PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BENIGNO FETALINO Y GABALDON, ACCUSED-APPELLANT.

G.R. No. 174472. June 19, 2007

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

For Review is the Decision[1] of the Court of Appeals promulgated on 31 May 2006 in CA-G.R. CR-H.C. No. 02162 entitled, "People of the Philippines v. Benigno Fetalino y Gabaldon," affirming, with modification, the Judgment[2] dated 29 July 2004 of the Regional Trial Court of Mandaluyong City, Branch 213, in Criminal Cases No. MC-99-1445, MC- 99-1446, MC-99-1447-H, MC 99-1448-H, and MC-99-1449-H.

Appellant stood charged with two counts of acts of lasciviousness and three counts of rape allegedly committed against the person of his own daughter, AAA.[3] The Informations, all signed by Assistant City Prosecutor Carlos A. Valenzuela, state:

> In Criminal Case No. MC-99-1445
>
> That on or about the 21[st] day of March 1999, in the City of XXX, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, by force and intimidation, did, then and there willfully, unlawfully and feloniously commit acts of lasciviousness upon the person of [his] daughter AAA, a girl sixteen (16) years of age, and subjected to sexual abuse, by inserting his finger into her vagina against her will and consent.[4]
>
> In Criminal Case No. MC-99-1446
>
> That on or about the 22[nd] day of March 1999, in the City of XXX, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, by force and intimidation, did, then and there willfully, unlawfully and feloniously commit acts of lasciviousness upon the person of [his] daughter, AAA, a girl sixteen (16) years of age, and subjected to sexual abuse, by inserting his finger into her vagina against her will and consent.[5]
>
> In Criminal Case No. MC-99-1447-H
>
> That on or about the 23[rd]day of March 1999, in the City of XXX, Philippines, a place [within] the jurisdiction of this Honorable Court, the above-named accused, with lewd design, by means of force and intimidation, did, then and there willfully, unlawfully and feloniously have carnal knowledge of [his] daughter AAA, a girl sixteen years of age, and subjected to sexual abuse, all against her will and consent.[6]
>
> In Criminal Case No. MC 99-1448-H
>
> That on or about the 24[th] day of March 1999, in the City of XXX, Philippines, a place [within] the jurisdiction of this Honorable Court, the above-named accused, with lewd design, by means of force and intimidation, did, then and there willfully, unlawfully and feloniously have carnal knowledge of [his] daughter AAA, a girl sixteen years of age, and subjected to sexual abuse, all against her will and consent.[7]

> In Criminal Case No. MC 99-1449-H
>
> That on or about the 25[th] day of March 1999, in the City of XXX, Philippines, a place [within] the jurisdiction of this Honorable Court, the above-named accused, with lewd design, by means of force and intimidation, did, then and there willfully, unlawfully and feloniously have carnal knowledge of [his] daughter AAA, a girl sixteen years of age and subjected to sexual abuse, all against her will and consent.[8]

On 20 April 1999, the arraignment for Criminal Cases No. MC-99-1445 and MC-99 99-1446 was held at which time appellant pleaded not guilty to the charges of acts of lasciviousness.[9] On 10 February 2000, he entered a similar plea to the three counts of rape in Criminal Cases No. MC-99-1447-H, MC-99-1448-H, and MC-99-1449-H.[10] Joint trial of the five cases thereafter ensued with the prosecution presenting five witnesses, namely: AAA, the private complainant; BBB, AAA's mother and appellant's live-in partner; Dr. Winston S. Tan (Dr. Tan), Medico-Legal Officer of the Philippine National Police (PNP) Crime Laboratory in Camp Crame, Quezon City; SPO4 Julieta Espiritu (SPO4 Espiritu), Chief of the Women's Desk of the PNP, XXX City; and POS Rolando Tejada (POS Tejada).

AAA was called to the witness stand as a hostile witness by the prosecution. The reason behind this unusual move was explained by the prosecutor during the offer of AAA's testimony:

> Before we proceed your honor, may we manifest that we are presenting this witness as our hostile witness in view of her declaration before this representation that she is no longer interested in prosecuting this case against the accused your honor, and in view likewise, of the manifestation given before this honorable court by the counsel for the accused that the victim and the mother of the victim came to see him to ask her (sic) to desist.[11]

AAA testified that appellant raped her on three separate instances in March 1999. She recalled that the events transpired in their house which was then undergoing renovation.[12] Appellant allegedly undressed her and inserted his private organ into her vagina for which she felt pain and cried. She claimed that she tried to resist appellant's bestial attack and that she struggled with him by trying to remove his hands. She could not shout for help as appellant threatened her with harm. After satisfying his lust, appellant told her not to report the incident to anybody or else he would kill her and her mother. She, however, finally revealed her sad experiences to her mother sometime in 1999. Thereafter, she was brought to the crime laboratory in Camp Crame, Quezon City for a medical examination. The physical examination was conducted by Dr. Tan whose test confirmed that AAA was already in a non-virgin state physically. The pertinent portion of Dr. Tan's medico-legal report states:

> GENITAL:
>
> There is absence of pubic hair. Labia majora are full, convex and coaptated with the pinkish brown labia minora presenting in between. On separating the same disclosed an elastic, fleshy-type hymen with deep healed lacerations at 7 and 9 o'clock and shallow healed laceration at 6 o'clock positions. External vaginal orifice offers strong resistance to the introduction of the examining index finger. Vaginal canal is narrow with prominent rugorsities. Cervix is firm and closed.[13]

Dr. Tan confirmed having performed the medical examination on the person of AAA. According to him, their office received a request from the XXX Police Station for the conduct of a "medico-legal/physical examination" on AAA who was a victim of an "alleged sexual abuse/molestation perpetrated by her biological father."[14] AAA and BBB were then subjected to a brief interview after which they both signed the consent form for the said examination.[15] Dr. Tan likewise explained that the most common cause of a hymenal laceration is the insertion into the vagina of an erect male genitalia or any other object of the same consistency.[16]

BBB, AAA's mother, stated that she and appellant were engaged in a common law relationship and together they

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begot five children[17] including AAA. On the evening of 25 March 1999, BBB came home from Divisoria where she earned a living as a vendor. When she reached their house, a certain Paul Quiambao, a carpenter she hired to do some minor repairs in their abode, came to see her and informed her that he saw appellant on top of AAA. In the vernacular, Paul allegedly told BBB that AAA was "ginagalaw" by appellant. Immediately after Paul left, BBB talked to AAA to confirm the harrowing news that she had just received. AAA finally had the courage to reveal to her mother that her predicament in the hands of her own father started on 22 March 1999 and it occurred everyday thereafter until 25 March 1999. She and AAA then proceeded to the barangay hall to report the misdeeds of appellant. After this, their barangay captain and members of the police came to their house to look for appellant who allegedly tried to flee after seeing the authorities. He was eventually arrested and taken to the police station. The barangay officials then instructed her and AAA to go to the police station in order for them to file a complaint against appellant.

In the police station, she and AAA gave their respective sworn statements to the investigating officer.[18]

SPO4 Espiritu testified that she was the investigator assigned to the case. During her investigation, AAA complained that in the afternoon of 21 March 1999, when the latter arrived home from school, appellant entered her room and, at knife point, embraced and kissed her. Unsatisfied with these initial condemnable acts, appellant thereafter inserted his finger into AAA's vagina. This incident would be repeated the following day, 22 March 1999.

Unfortunately for AAA, her ordeal would even take a turn for the worse for on 23 March 1999, appellant apparently became more emboldened and could no longer contain his bestial desires; thus, he proceeded to have carnal knowledge of AAA. AAA had to suffer such abuse on two more separate instances which occurred on 24 and 25 March 1999.

The prosecution presented, as its last witness, POS Tejada, who was a member of the team which responded to the complaint of AAA and BBB on 26 March 1999. His turn at the witness stand was brief, as appellant's counsel admitted the substance of POS Tejada's would-be testimony which pertained mainly to the circumstances surrounding the arrest of appellant.

For his part, appellant offered the hackneyed defense of denial to refute the charges brought against him. Appellant narrated that he and BBB had been live-in lovers for almost 25 years. He admitted that AAA was indeed one of their children.[19] In 1977, he was imprisoned for murder and was ordered released from detention on 23 February 1996. From the time he regained freedom, he allegedly stayed in the house of one of his legitimate children located somewhere in Paco, Manila. During the time material to the case, however, he was at the house he used to share with BBB and their children located at No. XXX St., XXX Drive, XXX City. Said house was undergoing renovation at that time.

Appellant claimed that the present criminal charges were brought against him in retaliation for the physical injuries he inflicted upon BBB during one of their heated arguments which became frequent as he wanted BBB and her new live-in partner to move out of their house in XXX St. In fact, according to appellant, BBB even charged him with physical injuries which was raffled off to a different branch of the court.

To bolster appellant's claim of innocence, the defense presented CCC, another one of his children with BBB. In CCC's recollection, at the time the criminal acts complained of took place, she was in their house together with AAA, their brother DDD, and appellant. She, however, insisted that nothing unusual happened during those dates. She remembered that although appellant was in their house, he spent most of his time inside his room fixing his belongings.

As for its last witness, the defense recalled BBB to the witness stand in order to prove that the only reason she executed her sworn statement before the police was because she was angry with appellant for having stabbed her during one of their fights.

After trial, the court a quo found appellant guilty as charged in all the cases filed against him. The dispositive portion of the trial court's judgment states:

> IN VIEW OF THE FOREGOING, judgment is hereby rendered in Criminal Case Nos. MC-99-1445 and MC-99-1446, finding the accused BENIGNO FETALINO Y GABALDON, GUILTY, beyond reasonable doubt of Acts of Lasciviousness defined and penalized under Article III, Section 5[b] of Republic Act 7610, and he is hereby sentenced to suffer for each of the two (2) charges, the penalty of twelve (12) years and one (1) day to fourteen (14) years of reclusion temporal, as minimum and maximum, respectively.
>
> Decision is also hereby rendered in Criminal Cases Nos. MC-99-1447-H, MC-99-1448-H and MC-99-1449-H finding the accused, BENIGNO FETALINO Y GABALDON, GUILTY beyond reasonable doubt for the crime of RAPE defined and penalized under Article 335 of the Revised Penal Code, as amended by the Republic Act 7659 and R.A. 8353. Finding the victim to be under eighteen (18) years of age at the time of the commission of the crime, and that the offender is the father, this court imposes upon same BENIGNO FETALINO Y GABALDON, for EACH charge, the supreme penalty of DEATH through lethal injection, as provided for in R.A. 8177, amending Section 24, of R.A. 7659 in the manner and procedure therein provided.
>
> Moreover, pursuant to [A]rticle 100 in relation to Article 104 of the Revised Penal Code, governing civil indemnity, accused is furthermore ordered to indemnify the minor victim, AAA, the amount of Php50,000.00, by way of moral damages in line with the reward made under the case of People vs. Bonday (222 SCRA 216) and another Php25,000.00 for exemplary damages to deter other sexual perverts or two legged-beast from sexually assaulting or molesting hapless and innocent girls.
>
> As the penalty imposed is [TRIPLE] DEATH, the City Jail Warden is directed to immediately commit the person of BENIGNO FETALINO Y GABALDON to the National Prisons at Muntinlupa, Metro Manila.[20]

In view of the death penalty imposed by the trial court, the cases were automatically elevated to this Court for review. However, in our Resolution dated 13 December 2005,[21] we ordered the remand of these cases to the Court of Appeals pursuant to our holding in People v. Mateo.[22]

In its assailed Decision, the appellate court modified the decision of the trial court by acquitting appellant of the two charges of rape and by downgrading the penalty imposed in Criminal Case No. MC-99-1447-H from death to reclusion perpetua –

> WHEREFORE, the judgment of the Regional Trial Court, Branch 213 of Mandaluyong City convicting accused-appellant Benigno Fetalino of the crime of two (2) counts of acts of lasciviousness in Criminal Case Nos. MC-99-1445 and MC-99-1446 and for rape in Criminal Case No. MC-99-1447-H is AFFIRMED with the MODIFICATION that the penalty of death imposed by the trial court for the crime of rape should be reduced to reclusion perpetua. Accused-appellant is ordered to pay complainant AAA the following amounts:
>
> - the total amount of P50,000.00 as moral damages;
>
> - P50,000.00 as civil indemnity; and
>
> - P25,000.00 as exemplary damages.
>
> As regards Criminal Case Nos. MC-99-1448-H and MC-99-1449-H, accused is hereby ACQUITTED for failure of the prosecution to prove his guilt beyond reasonable doubt.[23]

Once again, appellant's case is before us for our consideration raising the following errors:

I

THE COURT A QUO GRAVELY ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT FOR THE [CRIMES] CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT.

II

THE COURT A QUO GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE INCREDIBLE TESTIMONY OF THE PROSECUTION WITNESSES.

III

THE COURT A QUO GRAVELY ERRED IN IMPOSING UPON THE ACCUSED-APPELLANT THE SUPREME PENALTY OF DEATH AS THE AGE OF THE PRIVATE COMPLAINANT HAS NOT BEEN SUFFICIENTYLY PROVED.[24]

The appeal is partly meritorious.

At the outset, we would like to impart our observation as regards the proper charge that should have been filed against appellant for the incidents that transpired on 21 and 22 March 1999, during which he inserted his finger into the vagina of AAA. For these acts, which spawned Criminal Cases No. MC-99-1445 and MC-99-1446, appellant was indicted merely for two counts of acts of lasciviousness when the appropriate charges should have been two separate counts of rape under Article 266-A(2) of the Revised Penal Code. It must be remembered that Articles 266-A and 266-B are the amendments introduced to the Revised Penal Code by Republic Act No. 8353 or the "The Anti-Rape Law of 1997," which took effect on 22 October 1997. With these amendments, rape was reclassified as a crime against person and not merely a crime against chastity. Article 266-A of the Revised Penal Code states:

Art. 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.

2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object into the genital or anal orifice of another person.

The first paragraph of Article 266-A refers to the traditional concept of rape; that is, having sexual intercourse with a woman against her will. The second paragraph, on the other hand, is categorized as rape by sexual assault.[25]

In the case of People v. Soriano,[26] appellant therein was charged with 13 counts of rape by sexual assault for having inserted his finger inside the private organ of his minor daughter. After reviewing the records of said case, we adjudged appellant therein guilty of 12 counts rape by sexual assault, bearing in mind the expanded definition of rape under Republic Act No. 8353.

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Subsequently, in People v. Palma,[27] appellant therein was charged with six counts of qualified rape committed between the second week of October 1997 and the first week of November 1997. This case was brought before us on automatic appeal in view of the death sentence imposed by the trial court. It must be noted that two of the charges arose from appellant's acts of inserting his finger into the vagina of his victim. The first of such incidents happened during the second week of October 1997 when appellant inserted his thumb into the victim's vaginal orifice. Then, sometime during the first week of November 1997, appellant inserted his middle finger into the vagina of the private complainant. In disposing said case, we declared –

> x x x In Criminal Case No. 8177, the first incident of insertion of appellant's finger into the victim's vagina during the second week of October 1997 could only render appellant guilty of an act of lasciviousness. The second incident of the insertion of appellant's middle finger, however, during the first week of November 1997, constituted consummated rape through sexual assault under Republic Act No. 8353 or the "The Anti-Rape Law of 1997," which took effect on 22 October 1997 x x x."[28]

With these precedents, it is clear that the insertion of one's finger into the genital or anal orifice of another person constitutes rape by sexual assault and not merely an act of lasciviousness like what was erroneously charged in this case. Much as we want to punish appellant for his appalling acts toward AAA in Criminal Cases Nos. MC-99-1445 and MC-99-1446, we are enjoined by our primordial duty to observe appellant's constitutionally guaranteed right to be informed of the charges against him. Certainly, we cannot allow ourselves to be the ones to perpetrate the denial of appellant's right to due process. He cannot be punished for an offense graver than that with which he was charged.[29]

In his Brief, appellant invokes the settled rule that under our jurisdiction, an accused is presumed innocent until proven guilty and to overcome this presumption, the prosecution must establish the guilt of an accused beyond reasonable doubt. He contends that in this case, the fact that the prosecution presented AAA as a hostile witness casts doubt as to the culpability of appellant. He also insists that the testimony of AAA was unconvincing and vague and points to the following portions of her statement in the witness stand:

> Q.
>
> Who was raped by Benigno Fetalino?
>
> A.
>
> Me, ma'am.
>
> Q.
>
> When was (sic) you raped by Benigno Fetalino?
>
> A.
>
> I cannot recall anymore, ma'am.
>
> Q.
>
> Could it be in the year 1999?
>
> A.
>
> Yes, ma'am.
>
> Q.
>
> Could it be in the month of March?

A.

Yes, ma'am.

Q.

Where did the alleged raping incident took place?

A.

In our house.

Q.

Where is your house located?

A.

XXX Street, XXX City.

Q.

How many times were you raped in March 1999?

A.

Three (3) times.

Q.

Is it on the same date or on different dates of March 1999?

A.

Same dates, ma'am.

Q.

Are you sure of that?

A.

Yes, ma'am.

PROS. SILAO:

I would like to remind you again Madam Witness that you are under oath and you can be held liable for telling a lie.

Q.

What time was the first rape committed?

A.

It was then in the afternoon after my mother arrived.

Q.

What time did your mother arrived on that afternoon?

A.

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5:00 p.m.

Q.

What about the second rape, what time was it?

A.

I cannot recall the time anymore.

Q.

What about the third rape?

A.

I cannot recall anymore, ma'am.

Q.

But all in the year 1999 of March?

A.

Yes, ma'am.[30]

The seeming reluctance of AAA, as punctuated by appellant, is precisely one of the principal motivations which propelled our legislature to reclassify the crime of rape as a crime against person. As explained by Congresswoman Luz Reyes Bakunawa during her sponsorship speech of the House Bill No. 6265 which eventually became Republic Act No. 8353 –

> This reclassification is necessary because under the existing law, only the victim can file a complaint, if she wishes, or her parents, or grandparents in that order, which is very restrictive. The bill now prescribes that any citizen can file a complaint, even if the complainant may not be the victim, or close relative of the victim. This is the significance of the change that intends to bring the criminal to the bar of justice even if the victim may not decide to complain due to fear, shame, or for other reasons. [31]

Thus, despite the claimed disinterest of AAA in pursuing the charges against appellant, the choice of whether the cases would prosper was no longer hers alone. Besides, at the time AAA was presented as a witness, almost three years had already lapsed. Events must have taken place or influence might have been exerted upon her that could have weakened her resolve to seek justice for what was done to her. However, the fact remains that AAA never categorically denied in open court the charges she hurled at appellant. On the contrary, when AAA was subjected to cross-examination, she affirmed that appellant had indeed raped her, thus:

COURT:

Q.

Do you know why you were (sic) here, Madam Witness?

A.

Yes, sir.

Q.

Why?

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A.

Because we have a hearing.

Q.

Do you know for a fact that you filed a rape case against the accused in this case?

A.

Yes, sir.

Q.

Tell us the reason why you filed this case?

A.

Because he raped me.

Q.

Did anyone forced (sic) you to file a case against the accused herein?

A.

None, sir.

Q.

In what part of your house were you raped?

A.

Inside my father's bedroom.

Q.

How many bedrooms do you have in your house?

A.

Two only, sir.

Q.

So, at the time you were rape you were inside your father's bedroom?

A.

Yes, sir.

Q.

You will agree with me that the door of the room has a lock, Madam Witness?

A.

None sir, it was open because our house was under renovation then.

Q.

When the accused inserted his penis into your vagina, you did not resisted (sic)?

A.

I resisted.

Q.

How did you resisted (sic), Madam Witness?

A.

I struggled.

Q.

In what way?

A.

I remove (sic) his hands.

Q.

Did the accused likewise, undress himself?

A.

Yes, sir.

Q.

He was totally naked then?

A.

Yes, sir.

Q.

Do you have a neighbor, Madam Witness?

A.

Yes, sir.

Q.

It happened at about 1:00 to 2:00 in the afternoon, Madam Witness?

A.

Yes, sir.

Q.

You did not shout for help, Madam Witness?

A.

No, sir.

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Q.

Why?

A.

I was afraid because he threatened me.

Q.

How did he threaten you?

A.

He told me not to report the matter to anybody.

Q.

When did you finally decide to disclose what happened to you to anyone, Madam Witness?

A.

It was on (sic) 1999, to my mother, but I cannot recall the date.

Q.

Why did you disclose the same to your mother?

A.

I was afraid of my father.

Q.

When you stated in your statement that a certain Paul witnessed the incident, when was that?

A.

March 1999.

Q.

While your father was raping you?

A.

He saw the incident because he was then working at our house.

Q.

You stated in your affidavit that your father was on top of you when Paul see (sic) you?

A.

Yes, sir.

Q.

But at the time when Paul saw your father on top of you, his penis was not yet inserted in to your vagina?

A.

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Not yet, sir.[32]

Complementary to AAA's oral testimony, she confirmed the sworn statement which she executed before SPO4 Espiritu on 26 March 1999 upon redirect examination by the prosecutor. As we had elucidated in the case of People v. Servano,[33] the evidence which should be considered by the court in criminal cases need not be limited to the statements made in open court; rather, it should include all documents, affidavits or sworn statements of the witnesses, and other supporting evidence. We explained –

> x x x [W]hen a sworn statement has been formally offered as evidence, it forms an integral part of the prosecution evidence which should not be ignored for it complements and completes the testimony on the witness stand. A sworn statement is a written declaration of facts to which the declarant has sworn before an officer authorized to administer oaths. This oath vests credibility and trustworthiness on the document. The fact that a witness fails to reiterate, during trial, the contents of his sworn statement should not affect his credibility and render the sworn statement useless and insignificant, as long as it is presented as evidence in open court. This is not to say, however, that the sworn statement should be given more probative value than the actual testimony. Rather, the sworn statement and the open court declarations must be evaluated and examined together in toto so that a full and thorough determination of the merits of the case may be achieved. Giving weight to a witness' oral testimony during the trial should not mean being oblivious to the other pieces of available evidence such as the sworn statement. In like manner, the court cannot give probative value to the sworn statement to the exclusion of the oral testimony. In every case, the court should review, assess and weigh the totality of the evidence presented by the parties. x x x.[34]

In this case, AAA's sworn statement which forms part of the records of this case supplied the details of the incidents she experienced during those fateful days in March 1999, thus:

> T : Ano ang dahilan at narito ka ngayon sa aming tanggapan at nagbibigay ng isang malayang salaysay?
>
> S : Para po isumbong at ipakulong ang tatay ko na tatlong beses akong ni-rape at dalawang beses na ipinasok and daliri niya sa ari ko.
>
> T : Sino ba ang tatay mo na sinasabi mo na nag-rape sa iyo ng tatlong beses?
>
> S : Siya po si Benigno Fetalino y Gabaldon, 62 taong gulang, walang trabaho at nakatira din po sa XXX St., XXX City.
>
> T : Kailan, saan at anong oras nangyari ang sinasabi mong pangre-rape na ginawa sa iyo ng tatay mo?
>
> S : Noon pong March 21, 22, 23, 24, 25, 1999, lahat po ay mga ala-una hanggang alas dos ng hapon, sa mismo pong bahay namin sa XXX St., XXX City.
>
> T : Tunay mo bang ama ang sinasasabi mong tatay mo na nag-rape sa iyo ng maraming beses?
>
> S : Opo.
>
> T : Maari mo bang ituro sa akin ang sinasabi mong tatay mo na nag-rape sa iyo?
>
> S : Siya po. (Affiant pointing to ne Benigno Fetalino y Gabaldon, 62 years old, jobless of XXX St., XXX City.)
>
> T : Maari mo bang isalaysay ang buong pangyayari?
>
> S : Noon nga pong March 21, 1999, pagdating ko po galing sa eskwela at nasa loob ako ng kwarto at gumagawa po ako ng assignment ng bigla pong pumasok ang tatay ko at agad akong tinutukan ng balisong at sinabing huwag akong maingay, niyakap po ako at hinalikan, tapos po ay ipinasok ang kamay niya sa loob ng short ko at ipinasok ang daliri niya sa ari ko, umiiyak po ako at nakikiusap ng huwag niyang gawin, pero ang

> sabi lang po niya "HUWAG KANG MAINGAY, PAPATAYIN KITA" at pagkatapos po ay sinabihan din niya ako ng "HUWAG KANG MAGSUSUMBONG, PAPATAYIN KITA, PATI NA ANG NANAY MO." Noon pong March 22, 1999, pagdating ko po uli galing eskwela, ay ganon po ulit ang ginawa niya, ipinasok po uli ang daliri niya sa ari ko, natatakot po ako kaya hindi po ako sumisigaw at hindi rin po ako nagsusumbong, kasi baka nga patayin niya kaming lahat. Ng pangatlong araw po, March 23, 1999 ay ganon po uli ang ginawa niya, pinasok po niya ako sa kwarto at tinutukan ng balisong, pero hinubad na po niya ang short ko at inihiga ako sa papag at naghubad din po siya at pumatong sa akin at ipinasok ang ari niya sa ari ko, hindi po ako pumapalag dahil natatakot po ako dahil may hawak siyang balisong habang gumagalaw siya sa ibabaw ko. Wala po akong nagawa kundi ang umiyak, hindi po ako makapagsumbong dahil sa pananakot niya na papatayin kami. Tapos po ng March 24, 1999 uli ng hapon ay pinasok ulit niya ako at ganon po ulit, inalis niya ang short ko at pumatong sa akin, ng nakapatong po siya ay biglang pumasok si Kuya Pol, iyon po yong karpintero na gumagawa ng bahay naming at nakita kami, kaya po biglang tumigil ang tatay ko, at lumabas na siya pero sinabihan ako ulit na huwag magsusumbong dahil papatayin kami. Hindi pa rin po ako nagsumbong, kaya kahapon po, March 25, 1999 ay inulit na naman niya ang ginagawa niyang pangre-rape sa akin. Tapos kagabi nga po ng wala ang tatay ko ay nagpunta sa amin si Kuya Pol at kinausap ang nanay ko at narinig ko ng sabihin niya sa nanay ko na nakita niya ang tatay ko na nakapatong sa akin sa kwarto. Pag-alis po ni Kuya Pol ay agad akong kinausap ng nanay ko at tinanong, kaya po sinabi ko na sa kanya, pero ang sinabi ko po ay daliri lang ang ginagamit ng tatay ko, natatakot po kasi ako na baka patayin kami ng tatay ko. Agad pong pumunta ang nanay ko sa Barangay at nagsumbong, kaya po hinuli siya ng Barangay at dinala kami dito sa pulis.[35]

Against the categorical statements of AAA, appellant could only offer the defense of denial and point to BBB as the brains behind the institution of these criminal charges against him. Such bare-faced defense is obviously insufficient to overcome AAA's categorical claim of being raped and sexually molested by appellant. The rule is settled that against the positive identification by the private complainant, the mere denials of an accused cannot prevail to overcome conviction by the trial court.[36]

Indeed, appellant could not offer any plausible reason which could have impelled AAA to bring these serious charges against him. All he could muster was to claim in the trial court that BBB was furious at him and that the two of them engaged in frequent fights. To our mind, such contention is unavailing. Although BBB admitted that she was mad at appellant for the physical injuries he inflicted upon her, still, she stated that what drove her to issue her sworn statement on 26 March 1999 was appellant's rape of AAA. Furthermore, a mother like BBB certainly would not expose her own daughter to the ignominy of a rape trial simply to retaliate against her husband for the transgressions, knowing fully well the life-long stigma and scars that such a public trial could bring.[37] Such selfish motive on the part of a mother runs counter to her natural instinct to protect her offspring from all kinds of harm and to safeguard the latter's well-being.

We, however, sustain the appellate court's acquittal of appellant in Criminal Cases No. MC-99-1448-H and MC-99-1449-H. It must be remembered that each and every charge of rape is a separate and distinct crime so that each of the other rape charges should be proven beyond reasonable doubt.[38] Thus, it is incumbent on the prosecution to present the quantum of proof necessary for the conviction of an accused.

In this case, we have gone over the testimony of AAA and her sworn statement and cannot agree in the trial court's conclusion that appellant's guilt had been sufficiently established. AAA's testimony pertaining to the second and third incidents of rape merely consists of the following:

> Q.
>
> What about the second rape, what did he do to you?
>
> A.

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> The same.
>
> Q.
>
> Meaning he undressed you and he inserted his private organ to your private organ?
>
> A.
>
> Yes, ma'am.
>
> Q.
>
> What about the third rape, how did he did (sic) it to you?
>
> A.
>
> The same procedure, ma'am.[39

Such laconic responses on the part of AAA to the prosecutor's queries are grossly inadequate to sustain appellant's conviction. Her answers during the prosecutor's examination are utterly lacking in material details that would warrant a finding of guilt beyond reasonable doubt.[40] As we have held in the case of People v. Marahay –

> When prodded to specify the acts done to her, she stated that her father "used her." No other detail was evoked from her to show the attendant elements that constitute rape, the crime charged. Such bare statements cannot suffice to establish accused-appellant's guilt with the required quantum of evidence.[41]

In this regard, we cannot overemphasize the need for the prosecution to ask the necessary probing questions in order to elicit from a witness crucial details to establish the elements of the crime charged.

Likewise, AAA's sworn statement cannot be the basis for appellant's conviction for the second and third incidents of rape. To recall, AAA declared in said statement that the rape which allegedly occurred on 24 March 1999 was the one witnessed by their carpenter Quiambao. However, on the witness stand, she declared that when Quiambao saw appellant on top of her, appellant had not yet inserted his penis into her vagina. In fact, her testimony does not even state whether appellant's penis even touched her vagina at all. In the absence of a statement that appellant's penis touched even just her labia majora, we have to acquit him for the 24 March 1999 incident.

As regards the rape purportedly committed on 25 March 1999, AAA's sworn statement, like her testimony, contained a mere conclusion that she was raped by appellant on that day which we find insufficient to support a finding of appellant's guilt.

We now turn to the appropriate penalties that should be imposed upon appellant for the two counts of acts of lasciviousness and one count of rape. Appellant contends, and the Court of Appeals and the Office of the Solicitor General agree with him, that the trial court erred in appreciating AAA's minority in determining the imposable penalties on him. We find merit in this contention.

While it is alleged in the Informations that AAA was only 16 years old at the time the crimes charged were committed, nevertheless, the prosecution failed to substantiate said allegation. In establishing the minority of the alleged victim, the courts are to be guided by our pronouncement in the case of People v. Pruna,[42] to wit:

> - The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party.
>
> - In the absence of a certificate of live birth, similar authentic documents such as baptismal certificate and school records which show the date of birth of the victim would suffice to prove age.

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- If the certificate of live birth or authentic document is shown to have been lost or destroyed or otherwise unavailable, the testimony, if clear and credible, of the victim's mother or a member of the family either by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the offended party pursuant to Section 40, Rule 130 of the Rules on Evidence shall be sufficient under the following circumstances:

- If the victim is alleged to be below 3 years of age and what is sought to be proved is that she is less than 7 years old;

- If the victim is alleged to be below 7 years of age and what is sought to be proved is that she is less than 12 years old;

- If the victim is alleged to be below 12 years of age and what is sought to be proved is that she is less than 18 years old.

- In the absence of a certificate of live birth, authentic document, or the testimony of the victim's mother or relatives concerning the victim's age, the complainant's testimony will suffice provided that it is expressly and clearly admitted by the accused.

- It is the prosecution that has the burden of proving the age of the offended party. The failure of the accused to object to the testimonial evidence regarding age shall not be taken against him.[43]

In the case at bar, we cannot simply rely on BBB's unsubstantiated claim with regard to AAA's age, particularly since the loss of her birth certificate was not sufficiently established. We cannot overemphasize the importance of fixing with exactitude AAA's age, for under Article 266-B of the Revised Penal Code, rape by sexual intercourse is punishable by the supreme penalty of death in case "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 severity, permanence and irreversible nature of the penalty prescribed by law makes the decision-making process in capital offenses, such as qualified rape, subject to the most exacting rules of procedure and evidence.[44]

On the other hand, the alternative circumstance of relationship under Article 15 of the Revised Penal Code should be considered against appellant since in crimes against chastity, like acts of lasciviousness, relationship is considered aggravating.[45] In this case, as it was clearly mentioned in the Informations and admitted by appellant that AAA is his daughter, their relationship aggravated the two charges of acts of lasciviousness.

Acts of lasciviousness is punished under the Revised Penal Code by prision correccional. Applying the Indeterminate Sentence Law, and taking into consideration the aggravating circumstance of relationship, appellant should be made to suffer an indeterminate prison term of six (6) months of arresto mayor, as minimum, to six (6) years of prision correccional, as maximum. In addition, appellant is to pay the amount of P30,000.00 as moral damages for each count of acts of lasciviousness.[46]

With respect to Criminal Case No. M-99-1447-H, because of the prosecution's failure to establish with certainty that AAA was still a minor at the time the incestuous rape was committed by appellant, the appropriate penalty should only be reclusion perpetua in accordance with the first sentence of Article 266-B of the Revised Penal Code which states that rape under paragraph 1 of Article 266-A, or rape by sexual intercourse, shall be punished by reclusion perpetua. In addition to this, and consistent with the prevailing jurisprudence,[47] appellant is also held liable to AAA in the amount of P50,000.00 as civil indemnity, P50,000.00 as moral damages, and P25,000.00 as exemplary damages.

WHEREFORE, premises considered, the Decision dated 31 May 2006 of the Court of Appeals is AFFIRMED

with MODIFICATIONS:

- Appellant Benigno Fetalino y Gabaldon is hereby found GUILTY:

- In Criminal Case No. MC-99-1445, of acts of lasciviousness and he is sentenced to suffer the indeterminate prison term of six (6) months of arresto mayor, as minimum, to six (6) years of prision correccional, as maximum and to pay AAA the amount of Thirty Thousand (P30,000.00) Pesos as moral damages;

- In Criminal Case No. MC-99-1446, of acts of lasciviousness and he is sentenced to suffer the indeterminate prison term of six (6) months of arresto mayor, as the minimum, to six (6) years of prision correccional, as maximum and to pay AAA the amount of Thirty Thousand (P30,000.00) pesos as moral damages;

- In Criminal Case No. MC-99-1447-H, of rape through sexual intercourse, and he is sentenced to suffer the penalty of reclusion perpetua and to pay AAA the amount of fifty thousand (P50,000.00) pesos as civil indemnity, fifty thousand (P50,000.00) pesos as moral damages, and twenty-five thousand (P25,000.00) pesos as exemplary damages.

- Appellant is ACQUITTED of the charges in MC-99-1448-H and MC-99-1449-H on grounds of reasonable doubt.

SO ORDERED.

Ynares-Santiago, (Chairperson), and Austria-Martinez, JJ., concur.
Nachura, J., no part. filed pleadings as Sol Gen.

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[1] Penned by Associate Justice Mariano C. del Castillo with Associate Justices Conrado M. Vasquez, Jr. and Magdangal M. de Leon, concurring; rollo, pp. 146-167.

[2] Penned by Judge Amalia F. Dy; id. at 28-40.

[3] Pursuant to Republic Act No. 9262 or the "Anti-Violence Against Women and Their Children Act of 2004" and its implementing rules, the real name of the victim as well as those of her immediate family members is withheld and fictitious initials instead are used to represent her to protect her privacy. People v. Cabalquinto, G.R. No. 167693, 19 September 2006, 502 SCRA 419.

[4] Rollo, pp. 9-10.

[5] Id. at 11-12.

[6] Id. at 13-14.

[7] Id. at 15-16.

[8] Id. at 17-18.

[9] Records, p. 7.

[10] Id. at 18.

[11] TSN, 12 March 2002, p. 3.

[12] Id. at 12.

[13] Id. at 329.

[14] Id. at 324.

[15] Id. at 328.

[16] TSN, 12 February 2002, p. 7.

[17] In appellant's direct examination, he stated that he and BBB had only four (4) children.

[18] Records, pp. 319-321.

[19] TSN, 10 April 2003, p. 10.

[20] Records, pp. 309-310.

[21] Rollo, pp. 143-144.

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

[23] Rollo, pp. 165-166.

[24] Id. at 77.

[25] People v. Soriano, 436 Phil. 719, 755 (2002).

[26] Id.

[27] 463 Phil. 767 (2003).

[28] Id. at 781.

[29] People v. Mendoza, 432 Phil. 666, 674 (2002).

[30] TSN, 12 March 2002, pp. 5-6.

[31] Sponsorship speech of Congresswoman Luz Reyes Bakunawa dated 20 August 1996.

[32] Id. at 12-14.

[33] G.R. Nos. 143002-03, 17 July 2003, 406 SCRA 508.

[34] Id. at 523.

[35] Records, pp. 320-321.

[36] People v. Supnad, 414 Phil. 637, 648-649 (2001).

[37] People v. Rivera, 376 Phil. 424, 440 (1999).

[38] People v. de Leon, 377 Phil. 776, 788 (1999).

[39] TSN, 12 March 2002, p. 7.

[40] People v. Marahay, 444 Phil. 143, 151 (2003).

[41] Id. at 152.

[42] 439 Phil. 440 (2002).

[43] Id. at 470-471.

[44] People v. Ulit, 467 Phil. 852, 884 (2004).

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[45] People v. Orillosa, G.R. Nos. 148716-18, 7 July 2004, 433 SCRA 689, 700.

[46] People v. Lilo, 444 Phil. 778, 792 (2003).

[47] People v. Marahay, supra note 40 at 160.

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