596 Phil. 883

SECOND DIVISION

[G.R. No. 182549, January 20, 2009]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SERGIO LAGARDE, ACCUSED-APPELLANT.

D E C I S I O N

VELASCO JR., J.:

In this appeal, accused-appellant Sergio Lagarde seeks to reverse the Decision of the Court of Appeals (CA) dated March 7, 2007[1] in CA-G.R. CR-H.C. No. 00069, affirming the judgment of conviction for rape handed down by the Regional Trial Court (RTC), Branch 13 in Carigara, Leyte on April 24, 2003[2] in Criminal Case No. 4132.

The Facts

Accused-appellant was charged with rape in an information dated March 1, 2002 which reads:

> That on or about the 27th day of December, 2001, in the municipality of San Miguel, Province of Leyte, Philippines and within the jurisdiction of this Honorable court, the above-named accused, with deliberate intent with lewd designs and by use of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with [AAA], 11 years old, against her will to her damage and prejudice.
>
> CONTRARY TO LAW.[3]

Upon arraignment on August 5, 2002, accused-appellant pleaded not guilty.

During trial, the prosecution presented the victim, AAA,[4] and Drs. Felix P. Oyzon and Karen Palencia-Jadloc as witnesses. According to the prosecution, on December 27, 2001, around 12 noon, AAA and her mother were at the house of Lolita Lagarde-Sarsosa, which was about 500 to 600 meters away from the victim's house, to attend the death anniversary celebration of Lolita's mother. Accused-appellant was also present in that occasion, being the nephew of Lolita. Accused-appellant is a neighbor of AAA and the father of her classmate.

After lunch, AAA's mother, accused-appellant, and the other visitors started drinking *tuba* (coconut wine). AAA remained inside the house until her mother ordered her to pick a jackfruit at around 4:00 p.m. AAA obliged and went outside towards the jackfruit tree which was about 150 meters away from the house. When she was near the tree, she sensed the presence of somebody behind her who suddenly placed his hand over her mouth and dragged her to the *loonan* or copra dryer which was about eight meters away from the jackfruit tree. There, AAA recognized the

attacker as accused-appellant.

In the copra dryer, accused-appellant undressed AAA while keeping one of his hands on her mouth. He then took off his clothes and told AAA to lie on the *papag* or bamboo bench. Accused-appellant then mounted AAA, poked a seven-inch knife on her face, and told her to be silent. Thereafter, he inserted his penis into her vagina and made a pumping motion, which hurt AAA's chest and vagina. After the sexual assault, accused-appellant stood up, put on his shirt and pants, and then left the place. Not long after, AAA dressed herself up, and returned to the house and told her ordeal to her mother. AAA and her mother subsequently reported the incident to the officials of *Barangay* Lukay, San Miguel, Leyte. Accused-appellant was immediately arrested.[5]

On December 28, 2001, AAA was brought to the Eastern Visayas Regional Medical Center, Tacloban City for physical examination. Drs. Oyzon and Palencia-Jadloc, the attending medical examiners, submitted a report with the following relevant findings:

> Pelvic Exam -
>
> External genitalia: grossly normal
> Intoitus: (+) healed incomplete laceration of the hymen at 3, 9 & 10 o'clock
> S/E: speculum inserted with ease
> Cervix pinkish, small, smooth (+) whitish mucoid discharge
> I/E: cervix firm, closed, nontender on motion
> U: small
> A: no mass/tenderness
> D: whitish mucoid discharge
>
> LABORATORY RESULT:
>
> Vaginal smear for presence of spermatozoa = Negative for spermatozoa[6]

The pertinent testimony of Dr. Oyzon tended to prove that there was apparently no struggle on the part of the victim because there was no hematoma on her body, although it is possible for injuries to be concealed. Dr. Palencia-Jadloc, on the other hand, established the fact that the victim had sexual intercourse.[7]

For the defense, Lolita testified that on December 27, 2001, during the celebration of her mother's death anniversary, accused-appellant was drinking *tuba* with other visitors on the ground floor of her house. Most of the time, AAA played with Lolita's niece, Jennilyn, around 10 meters away from the house. AAA went to see her mother a few times on the second floor of the house until they left around 7:00 p.m. Lolita asserted that at no time did accused-appellant leave his seat until he left around 5:00 p.m. On cross-examination, Lolita stated that prior to the incident, there was no altercation between AAA's mother and accused-appellant, and she did not know why they would file a case against her nephew.[8]

Accused-appellant denied raping AAA. He testified that on the day the alleged offense occurred, he never left the house of Lolita from the time he arrived at 12 noon until he went home at about 9:00 p.m. He admitted having a drinking spree with other visitors, but disclaimed never talking to AAA who left with her mother at

4:30 p.m. He stated that there was no *loonan* or copra/kiln dryer near the house of Lolita.[9]

The RTC found AAA's testimony credible, noting that at her age, it is inconceivable for her to concoct a tale of having been raped. Her accusation, according to the RTC, was supported by medical findings that she was indeed sexually abused. The lower court dismissed accused-appellant's denial and alibi. Lolita's testimony was likewise disbelieved not only because she was related to accused-appellant but also because she herself was busy drinking *tuba* in another part of the house. She could not categorically say, the RTC added, that accused-appellant did not leave his seat and molest AAA. Thus, the trial court convicted accused-appellant of rape aggravated by minority of the victim, use of bladed weapon and force, and uninhabited place in view of the location of the offense. The dispositive portion of the RTC's decision states:

> WHEREFORE, premises considered, pursuant to Article 266-A and 266-B of the Revised Penal Code as Amended, and further amended by R.A. No. 8353 (The Anti Rape law of 1997) and the amendatory provision of R.A. No. 7659 (Death Penalty Law), the Court found SERGIO LAGARDE, **GUILTY**, beyond reasonable doubt for the crime of Rape charged under the information and sentenced to suffer a maximum penalty of **DEATH** and pay civil indemnity to [AAA], the sum of seventy Five Thousand (P75,000.00) Pesos and pay moral damages in the amount of Fifty Thousand (P50,000.00) Pesos, and
>
> Pay the cost.
>
> SO ORDERED.[10]

In view of the imposition of the death penalty, the case was automatically elevated to the Court. In accordance with the ruling in *People v. Mateo*,[11] however, the case was transferred to the CA for review per this Court's August 24, 2004 Resolution.

The Ruling of the CA

The appellate court upheld the trial court's findings of fact and judgment of conviction. With regard to the penalty, however, the CA ruled that the trial court erred when it imposed the death sentence on the basis of the following aggravating circumstances: minority, use of bladed weapon, and uninhabited place. Aside from the abolition of the death penalty, the CA held that:

> It is basic in criminal procedure that the purpose of the information is to inform the accused of the nature and cause of the accusation against him or the charge against him so as to enable him to prepare a suitable defense. It would be a denial of the right of the accused to be informed of the charges against him, and consequently, a denial of due process, if he is charged with simple rape and convicted of its qualified form punishable by death although the attendant circumstances qualifying the offense and resulting in capital punishment were not set forth in the indictment on which he was arraigned. More importantly, they are not the circumstances that would call for the application of death penalty. Article 266-B of Republic Act 8353 provides, viz-

x x x x

Anent the victim's minority, the allegation in the Information that she was a minor and only eleven (11) years old at the time she was raped by accused-appellant was but an assertion of fact to establish that the crime committed by accused-appellant fall under Article 266-A in relation to Article 266-B of the Revised Penal Code which provides:

> Art. 266-A. Rape; when and how committed.--
>
> 1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:
>
> x x x x
>
> d) when the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mention above be present.
>
> Art. 266-B. Penalties. Rape under paragraph 1 of the next preceding article shall be punished by reclusion perpetua.

To warrant sentencing the accused to death, the child must be under seven (7) years of age.

x x x x

Consequently, the amount of Seventy Five Thousand Pesos (P75,000.00) as indemnity awarded by the trial court to the victim must be reduced to Fifty Thousand Pesos (P50,000.00) for the crime of rape committed in this case was in its simple form in the absence of any qualifying circumstance under which the imposition of death penalty is unauthorized.[12]

The dispositive portion of the CA's judgment reads:

> **WHEREFORE**, the Decision of the Regional Trial Court of Carigara, Leyte, Branch 13, dated 24 April 2003, in Criminal Case No. 4132 is UPHELD with modification as to the penalty and award of civil damages. Accordingly, accused-appellant Sergio Lagarde is hereby sentenced to suffer *Reclusion Perpetua* in lieu of death penalty and is further ordered to pay the private complainant the amount of Fifty Thousand Pesos (P50,000.00) as civil indemnity and another Fifty Thousand Pesos (P50,000.00) as moral damages.[13]

Hence, before us is this appeal.

Assignment of Errors

THE COURT A QUO GRAVELY ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT FOR THE CRIME CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT.

THE COURT A QUO GRAVELY ERRED IN IMPOSING UPON THE ACCUSED-APPELLANT THE PENALTY OF [RECLUSION PERPETUA][14]

Accused-appellant asserts that the trial court should not have easily dismissed his denial and alibi, i.e., that he was at the party drinking *tuba* with the other visitors and he neither left his seat nor talked to the victim that day. He stresses that his testimony was corroborated by Lolita. Considering that the crime involves capital punishment, conviction should, according to accused-appellant, rest on moral certainty of guilt.

Accused-appellant also questions the death penalty imposed on him, arguing that the aggravating circumstances of minority, use of a bladed weapon, and uninhabited place were not specifically alleged in the information. Since the crime was not qualified, the award of PhP 75,000 was likewise erroneous.

The Office of the Solicitor General, on the other hand, agrees with the judgment of conviction but not with the death penalty for the same reasons submitted by accused-appellant.

The Court's Ruling

The appeal has no merit.

In rape cases, courts are governed by the following principles: (1) an accusation of rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (2) due to the 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. Due to the nature of this crime, only the complainant can testify against the assailant. Accordingly, conviction for rape may be solely based on the complainant's testimony provided it is credible, natural, convincing, and consistent with human nature and the normal course of things.[15]

In this case, AAA testified as follows:

PROS. MERIN:
Q: Do you know Sergio Lagarde?
A: Yes, sir.
Q: Is he inside the courtroom?
A: Yes, sir.
Q: Where is he?
A: There. [Witness pointing to a person inside of the courtroom who when asked of his name identified himself as Sergio