579 Phil. 803

SECOND DIVISION

[G.R. No. 180499, July 09, 2008]

THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. CONRADO CACAYAN, APPELLANT.

D E C I S I O N

TINGA, J,:

Four (4) informations[1] for rape accusing appellant Conrado Cacayan of raping his eighteen (18)-year old daughter, AAA,[2] were filed before the Regional Trial Court (RTC) of Baler, Aurora, Branch 96. The informations were similarly worded except for the dates of the commission of the crime. Appellant pleaded not guilty to all the charges against him during the arraignment.[3]

The facts as culled from the records are as follows:

AAA[4] was born on 19 August 1979.[5] Due to familial problems, AAA was reared by a sister of appellant in Saguday, Quirino, Isabela. On 10 January 1997, AAA started living with appellant in Barangay Diniog, Dilasag, Aurora. Her father was living in with another woman and the latter's 13-year old niece, BBB.[6] AAA helped out in appellant's *sari-sari* store.[7]

In the afternoon of 13 May 1997, AAA and BBB went out with appellant to gather rattan in the mountain. Earlier that day, appellant had a drinking session with a friend who was elected as barangay councilor. At around 7:00 p.m., the three passed by the seashore on the way to the mountain. As they were about to set up camp for the night, appellant asked BBB to fetch a cauldron (*casserole*) from Dipasaleng, Diniog, which, from where they were, would take around 15 minutes to reach. After BBB left, appellant approached AAA, who was then spreading a blanket on the seashore, and blamed her for his defeat in the 12 May 1997 barangay election. Appellant told her to undress and lie down. When she did not comply, appellant unsheathed his bolo, pointed it to her neck, and threatened to kill her if she refused to lie down. Despite AAA's vehement refusal, appellant started pulling down her pants and panties. After undressing AAA, appellant removed his pants. AAA's pleas for mercy fell on deaf ears. Appellant laid her on the blanket, held her left hand, and rested the bolo on the right side of her neck. Appellant then inserted his penis into her vagina. After appellant succeeded in having sexual intercourse with her, he told her to get dressed. Appellant called back BBB. They all spent the night by the seashore. AAA was not permitted by appellant to leave the place.[8]

The following morning, 14 May 1997, the three of them went to the mountain to gather rattan. At around 10:00 a.m., appellant told BBB to go down the mountain ahead of them. When BBB left, appellant asked AAA if he could repeat what he did to her the night before. AAA pleaded and reminded him that she is his daughter.

When AAA did not comply with his wishes, appellant again threatened her with a bolo, then held her hand and laid her down. Appellant rested his bolo on her neck and held her hand as he inserted his penis into her vagina. AAA cried and shouted for help to no avail. After the sexual intercourse, they went down the mountain.[9]

On 7 June 1997, the three of them went to appellant's banana plantation in Dicasiw, Dilasag, Aurora to gather bananas. After the task, AAA went home ahead of them. Appellant followed her and told her to stop. She refused and told him that she still had to wash some clothes. Appellant scolded her with expletives for not following his order. She retorted, "What kind of father are you? You are doing bad things to your daughter!" Appellant pulled AAA, causing her to stumble. He laid AAA down and undressed her. Appellant held her hand and rested his bolo on AAA's neck. He inserted his penis into her vagina. The penetration caused her extreme pain because she was then suffering from vaginal infection caused by appellant's previous sexual assaults. AAA described it as, "*Masakit po dahil hindi pa po magaling iyong mga butlig-butlig dahil doon po sa ginawa niya sa akin*."[10] AAA did not report the rape for fear that appellant would make good his threat that he would kill her and her mother.[11]

Sometime in June 1997, AAA started living in the house of CCC,[12] who used to be her teacher in school. Because AAA had financial difficulties when she was still CCC's student, the latter invited her to stay in her house. Appellant gave his permission to this arrangement; however, he told CCC not to allow AAA to go out. [13]

On 21 June 1997, appellant went to CCC's house and confronted AAA about the rumors that she had gone out with many male companions during the town fiesta. She went with appellant to his house to verify the gossips and there, she denied the rumors. Then, she proceeded to leave for CCC's house but appellant persisted in accompanying her. Together, they boarded a tricycle which, on the way to their destination, ran out of fuel. The driver advised them to just walk the rest of the way. However, before they could reach CCC's house, appellant dragged AAA into a coconut plantation and told her to undress. Appellant persisted in undressing AAA despite her pleas for mercy. AAA resisted appellant's actions but the latter drew a knife and pointed it at her neck. Appellant undressed himself and inserted his penis into AAA's vagina while she was lying down. Appellant made push-and-pull movements which AAA described as, "*kinayopan po nya ako. Labas[-] pasok po ang ari nya sa ari ko*." After satisfying his bestial desires, appellant told AAA to stand up and get dressed.[14]

As soon as AAA reached the house of CCC, she confided to the latter that appellant had raped her. CCC advised her to report the matter to the Department of Social Welfare and Development (DSWD). AAA did not follow CCC's advice for she was afraid that appellant could easily kill her.[15] Instead, AAA escaped to Barangay Calabuanan, Baler, Aurora to seek her friend. She was told by the residents, however, that her friend was working in Bulacan. A certain Baby Lucie Bitong (Baby), a resident of the locality, invited AAA to her house. There, AAA related her ordeal to Baby. Baby accompanied AAA to a barangay councilor who, in turn, referred them to the barangay captain. The barangay captain was then in a meeting so a *tanod* took her statement. AAA and Baby proceeded to the DSWD office in the municipal building. As advised by the DSWD, they proceeded to the police station

where AAA's statement was taken.[16]

On 14 July 1997, Dr. Nenita Hernandez, the municipal health officer of Baler, Aurora, examined AAA and issued a medico-legal examination report.[17] She testified that the healed hymenal lacerations were consistent with the fact that the last rape occurred on 21 June 1997, and that these also indicate several forcible copulations.[18]

Appellant denied the charges against him. He testified that AAA merely concocted the charges against him for he scolded and mauled her on 20 June 1997 when he learned from his brother that she was having an affair with a certain "Alias Pogi" near the seashore the day before. Appellant disavowed that AAA was with him gathering rattan on 13 and 14 May 1997 and that she was with him gathering bananas on 7 June 1997 as in fact on those dates, she was managing their *sari-sari* store.[19] He testified that AAA was not in his house on 21 June 1997, the date of the fourth rape.[20]

Appellant's brothers—Arman Cacayan (Arman), Mariano Cacayan (Mariano) and Guillermo Cacayan (Guillermo)—tried to corroborate appellant's defense. Arman and Mariano both testified that appellant could not have raped AAA on 13 and 14 May and on 7 June 1997 since on said dates, they saw AAA tending the *sari-sari* store, and that appellant was at home in the evening of 13 May. Mariano testified that he even saw AAA having a picnic with her friends by the beach in Dilasag on 14 May. Mariano further testified that he saw AAA kissing a man near the seashore in the evening of 19 June 1997, and told appellant about it. He revealed that AAA was beaten up by appellant because of said incident.[21] Arman testified that AAA was alone when she boarded the tricycle bound to CCC's house in the evening of 21 June 1997, and that appellant was then in his house. He further testified that AAA was a flirt.[22] Guillermo also tried to show through his testimony that AAA was a flirt. He testified that AAA was no longer a virgin and that the latter had previously suffered a miscarriage as he once saw her bleeding when they were still living in the same house.[23]

In its Decision[24] dated 23 July 2002, the RTC found appellant guilty of four (4) counts of rape with the use of a deadly weapon and attended by the aggravating circumstance of relationship and sentenced him to death. Since the rapes were committed prior to the effectivity of Republic Act No. 8353 on 22 October 1997, the RTC applied Article 335 of the Revised Penal Code.[25] The records of the case were thereafter forwarded to this Court on automatic review. On 7 February 2006, the Court issued a Resolution[26] transferring the case to the Court of Appeals for intermediate review.

The Court of Appeals[27] affirmed with modification the decision of the RTC. The appellate court found appellant guilty of all four (4) counts of simple and not qualified rape. It held that although appellant admitted that AAA is his daughter, her minority at the time she was raped was not alleged in the informations nor was it proven in court. Appellant filed a Notice of Appeal dated 19 July 2007 before the Court of Appeals.[28]

The case is again before us for our final disposition. Appellant assigns two (2) errors which have already been passed upon by the Court of Appeals, to wit: whether the RTC erred in finding him guilty of all four (4) counts of rape despite the alleged failure of the prosecution to prove his guilt beyond reasonable doubt; and assuming *arguendo* that he is guilty, whether the RTC erred in imposing the death penalty.[29]

The appeal is bereft of merit.

The issues raised by the appellant involve weighing of evidence already passed upon by the RTC and the Court of Appeals. The age-old rule is that the task of assigning values to the testimonies of witnesses in the stand and weighing their credibility is best left to the trial court which forms its first-hand impressions as a witness testifies before it. It is also axiomatic that positive testimony prevails over negative testimony.[30] The denial and alibi of appellant fail in light of AAA's positive identification that he raped her on the alleged dates which is corroborated by physical evidence showing forced coitus.

It is true that alibi is not always false and without merit. It may serve as basis for an acquittal if it can really be shown by clear and convincing evidence that it was indeed physically impossible for the accused to be at the crime scene at the time. [31] In this regard, appellant failed to prove convincingly that he was not at the crime scene at the time the four rapes occurred because he merely denied that AAA was with him on the alleged dates. Moreover, the distance of appellant's house, where AAA was alleged to be during the four rapes, from the crime scene does not evince belief that it was impossible for him to be there when the rapes were committed. Further, jurisprudence has shown that alibi becomes less plausible as a defense when it is invoked and sought to be crafted mainly by the accused himself and his immediate relative or relatives.[32] Appellant's alibi is patently self-serving even though his brothers tried to corroborate it.

The use of a bolo at the time of the rapes and the threat of death posed by appellant constituted sufficient force and intimidation to cow AAA into obedience.[33] Moreover, appellant, who is AAA's father, undoubtedly exerted a strong moral influence over her. His moral ascendancy and influence over AAA may even substitute for actual physical violence and intimidation.[34]

In a prosecution for rape, the complainant's candor is the single most important issue. If a complainant's testimony meets the test of credibility, the accused may be convicted solely on that basis.[35] We have thoroughly examined AAA's testimony and find nothing that would cast doubt as to her credibility. All said, there is no evidence to show any improper motive on the part of AAA to falsely charge appellant with rape and to testify against him; hence, the logical conclusion is that her testimony is worthy of full faith and credence. The prosecution has established beyond reasonable doubt that appellant had carnal knowledge of AAA against her will, through force and intimidation, and with the use of a bolo.

The alleged minor inconsistencies in AAA's testimony pertain only to collateral or minor incidents of the case and they do not affect the real issue, which is whether or not appellant indeed raped his daughter, AAA.As long as the witness has been found credible by the trial court, especially after undergoing a rigid cross-examination, any

apparent inconsistency may be overlooked. This is especially true if the lapses concern trivial matters.[36]

AAA's failure to report the previous incidents of rape to her mother does not dent her credibility, there being no standard form of behavior expected of rape victims who react differently to emotional stress.[37] Appellant's threats had intimidated AAA and kept her from immediately reporting the rapes. As this Court held, it is not uncommon for young girls to conceal for some time the violation of their honor because of the threats on their lives.[38]

Appellant's contention that AAA filed the rape charges because he had scolded and mauled her for seeing a man could not be believed. As held by the Court in *People v. Rosario,* [39]"[i]t would take the most senseless kind of depravity for a young daughter to fabricate a story which would send her father to death only because he disciplined her. Verily, no child in her right mind would concoct a story of defloration against her own father and expose her whole family to the stigma and disgrace associated with incestuous rape, if only to free herself from an overweening and strict parent who only happens to enforce parental guidance and discipline."

Significantly, AAA's claim of sexual violations was corroborated by Dr. Hernandez's medical findings which were presented to the RTC at the trial. AAA's hymen showed multiple healed lacerations at 11, 3, 4, 6, 7 and 8 o'clock positions.[40] As Dr. Hernandez testified, these lacerations could only have resulted from the forcible insertion into the vagina of an erect penis.[41]

Lastly, just as in other rape cases, appellant raises the argument that the rapes could not have happened because BBB was with them when the alleged crime was committed. However, as is common judicial experience, rapists are not deterred from committing their odious act by the presence of people nearby. As revealed in our review of rape cases, rape can be committed in a house where there are other occupants.[42]

All told, the Court finds no reason to reverse the ruling of the RTC and the Court of Appeals insofar as the crime was committed. What remains to be determined is the propriety of the penalty imposed on appellant in relation to the second issue raised.

The RTC is correct when it imposed the penalty of death for the four rapes. Under Article 335 of the Revised Penal Code, the use by appellant of a bolo to consummate the crime is a special aggravating circumstance which warrants the imposition of the penalty of *reclusion perpetua* to death. A similar provision can also be found in Article 266-B,[43] when the law on rape was amended by Republic Act No. 8353 which also reclassified rape to a crime against persons. With the existence of the aggravating circumstance of relationship, the imposable penalty is death conformably with Article 63[44] of the Revised Penal Code. There is no question that appellant is the father of AAA.[45] Such relationship of father-daughter in rape cases is considered an aggravating circumstance under Article 15[46] of the RPC.[47] However, pursuant to Republic Act No. 9346,[48] the Court can only impose the penalty of *reclusion perpetua* without eligibility for parole, in lieu of the death penalty.