

PEOPLE OF THE PHILIPPINES, APPELLE, VS. RUFINO UMANITO, APPELLANT.*G.R. No. 172607. April 16, 2009*

Ponente: TINGA, J.

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In our Resolution dated 26 October 2007, this Court resolved, for the very first time, to apply the then recently promulgated New Rules on DNA Evidence (DNA Rules)[1] in a case pending before us - this case. We remanded the case to the RTC for reception of DNA evidence in accordance with the terms of said Resolution, and in light of the fact that the impending exercise would be the first application of the procedure, directed Deputy Court Administrator Reuben Dela Cruz to: (a) monitor the manner in which the court a quo carries out the DNA Rules; and (b) assess and submit periodic reports on the implementation of the DNA Rules in the case to the Court.

To recall, the instant case involved a charge of rape. The accused Rufino Umanito (Umanito) was found by the Regional Trial Court (RTC) of Bauang, La Union, Branch 67 guilty beyond reasonable doubt of the crime of rape. Umanito was sentenced to suffer the penalty of reclusion perpetua and ordered to indemnify the private complainant in the sum of P50,000.00. On appeal, the Court of Appeals offered the judgment of the trial court. Umanito appealed the decision of the appellate court to this court.

In its 2007 Resolution, the Court acknowledged "many incongruent assertions of the prosecution and the defense." [2] At the same time, the alleged 1989 rape of the private complainant, AAA, had resulted in her pregnancy and the birth of a child, a girl hereinafter identified as "BBB." In view of that fact, as well as the defense of alibi raised by Umanito, the Court deemed uncovering of whether or not Umanito is the father of BBB greatly determinative of the resolution of the appeal. The Court then observed:

x x x With the advance in genetics and the availability of new technology, it can now be determined with reasonable certainty whether appellant is the father of AAA's child. If he is not, his acquittal may be ordained. We have pronounced that if it can be conclusively determined that the accused did not sire the alleged victim's child, this may cast the shadow of reasonable doubt and allow his acquittal on this basis. If he is found not to be the father, the finding will at least weigh heavily in the ultimate decision in this case. Thus, we are directing appellant, AAA and her child to submit themselves to deoxyribonucleic acid (DNA) testing under the aegis of the New Rule on DNA Evidence (the Rules), which took effect on 15 October 2007, subject to guidelines prescribed herein.[3]

The RTC of Bauang, La Union, Branch 67, presided by Judge Ferdinand A. Fe, upon receiving the Resolution of the Court on 9 November 2007, set the case for hearing on 27 November 2007[4] to ascertain the feasibility of DNA testing with due regard to the standards set in Sections 4(a), (b), (c) and (e) of the DNA Rules. Both AAA and BBB (now 17 years old) testified during the hearing. They also manifested their willingness to undergo DNA examination to determine whether Umanito is the father of BBB.[5]

A hearing was conducted on 5 December 2007, where the public prosecutor and the counsel for Umanito

manifested their concurrence to the selection of the National Bureau of Investigation (NBI) as the institution that would conduct the DNA testing. The RTC issued an Order on even date directing that biological samples be taken from AAA, BBB and Umanito on 9 January 2008 at the courtroom. The Order likewise enjoined the NBI as follows:

In order to protect the integrity of the biological samples, the [NBI] is enjoined to strictly follow the measures laid down by the Honorable Supreme Court in the instant case to wit:

Moreover, the court a quo must ensure that the proper chain of custody in the handling of the samples submitted by the parties is adequately borne in the records, i.e.; that the samples are collected by a neutral third party; that the tested parties are appropriately identified at their sample collection appointments; that the samples are protected with tamper tape at the collection site; that all persons in possession thereof at each stage of testing thoroughly inspected the samples for tampering and explained his role in the custody of the samples and the acts he performed in relation thereto.

The DNA test result shall be simultaneously disclosed to the parties in Court. The [NBI] is, therefore, enjoined not to disclose to the parties in advance the DNA test results.

The [NBI] is further enjoined to observe the confidentiality of the DNA profiles and all results or other information obtained from DNA testing and is hereby ordered to preserve the evidence until such time as the accused has been acquitted or served his sentence.[6]

Present at the hearing held on 9 January 2008 were AAA, BBB, counsel for Umanito, and two representatives from the NBI. The RTC had previously received a letter from the Officer-in-Charge of the New Bilibid Prisons informing the trial court that Umanito would not be able to attend the hearing without an authority coming from the Supreme Court.[7] The parties manifested in court their willingness to the taking of the DNA sample from the accused at his detention center at the New Bilibid Prisons on 8 February 2008.[8] The prosecution then presented on the witness stand NBI forensic chemist Mary Ann Aranas, who testified on her qualifications as an expert witness in the field of DNA testing. No objections were posed to her qualifications by the defense. Aranas was accompanied by a laboratory technician of the NBI DNA laboratory who was to assist in the extraction of DNA.

DNA samples were thus extracted from AAA and BBB in the presence of Judge Fe, the prosecutor, the counsel for the defense, and DCA De la Cruz. On 8 February 2008, DNA samples were extracted from Umanito at the New Bilibid Prisons by NBI chemist Aranas, as witnessed by Judge Fe, the prosecutor, the defense counsel, DCA De la Cruz, and other personnel of the Court and the New Bilibid Prisons.[9]

The RTC ordered the NBI to submit the result of the DNA examination within thirty (30) days after the extraction of biological samples of Umanito, and directed its duly authorized representatives to attend a hearing on the admissibility of such DNA evidence scheduled for 10 March 2008. The events of the 28 March 2008 hearing, as well as the subsequent hearing on 29 April 2008, were recounted in the Report dated 19 May 2008 submitted by Judge Fe. We quote therefrom with approval:

2. That as previously scheduled in the order of the trial court on 09 January 2008, the case was set for hearing on the admissibility of the result of the DNA testing.

At the hearing, Provincial Prosecutor Maria Nenita A. Opiana, presented Mary Ann T. Aranas, a Forensic Chemist of the National Bureau of Investigation who testified on the examination she conducted, outlining the procedure she adopted and the result thereof. She further declared that using the Powerplex 16 System, Deoxyribonucleic acid analysis on the Buccal Swabs and Blood stained on FTA paper taken from [AAA], [BBB], and Rufino Umanito y Millares, to determine whether or not Rufino Umanito y Millares is the biological father of [BBB], showed that there is a Complete Match in all of the fifteen (15) loci tested between the alleles of Rufino Umanito y Millares and [BBB]; That based on the above findings, there is a 99.9999%

probability of paternity that Rufino Umanito y Millares is the biological father of [BBB] (Exhibits "A" and series and "B" and series).

After the cross-examination of the witness by the defense counsel, the Public Prosecutor offered in evidence Exhibits "A" and sub-markings, referring to the Report of the Chemistry Division of the National Bureau of Investigation, Manila on the DNA analysis to determine whether or not Rufino Umanito y Millares is the biological father of [BBB] and Exhibit "B" and sub-markings, referring to the enlarged version of the table of Exhibit "A," to establish that on the DNA examination conducted on [AAA], [BBB] and the accused Rufino Umanito for the purpose of establishing paternity, the result is 99.9999% probable. Highly probable.

The defense did not interpose any objection, hence, the exhibits were admitted.

1. That considering that under Section 9, A.M. No. 06-11-5-SC, if the value of the Probability of Paternity is 99.9% or higher, there shall be a disputable presumption of paternity, the instant case was set for reception of evidence for the accused on April 29, 2008 to controvert the presumption that he is the biological father of [BBB].

During the hearing on April 29, 2008, the accused who was in court manifested through his counsel that he will not present evidence to dispute the findings of the Forensic Chemistry Division of the National Bureau of Investigation.

The DNA samples were collected by the forensic chemist of the National Bureau of Investigation whose qualifications as an expert was properly established adopting the following procedure:

- a) The subject sources were asked to gargle and to fill out the reference sample form. Thereafter, the chemists informed them that buccal swabs will be taken from their mouth and five (5) droplets of blood will also be taken from the ring finger of their inactive hand;
- b) Pictures of the subject sources were taken by the NBI Chemist;
- c) Buccal swabs were taken from the subject sources three (3) times;
- d) Subject sources were made to sign three (3) pieces of paper to serve as label of the three buccal swabs placed inside two (2) separate envelopes that bear their names;
- e) Blood samples were taken from the ring finger of the left hand of the subject sources;
- f) Subject sources were made to sign the FTA card of their blood samples.

The buccal swabs and the FTA cards were placed in a brown envelope for air drying for at least one hour.

- g) Finger prints of the subject sources were taken for additional identification;
- h) The subject sources were made to sign their finger prints.
- i) Atty. Ramon J. Gomez, Deputy Court Administrator Reuben dela Cruz and Prosecutor Maria Nenita A. Oplana, in that order, were made to sign as witnesses to the reference sample forms and the finger prints of the subject sources.
- j) After one hour of air drying, the Buccal Swabs and the FTA papers were placed inside a white envelope and sealed with a tape by the NBI Chemists;
- k) The witnesses, Atty. Ramon J. Gomez, Deputy Court Administrator Reuben dela Cruz, Prosecutor Maria Nenita A. Oplana including the NBI Chemist, affixed their signatures on the sealed white envelope;
- l) The subjects sources were made to sign and affix their finger prints on the sealed white envelope;

- m) The chemists affixed their signatures on the sealed envelope and placed it in a separate brown envelope;
- n) The subjects sources were made to affix their finger prints on their identification places and reference forms.

The same procedure was adopted by the Forensic Chemists of the NBI in the taking of DNA samples from the accused, Rufino Umanito at the New Bilibid Prison in the afternoon of February 8, 2008.

Mary Ann Aranas, the expert witness testified that at the NBI the sealed envelope was presented to Ms. Demelen dela Cruz, the supervisor of the Forensic Chemistry Division to witness that the envelope containing the DNA specimens was sealed as it reached the NBI. Photographs of the envelope in sealed form were taken prior to the conduct of examination.

With the procedure adopted by the Forensic Chemist of the NBI, who is an expert and whose integrity and dedication to her work is beyond reproach the manner how the biological samples were collected, how they were handled and the chain of custody thereof were properly established the court is convinced that there is no possibility of contamination of the DNA samples taken from the parties.

At the Forensic Laboratory of the National Bureau of Investigation, the envelopes containing the DNA samples were opened and the specimens were subjected to sampling, extraction, amplification and analysis. Duplicate analysis were made. The Forensic Chemist, Mary Ann Aranas caused the examination of the blood samples and the buccal swabs were separately processed by Mrs. Demelen dela Cruz.

In order to arrive at a DNA profile, the forensic chemists adopted the following procedure: (1) Sampling which is the cutting of a portion from the media (swabs and FTA paper); (2) then subjected the cut portions for extraction to release the DNA; (3) After the DNA was released into the solution, it was further processed using the formarine chain reaction to amplify the DNA samples for analysis of using the Powerplex 16 System, which allows the analysis of 16 portions of the DNA samples. The Powerplex 16 System are reagent kits for forensic purposes; (3) After the target, DNA is multiplied, the amplified products are analyzed using the genetic analyzer. The Powerplex 16 System has 16 markers at the same time. It is highly reliable as it has already been validated for forensic use. It has also another function which is to determine the gender of the DNA being examined.

Mary Ann Aranas, the Forensic Chemist, in her testimony explained that the DNA found in all cells of a human being come in pairs except the mature red blood cells. These cells are rolled up into minute bodies called "chromosomes," which contain the DNA of a person. A human has 23 pairs of chromosomes. For each pair of chromosome, one was found to have originated from the mother, the other must have come from the father. Using the Powerplex 16 System Results, the variable portions of the DNA called "loci," which were used as the basis for DNA analysis or typing showed the following: under "loci" D3S1358, the genotype of the locus of [AAA] is 15, 16, the genotype of [BBB] is 15, 16, one of the pair of alleles must have originated and the others from the father. The color for the allele of the mother is red while the father is blue. On matching the allele which came from the mother was first determined [AAA], has alleles of 15 or 16 but in the geno type of [BBB], 15 was colored blue because that is the only allele which contain the genotype of the accused Rufino Umanito, the 16 originated from the mother, [AAA]. In this marker [BBB] has a genotype of 15, 16, 16 is from the mother and 15 is from the father.

The whole process involved the determination which of those alleles originated from the mother and the rest would entail looking on the genotype or the profile of the father to determine if they matched with those of the child.

In the analysis of the 16 loci by the Forensic Chemists, amel on the 13[th] row was not included because this is the marker that determines the gender of the source of the loci. The pair XX represents a female and XY for a male. Rufino Umanito has XY amel and [BBB] and [AAA] have XX amel. For matching paternity purposes only 15 loci were examined. Of the 15 loci, there was a complete match between the alleles of the loci of

[BBB] and Rufino (Exhibits "A" and "B").

To ensure reliable results, the Standard Operating Procedure of the Forensic Chemistry Division of the NBI in paternity cases is to use buccal swabs taken from the parties and blood as a back up source.

The said Standard Operating Procedure was adopted in the instant case.

As earlier mentioned, DNA samples consisted of buccal swabs and blood samples taken from the parties by the forensic chemists who adopted reliable techniques and procedure in collecting and handling them to avoid contamination. The method that was used to secure the samples were safe and reliable. The samples were taken and handled by an expert, whose qualifications, integrity and dedication to her work is unquestionable, hence, the possibility of substitution or manipulation is very remote.

The procedure adopted by the DNA section, Forensic Chemistry Division of the National Bureau of Investigation in analyzing the samples was in accordance with the standards used in modern technology. The comparative analysis of DNA prints of the accused Rufino Umanito and his alleged child is a simple process called parentage analysis which was made easier with the use of a DNA machine called Genetic Analyzer. To ensure a reliable result, the NBI secured two (2) DNA types of samples from the parties, the buccal swabs as primary source and blood as secondary source. Both sources were separately processed and examined and thereafter a comparative analysis was conducted which yielded the same result.

The National Bureau of Investigation DNA Section, Forensic Division is an accredited DNA testing laboratory in the country which maintains a multimillion DNA analysis equipment for its scientific criminal investigation unit. It is manned by qualified laboratory chemists and technicians who are experts in the field, like Mary Ann Aranas, the expert witness in the instant case, who is a licensed chemists, has undergone training on the aspects of Forensic Chemistry for two (2) years before she was hired as forensic chemists of the NBI and has been continuously attending training seminars, and workshops which are field related and who has handled more than 200 cases involving DNA extraction or collection or profiling.

The accused did not object to the admission of Exhibits "A" and "B" inclusive of their sub-markings. He did not also present evidence to controvert the results of the DNA analysis.

Section 6. A.M. No. 06-11-5-SC provides that: "If the value of the Probability of Paternity is 99.9% or higher, there shall be a disputable presumption of paternity.

DNA analysis conducted by the National Bureau of Investigation Forensic Division on the buccal swabs and blood stained on FTA paper taken from [AAA], [BBB] and Rufino Umanito y Millares for DNA analysis to determine whether or not Rufino Umanito y Millares is the biological father of [BBB] gave the following result:

"FINDINGS: Deoxyribonucleic acid analysis using the

Powerplex 16 System conducted on the

above-mentioned, specimens gave the

following profiles;

x x x

x x x

There is a COMPLETE MATCH in all the fifteen (15) loci tested between the alleles of Rufino Umanito y Millares and [BBB].

REMARKS: Based on the above findings, there is a

99.9999% Probability of Paternity that
Rufino Umanito y Millares is the biological
Father of [BBB]"

Disputable presumptions are satisfactory if uncontradicted but may be contradicted and overcome by other evidence (Rule 131, Section 3, Rules of Court).

The disputable presumption that was established as a result of the DNA testing was not contradicted and overcome by other evidence considering that the accused did not object to the admission of the results of the DNA testing (Exhibits "A" and "B" inclusive of sub-markings) nor presented evidence to rebut the same.

WHEREFORE, premises considered, the trial court rules that based on the result of the DNA analysis conducted by the National Bureau of Investigation, Forensic Division, RUFINO UMANITO y MILLARES is the biological father of [BBB].[10]

Umanito's defense of alibi, together with his specific assertion that while he had courted AAA they were not sweethearts, lead to a general theory on his part that he did not engage in sexual relations with the complainant. The DNA testing has evinced a contrary conclusion, and that as testified to by AAA, Umanito had fathered the child she gave birth to on 5 April 1990, nine months after the day she said she was raped by Umanito.

Still, Umanito filed a Motion to Withdraw Appeal dated 16 February 2009. By filing such motion, Umanito is deemed to have acceded to the rulings of the RTC and the Court of Appeals finding him guilty of the crime of rape, and sentencing him to suffer the penalty of reclusion perpetua and the indemnification of the private complainant in the sum of P50,000.00. Given that the results of the Court-ordered DNA testing conforms with the conclusions of the lower courts, and that no cause is presented for us to deviate from the penalties imposed below, the Court sees no reason to deny Umanito's Motion to Withdraw Appeal. Consequently, the assailed Decision of the Court of Appeals dated 15 February 2006 would otherwise be deemed final if the appeal is not withdrawn.

WHEREFORE, the Motion to Withdraw Appeal dated 16 February 2009 is GRANTED. The instant case is now CLOSED and TERMINATED.

SO ORDERED.

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

[1] A.M. No. 06-11-5-SC, 15 October 2007.

[2] Rollo, p. 28. "Among the many incongruent assertions of the prosecution and the defense, the disharmony on a certain point stands out. Appellant, on one hand, testified that although he had courted AAA, they were not sweethearts. Therefore, this testimony largely discounts the possibility of consensual coitus between him and AAA. On the other, AAA made contradictory allegations at the preliminary investigation and on the witness stand with respect to the nature of her relationship with appellant. First, she claimed that she met appellant only on the day of the purported rape; later, she stated that they were actually friends; and still later, she admitted that they were close."

[3] Id. at 28-29.

[4] Through an Order dated 14 November 2007. See id. at 77.

[5] Id. at 89, 94.

[6] Id. at 97-98.

[7] Judge Fe had sought permission from the Supreme Court to allow the accused to attend the 9 January 2008 hearing at the Bauang RTC, but it appeared that the letter did not reach the Court in time, owing to the Christmas holidays. See id. at 102.

[8] Id. at 99-100.

[9] Id. at 130-131.

[10] Id. at 131-136.

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