

EN BANC

[G.R. NO. 169643, April 13, 2007]

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. FILOMINO L. VILLANUEVA, APPELLANT.

DECISION

CALLEJO, SR., J.:

On automatic review is the Decision^[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 00825, dated May 30, 2005, which affirmed with modification the Decision^[2] of the Regional Trial Court of Capas, Tarlac, Branch 66 in Criminal Cases Nos. 1288-1289 convicting appellant Filomino Villanueva of rape.

The Case for the Prosecution

BBB is the appellant's daughter and was born on January 23, 1983.^[3] In the evening of December 23, 1997, BBB, together with her parents and her three brothers, spent the night in her aunt's house. Her mother left to attend a wake.^[4] While inside the room with her brothers (who were then sleeping), BBB asked for a glass of water from appellant. After drinking, she felt dizzy.^[5] When she woke up the following morning, her breasts and private part were aching, but she did not do anything because she thought that she had just been bitten by ants.^[6]

At around midnight in the first week of February 1998, while BBB and her brothers were inside their room sleeping, appellant went inside, raised (BBB's) blouse up to her neck and sucked her breasts.^[7] He likewise pulled down her shorts and panty up to her thighs;^[8] kissed her lips;^[9] went on top of her;^[10] and inserted his penis into her vagina. ^[11] After satisfying his lustful desire, appellant told her that he would kill her and her family if she reported the matter to anyone.^[12] BBB did not report the incident. She finally told her mother when she learned that she was pregnant. Her mother cried and got mad.^[13] BBB gave birth in October 1998. The child was later adopted by her cousin.^[14]

On July 7, 1998, BBB executed a *Sinumpaang Salaysay*^[15] before SPO1 Nixon Cruz of the Philippine National Police. On the same day, SPO4 Cezar T. Mangune, the Chief Investigator, filed a Criminal Complaint^[16] against appellant before the 2nd Municipal Circuit Trial Court (MCTC) of Bamban-Capas-Concepcion, Capas Tarlac. A preliminary investigation was immediately conducted. On even date, the MCTC issued a Resolution^[17] finding *prima facie* evidence of rape. The Provincial Prosecutor sustained the findings of the MCTC in a Resolution^[18] dated July 20, 1998. Two (2) separate Informations were then filed with the RTC of Capas, Tarlac,

Branch 66, docketed as Criminal Cases Nos. 1288-(98) and 1289-(98). The Informations contain the following accusatory portions:

That on or about December 23, 1997, in the x x x Province of Tarlac, Philippines and within the jurisdiction of this Honorable Court the above-named accused did then and there willfully, unlawfully, and feloniously, by means of force and intimidation, succeed in having sexual intercourse with his daughter BBB, a minor 15 years old.

CONTRARY TO LAW.^[19]

x x x x

That sometime in the first week of February 1998, in the x x x Province of Tarlac, Philippines and within the jurisdiction of this Honorable Court the above-named accused did then and there willfully, unlawfully and feloniously, by means of force and intimidation, succeed in having sexual intercourse with his daughter BBB, a minor 15 years old.

CONTRARY TO LAW.^[20]

The Case for the Appellant

Appellant interposed the defenses of denial and alibi. He testified that on the night of December 23, 1997, he and his wife and children went to the house of his sister-in-law where they spent the night. At 7:00 p.m., his wife and sister-in-law went to a wake.^[21] While his wife was away, he and his children watched the television. His wife arrived at 9:00 p.m. At 10:00 p.m., he decided to sleep and went inside the room where his wife and children were sleeping. At that time, BBB was sleeping beside her mother. Appellant then positioned himself beside his wife.^[22] He denied that BBB asked him to get a glass of water; at that time, BBB and his other children were already asleep.

Appellant further claimed that he and his wife did not have serious problems with each other except for petty quarrels over who was going to cook in the mornings.^[23] He did not have any misunderstanding with his daughter BBB.^[24] He admitted that he did not file a counter-affidavit at the MCTC because he was surprised, and "they" hurt him. He did not, however, report this matter either before the MCTC or other authorities.^[25]

The Ruling of the Trial Court

On September 10, 2001, the RTC rendered a Decision acquitting the appellant in Criminal Case No. 1288-(98), but convicting him for the crime of rape in Criminal Case No. 1289-(98). The fallo reads:

WHEREFORE, in view of all the foregoing, judgment is hereby rendered as follows:

1. For Criminal Case No. 1288: For failure of the prosecution to prove the guilt of the accused beyond reasonable doubt, judgment is

hereby rendered acquitting him of the crime charged.

2. For Criminal Case No. 1289: The prosecution having successfully established the guilt of the accused beyond any cavil or doubt of the crime of rape, judgment is hereby rendered sentencing him to suffer the penalty of death by lethal injection.

"If the crime of rape is committed where the victim is under eighteen (18) years of age and the offender is a parent x x x the imposition of the death penalty is mandatory." (People vs. Tanco, 284 SCRA 251).

The accused is further ordered to pay, by way of indemnity the amount of Fifty Thousand Pesos (P50,000.00), Fifty Thousand Pesos (P50,000.00) as moral damages, and another Twenty- Five Thousand Pesos (P25,000.00) as exemplary damages.

SO ORDERED.^[26]

On the alleged rape committed on December 23, 1997, the RTC concluded that, from the evidence presented, the prosecution failed to sufficiently establish the first element of rape — sexual intercourse. The trial court further stated that the offended party's testimony — that she felt dizzy after drinking the glass of water given by the appellant, and felt pain on her breasts and private part when she woke up the following morning — are not positive *indicia* of defloration.^[27]

The trial court, however, was convinced that appellant committed the second charge of rape (the first week of February 1998). The testimony of the offended party on the matter was clear, frank, positive and convincing. The apparent delay in reporting the incident was justified since the appellant had threatened BBB.^[28] The court further found that the offended party had no ill motive to file false charges against the appellant.^[29] Consequently, the trial court convicted the accused and sentenced him to suffer the supreme penalty of death.

The case was initially elevated to this Court on automatic review. In deference to the ruling in *People of the Philippines v. Mateo*,^[30] however, the case was transferred to the CA.

The Ruling of the Court of Appeals

Appellant claimed that the trial court gravely erred in imposing the death penalty despite the prosecution's failure to prove the qualifying circumstance of minority.^[31] While appellant did not question his conviction, he contested the penalty imposed. He insisted that the minority of the offended party had not been sufficiently proven because the prosecution presented a mere photocopy of the birth certificate which was not certified as a true copy of the original.^[32]

On May 30, 2005, the CA sustained the trial court's imposition of the death penalty. It held that the qualifying circumstance of the victim's minority had been specifically alleged in the Information and duly proven during the trial. The appellate court, however, modified the civil indemnity by increasing it from P50,000.00 to P75,000.00 pursuant to prevailing jurisprudence. The *falla* of the decision reads:

WHEREFORE, there being no error in the appealed decision finding appellant guilty beyond reasonable doubt in Criminal Case No. 1289-C-98 of **Qualified Statutory Rape** and **sentencing him to suffer the penalty of Death**, the Court hereby affirms the same with the **MODIFICATION** that Civil indemnity is increased to P75,000.00

However, instead of entering judgment, we hereby certify and elevate the entire records of this case to the Supreme Court for its final disposition.

SO ORDERED.^[33]

The Ruling of the Court

In the Court's Resolution^[34] dated November 8, 2005, the parties were required to submit their respective supplemental briefs. The Office of the Solicitor General manifested^[35] that it would no longer file a supplemental brief since the arguments contained in the Appellee's Brief would only be reiterated. In his Supplemental Brief, appellant alleged that he was no longer questioning his conviction, and pleaded only for a lighter sentence. He further averred that in view of the enactment of Republic Act (R.A.) No. 9346 abolishing the death penalty, the present appeal should now be deemed moot and academic.

The Ruling of the Court

After a careful and meticulous review of the records of the case, the Court finds no reason to overturn the findings of facts and conclusions of the trial and appellate courts. The prosecution adduced evidence to prove beyond reasonable doubt that the appellant raped BBB sometime in the first week of February 1998 in their house. The victim narrated in a spontaneous and straightforward manner how appellant defiled her, thus:

FISCAL CAPULONG:

Q How about in the month of February 1998 about the first week of February, do you recall if your father did anything to you?

A Yes, Sir.

Q And could you tell us what did your father do to you?

A He sucked my breasts, Sir, and he inserted his penis into my vagina.

Q And at what time was that when he did this to you?

A Midnight already, Sir.

Q And whereat did he do this to you?

A In our house, Sir.

Q When you said in your house, are you referring to the house of your aunt x x x?

A No, Sir.

X X X

Q You stated that at about midnight of the first week of February 1998 your father sucked your breasts and inserted his penis on your private part. Before doing this, did he remove your dress or did he do anything to you?

A He raised my blouse, Sir, and pulled down my shorts.

Q Aside from your shorts, were you wearing any other underwear like panty?

A Yes, Sir, I was wearing a panty then.

Q And what did your father do with your panty?

A He also removed it, Sir.

Q When you said "removed it," did he remove it from your two feet?

A No, Sir, he just pulled my panty up to my thighs.

FISCAL CAPULONG

Q And after pulling down your panty to your thighs, what else did he do, if anything?

A He threatened me, Sir.

Q How did he threaten you?

A He told me that he will kill my mother as well as my brothers if I reported the matter to anyone, Sir.

Q Did you not tell him anything when he pulled down your shorts and panty?

A I told him to have mercy on me, Sir.

Q You stated that he likewise sucked your breasts. How did he suck your breasts? Did he remove your bra?

A He just raised my blouse, Sir, up to my neck.

Q Where did your father do this to you, in a room or in what part of the house?

A Inside our room, Sir.

Q How about your brothers, where were your brothers at that time when he did this to you at the second time?

A They were also inside the room, Sir, however, they were soundly (sic) asleep.

FISCAL CAPULONG