

EN BANC

[G.R. No. 130662, October 15, 2003]

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. SERGIO ABON Y ESTEBAN, APPELLANT.

DECISION

SANDOVAL-GUTIERREZ, J.:

For automatic review is the Decision^[1] dated April 22, 1997 of the Regional Trial Court, Branch 47, Urdaneta, Pangasinan in Criminal Case No. U-8671, convicting Sergio Abon y Esteban, appellant, of qualified rape and sentencing him to suffer the supreme penalty of death. He was ordered to pay the victim, AAA, P50,000.00 as civil indemnity, P50,000.00 as moral and exemplary damages, and costs.

The Information charges appellant as follows:

"That on or about the month of January, 1995 at barangay [REDACTED], municipality of [REDACTED], province of [REDACTED], and within the jurisdiction of this Honorable Court, the said accused who is the grandfather of the victim, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge on the person of AAA, a woman of 13 years old, against her will.

"CONTRARY to Article 335, Revised Penal Code, as amended by Section 11, Rep. Act 7659."^[2]

Upon arraignment on November 10, 1995, appellant, assisted by counsel, pleaded "not guilty." Trial ensued thereafter.

The evidence for the prosecution, as borne by the records, shows that complainant AAA was born on September 29, 1982^[3] to spouses [REDACTED] and [REDACTED]. But the couple separated, prompting AAA, her elder sister [REDACTED], and younger brother [REDACTED] to live with their paternal grandparents, appellant and [REDACTED], at Barangay [REDACTED]. They provided for their support and education.

Sometime in January, 1995, at about 4:00 o'clock to 5:00 o'clock in the afternoon, appellant, AAA, then barely thirteen (13) years old, and [REDACTED] were at their backyard gathering vegetables. Appellant instructed [REDACTED] to buy cigarettes at the store. While AAA was harvesting some mangoes, appellant suddenly pulled down her shorts and drew his "panabas" (bolo). Frightened, she asked him what he was doing but he simply admonished her not to make any noise. He then proceeded to undress her and remove her panty. He also removed his shorts. Pointing the "panabas" to her, he ordered her to lie down. He placed himself on top of her, touched her breasts, and even forced her to hold his penis. Thereafter, he inserted

his penis inside her vagina and sexually ravished her. She felt pain and dizziness. But still she tried to push him away. However, she was overpowered by his strength. After his bestial act, he dressed up and left for the farm.

Meanwhile, [REDACTED], who returned from the store, hid behind a mango tree. He saw both appellant and AAA naked, indulging in sexual activity. Scared, [REDACTED] decided to go back to the store and then went home.

The next day, AAA informed her grandmother [REDACTED] that she was sexually molested by appellant. However, she refused to believe and even accused AAA of fabricating the incident. After a month, she stayed with her aunt [REDACTED] and revealed her traumatic experience to her.

On August 15, 1995, [REDACTED] brought AAA to Don Amadeo J. Perez, Sr. Memorial General Hospital at Urdaneta, Pangasinan. There, she was examined by Dr. Noel Obedoza who issued a Medical Certificate^[4] with the following findings:

- "(1) No sign of external physical injury such as abrasions, contusion and laceration on examination;
- "(2) **Hymen is ruptured with old healed laceration at 3-6 and 8 o'clock;**
- "(3) Vaginal intotitus admit tip of a forefinger with minimal resistance;
- "(4) Pregnancy test: negative (-)." (Emphasis supplied)

Dr. Obedoza confirmed on the witness stand that the lacerations at AAA's hymen were at 3, 6 and 8 o'clock positions and **more than two to three weeks old**.

AAA and her aunt reported the incident to the Binalonan Police Station, where she executed and signed a sworn statement. Eventually, she was brought to the Department of Social Welfare and Development in La Union.

The defense presented appellant, [REDACTED], [REDACTED] and his other granddaughter as witnesses. Appellant denied having raped AAA, whom he admitted is his own granddaughter, being the daughter of his son Nelson. He claimed that in January, 1995, (the alleged date when the rape was committed), AAA was in Manila. The filing of the rape charge against him was instigated by [REDACTED], his wife's niece, who felt slighted after Francisco Novido, his brother-in-law, transferred the possession and cultivation of his land to him (appellant) in place of [REDACTED]. AAA denounced him because she resented being disciplined by him and his wife.

[REDACTED], appellant's wife, corroborated his testimony.

[REDACTED], AAA's brother, recanted his earlier testimony for the prosecution, explaining that he was instigated by their aunt [REDACTED] in testifying against appellant.

On April 22, 1997, the trial court rendered a Decision, the dispositive portion of which reads:

"WHEREFORE, finding the accused SERGIO ABON y ESTEBAN GUILTY of the crime of incestuous rape under Article 335 of the Revised Penal Code, as amended by Section 11, Republic Act No. 7659, beyond reasonable

doubt, he is hereby sentenced to suffer the supreme penalty of DEATH.

"In addition, he is ordered to pay the victim AAA the sum of FIFTY THOUSAND (P50,000.00) as indemnity, the sum of FIFTY THOUSAND (P50,000.00) as moral damages and exemplary damages, and the costs.

"SO ORDERED."^[5]

Hence, this automatic review.

Appellant, in his brief, ascribes to the trial court the following errors:

"FIRST: THE TRIAL COURT GRAVELY ERRED IN NOT CONSIDERING THE FACT THAT THE ACCUSED IS INNOCENT OF THE CRIME CHARGED.

"SECOND: THE TRIAL COURT GRAVELY ERRED IN NOT CONSIDERING THE FACT THAT THERE IS ULTERIOR OR ILL MOTIVE ON THE PART OF THE PRIVATE COMPLAINANT AND [REDACTED] IN FILING THE RAPE COMPLAINT AGAINST THE ACCUSED.

"THIRD: THE TRIAL COURT GRAVELY ERRED IN NOT CONSIDERING THAT THE PROSECUTION'S EVIDENCE IS INSUFFICIENT TO SUPPORT CONVICTION OF THE ACCUSED.

"FOURTH: THE TRIAL COURT GRAVELY ERRED IN NOT CONSIDERING THAT THERE IS REASONABLE DOUBT AS TO THE TRUTH OF THE RAPE CHARGE, AND THAT THE DOUBT SHOULD BE RESOLVED IN FAVOR OF THE ACCUSED."

The law applicable to the case at bar is Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659,^[6] which provides:

"Article 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

"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."

Under the above provisions, the essential elements of incestuous rape are: (1) the offender had carnal knowledge of a woman; (2) the victim is under eighteen (18) years of age; and (3) 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.

Appellant, in assailing the evidence for the prosecution, contends that: (1) AAA admitted in the course of her testimony that at the time of the commission of the crime in January, 1995, she was actually in Metro Manila; (2) there is substantial delay of 240 days or 8 months before she reported the crime to the proper authorities; (3) the prosecution failed to establish his guilt beyond reasonable doubt because its witness ██████ recanted his testimony; (4) the results of AAA's physical examination negate the finding that she was raped; and (5) the filing of the complaint was instigated by AAA's aunt.

In a prosecution for rape, the victim's credibility becomes the single most important issue, and when her testimony satisfies the test of credibility, an accused may be convicted solely on the basis thereof.^[7]

The trial court, in giving full credence to AAA's testimony, held:

"This Court observed the deportment and demeanor of the complainant when she testified on the witness chair. She uncontrollably cried while narrating her unfortunate experience. She appeared candid and honest in her testimony; unsophisticated and so young. She claimed to have been born on 29 September 1982, which claim was never rebutted by the accused. It would appear that when she was allegedly sexually abused, she was less than thirteen years old. She was only in elementary school.

"She was subjected to thorough, extensive and rigid cross-examination for three settings, but her testimony remained unshaken. While there may have been some inconsistencies and contradictions in her testimony, these were expected considering her juvenility and inexperience and her apparent inability to grasp the cross-examination questions."

Indeed, AAA's declaration has sufficiently and convincingly proved that appellant had sexually ravished her sometime in January, 1995. Her direct and straightforward account of the harrowing incident could not be any clearer, thus:

"x x x

"Q. Sometime in the month of January, 1995, do you recall if there was any unusual incident that happened to you at your place?

x x x

A. Yes, sir.

Q. What was that all about?

A. was raped by my grandfather, sir.

Q. What is the name of your grandfather?

A. Sergio Abon, sir.

Q. If Sergio Abon whom you claimed raped you sometime in the month of January, 1995 is now inside the courtroom, kindly stand up and point to said accused?

A. Witness stood up and pointed to a person who when asked of his name, answered Sergio Abon.

Q. You said that Sergio Abon raped you, where did he rape you?

A. At the back of our house, sir.

Q. And what time of the day if you remember?

A. In the afternoon, sir.

Q. About what time did he rape you?

A. Between 4:00 o'clock to 5:00 o'clock in the afternoon.

Q. You said Madam Witness, that your grandfather raped you at the back of your house between the hours of 4:00 to 5:00 p.m., how did your grandfather rape you?

A. He undressed me, sir.

Q. You said 'he undressed me,' tell us if your grandfather removed your clothes including your panty, is that what you mean?

A. Yes, sir.

Q. And what happened after Sergio Abon removed your clothes and your panty?

x x x

A. He went on top of me and he raped me.

x x x. [8]

Q. x x x what do you mean by 'he raped you'?

A. Sergio Abon undressed me then he was on top. What I meant by 'he raped me,' he put his penis on my private part, sir.

x x x

Q. What do you mean by your alleged testimony that Sergio Abon put his penis inside your private part?

A. When he was on top of me he put his penis inside my vagina.

Q. And what did he do after he put his penis inside your vagina?