

THIRD DIVISION

[G.R. No. 185380, June 18, 2009]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROGELIO MARCOS, ACCUSED-APPELLANT.**

D E C I S I O N

CHICO-NAZARIO, J.:

For review is the Decision^[1] of the Court of Appeals dated 30 June 2008, in CA-G.R. CR-H.C. No. 01919, which affirmed with modifications the Decision^[2] of the Regional Trial Court (RTC) of Aparri, Cagayan, Branch 8, in Criminal Case No. 11-9436, finding accused-appellant Rogelio Marcos (Rogelio) guilty of Rape under Articles 266-A and 266-B of the Revised Penal Code, as amended by Republic Act No. 8353 or the Anti-Rape Law of 1997, in relation to Republic Act No. 7610.^[3]

On 8 July 2005, Rogelio was charged before the RTC with Rape under Articles 266-A and 266-B of the Revised Penal Code, as amended by Republic Act No. 8353, in relation to Republic Act No. 7610. The accusatory portion of the Information reads:

That **on or about JULY 13, 2003 and sometimes thereafter**, in the Municipality of Gattaran, province of Cagayan, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, by force, threat or intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the herein offended party his step-daughter, AAA^[4], a minor, eleven (11) years of age, all against her will and consent, the sexual assault thereby gravely threatening and gravely endangering the survival and normal development of the child.^[5]

When arraigned on 11 November 2004, Rogelio, with the assistance of his counsel *de parte*, pleaded not guilty to the charge.^[6] Following the termination of the pre-trial conference, trial on the merits ensued.

The evidence of the prosecution, as culled from the testimonies of the victim (AAA), the victim's aunt (BBB), the investigating police, Senior Police Officer (SPO) I Dennis P. Aguilar, and Dr. Corazon Flor, and from the documentary evidence, are as follows:

The victim was 11 years old, having been born on 15 March 1992, when the alleged rape incident took place on the date in question.^[7] AAA was then living with her mother and her stepfather Rogelio, and three younger siblings at XXX, Gattaran, Cagayan. On 13 July 2003, a little after lunch time and while taking care of her younger siblings, as her mother was away working in the farm, Rogelio ordered the victim to go upstairs. AAA obliged her stepfather's order. Rogelio immediately followed AAA. As soon as Rogelio was upstairs, he suddenly moved toward AAA and removed her dress, her short pants and panties and put her down. Rogelio undressed himself, mounted AAA and forcibly inserted his penis into her vagina.

Rogelio then made a push and pull motion. As Rogelio was inserting his penis, AAA cried as she felt so much pain. AAA's wailing continued throughout the entire sexual episode. After Rogelio was done, he told AAA to wipe her tears, dress up, go downstairs, and take care of her younger siblings. AAA did as instructed. Moments later, Rogelio left the house.

After the first rape incident, and in the same month of July, 2003, AAA was again abused by Rogelio. This time, Rogelio did it at the back of the house at about 10:00 o'clock in the morning. The following months, she was subjected to sexual abuse three times every month. The last rape incident was on 18 July 2005.

Despite all these tormenting incidents, AAA did not report them because she was afraid of the threats made by Rogelio after every molestation that he would kill her and her mother if she reported the same to anybody.

On 19 January 2005, BBB, the victim's aunt, went to the victim's house for a visit. She noticed AAA's pregnancy, prompting her to confront the latter. It was then that AAA revealed what had happened to her. BBB assisted the victim in reporting the incidents to the police. SPO1 Aguilar conducted the interview of the victim. The police officer advised AAA to undergo a medical examination.

During the hearing, AAA admitted that the child she was carrying was the product of the sexual abuse perpetrated by Rogelio.

The defense, on the other hand, presented the oral testimonies of Rogelio and AAA's mother. The defense claimed that it was AAA who initiated the sexual congress.

Rogelio admitted that AAA is his step-daughter.^[8] He testified that when he was upstairs, AAA followed, and kissed him. Rogelio reacted by kissing AAA. He then requested AAA to remove her short pants, and she acceded. Rogelio asked AAA to unzip his short pants, and the latter voluntarily complied. AAA knelt in front of Rogelio and the latter requested the former to suck his penis. AAA took out Rogelio's organ and did as requested. When he was about to ejaculate, Rogelio pulled his penis from AAA's mouth and let her play with it. AAA's mother suddenly caught them in such compromising situation. AAA rushed downstairs, while AAA's mother banged Rogelio's head against the wall and threatened to cut his neck should he repeat such act.

AAA's mother corroborated Rogelio's testimony that she caught him and AAA engaged in oral sex.

In a Decision dated 7 February 2006, the RTC rendered a guilty verdict against Rogelio. The supreme penalty of death was meted out to him. The decretal portion of the RTC decision reads:

WHEREFORE, in the light of the foregoing ratiocination, the Court finds accused, **Rogelio Marcos, "Guilty"** beyond reasonable doubt of the crime of rape and sentences him to:

- a) suffer the supreme penalty of death;
- b) pay the victim AAA the amount of P50,000.00 as civil indemnity and

P20,000.00 as moral damages. and

c) pay the costs of litigation.^[9]

The Court of Appeals, in a Decision dated 30 June 2008, affirmed the conviction of Rogelio, but modified the penalty of death to *reclusion perpetua* on the ground that the imposition of the death penalty was prohibited by Republic Act No. 9346.^[10] The dispositive part of the Decision of the Court of Appeals states:

WHEREFORE, the February 7, 2006 Decision of the Regional Trial Court, Branch 8, Aparri, Cagayan, in Criminal Case No. 11-9436, is MODIFIED to read as follows:

x x x the Court hereby sentences him to suffer the penalty of Reclusion Perpetua without possibility of parole; and to pay the complainant the amount of P75,000.00 as moral damages and another P75,000.00 as civil indemnity.^[11]

Hence, the instant recourse.

Rogelio contends that the RTC erred in convicting him of statutory rape, considering that the prosecution failed to present evidence to warrant a finding of conviction. Rogelio expresses a strong objection to the RTC's giving credence to the victim's testimony, which according to him is loaded with improbability. Specifically, Rogelio pinpoints the substantial lapse of time from the date the victim was allegedly raped on 13 July 2003 to the date of the victim's pregnancy in December of 2004. Rogelio insists that if indeed he was responsible for the victim's pregnancy, then it would not have taken until December 2004 for the signs of pregnancy to become manifest.

Statutory rape, under Article 266-A, par. 1-d, is committed by having carnal knowledge of a woman "when the offended party is under 12 years of age." The two elements of statutory rape are: (1) that the accused had carnal knowledge of a woman; and (2) that the woman was below 12 years of age. Sexual congress with a girl under 12 years old is always rape.^[12]

In this case, the victim's age is undisputed. She was below 12 years old. Her Birth Certificate shows that she was born on 15 March 1992. Thus, on 13 July 2003, AAA was only eleven (11) years old. Hence, the remaining issue is whether Rogelio had carnal knowledge of the victim.

To ascertain the guilt or innocence of the accused in cases of rape, the courts have been traditionally guided by three settled principles, namely: (a) an accusation for rape is easy to make, difficult to prove and even more difficult to disprove; (b) in view of the intrinsic nature of the crime, the testimony of the complainant must be scrutinized with utmost caution; and (c) the evidence of the prosecution must stand on its own merits and cannot draw strength from the weakness of the evidence for the defense.^[13]

Since the crime of rape is essentially one committed in relative isolation or even secrecy, it is usually only the victim who can testify with regard to the fact of the forced *coitus*.^[14] In a prosecution for rape, therefore, the credibility of the victim is

almost always the single and most important issue to deal with.^[15] If her testimony meets the test of credibility, the accused can justifiably be convicted on the basis thereof; otherwise, he should be acquitted of the crime.^[16]

In this case, after a painstaking assessment of the victim's testimony, the RTC found her credible, thus:

The Court noticed that the victim while making public her horrifying, terrible and pyrrhic ordeal from the hands of the accused, cried not once but twice, thus, bolstering the truthfulness of her statements as it was narrated with feelings and down to earth emotions.

Thus, the Court believes, that, the victim cannot fabricate more so concoct nor weave a case so serious against her own step-father.^[17]

This Court itself, in its effort to ferret out the truth based on the evidence on records has diligently examined the transcripts of stenographic notes of this case. Like the RTC, it finds the victim's testimony on the incident candid and straightforward, indicative of an unadulterated and realistic narration of what took place on that fateful day. She narrated the sexual abuse in this manner:

Q: On July 13, 2003 Madam witness, where were you then living?

A: I was living at XXX, Gattaran, Cagayan, sir.

Q: In whose house?

A: House of my grandfather, sir.

Q: Who were living with you in the house of your grandfather?

A: My step-father Rogelio Marcos, my mother, my siblings and I, sir.

x x x x

Q: You said you were in the house of your grandfather on July 13, 2003 Madam witness, what were you then doing?

A: I was taking care of my siblings, sir.

x x x x

Q: Why, where was your mother Madam witness?

A: She went to work, sir.

Q: Whereat?

A: She went to work as farm worker, sir.

Q: How about your step-father, where was he then?

A: He was at home, sir.

Q: What was he doing then?

A: None, sir.

Q: Now, what happened when you were taking care of your brothers and sister?

A: My step-father requested me to go upstairs, sir.

Q: Did you go upstairs as requested?

A: Yes, sir.

Q: Do you know the reason then why, you were let by your step-father to go upstairs?

A: I do not know yet at that time what was the reason why he let me go upstairs, sir.

Q: When you were already in the upstairs, what did your step-father do if any?

A: He also went upstairs, sir.

Q: And after that, what happen if any?

A: He came near me and suddenly removed my dress, sir.

Q: What happened next if any?

A: He came near me and suddenly removed my dress, sir.

Q: What happened next if any?

A: He removed my short pants, my panty and laid me down and after which he mounted on me, sir.

Q: And where did he lay you down?

A: On the floor, sir.

Q: Now you said that he mounted on you, was he in his dress at that time?

A: None sir, he also removed his dress.

Q: When he mounted at you, what did he do next?

A: He made the push and pull motion, sir.

Q: What happened when he did do that to you?

x x x x