

## FIRST DIVISION

**[ G.R. No. 192941, November 13, 2013 ]**

**PEOPLE OF THE PHILIPPINES PLAINTIFF-APPELLEE, VS. DANIEL  
ALCOBER, ACCUSED-APPELLANT.**

### D E C I S I O N

**LEONARDO-DE CASTRO, J.:**

This is an appeal<sup>[1]</sup> from the Decision<sup>[2]</sup> of the Court of Appeals dated May 29, 2009 in CA-G.R. CR.-H.C. No. 00063, which affirmed with modification the Decision<sup>[3]</sup> of the Regional Trial Court (RTC) of Carigara, Leyte finding accused-appellant Daniel Alcober guilty beyond reasonable doubt of the crime of rape.

Accused-appellant Alcober was charged in an Information dated February 12, 2001, as follows:

That on or about the 20<sup>th</sup> day of July, 1999, in the municipality of Tunga, Province of Leyte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent and with lewd designs and by use of force and intimidation then armed with a long bolo (sundang), taking advantage of the minority of the victim and their relationship, the accused being [the] common-law spouse of the victim's mother, did then and there wilfully, unlawfully and feloniously had (sic) carnal knowledge with AAA,<sup>[4]</sup> against her will and to her damage and prejudice.<sup>[5]</sup>

Accused-appellant pleaded not guilty to the offense charged.

During the pre-trial, accused-appellant admitted that the incident happened on the 20<sup>th</sup> day of July 1999 in the municipality of Tunga, Leyte, and that he is "the common-law spouse of the victim's mother." The prosecution furthermore proposed to have the accused-appellant admit that AAA was a minor at the time of the incident, but the court insisted that it be proven with a Birth Certificate.<sup>[6]</sup>

AAA testified that she was around 10 years old and was in Grade 5 when accused-appellant and her mother started living together as husband and wife. She considered accused-appellant to be her father and calls him "Tatay." Her mother is the one earning for the family, by selling bananas in Carigara, Leyte.<sup>[7]</sup>

On July 20, 1999, at around 2:00 a.m., AAA was in their house in Tunga, Leyte. Her mother was away, selling bananas in Carigara, while her younger siblings were upstairs, sleeping. At that time, AAA was in second year high school and was thirteen years old. After working on her school assignment, AAA cooked rice downstairs in the kitchen. While she was busy cooking rice, she did not notice the arrival of accused-appellant, who suddenly embraced her from her back. She

identified accused-appellant as the person who embraced her since she immediately turned around and the place was illuminated by a kerosene lamp. AAA resisted and was able to release herself from accused-appellant's hold. Accused-appellant unsheathed the long bolo, locally called a *sundang*, from the scabbard on his waist and ordered her to go upstairs. Poking the *sundang* at AAA's stomach, he then ordered AAA to take off her shorts, and told her he will kill her, her siblings and her mother if she does not do as she was told.<sup>[8]</sup>

AAA complied with accused-appellant's orders. When she was lying on the floor, already undressed, accused-appellant placed the *sundang* beside her on her left side. He took off his shirt and shorts and went on top of her. AAA did not shout since accused-appellant threatened to kill them all if she did. He held her hair with his right hand and touched her private parts with his left hand. He then "poked" his penis into her vagina and made a push and pull movement. AAA felt pain. Accused-appellant kissed her and said "Ah, you're still a virgin." When accused-appellant was done, he stood and said "If you will tell this to anybody, I will kill you."<sup>[9]</sup>

AAA did not tell her mother about the incident as she was afraid accused-appellant will execute his threat to kill them all. The sexual advances were thereafter repeated every time AAA's mother sold bananas on Wednesdays and Sundays.<sup>[10]</sup>

On January 8, 2001, accused-appellant ordered AAA to pack and go with him to Tabontabon, Leyte, threatening once more to kill her siblings if she does not comply. In Tabontabon, accused-appellant once again forced AAA to have sex with him. The following day, AAA's mother, accompanied by police officers of Tunga, Leyte, arrived, searching for AAA and the accused-appellant. AAA was finally able to talk to her mother, which led to AAA's filing a complaint for rape against accused-appellant. Accused-appellant was arrested a few days later on January 11, 2001.<sup>[11]</sup>

Dr. Rogelio Gariando, Municipal Health Officer IV of the Carigara District Hospital, requested a vaginal smear in the course of his physical examination of AAA. Dr. Gariando testified that the specimen secured from AAA at around 2:00 p.m. of January 10, 2001 was positive for the presence of spermatozoa.<sup>[12]</sup> Medical Technologist II of Carigara District Hospital, Alicia Adizas, confirmed the finding of Dr. Gariando.<sup>[13]</sup>

BBB, the mother of AAA, testified that she and accused-appellant Alcober lived together from 1989 to 2001. BBB and accused-appellant had three children, who were three, eight and ten years old, as of her testimony on October 30, 2001. AAA, however, was her daughter with a previous live-in partner. AAA was six years old when she and accused-appellant Alcober started living together. BBB was the one who supported their family the entire time they lived together, since accused-appellant was not always gainfully employed. AAA called accused-appellant "Tatay."<sup>[14]</sup>

BBB resided in Tunga, Leyte, while AAA was living with BBB's sister, CCC. The house of CCC was around one kilometer away from her and accused-appellant's house. AAA, however, was frequently in BBB's house since she had lunch there and since it was nearer to her school than CCC's house. BBB remembered AAA crying on July

20, 1999, but when she asked AAA, the latter told her that she was merely fondled by accused-appellant. AAA was 13 years old on July 20, 1999.<sup>[15]</sup>

On January 8, 2001, when BBB learned that accused-appellant took AAA to Tabontabon, Leyte, she immediately looked for them in Burauen, Leyte. When she failed to find them there, she reported the apparent abduction of AAA to the PNP in Tunga. Together with an uncle of accused-appellant, she reached Tabontabon at around 9:30 in the morning, but found only AAA. She asked AAA why she went with accused-appellant, to which AAA replied that she was threatened by accused-appellant that he would kill them all. AAA also told her that she was actually raped by accused-appellant on July 20, 1999.<sup>[16]</sup>

For the defense, Tunga resident Ernesto Davocol testified that sometime on July 20, 1999, he saw AAA and accused-appellant, carrying a bag and a bolo, in front of the municipal cemetery of Tunga, Leyte. They hailed and boarded a jeep bound for Tacloban.<sup>[17]</sup>

Accused-appellant Alcober testified that on October 20, 1999,<sup>[18]</sup> at around 2:00 a.m., he was inside their house in Tunga, Leyte, drinking coffee in the kitchen when AAA unzipped her shirt and told him that "this is the gift that I am offering you that you are longing for too long." They then proceeded to have consensual sexual intercourse. He claimed that this was the only time that they had sexual intercourse. On cross-examination, accused-appellant admitted that AAA sometimes called him Papa and that he did not give her monetary support since she grew up at her uncle's house. Accused-appellant clarified that AAA was not in their house on July 20, 1999 and that their sexual intercourse occurred on October 20, 1999. Accused-appellant categorically admitted that he had sex with his 13-year old stepdaughter on October 20, 1999. Accused-appellant further testified on cross that BBB watched him having sexual intercourse with AAA and that BBB was crying while watching them. To prove that the sexual intercourse was consensual, accused-appellant presented in court what he claimed was the underwear of AAA, alleging that they agreed to exchange underwear with each other.<sup>[19]</sup>

On March 15, 2002, the RTC of Carigara, Leyte rendered its Decision finding accused-appellant guilty of the crime of rape. The dispositive portion of the Decision is as follows:

WHEREFORE, premises considered, pursuant to paragraph 1(a), Art. 266-A and the second paragraph of Art. 266-B (Rape Law of 1997, R.A. No. 8353) of the Revised Penal Code as amended, and further amended by R.A. No. 7659, (The Death Penalty Law), the Court found DANIEL ALCOBER, GUILTY beyond reasonable doubt of the crime of Rape and sentenced to suffer the maximum penalty of DEATH, and indemnify [AAA] the amount of Seventy[-]Five (P75,000.00) Thousand Pesos and pay moral damages in the amount of Fifty Thousand (P50,000.00) Pesos and pay the cost.<sup>[20]</sup>

On May 29, 2009, the Court of Appeals affirmed the RTC Decision with several

modifications:

**WHEREFORE**, in view of the foregoing premises, the assailed Decision of the Regional Trial Court, Branch 13 in Carigara, Leyte in Criminal Case No. 4025 is hereby AFFIRMED with MODIFICATIONS. Finding accused-appellant Daniel Alcober GUILTY beyond reasonable doubt as principal of the crime of rape qualified by the use of a deadly weapon, the Court sentences him to *reclusion perpetua*. Accused-appellant is further ordered to pay the following sums: Php75,000 as civil indemnity; Php75,000 as moral damages; and Php25,000 as exemplary damages. Costs against accused-appellant.<sup>[21]</sup>

Accused-appellant appeals to this Court with the following Assignment of Errors:

I

THE COURT A QUO GRAVELY ERRED IN COMPLETELY IGNORING THE SWEETHEART THEORY INTERPOSED BY ACCUSED-APPELLANT.

II

THE COURT A QUO GRAVELY ERRED IN FINDING ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE.<sup>[22]</sup>

Accused-appellant asserts that AAA's testimony that the sexual intercourse between them was *not* consensual is "patently incredible." According to accused-appellant, AAA could have escaped after she was raped for the first time on July 20, 1999. Since AAA was already residing in her aunt's house, she should never have returned to BBB and accused-appellant's house in order to prevent the repeated sexual intercourse after July 20, 1999 and the before the incident in Tabontabon.<sup>[23]</sup> Accused-appellant furthermore claim that the delay in revealing her alleged sexual ordeals from July 20, 1999 up to January 10, 2001 creates serious doubts as to her contention that she was raped.<sup>[24]</sup>

We must emphasize that when the accused in a rape case claims, as in the case at bar, that the sexual intercourse between him and the complainant was consensual, the burden of evidence shifts to him, such that he is now enjoined to adduce sufficient evidence to prove the relationship. Being an affirmative defense, it must be established with convincing evidence, such as by some documentary and/or other evidence like mementos, love letters, notes, pictures and the like.<sup>[25]</sup> Thus, in *People v. Mirandilla, Jr.*,<sup>[26]</sup> we held:

The sweetheart theory as a defense, however, necessarily admits carnal knowledge, the first element of rape. Effectively, it leaves the prosecution the burden to prove only force or intimidation, the coupling element of rape. x x x.

This admission makes the sweetheart theory more difficult to defend, for it is not only an affirmative defense that needs convincing proof; after the prosecution has successfully established a *prima facie* case, the burden of evidence is shifted to the accused, who has to adduce evidence that the intercourse was consensual. (Citations omitted.)

Other than his self-serving testimony, however, accused-appellant failed to adduce evidence of his supposed relationship with AAA. The testimony of Davocol as regards seeing AAA and accused-appellant on July 20, 1999 boarding a jeep bound for Tacloban does not in any way suggest a romantic or sexual relationship between them. On the other hand, we are convinced that the sordid version of facts presented by accused-appellant is nothing but a depraved concoction by a very twisted and obnoxious imagination. Accused-appellant's tale of being seduced by his 13-year old stepdaughter who calls him "Tatay" or "Papa," and having sexual intercourse with her while her mother was watching and crying is not only nauseatingly repulsive but is likewise utterly incredible. It is unthinkable for BBB, who helped AAA file the complaint and testified against accused-appellant, to just passively endure such an outrage happening before her very eyes. The trial court, which observed the demeanor of AAA, BBB and the accused-appellant on the witness stand, did not find accused-appellant's account plausible, and instead gave full faith and credence to the testimonies of AAA and BBB. The trial court, in fact, described accused-appellant's demeanor as boastful and his narration as a make-believe story:

While at the witness stand, the accused boastfully testified and took out from the back pocket of his pants a panty of a woman which according to him was given to him by [AAA] after their sexual intercourse to which he exchanged it with his own brief as a proof that [AAA] enjoyed having sexual intercourse with him; viz:

x x x x

PROS. MERIN:

Q – So, you are telling this court that [AAA] was enjoying?

A – Yes, sir, and her panty is even here. I brought this to the Court as evidence.

Q – What was then in your mind that you would make your own stepdaughter without a panty after you had sex with her? What was in your mind?

A – Because this was given to me by her and we exchanged our underwear, she gave me her panty and I gave her my brief.

Q – And it was in the presence of her mother?

A – Yes sir. TSN p[p]. 10-11. March 5, 2002.)