

EN BANC

[G. R. No. 148821, July 18, 2003]

**THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JERRY
FERRER, APPELLANT.**

DECISION

DAVIDE JR., C.J.:

Before us for automatic review^[1] is the decision^[2] of 28 November 2000 of the Regional Trial Court of Lanao del Sur, Branch 9, Marawi City, in Criminal Case No. 2969-98, finding appellant Jerry Ferrer guilty beyond reasonable doubt of the crime of rape committed against AAA and sentencing him to suffer the penalty of death and to pay the sum of P100,000 as moral damages and P30,000 as attorneys fees, as well as the costs.

Appellant was tried under an information^[3] for rape which was filed on 17 February 1998. Its accusatory portion reads:

That on or sometime in October 1995 and continuously thereafter in the Municipality of [REDACTED], Province of [REDACTED], Philippines and within the jurisdiction of this Honorable Court, the said accused with lewd design, did then and there willfully and feloniously and by means of force, violence and intimidation and taking advantage of his ascendancy as stepfather of an eleven (11) years [sic] old and studying Grade V [sic] at the Katutungan Elementary School by the name of AAA by pointing [to] her a scythe (garab) and ordering her to remove her clothes and then to lay down, remove her panty and successfully have [sic] sexual intercourse with her against her will and consent and continuously repeated the same thereafter when she is alone at home and while her mother is out.

CONTRARY to and in violation of Article 335, par. 3 of the Revised Penal Code.

When arraigned on 16 June 1998, appellant pleaded not guilty.^[4]

Subsequently, appellant, through counsel Atty. Moh'd Hassan Macabanding of the Public Attorney's Office (PAO), filed an undated Urgent Motion for Medical Treatment. He alleged that he was suffering from an unknown internal sickness which had already claimed the life of another detention prisoner. Afraid that he would suffer the same fate, appellant prayed for his immediate medical treatment at the Provincial or City Hospital.^[5]

On 22 June 1998, the trial court granted appellant's Urgent Motion for Medical Treatment and ordered his temporary release to the custody of Ustadj Sinoding

Langcoa, a trusted member of the society, who has the responsibility of bringing the former to any government physician or to the clinic of Dr. Saprola Dipatuan. The court also ordered appellant to submit to the court the findings and record of his treatment by Dr. Dipatuan. It likewise set the pre-trial and the trial of the case on 21 and 22 July 1998,^[6] respectively.

On the scheduled 21 July 1998 pre-trial hearing, appellant and his PAO counsel, Atty. Moh'd Hassan Macabanding, failed to appear in court. Assistant Provincial Prosecutor Abubakar Barambangan vigorously opposed the motion for postponement^[7] which was filed by Atty. Macabanding the previous day, 20 July 1998. In denying the motion for postponement, the trial court took into consideration of the fact that Prosecutor Barambangan was not notified of the motion, the failure of appellant and Atty. Macabanding to appear at the pre-trial despite due notice and appellant's blatant disregard of its order dated 22 June 1998, requiring him to submit the medical findings of Dr. Dipatuan. The trial court then ordered the immediate issuance of a warrant to arrest appellant and allowed the prosecution to present evidence *in absentia*.^[8]

Trial *in absentia* followed. The prosecution presented as witnesses [REDACTED], AAA, [REDACTED] and Dr. Benjamin B. Bajarla. Their testimonies tended to establish the facts we now narrate.

AAA was born on 6 July 1984 to spouses [REDACTED] and [REDACTED] at Banisilan, North Cotabato.^[9] The [REDACTED] spouses were lawfully married sometime in 1978^[10] and out of such union, four (4) children were born, one of whom is AAA. The couple, however, separated. When AAA was barely one (1) year and six (6) months old, [REDACTED] started to live-in with appellant at [REDACTED].^[11] She brought her children with her.

From then on, life for [REDACTED] started at 3:00 a.m. to peddle her *sari-sari* items and ended at 7:00 p.m. when she returned home. In contrast, appellant was a freelance blacksmith who usually stayed home.^[12]

Sometime in October 1995, a Monday, when AAA was already 11 years old, she was to experience the first of a series of sexual abuses from appellant. Around 2:00 p.m., appellant called AAA to go upstairs at their house. With appellant's previous lascivious acts etched in her mind, AAA hesitated but she had no choice except to obey because appellant had placed a scythe on her neck. Against AAA's pleas of "don't kill me daddy," appellant ordered her to undress. AAA did not remove her clothes. Furious by her disobedience, appellant pulled down her shorts and panty. She resisted and covered her private parts with her hands. Her efforts, however, proved futile. Still threatening her with the scythe, appellant pushed her to lie down, pulled out his penis, placed himself on top of her and then inserted his penis into her vagina. Thereafter, he released her. She felt pain in her vagina when she was dressing up.^[13]

Friday night of the same week, while [REDACTED] was visiting her sister [REDACTED], appellant again had carnal knowledge of AAA. She felt excruciating pain in her vagina.

Thus, from October 1995 to 11 December 1997, appellant sexually abused AAA, repeatedly and continuously. He imposed his lechery on her three to four times a week whenever her mother was out of the house.^[14]

AAA initially kept to herself the sexual abuses as she was afraid that appellant might make good his threat to kill her mother.^[15] But AAA finally found the courage to reveal to her Aunt [REDACTED] what appellant had done to her. It was on 14 December 1997 when [REDACTED] and her brother-in-law Pablito Malagamba confronted [REDACTED] about AAA's revelation. Thereafter, they reported the incident to the [REDACTED] Police Headquarters as a result of which appellant was immediately arrested.^[16]

On 17 December 1997, Dr. Benjamin Bajarla, Medical Officer IV of the [REDACTED] District Hospital, Lanao del Sur, physically examined AAA. He found in AAA's hymen old and healed lacerations at 3, 6 and 9 o'clock positions^[17] which he opined could have been caused by sexual intercourse. He said that AAA told him that the last sexual abuse took place on 11 December 1997.^[18]

On 23 August 1999, the prosecution made its formal offer of evidence.^[19] Thereafter, the trial court set the dates for the presentation by the defense of its evidence. Notices were sent for the following scheduled hearing dates: 23 September 1999,^[20] 21 October 1999,^[21] 29 November 1999,^[22] 31 January 2000,^[23] 7 April 2000,^[24] 24 April 2000,^[25] 23 May 2000,^[26] 26 June 2000,^[27] and 24 July 2000.^[28] However, neither appellant nor his counsel appeared on said dates. Thus, at the hearing of 24 July 2000, the trial court granted the prosecution's motion to submit the case for decision, since the prosecution had long rested its case and the defense had no witnesses to present. The trial court also considered appellant as having jumped bail since he did not show up in court.^[29]

Thus, the trial court rendered on 28 November 2000, a decision which consisted of a five-page summary of the testimonial and documentary evidence and which abruptly concluded, that based on said evidence, the prosecution proved the guilt of appellant beyond reasonable doubt requiring the imposition of the death penalty.

In his Appellant's Brief,^[30] appellant assails the decision of the trial court as *res ipsa loquitor* violative of Section 14, Article VIII of the Constitution. He argues that the decision failed to distinctly point out the applicable law on which it is based and that there is nothing in the decision that would show how the trial court arrived at its conclusion convicting him of the crime charged.

Appellant also asserts that granting without admitting that he committed the alleged rape, the trial court erred in imposing the death penalty. He claims that while the prosecution may have proved that AAA was 11 years old at the time of the rape, it failed to prove that he was her stepfather as alleged in the information.

In the Appellee's Brief,^[31] the Office of the Solicitor General (OSG) contends that the evidence on record support appellant's conviction for statutory rape. It maintains that the prosecution successfully proved that in October 1995, appellant had carnal knowledge of AAA who was then 11 years old.

The OSG submits, however, that the trial court erred in imposing the death penalty. While the information alleged that appellant was AAA's stepfather, the evidence adduced however showed that he was merely the common-law spouse of AAA's mother. Under these circumstances, the penalty of *reclusion perpetua* and not the death penalty should be imposed upon him.

Similarly, the OSG asserts that the trial court failed to award civil indemnity in the amount of P50,000 and exemplary damages in the amount of P20,000. The OSG insists that exemplary damages should be awarded considering that the generic aggravating circumstance of abuse of confidence is present as seen in the relation of trust and confidence between AAA and appellant. While abuse of confidence could not have been properly appreciated in the determination of the appropriate penalty, it was nonetheless proven at the trial. As such, it should be the basis of the award for exemplary damages. As to the award of P100,000 as moral damages, the OSG proposes its reduction to P50,000.

Upon careful examination of the records of the case, we find that the decision of the trial court failed to comply with the rudimentary requirements of due process and the constitutional provisions that vouchsafe the same.

Let us first quote in full the trial court's decision.

Accused Jerry Ferrer is charged of the commission of the crime of Rape committed as follows:

xxx [Information is quoted] xxx

On arraignment, the accused assisted by his counsel pleaded not guilty.

In the trial after the termination of the pre-trial, the prosecution presented both testimonial and documentary evidences consisting of the testimonies of Mrs. [REDACTED], AAA, [REDACTED] and Dr. Benjamin Bajarla as well as Exhibits "A" (Certificate of Live Birth of the victim; "B" (Baptismal Certificate); "C" (Medical Certificate showing laceration of hymen; "D" (Microbiological result of such examination; and "E" (Sketch of the Female External Genetalia).

Trial was conducted in absentia in view of the escape from confinement of the accused.

From the evidence, it appears that AAA was born on July 6, 1984, at Banisilan, North Cotabato. Her father is [REDACTED] while her mother is [REDACTED]. Said spouses were lawfully married to each other in 1978 and out of such union, four (4) children were born one of whom is AAA (the victim in this case). The couple were however separated and when AAA was barely one (1) year and six (6) months old, [REDACTED] started living as a common law wife of the accused Jerry Ferrer together with AAA and her other children in one house at [REDACTED]. [REDACTED] was a "sari-sari" item vendor and normally left home as early as 3:00 o'clock in the morning for said business and return home at 7:00 o'clock in the evening. Jerry Ferrer (common law husband)

is a blacksmith and stay home with the child victim AAA.

In October of 1995 while the mother (██████) was away attending to her business, the accused Jerry started his criminal design to have carnal knowledge by committing rape on AAA. It was Monday afternoon at 2:00 o'clock in October 1995 that Jerry called his step-daughter AAA [to] go upstairs of their house at ████████████████████. With the use of his scythe in intimidating the girl, Jerry started touching the girl who was resisting but was no match to the strength of her step-father who was at the same time placing his scythe at the neck of the girl to prevent resistance. The accused undressed the girl by pulling the latter's short pant[s] down and her panty. The accused pushed the girl to lie down. The accused, then pulled down his short pant[s] and took out his penis into the girl's vagina. The girl felt the pain that day. On Friday of that same week in the evening while his common law wife ████████ (mother of the victim) was away, the accused succeeded in consummating the crime of rape upon AAA. The accused repeatedly did the sexual assault upon AAA until in 1977, the victim got the courage to reveal the said rape to her mother that resulted in the filing of this case. The Medical Certificate issued by Dr. Benjamin Bajarla following [the] medical and physical examination on the victim on December 17, 1997 showed laceration of the girl's hymen at 3:00 o'clock; 6 o'clock and 9 o'clock positions.

It further appears from the evidence that AAA was born on July 6, 1984 and [that] the crime of rape was committed upon her by the accused in 1995 and [the] subsequent year. The victim was therefore 11 years old at the time of the commission of rape upon her.

This Court was constrained to decide this case after trial in absentia for reason of the accused escaping from imprisonment after arraignment. From all the foregoing evidences, the prosecution proved the guilt of the accused beyond reasonable doubt.

WHEREFORE, judgment is hereby rendered:

1. Convicting the accused JERRY FERRER of the crime of Rape committed upon the person of his stepdaughter AAA who was only 11 years old at the time of the commission of said crime.
2. Sentencing the said accused JERRY FERRER of the supreme penalty of death under Art. 335 of the Revised Penal Code.
3. Ordering the accused JERRY FERRER to pay to the victim the sum of One hundred thousand (P100,000) Pesos in moral damages; and the further sum of Thirty thousand (P30,000) Pesos as Attorney's fee and the costs.^[32]

Violating the Constitutional requirements, the five-page decision failed to express therein clearly and distinctly the facts and the law on which it is based. After a summation of the evidence presented, which consisted only of the prosecution's considering that the defense failed to adduce evidence in its behalf, the trial court immediately declared, in a most sweeping manner, the guilt of appellant.