

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROGELIO MARCOS, ACCUSED-APPELLANT.

G.R. No. 185380. June 18, 2009

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

For review is the Decision[1] of the Court of Appeals dated 30 June 2008, in CA-G.R. CR-H.C. No. 01919, which affirmed with modifications the Decision[2] of the Regional Trial Court (RTC) of Aparri, Cagayan, Branch 8, in Criminal Case No. 11-9436, finding accused-appellant Rogelio Marcos (Rogelio) guilty of Rape under Articles 266-A and 266-B of the Revised Penal Code, as amended by Republic Act No. 8353 or the Anti-Rape Law of 1997, in relation to Republic Act No. 7610.[3]

On 8 July 2005, Rogelio was charged before the RTC with Rape under Articles 266-A and 266-B of the Revised Penal Code, as amended by Republic Act No. 8353, in relation to Republic Act No. 7610. The accusatory portion of the Information reads:

That on or about JULY 13, 2003 and sometimes thereafter, in the Municipality of Gattaran, province of Cagayan, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, by force, threat or intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the herein offended party his step-daughter, AAA[4], a minor, eleven (11) years of age, all against her will and consent, the sexual assault thereby gravely threatening and gravely endangering the survival and normal development of the child.[5]

When arraigned on 11 November 2004, Rogelio, with the assistance of his counsel de parte, pleaded not guilty to the charge.[6] Following the termination of the pre-trial conference, trial on the merits ensued.

The evidence of the prosecution, as culled from the testimonies of the victim (AAA), the victim's aunt (BBB), the investigating police, Senior Police Officer (SPO) I Dennis P. Aguilar, and Dr. Corazon Flor, and from the documentary evidence, are as follows:

The victim was 11 years old, having been born on 15 March 1992, when the alleged rape incident took place on the date in question.[7] AAA was then living with her mother and her stepfather Rogelio, and three younger siblings at XXX, Gattaran, Cagayan. On 13 July 2003, a little after lunch time and while taking care of her younger siblings, as her mother was away working in the farm, Rogelio ordered the victim to go upstairs. AAA obliged her stepfather's order. Rogelio immediately followed AAA. As soon as Rogelio was upstairs, he suddenly moved toward AAA and removed her dress, her short pants and panties and put her down. Rogelio undressed himself, mounted AAA and forcibly inserted his penis into her vagina. Rogelio then made a push and pull motion. As Rogelio was inserting his penis, AAA cried as she felt so much pain. AAA's wailing continued throughout the entire sexual episode. After Rogelio was done, he told AAA to wipe her tears, dress up, go downstairs, and take care of her younger siblings. AAA did as instructed. Moments later, Rogelio left the house.

After the first rape incident, and in the same month of July, 2003, AAA was again abused by Rogelio. This time, Rogelio did it at the back of the house at about 10:00 o'clock in the morning. The following months, she was subjected to sexual abuse three times every month. The last rape incident was on 18 July 2005.

Despite all these tormenting incidents, AAA did not report them because she was afraid of the threats made by Rogelio after every molestation that he would kill her and her mother if she reported the same to anybody.

On 19 January 2005, BBB, the victim's aunt, went to the victim's house for a visit. She noticed AAA's pregnancy, prompting her to confront the latter. It was then that AAA revealed what had happened to her. BBB assisted the victim in reporting the incidents to the police. SPO1 Aguilar conducted the interview of the victim. The police officer advised AAA to undergo a medical examination.

During the hearing, AAA admitted that the child she was carrying was the product of the sexual abuse perpetrated by Rogelio.

The defense, on the other hand, presented the oral testimonies of Rogelio and AAA's mother. The defense claimed that it was AAA who initiated the sexual congress.

Rogelio admitted that AAA is his step-daughter.[8] He testified that when he was upstairs, AAA followed, and kissed him. Rogelio reacted by kissing AAA. He then requested AAA to remove her short pants, and she acceded. Rogelio asked AAA to unzip his short pants, and the latter voluntarily complied. AAA knelt in front of Rogelio and the latter requested the former to suck his penis. AAA took out Rogelio's organ and did as requested. When he was about to ejaculate, Rogelio pulled his penis from AAA's mouth and let her play with it. AAA's mother suddenly caught them in such compromising situation. AAA rushed downstairs, while AAA's mother banged Rogelio's head against the wall and threatened to cut his neck should he repeat such act.

AAA's mother corroborated Rogelio's testimony that she caught him and AAA engaged in oral sex.

In a Decision dated 7 February 2006, the RTC rendered a guilty verdict against Rogelio. The supreme penalty of death was meted out to him. The decretal portion of the RTC decision reads:

WHEREFORE, in the light of the foregoing ratiocination, the Court finds accused, Rogelio Marcos, "Guilty" beyond reasonable doubt of the crime of rape and sentences him to:

- a) suffer the supreme penalty of death;
- b) pay the victim AAA the amount of P50,000.00 as civil indemnity and P20,000.00 as moral damages. and
- c) pay the costs of litigation.[9]

The Court of Appeals, in a Decision dated 30 June 2008, affirmed the conviction of Rogelio, but modified the penalty of death to reclusion perpetua on the ground that the imposition of the death penalty was prohibited by Republic Act No. 9346.[10] The dispositive part of the Decision of the Court of Appeals states:

WHEREFORE, the February 7, 2006 Decision of the Regional Trial Court, Branch 8, Aparri, Cagayan, in Criminal Case No. 11-9436, is MODIFIED to read as follows:

x x x the Court hereby sentences him to suffer the penalty of Reclusion Perpetua without possibility of parole; and to pay the complainant the amount of P75,000.00 as moral damages and another P75,000.00 as civil indemnity.[11]

Hence, the instant recourse.

Rogelio contends that the RTC erred in convicting him of statutory rape, considering that the prosecution failed to

present evidence to warrant a finding of conviction. Rogelio expresses a strong objection to the RTC's giving credence to the victim's testimony, which according to him is loaded with improbability. Specifically, Rogelio pinpoints the substantial lapse of time from the date the victim was allegedly raped on 13 July 2003 to the date of the victim's pregnancy in December of 2004. Rogelio insists that if indeed he was responsible for the victim's pregnancy, then it would not have taken until December 2004 for the signs of pregnancy to become manifest.

Statutory rape, under Article 266-A, par. 1-d, is committed by having carnal knowledge of a woman "when the offended party is under 12 years of age." The two elements of statutory rape are: (1) that the accused had carnal knowledge of a woman; and (2) that the woman was below 12 years of age. Sexual congress with a girl under 12 years old is always rape.[12]

In this case, the victim's age is undisputed. She was below 12 years old. Her Birth Certificate shows that she was born on 15 March 1992. Thus, on 13 July 2003, AAA was only eleven (11) years old. Hence, the remaining issue is whether Rogelio had carnal knowledge of the victim.

To ascertain the guilt or innocence of the accused in cases of rape, the courts have been traditionally guided by three settled principles, namely: (a) an accusation for rape is easy to make, difficult to prove and even more difficult to disprove; (b) in view of the intrinsic nature of the crime, the testimony of the complainant must be scrutinized with utmost caution; and (c) the evidence of the prosecution must stand on its own merits and cannot draw strength from the weakness of the evidence for the defense.[13]

Since the crime of rape is essentially one committed in relative isolation or even secrecy, it is usually only the victim who can testify with regard to the fact of the forced coitus.[14] In a prosecution for rape, therefore, the credibility of the victim is almost always the single and most important issue to deal with.[15] If her testimony meets the test of credibility, the accused can justifiably be convicted on the basis thereof; otherwise, he should be acquitted of the crime.[16]

In this case, after a painstaking assessment of the victim's testimony, the RTC found her credible, thus:

The Court noticed that the victim while making public her horrifying, terrible and pyrrhic ordeal from the hands of the accused, cried not once but twice, thus, bolstering the truthfulness of her statements as it was narrated with feelings and down to earth emotions.

Thus, the Court believes, that, the victim cannot fabricate more so concoct nor weave a case so serious against her own step-father.[17]

This Court itself, in its effort to ferret out the truth based on the evidence on records has diligently examined the transcripts of stenographic notes of this case. Like the RTC, it finds the victim's testimony on the incident candid and straightforward, indicative of an unadulterated and realistic narration of what took place on that fateful day. She narrated the sexual abuse in this manner:

Q:

On July 13, 2003 Madam witness, where were you then living?

A:

I was living at XXX, Gattaran, Cagayan, sir.

Q:

In whose house?

A:

House of my grandfather, sir.

Q:

Who were living with you in the house of your grandfather?

A:

My step-father Rogelio Marcos, my mother, my siblings and I, sir.

x x x x

Q:

You said you were in the house of your grandfather on July 13, 2003 Madam witness, what were you then doing?

A:

I was taking care of my siblings, sir.

x x x x

Q:

Why, where was your mother Madam witness?

A:

She went to work, sir.

Q:

Whereat?

A:

She went to work as farm worker, sir.

Q:

How about your step-father, where was he then?

A:

He was at home, sir.

Q:

What was he doing then?

A:

None, sir.

Q:

Now, what happened when you were taking care of your brothers and sister?

A:

My step-father requested me to go upstairs, sir.

Q:

Did you go upstairs as requested?

A:

Yes, sir.

Q:

Do you know the reason then why, you were let by your step-father to go upstairs?

A:

I do not know yet at that time what was the reason why he let me go upstairs, sir.

Q:

When you were already in the upstairs, what did your step-father do if any?

A:

He also went upstairs, sir.

Q:

And after that, what happen if any?

A:

He came near me and suddenly removed my dress, sir.

Q:

What happened next if any?

A:

He came near me and suddenly removed my dress, sir.

Q:

What happened next if any?

A:

He removed my short pants, my panty and laid me down and after which he mounted on me, sir.

Q:

And where did he lay you down?

A:

On the floor, sir.

Q:

Now you said that he mounted on you, was he in his dress at that time?

A:

None sir, he also removed his dress.

Q:

When he mounted at you, what did he do next?

A:

He made the push and pull motion, sir.

Q:

What happened when he did do that to you?

x x x x

A:

He forcibly inserted his penis into my vagina, sir.

Q:

And what did you do, when he do that to you?

A:

None sir, I just cried because I was afraid at that time.

Q:

Why were you afraid?

A:

After he inserted his penis into my vagina, I do not know what to do anymore because it was then painful at that time until he finished performing the sexual intercourse with me, sir.

Court:

May we make it on record that as observed by the court, the witness is crying.

x x x x

Q:

Did you not say anything to him while he was doing the push and pull movement or did you not resist?

A:

I did not do anything because I was afraid, sir.

Q:

How long did he do the push and pull movement?

x x x x

A:

About five (5) minutes, sir.

Q:

And after that, what did the accused do if any?

A:

Before he went downstairs sir, he told me to wipe my tears and after saying that he ordered me to come downstairs to take care of my siblings, sir.

x x x x

Q:

Now after dressing yourself, did you go down as ordered to you by your step-father?

A:

Yes, sir.[18]

The testimony of AAA, an eleven-year old child, adequately proved beyond reasonable doubt that she suffered from a bestial act committed by her stepfather on 13 July 2003. As a good daughter, AAA took care of her younger siblings. As an obedient daughter, she innocently followed Rogelio's order to go upstairs. She had no idea what would befall her from following her stepfather's orders. When she went upstairs, as ordered by stepfather, she was callously molested by him. The victim, who was only a naive eleven (11)-year-old child, regarded Rogelio as her true father. Deep in her heart, she was hoping that Rogelio would consider her as his true daughter and would protect her from harm and evil. This, after all, is a normal expectation of a fatherless child and a reasonable responsibility of a stepfather. Such expectation of AAA was shattered when the father whom she regarded as her own showed the beast in him. Far from being a safe refuge, Rogelio became the very evil that he should have shielded AAA from. Rogelio was the very same person who wrought malady upon her.

It may appear odd that AAA did not run away from her tormentor. Her conduct of staying with her tormentor and her failure to prevent the repetition of the rape incident should not be interpreted against her. She was too disturbed and too young to totally comprehend the consequences of the dastardly acts inflicted on her by the appellant. Rape victims, especially child victims, should not be expected to act the way mature individuals would when placed in such a situation.[19] It is not proper to judge the actions of children who have undergone traumatic experience by the norms of behavior expected from adults under similar circumstances.[20] The range of emotions shown by rape victims is yet to be captured even by calculus.[21] It is, thus, unrealistic to expect uniform reactions from rape victims. Certainly, the Court has not laid down any rule on how a rape victim should behave immediately after she has been violated.[22] This experience is relative and may be dealt with in any way by the victim depending on the circumstances, but her credibility should not be tainted with any modicum of doubt. Indeed, different people act differently to a given stimulus or type of situation, and there is no standard form of behavioral response when one is confronted with a strange or startling or frightful experience.[23] It would be insensitive to expect the victim to act with equanimity and to have the courage and the intelligence to disregard the threat made by the appellant. When a rape victim is paralyzed with fear, she cannot be expected to think and act coherently. This is especially true in this case since AAA was repeatedly threatened by appellant if ever she would tell anybody about the rape incidents. The threat instilled enormous fear in her, such that she failed to take advantage of any opportunity to escape from the appellant. Besides, getting away from Rogelio was a task extremely difficult for an 11-year-old girl, because it would be tantamount to leaving her mother and her relatives, fending for herself and perishing in the process.

In contradiction to the damning evidence adduced by the prosecution, what Rogelio could muster is only the defense that he and the victim were having oral sex. Between the self-serving testimony of Rogelio corroborated by his wife and the positive declaration of the victim who is of tender age, the latter deserves greater credence. As

the RTC pointed out, Rogelio's claim that he merely asked AAA to suck his penis was a fabrication and meant to mitigate the crime committed. It is clear that the oral sex was a desperate attempt of Rogelio to be convicted only of a lighter offense defined under paragraph 2 of Article 266-A[24] of the Revised Penal Code, which is penalized by prision mayor only, much lighter than the penalty for the offense charged against Rogelio under subparagraph (d), paragraph 1, Article 266-A, which carries with it the maximum penalty of death. Considering the oft repeated truism that a woman of tender age is shy and ignorant of the sophistication of city life, by no stretch of imagination can we believe that AAA - with her innate modesty, humility and purity as a young Filipina - would have permitted herself to be the object of public ridicule, shame and obloquy as a victim of sexual assault or debauchery.[25] It takes an extreme sense of moral depravity for an 11 year-old-stepdaughter to accuse her very own stepfather of a heinous crime, such as rape, and expose him to the perils attendant to a criminal conviction for no reason at all. As earlier held by the Court, a true Filipina would not go around in public unraveling facts and circumstances of her defloration for no reason, if such were not true. Besides, Rogelio did not ascribe any credible motive to explain why a girl of tender age like AAA would concoct a story accusing him of rape. Thus, in indicting Rogelio, AAA was purely impelled by her legitimate desire to see that justice was done for what she suffered. The absence of evidence as to improper motives actuating the principal witness for the prosecution strongly tends to sustain the conclusion that no such improper motives existed, and that her testimony is worthy of full faith and credit.

Rogelio tries to discredit the victim's testimony by questioning the long interval, which was about 17 months from the time of the rape charged to the time the signs of AAA's pregnancy became obvious. Rogelio claims that it was improbable that he had carnal knowledge of the victim on 13 July 2003 and that such act would come into fruition only in December 2004, which lapse of time was beyond the normal gestation period of nine months.

This fact would not in any way affect the victim's testimony that Rogelio raped her on the day in question. Rogelio must have forgotten that although he was charged only with one count of rape that was committed on 13 July 2003. AAA testified that she was ravished again by the former in the same month and every month thereafter, the last time being on 18 January 2005. This testimony alone would topple Rogelio's contention.

Championing his cause, Rogelio protests that those rape incidents subsequent to the 13 July 2003 cannot be considered as evidence for the prosecution. He asserts that it would violate his right to due process.

This contention is not well-taken. While it is a basic constitutional precept that the accused in a criminal case should be informed of the nature of the offense with which he is charged before he is put on trial, and that the accused be convicted only of an offense alleged in the complaint or information, such principle finds no application to this case. Rogelio is not being tried for the rapes he committed subsequent to that alleged in the Information. The prosecution does not seek that he be punished for the rapes he perpetrated outside the date mentioned in the Information. The said principle becomes relevant if Rogelio were sought to be punished for the acts of rape he carried out other than the one stated in the Information. The prosecution adduced evidence that Rogelio raped the victim several times after the date in question, precisely to show that the pregnancy of AAA was authored by him and not to prove that he should be punished for such. Even assuming *arguendo* that the testimony on the successive molestations could not be considered as evidence for the prosecution, the cause of the prosecution is sufficiently proved by the credible testimony of AAA relating to the 13 July 2003 rape incident. This is an established proof. This alone can sustain the conviction of Rogelio.

In sum, the Court finds that the RTC, as well as the Court of Appeals, committed no error in giving credence to the evidence of the prosecution and finding appellant guilty of the charges. The Court has long adhered to the rule that findings of the trial court on the credibility of witnesses and their testimonies are accorded great respect, unless it overlooked substantial facts and circumstances, which, if considered, would materially affect the result of

the case.[26] We find no reason not to apply the rule and to apply the exception.

The Court of Appeals reduced the penalty of death imposed by the RTC to reclusion perpetua, without possibility of parole pursuant to Republic Act No. 9346.

Under Article 266-B of the Revised Penal Code, as amended by Republic Act No. 8353, qualified rape is committed when, among others, "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." In the instant case, the minority of the victim was alleged in the information and was duly proven during trial. Likewise, Rogelio admitted his relationship to the victim. However, with the effectivity of Republic Act No. 9346 entitled, "An Act Prohibiting the Imposition of Death Penalty in the Philippines" on June 24, 2006, the imposition of the penalty of death has been prohibited. Thus, the proper penalty to be imposed on appellant as provided in Section 2, paragraph (a) of said law, is reclusion perpetua. Thus, this Court affirms the sentence imposed by the Court of Appeals.

Also affirmed is the award of damages imposed by the Court of Appeals, which fixed it at P75,000.00 for the civil indemnity and P75,000.00 for the moral damages. The award of civil indemnity in the said amount is the amount to be awarded if the crime is qualified by circumstances that warrant the imposition of the death penalty.

In addition, the award of exemplary damages is in order because of the presence of the qualifying circumstance of minority of the victim and relationship. When a crime is committed with an aggravating circumstance, either qualifying or generic, an award of P30,000.00 as exemplary damages is justified under Article 2230 of the New Civil Code.[27] This kind of damage is intended to serve as deterrent to serious wrongdoings, as a vindication of undue sufferings and wanton invasion of the rights of an injured, or as punishment for those guilty of outrageous conduct.[28]

WHEREFORE, premises considered, the instant appeal is DENIED. The Decision of the Court of Appeals dated 30 June 2008 in CA-G.R. CR-H.C. No. 01919 finding accused-appellant Rogelio Marcos GUILTY beyond reasonable doubt of statutory rape, sentencing him to suffer the penalty of RECLUSION PERPETUA, and ordering him to pay the victim P750,000.00 as civil indemnity and another P75,000.00 as moral damages, is AFFIRMED with the modification that Rogelio is also ordered to pay the victim P30,000.00 as exemplary damages.

SO ORDERED.

Ynares-Santiago, (Chairperson), Velasco, Jr., Nachura, and Peralta, JJ., concur.

[1] Penned by Associate Justice Jose Catral Mendoza with Associate Justices Hakim S. Abdulwahid and Arturo G. Tayag, concurring; rollo, pp. 2-15.

[2] Penned by Judge Conrado F. Manauis.

[3] Otherwise known as the "Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act, as Amended.

[4] Under Republic Act No. 9262 also known as "Anti-Violence Against Women and Their Children Act of 2004" and its implementing rules, the real name of the victim and those of her immediate family members are withheld and fictitious initials are instead used to protect the victim's privacy.

[5] Records, p. 1.

[6] Id. at 40.

[7] Exhibit D; Birth Certificate of AAA issued by the Municipal Civil Registrar of Gattaran, Cagayan. (Records, p. 9.)

[8] TSN, 15 November 2005, p. 4.

[9] Id. at 114.

[10] An Act Prohibiting the Imposition of Death Penalty in the Philippines.

[11] Rollo, p. 14.

[12] *People v. Somodio*, 427 Phil. 363, 376 (2002).

[13] *People v. Orquina*, 439 Phil. 359, 365-366 (2002).

[14] *People v. Baylen*, 431 Phil. 106, 118 (2002).

[15] *People v. Quijada*, 378 Phil. 1040, 1047 (1999).

[16] *People v. Babera*, 388 Phil. 44, 53 (2000).

[17] Records, pp. 110-111.

[18] TSN, 11 October 2005, pp. 5-9.

[19] *People v. Remoto*, 314 Phil. 432, 450 (1995).

[20] Id.

[21] Id.

[22] *People v. Malones*, 469 Phil. 301, 326-327 (2004).

[23] Id.

[24] Records, p. 111.

[25] *People v. Cana*, 431 Phil. 152, 164 (2002).

[26] *People v. Dagpin*, 400 Phil. 728, 739 (2000); *People v. Valdez*, 401 Phil. 19, 34 (2000).

[27] *People v. Aguila*, G.R. No. 171017, 6 December 2006, 510 SCRA 642, 663.

[28] Id.

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