

**[ G.R. No. 179498, August 03, 2010 ]**

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. RUSTICO  
BARTOLINI Y AMPIS, APPELLANT.**

**D E C I S I O N**

**VILLARAMA, JR., J.:**

We review the May 31, 2007 Decision<sup>[1]</sup> of the Court of Appeals (CA) which affirmed the guilty verdict rendered by Branch 29 of the Regional Trial Court (RTC) of Bislig City<sup>[2]</sup> in Criminal Case Nos. 99-1-2083-H, 99-1-2084-H and 99-1-2085-H, finding appellant Rustico Bartolini y Ampis guilty of three (3) counts of incestuous rape against his two (2) daughters, AAA and BBB.<sup>[3]</sup>

The facts are culled from the findings of both the trial and appellate courts.

Appellant Bartolini was charged with three (3) counts of rape before the RTC, Branch 29, of Bislig City, Surigao del Sur. The informations filed against him read:

**Criminal Case No. 99-1-2083-H:**

That on or about 7:00 o'clock in the morning sometime in the month of March 1995, at Sitio [ABC], Barangay [123], Municipality of Hinatuan, Province of Surigao del Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with lewd and unchaste designs, did then and there wilfully, unlawfully and feloniously rape [his] daughter, [AAA], by means of force and intimidation, and against his daughter's will, to the damage and prejudice of the said [AAA], who was then 14 years old.

CONTRARY TO LAW: In violation of Article 335 of the Revised Penal Code as amended by Section 11 of Republic Act No. 7659.

Bislig, Surigao del Sur, November 23, 1998.<sup>[4]</sup>

**Criminal Case No. 99-1-2084-H:**

That on or about March 2, 1998, at 8:00 o'clock in the morning, more or less, at Sitio [ABC], Barangay [123], Municipality of Hinatuan, Province of Surigao del Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd and unchaste designs and by means of force and intimidation, did then and there wilfully, unlawfully and feloniously [have] carnal knowledge or rape his own daughter, [BBB], against the latter's will, to the damage and prejudice of said [BBB].

CONTRARY TO LAW: In violation of Article 335 of the Revised Penal Code,

as amended by Section 11 of Republic Act No. 7659.

Bislig, Surigao del Sur, November 27, 1998.<sup>[5]</sup>

Criminal Case No. 99-1-2085-H:

That on or about 3:00 o'clock in the afternoon sometime in the month of March 1994, at Sitio [ABC], Barangay [123], Municipality of Hinatuan, Province of Surigao del Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with lewd and unchaste designs and by means of force and intimidation, did then and there wilfully, unlawfully and feloniously rape [his] daughter [BBB], 16 years old, against the latter's will, to the damage and prejudice of the said [BBB].

CONTRARY TO LAW: In violation of Article 335 of the Revised Penal Code as amended by Section 11 of Republic Act No. 7659.

Bislig, Surigao del Sur, November 27, 1998.<sup>[6]</sup>

Upon arraignment on May 4, 1999, Bartolini pleaded not guilty to all the three (3) charges filed against him.<sup>[7]</sup> The three (3) criminal cases were thereafter tried jointly.

In the course of the trial, the prosecution presented four (4) witnesses: AAA; BBB; CCC, appellant's wife and mother of both victims; and Dr. Emelie S. Viola, the Municipal Health Officer of Hinatuan District Hospital who conducted the physical examination of both victims.

Below are the facts established by their testimonies.

Bartolini is married to CCC.<sup>[8]</sup> They begot six (6) children, the eldest being BBB who was born on January 14, 1978,<sup>[9]</sup> followed by AAA who was born on June 16, 1980.<sup>[10]</sup>

Sometime in March 1994, at around 3:00 in the afternoon, while BBB was weeding the grass on their vegetable garden with her father, the latter suddenly pulled her to the ground and forced her to lie down. Bartolini then lifted BBB's skirt, removed her panty and proceeded to have sexual intercourse with her. As BBB struggled, appellant punched her and hit her at her back. Afterwards, appellant put back his clothes and left. When BBB went inside their house, appellant, who was waiting for her, warned her not to tell CCC about the incident. Despite the warning, BBB reported the incident to her mother, but the latter told her to just keep quiet.<sup>[11]</sup>

After the said incident, appellant repeatedly had sexual intercourse with BBB, the last of which happened on March 2, 1998 at about 8:00 in the morning inside their house while her mother was away selling fish and while all her siblings were attending school. That morning, appellant ordered BBB to get his clothes for him. Appellant then followed BBB to the room, took off her clothes and raped her.<sup>[12]</sup>

It also appears that sometime in March 1995, at about 6:30 in the morning, while having breakfast, appellant instructed his second eldest daughter, AAA, to burn the dried leaves in their garden. Dutifully, AAA went to the garden at around 7:00 that morning and met her father there. To her surprise, appellant immediately pulled her and brought her near a big fallen tree while threatening to kill her and all the members of their family if she would not acquiesce to his demands. Appellant told her to remove her panties, but since AAA was crying and pushing her father away, appellant himself took off AAA's panties, laid her on the ground and placed one (1) of her feet on top of the fallen tree. Afterwards, appellant removed his pants and raped her. After having sexual intercourse with AAA, appellant put back his pants and went to the barangay hall to report for duty as appellant was a barangay *kagawad* at that time. Like her sister, AAA also told the incident to their mother, but the latter told her to keep silent for fear that appellant would fulfill his threats. Consequently, AAA was repeatedly raped by appellant until sometime in October 1998, a month before she gave birth to appellant's child.<sup>[13]</sup>

When CCC discovered that AAA was pregnant, she confided the matter to her sister-in-law, DDD, who, in turn, reported the incident to the barangay captain and to a representative of the Department of Social Welfare and Development (DSWD) in Butuan City. On November 19, 1998, while under the custody of the DSWD, AAA gave birth to her child.<sup>[14]</sup>

During the trial, CCC testified that sometime in March 1994, her daughter BBB confided to her that she was raped by appellant. She just kept silent about the incident for fear that her husband will maul her when confronted. AAA also reported to her that she was raped by her father sometime in 1995. In one (1) instance, CCC even saw appellant touching AAA's vagina while the two (2) were inside their kitchen. She got angry and told her parents-in-law about the incident, but the latter replied that she has no other evidence to prove her accusation. CCC also testified that appellant, despite being an elected barangay *kagawad*, was a drunkard, violent and an irresponsible individual. She added that she had received a letter from appellant threatening to kill them.

Dr. Emelie S. Viola, Municipal Health Officer of Hinatuan District Hospital, testified that sometime in October 1998, BBB and AAA were brought to her clinic for physical examination. Although there were no visible signs of physical trauma, Dr. Viola found that BBB had deep healed hymenal lacerations at the 6 and 7 o'clock positions, as well as superficial healed hymenal laceration at the 10 o'clock position, which indicate that there was a penetration of an object or a male reproductive organ at BBB's female genitalia.<sup>[15]</sup>

Dr. Viola also examined AAA and found that the latter had deep healed lacerations at the 12 o'clock position and superficial healed hymenal lacerations at the 3, 9 and 10 o'clock positions, also indicating penetration of an object or a male reproductive organ at AAA's vagina. AAA was also pregnant.<sup>[16]</sup>

The defense, on the other hand, presented its lone witness, appellant Bartolini, who interposed the defense of denial and alibi. According to him, he could not have raped BBB in the morning of March 2, 1998 because he has been out of their house from 4:00 a.m. that day to deliver shrimps, prawns, and crabs to a certain Benjamin Castañas who resides in Hinatuan, Surigao del Sur. Appellant claims that he arrived

at Castañas's house at around 4:20 a.m. and stayed there for breakfast upon the latter's invitation. After getting paid, he left for home at around 10:00 a.m. and reached his house fifteen (15) minutes later.<sup>[17]</sup>

On September 4, 2000, a subpoena was issued for Benjamin Castañas to appear as witness for the defense.<sup>[18]</sup> Castañas, however, failed to appear before the trial court. A warrant of arrest was thereafter issued against him,<sup>[19]</sup> but to no avail. Thus, on July 24, 2002, the trial court issued another subpoena to Castañas.<sup>[20]</sup> When Castañas still failed to appear, the trial court issued an order declaring the case submitted for decision.<sup>[21]</sup>

On September 18, 2002, the RTC promulgated its decision finding appellant guilty beyond reasonable doubt of three (3) counts of rape committed against AAA and BBB. The *fallo* reads:

WHEREFORE, finding the accused RUSTICO BARTOLINI Y AMPIS, forty-four (44) years of age, a fisherman and a resident of [ABC, 123,] Hinatuan, Surigao del Sur, guilty beyond reasonable doubt of the crime of RAPE pursuant to Article 335 of the Revised Penal Code, as amended by Section 11, Republic Act No. 7659, paragraph (1), this Court hereby sentences him:

1. In Criminal Case No. [99-1-]2083-H, to suffer the penalty of Death by Lethal Injection. To pay Seventy-Five Thousand (P75,000.00) pesos as civil indemnity and Fifty Thousand (P50,000.00) pesos as moral damages and to pay the costs;
2. In Criminal Case No. [99-1-]2084-H, to suffer the penalty of Death by Lethal Injection. To pay Seventy-Five Thousand (P75,000.00) pesos as civil indemnity and Fifty Thousand (P50,000.00) pesos as moral damages and to pay the costs; [and]
3. In Criminal Case No. [99-1-]2085-H, to suffer the penalty of Death by Lethal Injection. To pay Seventy-Five Thousand (P75,000.00) pesos as civil indemnity and Fifty Thousand (P50,000.00) pesos as moral damages and to pay the costs.

Let the entire records of this case be forwarded to the Supreme Court for automatic review pursuant to Section 22 of Republic Act No. 7659.

SO ORDERED.<sup>[22]</sup>

At the CA, Bartolini argued that he should not have been convicted of the crime of qualified rape since the information in Criminal Case No. 99-1-2085-H was defective because it failed to allege that the act was committed by force or intimidation as required by law, while there was no allegation of minority of the victim in the information for Criminal Case No. 99-1-2084-H. Bartolini also argued that the prosecution failed to prove his guilt beyond reasonable doubt.<sup>[23]</sup>

After an extensive discussion on the issues raised by Bartolini, the appellate court found no compelling reason to deviate from the findings of the trial court. Nevertheless, the CA modified the penalties by reducing the penalty of death to *reclusion perpetua* following the abolition of the death penalty and by modifying the monetary award in favor of the victims. The dispositive portion of the appellate court's decision reads,

WHEREFORE, the Decision dated September 18, 2002 of the Regional Trial Court, 11<sup>th</sup> Judicial Region, Branch 29, Bislig City, in Criminal Case Nos. [99-1-]2083-H, [99-1-]2084-H and [99-1-]2085-H finding appellant Rustico Bartolini y Ampis guilty beyond reasonable doubt for three counts of rape is AFFIRMED with the following MODIFICATIONS:

(a) in Criminal Case Nos. [99-1-]2083-H and [99-1-]2085-H, the penalty of death is reduced to *reclusion perpetua*; and to pay the amount of seventy-five thousand pesos (P75,000.00) as civil indemnity, seventy-five thousand pesos (P75,000.00) as moral damages and twenty-five thousand pesos (P25,000.00) as exemplary damages for each count; and

(b) in Criminal Case No. [99-1-]2084-H, the accused is sentenced to suffer the penalty of *reclusion perpetua*; and to pay the amount of fifty thousand pesos (P50,000.00) as civil indemnity, the amount of fifty thousand pesos (P50,000.00) as moral damages, and twenty-five thousand pesos (P25,000.00) as exemplary damages;

(c) with costs.

SO ORDERED.<sup>[24]</sup>

On August 30, 2007, the records of the case were forwarded to this Court for automatic review.<sup>[25]</sup> The Court accepted the appeal and directed the parties to file their respective supplemental briefs if they so desire. However, both the Office of the Solicitor General, for the appellee, and the appellant submitted manifestations<sup>[26]</sup> stating that they replead and adopt the arguments raised in their respective briefs<sup>[27]</sup> before the CA.

Appellant raises the following issues:

- I. Whether the trial court erred in convicting the appellant;
- II. Whether the trial court erred in convicting the appellant in Criminal Case No. 99-1-2085-H despite the fact that the information therein was allegedly defective; and
- III. Whether the trial court erred in imposing the death penalty upon the appellant after finding him guilty in Criminal Case No. 99-1-