

FIRST DIVISION

[G.R. No. 201447, January 09, 2013]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ANASTACIO BROCA, AMISTOSO Y ACCUSED-APPELLANT.**

D E C I S I O N

LEONARDO-DE CASTRO, J.:

Before the Court is the appeal of accused-appellant Anastacio Amistoso y Broca (Amistoso) of the Decision^[1] dated August 25, 2011 of the Court of Appeals in CA-G.R. CR.-H.C. No. 04012, affirming with modification the Decision^[2] dated March 23, 2006 of the Regional Trial Court (RTC) of Masbate City, Branch 48, in Criminal Case No. 10106, which found Amistoso guilty beyond reasonable doubt of the qualified rape of his daughter AAA.^[3]

Amistoso was charged by the Provincial Prosecutor of Masbate in an Information^[4] dated August 30, 2000,^[5] which reads:

The undersigned 3rd Assistant Provincial Prosecutor upon a sworn complaint filed by private offended party, accuses ANASTACIO AMISTOSO y BROCA, for VIOLATION OF ANTI-RAPE LAW OF 1997 (art. 266-A, par. 1 sub par. (d) committed as follows:

That on or about the 10th day of July 2000, at about 8:00 o'clock in the evening thereof, at x x x Province of Masbate, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with lewd design and with intent to have carnal knowledge with [AAA], a 12-year old girl, did then and there wilfully, unlawfully and feloniously succeed in having carnal knowledge with the victim against her will and without her consent.

With the aggravating circumstance of relationship, accused being the father of the victim.

When arraigned on July 23, 2002, Amistoso pleaded not guilty to the crime charged.^[6]

Trial on the merits ensued.

The prosecution presented three witnesses: AAA,^[7] the victim herself; Dr. Ulysses V. Francisco (Francisco),^[8] the Municipal Health Officer who conducted the physical

examination of AAA; and Senior Police Officer (SPO) 4 Restituto Lipatan (Lipatan),^[9] the police investigator on duty at the police station on July 13, 2000. The prosecution also submitted as documentary evidence the Complaint^[10] dated July 13, 2000 filed by BBB, AAA's mother, against Amistoso; AAA's Affidavit^[11] dated July 13, 2000; Dr. Francisco's Medico-Legal Report^[12] dated July 13, 2000; AAA's Certificate of Live Birth;^[13] AAA's elementary school records;^[14] and a photocopy of the page in the Police Blotter containing the entries for July 13, 2000.^[15]

The evidence for the prosecution presented the following version of events:

AAA was born on June 2, 1988, the second of five children of Amistoso and BBB. Their family lived in a one-room shanty in Masbate. On July 10, 2000, AAA was exactly 12 years, one month, and eight days old.

Prior to July 10, 2000, Amistoso had often scolded AAA, maliciously pinched AAA's thighs, and even whipped AAA. At around 11:00 a.m. of July 10, 2000, Amistoso was again mad at AAA because AAA, then busy cooking rice, refused to go with her father to the forest to get a piece of wood which Amistoso would use as a handle for his bolo. Because of this, a quarrel erupted between Amistoso and BBB. In his fury, Amistoso attempted to hack AAA. BBB ran away with her other children to her mother's house in another *barangay*. AAA though stayed behind because she was afraid that Amistoso would get even madder at her.

On the night of July 10, 2000, AAA had fallen asleep while Amistoso was eating. AAA was awakened at around 8:00 p.m. when Amistoso, already naked, mounted her. Amistoso reached under AAA's skirt and removed her panties. AAA shouted, "Pa, *ayaw man!*" (Pa, please don't!), but Amistoso merely covered AAA's mouth with one hand. Amistoso then inserted his penis inside AAA's vagina. The pain AAA felt made her cry. After he had ejaculated, Amistoso stood up. AAA noticed white substance and blood coming from her vagina. Amistoso told AAA not to tell anyone what happened between them, otherwise, he would kill her.

The following day, July 11, 2000, AAA left their residence without Amistoso's consent to hide at the house of a certain Julie, a recruiter. AAA narrated to Julie her ordeal in Amistoso's hands. BBB subsequently found AAA at Julie's house. On July 13, 2000, AAA told BBB what Amistoso did to her. BBB brought AAA to the Department of Social Welfare and Development (DSWD), which in turn, brought AAA to Dr. Francisco for physical examination.

Thereafter, BBB and AAA went to the police for the execution of AAA's Affidavit and the filing of BBB's Complaint against Amistoso. A Municipal Circuit Trial Court in Masbate, after conducting the necessary preliminary examination, issued an Order of Arrest against Amistoso on July 13, 2000. Amistoso was arrested the same day and the fact thereof was entered in the Police Blotter by SPO4 Lipatan.

Dr. Francisco's findings in his Medico-Legal Report dated July 13, 2000 were as follows:

Hymen: Old hymenal lacerations noted at 7 and 3 o[']clock corresponding to the face of the clock.

Vaginal canal: Showed less degree of resistance and admits about two of the examiner[']s fingers.

REMARKS:

Physical Virginity has been lost to [AAA]^[16]

Dr. Francisco explained on the witness stand that the cause of AAA's hymenal lacerations was the penetration of a blunt object, which could be a penis. He also opined that a hymenal laceration, just like any wound, would take at least a week to heal. Upon further questioning, he answered that "[i]n minimum it would heal in one week time except when there is no infection."^[17]

The lone evidence for the defense was Amistoso's testimony.^[18]

Amistoso recounted that on July 10, 2000, he was working, unloading diesel and kerosene, at his employer's warehouse. After finishing his work at around 8:00 p.m., Amistoso had dinner at his employer's place before going home. The distance between his employer's warehouse and his house was about a kilometer, a 10-minute hike away.

When Amistoso arrived home, he found the door and the windows to the house tied shut. The house was primarily made of nipa with bamboo flooring. It was raised a foot from the ground. Amistoso's children were inside the house with BBB and an unknown man. Although he could not see inside the house, Amistoso heard BBB and the man talking. Amistoso suspected that BBB and the man were having sexual intercourse because they did not open the door when Amistoso called out. Amistoso was told to wait so he did wait outside the house for 15 minutes. Meanwhile, BBB and the man made a hole in the floor of the house from where they slipped out, crawled under the house, and fled.

Amistoso said the children had been sleeping inside the house, but BBB woke the children up. When BBB and her lover fled, the children were left together. However, Amistoso also said that he slept alone in the house on the night of July 10, 2000.^[19]

Amistoso did not take any action after catching BBB and her lover. He did not chase after BBB and her lover when the two fled on July 10, 2000; he did not report the incident to the police; and he did not file charges of adultery against BBB in the days after.

Amistoso believed that BBB, afraid she got caught with another man, manipulated AAA to falsely charge Amistoso with rape. Amistoso averred that BBB actually wanted to reconcile with him and apologized to him in May 2001 for what had happened, but he refused.^[20]

On March 23, 2006, the RTC rendered its Decision finding Amistoso guilty of qualified rape, to wit:

In view of the foregoing, this Court is convinced and so holds that the prosecution has proved the guilt of accused Anastacio Amistoso beyond reasonable doubt of qualified rape, punished under Article 266-B, par. 5, sub. Par. 1.

WHEREFORE, accused **ANASTACIO AMISTOSO**, having been convicted of **Qualified Rape**, he is hereby sentenced to the capital penalty of **DEATH**; to pay the victim the sum of Seventy[-]Five Thousand Pesos (PhP75,000.00) as indemnity; to pay the said victim the sum of Fifty Thousand Pesos (PhP50,000.00) as for moral damages, and to pay the costs.^[21]

On appeal, the Court of Appeals affirmed Amistoso's conviction for qualified rape but modified the penalties imposed. Below is the decretal portion of the Decision dated August 25, 2011 of the appellate court:

WHEREFORE, the appeal is **DISMISSED** and the assailed Decision dated March 23, 2006 of the Regional Trial Court of Masbate City, Branch 48, in Criminal Case No. 10106 is **AFFIRMED WITH MODIFICATION**.

Accused-appellant Anastacio Amistoso is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole. In addition to civil indemnity in the amount of P75,000.00, he is ordered to pay the victim P75,000.00 as moral damages and P30,000.00 as exemplary damages.^[22]

Hence, Amistoso comes before this Court via the instant appeal with a lone assignment of error:

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.^[23]

Amistoso argues that the defense of denial and alibi should not be viewed with outright disfavor. Such defense, notwithstanding its inherent weakness, may still be a plausible excuse. Be that as it may, the prosecution cannot profit from the weakness of Amistoso's defense; it must rely on the strength of its own evidence and establish Amistoso's guilt beyond reasonable doubt. Amistoso asserts that the prosecution failed even in this regard.

Amistoso was charged in the Information with statutory rape under Article 266-A, paragraph 1(d) of the Revised Penal Code, as amended. The elements of said crime are: (1) that the accused had carnal knowledge of a woman; and (2) that the woman is below 12 years of age or is demented.

According to Amistoso, there is no proof beyond reasonable doubt that he had carnal knowledge of AAA. AAA's claim that Amistoso was able to insert his penis into

her vagina on July 10, 2000 was contrary to the physical evidence on record. Dr. Francisco testified that hymenal lacerations would take a minimum of one week to heal; but in his Medico- Legal Report, prepared on July 13, 2000, just three days after AAA's alleged rape, he stated that AAA's hymenal lacerations were already healed. Amistoso also asserts that AAA had ulterior motive to falsely accuse him of rape. AAA admitted that Amistoso had been maltreating her and that she had already developed hatred or ill feeling against Amistoso. Such admission casts doubts on the veracity and credibility of AAA's rape charge and raises the question of whether the act complained of actually occurred.

Amistoso further claims lack of showing that AAA was below 12 years old or demented when she was supposedly raped on July 10, 2000. According to the prosecution's own evidence, AAA was precisely 12 years, one month, and eight days old on July 10, 2000; while the prosecution did not at all present any evidence of AAA's mental condition.

Amistoso's appeal is without merit.

Reproduced hereunder are the pertinent provisions of the Revised Penal Code, as amended:

ART. 266-A. *Rape; when and how committed.* – Rape is committed –

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat or intimidation;

b) When the offended party is deprived of reason or is otherwise unconscious;

c) By means of fraudulent machination or grave abuse of authority;

d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

x x x x

ART. 266-B. *Penalties.* – Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

x x x x

The **death penalty** shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

1) When the **victim is under eighteen (18) years of age and the offender is a parent**, ascendant, stepparent, guardian, relative by