

FIRST DIVISION

[G.R. No. 182690, May 30, 2011]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
EDGARDO OGARTE Y OCOB, ACCUSED-APPELLANT.**

D E C I S I O N

LEONARDO-DE CASTRO, J.:

Accused-appellant Edgardo Ogarte y Ocob (Ogarte) is now before Us on review after the Court of Appeals, in its Decision^[1] dated November 20, 2007, in CA-G.R. CR.-H.C. No. 00100, affirmed with modification the March 9, 2000 Decision^[2] of the Regional Trial Court (RTC), 9th Judicial Region, Branch 28, Liloy, Zamboanga del Norte, in Criminal Case Nos. L-0043 and L-0044, wherein Ogarte was found guilty beyond reasonable doubt of two counts of Rape, qualified by relationship and age, as defined and penalized under Article 335 of the Revised Penal Code and was sentenced to suffer the penalty of death and the payment of Seventy-Five Thousand Pesos (P75,000.00) as civil indemnity, and Fifty Thousand Pesos (P50,000.00) as moral damages, for each count of rape.

On May 2, 1997, two separate Informations were filed before the RTC, charging Ogarte with two separate counts of Rape. The accusatory portions of the respective Informations read:

Criminal Case No. L-0043^[3]:

That, in the evening, on or about the 1st day of November, 1996, in the municipality of xxx, within the jurisdiction of this Honorable Court, the said accused, moved by lewd and unchaste desire and by means of force, violence and intimidation, did then and there wilfully, unlawfully and feloniously succeed in having sexual intercourse with one [AAA],^[4] his 16[-]year[-]old daughter, against her will and without her consent.^[5]

Criminal Case No. L-0044^[6]:

That, in the morning, on or about the 3rd day of November, 1996, in the municipality of xxx, within the jurisdiction of this Honorable Court, the said accused, moved by lewd and unchaste desire and by means of force, violence and intimidation, did then and there wilfully, unlawfully and feloniously succeed in having sexual intercourse with one [AAA], his 16[-]year[-]old daughter, against her will and without her consent.^[7]

On October 15, 1997, Ogarte was arraigned and he pleaded not guilty to the two charges.^[8] Joint trial on the merits ensued after the termination of the pre-trial

conference.^[9]

The prosecution's first witness was the private complainant herself, AAA. She confirmed that it was she who had filed the two complaints for rape against her own father Ogarte, whom she identified in open court. According to AAA, the first instance of rape happened at around ten o'clock in the evening of November 1, 1996, in their home in xxx. AAA claimed that while she was sleeping beside her four younger sisters, Ogarte woke her up, held her hands, grabbed her head, and brought her to the kitchen wherein she was forced to lie down on the floor. AAA said that her struggles were no match for Ogarte's strength^[10] who proceeded to take off her pants and underwear, climb on top of her, and insert his penis into her vagina. AAA averred that she cried in pain and pleaded with her father "not to do it"^[11] but Ogarte told her "to be silent because he will do it slowly"^[12] and "not to worry because nothing will happen to [her]."^[13] AAA said that after Ogarte ejaculated - which she knew because of the white fluid she saw on his penis after he removed it from her vagina - he threatened to kill her if she told her mother, who was at that time in Guinabucan, Zamboanga del Sur,^[14] or anybody else of what had happened. For fear that Ogarte is capable of carrying out his threats, AAA kept her silence even when her mother arrived the following day.^[15]

At around nine o'clock in the morning of November 3, 1996, AAA alleged that she was again raped by Ogarte. This occurred when, upon her mother's order, she reluctantly obeyed to help Ogarte gather some firewood in the wooded area near their house. AAA narrated that upon carrying some of the wood pieces Ogarte had cut, Ogarte, still carrying the *bolo* he used to cut the wood, pulled her shoulders and told her not to make any noise as he missed her very much. AAA recounted how Ogarte then went on to remove her undergarments, and ignoring her cries, once again placed himself on top of her and with a "push and pull motion,"^[16] consummated his sexual desires. After Ogarte was done, he again warned and threatened AAA against breaking her silence.^[17]

AAA described how in the following days and weeks she was able to foil Ogarte's attempts, by avoiding him and by pinching and waking up her sleeping sisters whenever Ogarte tried to make advances. She had managed to keep the incidents to herself up until December 5, 1996, when her mother again asked her to help her father Ogarte gather some wood. AAA, believing that she would again be violated by Ogarte in the woods, mustered the courage to reveal to her mother the events that transpired on November 1 and 3, 1996. Upon learning about this, Ogarte, in his anger, pulled AAA and was about to stab her when he was stopped by AAA's mother who arrived just in time. Thereafter, AAA's mother told her to keep quiet about what her father did to her.^[18]

On March 20, 1997,^[19] AAA told her grandmother BBB her ordeal in the hands of her own father.^[20] On April 2, 1997, AAA and BBB went to the National Bureau of Investigation (NBI) in Dipolog City where they executed the sworn affidavits^[21] that were used as bases for the charges against Ogarte.^[22]

BBB, AAA's grandmother, was presented next. BBB identified Ogarte in open court and said she knew Ogarte because he is her son-in-law, being the husband of her

daughter, AAA's mother. BBB confirmed that AAA was her granddaughter, that she was only 16 years old when the rapes happened, and that AAA told her about the rapes on March 20, 1997, when AAA went to see her in Zamboanga del Sur.^[23]

Before resting their case, the prosecution also submitted the following Medico-Legal Findings made on April 2, 1997 by Dr. Milagros M. Cavan, whose testimony was deemed no longer necessary by the RTC, in view of the fact that the medical certificate she submitted was admitted by the defense, subject to rebuttal.^[24]

DIAGNOSIS/FINDINGS:

- Examined conscious, coherent, ambulatory:

Weight: 49.6 kgs. Height: 162 C.M.

Pertinent PE Findings:

Breast: Conical in shape; areola pinkish

Chest and Lungs: Clear breath sounds

CVS - Regular rate and rhythm

Abdomen - Flat, soft, no masses, no normoactive bowel sounds

Genitalia:

Introitus: Admits two examining fingers with ease.

Hymen - With old healed lacerations, at 5 O'clock and 7 O'clock positions^[25]

Ogarte, addressing the first charge against him, vehemently denied that he had raped his own daughter on the night of November 1, 1996. He said that although it was true that he was at their residence that evening, his wife, AAA's mother, was also there that night, contrary to AAA's allegations. Ogarte described the layout of their house and argued that because AAA slept at the other end of the room, beside the wall, thus, at the farthest side to the kitchen where the rape allegedly took place, it would have been impossible to pull her and bring her to the kitchen without stepping on or awakening his other children who were sleeping right beside AAA.^[26]

Ogarte likewise claimed innocence on the second charge of rape and averred that he was not in the wooded area with AAA on November 3, 1996 as he was plowing his farm that day. Ogarte contended that AAA filed these charges against him as an act of revenge because he and his wife slapped her sometime in February 1997^[27] when she adamantly denied having sexual intercourse with three men at her school, as reported by Ogarte's cousin who worked as a teacher in AAA's school.^[28]

Ogarte, invoking his love for AAA, his eldest child,^[29] whom he admitted to being 16 years old at the time the alleged incidents happened,^[30] asserted that for the very reason that AAA is his child, he could not commit these crimes as charged.^[31]

Ogarte's close friend Modesto Capalac, who was also their *Barangay* Captain at that time, attested to Ogarte's well-being and good moral character. He said that he knew Ogarte because they have been neighbors for a long time, even before they became neighbors in San Roque. He said that Ogarte had no criminal record in their *Barangay* and that since Ogarte was a cooperative man, nobody had ever filed a

complaint against him.^[32]

On March 9, 2000, the RTC found Ogarte guilty as charged in both criminal cases and imposed on him the supreme penalty of death for each count of rape:

WHEREFORE, finding the accused Edgardo Ogarte Y Ocob guilty beyond reasonable doubt of two counts of the crime of Rape as defined and penalized under Art. 335 of the Revised Penal Code, as charged, aggravated by relationship and age, in relation to Art. 47 of the same Code, this Court hereby sentences him to suffer the penalty of DEATH for each count and orders him to pay the private offended party the sums of P75,000.00 as indemnity for each count and P50,000.00 as moral damages for each count, or a total of P250,000.00.^[33]

The RTC said that the constitutional presumption of innocence that Ogarte originally enjoyed was sufficiently overcome by AAA's clear, straightforward, credible, and truthful declaration that on two separate occasions, he succeeded in having sexual intercourse with her, without her consent and against her will, in violation of Article 335 of the Revised Penal Code. The RTC also debunked Ogarte's imputation of ill motive on AAA, stating that while the supposed "whipping and slapping" happened only in February 1997, AAA had exposed Ogarte's appalling acts as early as December 5, 1996. Citing *People v. Victor*,^[34] the RTC held that denial and alibi are inherently weak defenses that cannot prevail over the positive and credible testimony of the prosecution witnesses that the accused committed the crime.^[35] Moreover, Ogarte, in interposing the defense of denial and alibi, "failed to demonstrate and show that he was somewhere else at the time of the commission of the crime and that is why it is physically impossible for him to have been at the scene of the crime at the time of its commission and commit the crime."^[36] The RTC also held that AAA's delay in filing a case against Ogarte is not uncommon and is justified in light of the threats made against her life if she told anyone about the rapes, on top of the fact that her own mother told her to keep quiet about it.^[37]

On intermediate appellate review,^[38] the Court of Appeals "synthesized for coherence"^[39] the errors assigned by Ogarte as follows: "(1) credibility of the victim-witness, (2) appellant's defense of denial, and (3) aggravating circumstance of minority."^[40] Ogarte argued AAA's testimony was replete with inconsistencies, her minority was never duly established, and his credible alibi should have been believed in view of the weakness of the prosecution's evidence.^[41]

The Court of Appeals gave full weight to the RTC's determination that AAA's testimony was "credible, worthy of full faith and credit," since there was nothing in the records, which showed that the RTC misappreciated the facts or was arbitrary in giving probative value on AAA's testimony. The Court of Appeals also held that the "allegation of inconsistency does not detract AAA's credibility"^[42] as sworn statements, not being conclusive proofs, cannot prevail over AAA's testimonies given in open court. On the issue of delay in filing this case, the Court of Appeals said it was justified "considering the intimidation, threat, and force employed"^[43] by Ogarte against AAA. The Court of Appeals also agreed with the RTC that Ogarte's

defense of denial, being an inherently weak and unreliable defense, could not prevail over AAA's positive and categorical statements. The Court of Appeals affirmed the RTC's appreciation of the aggravating circumstances of minority and relationship, as they were alleged in the information and duly proven during the trial.^[44]

On November 20, 2007, the Court of Appeals rendered its decision, modifying the RTC's decision in so far as the current law and jurisprudence are concerned, to wit:

WHEREFORE, the assailed Decision is **AFFIRMED** with **MODIFICATION**. Appellant is found guilty, beyond reasonable doubt, of the crime of rape in Crim. Case No. L-0043 and Crim. Case No. L-0044 and shall suffer the penalty of *reclusion perpetua* for each count of rape. Appellant shall indemnify AAA in the amount of P75,000.00 as civil indemnity ex delicto, P75,000.00 as moral damages, and P25,000.00 as exemplary damages, also for each count of rape.^[45]

Ogarte is now before this Court with the same assignment of errors he posed before the Court of Appeals, *viz*:

I

THE COURT A QUO ERRED IN IMPOSING THE DEATH PENALTY ON THE ACCUSED-APPELLANT DESPITE THE FACT THAT THE MINORITY OF THE PRIVATE COMPLAINANT WAS NEVER DULY ESTABLISHED IN ACCORDANCE WITH THE RULING IN PEOPLE VS. MANUEL LIBAN, G.R. NO. 136247 & 138330, NOVEMBER 22, 2000.

II

THE COURT A QUO ERRED IN ACCORDING WEIGHT AND CREDENCE TO THE UNCORROBORATED TESTIMONY OF THE PRIVATE COMPLAINANT DESPITE THE FACT THAT IT IS REplete WITH MATERIAL INCONSISTENCIES AND THERE WAS CONSIDERABLE DELAY BEFORE SHE INSTITUTED THE INSTANT CASE, WHICH SHE ONLY DID SO ON ACCOUNT OF ILL-MOTIVE ON HER PART.

III

THE COURT A QUO ERRED IN CONVICTING THE ACCUSED-APPELLANT OF TWO (2) COUNTS OF RAPE AND NOT FINDING CREDIBLE THE ALIBI INTERPOSED BY THE DEFENSE IN VIEW OF THE PATENT WEAKNESS OF THE PROSECUTION'S EVIDENCE.^[46]

In reviewing rape cases, this Court is guided by three settled principles: (1) an accusation of rape can be made with facility and while the accusation is difficult to prove, it is even more difficult for the person accused, although innocent, to disprove; (2) considering the intrinsic nature of the crime, only two persons being usually involved, the testimony of the complainant should be scrutinized with great