

## THIRD DIVISION

**[ G.R. Nos. 139064-66, September 06, 2001 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ALBERTO ARCE, JR., ACCUSED-APPELLANT.**

### DECISION

**GONZAGA-REYES, J.:**

This is a partial appeal of the Joint Decision<sup>[1]</sup> of the Regional Trial Court, National Capital Judicial Region, Branch 170, Malabon Metro Manila finding accused Alberto Arce, Jr. guilty of one (1) count of Statutory Rape and two (2) counts of Acts of Lasciviousness in Criminal Cases Nos. 15359-MN, 15466-MN and 15467-MN.<sup>[2]</sup>

The amended information for statutory rape in Criminal Case No. 15359-MN, which is the subject of the present appeal, reads as follows:

"That sometime in or about mid July 1992 in No. 22 Celestino St., San Jose, Navotas, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, by taking advantage of the offended party, nine (9) year old minor Gemmalyn Magbanua, with the use of force and intimidation, and threatening said Gemmalyn Magbanua with bodily harm, did then and there willfully, unlawfully and feloniously have carnal knowledge with said Gemmalyn Magbanua, against her will and consent, to her damage and prejudice.

CONTRARY TO LAW"<sup>[3]</sup>

On March 20, 1995, the accused was arraigned and with the assistance of counsel entered a plea of not guilty to the crime charged.<sup>[4]</sup> Thereafter, trial ensued.

The undisputed facts established by the prosecution and adopted by the trial court as the basis for its decision are as follows:

"The Magbanua family in the year 1992 was among the lessees of Mrs. Leoncia Piedad in her residential building located at No. 22 Celestino Street, San Juan, Navotas, Metro Manila. They were occupying one of the rented rooms at the left wing and so with the Forca Family of the other while the main house serves as the residence of Mrs. Piedad and her family including accused Alberto Arce, Jr., married to her daughter Cynthia Piedad.

Sometime in the middle part of July of same year and around 3:00

o'clock in the afternoon, Arce went to the room of the Magbanuas to ask Gemmalyn to buy cigarette. After she was able to buy what the accused requested from her, Gemmalyn looked for Arce but failed to find the accused at the sala of his house. The victim proceeded to the kitchen where she finally saw Arce who told her to wait for a minute as he closed the door. Arce when he came back ordered Gemmalyn to take off her shorts and panty before stripping himself of his trousers and brief. The accused subsequently made the victim to sit on his lap, with their legs spread apart, while she was facing him. In that position, Arce held the victim's hands and started leading his penis into touching the vagina of Gemmalyn for half an hour. The victim spoke to Arce why he was doing that to her but the accused just kept mum. Gemmalyn also pleaded to Arce not to do it with her because she is still young. Accused did not answer back. He then told Gemmalyn to stand up. By the time the victim was putting on her shorts and panty, Arce was playing with his penis until a whitish liquid oozed out from it. Arce ensuingly gave Gemmalyn P1.00 which the victim nonetheless rejected before allowing her to go home.

Six (6) days thereafter, Gemmalyn met Arce standing at the foot of the stairway. The accused once more requested the victim to buy cigarette. When Gemmalyn returned and handed to him the cigarette, Arce dragged her near the wall of the second floor of the residential building. After removing his shorts and brief, Arce held Gemmalyn by the face to force her mouth to open. He let the victim sucked (sic) his penis for half an hour before withdrawing it and played with his sex organ for a short while till a whitish liquid came out. Gemmalyn felt the penis of the accused to be hot and hard. Arce again gave Gemmalyn P1.00 which the latter turned down prior to his threat to the victim that he would kill her if ever she reported the incident.

From that second sexual encounter, six (6) days also elapsed when the third occasion occurred. Gemmalyn caught sight of Arce once more at his sala. He again requested the victim to buy cigarette. Upon receipt of the stuff, Arce closed the door and sat Gemmalyn on his lap, afterwards, begun kissing her on the neck and lips. He forced his tongue into the mouth of Gemmalyn for a moment when blackout suddenly struck up. Arce instructed Gemmalyn to stand up before opening the door which accorded the victim the opportunity to run outside.

Gemmalyn enduringly revealed her ordeal in the hands of the accused to her best friend and classmate Joy Lyn Ramirez. They were at the basketball court when Joy Lyn noticed the sadness on the face of the victim. Gemmalyn at the end narrated to her friend the manner Arce molested (binastos) her and the pretext the accused employed as well as the places where the sexual molestation took place. Gemmalyn, however, told Joy Lyn to keep it a secret because she did not want her mother to know about her experiences for she might be forced to leave their house. Joy Lyn, on the other hand, informed her mother Helen what Gemmalyn divulged to her. Helen then called Gemmalyn regarding the veracity of the story. Yet, the victim requested Helen not to disclose it to her mother.

On June 22, 1993, Mrs. Lydia Magbanua was informed by her maid about the rape which she overheard during the conversation of Mrs. Piedad and Gemmalyn at the Navotas Elementary School. She immediately went to the school and found the two still talking to each other. Mrs. Piedad said to her that Gemmalyn was telling her classmates that she was raped. When Mrs. Magbanua tried to speak with her daughter, Gemmalyn became worried and kept on rubbing her back against the wall. Mrs. Magbanua opted to bring her daughter to their house where Gemmalyn pointed to Arce as the man who raped her three (3) times. On that evening Gemmalyn only recalled the places where she was raped but not the dates of the commission. Nevertheless, Mrs. Magbanua assured her daughter that she would help her. She then talked to Mrs. Piedad and Eva, daughter-in-law of the former, regarding the incidents. Mrs. Piedad told Mrs. Magbanua not to make an outcry because the more her child would be traumatized. During the conversation, the parents of Arce arrived. Mrs. Piedad and Eva met and lead them inside the building. Mrs. Magbanua seeing them gone went to the house of Mrs. Piedad where she chanced upon Arce. She punched the accused on the face and cursed him. The accused wondered why. Mrs. Magbanua told him "Bakit, bakit ka pa, alam mo na ang ginawa mo sa anak ko, binaboy mo na ang anak ko." Arce did not make any response and just ran away through the kitchen. Later on, Mrs. Piedad, Cynthia Piedad and the parents of the accused went to see Mrs. Magbanua and asked forgiveness in behalf of the accused but such effort proved futile.

On the next morning, Cynthia Piedad and the mother of Arce came back reiterating their earlier plea. Mrs. Magbanua instead told them, "Pagkatapos sinara ang pagkababae ng anak ko". Nonetheless, Mrs. Magbanua agreed to have her daughter examined at the Mary Johnston Hospital. The result of the examination shows that there was no penile penetration of the genitalia of Gemmalyn. However, Mrs. Magbanua still pursued the complaint against Arce."<sup>[5]</sup>

On April 30, 1999, the RTC rendered its decision finding the accused guilty of rape and two (2) counts of acts of lasciviousness, the dispositive portion of the decision reads as follows:

"WHEREFORE, premises considered, judgment is hereby rendered as follows:

1. In Criminal Case No. 15359-MN, the Court finds accused ALBERTO ARCE, JR. guilty beyond reasonable doubt of the crime of Statutory Rape (Art. 335 of the Revised Penal Code) and hereby sentences him to suffer the penalty of *reclusion perpetua*.

Accused is likewise ordered to pay Gemmalyn Magabanua the sum of P50,000.00 as civil indemnity, P50,000.00 by way of moral damages, P30,000.00 as exemplary damages and cost of the suit;

2. In Criminal Case Nos. 15466-MN and 15467-MN, the Court finds accused ALBERTO ARCE, JR. guilty beyond reasonable doubt of the crime of Acts of Lasciviousness (Art. 336 of the Revised Penal Code) and hereby sentences him to suffer in each case an indeterminate penalty of five (5) months *arresto mayor*, as minimum, to five (5) years of *prision correccional*, as maximum, and to pay the cost of the suit.

Let the accused be credited for whatever preventive imprisonment he had undergone in connection with the above-entitled cases.

SO ORDERED."<sup>[6]</sup>

As previously mentioned, the accused-appellant is only appealing the decision in Criminal Case No. 15359-MN where he was convicted of rape and sentenced to suffer the penalty of *reclusion perpetua*.<sup>[7]</sup> We are therefore limiting our discussion to the conviction for rape.

In support of his appeal, accused-appellant claims that the prosecution failed to prove that he had actual carnal knowledge with the victim, Gemmalyn. According to the accused-appellant, the prosecution failed to establish actual penetration of Gemmalyn's vagina since Gemmalyn herself admitted that accused-appellant's penis was not inserted into her vagina. Accused-appellant further argues that the conduct of Gemmalyn after she was allegedly raped belies the fact of rape considering that she was active and lively and that she even attained higher grades in school after the incident. Accused-appellant therefore prays that he be acquitted of the crime charged.

After a careful review, we resolve to affirm the judgment of conviction of the RTC.

In her testimony, the victim Gemmalyn positively identified accused-appellant as her assailant and narrated the manner by which she was assaulted by him as follows:

"ATTY. BARRIOS:

Q: Do you know the accused in this case Alberto Arce?

A: Yes, sir.

Q: Could you please point to him if he is in this court room?

INTERPRETER:

Witness pointing to a certain person in court wearing yellow shirt and a black pants who when asked his name answered by the name of Alberto Arce.

ATTY. BARRIOS:

Q: Could you tell the court when for the first time did you come to know him?

A: I came to know him in 1991, sir.  
xxx xxx xxx

Q: Mid of July 1992 one afternoon at around 3:00 o'clock do you remember if there is anything unusual that happened? to you?

ATTY. VELARDE:

I object to the question on the ground that it is vague

because the date is not being specified and the witness is being asked to recall a particular event on a day which is not specified your honor.

ATTY. BARRIOS:

The Information precisely states that the offense occurred in mid July your honor.

COURT:

That's why the day of the date.

ATTY. BARRIOS:

Your honor the information states that the offense occurred in a day it is not specified, well if the witness could remember.

COURT:

If the witness could remember.

ATTY. BARRIOS:

On that condition your honor.

COURT:

Go ahead.

WITNESS:

Yes, there was, sir.

ATTY. BARRIOS:

Q: What is that mid July 1992, what date?

A: It was July 1992, sir.

COURT:

If you could remember the date in July on that unusual incident. What day?

WITNESS:

It was a Sunday, your honor.

COURT:

And do you understand the calendar?

WITNESS:

Yes, your honor.

COURT:

Is it in the first week, second week, third week or fourth week of July?

WITNESS:

Mid of July your honor.

COURT:

She cannot remember the exact date go ahead now.

ATTY. BARRIOS:

Why do you remember that it was a Sunday the month of July 1992?

WITNESS:

After six (6) day, sir.

Q: What about that?

A: I am referring to the days Mondays, Tuesdays, Wednesdays, Thursdays, Fridays, Saturdays.

Q: Now, what happened during the Mondays, Tuesdays, Wednesdays, up to Saturdays?

A: None, sir.

Q: What is the significance about a Sunday?

A: Because of what he did to me, sir.