

EN BANC

[G.R. No. 169061, June 08, 2007]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROQUE ABELLANO, ACCUSED-APPELLANT.

DECISION

NACHURA, J.:

After having experienced a most bestial crime from the most unlikely perpetrator, her own father, the complainant's primary instinct was still to protect her younger sisters from suffering the same fate. Thus, this case.

Before us on automatic review is a Decision^[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00773 affirming, with modification, the finding of guilt by the Regional Trial Court (RTC) of Legazpi City, Branch 6, in Criminal Case No. 8405, convicting accused Roque Abellano of qualified rape.^[2]

The Information^[3] against Abellano reads:

That sometime in the month of June, 1997, at nighttime, at xxx, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd and unchaste design, by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with his own daughter, AAA,^[4] 12 years of age, against her will and consent, to her damage and prejudice.

ACTS CONTRARY TO LAW.

It appears that at the time of the rape, AAA was 12 years old, living with the accused and her two younger sisters, BBB and CCC. The accused's wife, mother of AAA and her sisters, was already deceased.^[5]

One night in June 1997, AAA suddenly awoke and was surprised to see accused beside her. After undressing himself, the accused undressed AAA, lay on top of her, and forced himself on her. AAA's cries and remonstrations to the accused why he would do such a thing to his own daughter fell on deaf ears. The accused simply dismissed her sobs, telling her that the pain would pass upon her monthly menstruation. Thereafter, accused left her and went to sleep. However, AAA's nightmare did not end there. The accused repeatedly raped her until sometime in September 1998 when the abomination was revealed. Apparently, the rape had not been confined to complainant alone. Her older sister, DDD, had been raped by their father as well.^[6]

AAA and DDD went to their aunt and narrated their harrowing experience at the hands of the accused. Their aunt accompanied them to a barangay kagawad to

report the incident. From there they proceeded to the Manito Police Station to lodge a complaint. The Chief of Police of the station requested a medical examination on AAA. The results showed that AAA had a healed laceration at 5:00 o'clock position and was in a non-virgin state physically.^[7]

Despite threats made by the accused on her and her sisters' lives, AAA filed the case against their father.

Dr. Lily Melrose Camara, medico-legal officer, corroborated AAA's testimony. She testified that the laceration found on AAA could have been caused by a blunt object such as an erect penis or any instrument or object with a similar appearance.^[8]

In his defense, the accused denied the rape and claimed that the charge was merely instigated by Manuel Arizapa, a cousin of his deceased wife, who, after her death, failed to obtain custody of his children. The accused also claimed that he was drunk on the date the alleged rape occurred. Thus, he could not say anything about his daughter's charge of rape.^[9]

On April 23, 2001, the trial court rendered a decision finding the accused guilty as charged, to wit:

WHEREFORE, premises considered, the accused Roque Abellano is hereby found **GUILTY** beyond reasonable doubt of the crime of rape committed against her own daughter xxx in June 1997, who was then thirteen (13) years old and he is hereby sentenced to suffer the supreme penalty of **DEATH** and to pay xxx P75,000.00 as Indemnity. Costs against the accused.

Initially, this case was brought to this Court for automatic review. However, on September 7, 2004, the Court transferred this case to the CA consistent with its ruling in *People v. Mateo*.^[10]

On June 10, 2005, the CA affirmed the trial court's decision dated April 23, 2001 with modification on the latter's award of damages, thus:

WHEREFORE, the appealed decision is hereby **AFFIRMED**, with the **MODIFICATION**, as hereinabove indicated. Pursuant, however, to *Section 13, Rule 124 of the Amended Rules to Govern Review of Death Penalty Cases*, we refrain from entering judgment and, instead, forthwith certify the case and elevate its entire record to the Supreme Court for further review.

Both the Office of the Solicitor General and the Public Attorney's Office, counsel for the accused, reiterated the arguments in their respective briefs filed during the pendency of this case upon automatic review and prior to its transfer to the CA. Thereafter, the case was submitted for resolution.^[11]

In this appeal, the accused reiterates his assignment of errors before the appellate court, to wit:

THE COURT OF ORIGIN COMMITTED A REVERSIBLE ERROR IN GIVING MUCH WEIGHT TO THE EVIDENCE PRESENTED BY THE PROSECUTION.

II

THE COURT *A QUO* GRAVELY ERRED IN NOT EXCULPATING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DUE TO THE INCONSISTENCIES AS TO THE EXACT AGE OF THE ALLEGED VICTIM.

III

THE REGIONAL TRIAL COURT IN LEGASPI CITY (BRANCH 6) MADE A BLATANT ERROR IN NOT ACQUITTING THE ACCUSED ON THE GROUND OF REASONABLE DOUBT.

IV

THE LOWER COURT COMMITTED A GRAVE ERROR IN IMPOSING THE CAPITAL PUNISHMENT ON THE ACCUSED-APPELLANT DISREGARDING PERTINENT JURISPRUDENCE.^[12]

We do not find cause to disturb the findings of both courts.

At the outset, we point out that the case at bench disposes only of the rape committed in June 1997. In this regard, the trial court correctly ruled that AAA's steadfast and unequivocal testimony on the rape on her person by the accused cannot be overcome by the flimsy denial of the latter. The prosecution evidence proved beyond reasonable doubt the rape of AAA by the accused.

In the review of rape cases, we continue to be guided by the following principles: (1) an accusation for rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (2) in view of the nature of the crime of rape where only two persons are usually involved, the testimony of the complainant is scrutinized with extreme caution; and, (3) the evidence for the prosecution stands or falls on its own merits and cannot be allowed to draw strength from the weakness of the defense.^[13] Thus, in a prosecution for rape, the complainant's credibility becomes the single most important issue.^[14]

The perusal of the testimony of AAA inevitably leads us to conclude that the accused indeed raped her. AAA painfully narrated to the trial court, in a categorical and straightforward manner, how she was violated by her own father, thus:

Q: Now tell us exactly what happened on that night of June 7, 1997?

A: I went to sleep and to my surprise my father slept with me. I noticed it when I was awoken(ed). He was already beside me.

Q: And then (what) happened?

A: He undressed himself and also undressed me. He put himself on top of me and placed his penis inside my

vagina. And then he kept on moving up and down. He pushed himself up and down.

Q: And what did you do while he was doing that to you? While he was on top of you and placed his penis inside your vagina and kept on moving up and down, what did you do?

A: I cried and told him that I am his very own daughter. I asked him, "why are you doing this to me?"

Q: And what was the answer, if any?

A: He said, "mawawara man sana iyan pag nagregla ka." Or that nothing would go wrong once you have your monthly menstruation.

Q Did you not shout?

A Even if I did, no one would hear me except my two younger sisters who could do nothing to help me. We have no neighbor in our place.

Q So after your father had successfully raped you, what happened next?

A He left me and proceeded to sleep where he used to sleep.

Q And after your father removed his clothes and then undressed you also and then placed his penis inside your vagina, you said you cried, why did you cry?

A Because I could hardly accept the fact that my own father can afford to do such sexual act with me.

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Q Now that rape incident which you told the court which happened sometime in June, 1997, was that the first and last time that happened to you?

A No, sir because I have... I had been a victim of rape almost every night by my very own father.

Q When was the last time?

A It was in September but I could no longer recall the exact date?

Q What year?

A 1998?^[15]

Complainant's testimony remained consistent even on cross and re-cross examination. She refused to be deterred in her desire to protect her younger sisters from undergoing the same harrowing experience.

In stark contrast, however, is the accused's bare denial, and a vaguely drawn theory as to the impetus for the accusation. Both the lower and the appellate courts found the testimony of the accused unworthy of credence. Significantly, the accused failed to squarely deny AAA's charge of rape in his initial testimony, thus:

Q: Now Mr. Witness, one (1) of your children AAA is accusing

you of rape. Tell us what you can say to that?

(Silence)

PROS. DE MESA

Your honor please, may I manifest and put on record that the accused took time and does not give an answer.

WITNESS

A: I cannot say anything.

ATTY. GOMEZ (to the witness, continuing)

Q What do you mean "you cannot say anything?"

A I could not remember because I was then drunk sir.^[16]

Accused's testimony even revealed that he had been previously sentenced to the supreme penalty of death in a separate case of rape against the same victim committed on a different date.^[17] The trial and the appellate courts accurately noted that the accused's initial silence in his direct testimony in response to the question relating to his daughter's charge of rape, is equivalent to an admission thereof.^[18]

Moreover, AAA's testimony is corroborated by the findings of the medico-legal officer on all material points. Dr. Camara testified that the healed laceration on AAA's genitalia and the non-resistance of her hymen upon insertion of the examining index finger and the vaginal speculum are consistent with the claim of rape.^[19]

However, notwithstanding the foregoing, the accused maintains that there exists reasonable doubt in his favor due to the following defects and inconsistencies: (1) the victim's actual age at the time of the rape; (2) the date of the rape was not specifically alleged in the Information; (3) filing of the case is tainted with ill motive; and (4) the findings of Dr. Camara were inconclusive.^[20]

We disagree.

First. The accused mistakenly argues that the victim's age as alleged in the information is inconsistent, nay contradicted, by the findings of the trial court in its decision which declares the victim to be 12 years of age in its statement of facts, and 13 years old in the latter part of the decision. Hence, the accused hastily concludes that the trial court itself is not sure of AAA's exact age.^[21]

Time and again we have ruled that qualifying circumstances that increase the imposable penalty on an accused must be specifically alleged in the Information and duly proved during trial.^[22] Article 266-B (1) of the Revised Penal Code before the abolition of the death penalty provided,

ART. 266-B. Penalties. –

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