

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LUSTRISIMO ARELLANO, ACCUSED-APPELLANT.

G.R. No. 176640. August 22, 2008

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

On June 25, 2001, four criminal cases, docketed as Criminal Case Nos. 11724, 11725, 11726, and 11727, the first three for statutory rape, and the last for simple rape, were filed against accused-appellant Lustrisimo Arellano before the Regional Trial Court (RTC) of Batangas City. The accusatory portions of the Informations respectively read:

Criminal Case No. 11724:

That in the year 1993 at Brgy. x x x, Batangas City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, motivated by lust and lewd designs, by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of one [AAA], then a 7-year old minor, against her will.

That the aggravating circumstance of relationship is attendant in the commission of the offense, the accused being the father of the offended party.[1] (Underscoring supplied)

Criminal Case No. 11725:

That in or about August, 1994, at Brgy. xxx, Batangas City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, motivated by lust and lewd designs, by means of force, threat and intimidation, did then and there willfully, unlawfully, and feloniously have carnal knowledge of one [AAA], then an 8-year-old minor, against her will.

That the aggravating circumstance of relationship is attendant in the commission of the offense, the accused being the father of the offended party.[2] (Underscoring supplied)

Criminal Case No. 11726:

That in the year of 1997 at Brgy. xxx, Batangas City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, motivated by lust and lewd designs, by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of one [AAA], then an 11-year old minor, against her will.

That the aggravating circumstance of relationship is attendant to the commission of the offense, the accused being the father of the offended party.[3]

Criminal Case No. 11727:

That in or about January, 2000 at Brgy. xxx, Batangas City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, motivated by lust and lewd designs, by means of force, threat, and

intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of one [AAA], then a 13-year old minor, against her will.

That the aggravating circumstance of relationship is attendant in the commission of the offense, the accused being the father of the offended party.[4]

From the account of the private complainant AAA,[5] the following are gathered:

Sometime in 1993, while AAA, then seven years old, was left at home with her father-herein appellant, he carried her to a room in the house where he pulled down her underwear and undressed himself. He then forced her to lie down, kissed her breasts, and placed his penis into her sex organ, causing her to cry as she was in pain. She did not, however, disclose to anyone what appellant did to her because he had threatened to kill her mother if she did.

Sometime in August 1994, while the then eight year old AAA was again left alone at home with appellant, he inserted his hand inside her underwear, and touched her sex organ. He then undressed her, placed himself on top of her, and put his penis into her sex organ. Despite her pleas, appellant was not restrained. Again she did not disclose to anyone what appellant did to her under the same threat made by him.

Sometime in 1997, AAA, then 11 years old, was still again left alone at home with appellant. Anticipating that appellant might again do what he had previously done to her, she hid inside the bathroom, but appellant pursued her and once there he rubbed his penis against her sex organ. He then brought her to, and forced her to lie down on a bed and then inserted his penis into her sex organ, in the course of which something came out of appellant's penis which he wiped with a rug. She did not also disclose what appellant did to her under similar threats made by appellant.

Sometime in January 2000, AAA, then 13 years old and again left alone at home with appellant, the latter touched her breasts, made her lie down on his bed, and as appellant was consummating the sexual act, he withdrew his penis on hearing someone knock at the door, put on his short pants as she did hers. Her elder brother had arrived and on seeing her crying, he inquired why, but she kept mum. Later that day, however, when her mother, a laundrywoman, arrived home, she related all the incidents because she was "already hirap na hirap." [6]

To prove that AAA was below 12 years old at the time of the occurrence of the first, second, and third offenses and that appellant is her biological father,[7] the prosecution presented AAA's birth certificate.[8]

At the witness stand, Dr. Melodee Mercado (Dr. Mercado) who medically examined AAA[9] opined that her findings after her examination of AAA, viz:

EXTERNAL GENITALIA: Normal looking (+) pubic hair, (+) incomplete healed laceration at 3 o'clock and complete healed laceration at 8 and 9 o'clock, (+) hyperemia of perihymenal area at 3 and 9 o'clock.

INTERNAL EXAMINATION: Admits 1 finger with ease, 2 fingers with slight difficulty.

x x x x,[10]

could have resulted from penile penetration.[11]

Also at the witness stand, AAA's eldest sister BBB related[12] that when AAA told her about the rape incidents, she realized that like her, AAA was also being raped by appellant, drawing her (BBB) to file her own rape charge against him which was raffled to Branch 42 of the RTC of Batangas City.

Denying the charges, appellant surmised that AAA filed the cases against him at BBB's instigation because he was very strict with them and did not allow BBB to have a boyfriend as she was still studying.[13]

Branch 1 of the RTC of Batangas City, finding the positive testimony of AAA more credible than the denial of appellant, convicted him of all four charges, aggravated by relationship, by Consolidated Decision[14] of June 3, 2002, disposing as follows:

WHEREFORE, the accused, LUSTRISIMO ARELLANO y ESPIRITU, is found guilty beyond reasonable doubt of THREE (3) COUNTS OF AGGRAVATED STATUTORY RAPE and ONE (1) COUNT OF AGGRAVATED RAPE under Articles 266-A and 266-B of the Revised Penal Code, and is hereby sentenced to suffer the supreme penalty of death for each one of the charges in these four (4) cases, with costs. He is further ordered to indemnify [AAA] with the sum of P50,000.00 for each of the four offenses or a total of P200,000.00 as moral damages.

Considering that the capital punishment in these cases is imposed on the accused, their records are hereby directed to be forwarded immediately to the Supreme Court for automatic review under the law, and the accused is remanded to the New Bilibid Prisons in Muntinlupa City, there to await for the final judgment in these cases.

SO ORDERED.[15] (Underscoring supplied)

By Decision[16] of July 31, 2006, the Court of Appeals, to which this Court forwarded the appeal following *People v. Mateo*,[17] resolving in the negative the sole issue raised by appellant - whether delay in reporting the incidents of rape affected the credibility of AAA, affirmed the trial court's decision. It, however, modified the penalty by imposing reclusion perpetua instead of death, and additionally awarding P75,000 and P25,000 in each case representing civil indemnity and exemplary damages, respectively. Thus it disposed:

WHEREFORE, the consolidated judgment of conviction in Criminal Cases Nos. 11724, 11725, 11726, and 11727 is AFFIRMED with the following MODIFICATIONS:

(1)

In Criminal Case No. 11724, the accused-appellant Lustrisimo E. Arellano is hereby sentenced to suffer the penalty of reclusion perpetua and to pay the victim [AAA], in addition to the award of moral damages, P75,000.00 as civil indemnity and P25,000.00 as exemplary damages.

(2)

In Criminal Cases Nos. 11725, 11726, and 11727, the penalty of death imposed on the accused-appellant for each count of qualified rape is hereby reduced to reclusion perpetua, pursuant to Republic Act No. 9346. The accused-appellant is also ordered to pay the victim, in addition to moral damages, P75,000.00 as civil indemnity and P25,000.00 as exemplary damages, for each count of the qualified rape committed.[18] (Underscoring supplied)

Hence, the present appeal.

The Office of the Solicitor General and appellant have manifested that their arguments were already exhaustively discussed in the respective briefs they filed before the Court of Appeals,[19] hence, they would no longer file Supplemental Briefs.

The appeal is bereft of merit.

Indeed, AAA's delay in filing the cases against appellant does not, in light of the attendant facts and circumstances, detract from her credibility. Delay in reporting a rape incident renders the charge doubtful only if the delay is unreasonable and unexplained.[20]

In the case of AAA who was only seven years old when the first rape took place and still a minor at the time the fourth rape occurred, her explanation that appellant threatened to kill her mother if she disclosed what he did to her, coupled with the fact that appellant is her own father who exercises moral ascendancy over her, reasonably justifies the delay.

As in most criminal cases, decision thereof hinges on credibility - of witness and of testimony. This Court appreciates no reason to doubt AAA's credibility and that of her testimony vis-à-vis the findings of Dr. Mercado.[21] Appellant's bare denial of the charges fails to overcome the evidence against him.[22]

In Criminal Case Nos. 11724, 11725, 11726, the elements of statutory rape as defined by Article 266-A (1) (d) of the Revised Penal Code, which provides:

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 is otherwise unconscious;

c)

By means of fraudulent machinations or grave abuse of authority;

d)

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

x x x x,

have been established by the prosecution. And so have the elements of simple rape in Criminal Case No. 11727. For in a rape committed by a father against his daughter, his moral ascendancy and influence over his daughter substitutes for violence or intimidation,[23] hence, evidence thereof is unnecessary to secure his conviction.[24]

The appellate court's Decision with modification is in order, except with respect to 1) its affirmance of the trial court's award of moral damages in the amount of P50,000 in Criminal Case Nos. 11725, 11726, and 11727, which

amount must be increased to P75,000 following current jurisprudence[25]; and 2) its award of P75,000 as civil indemnity in Criminal Case No. 11724, which must be reduced to P50,000.

Following *People v. dela Cruz*,[26] P75,000 civil indemnity and P75,000 moral damages in rape cases are awarded only if they are classified as heinous. At the time the rape in Criminal Case No. 11724 took place in 1993, R.A. No. 7659, "AN ACT TO IMPOSE DEATH PENALTY ON CERTAIN HEINOUS CRIMES, AMENDING FOR THAT PURPOSE THE REVISED PENAL LAWS, AS AMENDED, OTHER SPECIAL PENAL LAWS, AND FOR OTHER PURPOSES," which was approved on December 13, 1993 and was to become effective fifteen days after its publication in two national newspapers of general circulations, was not yet effective.[27]

With regard to Criminal Case Nos. 11725, 11726, and 11727, the award of P75,000 civil indemnity and moral damages of P75,000 is in order even if the penalty in each case has been modified to reclusion perpetua, qualified rape having remained classified as heinous.[28]

WHEREFORE, the challenged decision of the Court of Appeals dated July 31, 2006 is AFFIRMED with MODIFICATION in that the award of P50,000 moral damages in Criminal Cases Nos. 11725, 11726, and 11727 which it affirmed is increased to P75,000, and the civil indemnity and moral damages in Civil Case No. 11724 are both reduced to P50,000.

SO ORDERED.

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

[1] Records (Criminal Case No. 11724), p. 1.

[2] Records (Criminal Case No. 11725), p. 1.

[3] Records (Criminal Case No. 11726), p. 1.

[4] Records (Criminal Case No. 11727), p. 1.

[5] TSN, August 8, 2001, pp. 2-15.

[6] TSN, August 8, 2001, p. 10.

[7] Records (Criminal Case No. 11724), pp. 65, 71.

[8] Exhibit "B," Id. at 67.

[9] TSN, September 12, 2001, pp. 2-5.

[10] Exhibit "C-1," records (Criminal Case No. 11724), p. 68.

[11] TSN, September 12, 2001, pp. 4-5.

[12] TSN, October 22, 2001, pp. 3-6.

[13] TSN, February 6, 2002, pp. 3-9.

[14] Records (Criminal Case No. 11724), pp. 93-99.

[15] Id. at 98-99.

[16] Penned by Court of Appeals Associate Justice Vicente S.E. Veloso, with the concurrence of Associate

Justices Conrado M. Vasquez, Jr. and Amelita G. Tolentino. CA rollo, pp. 95-117.

[17] G.R. No. 147678-87, July 7, 2004, 433 SCRA 640.

[18] CA rollo, pp. 115-116.

[19] Rollo, pp. 27-33.

[20] Vide *People v. Audine*, G.R. No. 168649, December 6, 2006, 510 SCRA 531, 548.

[21] Vide *People v. Bidoc*, G.R. No. 169430, October 31, 2006, 506 SCRA 581, 495-496.

[22] *Id.* at 498.

[23] Vide *People v. Matrimonio*, G.R. No. 82223-24, November 13, 1992, 215 SCRA 613, 631.

[24] *People v. Servano*, 454 Phil. 256, 282 (2003).

[25] Vide *People v. Audine*, G.R. No. 168649, December 6, 2006, 510 SCRA 531, 553; *People v. Salome*, G.R. No. 169077, August 31, 2006, 500 SCRA 659, 676.

[26] 529 SCRA 109, 188 (2007).

[27] Footnote 35 of the Court of Appeals July 31, 2006 Decision reads:

Although the rape was committed sometime in 1993, the possibility that it was committed on December 31, 1993 is very remote since complainant [AAA] stated in her "Salaysay" given at the Police Station of Batangas City that the rape happened "Noon pong ako ay Grade 1, 1993 magbabakasyon napo noon x x x," which means that the crime could have happened near the end of the school year 1992-1993. See Exh. A, p. 8, CA rollo, pp. 95, 113.

[28] Vide *People v. Salome*, G.R. No. 169077, August 31, 2006, 500 SCRA 659, 676.

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