

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROBERTO GARBIDA, ACCUSED-APPELLANT.

G.R. No. 188569. July 13, 2010

Ponente: VELASCO JR., J.

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VELASCO JR., J.:

Before this Court on appeal is the Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02563 dated March 19, 2009, which upheld the conviction of accused-appellant Roberto Garbida in Criminal Case Nos. 1230-1236, decided by the Regional Trial Court (RTC) of Irosin, Sorsogon, Branch 55 on July 10, 2006.

The facts of the case are as follows: The victim, hereafter referred to as AAA,[2] is the stepdaughter of accused-appellant Roberto Garbida. AAA's biological father and mother separated after the birth of AAA and another child. In 1990, AAA's mother married Garbida and had children of their own. The family lived together in Sua, Matnog, Sorsogon.

At about 1:00 p.m. on April 1, 1997, while the family was at home, Garbida suddenly pulled AAA into a room and then and there proceeded to undress her. He then had sexual intercourse with AAA, even as AAA's mother witnessed the act. AAA's mother attempted to intervene, but her efforts were for naught. Garbida continued to have sexual relations with his stepdaughter on each of the following nights until April 7, 1997, with AAA's mother attempting to stop her husband, but failing at every turn. On April 8, 1997, AAA's mother took her to the barangay center of Sua, where the midwife of the barangay gave them shelter. The next day they reported the crime to the police, and Garbida was arrested. The Department of Social Welfare and Development (DSWD) took custody of AAA.

Garbida was charged with rape in seven separate Amended Informations all dated August 28, 1997, for each act of sexual intercourse with his stepdaughter from April 1 to April 7, 1997. The informations, differing only as to the date of commission, read as follows:

That on or about x x x, inside the dwelling of the victim [AAA], an 11-year old minor, at Sua, Matnog, Sorsogon, and within the jurisdiction of this Honorable Court, the above-named accused, thru force and intimidation, willfully, unlawfully and feloniously, did then and there, had sexual intercourse with the said victim who is his step daughter against her will and consent, to her damage and prejudice.

The offense is aggravated by ignominy, that is, the accused perpetrated the offense in the presence of the victim's mother and against her protestations.

CONTRARY TO LAW.[3]

When arraigned, Garbida pleaded "not guilty."

In his defense, Garbida, while admitting having had sexual intercourse with AAA from April 1 to April 7, 1997, in the presence of AAA's mother, claimed that the acts of sexual intercourse were consensual. As Garbida would allege, AAA wanted to have sex with him because her mother was having sexual relations with other men. He

also claimed that she consented to have sex with him as he was sending her to school. He further claimed having sex with her again when she was 13 years old, or two years after the alleged April 1997 rape incidents took place.

After trial, the RTC found that the circumstances of minority and relationship, which would have qualified the crime committed, albeit alleged in the informations, had not been proved beyond reasonable doubt. As it were, AAA's birth certificate was not presented. Neither was a marriage certificate adduced to prove a valid marriage between Garbida and AAA's mother. The concurrence of minority and relationship constitute special qualifying circumstances in the prosecution for qualified rape, which, in accordance with the settled rule, must be alleged in the information and proved during trial.[4] And if so alleged and proved, then the special qualifying circumstances of minority and relationship could raise the penalty for rape to death.

The RTC nonetheless found Garbida liable for seven counts of statutory rape as she was sexually molested in 1997, when she was 11 years old. The RTC also ruled that the offense was aggravated by ignominy, perpetrated as it was in the presence and over the protestations of the victim's mother.

By decision of July 10, 2006, the RTC adjudged Garbida guilty beyond reasonable doubt of the crimes charged, the dispositive portion of which reads as follows:

WHEREFORE, premises considered, accused ROBERTO GARBIDA'S GUILT having been established beyond reasonable doubt, he is hereby sentenced to suffer the supreme penalty of DEATH for EACH count of RAPE, and to indemnify the victim AAA in the amounts of PhP 75,000.00 as civil indemnity and another PhP 75,000.00 as moral damages, for EACH count of RAPE, with no subsidiary imprisonment in case of insolvency. With costs de oficio.

SO ORDERED.[5]

Garbida then appealed to the CA, reiterating the defenses he presented before the RTC.

The CA affirmed the conviction of Garbida, but with the modification as to the penalty to be imposed, Republic Act No. (RA) 9346 having meanwhile abolished the death penalty, leaving reclusion perpetua as the most severe penalty imposable. The dispositive portion of the CA decision reads as follows:

WHEREFORE, the challenged Decision dated July 10, 2006 in Criminal Case Nos. 1230-1236 is AFFIRMED with MODIFICATION. In lieu of the death penalty, the accused Roberto Garbida should be sentenced to suffer reclusion perpetua for each of the seven counts of rape. The award of civil damages to the victim is maintained.

SO ORDERED.[6]

Now before this Court, Garbida submits the same defense presented before the RTC and the CA, that the acts of sexual intercourse between him and AAA were consensual.

The Court's Ruling

We uphold the conviction of accused-appellant.

In *People v. Dalisay*, the Court held:

Three principles guide the courts in resolving rape cases: (1) and accusation for rape can be made with facility; it is difficult to prove but more difficult for the accused, though innocent, to disprove; (2) in view of the intrinsic 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.[7]

Keeping these principles in mind, the guilt of accused-appellant has been sufficiently established. The testimony of private complainant AAA was not refuted and was found to be credible by the RTC, and was further corroborated by the testimony of her mother, who actually witnessed the crimes committed by accused-appellant against AAA. We hew to the ruling in *People v. Lopez*:

Since the trial judge had the direct and singular opportunity to observe the facial expression, gesture and tone of voice of the complaining witness while testifying, it was fully competent and in the best position to assess whether the witness was telling the truth. This Court has also ruled that testimonies of victims of tender age are credible, more so if they are without any motive to falsely testify against their offender. Their revelations that they were raped, coupled with their willingness to undergo public trial where they could be compelled to describe the details of the assault on their dignity by their own father, cannot be easily dismissed as concoctions. It would be the height of moral and psychological depravity if they were to fabricate sordid tales of sexual defloration - which could put him behind bars for the rest of his life - if they were not true.[8]

In fact, accused-appellant does not deny having had sexual intercourse with AAA. He merely repeats his claim that it was consensual between him and his stepdaughter, and that AAA had sex with him because her mother was having sexual relations with other men.

AAA testified that she was afraid of her father, and that she cried after he had his way with her. Already, this belies accused-appellant's claim that she consented to having sex with him, and is far more believable than his version of the events.

It is difficult, if not impossible, to believe that an 11-year old child consented to having sex with her stepfather to spite or as revenge on her mother. It is an indication of accused-appellant's depravity that he sees consensual sex with an 11-year old child, a stepdaughter no less, as an acceptable behavior. The idea of having sex with his stepdaughter, especially since she is a minor, should repel a normal man. Instead, accused-appellant gave in to his lustful desires. But even assuming *arguendo* that the sex was consensual, the consent of AAA is immaterial.

The acts were committed by accused-appellant in April of 1997, before RA 8353, the Anti-Rape Law of 1997, took effect on October 22, 1997 and amended the provisions of the Revised Penal Code on the crime of rape. Thus, Article 335(3) of the Revised Penal Code defining how statutory rape is committed is the applicable law.

The very act of sexual intercourse was established, in fact admitted by accused-appellant. The age of AAA was established before the RTC to be 11 years. The acts of accused-appellant fall squarely under Art. 335 of the Revised Penal Code, as the elements of the crime of statutory rape have been sufficiently proved. We held in *People v. Lopez*:

It must be remembered that under the law and prevailing jurisprudence, the gravamen of the offense of statutory rape as provided under Article 335 of the Revised Penal Code is the carnal knowledge of a woman below twelve years old. The only elements of statutory rape are: (1) that the offender had carnal knowledge of a woman; and (2) the such woman is under twelve (12) years of age.[9] x x x

Further, we held in *People v. Sarcia*:

x x x Where the girl is below 12 years old, as in this case, the only subject of inquiry is whether "carnal knowledge" took place. Proof of force, intimidation or consent is unnecessary, since none of these is an element of statutory rape. There is a conclusive presumption of absence of free consent when the rape victim is below the age of twelve.[10]

The voluntary submission of AAA, even if the Court were convinced that such is the case, to the sexual desires of accused-appellant will not relieve him of criminal liability. As she was 11 years old at the time, she could not give consent, and if she had indicated in any way to accused-appellant that she consented to having sexual intercourse

with him, there is no reason for him, were he not morally depraved, to take advantage of her consent. Sexual congress with a girl under 12 years old is always rape.[11]

As to damages to be awarded, they must be modified. Art. 2229 of the Civil Code provides, "Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages." Also known as "punitive" or "vindictive" damages, exemplary or corrective damages are intended to serve as deterrent to serious wrongdoings and as a vindication of undue sufferings and wanton invasion of the rights of an injured or a punishment for those guilty of outrageous conduct.[12] An award of exemplary damages is warranted, considering the circumstances of this case, where someone who was supposed to act as a guardian instead abused his ward, and compounded that wrong by doing it in the presence of the victim's mother. Following current jurisprudence,[13] the amount of PhP 30,000 as exemplary damages is proper.

The acts of accused-appellant are reprehensible to say the least. The preposterous defense he raised not only failed to absolve him of his guilt, but only served to reveal his own sordid character. Thus, the CA was correct in affirming the conviction by the RTC. In applying RA 9346 thus reducing the penalty of death to reclusion perpetua, the CA, however, overlooked and failed to indicate that the reduction of the penalty to reclusion perpetua is without eligibility for parole in accordance with Secs. 2[14] and 3[15] of RA 9346.

WHEREFORE, the Decision of the CA in CA-G.R. CR-H.C. No. 02563 is hereby AFFIRMED with the MODIFICATION that the proper penalty is reclusion perpetua without eligibility for parole, and accused-appellant is ordered to pay AAA the amount of PhP 30,000 as exemplary damages, in addition to the civil liability and damages thus imposed by the trial court.

SO ORDERED.

Corona, C.J., (Chairperson), Leonardo-De Castro, Del Castillo, and Perez, JJ.. concur.

[1] Penned by Associate Justice Ramon M. Bato, Jr. and concurred in by Associate Justices Portia Aliño-Hormachuelos and Jose C. Mendoza (now a member of this Court).

[2] The identity of the victim or any information to establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. 7610, "An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes"; Republic Act No. 9262, "An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes"; Section 40 of A.M. No. 04-10-11-SC, known as the Rule on Violence Against Women and Their Children," effective November 5, 2004; and *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[3] Rollo, p. 3.

[4] *People v. Barcena*, G.R. No. 168737, February 16, 2006, 482 SCRA 543, 556.

[5] Records, p. 44.

[6] Rollo, p. 11.

[7] G.R. No. 188106, November 25, 2009, 605 SCRA 807, 814.

[8] G.R. No. 179714, October 2, 2009, 602 SCRA 517, 526-527.

[9] Id. at 527.

[10] G.R. No. 169641, September 10, 2009, 599 SCRA 20, 37-38.

[11] *People v. Perez*, G.R. No. 182924, December 24, 2008, 575 SCRA 653, 681.

[12] *People v. Catubig*, G.R. 137842, August 23, 2001, 363 SCRA 621, 634.

[13] *People v. Ofemiano*, G.R. No. 187155, February 1, 2010; citing *People v. Pabol*, G.R. No. 187084, October 12, 2009, 603 SCRA 522, 532-533.

[14] Sec. 2. In lieu of the death penalty, the following shall be imposed:

(a) the penalty of reclusion perpetua, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code; or

(b) the penalty of life imprisonment, when the law violated does not make use of the nomenclature of the penalties of the Revised Penal Code.

[15] Sec. 3. Person 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. 4180, otherwise known as the Indeterminate Sentence Law, as amended. (Emphasis supplied.)

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