

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LEODEGARIO G. GREGORIO, JR., ACCUSED-APPELLANT.

G.R. No. 174474. May 25, 2007

Ponente: GARCIA, J.

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GARCIA, J.:

Under automatic review is the decision[1] dated May 23, 2006 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 01978 which affirmed, with modification, an earlier decision[2] of the Regional Trial Court (RTC) of Balanga, Bataan, Branch 3, in Criminal Case Nos. 7835 and 7836, finding herein appellant Leodegario G. Gregorio, Jr. guilty beyond reasonable doubt of the crime of Rape on two (2) counts and sentencing him to suffer the extreme penalty of death.

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 by the trial court 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. 01978.

Consistent with our decision in *People v. Cabalquinto*,[5] the real name of the rape victim in this case is withheld and 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, are not disclosed in this decision.

The Case

In the court of origin, appellant Leodegario G. Gregorio, Jr. was charged with two (2) counts of rape committed against his 14-year old daughter, XXX. One of the counts, allegedly committed on September 18, 1998, is the subject of the Information docketed as Criminal Case No. 7836. The other refers to the rape committed on July 27, 2000 subject of the Information docketed in the same court as Criminal Case No. 7835. The respective informations alleged, as follows:

In Criminal Case No. 7836:

That on or about September 18, 1998 at Liyang, Pilar, Bataan, Philippines and within the jurisdiction of this Honorable Court, the said accused, thru force and intimidation, did then and there, willfully, unlawfully and feloniously succeed to have sexual intercourse with the offended party, XXX, then 12-year old minor girl, against her will and consent, thus, degrading or demeaning her intrinsic worth and dignity as a child and a human being and subjecting her to sexual abuse and emotional maltreatment, to her damage and prejudice.

CONTRARY TO LAW.

That the accused is the father of the offended party, XXX.

In Criminal Case No. 7835:

That on or about July 27, 2000 at Brgy. Bagumbayan, Bagac, Bataan, Philippines and within the jurisdiction of this Honorable Court, the said accused, thru force and intimidation, did then and there, willfully, unlawfully and feloniously succeed to have sexual intercourse with the offended party, XXX, a 14-year old minor girl, against her will and consent, thus degrading or demeaning her intrinsic worth and dignity as a child and a human being and subjecting her to sexual abuse and emotional maltreatment, to her damage and prejudice.

CONTRARY TO LAW.

That the accused is the father of the offended party, XXX.

Arraigned on December 20, 2000, appellant, assisted by counsel, entered a plea of "Not Guilty" to both charges. Thereafter, a joint trial of the cases ensued, in the course of which the prosecution presented the oral testimonies of the victim herself, XXX; Dr. Wynne Gubuan, a physician at Bagac Medical Hospital where XXX was brought for examination; a certain Eugenio Oquindo; and Estrella Tuazon, the victim's aunt.

For its part, the defense presented the appellant himself, Leodegario G. Gregorio, Jr.; his common-law wife and stepmother of the victim, Marlene Gregorio; his cousin, Gloria Mendoza; a certain Medardo Dapitan who claimed to be fishing with the accused the whole day of July 27, 2000 when the alleged second incident of rape occurred; and one Joseph Nojadera, a family friend of the Gregorios.

The Evidence

The People's version of the incidents is succinctly summarized by the Office of the Solicitor General (OSG) in its Appellee's Brief[6] as follows:

On the night of September 18, 1998, XXX was in their farm in Liyang, Pilar, Bataan. She woke up in the middle of the night when she felt someone's hand on her "private part." She saw that it was her father, appellant herein, fondling her. She tried to remove his hand, but her father got angry and told her that she had no right to refuse because she was "just his child."

When appellant took off her clothes, she trembled. She was warned that if she resisted, he would place her in the oven ("isasalang niya ako sa pugon"). And even as she gave all her strength to shield herself from his advances, appellant succeeded in inserting his penis into her vagina.

XXX kept on pushing appellant, but he was just too strong for her. Her vagina bled and she cried. After appellant had satisfied his lust, he told her daughter that before he goes to jail, he would kill her first.

XXX kept the matter to herself as she was afraid and had no one tell her harrowing experience. She was of the impression that nobody would listen to her, including her stepmother whom she used to live with in Bagumbayan, Bagac, Bataan, because all were afraid of her father. As to her mother, she has no idea where she is or if she is still alive.

After the incident, appellant in the twilight hours of July 27, 2000 raped XXX again in their house in Bagac, Bataan. He went to where XXX was sleeping, removed her blanket and clothes, and placed himself on top of her. XXX struggled but it did not help her. Appellant got mad and covered her face with a blanket. He punched her thighs, put his entire weight upon her and succeeded in inserting his penis to her vagina and at the same time kissing her. XXX, however, could not do anything but cry. After the lecherous assault, appellant went out of the house.

Confused and in anguish, XXX ran to take refuge in the house of her friend in Ibis, Bagac, Bataan. However, darkness prevented her from pursuing her course and she was prompted to stop, knowing that her friend's house was still far away. Finding herself in a not so trodden part of the road, she waited there till morning. At about 6:30 a.m., she started walking until she reached the house of her friend.

When her friend Maricel Tiburcia asked her why she ran away from home, XXX covered up what her father did and told her that the latter had been mauling her. However, when her father and her uncle Roberto Gregorio tried on separate occasions to fetch her but did not succeed, XXX was compelled to disclose the truth. She told Eugenio Oquindo, stepfather of Maricel, about the molestation she suffered in the hands of her own father. She stayed in the house of Maricel at Ibis, Bagac, Bataan from July 28, 2000 until she was placed in the custody of the DSWD in September 2000. She had to stay under its care because she did not want to go back anymore to her father at Bagumbayan, Bagac, Bataan.

On September 19, 2000, the rape was reported to the police authorities of Bagac, Bataan who on the same day accompanied XXX to the Bagac Medical Hospital for medical examination.

On the other hand, appellant's version is hinged mainly on denial and alibi. He denied having raped his daughter on September 18, 1998. As for the other charge of rape committed on July 27, 2000, appellant testified that at around 8:00 p.m. of that day, he went fishing with Medardo Dapitan at the river at Sitio Caragman, Barangay Banawang, until 5:00 a.m. of the following day. Then, they went to the house of his cousin, Gloria Mendoza, where they segregated the big fish from the small ones, as well as the shrimp. He went home while Gloria went on her way to sell their catch.

Upon reaching his house at around 9:00 a.m., he was told by his common-law wife, Marlene Gregorio, that his daughter, XXX, left their house the night before and had not returned since. It was only two days after that they were able to find XXX at her friend's house at Sitio Alambre, Barangay Ibis. Appellant asked XXX why she left and the latter told him that there were things she wanted to discuss with her friend. He even granted XXX's request to stay at her friend's house for two (2) more days.

Then, on September 26, 2000, appellant was shocked to learn that he was being charged with two counts of rape by XXX. He insinuated that his sister-in-law, Estrella Tuazon, may have instigated the filing of the charges against him as he and Estrella were not in good terms ever since he and his wife, mother of XXX and sister of Estrella, separated. In fact, Estrella owed him P22,000.00 which remained unpaid.

The other witnesses for the defense merely corroborated appellant's testimony that he went fishing from 8:00 p.m. of July 27, 2000 until 5 a.m. of the next day. They also theorized that XXX may have been possibly motivated by ill-feelings in filing the charges against appellant as the latter would often scold and beat XXX.

The Trial Court's Decision

In a "Judgment"[7] dated August 19, 2003, the trial court found appellant guilty, as charged, and accordingly sentenced him, thus:

WHEREFORE, accused LEODEGARIO G. GREGORIO, JR. is found guilty beyond reasonable doubt as principal for two (2) counts of Rape, punishable under Article 266-A, paragraph 1(a) of the Revised Penal Code and qualified under Article 266-B, paragraph 1 of the same Code, and is hereby sentenced to suffer the penalty of Death.

Accused is ordered to pay complainant XXX the amount of P75,000.00 for each count or a total of P150,000.00 as civil indemnity, P50,000.00 or a total of P100,000.00 as moral damages and P25,000.00 or a total of P50,000.00 as exemplary damages.

Let the entire record of these two cases be forwarded to the Supreme Court for automatic review within five (5) days after the fifteenth (15th) day following the promulgation of this judgment, pursuant to Section 10 of Rule 122, Revised Rules of Criminal Procedure.

SO ORDERED.

As earlier stated, the Court, in its Resolution[8] of January 17, 2006 and pursuant to its ruling in *People v. Mateo*,[9] referred the case and its records to the CA for appropriate action and disposition, whereat it was docketed as CA-G.R. CR-H.C. No. 01978.

In its decision of May 23, 2006, the CA affirmed the judgment of conviction rendered by the trial court but reduced the penalty imposed from death to reclusion perpetua on account of the failure of the informations to allege the qualifying circumstance of relationship between the victim and appellant. Says the CA:

The twin requisites of minority of the victim and her filiation with appellant must be alleged in the Information as mandated by Section 8, Rule 110 of the Revised Rules of Criminal Procedure and proved by the prosecution, otherwise conviction for rape in its qualified form which is punishable with death is barred as the omission is prejudicial to the right of the accused to be informed of the nature of the accusations against him.

Dispositively, the CA decision reads:

WHEREFORE, the Decision of the Regional Trial Court of Bataan, Branch 3, is AFFIRMED WITH MODIFICATION. Accused-appellant is found guilty beyond reasonable doubt of two (2) counts of simple rape under Article 335 of the Revised Penal Code as amended by Republic Act No. 7659. He is sentenced to suffer the penalty of reclusion perpetua for each count. Also, he is ordered to pay private complainant XXX the amount of P50,000.00 as civil indemnity and P50,000.00 as moral damages for each count or in the total amount of P200,000.00; and P25,000.00 for each count as exemplary damages.

SO ORDERED.

From the CA, the case was then elevated to this Court for automatic review. In its Resolution[10] of December 6, 2006, the Court resolved to accept the case and required the parties to submit their respective supplemental briefs.

In its Manifestation of January 25, 2007, the OSG, in behalf of appellee People, informed the Court that it is no longer filing a supplemental brief since all the arguments raised by appellant have already been addressed and refuted in the appellee's brief before the CA.

For his part, appellant filed on February 23, 2007 his supplemental brief, on the lone assigned error that -

THE HONORABLE COURT OF APPEALS ERRED IN GIVING UNDUE CREDENCE TO THE TESTIMONY OF THE PRIVATE COMPLAINANT IN UTTER DISREGARD OF THE EXACTING STANDARD OF PROOF BEYOND REASONABLE DOUBT.

Insisting that the prosecution failed to establish his guilt beyond reasonable doubt, appellant pleads for acquittal. To him, his daughter's testimony lacks the element of truthfulness. He maintains that XXX merely fabricated a tale of defloration because she harbors a grudge against him for being strict on her. In short, appellant would want the Court to view his daughter's tale as a complete falsehood and a mere concoction to get even with him. At bottom then is the issue of credibility.

The appeal must fail.

Jurisprudence is clear that when the issue boils down to credibility, the trial court judge is in a better position to calibrate it because he has observed first hand the demeanor and deportment of the witnesses. And as a rule, appellate courts will not disturb the credibility accorded by trial courts to the witnesses and their testimonies, unless certain facts and circumstances of significance have been overlooked or arbitrarily disregarded.[11] In reposing credence to XXX's tale of her harrowing experience with her own father, the trial court observed:

The accuser is the minor XXX who conveyed in stirring manner how her own father sexually defiled her. She declared that she was first raped by accused Leodegario G. Gregorio, Jr. in a far-off farm on September 18,

1998, a date she will never forget because according to her, it marked the day her father destroyed her life. She bitterly recounted the incident in tears, expelling in the process the enormous pain and fury that she had been keeping. When her father did it over again on the night of July 27, 2000, she could bear it no more, and so off in the dark she fled to where fate would lead her.[12]

Our own review of the evidence on record impels us to impart truth to what XXX unfolded before the trial court. In clear, direct and categorical manner, she recounted the sordid details of how she was raped by her own father. The Court also notes that at one point, the young girl broke down in tears and cried while testifying. If anything else, her hysterical and obviously agitated deportment while recounting on the witness box the ordeals she went through during the bestial outbursts of her father is an eloquent demonstration of truth unabashedly released from the heart of one who had truly suffered. The Court cannot bring its mind to a rest that a young girl, like XXX, could have the courage and strength to fabricate a tale of defloration against her very own father and relate in public all its horrifying details were she not in fact physically abused and violated. The stigma of such a tale and the haunting shadow it will surely cast on the life of this young girl simply negate any notion of falsehood on her part.

To discredit his daughter, appellant claims that she had long harbored a grudge against him for being strict with her, obviously suggesting that XXX fabricated the rape story to get back at him. We are not persuaded. XXX's revelation that she had been raped, coupled with her voluntary submission to humiliating medical examination and her willingness to pass through, as she did, a public trial where she could and was compelled to dish out details of an assault against her very womanhood, dignity and honor cannot be dismissed as mere concoction. Incestuous rape is not an ordinary crime that can be easily fabricated or manufactured. The very parties involved in it, let alone the psychological toil, social scandal and humiliation it is likely to generate, are already deterrent factors against its concoction. The victim, the perpetrator, nay, the entire family must deal with a crisis that goes to the very core of familial integrity.[13] In fine, the Court has every reason to believe that in going to court, XXX is simply seeking justice for the bestial acts done to her even if the ax has to fall against her very own father.

The Court likewise finds no merit in the alleged ill-motive imputed by appellant on his sister-in law, Estrella Tuazon, whom he claimed to have instigated the filing of the rape charges against him, saying that he and Estrella were not in good terms because he parted ways with Estrella's sister who is the victim's mother. To us, the reason given is too petty a cause to move Estrella to goad her niece to charge her very own father with two (2) counts of rape. Besides, motive is not necessary when, as here, the identity of the wrongdoer is positively identified by the victim herself.[14]

Also, the failure of XXX to immediately disclose the rape incidents should not be taken against her. We have ruled that failure of the victim to immediately report the rape is not necessarily an indication of a fabricated charge.[15] For sure, it is not uncommon for young girls, like XXX, to conceal for some time the assault on their virtues because of the rapist's threat on their lives, more so when the rapist is living with her, as in this case. XXX, in fact, testified that her father threatened to kill her should she report what he had done to her. Thus, XXX's delay in reporting the sexual violations is thus understandable and cannot undermine her credibility.

Appellant makes capital of the testimony of the examining physician, Dr. Gubuan, that the lacerations in XXX's vagina were about two to three weeks old when she was examined on September 19, 2000, thus casting doubt on her claim that she was raped on July 27, 2000.

We are not impressed.

The doctor's testimony and opinion do not at all detract from the commission of rape. As consistently held by the Court, a medical examination of the victim is merely corroborative in character and is not an essential element of

rape. The accused may be convicted even on the basis of the lone uncorroborated testimony of the victim, provided that her testimony is clear, positive, and credible, as in this case.[16] For sure, the existence of lacerations in XXX's vagina indicates that she was indeed raped, as in fact, lacerations in the victim's vagina, whether healed or fresh, are the best physical evidence of forcible defloration.[17]

In exculpation, appellant relies mainly on denial and alibi. He simply discharged as not true the accusation that he raped his daughter on September 18, 1998. Given the unequivocal and positive testimony of XXX vis-à-vis the incident of September 18, 1998, as charged in Criminal Case No. 7836, appellant's bare denial thereof must simply collapse. A denial, unsubstantiated by clear and convincing evidence, is negative, self-serving and merits no weight in law.[18]

As regards the rape on July 27, 2000, as charged in Criminal Case No. 7835, appellant offered alibi by way of defense. He testified that from 8 p.m. of July 27, 2000 to 5 a.m. of the following day, he went fishing with a certain Medardo Dapitan.

It is a hornbook rule that for alibi to prosper, there must be a showing that the accused was at another place at the time of the perpetration of the offense and that it was physically impossible for him to be at the locus of the crime at the time of its commission.[19] The accused must not only prove that he was somewhere else when the crime was committed; he must also convincingly demonstrate that it was physically impossible for him to be at the locus criminis at the time of the incident.

Here, the evidence shows that the place (Banawang, Bagac, Bataan) where appellant allegedly went fishing and his house at Bagumbayan, Bagac, Bataan where the rape incident of July 27, 2000 occurred, are located in the same town. In fact, appellant's live-in partner, Marlene Gregorio, declared that the distance between Banawang and Bagumbayan can be negotiated in 20 minutes by tricycle. In short, it was not physically impossible for appellant to be at the scene of the other count of rape on the date and time of its commission.

But while we are in full square with the trial court on its assessment of the evidence, we differ with it and agree with the CA that the penalty of death should not have been imposed on appellant because the relationship of the offender as the father of the victim has not been alleged in the two Informations filed before it. In imposing the death penalty, the trial court relies on Section 11(1) of Republic Act (RA) No. 7659[20] which reads:

The death penalty shall be imposed if the crime of rape is committed with any of the following attendant 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. (*Italics ours*)

The Court has repeatedly held that the circumstances mentioned in the aforesaid provision of RA 7659, i.e. minority of the victim and her relationship to the offender, are in the nature of qualifying circumstances which cannot be proved as such unless alleged in the information. To impose the death penalty on the basis of a qualifying circumstance which has not been alleged in the information would violate the accused's constitutional and statutory right to be informed of the nature and cause of the accusation against him.[21]

While the two (2) separate Informations in this case commonly allege the age or minority of XXX, both, however, did not properly and specifically allege appellant's relationship with XXX. True it is that below the usual phrase "CONTRARY TO LAW," there appears in both informations the statement "[T]hat the accused is the father of the offended party, XXX." As correctly ruled by the CA, however, such a statement is "a mere description of the identity of the party who committed the crime charged." In any event, the Solicitor General himself, in his Brief

for the People, acknowledges the flaw in the Informations filed in this case and submits that "appellant should only be held liable for the crime of simple rape and the penalty imposed upon him should be reclusion perpetua and not death."

With regard to the civil indemnity, we rule that XXX is entitled to the amount of P50,000.00 for each count of rape in keeping with the current jurisprudence authorizing the mandatory award without need of proof other than the fact of the commission of the offense.[22] In addition, the victim should be awarded moral damages in the amount of P50,000.00 for each count.[23] Finally, exemplary damages in the sum of P25,000.00 in each case of rape are likewise imposed on appellant to deter other fathers with perverse tendencies and aberrant sexual behavior from preying upon and sexually abusing their daughters.[24]

WHEREFORE, the decision dated May 23, 2006 of the Court of Appeals in CA-G.R. CR-H.C. No. 01978, adjudging appellant Leodegario G. Gregorio, Jr. guilty beyond reasonable doubt of two counts of simple rape and sentencing him to suffer the penalty of reclusion perpetua is **AFFIRMED**. Appellant is ordered to indemnify XXX the following: (a) P50,000.00 as civil indemnity for each count or a total of P100,000.00; (b) P50,000.00 as moral damages for each count or a total of P100,000.00; and (c) P25,000.00 as exemplary damages for each count or a total of P50,000.00.

Costs de oficio.

SO ORDERED.

Puno, C.J., (Chairperson), Sandoval-Gutierrez, and Azcuna, JJ., concur.
Corona, J., on leave.

[1] Penned by Associate Justice Mariano C. Del Castillo, with Associate Justice Conrado M. Vasquez, Jr. and Associate Justice Magdangal M. De Laon, concurring; Rollo, pp. 3-22.

[2] Penned by Judge Remigio M. Escalada, Jr.; CA Rollo, pp. 23-38.

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

[4] In our Resolution of August 17, 2004.

[5] G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[6] CA Rollo, pp. 114-129.

[7] CA Rollo, pp. 23-38.

[8] CA Rollo, p. 131.

[9] Supra note 3.

[10] Rollo, p. 29.

[11] People v. Abaño, G.R. No. 142728, January 23, 2002, 374 SCRA 431.

[12] CA Rollo, p. 101.

[13] People v. Flores, G.R. Nos. 134488-89, January 25, 2002, 374 SCRA 631.

[14] People v. Abacia, G.R. Nos. 135552-53, June 21, 2001, 359 SCRA 342.

- [15] People v. Traya, G.R. No. 129052, May 31, 2000, 332 SCRA 499.
- [16] People v. Velasquez, G.R. Nos. 142561-62, February 15, 2002, 377 SCRA 214.
- [17] People v. Draganio, G.R. No. 137385, January 23, 2002, 374 SCRA 365.
- [18] People v. Alviz, G.R. Nos. 144551-55, June 29, 2004, 433 SCRA 164.
- [19] People v. Gonzales, G.R. No. 141599, June 29, 2004, 433 SCRA 102.
- [20] Otherwise known as the Death Penalty Law.
- [21] People v. Panganiban, G.R. Nos. 138439-41, June 25, 2001, 359 SCRA 509.
- [22] People v. Dawisan, G.R. No. 122095, September 13, 2001, 365 SCRA 138.
- [23] People v. Madia, G.R. No. 130524, June 20, 2001, 359 SCRA 157.
- [24] People v. Galvez, G.R. Nos. 136867-68, September 24, 2001, 365 SCRA 681.

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