

FIRST DIVISION

[G.R. No. 197363, June 26, 2013]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMAN ZAFRA Y SERRANO, ACCUSED-APPELLANT.

D E C I S I O N

LEONARDO-DE CASTRO, J.:

Accused-appellant ROMAN ZAFRA y SERRANO (Zafra) is now before Us on review after the Court of Appeals, in its June 29, 2010 Decision^[1] in **CA-G.R. CR.-H.C. No. 01921**, affirmed with modification the January 20, 2006 Decision^[2] of the Regional Trial Court (RTC) of Pasig City, Branch 159, in Criminal Case No. 122297-H, wherein he was found guilty beyond reasonable doubt of the crime of Rape under Article 266-A of the Revised Penal Code as amended by Republic Act No. 8353.^[3]

On December 19, 2001, an Information^[4] was filed before the RTC, charging Zafra with the crime of qualified rape of his minor daughter. The accusatory portion of the Information reads:

On or about December 14, 2001, in Pasig City and within the jurisdiction of this Honorable Court, the accused, who is then a father of the complainant, did then and there willfully, unlawfully and feloniously had sexual intercourse with one [AAA^[5]], 17 years old, a minor, against her will and consent.

Zafra pleaded not guilty to the charge upon his arraignment on February 4, 2002.^[6] Thereafter, the parties held their pre-trial conference, wherein they stipulated on the facts that AAA was the daughter of Zafra, and that she was only 17 years old on December 14, 2001.^[7]

The contradicting versions of the parties, as culled from the records of the case, are as follows:

Version of the Prosecution

AAA testified that her father, Zafra, started molesting her when she was around 13 or 14 years old. He used to insert his finger in her vagina and mash her breasts, which progressed into actual sexual intercourse when she was about 15. AAA claimed that her mother knew what her father was doing to her but did nothing to stop it. Aside from her best friend in school, AAA told no one about her ordeal for fear of her father, that her mother would not side with her, and that rumors about her would spread. Sometime in November 2001 however, she moved to her aunt's

house, after she was again raped by Zafra.^[8]

On December 14, 2001, her brother went to her aunt's house to tell AAA that Zafra had some chores for her. AAA followed her brother to their house, where she found Zafra, who asked her to fix the beddings and wash the dishes. When her brother left the house, Zafra instructed AAA to get his dirty clothes in his room. AAA did as she was told, but Zafra went inside the room and locked the door just as she was about to go out. At this point, AAA dropped the dirty clothes and ran towards the door but Zafra grabbed her and made her lie on the bed. AAA struggled but her protests were met with slaps and punches. Zafra then removed both their lower garments, spat on his hand, put the saliva on his penis, and then inserted his finger into AAA's vagina. Thereafter, Zafra inserted his penis in AAA's vagina and held her breast. After Zafra ejaculated, he wiped his penis with a towel. AAA in turn wiped the semen off her abdomen, and while she was dressing up, Zafra warned her against telling anybody of what happened. AAA immediately picked up the dirty clothes on the floor and went out the room.^[9]

After having lunch with her mother, who arrived while she was doing the laundry, she returned to her aunt's house. At her aunt's house, her mother asked her "*inulit na naman ng tatay mo, ano?*"^[10] to which, she replied yes. Her mother told her that they would file a complaint, then went back to their house, got the linen in her father's room, then soaked it in water. Just as AAA was about to leave her aunt's house, her mother arrived and asked her where she was headed. AAA said she was going to file a complaint against her father. AAA's mother accompanied her but was prodding her not to file any complaint. AAA however proceeded to file the complaint, and was subjected to a medical examination on the same day.^[11]

After examining AAA, Dr. Voltaire P. Nulud in his Medico-Legal Report No. M-3278-01^[12] concluded as follows:

Subject is in non-virgin state physically.

There are no external signs of application of any form of physical trauma.

Version of the Defense

Zafra denied the charge against him and claimed that it was filed as an act of retaliation by his wife. Zafra said that he and his wife fought about one of the rooms he was renting out because he would not acquiesce to renting it out to his sister-in-law and parents-in-law free of charge. In the meantime, Zafra learned that AAA was not attending school. This prompted him to scold her, but because his parents-in-law protected her, Zafra went to the extent of driving AAA and his parents-in-law out of the house. When this happened, Zafra's wife threatened to send him to jail. In fact, she had him arrested twice on drug charges but he was released for lack of evidence for the first charge, and on bail for the second charge. A few days later, he was again arrested, this time, on a rape charge against his daughter.^[13]

As proof of his defense, Zafra presented letters from AAA wherein she admitted to fabricating the charge against her father because he and her mother fought, and

because he drove all of them out of his house. She also admitted therein to having worked at a beer house and prostituting herself.^[14]

Ruling of the RTC

On January 20, 2006, the RTC rendered its Decision, giving credence to the prosecution's version, found Zafra guilty of qualified rape of his minor daughter, and sentenced him to death, in this manner:

WHEREFORE, in view of the foregoing, this Court finds the accused **ROMAN ZAFRA Y SERRANO GUILTY** beyond reasonable doubt of the crime of rape Under Art. 266-A of the Revised Penal Code as Amended by [Republic Act No.] 8353 and hereby sentences the said accused to suffer the supreme penalty of **DEATH and** to indemnify the victim the amount[s] of P75,000.00 as civil indemnity, P50,000.00 as moral damages and P25,000.00 as exemplary damages.^[15]

Zafra appealed^[16] to the Court of Appeals, imputing error on the part of the RTC for relying on AAA's inconsistent testimony and thereafter convicting him despite the prosecution's failure to rebut the presumption that he is innocent.

Ruling of the Court of Appeals

On June 29, 2010, the Court of Appeals affirmed the RTC's Decision, modifying the amount of moral damages awarded and the imposable penalty, to wit:

WHEREFORE, the appeal is **DENIED** for lack of merit. The Decision dated January 20, 2006 of the Regional Trial Court of Pasig City, Branch 159 in Criminal Case No. 122297-H which found Roman Zafra y Serrano guilty of raping his own minor daughter is hereby **AFFIRMED** with the **MODIFICATION** that the penalty of death is reduced to **RECLUSION PERPETUA WITHOUT ELIGIBILITY FOR PAROLE**, in accordance with Sections 2 and 3 of Republic Act No. 9346. The award of **MORAL DAMAGES** is also **INCREASED** from P50,000.00 to P75,000.00.^[17]

Issues

Undaunted, Zafra is now before this Court,^[18] with the same^[19] assignment of errors he presented before the Court of Appeals, viz:

I

THE COURT A QUO GRAVELY ERRED IN GIVING CREDENCE TO THE PRIVATE COMPLAINANT'S HIGHLY INCONSISTENT AND UNREALISTIC TESTIMONY.

II

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE FAILURE OF THE PROSECUTION TO OVERTHROW THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE IN HIS FAVOR.

III

ASSUMING THAT THE ACCUSED-APPELLANT IS GUILTY AS CHARGED, THE TRIAL COURT ERRED IN IMPOSING THE SUPREME PENALTY OF DEATH UNDER THE CIRCUMSTANCES.^[20]

As stipulated by the parties during the pre-trial, Zafra does not contest the facts that AAA is his biological daughter and was only 17 years old on December 14, 2001, the time the last rape occurred. What Zafra challenges is his conviction in light of the evidence the prosecution submitted during his trial.

Zafra attacks the credibility of AAA for being inconsistent. He claims that during AAA's testimony, she was so confused that she contradicted her own statements. Zafra also emphasizes the fact that prior to December 14, 2001, AAA acted as if nothing had happened at all. Zafra claims that the fact that she did not stay away from him despite the alleged incidents of rape belie her claim of sexual abuse. In support of his argument, Zafra points out the fact that AAA did not sustain any external physical marks, as shown by the medico-legal findings, despite her testimony that on December 14, 2001, Zafra punched her thighs whenever she resisted him. ^[21]

Ruling and Discussion

The present appeal is devoid of merit.

Zafra was charged with Rape under Article 266-A, paragraph 1, in relation to Article 266-B, paragraph 1, of the Revised Penal Code, as amended by Republic Act No. 8353. Said provisions read:

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;
- b) When the offended party is deprived of reason or is otherwise unconscious;
- c) By means of fraudulent machination or grave abuse of authority;
- 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.

ART. 266-B. *Penalties.* - 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, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim[.]

Credibility of AAA

Zafra is trying to discredit AAA by enumerating several points against her, to wit:

1. Zafra claims that AAA's inconsistent and contradictory testimony is a clear indication that she merely concocted her story of rape.^[22]

This Court has ruled that since human memory is fickle and prone to the stresses of emotions, accuracy in a testimonial account has never been used as a standard in testing the credibility of a witness.^[23] The inconsistencies Zafra are referring to are frivolous matters, which merely confused AAA when she was being questioned. Those matters are inconsequential and do not even pertain to AAA's ordeal. Thus, such trivial and insignificant discrepancies, which in this case were immediately clarified upon further questioning, will warrant neither the rejection of her testimony nor the reversal of the judgment.^[24]

2. Zafra insists that AAA's actions, of not immediately reporting that she was raped and returning to their house, belie her claim of sexual abuse.^[25]

It is not uncommon for a rape victim to initially conceal the assault against her person for several reasons, including that of fear of threats posed by her assailant. A rape charge only becomes doubtful when the victim's inaction or delay in reporting the crime is unreasonable or unexplained.^[26] In the case at bar, AAA testified that she did not immediately report the crime because she was afraid of her father, that her mother would not side with her even though she was aware of what Zafra was doing to her, and the rumors that might spread once word of what her father had been doing to her comes out. It must be noted that AAA was only a young girl when Zafra started molesting her. It is but natural that she factor in her decisions how her father and mother would react. Furthermore, it is settled jurisprudence that delay in filing a complaint for rape is not an indication of falsehood, viz:

The failure of complainant to disclose her defilement without loss of time to persons close to her or to report the matter to the authorities does not perforce warrant the conclusion that she was not sexually molested and that her charges against the accused are all baseless, untrue and