

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. FILOMINO L. VILLANUEVA, APPELLANT.

G.R. NO. 169643. April 13, 2007

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

On automatic review is the Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 00825, dated May 30, 2005, which affirmed with modification the Decision[2] of the Regional Trial Court of Capas, Tarlac, Branch 66 in Criminal Cases Nos. 1288-1289 convicting appellant Filomino Villanueva of rape.

The Case for the Prosecution

BBB is the appellant's daughter and was born on January 23, 1983.[3] In the evening of December 23, 1997, BBB, together with her parents and her three brothers, spent the night in her aunt's house. Her mother left to attend a wake.[4] While inside the room with her brothers (who were then sleeping), BBB asked for a glass of water from appellant. After drinking, she felt dizzy.[5] When she woke up the following morning, her breasts and private part were aching, but she did not do anything because she thought that she had just been bitten by ants.[6]

At around midnight in the first week of February 1998, while BBB and her brothers were inside their room sleeping, appellant went inside, raised (BBB's) blouse up to her neck and sucked her breasts.[7] He likewise pulled down her shorts and panty up to her thighs;[8] kissed her lips;[9] went on top of her;[10] and inserted his penis into her vagina.[11] After satisfying his lustful desire, appellant told her that he would kill her and her family if she reported the matter to anyone.[12] BBB did not report the incident. She finally told her mother when she learned that she was pregnant. Her mother cried and got mad.[13] BBB gave birth in October 1998. The child was later adopted by her cousin.[14]

On July 7, 1998, BBB executed a Sinumpaang Salaysay[15] before SPO1 Nixon Cruz of the Philippine National Police. On the same day, SPO4 Cezar T. Mangune, the Chief Investigator, filed a Criminal Complaint[16] against appellant before the 2nd Municipal Circuit Trial Court (MCTC) of Bamban-Capas-Concepcion, Capas Tarlac. A preliminary investigation was immediately conducted. On even date, the MCTC issued a Resolution[17] finding prima facie evidence of rape. The Provincial Prosecutor sustained the findings of the MCTC in a Resolution[18] dated July 20, 1998. Two (2) separate Informations were then filed with the RTC of Capas, Tarlac, Branch 66, docketed as Criminal Cases Nos. 1288-(98) and 1289-(98). The Informations contain the following accusatory portions:

That on or about December 23, 1997, in the x x x Province of Tarlac, Philippines and within the jurisdiction of this Honorable Court the above-named accused did then and there willfully, unlawfully, and feloniously, by means of force and intimidation, succeed in having sexual intercourse with his daughter BBB, a minor 15 years old.

CONTRARY TO LAW.[19]

x x x x

That sometime in the first week of February 1998, in the x x x Province of Tarlac, Philippines and within the jurisdiction of this Honorable Court the above-named accused did then and there willfully, unlawfully and feloniously, by means of force and intimidation, succeed in having sexual intercourse with his daughter BBB, a minor 15 years old.

CONTRARY TO LAW.[20]

The Case for the Appellant

Appellant interposed the defenses of denial and alibi. He testified that on the night of December 23, 1997, he and his wife and children went to the house of his sister-in-law where they spent the night. At 7:00 p.m., his wife and sister-in-law went to a wake.[21] While his wife was away, he and his children watched the television. His wife arrived at 9:00 p.m. At 10:00 p.m., he decided to sleep and went inside the room where his wife and children were sleeping. At that time, BBB was sleeping beside her mother. Appellant then positioned himself beside his wife.[22] He denied that BBB asked him to get a glass of water; at that time, BBB and his other children were already asleep.

Appellant further claimed that he and his wife did not have serious problems with each other except for petty quarrels over who was going to cook in the mornings.[23] He did not have any misunderstanding with his daughter BBB.[24] He admitted that he did not file a counter-affidavit at the MCTC because he was surprised, and "they" hurt him. He did not, however, report this matter either before the MCTC or other authorities.[25]

The Ruling of the Trial Court

On September 10, 2001, the RTC rendered a Decision acquitting the appellant in Criminal Case No. 1288-(98), but convicting him for the crime of rape in Criminal Case No. 1289-(98). The fallo reads:

WHEREFORE, in view of all the foregoing, judgment is hereby rendered as follows:

- For Criminal Case No. 1288: For failure of the prosecution to prove the guilt of the accused beyond reasonable doubt, judgment is hereby rendered acquitting him of the crime charged.

- For Criminal Case No. 1289: The prosecution having successfully established the guilt of the accused beyond any cavil of doubt of the crime of rape, judgment is hereby rendered sentencing him to suffer the penalty of death by lethal injection.

"If the crime of rape is committed where the victim is under eighteen (18) years of age and the offender is a parent x x x the imposition of the death penalty is mandatory." (People vs. Tanco, 284 SCRA 251).

The accused is further ordered to pay, by way of indemnity the amount of Fifty Thousand Pesos (P50,000.00), Fifty Thousand Pesos (P50,000.00) as moral damages, and another Twenty- Five Thousand Pesos (P25,000.00) as exemplary damages.

SO ORDERED.[26]

On the alleged rape committed on December 23, 1997, the RTC concluded that, from the evidence presented, the prosecution failed to sufficiently establish the first element of rape — sexual intercourse. The trial court further stated that the offended party's testimony — that she felt dizzy after drinking the glass of water given by the appellant, and felt pain on her breasts and private part when she woke up the following morning — are not positive indicia of defloration.[27]

The trial court, however, was convinced that appellant committed the second charge of rape (the first week of

February 1998). The testimony of the offended party on the matter was clear, frank, positive and convincing. The apparent delay in reporting the incident was justified since the appellant had threatened BBB.[28] The court further found that the offended party had no ill motive to file false charges against the appellant.[29] Consequently, the trial court convicted the accused and sentenced him to suffer the supreme penalty of death.

The case was initially elevated to this Court on automatic review. In deference to the ruling in *People of the Philippines v. Mateo*,[30] however, the case was transferred to the CA.

The Ruling of the Court of Appeals

Appellant claimed that the trial court gravely erred in imposing the death penalty despite the prosecution's failure to prove the qualifying circumstance of minority.[31] While appellant did not question his conviction, he contested the penalty imposed. He insisted that the minority of the offended party had not been sufficiently proven because the prosecution presented a mere photocopy of the birth certificate which was not certified as a true copy of the original.[32]

On May 30, 2005, the CA sustained the trial court's imposition of the death penalty. It held that the qualifying circumstance of the victim's minority had been specifically alleged in the Information and duly proven during the trial. The appellate court, however, modified the civil indemnity by increasing it from P50,000.00 to P75,000.00 pursuant to prevailing jurisprudence. The fallo of the decision reads:

WHEREFORE, there being no error in the appealed decision finding appellant guilty beyond reasonable doubt in Criminal Case No. 1289-C-98 of Qualified Statutory Rape and sentencing him to suffer the penalty of Death, the Court hereby affirms the same with the MODIFICATION that Civil indemnity is increased to P75,000.00

However, instead of entering judgment, we hereby certify and elevate the entire records of this case to the Supreme Court for its final disposition.

SO ORDERED.[33]

The Ruling of the Court

In the Court's Resolution[34] dated November 8, 2005, the parties were required to submit their respective supplemental briefs. The Office of the Solicitor General manifested[35] that it would no longer file a supplemental brief since the arguments contained in the Appellee's Brief would only be reiterated. In his Supplemental Brief, appellant alleged that he was no longer questioning his conviction, and pleaded only for a lighter sentence. He further averred that in view of the enactment of Republic Act (R.A.) No. 9346 abolishing the death penalty, the present appeal should now be deemed moot and academic.

The Ruling of the Court

After a careful and meticulous review of the records of the case, the Court finds no reason to overturn the findings of facts and conclusions of the trial and appellate courts. The prosecution adduced evidence to prove beyond reasonable doubt that the appellant raped BBB sometime in the first week of February 1998 in their house. The victim narrated in a spontaneous and straightforward manner how appellant defiled her, thus:

FISCAL CAPULONG:

Q

How about in the month of February 1998 about the first week of February, do you recall if your father did anything to you?

A

Yes, Sir.

Q

And could you tell us what did your father do to you?

A

He sucked my breasts, Sir, and he inserted his penis into my vagina.

Q

And at what time was that when he did this to you?

A

Midnight already, Sir.

Q

And whereat did he do this to you?

A

In our house, Sir.

Q

When you said in your house, are you referring to the house of your aunt x x x?

A

No, Sir.

x x x

Q

You stated that at about midnight of the first week of February 1998 your father sucked your breasts and inserted his penis on your private part. Before doing this, did he remove your dress or did he do anything to you?

A

He raised my blouse, Sir, and pulled down my shorts.

Q Aside from your shorts, were you wearing any other underwear like panty?

A Yes, Sir, I was wearing a panty then.

Q And what did your father do with your panty?

A He also removed it, Sir.

Q When you said "removed it," did he remove it from your two feet?

A No, Sir, he just pulled my panty up to my thighs.

FISCAL CAPULONG

Q And after pulling down your panty to your thighs, what else did he do, if anything?

A He threatened me, Sir.

Q How did he threaten you?

A He told me that he will kill my mother as well as my brothers if I reported the matter to anyone, Sir.

Q Did you not tell him anything when he pulled down your shorts and panty?

A I told him to have mercy on me, Sir.

Q You stated that he likewise sucked your breasts. How did he suck your breasts? Did he remove your bra?

A He just raised my blouse, Sir, up to my neck.

Q Where did your father do this to you, in a room or in what part of the house?

A Inside our room, Sir.

Q How about your brothers, where were your brothers at that time when he did this to you at the second time?

A They were also inside the room, Sir, however, they were soundly (sic) asleep.

FISCAL CAPULONG

Q How about your mother? Where was your mother at that time?

A She was not around then, Sir.

Q Where was your mother, if you know?

A She went to a fiesta, Sir.

Q After your father pulled down your shorts and your panty up to your thighs, what else did he do?

A He already kissed me on the lips, Sir, and again he inserted his penis into my vagina.

Q Did he succeed in penetrating your private part?

A Yes, Sir.

Q What did you feel when your father inserted his penis on your private part?

A It was painful, Sir.

Q And after he succeeded in penetrating your private part, did he make any movement?

A What he told me is that if I reported the matter to anyone he will also kill me, Sir.

COURT:

Q When did he tell you that he will kill you and your mother and your brothers, after the sexual intercourse or before?

A Before the sexual intercourse, Your Honor.

COURT:

Proceed.

FISCAL CAPULONG:

Q And for how long was the private part of your father inserted in your vagina?

A I do not know, Sir.

Q And after satisfying his lust, what else transpired?

A No more, Sir.

COURT:

Q Was your father wearing anything when he had sexual intercourse with you on the first week of February 1998?

A At that time, Sir, he had no shirt on and thereafter he also removed his shorts.

Q How about his brief?

A He also removed his brief.

Q So your father was entirely naked when he had sexual intercourse with you on the first week of February 1998?

A Yes, Your Honor.

Q Did you see him remove his short and brief?

A Yes, Your Honor.

Q While he was removing his short and brief what were you doing?

A I was pleading for mercy, Your Honor.

Q Were you lying down or what?

A I was lying down, your Honor.

Q When he inserted his penis on your private part, how did he do it?

A Both of us were lying down, Sir, then he inserted his penis into my vagina.

Q Who was on top?

A He was the one, Your Honor.

COURT:

Proceed.

FISCAL CAPULONG:

Q At what time did your mother arrive on the second time your father sexually abused you?

A I do not recall anymore the exact time my mother arrived, Sir, but that was in the morning because the preceding night she slept in another house.

Q Did you not report to your mother what your father did to you the first week of February 1998 when she arrived home?

A I did not, Sir.

Q Could you tell us why you did not report the incident?

A I was afraid, Sir.

Q When for the first time did you report the incident to your mother?

A When I got pregnant, Sir.

Q And how did your mother react?

A She was fuming mad and she cried, Sir.

Q Did you have yourself medically examined?

A Yes, Sir.

COURT:

Q After the first week of February 1998, was there any other sexual intercourse between you and your father?

A None, Your Honor.

Q So the incident on February 1998 was the last?

A Yes, Your Honor.

Q And you were impregnated?

A Yes, Your Honor.

Q What happened to the child?

A At that time, Your Honor, my mother was sick and we have no money that is why she had my child adopted.

FISCAL CAPULONG:

May we just make of record, Your Honor, that the witness is crying.

COURT:

Q When was your child born?

A In October 1998, I just could not recall the exact date, Your Honor.[36]

The trial court gave credence and full probative weight to the victim's testimony, and found it "clear, frank, positive and convincing":

The Court had observed personally and attentively the offended party when she testified. The Court in its effort to discover traces of falsehood in her testimony had participated in asking searching questions. It failed to unravel any vestige of untruthfulness. Her testimony was clear, frank, positive and convincing. It is consistent with human nature. She was firm and categorical in denouncing her own father's lecherous act of stripping her virginity. Offended party was only fifteen (15) and of tender age at the time of the commission of the offense. To the mind of the court, she was inexperienced with the ways of the world.[37]

The CA affirmed the findings of the trial court. It is settled that the trial court's evaluation of the credibility of witnesses is viewed as correct and entitled to the highest respect because it is more competent to so conclude, having had the opportunity to observe the witnesses' demeanor and deportment on the stand, and the manner in which they gave their testimony.[38] Unless the trial court ignored, misinterpreted or misunderstood facts and circumstances of substance which, if considered, would reverse or modify the outcome of the case, its findings on the credibility of witnesses will not be disturbed.[39] Moreover, when a rape victim testifies in a straightforward

and candid manner, unshaken by rigid cross-examination and unflawed by inconsistencies, or contradictions on material points, the testimony should be given full faith and credit.[40] And in view of the intrinsic nature of rape, the only evidence that can be offered to prove the guilt of the offender is the testimony of the offended party.[41]

Appellant admitted that no ill motive can be attributed to the victim to falsely charge him of the crime of rape:

Q:

By the way do you have any misunderstanding with your wife x x x?

A:

Sometimes, we quarrel, sir over cooking in the morning upon waking up.

Q:

But you have no serious problem whatsoever?

A:

None, Sir.

Q:

And so with your daughter, you have no misunderstanding with her?

A:

None, Sir.

FISCAL LLOBRERA:

Q: And you do not know of any reason whay (sic) they filed these complaints?

A: None Sir.[42]

Indeed, it would run counter to the natural order of events and of human nature, and contrary to the presumption of good faith, for a prosecution witness to falsely testify if the appellant is truly innocent.[43] Thus, the presumption is that the victim told the truth; hence, her testimony is entitled to full probative weight.

The strength of the prosecution's case is further bolstered by the fact that appellant no longer questions his conviction for rape, and merely prays for a lesser penalty. As such, we find no reason to disturb the trial court's finding of guilt.

Appellant insists, however, that he was wrongfully sentenced to suffer the supreme penalty of death, since the special qualifying circumstance of minority was not substantially proven.

The contention is without merit.

In *People of the Philippines v. Pruna*[44] the Court laid down the following guidelines in appreciating the age of the victim:

- 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.[45]

Records reveal that the victim testified during the hearing that she was born on January 23, 1983, and that appellant did not offer any objection to her testimony:

Q:

Incidentally, could you tell us when were you born?

A:

I was born January 23, 1983, Sir.

Q:

And do you have your birth certificate?

A:

It is in your possession already, Sir.[46]

In fact, during cross-examination of the victim, appellant's counsel referred to her age:

Q:

By the way, Miss witness, at that time on December 23, 1997 you were already 15 years old. Is it not?

A:

Yes ma'am.[47]

The fact of minority was further established by victim's certificate of live birth, albeit a mere photocopy of the original. In *People of the Philippines v. Mangitngit*,^[48] *People of the Philippines v. Barcena*,^[49] and *People of the Philippines v. Cayabyab*,^[50] this Court admitted and gave weight to a photocopied birth certificate to prove the age of the offended party. Specifically, we ratiocinated in this wise:

We are not unaware of our ruling in *People v. Mantis* 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:

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

x x x x

(d) When the original is a public record in the custody of a public officer or is recorded in a public office.[51]

A certificate of live birth is a public record in the custody of the local civil registrar who is a public officer. As such, the presentation of the photocopy of the birth certificate of the victim is admissible as secondary evidence to prove its contents. Production of the original may be dispensed with, in the trial court's discretion, whenever the opponent does not dispute the contents of the document and no other useful purpose will be served by requiring production.[52]

In the present case, appellant did not dispute the contents of the photocopied birth certificate. Having failed to raise a valid and timely objection, the document constitutes primary evidence; it is deemed admitted, and the other party is bound thereby.[53]

Thus, the prosecution sufficiently established that at the time of the commission of the crime of rape in the first week of February 1998, the victim was only 15 years of age, having been born on January 23, 1983.

However, in view of the enactment of R.A. No. 9346 on June 24, 2006 prohibiting the imposition of the death penalty, the penalty of reclusion perpetua without eligibility for parole should instead be imposed.[54]

We affirm the award of P75,000.00 as civil indemnity, which is awarded if the crime is qualified by circumstances warranting the imposition of the death penalty. The award of P25,000.00 as exemplary damages, in light of the presence of the qualifying circumstances of minority and relationship, is likewise proper.[55] However, in accordance with prevailing jurisprudence, the award of moral damages should be increased to P75,000.00.[56]

We would like to stress that even if the death penalty is not to be imposed on the appellant because of the prohibition in R.A. No. 9346, the award of damages under prevailing jurisprudence is not affected. This award is not dependent on the actual imposition of the death penalty, but on the fact that the qualifying circumstances warranting the imposition of the death penalty attended the commission of the offense.[57]

IN LIGHT OF ALL THE FOREGOING, the Decision dated May 30, 2005 of the Court of Appeals finding appellant Filomino L. Villanueva guilty beyond reasonable doubt of the crime of qualified rape is **AFFIRMED** with **MODIFICATION**. The penalty of death is reduced to reclusion perpetua pursuant to R.A. No. 9346. The award of moral damages to the private complainant is increased to P75,000.00.

SO ORDERED.

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

Nachura, J., no part. Signed pleading as Sol Gen.

[1]Penned by Associate Justice Portia Aliño-Hormachuelos, with Associate Justices Juan Q. Enriquez, Jr. and

Vicente Q. Roxas, concurring; rollo, pp. 3-10.

[2] Penned by Judge Cesar M. Sotero; CA rollo, pp. 16-24.

[3] Exh. "A"; TSN, August 3, 2000, p. 12.

[4] TSN, August 3, 2000, p. 7.

[5] Id. at 8.

[6] Id. at 11.

[7] Id. at 15.

[8] Id. at 15-16

[9] Id. at 17

[10] Id. at 19-20.

[11] Id. at 17.

[12] Id. at 16 and 18.

[13] Id. at 20.

[14] Id. at 3-4.

[15] Records, p. 7.

[16] The case was docketed as Criminal Case No. 125-98; id. at 5.

[17] Penned by Judge Panfilo V. Valdez, id. at 4.

[18] Records, p. 3.

[19] Id. at 1.

[20] Id. at 12.

[21] TSN, June 29, 2001, p. 5.

[22] Id. at 5 and 6.

[23] TSN, July 5, 2001, p. 6.

[24] Id.

[25] Id. at 7-9.

[26] Id. at 24.

[27] CA rollo, pp. 60-61.

[28] Id. at 61.

[29] Id. at 62.

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

[31] CA rollo, p. 40.

[32] Id. at 44.

[33] Rollo, pp. 9-10.

[34] Id. at 11.

[35] Id. at 13-17.

[36] TSN, August 3, 2000, pp. 14-22.

[37] CA rollo, p. 61.

[38] *People of the Philippines v. Mangitngit*, G.R. No. 171270, September 20, 2006, 502 SCRA 560, 572.

[39] *People of the Philippines v. Canuto*, G.R. No. 169083, August 7, 2006, 498 SCRA 198, 215; *People of the Philippines v. Mangitngit*, *supra*, at 570.

[40] *People of the Philippines v. Canuto*, *supra*, at 216, citing *People of the Philippines v. Baway*, 402 Phil 872, 890 (2001).

[41] *Llave v. People of the Philippines*, G.R. No. 166040, April 26, 2006, 488 SCRA 376, 402.

[42] TSN, July 5, 2001, pp. 6-7.

[43] *People of the Philippines v. Canuto*, *supra* note 39, at 216, citing *People of the Philippines v. Macaliag*, 392 Phil 284, 297 (2000).

[44] 439 Phil. 440 (2002).

[45] Id. at 470-471 (Emphasis supplied).

[46] TSN, August 3, 2000, p. 12.

[47] Id. at 31.

[48] *Supra* note 38.

[49] G.R. No. 168737, February 16, 2006, 482 SCRA 543.

[50] G.R. No. 167147, August 3, 2005, 465 SCRA 681.

[51] *People v. Barcena*, *supra* note 49, at 559-560; *People v. Cayabyab*, *supra*, at 691-692. (Emphasis supplied)

[52] Id. at 560; *id.* at 692.

[53] *People v. Mangitngit*, *supra* note 38, at 577; *People v. Barcena*, *supra* note 49, at 560-561; *People v. Cayabyab*, *supra*, at 692.

[54] *People v. Quiachon*, G.R. No. 170236, August 31, 2006, 500 SCRA 704, 718-719; *People v. Mangitngit*, *supra* note 38, at 577.

[55] Id.

[56] *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419, 435; *People v. Quiachon*, *supra*, at 719; *People v. Mangitngit*, *supra* note 38, at 578;

[57] *People v. Quiachon*, *supra*, at 719.

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