

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. CELIO GLODO Y BALISNO, APPELLANT.

G.R. No. 136085. July 07, 2004

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before us is an automatic review of the Decision[1] dated October 21, 1998, rendered by the Regional Trial Court of Malolos, Bulacan (Branch 78) in Criminal Case No. 274-M-98, finding appellant Celio Glodo y Balisno guilty of the crime of Rape and sentencing him to death.

On February 25, 1998, an Information against appellant was filed before the trial court, to wit:

That on or about the 10[th] day of November, 1997, in the municipality of Baliuag, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there wilfully, unlawfully and feloniously, by means of threat, force and intimidation, with lewd designs, have carnal knowledge of her (sic) daughter the offended party Maricel C. Glodo, a 15 year old girl, against her will and without her consent.

The alternative aggravating circumstance of relationship under Art. 15 of the Revised Penal Code is present as the accused is the father of the offended party, Maricel C. Glodo.

Contrary to law.

Upon arraignment, appellant pleaded not guilty to the foregoing charge. Thereafter, trial ensued.

The facts of the case, as established by the prosecution, are as follows:

At around 11:00 in the evening of November 10, 1997, private complainant Maricel Glodo (Maricel for brevity) was then sleeping at the top bunk of their double deck bed. She was awakened by her father, herein appellant. He instructed her to transfer to the lower deck of the bed. Maricel did not want to go down but appellant forced her to do so by squeezing her arms, thus, inflicting pain. When Maricel was already at the lower deck, appellant told her to lie down and proceeded to caress her body. Appellant then forced Maricel to lie on her back and whenever she resisted, he would hurt her by squeezing her arms. Appellant undressed Maricel, laid on top of her and then inserted his penis into her vagina. Maricel felt pain in her vagina while she was being sexually assaulted and for some time thereafter, she just kept crying.[2]

Subsequently, she narrated the incident to her boyfriend, Raymundo Galvez. It was Raymundo and his mother, Milagros Galvez, who accompanied Maricel in reporting the incident to barangay officials. On November 13, 1997, Maricel executed a handwritten complaint for rape against her father before the barangay officials who summoned appellant. At the meeting before the barangay officials, appellant first denied that he raped Maricel, but upon repeated questioning by the barangay officials, appellant admitted his dastardly act. Such admission was made in writing as shown by Exhibit "D," the Sinumpaang Salaysay dated November 14, 1997, executed by appellant before the Barangay Secretary and the Barangay Captain. Maricel and her companions then proceeded

to the police before whom she executed a sworn complaint.[3] SPO1 Celso Cruz who took down the statement of Maricel on November 14, 1997, observed that while she was narrating the incident to him, she had a very serious deportment and did not cry but there are times that her voice would crack.[4] At the time Maricel executed her Sinumpaang Salaysay before the aforementioned police officer, she stated her age as 15 years old.[5] Thereafter, Maricel was instructed to go to the medico legal officer who conducted a physical examination on her.[6]

Medico-legal officer Dr. Manuel Aves testified that as part of his examination of Maricel, he interviewed her about her sexual and physical background. Maricel told him that she had been sexually abused by appellant since 1993 up to November 10, 1997. She revealed to Dr. Aves that the rape incident on November 10, 1997 was not the first time such incident happened; and that she was raped for the first time by her father sometime in June of 1993 when he just arrived from Japan and they were staying with her father's relatives in Irosin, Sorsogon.

The physical examination conducted by Dr. Aves further disclosed that Maricel was in a non-virgin state and she practically had no hymen left because "she was used for a long time;"[7] and that he found signs of penetration but no bruises, laceration or any kind of physical injuries outside the genital area or any sign of resistance.[8]

On the witness stand, Maricel reiterated her claim that she had been raped by appellant since 1993. The trial court judge asked Maricel why did she not file a case against her father when he first molested her. She replied that she knew no one who would help her in filing the case since all their relatives in Bicol are the siblings of her father and they would just dissuade her from pursuing the case against him; and that she has tried to escape from her father but he was able to convince their neighbor to fetch her from Talavera, Nueva Ecija and bring her back to him.[9]

On the other hand, appellant testified that the accusation of his daughter, Maricel, is not true because on November 10, 1997, he was not at their house. He was then in Manila having his "goods listed." Afterwards, he proceeded to Biñan, Laguna for the interment of the father of his live-in partner, Marilou. It was only on November 11, 1997 that he and Marilou arrived home in Baliuag, Bulacan. He believes that Maricel filed rape charges against him out of resentment because he often struck her out of anger from the time she eloped with her former boyfriend, Rufino, sometime in December of 1996. In November 1997, Maricel eloped again, this time with Raymond Galvez, and he could no longer get his daughter Maricel back because the barangay officials took her. It was at the meeting at the barangay office on November 13, 1997 that he learned of his daughter's accusation that he raped her. He denied having signed any document at the barangay office. After said meeting at the barangay office on November 13, 1997, he was arrested and confined in jail.[10] On cross-examination, appellant admitted that after the criminal case was filed, he sent his sister to try to talk to Maricel to convince the latter to just settle this whole matter, but Maricel refused.[11]

The trial court rendered judgment, the dispositive portion of which reads as follows:

WHEREFORE, the foregoing considered, this Court hereby finds accused CELIO GLODO Y BALISNO GUILTY beyond reasonable doubt of the crime of Rape defined and penalized under Article 335 of the Revised Penal Code as amended by Republic Act No. 7659 and hereby sentences him to suffer the penalty of DEATH, and to pay private complainant Maricel Glodo the amount of Fifty Thousand Pesos (P50,000.00) as moral damages. With costs.

SO ORDERED.

On appeal before us, appellant assigns the following errors of the trial court:

I

THE TRIAL COURT GRAVELY ERRED IN FINDING THE EVIDENCE OF THE PROSECUTION TO BE

MORE CREDIBLE AND SUFFICIENT THAN THE DEFENSE DESPITE THEIR EVIDENT INCONSISTENCIES AND IMPROBABILITIES.

II

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED DESPITE LACK OF MATERIAL EVIDENCE ON THE PART OF THE PROSECUTION.

III

THE COURT A QUO GRAVELY ERRED IN IMPOSING THE SUPREME PENALTY OF DEATH DESPITE FAILURE OF THE PROSECUTION TO PROVE THE QUALIFYING CIRCUMSTANCE OF MINORITY OF THE ALLEGED VICTIM.[12]

Appellant claims that he was at Biñan, Laguna on the day the rape was supposedly committed in their house in Baliuag, Bulacan; and that there is no truth whatsoever to the claims of Maricel who is only making such accusation out of resentment because she believed that he would interfere in her relationship with her boyfriend.

The main question, therefore, is, who is more credible - private complainant or appellant?

Aside from his claim that he was not at the place and time where and when the rape allegedly took place, appellant points out several circumstances that would show that Maricel's testimony is not worthy of belief.

First, he contends that it is incredible that Maricel did not even put up much resistance when she was allegedly being raped, as in fact, their housemaid, Vicky, who was then sleeping at the top bunk of the double deck bed when the rape was allegedly happening in the lower deck, was not even awakened from her sleep. Maricel also admitted during cross-examination that if she had shouted when the rape was taking place, the housemaid and other neighbors would have heard her, but she did not shout. The medico-legal report also established that Maricel's body bore no signs of injuries from any struggle. Thus, appellant argues that Maricel's account of how the rape supposedly happened is doubtful.

Second, appellant asseverates that Maricel's failure to report the past incidents of rape allegedly committed by appellant taints her credibility as her long silence runs counter to the natural reaction of an outraged maiden despoiled of her honor.

Lastly, appellant insists that the accusation of rape was merely concocted by Maricel because of her resentment against him and to stop him from meddling with her relationship with her boyfriend, Raymond Galvez, with whom she eloped in November of 1997.

Appellant therefore concludes that the uncorroborated testimony of complainant is weak and cannot be considered more convincing and rational than the defense presented by him.

At the outset, we emphasize the settled rule that the testimony of a rape victim of tender or immature age deserves full credit.[13] At the time Maricel testified, she was a mere sixteen year old. Furthermore, a reading of the record reveals that her testimony is clear, straightforward and bereft of material or significant inconsistencies. Hence, the trial court correctly found that Maricel remained steadfast in her testimony and, thus, her statement that appellant had carnal knowledge of her against her will by means of force and intimidation deserves full faith and credit.

The trial court's findings on the credibility of witnesses carry great weight and respect and will be sustained by the appellate court unless it is shown that the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which will alter the assailed decision or affect the result of the case.[14] We find nothing on record that would compel us to deviate from such well-entrenched rule or to overturn the trial

court's assessment of the credibility of complainant Maricel.

Appellant's contention that Maricel's claim that she was raped should not be believed because there are no signs whatsoever that she put up any resistance, is untenable. In *People vs. Rodriguez*,^[15] we held that it would be plain fallacy to say that the failure to shout or offer tenacious resistance makes voluntary the victim's submission to the criminal act of the offender. Again, in *People vs. Gutierrez*,^[16] we ruled that:

Physical resistance need not be proved in rape when intimidation is exercised upon the victim and she submits herself, against her will, to the rapist's advances because of fear for her life and personal safety. It suffices that the intimidation produces fear in the mind of the victim that if she did not submit to the bestial demands of the accused, something worse would befall her at the time she was being molested.

In this case, it is true that Maricel did not put up a struggle, hence, their housemaid, Vicky, did not even notice what was happening between Maricel and appellant. However, it cannot be disregarded that Maricel had long been subjected to intimidation by her father as he had, for four long years, continuously subjected her to sexual abuse. Maricel's testimony that she had been sexually abused by her father since the year 1993, or when she was only a young child of around eleven or twelve years old, was never refuted by appellant. This gives full credence to her story of continuous sexual abuse from 1993 up to 1997. Such abuse from the time that she was a mere eleven-year old child must have instilled terrible fear and confusion in the mind of such a young child. Thus, considering that from such a tender age, her father had always succeeded in having his lustful way with her, it is very easy to understand why, in the mind of Maricel, it is already useless to put up any struggle against her father. She knew that no amount of protestation on her part would deter her father's dark intentions. The fact that there had been a long history of sexual abuse completely explains why Maricel did not put up any struggle against the dastardly act of her father. This occurrence was fully described in *People vs. Alba*,^[17] quoting the ruling in *People vs. Melivo*,^[18] to wit:

"A rape victim's actions are oftentimes overwhelmed by fear rather than by reason. It is this fear, springing from the initial rape, that the perpetrator hopes to build a climate of extreme psychological terror, which would, he hopes, numb his victim into silence and submissiveness. Incestuous rape magnifies this terror, because the perpetrator is a person normally expected to give solace and protection to the victim. Furthermore, in incest, access to the victim is guaranteed by the blood relationship, proximity magnifying the sense of helplessness and the degree of fear.

"x x x The rapist perverts whatever moral ascendancy and influence he has over his victim in order to intimidate and force the latter to submit to repeated acts of rape over a period of time. In many instances, he succeeds and the crime is forever kept on a lid. In a few cases, the victim suddenly finds the will to summon unknown sources of courage to cry out for help and bring her depraved malefactor to justice.

"Given this pattern, we have repeatedly ruled that the failure of the victim to immediately report the rape is not indicative of fabrication. 'Young girls usually conceal for some time the fact of their having been raped.' x x x

"In all of these and other cases of incestuous rape, the perpetrator takes full advantage of his blood relationship, ascendancy, and influence over his victim, both to commit the sexual assault and to intimidate the victim into silence. Unfortunately for some perpetrators of incestuous rape, their victims manage to break out from the cycle of fear and terror. In *People v. Molero*, we emphasized that "an intimidated person cowed into submitting to a series of repulsive acts may acquire some courage as she grows older and finally state that enough is enough, the depraved malefactor must be punished."

Furthermore, the fact that appellant is Maricel's father who naturally had considerable moral ascendancy over her, sufficiently explains why she did not offer physical resistance. In *People vs. Rodriguez*,^[19] we held that:

The defense argument that the accused has not employed force upon his daughter in order to have sex with him

does not at all persuade. The force or violence necessary in rape is a relative term that depends not only on the age, size, and strength of the persons involved but also on their relationship to each other. In a rape committed by a father against his own daughter, the former's parental authority and moral ascendancy over the latter substitutes for violence or intimidation who, expectedly, would just cower in fear and resign to the father's wicked deeds.[20]

Hence, in this case, we find that the prosecution has successfully established the elements of violence, force and intimidation in the commission of the crime of rape by appellant.

We find appellant's argument that Maricel's credibility is clouded by her failure to report the alleged previous incidents of rape, to be unmeritorious. As a mere child of eleven or twelve years at the time the first rape was committed, Maricel could hardly be expected to know how to go about reporting the crime to authorities without the help of an adult. Verily, we see how Maricel must have felt absolutely hopeless, believing that there is nobody to defend her since all the people around her are siblings of her father who would naturally prefer to keep such incident a secret because of the humiliation the whole family might suffer in the community. Thus, Maricel's long silence in not reporting and filing the appropriate case against appellant for his previous sexual assaults on Maricel is sufficiently explained. In *People vs. De Taza*,^[21] the accused therein likewise used the argument that the victim's delay in filing the rape case against him casts doubt on the victim's credibility, but we found such argument unmeritorious, and stated thus:

Appellant posits that given the traumatic consequences of rape incidents, it is inconceivable for Jocelyn not to report or confide to anybody what she claims she went through, despite the fact that she was already far from his reach and was already within the secure confines of her other relatives.

Many victims of rape, however, never complain or file criminal charges against the rapist for they prefer to silently bear the ignominy and pain rather than reveal their shame to the world or risk the offender's ire and drive him to carry out his threats.

.....

To this Court, Jocelyn's delay in charging appellant does not infirm her credibility.

In *People vs. Gutierrez*,^[22] we held:

Complainant's failure to immediately report the rape does not diminish her credibility. The silence of a victim of rape or her failure to disclose her misfortune to the authorities without loss of material time does not prove that her charge is baseless and fabricated. It is not uncommon for young girls to conceal for some time the assault on their virtues because of the rapist's threat on their lives, more so when the offender is someone whom she knew and who was living with her. The delay in this case was sufficiently explained and, hence, did not destroy complainant's credibility.

Thus, in the present case, the trial court did not err in finding that Maricel's credibility is untainted by the fact that she failed to report the sexual assaults committed by her father against her since 1993 and in upholding Maricel's testimony.

Appellant's assertion that Maricel falsely testified against him out of resentment for the physical punishment he inflicted on her when she eloped with her boyfriend and to stop him (appellant) from interfering with her and her boyfriend, is not plausible. In *People vs. Cariñaga*,^[23] we observed that not a few persons convicted of rape have attributed the charges against them to family feuds, resentment, or revenge. And in *People vs. Viajedor*,^[24] we held that family resentment, revenge or feud have never swayed the Court from giving full credence to the testimony of a complainant for rape, especially a minor who remained steadfast in her testimony, throughout the direct and cross-examinations, that she was sexually abused.

The alleged motives on the part of a minor victim have never swayed us from lending full credence to the testimony of a complainant who remained steadfast in her claim that her father had raped her. The Court does not believe that just to vex her father, a girl would willingly go through the traumatic experience of narrating the sordid details of a rape and be grilled and discredited during cross-examination in court. It is truly inconceivable for a girl of such tender years to be able to concoct a story, provide details of a rape and ascribe such wickedness to her very own father just because she resents being disciplined by him, since by thus charging him, she would also expose herself to extreme humiliation, even stigma. Maricel's credible testimony is unshaken by appellant's implausible claim that she was motivated by ill-will in accusing him of rape.

Moreover, the testimony of appellant that the victim had eloped twice before the act complained of with different men does not demolish the fact that appellant had raped her on November 10, 1997.

In contrast, appellant's lame excuse that he was not at their house in Baliuag, Bulacan on November 10, 1997 because he was then in Manila having his "goods listed" and then proceeded to Laguna to attend the burial of the father of his live-in partner, Marilou, does not inspire belief. Our jurisprudence is replete with rulings that alibi is the weakest defense for it can be easily fabricated. Hence, in *People vs. Cariñaga*,^[25] we held that:

Alibi is often viewed with suspicion and received with caution not only because it is inherently weak and unreliable but also because it is easy to fabricate. For the defense of alibi to prosper, it must be convincing to preclude any doubt on the physical impossibility of the presence of the accused at the locus criminis at the time of the incident. Other than his self-serving testimony, appellant did not present evidence to corroborate his alibi and denial. Self-serving declarations are inadmissible as evidence of the facts asserted.

Herein, appellant's testimony regarding his alibi was, just like in the case quoted above, uncorroborated, despite the fact that Marilou, his live-in partner, was supposedly with him when he went back home on November 11, 1997. Marilou could have easily backed up his claim if it were true. Consequently, appellant's self-serving declaration is inadmissible as evidence of his allegation that he was not at the scene of the crime at the time of the complained incident.

Appellant's defense of alibi and denial is further weakened by his admission in court that he asked his sister to talk to Maricel and try to settle the case. Section 27, Rule 130 of the Revised Rules on Evidence, provides:

"[i]n criminal cases, except those involving quasi-offenses (criminal negligence) or those allowed by law to be compromised, an offer of compromise by the accused may be received in evidence as an implied admission of guilt."

Nevertheless, over and above this implied admission of guilt, the credibility of Maricel having been firmly established, her testimony, even without said offer of compromise, has proven beyond reasonable doubt that appellant had carnal knowledge of her through force and intimidation.

As to the proper penalty to be imposed on appellant, the applicable provisions of the Revised Penal Code at the time of the commission of the crime are Articles 266-A and 266-B of the Revised Penal Code, as amended by Republic Act No. 8353 (effective October 22, 1997), to wit:

Article 266-A. Rape. When and How Committed. -Rape is committed -

(1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:a)
Through force, threat or intimidation;

...

Article 266-B. Penalties. - Rape under paragraph 1 of the next preceding article shall be punished by reclusion

perpetua.

...

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

- 1) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim;

...

The Information alleges that Maricel was only 15 years old at the time the crime was committed and that she is the daughter of appellant. However, the prosecution merely presented the oral testimony and sworn statement of Maricel. It failed to present independent evidence proving the age of the victim and her relationship with appellant so as to warrant the imposition of death penalty. In *People vs. Viajedor*,^[26] we held:

The minority of the victim and the offender's relationship to the victim, which constitute only one special qualifying circumstance, must be alleged in the Information and proved with certainty. Recent rulings of the Court relative to the rape of minors invariably state that in order to justify the imposition of the penalty of death, there must be independent evidence proving the age of the victim, other than the testimonies of prosecution witnesses and the absence of denial by the accused. xxx xxx xxx The prosecution has the burden of proving all the elements of a crime, including the qualifying circumstances, especially in death penalty cases.

In *People vs. Canoy*,^[27] we reiterated that:

Under Sec. 11 of RA 7659, however, the qualifying circumstances of minority and the relationship between the accused and the victim must be specifically alleged in the Informations and duly proved during the trial with equal certainty as the crime itself to warrant the imposition of the death penalty.

Thus, for failure of the prosecution to present independent evidence to prove the age of victim Maricel and her relationship with appellant, the trial court erred in considering the special qualifying circumstance of minority and relationship as basis for the imposition of the death penalty. Appellant should have been found guilty of simple rape and the penalty that should be imposed on appellant is reclusion perpetua by virtue of Article 266-A of the Revised Penal Code.

As to the damages awarded by the trial court, we held in *People vs. Viajedor*^[28] that an award of civil indemnity, which is in the nature of actual or compensatory damages, is mandatory upon a conviction for rape. Jurisprudence holds that moral damages in the amount of P50,000.00 should be granted without the necessity of additional pleading or proof other than the fact of rape, in recognition of the victim's injury necessarily resulting from the evil crime of rape.

WHEREFORE, the Decision dated October 21, 1998 of the Regional Trial Court of Malolos, Bulacan, Branch 78, in Criminal Case No. 274-M-98, finding appellant Celio Glodo y Balisno guilty beyond reasonable doubt of the crime of rape is **AFFIRMED** with the **MODIFICATIONS** that the death penalty imposed is reduced to reclusion perpetua and appellant is ordered to pay private complainant Maricel C. Glodo Fifty Thousand Pesos (P50,000.00) as civil indemnity and Fifty Thousand Pesos (P50,000.00) as moral damages.

SO ORDERED.

Davide, Jr., C.J., Puno, Vitug, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Corona, Carpio-Morales, Callejo, Sr., Azcuna, and Tinga, JJ., concur.

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- [1] Penned by Judge Gregorio S. Sampaga.
- [2] Testimony of Maricel Glodo, TSN of May 18, 1998, Record, pp. 111-113.
- [3] Testimony of Maricel Glodo, TSN of May 18, 1998, Record, pp. 113-117.
- [4] Testimony of SPO1 Celso Cruz, TSN of June 19, 1998, Record, p. 152.
- [5] Sinumpaang Salaysay of Maricel Glodo, Exhibit “A”, Record, p. 77.
- [6] Testimony of Maricel Glodo, TSN of May 18, 1998, Record, p. 117.
- [7] Testimony of Dr. Manuel Aves, TSN of July 10, 1998, Record, p. 164.
- [8] Id, at pp. 163-166.
- [9] Testimony of Maricel Glodo, TSN of May 18, 1998, Record, pp. 118-119.
- [10] Testimony of Celio Glodo, TSN, July 24, 1998, Record, pp. 174-177.
- [11] Testimony of Celio Glodo, TSN August 14, 1998, Record, p. 197.
- [12] Appellant’s Brief, Rollo, pp. 53–54.
- [13] People vs. Cariñaga, G. R. Nos. 146097-98. August 26, 2003
- [14] People vs. Johnny Viajedor, 401 SCRA 312, 320 (2003).

[15] 375 SCRA 224, 233 [2002].

- [16] G.R. Nos. 147656-58. May 9, 2003.

[17] 305 SCRA 811, 822 (1999)

[18] 253 SCRA 347, 356-358 (1996)

- [19] Supra, Note 15.
- [20] Ibid.
- [21] G. R. Nos. 136286-89. September 11, 2003.
- [22] G.R. Nos. 147656-58. May 9, 2003.
- [23] Supra, Note 13.
- [24] Supra, Note 14.
- [25] Supra, Note 13.
- [26] Supra, Note 14.

[27] G.R. Nos. 148139-43. October 15, 2003

[28] Supra. Note 14.

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