

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. NILO ROCABO, APPELLANT.

G.R. No. 193482. March 02, 2011

Ponente: BRION, J.

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BRION, J.:

We decide the appeal filed by the accused Nilo Rocabo (appellant) from the May 31, 2010 decision of the Court Appeals (CA) in CA-G.R. CEB-CR-H.C. No. 00730.[1]

THE FACTUAL ANTECEDENTS

On August 18, 1999, the appellant was charged[2] in the Regional Trial Court (RTC), Branch 10, Abuyog, Leyte, with 3 counts of incestuous rape[3] committed against his 11-year old daughter AAA[4] on April 27[5] and 29,[6] 1999 and May 1, 1999.[7] The appellant pleaded not guilty to all the charges against him. In the joint trial that followed, AAA testified on the details of the crimes.

On April 27, 1999, while AAA was sleeping in the living room of her grandmother's house, her father (the appellant) woke her up and told her to go to their house at the back of her grandmother's house.[8] On reaching their house, the appellant told her to go to the room.[9] While inside the room, the appellant removed her shorts and underwear, and told her to lie down.[10] The appellant then undressed himself, kissed her, and inserted his private organ into her vagina.[11] Two days later, on April 29, 1999, while AAA was watching television at her grandmother's house, the appellant told her to go home.[12] The appellant once again told AAA to go inside the room.[13] The appellant then kissed her on the neck.[14] Two days later, on May 1, 1999, while AAA was playing in the street, the appellant called her home and told her again to go to the room.[15] The appellant then undressed her, made her lie down, kissed her, and inserted his private organ into her vagina.[16] When BBB, AAA's mother, discovered what happened, she brought AAA on May 27, 1999 to the Burauen District Hospital for a medical examination.[17] The medical examination revealed an old healed hymenal laceration.[18]

The appellant denied the charges against him, claiming that he was roasting pig for the fiesta on April 27, 1999 with Ernie Dagami, and that he was at home with BBB and their children on April 29 and May 1, 1999. [19] He alleged that BBB instigated the case against him because she was afraid that he would file an adultery case against her.[20]

THE RTC RULING

In its January 12, 2007 Decision, the RTC acquitted the appellant for the alleged rape committed on April 29, 1999, but found him guilty of 2 counts of incestuous rape committed on April 27 and May 1, 1999.[21] It gave full credence to AAA's testimony and rejected the appellant's denial. It noted that AAA cried while narrating in court her father's monstrous acts, and that no child would fabricate a rape charge against her own father. The RTC sentenced the appellant to reclusion perpetua for two counts of rape and ordered him to pay AAA P75,000 as

moral damages and P25,000 as exemplary damages for each count.[22]

THE CA RULING

On intermediate appellate review, the CA affirmed the appellant's conviction. It rejected the appellant's attack on AAA's credibility, noting that it was improbable for a child of tender years to concoct a tale of sexual molestation committed by her own father just because she was persuaded to do so by her mother; that inconsistencies on minor details proved that AAA's testimony was not rehearsed; that the delay in reporting the rape incidents did not affect AAA's credibility because there was no uniform reaction for rape victims. The CA noted that the absence of fresh hymenal lacerations does not negate that rape was committed since hymenal lacerations are not an element of rape.[23]

From the CA, the case is now with us for final review.

OUR RULING

We affirm the appellant's conviction.

We have examined the records and we entertain no doubt that the appellant raped AAA. We find AAA's testimony convincing and straightforward. We, therefore, have no reason to reverse or modify the findings of the RTC on the credibility of AAA's testimony, more so in the present case where the said findings were affirmed by the CA. As the RTC and the CA did, we reject the appellant's denial. Not only is denial an inherently weak defense, it cannot also prevail over the positive testimony of the offended party.[24]

While we affirm the factual findings of the RTC and the CA, we note that neither court fully appreciated nor discussed the penalty properly imposable on the appellant.

Since the rape incidents happened on April 27 and May 1, 1999, the applicable laws are Article 266-A and Article 266-B of the Revised Penal Code, as amended,[25] which provide:

ART. 266-A. Rape: When and How Committed. - Rape is committed:

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 mentioned above be present.

x x x x

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

x x x x

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[.]

In the present case, the Informations charging the appellant with the crimes of rape clearly alleged that the appellant had carnal knowledge of his daughter, AAA, who was only 11 years old when the rapes were committed on April 27 and May 1, 1999.[26] The prosecution's evidence clearly shows AAA's age and filiation by the

appellant; AAA's duly presented Certificate of Live Birth showed that she was born on June 7, 1987 to spouses Nilo Rocabo and BBB.[27]

With the basic elements of the crime charged, AAA's minority and her relationship to the appellant having been alleged in the Informations and duly proven, we find the appellant guilty of two counts of qualified rape, as the lower courts did. In view of the enactment of Republic Act No. 9346,[28] the penalty of death that should have been meted out to the appellant under Articles 266-A and 266-B of the Revised Penal Code, shall now be reclusion perpetua for each count of qualified rape, without eligibility for parole.[29]

Lastly, we modify the appellant's civil liability to include civil indemnity and to increase the exemplary damages awarded. Civil indemnity is automatically awarded upon proof of the commission of the crime by the offender.[30] Under prevailing jurisprudence, the offended party is entitled to P75,000 as civil indemnity, P75,000 as moral damages, and P30,000 as exemplary damages to deter other persons with perverse or aberrant sexual behavior from sexually abusing their children.[31]

WHEREFORE, the May 31, 2010 Decision of the Court of Appeals in CA-G.R. CEB-CR-H.C. No. 00730 is hereby AFFIRMED with MODIFICATION. Appellant Nilo Rocabo is found guilty beyond reasonable doubt of two (2) counts of Qualified Rape and sentenced to suffer the penalty of reclusion perpetua for each count, without eligibility for parole. He is also ordered to pay AAA P75,000 as civil indemnity, P75,000 as moral damages, and P30,000 as exemplary damages for each count of rape.

SO ORDERED.

Bersamin, [***]Abad, Villarama, Jr., and Sereno, JJ., concur.

Carpio Morales, (Chairperson), J., on wellness leave.

[**]Brion, Acting Chairperson

[**] Designated Acting Chairperson of the Third Division per Special Order No. 925 dated January 24, 2011.

[***]Designated additional Member of the Third Division per Special Order No. 926 dated January 24, 2011.

[1] Penned by Associate Justice Edwin D. Sorongon, and concurred in by Associate Justices Socorro B. Inting and Eduardo B. Peralta, Jr. of the Twentieth Division; rollo, pp. 3-16.

[2] Except for the dates of the commission of the crime, the Informations were identically worded, thus:

"That on or about the 27[th] day of April 1999, in the Municipality of La Paz, Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs and by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of [AAA], his 11-year old daughter, against her will and without consent." (CA rollo, p. 26.)

[3] See REVISED PENAL CODE, Article 266-A, as amended by Republic Act No. 8353, otherwise known as the Anti-Rape Law of 1997, which became effective on October 22, 1997.

[4] Consistent with *People v. Cabalquinto* (G.R. No. 167693, September 19, 2006, 502 SCRA 419) the real name of the rape victim is withheld and, instead, fictitious initials are used to represent her. Also, the personal circumstances of the victim or any other information tending to establish or compromise her identity, as well as those of her immediate family or household members, is not disclosed.

[5] Docketed as Criminal Case No. 1857.

[6] Docketed as Criminal Case No. 1856.

[7] Docketed as Criminal Case No. 1855.

[8] TSN, September 2, 2004, pp. 5-6.

[9] Id. at 7.

[10] Id. at 8-11.

[11] Id. at 11-14.

[12] Id. at 15.

[13] Ibid.

[14] Id. at 15-16.

[15] Id. at 16-18.

[16] Ibid.

[17] Id. at 19-20.

[18] TSN, July 29, 2004, pp. 4-5; Exhibit "A," original records (Criminal Case No. 1857), p. 50.

[19] TSN, July 27, 2006, pp. 4-10 and 18-21.

[20] Id. at 13-14.

[21] The dispositive portion of the decision reads:

WHEREFORE, foregoing premises considered, judgment is hereby rendered as follows:

1. In Criminal Case No. 1855, the accused NILO ROCABO is found guilty beyond reasonable doubt of the crime as charge [sic], and to suffer the penalty of RECLUSION PERPETUA, and is ordered to pay the offended party the amount of Seventy Five Thousand Pesos (P75,000.00) as Moral Damages and Twenty Five Thousand Pesos (P25,000.00) as Exemplary Damages and to pay the costs.

2. In Criminal Case No. 1856, the accused NILO ROCABO is ACQUITTED, for failure of the prosecution to prove his guilt beyond reasonable doubt.

3. In Criminal Case No. 1857, the accused NILO ROCABO is found guilty beyond reasonable doubt of the crime as charge [sic], and to suffer the penalty of RECLUSION PERPETUA, and is ordered to pay the offended party the amount of Seventy Five Thousand Pesos (P75,000.00) as Moral Damages and Twenty Five Thousand Pesos (P25,000.00) as Exemplary Damages and to pay the costs. (CA rollo, p. 50.)

[22] Original records (Criminal Case No. 1857), pp. 122-132.

[23] Supra note 1.

[24] People v. Pelagio, G.R. No. 173052, December 16, 2008, 574 SCRA 53, 62; and People v. Bon, G.R. No. 166401, October 30, 2006, 506 SCRA 168, 185.

[25] Supra note 3.

[26] Original records (Criminal Case No. 1857), p. 1; original records (Criminal Case No. 1855), p. 1.

[27] Exhibit "B," original records (Criminal Case No. 1857), p. 69.

[28] Entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines," took effect on June 30, 2006.

[29] 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.

[30] *People v. Amatorio*, G.R. No. 175837, August 9, 2010; and *People v. Baun*, G.R. No. 167503, August 20, 2008, 562 SCRA 584, 602.

[31] *People v. Sambahon*, G.R. No. 182789, August 3, 2010; and *People v. Sobusa*, G.R. No. 181083, January 21, 2010, 610 SCRA 538, 559.

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