

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANDRES C. FONTILLAS ALIAS “ANDING,” ACCUSED-APPELLANT.

G.R. No. 184177. December 15, 2010

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

On appeal is the Decision[1] dated January 29, 2008 of the Court of Appeals in CA-G.R. CR.-H.C. No. 01792, which affirmed with modification the Decision[2] dated October 28, 2005 of Branch 69 of the Regional Trial Court (RTC) of Iba, Zambales, convicting accused-appellant Andres Fontillas, also known as "Anding," of qualified rape as defined and penalized under Articles 266-A(1)(c) and 266-B(1) of the Revised Penal Code.

The real name of the private offended party and her immediate family members, as well as such other personal circumstances or any other information tending to establish or compromise her identity, are withheld pursuant to *People v. Cabalquinto*[3] and *People v. Guillermo*. [4] Thus, the initials AAA represent the private offended party while the initials BBB, CCC, DDD, and EEE refer to her relatives.

Accused-appellant was indicted for rape qualified by his relationship with and the minority of AAA. The criminal information filed with the RTC read:

That on or about the 8[th] day of December 2001 at [Barangay] Bamban, Municipality of Masinloc, Province of Zambales, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with lewd design and with grave abuse of authority, did then and there, willfully, unlawfully and feloniously, have sexual intercourse with and carnal knowledge of his own daughter, 13-year old [AAA], without her consent and against her will, to the damage and prejudice of said [AAA]. [5]

Accused-appellant pleaded not guilty on June 24, 2002. After the pre-trial conference on September 23, 2002, trial ensued.

The prosecution presented the testimonies of AAA, the private offended party; Dr. Liezl dela Llana Edaño (Dr. Edaño), the medico-legal who physically examined AAA for signs of sexual abuse; and Narcisa Cubian, a social worker from the Department of Social Welfare and Development, formerly assigned at the Home for Girls in Olongapo City, who testified that AAA was referred and placed under the protective custody of said institution. The prosecution dispensed with the testimonies of Senior Police Officer 3 Zaldy Apsay, the police officer who investigated AAA's complaint; and Ana A. Ecle (Ecle), the social worker who referred AAA for protective custody at the Home for Girls in Olongapo City, as the defense admitted the subject matter of their testimonies. The documentary exhibits for the prosecution consisted of Dr. Edaño's Medico-Legal Report; [6] AAA's "Sinumpaang Salaysay" and Verified Complaint; [7] Ecle's Letter and Social Case Study Report; [8] and AAA's Certificate of Live Birth. [9]

The defense, on the other hand, presented the testimonies of accused-appellant who denied AAA's accusation; and EEE, accused-appellant's relative and neighbor, who testified that at around 8:30 p.m. on December 8, 2001, he saw accused-appellant under a tamarind tree, drunk, with his head bowed down.

In its Decision dated October 28, 2005, the RTC decreed:

IN VIEW THEREOF, accused Andres Fontillas y Calpo is found GUILTY beyond reasonable doubt of the crime of Incestuous Rape and is hereby sentenced to suffer the supreme penalty of DEATH. Accused is ordered to pay the victim P75,000.00 as civil indemnity, P75,000.00 as moral damages and P25,000.00 as exemplary damages.[10]

The RTC transmitted the records of the case to the Court of Appeals for automatic review. Accused-appellant filed his Brief[11] on July 18, 2006 while the plaintiff-appellee, represented by the Office of the Solicitor General (OSG), filed its Brief[12] on November 16, 2006.

The Court of Appeals summarized the evidence of the parties as follows:

In the evening of 08 December 2001, while private complainant was sleeping in their house in Bamban, Masinloc, Zambales with her younger brother [BBB], she was awakened by the arrival of their father, appellant Andres Fontillas, whom she heard coughing. She stood up and helped appellant enter their house because he was drunk. She let him sleep beside them. After a while, she was roused by appellant who was then taking off her short pants. She cried but he warned her not to make any noise. After removing his own pants, appellant pressed down ("inipit") both her hands and feet and covered her mouth with his hands. She kept quiet because she was afraid of him. Then he inserted his penis into her vagina causing complainant to feel pain in her private part.

After satisfying his lust, appellant went out of the house and proceeded to a store nearby while his daughter stayed in their house pretending that she was washing their clothes. When appellant left, she went to report the incident to her Aunt [CCC] who lived nearby. After hearing her story, her Aunt [CCC] did not allow her to go back to their house. Complainant also informed her Uncle [DDD] about the incident. He then brought her to the police station where she executed a sworn statement. After the investigation, complainant was brought to the Home for Girls where she still presently resides.

Dr. Liezl Dela Llana Edaño, the municipal health officer of the Rural Health Unit of Masinloc, Zambales, conducted the physical examination on the victim and made the following findings:

"Pertinent Findings: Conscious, coherent, ambulatory not in any form of cardio respiratory distress.

Genitalia: (+) old hymenal laceration at 6 & 8 o'clock position. Admits one finger with ease.

No other physical injuries noted at the time of the examination.

Laboratory Exam done: attached"

Denying the charge that he ravished his own daughter, [accused-appellant] testified that he worked as a fisherman and mango sprayer seven days a week because he did not want to waste any opportunity to earn. On cross-examination, he admitted that he had a drinking spree with friends on the night of 07 December and that he got too drunk. He likewise testified that he could not remember what happened that evening but only recalled that he woke up at 6:00 in the morning lying beside the door of their shanty.

The defense also presented [EEE] who testified that in the evening of 08 December 2001, he saw his cousin, accused-appellant herein, under a tamarind tree with his head bowed resting on a bench. He approached appellant and found him very drunk so he left him there. He recounted that in the morning of 09 December 2001, his niece, the private complainant, went to his house and informed him that she was raped by her father.[13]

After its evaluation of the evidence, the Court of Appeals affirmed the finding of guilt by the RTC but modified the penalty imposed, thus:

WHEREFORE, the decision of the Regional Trial Court (Branch 69) of Iba, Zambales, in Criminal Case No. RTC 3360-I finding accused-appellant Andres Fontillas y Calpo alias "Anding" GUILTY of the crime of incestuous rape is AFFIRMED with MODIFICATION. As modified, the penalty of death is hereby reduced to reclusion perpetua.[14]

Thereafter, accused-appellant appealed his conviction before us. In a Minute Resolution[15] dated October 6, 2008, we required the parties to file their respective supplemental briefs. The plaintiff-appellee filed a Manifestation[16] dated November 17, 2008, informing the Court that it was no longer filing a supplemental brief since it had already substantially and exhaustively refuted accused-appellant's arguments in its Brief before the Court of Appeals. On the other hand, accused-appellant filed his Supplemental Brief[17] dated December 5, 2008.

The Accused-Appellant's Brief assigns the following errors on the part of the RTC:

I

The trial court gravely erred in finding that the accused-appellant's guilt was proven beyond reasonable doubt.

II

The trial court gravely erred in convicting the accused-appellant despite the weak evidence presented by the prosecution.

III

On the assumption that the accused-appellant committed the acts complained of, the trial court erred in not considering the severe state of intoxication of the accused-appellant.[18]

Accused-appellant asserts that the prosecution failed to prove his guilt beyond reasonable doubt. He puts AAA's credibility into question considering AAA's failure to defend herself or to resist the assault, even when accused-appellant supposedly had no weapon. The threat accused-appellant supposedly made was not even directed at AAA. In addition, it would have been impossible that BBB, AAA's brother, was not awakened during the rape, and that their close neighbors, who also happen to be their relatives, did not notice anything unusual on the night of December 8, 2001.

Accused-appellant further argues that his severe intoxication from consuming eight bottles of gin with two drinking buddies on the night of December 8, 2001 was corroborated by EEE, who saw accused-appellant drunk under a tamarind tree, and even by the testimonies of the prosecution witnesses themselves. The RTC and the Court of Appeals should have at least appreciated accused-appellant's intoxication as an extenuating circumstance that would absolve accused-appellant from any criminal liability.

Accused-appellant lastly points out that the physical evidence is irreconcilably inconsistent with AAA's version of the rape incident. Dr. Edaño's medical examination reveals that the lacerations on AAA's vagina were old, which may have been acquired weeks before.

Plaintiff-appellee, for its part, maintains that the prosecution had duly proven accused-appellant's guilt beyond reasonable doubt for the crime of qualified rape. AAA convincingly detailed in court how, when, and where she was raped by her own father. Accused-appellant's moral and physical dominion over AAA is sufficient to submit her to his bestial desire. Moreover, accused-appellant failed to present the required proof that his claim of extreme intoxication from alcohol seriously deprived him of his reasoning, and that such intoxication was not habitual nor intentional, i.e., intended to fortify his resolve to commit the crime.

We affirm accused-appellant's conviction.

The prosecution was able to establish beyond reasonable doubt that accused-appellant, through force, threat or intimidation, had carnal knowledge of his daughter, AAA, who was only 13 years old at that time. AAA's birth certificate shows that she was born on August 15, 1988 and that accused-appellant is her biological father.

AAA was consistent, candid, and straightforward in her narration that she was raped by her own father, to wit:

Q:

In the evening of December 8, 2001, what were you doing inside your house [AAA]?

A:

I was sleeping, ma'am.

Q:

About what time when you went to sleep?

A:

I could not remember, ma'am.

Q:

What about your brother [BBB], did he go to sleep with you?

A:

Yes, ma'am.

Q:

What part of the house did you sleep?

A:

Inside of the bedroom, ma'am.

Q:

So, how long did you sleep that night of December 8, 2001?

A:

I have a long slept, ma'am.

Q:

Did you wake-up?

A:

Yes, ma'am.

Q:

What made you wake-up?

A:

When my papa arrived, ma'am.

Q:

When you said "papa" you are referring to the accused in this case, Andres Fontillas?

A:

Yes, ma'am.

Q:

How did you come to know that he arrive in your house at that night?

A:

I heard that he was coughing, ma'am.

Q:

When you heard him coughing, what did you do?

A:

I woke-up ma'am.

Q:

What did you do next?

A:

I stood up, ma'am.

Q:

Where did you go?

A:

I helped him enter the house because he was drunk, ma'am.

Q:

Why, did you know that he was drunk?

A:

Because he went to have drinking spree with his friends, ma'am.

Q:

So, you helped him entered the house. Where did you bring him?

A:

I let him slept, ma'am.

Q:

Where did you bring him to sleep?

A:

Beside us, ma'am.

Q:

So, when you brought your father to your bedroom to sleep, what did you do next?

A:

I continued my sleep, ma'am.

Q:

And did you wake-up?

A:

Not anymore, ma'am.

Q:

What time did you wake-up [AAA]

A:

Early in the morning, ma'am.

Q:

What made you [wake- up]?

A:

My papa, ma'am.

Q:

What did your papa do that make you wake-up?

A:

He was taking off my short pants, ma'am.

Q:

What did you do when you heard him taking off your short pants?

A:

I cried, ma'am.

Q:

What happened next?

A:

He took off his short pants, ma'am.

Q:

Was he saying anything to you [AAA] while he was doing that to you?

A:

Yes, ma'am.

Q:

What were these words?

A:

He told me not to create any noise, ma'am.

Q:

And did you obey him?

A:

Yes, ma'am.

Q:

Why did you obey him?

A:

Because I was afraid, ma'am.

Q:

Why were you afraid of him?

A:

Because he threatened me that if I will report the incident he will kill the person whom I reported the incident ma'am.

Q:

And did you believe him that he will kill the person to whom you reported the incident [AAA]?

A:

Yes, ma'am.

Q:

Was he able to remove his short pants?

A:

Yes, ma'am.

Q:

What happened after that?

A:

He clasped both of my hands and my feet then covered my mouth, ma'am.

Q:

With what hand did he cover your mouth?

A:

With his hand, ma'am.

Q:

And what did he use in "iniipit" your hands and feet?

A:

His feet and his body, ma'am. (Witness demonstrating by crossing her arms over his chest.)

Q:

What happened after that [AAA]?

A:

He did what he wanted to me, ma'am.

Q:

What did he do? Will you please tell us [AAA]?

A:

He raped me, ma'am.

Q:

When you said "he raped me" in what particular did he do?

A:

He inserted his penis, ma'am.

Q:

Where?

A:

To my vagina, ma'am.

Q:

And how did you feel when he was able to insert his penis to your vagina?

A:

I felt pain, ma'am.

Q:

In what part of your body did you feel the pain?

A:

To my hips, ma'am.

Q:

Where else?

A:

My vagina, ma'am.

Q:

And how many times [AAA] was he able to put inside his penis to your vagina?

A:

Once, ma'am.[19]

The lack of evidence that AAA tried to fight off accused-appellant's sexual assault does not undermine AAA's credibility. Jurisprudence on incestuous rape of a minor has oft-repeated the rule that the father's abuse of his moral ascendancy and influence over his daughter can subjugate the latter's will thereby forcing her to do whatever he wants.[20] In *People v. Orillosa*,[21] we held that actual force or intimidation need not be employed in incestuous rape of a minor because the moral and physical dominion of the father is sufficient to cow the victim into submission to his beastly desires.

The absence of any struggle on AAA's part while she was being raped may also be due to accused-appellant's threat that he will kill the person to whom AAA would report the incident. It is of no moment that the threat was not directed at AAA. The threat still instilled in AAA the fear that someone might be harmed because of her.

Neither do we give much weight to the alleged inconsistency between the physical evidence and AAA's version of the rape incident. We note that Dr. Edaño was able to examine AAA only on December 10, 2001, two days after the rape. During cross-examination, Dr. Edaño explained that the two old lacerations she found on AAA's vagina could have happened several weeks or days before the examination. Hence, the old lacerations could still have been caused by and is not irreconcilably inconsistent with the rape of AAA two days earlier. As the Court of Appeals observed, the improbabilities or inconsistencies cited by accused-appellant refer to minor details that do not directly pertain to the elements of the crime of rape or to the identification of accused-appellant as the rapist; and do not detract from the proven fact that accused-appellant had sexual intercourse with AAA through force, intimidation, and grave abuse of authority.

Accused-appellant's bare denial cannot overturn AAA's positive testimony. As we fittingly ruled in *People v. Mendoza*[22]:

It is well-settled that denial is essentially the weakest form of defense and it can never overcome an affirmative testimony particularly when it comes from the mouth of a credible witness. Accused-appellant's bare assertion that private complainant was just "using" him to allow her to freely frolic with other men, particularly with a certain Renato Planas, begs the credulity of this Court. This is especially true in the light of our consistent pronouncement that "no decent and sensible woman will publicly admit being a rape victim and thus run the risk of public contempt - the dire consequence of a rape charge - unless she is, in fact, a rape victim." More in point is our pronouncement in *People v. Canoy* [G.R. Nos. 148139-43, 15 October 2003, 413 SCRA 490], to wit:

... It is unthinkable for a daughter to accuse her own father, to submit herself for examination of her most intimate parts, put her life to public scrutiny and expose herself, along with her family, to shame, pity or even ridicule not just for a simple offense but for a crime so serious that could mean the death sentence to the very person to whom she owes her life, had she really not have been aggrieved. Nor do we believe that the victim

would fabricate a story of rape simply because she wanted to exact revenge against her father, appellant herein, for allegedly scolding and maltreating her.[23]

The Court of Appeals correctly rejected the accused-appellant's assertion that his extreme intoxication from alcohol on the night of the rape should be appreciated as a mitigating circumstance. Section 15 of the Revised Penal Code, on alternative circumstances, provides:

ART. 15. Their concept. - Alternative circumstances are those which must be taken into consideration as aggravating or mitigating according to the nature and effects of the crime and the other conditions attending its commission. They are the relationship, intoxication and the degree of instruction and education of the offender.

x x x x

The intoxication of the offender shall be taken into consideration as a mitigating circumstance when the offender has committed a felony in a state of intoxication, if the same is not habitual or subsequent to the plan to commit said felony; but when the intoxication is habitual or intentional, it shall be considered as an aggravating circumstance.

Accused appellant did not present any evidence that his intoxication was not habitual or subsequent to the plan to commit the rape. The person pleading intoxication must likewise prove that he took such quantity of alcoholic beverage, prior to the commission of the crime, as would blur his reason.[24] Accused-appellant utterly failed to present clear and convincing proof of the extent of his intoxication on the night of December 8, 2001 and that the amount of liquor he had taken was of such quantity as to affect his mental faculties. Not one of accused-appellant's drinking buddies testified that they, in fact, consumed eight bottles of gin prior to the rape incident.

Hence, the conviction of the accused-appellant of qualified rape without any mitigating circumstance by the Court of Appeals must be affirmed. Regarding the penalty imposed for the crime committed by the accused-appellant, the appellate court properly imposed upon accused-appellant the penalty of reclusion perpetua without eligibility for parole, instead of death, pursuant to Republic Act No. 9346. We also affirm the order of the appellate court that accused-appellant pay AAA the amount of Seventy-Five Thousand Pesos (P75,000.00) as civil indemnity and another Seventy-Five Thousand Pesos (P75,000.00) as moral damages, for being consistent with current jurisprudence on qualified rape. However, we increase the award of exemplary damages from Twenty-Five Thousand Pesos (P25,000.00) to Thirty Thousand Pesos (P30,000.00) in line with recent case law.[25]

WHEREFORE, in view of the foregoing, the Decision dated January 29, 2008 of the Court of Appeals in CA-G.R. CR.-H.C. No. 01792, which affirmed with modification the Decision dated October 28, 2005 of the RTC, Branch 69, of Iba, Zambales, is **AFFIRMED** with further **MODIFICATION** to read as follows:

(1) Accused Andres C. Fontillas is held **GUILTY** beyond reasonable doubt for the crime of **QUALIFIED RAPE** and he is sentenced to suffer the penalty of reclusion perpetua without eligibility for parole, and ordered to pay the private offended party civil indemnity in the amount of Seventy-Five Thousand Pesos (P75,000.00), moral damages also in the amount of Seventy-Five Thousand Pesos (P75,000.00), and exemplary damages in the amount of Thirty Thousand Pesos (P30,000.00); and

(2) Accused Andres C. Fontillas is further ordered to pay the private offended party interest on all damages awarded at the legal rate of Six Percent (6%) per annum from date of finality of this judgment.

No costs.

SO ORDERED.

Corona, C.J., (Chairperson), Velasco, Jr., Del Castillo, and Perez, JJ., concur.

[1] Rollo, pp. 2-15; penned by Associate Justice Ricardo R. Rosario with Associate Justices Rebecca de Guia-Salvador and Magdangal M. de Leon, concurring.

[2] CA rollo, pp. 11-23.

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

[4] G.R. No. 173787, April 23, 2007, 521 SCRA 597.

[5] Records, p. 2.

[6] Id. at 251-252.

[7] Id. at 253-254.

[8] Id. at 255-257.

[9] Id. at 258.

[10] CA rollo, p. 23.

[11] Id. at 35-49.

[12] Id. at 73-95.

[13] Rollo, pp. 3-5.

[14] Id. at 14.

[15] Id. at 21-22.

[16] Id. at 26-28.

[17] Id. at 29-33.

[18] CA rollo, p. 37.

[19] TSN, April 2, 2003, pp. 3-7.

[20] People v. Baun, G.R. No. 167503, August 20, 2008, 562 SCRA 584, 598.

[21] G.R. Nos. 148716-18, July 7, 2004, 433 SCRA 689, 698.

[22] 490 Phil. 737 (2005).

[23] Id. at 746-747.

[24] People v. Bernal, 437 Phil. 11, 25 (2002).

[25] People v. Sarcia, G.R. No. 169641, September 10, 2009, 599 SCRA 20, 46.

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