

## SPECIAL EIGHTEENTH DIVISION

[ CA-G.R. CR. HC. NO. 01277, September 25, 2014 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
FEDERICO GEROLA Y AMAR ALIAS "FIDEL", ACCUSED-  
APPELLANT.**

### DECISION

**INGLES, G. T., J.:**

This is an appeal from the Decision<sup>[1]</sup> of the Regional Trial Court of Himamaylan City, Negros Occidental, Branch 55 in Criminal Case Nos. 1213, 1214 and 1215 dated January 28, 2010<sup>[2]</sup> and promulgated on April 21, 2010<sup>[3]</sup> convicting the accused-appellant of three counts of Rape defined and penalized under Art. 266-A, paragraph 1 of the Revised Penal Code as amended by R.A. 8353 in relation to R.A. 7610.

#### Factual and Procedural Antecedents

In three (3) separate informations, appellant was charged with three (3) counts of Rape allegedly for having carnal knowledge with private complainant AAA<sup>[4]</sup> through the use of force, threat or intimidation sometime in the year 1998, 1999 and on January 9, 2000, to wit:

In Criminal Case No. 1213<sup>[5]</sup>.

"That sometime in July of 1999, in the Municipality of Himamaylan, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, taking advantage of his moral ascendancy being the step-father of herein victim AAA<sup>[6]</sup>, a minor, 11 years old, did then and there, willfully, unlawfully and feloniously have carnal knowledge of the latter, against her will.

CONTRARY TO LAW."

In Criminal Case No. 1214<sup>[7]</sup>.

"That sometime in the year 1998, in the Municipality of

Himamaylan, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, taking advantage of his moral ascendancy being the step-father of herein victim AAA, a minor, 10 years old, did then and there, willfully, unlawfully and feloniously have carnal knowledge of the latter, against her will.

CONTRARY TO LAW.”

In Criminal Case No. 1215<sup>[8]</sup>.

“That on or about the 9th day of January, 2000, in the Municipality of Himamaylan, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, taking advantage of his moral ascendancy being the step-father of herein victim AAA<sup>[9]</sup>, a minor, 12 years old, did then and there, willfully, unlawfully and feloniously have carnal knowledge of the latter, against her will.

CONTRARY TO LAW.”

When arraigned, appellant pleaded “Not Guilty” to the crimes charged. During the trial, the prosecution presented the private complainant AAA, Dr. Medardo Estanda, private complainant's mother, MMM, and PO3 Bibiana Ramos, as witnesses.<sup>[10]</sup>

On the other hand, the defense presented appellant himself.<sup>[11]</sup>

As rebuttal evidence, the prosecution likewise presented Elenita Gerola and Leonardo Puertas.<sup>[12]</sup>

### ***Version of the Prosecution***

Private complainant AAA was born on July 5, 1987.<sup>[13]</sup> She was a minor when all three (3) acts of rape were committed. She was 11 years old when the first act of rape occurred sometime in the year 1998. The second act of rape happened sometime in the year 1999 when she was 12 years old and the third time was in January 2000 when she was 12 years and 6 months of age.<sup>[14]</sup> At the time all three (3) acts of rape occurred, she was living in the same house in Barangay Libacao, City of Himamaylan in San Jose with her full-blood sister, her half-siblings (children of her mother and step-father), her mother MMM and AAA's step-father, accused-appellant Federico Gerola.<sup>[15]</sup>

Sometime in 1998 at around 8:30 in the evening, AAA and her sisters were sleeping.<sup>[16]</sup> Her mother was in the hospital tending to her aunt who had just delivered a baby.<sup>[17]</sup> At that time, appellant crawled towards AAA.<sup>[18]</sup> Accused-

appellant told AAA to keep quiet, lie down and remove her underwear.<sup>[19]</sup> AAA tried to resist but appellant gestured to box her. AAA tried to shout but he covered her mouth. After removing her underwear, accused also removed his brief and laid on top of AAA. Appellant inserted his penis into her vagina. AAA bled and felt pain.<sup>[20]</sup> AAA did not tell her mother about the incident because appellant threatened her of maltreating them if she did so.<sup>[21]</sup>

In July 1999 at around 9:30 in the evening, AAA was raped for the second time. While she was sleeping in bed, appellant sat beside her and removed her underwear.<sup>[22]</sup> He then inserted his penis into her vagina. The victim felt pain and bled.<sup>[23]</sup> At that time, AAA's mother was in the Himamaylan hospital tending to her grandmother.<sup>[24]</sup> Again, she did not tell her mother due to appellant's threat to maltreat her mother.<sup>[25]</sup>

In January of the year 2000, appellant did the same act of having carnal knowledge with AAA for the third time. This was done at around 2:30 in the morning and lasted for about thirty (30) minutes while everyone else in the house was sleeping.<sup>[26]</sup> AAA's mother was away from home to tend to the latter's younger sister who gave birth.<sup>[27]</sup> Like the other incidents, AAA did not tell her mother. Instead, AAA told her friend who advised her to tell their teacher.<sup>[28]</sup> AAA then narrated the incident to her teacher, Mrs. Rafil, who summoned her mother and told her what happened. When her mother learned of her daughter's ordeal, she cried. AAA's aunt Elen accompanied the victim to the Barangay Captain and reported the rape incidents.<sup>[29]</sup> Appellant was then fetched by the Barangay Captain and thereafter brought to the police station where the appellant was detained.<sup>[30]</sup>

On February 7, 2000, AAA was examined by Dr. Medardo Estanda who made a written case report and anatomical sketch of the victim pursuant to the incidents that occurred.<sup>[31]</sup> The report indicated that there were penetrations on the organ of the victim which had hymenal lacerations at 5, 6 and 12 o'clock positions.<sup>[32]</sup>

### ***Version of the Appellant***

Accused-appellant Federico Gerola y Amar alias Fidel testified that he was married to MMM, the private complainant's mother, in the year 1996 and they begot four (4) children. The family which was composed of his wife and himself, their four children and a child of MMM by her first marriage were living in San Jose Valing, Barangay Libacao, Himamaylan City. The other child of MMM by her first husband, AAA, lived with her aunt Erlita Aguirre.

As a cane laborer, accused-appellant worked in the sugarcane field and sometimes in the rice field. Since 1998 up to 2000, AAA was living with the latter's aunt Erlita Aguirre in a separate house because she was going to school in San Jose.

Accused-appellant testified that he was not in good terms with Dodoy Puertas, the brother-in-law of his wife MMM, because Puertas was not in favor of their marriage. Accused-appellant recalled that when he and MMM asked permission from Dodoy Puertas about their plan to get married, Puertas did not give consent and merely said "I don't know". Appellant further testified that MMM and Dodoy Puertas initiated

the filing of the criminal cases against him because MMM and Puertas have an illicit affair and both live together in Mirasol.

### ***Findings of the trial court***

On January 28, 2010, the trial court rendered its Decision convicting accused-appellant as charged. The trial court ruled that the prosecution was able to establish by clear and convincing evidence that indeed, the accused had carnal knowledge with the victim.

The trial court gave full faith and credit to AAA's testimony and ruled after finding that the victim testified in a candid manner how her step-father had consummated the three acts of rape despite the presence of her sleeping siblings.

The trial court further ruled that AAA's accusations were bolstered by the medical findings of the doctor who conducted the medical examination on the private complainant.

The dispositive portion of the said Decision reads:

“WHEREFORE, in view of all the foregoing, the Court finds the accused Federico Gerola y Amar alias “Fidel” “GUILTY” beyond reasonable doubt of the three counts of Rape as charged against him. Since the death penalty is suspended, the Court hereby sentences the accused to three (3) penalties of Reclusion Perpetua, without eligibility of parole.

The accused is further ordered to pay the private complainant, AAA<sup>[33]</sup>, moral damages in the amount of Fifty Thousand Pesos (Php50,000.00) for each case; civil indemnity in the amount of Seventy-Five Thousand Pesos (Php75,000.00) for each case; and exemplary damages in the amount of Twenty-Five Thousand Pesos (Php25,000.00) for each case.

SO ORDERED.”

Accused-appellant timely filed a Notice of Appeal<sup>[34]</sup> on April 28, 2010, which was given due course by the trial court in its Order dated May 25, 2010<sup>[35]</sup>.

This court received the records of this case on December 8, 2010<sup>[36]</sup>. On January 14, 2011, a Notice to File Brief<sup>[37]</sup> was sent to the parties. Appellant filed his brief<sup>[38]</sup> on August 15, 2011, while the appellee filed brief<sup>[39]</sup> on May 28, 2012. This case was declared submitted for decision on January 21, 2014.

### **Assignment of Errors**

Accused-appellant Gerola makes the following assignment of error:

"The trial court erred in convicting accused-appellant giving credence to the testimonies of prosecution witnesses which are replete of inconsistencies and contradictions."

Otherwise stated, appellant is imputing error on the part of the RTC for relying on AAA's inconsistent testimony and thereafter convicting him despite the prosecution's failure to rebut the presumption that he is innocent.

### **Appellant's Arguments**

The accused-appellant contends that the trial court overlooked certain facts of substance pertaining to the credibility of complainant-witness AAA, which, if considered, will affect the result of this case.

The accused-appellant points to allegedly material and substantial inconsistencies in the testimony of private complainant, particularly on private complainant's imperfect recollection as to when and in what year the first incident of rape occurred. This substantial discrepancy of time, appellant argues, should not have been ignored by the trial court as it creates doubt on the credibility of AAA. Moreover, it was error on the part of the trial court to have ignored AAA's failure to promptly disclose her defilement to the authorities or to persons close to her.

Finally, the accused-appellant argues, where two conflicting probabilities arise from the evidence, as in this case, the one compatible with the presumption of innocence will be adopted. Judges must free themselves of the natural tendency to be overprotective of every girl or woman decrying her defilement and demanding punishment of the abuser. While courts ought to be cognizant of the anguish and humiliation the rape victim goes through as she demands justice, magistrates should equally bear in mind that their responsibility is to render justice in accordance with law.

### **Appellee's Arguments**

The appellee on the other hand argues that the prosecution more than sufficiently proved the guilt of appellant beyond reasonable doubt for three (3) counts of rape. The alleged inconsistencies and contradictions in private complainant's testimony are too inconsequential to the issue of rape and do not affect her credibility.

What is decisive in a rape charge, the appellee argues, is that the commission of the rape by appellant against complainant has been sufficiently proven. Inconsistencies and discrepancies as to minor matters which are irrelevant to the elements of the crime cannot be considered grounds for acquittal. Thus, the trial court was correct in giving full faith and credit to the testimony of AAA.

Anent accused-appellant's allegation that there was delay in reporting the subject offenses, the same lacks merit. The appellee argues that delay in reporting an incident of rape is not an indication of fabricated charge nor does it cast doubt on the credibility of the complainant as it is not uncommon for young girls to conceal