PEOPLE OF THE PHILIPPINES, PETITIONER, VS. AGUSTIN ABELLERA Y CAMANA, RESPONDENT.

G.R. NO. 166617. July 03, 2007

Ponente: CORONA, J.

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CORONA, J.:

The subject of this petition for review is the decision of the Court of Appeals (CA) in CA-G.R. CR-HC No. 00097[1] affirming respondent Agustin Abellera y Camana's conviction by the Regional Trial Court (RTC), Branch 275 of Las Piñas City,[2] for statutory rape, two counts of simple rape and attempted rape committed against his minor daughters AAA and BBB.

The antecedent facts follow.

In 1986, then seven-year-old AAA was at home attending to the laundry when respondent arrived drunk. When respondent tried to grab her, she pushed him away but he was too strong for her. Respondent undressed her, removed her underwear and forced himself on her. She felt excruciating pain. Thereafter, respondent warned her not to tell anybody what happened, otherwise he would kill her.

On August 4, 1992, AAA, then already 14 years old, was with her youngest sister when respondent instructed her to go home immediately. The moment she arrived, respondent began undressing her. Thereafter, he inserted his penis into AAA's vagina. Pointing a knife at the latter's neck, respondent warned her not to tell anyone about the incident.

In 1996, AAA's younger sister, BBB, went through the same ordeal in respondent's hands. On April 2, 1996, BBB was washing the dishes at home when respondent arrived drunk and ordered her to undress. Thereafter, he took off his clothes and dragged her inside a room. She cried and pleaded with her father to stop but he warned her not to refuse him otherwise he would kill her, her mother and her siblings. Respondent then positioned himself on top of her, sucked her breasts, inserted his fingers, then his penis, into her. After the dastardly act, he told her to take a bath and go to sleep.

On October 7, 1996, respondent sent BBB's brother on an errand. After the boy left, he undressed her and forced her to lie down. She begged respondent not to repeat what he had done to her in the past but the latter took no heed. Instead, he again threatened to kill her if she refused. She kicked respondent in the groin which forced him to stand up in pain.

On the same day, BBB reported the incident to barangay officials. Respondent was arrested and brought to the Las Piñas police station where he was detained. Subsequently, the following Informations were filed against him:

Criminal Case No. 97-0007 for statutory rape:

> Sometime in 1986, in the Municipality of Las Piñas and within the jurisdiction of the Court, the [respondent], being the father of [AAA], then a seven (7) year old minor, through moral ascendancy and influence and by means of force and intimidation, willfully, unlawfully, and feloniously [had] carnal knowledge with [AAA]

against her will and consent.[3]

Criminal Case No. 97-0007-A for Violation of RA 7610[4] in relation to Art. 335[5] of the Revised Penal Code (RPC):

> On or about the 4[th] day of August 1992 in the [M]unicipality of Las Piñas and within the jurisdiction of this Court, the [respondent], being the father of [AAA], then a fourteen (14) year old minor, through moral ascendancy and influence and by means of force and intimidation, willfully, unlawfully, and feloniously have carnal knowledge with [AAA] against her will and consent.[6]

Criminal Case No. 96-0460 for rape:

> On or before the 2[nd] day of April 1996, in the Municipality of Las Piñas and within the jurisdiction of this Court, the [respondent], being the father of [BBB], a 14 year-old minor, through moral ascendancy and influence and by means of force and intimidation, willfully and unlawfully, and feloniously have carnal knowledge with said minor against her will and consent.[7]

Criminal Case No. 96-0461 for attempted rape:

> On or about the 7[th] day of October 1996, in the Municipality of Las Piñas and within the jurisdiction of this court, the [respondent], being the father of 14 year-old [BBB] through moral ascendancy and influence, and by means of force and intimidation willfully, unlawfully and feloniously commenced the commission of rape directly by overt acts by pulling [BBB] inside the bedroom of their house, forcibly removing her panty, lying her down and placing himself on top of her[,] removing his shorts with the manifest intent of having carnal knowledge with her against her will but the accused did not perform all the acts of execution which should have produced the crime of rape by reason of some cause or accident other than his own spontaneous desistance, that is, because the complainant vigorously resisted and she was able to run away.[8]

Respondent pleaded not guilty to the charges. Thereafter, a joint trial ensued.

Aside from AAA's and BBB's testimonies in court, the prosecution presented their birth certificates proving their relationship to respondent and establishing their ages during the rape incidents.

Respondent denied the accusations against him. In Criminal (Crim.) Case Nos. 97-0007, 97-0007-A and 96-0460, he insisted it was impossible for him to commit the crimes since his wife was always at home. In Crim. Case No. 96-0461, he claimed that, on October 7, 1996, he was in his neighbor's house fixing a karaoke appliance. He later on "joined a drinking spree" there. According to respondent, his daughters filed the cases only because they were angry at him for not sending them to school.

Respondent's neighbor, Allan Alvero, corroborated respondent's testimony saying he was in his house on October 7, 1996.

AAA's and BBB's mother, youngest sister and aunt also testified in respondent's defense. According to them, the whole family attended AAA's graduation on April 2, 1996 and, on October 7, 1996, BBB was not home but studying in Cabanatuan City.

After trial, the court a quo found respondent guilty of the charges. The dispositive portion of its decision read:

> WHEREFORE, in view of the foregoing, judgment is hereby rendered finding the [respondent] AGUSTIN ABELLERA Y CAMANA GUILTY beyond reasonable doubt in the Informations as follows:
>
> - of Rape in Criminal Case No. 96-0460 committed against his daughter [BBB] in 1996 for which he is sentenced to suffer the penalty of Death under Article 335 of the Revised Penal Code as amended by Republic Act No. 7659;

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> - of Statutory Rape in Criminal Case No. 97-0007 committed against his daughter [AAA] in 1986 for which he is sentenced to suffer the penalty of [Reclusion Perpetua];
>
> - of Rape in Criminal Case No. 97-0007-A committed against his daughter [AAA in 1992] for which he is sentenced to suffer the penalty [Reclusion Perpetua]; and;
>
> - of Attempted Rape in Criminal Case No. 96-0461 committed against his daughter [BBB] in 1996 for which he is sentenced to a prision term of fifteen (15) years of Reclusion Temporal; and to pay [AAA] and [BBB] the amount of P50,000.00 as moral damages; P75,000.00 as civil indemnity; and P20,000.00 as exemplary damages; and costs.[9]

This case was first brought to us on automatic review. However, following People v. Mateo,[10] we transferred it to the CA. There, respondent assigned the following errors to the trial court: (1) giving full credence to the testimonies of the complainants; (2) rejecting his testimony, his wife's and youngest daughter's and (3) convicting him.

In a decision dated January 21, 2005, the CA affirmed with modification the trial court's decision convicting respondent. The CA ruled:

> The trial court correctly imposed upon [respondent] the penalty corresponding to each case, save in Crim. Case No. 96-0461 where [respondent] was charged with attempted rape of then [14-year old BBB], i.e., by use of force and intimidation. For said crime, the trial court sentenced him to a prison term of fifteen (15) years of reclusion temporal.
>
> Under paragraph 1, Article 335, of the Revised Penal Code, the penalty for the crime of rape is reclusion perpetua. According to Article 57 . . . the penalty lower by two degrees than that prescribed by law for the consummated felony shall be imposed upon the principals in an attempt to commit a felony. Following the graduated scale in Article 71. . . the penalty imposable upon [respondent] in the attempted rape is prision mayor. Absent any modifying circumstance, the maximum term of the indeterminate penalty shall be taken from the medium period of prision mayor or from 8 years and 1 day to 10 years; while the minimum term is one degree lower than prision mayor, i.e., prision correccional, from 6 months and 1 day to 6 years.
>
> Moreover, the impositions by the trial court of the civil liabilities [need] clarification and modification. In line with the current jurisprudence, civil indemnity is imposed without need of proof other than the fact of the commission of the offense. Moral damages should be awarded taking into account that [AAA] and [BBB] were minors at the time of rape, and considering too[,] the immeasurable havoc on their female psyche as a result of the abominable crimes.
>
> For the rapes committed against [AAA] in Crim. Case Nos. 97-0007 and 97-0007-A, [respondent] shall be held to pay her P75,000.00 and P50,000.00, respectively, as civil indemnity and another P50,000.00 as moral damages in each case, or the total amount of P225,000.00. For the simple rape committed against [BBB] in Crim. Case 96-0460, the sum of P50,000.00 each as civil indemnity and as moral damages; and for the attempted rape against her in Crim. Case No. 96-0461, the amount of P25,000.00 representing the civil indemnity and the like sum as moral damages --- are imposed [respectively] upon [respondent].
>
> WHEREFORE, the appealed Joint Decision of conviction is AFFIRMED, finding [respondent] AGUSTIN ABELLERA y CAMANA guilty of rape as separately charged in the four (4) Informations. However, in Crim. Case No. 96-0461, the penalty is MODIFIED in that he is sentenced to suffer the indeterminate penalty of [t]wo (2) [y]ears and [f]our months of prision correccional, as minimum, to [e]ight (8) [y]ears and [o]ne day of prision mayor, as maximum. The civil liabilities of [respondent] are ... MODIFIED, to the extent that he is hereby ordered to pay the rape victims, as follows:
> a) for the statutory rape against [AAA] in Crim. Case No. 97-0007, the sum of P75,000.00 as civil indemnity and P50,000.00 as moral damages;

b) for the simple rape against [AAA] in Crim. Case No. 97-0007-A, the sum of P50,000.00 as civil indemnity and P50,000.00 as moral damages; and

c) for the attempted rape against [BBB] in Crim. Case No. 96-0461, the sum of P25,000.00 as civil indemnity and P25,000.00 as moral damages.

SO ORDERED.[11]

Respondent now assails the CA decision.

After a careful study of this case, we affirm respondent's conviction for statutory rape, [12]two counts of simple rape[13] and attempted rape.[14]

Respondent's guilt was clear beyond the shadow of a doubt.

In Crim. Case No. 97-0007 (statutory rape), AAA testified:

q:

What happened during that year 1986 if you remember?

a:

It was nighttime[.] I do not remember the [exact] time, our father arrived and he was drunk.

q:

Where were you then?

a:

I was at our house, sir.

q:

What happened when your father arrived on that particular time?

a:

I was fixing our laundry when he grabbed me.

q:

What did you do when your father grabbed you while fixing your clothes?

a:

I resisted, sir.

q:

What did your father do when you resisted?

a:

He forced me to undress including my panty, sir.

q:

Did he succeed in undressing you?

a:

Yes, sir.

q:

What happened after your father was able to remove your dress and panty?

a:

He forcibly entered his penis, sir. [15]

In Crim. Case No. 97-0007-A (simple rape), AAA stated:

q:

Madam Witness, on the night of August 4, 1992, do you remember where were you then?

a:

Yes, sir.

xxx

q:

What were you doing on that particular date and time?

a:

I just arrived from selling balut, sir.

q:

Madam Witness, while you were inside your house during that particular date and time, do you remember what happened next, if any?

a:

Yes, sir.

x x x

q:

What happened next?

a:

When we reached the house[,] I was shocked because he suddenly entered my room and undressed me.

q:

What did you do when your father undressed you?

a:

I told him not to do what he was thinking.

q:

What did your father do when you [told] him not to do what he intended to do?

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a:

He told me, "I will kill you if you will not obey me."

q:

What did you do when your father said [he will kill you]?

a: I was crying and begging. (Witness started to cry).

xxx

q:

What did your father do after that?

a:

[H]e removed my panty and he forcibly inserted his penis [into] my private parts.

q:

Was he able to insert his penis to your private parts?

a:

Yes, sir.

q:

What did you do when your father inserted his penis to your vagina?

a:

I tried to resist and prevent him at the same [time,] I was crying and begging him not to do [it].

q:

What else happened after you resisted?

a:

He continued and forced his penis [into] my vagina until he succeeded.[16]

In Crim. Case No. 96-0460 (simple rape), BBB narrated:

q:

Madam Witness, at about 8 o?clock in the evening of April 2, 1996, do you remember where were you then?
xxx

a:

On April 2[,] my father arrived drunk.

q:

What happened next after your father arrived drunk?

a:

He asked me to undress myself, sir.

xxx

q:

After you undressed yourself what did your father do?

a:

He also undressed himself.

xxx

q:

Madam Witness, what did your father do when removed his clothes?

a:

He brought me inside the room, sir.

xxx

q:

What did you do when your father pulled you or drag you?

a:

I was begging him not to do what he [intended] to do.

xxx

q:

When you say he proceeded to [do] his intention, what do you mean by that?

a:

He put his body on top of me.

q:

What happened when your father placed his body on top of you?

a:

He sucked my breast, sir.

q:

What else did your father do to you?

a:

He inserted his finger in my private parts, sir.

q:

What happened next when your father inserted his finger into your organ?

a:

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He likewise inserted his penis, sir. [17]

In Crim. Case No. 96-0461 (attempted rape), BBB said:

q:

Madam Witness, on October 7, 1996, at about 7 o' clock in the evening, do you remember where were you then?

a:

I was at home, sir.

q:

What were you doing inside your house?

a:

I was fixing our clothes.

q:

When you were fixing your clothes, do you remember if anything unusual. . .happened?

a:

Yes, sir.

xxx

q:

. . . [W]here there other persons in the household?

a:

Only my brother but he was sent for an errand.

xxx

q:

After your father asked your brother to leave the house, do you remember what happened next?

a:

He forcibly removed my panty, sir.

q:

What did you do when your father removed your panty?

a:

He laid me down, sir.

xxx

q:

After your father pulled you down, what happened next?

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a:

He [undressed] himself, sir.

q:

How about you[,] what were you doing when your father was undressing himself?

a:

I was begging to him not to repeat what he did to me in the past, sir.

xxx

q:

What did your father tell you, if any?

a:

"If you do not follow, I will kill you."

q:

What did you do when your father [told you] those words?

a:

Because I did not want the same thing to happen to me again[,] I kicked him.

xxx

q:

What did he do when you kicked him?

a:

He stood up, sir.[18]

AAA's and BBB's testimonies in the trial court were telling. There is no question respondent indeed committed the crimes charged. His contention that the lower courts erred in giving full credence to his daughters' testimonies deserves no merit.

Testimonies of victims of tender age are credible, more so if they are without any motive to falsely testify against their offender.[19] Their revelations that they were raped, coupled with their willingness to undergo public trial where they could be compelled to describe the details of the assault on their dignity by their own father, cannot be easily dismissed as concoctions.[20] It would be the height of moral and psychological depravity if they were to fabricate sordid tales of sexual defloration (which could put him behind bars for the rest of his life) if they were not true.[21]

Respondent's alibi that he could not have committed the crimes in the presence of his wife was utterly lame. It was disproven by the categorical and positive identification by his daughters that he was their rapist. Besides, there is no rule that rape can only be committed in seclusion.[22]

Respondent's contention that he was allegedly in his neighbor's house during the October 7, 1996 rape incident was likewise untenable. For this defense of alibi to prosper, respondent should have proven that he was in some place where it was physically impossible for him to be at the locus criminis during the commission of the

crimes.[23] In this case, even assuming that respondent was in his neighbor's place, he was nevertheless still near his house and his daughters.

Similarly, not even the testimonies of respondent's wife and youngest daughter sufficed to negate the overwhelming evidence pointing to respondent as the sole perpetrator of the crimes.

Rape is committed by having carnal knowledge of a woman under any of the following circumstances: (1) by using force or intimidation; (2) when the woman is deprived of reason or otherwise unconscious and (3) when the woman is under 12 years of age.[24] The third instance is "statutory rape" or carnal knowledge of a woman below 12 years old.[25]

On the applicable penalties, we affirm the imposition of reclusion perpetua in Crim. Case Nos. 97-0007 and 97-0007-A (for simple rape).[26] In Crim. Case No. 96-0460,[27] however, the penalty of reclusion perpetua without eligibility for parole should instead be imposed pursuant to RA 9346[28] which prohibits the imposition of the death penalty.[29]

In Crim. Case No. 96-0461, we agree with the CA that the proper penalty for attempted rape is the penalty lower by two degrees than that prescribed by law for the consummated felony.

In the scale of penalties in Article 71[30] of the RPC, the penalty two degrees lower than death is reclusion temporal. However, with the abolition of the death penalty by RA 9346, the highest remaining penalty is reclusion perpetua. Consequently, the penalty lower by two degrees than reclusion perpetua is prision mayor, from which the maximum penalty for attempted rape shall now be taken.[31] As the CA correctly imposed, "absent any modifying circumstance, the maximum term of the indeterminate penalty shall be taken from the medium period of prision mayor or from 8 years and 1 day to 10 years; while the minimum term is one degree lower than prision mayor, i.e., prision correccional, from 6 months and 1 day to 6 years."[32]

On damages, we see no error in the CA's award of civil indemnity and moral damages in Crim. Case Nos. 97-0007 and 97-0007-A. However, in Crim. Case No. 96-0460, since the death penalty was originally imposed on respondent, the award of civil indemnity should be increased to P75,000[33] and moral damages to P75,000.[34] Exemplary damages of P30,000 must also be awarded in these cases to deter others with perverse tendencies from sexually abusing young girls of their own flesh and blood.[35]

Moreover, in the light of recent jurisprudence,[36] the award of civil indemnity in Crim. Case No. 96-0461 should be increased to P30,000. Exemplary damages of P10,000 are likewise in order.[37]

WHEREFORE, the assailed decision of the Court of Appeals in CA-G.R. CR-HC No. 00097 is hereby AFFIRMED with MODIFICATION. The Court finds respondent Agustin Abellera y Camana GUILTY of:

(1) statutory rape in Crim. Case No. 97-0007 for which he is sentenced to suffer the penalty of reclusion perpetua and ordered to pay AAA P75,000 as civil indemnity, P50,000 as moral damages and P30,000 as exemplary damages;

(2) simple rape in Crim. Case No. 97-0007-A for which he is sentenced to suffer the penalty of reclusion perpetua and ordered to pay AAA P50,000 as civil indemnity, P50,000 as moral damages and P30,000 as exemplary damages;

(3) simple rape in Crim. Case No. 96-0460 for which he is sentenced to suffer the penalty of reclusion perpetua without eligibility for parole and ordered to pay BBB P75,000 as civil indemnity, P75,000 as moral damages and P30,000 as exemplary damages;

(4) attempted rape in Crim. Case No. 96-0461 for which he is sentenced to suffer the minimum penalty of 2 years

and 4 months of prision correccional to 8 years and 1 day of prision mayor as maximum. He is likewise ordered to pay BBB P30,000 as civil indemnity, P25,000 as moral damages and P10,000 as exemplary damages.

SO ORDERED.

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

[***] In some parts of the records, Agustin Abellera y Camaña.

[1] Penned by Justice Magdangal M. de Leon, with the concurrence of Justices Romeo A. Brawner (retired) and Mariano C. del Castillo of the Ninth Division of the Court of Appeals. Rollo, pp. 217-219.

[2] Decided by Judge Cesar Z. Ylagan, id., pp. 188-207.

[3] Id., p. 202.

[4]Anti-Child Abuse Act.

[5] Defining and punishing the crime of rape.

[6] Rollo, p. 32.

[7]Id., p. 202.

[8]Id., p. 202.

[9] Supra note 2.

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

[11]Supra note 1.

[12] Crim. Case No. 97-0007.

[13]Crim. Case Nos. 97-0007-A and 96-0460.

[14]Crim. Case No. 96-0461.

[15] TSN, p.33.

[16] Id., pp. 28-32.

[17] Id., pp. 74-76.

[18] Id., pp. 77-81.

[19] People v. Buada, 439 Phil. 857 (2002).

[20] People v. Caliso, 439 Phil. 492 (2002); People v. Fucio, G.R. Nos. 151186-95, 13 February 2004, 422 SCRA 677.

[21] People v. Olivar, 458 Phil. 375 (2003).

[22] People v. Pepito, G.R. Nos. 147650-52, 16 October 2003, 413 SCRA 558.

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[23]People v. Flores, G.R. No. 137497, 5 February 2004, 422 SCRA 91.

[24] Art. 335 of the RPC, as amended by Republic Act 7659 (An Act to Impose Death Penalty on Heinous Crimes).

[25] People v. De la Peña, G.R. No. 116060. 31 July 1997, 276 SCRA 558.

[26] The penalties in Crim. Case Nos. 97-0007 and 97-0007-A are maintained as the rape incidents were committed prior to the amendment of Art. 335 of the RPC by RA 7659 on December 31, 1993.

[27] See People v. Quiachon, G.R. No. 170236, 31 August 2006, 500 SCRA 704.

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

[29] The law became effective on June 24, 2006.

[30] ART. 71. Graduated scales. In the cases in which the law prescribes the penalty lower or higher by one or more degrees than another given penalty, the rules prescribed in Article 61 shall be observed in graduating such penalty.

The lower or higher penalty shall be taken from the graduated scale which is comprised the given penalty.

The courts, in applying such higher or lower penalty shall observe the following graduated scales:

SCALE 1

- Death

- Reclusión perpetua,

- Reclusión temporal,

- Prisión mayor,

- Prisión correcciónal,

- Arresto mayor,

- Destierro,

- Arresto menor,

- Public censure,

- Fine.

xxx

[31]See also People v. Bon, G.R. No. 166401, 30 October 2006.

[32]Supra note 9.

[33] People v. Quachon, supra.

In this case, the Supreme Court said that, even if the death penalty is not to be imposed on the accused because of the prohibition in RA 9346, the civil indemnity of P75,000 is still proper because the said award is not dependent on the actual imposition of the death penalty but on the fact that qualifying circumstances warranting its imposition attended the commission of the offense.

[34] Id., People v. Bon, supra.

[35] People v. Miranda, G.R. No. 169078, 10 March 2006, 484 SCRA 555.

[36] Id.

[37] Id.

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