

EN BANC

[G.R. No. 169059, September 05, 2007]

**THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. LAMBERTO
RAFON, APPELLANT.**

D E C I S I O N

TINGA, J.:

This treats of the appeal from the Decision^[1] dated 5 May 2005 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00115 affirming the Decision^[2] dated 8 July 2002 of the Regional Trial Court (RTC) of Gumaca, Quezon, Branch 61 in Criminal Case Nos. 6204-G and 6694-G where appellant Lamberto Rafon was found guilty of raping his minor daughter and sentenced to suffer the penalty of death.

In two (2) separate Informations^[3] filed on 5 March 1999, appellant was charged, the accusatory portions of which read, thus:

Criminal Case No. 6204-G

That sometime in the year 1994, at Barangay x x x,^[4] Municipality of x x x,^[5] Province of Quezon, Philippines, within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, by means of force, threats and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with one [AAA],^[6] his own daughter, a minor, 11 years of age, against her will.

CONTRARY TO LAW.^[7]

Criminal Case No. 6694-G

That sometime in the year 1998, at Barangay x x x, Municipality of x x x, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, by means of force, threats and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of one [AAA], his own daughter, a minor, 15 years of age, against her will.

CONTRARY TO LAW.^[8]

Appellant pleaded not guilty on arraignment. Forthwith, trial ensued which culminated in the guilty verdict. The dispositive portion of the judgment reads, thus:

WHEREFORE, based on the foregoing premises, accused LAMBERTO RAFON is hereby found GUILTY beyond reasonable doubt of two (2) counts of rape defined and penalized under Art. 335 of the Revised Penal

Code[,] as amended by R.A. [No.] 7659[,] and is hereby imposed the penalty of DEATH for each crime of rape. He is further ordered to indemnify [AAA] the amount of P75,000.00 for each act or P150,000.00. In addition, accused shall pay her likewise P20,000.00 as moral damages and P10,000.00 as exemplary damages for each count of rape or the total amount of P60,000.00. Costs against the accused.

SO ORDERED.^[9]

The case was thereafter elevated to this Court on automatic review and the parties were directed to file their respective Briefs.^[10] The parties complied. However, the Court issued a Resolution^[11] on 21 September 2004, transferring the case to the CA for intermediate review conformably with the ruling in *People v. Mateo*.^[12]

The appellate court affirmed the judgment of the trial court with the following modification:

WHEREFORE, premises considered, the appeal is **DENIED**. The assailed Decision dated 8 July 2002 is **AFFIRMED** with **MODIFICATION**. Appellant is ordered to pay [AAA] P50,000.00 as moral damages and P25,000.00 as exemplary damages for each count of rape.^[13]

The case is again before us for our final disposition.

The evidence for the prosecution consists mainly of the testimonies of private complainant, AAA, and Dr. Cheres Daquilanea, a resident physician of the Doña Marta District Hospital, Atimonan, Quezon.

AAA testified that she was born on 3 November 1983 as evidenced by her birth certificate.^[14] She is one of five children born to appellant and BBB.^[15] She recounted that appellant first raped her in their house sometime in 1994 when she was in grade five and while her mother was working overseas. Her two younger brothers were at a neighbor's house watching television while her two sisters were studying in the poblacion. Appellant who was drunk allegedly forced her to lie down on the *papag* and remove her clothes. He then warned her not to make any noise or he would kill her and her siblings. Appellant started kissing her then she felt pain when he inserted his penis inside her vagina and proceeded to have sexual intercourse with her. She tried to cross her legs but was overpowered by her father and she could not do anything but cry silently. She did not report the harrowing experience to anyone for fear that appellant would make good his threats.^[16]

Appellant allegedly raped her several more times thereafter until she was in second year high school, the last incident being sometime in 1998. AAA recalled that the last incident was similar to the first, with the appellant forcing her to lie down and to remove her clothes, and successfully having his way with her. Afraid of what appellant might do to her and her family, AAA did not dare tell her mother BBB of her sufferings in the hands of her father. It was at the instance of her boyfriend to whom she first revealed the truth about her father that she eventually had the courage to tell BBB. When BBB arrived home in January 1999, AAA relayed the rape incidents to her and they both went to the police to report the matter.^[17]

Dr. Daquilanea testified that AAA went to see her on 4 January 1999 at the Doña Marta District Hospital to have herself examined because she was raped.^[18] Dr. Daquilanea found healed hymenal lacerations in AAA at the 3 o'clock, 6 o'clock, and 9 o'clock positions that according to her could have been caused by sexual intercourse.^[19]

As the lone witness for his defense, appellant denied the charges against him. He testified that AAA is his daughter and he is legally married to BBB. From 1994 to 1998, he worked as a laborer so that he sometimes went to Lopez, Quezon to haul coco lumber.^[20] Averring that BBB never left their house during the said period, appellant wondered why AAA would file a criminal case against him as he had very cordial relations with her. On cross-examination, however, he testified that BBB had been working as a beautician in Saudi Arabia since 1995 and came home for a vacation every two years.^[21] His parents allegedly stayed with them in their house while BBB was away. He claimed that it was his brother-in-law, CCC,^[22] who had a grudge against him because the latter wanted a share in the money sent to him by his wife. CCC allegedly initiated the instant case because he owed appellant P10,000.00 and was angry at him.^[23]

In finding the appellant guilty, the RTC made the following findings, thus:

Certainly, the innocent but natural and straightforward testimony of [AAA] alone on [sic] the detailed narration of a pretty girl on [sic] her teens on how she was repeatedly violated by her own father from 1994 to 1998 is sufficient to sustain the conviction of her father. No one indeed would want to go through the troubles and humiliation of a trial for a much debasing offense unless she was really raped and her motive was solely to seek justice. (People v. Gaban, 262 SCRA 598; People v. Campesino, 131 SCRA 56). In fact, it is entitled to greater weight since her accusing words are directed against a close relative, her own father (People v. Lao, 249 SCRA 137). It is indeed extremely difficult to believe that the complainant Arlene, young as she was, could have guile and craft to accuse her father of such heinous crime.

x x x x

Verily, [AAA] is a credible witness. Her testimony deserves the highest credence. She would not have admitted in public that she was deflowered by her own father unless she was telling the truth for in doing so, she was compromising her family. (People v. Esquila, 254 SCRA 140).

The age of [AAA] has been established beyond cavil by her birth certificate (Exh. "B") indicating that she was born on March^[24] [sic] 3, 1983 and that her name [AAA] as Exh. "B-1" and the name of Lamberto Rafon as her father was marked as Exh. "B-3." Computing her age based on November 3, 1983, her age in 1994 was 11 years old and in 1998 is 15 years old.

The relation that exists between the complainant and the accused as daughter and father is established beyond cavil not only as shown in the

birth certificate (Exh. "B") but by the testimony of both complainant and the accused. x x x x^[25]

Like the lower court, the appellate court gave full faith and credence to AAA's positive and straightforward testimony as against appellant's bare denial. It stressed that although there were inconsistencies in her testimony as to who removed her clothes and as regards the whereabouts of her siblings at the time of the rape incidents, these are trivial and do not impair her credibility as "a rape victim is not expected to mechanically keep memory details of the rape incident and then when called to testify automatically give an accurate account of the traumatic experience she suffered."^[26] It further held that AAA's testimony is corroborated by physical evidence, she having sustained hymenal lacerations. According great respect to the findings and conclusions of the trial court on the credibility of witnesses, the CA affirmed the RTC's decision, modifying it only to increase the award of moral damages from P20,000.00 to P50,000.00 for each count, and similarly increasing the award of exemplary damages from P10,000.00 to P20,000.00 for each count in accordance with jurisprudence.

In his brief,^[27] appellant avers that the court *a quo* erred: (1) in giving credence to the testimony of AAA, which according to him was unreliable and unbelievable; and (2) in finding him guilty beyond reasonable doubt despite the uncertainty of the commission of the crime charged.

Appellant insists that he cannot be convicted based on AAA's incredible testimony. The absence of a struggle or an outcry during the rape plus the long delay in reporting the incidents defy a woman's natural instinct for self-preservation, he argues. He claims that there was no imminent danger to AAA's life and she had every opportunity to report the incident and to prevent a recurrence but she failed to do so. Questioning the truthfulness of AAA's testimony, he asserted that it reeked of inconsistencies. He maintains that all these cast doubt on the prosecution's evidence which, as a consequence, cannot result in a judgment of guilt.

Appellant also challenges the two Informations filed against him for being ambiguous as they did not specify the date or at the very least the month as to when the rape incidents allegedly took place. This, so he stresses, is a denial of due process as no less than the Constitution guarantees that the accused must be informed of the nature and cause of the accusation against him. The allegations that he committed two counts of rape, one in 1994 and another in 1998, deprived him of the chance to interpose the defense of alibi, he concludes.

In its brief,^[28] the Office of the Solicitor General (OSG) maintains that appellant's guilt has been proven beyond reasonable doubt by the positive and credible testimony of AAA. The OSG points out that AAA resisted her father's bestial acts but to no avail and that his moral ascendancy also cowed her to submission. Addressing the inconsistencies in her testimony, the OSG notes that the same are minor and inconsequential and seem more apparent than real. As regards AAA's failure to recall the exact time and date of the commission of the offenses, it observes that the time of commission is not a material ingredient of rape. The OSG adds that appellant did not object to the sufficiency of the Informations before he entered his plea and it is now too late for him to complain.

A careful examination of the records as well as the transcripts of stenographic notes of the instant case lead us to affirm appellant's guilt.

We shall first address the issue of the insufficiency of the Informations.

Appellant argues that the statement only of the year of commission of the offense is too vague so that he was deprived of his constitutional right to be informed of the accusation against him and to fully prepare for his defense. We disagree.

It is unnecessary to state in the information the precise date that the offense was committed, except when it is an essential element of the offense.^[29] The date of commission is not an element of the offense of rape.^[30] The gravamen of rape is carnal knowledge of a woman under any of the circumstances provided by law.

In *People v. Bugayong*,^[31] we held that "when the time given in the complaint is not of the essence of the offense, it need not be proven as alleged and x x x the complaint will be sustained if the proof shows that the offense was committed at any time within the period of the statute of limitations and before the commencement of the action."^[32] In said case, accused therein was charged with raping his stepdaughter several times before and until 15 October 1994 but was convicted of his dastardly acts committed in 1993. The Court therein held that the victim's Sworn Statement which categorically stated that she had been raped by the accused in 1993 when she was in grade three substantially cured the vagueness in the information and considered accused to have been sufficiently informed thereby. Thus, a statement of the year of the commission of the offense, as in the instant case, would suffice.

Furthermore, it is too late in the day for appellant to raise this issue. He should have made his objection before he was arraigned. Section 9, Rule 117 of the Rules of Criminal Procedure provides, to wit:

The failure of the accused to assert any ground of a motion to quash before he pleads to the complaint or information, either because he did not file a motion to quash or failed to allege the same in said motion, shall be deemed a waiver of any objections except those based on the grounds provided for in paragraphs (a), (b), (g), and (i) of section 3 of this Rule.

As was held in *Bugayong*, appellant herein cannot be said to have been deprived of his right to be informed. He did not timely object to the alleged defects in the Informations and he actively participated in the trial, defending himself and confronting the witnesses against him. Hence, there was no denial of due process.

We now go into the crux of the controversy.

We note that appellant was charged with two counts of rape. The first which was committed in 1994 is governed by Art. 335 of the Revised Penal Code (RPC) before the enactment of R.A. No. 8353 or the Anti- Rape Law of 1997.^[33] As regards the rape incident in 1998, the applicable provisions are Arts. 266-A and 266-B of the RPC,^[34] as introduced by the Anti-Rape Law of 1997.