

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. GEORGE GACUSAN, RESPONDENT.

G.R. No. 207776. April 26, 2017

Ponente: LEONEN, J.

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LEONEN, J.:

The abuse of moral influence is the intimidation required in rape committed by the common-law father of a minor.

This Court resolves this appeal filed by George Gacusan (Gacusan) from the August 31, 2012 Decision[1] of the Court of Appeals in CA-G.R. CR H.C. No. 04832. The assailed decision affirmed the Regional Trial Court's ruling that Gacusan was guilty beyond reasonable doubt of rape in Criminal Case No. 2009-0581-D.[2]

An information for rape docketed as Criminal Case No. 2009-0581-D was filed before the Regional Trial Court, Branch 43 of Dagupan City against Gacusan on October 16, 2009.[3] The information provided:

That at around 11 [o]'clock in the evening of October 14, 2009 in Brgy. [Inmalog], San Fabian, Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there, wilfully, unlawfully and feloniously have carnal knowledge [of AAA], a 15 year old minor, by having sexual intercourse with her, against her will and consent, to her damage and prejudice.

CONTRARY to Article 266-A of the Revised Penal Code, as amended by [Republic Act No.] 8353.[4]

Upon arraignment, Gacusan pleaded not guilty to the charge.[5]

Trial on the merits ensued. The evidence for the prosecution showed that victim AAA's mother was BBB and CCC was her father.[6] When AAA was asked about her father, she claimed that her deceased father had abandoned them.[7]

Gacusan was BBB's common-law partner.[8] At the onset of their relationship, BBB moved in to Gacusan's house.[9] Within eight (8) months of BBB's common-law relationship with Gacusan, she died, leaving AAA an orphan.[10] Even though AAA's paternal grandmother was still alive, AAA opted to stay with Gacusan "as life was harder living with her grandmother than with her stepfather." [11]

When BBB was still alive, AAA slept in a separate room in Gacusan's house.[12] When BBB died, AAA began sleeping beside Gacusan because of her fear of ghosts.[13]

At around 10:00 p.m. to 11:00 p.m. of October 14, 2009, "AAA was trying to sleep beside [Gacusan] when" she felt Gacusan's hand touching her private parts inside her shorts.[14] DDD, Gacusan's 19-year old son, was sleeping on a folding bed in the same room.[15] AAA said that she did not attempt to remove Gacusan's hand because she was already used to it.[16] Gacusan "brought out his penis and inserted it through the leg opening of [AAA]'s shorts. During this time, AAA was on her back while [Gacusan] was on his side, facing her and trying to lift her leg." [17] Gacusan was able to penetrate AAA's vagina then proceeded to do a "push and pull"

movement".[18] When AAA felt Gacusan's penis inside her, she got up to go to the bathroom to urinate.[19] Thereafter, "AAA went back to sleep beside [Gacusan]."[20]

According to AAA, although she felt pain when Gacusan raped her, "she did not shout [because] she was ... afraid of him ... [S]he was afraid to lose [a] family and she depended on [Gacusan for] support[.]"[21] She also claimed that she "was already 15 years old [on the date of the alleged rape] and had been living with [Gacusan] for five years." [22] AAA confessed that Gacusan was already molesting her two (2) years after BBB's death.[23]

The next day after the rape incident, AAA confided to her teacher Aurora Fabia (Fabia).[24] Fabia informed the school principal, Delia Patalud, of A.AN's story, prompting them to report the case to the police.[25] Gacusan was then brought to police custody.[26]

Thereafter, AAA was brought to the Medical Center of Dagupan City where she was examined by Dr. Marlene Quimoy (Dr. Quimoy).[27] The Medico-Legal Report showed that AAA had multiple lacerations and spermatozoa in her vagina, as corroborated by the testimony of Dr. Quimoy as follows:[28]

Dr. Quimoy testified that when she examined AAA, she discovered the presence of fresh erythema or redness and slight swelling around AAA's hymen. She explained that erythema [was] consistent with penetrating trauma caused by a finger or a penis. In addition to the erythema found around AAA's hymen, Dr. Quimoy also noted the presence of multiple healed lacerations consistent with infliction of trauma approximately 72 hours to 21 days prior to the examination. Although no fresh lacerations were discovered, Dr. Quimoy revealed that she found spermatozoa inside the vagina of AAA, which may have been caused by a shallow insertion of the penis and ejaculation into the vagina. Having only taken a sample of the sperm cell, Dr. Quimoy admitted that she did not preserve the spermatozoa sample. Dr. Quimoy opined that based on her examination, AAA is a victim of sexual abuse.[29] (Emphasis supplied, citation omitted)

On the other hand, the defense presented Gacusan as its sole witness.[30] He admitted that AAA was his deceased common-law partner's daughter.[31] Gacusan, however, denied all the accusations against him. He identified his 21 and 15-year old sons and stated that all of them lived in the same house.[32] He insisted that he treated AAA as his own child.[33]

On the date of the rape incident, he claimed that all of them were watching television until 11:00 pm.[34] He also disputed having raped AAA "several times prior to October 14, 2009." [35]

On December 2, 2010, the Regional Trial Court convicted Gacusan of simple rape.[36] It found AAA's testimony as credible to establish the sordid acts committed against her.[37] AAA's testimony was "clear, sincere, spontaneous and candid." [38] Moreover, it found no trace of improper motive for AAA to concoct an accusation.[39] The trial court found that AAA only succumbed to Gacusan's act for fear that she might lose a family.[40]

The trial court also ruled that in rape committed by a father to his daughter, it is the father's moral ascendancy that replaces violation and intimidation.[41] Thus, this principle "applies in the case of a sexual abuse of a stepdaughter by her stepfather and of a goddaughter by a godfather in the sacrament of confirmation." [42] Furthermore, the medico-legal findings were consistent with AAA's testimony that she was raped.[43] Hence, there is a sufficient basis to conclude that the essential requisites of carnal knowledge have been established.[44] The dispositive portion of the decision read:

WHEREFORE, in view of the foregoing, the Court finds the accused GEORGE GACUSAN GUILTY beyond reasonable doubt for the crime of simple rape under Article 266-A of the Revised Penal Code as amended by [Republic Act No.] 8353 and is hereby sentenced to suffer the penalty of reclusion perpetua. He is likewise ordered to pay AAA civil indemnity in the amount of P50,000.00, moral damages in the amount of P50,000.00

and P30,000 as exemplary damages.

SO ORDERED.[45] (Emphasis in the original)

In his appeal, Gacusan insisted that his guilt was not proven beyond reasonable doubt because "the prosecution failed to prove the elements of force, threat or intimidation" in the rape incident.[46]

In its August 31, 2012 Decision, the Court of Appeals affirmed Gacusan's conviction.[47] The Court of Appeals ruled that "in incestuous rape or those committed by the common law spouse of the victim's parent, evidence of force and intimidation is not necessary to secure a conviction." [48] "[I]n rape committed by an ascendant, close kin, a step parent or a common law spouse of a parent, moral ascendancy takes the place of force and intimidation." [49] Furthermore, AAA's testimony and positive identification of Gacusan as the person who raped her, as well as the medical findings confirming the rape, prevail over the bare denials of Gacusan.[50] Thus,

WHEREFORE, the instant appeal is DENIED. The Decision dated December 2, 2010 of the Regional Trial Court Branch 43, Dagupan City in Criminal Case No. 2009-0581-D finding appellant George Gacusan GUILTY beyond reasonable doubt of simple rape under Article 266-A of the Revised Penal Code, as amended by Republic Act No. 8353 is AFFIRMED.

SO ORDERED.[51] (Emphasis in the original)

Hence, an appeal before this Court has been submitted.

On June 27, 2013,[52] the Court of Appeals elevated to this Court the records of this case pursuant to its Resolution[53] dated November 15, 2012. The Resolution gave due course to the Notice of Appeal[54] filed by the accused-appellant.

In the Resolution dated August 12, 2013,[55] this Court noted the records of the case forwarded by the Court of Appeals. The parties were then ordered to file their supplemental briefs, should they desire, within 30 days from notice.[56]

On October 24, 2013, the Office of the Solicitor General filed a manifestation[57] dated October 23, 2013 on behalf of the People of the Philippines stating that it would no longer file a supplemental brief.[58] A similar manifestation[59] was filed by the Public Attorney's Office on behalf of accused-appellant Gacusan.

The sole issue for resolution is whether Gacusan's guilt was proven beyond reasonable doubt despite the alleged failure of the prosecution to prove that Gacusan employed force, threat, or intimidation in raping AAA.

Gacusan claims that the employment of force, threat, or intimidation under Article 266-A of the Revised Penal Code was not satisfactorily proven by the prosecution.[60]

He insists that only when the offended party is either under twelve (12) years of age or is demented that the elements of force, threat or intimidation may be dispensed with.[61] Since it was admitted that AAA was already fifteen (15) years old at the time of the alleged rape, the prosecution should have proven that the incident was accompanied by force, threat, or intimidation.[62]

Gacusan also asserts that he was unarmed and AAA just "let him do what he wanted." [63] Thus, he concludes:

She, in effect, consented to [Gacusan's] advances, inasmuch as, according to her, she was used to it as he always did it or he had done it many times before. After the advances subsided, according to her again, she stood up to urinate and then went back to sleep-just the same- beside him. She did not cry. She did not protest. She did not complain. She did not exhibit any sign of pain or physical suffering. She just went back to bed and slept, beside him, again, as if nothing happened.[64] (Emphasis supplied)

On the other hand, the Office of the Solicitor General claims that Gacusan's argument has no merit.[65] It cites *People v. Corpuz*,[66] which states that "[i]n rape committed by a close kin, such as the victim's father, stepfather, uncle, or the common-law spouse of her mother, it is not necessary that actual force or intimidation be employed; moral influence or ascendancy takes the place of violence or intimidation." [67] It further asserts that "AAA's failure to show outward signs of resistance to appellant's sexual advances" does not equate to consent.[68] Thus,

She was an orphan young girl, who was much insecure and embattled. In her misfortune, she tried to hang on with what little form of security and stability she could conceive. Unfortunately, it was under her so called savior's hand that her childhood innocence was torn apart.[69]

Furthermore, it cites *People v. Noveras*[70] to emphasize that there is no need to establish physical resistance when a victim submits because of fear due to the threats and intimidation employed by the perpetrator.[71] Physical resistance is not the only test in determining "whether a woman involuntarily succumbed to the lust of an accused." [72] Thus, rape victims react differently to the situation.[73]

I

The appeal lacks merit.

Sections 266-A and 266-B of the Revised Penal Code, as amended by Republic Act No. 8353 or the Anti-Rape Law of 1997, provide that:

Article 266-A. Rape; When And How Committed. - Rape is Committed

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a. Through force, threat, or intimidation;

....

Article 266-B. Penalties. - Rape under paragraph 1 of the next preceding article shall be punished by reclusion perpetua. (Emphasis supplied)

AAA admitted that despite the pain she felt, she neither protested nor shouted at the time of the rape incident.[74] Thus,

COURT:

Q:

Did [you] feel pain while he was doing that to you?

A:

Yes, sir.

Q:

Why did you not shout?

PROS. ESPINOZA:

May I make on record, Your Honor, that the witness is crying.

WITNESS:

A:

Because I am very much afraid of him, sir.

Q:

Why are you so afraid of him?

A:

Because I am afraid that I will lose a family, sir.

Q:

You mean, you are dependent on him?

A:

Yes, sir.

Q:

He is the one supporting your needs as well as your food?

A:

Yes, sir.[75] (Emphasis supplied)

Appellant contends that his guilt was not proven beyond reasonable doubt since the prosecution failed to introduce evidence that will prove the elements of force, intimidation, or threat.[76] He underscores that AAA let him do "whatever he wanted and even acted as if nothing happened." [77]

Gacusan's contention is unavailing.

The testimony of AAA reveals that the reason she did not shout during the alleged rape was that she was afraid of losing a family.[78] It is reasonable to assume that she was terrified of losing someone who provided her support after losing her biological mother. She testified that she could not find comfort from her grandmother.[79]

"[D]ifferent people react differently to a given type of situation, and there is no standard form of human behavioral response when one is confronted with a strange, startling or frightful experience." [80] One person may react aggressively, while another may show cold indifference.[81] Also, it is improper to judge the actions of children who are victims of traumatic experiences "by the norms of behavior expected under the circumstances from mature people." [82] From AAA's view, it appeared that the danger of losing a family was more excruciating than physical pain.[83]

Furthermore, a victim should never be blemished for her lack of resistance to any crime especially as heinous as rape.[84] Neither the failure to shout nor the failure to resist the act equate to a victim's voluntary submission to the appellant's lust.[85]

II

Recent cases[86] reiterating that moral ascendancy replaces violence or intimidation in rape committed by a close-kin cited *People v. Corpuz*. [87]

In *Corpuz*, the accused was the live-in partner of the victim's mother.[88] The victim, AAA, was 13 years old when accused *Corpuz* started raping her.[89] The repeated rape incidents made AAA pregnant.[90]

Accused *Corpuz* admitted his sexual encounters with AAA.[91] He insisted, however, that he never forced

himself to AAA since he even courted her.[92] Similarly, he admitted that he was the father of AAA's child.[93]

Nonetheless, this Court affirmed his conviction and held that:

[I]n rape committed by a close kin, such as the victim's father, stepfather, uncle, or the common-law spouse of her mother, it is not necessary that actual force or intimidation be employed; moral influence or ascendancy takes the place of violence or intimidation.[94] (Emphasis provided)

In *People v. Fraga*,[95] accused Fraga raped the daughters of his common-law partner.[96] Fraga tried evading his conviction by shifting from his defense of alibi to lack of force or intimidation.[97] While this Court affirmed Fraga's conviction since force and intimidation was sufficiently proven, it also emphasized that:

[A]ccused-appellant started cohabiting with complainants' mother in 1987. As the common-law husband of their mother, he gained such moral ascendancy over complainants that any more resistance than had been shown by complainants cannot reasonably be expected.[98] (Emphasis provided)

In *People v. Robles*,[99] accused Robles raped his common-law wife's daughter.[100] This Court affirmed his conviction and likened Robles' moral ascendancy over the victim to that of a biological father; thus:

Moral ascendancy and influence by the accused, stepfather of the 12 year--old complainant, and threat of bodily harm rendered complainant subservient to appellant's lustful desires... Actual force or intimidation need not even be employed for rape to be committed where the over powering influence of a father over his daughter suffices.[101] (Emphasis provided, citation omitted)

Gacusan had moral ascendancy over AAA.

In this case, therefore, the issue regarding the need to prove actual force or intimidation becomes superfluous since it was already established that Gacusan was the common-law partner of AAA's deceased mother.

Furthermore, apart from Gacusan's moral ascendancy over AAA, it is apparent that he also had physical advantage over her. Given all these reasons, AAA was left without any other choice but to succumb to Gacusan's sordid acts.

III

AAA's failure to openly verbalize Gacusan's use of force, threat, or intimidation does not adversely affect the prosecution's case as long as there is enough proof that there was sexual intercourse.[102]

The Regional Trial Court found that AAA's testimony "ha[s] been delivered in a clear, sincere, spontaneous and candid manner."[103] Moreover, AAA's positive identification of the accused as the one who raped her was corroborated by the Medico-Legal Report and the testimony of Dr. Quimoy.[104] Dr. Quimoy testified that AAA had "spermatozoa and multiple healed lacerations in her vagina and redness and swelling on her hymen, consistent with penetrating trauma."[105]

"It is settled that when the victim's testimony is corroborated by the physician's finding of penetration, there is sufficient foundation to conclude the existence of the essential requisite of carnal knowledge."[106] A healed or fresh laceration "is the best physical evidence of forcible defloration."[107] AAA's lacerations on the hymen, therefore, have sufficiently established that there was sexual intercourse.

AAA's testimony, as well as her positive identification of the accused, was at par with the findings of the examining physician that she was raped. This cannot be outweighed by Gacusan's bare denial of the accusations against him. The prosecution's positive assertions deserve more credence than the negative averment of the accused.[108]

After evaluating the records of this case, this Court resolves to affirm the conviction of the accused and dismiss the appeal, there being no reversible error in the assailed decision that would warrant the exercise of this Court's appellate jurisdiction. However, in accordance with *People v. Jugueta*,^[109] where this Court clarified that "when the circumstances of the crime call for the imposition of reclusion perpetua only, the civil indemnity and moral damages should be P75,000.00 each, as well as exemplary damages in the amount of P75,000.00."^[110] Thus, we modify the award of civil indemnity, moral damages, and exemplary damages to P75,000.00 each.

WHEREFORE, the findings of fact and conclusions of law of the Court of Appeals are ADOPTED. The assailed August 31, 2012 Decision of the Court of Appeals is AFFIRMED with MODIFICATION. Accused--appellant George Gacusan is found guilty beyond reasonable doubt of the crime of Rape. He is sentenced to suffer the penalty of reclusion perpetua and to pay private complainant P75,000.00 as civil indemnity, P75,000.00 as moral damages, P75,000.00 as exemplary damages, and the costs of the suit.

In line with current jurisprudence, interest at the rate of six percent (6%) per annum should be imposed on all damages awarded from the date of the finality of this judgment until fully paid.^[111]

SO ORDERED.

Carpio, (Chairperson), Peralta, Mendoza, and Martires, JJ., concur.

[1] Rollo, pp. 2-16. The Decision was penned by Associate Justice Magdangal M. De Leon and concurred in by Associate Justices Stephen C. Cruz and Myra V. Garcia-Fernandez of the Eleventh Division, Court of Appeals, Manila.

[2] *Id.* at 15-16.

[3] CA rollo, p. 9.

[4] *Id.* The Information referred to the barangay as "Brgy. Inmalug Sur," while the Court of Appeals' Decision referred to it as "Brgy. Inmatug, Sur."

[5] Rollo, p. 3.

[6] *Id.* at 4.

[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] *Id.*

[16] *Id.* at 5.

[17] Id.

[18] Id.

[19] Id.

[20] Id.

[21] Id.

[22] Id.

[23] Id.

[24] Id.

[25] Id.

[26] Id.

[27] Id. at 6.

[28] Id.

[29] Id.

[30] Id.

[31] Id. and 7.

[32] Id. at 7.

[33] Id.

[34] Id.

[35] Id.

[36] Id.

[37] CA rollo, p. 30.

[38] Id.

[39] Id.

[40] Id.

[41] Id.

[42] Id.

[43] Id. at 31.

[44] Id.

[45] Id. at 32. The Decision, docketed as Crim. Case No. 2009-0581-D, was penned by Judge Caridad V. Galvez of Regional Trial Court, Branch 43, Dagupan City.

[46] Id. at 76.

- [47] Rollo, pp. 15-16.
- [48] Id. at 11. Citation omitted.
- [49] Id. at 12-13. Citation omitted.
- [50] Id. at 15.
- [51] Id. at 15 16.
- [52] Id. at 1.
- [53] CA rollo, p. 124.
- [54] Id. at 120-120-A.
- [55] Rollo, p. 23.
- [56] Id.
- [57] Id. at 26-28.
- [58] Id. at 26.
- [59] Id. at 31-33.
- [60] CA rollo, p. 76.
- [61] Id. at 75.
- [62] Id.
- [63] Id. at 78.
- [64] Id.
- [65] Id. at 102.
- [66] 597 Phil. 459 (2009) [Per J. Carpio-Morales, Second Division].
- [67] Id. at 467.
- [68] CA rollo, p. 105.
- [69] Id. at 105.
- [70] 550 Phil. 871 (2007) [Per J. Callejo, Sr., Third Division].
- [71] CA rollo, p. 105. HIL 871, 887.
- [72] Id.
- [73] Id.
- [74] Id. at 117.
- [75] Id.
- [76] Rollo, p 11.
- [77] Id.

[78] Id. at 12.

[79] Id. at 4.

[80] People v. Lor, 413 Phil. 725, 734 (2001) [Per J. Ynares-Santiago, En Banc].

[81] Id.

[82] Id.

[83] Rollo, p. 15.

[84] People v. Barberan, G.R. No. 208759, June 22, 2016 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/june2016/208759.pdf>> 6 [Per J. Perez, Third Division].

[85] Id.

[86] See People v. Padua y Felomina, 661 Phil. 366 (2011) [Per J. Brion, Third Division]; People v. Dimanawa, 628 Phil. 678 (2010) [Per J. Nachura, Third Division]; People v. Ofemiano, 625 Phil. 92 (2010) [Per J. Velasco, Jr., Third Division]; People v. Viojela y Asartin, 697 Phil. 513 (2012) [Per J. Leonardo-De Castro, First Division].

[87] 597 Phil. 459 (2009) [Per J. Carpio-Morales, Second Division].

[88] Id. at 463.

[89] Id.

[90] Id.

[91] Id. at 464.

[92] Id. at 463.

[93] Id. at 464.

[94] Id. at 467.

[95] 386 Phil. 884 (2000) [Per J. Mendoza, En Banc].

[96] Id. at 907.

[97] Id. at 906

[98] Id. at 907.

[99] 252 Phil. 579 (1989) [Per J. Paras, Second Division].

[100] Id. at 580.

[101] Id. at 583. While the case refers to the accused as the victim's stepfather, a reading of the facts revealed that he was only the common law spouse of the victim's biological mother.

[102] People v. Servano, 454 Phil. 256, 280 (2003) [Per J. Corona, En Banc].

[103] CA rollo, p. 115-A.

[104] Id. at 116.

[105] Id.

[106] *People v. Noveras*, 550 Phil. 871, 887 (2007) [Per J. Callejo Sr, Third Division].

[107] Id. Citation omitted.

[108] *People v. Baroy*, 431 Phil. 638, 655 (2002) [Per J. Panganiban, En Banc].

[109] G.R. No. 202124, April 5, 2016
<<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/april20166/202124.pdf>> [Per J. Peralta, En Banc].

[110] Id. at 27.

[111] See *Nacar v. Gallery Frames*, G.R. No. 189871, August 13, 2013, 703 SCRA 439, 458 [Per J. Peralta, En Banc].

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