

EN BANC

[G.R. NO. 166617, July 03, 2007]

**PEOPLE OF THE PHILIPPINES, PETITIONER, VS. AGUSTIN
ABELLERA Y CAMANA, *** RESPONDENT.**

D E C I S I O N

CORONA, J.:

The subject of this petition for review is the decision of the Court of Appeals (CA) in CA-G.R. CR-HC No. 00097^[1] affirming respondent Agustin Abellera y Camana's conviction by the Regional Trial Court (RTC), Branch 275 of Las Piñas City,^[2] for statutory rape, two counts of simple rape and attempted rape committed against his minor daughters AAA and BBB.

The antecedent facts follow.

In 1986, then seven-year-old AAA was at home attending to the laundry when respondent arrived drunk. When respondent tried to grab her, she pushed him away but he was too strong for her. Respondent undressed her, removed her underwear and forced himself on her. She felt excruciating pain. Thereafter, respondent warned her not to tell anybody what happened, otherwise he would kill her.

On August 4, 1992, AAA, then already 14 years old, was with her youngest sister when respondent instructed her to go home immediately. The moment she arrived, respondent began undressing her. Thereafter, he inserted his penis into AAA's vagina. Pointing a knife at the latter's neck, respondent warned her not to tell anyone about the incident.

In 1996, AAA's younger sister, BBB, went through the same ordeal in respondent's hands. On April 2, 1996, BBB was washing the dishes at home when respondent arrived drunk and ordered her to undress. Thereafter, he took off his clothes and dragged her inside a room. She cried and pleaded with her father to stop but he warned her not to refuse him otherwise he would kill her, her mother and her siblings. Respondent then positioned himself on top of her, sucked her breasts, inserted his fingers, then his penis, into her. After the dastardly act, he told her to take a bath and go to sleep.

On October 7, 1996, respondent sent BBB's brother on an errand. After the boy left, he undressed her and forced her to lie down. She begged respondent not to repeat what he had done to her in the past but the latter took no heed. Instead, he again threatened to kill her if she refused. She kicked respondent in the groin which forced him to stand up in pain.

On the same day, BBB reported the incident to barangay officials. Respondent was arrested and brought to the Las Piñas police station where he was detained.

Subsequently, the following Informations were filed against him:

Criminal Case No. 97-0007 for statutory rape:

Sometime in 1986, in the Municipality of Las Piñas and within the jurisdiction of the Court, the [respondent], being the father of [AAA], then a seven (7) year old minor, through moral ascendancy and influence and by means of force and intimidation, willfully, unlawfully, and feloniously [had] carnal knowledge with [AAA] against her will and consent.^[3]

Criminal Case No. 97-0007-A for Violation of RA 7610^[4] in relation to Art. 335^[5] of the Revised Penal Code (RPC):

On or about the 4th day of August 1992 in the [M]unicipality of Las Piñas and within the jurisdiction of this Court, the [respondent], being the father of [AAA], then a fourteen (14) year old minor, through moral ascendancy and influence and by means of force and intimidation, willfully, unlawfully, and feloniously have carnal knowledge with [AAA] against her will and consent.^[6]

Criminal Case No. 96-0460 for rape:

On or before the 2nd day of April 1996, in the Municipality of Las Piñas and within the jurisdiction of this Court, the [respondent], being the father of [BBB], a 14 year-old minor, through moral ascendancy and influence and by means of force and intimidation, willfully and unlawfully, and feloniously have carnal knowledge with said minor against her will and consent.^[7]

Criminal Case No. 96-0461 for attempted rape:

On or about the 7th day of October 1996, in the Municipality of Las Piñas and within the jurisdiction of this court, the [respondent], being the father of 14 year-old [BBB] through moral ascendancy and influence, and by means of force and intimidation willfully, unlawfully and feloniously commenced the commission of rape directly by overt acts by pulling [BBB] inside the bedroom of their house, forcibly removing her panty, lying her down and placing himself on top of her[,] removing his shorts with the manifest intent of having carnal knowledge with her against her will but the accused did not perform all the acts of execution which should have produced the crime of rape by reason of some cause or accident other than his own spontaneous desistance, that is, because the complainant vigorously resisted and she was able to run away.^[8]

Respondent pleaded not guilty to the charges. Thereafter, a joint trial ensued.

Aside from AAA's and BBB's testimonies in court, the prosecution presented their birth certificates proving their relationship to respondent and establishing their ages during the rape incidents.

Respondent denied the accusations against him. In Criminal (Crim.) Case Nos. 97-

0007, 97-0007-A and 96-0460, he insisted it was impossible for him to commit the crimes since his wife was always at home. In Crim. Case No. 96-0461, he claimed that, on October 7, 1996, he was in his neighbor's house fixing a karaoke appliance. He later on "joined a drinking spree" there. According to respondent, his daughters filed the cases only because they were angry at him for not sending them to school.

Respondent's neighbor, Allan Alvero, corroborated respondent's testimony saying he was in his house on October 7, 1996.

AAA's and BBB's mother, youngest sister and aunt also testified in respondent's defense. According to them, the whole family attended AAA's graduation on April 2, 1996 and, on October 7, 1996, BBB was not home but studying in Cabanatuan City.

After trial, the court *a quo* found respondent guilty of the charges. The dispositive portion of its decision read:

WHEREFORE, in view of the foregoing, judgment is hereby rendered finding the [respondent] AGUSTIN ABELLERA Y CAMANA GUILTY beyond reasonable doubt in the Informations as follows:

- a. of Rape in Criminal Case No. 96-0460 committed against his daughter [BBB] in 1996 for which he is sentenced to suffer the penalty of Death under Article 335 of the Revised Penal Code as amended by Republic Act No. 7659;
- b. of Statutory Rape in Criminal Case No. 97-0007 committed against his daughter [AAA] in 1986 for which he is sentenced to suffer the penalty of [*Reclusion Perpetua*];
- c. of Rape in Criminal Case No. 97-0007-A committed against his daughter [AAA in 1992] for which he is sentenced to suffer the penalty [*Reclusion Perpetua*]; and;
- d. of Attempted Rape in Criminal Case No. 96-0461 committed against his daughter [BBB] in 1996 for which he is sentenced to a prison term of fifteen (15) years of Reclusion Temporal; and to pay [AAA] and [BBB] the amount of P50,000.00 as moral damages; P75,000.00 as civil indemnity; and P20,000.00 as exemplary damages; and costs.^[9]

This case was first brought to us on automatic review. However, following *People v. Mateo*,^[10] we transferred it to the CA. There, respondent assigned the following errors to the trial court: (1) giving full credence to the testimonies of the complainants; (2) rejecting his testimony, his wife's and youngest daughter's and (3) convicting him.

In a decision dated January 21, 2005, the CA affirmed with modification the trial court's decision convicting respondent. The CA ruled:

The trial court correctly imposed upon [respondent] the penalty corresponding to each case, save in Crim. Case No. 96-0461 where [respondent] was charged with attempted rape of then [14-year old BBB], i.e., by use of force and intimidation. For said crime, the trial court

sentenced him to a prison term of fifteen (15) years of *reclusion temporal*.

Under paragraph 1, Article 335, of the Revised Penal Code, the penalty for the crime of rape is *reclusion perpetua*. According to Article 57 . . . the penalty lower by two degrees than that prescribed by law for the consummated felony shall be imposed upon the principals in an attempt to commit a felony. Following the graduated scale in Article 71. . . the penalty imposable upon [respondent] in the attempted rape is *prision mayor*. Absent any modifying circumstance, the maximum term of the indeterminate penalty shall be taken from the medium period of *prision mayor* or from 8 years and 1 day to 10 years; while the minimum term is one degree lower than *prision mayor*, i.e., *prision correccional*, from 6 months and 1 day to 6 years.

Moreover, the impositions by the trial court of the civil liabilities [need] clarification and modification. In line with the current jurisprudence, civil indemnity is imposed without need of proof other than the fact of the commission of the offense. Moral damages should be awarded taking into account that [AAA] and [BBB] were minors at the time of rape, and considering too[,] the immeasurable havoc on their female psyche as a result of the abominable crimes.

For the rapes committed against [AAA] in Crim. Case Nos. 97-0007 and 97-0007-A, [respondent] shall be held to pay her P75,000.00 and P50,000.00, respectively, as civil indemnity and another P50,000.00 as moral damages in each case, or the total amount of P225,000.00. For the simple rape committed against [BBB] in Crim. Case 96-0460, the sum of P50,000.00 each as civil indemnity and as moral damages; and for the attempted rape against her in Crim. Case No. 96-0461, the amount of P25,000.00 representing the civil indemnity and the like sum as moral damages --- are imposed [respectively] upon [respondent].

WHEREFORE, the appealed Joint Decision of conviction is **AFFIRMED**, finding [respondent] AGUSTIN ABELLERA y CAMANA guilty of rape as separately charged in the four (4) Informations. However, in Crim. Case No. 96-0461, the penalty is **MODIFIED** in that he is sentenced to suffer the indeterminate penalty of [t]wo (2) [y]ears and [f]our months of *prision correccional*, as minimum, to [e]ight (8) [y]ears and [o]ne day of *prision mayor*, as maximum. The civil liabilities of [respondent] are ... **MODIFIED**, to the extent that he is hereby ordered to pay the rape victims, as follows:

a) for the statutory rape against [AAA] in Crim. Case No. 97-0007, the sum of P75,000.00 as civil indemnity and P50,000.00 as moral damages;

b) for the simple rape against [AAA] in Crim. Case No. 97-0007-A, the sum of P50,000.00 as civil indemnity and P50,000.00 as moral damages; and

c) for the attempted rape against [BBB] in Crim. Case No. 96-

0461, the sum of P25,000.00 as civil indemnity and P25,000.00 as moral damages.

SO ORDERED.^[11]

Respondent now assails the CA decision.

After a careful study of this case, we affirm respondent's conviction for statutory rape, ^[12] two counts of simple rape^[13] and attempted rape.^[14]

Respondent's guilt was clear beyond the shadow of a doubt.

In Crim. Case No. 97-0007 (statutory rape), AAA testified:

- q: What happened during that year 1986 if you remember?
a: It was nighttime[.] I do not remember the [exact] time, our father arrived and he was drunk.
- q: Where were you then?
a: I was at our house, sir.
- q: What happened when your father arrived on that particular time?
a: I was fixing our laundry when he grabbed me.
- q: What did you do when your father grabbed you while fixing your clothes?
a: I resisted, sir.
- q: What did your father do when you resisted?
a: He forced me to undress including my panty, sir.
- q: Did he succeed in undressing you?
a: Yes, sir.
- q: What happened after your father was able to remove your dress and panty?
a: He forcibly entered his penis, sir. ^[15]

In Crim. Case No. 97-0007-A (simple rape), AAA stated:

- q: Madam Witness, on the night of August 4, 1992, do you remember where were you then?
a: Yes, sir.

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- q: What were you doing on that particular date and time?
a: I just arrived from selling balut, sir.
- q: Madam Witness, while you were inside your house during that particular date and time, do you remember what happened next, if any?
a: Yes, sir.