

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. WENCESLAO DERI y BENITEZ, ACCUSED-APPELLANT.

G.R. No. 166566. November 23, 2010

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the January 12, 2005 Decision[1] of the Court of Appeals (CA), in CA-G.R. CR H.C. No. 00066, which affirmed with modification the January 27, 2003 Decision[2] of the Regional Trial Court, Quezon City, Branch 98 (RTC). Initially, the RTC found accused Wenceslao Deri guilty of three counts of rape committed against AAA[3] and sentenced him to suffer the penalty of death in Criminal Case Nos. Q-97-73621 and Q-98-75195 and the penalty of reclusion perpetua in Criminal Case No. Q-98-75196. In each case, accused was also ordered to pay the following amounts: P75,000.00 as civil indemnity, P50,000.00 as moral damages and P25,000.00 as exemplary damages.

THE FACTS

Accused Wenceslao Deri was charged with three counts of rape for sexually violating his minor daughter, committed on three separate incidents within a period of four years. The accusatory parts of the three (3) Informations read:

Criminal Case No. Q-97-73621[4]

That on or about the 17[th] day of October 1997 in Quezon City, Philippines, the said accused, [father of the complainant], by means of force and intimidation, to wit: by then and there wilfully, unlawfully and feloniously putting himself on top of the undersigned, a minor, 16 years of age, his own daughter,[5] and thereafter have carnal knowledge with the undersigned complainant against her will and without her consent.

CONTRARY TO LAW.

Criminal Case No. Q-98-75195[6]

That on or about the 14[th] day of August 1995, in Quezon City, Philippines, the said accused, [father of the complainant], by means of force and intimidation, to wit: by then and there willfully, unlawfully and feloniously undressing her and putting himself on top of AAA, 14 years of age, a minor,[7] and thereafter have carnal knowledge with the said complainant against her will and without her consent.

CONTRARY TO LAW.

Criminal Case No. Q-98-75196[8]

That on or about the month of March 1993, in Quezon City, Philippines, the said accused, father of the complainant, by means of force and intimidation, to wit: by then and there wilfully, unlawfully and feloniously putting himself on top of AAA, 11 years of age, a minor,[9] and thereafter have carnal knowledge with said

complainant against her will and without her consent.

CONTRARY TO LAW.

During the trial, the prosecution named four witnesses: (1) AAA; (2) Dr. Ma Christina B. Freyra, Chief-Medico Legal Officer of the Philippine National Police (PNP) Crime Laboratory; (3) Lydia Velez, their stay-out househelp; and (4) Senior Police Officer 2 (SPO2) Reynato Resurreccion of Quezon City Police Station 9. The testimony of SPO2 Resurreccion was later dispensed with after the parties stipulated that his testimony would merely be on the investigation he conducted concerning the cases.[10]

The prosecution established that AAA is the eldest child of Wenceslao Deri and BBB. As indicated in her birth certificate,[11] she was born on July 10, 1981. AAA testified that when their mother, BBB, left the Philippines to work as a baby-sitter abroad, she and her brother, CCC, were left under the custody of their father, the accused, who worked as a tricycle driver.[12] Her agony began when her father started sexually defiling her. She particularly remembered being raped by her father on three occasions: (1) March, 1993; (2) August 14, 1995; and (3) October 17, 1997.

She recalled that sometime in March of 1993, when she was still 11 years old, the accused came to their room while she and her brother, CCC, were fast asleep. She was awakened, however, when she felt that someone was on top of her.[13] When finally she opened her eyes, she saw that it was her father. She tried to push him away but her father threatened to kill her.[14] As she could not do anything to stop him, the latter eventually succeeded in ravishing her. This was the first time that her father raped her.

The second incident happened on August 14, 1995. It was her father's birthday and he had a drinking session with his friends in their house.[15] After his guests left, he ordered her, then 14 years old, to go to her room and undress.[16] She did not obey him and went to sleep instead. She was surprised to see her father in her bed.[17] She tried to push him away but he punched her in the buttocks to silence her.[18] After punching her, he continued raping her.

Finally, it was on October 17, 1997 when accused violated her for the third time. She was already 16 years old then. She recalled that on said date, he slid beside her while she was asleep and forcibly undressed her.[19] She tried to push him back but he hit her.[20] Already in pain, she could no longer find the strength to resist him, and so her father was able to successfully defile her yet again.

It was also this time that AAA finally found the courage to reveal her ordeal to their househelp, Lydia. The latter assured her that it would be reported to her grandfather, DDD.[21] On October 20, 1997, Lydia told DDD what she had discovered, and DDD immediately went to report this to the barangay authorities.[22] Thereafter, Captain Bing Garces and his men accosted the accused and brought him to the police station.[23] Eventually, AAA was subjected to a medical examination.

On October 21, 1997, Dr. Maria Cristina Freyra conducted a physical examination on AAA and discovered deep healed lacerations on her sexual organ at the 4 o'clock and 7 o'clock positions.[24] In her medical opinion, the said lacerations could have been caused by sexual intercourse that happened more than a week before the examination.[25] The Medico-Legal Report[26] concluded that she was "in non-virgin state physically."

Lydia Velez, the stay-out househelp of the family, testified that on October 14, 1997, she noticed AAA in tears so she asked her if there was something bothering her.[27] It was then that AAA confided that her father had been sexually violating her since she was in Grade VI.[28] She even narrated that AAA considered ending her life so that her father would not be able to repeat his dastardly acts against her.[29]

The accused, on the other hand, interposed the defense of denial and alibi. He insisted that he did not rape his

daughter. He surmised that AAA wanted to get back at him because she did not like the way he disciplined them. He mentioned in particular the incident where he and her daughter had an altercation about her skipping of classes and about her report card. It was during this time when, unable to control his temper, he slapped her and whipped her with his belt.[30] He also related that he worked as a tricycle driver from 12:00 o'clock midnight until 8:00 o'clock or 10:00 o'clock of the next morning.[31] AAA, would usually leave for school at around 7:00 o'clock in the morning, would go home at around 5:00 o'clock or 6:00 o'clock and sleep at around 11:00 o'clock in the evening.[32]

To further support his stand, he presented Gregorio Frias (Frias) and Violeta Tabar (Tabar). Frias testified that he was with the accused sometime in October of 1997 but could not remember the exact date.[33] Tabar, on the other hand, a former tenant of the accused, informed the Court that she used to lease a part of the house of the accused from 1993 to 1997. During that period, she never noticed anything out of the ordinary in the family or heard of the rapes that allegedly took place there.[34]

On January 27, 2003, the RTC convicted the accused for three counts of rape.[35] The dispositive portion of the decision reads:

WHEREFORE, PREMISES CONSIDERED, the guilt of the accused having been proven beyond reasonable doubt decision is hereby rendered as follows:

CRIMINAL CASE NO. Q-97-73621 - the accused WENCESLAO DERI Y BENITEZ is sentenced to suffer the penalty of DEATH and ordered to pay the victim the amounts of SEVENTY FIVE THOUSAND PESOS (P75,000.00) as civil indemnity, FIFTY THOUSAND PESOS (P50,000.00) as moral damages and TWENTY FIVE THOUSAND PESOS (P25,000.00) as exemplary damages.

CRIMINAL CASE NO. Q-98-75195 - the accused WENCESLAO DERI Y BENITEZ is sentenced to suffer the penalty of DEATH and ordered to pay the victim the amounts of SEVENTY FIVE THOUSAND PESOS (P75,000.00) as civil indemnity, FIFTY THOUSAND PESOS (P50,000.00) as moral damages and TWENTY FIVE THOUSAND PESOS (P25,000.00) as exemplary damages.

CRIMINAL CASE NO. Q-98-75196 - the accused WENCESLAO DERI Y BENITEZ is sentenced to suffer the penalty of RECLUSION PERPETUA and ordered to pay the victim the amounts of SEVENTY FIVE THOUSAND PESOS (P75,000.00) as civil indemnity, FIFTY THOUSAND PESOS (P50,000.00) as moral damages and TWENTY FIVE THOUSAND PESOS (P25,000.00) as exemplary damages.

SO ORDERED.[36]

The RTC found the testimony of AAA clear and credible and substantiated by the report of Dr. Freyra which confirmed that she had healed lacerations in her private genitalia.[37] The trial court did not give weight to the defense of denial and alibi of the accused. It opined that the testimonies of his witnesses hardly helped his case because "the testimonies of defense witnesses who did not actually see the commission of the offense cannot prevail over the positive testimony of the complainant that she was raped by the accused." [38]

The RTC did not impose the death penalty in Criminal Case No. Q-98-75196 as the rape was committed in March, 1993 or before the effectivity of Republic Act 7659.

At first, the records of this case were forwarded to the Court for automatic review. Following the Court's ruling in *People v. Mateo*, [39] this case was remanded to the CA for intermediate review.

In his Appellant's Brief, [40] the accused presented the following errors:

I

THE COURT A QUO GRAVELY ERRED IN GIVING FULL FAITH AND CREDENCE TO THE TESTIMONY OF PRIVATE COMPLAINANT AAA.

II

THE COURT A QUO GRAVELY ERRED IN FINDING ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THREE (3) COUNTS OF RAPE.[41]

Accused insisted that AAA only filed the case to get revenge as he usually employed corporal punishment on his children as his way of instilling discipline in them.[42] He also argued that it was not clearly established that he had raped his daughter on the mentioned dates: March 13, 1993, August 14, 1995 and October 17, 1997.[43]

The Office of the Solicitor General (OSG) countered that AAA's testimony that her father raped her on the mentioned dates was clear and categorical. The OSG added that "no woman would cry rape, allow an examination of her private parts, subject herself to humiliations, go to the rigors of public trial and taint her good name if her claim were not true." [44]

On its January 12, 2005 Decision, the CA affirmed with modification the RTC decision[45] giving more weight to the positive testimony of AAA who withstood the rigors of the trial in order to get justice than to the accused's defense of denial and alibi.

With respect to Criminal Case No. Q-98-75196, considering that the rape occurred before the effectivity of R.A. 7659,[46] the CA reduced the award of civil indemnity from P75,000.00 to P50,000.00.[47]

Thus, the decretal portion of the CA Decision reads:

WHEREFORE, the decision of the trial court in Criminal Cases Nos. Q-97-73621 and Q-98-75195 is hereby AFFIRMED in toto.

With respect to Criminal Case No. Q-98-75196, the decision appealed from is AFFIRMED with MODIFICATION in that the accuse-appellant is sentenced to suffer the penalty of reclusion perpetua and is ordered to pay complainant AAA the amount of P50,000.00 as civil indemnity, P50,000.00 as moral damages and P25,000.00 as exemplary damages.

SO ORDERED.[48]

Hence, this appeal.

Accused restates the issue he submitted before the CA: whether or not the RTC erred in finding him guilty beyond reasonable doubt of three counts of rape.

There was no error. The Court affirms the conviction.

In essence, the crime of rape is typically committed in relative isolation or even secrecy, thus, normally it is only the victim who can testify on the circumstances surrounding the forced coitus.[49] Therefore, in the prosecution of rape, the credibility of the rape victim is usually the single most important issue to determine.[50] Should her testimony withstand the test of credibility, the victim's account would be adequate to sustain a conviction.[51]

In the case at bench, the trial court, which had the opportunity to examine AAA's behavior in court, found her story to be clear, straightforward and credible. It wrote: "her testimony bore the earmarks of truth it being clear, positive, replete with details, straightforward, consistent and unwavering even when testifying during cross-examination. It must have been heartbreaking for her to recount vividly her father's dasdardly acts during her testimony, while shedding tears on her painful, traumatic experience in the hands of her own father who was supposed to be her own protector from evil elements at that time while her mother was abroad working and

wanting to give her family a better life by looking after and caring for other people's children when all the while she was away, her daughter was being ravished by the latter's own father." [52]

Settled is the rule that findings of the trial court on the credibility of witnesses and their testimonies are generally accorded great respect, absent any showing that it overlooked or misappreciated substantial facts and circumstances, which if considered, would materially modify the outcome of the case. [53]

Accordingly, accused's bare denial deserves scant or no consideration at all. The Court has consistently ruled that "denial, if unsubstantiated by clear and convincing evidence, is negative and self-serving evidence, which deserves no weight in law and cannot be given greater evidentiary value over the testimonies of credible witnesses who testify on affirmative matters." [54] In this case, AAA positively identified her father as the one who raped her on three separate occasions. Her testimony was corroborated by the medical finding that she was no longer a virgin at barely 16 years of age. A rape victim's testimony against her father deserves greater weight since Filipino culture dictates children revere and respect their elders. This trait is deep-rooted in Filipino children and families and is even acknowledged by law. It is thus improbable, if not completely absurd, that a daughter would imprudently invent a story of rape against her father in utter disregard of the unimaginable trauma and social stigma it may generate on her and the entire family. A teenage unmarried girl does not ordinarily file a rape complaint against anybody, much less her own father, if she does not speak the truth. [55]

Likewise, his defense of alibi warrants no evidentiary weight. For the defense of alibi to prosper, it must sufficiently prove: (a) the presence of the accused in another place at the time of the commission of the offense; and (b) the physical impossibility for him to be at the scene of the crime. [56] Other than the self-serving testimony of the accused, the Court finds nary an exculpatory evidence that would prove that he could not have possibly committed the crime being imputed against him.

On the contrary, his job as a tricycle driver gave him all the opportunity he needed to commit the crime. It did not eliminate the possibility of him committing the said crime but all the more proved that he could easily facilitate it. Even the testimony of defense witness Gregorio Frias, who attempted to support his alibi, was evidently vague because he could not recall the exact date when they were supposedly together.

In Criminal Case Nos. Q-97-73621 and Q-98-75195, the incidents of rape were committed on August 14, 1995 and October 17, 1997 or after the effectivity of R.A. 7659. Article 335 of the Revised Penal Code in relation to R.A. 7659, provides that when the victim of rape 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 penalty of death shall be imposed. However, in view of the effectivity of R.A. 9346, [57] the penalty of death should now be reduced to reclusion perpetua, without eligibility for parole. Hence, with respect to Criminal Case Nos. Q-97-73621 and Q-98-75195, where the penalty originally imposed was death for each crime, it should now be reduced to reclusion perpetua without eligibility for parole.

Regarding the award of damages in these two cases, the Court affirms the award of P75,000.00 representing civil indemnity ex delicto. As explained in *People v. Lopez*, [58] "if the rape is perpetrated with any of the attending qualifying circumstances that require the imposition of the death penalty, the civil indemnity for the victim shall be P75,000.00." In the same vein, the award of moral damages should be increased from P50,000.00 to P75,000.00 because the cases remain to be heinous. [59]

In Criminal Case No. Q-98-75196, the Court affirms the penalty of reclusion perpetua and the award of P50,000.00 as civil indemnity and P50,000.00 as moral damages. [60] At the time of the commission of the crime in this case, rape was still classified under crimes against chastity as defined and penalized under Article 335 [61] of the Revised Penal Code.

The Court, however, deems it proper to increase the exemplary damages from P25,000.00 to P30,000.00 following jurisprudence^[62] for all counts of rape. Article 2230 of the New Civil Code provides that "in criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party." Furthermore, in *People v. Matrimonio*,^[63] the Court awarded exemplary damages to dissuade other fathers with perverse tendencies or aberrant sexual behavior from sexually abusing their own daughters.

Lastly, in addition to the awarded damages, the accused is further ordered to pay interest at the legal rate of 6% per annum until fully paid.^[64]

WHEREFORE, the January 12, 2005 Decision of the Court of Appeals, in CA-G.R. H.C. CR No. 00066, is MODIFIED to read as follows:

(1) In Criminal Case Nos. Q-97-73621 and Q-98-75195, accused WENCESLAO DERI y BENITEZ is hereby sentenced to suffer the penalty of Reclusion Perpetua, without eligibility of parole, for each count. He is further ordered to pay the victim P75,000.00 as civil indemnity, P75,000.00 as moral damages and P30,000.00 as exemplary damages, for each count.

(2) In Criminal Case No. Q-98-75196, accused WENCESLAO DERI y BENITEZ is hereby sentenced to suffer the penalty of Reclusion Perpetua. He is further ordered to pay the victim P50,000.00 as civil indemnity, P50,000.00 as moral damages and P30,000.00 as exemplary damages.

(3) In all the three cases, the accused shall pay interest on the damages at the legal rate from the finality of this decision until fully paid.

SO ORDERED.

Corona, C.J., Carpio, Carpio Morales, Velasco, Jr., Leonardo-De Castro, Brion, Peralta, Bersamin, Abad, Villarama, Jr., Perez, and Sereno, JJ., concur.

Nachura, J., no part.

Del Castillo, J., on official leave.

[1] CA rollo, pp. 120-138. Penned by Associate Justice Eliezer De Los Santos with Associate Justices Delilah Vidallon-Magtolis and Monina Arevalo Zenarosa, concurring.

[2] Id. at 21-37.

[3] See *People v. Ching*, G.R. No. 177150, November 22, 2007, 538 SCRA 117, 121. Pursuant to Republic Act No. 9262, otherwise known as the "Anti-Violence Against Women and Their Children Act of 2004" and its implementing rules, the real name of the victim, together with the real names of her immediate family members, is withheld and fictitious initials instead are used to represent her, both to protect her privacy. (*People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419, 421-426).

[4] CA rollo, pp. 5-6.

[5] Emphasis supplied.

[6] CA rollo, pp. 7-8.

[7] Emphasis supplied.

[8] CA rollo, pp. 9-10.

[9] Emphasis supplied.

[10] TSN, April 22, 1999, pp. 2-4.

[11] Exhibits Folder, Exhibit "C," p. 5.

[12] TSN, October 30, 1998, p. 6.

[13] Id. at 7.

[14] Id. at 8-9.

[15] Id. at 11.

[16] Id. at 12.

[17] Id.

[18] Id. at 13.

[19] Id. at 15-16.

[20] Id. at 16.

[21] Id. at 17.

[22] Id. at 18.

[23] Id. at 18-19.

[24] TSN, March 11, 1999, p. 5.

[25] Id.

[26] Exhibits folder, Exhibit "B," p. 4.

[27] TSN, July 5, 1999, p. 5.

[28] Id. at 10.

[29] Id.

[30] TSN, January 20, 2000, p. 6.

[31] Id. at 4.

[32] Id. at 4-5.

[33] TSN, August 2, 2001, pp. 5, 8-9.

[34] TSN, September 5, 2001, p. 6.

[35] CA rollo, pp. 21-37.

[36] Id. at 36-37.

[37] Id. at 34-35.

[38] *People v. Balisnomo*, 332 Phil. 870, 881 (1996).

[39] G.R. Nos. 147678-87, July 4, 2004, 433 SCRA 640.

[40] CA rollo, pp. 49-70.

[41] Id. at 51.

[42] Id. at 61-62.

[43] Id. at 61.

[44] Id. at 100.

[45] Id. at 120-138.

[46] R.A. 7659 took effect on December 31, 1993.

[47] CA rollo, p. 137.

[48] Id. at 137-138.

[49] *People v. Baylen*, 431 Phil. 106, 118 (2002).

[50] *People v. Babera*, 388 Phil. 44, 53 (2000), citing *People v. Dacoba*, 352 Phil. 70, 76 (1998).

[51] *People v. Gapasan*, 312 Phil. 964, 972-973 (1995).

[52] CA rollo, p. 34.

[53] *People v. Albalate, Jr.*, G.R. No. 174480, December 18, 2009, 608 SCRA 535, 546, citing *People v. Manalili*, G.R. No. 184598, June 23, 2009, 590 SCRA 695.

[54] *People v. Asis*, G.R. No. 179935, April 19, 2010.

[55] *People v. Miranda*, G.R. No. 176634, April 5, 2010, citing *People v. Alvero*, 386 Phil. 181, 198 (2000).

[56] *People v. Penillos*, G.R. No. 65673, January 30, 1992, 205 SCRA 546, 560.

[57] "An Act Prohibiting the Imposition of the Death Penalty in the Philippines."

[58] G.R. No. 179714, October 2, 2009, 602 SCRA 517, 529. See also *People v. Sarcia*, G.R. No. 169641, September 10, 2009, 599 SCRA 20.

[59] *People v. Dela Cruz*, G.R. No. 166723, August 2, 2007, 529 SCRA 109, 118.

[60] *People v. Arellano*, G.R. 176640, August 22, 2008, 563 SCRA 181, 189.

[61] Art. 335. When and how rape is committed. -- Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

X x x

3. When the woman is under twelve years of age, even though neither of the circumstances mentioned in the two next preceding paragraphs shall be present.

The crime of rape shall be punished by reclusion perpetua.

[62] *People v. Alarcon*, G.R. No. 177219, July 9, 2010.

[63] G.R. Nos. 82223-24, November 13, 1992, 215 SCRA 613, 634.

[64] *People v. Bodoso*, G.R. No. 188129, July 5, 2010, citing *People v. Guevarra*, G.R. No. 182192, October 29,

2008, 570 SCRA 288, 313; *People v. Antivola*, 466 Phil. 394 (2004) and *People v. Olaybar*, 459 Phil. 114 (2003).

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