

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. REMEIAS BEGINO Y GRAJO, APPELLANT.

G.R. No. 181246. March 20, 2009

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This is an appeal from the Decision[1] dated 18 September 2007 of the Court of Appeals which affirmed the Decision[2] dated 13 December 2005 of the Regional Trial Court of Labo, Camarines Norte, Branch 64, (RTC-Branch 64) finding appellant Remeias Begino y Grajo (appellant) guilty beyond reasonable doubt of the crime of rape, with modification reducing the penalty of death to reclusion perpetua.

The Facts

Appellant was formally charged on 29 January 1999 in an Information which reads, as follows:

That sometime in the early afternoon of August 2, 1994 in Sitio WWW, Barangay XXX, YYY, ZZZ, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being then the stepfather of private complainant AAA,[3] with lewd design, and by using force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of said AAA, an 8 year old girl, against her consent, to her damage.[4]

Upon arraignment, appellant, assisted by counsel, pleaded not guilty to the offense charged.[5] Trial ensued.

The prosecution presented Dr. Virginia Barasona (Dr. Barasona), the Rural Health Officer in YYY, ZZZ, and Melinda Reyes (Melinda), the social worker of Department of Social Welfare and Development (DSWD) who conducted the social case study on AAA.

At the time she testified, AAA was 14 years old. She testified that she was born on 28 February 1986. AAA stated that in the afternoon of 2 August 1994, she and appellant were alone in their house. Appellant was sharpening his bolo while her mother, BBB, was out getting "talapang." She was not aware that appellant had closed the door and windows of the house. Appellant approached AAA and removed her shirt, panties and bra. Appellant removed his shorts and briefs and laid AAA down on the bamboo bench. With the bolo placed on his right side, appellant placed himself on top of AAA and inserted his penis into her vagina. AAA tried to fight back and resisted but appellant was too strong. Appellant kissed her and touched her breasts. AAA felt pain and blood oozed out of her vagina. After satisfying himself, appellant warned AAA that he would kill her and her mother BBB if she would tell anybody about the incident.[6]

Sometime in November 1998, AAA mustered enough courage to narrate her ordeal to her mother. AAA claimed appellant raped her four times - when she was still eight years old, then when she was in Grade III, in Grade IV and in Grade V. BBB brought her daughter to the DSWD where AAA was interviewed and assisted in executing her sworn statement before the Philippine National Police of YYY.[7] AAA was later brought to Dr. Barazona for

medical examination which revealed the following:

PHYSICAL FINDINGS:

General Survey: conscious, coherent, ambulatory, not in cardiorespiratory distress, cooperative

Pertinent findings:

- nipple is pinkish, measures .5 cm. in diameter
- areola is pinkish, 1.8 cm. in diameter
- with developing breasts
- lanugo hair is present
- with hymenal laceration (healed) at 9:00 o'clock

and 6:00 o'clock position (s)

- non-parous introitus
- labia minora is not gaping
- fouchette is v-shaped
- admits tip of finger up to 1 cm. with resistance.[8]

Dr. Barasona explained that the lacerations on AAA's hymen were caused by penetrations of an erected and turgid sex organ.[9]

AAA testified that she stopped studying since 1998. She felt ashamed of what happened to her that she even transferred to Daet because she was scorned by people.[10]

The defense presented appellant himself, Camilo Begino (Camilo) and Reynaldo Esturas (Reynaldo) as witnesses.

Appellant denied the accusation and asserted that he treated AAA and her siblings as his own children since he started living with their mother in 1991. He claimed BBB wanted to get rid of him as she was already romantically linked with the Chief of the Department of Agrarian Reform in Daet.

Appellant further testified that from 6:00 in the morning of 2 August 1994 until 6:00 in the afternoon of the same date, he was at the coconut plantation of Apolinario Malaluan (Apolinario) together with Camilo and Reynaldo husking coconuts. The distance between his house and the coconut plantation is two kilometers, more or less, and would require a 30-minute walk. There was never a time that he left the workplace since he took his lunch and snacks there.[11]

Defense witnesses Camilo and Reynaldo substantially corroborated appellant's testimony that appellant was with them the whole day from sunrise to sunset of 2 August 1994 and that there was never a time that appellant left the workplace.[12] Camilo and appellant are first cousins, as their fathers are brothers.[13]

The Ruling of the Trial Court

After trial, the RTC-Branch 64 rendered judgment on 13 December 2005 finding appellant guilty beyond reasonable of the "crime of statutory rape aggravated by the fact that the victim is below eighteen (18) years old" and that the offender is the common law husband of BBB. Appellant was sentenced to suffer the penalty of death. He was likewise ordered to pay the victim P75,000 as civil indemnity, P75,000 as moral damages, and P30,000 as exemplary damages.

The trial court found inconsistencies in the testimonies of the defense witnesses. Camilo testified that he owned the coconut plantation where appellant worked but he was not certain as to the exact date appellant went to work

at the coconut plantation. Reynaldo testified that appellant worked at the coconut plantation of Apolinario and not in the alleged coconut plantation of Camilo.

The trial court further rejected appellant's defense of alibi. The trial court found that it took only 30 minutes to walk going to appellant's house from the coconut plantation where he was husking. The trial court ruled that it was not physically impossible for appellant to have been at the scene of the crime at the time of its commission.

The Ruling of the Court of Appeals

On appeal, the Court of Appeals affirmed the judgment of conviction but reduced the penalty of death to reclusion perpetua in view of Republic Act No. 9346 (RA 9346) proscribing the imposition of the death penalty.

The Court of Appeals ruled that denial and alibi could not prevail over the positive identification by the victim. The Court of Appeals further ruled that the findings of the trial court on the credibility of witnesses enjoy a badge of respect as the latter is in a better position to observe the demeanor of witnesses as they testify.

The Court's Ruling

We agree with the findings and conclusion of the trial court, as affirmed by the appellate court, that, as the evidence undoubtedly proved, rape was committed by appellant against AAA.

The trial court found appellant guilty of "statutory rape aggravated by the fact that the victim is below eighteen (18) years old" and "the offender is the common law husband" of the mother of the victim. Thus, it imposed the death penalty pursuant to paragraph 1 of Article 266-B. The appellate court agreed with the trial court but reduced the penalty imposed from death to reclusion perpetua. However, we hold that appellant could not be indicted for qualified rape and penalized under paragraph 1 of Article 266-B.

While the death penalty is no longer imposable in view of RA 9346, the technical flaw committed by the lower courts is a matter that cannot be ignored.

Article 266-A and Article 266-B provide:

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:

- Through force, threat or intimidation;
- When the offended party is deprived of reason or otherwise unconscious;
- By means of fraudulent machination or grave abuse of authority; and
- When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above is present;

x x x

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

x x x

The death penalty shall 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.

x x x (Emphasis supplied)

Under Article 266-B, paragraph 1, the death penalty shall be imposed if the crime of rape is committed when the victim is under 18 years old and the offender is a "parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third degree, or the common law spouse of the parent of the victim." This Court has ruled that the circumstances that qualify a crime should be alleged and proved beyond reasonable doubt as the crime itself. These attendant circumstances alter the nature of the crime of rape and increase the penalty. As such, they are in the nature of qualifying circumstances.[14] The age of the victim and her relationship with the offender must be both alleged in the information and proven during the trial, otherwise, the death penalty cannot be imposed.[15]

The age of the victim was sufficiently proved. AAA was undeniably below 18 years old at the time she was raped. Although she claimed she was born on 28 February 1986, her birth certificate[16] and the Social Case Study Report[17] showed that she was born on 28 March 1986. The rape was committed on 2 August 1994 or when AAA was eight years and four months old.

However, the Information stated that appellant is the "stepfather" of AAA. A "stepfather" is the husband of one's mother by virtue of a marriage subsequent to that of which the person spoken of is the offspring. It presupposes a legitimate relationship between the appellant and the victim's mother.[18] The evidence adduced by the prosecution showed that appellant is not the stepfather of AAA but the common law spouse of BBB, mother of AAA. In fact, the trial court itself, in its decision,[19] found that appellant and BBB were not married and therefore he is not the stepfather of AAA. During the trial, AAA, when asked why she kept calling appellant "Tiyo," testified that appellant is the third husband of her mother and that the name of her real father is CCC, who at that time was in Manila. She explained that her mother lived separately from CCC since she was eight months old and on 2 August 1994, her mother was living with appellant.[20] Her birth certificate and the Social Case Study Report likewise showed that her father is CCC, not appellant. CCC was married to BBB and appellant was never married to BBB. There was no proof of marriage between BBB and appellant.

Since appellant is not the stepfather of AAA, the prosecution's failure to prove the qualifying circumstance bars conviction for rape in its qualified form.[21]

What the prosecution clearly proved was that appellant was the common law spouse of BBB, but such circumstance was not alleged in the Information. And as we have ruled in *People v. Garcia*,[22] qualifying circumstances must be properly pleaded in the indictment. If the same are not pleaded but proved, they shall be considered only as aggravating circumstances since the latter admit of proof even if not pleaded. It would be a denial of the right of the accused to be informed of the charges against him and consequently, a denial of due process, if he is charged with simple rape and be convicted of its qualified form, although the attendant circumstance qualifying the offense and resulting in the capital punishment was not alleged in the indictment on which he was arraigned.

Consequently, since the qualifying circumstance of "common law spouse" was not alleged in the Information for rape against appellant, he could not be convicted of rape in the qualified form as he was not properly informed of the nature and cause of accusation against him. In a criminal prosecution, it is a fundamental rule that every element of the crime charged must be alleged in the complaint or information. The main purpose of this requirement is to enable the accused to properly prepare his defense. He is presumed to have no independent knowledge of the facts that constitute the offense.[23]

The qualifying circumstance of relationship not having been properly pleaded, appellant should be convicted only of statutory rape under paragraph (d) of Article 266-A, for having carnal knowledge of a woman "under twelve (12) years of age." Statutory rape is punishable by reclusion perpetua.[24]

As regards the award of damages and in accordance with prevailing jurisprudence, AAA should be awarded P50,000 as civil indemnity, in addition to the award of moral damages of P50,000 for the immeasurable havoc wrought upon AAA. In view of the peculiar relationship of the parties, appellant should likewise be made to pay P30,000 as exemplary damages.

WHEREFORE, we find appellant REMEIAS BEGINO y GRAJO guilty beyond reasonable doubt of the crime of statutory rape and sentence him to suffer the penalty of reclusion perpetua. He is further ordered to pay the victim P50,000 as civil indemnity, P50,000 as moral damages, and P30,000 as exemplary damages.

SO ORDERED.

Puno, C.J., (Chairperson), Ynares-Santiago*, Corona, and Leonardo-De Castro, JJ., concur.

[*] Designated member per Special Order No. 588.

[1] Penned by Justice Bienvenido L. Reyes, with Justices Aurora Santiago Lagman and Apolinario D. Bruselas, Jr., concurring.

[2] Penned by Judge Franco T. Falcon.

[3] The real name of the victim and the immediate family members other than the accused are withheld pursuant to this Court's Resolution dated 19 September 2006 in A.M. No. 04-11-09- SC as well as the ruling in *People v. Cabalquinto*, G.R. No. 167693, 19 September 2006, 502 SCRA 419.

[4] Records, p. 1

[5] Records of Criminal Case No. 99-0344, pp. 29-30.

[6] TSN, 18 September 2000, pp. 2-11.

[7] Id. at 11-15.

[8] Records of Criminal Case No. 99-0344, p. 6.

[9] TSN, 9 November 1999, pp. 12-13.

[10] Id. at 18.

[11] TSN, 3 August 2004, pp. 2-15.

[12] TSN, 29 October 2001, pp 1-6; 3 September 2003, pp. 3-6.

[13] TSN, 29 October 2001, p. 7.

[14] *People v. Ferolino*, 386 Phil. 161 (2000).

[15] *People v. Bayya*, 384 Phil. 519 (2000); *People v. Maglente*, 366 Phil. 221 (1999); *People v. Ilao*, 357 Phil. 656 (1998); *People v. Ramos*, 357 Phil. 559 (1998).

[16] Records of Criminal Case No. 99-0344, p. 105.

[17] Id. at 100.

[18] People v. Radam, Jr., 434 Phil. 87 (2002).

[19] Rollo, p. 14

[20] TSN, 18 September 2000, pp. 5-6.

[21] Supra.

[22] 346 Phil. 475 (1997).

[23] People v. Medina, 360 Phil. 281 (1998); People v. Ramos, 357 Phil. 559 (1998).

[24] People v. Rentoria, G.R. No. 175333, 21 September 2007, 533 SCRA 708; People v. Tamos, 455 Phil. 844 (2003).

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