PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROQUE ABELLANO, ACCUSED-APPELLANT.

G.R. No. 169061. June 08, 2007

Ponente: NACHURA, J.

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NACHURA, J.:

After having experienced a most bestial crime from the most unlikely perpetrator, her own father, the complainant's primary instinct was still to protect her younger sisters from suffering the same fate. Thus, this case.

Before us on automatic review is a Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00773 affirming, with modification, the finding of guilt by the Regional Trial Court (RTC) of Legazpi City, Branch 6, in Criminal Case No. 8405, convicting accused Roque Abellano of qualified rape.[2]

The Information[3] against Abellano reads:

> That sometime in the month of June, 1997, at nighttime, at xxx, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd and unchaste design, by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with his own daughter, AAA,[4] 12 years of age, against her will and consent, to her damage and prejudice.
>
> ACTS CONTRARY TO LAW.

It appears that at the time of the rape, AAA was 12 years old, living with the accused and her two younger sisters, BBB and CCC. The accused's wife, mother of AAA and her sisters, was already deceased.[5]

One night in June 1997, AAA suddenly awoke and was surprised to see accused beside her. After undressing himself, the accused undressed AAA, lay on top of her, and forced himself on her. AAA's cries and remonstrations to the accused why he would do such a thing to his own daughter fell on deaf ears. The accused simply dismissed her sobs, telling her that the pain would pass upon her monthly menstruation. Thereafter, accused left her and went to sleep. However, AAA's nightmare did not end there. The accused repeatedly raped her until sometime in September 1998 when the abomination was revealed. Apparently, the rape had not been confined to complainant alone. Her older sister, DDD, had been raped by their father as well.[6]

AAA and DDD went to their aunt and narrated their harrowing experience at the hands of the accused. Their aunt accompanied them to a barangay kagawad to report the incident. From there they proceeded to the Manito Police Station to lodge a complaint. The Chief of Police of the station requested a medical examination on AAA. The results showed that AAA had a healed laceration at 5:00 o'clock position and was in a non-virgin state physically.[7]

Despite threats made by the accused on her and her sisters' lives, AAA filed the case against their father.

Dr. Lily Melrose Camara, medico-legal officer, corroborated AAA's testimony. She testified that the laceration found on AAA could have been caused by a blunt object such as an erect penis or any instrument or object with a

similar appearance.[8]

In his defense, the accused denied the rape and claimed that the charge was merely instigated by Manuel Arizapa, a cousin of his deceased wife, who, after her death, failed to obtain custody of his children. The accused also claimed that he was drunk on the date the alleged rape occurred. Thus, he could not say anything about his daughter's charge of rape.[9]

On April 23, 2001, the trial court rendered a decision finding the accused guilty as charged, to wit:

> WHEREFORE, premises considered, the accused Roque Abellano is hereby found GUILTY beyond reasonable doubt of the crime of rape committed against her own daughter xxx in June 1997, who was then thirteen (13) years old and he is hereby sentenced to suffer the supreme penalty of DEATH and to pay xxx P75,000.00 as Indemnity. Costs against the accused.

Initially, this case was brought to this Court for automatic review. However, on September 7, 2004, the Court transferred this case to the CA consistent with its ruling in People v. Mateo.[10]

On June 10, 2005, the CA affirmed the trial court's decision dated April 23, 2001 with modification on the latter's award of damages, thus:

> WHEREFORE, the appealed decision is hereby AFFIRMED, with the MODIFICATION, as hereinabove indicated. Pursuant, however, to Section 13, Rule 124 of the Amended Rules to Govern Review of Death Penalty Cases, we refrain from entering judgment and, instead, forthwith certify the case and elevate its entire record to the Supreme Court for further review.

Both the Office of the Solicitor General and the Public Attorney's Office, counsel for the accused, reiterated the arguments in their respective briefs filed during the pendency of this case upon automatic review and prior to its transfer to the CA. Thereafter, the case was submitted for resolution.[11]

In this appeal, the accused reiterates his assignment of errors before the appellate court, to wit:

> I
>
> THE COURT OF ORIGIN COMMITTED A REVERSIBLE ERROR IN GIVING MUCH WEIGHT TO THE EVIDENCE PRESENTED BY THE PROSECUTION.
>
> II
>
> THE COURT A QUO GRAVELY ERRED IN NOT EXCULPATING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DUE TO THE INCONSISTENCIES AS TO THE EXACT AGE OF THE ALLEGED VICTIM.
>
> III
>
> THE REGIONAL TRIAL COURT IN LEGASPI CITY (BRANCH 6) MADE A BLATANT ERROR IN NOT ACQUITTING THE ACCUSED ON THE GROUND OF REASONABLE DOUBT.
>
> IV
>
> THE LOWER COURT COMMITTED A GRAVE ERROR IN IMPOSING THE CAPITAL PUNISHMENT ON THE ACCUSED-APPELLANT DISREGARDING PERTINENT JURISPRUDENCE.[12]

We do not find cause to disturb the findings of both courts.

At the outset, we point out that the case at bench disposes only of the rape committed in June 1997. In this regard, the trial court correctly ruled that AAA's steadfast and unequivocal testimony on the rape on her person by the

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accused cannot be overcome by the flimsy denial of the latter. The prosecution evidence proved beyond reasonable doubt the rape of AAA by the accused.

In the review of rape cases, we continue to be guided by the following principles: (1) an accusation for rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (2) in view of the nature of the crime of rape where only two persons are usually involved, the testimony of the complainant is scrutinized with extreme caution; and, (3) the evidence for the prosecution stands or falls on its own merits and cannot be allowed to draw strength from the weakness of the defense.[13] Thus, in a prosecution for rape, the complainant's credibility becomes the single most important issue.[14]

The perusal of the testimony of AAA inevitably leads us to conclude that the accused indeed raped her. AAA painfully narrated to the trial court, in a categorical and straightforward manner, how she was violated by her own father, thus:

> Q:
>
> Now tell us exactly what happened on that night of June 7, 1997?
>
> A:
>
> I went to sleep and to my surprise my father slept with me. I noticed it when I was awaken(ed). He was already beside me.
>
> Q:
>
> And then (what) happened?
>
> A:
>
> He undressed himself and also undressed me. He put himself on top of me and placed his penis inside my vagina. And then he kept on moving up and down. He pushed himself up and down.
>
> Q:
>
> And what did you do while he was doing that to you? While he was on top of you and placed his penis inside your vagina and kept on moving up and down, what did you do?
>
> A:
>
> I cried and told him that I am his very own daughter. I asked him, "why are you doing this to me?"
>
> Q:
>
> And what was the answer, if any?
>
> A:
>
> He said, "mawawara man sana iyan pag nagregla ka." Or that nothing would go wrong once you have your monthly menstruation.
>
> Q
>
> Did you not shout?
>
> A
>
> Even if I did, no one would hear me except my two younger sisters who could do nothing to help me. We have no neighbor in our place.

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Q

So after your father had successfully raped you, what happened next?

A

He left me and proceeded to sleep where he used to sleep.

Q

And after your father removed his clothes and then undressed you also and then placed his penis inside your vagina, you said you cried, why did you cry?

A

Because I could hardly accept the fact that my own father can afford to do such sexual act with me.

xxxx

Q

Now that rape incident which you told the court which happened sometime in June, 1997, was that the first and last time that happened to you?

A

No, sir because I have... I had been a victim of rape almost every night by my very own father.

Q

When was the last time?

A

It was in September but I could no longer recall the exact date?

Q

What year?

A

1998?[15]

Complainant's testimony remained consistent even on cross and re-cross examination. She refused to be deterred in her desire to protect her younger sisters from undergoing the same harrowing experience.

In stark contrast, however, is the accused's bare denial, and a vaguely drawn theory as to the impetus for the accusation. Both the lower and the appellate courts found the testimony of the accused unworthy of credence. Significantly, the accused failed to squarely deny AAA's charge of rape in his initial testimony, thus:

Q:

Now Mr. Witness, one (1) of your children AAA is accusing you of rape. Tell us what you can say to that?

(Silence)

PROS. DE MESA

Your honor please, may I manifest and put on record that the accused took time and does not give an answer.

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WITNESS

A:

I cannot say anything.

ATTY. GOMEZ (to the witness, continuing)

Q

What do you mean "you cannot say anything?"

A

I could not remember because I was then drunk sir.[16]

Accused's testimony even revealed that he had been previously sentenced to the supreme penalty of death in a separate case of rape against the same victim committed on a different date.[17] The trial and the appellate courts accurately noted that the accused's initial silence in his direct testimony in response to the question relating to his daughter's charge of rape, is equivalent to an admission thereof.[18]

Moreover, AAA's testimony is corroborated by the findings of the medico-legal officer on all material points. Dr. Camara testified that the healed laceration on AAA's genitalia and the non-resistance of her hymen upon insertion of the examining index finger and the vaginal speculum are consistent with the claim of rape.[19]

However, notwithstanding the foregoing, the accused maintains that there exists reasonable doubt in his favor due to the following defects and inconsistencies: (1) the victim's actual age at the time of the rape; (2) the date of the rape was not specifically alleged in the Information; (3) filing of the case is tainted with ill motive; and (4) the findings of Dr. Camara were inconclusive.[20]

We disagree.

First. The accused mistakenly argues that the victim's age as alleged in the information is inconsistent, nay contradicted, by the findings of the trial court in its decision which declares the victim to be 12 years of age in its statement of facts, and 13 years old in the latter part of the decision. Hence, the accused hastily concludes that the trial court itself is not sure of AAA's exact age.[21]

Time and again we have ruled that qualifying circumstances that increase the imposable penalty on an accused must be specifically alleged in the Information and duly proved during trial.[22] Article 266-B (1) of the Revised Penal Code before the abolition of the death penalty provided,

ART. 266-B. Penalties. –

xxxx

The death penalty shall also be imposed if the crime of rape is committed with any of the following circumstances:

- 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 Information states that AAA was 12 years old in June 1997 when the rape was committed.[23] Clearly, AAA was then under 18 years of age. AAA was born on August 19, 1984 as indicated in her birth certificate presented during trial. Her relationship to the accused is likewise reflected in the same document.[24] Further, the victim's

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declaration on direct testimony as to her date of birth and her actual age at the time of the incident (12 going on 13 years old) undoubtedly shows that she was below 18 years of age.[25] Indeed, the prosecution had sufficiently alleged and duly proved the twin qualifying circumstances of minority and relationship.

In point is the case of People v. Carinaga.[26] Both Informations stated that the victim was 12 years old at the time of the two rape incidents. However, it was proven during the trial that the victim was actually only 11 years old on the given dates. This Court ruled that, since the facts alleged in the Information and the facts proven in court establish the qualifying circumstances of minority and relationship, there was qualified rape.

Second. With regard to the specific date of the rape, we agree with the appellate court's succinct holding that it is clearly not an element of the crime of incestuous rape.[27]

Third. As for the alleged ill motive behind the institution of the case, the appellate court is correct in finding that the accused did not present concrete proof to buttress the same.[28] Corollarily, it is unbelievable that AAA will allow herself to be influenced by her uncle to concoct a convoluted story of rape by her own father simply because he was prevented by the accused from taking custody of her and her sisters after their mother's death. No woman would want to go through the humiliation of trial unless she has been so brutalized that she desires justice for her suffering.[29] It takes a certain amount of psychological depravity for a young woman to concoct a story which could cost the life of her own father and drag the rest of the family, including herself, to a lifetime of shame.[30] AAA's asseveration that she wanted to protect her siblings from their father's sexual clutches far outweighs accused's lame attempt to cast a shadow on her credibility and save himself. Besides, the records reveal that AAA herself, accompanied by her aunt, went to the Manito Police Station to lodge a complaint against the accused.

Fourth. The accused next contends that the findings of Dr. Camara are inconclusive. He cites Dr. Camara's testimony that AAA's non-virgin state could have been caused by populated menstrual flow, exercises, horseback riding, accidentally falling on a hard object, and biking.[31] Accused also questions the single laceration on AAA's genitalia which, he insists, is inconsistent with the latter's claim of repeated rape by the former from June 1997 until September 1998.

Undeniably, the other possibilities mentioned by Dr. Camara do not exclude the accused's rape of AAA. But neither does the single laceration belie the sexual abuse by her father. In any event, the imagined inconsistencies refer only to minor matters that cannot overcome AAA's strong, unhesitant, and credible testimony found by the trial court as sufficient to sustain a conviction.

The trial court's evaluation of a witness' credibility is accorded the highest respect because it had the direct and singular opportunity to observe the facial expression, gesture, and tone of voice of a witness while testifying. The trial court has the strategic position to determine whether a witness is telling the truth and its findings thereon are accorded finality, unless there appears on record some fact or circumstance of weight which the lower court may have overlooked, misunderstood, or misappreciated and, if properly considered, would alter the results of the case.[32]

All told, the perceived defects and contradictions by the defense refer only to minor and insignificant details which do not work to alter the outcome of the case.[33]

With respect to the proper penalty to be imposed, the accused avers that he cannot be sentenced to suffer the death penalty since the qualifying circumstance of minority, that AAA was 12 years and 10 months old in June 1997, was not duly alleged in the Information, in the light of the rulings in People v. Bartolome,[34] People v. Cula,[35] and People v. Liban.[36] His reliance on these cases is misplaced. These cases reduced the penalty from death to

reclusion perpetua because the qualifying circumstance of minority was not duly alleged and proven. However, nowhere in the cited decisions does it declare that the exact age, including the number of months must be recited in the Information, otherwise, an accused may not be convicted of qualified rape. More importantly, the facts obtaining in these cases show that although the qualifying circumstances were not duly alleged and established during trial, such inconsistencies did not create reasonable doubt as would reverse a conviction of rape.

In the case at bench, the qualifying circumstances of minority and relationship were specifically alleged in the Information and duly proven. However, with the advent of Republic Act No. 9346 prohibiting the imposition of the death penalty, the penalty of reclusion perpetua without eligibility for parole should instead be imposed.

As regards the civil liability of the accused, we affirm the appellate court's award of P75,000.00 as civil indemnity. We increase the award of moral damages to P75,000.00, without need of proof, and additionally award P25,000.00 as exemplary damages consistent with current jurisprudence.[37]

WHEREFORE, the decision of the RTC of Legazpi City, Branch 6, in Criminal Case No. 8405 and the decision of the CA in CA-G.R. CR-H.C. No. 00773 are AFFIRMED with MODIFICATION. Appellant Roque Abellano is sentenced to suffer the penalty of reclusion perpetua without eligibility for parole and to pay the victim, AAA, the amount of P75,000.00 as civil indemnity, P75,000.00 as moral damages, and the further sum of P25,000.00 as exemplary damages, plus costs.

SO ORDERED.

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

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[1] Penned by the late Associate Justice Salvador J. Valdez, Jr., with Associate Justices Mariano C. del Castillo and Magdangal M. de Leon, concurring.

[2] Penned by Judge Vladimir B. Brusola.

[3]Dated March 4, 1999, signed by Prosecutor II Milagros G. Quijano, RTC records, p. 24.

[4] The real name of the victim is withheld as per Republic Act (R.A.) No. 7610 and R.A. No. 9262. See People v. Cabalquinto, G.R. No. 167693, September 19, 2006.

[5]TSN, July 11, 2000, pp. 5-6, 9-10.

[6]Id. at pp. 5-8.

[7]TSN, July 11, 2000, p. 9; TSN, February 15, 2000, p. 7.

[8]TSN, July 11, 2000, p. 8; TSN, February 15, 2000, pp. 9-10.

[9]TSN, March 13, 2001, pp. 4-6.

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

[11]Rollo, pp. 26-31.

[12]Appellant's Brief, CA rollo, pp. 33-49.

[13]People v. Brondial, G.R. No. 135517, October 18, 2000, 343 SCRA 601; People v. Baniguid, G.R. No. 126199, December 8, 1999, 320 SCRA 92; People v. Baygar, G.R. No. 132238, November 17, 1999, 318 SCRA 358; People v. Sta. Ana, G.R. Nos. 115657-59, June 26, 1998, 291 SCRA 188; People v. Auxtero, G.R. No. 118314, April 15, 1998, 289 SCRA 75; People v. Balmoria, G.R. Nos. 120620-21, March 20, 1998, 287 SCRA 687; People v. Barrientos, G.R. No. 119835, January 28, 1998, 285 SCRA 221; People v. Gallo, G.R. No. 124736, January 22, 1998, 284 SCRA 590.

[14] People v. Baway, G.R. No. 130406, January 22, 2001, 350 SCRA 29, 39.

[15] TSN, July 11, 2000, pp. 5-7.

[16] TSN, March 13, 2001, pp. 4-5.

[17]Id. at p. 5.

[18] CA Decision dated June 10, 2005, rollo, pp. 14-17.

[19] TSN, February 15, 2000, pp. 6-10.

[20]Supra note 12, at pp. 40-45.

[21] Supra note 12, at pp. 41-42.

[22]People v. Dela Cerna, G.R. Nos. 136899-904, October 9, 2002, 390 SCRA 538; People v. Bartolome, G.R. No. 138365, April 16, 2002, 381 SCRA 91; People v. Carinaga, G.R. Nos. 146097-98, August 26, 2003, 409 SCRA 614.

[23] Supra note 3.

[24]Rollo, p. 6.

[25]TSN, July 11, 2000, p. 9.

[26] G.R. Nos. 146097-98, August 26, 2003, 409 SCRA 614.

[27] Rollo, p. 10.

[28] Id.

[29] People v. Brondial, G.R. No. 135517, October 18, 2000, 343 SCRA 601.

[30]Id. at 620.

[31] TSN, February 15, 2000, pp. 10-13.

[32] People v. Carinaga, supra note 26; People v. Suarez, G.R. Nos. 153573-76, April 15, 2005, 456 SCRA 333.

[33] People v. Suarez, supra note 32.

[34] G.R. No. 138365, April 16, 2002, 381 SCRA 91.

[35]G.R. No. 133146, March 28, 2000, 329 SCRA 101.

[36] G.R. Nos. 136247 & 138330, November 22, 2000, 345 SCRA 453.

[37] People v. Salome, G.R. No. 169077, August 31, 2006; People v. Quiachon, G.R. No. 170236, August 31, 2006; People v. Tamsi, G.R. Nos. 142928-29, September 11, 2002, 388 SCRA 604.

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