

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSELITO A. LOPIT, ACCUSED-APPELLANT.

G.R. No. 177742. December 17, 2008

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

Before us on automatic review is the Decision[1] of the Court of Appeals (CA) dated June 30, 2006 in CA-G.R. CR-H.C. No. 01896 which affirmed, with modifications, the decision[2] of the Regional Trial Court (RTC) of Bulanao, Tabuk, Kalinga, Branch 25, in Criminal Case No. 85-2003, finding herein accused-appellant guilty beyond reasonable doubt of the crime of Qualified Rape committed against his own daughter and sentencing him to suffer the extreme penalty of death.

Consistent with *People v. Cabalquinto*, [3] the Court withholds the real name of the rape victim. Instead, fictitious initials of AAA 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, is not disclosed in this decision.[4] In this regard, the mother is referred to as BBB.

In three (3) separate Informations[5] dated September 15, 2003, accused-appellant was charged with three (3) counts of rape committed against his own 14-year old daughter AAA on September 5, 7, and 9, 2003. Except for the dates of the commission of the crime, the Informations were identically worded, thus:

CRIM. CASE NO. 85-2003

The undersigned accuses [accused-appellant], a detention prisoner at the PNP of Tabuk, of the crime of RAPE, defined and penalized under Republic Act Numbered 8353, committed as follows:

That on or about September 5, 2003 at San Julian, Tabuk, Kalinga, and within the jurisdiction of this Honorable Court, the accused, through force, threat and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of her daughter [AAA], who is a minor, fourteen (14) years of age, against her will.

CONTRARY TO LAW.[6]

On November 4, 2003, accused-appellant, duly assisted by Atty. Marcelino K. Wacas of the Public Attorney's Office (PAO), entered a plea of "not guilty" in Criminal Case Nos. 85-2003, 86-2003 and 87-2003. [7]

On November 10, 2003, the PAO lawyer verbally moved to be relieved as counsel for accused-appellant and with the latter's concurrence, the motion was granted. In his stead, Atty. Daniel Dapeg of the Integrated Bar of the Philippines Legal Aid Pilot Project was appointed as accused-appellant's counsel de oficio.[8]

During the pre-trial conference held on November 12, 2003, accused-appellant, assisted by counsel, manifested his desire to plea-bargain. In open court, he expressed willingness to plead guilty in Criminal Case No. 85-2003, on the condition that the Informations in Criminal Case Nos. 86-2003 and 87-2003 be withdrawn. Victim AAA,

assisted by her mother BBB and the provincial prosecutor, expressed her conformity thereto.[9]

Thus, accused-appellant entered a new plea of "guilty" to the crime of rape in Criminal Case No. 85-2003.[10] This was done with the assistance of counsel de oficio and after the trial court conducted searching inquiry into the voluntariness and full comprehension of the consequences of the accused-appellant's plea.

Thereafter, the trial court commenced with the reception of evidence to prove accused-appellant's guilt and degree of culpability.

The prosecution presented the victim AAA and her mother BBB as witnesses, while accused-appellant testified on his own defense.

After trial, the court a quo rendered its Decision on November 28, 2003 imposing upon the accused-appellant the supreme penalty of death thus:

Accordingly, judgment is hereby rendered finding the accused guilty beyond reasonable doubt of the crime of rape attendant the qualifying and aggravating circumstances of minority and relationship, victim [AAA] being 15 years old and daughter of [accused-appellant] and hereby sentences the said accused the supreme penalty of death and to indemnify minor victim P75,000.00, by way of civil indemnity, moral damages in the amount of P100,000.00 and P50,000.00 by way of exemplary damages, plus cost.

Transmit the record of the case to the Office of the Clerk of Court, Supreme Court of the Philippines for review.

SO ORDERED.[11]

The records of these cases were forwarded to this Court for automatic review, in view of the death penalty imposed.

In our Resolution[12] of August 10, 2004, We accepted the appeal and directed the Chief, Judicial Records Office, to send notices to the parties to file their respective briefs and to the Director of the Bureau of Corrections, to confirm the detention of the accused at the National Penitentiary. Accused-appellant filed his Appellant's Brief[13] on April 11, 2005, while the People, through the Office of the Solicitor General (OSG), filed its Appellee's Brief[14] on May 31, 2005.

Conformably with this Court's decision in *People v. Mateo*,[15] accused-appellant's appeal by way of automatic review was transferred to the CA where it was docketed as CA-G.R. CR-H.C. No. 01896.

The prosecution, through the testimonies of the victim (AAA) and witness (BBB), the victim's mother, established the following facts:

[AAA], then fourteen (14) years old having been born on October 2, 1988, is the daughter of the [accused-appellant] and BBB, a barangay midwife; they were married on May 10, 1986. On September 5, 2003 at around 2:00 in the afternoon, [AAA], a third year high school student at Tabuk National High School was in their house together with her mentally retarded sister CCC. At that time, their mother [BBB] was in San Julian Elementary School. Suddenly [AAA]'s father [accused-appellant], a farmer, arrived drunk and forced the victim to have sexual intercourse with him. She struggled but her efforts were in vain since [accused-appellant] was strong. [Accused-appellant] removed his pants and pinned the victim on the bed, pulled down her pants and inserted his penis into her vagina. [AAA] cried. After doing the bestial act, [accused-appellant] left but not before threatening [AAA] that he would kill her, her mother and siblings if she reported the matter. As further testified by the victim, she had been sleeping with her father on the cement floor of their unfinished house for some time and that her father started staying with them only in 2002 since he had been staying in Laguna as a soldier in the Philippine Army.

Terrified and disgusted by what happened to her, the victim left home on September 10, 2003. She stayed in the house of Rita Carbonel in San Francisco, Tabuk, Kalinga. On September 11, 2003, [BBB] came looking for her and it was only then that the victim revealed the sexual assaults committed by her father. Without delay, [BBB] accompanied her daughter to the police headquarters where the victim's statement was taken.

[BBB] testified that she and [accused-appellant] were married on May 10, 1986 at Calanasan, Cagayan. Although she did not present any document to prove such assertion nor did she expressly and categorically state that [accused-appellant] was the victim's father, the victim repeatedly referred to [accused-appellant] as her father all throughout her testimony. Their relationship was never refuted by the [accused-appellant] who in fact admitted in open court that [AAA] was one of his daughters.

On the other hand, accused-appellant testified on his own version of the events which transpired on September 5, 2003:

For his part, [accused-appellant] testified that on September 5, 2003, he came home drunk and fell asleep naked on the cemented floor; that he was awakened when someone placed a mat and a blanket for him. He thought that his daughter was his wife, so he had sex with her. [Accused-appellant] manifested remorse and declared that he pleaded guilty as he had no money to fight his case also to secure a reduction of the penalty that will be imposed on him.

On June 30, 2006, the CA promulgated the herein challenged decision affirming in most part the decision of the trial court with modification only in the amount of the award of moral and exemplary damages. Pertinently, the CA decision reads in part:

With respect to the civil aspect of the crimes, We sustain the award of civil indemnity in the amount of P75,000.00 since rape was committed in its qualified form. However, the trial court's award of P100,000.00 as moral damages and P50,000.00 as exemplary damages must be modified. In line with existing jurisprudence, the award of moral damages should be in the amount of P75,000.00, without need of further proof. Likewise, exemplary damages is reduced to P25,000.00 in line with existing jurisprudence.

A final note: Notwithstanding current moves for the abolition of the death penalty, no legislation or rules have yet been promulgated relative thereto as of the time of the writing of his Decision, hence We are constrained to affirm the penalty imposed by the court a quo which We find to be conformable to the facts and existing law.

WHEREFORE, premises considered, the appealed Decision is hereby AFFIRMED with MODIFICATION that the award of moral damages is reduced to P75,000.00 and exemplary damages to P25,000.00 or a total of P175,000.00. Let the record of this case be elevated to the Honorable Supreme Court for review pursuant to Rule 124, Section 13 of the Revised Rules on Criminal Procedure as amended by A.M. No. 00-5-03-SC.

SO ORDERED.

On April 23, 2007, the CA forwarded the records of the case to this Court for automatic review.[16]

In the Resolution[17] dated June 26, 2007, We required the parties to simultaneously submit their respective supplemental briefs. However, the parties filed separate manifestations stating that they were waiving the filing of supplemental briefs and instead opted to stand by their respective briefs filed with the CA.

In his Brief, accused-appellant alleged that the trial court gravely erred in imposing on him the supreme penalty of death.

Before delving into the main issue of the case, it is necessary to determine whether the trial court has satisfied the requirement as mandated by Rule 116 of the Rules on Criminal Procedure, which provides:

SEC. 3. Plea of guilty to capital offense; reception of evidence.- When the accused pleads guilty to a capital

offense, the court shall conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea and require the prosecution to prove his guilt and the precise degree of culpability. The accused may also present evidence on his behalf.

Explicitly, when the accused pleads guilty to a capital offense, the court shall conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea and require the prosecution to prove his guilt and the precise degree of his culpability. The accused may also present evidence on his behalf. Under the foregoing Rule, three things are enjoined upon the trial court when a plea of guilty to a capital offense is entered: (1) the court must conduct a searching inquiry into the voluntariness of the plea and the accused's full comprehension of the consequences thereof; (2) the court must require the prosecution to present evidence to prove the guilt of the accused and the precise degree of his culpability; and (3) the court must ask the accused if he desires to present evidence on his behalf and allow him to do so if he desires.[18]

We explained the rationale of the rule in *People v. Albert*,[19] thus:

The rationale behind the rule is that courts must proceed with more care where the possible punishment is in its severest form--death--for the reason that the execution of such a sentence is irrevocable and experience has shown that innocent persons have at times pleaded guilty. The primordial purpose then is to avoid improvident pleas of guilt on the part of an accused when grave crimes are involved since he might be admitting his guilt before the court and thus forfeit his life and liberty without having fully understood the meaning, significance and consequences of his plea. Moreover, the requirement of taking further evidence would aid the Supreme Court on appellate review in determining the propriety or impropriety of the plea.

It is not enough to inquire as to the voluntariness of the plea; the court must explain fully to the accused that once convicted, he could be meted the death penalty; that death is a single and indivisible penalty and will be imposed regardless of any mitigating circumstance that may have attended the commission of the felony. Thus, the importance of the court's obligation cannot be overemphasized, for one cannot dispel the possibility that the accused may have been led to believe that due to his voluntary plea of guilty, he may be imposed a lesser penalty,[20] which was precisely what happened here.

The trial court proffered the following questions to accused-appellant to determine the voluntariness and full comprehension of his change of plea from "not guilty" to "guilty," thus:[21]

COURT

Q

Mr. Lopit y Abulao you have been arraigned yesterday with the Information for Rape in Criminal Case No. 85-2003, did you confer with your newly designated counsel de oficio regarding your plea?

WITNESS

A

Yes, Your Honor.

Q

After having been confer (sic) with him that you entered a plea of guilty for the Information of Rape you voluntary done (sic) of your own perception?

A

Yes, Your Honor.

Q

Will you tell us the reason why you have pleaded guilty to the offense?

A

I have no money to fight my case, Your Honor.

Q

Is that the reason why you have admitted or because you are repenting for the intention you have committed?

A

That is the only reason, Your Honor.

Q

Are you telling us that you did not rape your daughter?

A

No, Your Honor.

Q

If you did not rape your daughter, why did you plead guilty?

A

Atty. Wagas told me to admit one case in order to reduce the penalty, Your Honor.

Q

In fact there are three (3) Criminal Cases for Rape allotted against you involving your daughter, is that correct?

A

Yes, Your Honor.

Q

Did you believe that beneficial to you to admit one?

A

Yes, Your Honor.

Q

And that is the reason you pleaded guilty?

A

Yes, Your Honor.

Q

Is it not therefore the lack of money that to fight a case and prompted you to plea of guilty?

A

Yes, both Your Honor.

Q

So it is the reason?

A

Yes Your Honor.[22]

Clearly, Section 3, Rule 116 of the 1985 Rules of Criminal Procedure was not satisfactorily complied with. The trial court should have taken the necessary measures to see to it that accused-appellant really and freely comprehended the meaning, full significance and consequences of his plea but it did not. It failed to explain to accused-appellant that the penalty imposable for the crime attended by the qualifying circumstance of minority and filiation, as alleged in the Information against him, is death, whether or not he pleads guilty and regardless of the presence of other mitigating circumstances. Accused-appellant's justification that he had no money to defend his case and his belief that the penalty would be reduced if he pleaded guilty were not sufficient reasons for the trial court to allow a change of plea from not guilty to one of guilty. It was the duty of the judge to see to it that the accused did not labor under this mistaken impression.

Still, the trial court's shortcomings will not necessarily result in accused-appellant's acquittal. The evidence for the prosecution, independently of accused-appellant's plea of guilty, adequately established his guilt beyond reasonable doubt as charged in the Informations. The testimony of the victim AAA is worthy of belief and enough to convict accused-appellant. She testified in a candid, straightforward and categorical manner. She narrated in open court that on September 5, 2003, she was ravished by her own father. She recalled thus

My mother went to San Juan Elementary School at 2: o'clock he was forcing me but I refused. He was strong and I kicked him and he put my pants down and then he took advantage of me.[23]

AAA recounted how accused-appellant was able to insert his private organ into hers in the midst of her tears and in full view of her mentally challenged sister who was unfortunately oblivious of their father's dastardly act.[24] After satisfying his bestial instinct, accused-appellant left his daughter AAA with a threat: "No agipulong ka, patayen kayo amin." (If you will report, I will kill you all).[25]

Thus, accused-appellant's plea of guilty effectively corroborated and substantiated victim AAA's allegation that accused-appellant indeed raped her.

In his Brief, accused-appellant does not question his conviction for raping his own daughter. He only assails the imposition of the death penalty by the CA. Accused-appellant contends that while the Information alleged the qualifying circumstances of both his relationship to the victim and the latter's minority, the prosecution failed to prove beyond reasonable doubt these qualifying circumstances. The People through the OSG, while maintaining that accused-appellant's guilt has been proven beyond reasonable doubt, agrees that accused-appellant should only be convicted of simple rape, as the qualifying circumstances of the victim's minority and her filiation with accused-appellant were not proven beyond reasonable doubt.

We agree.

Article 266 of the Revised Penal Code, as amended by RA 7659 and further amended by RA 8353, 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;

Art. 266-B. Penalties.- Rape under paragraph 1 of the next preceding article shall be punished by reclusion perpetua.

xxx xxx xxx

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying 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;

In the prosecution of criminal cases, especially those involving the extreme penalty of death, nothing but proof beyond reasonable doubt of every fact necessary to constitute the crime with which an accused is charged must be established. Qualifying circumstances or special qualifying circumstances must be proved with equal certainty and clearness as the crime itself; otherwise, there can be no conviction of the crime in its qualified form. As a qualifying circumstance of the crime of rape, the concurrence of the victim's minority and her relationship to the accused-appellant must be both alleged and proven beyond reasonable doubt.[26]

Here, the Information alleged the concurrence of the victim's minority and her relationship to accused-appellant. However, except for the bare testimony of the victim and her mother as to the former's age as well as their filiation to the accused-appellant, no birth certificate or baptismal certificate or school record and marriage contract exist on record to prove beyond reasonable doubt the victim's age or her minority at the time of the commission of the offense. In *People v. Tabanggay*,[27] we held:

Jurisprudence dictates that when the law specifies certain circumstances that will qualify an offense and thus attach to it a greater degree of penalty, such circumstances must be both alleged and proven in order to justify the imposition of the graver penalty. Recent rulings of the Court relative to the rape of minors invariably state that in order to justify the imposition of death, there must be independent evidence proving the age of the victim, other than the testimonies of prosecution witnesses and the absence of denial by the accused. A duly certified certificate of live birth accurately showing the complainant's age, or some other official document or record such as a school record, has been recognized as competent evidence.

In the instant case, we find insufficient the bare testimony of private complainants and their mother as to their ages as well as their kinship to the appellant. x x x [We] cannot agree with the solicitor general that appellant's admission of his relationship with his victims would suffice. Elementary is the doctrine that the prosecution bears the burden of proving all the elements of a crime, including the qualifying circumstances. In sum, the death penalty cannot be imposed.

There is no showing that the victim's birth certificate and accused-appellant's marriage contract were lost or destroyed or were unavailable without the prosecution's fault. Therefore, the prosecution failed to prove beyond reasonable doubt that the alleged special qualifying circumstance of minority attended the commission of the crime of rape. Hence, accused-appellant should be convicted only of simple rape. Simple rape is punishable by a single indivisible penalty of reclusion perpetua. Article 63 of the Revised Penal Code provides that in "all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed."

Accordingly, the imposed indemnity and moral damages should be reduced to (P50,000.00) pursuant to our ruling in *People v. Gonzales*,[28] that upon a finding of the fact of rape, the award of civil indemnity ex delicto is mandatory. If the death penalty is imposed, the indemnity should be P75,000.00; otherwise, the victim is entitled

to P50,000.00. An additional P50,000.00 should be awarded as moral damages. Moral damages are automatically granted in rape cases without need of further proof other than the commission of the crime, because it is assumed that a rape victim has actually suffered moral injuries entitling her to such an award.

Finally, the award of exemplary damages in the amount of P25,000.00 is in order. Exemplary damages may be awarded in criminal cases as part of civil liability if the crime was committed with one or more aggravating circumstances. Relationship as an alternative circumstance under Article 15 of the Revised Penal Code is considered aggravating in the crime of rape. In this case, victim AAA was raped by her own father. Accused-appellant admitted the allegation of such relationship in his direct testimony. Hence, complainant is entitled to the award of exemplary damages in the amount of P25,000.00 in order to deter fathers with perverse tendencies and aberrant sexual behavior from preying upon their young daughters.[29]

WHEREFORE, the Decision dated June 30, 2006 of the CA is AFFIRMED with MODIFICATION in that accused-appellant is found GUILTY beyond reasonable doubt of SIMPLE RAPE and is sentenced to suffer the penalty of reclusion perpetua and to pay the victim AAA, indemnity ex delicto of P50,000.00, moral damages of P50,000.00 and exemplary damages of P25,000.00. No pronouncement as to costs.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Carpio Morales, Azcuna, Tinga, Chico-Nazario, Velasco, Jr., Nachura, Reyes, and Brion, JJ., concur.
Corona, J., on official leave.

[1] Penned by Associate Justice Portia Aliño-Hormachuelos with Associate Justice Amelita G. Tolentino and Associate Justice Santiago Javier Ranada concurring; rollo, pp. 3-14.

[2] Penned by Judge Milnar T. Lammawin; CA rollo, pp. 10-19.

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

[4] *People v. Guillermo*, G.R. No. 173787, April 23, 2007, 521 SCRA 597, 599.

[5] *Supra* note 2 at 11-12.

[6] CA rollo, p. 5.

[7] RTC Record, p. 18.

[8] *Id.* at 21.

[9] TSN, dated November 12, 2003, pp. 3-8.

[10] RTC Record, p. 25.

[11] CA Record, p. 19.

[12] *Id.* at 23.

[13] *Id.* at 38-49.

[14] *Id.* at 66-77.

[15] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640, 657-658.

[16] Rollo, p. 1.

[17] Id. at 17.

[18] People v. Murillo, G.R. No. 134583, July 14, 2004, 434 SCRA 342, 349.

[19] People v. Albert, G.R. No. 114001, December 11, 1995, 251 SCRA 136, 145-146.

[20] People v. Ibañez, G.R. Nos. 133923-24, July 30, 2003, 407 SCRA 406, 415-416.

[21] TSN, dated November 13, 2003, pp. 4-5.

[22] TSN, dated November 13, 2003, pp. 4-5.

[23] TSN, dated November 12, 2003, p. 14.

[24] Id. at 15.

[25] Id. at 16.

[26] People v. Ramos, G.R. No. 142577, December 27, 2002, 394 SCRA 452, 469.

[27] G.R. No. 130504, June 29, 2000, 334 SCRA 575, 600-601.

[28] G.R. No. 140676, July 31, 2002, 385 SCRA 573, 587-588.

[29] People v. Viajedor, G.R. No. 148138, April 11, 2003, 401 SCRA 312, 331.

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