

FIRST DIVISION

[G.R. No. 186235, January 25, 2012]

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

D E C I S I O N

LEONARDO-DE CASTRO, J.:

On appeal is the Decision^[1] dated January 30, 2008 of the Court of Appeals in CA-G.R. CR.-H.C. No. 00136, affirming *in toto* the Decision^[2] dated May 9, 2005 of the Regional Trial Court (RTC), Branch 39 of Polomolok, South Cotabato, in Criminal Case Nos. 585 and 586, which found accused-appellant Daniel Ortega (Ortega) guilty of two counts of rape committed against his daughter AAA.^[3] The RTC sentenced Ortega to *reclusion perpetua* for each count of rape, and ordered him to pay AAA the amounts of P50,000.00 as civil indemnity, P50,000.00 as moral damages, and P25,000.00 as exemplary damages for each count of rape.

The two Informations filed before the RTC against Ortega read:

Criminal Case No. 585:

That sometime in 1995, in the residence of the accused and complainant, at Barangay [xxx], Municipality of Polomolok, Province of South Cotabato, Philippines, and within the jurisdiction of this Honorable Court, the said accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously lie and succeed in having carnal knowledge of [AAA], a sixteen (16)[-]year[-]old girl and daughter of said accused Daniel Ortega.^[4]

Criminal Case No. 586:

That sometime in 1990, in the residence of the accused and complainant, at Barangay [xxx], Municipality of Polomolok, Province of South Cotabato, Philippines, and within the jurisdiction of this Honorable Court, the said accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously lie and succeed in having carnal knowledge of [AAA], an eleven[-]year[-]old girl and daughter of said accused Daniel Ortega.^[5]

At his arraignment, Ortega pleaded "not guilty" to both charges.

The prosecution called to the witness stand AAA, the victim, and Dr. Porfirio P. Pasuelo, Jr. (Dr. Pasuelo), the physician who conducted the physical examination of

AAA; while the defense presented Ortega, the accused, as its lone witness.

The prosecution's version of events is as follows:

Private-complainant [AAA] is the daughter of accused-appellant. [AAA] lived with accused-appellant and her step-mother in x x x.

In 1990, then 11 year old [AAA] was at home, when accused-appellant suddenly dragged her from the kitchen to her bedroom. [AAA], with all her strength, resisted and cried. She then tried to cling on a wooden wall but it did not help her in any way. When inside the room, accused-appellant forcibly undressed [AAA]. [AAA] tried to cover her body but her effort proved futile. Accused-appellant succeeded in overpowering her and laid her down on the bed. Accused-appellant, thereafter, mounted and inserted his penis to [AAA]'s vagina, and made pumping motions. [AAA] cried for help but to no avail. After raping his daughter, accused-appellant threatened [AAA] not to tell the incident to anyone.

In 1995, [AAA] who was then 16-years old, would again suffer the same harrowing ordeal in the hands of her own father.

It happened when accused-appellant and [AAA] were at home. Accused-appellant removed her shorts, shirt and underwear and laid her down on the bed. Accused-appellant then undressed himself, mounted and inserted his penis into [AAA]'s vagina. During the sexual act, [AAA] felt pain in her vagina.

As a result of the incident, [AAA] got pregnant but had a miscarriage thereafter. Later on, she ran away from home and reported the incidents to the police.

On May 9, 2006, Dr. Porfirio Pasuelo, Jr., the Municipal Health Office of Polomolok, South Cotabato, conducted a medical examination on [AAA]. The medical examination revealed that [AAA] has a loose vaginal opening as it easily admitted a forefinger, an indication that there was already a prior intrusion in [AAA]'s genitalia. Dr. Pasuelo did not find lacerations on [AAA]'s vagina.^[6]

Ortega relied on denial and alibi. Below is the gist of his testimony:

Appellant admitted that he had maltreated the complainant in trying to discipline her, but he vehemently denied that he raped her in both incidents. He testified that he never stayed at Polomolok in 1990. He, who was a sergeant, was assigned at Lebak, Sultan Kudarat, and only his son Roldan lived with him in the camp. In December 1990, his wife lived with him at Alabel, Sarangani Province, where he was "held up" by his battalion for having lost a firearm.

Appellant stated that complainant had run away from home many times

when he was still attending military operations. He admitted that he was never close to the complainant and that latter was jealous of his children from his second wife. He surmised that because of this jealousy, the complainant fabricated these rape charges against him. His friend Nonoy Somito intimated to him that complainant was sexually molested thrice by the latter's admirer in 1995.^[7]

On May 9, 2005, the RTC rendered its Decision finding Ortega guilty beyond reasonable doubt of two counts of rape and sentencing him thus:

WHEREFORE, finding the guilt of the accused DANIEL ORTEGA, beyond reasonable doubt of the crime of **TWO (2) COUNTS OF RAPE**, defined and penalized under Article 335, of the Revised Penal Code, the other defined and penalized under Article 335, of the Revised Penal Code, as amended by R.A. No. 7659.

The Court hereby sentenced the accused to suffer the penalty of imprisonment of **reclusion perpetua for each count of rape** and he shall pay private complainant P50,000.00 as civil indemnity for every rape committed, P50,000.00 as moral damages and the amount of P25,000.00 as exemplary damages and to pay the cost.

Upon finality of Decision, the Branch Clerk of Court is hereby directed to forward the complete records of this case to the Clerk of Court of the Court of Appeals, Cagayan de Oro City for its intermediate review pursuant to the OCA Circular No. 57-2005 dated 12 May 2005 and Supreme Court Administrative Circular No. 20-2005 dated 19 May 2005.

^[8]

In accordance with the Office of the Court Administrator Circular No. 57-2005 dated May 12, 2005 and Supreme Court Administrative Circular No. 20-2005 dated May 19, 2005, the RTC forwarded the complete records of the case to the Court of Appeals, Cagayan de Oro City, for its immediate review.

After Ortega filed his Accused-Appellant's Brief^[9] on October 18, 2006 and the People, through the Office of the Solicitor General, submitted its Appellee's Brief^[10] on March 2, 2007, the Court of Appeals promulgated its Decision on January 30, 2008, denying Ortega's appeal and affirming *in toto* the assailed RTC judgment.

Ortega filed on March 14, 2008 with the Court of Appeals a Notice of Appeal.^[11]

In a Resolution dated March 16, 2009, we accepted Ortega's appeal and required the parties to file their respective supplemental briefs, if they so desire. We also required the Provincial Jail Warden of South Cotabato Rehabilitation and Detention Center to confirm the commitment of Ortega to prison and to submit to us a report thereon.^[12]

Both Ortega^[13] and the People^[14] waived the filing of supplemental briefs and,

instead, opted to stand by the briefs they filed before the Court of Appeals.

On May 14, 2009, this Court received a letter from Provincial Warden Jesus S. Sta. Cruz of the Provincial Jail Management Division, Koronadal City, South Cotabato, with the information that Ortega was already transferred/committed to the custody of the Penal Superintendent of the Davao Prison and Penal Farm, Panabo, Davao del Norte on June 22, 2008.^[15]

We now consider the same assignment of error raised by Ortega before the Court of Appeals:

THE COURT A QUO GRAVELY ERRED IN CONVICTING APPELLANT OF THE CRIME CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.^[16]

Ortega averred that the RTC ignored or overlooked facts or circumstances which cast serious doubt on AAA's credibility and claims of rape, particularly: (1) AAA did not mention at all in her testimony that Ortega succeeded in having carnal knowledge of her in 1995 with the use of force and intimidation, a vital element of the crime of rape; (2) the incident in 1990 cannot be considered rape because as AAA testified, Ortega only threatened her after he had carnal knowledge of her; (3) AAA did not struggle or exert real resistance to protect her chastity against an unarmed Ortega or to attract attention from neighbors, casting doubt on whether the carnal act was committed without her consent; (4) AAA could not remember the date or even just the month when the two alleged rape incidents occurred and not mentioning at all the time (whether day or night) of the alleged second rape incident; (5) AAA testified that she became pregnant as a result of the alleged second rape incident in 1995, contradicting her statement in her Affidavit that she was only three months pregnant as of May 9, 1996, meaning, she conceived the baby only in 1996; (6) the RTC erroneously ruled that AAA's declaration of defloration was corroborated by Dr. Pasuelo's finding that AAA's vaginal opening admitted a forefinger, when the very same physician admitted that such finding is not conclusive proof that a woman already experienced sexual intercourse; (7) AAA's claims that she was pregnant by May 9, 1996 and she eventually had a miscarriage were not supported by independent evidence, such as by a doctor's finding; (8) AAA stated in her sworn statement that she was 11 years old when she was first raped by Ortega in 1990, but she testified during trial that she was born on August 11, 1980 and was raped before her birthday in 1990, which would mean she was just 10 years old at the time of the alleged first rape incident; and (9) although not mentioned in her Affidavit nor her testimony during direct examination, AAA would claim during her cross examination that Ortega bathed her before raping her.

Ortega's arguments boil down to the insufficiency of the evidence for the prosecution to support his conviction for two counts of rape, especially considering the doubtful credibility of AAA.

We reiterate the following standard in reviewing an appeal from a conviction for rape:

In reviewing rape cases, this Court had always been guided by three well-entrenched principles: (1) an accusation of rape can be made with facility and while the accusation is difficult to prove, it is even more difficult to disprove; (2) considering that in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense.^[17]

Yet, we have also held that an accused may be convicted solely on the basis of the victim's testimony, provided that such testimony is logical, credible, consistent, and convincing. At the witness stand, AAA related her painful ordeal in 1990, to wit:

Q Now, sometime in 1990 in the house where you are staying, do you remember if there is something that happened to you and your father?

A Yes, sir.

Q What was that incident?

A He placed himself on top of me and undressed me.

COURT:

Q Which comes first, his putting himself on top of you or undressing?

A The undressing.

x x x x

PROS. MADURAMENTE:

Q What part of the house did this take place?

A Inside the room.

Q Were there other people other than your father and you?

A None, sir?

Q What time of the day was that?

A Morning.

Q Have you already eaten your breakfast?

A Yes, sir.

Q Now, how did he do it?

A He undressed me and afterwards he put himself on top of me.

Q Now, after placing himself on top of you, what did he do?

A He made a pumping motion.

Q Now, were you completely naked?

A Yes, sir.