

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. EDGARDO BARCENA Y POCA, APPELLANT.

G.R. No. 168737. February 16, 2006

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PER CURIAM:

For automatic review is the Decision[1] of the Court of Appeals in CA-G.R. CR-H.C. No. 00770 dated May 31, 2005 which affirmed the Judgment[2] of the Regional Trial Court of Narvacan, Ilocos Sur, Branch 22 in Crim. Case No. 1952-N finding appellant Edgardo Barcena guilty beyond reasonable doubt of the crime of qualified rape and sentencing him to suffer the death penalty and to indemnify the victim in the amount of P75,000.00 and P50,000.00 as moral damages.

Appellant Barcena was charged with rape as defined and penalized under Article 335 of the Revised Penal Code as amended by Republic Act (R.A.) No. 7659 in an Information that reads:

The undersigned Provincial Prosecutor upon sworn complaint filed by the offended party with the Municipal Circuit Trial Court, accuses Edgardo Barcena Y Poca of the crime of Rape, defined and penalized under Article 335 of the Revised Penal Code, as amended by Republic Act 7659, committed as follows:

That on or about the 10th day of April, 1997, in the municipality of Narvacan, province of Ilocos Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, who is the common-law spouse of Nenita Barcena, mother of the victim Estrella Cabida Y Delos Santos, did then and there wilfully, unlawfully and feloniously have carnal knowledge of said Estrella Cabida Y Delos Santos, a minor, 15 years of age, by means of force and intimidation and against the latter's will and consent.

Contrary to law.[3]

Appellant pleaded not guilty to the charge. Thereafter, trial on the merits ensued.

The facts of the case are as follows:

The victim, Estrella Cabida, was born on March 2, 1982 and was 15 years of age when the rape incident happened on April 10, 1997. She was living with her mother, Nenita Cabida[4] and her common-law spouse, the appellant Barcena at Dinalaoan, Narvacan Ilocos Sur.

Estrella testified that at 10:00 o'clock in the morning of April 10, 1997, she was alone in their house when appellant suddenly embraced her from behind and dragged her towards the bedroom despite her vigorous attempts to free herself from his clutches. Appellant repeatedly slapped Estrella, forcibly stripped her of her clothing, mounted her and then inserted his penis into her vagina. Estrella could not tell how long the appellant stayed on top of her but after a while, he put on his clothes and ordered her to do the same. He warned her not to tell anybody about the assault or he would kill her. Four days later, she revealed the harrowing experience to her cousin who accompanied her to the barangay captain.

Dr. Estela Cabigas-Cabatu, resident physician of the Central Ilocos Sur District Hospital, testified that she found healed lacerations at 2 o'clock, 4 o'clock, and 8 o'clock positions of the hymen of the victim. She opined that for

a 15-year old girl with no history of delivery, the presence of healed lacerations is abnormal and could have been caused by the introduction of a foreign object into her genitalia, such as a penis during sexual intercourse.[5]

Appellant raised the defenses of denial and alibi. He testified that since 1992 he was living in the house of his live-in partner Nenita Cabida, the mother of Estrella, at Dinalaoan, Narvacan Ilocos Sur. On April 10, 1997, he left the house at 6 o'clock in the morning and reported for work at the Cachola's Rice Mill where he was a mill operator and went home at 6 o'clock in the evening. He insisted that he was in good terms with Nenita's six children, including Estrella, who would not have accused him of rape had she not been prodded by her relatives who were resentful of him because he squandered the money Nenita was sending from abroad. While admitting that he misspent the money, he claimed that he never neglected to provide for the education and the subsistence of her children. He also stated that on April 10, 1997, Nenita was working abroad and arrived in the country only in November 1997.

Interestingly, despite appellant's allegation that Nenita was abroad when the alleged rape was committed, the latter testified that on April 10, 1997, she and the appellant left the house at 6 o'clock in the morning and went to Cachola's Rice Mill where she worked as a cook. On cross-examination, she insisted that her daughter would not have filed the instant case against the appellant had she not been influenced by other persons.

The presence of the appellant at the rice mill on April 10, 1997 was corroborated by the rice mill operator, Manuel Cachola, who testified that appellant reported for work as a machine operator on that day.

In a decision dated October 13, 2000, the trial court found the appellant guilty beyond reasonable doubt of the crime of rape and sentenced him to suffer the extreme penalty of death, the decretal portion of which reads:

All things having been considered, this Court finds the accused EDGARDO BARCENA y POCA "GUILTY" beyond reasonable doubt of the offense of rape as charged in the aforequoted Information through the use of force or intimidation as amended by Republic Act No. 7659, making the same a "qualified rape" having been committed and duly proven at the trial as alleged in the Information with the attendant circumstance of, "that the victim is under eighteen (18) years of age, and the offender x x x is the common-law-spouse of the parent of the victim.

Perforce with heartfelt regrets, this Court has to dutifully impose the supreme penalty of DEATH upon the accused Edgardo Barcena and to indemnify the victim in the amount of P75,000.00, pay moral damages in the amount of P50,000.00 and the costs of the suit.

SO ORDERED.[6]

The Court of Appeals affirmed the decision of the trial court, the dispositive portion of which reads:

UPON THE VIEW WE TAKE OF THIS CASE, THUS, the appeal is hereby DISMISSED for lack of merit. The accused-appellant EDGARDO BARCENA y POCA is hereby sentenced to the capital penalty of DEATH and condemned to indemnify the victim in the amounts of Php 75,000.00 as civil indemnity and Php 50,000.00 as moral damages as well as the costs of this suit.

ACCORDINGLY, let the entire record of this case be forwarded for review to the Supreme Court pursuant to A.M. No. 00-5-03-SC, which took effect on October 15, 2004.

SO ORDERED.[7]

Hence, this appeal based on the following assignment of errors:

I

THE LOWER COURT GRAVELY ERRED IN FINDING ACCUSED-APPELLANT GUILTY BEYOND

REASONABLE DOUBT OF THE CRIME CHARGED.

II

THE LOWER COURT GRAVELY ERRED IN GIVING FULL AND (sic) WEIGHT AND CREDENCE TO THE TESTIMONY OF PRIVATE COMPLAINANT ESTRELLA CABIDA.[8]

Appellant contends that the conduct of complainant prior to, during, and after the alleged sexual assault was inconsistent with the charge of rape. Complainant's reaction was too perfunctory and unconcerned about her alleged ordeal which put into serious doubt the charge of rape.

Appellant further asserts that if Estrella was indeed raped on April 10, 1997, she should have shouted for help since her brothers and cousins were just nearby playing cards at a neighbor's house. He insists that the charge of rape could not have occurred because there was no resistance from the victim; that Estrella's credibility is put to doubt by her failure to report the incident to her mother Nenita, and to her siblings; that it was only after four days that she reported the incident to the barangay captain whose house was only a few meters away from her house; and that more than four months had elapsed before she filed the complaint with the Narvacan Police.

Appellant also assails the veracity of Estrella's birth certificate considering that it is merely an unauthenticated photocopy of the original, and it cannot be fully ascertained if the complainant was really 15 years of age at the time of the alleged rape incident.

The trial court dismissed the arguments advanced by the defense and gave full credence to the categorical and forthright testimony of Estrella who was steadfast in her testimony even when cross-examined by the defense counsel. It further observed that the victim broke down three times during her testimony. Her narration of how the appellant, through force and intimidation, succeeded in having carnal knowledge of her against her will and consent exhibits all the badges of truth as there is no scintilla of falsehood in her testimony that would suggest a concocted tale of defloration. The bestiality committed by appellant is detailed in the following narration of the victim at the witness stand:[9]

Q. What did you do or what was your reaction when the accused suddenly embraced you from behind?

A. I was struggling.

x x x x

Fiscal Rojas:

Q. And why were you trying to struggle free from the hold of the accused who embraced you from behind?

A. To go away from him, sir.

Q. And were you successful in extricating yourself from the embrace behind of the accused?

A. No, sir.

Q. Why, what did the accused do so that you were not able to struggle free from his embrace?

A. Because he embraced me tightly.

Fiscal Rojas:

Q. So, what happened next Madam witness when you were not able to break free from his tight embrace?

A. He undressed me completely.

Q. Where, right there at the sala?

A. No, sir.

Q. Where?

A. In the room, sir.

x x x x

Q. And how did you end up in the bedroom with the accused when you said earlier that the accused was then tightly embracing you in the sala of the house?

A. He pulled me to his room.

Q. And while the accused was pulling you towards his room, what did you do if any?

A. I struggled and struggled, sir.

On cross-examination, Estrella elaborated more on how she was defiled by the appellant:[10]

Atty. Corrales:

Q. In your direct testimony you narrated what the accused did to you on that date, April 10, 1997. When the accused held you he used both his hands in embracing you, is that correct?

A. Yes, sir.

Q. And that was all the accused did?

A. He even kissed me when we were still in the sala, sir.

Q. My question is about your being embraced by the accused if he used his both hands in tightly embracing you?

A. Yes, sir.

Q. According to you he used his both hands in embracing you after that he pulled you to the room using his both hands?

A. Yes, sir.

Q. When you were in the room he kissed you, is that correct?

A. Yes, sir.

Q. Where were his hands at the time he kissed you?

A. He was still embracing me sir.

Q. With both his hands?

A. Yes, sir.

Court:

Q. From your behind or in front of you?

A. In front of me, Your Honor.

Atty. Corrales:

Q. When he undressed you he used both his hands, is that correct?

A. He used only one hand because his other hand was holding me, sir.

Q. Holding your body is that correct?

A. Yes, sir.

Q. How long did it take him to undress you?

A. I do not know, sir.

Q. You were dressed with pant[s] then, is that correct?

A. I was wearing short pant[s], sir.

Q. With tight garter, is that correct?

A. Yes, sir.

Q. And with your both thighs closed then, is that correct?

A. Yes, sir.

Atty. Corrales:

Q. And because both your thighs were closed to each other he used both hands in removing your panty.

A. Yes, sir.

Q. And it took him several minutes to remove your pant[s], is that correct?

A. I do not know, sir.

Q. You were withy panty then, is that correct?

A. Yes, sir.

Q. And the accused also removed your panty, is that correct?

A. Yes, sir.

Q. You said that you were wearing a panty then, your thighs were closed with each other and the accused removed also your panty, is that correct?

A. When he removed my short pant[s] he removed my panty next, sir.

Q. Because your thighs were closed with each other it took him a long time to remove your panty, is that correct?

A. Yes, sir.

Q. And according to you he slapped you, is that correct?

A. Yes, sir.

Q. Very strong slap, is that correct?

A. Yes, sir.

Q. On what part of the body did the slap land?

A. On my cheek, sir.

Q. Because of this strong slap there was discoloration on your face, is that correct?

A. Yes, sir.

Q. And then he went on top of you, is that correct?

A. Yes, sir.

Q. You said that he inserted his penis into your vagina when he did that he used both his hands in doing so, is that correct?

A. He only used one hand because he was then restraining me from struggling against him with his other hand, sir.

Q. When you were struggling he used his one hand and the other hand was holding your body tight, is that correct?

A. Yes, sir.

Q. You said that after inserting his penis into your vagina he removed it, is that correct?

A. Yes, sir.

Q. And that was all what he did after he inserted his penis into your vagina then removed it, is that correct?

A. He kissed me after raping me, sir.

Q. After inserting his penis inside your vagina he removed it and that was all what he did during that stage of the alleged rape, is that correct?

A. Yes, sir.

Q. According to you, you felt pain in your vagina, is that correct?

A. Yes, sir.

The fact that Estrella did not shout or make an outcry when her relatives were just nearby does not mean that she was not raped by the appellant. It would be demanding too much from an ordinary mortal placed under such a stressful psychological and emotional situation to require that she shout or ward off the impending evil. We have said before that workings of a human mind when placed under emotional stress are unpredictable and people react differently. In such a given situation, some may shout; some may faint; and some may be shocked into insensibility; while others may openly welcome the intrusion.[11]

Estrella demonstrated her repulsion to appellant's lewd advances. Even so, physical resistance need not be established in rape when intimidation is exercised upon the victim who submits against her will to the rapist's lust because of fear for her life or personal safety. The force, violence, or intimidation in rape is a relative term, depending not only on the age, size, and strength of the parties but also on their relationship with each other. A woman of such young age like Estrella can only cower in fear and yield into submission. Rape is nothing more than a conscious process of intimidation by which a man keeps a woman in a state of fear and humiliation. Thus, it is not even impossible for a victim of rape not to make an outcry against an unarmed assailant.

Neither is there merit in the contention that the rape could not have occurred considering that the relatives of the victim were just nearby. In *People v. Watimar*,^[12] the Court, citing the case of *People v. Antonio*^[13] said that "for rape to be committed, it is not necessary for the place to be ideal or the weather to be fine, for rapists bear no respect for locale and time when they carry out their evil deed." Judicial experience has taught us that rape may be committed even in the unlikeliest of places.

Likewise, the delay in revealing the commission of rape is not an indication of a fabricated charge. The charge of rape is rendered doubtful only if the delay was unreasonable and unexplained. Although Estrella may have tarried in reporting the rape incident, it cannot be doubted however, that despite her harrowing experience and the threats from the appellant, she reported the incident to her cousin and to the barangay captain four days later. It is not unusual for a victim immediately following the sexual assault to conceal at least momentarily the incident.

Appellant's explanation that the charge against him was an act of revenge by the complainant and her kin because of his inordinate propensity to squander the money intended for family subsistence is too puerile to inspire belief. It takes an extreme sense of moral depravity for the complainant to impute a serious crime such as rape on a man, knowing him to be innocent, and who is not only the live-in partner of her mother but has also taken her and her siblings as his own. This truism becomes more apparent in the light of the appellant's testimony that he and Nenita's children were generally in good terms. Indeed, appellant's denial, not being sustained by sufficient evidence, fails to diminish the credibility of complainant or the weight of her testimony.

R.A. No. 7659, which took effect on December 31, 1993, imposes the death penalty for rape committed under any of the circumstances provided under Section 11 thereof. Article 335 of the Revised Penal Code, as amended by R.A. No. 7659, provides that the death penalty shall be imposed if the victim of rape is under 18 years of age and the offender is the parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree or the common-law spouse of the parent of the victim. Minority and relationship constitute special qualifying circumstances, which, in accordance with the settled rule, must be alleged in the information and

proven during trial.

In the instant case, the filial relationship between appellant and the complainant has been sufficiently alleged in the information and established during trial. Several witnesses from both the prosecution and the defense testified that the appellant is the common law husband of Nenita, the mother of the victim. In fact, the appellant himself admitted that he exercised parental authority over the children, including the complainant, of his common-law wife Nenita:[14]

Q. Does the Court understands (sic) also that sometimes you would spend your earnings as a rice mill operator for the livelihood of the children of your common-law-wife Nenette Cabida?

A. Yes, your Honor.

Q. In short you are also a part provider or supporter in the needs of the children of your common-law wife, is that correct?

A. Yes, your Honor.

Proceed Fiscal.

Pros. Rojas

Q. Do you see yourself then Mr. Witness in the absence of Nenita as having assumed the role of a father of a family with respect to Nenita's children because what you do to them like buying food, providing them their basic needs and daily needs?

Atty. Lim

May we register our similar objection to the question of the Prosecutor, Your Honor.

Court

Objection overruled. The witness may answer.

Witness

A. Yes, sir.

Pros. Rojas

Q. So how did you relate to the children, Estrella, Romy, Richard, Anabelle, will you describe your relationship with them to you?

A. We had a good relationship but when I give them small amount of money that's the time they protest, sir.

Q. Going to Estrella Mr. Witness, during Nenita's absence from 1995 to 1997, will you please describe your relationship to each other?

A. I took care of her as I would treat other persons, sir.

Q. Did you treat her as if your own child?

A. All of them, sir.

Q. Did you give love, care and affection to the children or say Estrella during Nenita's absence?

A. Yes, sir.

Significantly, the defense counsel admitted during pre-trial that appellant was the common-law spouse of the victim's mother, thus:

Court:

You have some proposals for admission of the defense[?]

Pros. Rojas:

Yes, Your Honor, that the accused indeed is a live-in partner or common law spouse of Nenita Barcena, the mother of the victim, Estrella Cabida.

Atty. Corrales:

We admit, Your Honor.[15]

We are not likewise persuaded by appellant's claim that the minority of the victim was not duly established since her certificate of live birth was a mere photocopy of the original. While only an unauthenticated original of the Certificate of Live Birth,[16] not a photocopy as alleged by the defense, was presented by the prosecution, complainant testified during trial that she was born on March 2, 1982 and that at the time of the rape on April 10, 1997, she was 15 years old, which testimony was never objected to by the defense during the trial.

In *People v. Pruna*,[17] the Court laid down the guidelines in appreciating the age of the victim, thus:

- 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. (Emphasis added)

As already discussed, complainant testified that she was born on March 2, 1982 and was 15 years of age when the rape was committed on April 10, 1997. It is of record that the defense did not offer any objection to her testimony, thus:

Fiscal Rojas

Q. When is your birthday, Madam?

A. March 2, sir.

Q. What year were you born?

A. 1982, sir.

Q. So, you are how old now?

A. 16 sir.

Q. On April 10, 1997, how old were you then?

A. 15 sir.[18]

Even granting that the certificate of live birth is only a photocopy of the original, the same sufficiently proved Estrella's age and minority. In *People v. Cayabyab*,[19] we held that:

We are not unaware of our ruling in *People v. Mantis*[20] that a mere photocopy of the birth certificate, in the absence of any showing that the original copy was lost or destroyed, or was unavailable, without the fault of the prosecution, does not prove the victim's minority, for said photocopy does not qualify as competent evidence for that purpose.

However, there are other exceptions to the "best evidence rule" as expressly provided under Section 3, Rule 130 of the Rules of Court, which reads:

Sec. 3. Original document must be produced; exceptions. – When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:

(a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;

(b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;

(c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and

(d) When the original is a public record in the custody of a public officer or is recorded in a public office.
[Emphasis supplied]

Without doubt, a certificate of live birth is a public record in the custody of the local civil registrar who is a public officer. Clearly, therefore, the presentation of the photocopy of the birth certificate of Alpha Jane is admissible as secondary evidence to prove its contents. Production of the original may be dispensed with, in the trial court's discretion, whenever in the case at hand the opponent does not bona fide dispute the contents of the document and no other useful purpose will be served by requiring production.[21]

In the case at bar, the defense did not dispute the contents of the photocopied birth certificate; in fact it admitted the same. Having failed to raise a valid and timely objection against the presentation of this secondary evidence the same became a primary evidence, and deemed admitted and the other party is bound thereby.[22]

In fine, we find that the prosecution sufficiently proved that Estrella was 15 years old when she was raped on April 10, 1997 by the appellant who was the common-law spouse of her mother.

Anent the award of damages, the trial court correctly awarded P75,000.00 as civil indemnity which is awarded if the crime is qualified by circumstances which warrant the imposition of the death penalty. However, the award of P50,000.00 as moral damages must be increased to P75,000.00 in line with prevailing jurisprudence. In addition, the presence of the qualifying circumstances of minority and relationship entitles the offended party to exemplary damages in the amount of P25,000.00.[23]

WHEREFORE, the Decision of the Regional Trial Court of Narvacan, Ilocos Sur, Branch 22, in Crim. Case No.

1952-N, as affirmed by the Court of Appeals in CA-G.R. CR-H.C. No. 00770 finding appellant Edgardo Barcena y Poca guilty beyond reasonable doubt of the crime of qualified rape and imposing the penalty of DEATH[24] is AFFIRMED with the MODIFICATION that the award of moral damages is increased to P75,000.00 and the appellant is further ordered to pay the victim P25,000.00 as exemplary damages.

SO ORDERED.

Panganiban, C.J., Puno, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Carpio-Morales, Azcuna, Tinga, Chico-Nazario and Garcia, JJ., concur.
Corona and Callejo, Sr., JJ., on leave.

[1] Rollo, pp. 3-18. Penned by Associate Justice Renato C. Dacudao and concurred in by Associate Justices Edgardo F. Sundiam and Rosalinda Asuncion-Vicente.

[2] Id. at 25-76. Penned by Judge Ulpiano I. Campos.

[3] Id. at 7.

[4] Referred to as Nenette Cabida in some parts of the records.

[5] TSN, February 25, 1999, p. 3.

[6] Rollo, pp. 75-76.

[7] Id. at 17-18.

[8] Id. at 128.

[9] TSN, September 3, 1998, pp. 12-13.

[10] TSN, October 6, 1998, pp. 3-4.

[11] People v. Grefiel, G.R. No. 77228, November 13, 1992, 215 SCRA 596, 607-608.

[12] 392 Phil. 711, 724 (2000).

[13] 388 Phil. 869 (2000).

[14] TSN, November 11, 1999, pp. 6-7.

[15] TSN, August 19, 1998, pp. 2-3.

[16] Records, p. 50.

[17] 439 Phil. 440, 470-471 (2002).

[18] TSN, September 3, 1998, p. 2.

[19] G.R. No. 167147, August 3, 2005.

[20] G.R. Nos. 150613-14, June 29, 2004, 433 SCRA 236, 249.

[21] Estrada v. Desierto, G.R. Nos. 146710-15 & 146738, 3 April 2001, 356 SCRA 108, 138.

[22] People v. Boras, G.R. No. 127495, 22 December 2000, 348 SCRA 638, 645.

[23] People v. Cayabyab, supra note 19.

[24] Two (2) Justices of the Court maintain their position that Republic Act No. 7659 is unconstitutional insofar as it prescribes the death penalty, nevertheless they submit to the ruling of the majority that the law is constitutional, hence the death penalty may be lawfully imposed in this case.

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