

THIRD DIVISION

[G.R. No. 187743, March 03, 2010]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ROLANDO
BAUTISTA IROY, APPELLANT.**

R E S O L U T I O N

NACHURA, J.:

For final review by the Court is the trial court's conviction of appellant Rolando Bautista Iroy for qualified rape. In the December 15, 2008 Decision^[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02947, the appellate court affirmed with modification the June 22, 2007 Decision^[2] of the Regional Trial Court (RTC), Branch 69, Pasig City, in Criminal Case Nos. 128200-H and 128201-H.

Appellant, a widower and a fish ball vendor, rented a room in the house of prosecution witness Jojo Sarmiento (Sarmiento). Appellant lived there together with his daughter AAA and son BBB. At around 8:30 p.m. on May 31, 2004, while Sarmiento was in the restroom answering the call of nature, he noticed that the partition wall was shaking. He got out of the restroom and moved closer to the partition wall, which also served as the wall of appellant's room. Intrigued, Sarmiento peeped through a hole on the wall and, to his surprise, he saw appellant and his daughter standing face to face, with appellant's shorts pushed down to his knees, while his daughter AAA was naked. Appellant was having sexual intercourse with his daughter in a standing position. AAA was pushing appellant but the latter persisted in having sexual intercourse with her. After satisfying his lust, appellant ordered his daughter to get dressed.

Sarmiento did not try to stop appellant, since the former was afraid that the latter might create a scandal or commotion. The following day, Sarmiento reported what he saw to their Zone Leader, a certain Evelyn Geraldino (Geraldino), and asked her to report the incident to the police.

On June 1, 2004, Geraldino called the Municipality's Public Order and Safety Officer, Abdon C. Lozano (Lozano), and reported the incident. Responding to the report, Lozano immediately went to the house of Geraldino to verify the information. On his way, he met AAA, whom he confronted. AAA readily admitted that her father sexually abused her not only on May 31, 2004, but also on May 15, 2004. Her father purportedly threatened to kill her if she refused to have sexual intercourse with him.

When examined by Medico-Legal Officer Dr. Paul Ed dela Cruz Ortiz, AAA was found to be in a non-virgin state. Based on the testimony of Ma. Victoria Delfin of the National Statistics Office, AAA was fourteen (14) years old at the time she was sexually abused on May 15 and 31, 2004, it appearing in her Certificate of Live Birth that AAA was born on October 4, 1989.

For his part, appellant interposed the defense of denial and alleged that AAA charged him with rape because of ill feelings. Appellant alleged that AAA may have harbored ill feelings toward him when he berated and spanked her on two occasions, once on May 15, 2004 and again on May 31, 2004, for allegedly not preparing food and water for him. Appellant purportedly came home tired from vending fish balls on such dates and was irritated when he found no water and food. With respect to Sarmiento, appellant averred that the former wanted him out of his house, that was why he testified against appellant in this case.

Consequently, in an Information dated June 2, 2004, appellant was charged with qualified rape under paragraph 1(a), Article 266-A of the Revised Penal Code (RPC), allegedly committed as follows:

That on or about the 15th day of May, 2004, in the City of (PPP), Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, taking advantage of his moral ascendancy and authority, and by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of his daughter (AAA), against her will and consent, the crime having been attended by the qualifying circumstances of relationship and minority, the accused being the father of the victim who is a fourteen (14) year old minor at the time of the commission of the offense, thereby raising the crime to Qualified Rape aggravated by nighttime, dwelling and abuse of superior strength.

CONTRARY TO LAW.

Subsequently, another Information of even date, similarly charging appellant with qualified rape, was filed before the trial court. Except for the date of the alleged commission, which was May 31, 2004, said Information was committed against the same victim and was similarly worded as the first Information.

The defense attempted to discredit the testimony of Sarmiento by arguing that it was highly unlikely for a man to consummate rape while in a standing position. Appellant insinuated that the alleged sexual intercourse in a standing position was improbable unless both parties acted in concert. He further sought to establish that the sexual intercourse, if any, took place with the consent of AAA, owing to the absence of any outcry or sufficient resistance on her part. Appellant likewise harped on the alleged failure of AAA to report the rape incident to her brother or to her relatives.

After trial on the merits, the RTC rendered the June 22, 2007 Decision,^[3] convicting appellant of qualified rape and imposing the penalty of *reclusion perpetua*. It further ordered appellant to pay the victim the amount of P75,000.00 as moral damages.^[4]

On review, the appellate court affirmed with modification the ruling of the trial court as follows:

WHEREFORE, the appealed Decision, dated 22 June 2007, of the Regional Trial Court of Pasig City (Branch 69) in Criminal Case No. 128201-H, is AFFIRMED with the MODIFICATION that, in addition to the award of civil indemnity of Seventy-Five Thousand Pesos (P75,000.00), appellant is likewise ordered to pay the victim AAA another Seventy-Five Thousand Pesos (P75,000.00) as moral damages and Twenty-Five Thousand Pesos (P25,000.00) as exemplary damages.

SO ORDERED.^[5]

In their respective Manifestations^[6] filed before this Court, appellee, People of the Philippines, as represented by the Office of the Solicitor General, and Iroy, as represented by the Public Attorney's Office, intimate that they are no longer filing any Supplemental Brief in support of their respective positions, for the same has been adequately discussed in their earlier briefs, and to avoid a repetition of arguments.

The case having been elevated to this Court, we now finally review the trial and the appellate courts' findings.

The instant appeal is bereft of merit.

It is settled that sexual intercourse in a standing position, while perhaps uncomfortable, is not improbable.^[7] Prosecution witness Dr. Paul Ed dela Cruz Ortiz, who conducted the physical examination on the victim AAA, positively testified that the latter was in a non-virgin state. Significantly, prosecution's eyewitness, Sarmiento, unequivocally identified appellant as the malefactor who ravished AAA.

Furthermore, we are not persuaded by appellant's contention that the victim offered no resistance to appellant's sexual advances, for as testified to by Sarmiento, AAA continuously pushed appellant while the latter was raping her. We also disagree with the contention that the victim's failure to shout for help is fatal to the charge of rape. Physical resistance is not an essential element of the felony and need not be established when intimidation is exercised upon the victim and the latter submits herself, against her will, to the rapist's embrace because of fear for her life and personal safety.^[8] The moral and physical ascendancy of the father over his daughter-victim is sufficient to cow her into submission to his bestial desires.^[9]

Verily, AAA's failure to report the rape to her family or to the police authorities does not weaken the prosecution's case, the victim's hesitation being attributable to her age, the moral ascendancy of the appellant and his threats to the former.

The RTC found all the prosecution witnesses to be credible witnesses, whose testimonies were natural and convincing, thus, deserving of full faith and credence. It bears stressing that full weight on and respect for the determination by the trial court of the credibility of witnesses is usually accorded by the appellate courts, since a trial court judge has the

opportunity to observe the demeanor of these witnesses.^[10] The CA did not disturb the RTC's appreciation of their credibility. Thus, the cardinal rule applies that factual