

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. LUIS AYCARDO, APPELLANT.

G.R. No. 168299 (Formerly G.R. Nos. 156927-29). October 06, 2008

Ponente: AZCUNA, J.

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AZCUNA, J.:

This is a petition for review of the Decision of the Court of Appeals in CA-G.R. CR H.C. No. 00107, promulgated on May 5, 2005, which affirmed with modification the Decision of the Regional Trial Court (RTC) of Bulan, Sorsogon City, Branch 65, promulgated on October 11, 2002, finding appellant Luis Aycardo guilty of three counts of Statutory Rape and imposing on him the death penalty.

The facts are as follows:

Appellant was charged with three counts of rape under three separate Informations[1] which read:

Criminal Case No. 00-387

The undersigned Asst. Provincial Prosecutor accuses LUIS AYCARDO, of San Francisco, Bulan, Sorsogon, of the crime of RAPE, defined and penalized under Art. 335 of the Revised Penal Code, in relation to Section 5, Art. III of RA 7610, committed as follows:

That sometime in the month of March, 1994 at more or less 9:00 o'clock in the morning at Barangay San Francisco, Municipality of Bulan, Province of Sorsogon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, violence and/or intimidation, accused also gave the amount of P20.00, did then and there willfully, unlawfully and feloniously, taking advantage of the tender age of the victim, have carnal knowledge of one [AAA], a 9-year-old girl, a virgin of good reputation, his niece, against her will and consent, which act debased, demeaned and degraded her integrity as a human being, to her damage and prejudice.

The alternative aggravating circumstance of relationship is present, the accused being the uncle of the victim.

Criminal Case No. 00-388

The undersigned Asst. Provincial Prosecutor accuses LUIS AYCARDO, of San Francisco, Bulan, Sorsogon, of the crime of RAPE, defined and penalized under Art. 335 of the Revised Penal Code, in relation to Section 5, Art. III of RA 7610, committed as follows:

That sometime in the month of April, 1995 at more or less 2:00 o'clock in the afternoon at Barangay San Francisco, Municipality of Bulan, Province of Sorsogon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, violence and/or intimidation, accused also gave the amount of P50.00, did then and there willfully, unlawfully and feloniously, taking advantage of the tender age of the victim, have carnal knowledge of one [AAA], a 10-year-old girl, a virgin of good reputation, his niece, against her will and consent, which act debased, demeaned and degraded her integrity as a human being, to her damage and prejudice.

The alternative aggravating circumstance of relationship is present, the accused being the uncle of the victim.

Criminal Case No. 00-389

The undersigned Asst. Provincial Prosecutor accuses LUIS AYCARDO, of San Francisco, Bulan, Sorsogon, of the crime of RAPE, defined and penalized under Art. 335 of the Revised Penal Code, in relation to Section 5, Art. III of RA 7610, committed as follows:

That sometime in the month of April, 1995 at more or less 4:00 o'clock in the afternoon at Barangay San Francisco, Municipality of Bulan, Province of Sorsogon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, violence and/or intimidation, accused also gave the amount of P50.00, did then and there willfully, unlawfully and feloniously, taking advantage of the tender age of the victim, have carnal knowledge of one [AAA], a 10-year-old girl, a virgin of good reputation, his niece, against her will and consent, which act debased, demeaned and degraded her integrity as a human being, to her damage and prejudice.

The alternative aggravating circumstance of relationship is present, the accused being the uncle of the victim.

Contrary to law.

On arraignment, appellant entered pleas of not guilty to all three charges. During the pre-trial conference, the defense admitted that private complainant AAA[2] is the niece of appellant. Thereafter, trial ensued.

AAA further testified that she was born on December 27, 1985. She grew up with her late paternal grandmother, BBB, who took care of her since she was a baby. She lived with her grandmother and appellant in one house. Appellant is her uncle, being the brother of her father.[3]

Private complainant testified that she was raped by appellant thrice in the house of her grandmother in Barangay San Francisco, Bulan, Sorsogon, when her grandmother was not around. She was first raped on March 19, 1994, when she was nine years old. At about 9:00 a.m. of that day, while she was in the house of her grandmother, appellant forcefully pulled her inside the room and pushed her toward the bed. Appellant undressed himself by removing only his trousers and brief, then he got hold of her and undressed her too. Thereafter, appellant lay on top of her and inserted his penis into her genitalia, then he made pumping motions. She felt pain. After the ordeal, appellant put on his clothes and gave her P20 to keep her silent. He threatened her not to tell anybody about the incident. Her grandmother returned that same day coming from the place where her other child lived. After the incident, appellant continued to stay with her grandmother in the same house.[4]

Private complainant testified that appellant raped her again when she was 10 years old. Sometime in the month of April, 1995, at about 4:00 p.m., while her grandmother went to the center of the barrio (Polot), appellant called her, but she did not want to approach him. He pulled her inside the room and pushed her toward the bed and slapped her. She fell down face up. Appellant held both of her hands and undressed her. Then appellant removed his trousers and brief and lay on top of her. She kept crying while appellant was on top of her and she felt pain. After she was sexually molested, appellant gave her P50 to keep her mum. Her grandmother returned home on the same day, but she did not tell her about the incident, fearing that appellant might kill her.[5]

The third rape incident was committed almost a week after the second rape in April, 1995. AAA testified that it happened at about 2:00 p.m. when her grandmother was not around. Appellant approached her, took hold of her hands and pulled her inside the room. Although she resisted, appellant overpowered her. After undressing himself and her, appellant pushed her towards the bed and sexually molested her. She felt pain. After the ordeal, appellant dressed himself and threatened her not to tell anybody or they would be killed. He again gave her P50.[6]

Private complainant testified that the ordeal she suffered in the hands of appellant only ended in June, 1996 when

her grandmother died and her mother took her. Although her parents visited her in her grandmother's house, she was not able to inform them about the rape incidents because of fear. Her mother only learned of the rape incidents in January, 2000, because she could no longer withstand the emotional pain that she felt. Her mother brought her to a doctor for medical examination, after which they proceeded to the Department of Social Welfare and Development. They also went to the police station where she executed a sworn statement.[7]

Dr. Estrella A. Payoyo, a rural health physician, testified that on January 7, 2000, she examined private complainant, then 14 years old, and she executed a Medico-legal Report.[8] She found that complainant's hymen had old lacerations at 1, 5, 7, and 11 o'clock positions and that her vaginal orifice admitted one finger with ease. She stated that the lacerations could have been caused by sexual intercourse, specifically so if the penetration was made violently or done in a hurry. The old lacerations could have been inflicted sometime in 1995.[9]

CCC, the mother of private complainant, testified that she gave birth to AAA on December 27, 1985 in Sucat, Muntinlupa, and she identified the Birth Certificate[10] of her daughter. AAA is the eldest among her three children. Appellant is the full-blood brother of her (CCC's) husband. AAA was reared by her mother-in-law since she was four months old, and she (CCC) took her back in custody after the death of her mother-in-law. She knew about the rape incidents only on January 6, 2000. Her daughter acted strangely, which bothered her. After her daughter told her that she was raped, she brought her to the doctor.[11]

On cross-examination, CCC testified that her family does not have any dispute with appellant. She was a housewife and a permanent resident of Polot, San Francisco, Bulan, Sorsogon. Her husband is a farmer. She stated that she and her husband used to work in Manila. Her mother-in-law, BBB, was able to gain custody of her daughter, AAA, because her mother-in-law asked her husband to go home to the province to tend the ricefield. Her husband obeyed and brought with him AAA. From then on, her mother-in-law had custody of AAA. She (CCC) was refused custody of her daughter, AAA, because she was not the one who reared and took care of her. Appellant, her mother-in-law and AAA lived together in one house.[12]

On the other hand, appellant denied that he raped private complainant and put up the defense of alibi. During his direct examination, appellant testified that he was in Jamorawon, Bulan, Sorsogon as of March 1994 and that he left for Manila on December 10, 1994 and returned to Bulan only in April, 1997. Hence, appellant denied that he was living in San Francisco, Bulan, Sorsogon with his mother and private complainant when the rape incidents allegedly happened sometime in March, 1994 and in April, 1995.[13]

Appellant testified that he came to know about the complaint for rape only in the year 2000 when he received a letter from the Chief of Police of Bulan. He claimed that AAA was used by her mother CCC because of their long-standing dispute over a ricefield owned by a certain Crisanto. The land dispute between him and CCC started in the year 1989, and since then they were no longer in speaking terms. When he returned to Bulan in 1997, the land he was tenanting was being cultivated by private complainant's mother and her husband. Thus, what really prompted the filing of these cases against him was the long-standing dispute over the property they cultivated.[14]

On cross-examination, appellant admitted that his niece, AAA, grew up with his late mother and with him. Time and again, he stayed at the residence of his mother. However, a nephew also stayed in the house with them. He only stayed with his mother from 1994 to September 17, 1995. In 1993, when his mother suffered a stroke, AAA stayed with his sibling in Jamorawon, Bulan, Sorsogon. He actually treated AAA like his real child, showering her with love and care. He did not know any other reason why AAA would file criminal cases for rape against him because the only reason that he had in mind was the property dispute between AAA's parents and him.[15]

When the trial court asked some clarificatory questions, appellant testified that he stayed in Manila for nine years. He returned to Jamorawon, Bulan, Sorsogon when his mother had a stroke in 1993 up to March 10, 1994 on

which date he went back to Manila. He returned home to Bulan when his mother died on September 17, 1994 (sic) [1995?]. After his mother was buried, he left for Manila and he returned to Bulan with his family in 1997. He re-affirmed that he only came to know about this case in the year 2000 when he was invited to the Police Station of Bulan. When he went home to Jamorawon together with his family, he chanced upon private complainant as well as her parents. However, the father of private complainant did not even bother to inform him about these cases during those times they met.[16]

Appellant was the lone witness of the defense.

In a Decision dated October 11, 2002, the RTC found appellant guilty beyond reasonable doubt of three counts of Statutory Rape. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, accused LUIS AYCARDO having been found guilty beyond reasonable doubt of the three (3) counts of RAPE as charged, defined and penalized under Article 335 of the Revised Penal Code, as amended, by R.A. 7610 and R.A. 7659, is hereby sentenced as follows:

- a) To suffer the penalties of DEATH each, for the three (3) counts of RAPE committed sometime in March of 1994 and in April of 1995;
- b) To indemnify the victim [AAA] for each count of RAPE in the amount of P50,000.00 as civil indemnity, in addition to the P50,000.00 moral damages and costs.[17]

These consolidated cases were elevated to this Court for automatic review. The Court referred the cases to the Court of Appeals for intermediate review following *People v. Mateo*. [18]

Appellant's Brief, submitted by the Public Attorney's Office, argued that the trial court erred in convicting appellant of rape when his guilt was not proved beyond reasonable doubt. Appellant claimed that it was impossible for him to commit the alleged offenses because his testimony showed that he was in Jamorawon, Bulan, Sorsogon when the first rape on March 19, 1994 allegedly happened; while he was in Manila when the two incidents of rape in April, 1995 were allegedly committed. Moreover, the alleged rape incidents transpired more than six years before the case was filed. It is apparent that private complainant filed the case in 2000 after the land dispute between her mother and him (appellant) had arisen. Thus, private complainant was motivated to falsely testify against him.

In the Decision promulgated on May 5, 2005, the Court of Appeals affirmed the Decision of the RTC with modification, disposing thus:

WHEREFORE, premises considered, the Decision of the Regional Trial Court of Bulan, Sorsogon City, Branch 65 dated 11 October 2002 is hereby AFFIRMED, with the modification that accused-appellant is ordered to indemnify [AAA] the amount of P75,000.00 as civil indemnity for each count of rape.[19]

The cases were forwarded to this Court for review.

The issue is whether or not the Court of Appeals correctly affirmed the decision of the RTC finding appellant guilty beyond reasonable doubt of three counts of rape.

Appellant is charged under Art. 335 of the Revised Penal Code, which provides:

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

- By using force or intimidation;
- When the woman is deprived of reason or otherwise unconscious; and

- When the woman is under twelve years of age or is demented.

Considering that private complainant was 9 years old at the time the first rape was allegedly committed and was 10 years old during the second and third rape incidents, the three counts of rape fall under paragraph 3 of Art. 335 of the Revised Penal Code. Carnal knowledge of a girl under 12 years old is statutory rape.[20] Consent of the offended party is immaterial as she is presumed not to have any will of her own, being of tender age.[21] The fact that the offended party is under 12 years old at the time of the commission of the crime is an essential element of the crime and must be proved beyond reasonable doubt.[22] In statutory rape, violence or intimidation is not required, and the only subject of inquiry is whether carnal knowledge took place.[23]

The prosecution proved that private complainant was under 12 years of age when she was raped by submitting in evidence her Birth Certificate showing that she was born on December 27, 1985.

The Court found private complainant's testimony that she was raped to be straightforward and credible. Her testimony is supported by the Medico-legal Report showing that her hymen had old lacerations at 1, 5, 7 and 11 o'clock positions.

Appellant, however, disputes the charges with his alibi. He alleged that he was in another place when the incidents allegedly took place. He also questioned the credibility and motive of private complainant since the complaint was filed after six years from the alleged commission of the offenses and after a land dispute arose between him and private complainant's mother (appellant's sister-in-law).

It is settled that alibi is the weakest of all defenses for it is easy to contrive and difficult to disprove. It is thus generally rejected.[24] For this defense to prosper, the accused must establish two elements: (1) he was not at the locus delicti at the time the offense was committed; and (2) it was physically impossible for him to be at the scene at the time of its commission.[25] Moreover, alibi must be supported by credible corroboration from disinterested witnesses, and where such defense is not corroborated, it is usually fatal to the accused.[26]

Appellant claimed that during the rape incident on March 19, 1994, he was in Jamorawon, Bulan, Sorsogon; while he was in Manila during the two rape incidents which occurred sometime in April, 1995.

The Court observed that appellant testified inconsistently as regards the dates when he was in Bulan and when he left for Manila to show that he was not in San Francisco, Bulan, Sorsogon when the three rapes were committed. In his direct examination, appellant testified that he was in Jamorawon, Bulan, Sorsogon in March, 1994 and that he left for Manila on December 10, 1994.[27] The Court of Appeals thus stated that although appellant testified that he was in Jamorawon, Bulan, Sorsogon in March, 1994, this does not negate the possibility that he perpetrated the first count of rape in San Francisco, Bulan, Sorsogon, without any proof of the distance between the two places. However, during cross-examination, appellant testified that he stayed with his mother (private complainant's grandmother) from 1994 up to September 17, 1995,[28] which defeated his alibi. When the trial court asked him clarificatory questions, appellant testified that he was in Jamorawon, Bulan, Sorsogon when his mother had a stroke in 1993 up to March 10, 1994 on which date he left for Manila. He returned to Bulan on September 17, 1994 (sic) [1995?], when his mother died.[29]

Considering that appellant's alibi was uncorroborated and unsubstantiated by clear and convincing evidence, the Court finds it self-serving and deserving of no weight in law.[30] Appellant's alibi cannot prevail over the positive identification of private complainant that he was the one who raped her.[31]

Further, the Court finds that the delay in filing the rape cases was adequately explained by the trial court, thus:

The delay in reporting the rapes that were committed against her was justifiably explained by the complainant herself in the course of her testimony in open court, which was caused by the death threats employed on her

tender mind by the accused. Worth stressing, complainant was a girl of tender age who was completely under the moral ascendancy and control of the accused. Fear alone of what the accused would do if she exposed his evil deed was reason enough for her to suffer in silence for a long time. She was only able to master enough courage to expose her harrowing experience in the hands of the accused, after she was taken back into their custody by her parents due to the demise of her [grandmother].[32]

In addition, the Court of Appeals correctly disregarded appellant's assertion that the rape charges were merely fabricated because of the land dispute between appellant and private complainant's mother in the absence of any independent and corroborative evidence to support the assertion. Motives such as feuds, resentment and revenge have never swayed the Court from giving full credence to the testimony of a minor complainant.[33]

Youth and immaturity are generally badges of truth and sincerity.[34] No sane girl would concoct a story of defloration, allow an examination of her private parts and subject herself to public trial or ridicule if she has not, in truth, been a victim of rape, and thus impelled to seek justice for the wrong done to her.[35] The weight of her testimony may be countered by physical evidence to the contrary, or indubitable proof that the accused could not have committed the rape, but in the absence of such countervailing proof, the testimony shall be accorded utmost value.[36]

The rule is that when an alleged victim of rape says she was violated, she says in effect all that is necessary to show that rape has been inflicted on her, and so long as her testimony meets the test of credibility, the accused may be convicted on that basis.[37]

It is a settled doctrine that the assessment made by the trial court on the credibility of witnesses deserves great regard and weight on appeal.[38] This is because the trial judge has a unique position of hearing first hand the witnesses and observing their deportment, conduct and attitude during the course of the testimony in open court.[39] The exception is when the trial court's evaluation was reached arbitrarily or when the trial court overlooked, misunderstood or misapplied certain facts or circumstances of weight and substance which could affect the result of the case.[40] The Court, after a careful review of the records of this case, finds no compelling reason to reverse the finding of the trial court.

In fine, the Court of Appeals correctly affirmed the decision of the trial court with modification only as to the amount of civil indemnity awarded to private complainant.

As regards the penalty imposed, the rape incidents occurring in 1994 and 1995 were covered by Republic Act No. 7659,[41] which amended Art. 335 of the Revised Penal Code, thus:

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

xxx xxx xxx

The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant 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 concurrence of the minority of the victim and her relationship to the offender are special qualifying circumstances that are needed to be alleged in the Complaint or Information for the penalty of death to be

decreed.[42]

In these cases, the minority of private complainant and her relationship to appellant were alleged in the three Informations and proved in court. The Birth Certificate[43] of private complainant showed that she was born on December 27, 1985. She was thus below 12 years old when she was raped in March, 1994 and April, 1995. Appellant admitted that private complainant was his niece, being the daughter of his brother. As private complainant's uncle, appellant is AAA's relative by consanguinity within the third civil degree. Since private complainant's minority and relationship to appellant were proved in court, the imposition of the death penalty was warranted under Republic Act No. 7659.

However, the imposition of the death penalty has been prohibited by Republic Act No. 9346[44] which took effect on June 30, 2006. Sections 2 and 3 of the Act provide:

Sec. 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; x x x x

Sec. 3. Persons convicted of offenses punished with reclusion perpetua, or whose sentences will be reduced to reclusion perpetua, by reason of this Act, shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended.

Hence, the death penalty imposed on appellant is reduced to reclusion perpetua, without eligibility for parole.

Finally, the Court of Appeals correctly increased the trial court's award to private complainant of civil indemnity from P50,000 to P75,000.[45] Civil indemnity is automatically awarded upon proof of the commission of the crime by the offender.[46]

Although moral damages was correctly awarded to private complainant, the amount should be increased from P50,000 to P75,000 for each case.[47] Private complainant is entitled to moral damages, for it is assumed that she has suffered moral injuries.[48]

In addition, private complainant is entitled to exemplary damages in the amount of P25,000 for each case due to the presence of the qualifying circumstances of minority and relationship.[49]

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. CR H.C. No. 00107 dated May 5, 2005 is hereby AFFIRMED with MODIFICATION. Appellant LUIS AYCARDO is found GUILTY beyond reasonable doubt of committing three counts of Statutory Rape against private complainant, but the three penalties of death imposed upon him are REDUCED to three penalties of reclusion perpetua, without eligibility for parole. Appellant is ordered to pay private complaint AAA (to be identified through the Informations filed with the trial court in this case) civil indemnity in the amount of Seventy-Five Thousand Pesos (P75,000) for each case; moral damages in the amount of Seventy-Five Thousand Pesos (P75,000) for each case; and exemplary damages in the amount of Twenty-Five Thousand Pesos (P25,000) for each case.

No costs.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Carpio-Morales, Tinga, Chico-Nazario, Velasco, Jr., Nachura, Reyes, Leonardo-De Castro, and Brion, JJ., concur.
Corona, J., on official leave.

[1] CA Decision, rollo, pp. 4-5.

[2] The names of the private complainant and members of her immediate family are withheld pursuant to *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[3] TSN, July 11, 2000, pp. 3-5.

[4] *Id.* at 5-10.

[5] *Id.* at 10-15.

[6] *Id.* at 15-19.

[7] *Id.* at 20-24.

[8] Exh. "A," records, p. 20.

[9] TSN, November 20, 2000, pp. 4-12.

[10] Exh. "B," records, p. 63.

[11] TSN, January 29, 2001, pp. 3-9.

[12] *Id.* at 10-15.

[13] TSN, September 10, 2001, p. 3.

[14] *Id.* at 4-8.

[15] TSN, October 29, 2001, pp. 2-6.

[16] *Id.* at 8-13.

[17] CA rollo, p. 69.

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

[19] Rollo, p. 20.

[20] *People v. Mahinay*, G.R. No. 139609, November 24, 2003, 416 SCRA 402, 409.

[21] *Ibid.*

[22] *Ibid.*

[23] *People v. Pancho*, G.R. No. 136592-93, November 27, 2003, 416 SCRA 506, 512.

[24] *People v. Audine*, G.R. No. 168649, December 6, 2006, 510 SCRA 531, 547.

[25] *Ibid.*

[26] *Id.* at 548.

[27] TSN, September 10, 2001, p. 3.

[28] TSN, October 29, 2001, pp. 4-5.

[29] *Id.* at 9-10.

[30] People v. Audine, supra.

[31] People v. Alvarado, G.R. No. 145730, March 19, 2002, 379 SCRA 475.

[32] CA rollo, p. 68.

[33] People v. Audine, supra, at 594.

[34] People v. Bon, G.R. No. 166401, October 30, 2006, 506 SCRA 168, 187.

[35] Ibid.

[36] Ibid.

[37] People v. Ambray, G.R. No. 127177, February 25, 1999, 303 SCRA 697.

[38] People v. Catubig, G.R. No. 137842, August 23, 2001, 363 SCRA 621, 629.

[39] Ibid.

[40] People v. Macapal, Jr., July 14, 2005, G.R. No. 155335, 463 SCRA 387.

[41] An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Code, as Amended, Other Special Penal Laws, and For Other Purposes. Republic Act No. 7659 took effect on December 31, 1993.

[42] People v. Catubig, supra, at 630.

[43] Exhs. B to B-6, records, p. 63.

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

[45] People v. Orbita. G.R. No. 172091, March 31, 2008.

[46] People v. Orilla, G.R. Nos. 148939-40, February 13, 2004, 422 SCRA 620, 646.

[47] People v. Orbita, supra.

[48] People v. Orilla, supra, at 645.

[49] Civil Code, Art. 2230. 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.

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