

## PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ELPIDIO IMPAS Y POLBERA, APPELLANT.

*G.R. No. 176157 [Formerly G.R. No. 155937]. June 18, 2009*

Ponente: QUISUMBING, J.

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### QUISUMBING, J.:

On appeal is the Decision[1] dated September 25, 2006, of the Court of Appeals in CA-G.R. CR-H.C. No. 01457, affirming with modification the Decision[2] dated July 5, 2002 of the Regional Trial Court (RTC) of Antipolo City, Branch 73, in Criminal Case No. 93-10413. The trial court had convicted appellant for raping AAA,[3] allegedly his daughter.

Appellant was charged under the following information:

That on or about the 7[th] day of November 1993, in the Municipality of Antipolo, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs and by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the undersigned complainant, AAA, a minor, eleven (11)[4] years of age, against her will and consent.

CONTRARY TO LAW.[5]

On arraignment, the appellant pleaded not guilty. Thereafter, trial on the merits ensued.

Based on the testimonies of AAA, the victim; BBB, the sister of AAA; and Dr. Jesusa Nieves-Vergara, Medico-Legal Officer of Philippine National Police Camp Crime Laboratory, the prosecution established the following facts:

On November 7, 1993, around seven o'clock in the evening, AAA was inside their house. She was with appellant (allegedly her father), her sister BBB and her brothers CCC and DDD. BBB, CCC and DDD were nine, seven and five years old, respectively, at that time.[6]

While watching television with her siblings, AAA was suddenly pulled by the appellant towards the room of their house and was told to look for his shorts. AAA asked her brother to look for the shorts but the latter did not obey her, so she looked for them herself.[7]

After AAA found his shorts, appellant again pulled AAA towards the room, and this time, he took off AAA's shorts and panty. AAA cried and tried to resist appellant's advances. In response to AAA's resistance, appellant forced, boxed, and then pushed her towards the bed. Appellant then laid on top of her and inserted his penis into her private part while embracing her tightly. After completing his beastly act, appellant told AAA not to tell anyone what he did. AAA, however, confided to BBB that appellant raped her. AAA and BBB likewise reported the incident to their mother, EEE, when the latter arrived home later that evening.[8]

EEE thereafter sought the help of FFF, AAA's aunt. A week after the incident, FFF accompanied AAA to the

police station to file a complaint for rape against appellant.

AAA was examined on November 24, 1993 by Dr. Jesusa Nieves-Vergara. Dr. Vergara found that AAA had healed lacerations on her hymen and that AAA was eight to nine weeks pregnant.

For his part, appellant denied the charge against him and raised the defense of alibi. He alleged that on November 7, 1993, he was in Quiapo, Manila, as a stay-in plumber because he had a three-month contract to install water pipes. During the said three-month period, he went home one Saturday night and was arrested for a charge of rape. He attributed the charge to a misunderstanding regarding the financial needs of his wife's brothers and sisters. He also admitted that he was similarly charged and convicted for raping AAA before Branches 71 and 72 of the RTC of Antipolo City.[9]

After trial, the RTC convicted appellant for simple rape in its Decision dated July 5, 2002. The dispositive portion of the decision reads:

WHEREFORE, premises considered, accused ELPIDIO IMPAS y POLBERA is hereby found guilty beyond reasonable doubt for the crime of rape and is hereby sentenced the penalty of reclusion perpetua and to indemnify the victim in the amount of P50,000.00 pesos as moral damages. The period during which the accused undergoes preventive imprisonment shall be credited in his favor.

SO ORDERED.[10]

In convicting the appellant, the RTC relied on the testimonies of the three witnesses of the prosecution. The RTC found weak appellant's defenses of denial and alibi in light of the affirmative, categorical and consistent testimonies of AAA and BBB. The RTC also stated that the only consolation that appellant could get in this case is that since he had only been charged for simple rape, he could only be adjudged guilty and penalized for the same.[11]

In view of the RTC's imposition of the penalty of reclusion perpetua on appellant, the case was elevated to us for automatic review. However, we transferred and referred this case to the Court of Appeals, in line with *People v. Mateo*. [12]

In its decision dated September 25, 2006, the Court of Appeals affirmed with modification the RTC decision. The dispositive portion of the appellate court's decision reads:

WHEREFORE, premises considered, the instant appeal is DENIED. The assailed Decision appealed from dated July 5, 2002 of the RTC of Antipolo City, Branch 73, is hereby AFFIRMED with modification with respect to the civil aspect, directing accused-appellant to pay the private complainant the amount of P50,000.00 as civil indemnity and P25,000.00 as exemplary damages, in addition to the P50,000.00 moral damages awarded by the court a quo.

SO ORDERED.[13]

In his appeal, the appellant assigned a single error:

THE LOWER COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED.[14]

Before us, the main issue now for resolution is whether appellant's guilt concerning the charge of rape has been proven beyond reasonable doubt.

Appellant contends that what AAA actually narrated before the court were the details of the alleged first rape incident, which was the subject of another case, and not the details of the alleged third rape incident which is the

subject of this case. He contends that AAA's statements in court were the same as her allegations in her Sworn Statement concerning the details of the first rape incident and that AAA even admitted during her cross examination that she referred to the first rape incident when she testified that appellant raped her while her two brothers and her sister were in the sala. Such being the case, appellant cannot be convicted of the crime charged, the evidence not being in conformity with the allegations in the information and the conviction being in violation of his right to be informed of the nature and cause of the accusation against him.

The appeal has no merit.

At the outset, it is worth noting that the appellant in his brief did not deny raping AAA on or about November 7, 1993. What he merely contended was that AAA exclusively testified on the details of her alleged first sexual encounter with the appellant and it did not allegedly touch on the last rape incident which is the subject of this case.[15]

A careful scrutiny of the records of this case would reveal that the aforesaid contention is bereft of merit. During her testimony, AAA explicitly said that the appellant raped her three times on different occasions and that the last one was committed sometime in November 1993. She had also tearfully recounted how the appellant pulled her towards the room of their house and how the appellant raped her for the third time.[16]

By the said categorical and straightforward testimony alone, it would have been sufficient to prove that the appellant indeed raped AAA sometime in November 1993.

In the case of *People v. Bejic*,[17] we had held that:

It is a well-settled doctrine that the testimony of a child-victim is given full weight and credence considering that when a woman, especially a minor, says that she had been raped, she says in effect all that is necessary to show that rape was committed. Youth and immaturity are badges of truth and sincerity.

[No] young woman, especially of tender age, would concoct a story of defloration at the hands of her own father, allow an examination of her private parts, and thereafter pervert herself by being subject to a public trial, if she was not motivated solely by the desire to obtain justice for the wrong committed against her. It is highly improbable that a girl of tender years, not yet exposed to the ways of the world, would impute to her own father a crime so serious as rape if what she claims is not true. This is more true in our society since reverence and respect for the elders is deeply rooted in Filipino children and is even recognized by law.[18]

We had likewise stated in another case that:

Incestuous rape is not an ordinary crime that can be easily fabricated or manufactured. The very parties involved in it, let alone the psychological toll, 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. In fine, the Court has every reason to believe that in going to court, [the victim] is simply seeking justice for the bestial acts done to her even if the ax has to fall against her very own father.[19]

Moreover, whatever doubt, if there is any, as to the testimony of AAA regarding the last rape incident would immediately be extinguished by BBB's testimony, which clearly corroborated the testimony of AAA. BBB said that the appellant pulled and dragged AAA inside the room of their house on three different occasions. She also testified seeing the appellant covering the door of the aforesaid room with a blanket and a mat after he was able to drag AAA inside it. She also recounted that she heard her sister shouting while inside the room.[20]

Furthermore, in BBB's sworn statement,[21] which she had identified in her testimony, she had forthrightly stated among others the following:

x x x x

T:

Kailan mo sila huling nakita na hinahatak ang ate mo ng tatay mo?

S:

Noon [S]abado po, Nobiembre 20, 1993, gabi po noon, alas-6:00 ng gabi, at wala po ang nanay ko sa amin.

T:

Sa ikaliliwanag ng pagsisiyasat na ito, maari mo ba na sabihin sa akin ang iba pang nakita mo na ginagawa ng iyong tatay sa iyong ate?

S:

Opo, noon [S]abado ng Nobiembre 1993, alas seis ng gabi, sa loob ng amin bahay ay inutusan si ate AAA ko na isarado ang pinto at bintana ng akin tatay, at nakita ko na hinihila si ate ng akin tatay na papunta sila sa loob ng amin kwarto, at nakarinig po ako ng kalampag ng kalampag na ingay galing sa loob ng amin kwarto, at sinabi ko sa nanay ko ang pangyayari kinabukasan.

T:

Meron ka pa ba na sasabihin sa akin na idadagdag o babawasin sa iyong salaysay?

S:

Opo.

T:

Ano ang sasabihin mo na idadagdag sa iyong salaysay?

S:

Lagot po si ate kung magsusumbong si ate kahit na kanino na narinig ko na sinabi ng akin tatay kay ate noon [S]abado.

T:

Sa iyo at sa ibang kapatid mo ano naman ang sinabi sa iyo ng iyong tatay?

S:

Papaluin niya ako pag ako (BBB) ay nagsumbong kay Nanay, at wala na po akong sasabihin.[22]

x x x x

To obtain a conviction for qualified rape, however, the minority of the victim and her relationship to the offender must be both alleged in the information and proved with certainty.[23] In the case at bar, only the circumstance of minority was alleged in the information and the prosecution failed to show independent proof to establish the presence of the qualifying circumstances of minority and relationship. Thus, the RTC and the Court of Appeals correctly held that the appellant may only be convicted of simple rape and not qualified rape.

As regards the award of damages, however, we find a slight modification in order. The civil indemnity and moral damages awarded by the Court of Appeals is proper. The award of civil indemnity is mandatory in rape convictions. A civil indemnity of P50,000 is automatically given to the offended party without need of further

evidence other than the commission of rape. In accordance with prevailing jurisprudence, the amount of P50,000 for moral damages is likewise appropriate.[24]

However, we find it proper to delete the Court of Appeals' award of exemplary damages. Article 2230 of the Civil Code provides that "(i)n criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances." In this case, however, no aggravating circumstance was shown in the records concerning the commission of this particular crime of rape. Thus, the award of exemplary damages has no factual and legal basis.[25]

WHEREFORE, the Decision dated September 25, 2006 of the Court of Appeals in CA-G.R. CR-H.C. No. 01457 is hereby AFFIRMED with the MODIFICATION that the award of P25,000 as exemplary damages is DELETED for lack of factual and legal basis.

**SO ORDERED.**

Ynares-Santiago,[\*] Chico-Nazario,\*\*] Leonardo-De Castro,[\*\*\*] and Brion, JJ., concur.

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[\*] Designated member of the Second Division per Special Order No. 645 in place of Associate Justice Conchita Carpio Morales who is on official leave.

[\*\*] Designated member of the Second Division per Special Order No. 658.

[\*\*\*] Designated member of the Second Division per Special Order No. 635 in view of the retirement of Associate Dante O. Tinga.

[1] CA rollo, pp. 88-95. Penned by Associate Justice Estela M. Perlas-Bernabe, with Associate Justices Renato C. Dacudao and Rosmari D. Carandang concurring.

[2] Id. at 12-17. Penned by Executive Judge Mauricio M. Rivera.

[3] See *People v. Ching*, G.R. No. 177150, November 22, 2007, 538 SCRA 117, 121. Pursuant to Republic Act No. 9262, otherwise known as the "Anti-Violence Against Women and Their Children Act of 2004" and its implementing rules, the real name of the victim, together with the real names of her immediate family members, is withheld and fictitious initials instead are used to represent her, both to protect her privacy (*People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419, 421-426).

[4] AAA stated that she was 12 years old in her sworn statement dated November 23, 1993. See Records, p. 3. AAA's birth certificate was not likewise presented as evidence during the trial of the case.

[5] Records, p. 1.

[6] TSN, January 26, 1995, pp. 7-10.

[7] Id. at 10-15.

[8] Id. at 15-20.

[9] TSN, March 1, 1996, pp. 3-6, 11-13.

[10] CA rollo, p. 17.

[11] Id. at 13-17.

[12] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640, 657.

[13] CA rollo, p. 94.

[14] Id. at 44.

[15] Id. at 48.

[16] TSN, January 26, 1995, pp. 3-9.

[17] G.R. No. 174060, June 25, 2007, 525 SCRA 488.

[18] Id. at 502-503.

[19] *People v. Gregorio, Jr.*, G.R. No. 174474, May 25, 2007, 523 SCRA 216, 228.

[20] CA rollo, p. 92.

[21] Records, pp. 5-6.

[22] Id. at 5.

[23] *People v. Corpus*, G.R. No. 175836, January 30, 2009, pp. 7-8.

[24] *People v. Mahinay*, G.R. No. 179190, January 20, 2009, p. 9.

[25] *People v. Bang-ayan*, G.R. No. 172870, September 22, 2006, 502 SCRA 658, 671.

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