

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. EMINIANO BARCELA Y MEDINA, APPELLANT.

G.R. No. 179948. December 08, 2010

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

Before us is another case of a girl "snatched from the cradle of innocence"[1] by her own father for the sole purpose of satisfying his despicable and deviant sexual behavior.

Factual Antecedents

For review is the Decision[2] dated March 17, 2005 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01561 that affirmed with modification the Decision[3] of the Regional Trial Court (RTC) of Calabanga, Camarines Sur, Branch 63, in Criminal Case No. 04-911, finding appellant guilty beyond reasonable doubt of the crime of Qualified Rape against "AAA." [4] The Information[5] contained the following accusatory allegations:

That on or about the 4[th] day of January, 2004 at around 9:00 in the evening at Barangay x x x, Municipality of Calabanga, Province of Camarines Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused while armed with an ice pick, with lewd designs by means of force and intimidation, did then and there willfully, unlawfully and feloniously succeed having carnal knowledge [of] one "AAA," an 11 year old minor, and the accused's daughter, which act of the accused debase[s], degrade[s] and demeans the intrinsic worth and dignity of the child as a human being and prejudicial to the child's development, to her damage and prejudice.

ACTS CONTRARY TO LAW.

Appellant pleaded not guilty to the crime charged during arraignment. After the termination of the pre-trial conference, trial ensued.

The Version of the Prosecution

On January 4, 2004, "AAA," then 11 years old, was at the residence of her parents in Calabanga, Camarines Sur, tending to her younger siblings. Her father, the appellant, arrived at around five o'clock in the afternoon from the Bicol Medical Center, where his pregnant wife and mother of "AAA" was left behind to take care of their two children who were confined thereat. After eating dinner prepared by appellant, "AAA" and her siblings went to sleep at around six to seven o'clock in the evening while appellant attended to his youngest child who was suffering from an asthma attack.

At around nine o'clock in the evening, "AAA" was awakened due to a pain in her vagina. She then noticed that she was naked with her hands tied above her head. Her feet were spread apart and tied to the bamboo poles of their house. While in this exposed position, appellant was on top of her, inserting his penis into her vagina and making a push and pull movement. While she was being violated by appellant, "AAA" cried in pain. Thereafter, appellant untied her, used a lighter to illuminate himself and the ice pick poked at her, and told her to go back to

sleep.

The following morning, "AAA" just lay in bed and continued crying. Appellant told her to wake up and wash her bloodstained panty. She got up, but instead of obeying appellant, she burned said underwear together with her mat to rid herself of any reminder of the horrible fate she suffered in the hands of her father.

"AAA" told her mother about the appellant's beastly sexual aggression on January 21, 2004. The following day, January 22, 2004, the mother of "AAA" took her to the Bicol Medical Center for a medical examination conducted by Dr. Augusto M. Quilon, Jr. (Dr. Quilon) who issued a medical certificate[6] confirming that "AAA" had old hymenal lacerations at two and seven o'clock positions.

When asked to clarify, Dr. Quilon explained that it takes about two weeks for a laceration to heal. In this case, since the rape took place on January 4, 2004, the lacerations were already considered old and healed by the time "AAA" was examined on January 22, 2004, or 17 days after the rape.[7]

The Version of the Appellant

Appellant denied raping his daughter, "AAA." He claimed that on January 4, 2004, at around nine o'clock in the evening, he was in his home with "AAA" and three more of his children. He had just arrived after staying for three days in a hospital where his wife remained to take care of their two children confined thereat. While in his house, he attended to the needs of his youngest child who was suffering from an asthma attack. "AAA" and her other siblings slept side by side at around midnight. However, his child who was sick with asthma slept at around two o'clock in the morning. Thereafter, he slept beside his three children and woke up at seven o'clock in the morning. His children, including "AAA," were still in the house.

Ruling of the Regional Trial Court

On August 13, 2005, the trial court rendered its Decision, the dispositive portion of which reads as follows:

WHEREFORE, in view of the foregoing, the prosecution having proven the guilt of the accused EMINIANO BARCELA y MEDINA beyond reasonable doubt, he is found guilty of the crime of qualified rape as charged in the information. He is hereby sentenced to suffer the penalty of death. He is also ordered to pay the private complainant "AAA" the amount of P75,000.00 as civil indemnity; P50,000.00 as moral damages; P25,000.00 as exemplary damages. He is likewise meted the accessory penalties under Article 40 of the Revised Penal Code.

No pronouncement as to cost.

SO ORDERED.[8]

Ruling of the Court of Appeals

On April 30, 2007, the CA promulgated its Decision that affirmed with modification the trial court's decision. Thus:

WHEREFORE, premises considered, the assailed August 13, 2005 Decision of the RTC of Calabanga, Camarines Sur, Branch 63, in Criminal Case No. RTC`04-911, convicting accused-appellant BARCELA of incestuous rape, is hereby MODIFIED in that: (1) the penalty imposed which should be reduced from death penalty to reclusion perpetua pursuant to Republic Act No. 9346 and (2) the amount of moral damages should be increased from P50,000.00 to P75,000.00 to conform with current jurisprudence.

Pursuant to Section 13 (c), Rule 124 of the 2000 Rules of Criminal Procedure as amended by A.M. No. 00-5-03-SC dated September 28, 2004, which became effective on October 15, 2004, this judgment of the Court of Appeals may be appealed to the Supreme Court by notice of appeal filed with the Clerk of Court of

the Court of Appeals.

SO ORDERED.[9]

The Assignment of Error

Still insisting on his innocence, appellant filed an appeal and adopted the same lone assignment of error he advanced before the CA that -

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT WHEN HIS GUILT HAS NOT BEEN PROVEN BEYOND REASONABLE DOUBT.[10]

Our Ruling

The appeal is unmeritorious.

"In reviewing rape cases, the Court is guided by the four well-established principles x x x: (1) an accusation for rape can be made with facility; (2) it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (3) [considering] 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, (4) 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." [11] Thus, "the primordial consideration in a determination concerning the crime of rape is the credibility of the private complainant's testimony." [12]

In this case, the trial court gave complete credence to "AAA's" testimony. She positively identified the appellant as her sexual aggressor and never wavered in her declaration on the details of the horrible experience she suffered in the hands of her father. On January 4, 2004, she was just 11 years old when her father undressed her, and tied her hands and feet while she was asleep. He was already having carnal knowledge of her when she was awakened due to the excruciating pain caused by the penetration of her own father's penis into her vagina. This incident occurred in the evening in the privacy of their family home. In a plain and straightforward manner, she recounted her harrowing ordeal as follows:

Q.

You said you were sleeping then. Can you tell us what time x x x you [woke] up x x x that night?

A.

At around 9:00 o'clock or 10:00 o'clock.

Q.

Why [were you a]wakened [at] that hour?

A.

Because I felt pain [in] my vagina.

Q.

After you were awakened, what did you observe on your person?

A.

I was tied and already naked.

Q.

When you said you were tied, kindly tell us which part[s] of your body x x x were tied?

A.

My two hands and my feet.

INTERPRETER:

The witness is illustrating how her two hands were tied by placing her two hands above her head.

Q.

And when you [say] that you were [in] that situation, do you remember who was x x x present then while you were [in] that position?

A.

Eminiano Barcela.

Q.

And what was the action taken by Eminiano Barcela?

A.

He was [doing] push and pull movement[s] on top of me.

x x x x

PROS. OLIVEROS:

Okay. You said, your hands were tied, what else did you observe on your person?

A.

I was also naked and my feet were also tied.

Q.

And how [were] your feet x x x tied?

A.

My two feet were tied apart from each other.

Q.

When you saw Eminiano Barcela for the first time, what did you observe x x x him [doing]?

A.

He was [doing] push and pull movement[s] on top of me.

Q.

Then, what did you feel while he was in that position?

A.

My vagina was in pain.

Q.

And what action did you take if any while Eminiano Barcela was on top of you making push and pull movement[s]?

A.

I was crying.

x x x x

COURT:

Sustained. Why is it that your vagina is in pain?

A.

Because his penis was inserted [into] my vagina.

PROS. OLIVEROS:

When you said your father Eminiano Barcela was [doing] push and pull movement, what else did he do?

A.

After that he untied me and then poked an icepick [at] me and told me to go to sleep.[13]

"[T]he findings of the trial court as to the credibility of witnesses [will not be disturbed on appeal] considering that [the trial court] is in a better position to observe their candor and [conduct] on the witness stand. Evaluation of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court, [due to] its unique opportunity to observe the witnesses and their demeanor, conduct, and attitude, especially under cross-examination. Its assessment is respected unless certain facts of substance and value were overlooked which, if considered, might affect the outcome of the case." [14]

Moreover, "[n]o sane girl would concoct a story of defloration, allow an examination of her private parts and [thereafter subject herself] to public trial or ridicule if she has not in truth been a victim of rape and [is] impelled to seek justice for the wrong [committed against her]. It is highly [improbable that a girl would] fabricate a story that would expose herself and her family to a lifetime of dishonor, especially when her charges would mean the death or the long-term imprisonment of her father. Youth and immaturity are generally badges of truth and sincerity." [15] Considering that the victim in this case underwent a harrowing experience and exposed herself to the rigors of public trial, it is unlikely that she would devise false accusations against appellant, who is her father.

Further, the testimony of "AAA" was corroborated by the medical findings of Dr. Quilon, the physician who conducted the medico-legal examination on her. Dr. Quilon, declared that he found healed hymenal lacerations at the two and seven o'clock notches on the private part of "AAA," which could have been caused by the penetration of a man's penis. He also disclosed that the hymen of "AAA" was no longer intact; she was no longer a virgin. When the testimony of a rape victim is consistent with the medical findings, sufficient basis exists to warrant a conclusion that the essential requisite of carnal knowledge has been established.[16] The testimony of Dr. Quilon, therefore, strengthens "AAA's" claim of rape against appellant.

In an attempt to exonerate himself, appellant impugns the credibility of "AAA." He avers that the testimony that he tied her hands and feet while she was asleep to facilitate the consummation of rape is unbelievable considering that their house is so small and several people were sleeping beside her on the same mat. He also claims that "AAA" failed to resist the alleged sexual aggression. Moreover, he casts doubt on the testimony of "AAA" that he ordered her to wash her bloodstained panty. He posits that "AAA" could not have stained her panty with blood

since she testified that she was already naked at the time he was allegedly raping her and there is no proof that she put on her clothes after he satisfied his lust.[17]

Appellant's assertions fail to impress. The testimony of "AAA" that appellant tied her hands and feet to consummate the rape in spite of the fact that their house was small and people were sleeping beside her is not incredible. It is axiomatic that appellant tied the hands and feet of "AAA" to ensure the commission of rape and to eliminate any resistance that she might use. Restraining "AAA" was also intended to limit her movement so that her siblings sleeping beside her would not be awakened and witness the crime.

Appellant's contention that rape could not be committed in a small house where several people were sleeping does not deserve consideration. "Lust is no respecter of time and place. x x x [R]ape can be committed even inside a house where there are other occupants or where other members of the family are also sleeping. Thus, it is an accepted rule in criminal law that rape may be committed even when the rapist and the victim are not alone. Fact is, rape may even be committed in the same room x x x or in a small room where other family members also sleep,"[18] as in this case.

Appellant's allegation that "AAA" failed to resist the sexual assault is untenable. Obviously, "AAA" could not be expected to offer resistance to the sexual aggression of appellant since her hands and feet were tied. Even if it were true that "AAA" did not seriously resist appellant's offense, her failure cannot be considered to diminish the credibility of her testimony. "It must be stressed that the resistance of the victim is not an element of the crime [of rape]," and "the law does not impose [on the prosecution] the burden of [establishing the same]."[19] "As long as the force or intimidation is present, whether it was more or less irresistible is beside the point."[20]

In addition, "in the incestuous rape of a minor, actual force or intimidation need not be [proven]. x x x The moral and physical [domination] of the father is sufficient to [intimidate] the victim into submission to his [carnal] desires. x x x The [rapist], by his overpowering and overbearing moral influence, can easily consummate his bestial lust with impunity. [Consequently], proof of force and violence is unnecessary, unlike when the accused is not an ascendant or a blood relative of the victim."[21]

Whether the bloodstained panty actually existed will not adversely affect the credibility of "AAA" as appellant wants to make it appear. The fact that "AAA" did not declare on the witness stand that she put on her clothes after the rape does not make her testimony inconsistent. Neither does it make the existence of said bloodstained panty improbable. What is essential is that "AAA" categorically testified that her father asked her to wash said panty the morning after the incident because it had blood on it. However, she burned it along with her mat since it was a reminder of her horrible fate.

Furthermore, the alleged improbability is an inconsequential matter that does not bear upon the elements of the crime of rape. The decisive factor in the prosecution of rape is whether the commission of the crime has been sufficiently proven. "For a discrepancy or inconsistency in the testimony of a witness to serve as basis for acquittal, it must refer to the significant facts [indispensable] to the guilt or innocence of the [appellant] for the crime charged."[22] As the inconsistencies alleged by appellant had nothing to do with the elements of the crime of rape, they cannot be used as grounds for his acquittal.[23]

Appellant's defense of denial was properly rejected. All that is on record is the bare and uncorroborated protestations of appellant that he did not rape his minor daughter, "AAA." He did not proffer evidence to substantiate his averments. "[D]enial is inherently a weak defense. To be believed, it must be [supported] by strong evidence of non-culpability; otherwise, such denial is purely self-serving and has practically no evidentiary value"[24] vis a vis the positive declaration of a credible witness. "Between the positive assertions of the [victim] and the negative averments of [appellant], the former indisputably deserve more credence and are entitled to

greater evidentiary weight." [25] Thus, the positive identification made by "AAA" of appellant as the person who inserted his penis into her vagina plainly prevails over his denial.

Given the foregoing circumstances, we find no cogent reason to deviate from the findings and conclusions of the trial court, as affirmed by the CA. The record in this case fully substantiates the incident of rape suffered by "AAA" in the hands of appellant. The prosecution sufficiently proved the guilt of appellant beyond reasonable doubt. The evaluation of the testimony of "AAA" has been appreciated properly and the evidence is overwhelming to convict appellant of having carnal knowledge of her.

The Proper Penalty

The rape of "AAA" was committed on January 4, 2004. Accordingly, the provisions of Republic Act (RA) No. 8353, [26] which is the law in effect when the crime was committed, shall apply.

In this case, the element of carnal knowledge was proven by the testimony of the victim. "AAA's" minority was established by the presentation of her Certificate of Live Birth [27] showing that she was born on April 3, 1992. She was only 11 years old when the rape was committed on January 4, 2004. Notably, the appellant admitted that he is the father of "AAA" during the pre-trial conference and the trial of this case. Clearly, the minority of the victim and her filial relationship to the appellant have been alleged in the Information and duly proven during trial. "The presence of the foregoing qualifying circumstance[s] raised the crime of Statutory Rape to Qualified Rape. Simply stated, Qualified Rape is Statutory Rape in its qualified form." [28]

As a result, the trial court's imposition of the penalty of death on appellant was justified. However, with the passage of RA 9346 entitled "An Act Prohibiting The Imposition Of The Death Penalty In The Philippines," the penalty, as correctly imposed by the Court of Appeals, should be reclusion perpetua. [29] Pursuant to the same law, the appellant shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law. [30]

The Damages

In line with prevailing jurisprudence, "AAA" is entitled to an award of P75,000.00 as civil indemnity, another P75,000.00 as moral damages and P30,000.00 as exemplary damages. [31] The award of civil indemnity, which is in the nature of actual or compensatory damages, is mandatory upon conviction. [32] On the other hand, moral damages is awarded without need of pleading or proving their basis. [33] Due to the presence of the aggravating/qualifying circumstances of minority and the relationship of "AAA" to appellant, both of which were alleged in the Information and proven during trial, the award of exemplary damages is in order.

Thus, the CA correctly awarded "AAA" civil indemnity in the amount of P75,000.00, and another P75,000.00 as moral damages. The award of exemplary damages must however be increased from P25,000.00 to P30,000.00 in line with prevailing jurisprudence. [34]

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. CR-HC No. 01561, which affirmed with modification the Decision of the Regional Trial Court of Calabanga, Camarines Sur, Branch 63, finding appellant Eminiano Barcela y Medina guilty beyond reasonable doubt of committing the crime of qualified rape is **AFFIRMED** with modifications that the amount of exemplary damages is increased to P30,000.00 and that appellant is not legible for parole.

SO ORDERED.

Corona, C.J., (Chairperson), Leonardo-De Castro, Abad,[*] and Perez, JJ., concur.

[*] In lieu of Associate Justice Presbitero J. Velasco, Jr., per Special Order No. 917 dated November 24, 2010.

[1] *People v. Castel*, G.R. No. 171164, November 28, 2008, 572 SCRA 642, 679.

[2] CA rollo, pp. 112-127; penned by Associate Justice Vicente Q. Roxas and concurred in by Associate Justices Josefina Guevara-Salonga and Ramon R. Garcia.

[3] *Id.* at 13-14; penned by Judge Freddie D. Balonzo.

[4] The identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. 7610, An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes; Republic Act No. 9262, An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes; and Section 40 of A.M. No. 04-10-11-SC, known as the Rule on Violence Against Women and Their Children, effective November 5, 2004.

[5] Records, p. 1.

[6] *Id.* at 48.

[7] TSN December 15, 2004, pp. 3-4.

[8] Records, p. 91.

[9] CA rollo, pp. 126-127.

[10] *Id.* at 43.

[11] *People v. Castel*, *supra* note 1 at 660-661.

[12] *Id.* at 661.

[13] TSN, November 10, 2004, pp. 7-9.

[14] *People v. Tormis*, G.R. No. 183456, December 18, 2008, 574 SCRA 903, 913.

[15] *People v. Baun*, G.R. No. 167503, August 20, 2008, 562 SCRA 584, 599.

[16] *People v. Tormis*, *supra* note 14 at 914.

[17] CA rollo, pp. 44-45.

[18] *People v. Castel*, *supra* note 1 at 666-667.

[19] *People v. Salima*, G.R. No. 183702, February 10, 2009, 578 SCRA 415, 426; *People v. Fraga*, 386 Phil. 884, 907 (2000).

[20] *People v. Baldo*, G.R. No. 175238, February 24, 2009, 580 SCRA 225, 233.

[21] *People v. Castel*, *supra* note 1 at 671.

[22] *People v. Masopol*, 463 Phil. 25, 33 (2003).

[23] *People v. Cariñaga*, 456 Phil. 944, 956 (2003).

[24] *People v. Umbaña*, 450 Phil. 493, 517 (2003).

[25] *People v. Bang-ayan*, G.R. No. 172870, September 22, 2006, 502 SCRA 658, 670.

[26] AN ACT EXPANDING THE DEFINITION OF THE CRIME OF RAPE, RECLASSIFYING THE SAME AS A CRIME AGAINST PERSONS, AMENDING FOR THE PURPOSE ACT NO. 3815, AS AMENDED, OTHERWISE KNOWN AS THE REVISED PENAL CODE, AND FOR OTHER PURPOSES. Republic Act No. 8353, otherwise known as THE ANTI-RAPE LAW OF 1997, took effect on October 22, 1997; See *People v. Perez*, G.R. No. 182924, December 24, 2008, 575 SCRA 653, 680.

[27] Records, p. 42.

[28] *People v. Gloria*, G.R. No. 168476, September 27, 2006, 503 SCRA 742, 756.

[29] SEC 2. In lieu of the death penalty, the following shall be imposed:

(a) The penalty of reclusion perpetua, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code.

(b) The penalty of life imprisonment, when the law violated does not make use of the nomenclature of the penalties of the Revised Penal Code.

[30] Section 3 of Republic Act No. 9346 provides:

SEC. 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.

[31] *People v. Araojo*, G.R. No. 185203, September 17, 2009, 600 SCRA 295, 309.

[32] *People v. Castel*, supra note 1 at 679.

[33] Id.

[34] *People v. Llamas*, G.R. No. 190616, June 29, 2010.

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