

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. NIDO GARTE, APPELLANT.

G.R. No. 176152. November 25, 2008

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Nido Garte (appellant) was charged and convicted of four counts of rape of AAA, his 17 year old daughter, by the Regional Trial Court, Branch 89, Quezon City by Joint Decision of May 19, 2005[1] which was affirmed with modification by the Court of Appeals.

The Amended Informations against appellant read:

Criminal Case No. Q-01-106123

That on or about the first week of April[,] 2001[,] in Quezon City, Philippines, the above-named accused with force and intimidation did then and there, willfully, unlawfully and feloniously commit acts of sexual assault upon the person of one [AAA][,] his own daughter[,], a minor 17 years of age by then and there inserting his penis inside her vagina and thereafter had carnal knowledge of her against her will and without her consent, to her damage and prejudice.[2] (Underscoring supplied)

Criminal Case No. Q-01-106124

That on or about the 23[rd] day of May, 2001[,] in Quezon City, Philippines, the above-named accused with force and intimidation did then and there, willfully, unlawfully and feloniously commit acts of sexual assault upon the person of one [AAA][,] his own daughter[,], a minor 17 years of age by then and there inserting his penis inside her vagina and thereafter had carnal knowledge of her against her will and without her consent, to her damage and prejudice.[3] (Underscoring supplied)

Criminal Case No. Q-01-106125

That on or about the second week of April, 2001[,] in Quezon City, Philippines, the above-named accused with force and intimidation did then and there, willfully, unlawfully and feloniously commit acts of sexual assault upon the person of one [AAA][,] his own daughter[,], a minor 17 years of age by then and there inserting his penis inside her vagina and thereafter had carnal knowledge of her against her will and without her consent, to her damage and prejudice.[4] (Underscoring supplied)

Criminal Case No. Q-01-106126

That on or about the 8[th] day of August, 2000, in Quezon City, Philippines, the above-named accused with force and intimidation did then and there, willfully, unlawfully and feloniously commit acts of sexual assault upon the person of one [AAA][,] his own daughter[,], a minor 17 years of age by then and there dragging her inside her room, removing her clothes, placed him[elf] on top of her and inserting his penis inside her vagina and thereafter had carnal knowledge of her against her will and without her consent, to her damage and prejudice.[5] (Underscoring supplied)

At the pre-trial of the cases which were consolidated, appellant admitted that he is the father of AAA; that at the

time of the incident, he and AAA were residing in the same place in Quezon City; and that he and AAA's mother BBB are not married, they being merely live-in partners.[6]

At the witness stand where she kept crying, AAA gave the following account:

She was born on November 9, 1982.[7] Appellant, a barangay tanod, was a tricycle driver plying in the vicinity of Sikatuna, Quezon City. Her mother BBB, a laundrywoman, would leave home in the morning and return at around 5:00 p.m. of each day of work. She, appellant and BBB were residing at a guardhouse in Sikatuna, Quezon City.

In the afternoon of August 8, 2000, on her arrival from school, appellant dragged her inside their guardhouse-residence and kissed her neck and put himself on top of her.[8] After that incident, she went to the house of, and reported the incident to her sister CCC, BBB's child by a previous relation, who restrained her from returning home to the guardhouse. She thus stayed with CCC for two weeks until BBB fetched her.[9]

In the first week of April 2001, at around 3:00 p.m., over her resistance, appellant kissed and mashed her breasts and other parts of her body and succeeded in having sexual intercourse with her in their house the door of which he "barricaded." After the incident she again repaired to her sister's house and related to her what appellant did.[10] While her sister was incensed, given the threat of appellant against revealing what he did, otherwise he would kill her and BBB, BBB was not informed thereof.[11]

In the second week of April 2001, after AAA returned from a visit to her sister, appellant again had carnal knowledge of her.[12]

On May 23, 2001, appellant, infuriated over AAA's frequent going out of the house, again had sexual intercourse with her. While AAA fiercely resisted, appellant instilled fear in her with his Batangas fan knife ("beinte nueve").[13] When at 5:00 p.m. her mother BBB arrived and found her crying, she related to her her plight. BBB did not, at first, believe her and even got mad at her.[14]

BBB eventually accompanied AAA and CCC to Camp Karingal to file a complaint against appellant and execute a Salaysay,[15] following which they proceeded to Camp Crame for AAA's medical examination.[16]

The medical examination conducted by Dr. Mary Ann P. Gajardo generated the following findings:

GENERAL AND EXTRAGENITAL:

PHYSICAL BUILT: Medium built

MENTAL STATUS: Coherent female subject

BREAST: Conical in shape with pinkish brown areola and nipples from which no secretions could be pressed out.

PHYSICAL INJURIES: See back page

PUBLIC [sic] HAIR: Scanty growth

LABIA MAJORA: Full, convex and slightly gaping

LABIA MINORA: Pinkish brown non-hypertrophied

HYMEN: Fleshy, elastic type, with deep healed laceration at 6 o'clock position.

POSTERIOIR [sic] FOURCHETTE: Rounded

EXTERNAL VAGINAL ORIFICE: Offers strong resistance of the examining finger.

VAGINAL CANAL: Narrow with prominent rugosities.

CERVIX: Normal in size, color and consistency

CONCLUSION: The subject is in non-virgin state physically.

There are no external signs of application of any form of physical trauma.

x x x [17] (Emphasis in the original; underscoring supplied)

Appellant, denying the charges, invoked alibi. By his account, he would ply his route within the Sikatuna area from 4:00 or 5:00 a.m., take lunch at home, rest for about an hour and then resume his work. He would go home at 8:00 in the evening, take dinner, watch television and then leave the house at 10:00 p.m. to discharge his duties as a barangay tanod until the following day. Why his daughter would impute rape charges against him, he had no idea as he had been enjoying a harmonious relationship with family members except his stepdaughter CCC who harbors ill feelings against him for unknown reasons.[18] By Joint Decision of May 19, 2005,[19] the trial court convicted appellant, disposing as follows:

WHEREFORE, premises considered[,] judgment is rendered finding accused Nido Garte guilty [of] four (4) counts of the crime of Rape[,] defined and penalized under Art. 226-A in relation to subsec. 1, Art. 226-B, RPC or R.A. 8353. Accordingly, he is hereby sentenced to suffer death for each count of rape as charged in the four (4) informations docketed as Q-01-1061123, Q-01-106124, Q-01-106125 and Q-01-106126.

He is further ordered to pay complainant for each count of rape the sum of P75,000.00 as civil indemnity (P. vs. Dinambing, 379 SCRA 107) or a total of P300,000 and the sum of P50,000.00, as moral damages for each count of rape, or a total of P200,000.00.

With costs de oficio.[20] (Underscoring supplied)

In convicting appellant, the trial court observed:

In a clear, direct, positive, straightforward manner and continuous crying on the witness stand, complainant declared that she was ravished or raped four times by no less than her father. It has been said that a witness who testifies in a categorical, straightforward, spontaneous and frank manner and remains consistent on her accusation is a credible witness. Consequently, accused's denial of the crimes gains no significance at all. Similarly, the fact that the evidence for both the prosecution and the defense was bereft of any motive for the complainant to testify the way she did renders her a very credible witness. When there is no evidence to show that a witness was actuated by improper motive, her identification of the accused as the perpetrator of the crime should be given full faith and credit. Besides motive plays insignificant importance by the fact that accused was positively identified as the author of the crimes.

It is worth stating also that complainant in relating her unforgettable experience in the hands of the accused cried continuously on the witness stand. To the mind of the Court this act of complainant, who was under solemn oath while on the witness stand is another strong badge of her credibility. The Supreme Court...ruled that the crying of the offended party on the witness stand narrating her horrible ordeals earmarks her credibility with the verity born out of human nature and experience. One thing more, it is doctrinal that no woman especially a young girl like the complainant, who has not been exposed to the intricacies of the world and in her right mind would cry rape by her father, allow the examination of her private parts, or subject herself and her family to the embarrassments and humiliation concomitant to the prosecution of the case unless her charges were true and her motive is her fervent desire to seek justice. Besides, the accusations of the complainant w[ere] corroborated by the medical finding that she is no longer in a virgin state. While medical finding on non-virginity of an offended party is not controlling on the truth of the accusation, the same has been repeatedly accepted by the Supreme Court as corroborating evidence on the crime of rape.

Similarly, it is clear from the testimony of the complainant that she was raped four times under threats, force and in the presence of a knife and her efforts to resist the unpardonable act of the accused, who is her father, and pleas for mercy, did not deter his evil lustful spirit in committing the crime. . . Even assuming that there was absence of any force or intimidation, the same does not affect the nature of the crime. The rule firmly settled in this jurisdiction is that in a rape committed by a father against his own daughter, the former's authority and moral ascendancy over the latter substitute for violence or intimidation.[21] (Emphasis and

underscoring supplied; citations omitted)

On appeal, appellant cited inconsistencies in the evidence for the prosecution, viz: AAA's two Salaysays[22] relative to the number of times she claimed to have been raped; BBB's testimony relative to the number of times AAA informed her mother about the rapes;[23] and AAA's claim on direct examination that appellant used a knife whereas she claimed on cross examination that appellant poked a gun at her.[24] And appellant argued that it would be unusual for a father to rape his daughter in broad daylight, without bothering to close the windows and lock the door.[25]

By Decision of September 27, 2006,[26] the appellate court dismissed appellant's appeal in this wise:

Accused-appellant's reliance on the alleged discrepancies between [AAA]'s Sinumpaang Salaysay and handwritten sworn affidavit on the number of times she was raped is untenable. We take note of the steadfast doctrine prevailing in our criminal justice system that inconsistencies found in the ex parte affidavits do not necessarily downgrade the credibility of a witness. Almost always, ex parte affidavits are considered incomplete and often inaccurate. They are products sometimes of partial suggestions and at other times of want of suggestions and inquiries, without the aid of which witnesses may be unable to recall the connected circumstances necessary for accurate recollection.

In this regard, the Court takes note of the fact that although [AAA]'s educational attainment is that of a second year high school student, the latter admitted however that she was not well versed in written English. This would account for the non-inclusion of the first rape, more so if we consider the disparity in the dates of the commission of the first rape which occurred a year before the commission of the subsequent rapes. As testified to by [AAA], she was not able to mention the August 8, 2000 rape incident as she was confused at the time. Added to this, the evidence on hand also show that [AAA] was not beside the policeman when the Sinumpaang Salaysay was prepared and that thereafter, she just signed the same without reading it. Significantly, the records reveal that the handwritten affidavit, executed subsequent to the Sinumpaang Salaysay, is a supplemental affidavit for [AAA]'s earlier sworn statement.

Also worthwhile to note is the fact that while on the stand, [AAA] remained firm and steadfast that what she stated in her sworn affidavits were correct despite the consistent prodding of the defense counsel...

x x x x

Considering the foregoing, the Court finds such alleged discrepancy in [AAA]'s sworn affidavits on the non-inclusion of the first rape is a trivial matter which do not in any way cast doubt on her credibility.

In the same manner, we rule that the alleged inconsistency with respect to the weapons used in the commission of the rapes is likewise unavailing as we find the same as a mere extraneous matter and does not remove the fact that the crime of rape was repeatedly committed by the accused-appellant against the victim through the use of force and intimidation...

x x x x

Meanwhile, the alleged inconsistency between the testimonies of [AAA] and her mother, [BBB] as to the number of times [AAA] informed the latter of the rape incidents is again a trivial matter which does not remove the fact that the latter corroborated the claim of her daughter that she was raped by her father, [BBB]'s husband. True, [BBB] admitted that she first had doubts in the truthfulness of [AAA]'s claim - considering its disturbing implications, but in the end she herself was convinced from her observations of her daughter's conduct who always appeared to be frightened...

On the matter of accused-appellant's contention on the improbability of the commission of the rapes during daytime, well-settled is the rule that lust is no respecter of time and place, and in this case, also of kinship...[27] (*Italics in the original; emphasis and underscoring supplied*)

In view, however, of the enactment of Republic Act No. 9346,[28] the appellate court modified the penalty of death to reclusion perpetua in each of the four counts of rape. In addition to the award for civil indemnity and moral damages, the appellate court awarded exemplary damages in the amount of P25,000 for each count.

Thus the decretal portion of the appellate court decision reads:

WHEREFORE, premises considered, the decision of the Regional Trial Court, Branch 89 of Quezon City in Criminal Cases Nos. Q-01-106123, Q-01-106124, Q-01-106125 and Q-01-106126 finding accused-appellant Nido Garte GUILTY beyond reasonable doubt of the crime of rape under Article 266-A in relation to paragraph 1 of Art. 226-B of the Revised Penal Code, as amended by Republic Act No. 8353, in each case is AFFIRMED with MODIFICATION in that, accused-appellant is sentenced is sentenced to suffer the penalty of reclusion perpetua for each count of rape and is also hereby ordered to pay [AAA] P75,000 as civil indemnity; P50,000 as moral damages; and P25,000 as exemplary damages, in each case.[29] (Underscoring supplied)

Hence, the present appeal of appellant.

Appellant and the People have by separate Manifestations informed that they are no longer filing supplemental briefs as they had sufficiently discussed their respective positions in the briefs they earlier filed.[30]

Appellant's conviction for each of the four counts must be upheld.

A review of the records of the cases shows that AAA's testimony has satisfactorily met the test of credibility. Why AAA would impute serious charges against him, appellant could not advance any reason. In the recent case of *Campos v. People*,[31] this Court once again reiterated the following well-settled rule:

. . . [A] rape victim's testimony against her parent is entitled to great weight since, customarily, Filipino children revere and respect their elders. These values are so deeply ingrained in Filipino families that it is unthinkable for a daughter to concoct brazenly a story of rape against her father, if such were not true. Indeed, courts usually give greater weight to the testimony of a girl who fell victim to sexual assault, especially a minor, particularly in incestuous rape as in this case, because no woman would be willing to undergo a public trial and bear the concomitant shame, humiliation, and dishonor of exposing her own degradation were it not for the purpose of condemning injustice and ensuring that the offender is punished.[32]

Appellant's harping on the alleged inconsistencies in AAA's claim respecting the kind of weapon used by appellant and the number of times she informed her mother about the incidents does not persuade. Especially given the number of times AAA was abused, she is not expected to have "the memory of an elephant and the cold precision of a mathematician." [33] Indeed, minor lapses are to be expected when a person is recounting details of a traumatic experience which are commonly too painful and agonizing to recall, especially in a courtroom atmosphere.[34]

More specifically on the kind of weapon used by appellant to threaten AAA, AAA's claims bearing thereon are not necessarily conflicting.[35] AAA corrected herself by pointing out that aside from the knife, appellant also threatened her with a gun. If the defense wanted to impeach AAA, it should have followed the procedure laid down by Rules of Court[36] by laying the predicate.[37] No such effort was done, however.

In any event, whether appellant used a gun or a knife to threaten AAA becomes immaterial as his moral ascendancy as a father over her replaces "force and intimidation". *People v. Rodavia*, which was correctly cited by the Office of the Solicitor General, is instructive:

...[T]he use of a knife or any other weapon for that matter is not an element of the crime of rape. As long as the evidence shows that force, violence or intimidation was used to have a carnal knowledge of the victim, the

requisite components of the crime are deemed satisfied.

It bears emphasizing that in a rape committed by a father against his own daughter, the former's moral ascendancy and influence sufficiently takes the place of violence or intimidation. Under the same circumstances, proof of force and violence is not even essential, because the moral and physical ascendancy of the father over his daughter is sufficient to cow her into submission to his bestial desires.[38] (Emphasis and underscoring supplied)

Appellant's denial and alibi are of course legitimate defenses in rape cases. To successfully invoke alibi, however, the accused must not only prove his presence at another place at the time of the commission of the offense. He must also demonstrate that it would be physically impossible for him to be at the locus criminis at the time of the commission of the crime.[39] Appellant, on whom the onus probandi lies, failed to discharge the same, however, as he in fact testified that he would go home for lunch and dinner in between plying his tricycle in the vicinity.

The Court affirms then the appellate court's decision, with modification, however. Following Republic Act No. 9346 which provides:

Section 3. Persons convicted of offenses punished with reclusion perpetua, or whose sentences will be reduced to reclusion perpetua, by reason of this Act, shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended[,] (Underscoring supplied),

appellant is not eligible for parole.[40] And consistent with prevailing jurisprudence, the award by the trial court of moral damages in the amount of P50,000 in each count, which was affirmed by the appellate court, should be increased to P75,000 for each count.[41]

WHEREFORE, the assailed September 27, 2006 Decision of the Court of Appeals in CA-GR CR-H.C. No. 01099 is **AFFIRMED** with **MODIFICATION** in that appellant is not eligible for parole, and his liability for moral damages is increased from P50,000 to P75,000 in each of the four counts of rape. In all other aspects, the challenged decision is affirmed.

SO ORDERED.

Quisumbing, (Chairperson), Tinga, Velasco, Jr., and Brion, JJ., concur.

[1] Records, pp. 196-206.

[2] Id. at 94.

[3] Id. at 95.

[4] Id. at 96.

[5] Id. at 97.

[6] Pre-Trial Order, id. at 105.

[7] Exhibit "C," id. at 165.

[8] TSN, July 2, 2003, pp. 2-7.

[9] TSN, July 7, pp. 3-4.

[10] TSN, July 2, 2003, pp. 9-12.

- [11] TSN, July 7, 2003, p. 6.
- [12] Id. at 6-7.
- [13] Id. at 9-10.
- [14] Id. at 11-12.
- [15] Exhibit "A," records, p. 163. The Salaysay was sworn to before Police Inspector Anacleto Sugang Enopia on July 26, 2001.
- [16] TSN, July 7, 2003, pp. 13-16.
- [17] Exhibit "G," records, p. 169.
- [18] TSN, June 16, 2004, pp. 2-7; September 7, 2004, pp. 2-5.
- [19] Records, pp. 196-206.
- [20] Id. at 205-206.
- [21] Id. at 203-204.
- [22] Exhibits "A" and "B," id. at 163-164.
- [23] CA rollo, p. 46.
- [24] Id. at 47.
- [25] Ibid.
- [26] Id. at 99-110; penned by Justice Rodrigo V. Cosico with the concurrence of Justices Edgardo F. Sundiam and Celia C. Librea-Leagogo.
- [27] Id. at 104-106.
- [28] Otherwise known as "An Act Prohibiting the Imposition of Death Penalty in the Philippines."
- [29] CA rollo, p. 109.
- [30] Rollo, pp. 15-17 for the People and pp. 22-24 for appellant.
- [31] G.R. No. 175275, February 19, 2008, 546 SCRA 334.
- [32] Id. at 345-346.
- [33] People v. Gloria, G.R. No. 168476, September 27, 2006, 503 SCRA 742, 753.
- [34] Vide People v. Palac, G.R. No. 175600, April 23, 2008, 552 SCRA 616, 625.
- [35] On cross-examination, AAA testified:
- Q
- All these incidents, the accused had a pointed knife?
- A
- Yes, once, sir.

Q

How many times?

A

3 times he poked a gun at me.

(TSN, August 11, 2003, pp. 7-8)

[36] Section 13, Rule 132 provides:

How witness impeached by evidence of inconsistent statements. - Before a witness can be impeached by evidence that he has made at other times statements inconsistent with his present testimony, the statements must be related to him, with the circumstances of the times and places and the persons present, and he must be asked whether he made such statements, and if so, allowed to explain them. If the statements be in writing they must be shown to the witness before any question is put him concerning them.

[37] In *People v. Relucio*, No. L-38790, November 9, 1978, 86 SCRA 227, 288, this Court held:

It is a basic postulate in the law on evidence that every witness is presumed to be truthful and perjury is not to be readily inferred just because apparent inconsistencies are evinced in parts of his testimony. Every effort to reconcile the conflicting points should first be exerted before any adverse conclusion can be made therefrom. These considerations lie at the base of the familiar rule requiring the laying of a predicate, which i[n] essence means simply that it is the duty of a party trying to impugn the testimony of a witness by means of prior or , for that matter, subsequent inconsistent statements, whether oral or in writing, to give the witness a chance to reconcile his conflicting declarations, such that it is only when no reasonable explanation is given by him that he should be deemed impeached. (Underscoring supplied)

[38] 426 Phil. 707, 719 (2002).

[39] *Campos v. People*, supra note 31 at 335.

[40] Vide *People v. Nazareno*, G.R. No. 167756, April 9, 2008, 551 SCRA 16; *People v. Dela Paz*, G.R. No. 177294, February 19, 2008, 546 SCRA 363.

[41] *People v. Ramos*, G.R. No. 179030, June 12, 2008, 554 SCRA 423; *People v. Nazareno*, G.R. No. 167756, April 9, 2008, 551 SCRA 16; *People v. Dela Paz*, G.R. No. 177294, February 19, 2008, 546 SCRA 363.

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