

## EN BANC

[ G.R. No. 130593, June 19, 2000 ]

### PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMEO ARILLAS Y MONTOYA, ACCUSED-APPELLANT.

#### DECISION

**PUNO, J.:**

In a sworn complaint,<sup>[1]</sup> Amor O. Arillas accused her father, Romeo Arillas y Montoya, of raping her on two occasions when she was barely 16 years old. The trial court found her father guilty beyond reasonable doubt. It sentenced him to suffer the penalty of death. These cases<sup>[2]</sup> are now before the Court on automatic review.

Amor Arillas alleged in her complaint<sup>[3]</sup> that in December 1995 and on February 10, 1996, her father sexually abused her while they were alone in their house at Barangay Sto. Niño, Bula, Camarines Sur. Through the use of force, violence and intimidation, he succeeded in having carnal knowledge of her.

Based on the sworn complaint, two informations were filed against appellant by the Assistant Provincial Prosecutor of Camarines Sur. The information in Criminal Case No. P-2532, filed in Branch 33, Regional Trial Court, Pili, Camarines Sur, reads:

"That sometime in December, 1995 in the Barangay of Sto. Niño, Municipality of Bula, Province of Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there, wilfully, unlawfully and feloniously have carnal knowledge with his own daughter Amor A. Arillas against her will and consent, to the damage and prejudice of the offended party."<sup>[4]</sup>

and the information in Criminal Case No. P-2533, filed in Branch 31 of the same court, reads:

"That on or about the 10th day of February, 1996 in the Barangay of Sto. Niño, Municipality of Bula, Province of Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused by means of force and intimidation did then and there, wilfully, unlawfully and feloniously have carnal knowledge with his own daughter Amor Arillas y Onquit, against her will and consent, to the damage and prejudice of the offended party."<sup>[5]</sup>

On motion by the counsel of the appellant, the cases were consolidated in Branch 33.

It appears that in the morning of December 23, 1995, while Amor Arillas was

sweeping their backyard, her father told her to go inside their house to prepare their breakfast. At that time, her brothers were grazing their carabao in the mountains, her sisters were washing clothes in a creek about 300 to 400 meters away from their house and her mother was selling soft drink and bread in the rice field.<sup>[6]</sup> She was alone with her father in their house.

While doing her chore; her father came near her, embraced and forcibly kissed her. She resisted but her father kicked her on the right buttocks. The force of the blow threw her beside the stairs of their house. Her father embraced her again and dragged her towards their room. She tried to run away but she could not escape as her father held her hands. Inside the room, her father undressed her and forced her to lie down. Her gallant resistance proved futile. He was able to take her maidenhood. She bled and felt pain all over her body. In Amor's words, it was her first experience.<sup>[7]</sup>

Appellant threatened Amor that something bad would happen if she reports the incident to anyone. He became strict with her. She was afraid of her father and did not want her family broken. Hoping that the bestial act would not be repeated, she kept silent.<sup>[8]</sup>

Amor's hope was not to happen. On February 10, 1996, while preparing lunch inside their house, her father approached her, embraced and kissed her. She resisted by pushing him but he held her tight and continuously touched her private part. He dragged her inside their room, undressed her and forced her to lie down. He slapped her when she refused. Amor fought hard to free herself but she was no match against the appellant who was heavy and very strong. He mounted her and violated her. She felt pain all over her body.

Appellant again threatened her that he would kill them if she would reveal the incident to anyone. He began harming her and her brothers and sisters. He also forbade her to go out of their house. Amor suspected that he still wanted to ravish her.<sup>[9]</sup>

She finally found the courage to report the incident on April 1, 1996. She narrated her ordeal to their barangay captain Domingo Arevalo.<sup>[10]</sup> A complaint was filed against the appellant. Amor then underwent a medical examination. Dr. Mylene Chavez Milla, Municipal Health Officer of Bula, Camarines Sur found five old lacerations in the hymen of Amor Arillas at 10:00 o'clock, 2:00 o'clock, 9:00 o'clock, 5:00 o'clock and 6:00 o'clock positions. She said that these lacerations might have been caused by inserting a hard object like a male organ. She also testified that her hymen admits two fingers with ease which indicates that penetration was made more than once.<sup>[11]</sup>

To prove the age of Amor, Romeo Decena, Assistant Local Civil Registrar, was presented. He testified that despite diligent search, he failed to find her name in the registry book. However, when shown her birth certificate,<sup>[12]</sup> he confirmed its issuance by their office. The date of birth of private complainant, as indicated in her birth certificate, was May 10, 1980.<sup>[13]</sup>

Romeo Arillas interposed the defense of denial and alibi. Allegedly, on December 23,

1995, he was in the farm and on February 10, 1996, he was repairing an irrigation pump in San Jose, Minalabac, Camarines Sur.

He claimed that the charges against him were due to the anger of her brothers and sisters and parents-in-law with him. This arose when he left his brother-in-law drunk during a fiesta celebration in San Ramon, Bula. From then on, his relationship with his in-laws soured.<sup>[14]</sup>

On June 26, 1997, the trial court rendered a joint judgment<sup>[15]</sup> on the two cases convicting the appellant. It held that appellant was positively identified by the complainant as the culprit. It ruled that the fact of carnal knowledge is supported by the presence of laceration in the victim's hymen. It further explained that the testimony of the complainant, coupled with the absence of any motive on her part to falsely testify against her father, is more than sufficient to convict the appellant.<sup>[16]</sup>

The imputed ill-motive on the part of his in-laws, emanating from the alleged quarrel between him and his brother-in-law, was held as too insignificant to cause his daughter to falsely charge him with such a serious crime.

The appellant was sentenced to death. It considered Section 11 of R.A. 7659, calling for the imposition of the death penalty when the victim is under 18 years of age and the offender is her parent or ascendant. The dispositive portion of the joint judgment reads:

"WHEREFORE, in view of the foregoing, joint judgment is hereby rendered in these two (2) cases finding the accused ROMEO ARILLAS Y MONTOYA, guilty beyond reasonable doubt of the two charges of rape filed against him, defined and punished under Article 335 of the Revised Penal Code as amended by Republic Act No. 7659 and is hereby sentenced to suffer the penalty of death. And as civil liability to pay Amor O. Arillas the amount of P100,000.00 for actual and moral damages.

"Let the entire records of these cases be forwarded immediately to the Honorable Supreme Court for automatic review pursuant to Sec. 22 of Republic Act No. 7659, amending Article 47 of the Revised Penal Code."<sup>[17]</sup>

Against this judgment, accused-appellant assigns a single error, *viz.*:

"THE COURT OF ORIGIN HAS COMMITTED AN ERROR IN NOT ACQUITTING THE ACCUSED-APPELLANT OF THE CRIMES CHARGED DESPITE THE PRESENCE OF REASONABLE DOUBT TO EXCULPATE HIM OF THE SAME."<sup>[18]</sup>

In his brief, accused-appellant insists that even if his defense is merely denial and alibi, reasonable doubt exists as to his guilt.<sup>[19]</sup> He maintains that these cases were filed against him out of spite. They were the end result of the quarrel between him and an uncle of the private complainant. He argued that his testimony to this effect was never rebutted by the prosecution.

We are not persuaded.

It is the teaching of countless cases that for the defense of alibi to prosper, it must be proven that during the commission of the crime, the accused was in another place and that it was physically impossible for him to be at the place where the crime was committed. In the cases at bar, appellant's bare allegations that he was in the rice field when his daughter was raped on December 23, 1995 and that he was in San Jose, Minalabac, Camarines Sur when his daughter was again raped on February 10, 1996 cannot exculpate him. The positive assertions of his daughter that he raped her is entitled to greater weight. Her candid and straightforward testimony that she lost her virginity is supported by the medical findings of the Municipal Health Officer.

The claim of the appellant that the cases at bar were filed out of spite did not convince the trial court, and so are we not convinced. Aside from the fact that he failed to substantiate this claim, it is highly inconceivable why Amor would falsely accuse appellant, her father, just to advance the interest of her uncle in a quarrel. More worthy of credence is the statement of Amor that she filed these cases because she could no longer bear the conduct of her father. After his bestial acts, he did not allow her to go out of their house and he inflicted harm on her and her siblings. She feared that he still wanted to ravish her.<sup>[20]</sup>

Needless to state, appellant cannot contend that the prosecution failed to rebut the motive he ascribed to the relatives of Amor. The prosecution does not have to rebut his outlandish claim. An allegation that does not merit any credence need not be rebutted.

Be that as it may, the trial court erred when it imposed the death penalty on accused-appellant. We make the correction *motu proprio* for an appeal in a criminal proceeding throws the whole case open for review.<sup>[21]</sup> It is the duty of the appellate court to correct any error in the judgment whether assigned or not.

When the offenses at bar were committed, rape is defined and punished by Article 335 of the Revised Penal Code as amended by Section 11 of Republic Act No. 7659, which reads:

"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*.

Whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death.

When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be death.