

FIRST DIVISION

[G.R. No. 177295, January 06, 2010]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MARLON BARSAGA ABELLA, ACCUSED-APPELLANT.**

D E C I S I O N

LEONARDO-DE CASTRO, J.:

Under automatic review is the *Decision*^[1] dated September 21, 2006 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 02085 which affirmed with modification the *Judgment*^[2] promulgated on June 3, 2003 by Branch 25 of the Regional Trial Court (RTC) of Naga City convicting accused-appellant Marlon Barsaga Abella of the crime of rape, defined and penalized under Articles 266-A and 266-B of the Revised Penal Code, as amended, sentencing him to suffer the penalty of *reclusion perpetua*, ordering him to pay civil indemnity and damages, and further ordering him to acknowledge and support his offspring with the private offended party.

In a *Minute Resolution*^[3] dated June 27, 2007, we required the parties to file their respective supplemental briefs. The parties, however, manifested that they have exhausted their arguments before the CA and, thus, will no longer file any supplemental brief.^[4]

The antecedent facts are culled from the records of this case. Consistent with our ruling in *People v. Cabalquinto*^[5] and *People v. Guillermo*,^[6] this Court withholds the real name of the private offended party and her immediate family members as well as such other personal circumstance or information tending to establish her identity. The initials AAA represent the private complainant and the initials BBB refer to the mother of the private complainant.

The accusatory portion of the information reads:

That sometime on December 1999, in the afternoon, at Barangay San Vicente, Municipality of Pamplona, Province of Camarines Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, while armed with "Balisong" and under the influence of liquor, by means of force and intimidation and with lewd design, did then and there willfully and feloniously enter the house of herein complainant and then and there have sexual intercourse with AAA, a woman of feeble mind, against her will to her damage and prejudice.

Acts contrary to law.

Accused-appellant Abella pleaded not guilty upon arraignment.^[7] The pre-trial

conference followed and, thereafter, trial ensued.

The prosecution presented five (5) witnesses, namely, AAA,^[8] BBB,^[9] Dr. Emelito Alegre,^[10] Dr. Imelda Escuadra^[11] and Corazon Alipante,^[12] and documentary exhibits consisting of the *Ultrasound Report*^[13] of AAA dated September 14, 2000 issued by Dr. Alegre, the *Medical Certificate*^[14] of AAA dated July 14, 2000 and *Clinical Record*^[15] of AAA dated June 13, 2000 issued by Dr. Alcantara, the *Psychiatric Evaluation*^[16] of AAA dated September 25, 2001 of Dr. Escuadra, and the *Certificate of Live Birth*^[17] of the daughter of AAA issued by the Office of the Civil Registrar of the City of Naga.

The defense, on the other hand, presented the testimonies of the accused-appellant^[18] and his father, Danilo Abella,^[19] and documentary exhibits consisting of two (2) *Barangay Blotters*^[20] dated March 15 and September 16, 2000 issued by the Barangay Captain of San Vicente, Municipality of Pamplona, Province of Camarines Sur.

After trial, the RTC convicted the accused-appellant. The trial court found the 38-year old AAA as a credible witness and her testimony candid and truthful despite her "moderate mental retardation" or intellectual quotient of a 7 to 8-year old child. In contrast, the trial court found that the defenses of denial and alibi of the accused-appellant were flimsy and farfetched. It further ruled that the child conceived and delivered by AAA was fathered by the accused-appellant. The dispositive portion of the judgment reads:

WHEREFORE, in view of all the foregoing, judgment is hereby rendered finding accused MARLON ABELLA y BARSAGA guilty beyond reasonable doubt for the crime of Rape, and hereby sentences him to suffer the penalty of reclusion perpetua. Accused is likewise directed to recognize [xxx] as his illegitimate daughter, and provide for her support as soon as his financial means permit. Furthermore, he is hereby ordered to pay complainant the sum of P75,000.00 as indemnity, P50,000.00 as moral damages and P50,000.00 as exemplary damages. With costs de officio.

Considering that the accused has been undergoing detention during the pendency of the trial of this case, the same is hereby credited in the service of his sentence.

The decision of the RTC was directly elevated to this Court. The accused-appellant filed his *Brief*^[21] on August 23, 2005 while the plaintiff-appellee filed its *Brief*^[22] on December 19, 2005. In a *Minute Resolution*^[23] dated February 15, 2006, we transferred this case to the CA for appropriate action conformably with our ruling in *People v. Mateo*.^[24]

The CA summarized the evidence of the parties as follows:

Dr. Emelito Alegre, a radiologist and sonologist, testified that he had conducted an ultrasound examination on AAA on 10 July 2000. Through the conduct of the necessary measurements and ultrasound examination, he confirmed AAA's pregnancy. At the time of the examination, AAA was already 30.7 weeks pregnant. The testimony of the Municipal health Officer, **Dr. Marietta Alcantara**, in turn, was dispensed with on account of the admission of the defense of the existence and genuineness of the medical certificate that she had executed in relation to the instant case.

Dr. Imelda Escudra of the Women and Children Protection Unit of Bicol Medical Center, Naga City, and a specialist in the field of psychiatry testified that AAA was referred to her clinic for examination and evaluation by the Department of Social Work and Development (DSWD). During the first examination, she noticed that AAA was pregnant, was coughing, but responsive, coherent and relevant with no auditory nor visual hallucinations or delusions shown. AAA, as she had observed, was not psychotic at the time of the examination.

Dr. Escudra added that AAA had recurrent thoughts of the rape incident and the threats to kill her if she would divulge the matter. It was also observed that AAA was not oriented as regards to persons and dates and that she showed poor grasp of general information. During the last examination on 24 July 2000, AAA looked depressed and claimed that her baby was moving.

Dr. Escudra further testified that AAA's mental ability particularly on the arithmetic aspect was poor, as she could not even count from 1-100. She concluded that although AAA's chronological age was 38 years old, she manifested a mental age of between 7-8 years old. AAA's intelligence quotient was only 51, which is classified as moderate mental retardation. Aside from her mental disadvantage, AAA also suffers from dwarfism being only three (3) feet and eight (8) inches tall.

Corazon Alipante, a psychologist of the Bicol Medical Center who conducted the psychological testing on AAA, confirmed that the latter's mental capacity is functioning within the moderate mental retardation level with an average intelligent quotient of 51 and that her perception of reality is impaired.

AAA testified that she knew the appellant personally since he was a child because they lived in the same neighborhood. She narrated that sometime at around 1:00 o'clock in the afternoon while she was alone at home the appellant entered their house and started molesting her. Appellant pulled down her shorts with his left hand while covering her mouth with his right hand. Appellant then placed himself on top of her and inserted his penis into her vagina. At that time, she did not shout as the appellant was holding a knife. AAA recalled that when appellant inserted his penis into her vagina, she had felt pain. Afraid for her life, she did not tell her parents about the rape incident.

Continuing with her narration, AAA stated that several months after the incident, her stomach became big. Thinking that she was just ill, she

drank some bitter solution upon her mother's instruction. As her stomach continued to grow, AAA was forced to tell her mother about the rape incident. Thereafter, AAA consulted a doctor who confirmed that she was pregnant. Consequently she gave birth to a baby girl.

BBB, AAA's mother, on the other hand, testified that the appellant is the cousin of her husband. She claimed that she noticed her daughter becoming pale and thinner. She also noticed that AAA's stomach was getting bigger and thus decided to bring her to a doctor, who in turn informed her that her daughter might be pregnant. An ultrasound examination confirmed that AAA was indeed pregnant. BBB then asked her daughter who was responsible for her pregnancy, AAA replied that it was the appellant.

BBB further claimed that prior to the confirmation of the pregnancy, the appellant had given her some mahogany seeds which he said AAA should take so that she will have her menstruation. But since the mahogany seeds made AAA weaker, BBB discontinued it and decided to consult a doctor instead. Upon learning that it was the appellant who had raped her daughter, BBB immediately reported the matter to the Municipal Hall of Pamplona. Thereafter, the appellant was arrested.

BBB also testified that appellant's parents had tried to settle the case by offering the sum of Twenty Thousand Pesos (P20,000.00). They however declined said offer, as it was not even commensurate to the expenses they have already spent for their daughter and her child. AAA gave birth to a baby girl on 16 August [2000] but the appellant and his family had never given them any financial support.

Aside from the testimony of the **[accused]-appellant**, the defense also called **Danilo Abella**, appellant's father, to the stand. Both testimonies were principally anchored on denial, and attributed that the filing of this case against the accused was ill motivated and was due to the bad blood and personal animosities between their family and that of the complainant. Appellant contends that a certain Mang Ben, a construction worker of the China Geo, was the one responsible in impregnating the complainant.

After its review of the evidence, the CA agreed with the findings of the RTC and affirmed the conviction of the accused-appellant. However, as prayed for by the plaintiff-appellee, the appellate court deleted the award of exemplary damages in favor of AAA for lack of basis, thus:

WHEREFORE, the foregoing considered, the assailed Decision is AFFIRMED with the MODIFICATION that the award for exemplary damages is DELETED. No costs.

The accused-appellant did not move for the reconsideration of the appellate court's judgment. He instead elevated for review his conviction before us.

Accused-appellant reiterates the issues and arguments he has raised before the courts below as follows:

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 convicting the accused-appellant of the crime charged although his actual participation in the alleged act was not proven with certainty.

Accused-appellant asserts that he should be acquitted of the crime charged. AAA allegedly testified unsurely as to the identity of her assailant and that she testified incoherently as to the details surrounding the rape incident. Accused-appellant points out that AAA mentioned that she was raped by a certain *Mang Ben*. AAA then testified that the accused-appellant was holding a knife while her pants were being pulled by him with his left hand and her mouth being covered with his right hand. She also allegedly said that the accused-appellant opened his knife when he was about to molest her but he left after opening the knife.

Accused-appellant insists that AAA was coached to testify against him in furtherance of the hostility between their families. He claims that AAA's mental disability made her so subservient to her parents that she would believe everything that they tell her. He further argues that the alleged P20,000.00 offer of accused-appellant's family to settle this criminal case happened before this case was actually filed which proves that the said offer was either concocted by AAA's family or they were extorting money.

The plaintiff-appellee maintains that the prosecution has proven the guilt of the accused-appellant of the crime charged. AAA allegedly testified clearly and convincingly that she was raped by accused-appellant. The plaintiff-appellee points out that AAA clarified on the witness stand that it was accused-appellant, and not *Mang Ben*, who raped her; that she did not say that the accused-appellant simultaneously pointed a knife at her, covered her mouth, and pulled down her pants - she rather testified that, after her mouth was covered and pants pulled down, the accused-appellant forced her to lay down and then drew a knife; and that AAA said that the accused-appellant left after raping her. Assuming there were inconsistencies in AAA's testimony, the same pertain to insignificant details which rather support, not destroy, her credibility.

The plaintiff-appellee claims that the contention that the crime charged against the accused-appellant was prompted by revenge or ill-motive on the part of AAA's family was baseless and that the mental disability of AAA did not affect her credibility and veracity of her testimony. The psychiatric evaluation of AAA allegedly proves that she was generally "coherent and relevant" and that her extensive examination on the witness stand shows that she could distinguish good from bad and truth from lies.