

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SONNY MAYAO, ACCUSED-APPELLANT.

G.R. NO. 170636. April 27, 2007

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Accused-appellant Sonny Mayao was charged before the Regional Trial Court (RTC) of Camarines Sur at San Jose with four counts of rape. One, Criminal Case No. T-2047, was dismissed by Branch 30 thereof for failure of the prosecution to present evidence.

The accusatory portions of the informations in the three other cases, Criminal Case Nos. T-2044, T-2045, and T-2046, respectively read as follows:

CRIMINAL CASE NO. T-2044

That sometime in 1996 at around 1:00 A.M. in the Municipality of Lagonoy, Province of Camarines Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused[,] with lewd design by means of superior strength and grave abuse of confidence being the stepfather of the victim, did then and there wil[l]fully, unlawfully and feloniously succeed in having carnal knowledge with [AAA] who was then only 10 years old, against her will and consent to her damage and prejudice as shown by the Medical Certificate marked as Annex "A" hereof.[1] (Underscoring supplied)

CRIMINAL CASE NO. T-2045

That sometime in the year 1992 at about 12:00 o'clock midnight in Sitio Kinayangan[,] [2] Barrio San Sebastian, Municipality of Lagonoy, Province of Camarines Sur, Philippines and within the jurisdiction of this Honorable Court, the said accused, with lewd design, by means of threats force and intimidation, did then and there wil[l]fully, unlawfully and feloniously succeed in having carnal knowledge with his 8 [sic] -year old niece, [BBB], against her will and without her consent to her damage and prejudice in such an amount as maybe [sic] determined by the Honorable Court, as evidenced by the Medical Certificate marked as Annex "A" hereof.[3] (Underscoring supplied)

CRIMINAL CASE NO. T-2046

That on or about December 20, 1995 in the evening at Sitio Kinayangan, San Sebastian, Municipality of Lagonoy, Province of Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, with grave abuse of confidence, by the use of force and intimidation[,] did then and there wil[l]fully, unlawfully and feloniously succeed in having carnal knowledge with his stepdaughter, [CCC] who was then a minor below 12 years old, against her will and without her consent to her damage and prejudice in such amount as may be determined by the Honorable Court. The Medical Certificate marked as Annex "A" is attached to the records of this case.[4] (Underscoring supplied)

The three cases which involve different private complainants were jointly tried.

In Criminal Case No. T-2044, private complainant AAA, who was born on May 5, 1984,[5] declared that at around 1 a.m. sometime in 1996, as she lay asleep together with her family in the cramped room of their house at Lagonoy, Camarines Sur, she was awakened as she was being undressed from waist down and her breast being fondled by her stepfather-accused-appellant. She tried to fight but she was overpowered. For about 10 minutes, accused-appellant, who put his penis into her vagina, made a push and pull movement, causing blood to ooze therefrom. She thereafter cried herself to sleep.[6]

In Criminal Case No. T-2045, private complainant BBB, born on November 14, 1985,[7] declared that sometime in 1992, her parents went to Manila, leaving her with her aunt EEE, wife of accused-appellant and the sister of her mother DDD. While sleeping, she was awakened at around 12 midnight by accused-appellant who was fondling the sensitive parts of her body. Despite her resistance, accused-appellant undressed her and while holding her hands, went on top of her and inserted his penis into her vagina. After satisfying his lust, accused-appellant returned to his wife's bedside. The next morning, she left her aunt's house and stayed with a friend. When her mother returned from Manila, she begged her not to leave her again with accused-appellant, albeit she did not reveal what he had done to her.[8]

In Criminal Case No. T-2046, private complainant CCC, who was born on June 26, 1982,[9] testified that in the evening of December 20, 1995, while she was alone with her stepfather-accused-appellant as her mother and her siblings were out visiting a relative in Sabang, San Jose, she was awakened by him as he was fondling her breast and private organ. Although she resisted, accused-appellant pinned her down and succeeded in inserting his penis into her vagina. The following morning she told her mother what accused-appellant had done to her but her mother refused to believe her, she telling her that "[her] husband is kind." She thus repaired to the house of her aunt DDD, beside their house, but she did not tell her about the incident.[10]

While CCC was in Manila with her aunt DDD in 1998, as the celebrated rape case of Baby Echegaray was reported via television which she watched, CCC was reminded of the experience she had with accused-appellant, drawing her to shed tears which was noticed by DDD. Pressed for the reason why she was in tears, she told DDD about her ordeal. On returning to Bicol, DDD confronted AAA and BBB whom she accompanied, together with AAA, to the National Bureau of Investigation.[11]

The three complainants were physically examined on March 24, 1999 at the Bicol Medical Center by Dr. Ma. Vienna Llorin. The results of the examinations revealed the following findings:

As to AAA:

PPE:

Old hymenal lacerations at 4,5,6, and 7 o'clock positions[12]

As to BBB:

PPE:

Nulligravid external genitalia.

Multiple old hymenal lacerations at 3,5,6,8,9 and 11 o'clock positions.

IE:

Admits 2 fingers with ease.[13]

And as to CCC:

PPE:

Multiple old hymenal lacerations at 3,5,6, and 9 o'clock positions[14].

Accused-appellant denied the accusations.

By his claim, he could not have raped AAA in 1996 since as early as 1989, when her mother EEE moved to live with him at Lagonoy, AAA was left with DDD who was then residing in Kinayangan, San Sebastian, Lagonoy at a house about five meters away from their residence.[15]

As for BBB, on direct examination, accused-appellant stated that at the time of the alleged rape "sometime in the year 1992," she was studying in Manila.[16] On cross-examination, however, he stated that BBB was at the house of her mother DDD located "at the southern portion of Sabang, near the seashore." [17]

With respect to CCC, accused-appellant claimed that at the time of the alleged commission of the rape on December 20, 1995, she was working as a house helper in Sabang for a certain May Conching.[18]

To the complainants, accused-appellant imputed ill-motive in that they were driven by their desire to obtain a house and lot as in the case of Baby Echegaray.

Accused-appellant's wife EEE, the mother of AAA and CCC and the aunt of BBB, testified in his favor.

In Criminal Case Nos. T-2044 and T-2046, she declared that AAA and CCC, her daughters from a previous marriage, could not have been possibly raped by accused-appellant as the two were then living with DDD in the latter's house adjacent to theirs; and on December 20, 1995, the alleged date of the commission of the rape of CCC, accused-appellant left for Pangasinan to work as a factory worker.[19]

In Criminal Case No. T-2045, EEE declared that in 1992, when her niece BBB was allegedly raped by accused-appellant, BBB was then living with a certain May Auring at Kinayangan, Lagonoy while she and her husband stayed in Sabang which is approximately ten minutes away by motor boat.[20]

The trial court convicted accused-appellant by Joint Decision of November 19, 2002,[21] the decretal portion of which reads:

WHEREFORE:

In Criminal Case No. T-2044, the accused Sonny Mayao is hereby sentenced to suffer the penalty of imprisonment of reclusion perpetua with inherent accessory penalties provided by law; to indemnify the offended party, [AAA,] the sum of Fifty Thousand Pesos ([P]50,000.00) and the sum of Twenty Thousand Pesos ([P]20,000.00) as moral damages, both of Philippine Currency, and for him to pay the costs.

In Criminal Case No. T-2045, the accused Sonny Mayao is hereby sentenced to suffer the penalty of imprisonment of reclusion perpetua with inherent accessory penalties provided by law; to indemnify the offended party, [BBB,] the sum of Fifty Thousand Pesos ([P]50,000.00) and the sum of Twenty Thousand Pesos ([P]20,000.00) as moral damages, both of Philippine Currency, and for him to pay the costs.

In Criminal Case No. T-2046, the accused Sonny Mayao is hereby sentenced to suffer the penalty of imprisonment of reclusion perpetua with inherent accessory penalties provided by law; to indemnify the offended party, CCC, the sum of Fifty Thousand Pesos ([P]50,000.00) and the sum of Twenty Thousand Pesos ([P]20,000.00) as moral damages, both of Philippine Currency, and for him to pay the costs.

In Criminal Case No. T-2047, this case should be, as it is hereby ordered dismissed. No costs.

In Criminal Cases Nos. T-2044, T-2045, and T-2046, the accused Sonny Mayao is entitled to full credit of his preventive imprisonment during the pendency of these three (3) cases, if he agreed to abide with the rules imposed upon convicted persons, otherwise, he shall be entitled four fifth (4/5) credit thereof.[22] (Italics

supplied)

On elevation of the case to this Court, it was referred to the Court of Appeals per *People v. Mateo*.^[23]

By Decision of June 30, 2005,^[24] the accused-appellate court affirmed with modification the trial court's decision, disposing as follows:

WHEREFORE, the foregoing considered the Joint Decision of conviction is hereby AFFIRMED with the MODIFICATION that the award of moral damages is increased to P50,000.00 each for the three rape victims. Costs against the accused-appellant.^[25] (Underscoring supplied)

After his Motion for Reconsideration^[26] was denied, appellant appealed to this Court.

The parties have submitted their respective Manifestations that they are no longer filing supplemental briefs.

Accused-appellant maintains that he could not have successfully raped AAA and CCC inside a small room where several persons were sleeping and with bamboo floorings which usually produce noise whenever there is a movement; specifically with respect to CCC, there was inconsistency as to the alleged time of the rape, she having claimed during the preliminary investigation that she was raped "after lunch," but she claiming in court that she was raped in the evening; and his denial deserves credence as it was corroborated by his wife.^[27]

Time and again, this Court held that lust is no respecter of time and place. Rape can be committed even when relatives of the victim are just nearby for it is not necessary for the place to be ideal for it to be committed.^[28]

Thus, in *People v. Mangitngit*,^[29] this Court rejected the assertion of the therein accused-appellant that rape could not have occurred in the presence of his other children, and without them noticing the commotion.

Aside from AAA's mother EEE, the others who were sleeping at the time of the alleged rape of AAA were children whose ages ranged from three to 10 years old.^[30] That EEE was not awakened is not improbable.^[31] The same holds true with growing children, who are wont to sleep more soundly than grown-ups and are not easily awakened by adult exertions, gyrations or suspirations in the night.^[32]

Thus, this Court observed in *People v. Legaspi*:^[33]

That [victim's] daughters, aged 3, 6, and 9 years, did not wake up during the assault is not as incredible as accused-appellant would make it out. The failure of the three children to wake up during the commission of the rape was probably due to the fact that they were sound asleep. It is not unusual for children of tender ages to be moved from their sleeping mats and transferred to another bed without eliciting the least protest from them, much less awakening them (*People vs. Mustacisa*, 159 SCRA 227 [1988]). It is also to be noted that among poor couples with big families living in small quarters, copulation does not seem to be a problem despite the presence of other persons around them. One may also suppose that growing children sleep more soundly than grown-ups and are not easily awakened by adult exertions and suspirations in the night (*People vs. Ignacio*, 233 SCRA 1 [1994]).^[34] (Underscoring supplied)

As regards BBB, while accused-appellant, as earlier stated, declared on direct examination that he could not have possibly raped BBB at the alleged date of its commission as she was then studying in Manila, on cross examination, he stated that she was in the house of her mother in Sabang, San Jose. Muddling even more the matter, accused-appellant's wife EEE claimed that BBB was then living with a certain May Auring Caratao, also in Kinayangan, Lagonoy.^[35]

On the inconsistency of CCC's claim regarding the time of the commission of the rape, suffice it to state that the precise time of commission is not an essential element of the crime.^[36]

In *People v. Gabris*^[37] wherein the minor rape victim had conflicting statements as to the particular hour of the

day when the rape was committed, the Court held that the inconsistencies referred "only to minor matters which do not detract from the credibility of the complainant or impair the evidence of the prosecution." [38] What is important is that, as the appellate court observed, CCC was "unflinching in her declaration of the occurrence of rape" and that she positively identified accused-appellant as the perpetrator of the crime.

Respecting the merits of accused-appellant's wife EEE testifying in his defense, as this Court has in some cases noted, some wives are overwhelmed by emotional attachment to their husbands to the point that they knowingly or otherwise suppress the truth and act as medium for injustice to preponderate and come what may they would stand by their husbands. [39] That could explain why when CCC informed her mother EEE that accused-appellant had raped her, EEE disbelieved her, she claiming that "[m]y husband is kind."

Besides, and oddly enough, as the following transcripts of the stenographic notes of the testimonies of EEE and accused-appellant show, while she invoked alibi in defense of accused-appellant (that he was in Pangasinan), the latter did not. And, when EEE was asked where CCC was staying on December 20, 1995, she answered that she was with her aunt DDD, whereas, as priorly stated, accused-appellant claimed that CCC was then working as a helper of a certain May Conching in Sabang, San Jose.

ACCUSED-APPELLANT'S TESTIMONY on direct examination:

x x x x

Q: Now, in Criminal Case No. T-2046 and also in Criminal Case No. T-2047, [CCC] testified that on December 20, 1995 also at 1:00 o'clock in the afternoon you [forcibly had] sexual intercourse with the said [CCC] in your residence, what can you say to that allegation?

A: That is not true sir.

Q: Why were you able to say that it is not true?

A: Because [CCC] was then employed as a helper at the house of May Conching.[40]

x x x x (Underscoring supplied)

On cross examination, accused-appellant testified:

PROS. SOLANO:

Q: Likewise, you also testified that the incident involving [CCC] could not have happened because according to you [CCC] was not at your place. Tell us then where was [CCC]?

A: She was at the house of May Conching?[41]

x x x x (Underscoring supplied)

EEE'S TESTIMONY:

Q: We shall go now to [CCC][.] For the record in 1995 where was [CCC], your daughter, staying more particularly in Dec. 20?

A: She is already with [DDD].

x x x

Q: On your own knowledge at that precise moment and time on Dec. 20, 1995 where was your alleged husband, the accused in this case, Sonny Mayao staying?

A: He was in Pangasinan in December with Manoy Eddie.

Q: Who is this Manoy Eddie you are talking about?

A: His brother.

Q: Of your own knowledge when did this Sonny Mayao allegedly went to Pangasinan with his brother?

A:

(No answer).[42]

x x x (Underscoring supplied)

Indeed, the appellate court correctly observed that:

. . . It is quite perplexing how accused-appellant could have missed out mentioning [his alibi] during his direct testimony that he was indeed in Pangasinan at the time the rape of [CCC] took place. As this Court sees it, the testimony regarding his whereabouts on December 20, 1995 was only an eleventh-hour concoction that deserves no attention from this Court.[43]

This Court thus finds that accused-appellant failed to overcome the prosecution evidence showing his guilt beyond reasonable doubt.

The applicable provision when the subject rapes were committed — 1992, 1995 and 1996 — was Article 335 of the Revised Penal Code.[44]

In the case of AAA, the appellate court found that she was about 12 years old at the time of the commission of the rape, hence, "her age will operate to bar [accused-appellant's] conviction under Paragraph No. 3 of Article 335 ... in view of the construction of penal laws in favor of the accused." It held, however, that since accused-appellant employed force and intimidation against AAA, he is still liable under paragraph No. 1 of Article 335.

Since AAA was born on May 5, 1984, and the rape occurred sometime in 1996, she could not have been "then only 10 years old" as alleged in the information. If the rape occurred prior to her birthday on May 5, 1996, she was below 12 years old. If the rape occurred after May 5, 1996, she was more than 12 years old. The prosecution presented evidence, however, without the objection of the defense, that accused-appellant employed force and intimidation to accomplish the rape. *People v. Abiera*[45] is instructive:

The appellant maintains that he cannot be convicted of rape committed under one mode when the information alleged another mode. He cites the case of *People v. Pailano*, where this Court held that to convict the appellant on the finding that he had committed rape while the victim was unconscious or otherwise deprived of reason — and not through force and intimidation, which was the method alleged — would violate his constitutional right to be informed of the nature and cause of the accusation against him.

That case works against the appellant. In *Pailano*, this Court impliedly recognized that an accused charged with rape through one mode of commission may still be convicted of the crime if the evidence shows another mode of commission provided that the accused did not object to such evidence. x x x[46] (*Italics in the original, emphasis and underscoring supplied*)

As regards BBB, who was, according to the Information,[47] 8 years old, the crime committed was statutory rape, she being under 12 years old.

With respect to CCC, who was more than 12 years old at the time of the commission of the rape on December 20, 1995, the elements of force and intimidation were sufficiently established by the prosecution.

As for the imposable penalty, this Court has consistently held that the concurrence of the minority of the victim and her relationship to the offender is a special qualifying circumstance which increases the penalty. It must thus be properly alleged in the information because of the right to be informed of the accused. [48]

In the case of AAA and of CCC, the Informations alleged that accused-appellant is their stepfather. It appears, however, that he was, at the time of the rapes, only the common-law spouse of their mother. The relationship of stepfather presupposes a legitimate relationship. A stepfather is the husband of one's mother by virtue of a marriage subsequent to that of which the person spoken of is the offspring.[49]

In the case of BBB, the allegation in the Information merely alleging that BBB is his niece is not specific enough to satisfy the special qualifying circumstance of relationship. If the offender is merely a relation — not a parent, ascendant, stepparent, guardian, or common law spouse of the mother of the victim — the specific relationship must be alleged in the information, i.e. that he is "a relative by consanguinity or affinity within the third civil degree." [50]

Since relationship cannot be appreciated to qualify rape in the three cases, accused-appellant is, indeed, guilty of only three counts of simple rape.

Finally, the increase by the appellate court to P50,000 of the amount of moral damages is, consistent with prevailing jurisprudence which has pegged the amount to P50,000 in cases of simple rape.[51]

WHEREFORE, the June 30, 2005 Decision and October 12, 2005 Resolution of the Court of Appeals in CA-G.R. C.R.-H.C. No. 00848 are AFFIRMED.

Costs against accused-appellant.

SO ORDERED.

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

[1] Records, vol. I, p. 14.

[2] Also spelled as Quinayangan in some parts of the records.

[3] Records, vol. II, p. 19.

[4] Records, vol. III, p. 17.

[5] Exhibit "F," records, vol. I, p. 317.

[6] TSN, March 19, 2001, pp. 2-6.

[7] Exhibit "C," records, vol. II, p. 41.

[8] TSN, May 3, 2001, pp. 8-11.

[9] Exhibit "G," records, vol. 1, p. 318.

[10] TSN, January 16, 2001, pp. 6-9, 12-13.

[11] TSN, May 4, 2001, p. 6.

[12] Exhibit "C," records, vol. I, p. 3.

[13] Exhibit "C," records, vol. II, p. 2.

- [14] Records, vol. III-A, p. 2.
- [15] TSN, May 30, 2002, pp. 3-4.
- [16] TSN, February 11, 2002, pp. 3-4.
- [17] TSN, February 21, 2002, p. 2.
- [18] TSN, February 11, 2002, pp. 3-5.
- [19] TSN, May 30, 2002, pp. 10, 13-15.
- [20] TSN, February 11, 2002, pp. 3-4; TSN, May 30, 2002, p. 13.
- [21] Records, vol. I, pp. 430-443.
- [22] *Id.* at 442-443.
- [23] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640. The case modified the pertinent provisions of the Revised Rules on Criminal Procedure, more particularly Section 3 and Section 10 of Rule 122, Section 13 of Rule 124, Section 3 of Rule 125 and any other rule in so far as they provide for direct appeals from the Regional Trial Courts to the Supreme Court in cases where the penalty is imposed is death or reclusion perpetua and allowed intermediate review by the Court of Appeals.
- [24] CA rollo, pp. 122-137. Penned by Justice Josefina Guevara-Salonga with the concurrence of Justices Ruben T. Reyes and Fernanda Lampas Peralta.
- [25] CA rollo, pp. 136-137.
- [26] *Id.* at 138-140.
- [27] *Id.* at 67-71.
- [28] *People v. Barcena*, G.R. No. 168737, February 16, 2006, 482 SCRA 543, 555.
- [29] G.R. No. 171270, September 20, 2006, 502 SCRA 560, 576.
- [30] TSN, March 19, 2001, pp. 12-13.
- [31] *People v. Umayam*, 450 Phil. 543, 563 (2003).
- [32] *People v. Pepito*, 459 Phil. 1023, 1038 (2003); *People v. Fontanilla*, 456 Phil. 454, 469 (2003); *People v. Delos Reyes*, 423 Phil. 75, 82 (2001).
- [33] G.R. Nos. 136164-65, April 20, 2001, 357 SCRA 234.
- [34] *Id.* at 241.
- [35] TSN, May 20, 2002, pp. 3-4.
- [36] *People v. Emilio*, 445 Phil. 15, 25 (2003); *People v. Alicante*, 388 Phil. 233, 258 (2000); *People v. Molero*, 228 Phil. 375, 385 (1986).
- [37] G.R. No. 116221, July 11, 1996, 258 SCRA 663.
- [38] *Id.* at 673-674.
- [39] *People v. Fontanilla*, *supra* note 32 at 470; *People v. Dizon*, G.R. Nos. 134522-24 and 139508-09, April 3,

2001, 356 SCRA 69, 85.

[40] TSN, February 11, 2002, p. 4.

[41] TSN, February 21, 2002, p. 2.

[42] TSN, May 30, 2002, p. 14.

[43] CA rollo, p. 134.

[44] 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 and 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.

Whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death.

When by reason or on occasion of the rape, the victim has become insane, the penalty shall be death.

When the rape is attempted or frustrated and a homicide is committed by reason or on the occasion thereof, the penalty shall be reclusion perpetua to death.

When the rape is attempted or frustrated and a homicide is committed by reason or on the occasion thereof, the penalty shall be reclusion perpetua to death.

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, stepparent, 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

[45] G.R. No. 93947, May 21, 1993, 222 SCRA 378.

[46] Id. at 381-382. Vide *People v. Corpuz*, G.R. No. 168101, February 13, 2006, 482 SCRA 435; *People v. Atienza*, 383 Phil. 707 (2000).

[47] BBB testified that she was then 8 years old since she was already in Grade II at that time (TSN, May 3, 2001). The trial court ruled that she was either 7 or 8 during the commission of the rape. The appellate court ruled that she was 8 years old. In any event, there is no doubt that BBB was below 12 years of age during the commission of the rape.

[48] *People v. Corpuz*, supra note 48, at 453.

[49] *People v. Tonyacao*, G.R. Nos. 134531-32, July 7, 2004, 433 SCRA 513, 532-533; *People v. Daño*, 458 Phil. 439, 452; *People v. Balleno*, 455 Phil. 979, 989 (2003); *People v. Torio*, 376 Phil. 453, 465 (1999).

[50] *People v. Esperanza*, 453 Phil. 55, 76 (2003).

[51] *People v. Arnaiz*, G.R. No. 171447, November 29, 2006; *People v. Bang-ayan*, G.R. No. 172870, September 22, 2006, 502 SCRA 658, 671.

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