

THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. CELESTINO GARDON, APPELLANT,

G.R. NO. 169872 [FORMERLY G.R. NOS. 158428-29]. September 27, 2006

Ponente: TINGA, J.

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TINGA, J.:

Celestino Gardon (Gardon) was charged with two (2) counts of Rape in separate Informations which read:

Criminal Case No. 1258

That on or about March, 1995, more or less 6:00 P.M. at [B]arangay xxx, [M]unicipality of xxx, [P]rovince of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused[,] with abuse of confidence and by means of force and intimidation did then and there, willfully, unlawfully and feloniously, have carnal knowledge of one AAA[1] who was alone on the aforementioned date and time, without the latter's consent and against her will, to her damage and prejudice.[2]

Criminal Case No. 1259

That on or about August 29, 1997, more or less 6:00 o'clock in the afternoon at [B]arangay xxx, [M]unicipality of xxx, [P]rovince of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with abuse of confidence and by means of force and intimidation, did then and there, willfully, unlawfully and feloniously, have carnal knowledge of one AAA[3] who was alone on the aforementioned date and time, without the latter's consent and against her will, to her damage and prejudice.[4]

Gardon pleaded not guilty upon arraignment. After trial, the Regional Trial Court of Irosin, Sorsogon, Branch 55, in a Decision[5] dated December 4, 2002, convicted Gardon as charged. The dispositive portion of the decision states:

WHEREFORE, premises considered, the [C]ourt finds accused Celestino Gardon guilty beyond reasonable doubt of the 2 counts of RAPE defined and penalized in Art. 335 of the RPC, as amended by RA 7659 and RA 8353 and sentenced him to RECLUSION PERPETUA for each count of rape. The period of the detention is credited to his favor in accordance with Art. 29 RPC; to indemnify the victim of the sum of P50,000[.00] for each count or a total of P100,000.00 as civil indemnity; to pay the sum of P50,000.00 for each count or a total of P100,000.00 as moral damages plus P25,000.00 for each count or a total of P50,000.00 as exemplary damages.

SO ORDERED.[6]

Conformably with the Decision of this Court in *People v. Mateo*,[7] the case was transferred to the Court of Appeals for intermediate review.[8] The appellate court affirmed Gardon's conviction in a Decision[9] dated July 28, 2005. The case is again before us for our final disposition.

The records disclose the following facts:

AAA testified that in March 1995, she and her younger brother AA[10] lived in the house of their maternal

grandparents, BB[11] and accused Celestino Gardon, in xxx, Sorsogon.[12] At about 6:00 o'clock one night, while her grandmother was at the town proper purchasing some goods and AA was sleeping in the other room, her grandfather, Gardon, accosted her with a knife and ordered her to lie down. Gardon then undressed her and took off his pair of shorts. He threatened to kill her if she told anyone what happened. He then held her breast and inserted his penis into her vagina. She felt pain in her vaginal area during the intercourse. She struggled to no avail because Gardon pointed a knife to her chest. When she stood up, she noticed blood oozing from her genitals to the floor. She did not tell her grandmother what happened for fear that Gardon might make good his threat of harming her and her brother.[13]

The incident was repeated three (3) more times but AAA could only remember that the fourth abuse happened at around 6:00 in the evening of August 29, 1997. AAA's grandmother was at the town proper and she was left home with Gardon. That night, AAA was washing the dishes when Gardon held her hand and pulled her towards a room. He pointed a knife to her chest, told her to lie down and undress herself, and took off his pair of shorts. He then inserted his penis into her vagina. Again, she felt pain. She did not tell her grandmother about the incident but confided in her sister, CC.[14]

Dr. Nerissa B. Tagum (Dr. Tagum), the resident physician of Irosin District Hospital who examined AAA, explained that she found old lacerations on the latter's hymen which could have been caused by the insertion of an instrument. She also mentioned that AAA's vagina can admit two (2) fingers which is not normal for a 14-year old girl.[15]

AAA's sister, CC, was also presented in court. She recounted that in September 1997, AAA left their grandparents' house in xxx and came to live with her in xxx. When she told AAA to go back to xxx, AAA refused and told her that their grandfather, Gardon, raped her four (4) times since March 1995. The sisters reported the matter to their stepmother, DD.[16] Afterwards, they went to the xxx police to lodge a complaint against Gardon.[17]

For the defense, Leonardo Gracilla (Gracilla) testified that Gardon worked as an abaca stripper of a three (3)-hectare plantation in a hilly place known as xxx, an hour's walk from Gardon's house in xxx. According to Gracilla, it was impossible for Gardon to have raped AAA because Gardon spent most of his time in xxx. Specifically, Gracilla claimed that he and Gardon started stripping abaca on August 25 and finished on August 29, 1997. On August 31, 1997, they came down from xxx to sell abaca hemp in the poblacion. Afterwards, Gardon went back to xxx.[18]

Gardon himself took the witness stand to deny that he raped his granddaughter AAA. Gardon claimed that the motive behind the filing of the criminal cases against him was his wife's refusal to yield custody of AAA and her siblings to their stepmother. Allegedly, this refusal led EE,[19] the brother of the children's stepmother, to forcibly take custody of the children.[20]

In his Brief,[21] Gardon avers that there are material contradictions in AAA's testimony that cast serious doubt on her claim that she was raped. In the first alleged incident of rape, AAA claimed that she fought Gardon even as the latter pointed his knife at her. However, AAA's brother who was sleeping in the other room was not roused by any unusual sound. The period in which Gardon put down his knife to undress would also have allegedly given AAA a chance to escape had her testimony been true.

Moreover, the fact that no criminal charges were brought against Gardon even after AAA's father already learned of the first three rapes allegedly discredits her claim. So does the fact that AAA did not exhibit any strange behavior after the supposed rape.

The Office of the Solicitor General (OSG) insists on the affirmation of Gardon's conviction. According to the OSG in its Brief,[22] AAA's testimony that she was raped by Gardon while her brother was sleeping in the next room is entirely plausible because rape can be consummated even when the rapist and the victim are not alone. That it may have been possible for AAA to escape while Gardon put down his knife likewise does not affect the truthfulness of AAA's testimony.

The OSG also emphasizes that while CC testified that she did not notice any unusual behavior on AAA's part, CC did recall AAA having said that Gardon threatened to kill her and her brother if the truth were known.

Further, Gardon's defense of alibi cannot prevail over AAA's positive identification of him as the one who raped her. Considering that xxx is a mere hour's walk from the house in xxx where the rape was committed, Gardon was not able to prove that it was physically impossible for him to be at the scene of the crime.

The Revised Penal Code defines the crime of Rape thus:

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

- By using force or intimidation;
- When the woman is deprived of reason or otherwise unconscious; and
- When the woman is under twelve years of age or is demented.

The crime of rape shall be punished by reclusion perpetua.

x x x x

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

x x x x

AAA narrated in agonizing detail punctuated by unfeigned tears that her own grandfather, Gardon, had carnal knowledge of her through force and intimidation on four different occasions although she remembered only those that happened in March 1995 and on August 29, 1997. She described how Gardon held a knife to her chest, undressed her and succeeded to consummate his revolting lust. AAA attempted to resist her grandfather's sexual assault, but the latter's physical superiority, aided by his knife-brandishing and clear moral ascendancy, prevailed. She testified:123

q

-

While you were there together with your brother and Celestino Gardon, do you recall any incident that happened?

a

-

Yes, sir.

q

-

What was it about?

a

-

He was carrying a knife and then he undressed me and he undressed himself.

q

-

Who was this person carrying a knife and undressed you?

a

-

Celestino Gardon.

q

-

Where did this happen?

a

-

In the house.

q

-

Whose house?

a

-

In the house of my grandmother [BB].[23]

q

-

In what particular place of that house did this incident happened?

a

-

In the room.

q

-

Whose room?

a

-

The room where I and my brother stayed.

q

-

After noticing him holding a knife, what came [into] your mind?

a

-

I was afraid.

q

-

You said he undressed you, which part of your clothing did he remove?

a

-

He removed my short.

q

-

What else did he remove?

a

-

My panty.

q

-

What were you doing as Celestino Gardon was removing your short[s] and panty?

a

-

I was lying then.

q

-

Who made you lie down?

a

-

It was Celestino Gardon.

q

-

Did you not fight back?

a

-

I fought back.

q

-

Why [sic] did [sic] Celestino Gardon able to undress you when you said you fight [sic] back?

a

-

I was fighting back but he still undressed me.

q

-

When he undressed you[,] where was the knife he was holding[?]

a

-

It was placed on the floor while he was undressing me.

q

-

Was he able to remove your short[s] and panty?

a

-

Yes, sir.

q

-

You said that after undressing you [Celestino] Gardon undressed himself also, which part of his clothing did he take off?

a

-

His short[s].

x x x x

q

-

What did he do after that?

a

-

He inserted his.

q

-

What do you mean by ["]he inserted his["]?

ATTY. ARRIESGADO:

The witness is having a hard time to answer.

WITNESS:

His penis.

PROS. PURA:

q

-

Where did he insert his penis?

a

-

He inserted his penis in my vagina.

q

-

How was he able to do this?

COURT:

The witness is crying. Do not be afraid to tell the court what happened to you, Madam witness.

WITNESS:

He lay on top of me and he had a push and pull action.

PROS PURA:

q

-

What was your position?

a

-

I was lying down.

q

-

Did you not close your legs so he cannot insert his penis [in]to your vagina?

a

-

He opened it wide.

q

-

Did you not fight?

a

-

I did.

COURT:

q

-

And what happened to your effort?

a

-

He was holding a knife.

q

-

What did he do with that knife while you were trying to resist him?

a

-

He pointed the knife to my chest.

q

-

And what did you do when he was pointing the knife to your chest? Were you still able to fight?

a

-

Yes, I still continue fighting him.[24]

The foregoing excerpt from AAA's account of the first incident of rape in March 1995 is plain and forthright. Her testimony regarding the August 29, 1997 rape is similarly candid. The trial court, which had the unique opportunity to assess the truthfulness of her narration, was thoroughly convinced of her credibility.

Appellate courts have consistently deferred to the findings and conclusions made by a trial judge principally because it is the latter who gets the opportunity to directly and intimately observe the witnesses and to determine, by their demeanor on the witness stand, the probative strength or weakness of that which they declare. The witnesses can reveal much more than what can ordinarily be reflected in and perceived from the transcripts that merely would contain the matter which is stated but not how it is said. Tell-tale marks of either honesty or fabrication, truth or concoction, reality or imagination, may be gleaned from a meaningful pause or spontaneous ready reply, the angry or subdued denial, the forthright stare or the elusive eyes, the sudden pallor or the flush of face, and all that characterizes the deportment and peculiar outward behavior of witnesses when their response to both direct examination and cross examination is elicited. These signs, available to the trial judge, are easily lost on the appellate court.[25]

It should be stressed that this case has already undergone intermediate review by the Court of Appeals which reached the same conclusion as the trial court. Our own judicious scrutiny of the records compels us to concur.

AAA's claim that she was raped by Gardon is corroborated by the testimony of Dr. Tagum that there are old lacerations on AAA's genitalia located at the 3, 6, 9 and 11 o'clock positions. When the unwavering and forthright testimony of a rape victim is consistent with the medical findings, there is sufficient basis to warrant a conclusion that the essential requisites of carnal knowledge have been established.[26]

That AAA failed to immediately report the rape is not necessarily indicative of fabrication as Gardon suggests. As we held in *People v. Melivo*,[27] incest magnifies the terror of rape because the perpetrator is a person normally expected to give solace and protection to the victim. Access to the victim is guaranteed by the blood relationship, proximity magnifying the sense of helplessness and the degree of fear. The perpetrator takes full advantage of his blood relationship, ascendancy and influence over his victim, both to commit the sexual assault and to intimidate the victim into silence.

In this case, not only was AAA cowed into submission and silence by the fact that Gardon is her grandfather, the latter also actually threatened to kill her and her brother if she told anyone what happened.

Apart from ruling that the prosecution successfully proved that Gardon had sexual intercourse with AAA against her will, both courts also rejected Gardon's defense of alibi declaring that the latter was not able to sufficiently demonstrate that it was physically impossible for him to be at the locus criminis when the rapes were committed. We quote with favor the trial court's finding:

The defense does not preclude accused's presence at the scene of the crime. Granting he was at xxx, xxx, xxx,

Sorsogon on August 29, 1997 at 6:00 o'clock in the evening, stripping abaca with the witness, it was not physically impossible for him to be at home in xxx, xxx, Sorsogon, since xxx is merely more than 2 kilometers away from xxx and could be reached in an hour by walking normally. It must be noted that the accused is very familiar with the terrain of the mountain of xxx as he has another house there aside from his house in xxx. In this case, the physical impossibility of accused Celestino Gardon being at the locus criminis was not properly established.[28]

The defense of alibi will prevail over a victim's clear and positive identification of the perpetrator if it is compellingly established not only that the latter was somewhere else when the crime was committed, but that he was so situated from the crime scene or its immediate vicinity that the possibility of his presence there is remote or improbable, even impossible.[29] The defense of denial is also weak and worthless in the face of AAA's positive identification of Gardon as her rapist.[30]

Gardon's argument that the instant case was filed against him because of his wife's refusal to grant custody of AAA and her siblings to their stepmother is ludicrous. It was AAA herself and not her stepmother who filed the rape charges against Gardon. No young girl would falsely accuse her own grandfather of such an atrocious crime as rape, willingly undergo an examination of her private parts, and expose herself to a public trial, unless she is motivated by a desire to seek justice for the wrong committed against her.[31]

Carnal knowledge of a woman by use of force and intimidation is rape as defined under Art. 335 of the Revised Penal Code and is punishable by reclusion perpetua. Rape is punishable by reclusion perpetua to death when it is committed with the use of a deadly weapon. And when the offended party is under 18 years of age and the offender is an ascendant of the victim, rape is qualified and becomes punishable by death as provided under the Death Penalty Law.[32] In this case, however, the aggravating circumstance of use of a deadly weapon, and the qualifying circumstances of the victim's minority and her relationship with the accused as the latter's granddaughter were not properly alleged in the Informations, although the aggravating circumstance of use of a deadly weapon and the qualifying circumstance of relationship were established during trial. Hence, the proper imposable penalty is reclusion perpetua.

Moreover, Gardon shall not be entitled to parole in view of Republic Act (R.A.) No. 9346, Sec. 3 of which states that "[p]ersons convicted of offenses punished with reclusion perpetua, or whose sentences will be reduced to reclusion perpetua, by reason of this Act, shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended." [33]

We should point out that the benefit of parole cannot be extended to Gardon even if he committed the crimes for which he is now convicted prior to the effectivity of R.A. No. 9346.[34] Sec. 2 of the Indeterminate Sentence Law provides that the law "shall not apply to persons convicted of offenses punished with death penalty or life-imprisonment." Although the law makes no reference to persons convicted to suffer the penalty of reclusion perpetua such as Gardon, the Court has consistently held that the Indeterminate Sentence Law likewise does not apply to persons sentenced to reclusion perpetua. In *People v. Enriquez*, [35] we declared:

[R]eclusion perpetua is the only penalty that can be imposed against the appellants. As correctly argued by the Solicitor General, Act No. 4103, otherwise known as the Indeterminate Sentence Law, cannot be applied in the case of appellants considering the proscription in Sec. 2 thereof, viz:

x x x x

Indeed, in *People v. Asturias*, *Serrano v. Court of Appeals*, *People v. Lampaza* and *People v. Tan*, to name a few cases, we in effect equated the penalty of reclusion perpetua as synonymous to life-imprisonment for purposes of the Indeterminate Sentence Law, and ruled that the latter law does not apply to persons convicted

of offenses punishable with the said penalty. Consequently, we affirm the Court of Appeals in not applying the Indeterminate Sentence Law, and in imposing upon appellants the penalty of reclusion perpetua instead.[36]

Reclusion perpetua is an indivisible penalty without a minimum or maximum period. Parole, on the other hand, is extended only to those sentenced to divisible penalties as is evident from Sec. 5 of the Indeterminate Sentence Law, which provides that it is only after "any prisoner shall have served the minimum penalty imposed on him" that the Board of Indeterminate Sentence may consider whether such prisoner may be granted parole.[37]

To reiterate, given that the Informations failed to allege the aggravating circumstance of use of a deadly weapon and the qualifying circumstances of minority and relationship, Gardon is guilty of simple rape only. Accordingly, the trial court and the Court of Appeals correctly awarded to AAA, for each count of rape, P50,000.00 as civil indemnity, P50,000.00 as moral damages, and P25,000.00 as exemplary damages consistent with current jurisprudence.[38] Moral damages, separate and distinct from the civil indemnity, are automatically granted in rape cases. Exemplary damages, on the other hand, are imposed to deter fathers and, in this case, grandfathers, with aberrant sexual behaviors from sexually abusing their daughters.[39]

WHEREFORE, the decision of the Regional Trial Court of Irosin, Sorsogon, Branch 55, in Criminal Cases Nos. 1258-1259, as well as the Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 01110, are AFFIRMED. Appellant CELESTINO GARDON is sentenced, in each of the criminal cases subject of this review, to suffer the penalty of reclusion perpetua without eligibility for parole and to pay the victim, AAA (to be identified through the Informations filed with the trial court in this case), the amounts of P50,000.00 as

civil indemnity, P50,000.00 as moral damages and the further sum of P25,000.00 as exemplary damages plus costs.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Carpio-Morales, and Velasco, Jr., JJ., concur.

[1] Pursuant to *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, the name of the victim, her personal circumstances and other information which tend to establish or compromise her identity shall not be disclosed to protect her privacy. Fictitious initials are used instead.

[2] CA rollo, pp. 8-9.

[3] *Supra* note 1.

[4] CA rollo, pp. 10-11.

[5] *Id.* at 21-32.

[6] *Id.* at 32.

[7] G.R. Nos. 147678-87, July 7, 2004.

[8] CA rollo, p. 101; Resolution dated February 23, 2005.

[9] Rollo, pp. 3-16; Penned by Associate Justice Amelita G. Tolentino and concurred in by Associate Justices Roberto A. Barrios and Vicente S.E. Veloso.

[10] Fictitious initials are used per *People v. Cabalquinto*, *supra*, note 1.

[11] *Id.*

- [12] TSN, June 30, 1999, pp. 2-5.
- [13] Id. at 6-12.
- [14] Id. at 12-15; TSN, February 9, 2000, p. 7; TSN, March 15, 2000, p. 6. Fictitious initials are used per *People v. Cabalquinto*, supra note 1.
- [15] TSN, July 5, 2000, p. 3.
- [16] Fictitious initials are used per *People v. Cabalquinto*, supra, note 1.
- [17] TSN, September 20, 2000, pp. 4-6.
- [18] TSN, January 24, 2001, pp. 2-5.
- [19] Fictitious initials are used per *People v. Cabalquinto*, supra, note 1.
- [20] TSN, August 8, 2001, p. 3.
- [21] CA rollo, pp. 52-63; Dated July 29, 2004.
- [22] Id. at 86-98; Dated November 30, 2004.
- [23] Fictitious initials are used per *People v. Cabalquinto*, supra note 1.
- [24] TSN, June 30, 1999, pp. 6-9.
- [25] *People v. Alejo*, G.R. No. 149370, September 23, 2002, 411 SCRA 563.
- [26] *People v. Limio*, G.R. Nos. 148804-06, May 27, 2004, 429 SCRA 597.
- [27] 323 Phil. 412 (1996).
- [28] CA rollo, pp. 30-31; Decision of the trial court.
- [29] *People v. Torio*, 376 Phil. 453 (1999).
- [30] *People v. Isla, Jr.*, 432 Phil. 414 (2002).
- [31] *People v. Musa*, 422 Phil. 563 (2001).
- [32] Republic Act No. 7659 (1993).
- [33] *People v. Quiachon*, G.R. No. 170236, August 31, 2006.
- [34] *People v. Tubongbanua*, G.R. No. 171271, August 31, 2006. See Concurring Opinion.
- [35] G.R. No. 158797, July 29, 2005, 465 SCRA 407.
- [36] Id. at 418.
- [37] *People v. Tubongbanua*, supra note 34.
- [38] *People v. Balbarona*, G.R. No. 146854, April 28, 2004, 428 SCRA 127; *People v. Escutor*, G.R. Nos. 149366-67, May 27, 2004, 429 SCRA 651; *People v. Almendral*, G.R. No. 126025, July 6, 2004, 433 SCRA 440; *People v. Balas*, 423 Phil. 295 (2001).
- [39] *People v. Tamsi*, 437 Phil. 424 (2002).

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