

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ROGELIO PELAGIO Y BERMUDO, APPELLANT.

G.R. No. 173052. December 16, 2008

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Rogelio Pelagio (appellant) was charged with three counts of Rape by his own daughter, AAA,[1] under three separate Informations, to wit:

Crim. Case No. 98-7037:

The undersigned 4[th] Assistant Provincial Prosecutor of XXX, upon a sworn complaint originally filed by the private offended party, accuses ROGELIO PELAGIO Y BERMUDO of the crime of RAPE, defined and penalized under Article 335 of the Revised Penal Code, as amended by RA 7659, committed as follows:

That on or about the 30[th] day of August, 1997 at around 10:00 P.M. in the evening thereof, at Bgy. XXX, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, and by means of force and intimidation, being the natural father of herein victim, did then and there wilfully, unlawfully and feloniously have carnal knowledge with one, AAA, her daughter, a minor-15 years old, against her will, to her prejudice.

CONTRARY TO LAW.[2]

Crim. Case No. 98-7038

The undersigned Assistant Provincial Prosecutor of XXX, upon a sworn complaint originally filed by the private offended party, accuses ROGELIO PELAGIO Y BERMUDO of the crime of RAPE, defined and penalized under Art. 335 of the Revised Penal Code, as amended by RA 7659, committed as follows:

That on or about the 22[nd] day of August, 1997, at around 9:30 in the evening thereof, at Bgy. XXX, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, and by means of force and intimidation, being the natural father of herein victim, did then and there willfully, unlawfully and feloniously have carnal knowledge with one AAA, her daughter, a minor-15 years old, against her will, to her prejudice.

ACTS CONTRARY TO LAW.[3]

Crim. Case No. 98-7142

The undersigned Assistant Provincial Prosecutor of XXX upon a sworn complaint filed by the offended party, accuses ROGELIO PELAGIO Y BERMUDO of Zone XXX, Barangay XXX of the crime of RAPE, defined and penalized under RA 7610 in relation to Art. 335 of the Revised Penal Code and further amended by RA 7659, committed as follows:

That on or about 9:00 o'clock in the evening of October 18, 1997 at Barangay XXX, Philippines, the above-named accused with lewd designs, by means of force and intimidation, did then and there willfully,

unlawfully and feloniously have carnal knowledge with AAA, his 15-year old daughter against her will and without her consent as shown by the medical certificate attached and marked as Annex "A" of the complaint to the damage and prejudice of the latter.

CONTRARY TO LAW.[4]

Appellant was duly arraigned and pleaded "not guilty" on all counts, after which trial ensued.

In a Judgment dated February 19, 1999, the Regional Trial Court (RTC) of Naga City, Branch 25, found appellant guilty of Rape, as follows:

WHEREFORE, premises considered, this court finds the accused ROGELIO PELAGIO Y BERMUDO GUILTY beyond reasonable doubt of the crime of Rape, defined and penalized under Article 335 of the Revised Penal Code, as amended by Republic Act 7659 in Criminal Cases Nos. 98-7037, 98-7038 and 98-7142, and hereby sentences the said accused to suffer the penalty of DEATH for each of the offense committed; accused Rogelio Pelagio y Bermudo is hereby ordered to pay the victim AAA the sum of P50,000.00 for each of the offense committed, by way of moral damages. To serve as a deterrent and a warning to fathers who [sic] may have bestial desire against their children, the accused is also ordered to pay the sum of P75,000.00 by way of exemplary damages; and for destroying the future of a daughter who was a consistent honor student when the incident happened, now could only pass her subjects due to her harrowing and traumatic experience in the hands of her father, the latter is further ordered to pay the victim the total sum of P300,000.00 for the three (3) offenses committed by way of consequential damages to help her secure a brighter future, and to pay the costs.

SO ORDERED.[5]

In view of the death penalty imposed, the case was brought to this Court on automatic review. Pursuant to People v. Mateo,[6] the case was transferred to the Court of Appeals (CA) for appropriate action and disposition.[7]

On March 31, 2006, the CA affirmed with modification the RTC Decision. The dispositive portion of the CA Decision[8] provides:

WHEREFORE, premises considered, the Judgment appealed from convicting accused-appellant Rogelio Pelagio y Bermudo of three (3) counts of rape and sentencing him to suffer the supreme penalty of death in each count is hereby AFFIRMED with MODIFICATION in that for each count of rape, accused-appellant ROGELIO PELAGIO Y BERMUDO is ordered to pay private complainant AAA P75,000.00 as civil indemnity, P50,000.00 as moral damages, and P25,000.00 as exemplary damages.

In accordance with A.M. No. 00-5-03-SC amending the revised Rules of Criminal Procedure, let the entire record of the case be immediately elevated to the Supreme Court for review.

SO ORDERED.[9]

The Office of the Solicitor General and appellant both manifested that they would not file supplemental briefs and instead, adopt the briefs they had previously filed.

In the Accused-Appellant's Brief, appellant sets forth the following assignment of errors:

I

THE TRIAL COURT ERRED IN COMPLETELY BELIEVING THE HIGHLY INCREDIBLE, UTTERLY BASELESS AND TOTALLY UNFOUNDED ACCUSATION OF PRIVATE COMPLAINANT IN CRIMINAL CASE NOS. 98-7037, 98-7038 AND 98-7142, NOT TO MENTION THE LONG DELAY IN REPORTING THE SAME.

II

THE TRIAL COURT ERRED IN NOT BELIEVING THE DENIAL INTERPOSED BY ACCUSED-APPELLANT RELATIVE TO THE CRIMES CHARGED, NAY THE FACT THAT HIS WIFE WAS MOTIVATED BY ILL WILL IN FILING THE SAME.

III

THE TRIAL COURT ERRED IN NOT ABSOLVING ACCUSED-APPELLANT OF THE OFFENSES CHARGED DESPITE WANT OF CONCLUSIVE EVIDENCE TO PROVE THE SAME AS PER TESTIMONY OF THE PHYSICIAN WHO EXAMINED PRIVATE COMPLAINANT.

IV

THE TRIAL COURT ERRED IN RENDERING A JUDGMENT OF CONVICTION IN CRIMINAL CASE NOS. 98-7037, 98-7038 AND 98-7142 NOTWITHSTANDING THE FACT THAT THE GUILT OF ACCUSED-APPELLANT WAS NOT PROVED BEYOND REASONABLE DOUBT.[10]

Appellant's defense is denial. He claims that it was his estranged wife, BBB, the mother of AAA, who instigated the filing of the complaint against him after he left BBB in 1986. Appellant points out that there were inconsistencies and flaws in the testimony of AAA, which cast doubt on the credibility of her accusation.

The RTC had dismissed appellant's defense and given credence to the testimony of AAA, ruling in this wise —

In the case at bar, the records are bereft of any evil motive which would move AAA to charge her own father with three (3) counts of rape. Accused alleged anger of his wife as an act of revenge instigated her daughter to file these heinous crimes against her father, cannot be given scant appreciation by the court. The records show that although BBB, the mother was with her daughter AAA when the complaints were lodged against the accused, yet the very complaint (Exhibits "E", "F" and "G") were signed by AAA alone.

x x x x.[11]

For its part, the CA also gave credence to AAA's testimony, stating that:

In narrating her painful and harrowing unspeakable experience under the unwelcome penile invasion of her own father during those three incidents, AAA's testimony was spontaneous, consistent and categorical. The trial court found her credible and gave full faith and credit to her testimony as sufficient to sustain the conviction of the accused-appellant of rape in all three counts, thus:

x x x x.[12]

The Court has reviewed the records of this case, including the respective pieces of evidence presented by the prosecution and the defense, and finds no reason to overturn the verdict of guilt handed down by the RTC and affirmed by the CA.

To determine the innocence or guilt of an accused in a rape case, the courts are guided by three well-entrenched principles: (1) an accusation of rape can be made with facility and while the accusation is difficult to prove, it is even more difficult for the accused, though innocent, to disprove; (2) considering that in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense.[13] As a result of these guiding principles, credibility becomes the single most important issue.[14]

AAA categorically testified that her father sexually abused her on the dates stated in the Informations.

As regards the rape that occurred on August 22, 1997, AAA testified:

Q

Why were you awakened?

A

I was awakened when I saw my father without his shorts on and he was trying to remove my shorts.

x x x x

Q

What did he do with your underwear, if any?

A

He removed my panty, sir.

x x x x

Q

When your father was removing your panty as well as your shorts, what was your relative position"

A

I was made to lie down face upward.

Q

So, what happened next?

A

Then he removed his brief and held my private parts.

Q

What private parts did his hold?

A

He held my both hands, sir.

Q

So, it was not your private parts?

A

Yes, sir, he held my both hands, then he lied on top of me.

Q

What happened next after he lied on top of you?

A

I tried to stand up telling my father not to do such thing because as expected, he should be the one to watch over me because my mother was in Fundado.

x x x x

Q

After that, after your father told you that, what happened next?

A

He did not listen to me, he held my both hands and he lied on top of me

Q

What happened next?

A

He exposed his penis, then spread my legs and inserted his penis to my vagina.

Q

What was the condition of the penis of your father?

A

I did not see it, sir.

Q

When he inserted his penis into your vagina, what did you feel?

A

I felt pain, sir.

Q

After he inserted his penis into your vagina, what happened next?

A

He made a push and pull movement, sir,

Q

While he was making this push and pull movement, what did you feel?

A

I felt pain, sir.

x x x x

Q

Alright, after the accused made a push and pull movement while his penis was at your vagina, what happened next?

A

Then he suddenly pulled out his penis from my vagina.

Q

After he pulled out his penis from your vagina, what happened next?

A

He put on his shorts, sir.[15]

AAA's testimony regarding the subsequent rapes on August 30 and October 18, 1997 were also of the same import.

As held in *People v. Maglente*:^[16]

When the offended party is a young and immature girl testifying against a parent, courts are inclined to lend credence to her version of what transpired. Youth and immaturity are given full weight and credit. Incestuous rape is not an ordinary crime that can be easily invented because of its heavy psychological toll. It is unlikely that a young woman of tender years would be willing to concoct a story which would subject her to a lifetime of gossip and scandal among neighbors and friends and even condemn her father to death.^[17]

Like the RTC and the CA, the Court has no reason to doubt AAA's credibility. Her testimony was candid and straightforward.

Appellant interposed the defense of denial, which is inherently a weak defense. Mere denial of involvement in a crime cannot take precedence over the positive testimony of the offended party.^[18]

The fact that it took a long time for AAA to report her father's transgressions does not mitigate her credibility. In the first place, appellant threatened to kill AAA and her mother.[19] Moreover, telling people that one has been raped by her own father is not easy to do, and a girl of AAA's age cannot be expected to know how to go about reporting crimes to the proper authorities.[20] Thus, the Court has constantly ruled that:

x x x [D]elay in making a criminal accusation [does not] impair the credibility of a witness if such delay is satisfactorily explained. In *People v. Coloma*, x x x the Court adverted to the father's moral and physical control over the young complainant in explaining the delay of eight years before the complaint against her father was made. In this case, [complainant] must have been overwhelmed by fear and confusion, and shocked that her own father had defiled her. x x x She also testified that she was afraid to tell her mother because the latter might be angered x x x. Indeed, a survey conducted by the University of the Philippines Center for Women's Studies showed that victims of rape committed by their fathers took much longer in reporting the incidents to the authorities than did other victims. Many factors account for this difference: the fact that the father lives with the victim and constantly exerts moral authority over her, the threat he might make against her, the victim's fear of her mother and other relatives.[21]

The Court also cannot subscribe to appellant's argument that AAA was merely instigated by her mother BBB to file the complaints against him due to BBB's anger with him when he left his family and went to Manila. Suffice it to say that such argument is not uncommon in rape cases. The Court has repeatedly held that it is unnatural for a parent to use her offspring as an instrument of malice, especially if it will subject them to embarrassment and even stigma. No mother in her right mind would expose her daughter to the disgrace and trauma resulting from a prosecution for rape if she was not genuinely motivated by a desire to incarcerate the person responsible for her daughter's defilement.[22] Appellant miserably failed to show that her "anger" was such that BBB would senselessly use her daughter as an instrument of revenge against him and subject her to the trauma of being internally examined by a doctor and exposed to the rigors of police and court proceedings, not to mention the ignominy attached to a rape victim by insensitive neighbors and townmates.

Appellant harps on the alleged statements of the examining physician that there were no external injuries on AAA's body or that the laceration on her hymen could be caused by many factors. Case law has it that 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. Even absent a medical certificate, her testimony, standing alone, can be made the basis of conviction if such testimony is credible.[23] Moreover, the absence of external injuries does not negate rape.[24] In fact, even the absence of spermatozoa is not an essential element of rape. This is because in rape, the important consideration is not the emission of semen but the penetration of the female genitalia by the male organ.[25]

All told, the prosecution was able to prove beyond reasonable doubt the commission of the heinous crimes alleged in this case.

Article 266-B of the Revised Penal Code provides that the death penalty shall be imposed if the crime of rape is committed with any aggravating/qualifying circumstances enumerated thereunder, one of which is when the victim is under 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. The three separate Informations filed in this case all contained the allegations of AAA's minority and her relationship with appellant, which were proved by competent evidence during the trial. Hence, the imposition of the death penalty was proper.

However, with the enactment of Republic Act (R.A.) No. 9346, effective June 24, 2006, prohibiting the imposition of the death penalty, the penalty to be imposed on appellant in this case is reclusion perpetua, without eligibility for parole, as provided in Section 2, paragraph (a) thereof. The Court has ruled that R.A. No. 9346 has

retroactive effect, to wit:

The aforequoted provision of R.A. No. 9346 is applicable in this case pursuant to the principle in criminal law, *favorabilia sunt amplianda adiosa restringenda*. Penal laws which are favorable to accused are given retroactive effect. This principle is embodied under Article 22 of the Revised Penal Code, which provides as follows:

x x x x

However, appellant is not eligible for parole because Section 3 of R.A. No. 9346 provides that "persons convicted of offenses punished with reclusion perpetua, or whose sentences will be reduced to reclusion perpetua by reason of the law, shall not be eligible for parole." [26]

On the award of damages for each count of rape, the CA modified the award made by the RTC. The Court modifies it further. The CA's award of civil indemnity in the amount of P75,000.00 is proper inasmuch as the death penalty was originally imposed on appellant. The award of exemplary damages in the amount of P25,000.00 is likewise proper. As regards moral damages, however, the CA affirmed the RTC's award of P50,000.00. This should be increased to P75,000.00 in line with prevailing jurisprudence. [27]

WHEREFORE, the Court of Appeals Decision dated March 31, 2006 is AFFIRMED with MODIFICATION in that appellant is ordered to pay AAA P75,000.00 as civil indemnity, P75,000.00 as moral damages and P25,000.00 as exemplary damages, for each count of rape or a total of P525,000.00.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Carpio Morales, Tinga, Chico-Nazario, Velasco, Jr., Nachura, Reyes, Leonardo-De Castro and Brion, JJ., concur.

Corona, and Azcuna, JJ., On official leave.

[1] In line with the Court's ruling in *People v. Cabalquinto* (G.R. No. 167693, September 19, 2006, 502 SCRA 4), the real names of the victims will not be disclosed; instead, fictitious initials will be used to represent them throughout the decision. The personal circumstances of the victims or any other information tending to establish or compromise their identities will likewise be withheld; see also Resolution dated September 19, 2006 in A.M. No. 04-11-09-SC.

[2] Records, Volume I, p. 1.

[3] *Id.*, Volume II, p. 2.

[4] Records, Volume III, p. 1.

[5] *Id.*, Volume I, p. 81.

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

[7] CA rollo, p. 147, Resolution dated November 9, 2004.

[8] Penned by Associate Justice Edgardo F. Sundiam, with Associate Justices Martin S. Villarama, Jr. and Japar B. Dimaampao, concurring, rollo, p. 3.

[9] CA rollo, p. 180.

[10] CA rollo, pp. 51-52.

[11] Records, p. 80.

- [12] CA rollo, p. 169.
- [13] *People v. Pangilinan*, G.R. No. 171020, March 14, 2007, 518 SCRA 358, 373.
- [14] *People v. Andales*, G.R. Nos. 152624-25, February 5, 2004, 422 SCRA 253, 261.
- [15] TSN, September 16, 1998, pp. 13-17.
- [16] G.R. No. 179712, June 27, 2008.
- [17] *People v. Maglente*, *supra* note 16.
- [18] *People v. Bon*, G.R. No. 166401, October 30, 2006, 506 SCRA 168, 185.
- [19] TSN, September 16, 1998, p. 16.
- [20] *People v. Montinola*, G.R. No. 178061, January 31, 2008, 543 SCRA 412, 425.
- [21] *Ibid.*, citing *People v. Bugarin*, G.R. Nos. 110817-22, June 13, 1997, 273 SCRA 384, 398-399.
- [22] *People v. Reyes*, G.R. No. 167180, January 25, 2007, 512 SCRA 712, 720.
- [23] *Llave v. People*, G.R. No. 166040, April 26, 2006, 488 SCRA 376, 402.
- [24] *People v. Dela Cruz*, G.R. No. 177572, February 26, 2008, 546 SCRA 363, 381.
- [25] *People v. Juntilla*, G.R. No. 130604, September 16, 1999, 314 SCRA 568, 583.
- [26] *People v. Tinsay*, G.R. No. 167383, September 22, 2008, citing *People v. Quiachon*, G.R. No. 170236, August 31, 2006, 500 SCRA 704; see also *People v. Castro*, G.R. No. 172370, October 6, 2008.
- [27] *People v. Ramos*, G.R. No. 179030, June 12, 2008; *People v. Glivano*, G.R. No. 177565, January 28, 2008, 542 SCRA 656, 665.

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