EN BANC

[G.R. NO. 166401 (FORMERLY G.R. NOS. 158660-67), October 30, 2006]

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ALFREDO BON, APPELLANT.

D E C I S I O N

TINGA, J.:

Two critical issues emerge in this case. The first relates to whether the Court should affirm the conviction of appellant Alfredo Bon (appellant) for six counts of rape and two counts of attempted rape, the victims being his then-minor nieces. On that score, we affirm. **As a consequence though, we are ultimately impelled to confront a question much broader in both scope and import. While the Court had previously declined to acknowledge the constitutional abolition of the death penalty through the 1987 Constitution,[1] we now find it necessary to determine whether the enactment of Republic Act No. 9346 resulted in the statutory interdiction of the death penalty.**

The second issue arises as we are compelled to review the maximum term of *reclusion temporal* in the sentence imposed on appellant by the Court of Appeals for the two counts of attempted rape. The sentence was prescribed by the appellate court prior to the enactment of Republic Act No. 9346 which ended the imposition of the death penalty in the Philippines. The proximate concern as to appellant is whether his penalty for attempted qualified rape, which under the penal law should be two degrees lower than that of consummated qualified rape, should be computed from death or *reclusion perpetua*.

First, the antecedent facts.

I.

Eight (8) Informations[2] were filed within the period from 21 August 2000 to 23 February 2001 by the Assistant Provincial Prosecutor of Gumaca, Quezon against appellant, charging him with the rape of AAA[3] and BBB,[4] the daughters of his older brother. Appellant was accused of raping AAA in Criminal Case Nos. 6899-G, 6902-G, 6906-G, and 6908-G; while he was accused of raping BBB in Criminal Case Nos. 6689-G, 6903-G, 6905-G, and 6907-G.[5] All these cases were consolidated for trial. The rapes were alleged to have been committed in several instances over a span of six (6) years.

Both AAA and BBB testified against appellant, their uncle, and both identified him as the man who had raped them. During trial, their respective birth certificates and the medical certificates executed by the doctor who physically examined them were entered as documentary evidence.

AAA testified that she was only six (6) years old when she was first molested in 1994 in the house appellant had shared with her grandmother.[6] She recounted that the incident took place when she and appellant were alone in the house. Appellant touched her thighs and vagina, removed her clothes and inserted his penis into her vagina. Appellant threatened that she and her parents would be killed should she disclose the incident to anyone. She thereafter stopped sleeping in the house of her grandmother. It was only three (3) years after, in 1997, that she slept in the said house, yet again she was sexually abused by appellant. She was then nine (9) years old.[7]

AAA recounted that at age eleven (11) in 1999, she was raped by appellant for the third time, again at the house of her grandmother.[8] The following year, when she was twelve (12), she was abused for the fourth time by appellant. This time, she was raped in an outdoor clearing[9] after having been invited there by appellant to get some vegetables. While at the clearing, appellant forced her to lie down on a grassy spot and tried to insert his penis in her vagina. As she cried in pain, appellant allegedly stopped.[10]

It was only on 12 June 2000 that she decided to reveal to her mother, CCC,[11] the brutish acts appellant had done to her.[12] Her mother thus filed a complaint against her uncle. AAA identified appellant in open court and presented as documentary evidence her birth certificate to prove that she was born on 3 September 1988.[13]

BBB, on the other hand, testified that she was first raped by appellant in 1997 when she was ten (10) years old, also at the house appellant shared with her grandmother. While alone in the house, appellant poked a knife at her, removed her clothes and inserted his penis in her vagina. Despite the pain she felt, she could not resist appellant as he was holding a knife. She did not report the rape to her parents out of fear of appellant's threat that he would kill her.[14] BBB further testified that in 1998 and 1999, she was raped again by appellant on several occasions, the rapes occurring under threat of a bladed weapon, and regardless of the time of day.[15]

BBB stated that she was last raped by appellant on 15 January 2000.[16] On that night, she was sleeping beside her sister AAA in the house of her grandmother when she felt appellant touching her body. She pushed him away but appellant pulled her three (3) meters away from AAA towards the door. As appellant was holding a knife, BBB could not make any noise to alert her sister. Appellant ordered her to remove her clothes and forced her to lie down. After he took off his clothes, appellant placed himself on top of BBB and stayed there for three (3) minutes "moving up and down." Thereafter, she put on her clothes and returned to where her sister was. She added that although it was dark, she knew it was appellant who had molested her as she was familiar with his smell. Since then, she never slept in her grandmother's house again.[17]

It was on 14 June 2000 that BBB disclosed her harrowing experience to her mother. Prior to that, however, she had already revealed the sexual abuses she had underwent to her sister AAA. Upon learning of the same, her mother brought her to the police station and her statement was taken. Thereafter, she was brought to the

hospital to be examined. Furthermore, BBB explained that she only reported the abuses done to her on 14 June 2000 or five (5) months after the last rape because she was afraid of appellant's threat of killing her and her family.[18]

The third witness for the prosecution was the mother, CCC. She testified that she only knew of the abuses done on her daughters on 15 June 2000. Five months earlier, CCC became concerned after observing that BBB, on the pretext of preparing clothes for a game, was packing more than enough clothes. She asked her other daughter, DDD, to dig into the matter and the latter told her that BBB was planning to leave their house. Upon learning this, she sent somebody to retrieve BBB. However, it was only five months after that incident that BBB confided to her mother that she was raped by appellant. CCC lost no time in reporting the matter to the authorities and had BBB and AAA examined in the hospital. After examination, it was confirmed that BBB was indeed sexually molested.[19]

CCC initially did not tell her husband about what had happened to their daughters because she was afraid that her husband might kill appellant. It was only after appellant was arrested that she disclosed such fact to her husband. After the arrest of appellant, his relatives became angry at CCC, and her mother-in-law avoided talking to her since then.[20]

The physician who examined BBB and AAA also testified for the prosecution. Dr. Purita T. Tullas (Dr. Tullas), medical officer of Gumaca District Hospital, testified that she was the one who examined BBB and AAA, and thereafter, issued medical certificates for each child. These medical certificates were presented in court.[21]

The medical certificate of BBB revealed that at the time of examination, there were no external sign of physical injury found on her body. However, Dr. Tullas found that the *labia majora* and *minora* of BBB was slightly gaping, her vaginal orifice was admitting two fingers without resistance and there were hymenal lacerations at "three (3) o'clock" and "eight (8) o'clock" which might have happened a long time before her examination. Dr. Tullas concluded that there might have been sexual penetration caused by a male sex organ for several times.[22]

AAA's medical certificate stated that at the time of examination, there were no external physical injuries apparent on her body. AAA's *labia majora* and *minora* were well coaptated and the hymen was still intact. On direct examination, Dr. Tullas said that it could happen that the hymen would still be intact despite sexual penetration with a person having an elastic hymen. On the other hand, when asked on cross-examination, she stated that there was also the possibility that no foreign body touched the labia of the pudendum of AAA.[23]

Only appellant testified for his defense, offering denial and alibi as his defense. He averred in court that from 1994 to 2000, he lived in the house of his parents which was about "thirty (30) arm stretches" away from the house of BBB and AAA. He denied having raped BBB on 15 January 2000 because on said date he was at the house of his sister, two (2) kilometers away from the house of his parents where the rape occurred, from 11:30 in the morning and stayed there until early morning of the following day.[24]

He offered a general denial of the other charges against him by BBB and AAA. He claimed that he seldom saw the two minors. He further asserted that prior to the institution of the criminal case against him he had a smooth relationship with his nieces and the only reason the case was filed against him was that CCC, his sister-in-law and the mother of his nieces, harbored ill-feelings towards his deceased father, who would call CCC "lazy" within earshot of other family members.[25]

The RTC convicted appellant on all eight (8) counts of rape.[26] The RTC pronounced appellant's defense of denial and alibi as unconvincing, citing jurisprudence declaring denial and alibi as intrinsically weak defenses. The RTC concluded that appellant failed to controvert the clear, candid and straightforward testimonies of his nieces. It further considered the qualifying circumstances of minority of the victims and the relationship of the victims and appellant, the latter being the former's relative by consanguinity within the third degree.

As the penalty imposed consisted of eight (8) death sentences, the records of the case were automatically elevated to this Court for review. However, in the aftermath of the pronouncement of the Court in *People v. Mateo*[27] the present case was transferred to the Court of Appeals for appropriate action and disposition.

On 29 December 2004, the Court of Appeals agreed with the rulings of the RTC in regard to six (6) of the eight (8) death sentences imposed on appellant.[28] The appellate court ratiocinated, thus:

> We have painstakingly gone over the record of these cases and find no cogent reason to deviate from the findings of the trial court except in at least two (2) cases. The prosecution's case which was anchored mainly on the testimonies of private complainants [BBB] and [AAA], deserve full faith and credit for being clear, precise and straightforward. Like the trial court, We find no reason to disbelieve the private complainants. It was established with certitude that the accused on several occasions sexually assaulted his nieces. The perpetration of the crimes and its authorship were proved by the victims' candid and unwavering testimonies both of whom had the misfortune of sharing the same fate in the hands of their own uncle. The sincerity of [AAA] was made more evident when she cried on the witness stand in obvious distress over what their uncle had done to her and her sister.[29]

The Court of Appeals downgraded the convictions in Criminal Case Nos. 6906 and 6908 to attempted rape. In these two (2) cases, it was alleged that appellant had raped AAA in 1999 and on 11 June 2000, respectively. According to the appellate court, it could not find evidence beyond reasonable doubt in those two (2) cases that appellant had accomplished the slightest penetration of AAA's vagina to make him liable for consummated rape. It stressed that there was not even moral certainty that appellant's penis ever touched the labia of the pudendum, quoting portions of the transcript of the stenographic notes where AAA was asked if appellant was then successful in inserting his penis into her vagina and she answered in the negative.[30] Accordingly, the Court of Appeals reduced the penalties attached to the two (2) counts of rape from death for consummated qualified rape to an indeterminate penalty of ten (10) years of *prision mayor*, as minimum, to seventeen (17) years and four (4) months of *reclusion temporal*, as

maximum, for attempted rape.

Appellant, in his Supplemental Brief[31] before this Court, assails the findings of the Court of Appeals. He cites inconsistencies in the testimony of BBB as to what really transpired on 15 January 2000. Particularly, appellant observes that BBB testified on 6 June 2001 as to her rape on 15 January 2000. BBB, her sister and appellant had been sleeping side by side. However, when BBB again testified on 3 July 2002, this time she stated that on that night, as she and her sister AAA were sleeping in their room at their parents' house (and not at her grandmother's), the accused passed through a window, entered their room and raped her again.[32] Appellant also latches on the inconsistencies in BBB's testimony as to the length of the duration of her rape on that day. In BBB's testimony on 6 June 2001, she said that appellant was atop her for three (3) minutes while in the 3 July 2002 hearing, BBB stated that the rape lasted for only half a minute.

It must be observed though that BBB was at a tender age when she was raped in 2001. Moreover, these inconsistencies, which the RTC and the Court of Appeals did not consider material, were elicited while BBB was testifying in open court. Our observations in *People v. Perez*[33] on the appreciation of alleged inconsistencies in the testimony of rape victims who happen to be minors are instructive, thus:

> We note that these alleged inconsistencies refer, at best, only to trivial, minor, and insignificant details. **They bear no materiality to the commission of the crime of rape of which accused-appellant was convicted.**[[34]] As pointed out by the Solicitor General in the Appellee's Brief, the seeming inconsistencies were brought about by confusion and merely represent minor lapses during the rape victim's direct examination and cannot possibly affect her credibility. Minor lapses are to be expected when a person is recounting details of a traumatic experience too painful to recall. The rape victim was testifying in open court, in the presence of strangers, on an extremely intimate matter, which, more often than not, is talked about in hushed tones. Under such circumstances, it is not surprising that her narration was less than letter-perfect.[[35]] "Moreover, the inconsistency may be attributed to the well-known fact that a courtroom atmosphere can affect the accuracy of testimony and the manner in which a witness answers questions."[[36]] [37]

Further, the public prosecutor offered a convincing explanation on why BBB was confused on some points of her two testimonies. Particularly in the Memorandum for the People[38] filed with the RTC, the public prosecutor creditably explained the inconsistencies, thus:

> [BBB]'s testimony on July 3, 2002 might be contradictory to her first testimony on June 6, 2001, with respect to the last rape on January 15, 2000, as regards the place of commission—house of her parents or house of accused; and the length of time he stayed on her top - 3 minutes or half-minute. But she remained consistent in her declaration that on January 15, 2000, her uncle inserted his penis into her vagina, and he was moving while on her top then she felt something came out from him. He was able to rape her because he threatened her with a knife or bladed