

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. RODOLFO BIYOC Y WENCESLAO, APPELLANT.

G.R. No. 167670. September 07, 2007

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

The February 28, 2005 Decision of the Court of Appeals[1] which affirmed that of the Regional Trial Court, Branch 76 of San Mateo, Rizal[2] convicting appellant Rodolfo Biyoc y Wenceslao for qualified rape is on final review before this Court.

The accusatory portion of the Information charging appellant with qualified rape reads:

That on or about the 5th day of December, 2000, in the Municipality of San Mateo, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, having moral ascendancy over the complainant, [AAA],[3] the latter being his daughter by means of force, coercion and intimidation, with lewd design and with intent to cause, gratify his sexual desire or abuse and maltreat complainant [AAA], a minor, 11 years old, did then and there willfully, unlawfully and feloniously have sexual intercourse with said complainant against her will and without her consent which debases, degrades or demeans the intrinsic worth and dignity of said child as a human being.

Contrary to law.[4] (Underscoring supplied)

From the evidence for the prosecution, the following version is culled:

At four in the afternoon of December 5, 2000, private complainant AAA was in a room on the second floor of the family house at Nawasa Pipeline, Guitnagbayan I, San Mateo, Rizal taking care of her one-year-old sister. Her father, herein appellant, entered the room and touched her genitals, after which he told her to lie down on the floor.

Overcome by fear, AAA did lie down on the floor as told. Appellant at once pulled her short pants down and touched her genitals again, after which he went on top of her and tried to insert his penis into her vagina. Appellant was not able to fully penetrate AAA's vagina, however, as her elder sister BBB went up the second floor and saw appellant sitting in front of AAA who was lying down, face up. Appellant immediately warned BBB not to tell their mother about what she just saw.[5] After BBB left, appellant inserted his penis inside AAA's vagina.

BBB lost no time to report that same day to her mother CCC, live-in partner of appellant, what she saw.[6] CCC thus immediately confronted AAA who did confirm that appellant had inserted his penis inside her vagina that afternoon, and that appellant had been doing the same act to her since she was nine years old. Incensed, CCC accompanied AAA the following day, December 6, 2000, to the Department of Social Welfare and Development (DSWD) to report the incident.[7]

From the DSWD, AAA and her mother, accompanied by a social worker, proceeded to the police station of San

Mateo, Rizal where they lodged a complaint against appellant. At the police station, AAA and CCC were interviewed by PO1 Florescita S. Javier.

PO1 Javier, together with AAA and CCC thereafter proceeded to the family home, and on their way, they met appellant. PO1 Javier at once informed him of his rights, arrested him, and brought him to the police station.[8] AAA's and CCC's statements were thereupon taken.[9]

On the same day, December 6, 2000, AAA was examined by Dr. Winston Tan, a medico-legal officer at Camp Crame, Quezon City. The examination revealed the following findings:

FINDINGS: GENERAL AND EXTRAGENITAL:

PHYSICAL BUILT: Light built

MENTAL STATUS: Coherent female child

BREAST: Undeveloped

ABDOMEN: Flat and soft

PHYSICAL INJURIES: No external signs of application of any form of trauma

GENITAL:

PUBLIC HAIR:

Lanugo-type growth

LABIA MAJORA:

Full, convex and coaptated

LABIA MINORA:

Pinkish brown

HYMEN:

Presence of deep healed laceration at 7 o'clock position

POSTERIOIR FOURCHETTE: Sharp

EXTERNAL VAGINAL ORIFICE:

VAGINAL CANAL: CERVIX:

PERIURETHRAL AND VAGINAL SMEARS:

NEGATIVE for spermatozoa and for gram-negative diplococci.

CONCLUSION:

Subject is in non-virgin state physically. There are no external signs [sic] of application of any form of physical trauma.[10] (Emphasis and underscoring supplied)

Upon the other hand, appellant gave the following version:

In the afternoon of December 5, 2000, appellant slept on the second floor of their house with his common-law wife CCC, AAA, and two other younger children. On waking up at four, CCC and one of the younger children were gone, leaving AAA and a younger sister whom she was taking care of. At five p.m., BBB arrived. Appellant and BBB had an altercation over her and her husband being unemployed and their continued stay in the family house, causing financial difficulties to the family. BBB had thus a grudge against him on account of which he surmised that she gave a false report to her mother.

Appellant added that CCC and AAA filed the charge against him because he was jobless, and constantly inebriated and when in that state, he would quarrel with CCC and scold his children.

Appellant finally proffered that even if he was aware of the gravity of the offense lodged against him, he made no attempt to escape which is indicative of his innocence.[11]

By Decision dated June 18, 2002, the trial court found appellant guilty, disposing as follows:

WHEREFORE, premises considered, judgment is hereby rendered finding accused Rodolfo Biyoc y Wenceslao GUILTY BEYOND REASONABLE DOUBT of the crime of Rape (Violation of par. 1 (d), Art. 266-A in relation to Art. 266-B 6th par., (1) of the Revised Penal Code, as amended by R.A. 8353 and further in relation to Sec. 5 (j) of R.A. 8369) and sentencing him to suffer the penalty of DEATH, and to indemnify the private complainant [AAA] in the amount of P75,000.00 and P50,000.00 as moral damages and to pay the costs.

SO ORDERED.[12] (Underscoring supplied)

In his Brief,[13] appellant raised only one assignment of error â”€ "THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT FOR THE CRIME OF RAPE,"[14] in support of which, he argued that:

- The trial court disregarded the fact that the prosecution failed to establish the exact age of the victim and her relationship to the accused.[15]
- The trial court did not give weight and credence to the accused's testimony thereby depriving him of the presumption of innocence.[16]
- The trial court did not meet the test of moral certainty required for the conviction of the accused.[17]
- The trial court failed to consider the fact that the accused's arrest was legally objectionable.[18] (Underscoring supplied)

In his Supplemental Brief which was received by the Court on November 10, 2005, appellant raised additional assignments of error which may be summarized as follows:

1. The trial court erred in appreciating AAA's testimony that she had long been sexually molested by appellant, it being hearsay and, in any event, no criminal charges were filed therefor, and
2. The findings in the medico-legal report did not support the claim of the prosecution that AAA was raped on December 5, 2000.[19]

Appellant contends that the prosecution was unable to prove the age of AAA in accordance with the guidelines laid down by this Court in *People v. Pruna*, viz:

In order to remove any confusion that may be engendered by the foregoing cases, we hereby set the following guidelines in appreciating age, either as an element of the crime or as a qualifying circumstance.

- The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party.

- In the absence of a certificate of live birth, similar authentic documents such as baptismal certificate and school records which show the date of birth of the victim would suffice to prove age.

- If the certificate of live birth or authentic document is shown to have been lost or destroyed or otherwise unavailable, the testimony, if clear and credible, of the victim's mother or a member of the family either by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the offended party pursuant to Section 40, Rule 130 of the Rules on Evidence shall be sufficient under the following circumstances:

- If the victim is alleged to be below 3 years of age and what is sought to be proved is that she is less than 7 years old;

- If the victim is alleged to be below 7 years of age and what is sought to be proved is that she is less than 12 years old;

- If the victim is alleged to be below 12 years of age and what is sought to be proved is that she is less than 18 years old.

- In the absence of a certificate of live birth, authentic document, or the testimony of the victim's mother or relatives concerning the victim's age, the complainant's testimony will suffice provided that it is expressly and clearly admitted by the accused.

- It is the prosecution that has the burden of proving the age of the offended party. The failure of the accused to object to the testimonial evidence regarding age shall not be taken against him.

- The trial court should always make a categorical finding as to the age of the victim. [20] (Emphasis and underscoring supplied)

From the accusatory portion of the information quoted above, AAA was alleged to be 11 years old at the time of the alleged rape. The certificate of live birth or similar authentic documents were not presented. There is no showing that the prosecution claimed that the said documents had been lost, destroyed or were otherwise unavailable, hence, CCC's testifying on AAA's age does not suffice to prove that AAA was below the age of 12.

Since age was not adequately proven, it cannot be used to qualify the offense of rape in this case.

As for appellant's relationship to AAA, contrary to his claim that it was not proven, he himself admitted in open court that she is his daughter.

ATTY. GARILLO: Q. Mr. Biyoc, where did you reside on December 5, 2000?

A. At Nawasa Pipeline, sir.

Q. With whom were you residing in that place?

A. My family sir.

Q. What is the name of your wife?

A. [CCC], sir.

Q. You have sons and daughters?

A. Yes, sir.

Q. How many are they?

A. Nine (9) sir.

Q. What is the name of your eldest?

A. BBB and [DDD] because they are twins, sir.

Q. Who is your second?

A. [EEE], [AAA], [FFF], [GGG], [HHH] and [III], sir.

x x x x

Q. And who were with you at the second floor at the time you slept at 1:30?

A. My wife and my children, sir.

Q. Who among your children?

A. My two (2) youngest children, [AAA] and my wife, sir.[21] (Emphasis supplied)

Admission in open court of relationship has been held to be "sufficient and hence conclusive . . . to prove relationship with the victim." [22]

Respecting appellant's claim that his testimony was not credited to thereby deprive him of the presumption of innocence, the same fails.

Appellant's attribution of the filing of the case to his having berated AAA's sister BBB is too shallow to merit credence. Even assuming that BBB nursed a grudge against him and that CCC was partly responsible in filing the case, it is contrary to the caring and protective instincts of a daughter and a wife to subject a younger sister and daughter, respectively, to the rigors of a trial for rape. But even if the two have the unimaginable capacity to subject AAA to an ordeal as a trial for rape, it would be difficult to even imagine how AAA, a child of tender years, would subject herself to the psychological stress and humiliation of pursuing the case. More so when the case is against her own father, even if he often scolded her and her siblings. Thus, in a similar case, this Court held:

No woman would openly admit that she was raped and consequently subject herself to an examination of her private parts, undergo the trauma and humiliation of a public trial and embarrass herself with the need to narrate in detail how she was raped unless she was in fact raped. This is especially true when the accusing words are directed against a close relative, especially the father, as in this case. A young unmarried lass does not ordinarily file a rape complaint against anybody, much less her own father, if it is not true.

x x x x

Parental punishment is not a good reason for a daughter to falsely accuse her father of rape. Filipino children's reverence and respect for elders is too deeply ingrained in Filipino children and families. Thus, it would take depravity for a young daughter to concoct such a story of defloration against her own father unless she had really been aggrieved.

Similarly, the imputation by CASTRO of ill-motive on the part of his wife and mother-in-law does not persuade us. It is unnatural for a parent, more so for a mother, to use her offspring as an engine of malice especially if it will subject her child to the humiliation, disgrace and even stigma attendant to a prosecution for rape, if she were not motivated solely by the desire to incarcerate the person responsible for her child's defilement.[23] (Underscoring supplied)

As for appellant's argument that "the trial court disregarded the fact that no one actually saw appellant abusing [AAA]," [24] the same does not persuade. This Court has consistently pronounced that the lone testimony of the victim in a prosecution for rape, if credible, suffices to sustain a verdict of conviction,[25]

. . . the rationale being that owing to the nature of the offense, the only evidence that can oftentimes be adduced to establish the guilt of the accused is the offended party's testimony (People v. Lor, L-47440-42, September 12, 1984, 132 SCRA 41). Hence, if the testimony of the offended party is not improbable, a defendant may be convicted on the lone testimony of the victim.[26]

On appellant's not fleeing after his indictment, he needs only to be reminded that

. . . non-flight by itself does not necessarily indicate a clear conscience. It is true that in a good number of cases, flight of the accused has been taken as an admission of guilt. However, as held in an equally good number of cases, the non-flight of the accused per se is not proof, much less a conclusive one, of the accused's innocence...[27]

Respecting the trial court's crediting of AAA's testimony that she had long been sexually molested by appellant which testimony appellant alleges is hearsay, the same is mere obiter dictum. It neither augments nor denigrates the trial court's finding that appellant raped AAA beyond reasonable doubt on December 5, 2000.

On the alleged inconsistency, attention to which appellant draws, between AAA's claim that appellant had successfully inserted his penis into her vagina and another claim that he was only able to slightly insert it due to BBB's arrival, appellant loses sight of the fact that there were two instances on the same occasion in which he was alleged to have inserted his penis before and after BBB's arrival.

Q: And you were asked this question, and I will quote: "and panghahalay niya sa iyo kahapon petsa 5 ng Disyembre humigit kumulang alas 4:00 ng hapon, naipasok ba niyang muli ang kanyang ari sa iyong ari", and your answer is like this. "Opo, "naipasok na po niya ng kaunti ang kanyang ari sa aking ari, hindi lang po ito naituloy dahil bigla pong dumating ang aking Ate [BBB] kayat bigla na po siyang tumayo,["] is that your answer to the question?

A: Yes, sir.

Q: So, you are telling me that your father was not able to insert his private part into yours because of the arrival of your Ate [BBB]?

A: Yes, sir.

Q: When your Ate [BBB] arrived, was your father still naked or not?

A: No, more sir.

Q: So, you are telling us that your father had dressed up at the time your Ate [BBB] arrived?

A: He was not naked because he just put out his penis (hindi po nakahubad dahil inilabas lang niya ang kanyang ari), sir.

Q: But you were naked?

A: Only my shorts were removed (shorts lang po and nakatanggal sa akin), sir.

Q: Your shorts was totally taken out of your body?

A: It was lowered up to my knees, sir.

Q: So, it is not true that your father was still on top of your (sic) for quiet some time because as you claimed, "naipasok na po niya ng kaunti and kanyang ari, hindi lang po ito naituloy dahil bigla pong dumating ang aking Ate [BBB] kayat bigla napo siyang tumayo?

A: Pagkatapos lumabas ng Ate [BBB] ko, ipinagpatuloy po niya and kanyang ginagawa, sir.

Q: You did not mention that fact in your statement, Ms. Witness, and not in any part of your statement which you narrated to the police officers?

A: Yes, sir, I did not mention it.

Q: Why?

A: It was not asked of me (hindi po itinanong sa akin), sir.

x x x x

Q: And you claimed that after your Ate [BBB] went down and after your Ate [BBB] had seen you and your father upstairs, your father still continued raping you?

A: Yes, sir.

Q: And it took your father quite some time before he was finished raping you?

A: Yes, sir.

x x x x[28] (Emphasis and underscoring supplied)

Thus, by AAA's account, appellant at first "naipasok . . . po niya kaunti" his penis inside her vagina "hindi lang . . . ito naituloy" due to the arrival of BBB, but that after BBB left, he successfully inserted his penis inside her vagina.

Respecting the alleged inconsistency, attention to which appellant likewise draws, between AAA's testimony that he was able to successfully insert his penis inside her vagina to thus cause her pain, and the medico-legal expert's testimony, viz:

Q: Aside from that mere touching, are there any other circumstance or circumstances wherein you cannot determine contusion, abrasion and hematoma for that matter?

A: Possible that the act was not consummated.,[29] (Underscoring supplied)

the same does not dent his guilt.

The Medico-legal officer's finding that "[t]here is no external signs [sic] of application of any form of physical trauma" (underscoring supplied) and his above-quoted testimony about the possibility that the act was not consummated do not rule out the commission of rape. For mere penetration of the labia by the penis is enough to consummate rape.[30]

In another vein, appellant claims that his arrest was illegal because a "warrantless arrest was effected even before the statement of the private complainant was taken." [31] Objections to the legality of arrests must, however, be made prior to the entry of plea at arraignment; otherwise, they are considered waived.[32]

We have also ruled that an accused may be estopped from assailing the illegality of his arrest if he fails to move for the quashing of the information against him before his arraignment. And since the legality of an arrest affects only the jurisdiction of the court over the person of the accused, any defect in his arrest may be deemed cured when he voluntarily submitted to the jurisdiction of the trial court as what was done by the appellants in the instant case. Not only did they enter their pleas during arraignment, but they also actively participated during the trial which constitutes a waiver of any irregularity in their arrest.[33] (Emphasis and underscoring supplied)

In the present case, appellant failed to question the illegality of his arrest before entering his plea, hence, he is deemed to have waived the same.

In fine, appellant is guilty of Simple Rape, aggravated by relationship.[34]

WHEREFORE, the decision of the Court of Appeals is AFFIRMED with MODIFICATION.

Appellant, Rodolfo Biyoc Wenceslao, is GUILTY beyond reasonable doubt of Simple Rape under par.1 (a), Art. 266-A in relation to par. 1, Art. 266-B of the Revised Penal Code and is sentenced to suffer the penalty of reclusion perpetua, to pay private complainant AAA the amounts of P50,000 in civil indemnity, P50,000 in moral damages and P25,000 in exemplary damages, and to pay the costs.

SO ORDERED.

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

[1] CA-G.R.—HC. No. 00082; penned by Presiding Justice Romeo A. Brawner and concurred in by Justice Edgardo P. Cruz and Justice Jose C. Mendoza all of the Court of Appeals. CA rollo, pp. 126-144.

[2] Crim. Case No. 5259.

[3] The names of the victim and the immediate family members of the victim were withheld pursuant to People v. Cabalquinto, G.R. No. 167693, Sept. 19, 2006, 502 SCRA 419.

[4] Records, pp. 1-2.

[5] Rollo, p. 5.

[6] Ibid.

[7] Ibid.

[8] Id. at 5-6.

[9] TSN, March 27, 2001, p.7.

[10] Exhibit "D," records, p. 91.

[11] Rollo, p. 6.

[12] Records, p. 139.

[13] Rollo, pp. 39-57.

[14] CA rollo, p. 46.

[15] Ibid.

[16] Id. at 49.

[17] Id. at 51.

[18] Id. at 53.

[19] Rollo, unnumbered.

[20] 439 Phil 440, 470-471 (2002).

[21] TSN, February 7, 2002, pp. 2-3.

[22] *People v. Macabata*, G.R. Nos. 150493-95, October 23, 2003, 414 SCRA 260, 270.

[23] *People v. Geraban* G.R. No. 137048, May 24, 2001, 358 SCRA 213, 221-222 citing *People v. Gagto*, 253 SCRA 468 (1996); *People v. Abrecinoz*, 281 SCRA 72 (1997); *People v. Fundano*, 291 SCRA 356, 368 (1998); *People v. Aloro*, G.R. No. 129208, 14 September 2000; *People v. Alvero*, G.R. Nos. 134536-38, 5 April 2000, 329 SCRA 737; *People v. Sacapano*, 313 SCRA 650, 660 (1999); *People v. Alama*, G.R. Nos. 134122-27, February 7, 2000, 324 SCRA 785; *People v. Burce*, 269 SCRA 293, 314 (1997); *People v. Escobar*, 281 SCRA 498 (1997); *People v. Silvano*, 309 SCRA 366 (1999); *People v. Francisco*, G.R. No. 136252, 20 October 2000, 344 SCRA 110.

[24] CA rollo, p. 51.

[25] *People v. Esperanza*, 453 Phil 54 (2003); *People v. Bitancor*, 441 Phil 758 (2002); *People v. Musa*, 422 Phil 563 (2001); *People v. Lubong*, 388 Phil 474 (2000); *People v. Hivela*, 373 Phil 600 (1999); *People v. Santiago*, G.R. No. 46132, May 28, 1991, 197 SCRA 556; *People v. Lor*, L-47440-42, September 12, 1984, 132 SCRA 41; *People v. Managbanag*, G.R. No. L-66550, November 27, 1987, 155 SCRA 669.

[26] *People v. Santiago* G.R. No. 46132, May 28, 1991, 197 SCRA 556, 564-565.

[27] *People v. Ortalezai*, 327 Phil 827, 836 (1996).

[28] TSN, September 20, 2001, pp. 8-10.

[29] TSN, May 9, 2001, p. 9.

[30] *People v. Arango*, G.R. No. 168442, August 30, 2006, 500 SCRA 259, 279 states:

It is a settled rule that for rape to be consummated, . . . [i]t is enough that the penis reaches the pudendum, or at the very least, the labia. The briefest of contacts under circumstances of force, intimidation or unconsciousness, even without laceration of the hymen, is deemed to be rape in our jurisprudence. The mere introduction of the penis into the aperture of the female organ, thereby touching the labia of the pudendum, already consummates the crime of rape.

[31] Rollo, p. 55.

[32] *People v. Ereño*, 383 Phil 30 (2000); *People v. Tidula*, 354 Phil 609 (1998); *People v. Cabiles*, 348 Phil 220 (1998) *People v. Mahusay*, 346 Phil 762 (1997); *People v. Rivera*, 315 Phil 454 (1995); *People v. Lopez, Jr.*, 315 Phil 59 (1995).

[33] *People v. Vallejo*, 461 Phil 672, 686 (2003).

[34] *People v. Tundag*, 396 Phil. 873, 892 (2000):

[I]n this case, the special qualifying circumstance of relationship was proved but not the minority of the victim, taking the case out of the ambit of mandatory death sentence. Hence, relationship can be appreciated as a generic aggravating circumstance in this instance so that exemplary damages are called for. In rapes committed by fathers on their own daughters, exemplary damages may be imposed to deter other fathers with perverse tendency or aberrant sexual behavior from sexually abusing their own daughters. (Underscoring supplied)

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