

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. NORLITO SAMBAHON Y NUEVA, APPELLANT.

G.R. No. 182789. August 03, 2010

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Norlito Sambahon y Nueva (appellant) was charged and convicted of rape of his 13 year-old stepdaughter, AAA,[1] by the Regional Trial Court (Branch 63), Calabanga, Camarines Sur by Decision of February 15, 2006 which was affirmed with modification by the Court of Appeals.

The Information against appellant reads:

That on or about the 12[th] day of August 2003, at around eight o'clock in the evening in Barangay San Ramon, Tinambac, Camarines Sur, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused willfully, unlawfully and feloniously, through force or intimidation, had carnal knowledge with complainant, [AAA], fifteen (15)[2] years old and the stepdaughter of the accused, against her will, to her damage and prejudice.

The crime is committed with the following attendant aggravating/qualifying circumstances:

The victim is under eighteen years of age and the offender is her stepfather.

ACTS CONTRARY TO LAW.

Naga City, Philippines, April 12, 2004.[3] (Underscoring supplied)

During the pre-trial of the case, appellant admitted that on August 12, 2003, AAA was 13 years old as she was born on December 15, 1989 to her mother BBB[4] and the latter's late common-law husband CCC,[5] as evidenced by a certified true copy of her birth certificate[6] (Exhibit "A"); that AAA is his stepdaughter, having married BBB on June 5, 1996 as evidenced by a certified true copy of their Certificate of Marriage[7] (Exhibit "C"); and that on the day of the incident, he, AAA and BBB were residing in their house at San Ramon, Tinambac, Camarines Sur.[8]

Culled from the testimonies of AAA, BBB and Dr. Augusto M. Quilon, Jr. is the following version of the prosecution:

In the afternoon of August 12, 2003, BBB and appellant left their house in San Ramon, Tinambac and proceeded to their store at Sitio Bayang, also in Tinambac, to sell merchandise, leaving behind AAA and her three young siblings.[9]

Appellant returned to their house in the early evening of the same day purportedly to get some merchandise.[10] At past 8:00 that night, appellant approached AAA who was then sleeping in the room of BBB and appellant, telling her not to make any noise. He immediately removed AAA's skirt and panties and tied her hands, after which he parted her legs and inserted his penis into her vagina, drawing her to cry as he made a push and pull

movement. Before he returned to the store, he warned her not to tell her siblings and her mother about what he did to her, otherwise, he would kill all of them.[11]

About five months later or sometime in the first week of January, 2004, appellant brought AAA to the Bicol Medical Center, Naga City for medical check-up where she was found to be pregnant.[12] She left home the following day and stayed at the house of her maternal grandmother at Sitio Bayang to whom she revealed the sexual abuse committed by appellant. AAA later also revealed the matter to her mother. The rape was thereafter reported to the police.[13]

When Dr. Augusto M. Quilon, Jr., a physician at the Bicol Medical Center, examined AAA on January 20, 2004, she complained that she was raped by appellant on August 12, 2003, around 8:00 p.m., at San Ramon, Tinambac. The doctor issued the following findings:

X X X X

Abdomen:

Slightly globular, FH - 26 cm.

Fetal heart tune - 146/min.

External Genitalia:

Normal looking external genitalia; (+) Old hymenal laceration at 4, 6 and 9 o'clock position;
Admits 2 fingers with ease.

A) Pregnancy uterine, 27-28 wks. gestation, G1PPO.

UTS (ultrasound): Pregnancy uterine, 30 wks. gestation.[14] (underscoring supplied),

and opined that AAA was about 6 to 7 months pregnant.[15]

Appellant, interposing alibi, denied being at their house around 8:00 p.m. when the alleged rape of AAA took place on August 12, 2003. He claimed that at 5:30 p.m. until 10:00 that evening, he had a drinking spree with one Rolando Ponis and his (appellant's) brother-in-law at the latter's house, which is just in front of their house. On returning home drunk that night, AAA was still studying. He then slept in their living room at past 10:00 p.m., while his wife BBB was already asleep in their room as they had a new-born baby whose name he could not, however, furnish. Why AAA - whom he "considered as [his] own child" and who, in turn, treated him as if he were her natural father - would charge him with rape,[16] he could not fathom.

By Decision of February 15, 2006, the trial court convicted appellant of qualified rape as charged, disposing as follows:

WHEREFORE, in view of the foregoing, the prosecution having proven the guilt of accused Norlito Sambahon y Nueva 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[s].[17]

Before the Court of Appeals to which appellant appealed, he faulted the trial court

I

... IN GIVING FULL WEIGHT AND CREDENCE TO THE TESTIMONY OF THE PRIVATE COMPLAINANT; AND

II

... IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED.

The appellate court, by Decision[18] of November 5, 2007, affirmed the factual findings of the trial court but modified the penalty to reclusion perpetua, following the enactment of Republic Act No. 9346,[19] and reduced the award of civil indemnity from P75,000.00 to P50,000.00:

WHEREFORE, premises considered, the instant appeal is hereby DENIED and the assailed Decision dated February 15, 2006 rendered by the Regional Trial Court (RTC) of Calabanga, Camarines Sur, Branch 63, in Criminal Case No. RTC'04-921 is AFFIRMED with modification imposing the penalty of reclusion perpetua on accused-appellant and reducing the award of civil indemnity from P75,000.00 to P50,000.00. The rest of the decision stands.

SO ORDERED.[20] (emphasis in the original)

Hence, appellant's present appeal. In separate Manifestations, appellant and the OSG found it no longer necessary to file their respective supplemental briefs.

In his Appellant's Brief filed before the appellate court, appellant contended that AAA's testimony cannot be relied upon because: a) she made inconsistent statements by declaring during the preliminary examination that she was raped by appellant in the room where she and her siblings were sleeping,[21] but in her testimony in court she stated that the rape occurred in the room of her mother and appellant; b) she did not call for help when sexually assaulted; and c) it took her about five months from the time of rape before she revealed the incident to her grandmother and the police.

From a review of the transcript of stenographic notes, the Court finds AAA's testimony to bear the hallmarks of a credible witness. As appellant himself conceded, he could not advance any reason why AAA would impute such a serious charge against him.[22] Even BBB claimed that AAA and appellant had a good relation.

ATTY. NACIONAL [to BBB]:

x x x x

Q

[Do] these children of your first common-law-husband agree to a relationship that you have with Norlito Sambahon (appellant)?

A

Yes, sir, they were amenable.

Q

So, nobody, not even [AAA] ever opposed . . . your relationship with Norlito Sambahon?

A

None, sir.

Q

How did you observe the relation of [AAA] and your husband when they were living at the same house?

A

It was good.

Q

And [AAA] treated your husband fairly also?

A

Yes, sir.

Q

She never complained to you regarding the treatment given by her stepfather?

A

None, sir.[23] (underscoring supplied)

The Court thus credits AAA's testimony.

. . . [A] rape victim's testimony against her parent is entitled to great weight since, customarily, Filipino children revere and respect their elders. These values are so deeply ingrained in Filipino families that it is unthinkable for a daughter to concoct brazenly a story of rape against her father if such were not true. Indeed, courts usually give greater weight to the testimony of a girl who fell victim to sexual assault, especially a minor, particularly in incestuous rape as in this case, because no woman would be willing to undergo a public trial and bear the concomitant shame, humiliation, and dishonor of exposing her own degradation were it not for the purpose of condemning injustice and ensuring that the offender is punished.[24]

Respecting AAA's inconsistent statements, harped upon by appellant, during the preliminary examination and at the witness stand relative to the location of the room where she was ravished, the defense oddly did not call attention thereto to afford her the opportunity to explain or clarify it as called for under Rule 132, Section 13 of the Rules of Court[25] which provides:

SEC. 13. How witness impeached by evidence of inconsistent statements. - Before a witness can be impeached by evidence that he has made at other times statements inconsistent with his present testimony, the statements must be related to him, with the circumstances of the times and places and the persons present, and he must be asked whether he made such statements, and if so, allowed to explain them. If the statements be in writing they must be shown to the witness before any question is put to him concerning them. (underscoring supplied)

Appropos is this Court's ruling in *People v. Relucio*: [26]

. . . every witness is presumed to be truthful and perjury is not to be readily inferred just because apparent inconsistencies are evinced in parts of his testimony. Every effort to reconcile the conflicting points should first be exerted before any adverse conclusion can be made therefrom. These considerations lie at the base of the familiar rule requiring the laying of a predicate, which in essence means simply that it is the duty of a party trying to impugn the testimony of a witness by means of prior or, for that matter, subsequent inconsistent statements, whether oral or in writing, to give the witness a chance to reconcile his conflicting declarations, such that it is only when no reasonable explanation is given by him that he should be deemed impeached. (underscoring supplied)

In any event, the questioned inconsistency does not impinge on the essential elements of the offense charged. What is important is that AAA's narration (both in the preliminary examination and during the trial) of how she

was forced and intimidated by appellant into submission to his bestial cravings was indisputably consistent, direct, positive and unwavering.

That AAA, when sexually assaulted by appellant, did not call her young siblings for help and that she kept mum on the incident for about five months are quite understandable. The moral and physical ascendancy of appellant, her stepfather, who was living with them, sufficed to cow her into yielding to his bestial desires.[27]

As for appellant's alibi, it fails for it was not physically impossible for him to be at the locus criminis at the time of its commission,[28] he having been merely in his brother-in-law's house fronting the scene of the crime.

The Court modifies the challenged decision, however, in that a) appellant is not eligible for parole;[29] and, b) consistent with prevailing jurisprudence, the award by the trial court of civil indemnity in the amount of P75,000.00, which was reduced by the appellate court to P50,000.00, should be reinstated; and his liability for moral and exemplary damages should be increased to P75,000.00 and P30,000.00, respectively.[30]

WHEREFORE, the assailed Court of Appeals Decision of November 5, 2007 in CA-G.R. CR-HC No. 02083 is AFFIRMED with MODIFICATION in that appellant Norlito Sambahon y Nueva is not eligible for parole; and he is ordered to pay AAA P75,000.00 as civil indemnity, P75,000.00 as moral damages, and P30,000.00 as exemplary damages. Costs against appellant.

SO ORDERED.

Brion, Peralta,[*] Abad,**] and Villarama, Jr., JJ., concur.

[*] Additional Member per Raffle dated July 26, 2010 in lieu of Associate Justice Lucas P. Bersamin..

[**] Designated as Additional Member, per Special Order No. 843 (May 17, 2010), in view of the vacancy occasioned by the retirement of Chief Justice Reynato S. Puno.

[1] The real name of the private complainant-victim is withheld per Republic Act (R.A.) No. 7610 (Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act), R.A. 9262 (Anti-Violence Against Women and Their Children Act of 2004), and A.M. No. 04-10-11-SC effective November 15, 2004 (Rule on Violence Against Women and Their Children). Vide: *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419, 421-423.

[2] AAA was 13 years old when the crime was committed on August 12, 2003, she having been born on December 15, 1989 as shown in her Birth Certificate.

[3] Records, p. 1.

[4] Her real name is withheld for the same reason stated in note 1.

[5] His real name is withheld for the same reason stated in note 1.

[6] Records, pp. 26-27, 40; TSN (testimony of BBB), November 24, 2004, p. 3.

[7] Id. at 33-34; TSN, id. at 4.

[8] Pre-Trial Order dated August 18, 2004, id. at 24-25.

[9] TSN, supra note 5 at 4-5, 10.

[10] Id. at 5-6.

- [11] TSN (testimony of AAA), February 6, 2005, pp. 5-9.
- [12] Id. at 19-21.
- [13] Id. at 10.
- [14] Exhibit "B," records, p. 5; TSN (testimony of Dr. Augusto Quilon, Jr.), April 26, 2005, pp. 2-6.
- [15] Id. at 6.
- [16] TSN (testimony of appellant), July 19, 2005, pp. 4-12.
- [17] Records, p. 64.
- [18] Penned by Associate Justice Estela M. Perlas-Bernabe and concurred in by Associate Justices Portia Alino-Hormachuelos and Lucas P. Bersamin (now a member of the Supreme Court); CA rollo, pp. 90-98.
- [19] Otherwise known as AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES, signed into law on June 24, 2006; *People v. Bidoc*, G.R. No. 169430, October 31, 2006, 506 SCRA 481, 502.
- [20] CA rollo, pp. 97-98.
- [21] Her statement was taken before Judge Eddie P. Monserate, Municipal Trial Court of Tinambac, Camarines Sur, RTC records, pp. 6-8.
- [22] *People v. Manallo*, G.R. No. 143704, March 28, 2003, 400 SCRA 129, 141, cited in *Llagas*, G.R. No. 178873, April 24, 2009, 586 SCRA 707, 717.
- [23] TSN, November, 24, 2004, pp. 9, 12.
- [24] *Campos v. People*, G.R. No. 175275, February 19, 2008, 546 SCRA 334, 345-346.
- [25] *People v. Garte*, G.R. No. 176152, November 25, 2008, 571 SCRA 570, 582.
- [26] No. L-38790, November 9, 1978, 175 Phil. 398, 413; 86 SCRA 227, 242, cited in *People v. Garte*, id.
- [27] *People v. Rodavia*, G.R. Nos. 133008-24, February 6, 2002; 426 Phil. 707, 719; 376 SCRA 320, 329.
- [28] *People v. Garte*, supra note 24 at 583.
- [29] Section 3 of Republic Act No. 9346 provides: "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" (underscoring supplied); *People v. Garte*, supra note 24 at 583-584.
- [30] *People v. Sobusa*, G.R. No. 181083, January 21, 2010.

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