

THIRD DIVISION

[G.R. No. 183087, December 04, 2008]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
IGNACIO ISANG Y LAGAY, RESPONDENTS.**

D E C I S I O N

CHICO-NAZARIO, J.:

This is a review of the Decision^[1] of the Court of Appeals in CA-G.R. CR.-H.C. No. 01528 dated 30 May 2007 affirming with modification the Decision of the Regional Trial Court (RTC) of La Trinidad, Benguet, convicting accused-appellant Ignacio Isang y Lagay (Isang) of rape.

On 19 November 1999, Isang was charged with two counts of rape committed against his daughter, AAA,^[2] in two separate Informations, as follows:

Criminal Case No. 99-CR-3628

That sometime in the month of June, 1996, at Barangay Gumatdang, Municipality of Itogon, Province of Benguet, Philippines, and within the Jurisdiction of this Honorable Court, the above-named accused, being the biological father of the victim [AAA], did then and there willfully, unlawfully and feloniously, have carnal knowledge of one [AAA], who is his eleven (11) year old daughter.

That in the commission of the crime, the aggravating circumstance of nighttime is present, the same having been purposely sought to facilitate the commission thereof.

Criminal Case No. 99-CR-3629

That on or about the 5th day of September 1999, at Barangay Ampucao, Municipality of Itogon, Province of Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of [AAA], who is under eighteen (18) years of age and his daughter.

On 7 June 2000, Isang, assisted by counsel, pleaded not guilty to the crimes charged. The two criminal cases were jointly tried.

The prosecution presented the testimonies of private complainant AAA, her mother BBB, psychologist Dr. Ruby M. Bell, and examining physician Dr. Vladimir Villaseñor. During the turn of the presentation of evidence by the defense, Isang escaped from detention and has since remained at large. Trial *in absentia* against accused, thus,

proceeded.

The evidence of the prosecution tends to establish the following:

AAA was born on 24 October 1985 to her parents Isang and BBB. She is the second child. She has three brothers, XXX, YYY and ZZZ. BBB worked as an overseas Filipino worker in Singapore from 1989 to 1990 and again from 1996 to 2001. Her father, accused-appellant Isang, was jobless.

AAA testified that she was sexually abused by her father from 1994 to 1999. However, it was only her account of the last assault that allegedly occurred on 5 September 1999, which the trial court found sufficient for conviction.

In the afternoon of 5 September 1999, AAA, who was then thirteen years old, was out of their house in Gumatdang, Itogon, Benguet, washing the family's clothes. Isang, who was in the *sala* of their house, called AAA to approach him. When AAA went inside the house, she realized that she and her father were alone upon learning that YYY and ZZZ were sent out (by their father) to buy *merienda*, while XXX was in Balitoc.

Isang forced AAA to lie down in the *sala*. He forcibly removed her pants and panty and then forcibly inserted his penis into her vagina. AAA struggled and tried to push her father, but her efforts proved futile. Isang ravished her and stopped only when something sticky and white appeared on AAA's legs. Isang told AAA not to tell anybody about the incident. AAA obeyed out of fear, because the former whipped his children even for little mistakes. Feeling helpless, she just put on her clothes and cried in a corner.

On 11 September 1999, BBB went home from Taiwan to attend her mother's funeral. On said date, BBB and AAA went to the house of CCC (BBB's sister). There, they talked about sexual abuses of children in the Philippines. At this point, CCC jokingly asked AAA if her father also abused her. At first, AAA tried to deny what her father did to her. She later, however, went inside another room and cried.

Sensing that something was not right, BBB confronted AAA and demanded that she tell the truth. AAA then told her mother that her father had been raping her since she was in Grade 3. Isang was not with them at CCC's house at this time; he was at their house in Itogon, Benguet.

BBB sought the assistance of a certain Atty. Gayaman who referred their case to the Department of Social Welfare and Development (DSWD). They were then accompanied to the National Bureau of Investigation-Cordillera Autonomous Region (NBI-CAR), where their statements were taken.

On 16 September 1999, AAA was brought to Dr. Vladimir Villaseñor, the physician and medico-legal officer of the Philippine National Police (PNP) Crime Laboratory Service, Camp Dangwa, La Trinidad, Benguet, for medical examination. Dr. Villaseñor examined the external part of the body of the victim and found no external signs of injuries. On examination of the genitalia, however, Dr. Villaseñor observed that the hymen had shallow healed lacerations at the three o'clock position and a healed laceration at the six o'clock position. He concluded that AAA was physically in a non-virgin state. The lacerations may have been caused by the

insertion of foreign object, such as a fully erect penis. He documented his findings in Medico-Legal Report No. M-175-99.

Dr. Ruby M. Bell, a psychologist connected with the Philippine Mental Health Association, conducted a series of psychological tests on AAA. She found that AAA was suffering from emotional disturbances and had problems with her parents, especially her father who allegedly raped her several times. She recommended that AAA and her family undergo counseling and therapy sessions. She suggested that if AAA should testify in court, she be asked simple questions in a gentle manner. While in court, Dr. Bell testified that she only learned about AAA's rape from BBB. However, the profile in her tests confirmed that AAA was a victim of rape.

On 9 July 2001, when it was the turn of the defense to present its evidence, Atty. Jerome Selmo formally withdrew his appearance as counsel for Isang, with the conformity of the latter. The trial court referred the case to the Public Attorney's Office.

On 10 January 2002, the trial court received notice from the Office of the Provincial Warden, through Assistant Provincial Jail Warden Delfin Carimpal, that Isang escaped from the Provincial Jail at dawn of 6 January 2002. An alias warrant for his arrest was issued.

The RTC, acting on a Motion by the prosecution, considered Criminal Cases No. 99-CR-3628 and No. 99-CR-3629 submitted for decision.

On 24 September 2004, the RTC rendered its Decision acquitting Isang in Criminal Case No. 99-CR-3628, but finding him guilty beyond reasonable doubt of rape in Criminal Case No. 99-CR-3629. The dispositive portion of the RTC's Decision is as follows:

WHEREFORE, PREMISES CONSIDERED, ACCUSED Ignacio Isang, is hereby ACQUITTED in Criminal Case No. 99-CR-3628 for insufficiency of evidence against him but declared guilty beyond reasonable doubt of the crime of Rape under Criminal Case No. 99-CR-3629.

Pursuant to Art. 266-B par. No. 1 of Republic Act No. 8353 or the Anti-Rape Law of 1997, with the minority of the victim and her relationship to the accused, both alleged in the information and duly proven during trial, accused, IGNACIO ISANG, is hereby meted the extreme penalty of DEATH.

Further, the accused is ordered to pay the victim the sum of Seventy Five Thousand (P75,000.000) Pesos, Philippine currency as civil indemnity; the amount of Fifty Thousand (P50,000.00) Pesos as Moral damages; and Twenty Five Thousand (P25,000.00) Pesos as Exemplary Damages.^[3]

According to the RTC, the prosecution failed to adduce evidence to establish the crime in Criminal Case No. 99-CR-3628 beyond reasonable doubt, allegedly committed sometime in June 1996, since the private complainant testified that she could no longer remember the exact date, time and manner she was raped by her father. In Criminal Case No. 99-CR-3629, however, where the subject matter was the rape which allegedly occurred on 5 September 1999, the private complainant

was able to narrate in a straightforward, positive and convincing manner how she was forced by her father to lie down and to remove her pants and panty, and how he forcibly inserted his penis into her vagina in the *sala* of their house.

Since the penalty imposed was death, the case was elevated to this Court on automatic appeal. However, pursuant to *People v. Mateo*,^[4] this case was forwarded to the Court of Appeals for intermediate review and disposition, where the case was docketed as CA-G.R. CR.-H.C. No. 01528.

On 30 May 2007, the Court of Appeals affirmed with modification the Decision of the RTC, to wit:

WHEREFORE, the appealed Decision dated September 24, 2004 finding accused-appellant Ignacio Isang y Lagay guilty beyond reasonable doubt of the crime of qualified rape is **AFFIRMED** with **MODIFICATION** in that the penalty of death meted on the accused-appellant is reduced to reclusion perpetua pursuant to Republic Act No. 9346 without eligibility for parole, and the award of moral damages is hereby increased to P75,000.00.

Let the entire records of this case be elevated to the Supreme Court for its review.^[5]

The Court of Appeals agreed with the RTC that AAA was clear and straightforward in narrating her traumatic experience. The Court of Appeals added that AAA remained unshaken even during cross-examination. However, in view of Republic Act No. 9346,^[6] it modified the sentence of Isang, imposing on him instead the penalty of *reclusion perpetua*.

The Court of Appeals forwarded the records of the case to this Court for review.

Isang, through counsel, argues that the trial court failed to scrutinize the testimony of AAA with great caution. He highlights the following part of the testimony of AAA:

Q: You stated that he was able to remove your pants and your panty. What happened next?

A: He forced to insert his penis in my vagina.

Q: Was his penis able to be inserted in your vagina?

A: No, sir.

Q: About how many minutes did your father try to insert his penis in your vagina?

A: I cannot recall, sir.

Q: And when did he stop?

A: When I felt something sticky and then he left.^[7]