

THIRD DIVISION

[G.R. NO. 169872 [FORMERLY G.R. NOS. 158428-29], September 27, 2006]

THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. CELESTINO GARDON, APPELLANT,

D E C I S I O N

TINGA, J.:

Celestino Gardon (Gardon) was charged with two (2) counts of Rape in separate Informations which read:

Criminal Case No. 1258

That on or about March, 1995, more or less 6:00 P.M. at [B]arangay xxx, [M]unicipality of xxx, [P]rovince of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused[,] with abuse of confidence and by means of force and intimidation did then and there, willfully, unlawfully and feloniously, have carnal knowledge of one AAA^[1] who was alone on the aforementioned date and time, without the latter's consent and against her will, to her damage and prejudice.^[2]

Criminal Case No. 1259

That on or about August 29, 1997, more or less 6:00 o'clock in the afternoon at [B]arangay xxx, [M]unicipality of xxx, [P]rovince of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with abuse of confidence and by means of force and intimidation, did then and there, willfully, unlawfully and feloniously, have carnal knowledge of one AAA^[3] who was alone on the aforementioned date and time, without the latter's consent and against her will, to her damage and prejudice.^[4]

Gardon pleaded not guilty upon arraignment. After trial, the Regional Trial Court of Irosin, Sorsogon, Branch 55, in a Decision^[5] dated December 4, 2002, convicted Gardon as charged. The dispositive portion of the decision states:

WHEREFORE, premises considered, the [C]ourt finds accused Celestino Gardon guilty beyond reasonable doubt of the 2 counts of RAPE defined and penalized in Art. 335 of the RPC, as amended by RA 7659 and RA 8353 and sentenced him to **RECLUSION PERPETUA** for each count of rape. The period of the detention is credited to his favor in accordance with Art. 29 RPC; to indemnify the victim of the sum of P50,000[.00] for

each count or a total of P100,000.00 as civil indemnity; to pay the sum of P50,000.00 for each count or a total of P100,000.00 as moral damages plus P25,000.00 for each count or a total of P50,000.00 as exemplary damages.

SO ORDERED.^[6]

Conformably with the Decision of this Court in *People v. Mateo*,^[7] the case was transferred to the Court of Appeals for intermediate review.^[8] The appellate court affirmed Gardon's conviction in a Decision^[9] dated July 28, 2005. The case is again before us for our final disposition.

The records disclose the following facts:

AAA testified that in March 1995, she and her younger brother AA^[10] lived in the house of their maternal grandparents, BB^[11] and accused Celestino Gardon, in xxx, Sorsogon.^[12] At about 6:00 o'clock one night, while her grandmother was at the town proper purchasing some goods and AA was sleeping in the other room, her grandfather, Gardon, accosted her with a knife and ordered her to lie down. Gardon then undressed her and took off his pair of shorts. He threatened to kill her if she told anyone what happened. He then held her breast and inserted his penis into her vagina. She felt pain in her vaginal area during the intercourse. She struggled to no avail because Gardon pointed a knife to her chest. When she stood up, she noticed blood oozing from her genitals to the floor. She did not tell her grandmother what happened for fear that Gardon might make good his threat of harming her and her brother.^[13]

The incident was repeated three (3) more times but AAA could only remember that the fourth abuse happened at around 6:00 in the evening of August 29, 1997. AAA's grandmother was at the town proper and she was left home with Gardon. That night, AAA was washing the dishes when Gardon held her hand and pulled her towards a room. He pointed a knife to her chest, told her to lie down and undress herself, and took off his pair of shorts. He then inserted his penis into her vagina. Again, she felt pain. She did not tell her grandmother about the incident but confided in her sister, CC.^[14]

Dr. Nerissa B. Tagum (Dr. Tagum), the resident physician of Irosin District Hospital who examined AAA, explained that she found old lacerations on the latter's hymen which could have been caused by the insertion of an instrument. She also mentioned that AAA's vagina can admit two (2) fingers which is not normal for a 14-year old girl.^[15]

AAA's sister, CC, was also presented in court. She recounted that in September 1997, AAA left their grandparents' house in xxx and came to live with her in xxx. When she told AAA to go back to xxx, AAA refused and told her that their grandfather, Gardon, raped her four (4) times since March 1995. The sisters reported the matter to their stepmother, DD.^[16] Afterwards, they went to the xxx police to lodge a complaint against Gardon.^[17]

For the defense, Leonardo Gracilla (Gracilla) testified that Gardon worked as an

abaca stripper of a three (3)-hectare plantation in a hilly place known as xxx, an hour's walk from Gardon's house in xxx. According to Gracilla, it was impossible for Gardon to have raped AAA because Gardon spent most of his time in xxx. Specifically, Gracilla claimed that he and Gardon started stripping abaca on August 25 and finished on August 29, 1997. On August 31, 1997, they came down from xxx to sell abaca hemp in the *poblacion*. Afterwards, Gardon went back to xxx.^[18]

Gardon himself took the witness stand to deny that he raped his granddaughter AAA. Gardon claimed that the motive behind the filing of the criminal cases against him was his wife's refusal to yield custody of AAA and her siblings to their stepmother. Allegedly, this refusal led EE,^[19] the brother of the children's stepmother, to forcibly take custody of the children.^[20]

In his Brief,^[21] Gardon avers that there are material contradictions in AAA's testimony that cast serious doubt on her claim that she was raped. In the first alleged incident of rape, AAA claimed that she fought Gardon even as the latter pointed his knife at her. However, AAA's brother who was sleeping in the other room was not roused by any unusual sound. The period in which Gardon put down his knife to undress would also have allegedly given AAA a chance to escape had her testimony been true.

Moreover, the fact that no criminal charges were brought against Gardon even after AAA's father already learned of the first three rapes allegedly discredits her claim. So does the fact that AAA did not exhibit any strange behavior after the supposed rape.

The Office of the Solicitor General (OSG) insists on the affirmation of Gardon's conviction. According to the OSG in its Brief,^[22] AAA's testimony that she was raped by Gardon while her brother was sleeping in the next room is entirely plausible because rape can be consummated even when the rapist and the victim are not alone. That it may have been possible for AAA to escape while Gardon put down his knife likewise does not affect the truthfulness of AAA's testimony.

The OSG also emphasizes that while CC testified that she did not notice any unusual behavior on AAA's part, CC did recall AAA having said that Gardon threatened to kill her and her brother if the truth were known.

Further, Gardon's defense of alibi cannot prevail over AAA's positive identification of him as the one who raped her. Considering that xxx is a mere hour's walk from the house in xxx where the rape was committed, Gardon was not able to prove that it was physically impossible for him to be at the scene of the crime.

The Revised Penal Code defines the crime of Rape thus:

Art. 335. *When and how rape is committed.*-Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

1. By using force or intimidation;
2. When the woman is deprived of reason or otherwise unconscious;
and

3. When the woman is under twelve years of age or is demented.

The crime of rape shall be punished by *reclusion perpetua*.

x x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:

1. When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.

x x x x

AAA narrated in agonizing detail punctuated by unfeigned tears that her own grandfather, Gardon, had carnal knowledge of her through force and intimidation on four different occasions although she remembered only those that happened in March 1995 and on August 29, 1997. She described how Gardon held a knife to her chest, undressed her and succeeded to consummate his revolting lust. AAA attempted to resist her grandfather's sexual assault, but the latter's physical superiority, aided by his knife-brandishing and clear moral ascendancy, prevailed. She testified:123

q- While you were there together with your brother and Celestino Gardon, do you recall any incident that happened?

a- Yes, sir.

q- What was it about?

a- He was carrying a knife and then he undressed me and he undressed himself.

q- Who was this person carrying a knife and undressed you?

a- Celestino Gardon.

q- Where did this happen?

a- In the house.

q- Whose house?

a- In the house of my grandmother [BB].^[23]

q- In what particular place of that house did this incident happened?

a- In the room.

q- Whose room?

a- The room where I and my brother stayed.

q- After noticing him holding a knife, what came [into] your mind?

a- I was afraid.

q- You said he undressed you, which part of your clothing did he

remove?

a- He removed my short.

q- What else did he remove?

a- My panty.

q- What were you doing as Celestino Gardon was removing your short[s] and panty?

a- I was lying then.

q- Who made you lie down?

a- It was Celestino Gardon.

q- Did you not fight back?

a- I fought back.

q- Why [sic] did [sic] Celestino Gardon able to undress you when you said you fight [sic] back?

a- I was fighting back but he still undressed me.

q- When he undressed you[,] where was the knife he was holding[?]

a- It was placed on the floor while he was undressing me.

q- Was he able to remove your short[s] and panty?

a- Yes, sir.

q- You said that after undressing you [Celestino] Gardon undressed himself also, which part of his clothing did he take off?

a- His short[s].

x x x x

q- What did he do after that?

a- He inserted his.

q- What do you mean by ["]he inserted his["]?

ATTY. ARRIESGADO:

The witness is having a hard time to answer.

WITNESS:

His penis.

PROS. PURA:

q- Where did he insert his penis?

a- He inserted his penis in my vagina.

q- How was he able to do this?

COURT: