

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARIO GUILLERMO Y ESTEBAN, ACCUSED-APPELLANT.

G.R. NO. 173787. April 23, 2007

Ponente: GARCIA, J.

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GARCIA, J.:

For automatic review is the Decision[1] dated April 6, 2006 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00103, which dismissed appellant's appeal from and affirmed the earlier decision[2] of the Regional Trial Court (RTC) of Camiling, Tarlac, Branch 68, in its Criminal Cases No. 2001-129 and 2001-130, finding appellant Mario Guillermo y Esteban guilty beyond reasonable doubt of the crime of Incestuous Rape on two (2) counts and sentencing him to suffer the extreme penalty of death for each count.

Pursuant to our pronouncement in *People v. Mateo*,[3] which modified the provisions of the Rules of Court insofar as they provide for direct appeals from the RTC to this Court in cases where the penalty imposed is death, reclusion perpetua or life imprisonment, this case was earlier[4] referred to the CA for appropriate action and disposition, whereat it was docketed as CA-G.R. CR-H.C. No. 00103.

In line with our decision in *People v. Cabalquinto*,[5] the real name of the rape victim in this case is withheld. Instead, fictitious initials are used to represent her. Also, the personal circumstances of the victim or any other information tending to establish or compromise her identity, as well as those of her immediate family or household members, is not disclosed in this decision.

The facts:

In the court of origin, Mario Guillermo y Esteban was accused of incestuous rape on two (2) counts under two separate Informations[6] worded as follows:

Criminal Case No. 2001-129:

That on or about November 18, 2000 at around 11:00 o'clock in the evening at Brgy. Sawat, Municipality of Camiling, Province of Tarlac, Philippines and within the jurisdiction of this Honorable Court, the above-named accused being the father of 14 year old XXX, by means of force, threats and intimidation did then and there willfully, unlawfully and feloniously have sexual intercourse against her (sic) daughter XXX, against the latter's will and consent.

CONTRARY TO LAW.

Criminal Case No. 2001-130:

That on or about April 29, 2001, at around 2:00 o'clock in the morning at Brgy. Sawat, Municipality of Camiling, Province of Tarlac, Philippines and within the jurisdiction of this Honorable Court, the above-named accused being the father of 14 year old XXX, by means of force, threats and intimidation did then and there willfully, unlawfully and feloniously have sexual intercourse against her (sic) daughter XXX, against the latter's will and consent.

CONTRARY TO LAW.

Arraigned on March 12, 2002, appellant, as accused below, assisted by counsel, pleaded "Not Guilty" to both charges. Thereafter, a joint trial on the merits ensued, in the course of which the prosecution presented the oral testimonies of the victim XXX, of the victim's mother and of Dr. Mercedes Gapultos, a doctor from the Camiling Emergency Hospital where XXX was brought for examination.

The People's version of the incidents is succinctly summarized by the Office of the Solicitor General (OSG) in its Appellee's Brief[7] as follows:

On November 18, 2000, at about 11:00 in the evening, while private complainant XXX and her three (3) sisters are sleeping, XXX suddenly woke up feeling that someone removed her panty and that someone was already on top of her, whom she later recognized as her father herein appellant. She also felt appellant insert his organ in her organ.

When she was awakened, appellant immediately stood up and put on his underwear and short pants. At the same time, XXX also saw appellant laughing at her.

On April 3, 2001, at around 2:00 in the morning, XXX woke up and found out that her short pants were down and her sex organ was wet. Later in the morning of the same day, when they were about to have breakfast, appellant told XXX that he inserted his penis in her organ. When confronted, appellant merely told her that she would not get pregnant.

On the other hand, the defense's version is hinged mainly on appellant's denial. To quote from his own (appellant's) brief:

MARIO GUILLERMO denied that he ever committed the accusations leveled against him by his daughter. He could only surmise that her mother coached his daughter on what to say.

He recalled that on November 18, 2000 at around 11 o'clock in the evening, as he was trying to sleep inside their bedroom, his daughter, the herein complainant, suddenly got up from bed. It is the habit of the complainant to walk while still asleep. She usually walks whenever she sleeps even during her afternoon nap. He remembered also that his daughter attended a seminar but returned only after three (3) days. He scolded and spanked her every time she failed to come home on the same day.

Significantly, appellant made no attempt to dispute the allegations regarding the April 29, 2001 rape incident in his appellant's brief, other than asserting that XXX did not see appellant inserting his penis in her vagina.

On February 5, 2004, the trial court came out with its decision[8] convicting appellant of incestuous rape on two (2) counts and sentencing him as follows:

WHEREFORE, in view of the foregoing, accused MARIO GUILLERMO y ESTEBAN is hereby found GUILTY beyond reasonable doubt of the crime of Rape, two (2) counts under Article 266-A of the Revised Penal Code, as amended, and is hereby sentenced to suffer the supreme penalty of DEATH for each crime of Rape, and, further, to pay the private complainant the amount of P75,000.00 by way of civil indemnity ex delicto in each of the two (2) cases, the amount of P50,000.00 by way of moral damages, likewise, in each of the two (2) cases, and the amount of P50,000.00 by way of exemplary damages, with costs.

IT IS SO ORDERED.

As stated at the onset hereof, the Court, in its Resolution[9] of August 24, 2004, and pursuant to its ruling in *People v. Mateo*,[10] referred the case and its records to the CA for appropriate action and disposition.

In turn, in its decision[11] of April 6, 2006, the CA affirmed that of the trial court. Dispositively, the CA decision

reads:

UPON THE VIEW WE TAKE OF THIS CASE, THUS, the appealed Decision dated February 5, 2004 of the Regional Trial Court of Camiling, Tarlac, Branch 68, in Criminal Cases Nos. 2001-129 and 2001-130, finding the accused-appellant MARIO GUILLERMO Y ESTEBAN guilty beyond reasonable doubt of two counts of qualified rape and sentencing him in each case to suffer the supreme penalty of death and to pay his daughter-victim, XXX, the amounts of P75,000.00 as civil indemnity, P50,000.00 as moral damages, and P25,000.00 as exemplary damages is AFFIRMED.

Should no motions for reconsideration be filed in these cases by the accused-appellant within the allowable reglementary period, or after the lapse thereof, let the entire records of this case be forwarded to the Honorable Supreme Court for appropriate action thereon.

SO ORDERED.

In its Resolution of September 19, 2006, the Court resolved to accept the case and required the parties to submit their respective supplemental briefs.

In separate Manifestations (In lieu of a Supplemental Brief) respectively dated October 17, 2006 and November 8, 2006, appellant, through the Public Attorney's Office, and appellee People, through the Office of the Solicitor General, informed the Court that they were no longer filing supplemental briefs and were merely adopting their appellant's and appellee's briefs before the CA as their supplemental briefs.

In his Appellant's Brief[12] before the CA, appellant assigns the following errors:

I

THE TRIAL COURT GRAVELY ERRED IN FAILING TO CONSIDER THAT THE FACT OF CARNAL KNOWLEDGE, WHICH IS A VITAL ELEMENT OF THE CRIME OF RAPE, WAS NOT PROVEN WITH CERTAINTY.

II

ASSUMING THAT THE ACCUSED-APPELLANT IS GUILTY OF THE CRIME CHARGED, THE COURT A QUO GRAVELY ERRED IN IMPOSING THE SUPREME PENALTY OF DEATH DESPITE THE FAILURE OF THE PROSECUTION TO PROVE THE REAL AGE OF THE COMPLAINANT.

The appeal must fail.

Appellant claims that the prosecution failed to present concrete evidence to prove that he had sexual intercourse with his own daughter.

In an effort to exculpate himself, appellant imputes ill motive on the part of his daughter XXX in charging him with rape. He claims that his daughter harbored ill-feelings against him whenever he scolded or spanked her every time she came home late at night or when she failed to come home for three (3) days after asking permission from him to attend a seminar.

Contrary to appellant's assertions, XXX testified that although she harbored ill-feelings against her father, such ill-feelings easily came to pass. Thus:

PROS. GUARDIANO:

xxx

Q Miss witness, earlier when counsel asked you about scolding, you had an ill feeling about your father, what

is the reason?

A I had an ill feeling Sir but after a while that feeling passed.

Q By reason of the scolding?

A Yes, Sir I had ill feeling for a moment but it will pass.[13]

The imputation of ill motive on the part of the victim XXX against appellant hardly merits consideration. The alleged ill-feelings harbored by XXX against her father are too flimsy to justify the filing of charges punishable by death. The acts imputed against the appellant -- incestuous rapes -- are not ordinary criminal offenses that can be hurled with facility. In relating her experiences in public, not only the victim, but her entire family as well, had to go through the humiliation of a trial. Surely, only the genuine desire to seek justice impelled XXX to come out in the open and reveal her unfortunate fate in the hands of her own father.[14]

To be sure, XXX was duly informed of the dire consequences of the charges she filed against her father. When asked in open court, she nonetheless answered in the following manner:

ATTY. JOAQUIN:

Q Are you aware Miss witness that if your father will be found guilty of two (2) counts of rape, he will be penalized with death by lethal injection?

A Yes, Sir.

Q And you want your father to be killed by lethal injection?

A Yes, Sir.

xxx

PROS. GUARDIANO:

Q Miss witness, earlier in the questions of the defense counsel, you stated that, if there is a possibility that your father is convicted he will die with electrocution or lethal injection, and you said "yes." If your father will ask forgiveness from you, can you forgive him?

A No, Sir.[15]

Indeed, XXX was unwavering in her account that she was repeatedly raped by her own father:

xxx xxx xxx

Q: Now Miss witness, what about April 3, 2001 around 2:00 o'clock at Sawat, Camiling, Tarlac, do you remember any incident that transpired on that day and time?

A: Yes, Sir.

Q: What was that incident?

A: When I woke up I noticed that my short pants were down, Sir.

Q: And what else did you notice?

A: When we were about to take our breakfast my father told me that he inserted his penis on me and I told him, "aren't you not afraid of what you are doing and it is not good to see in the sight of my sisters" and he answered, "you will not get pregnant," Sir

xxx xxx xxx

Q: But when you woke up that was the time that you felt or noticed that your father, by the way Miss witness, what was your attire when you slept in that night?

A: I was wearing shorts, Sir.

Q: And of course you were then wearing panty?

A: Yes, Sir.

Q: So you did not feel or notice your father removed your panty because according to you, you only woke up and felt that your father has drawn his sex organ from your sex organ?

A: I felt him removed my panty, Sir.

Q: And despite the fact that you felt that someone removed your panty you did not react or resisted?

A: No, Sir I just cried.

Q: Are we made to understand that your father was on top of you and started to insert his sex organ into your vagina you did not feel that?

A: I felt it, Sir.

Q: But despite of it you did not shout or you did not fight back?

A: No, Sir because I was afraid of him.

Q: But in your testimony while you were sleeping you felt that there was someone on top of you, is that right?

A: Yes, Sir.

Q: That time that you felt someone on top of you, you did not know who was that person, is that right?

A: I don't know him, Sir but when I came to my senses I discovered that it was my father who was on top of me, Sir.

Q: And when you discovered that it was your father, you did not shout, you did not fight or resist?

A: No, Sir.

Appellant would next argue that the fact of carnal knowledge, which is a vital element of the crime of rape, was not proven with certainty because XXX did not see him insert his penis into her vagina. He further states that there was not even any statement on how the sexual act was perpetrated against the person of XXX.

Again, this contention deserves scant consideration.

From her Sinumpaang Salaysay[16] to her testimony in open court, XXX categorically stated that her father inserted his penis into her vagina:[17]

PROS. GUARDIANO:

Q: Just to clarify, when the organ of your father touched your organ, you felt that there was no cloth in between?

A: Yes, Sir, there was none.

COURT:

Q: Could you explain to the Court how the organ of your father was touching your organ when you woke up that night?

A: When he inserted it, sir.

Q: How could you say that your father inserted his organ into your organ?

A: I felt it, Sir.

Q: At what point in time did you feel that the organ of your father was inserted into your organ because you said earlier that you were awakened and felt that your father was on top of you already?

A: When I was about to wake up, sir.

COURT:

Continue.

PROS. GUARDIANO:

Q: Are you saying that you were awakened because of that insertion?

A: Yes, Sir.

As to the rape committed on April 3, 2001, XXX testified:

xxx xxx xxx

Q: Now Miss Witness, what about April 3, 2001 around 2:00 o'clock at Sawat, Camiling, Tarlac, do you remember any incident that transpired on that day and time?

A: Yes, sir.

Q: What was that incident?

A: When I woke up I noticed that my short pants were down, sir.

Q: And what else did you notice?

A: When we were about to take our breakfast my father told me that he inserted his penis on me and I told him, 'aren't you not afraid of what you are doing and it is not good to see in the sight of my sister's and he answered, 'you will not get pregnant,' sir.

Q:

After those incident, do you remember what transpired if any?

A: After taking his breakfast he went out because of his job, sir.[18]

XXX was raped by appellant while she was asleep. As correctly held by the two courts below, this falls within Article 266-A-1(b) of the Revised penal Code:

Article 266-A. Rape; When And How Committed. — Rape is committed —

xxx xxx xxx

b) When the offended party is deprived of reason or otherwise unconscious;

xxx xxx xxx

Of course, nothing can be more telling than the medico-legal report proving the presence of healed hymenal lacerations on XXX consistent with coitus.[19] XXX positively identified her father as her ravisher.[20]

Settled is the rule that the testimony of a rape victim of tender or immature age deserves full credit.[21] In *People v. Pacheco*,[22] we held that when the offended party is a young and immature girl between the ages of 12 and 16, as in this case, courts are inclined to give credence to her version of the incident, considering not only her relative vulnerability but also the public humiliation to which she would be exposed in the course of trial if her accusations were untrue. Testimonies of youthful rape victims are, as a general rule, given full faith and credit, considering that when a girl says she has been raped, she says in effect all that is necessary to show that rape was indeed committed.[23]

Article 266 of the Revised Penal Code, as amended by Republic Act (R.A.) No. 8353, otherwise known as The Anti-Rape Law of 1997, defines rape as follows:

Article 266-A. Rape; When And How Committed. — Rape is committed —

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat, or intimidation;

b) When the offended party is deprived of reason or otherwise unconscious;

c) By means of fraudulent machination or grave abuse of authority; and

d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

xxx

Article 266-B. Penalties. —

xxx

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

1) 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;

Definitely, the elements of the crime have been sufficiently proven by the prosecution in this case.

Lastly, to skirt the death penalty, appellant argues that no independent proof was presented to establish the minority of private complainant.

Again, the argument crumbles in the weight of XXX's Birth Certificate[24] showing that she was fourteen (14) years old at the time of the rape. Also present in the records is an Affidavit of Relationship[25] dated October 1, 1999, which was signed by appellant himself and by his wife, the victim's mother. The said affidavit contains an admission as to the names and birth dates of their children, including that of XXX.

The courts below imposed the death penalty upon appellant pursuant to Article 266-B, supra, of the Revised Penal Code which imposes the penalty of death whenever the rape victim is under eighteen years of age and the offender is a parent of the victim.

Such a gruesome crime committed by a father against his very daughter, no less his own flesh and blood, has no

place in any civilized society. As such, appellant must suffer the most extreme penalty provided for by law.

In view, however, of the passage of R.A. No. 9346,[26] otherwise known as the Anti-Death Penalty Law, which prohibits the imposition of the penalty of death, the penalty of reclusion perpetua without eligibility for parole should instead be imposed.[27] Accordingly, appellant is hereby sentenced to reclusion perpetua without eligibility for parole.

With regard to the award of damages, prevailing jurisprudence dictates that where, as here, the rape is perpetrated with any of the qualifying/aggravating circumstances that require the imposition of the death penalty, the victim shall be awarded the following: P75,000.00 as civil indemnity ex delicto, which is mandatory upon the finding of the fact of rape;[28] P75,000.00 as moral damages, even without need of proof since it is assumed that the victim has suffered moral injuries;[29] and P25,000.00 as exemplary damages to curb this disturbing trend of incestuous rape and to set an example for the public good.[30]

WHEREFORE, the decision dated April 6, 2006 of the CA is hereby AFFIRMED with the MODIFICATIONS that instead of death, appellant is meted the penalty of reclusion perpetua without eligibility for parole and the award of moral damages is increased to P75,000.00 for each count of rape.

SO ORDERED.

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

[1] Penned by Associate Justice Renato C. Dacudao with Associate Justices Lucas P. Bersamin and Celia C. Librea-Leagogo, concurring; Rollo, pp. 3-17.

[2] CA Rollo, pp. 63-73.

[3] G.R. Nos. 147678-87, July 4, 2004, 433 SCRA 640.

[4] In our Resolution of August 24, 2004.

[5] G.R. No. 167693, September 19, 2006.

[6] CA Rollo, pp. 8- 11.

[7] CA Rollo, pp. 87-104.

[8] CA Rollo, pp. 82-100.

[9] Rollo, p. 40.

[10] Supra note 3.

[11] Rollo, pp. 123-124.

[12] CA Rollo, pp. 50-62.

[13] TSN, September 10, 2002, p. 6.

[14] People v. Nelson Dela Cruz y Villatora, G.R. Nos. 131167-68, August 23, 2000, 338 SCRA 582.

[15] Id.

[16] Records, pp. 10-11

[17] TSN, August 20, 2002, pp. 5-12.

[18] TSN, August 20, 2002, p. 12.

[19] Records, p. 13.

[20] Id. at pp. 3-4.

[21] People v. Blancaflor, G.R. No. 130586, 29 January 2004, 421 SCRA 354.

[22] G.R. No. 142887, 2 March 2004, 424 SCRA 164.

[23] People v. Wilson Suarez, G.R. No. 153573-76, April 15, 2005, 456 SCRA 333.

[24] Records, p. 57.

[25] Id. at p. 44.

[26] Approved on June 24, 2006.

[27] Supra note 5.

[28] People v. Junas, G.R. Nos. 144972-73, September 12, 2003, 411 SCRA 120.

[29] People v. Soriano, G.R. Nos. 142779-95, August 29, 2002, 388 SCRA 140.

[30] People v. Montemayor, G.R. Nos. 124474 and 139972-78, January 28, 2003, 396 SCRA 159.

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