

## EN BANC

[ G.R. NO. 172118, April 24, 2007 ]

### PEOPLE OF THE PHILIPPINES, APPELLEE, VS. WARLITO C. FERNANDEZ, APPELLANT.

#### DECISION

##### CALLEJO, SR., J.:

This is an automatic appeal from the Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. CR H.C. No. 00637, affirming with modification, the Decision<sup>[2]</sup> of the Regional Trial Court (RTC), Branch 11, Tuao, Cagayan, in Criminal Case No. 699-T convicting appellant Warlito C. Fernandez of rape under Article 335(1) of the Revised Penal Code, as amended by Republic Act No. 7659 and Republic Act No. 8353.

##### The Antecedents

The victim (BBB) and the appellant's wife were good friends. They were also partners in a "mango business."

On April 29, 1998, BBB and appellant's wife had just come from Tuguegarao, Cagayan. BBB arrived home at around 8:00 p.m.,<sup>[3]</sup> and by 11:00 p.m., she was already in bed together with her eight-year-old daughter. The two were awakened by the incessant barking of their dog. BBB knew that whoever it was outside, it could not be her husband since he had attended a political rally.<sup>[4]</sup> Suddenly, the appellant, armed with a short gun, entered the room,<sup>[5]</sup> which was illuminated by a kerosene lamp placed on top of a cabinet.<sup>[6]</sup> BBB and her daughter recognized the appellant.

Upon entering the room, the appellant immediately laid on top of BBB. He held her with his left hand, and with his right hand poked the gun at her right temple.<sup>[7]</sup> That night, BBB was wearing only shorts.<sup>[8]</sup> Appellant pushed it down with his foot, and inserted his penis into the victim's vagina.<sup>[9]</sup> BBB did not struggle because she was afraid that appellant would kill her and her daughter if she did so. After around 15 minutes, appellant finished the beastly act<sup>[10]</sup> and immediately left the premises.

BBB's daughter was on the same bed where the act was committed.<sup>[11]</sup> She saw how the appellant positioned himself on top of her mother. Appellant then pointed a gun at the child, who, in her terror, covered herself with a blanket.<sup>[12]</sup>

When her husband arrived, the victim tearfully narrated all that transpired and what appellant had done. BBB's husband was angered by what he heard, but he comforted his wife, told her to stop crying, and promised that they would look for the appellant the following day.<sup>[13]</sup>

At 7:00 p.m. the next day, April 30, 1998, BBB reported the incident to a *barangay* councilman, who accompanied her to the *barangay* captain. On May 2, 1998, BBB reported the matter to the police headquarters where she and her daughter executed their respective sworn statements.<sup>[14]</sup>

On May 5, 1998, BBB was physically examined by Municipal Health Officer Dr. Eugenio Dayag. The doctor issued a medical certificate<sup>[15]</sup> stating in part that that there were no signs of bruises or abrasions on the victim.

On May 7, 1998, BBB filed a criminal complaint<sup>[16]</sup> with the Municipal Circuit Trial Court (MCTC) of Piat, Cagayan, and preliminary investigation ensued.<sup>[17]</sup> Presiding Judge Estela B. Lucas ordered the issuance of a warrant for the arrest of the appellant with "no bail recommended."<sup>[18]</sup> Appellant was arrested on June 8, 1998.

On September 24, 1998, the MCTC found probable cause against the appellant for the crime of rape, and ordered that the records of the case be forwarded to the Office of the Provincial Prosecutor of Cagayan for proper disposition pursuant to law.<sup>[19]</sup> An Information dated October 5, 1998 was then filed before the RTC. The accusatory portion reads:

That on or about April 29, 1998 in the Municipality of Sto. Niño, Province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused, Warlito Fernandez alias Warling armed with a gun, with lewd design and by the use of force, threat and intimidation, did, then and there willfully, unlawfully and feloniously have sexual intercourse with the offended party, [BBB] against her will.

That in the commission of the offense the aggravating circumstance of dwelling was present.<sup>[20]</sup>

During the arraignment on April 14, 1999, appellant entered a plea of "not guilty."<sup>[21]</sup> Trial ensued.

The prosecution presented four witnesses: the victim, her daughter, the *barangay* councilman to whom the incident was first reported, and the *barangay* captain. The prosecution likewise presented the stipulated testimony of Dr. Dayag that on May 5, 1998, he examined BBB at the Municipal Health Office of Sto. Niño, Cagayan, and issued a medico-legal certificate thereon. Appellant's counsel admitted the proposal that in case the medico-legal certificate is presented, appellant would admit to the examination conducted on BBB and the issuance of the certificate.<sup>[22]</sup> The prosecution formally offered the following documentary evidence before resting its case: the criminal complaint<sup>[23]</sup> and the victim's signature;<sup>[24]</sup> the victim's sworn statement<sup>[25]</sup> and her signature;<sup>[26]</sup> the sworn statement of the victim's daughter<sup>[27]</sup> and the latter's signature;<sup>[28]</sup> the medico-legal certificate<sup>[29]</sup> and the signature of Dr. Dayag.<sup>[30]</sup>

The appellant interposed the defense of denial and alibi. He testified that he could not have committed the crime on April 29, 1998 because he was at a political rally in Lattac, Sto Niño, Cagayan; the rally started at 7:00 p.m. and ended at 12:00

midnight.<sup>[31]</sup> He further testified that he was with BBB's husband and the latter's brother-in-law,<sup>[32]</sup> and that after the rally, they accompanied two others to a nearby *barrio* aboard a *culiglig* owned by BBB's husband.<sup>[33]</sup> After their companions alighted near the riverbank, he, BBB's husband, and the latter's brother-in-law proceeded to their *barrio*.<sup>[34]</sup>

The appellant further testified that at 6:30 a.m. the next day, April 30, 1998, BBB went to their house and helped pick mangoes for the business.<sup>[35]</sup> He also claimed that BBB's husband suspected that he and BBB were having an affair; every time BBB's husband was drunk, he would tell the appellant that he (appellant) was a traitor ("*traidor*").<sup>[36]</sup>

On June 5, 2002, the defense presented a female witness to corroborate the appellant's alibi. The witness testified that BBB went to her house at 11:00 p.m. on April 29, 1998, and told her that a man had entered her (BBB's) house. BBB did not know who it was.<sup>[37]</sup> BBB looked afraid, and the witness gave her water. However, the witness later retracted this statement, and declared that BBB "was not afraid" and that she was given water because she was thirsty.<sup>[38]</sup> The witness recounted that she did not press BBB any further after she asked who the man was, and then went to BBB's house to get the sleeping child (the victim's daughter). It appears from the witness's testimony that BBB stayed with her (at the witness's house) for two hours before BBB's husband arrived.

After the defense rested its case, the prosecution manifested that it intended to present BBB as rebuttal witness. However, after several failed attempts to present her in court, the trial court declared that the prosecution was deemed to have waived its right to present rebuttal evidence. The case was considered submitted for decision.<sup>[39]</sup>

On January 7, 2003, the RTC rendered its Decision convicting the appellant of rape. The fallo reads:

WHEREFORE, in view of all the foregoing, the Court finds that the guilt of the accused WARLITO FERNANDEZ alias "Warling" for the offense of Rape, defined in Article 266-A and penalized under Article 266-B, both of the Revised Penal Code, as amended by Republic Act 8353, has been established beyond reasonable doubt and hereby sentences him to suffer the supreme penalty of DEATH by lethal injection.

Furthermore, he is sentenced to pay to the offended party [BBB] the amount of P50,000.00 as indemnity and a further amount of P50,000.00 as moral damages. He is further ordered to pay the costs.

SO ORDERED.<sup>[40]</sup>

The records of the case were initially transmitted to this Court on automatic review. However, conformably with the ruling in *People v. Mateo*,<sup>[41]</sup> which modified "Sections 3 and 10 of Rule 122, Section 13 of Rule 124, Section 3 of Rule 125 of the Revised Rules on Criminal Procedure, and any other rule insofar as they provide for direct appeals from the RTC to the Supreme Court in cases where the penalty

imposed is death, *reclusion perpetua* or life imprisonment," the Court issued a Resolution<sup>[42]</sup> dated November 16, 2004 referring the case to the CA.

In his brief<sup>[43]</sup> filed before the appellate court, the appellant alleged that the trial court erred as follows:

I.

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

II.

THE COURT A QUO GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE INCREDIBLE AND INCONSISTENT TESTIMONY OF THE PROSECUTION WITNESSES.<sup>[44]</sup>

The CA rendered the assailed Decision on January 30, 2006.<sup>[45]</sup> Thus, the case is now before this Court on automatic review.

### **The Court's Ruling**

At the outset, it must be stressed that in the review of rape cases, courts are guided by three principles: (1) an accusation for rape can be made with facility, and it is difficult to prove but more difficult for the accused, though innocent, to disprove; (2) in view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merit, and cannot be allowed to draw strength from the weakness of the evidence for the defense.<sup>[46]</sup>

Moreover, at the heart of almost all rape cases is the issue of the *credibility of the witnesses*. This is primarily because the conviction or acquittal of the accused virtually depends entirely on the credibility of the victim's testimony as only the participants can testify to its occurrence.<sup>[47]</sup> In turn, the manner of assigning values to declarations of witnesses on the witness stand is best and most competently performed by the trial judge who had the unmatched opportunity to observe the witnesses and assess their credibility by the various *indicia* available but not reflected on record; the demeanor of the person on the stand can draw the line between the fact and fancy, or evince if the witness is lying or telling the truth. Thus, when the question arises as to which of the conflicting versions of the prosecution and the defense is worthy of belief, the assessment of trial courts is generally viewed as correct and entitled to great weight. In an appeal where the culpability or innocence of the accused depends on the issue of the credibility of witnesses and the veracity of their testimonies, the findings of the trial court are given the highest degree of respect if not finality.<sup>[48]</sup>

It is also settled that the accused may be convicted solely on the basis of the victim's testimony, provided that such testimony is credible, natural, convincing, and consistent with human nature and the normal course of things.<sup>[49]</sup> If the victim's testimony meets the test of credibility, this is sufficient to convict the accused. The credibility of the victim is almost always the single most important issue to hurdle.

The Court finds no reason to disturb the findings of both the RTC and the CA that the victim's testimony passed this test of credibility. The victim categorically stated that it was the appellant who entered their room, laid on top of her, brought down her shorts, and, against her will, satisfied his lustful desire. The pertinent portion of her testimony reads:

Q: Will you tell this Court what happened on that particular time and date?

A: Warlito Fernandez entered my house and he went on top of me, Sir.

Q: You stated that it was around 11:00 o'clock in the evening, how do you know that it was Warlito Fernandez who entered your house?

A: The kerosene light was bright, Sir.

Q: Where were you sleeping then?

A: In our room, Sir.

Q: When Warlito Fernandez entered your room, do you remember what happened next?

A: He immediately went on top of me, sir and he held my hands.

Q: What did you notice from Warlito Fernandez when he laid on top of you?

A: I noticed the gun he was holding and he poked on (*sic*) my head, Sir.

Q: What particular hand was he holding the gun?

A: Right hand, Sir.

Q: How about the left hand?

A: The left hand was holding me, Sir.

Q: What kind of gun is (*sic*) that?

A: A short firearm, Sir.

Q: After the accused laid on top of you and poked his gun on your head, what happened next?

A: He used his foot to bring down my shorts, Sir.

Q: After that, what happened next?

A: I felt that his penis was inserted on my vagina, Sir.

Q: And how about the gun, where was that gun when he was