

PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, vs. NELSON ABON Y NOVIDO, Accused-Appellant.

G.R. No. 169245. February 15, 2008

Ponente: VELASCO JR., J.

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VELASCO JR., J.:

Of all so called heinous crimes,
none perhaps more deeply provokes feelings of outrage,
detestation and disgust than incestuous rape.[1]

—former Chief Justice Andres R. Narvasa

The credibility of the testimony of a young incestuous rape victim cannot be diminished by an unsupported allegation that she is mentally disturbed. Considering that family honor is at stake, a minor rape victim will not fabricate a story that she was raped by her own father unless it was true.

The Case

This is an automatic review of the June 6, 2005 Decision[2] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00507 entitled *People of the Philippines v. Nelson Abon* which affirmed the June 23, 1998 Decision[3] of the Urdaneta City, Pangasinan Regional Trial Court (RTC), Branch 48, convicting accused-appellant Nelson Abon of the crime of qualified rape and sentencing him to suffer the penalty of death.

The Facts

On the last week of May 1995, at about 11 p.m., in Binalonan, Pangasinan, accused-appellant entered the room where his daughter, AAA,[4] who was then 13 years old, and his son, BBB, were sleeping. Accused-appellant moved BBB away from AAA, and, thereafter, embraced AAA. He removed AAA's pajama, then his shorts and brief, and went on top of AAA. AAA called her grandmother, who was sleeping at the next room, but the latter was not awakened by AAA's call. Accused-appellant silenced AAA and threatened to strangle her if she made any noise.[5]

Accused-appellant succeeded in inserting his penis inside AAA's vagina, and then made a push and pull movement of his penis inside her vagina for about 20 to 30 minutes. T hereafter, he left.[6]

The following morning, AAA told her grandmother about the incident but the latter dismissed her granddaughter's tale. AAA then went to Cristeta Bayno's house and told her about the molestation. AAA also told Bayno that she was previously raped by her grandfather. Bayno brought AAA to her uncle, who told them to report the matter to the police.[7]

Bayno assisted AAA in reporting the matter to the police. Thereafter, AAA was physically examined and the findings showed that her hymen was already ruptured and she had old lacerations inflicted approximately three months before the date of the examination.[8]

An Information for qualified rape was filed against Nelson, which reads:

That on or about the last week of May 1995 at [B]arangay Linmansangan, [M]unicipality of Binalonan, [P]rovince of Pangasinan and within the jurisdiction of this Honorable Court, said accused who is the father of the victim, by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge on the person of AAA, a [13-year old woman], against her will.[9]

When arraigned, accused-appellant pleaded not guilty to the crime charged.[10] During the trial, he interposed denial and alibi as his defenses. He alleged that he had been working in Binangonan, Rizal from March 1995 to August 1995. He also claimed going to Binalonan, Pangasinan only once during that period, and that was in June 1995. He did not see his children then because they were in Pozzorubio, Pangasinan where they were studying. Furthermore, he stated that AAA filed the case against him for the reason that he used to whip her very hard on the buttocks with a yard-long piece of wood.[11]

On June 23, 1998, the RTC rendered a Decision, the dispositive portion of which reads:

Wherefore, the Court sentences [accused-appellant] to suffer death penalty as provided for by Section 11 of Republic Act [No.] 7659 and to pay the amount of [PhP] 50,000 as moral damages to the victim AAA aside from paying exemplary damages in the amount of [PhP] 30,000 for other fathers not to follow the bad example shown by the accused.

SO ORDERED.[12]

Due to the penalty imposed, the case was forwarded to this Court for automatic review and was originally docketed as G.R. No. 135056. However, in accordance with the ruling in *People v. Mateo*,[13] this Court, in its September 14, 2004 Resolution, transferred this case to the CA for intermediate review.

The Ruling of the Court of Appeals

The CA affirmed the trial court's judgment of conviction, but it modified the award of damages. The CA upheld the credibility of the complaining witness, AAA. It observed that accused-appellant failed to show any inconsistency in AAA's testimony, and neither did he prove any ill-motive which would prompt AAA to concoct her incest rape story. The appellate court also dismissed accused-appellant's defenses of denial and alibi as these were not supported by trustworthy evidence.

The modification in the award of damages consisted in the grant of PhP 75,000 as civil indemnity and the increase in the award of moral damages to PhP 75,000. The award of exemplary damages was, however, decreased to PhP 25,000.

The Issues

On October 17, 2006, accused-appellant filed a Supplemental Brief before this Court, raising the following issues for our consideration:

- Whether or not the Honorable Court of Appeals erred in affirming the decision of the court a quo finding the appellant guilty beyond reasonable of the crime of qualified rape; [and]
- Whether or not the Honorable Court of Appeals erred in increasing the amount of damages awarded by the court a quo.[14]

The Court's Ruling

The appeal has no merit.

Preliminary Matter: Rules on Appeal

An appeal is a proceeding undertaken to have a decision reconsidered by bringing it to a higher court authority.[15] It is not a right but a mere statutory privilege[16] to be exercised only in the manner and in accordance with the provisions of law.[17]

Recent developments in criminal law and jurisprudence have brought about changes in the rules on appeal, specifically in cases where the penalty imposed is death, reclusion perpetua, or life imprisonment. To clarify the present rules, we shall discuss these developments.

Section 3 of Rule 122 of the 2000 Rules on Criminal Procedure states:

SEC. 3. How appeal taken.—(a) The appeal to the Regional Trial Court, or to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction, shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and by serving a copy thereof upon the adverse party.

(b) The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its appellate jurisdiction shall be by petition for review under Rule 42.

(c) The appeal to the Supreme Court in cases where the penalty imposed by the Regional Trial Court is death, reclusion perpetua, or life imprisonment, or where a lesser penalty is imposed but for offenses committed on the same occasion or which arose out of the same occurrence that gave rise to the more serious offense for which the penalty of death, reclusion perpetua, or life imprisonment is imposed, shall be by filing a notice of appeal in accordance with paragraph (a) of this section.

(d) No notice of appeal is necessary in cases where the death penalty is imposed by the Regional Trial Court. The same shall be automatically reviewed by the Supreme Court as provided in section 10 of this Rule.

(e) Except as provided in the last paragraph of section 13, Rule 124, all other appeals to the Supreme Court shall be by petition for review on certiorari under Rule 45.

The provision provides that where the penalty imposed by the RTC is reclusion perpetua or life imprisonment, an appeal is made directly to this Court by filing a notice of appeal with the court which rendered the judgment or final order appealed from and by serving a copy thereof upon the adverse party. On the other hand, a case where the penalty imposed is death will be automatically reviewed by the Court without a need for filing a notice of appeal.

However, Mateo[18] modified these rules by providing an intermediate review of the cases by the CA where the penalty imposed is reclusion perpetua, life imprisonment, or death. Pursuant to Mateo's ruling, the Court issued A.M. No. 00-5-03-SC 2004-10-12, amending the pertinent rules governing review of death penalty cases, thus:

Rule 122

Sec. 3. How appeal taken.—(a) The appeal to the Regional Trial Court, or to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction, shall be by notice of appeal filed with the court which rendered the judgment or final order appealed from and by serving a copy thereof upon the adverse party.

(b) The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its appellate jurisdiction shall be by petition for review under Rule 42.

(c) The appeal in cases where the penalty imposed by the Regional Trial Court is reclusion perpetua, life imprisonment or where a lesser penalty is imposed for offenses committed on the same occasion or which

arose out of the same occurrence that gave rise to the more, serious offense for which the penalty of death, reclusion perpetua, or life imprisonment is imposed, shall be by notice of appeal to the Court of Appeals in accordance with paragraph (a) of this Rule.

(d) No notice of appeal is necessary in cases where the Regional Trial Court imposed the death penalty. The Court of Appeals shall automatically review the judgment as provided in Section 10 of this Rule.

x x x x

Sec. 10. Transmission of records in case of death penalty.—In all cases where the death penalty is imposed by the trial court, the records shall be forwarded to the Court of Appeals for automatic review and judgment within twenty days but not earlier than fifteen days from the promulgation of the judgment or notice of denial of a motion for new trial or reconsideration. The transcript shall also be forwarded within ten days after the filing thereof by the stenographic reporter. (Emphasis supplied.)

x x x x

Rule 124

Sec. 12. Power to receive evidence.—The Court of Appeals shall have the power to try cases and conduct hearings, receive evidence and perform all acts necessary to resolve factual issues raised in cases falling within its original and appellate jurisdiction, including the power to grant and conduct new trials or further proceedings. Trials or hearings in the Court of Appeals must be continuous and must be completed within three months, unless extended by the Chief Justice. 12(a)

Sec. 13. Certification or appeal of case to the Supreme Court.—(a) Whenever the Court of Appeals finds that the penalty of death should be imposed, the court shall render judgment but refrain from making an entry of judgment and forthwith certify the case and elevate its entire record to the Supreme Court for review.

(b) Where the judgment also imposes a lesser penalty for offenses committed on the same occasion or which arose out of the same occurrence that gave rise to the more severe offense for which the penalty of death is imposed, and the accused appeals, the appeal shall be included in the case certified for review to, the Supreme Court.

(c) In cases where the Court of Appeals imposes reclusion perpetua, life imprisonment or a lesser penalty, it shall render and enter judgment imposing such penalty. The judgment may be appealed to the Supreme Court by notice of appeal filed with the Court of Appeals. (Emphasis supplied.)

Also affecting the rules on appeal is the enactment of Republic Act No. (RA) 9346 or An Act Prohibiting the Imposition of the Death Penalty in the Philippines, which took effect on June 29, 2006. Under Sec. 2 of RA 9346, the imposition of the death penalty is prohibited, and in lieu thereof, it imposes the penalty of reclusion perpetua, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code (RPC); or life imprisonment, when the law violated does not make use of the nomenclature of the penalties of the RPC. Consequently, in the provisions of the Rules of Court on appeals, death penalty cases are no longer operational.

Having clarified the rules on appeal in criminal proceedings, we now discuss the substantive issues of the instant case.

Sufficiency of Prosecution Evidence

The present appeal raises issues of facts. It is a settled rule that substantiated factual findings of the appellate court, affirming those of the trial court, are conclusive on the parties and may not be reviewed on appeal.[19] In the present case, a review of the records shows that the RTC and the CA had carefully considered the questions of

facts raised, and their decisions are both amply supported by the evidence on record.

To sustain a conviction for rape, there must be proof of the penetration of the female organ.[20] In this case, the conviction of accused-appellant was anchored mainly on the testimony of the minor victim, AAA. However, accused-appellant casts doubt on AAA's credibility by tagging her as a disturbed child who invented the accusation against him because he maltreated her.[21] This theory deserves scant consideration. Rape victims, especially those of tender age, would not concoct a story of sexual violation, or allow an examination of their private parts and undergo public trial, if they are not motivated by the desire to obtain justice for the wrong committed against them.[22] Moreover, a rape victim's testimony against her father goes against the grain of Filipino culture as it yields unspeakable trauma and social stigma on the child and the entire family. Thus, great weight is given to an accusation a child directs against her father.[23]

The trial and appellate courts extensively discussed the trustworthiness of the victim's testimony describing her father's bestiality against her. We find no reason to overturn their findings.

Moreover, the CA correctly disregarded accused-appellant's defense of alibi as follows:

The appellant attempted to show, [through a witness, his brother-in-law], that he was at [his brother-in-law's] birthday party held in Binangonan, Rizal on May 27, 1995. Such fact, even if it were true, did not eliminate the possibility of his traveling to Binalonan, Pangasinan anytime after May 27, 1995. x x x

x x x x

To be reliable, alibi must be supported by credible corroboration, preferably from disinterested witnesses who swear that they saw or were with the accused somewhere else when the crime was being committed. In this case, the appellant's alibi, though corroborated by [his mother], [niece] and [brother-in-law], was not credible for the obvious reason that they were his close relatives, not disinterested persons. Alibi is regarded as weak if it is established wholly or mainly by the accused himself or his relatives, and so should fail as a defense once the accused is positively identified by the victim herself.[24]

Proper Penalty

As regards the penalty imposed, in view of the effectivity of RA 9346, the penalty of death is reduced to reclusion perpetua, without eligibility for parole.

Also, we find that the increased amount of damages awarded by the CA is proper and is consistent with recent jurisprudence on the matter.[25]

WHEREFORE, the June 6, 2005 Decision of the CA in CA-G.R. CR-H.C. No. 00507, finding accused-appellant guilty beyond reasonable doubt of qualified rape is **AFFIRMED** with the **MODIFICATION** that the penalty of death imposed on accused-appellant is **REDUCED** to **RECLUSION PERPETUA** without eligibility for parole pursuant to RA 9346.

SO ORDERED.

Puno, C.J., (Chairperson), Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Azcuna, Tinga, Nachura, and Reyes, JJ., concur.
Chico-Nazario, J., on leave

[1] *People v. Baculi*, G.R. No. 110591, July 26, 1995, 246 SCRA 756, 758.

[2] *Rollo*, pp. 3-29. Penned by Associate Justice Lucas Bersamin and concurred in by Associate Justices Andres

Reyes Jr. and Celia Librea-Leagoco.

[3] CA rollo, pp. 23-46. Penned by Judge Alicia Gonzalez-Decano.

[4] Pursuant to RA 9262, otherwise known as the “Anti-Violence Against Women and Their Children Act of 2004,” and its implementing rules, the real names of the victim and her immediate family members are withheld; instead, fictitious initials are used to represent them to protect their privacy. See *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[5] Rollo, pp. 14-15.

[6] *Id.* at 18.

[7] *Id.* at 6.

[8] *Id.* at 7.

[9] CA rollo, p. 10.

[10] Rollo, p. 4

[11] *Id.* at 7-8.

[12] *Supra* note 3, at 46.

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

[14] Rollo, p. 50. Original in capital letters.

[15] BLACK'S LAW DICTIONARY (Abridged 7th ed., 2000).

[16] *Badillo v. Gabo*, G.R. No. 145846, April 3, 2003, 400 SCRA 494, 506; citing *Manalili v. De Leon*, G.R. No. 140858, November 27, 2001, 370 SCRA 625, 630.

[17] *Basuel v. Fact-Finding and Intelligence Bureau*, G.R. No. 143664, June 30, 2006, 494 SCRA 118, 123.

[18] *Supra* note 13.

[19] *Aboitiz Shipping Corporation v. New India Assurance Company, Ltd.*, G.R. No. 156978, May 2, 2006, 488 SCRA 563, 572; *DBP Pool of Accredited Insurance Companies v. Radio Mindanao Network, Inc.*, G.R. No. 147039, January 27, 2006, 480 SCRA 314, 321.

[20] *People v. Pandapatan*, G.R. No. 173050, April 13, 2007, 521 SCRA 304, 319.

[21] Rollo, pp. 51-52.

[22] *People v. Villafuerte*, G.R. No. 154917, May 18, 2004, 428 SCRA 427, 433.

[23] *People v. Pioquinto*, G.R. No. 168326, April 11, 2007, 520 SCRA 712, 720-721.

[24] Rollo, pp. 24-25.

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

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