

FIRST DIVISION

[G.R. No. 188569, July 13, 2010]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROBERTO GARBIDA, ACCUSED-APPELLANT.**

D E C I S I O N

VELASCO JR., J.:

Before this Court on appeal is the Decision^[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02563 dated March 19, 2009, which upheld the conviction of accused-appellant Roberto Garbida in Criminal Case Nos. 1230-1236, decided by the Regional Trial Court (RTC) of Irosin, Sorsogon, Branch 55 on July 10, 2006.

The facts of the case are as follows: The victim, hereafter referred to as AAA,^[2] is the stepdaughter of accused-appellant Roberto Garbida. AAA's biological father and mother separated after the birth of AAA and another child. In 1990, AAA's mother married Garbida and had children of their own. The family lived together in Sua, Matnog, Sorsogon.

At about 1:00 p.m. on April 1, 1997, while the family was at home, Garbida suddenly pulled AAA into a room and then and there proceeded to undress her. He then had sexual intercourse with AAA, even as AAA's mother witnessed the act. AAA's mother attempted to intervene, but her efforts were for naught. Garbida continued to have sexual relations with his stepdaughter on each of the following nights until April 7, 1997, with AAA's mother attempting to stop her husband, but failing at every turn. On April 8, 1997, AAA's mother took her to the *barangay* center of Sua, where the midwife of the *barangay* gave them shelter. The next day they reported the crime to the police, and Garbida was arrested. The Department of Social Welfare and Development (DSWD) took custody of AAA.

Garbida was charged with rape in seven separate Amended Informations all dated August 28, 1997, for each act of sexual intercourse with his stepdaughter from April 1 to April 7, 1997. The informations, differing only as to the date of commission, read as follows:

That on or about x x x, inside the dwelling of the victim [AAA], an 11-year old minor, at Sua, Matnog, Sorsogon, and within the jurisdiction of this Honorable Court, the above-named accused, thru force and intimidation, willfully, unlawfully and feloniously, did then and there, had sexual intercourse with the said victim who is his step daughter against her will and consent, to her damage and prejudice.

The offense is aggravated by ignominy, that is, the accused perpetrated the offense in the presence of the victim's mother and against her

protestations.

CONTRARY TO LAW.^[3]

When arraigned, Garbida pleaded "not guilty."

In his defense, Garbida, while admitting having had sexual intercourse with AAA from April 1 to April 7, 1997, in the presence of AAA's mother, claimed that the acts of sexual intercourse were consensual. As Garbida would allege, AAA wanted to have sex with him because her mother was having sexual relations with other men. He also claimed that she consented to have sex with him as he was sending her to school. He further claimed having sex with her again when she was 13 years old, or two years after the alleged April 1997 rape incidents took place.

After trial, the RTC found that the circumstances of minority and relationship, which would have qualified the crime committed, albeit alleged in the informations, had not been proved beyond reasonable doubt. As it were, AAA's birth certificate was not presented. Neither was a marriage certificate adduced to prove a valid marriage between Garbida and AAA's mother. The concurrence of minority and relationship constitute special qualifying circumstances in the prosecution for qualified rape, which, in accordance with the settled rule, must be alleged in the information and proved during trial.^[4] And if so alleged and proved, then the special qualifying circumstances of minority and relationship could raise the penalty for rape to death.

The RTC nonetheless found Garbida liable for seven counts of statutory rape as she was sexually molested in 1997, when she was 11 years old. The RTC also ruled that the offense was aggravated by ignominy, perpetrated as it was in the presence and over the protestations of the victim's mother.

By decision of July 10, 2006, the RTC adjudged Garbida guilty beyond reasonable doubt of the crimes charged, the dispositive portion of which reads as follows:

WHEREFORE, premises considered, accused ROBERTO GARBIDA'S GUILT having been established beyond reasonable doubt, he is hereby sentenced to suffer the supreme penalty of DEATH for EACH count of RAPE, and to indemnify the victim AAA in the amounts of PhP 75,000.00 as civil indemnity and another PhP 75,000.00 as moral damages, for EACH count of RAPE, with no subsidiary imprisonment in case of insolvency. With costs de officio.

SO ORDERED.^[5]

Garbida then appealed to the CA, reiterating the defenses he presented before the RTC.

The CA affirmed the conviction of Garbida, but with the modification as to the penalty to be imposed, Republic Act No. (RA) 9346 having meanwhile abolished the death penalty, leaving *reclusion perpetua* as the most severe penalty imposable.

The dispositive portion of the CA decision reads as follows:

WHEREFORE, the challenged Decision dated July 10, 2006 in Criminal Case Nos. 1230-1236 is AFFIRMED with MODIFICATION. In lieu of the death penalty, the accused Roberto Garbida should be sentenced to suffer *reclusion perpetua* for each of the seven counts of rape. The award of civil damages to the victim is maintained.

SO ORDERED.^[6]

Now before this Court, Garbida submits the same defense presented before the RTC and the CA, that the acts of sexual intercourse between him and AAA were consensual.

The Court's Ruling

We uphold the conviction of accused-appellant.

In *People v. Dalisay*, the Court held:

Three principles guide the courts in resolving rape cases: (1) and accusation for rape can be made with facility; it is difficult to prove but more difficult for the accused, though innocent, to disprove; (2) in view of the intrinsic nature of the crime of rape in which only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme 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.^[7]

Keeping these principles in mind, the guilt of accused-appellant has been sufficiently established. The testimony of private complainant AAA was not refuted and was found to be credible by the RTC, and was further corroborated by the testimony of her mother, who actually witnessed the crimes committed by accused-appellant against AAA. We hew to the ruling in *People v. Lopez*:

Since the trial judge had the direct and singular opportunity to observe the facial expression, gesture and tone of voice of the complaining witness while testifying, it was fully competent and in the best position to assess whether the witness was telling the truth. This Court has also ruled that testimonies of victims of tender age are credible, more so if they are without any motive to falsely testify against their offender. Their revelations that they were raped, coupled with their willingness to undergo public trial where they could be compelled to describe the details of the assault on their dignity by their own father, cannot be easily dismissed as concoctions. It would be the height of moral and psychological depravity if they were to fabricate sordid tales of sexual defloration - which could put him behind bars for the rest of his life - if they were not true.^[8]