

PEOPLE OF THE PHILIPPINES, Appellee, vs. ELMER GLIVANO y SILVALLANA, Appellant.*G.R. No. 177565 (Formerly 162634-83). January 28, 2008*

Ponente: NACHURA, J.

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This is not the first time that the Court has encountered such an outrageous display of moral depravity and irreverent disregard of parental duties. Far from being benumbed, however, this Court remains convulsed in shock, horror and fury at this account of a perverted father repeatedly molesting his 7-year-old stepdaughter for four years, and of a mother deserting her traumatized child to take the side of her lecherous husband.

For final review is the trial court's conviction of appellant Glivano for fifty (50) counts of qualified rape committed from 1995-1999 against the private complainant, his stepdaughter. By its July 10, 2006 Decision,[1] the Court of Appeals (CA), in CA-G.R. H.C. CR No. 02077, affirmed in toto the January 12, 2004 Judgment[2] of the Regional Trial Court (RTC), Branch 61 of Gumaca, Quezon in Criminal Cases Nos. 6551-G to 6600-G.

Records reveal that the appellant first carried out his bestial act on his then 7-year-old stepdaughter in 1995 at their residence in Pitogo, Quezon. At that time, the only ones in the house were the appellant, the private complainant and the latter's 4-year-old sister. While the 4-year-old was fast asleep, appellant laid the private complainant down on the floor and undressed her. He then took off his shorts, positioned himself on top of her, forced his erect member into her genital canal, and bombarded it. She felt pain so she tried to resist and fight, but she was no match to her monstrous stepfather.[3]

This same atrocity was perpetrated by appellant on the hapless child whenever her mother was not home and her siblings were either sleeping or playing outside. And this was frequent, for the child was defiled on an average of thrice a week for an agonizing four years.[4]

Fearing that her mother would not believe her, she kept her harrowing experience to herself. It was in the last quarter of 1999 when she finally mustered enough courage to tell her mother in a letter of her stepfather's vileness. Already 11 years old at the time, the child wrote, "Hindi ko na po makayanan ang ginagawa sa akin." [5] Initially, the child's mother did not believe the story. Later, however, the mother sought the assistance of a barangay kagawad who referred the child's case to an officer of the Department of Social Welfare and Development (DSWD).[6]

On December 17, 1999, the child was examined by the Municipal Health Officer of Pitogo who discovered healed hymenal lacerations at 2, 6 and 10 o'clock positions. The doctor also found that the child's genital canal could admit two fingers with ease—an indication that it was subjected to penetration of a hard object.[7]

Consequently, twenty-five (25) separate Informations[8] for Rape defined and punished under Article 335 of the Revised Penal Code (RPC), as amended by Republic Act (R.A.) No. 7659, were filed against the appellant with the RTC of Gumaca, Quezon. These covered the acts of defilement committed from 1995 to October 1997.

Another twenty-five (25) separate Informations[9] for Rape defined and punished under Articles 226-A and 266-B of the RPC, as introduced by R.A. 8353,[10] were filed with the trial court to include appellant's sexual molestation of the private complainant from November 1997 to November 1999.

During the trial, the prosecution presented as evidence, among others, the testimonies of the private complainant, the municipal health officer and the barangay kagawad.[11] The birth certificate of the victim, the certificate of marriage of her mother and of the appellant, and the medical certificate of the private complainant were, likewise, introduced in evidence.[12]

For his part, appellant interposed the defenses of denial and alibi. He claimed that he was working everyday in the fishpond about 10 meters away from their house. He spent most of his time working, if not in the fishpond, in some other place. It was only on Sundays when he stayed long hours in the house to rest with his family. He further claimed that his mother, his sister and the children of his sisters were also living with them, thus, there was no way then for him to have raped the victim repeatedly over a period of four years.[13]

Abandoning her child's side to defend her husband, the victim's mother testified that she did not observe any indication that her daughter was raped—she never saw her insentient, and she did not notice any bloodstain on her underwear whenever she washed them. She claimed that in 1995 and in 1996, she never left the house for her children were still small. She only went out when she had to buy something from the store, or when she had to gather firewood just outside their house. She knew everything that happened in the house and if her daughter was raped, she would have known. She further testified that her husband was not always in the house on account of his work. In 1999, she worked in Gumaca only for a month as a housemaid because her husband was sick for three weeks. When her daughter told her about the abuse, she was confused, transferred her daughter to another place, and asked assistance from the barangay kagawad. She later asked that the charges against the appellant be dropped, because she was pregnant and their children were still small and if her husband would be punished, no one would support their family.[14]

On January 12, 2004, the trial court rendered Judgment[15] convicting the appellant of fifty (50) counts of qualified rape and imposing upon him the death penalty. The dispositive portion of the decision reads:

WHEREFORE, in view of all the foregoing considerations, judgment is hereby rendered finding the accused ELMER GLIVANO GUILTY beyond reasonable doubt of the crime of qualified rape in Criminal Cases Nos. 6551-G to 6575-G, inclusive, defined and punished under Article 335 of the Revised Penal Code as amended by Republic Act (RA) No. 7659 and in Criminal Cases Nos. 6576-G to 6600-G, inclusive, defined and punished under Article 266-A of the Revised Penal Code as amended by Republic Act (RA) No. 8353 and is hereby sentenced to DEATH for each of the fifty (50) rapes and to pay P75,000.00 as civil indemnity and additional amount of P50,000.00 by way of moral damages plus P25,000.00 as exemplary damages in each count of rape or the total amount (sic) P3,750,000.00 as civil indemnity and a total amount (sic) of P2,500,000.00 by way of moral damages plus the total amount (sic) of P1,250,000.00 as exemplary damages for the fifty (50) cases of qualified rape.

SO ORDERED.[16]

On direct appeal to this Court in G.R. Nos. 162634-83, we transferred the cases to the appellate court for intermediate review[17] following the doctrine in *People v. Mateo*. [18]

On July 10, 2006, the CA, as aforesaid, affirmed in toto the decision of the trial court.[19] Thus, the Court now finally reviews the trial court's and the appellate court's uniform findings.

We affirm appellant's conviction. We, however, modify the penalty imposed and the moral damages awarded.

Three basic principles guide the courts in resolving rape cases: (1) an accusation for rape can be made with facility; it is difficult to prove but more difficult for the accused, though innocent, to disprove; (2) in view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense.[20]

Central in the determination of guilt for the crime of rape is the credibility of the complainant's testimony, because in rape cases, the accused may be convicted solely on the testimony of the victim, provided it is credible, natural, convincing and consistent with human nature and the normal course of things.[21] In this case, the eloquent testimony of the victim, coupled with the medical findings attesting to her non-virgin state, should be enough to confirm the truth of her charges.[22]

Furthermore, the general rule is that the findings of the trial court on the credibility of witnesses are entitled to the highest respect and are not to be disturbed on appeal in the absence of any clear showing that the trial court overlooked, misunderstood or misapplied facts or circumstances of weight and substance which would have affected the result of the case.[23] The stringency with which appellate tribunals have observed this rule is predicated on the undisputed vantage of the trial court in the evaluation and appreciation of testimonial evidence.[24]

In the instant case, we agree with the trial court's finding that the victim's narration of her painful ordeal is clear, categorical, straightforward, sincere and truthful, thus:

Analyzing carefully the testimony of [the victim] giving an account on how her chastity was defiled by her stepfather the least on fifty (50) occasions, the Court is fully convinced of [the victim's] sincerity, candor and truthfulness of the rapes on her and the number of times she was raped. There is not even a single iota of evidence showing that the account of her defilements was the result of falsehood. True, there were occasions in her testimony that she could not remember the time and month of defilement on her chastity but this is understandable for a rape victim cannot be expected to mechanically keep and give an accurate account of the traumatic and horrifying experience she had undergone. Given private complainant's tender age and trauma of her experience, we cannot expect her to immediately recall and give an account and detailed description of the rape.

It is reputable precepts that testimonies of rape victims who are young or of tender age are credible. Although [the herein victim's] testimony is not perfect in detail, it bears the earmarks of truth. x x x[25]

Appellant's defenses of denial and alibi, therefore, cannot demolish the victim's clear and convincing narration and positive identification of her assailant. Denial and alibi are disfavored on account of the facility with which they can be concocted to suit the defense of an accused.[26] Here, appellant has not even shown that it was physically impossible for him to have been at the crime scene—the fishpond where he worked was just a stone's throw away from their house. Rather than detract from the complainant's account, the testimony of the mother even supports the hypothesis that appellant had all the opportunity to repeatedly rape the child, especially during the time she worked as a housemaid in another place.

The delay in the reporting of the crime, the absence of a threat on the life of the victim, and the presence of other occupants in the house cannot weaken the force of the victim's clear and convincing statements. Jurisprudence states that the delay in reporting the commission of rape is not an indication of a fabricated charge. The charge is beclouded - only if the delay is unreasonable and unexplained.[27] Often, victims would rather bear the ignominy and the pain in private than reveal their shame to the world.[28] Likewise, a stepfather, who exercises moral and physical ascendancy over his stepdaughter, need not make any threat against her because the latter is cowed into submission when gripped with the fear of refusing the advances of a person she customarily obeys.[29] Rape may,

likewise, be committed in a room adjacent to where the victim's family is sleeping, or even in a room shared with other people. There is no rule that rape can only be committed in seclusion.[30]

The Court, therefore, finds the appellant guilty beyond reasonable doubt of all the counts of rape of his stepdaughter.

The Court, however, modifies the penalty imposed by the trial court. R.A. 9346[31] now mandates that *reclusión perpetua*, without eligibility for parole, is the penalty to be imposed in lieu of the death penalty when the law violated makes use of the nomenclature of the penalties of the RPC. Thus, appellant herein is meted the reduced penalty of *reclusión perpetua* for each of the fifty (50) counts of rape.

With regard to the award of damages for each count of rape, the Court finds the civil indemnity of P75,000.00 and the exemplary damages of P25,000.00 to be correct. The award of P50,000.00 as moral damages, however, is deficient. In line with current jurisprudence, the moral damages awarded must be increased to P75,000.00 in each of the 50 counts without need of pleading or proof of basis thereof.[32]

WHEREFORE, premises considered, the July 10, 2006 Decision of the Court of Appeals (CA) in CA-G.R. H.C. CR No. 02077 affirming the January 12, 2004 Judgment of the RTC, Branch 61 of Gumaca, Quezon in Criminal Cases Nos. 6551-G to 6600-G is likewise AFFIRMED, with the following MODIFICATIONS: (1) the penalty of death is reduced to *reclusión perpetua* without eligibility for parole for each of the 50 counts of rape; and (2) the award of moral damages is increased to P75,000.00 for each count.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Azcuna, Tinga, Reyes, and Leonardo-De Castro, JJ., concur.
Chico-Nazario, and Velasco, Jr., JJ., on official leave.

[1] Penned by Associate Justice Bienvenido L. Reyes, with Associate Justices Regalado E. Maambong and Enrico A. Lanzanas, concurring; rollo (G.R. No. 177565), pp. 3-19.

[2] Rollo (G.R. Nos. 162634-83), pp. 122-178.

[3] Id. at 150-152.

[4] Id. at 152-167.

[5] Id. at 170.

[6] Id. at 143.

[7] Id. at 142.

[8] Id. at 56-79.

[9] Id. at 80-104.

[10] R.A. No. 8353 or the Anti-Rape Law of 1997, which took effect on October 22, 1997, repealed Article 335 of the Revised Penal Code.

[11] Rollo (G.R. Nos. 162634-83), pp. 139-144.

[12] Id. at 55 and 144.

[13] Id. at 144-146.

[14] Id. at 146-148.

[15] Supra note 2.

[16] Rollo (G.R. Nos. 162634-83), pp. 177-178.

[17] Id. at 332.

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

[19] See note 1.

[20] People v. Malones, 469 Phil. 301, 318 (2004).

[21] People v. Pascua, 462 Phil. 245, 253-254 (2003).

[22] People v. Oden, G.R. Nos. 15511-22, April 14, 2004, 427 SCRA 634, 655.

[23] People v. Sta. Ana, 353 Phil. 388, 401-402 (1998).

[24] People v. Quiñanola, 366 Phil. 390, 404 (1999).

[25] Rollo (G.R. Nos. 162634-83), p. 167. (Citations omitted.)

[26] People v. Alvarez, 461 Phil. 188, 200 (2003).

[27] People v. Baway, 402 Phil. 872, 892 (2001).

[28] People v. Capareda, G.R. No. 128363, May 27, 2004, 429 SCRA 301, 314.

[29] People v. Balacano, 391 Phil. 509, 521 (2000).

[30] Id.

[31] Entitled “An Act Prohibiting the Imposition of Death Penalty in the Philippines,” approved on June 24, 2006.

[32] People v. Audine, G.R. No. 168649, December 6, 2006, 510 SCRA 531, 553; People v. Alfaro, 458 Phil. 942, 963 (2003).

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