

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SERGIO LAGARDE, ACCUSED-APPELLANT.

G.R. No. 182549. January 20, 2009

Ponente: VELASCO JR., J.

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VELASCO JR., J.:

In this appeal, accused-appellant Sergio Lagarde seeks to reverse the Decision of the Court of Appeals (CA) dated March 7, 2007[1] in CA-G.R. CR-H.C. No. 00069, affirming the judgment of conviction for rape handed down by the Regional Trial Court (RTC), Branch 13 in Carigara, Leyte on April 24, 2003[2] in Criminal Case No. 4132.

The Facts

Accused-appellant was charged with rape in an information dated March 1, 2002 which reads:

That on or about the 27[th] day of December, 2001, in the municipality of San Miguel, Province of Leyte, Philippines and within the jurisdiction of this Honorable court, the above-named accused, with deliberate intent with lewd designs and by use of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with [AAA], 11 years old, against her will to her damage and prejudice.

CONTRARY TO LAW.[3]

Upon arraignment on August 5, 2002, accused-appellant pleaded not guilty.

During trial, the prosecution presented the victim, AAA,[4] and Drs. Felix P. Oyzon and Karen Palencia-Jadloc as witnesses. According to the prosecution, on December 27, 2001, around 12 noon, AAA and her mother were at the house of Lolita Lagarde-Sarsosa, which was about 500 to 600 meters away from the victim's house, to attend the death anniversary celebration of Lolita's mother. Accused-appellant was also present in that occasion, being the nephew of Lolita. Accused-appellant is a neighbor of AAA and the father of her classmate.

After lunch, AAA's mother, accused-appellant, and the other visitors started drinking tuba (coconut wine). AAA remained inside the house until her mother ordered her to pick a jackfruit at around 4:00 p.m. AAA obliged and went outside towards the jackfruit tree which was about 150 meters away from the house. When she was near the tree, she sensed the presence of somebody behind her who suddenly placed his hand over her mouth and dragged her to the loonan or copra dryer which was about eight meters away from the jackfruit tree. There, AAA recognized the attacker as accused-appellant.

In the copra dryer, accused-appellant undressed AAA while keeping one of his hands on her mouth. He then took off his clothes and told AAA to lie on the papag or bamboo bench. Accused-appellant then mounted AAA, poked a seven-inch knife on her face, and told her to be silent. Thereafter, he inserted his penis into her vagina and made a pumping motion, which hurt AAA's chest and vagina. After the sexual assault, accused-appellant stood up, put on his shirt and pants, and then left the place. Not long after, AAA dressed herself up, and returned to the house and told her ordeal to her mother. AAA and her mother subsequently reported the incident to the officials of Barangay Lukay, San Miguel, Leyte. Accused-appellant was immediately arrested.[5]

On December 28, 2001, AAA was brought to the Eastern Visayas Regional Medical Center, Tacloban City for physical examination. Drs. Oyzon and Palencia-Jadloc, the attending medical examiners, submitted a report with the following relevant findings:

Pelvic Exam -

External genitalia: grossly normal

Introitus: (+) healed incomplete laceration of the hymen at 3, 9 & 10 o'clock

S/E: speculum inserted with ease

Cervix pinkish, small, smooth (+) whitish mucoid discharge

I/E: cervix firm, closed, nontender on motion

U: small

A: no mass/tenderness

D: whitish mucoid discharge

LABORATORY RESULT:

Vaginal smear for presence of spermatozoa = Negative for spermatozoa[6]

The pertinent testimony of Dr. Oyzon tended to prove that there was apparently no struggle on the part of the victim because there was no hematoma on her body, although it is possible for injuries to be concealed. Dr. Palencia-Jadloc, on the other hand, established the fact that the victim had sexual intercourse.[7]

For the defense, Lolita testified that on December 27, 2001, during the celebration of her mother's death anniversary, accused-appellant was drinking tuba with other visitors on the ground floor of her house. Most of the time, AAA played with Lolita's niece, Jennilyn, around 10 meters away from the house. AAA went to see her mother a few times on the second floor of the house until they left around 7:00 p.m. Lolita asserted that at no time did accused-appellant leave his seat until he left around 5:00 p.m. On cross-examination, Lolita stated that prior to the incident, there was no altercation between AAA's mother and accused-appellant, and she did not know why they would file a case against her nephew.[8]

Accused-appellant denied raping AAA. He testified that on the day the alleged offense occurred, he never left the house of Lolita from the time he arrived at 12 noon until he went home at about 9:00 p.m. He admitted having a drinking spree with other visitors, but disclaimed never talking to AAA who left with her mother at 4:30 p.m. He stated that there was no loonan or copra/kiln dryer near the house of Lolita.[9]

The RTC found AAA's testimony credible, noting that at her age, it is inconceivable for her to concoct a tale of having been raped. Her accusation, according to the RTC, was supported by medical findings that she was indeed sexually abused. The lower court dismissed accused-appellant's denial and alibi. Lolita's testimony was likewise disbelieved not only because she was related to accused-appellant but also because she herself was busy drinking tuba in another part of the house. She could not categorically say, the RTC added, that accused-appellant did not leave his seat and molest AAA. Thus, the trial court convicted accused-appellant of rape aggravated by minority of the victim, use of bladed weapon and force, and uninhabited place in view of the location of the offense. The dispositive portion of the RTC's decision states:

WHEREFORE, premises considered, pursuant to Article 266-A and 266-B of the Revised Penal Code as Amended, and further amended by R.A. No. 8353 (The Anti Rape law of 1997) and the amendatory provision of R.A. No. 7659 (Death Penalty Law), the Court found SERGIO LAGARDE, GUILTY, beyond reasonable doubt for the crime of Rape charged under the information and sentenced to suffer a maximum penalty of DEATH and pay civil indemnity to [AAA], the sum of seventy Five Thousand (P75,000.00) Pesos and pay moral damages in the amount of Fifty Thousand (P50,000.00) Pesos, and

Pay the cost.

SO ORDERED.[10]

In view of the imposition of the death penalty, the case was automatically elevated to the Court. In accordance with the ruling in *People v. Mateo*,[11] however, the case was transferred to the CA for review per this Court's August 24, 2004 Resolution.

The Ruling of the CA

The appellate court upheld the trial court's findings of fact and judgment of conviction. With regard to the penalty, however, the CA ruled that the trial court erred when it imposed the death sentence on the basis of the following aggravating circumstances: minority, use of bladed weapon, and uninhabited place. Aside from the abolition of the death penalty, the CA held that:

It is basic in criminal procedure that the purpose of the information is to inform the accused of the nature and cause of the accusation against him or the charge against him so as to enable him to prepare a suitable defense. 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 convicted of its qualified form punishable by death although the attendant circumstances qualifying the offense and resulting in capital punishment were not set forth in the indictment on which he was arraigned. More importantly, they are not the circumstances that would call for the application of death penalty. Article 266-B of Republic Act 8353 provides, viz-

x x x x

Anent the victim's minority, the allegation in the Information that she was a minor and only eleven (11) years old at the time she was raped by accused-appellant was but an assertion of fact to establish that the crime committed by accused-appellant fall under Article 266-A in relation to Article 266-B of the Revised Penal Code which provides:

Art. 266-A. Rape; when and how committed.--

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

x x x x

d) when the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mention above be present.

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

To warrant sentencing the accused to death, the child must be under seven (7) years of age.

x x x x

Consequently, the amount of Seventy Five Thousand Pesos (P75,000.00) as indemnity awarded by the trial court to the victim must be reduced to Fifty Thousand Pesos (P50,000.00) for the crime of rape committed in this case was in its simple form in the absence of any qualifying circumstance under which the imposition of death penalty is unauthorized.[12]

The dispositive portion of the CA's judgment reads:

WHEREFORE, the Decision of the Regional Trial Court of Carigara, Leyte, Branch 13, dated 24 April 2003, in Criminal Case No. 4132 is UPHELD with modification as to the penalty and award of civil damages. Accordingly, accused-appellant Sergio Lagarde is hereby sentenced to suffer Reclusion Perpetua in lieu of

death penalty and is further ordered to pay the private complainant the amount of Fifty Thousand Pesos (P50,000.00) as civil indemnity and another Fifty Thousand Pesos (P50,000.00) as moral damages.[13]

Hence, before us is this appeal.

Assignment of Errors

THE COURT A QUO GRAVELY ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT FOR THE CRIME CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT.

THE COURT A QUO GRAVELY ERRED IN IMPOSING UPON THE ACCUSED-APPELLANT THE PENALTY OF [RECLUSION PERPETUA][14]

Accused-appellant asserts that the trial court should not have easily dismissed his denial and alibi, i.e., that he was at the party drinking tuba with the other visitors and he neither left his seat nor talked to the victim that day. He stresses that his testimony was corroborated by Lolita. Considering that the crime involves capital punishment, conviction should, according to accused-appellant, rest on moral certainty of guilt.

Accused-appellant also questions the death penalty imposed on him, arguing that the aggravating circumstances of minority, use of a bladed weapon, and uninhabited place were not specifically alleged in the information. Since the crime was not qualified, the award of PhP 75,000 was likewise erroneous.

The Office of the Solicitor General, on the other hand, agrees with the judgment of conviction but not with the death penalty for the same reasons submitted by accused-appellant.

The Court's Ruling

The appeal has no merit.

In rape cases, courts are governed by the following principles: (1) an accusation of rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (2) due to the nature of the crime of rape in which 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. Due to the nature of this crime, only the complainant can testify against the assailant. Accordingly, conviction for rape may be solely based on the complainant's testimony provided it is credible, natural, convincing, and consistent with human nature and the normal course of things.[15]

In this case, AAA testified as follows:

PROS. MERIN:

Q:

Do you know Sergio Lagarde?

A:

Yes, sir.

Q:

Is he inside the courtroom?

A:

Yes, sir.

Q:

Where is he?

A:

There. [Witness pointing to a person inside of the courtroom who when asked of his name identified himself as Sergio Lagarde.]

Q:

Why do you know the accused in this case Sergio Lagarde?

A:

Because his residence is near our house.

x x x x

Q:

On December 27, 2001, about 4:30 o'clock in the afternoon, where were you?

A:

Yes, sir.

Q:

Where were you?

A:

I was in a celebration of the death anniversary.

Q:

And who was celebrating then?

A:

A certain Lolita friend of my mother.

Q:

How far is that house to that of your house?

A:

From here to the public market.

[Witness indicating a distance of five hundred (500) meters to six hundred (600) meters distance.]

Q:

Now, were you alone in attending that particular death anniversary or `tapos'?

A:

No, I was a companion of my mother.

x x x x

Q:

What time when you arrived at the place where there was a celebration?

A:

About 12:00 o'clock noon.

Q:

You mean, you and your mother took lunch in that particular place of Lolita?

A:

Yes, sir we ate our lunch in that place.

Q:

And after you ate lunch at that place what did you do next?

A:

My mother together with some other people had a drinking spree.

x x x x

Q:

And during that time when your mother having that drinking spree where did you go, tell this Court?

A:

I stayed inside their house.

Q:

And up to when did you stay?

A:

Until about 4:00 o'clock in the afternoon.

Q:

And after 4:00 o'clock where did you go?

A:

My mother ordered me to pick a jackfruit for me to cook as a viand.

x x x x

Q:

And did you accede to that order of your mother?

A:

Yes, sir.

Q:

Now, you in fact reached that jackfruit tree?

A:

Yes, sir.

Q:

Were you successful in taking a jackfruit?

A:

Yes, sir.

Q:

Were you successful in taking a jackfruit?

A:

No sir, I was not.

Q:

Were you alone in going there?

A:

Yes, sir.

Q:

Why were you not able to get a jackfruit?

A:

Because that person was there.

Q:

Who was that person?

A:

Sergio Lagarde.

Q:

And where was he located in reference to that jackfruit tree?

A:

He was already at my back.

Q:

Now, were there houses nearby that jackfruit tree?

A:

None, sir.

Q:

And when you noticed the presence of Sergio Lagarde what happened next, if any?

A:

He placed his hand on my mouth to keep me from not making any noise.

Q:

Was he in front of you? What was his relative position when he put his hand at your mouth?

A:

He was at my back.

Q:

And after your mouth was covered by his hand what did Sergio Lagarde do next, if any?

A:

He brought me to the copra dryer.

x x x x

Q:

Now, how were you brought by this accused to that "loonan" or kiln dryer?

A:

He dragged me.

Q:

How were you able to know his person as he was situated at your back?

A:

I learned his identity when we were already at the kiln dryer.

Q:

When you reached the kiln dryer, what happened next, tell the Court?

A:

He placed himself on top of me.

Q:

And what was your relative position when he placed himself on top of you? Were you on a bed or were you on the ground?

A:

I was lying down face up in [the] bamboo bench.

x x x x

Q:

When you were placed by this accused on this "papag" and you were laid upon on that "papag" while he placed himself on top of you, what did this accused do upon your person?

A:

He poked a knife on me and told me not to tell our neighbors.

x x x x

Q:

Now, when this knife was poked upon your face which is about seven (7) inches long what did you feel?

A:

I was afraid.

Q:

Were you able to shout for help?

A:

No, I was not able to shout and he placed his hand on my mouth.

x x x x

Q:

Now, how did he rape you?

A:

He placed himself on top of me.

Q:

And were you still with your clothes?

A:

No, he has none.

Q:

How about you?

A:

None also.

Q:

Who took off your clothes?

A:

He.

Q:

When did he take your clothes?

A:

At the time when he placed his hand on my mouth.[16]

The trial court observed that AAA's testimony was credible, straightforward, clear, and convincing. She ably identified accused-appellant as her attacker and described in detail how she was sexually assaulted. There is no reason a child would fabricate such a serious accusation such as rape and risk public humiliation if not to seek justice. It is for this reason that testimonies of child-victims are normally given full weight and credence, since when minors say they were raped, they say in effect all that is necessary to show that rape was committed.[17] According to the trial court:

No woman, especially one who is of tender age would concoct a tale of defloration, allow the examination of her private parts, and undergo the expense, trouble, inconvenience, not to mention the trauma of a public trial, if she is not motivated solely by the desire to have the culprit apprehended and punished. (People v. Segui, 346 SCRA 178)

The young rape victim, [AAA], when she testified, was frank and straightforward in vividly describing her horrible and harrowing sexual molestation in the hands of the accused at the copra kiln.

Time-tested is the principle that when a woman says she has been raped, she says in effect all that is necessary to show that she has been so raped. A woman will not expose herself to the humiliation of a trial with its attendant publicity and the morbid curiosity it would arouse, unless she has been truly wronged and seek atonement for her abuse. (People v. Boy Domingo, et. al. G.R. No. 143660, June 5, 2002.)

x x x x

It is inconceivable that [AAA], a very young woman, 11 years of age would concoct a story that she had been raped by her neighbor, if indeed she was not sexually molested and that her only intention is to seek justice from the bestial and harrowing experience she suffered from the hands of the accused, Sergio Lagarde. In fact, her family and family of the accused, Sergio Lagarde, has no misunderstanding that would propel her to file such a heinous crime against the accused.[18]

Accused-appellant admitted in court that he is not aware of any cause for the accusation against him:

PROS. MERIN:

Q:

Did I hear you correctly from the question of your counsel that in so far as the family of [AAA], there is no untoward relationship between you and [her] family x x x?

A:

No, we do not have any misunderstanding and I am no a troublesome person and also [AAA and her siblings] are friends of my children.

Q:

And in fact [AAA] is a close friend of your daughter?

A:

Yes, because they are classmates.

Q:

So, you do not know of any reason or reasons why [AAA] a classmate of your daughter would file a case against you of raping her?

A:

I do not know of her, sir.[19]

The victim's credibility is further bolstered by the immediate reporting of the incident to her mother and subsequently to the authorities. Moreover, the medical findings of Drs. Oyzon and Palencia-Jadloc established the fact that complainant had sexual intercourse.

Accused-appellant, on the other hand, could only offer denial and alibi as defenses. His alibi that he spent the afternoon drinking with other visitors does not deserve merit since he was present in the same house where the victim was. The copra dryer was only 150 meters away from the house. For alibi to prosper, the accused persons must establish, by clear and convincing evidence, (1) their presence at another place at the time of the perpetration of the offense and (2) the physical impossibility of their presence at the scene of the crime.[20] It should also be supported by the most convincing evidence since it is an inherently weak defense which can easily be fabricated.[21] Accused-appellant's alibi miserably fails the foregoing test. His only defense witness, his relative, Lolita, cannot consistently and convincingly assert that accused-appellant stayed in one place the whole afternoon. Lolita herself was busy entertaining other visitors while accused-appellant was outside the house. As found by the trial court:

The testimony of Lolita Lagarde, aunt of the accused, Sergio Lagarde, claiming among others that since Sergio Lagarde arrived in her house, took his lunch at noontime and started drinking tuba at 1:00 x x x in the afternoon up to 8:00 x x x in the evening, and that, during that period, Sergio Lagarde did not leave the place, is of dubious veracity. Sergio Lagarde claimed that her auntie Lolita was drinking tuba at the upstairs of the house, together with Minggay Guipon, Esing Lagarde, Bandang Lar, June Biako, Lukas, Olay, Silay, including the accused and some others, however at about 1:00 o'clock in the afternoon, because of the number of people who kept on coming upstairs, Lolita Lagarde requested the accused and his male drinking partners to transfer to the yard of her house, where they continued their drinking spree. Lolita Lagarde and her drinking partners remained drinking upstairs. She could not categorically say that the accused, Sergio Lagarde did not leave her place nor molested Mary Ann Guipon at around 4:30 o'clock in the afternoon, when she, herself, was also busy drinking inside their house upstairs, separated by walls, from the place where Sergio Lagarde and his companions were drinking at the yard. It could only be surmised that Lolita Lagarde only concocted her testimony in favor of her nephew, Sergio Lagarde.[22]

As regards the second assigned error, we agree with the appellate court that the death penalty is not warranted by the alleged aggravating circumstances, i.e., victim's minority, use of bladed weapon, and uninhabited place. First, the death penalty was abolished under Republic Act No. (RA) 9346. Second, the use of a bladed weapon and uninhabited place cannot be appreciated here because these were not specifically alleged in the information. Section 8, Rule 110 of the Revised Rules of Criminal Procedure provides:

Sec. 8. Designation of the offense.--The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

It is a basic constitutional right of the accused persons to be informed of the nature and cause of accusation against them. It would be a denial of accused-appellant's basic right to due process if he is charged with simple rape and consequently convicted with certain qualifying circumstances which were not alleged in the information.

The appellate court correctly ruled that the use of a bladed weapon and uninhabited place are not circumstances that would call for the imposition of the death penalty. Sec. 2 of RA 8353 or the Anti-Rape Law of 1997, incorporating Article 266-B into the Revised Penal Code, provides:

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.

2)

When the victim is under the custody of the police or military authorities or any law enforcement or penal institution.

3)

When the rape is committed in full view of the spouse, parent, any of the children or other relatives within the third civil degree of consanguinity.

4)

When the victim is a religious engaged in legitimate vocation or calling and is personally known to be such by the offender before or at the time of the commission of the crime.

5)

When the victim is a child below seven (7) years old.

6)

When the offender knows that he is afflicted with Human Immuno-Deficiency Virus (HIV)/Acquired Immune Deficiency Syndrome (AIDS) or any other sexually transmissible disease and virus or disease is transmitted to the victim.

7)

When committed by any member of the Armed Forces of the Philippines or para-military units thereof or the Philippine National Police or any law enforcement agency or penal institution, when the offender took advantage of his position to facilitate the commission of the crime.

8)

When by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation or disability.

9)

When the offender knew of the pregnancy of the offended party at the time of the commission of the crime.

10)

When the offender knew of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime.

The victim's minority does not also qualify the offense to merit the death penalty. To warrant a death sentence, the victim must be under seven (7) years of age. The applicable provisions, therefore, are the following:

Art. 266-A. Rape; when and how 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 otherwise unconscious;

c)

By means of fraudulent machination or grave abuse of authority; and

d)

When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mention above is present.

x x x x

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

In the case at bar, the trial court found that accused-appellant, with the use of force, did have sexual intercourse with the victim who was then under 12 years old. His guilt was established beyond reasonable doubt. Thus, the applicable penalty is only reclusion perpetua and not death, the imposition of which has been abolished. Without the qualifying circumstances, the indemnity should also be reduced from PhP 75,000 to PhP 50,000 only. The award of PhP 50,000 as moral damages is retained.[23]

WHEREFORE, the CA's March 7, 2007 Decision in CA-G.R. CR-H.C. No. 00069 is AFFIRMED IN TOTO. No costs.

SO ORDERED.

Quisumbing, (Chairperson), Carpio Morales, Tinga, and Brion, JJ., concur.

[1] Rollo, pp. 4-24. Penned by Associate Justice Priscilla Baltazar-Padilla and concurred in by Associate Justices Pampio A. Abarintos and Stephen C. Cruz.

[2] CA rollo, pp. 15-26. Penned by Judge Crisostomo L. Garrido.

[3] Id. at 7.

[4] The Court shall use fictitious initials in lieu of the real names of the victim and the latter's immediate family members other than accused-appellant. See *People v. Gloria*, G.R. No. 168476, September 27, 2006, 503 SCRA 742; citing Sec. 29 of Republic Act No. (RA) 7610, Sec. 44 of RA 9262, and Sec. 40 of the Rule on Violence against Women and their Children; and *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA

419.

[5] CA rollo, p. 22.

[6] Id. at 17-18.

[7] Id. at 18-19.

[8] Id. at 20.

[9] Id. at 21.

[10] Supra note 2, at 25-26.

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

[12] Supra note 1, at 19-22.

[13] Supra note 1, at 23.

[14] CA rollo, p. 36. Appellant's Brief originally states: The court a quo gravely erred in imposing upon the accused-appellant the supreme penalty of death.

[15] People v. Nazareno, G.R. No. 167756, April 9, 2008, 551 SCRA 16, 31.

[16] TSN, October 2, 2002, pp. 3-8.

[17] People v. Tejada, G.R. No. 126166, July 10, 2001, 360 SCRA 658, 670.

[18] Supra note 2, at 22-24.

[19] TSN, February 6, 2003, pp. 10-11.

[20] People v. Obrique, G.R. No. 146859, January 20, 2004, 420 SCRA 304, 321.

[21] People v. Makilang, G.R. No. 139329, October 23, 2001, 368 SCRA 155, 167.

[22] Supra note 2, at 24-25.

[23] People v. Nava, Jr., G.R. Nos. 130509-12, June 19, 2000, 333 SCRA 749, 764.

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