

## FIRST DIVISION

[ G.R. No. 181491, July 30, 2012 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. HENRY  
ARCILLAS, ACCUSED-APPELLANT.**

### D E C I S I O N

**BERSAMIN, J.:**

The rape of a female over 12 years but under 18 years of age by the common-law spouse of her mother is qualified rape. Yet, the crime is only simple rape, although the State successfully proves the common-law relationship, where the information does not properly allege the qualifying circumstance of relationship between the accused and the female. This is because the right of the accused to be informed of the nature and cause of the accusation against him is inviolable.

Henry Arcillas had been convicted of qualified rape by the Regional Trial Court in Masbate City (RTC) and meted the death penalty, which the law in force at the time prescribed. The Court of Appeals (CA) affirmed the finding of guilt, but found him guilty only of simple rape due to his common-law relationship with the victim's mother not having been properly alleged in the information and accordingly imposed *reclusion perpetua*. He is now before the Court to make his final plea for exoneration.

#### **Antecedents**

AAA,<sup>[1]</sup> allegedly Arcillas' step-daughter, brought a complaint dated May 22, 2000 for qualified rape against him.<sup>[2]</sup> After due proceedings, the Office of the Provincial Prosecutor of Masbate ultimately filed on August 29, 2000 an information charging him with qualified rape in the RTC, averring:

That on or about May 12, 2000 at more or less 11:00 o'clock in the evening thereof, at Brgy. Magsaysay, Municipality of Uson, Province of Masbate, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being then the step-father of AAA, with deliberate intent, with lewd design and by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with his own step-daughter, AAA, a 13-year-old girl, against her will.

CONTRARY TO LAW.<sup>[3]</sup>

The summary of the parties' evidence is rendered by the Court of Appeals (CA) in its

decision promulgated June 26, 2007,<sup>[4]</sup> follows:

The prosecution presented in evidence the testimonies of five (5) witnesses, namely: CCC, BBB, Dr. Allen Ching, AAA and SPO4 Aurora Moran. The trial court summarized their testimonies as follows:

AAA had just graduated from the Emilio S. Boro Elementary School in Cataingan, Masbate, sometime in March 2000. She was then living with her grandmother, DDD, in Alimango, Cataingan, Masbate. Immediately after her graduation, her mother, BBB, fetched her and brought her to Magsaysay, Uson, Masbate, where they lived together along with AAA's siblings and her mother's live-in partner, accused Henry Arcillas.

In the evening of May 12, 2000, AAA, then barely thirteen (13) years old, as evidenced by her certificate of live birth, went to sleep in a room shanty located in Magsaysay, Uson, Masbate, together with her two sisters, CCC and EEE, her mother and the latter's live-in partner, accused Henry Arcillas. The shanty consisted of a single room measuring more or less four (4) square meters. At around 11:00 o'clock in the evening, AAA was awakened when she felt that somebody was lying on top of her. She found out that accused Henry Arcillas was on top of her. She noticed that she had no more short pants and panties and that she felt pain in her vagina. She also noticed that something had been inserted into her vagina and that the accused was making a push and pull movement on top of her. She then pushed away the accused and awakened her mother Josie, who was just asleep near her. BBB then stood up and immediately lighted the gas lamp. She saw the accused beside AAA still naked. AAA told her mother that she was sexually abused by Henry Arcillas. BBB then grabbed an ax and struck the accused with it but the latter was not hit. Before BBB was awakened, CCC, who was at the right side of AAA, was awakened first because she heard the latter crying. She then saw Henry Arcillas already at the post of their hut.

AAA then went out of their shanty and thought of going back to her grandmother in Alimango, Cataingan, Masbate. BBB prevented her from traveling to Cataingan because it was almost midnight, and told her instead that they would have to go to the said place together some other time. Meanwhile, BBB drove Henry Arcillas away. AAA was able to go to her grandmother in Alimango, Cataingan, Masbate only about two weeks after the incident because her mother would not give her money for her fare. BBB explained that she was suffering from fever at that time and no one could tend to her.

Thereafter, BBB complained to Jimmy Lorena, the Barangay Kagawad of Magsaysay, Uson, Masbate. Jimmy Lorena then summoned Henry Arcillas and during the confrontation where AAA was also present, Henry Arcillas was made to sign a statement and was made to promise that he would not do the same act again. Despite the confrontation, however, the victim, with the help of her cousin, Evelyn Daligdig, still lodged a complaint for rape against Henry Arcillas before the Uson Police Station. She was investigated by SPO4 Aurora Moran, who prepared the complaint

as well as the victim's statement ("Deklarasyon").

The victim was physically examined at the Cataingan District Hospital on May 23, 2000 by Dr. Nerissa A. Deparine, who issued a medical certificate reflecting the following findings:

"External: Incomplete healed laceration at 5, 7 and 9 o'clock position; Internal: Admits 2 fingers without resistance."

It was Dr. Allen Ching, however, who testified on, and interpreted, the findings of Dr. Nerissa Deparine. Dr. Ching claimed that he and Dr. Nerissa Deparine knew each other as both were employed in Cataingan, Masbate, and that he was familiar with the signature of Dr. Nerissa Deparine since the latter usually referred to him some of her patients.

The defense, on the other hand, presented two witnesses, namely: the accused, Henry Arcilla, and Jimmy Lorena, a Barangay Kagawad of Magsaysay, Uson, Masbate. The trial court summarized their testimonies as follows:

Henry Arcillas testified that he was a widower since 1996 although he had a live-in partner, BBB. He admitted that AAA was his stepdaughter. In the afternoon of May 12, 2000, Henry Arcillas had a drinking spree in the house of the owner of the thresher where he worked. They started drinking hard liquor (Tanduay) at 4:00 in the afternoon until 6:00, after which he went home very drunk. He then went to sleep together with his live-in partner, BBB, and the latter's three daughters, CCC, EEE and AAA. The house where they slept was a one-room shanty. BBB was on his left side while AAA was on his right. At around 11:00 o'clock in the evening, Henry Arcillas was awakened when AAA complained to her mother that he held her shorts. At that juncture, his live-in partner tried to strike him with an ax. Henry claimed that he was able to touch the body of AAA but he did not know what part of her body he had touched nor which part of his body had touched AAA. He, however, denied having sexually molested the latter.

During the incident, the complainant's mother got so mad at Henry Arcillas that she drove him away. After almost two weeks, AAA went to the place of her grandmother in Alimango, Cataingan, Masbate. AAA and her relatives then returned to Magsaysay, Uson, Masbate and lodged a complaint before Jimmy Lorena, the Barangay Kagawad of Magsaysay, Uson, Masbate. During the confrontation, a certain Belen complained that Henry Arcillas committed acts of lasciviousness upon her niece AAA, who was also present. When confronted about the incident on May 12, 2000, AAA alleged that the accused touched her short pants prompting her to kick him. Thus, the intention of Henry Arcillas did not materialize.

Jimmy Lorena claimed that he was able to settle the case amicably in his house. In fact, Henry Arcillas executed an affidavit promising that he would not commit the same offense anymore. A certain Francisco Oliva was the one who prepared said affidavit but Jimmy had lost the copy of the same. The defense claimed that what the complainant AAA alleged in

that confrontation was that the accused only touched her short pants but she was not raped. Finally, the accused Henry Arcillas claimed that the motive of AAA in filing the case for rape against him was due to the fact that the complainant was against his relationship with her mother and that she wanted to take her mother from him.

### **Ruling of the RTC**

On March 8, 2004, the RTC convicted Arcillas of qualified rape based on the foregoing evidence and meted the death penalty on him,<sup>[5]</sup> disposing:

WHEREFORE, being convicted of such heinous crime of Qualified Rape, accused Henry Arcillas is hereby sentenced to suffer the capital penalty of DEATH; to indemnify the said victim the sum of FIFTY THOUSAND (PhP50,000.00) PESOS; to pay the latter the sum of FIFTY THOUSAND (PhP50,000.00) PESOS as for moral damages; and to pay the costs.

SO ORDERED.

### **Ruling of the CA**

In his appeal in the CA, Arcillas assigned to the RTC the following errors, namely:

#### **I.**

THE TRIAL COURT GRAVELY ERRED IN FAILING TO CONSIDER THE MOTIVE BEHIND THE FILING OF THE INSTANT CASE AGAINST THE ACCUSED-APPELLANT.

#### **II.**

THE COURT A *QUO* GRAVELY ERRED IN IMPOSING THE SUPREME PENALTY OF DEATH DESPITE THE DEFECTIVE ALLEGATION OF RELATIONSHIP IN THE INFORMATION.

On June 26, 2007, the CA affirmed the finding of guilt against Arcillas but downgraded the crime to simple rape on the ground that the information did not allege that he was her mother's common-law husband, instead of the victim's step-father, the qualifying circumstance the information alleged.<sup>[6]</sup> It decreed as follows:

*WHEREFORE*, premises considered, the March 8, 2005 Decision of the Regional Trial Court of Masbate City, Masbate, Branch 48, is *MODIFIED*. Accused-appellant is found guilty beyond reasonable doubt of the crime of Simple Rape and is hereby sentenced to suffer the penalty of *reclusion perpetua*. In all other respects, the assailed Decision is *AFFIRMED*.

SO ORDERED.

The CA supported its affirmance in this wise:

xxx We agree with the accused-appellant that the trial court erred in convicting him of Qualified Rape and in imposing the death penalty in view of the defective allegation in the information. Indeed, even the Solicitor General agrees with the accused-appellant on this point.

It must be noted that the Information alleged that accused-appellant was the step-father of the rape victim. The evidence shows, however, that he was merely the common-law husband or live-in partner of the latter's mother. In order that the accused may be convicted of qualified rape, the circumstances of relationship and minority must be jointly **alleged** in the Information and **proved** during trial. Thus, the accused can only be convicted of simple rape where the information alleges that the accused is the step-father of the victim but the evidence shows that he is merely the common-law husband of the natural mother of the victim.

In *People vs. Escultor*, the Supreme Court held:

Nevertheless, the death penalty is not the correct penalty for the two counts of rape committed by appellant because the two informations in Criminal Case No. CEB-BRL-478 and CEBBRL- 479 failed to correctly state appellant's relationship with Jenelyn. To justify the death penalty, the prosecution must specifically allege in the information and prove during the trial the qualifying circumstances of the minority of the victim and her relationship to the offender. The information must jointly allege these qualifying circumstances to afford the accused his right to be informed of the nature and cause of the accusation against him. Sections 8 and 9 of Rule 110 of the Revised Rules of Criminal Procedure expressly mandate that the qualifying circumstance should be alleged in the information.

Although the prosecution proved that appellant was the common-law spouse of (AAA's) mother, what appears in the informations is that the victim is the stepdaughter of appellant. A *stepdaughter* is the daughter of one's spouse by a previous marriage. For appellant to be the stepfather of (AAA), he must be legally married to (AAA's) mother. However, appellant and the victim's mother were not legally married but merely lived in common-law relation. **The two informations failed to allege specifically that appellant was the common-law spouse of the victim's mother. Instead, the two informations erroneously alleged the qualifying circumstance that appellant was the stepfather of the victim.** Hence, appellant is liable only for two counts of simple statutory rape punishable with *reclusion perpetua* for each count. (*Emphasis Ours*)