PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ARDEL CANUTO, APPELLANT.

G.R. NO. 166544. July 27, 2007

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

For final review is the Court of Appeals Decision[1] of January 12, 2005 affirming with modification the decision[2] of the Regional Trial Court (RTC) of Iriga City, Branch 35 finding Ardel Canuto (appellant) guilty beyond reasonable doubt of qualified rape of a minor, AAA.

The Amended Information dated November 14, 2001 charged appellant as follows:

> That on or about the 28[th] day of June, 1999, in Barangay Caranday, Municipality of Baao, Province of Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with one [AAA],[3] a 15-year old girl, against her will and consent, to the damage and prejudice of the offended party in such amount as may be proven in court.
>
> That qualifying aggravating circumstances are present in this case as follows: The accused is the common[-]law spouse of the mother of the minor victim, who was still below 18 years of age at the time of the commission of this Rape incident.
>
> ACTS CONTRARY TO LAW."[4] (Emphasis supplied)

During the pre-trial conference, appellant admitted that he is the common-law spouse of AAA's mother CCC.[5] Even CCC admitted at the witness stand that she is not married to appellant.

AAA was born on April 19, 1984 to spouses BBB and CCC.[6]

After BBB died, CCC started living with appellant, without the benefit of marriage, at Caranday, Baao, Camarines Sur.[7] When AAA was seven (7) years old,[8] the couple took AAA into their custody until she reached fourth grade when she lived with her grandmother, also at Caranday.

From the evidence for the prosecution, the following version gave rise to the filing of the information against appellant:

On June 28, 1999, AAA's grandmother left to assist a woman deliver a baby,[9] leaving her and her three cousins, namely: Jennifer, Jennyrose and Jennylyn, all surnamed Villagomez, and aged 9, 6, and 3 years old, respectively, in the house. At around 11:00 o'clock in the evening, appellant suddenly appeared at the sala where AAA was alone, her grandmother being still out and her cousins already asleep in a room. Appellant poked an ice pick at the base of her right ear,[10] and told her that he would kill her if she shouted.[11] He then removed her underwear as he did his short pants, forced her to lie down on a bench nearby and spread her legs, and placed himself on top of her. While AAA tried to push him away, she was overpowered. He continued to poke the ice pick at her while he

was kissing her cheeks and neck until he inserted his penis in her vagina and made a push and pull motion.[12] His lust satisfied, he put on his short pants and told AAA not to report the matter to anybody or else he would kill her mother, grandmother, brothers and sisters.[13]

Months later or on December 14, 1999, AAA related the incident to her aunt DDD,[14] who thereupon fetched her mother and grandmother and accompanied her to the Bicol Medical Center in Naga City where she was medically examined by Dr. Catherine Buban. The examination showed that AAA's genitalia had an old hymenal laceration at 4, 7, 8, 9 and 12 o'clock positions which the doctor opined could have been caused by a hardened penis inserted in the vagina.[15]

Denying the accusation, appellant claimed that at the time of the alleged rape, he was sleeping in his house at Caranday after taking supper, he having gotten tired after working at his farm from 6:00 o'clock in the morning until 4:00 o'clock in the afternoon.[16]

On cross-examination, appellant admitted that the house of AAA's grandmother where she is living is one (1) kilometer away from his house and could be negotiated in 15 minutes by foot;[17] and that he had been previously incarcerated at the National Penitentiary in Muntinlupa City for killing someone,[18] which fact was known to CCC and AAA.[19]

AAA's mother CCC, testifying for the defense, corroborated appellant's claim that at the time of the alleged rape, he was already asleep,[20] she adding that the family members usually sleep at 7:00 o'clock in the evening and wake up at 6:00 o'clock the following morning.[21] And CCC declared that AAA had not mentioned to her anything about any rape committed by appellant.[22]

By Decision of May 16, 2002, the RTC of Iriga City, Branch 35, convicted appellant of rape, the dispositive portion of which decision reads:

> WHEREFORE, finding accused, Ardel Canuto GUILTY of the crime of rape under Art. 335 of the Revised Penal Code, as amended by Rep. Act 7659, further amended by Art. 266-A and 266-B beyond reasonable doubt, he is sentenced to a penalty of death, to pay an indemnity of FIFTY THOUSAND (Php 50,000.00) PESOS and to pay the costs.[23]

After a review of the case by the Court of Appeals to which it was forwarded by this Court pursuant to People v. Mateo,[24] the appellate court affirmed the trial court's decision with modification consisting of an increase in the amount of civil indemnity and an addition of moral and exemplary damages awarded to AAA, thus:

> WHEREFORE, premises considered, the Decision dated May 16, 2002 of the Regional Trial Court of Iriga City, Branch 35, in Criminal Case No. IR-5814 finding accused-appellant guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer the supreme penalty of DEATH is hereby AFFIRMED with MODIFICATIONS in that he is ordered to pay the private complainant, [AAA], P75,000.00 as civil indemnity ex delicto; P75,000.00 as moral damages; and P25,000.00 as exemplary damages.
>
> With costs against the accused-appellant.
>
> Pursuant to Section 13, Rule 124 (A.M. No. 00-5-03-SC in re: Amendments to the Revised Rules of Criminal Procedure to Govern Death Penalty Cases) let the entire records of this case be forwarded to the Honorable Supreme Court for review.[25] (Underscoring supplied)

In his Brief[26] filed with this Court, appellant maintains that the lower courts erred in convicting him, the prosecution having failed to prove his guilt beyond reasonable doubt.[27]

Appellant calls attention to AAA's declaration that she did not recognize the person who entered her

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grandmother's house as the only light came from a gas lamp which was quite far from her.[28] He calls attention too to AAA's failure to take any precautionary measure to secure the door of the house, following her claim that appellant had earlier raped her on June 26, 1999;[29] and to AAA's claim that she felt nothing when appellant's penis was being inserted in her vagina, unlike other similarly situated victims who would describe the experience as horrible, dreadful or painful.[30]

Moreover, appellant harps on AAA's long delay in reporting the incident to thus create serious doubts on her claim, and only when she was already six months pregnant following her alleged rape by a certain Ricardo Bresinio in August 1999[31] (A separate complaint for rape was also filed by AAA against Bresinio.)

Finally, appellant questions the failure of the prosecution to prove the qualifying circumstance of stepfather-stepdaughter relationship.[32]

The conviction of appellant must be sustained.

Appellant casts doubt on AAA having recognized him as the malefactor, in light of her admission at the time of the incident, that the only light available came from a gas lamp which was "a bit far from [her]."[33] AAA testified on re-direct examination, however:

> Q
>
> Now, you said during the cross examination that when the accused entered the door of your grandmother's house, you were not yet able to recognize him, at what point of time you already recognized the accused?
>
> A
>
> I was able to recognize him when he approached me , sir.
>
> Q
>
> So, how were you able to recognize him when he approached you?
>
> A
>
> Now, he faced me and besides his voice is familiar to me . [34] (Underscoring supplied)

That the gas lamp was "a bit far" from AAA when the incident occurred did not preclude her from recognizing appellant. The scene was not exactly in pitch darkness. Besides, AAA lived with appellant for "more or less 6 years" to enable her to acquire familiarity with his voice, gait and demeanor.

Appellant's denial being unsubstantiated by clear and convincing evidence, it cannot prevail over the positive, candid and categorical testimony of the private complainant.[35] Neither can alibi.

Appellant himself testified that the distance between his house and that of AAA's grandmother could be negotiated by "not more than 15 minutes"[36] walk from his house. It was thus not physically impossible for him to have been at the place, the date and time of the commission of the offense.

Notably, appellant did not even intimate the presence of any dubious reason or fiendish motive for AAA to falsely charge him.[37]

That AAA felt nothing while she was being raped by appellant does not negate the commission of the crime. A 15-year-old naive barrio lass, threatened with death or serious injury if she repulses the accused's sexual advances, can only cower in fear and yield into submission.

As for AAA's delay of almost six months in reporting the incident to the authorities, People v. Francisco,[38]

People v. Marcelo[39] and People v. Bayani[40] enlighten. In these cases, this Court declared that a six-month delay in reporting the rape to the authorities does not impair the credibility of the private complainant or indicate a fabricated charge if satisfactorily explained.[41]

In AAA's case, the fear instilled in her by appellant that he would kill her and her kin if she reported the questioned act could explain the delay, especially given her awareness that appellant had been previously convicted and detained for killing someone. Besides, many victims of rape never complain or file criminal charges against the rapist, they preferring to silently bear the ignominy and pain, rather than reveal their shame to the world or risk the offender's making good his threats.[42]

The Amended Information alleges that appellant is the "common[-]law spouse of the mother of the minor victim." As stated earlier, appellant admitted that AAA's mother CCC is his common-law spouse. And so did CCC. There is thus no stepfather-stepdaughter relationship to speak of.

As for AAA's minority, her Certificate of Live Birth[43] clearly shows that she was born on April 19, 1984 and, therefore, was fifteen (15) years old on June 28, 1999 when the rape occurred.

Article 266-B paragraph 6(1) of the Revised Penal Code provides that the death penalty shall be imposed upon the accused if 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.

Minority and relationship constitute special qualifying circumstances which, when alleged in the Information and proved during trial, as in the instant case, warrant the imposition of the death penalty on the malefactor.

In view, however, of the passage and effectivity of Republic Act (R.A.) No. 9346[44] on June 24, 2006 prohibiting the imposition of death penalty, the proper penalty imposable on appellant is reclusion perpetua pursuant to Section 2 thereof which reads:

> SECTION 2. In lieu of the death penalty, the following shall be imposed:
>
> (a) the penalty of reclusion perpetua, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code; or
>
> (b) the penalty of life imprisonment, when the law violated does not make use of the nomenclature of the penalties of the Revised Penal Code.

The applicability of the foregoing provision of R.A. No. 9346 is undeniable in view of the principle in criminal law that favorabilia sunt amplianda adiosa restrigenda. Penal laws which are favorable to the accused are given retroactive effect.[45]

WHEREFORE, the Court of Appeals Decision of January 12, 2005 finding appellant, ARDEL CANUTO, GUILTY beyond reasonable doubt of qualified rape is AFFIRMED with MODIFICATION in that the penalty of death meted out to him is reduced to reclusion perpetua, pursuant to Republic Act No. 9346, without eligibility for parole.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Azcuna, Tinga, Chico-Nazario, Garcia, Velasco, Jr., and Nachura, JJ., concur.

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[1] Rollo, pp. 3-27. Decision penned by Associate Justice Martin S. Villarama, Jr. and concurred in by Associate Justices Regalado E. Maambong and Lucenito N. Tagle.

[2] Records, pp. 98-107. Decision penned by Judge Alfredo D. Agawa.

[3] The real names of the victim and her parents are withheld to protect their privacy. (Vide People v. Cabalquinto, G.R. No. 167693, September 19, 2006, 502 SCRA 419)

[4] Records, p. 35.

[5] Id. at 37.

[6] Exhibit "A," Certificate of Live Birth, id. at 71.

[7] TSN, November 22, 2001, p. 3.

[8] Ibid.

[9] Id. at 11.

[10] Id. at 5.

[11] Id. at 6.

[12] Id. at 6-7.

[13] Id. at 8.

[14] Id. at 9.

[15] TSN, February 20, 2002, p. 5.

[16] TSN, March 14, 2002, pp. 5-6.

[17] Id. at 14.

[18] Id. at 15.

[19] Id. at 17.

[20] TSN, April 4, 2002, pp. 6-7.

[21] Id. at 7.

[22] Id. at 8.

[23] Records, p. 107.

[24] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

While the Fundamental Law requires a mandatory review by the Supreme Court of cases where the penalty imposed is reclusion perpetua, life imprisonment, or death, nowhere, however, has it proscribed an intermediate review. If only to ensure utmost circumspection before the penalty of death, reclusion perpetua or life imprisonment is imposed, the Court now deems it wise and compelling to provide in these cases a review by the Court of Appeals before the case is elevated to the Supreme Court. Where life and liberty are at stake, all possible avenues to determine his guilt or innocence must be accorded an accused, and no care in the evaluation of the facts can ever be overdone. A prior determination by the Court of Appeals on, particularly, the factual issues, would minimize the possibility of an error of judgment. If the Court of Appeals should affirm the penalty of

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death, reclusion perpetua or life imprisonment, it could then render judgment imposing the corresponding penalty as the circumstances so warrant, refrain from entering judgment and elevate the entire records of the case to the Supreme Court for its final disposition.

[25] Rollo, p. 134.

[26] CA rollo, pp. 38-51.

[27] Id. at 44.

[28] Id. at 45.

[29] Ibid.

[30] Id. at 46.

[31] Ibid.

[32] Id. at 48.

[33] Id. at 45; TSN, December 4, 2001, p. 10.

[34] TSN, January 22, 2002, p. 3.

[35] People v. Arevalo, Jr., G.R. Nos. 150542-87, February 3, 2004, 421 SCRA 604, 619; vide also People v. Torres, G.R. No. 170837, September 12, 2006, 501 SCRA 591, 611; People v. Suyu, G.R.No. 170191, August 16, 2006, 499 SCRA 177, 200; People v. Lachica, G.R. No. 143677, May 9, 2002, 382 SCRA 162, 176; People v. Mores, G.R. No. 107746, July 28, 1999, 311 SCRA 342, 351;

[36] TSN, March 14, 2002, p. 14.

[37] Id. at 10.

x x x x

Q

So you do not know any reason why a case of rape was filed against you by [AAA]?

A

None, sir.

Q

Do you know the companion here, the Auntie of [AAA]?

A

I know her.

Q

What is her name?

A

[DDD].

Q

Is she in court?

A

Yes, sir.

Q

Please point to her?

INTERPRETER:

Witness looking around the court and pointing to a person who when asked of her name answered [DDD].

ATTY. SE

Q

Do you know if any interest she has or why she accompanied [AAA]?

A

I do not know, sir.

x x x x

[38] G.R. No. 141631, April 4, 2003, 400 SCRA 650, 657.

[39] G.R. Nos. 126538-39, November 20, 2001, 369 SCRA 661, 670.

[40] G.R. No. 120894, October 3, 1996, 262 SCRA 660, 683.

[41] Vide People v. Barcena, G.R. No. 168737, February 16, 2006, 482 SCRA 543, 555; People v. Narido, G.R. No. 132058, October 1, 1999, 316 SCRA 131, 145; People v. Bugarin, G.R. Nos. 110817-22, June 13, 1997, 273 SCRA 384, 398; People v. Abendaño, G.R. Nos. 105536-37, March 21, 1995, 242 SCRA 531, 540.

[42] People v. Geromo, G.R. No. 126169, Dec. 21, 1999, 321 SCRA 355, 364.

[43] Supra note 6.

[44] AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES.

Section 1 thereof reads:

> SECTION 1. The imposition of the penalty of death is hereby prohibited. Accordingly, Republic Act No. Eight Thousand One Hundred Seventy-Seven (R.A. No. 8177), otherwise known as the Act Designating Death by Lethal Injection is hereby repealed. Republic Act No. Seven Thousand Six Hundred Fifty-Nine (R.A. No. 7659), otherwise known as the Death Penalty Law, and all other laws, executive orders and decrees, insofar as they impose the death penalty are hereby repealed or amended accordingly.

[45] This principle is embodied under Article 22 of the Revised Penal Code which provides:

ART. 22. Retroactive effect of penal laws. – Penal laws shall have a retroactive effect insofar as they favor the persons guilty of a felony, which is not a habitual criminal, as this term is defined in Rule 5 of Article 62 of this Code, although at the time of the publication of such laws, a final sentence has been pronounced and the convict is serving the same.

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