

## SECOND DIVISION

[ G.R. No. 179031, November 14, 2012 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
BENJAMIN SORIA Y GOMEZ, ACCUSED-APPELLANT.**

### D E C I S I O N

**DEL CASTILLO, J.:**

This case involves a father's detestable act of abusing his daughter through rape by sexual assault.

#### ***Factual Antecedents***

Accused-appellant Benjamin Soria y Gomez (appellant) seeks a review of the December 29, 2006 Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 01442 which affirmed with modification the June 30, 2005 Judgment<sup>[2]</sup> of the Regional Trial Court (RTC) of Quezon City, Branch 94, in Criminal Case No. Q-01-98692. Said RTC Judgment found appellant guilty beyond reasonable doubt of the crime of rape committed against his daughter "AAA",<sup>[3]</sup> as described in an Information,<sup>[4]</sup> the relevant portion of which reads:

That on or about the 26<sup>th</sup> day of February, 2000, in Quezon City, Philippines, the said accused, who is the father of private complainant "AAA", did then and there willfully, unlawfully, and feloniously with force and intimidation commit an act of sexual assault upon the person of one "AAA", a minor, 7 years of age[, ] by then and there inserting his penis into [the] genital of said complainant, all against her will and consent, which act debases, degrades, or demeans the intrinsic worth and dignity of said "AAA", as a human being, in violation of said law.

CONTRARY TO LAW.<sup>[5]</sup>

Appellant pleaded not guilty to the crime charged. Pre-trial and trial thereafter ensued.

#### ***Version of the Prosecution***

On February 26, 2000, "AAA" and her siblings enjoyed the spaghetti their father (appellant) brought home for merienda. After eating, "AAA" went to the bedroom to rest. Thereafter, appellant also entered the room and positioned himself on top of "AAA", took off her clothes and inserted his penis into her vagina. "AAA" felt intense pain from her breast down to her vagina and thus told her father that it was painful. At that point, appellant apologized to his daughter, stood up, and left the

room. This whole incident was witnessed by "AAA's" brother, "BBB".

The pain persisted until "AAA's" vagina started to bleed. She thus told her aunt about it and they proceeded to a hospital for treatment. Her mother was also immediately informed of her ordeal. Subsequently, "AAA" was taken into the custody of the Department of Social Welfare and Development.

On March 15, 2000, Medico-Legal Officer Francisco A. Supe, Jr., M.D. (Dr. Supe) examined "AAA", which examination yielded the following results:

GENERAL AND EXTRA-GENITAL: Fairly developed, fairly nourished and coherent female child. Breasts are undeveloped. Abdomen is flat and soft.

GENITAL: There is absent growth of pubic hair. Labia majora are full, convex, and coaptated with light brown labia minora presenting in between. On separating the same, disclosed an elastic, fleshy type, hyperemic and intact hymen. Posterior fourchette is sharp.

CONCLUSION: The subject is in virgin state physically. There are no external signs of application of any form of physical trauma.<sup>[6]</sup>

### ***Version of the Defense***

Appellant admitted that he was at home on the day and time of "AAA's" alleged rape but denied committing the same. Instead, he claimed that the filing of the rape case against him was instigated by his wife, whom he confronted about her illicit affair with a man residing in their community. According to appellant, he could not have molested "AAA" because he treated her well. In fact, he was the only one sending his children to school since his wife already neglected them and seldom comes home.

### ***Ruling of the Regional Trial Court***

On June 30, 2005, the trial court rendered its Judgment<sup>[7]</sup> finding appellant guilty beyond reasonable doubt of the crime of rape against "AAA", his daughter of minor age, as charged in the Information. It ruled that the lack of tenacious resistance on the part of "AAA" is immaterial considering that appellant's moral ascendancy and influence over her substitute for violence and intimidation.<sup>[8]</sup> It also held that his wife could not have instigated the filing of the rape case since as the mother of "AAA", it would not be natural for her to use her child as a tool to exact revenge especially if it will result in her embarrassment and stigma.<sup>[9]</sup> The trial court gave credence to the testimony of "AAA" and her positive identification of appellant as her rapist, and rejected the latter's defense of denial. The dispositive portion of the Judgment reads as follows:

WHEREFORE, premises considered, judgment is hereby rendered finding the herein accused, BENJAMIN SORIA Y GOMEZ - GUILTY beyond reasonable doubt of the crime as charged and sentences him to suffer

the supreme penalty of DEATH and to indemnify the offended party the amount of P75,000.00[,] to pay moral damages in the amount of P50,000.00[,] and the amount of P25,000.00 as exemplary damages to deter other fathers with perverse proclivities for aberrant sexual behavior for sexually abusing their own daughters.

SO ORDERED.<sup>[10]</sup>

### ***Ruling of the Court of Appeals***

In its Decision<sup>[11]</sup> dated December 29, 2006, the CA found partial merit in the appeal. While the appellate court was convinced that appellant raped "AAA", it nevertheless noted the prosecution's failure to present her birth certificate as competent proof of her minority. Thus, the CA concluded that the crime committed by appellant against his daughter was only simple rape and accordingly modified the penalty imposed by the trial court from death to *reclusion perpetua* and reduced the civil indemnity awarded from P75,000.00 to P50,000.00. The dispositive portion of the appellate court's Decision reads as follows:

**WHEREFORE**, premises considered, [the] appeal is hereby **GRANTED** and the June 30, 2005 Decision of the Regional Trial Court of Quezon City, Branch 94, in Criminal Case No. Q-01-98692, is hereby **MODIFIED**, in that, the penalty imposed is reduced to *reclusion perpetua* instead of death and the civil indemnity to be paid by the offender to the victim is hereby reduced to the amount of P50,000.00 instead of P75,000.00 pursuant to prevailing jurisprudence as explained in this decision.

Pursuant to Section 13(c), Rule 124 of the 2000 Rules of Criminal Procedure as amended by A.M. No. 00-5-03-SC dated September 28, 2004, which became effective on October 15, 2004, this judgment of the Court of Appeals may be appealed to the Supreme Court by notice of appeal filed with the Clerk of Court of the Court of Appeals.

**SO ORDERED.**<sup>[12]</sup>

Still insisting on his innocence, appellant comes to this Court through this appeal.

### **Assignment of Errors**

Appellant adopts the same assignment of errors he raised before the appellate court, viz:

- I. THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED GUILTY OF THE CRIME OF RAPE DESPITE THE FAILURE OF THE PROSECUTION TO OVERTHROW THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE X X X.

II. ASSUMING ARGUENDO THAT THE ACCUSED IS GUILTY OF THE CRIME CHARGED, THE TRIAL COURT GRAVELY ERRED IN IMPOSING THE DEATH PENALTY UPON HIM.<sup>[13]</sup>

Appellant asserts that he should be acquitted of the crime of rape since there is no evidence that would establish the fact of sexual intercourse. Aside from the prosecution's failure to prove penile contact, "AAA's" testimony was also wanting in details as to how he took off her underwear or whether she saw his penis during the incident despite leading questions propounded on the matter by the prosecution. The medical report even revealed that "AAA's" hymen remained intact and that there were no notable lacerations or external physical injuries thereon. Appellant therefore surmises that his wife merely instigated "AAA" to file this baseless rape case against him in retaliation for his act of confronting her about her illicit relationship with a neighbor.

**Our Ruling**

The appeal lacks merit.

*The crime of rape under Article 266-A of the Revised Penal Code (RPC).*

Republic Act No. 8353, otherwise known as the Anti-Rape Law of 1997, classified the crime of rape as a crime against persons. It also amended Article 335 of the RPC and incorporated therein Article 266-A which reads:

Article 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;

2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

Thus, rape can now be committed either through sexual intercourse or by sexual assault. Rape under paragraph 1 of the above-cited article is referred to as rape through sexual intercourse. Carnal knowledge is the central element and it must be proven beyond reasonable doubt.<sup>[14]</sup> It is commonly denominated as "organ rape" or "penile rape"<sup>[15]</sup> and must be attended by any of the circumstances enumerated

in subparagraphs (a) to (d) of paragraph 1.

On the other hand, rape under paragraph 2 of Article 266-A is commonly known as rape by sexual assault. The perpetrator, under any of the attendant circumstances mentioned in paragraph 1, commits this kind of rape by inserting his penis into another person's mouth or anal orifice, or any instrument or object into the genital or anal orifice of another person. It is also called "instrument or object rape", also "gender-free rape".<sup>[16]</sup>

*The Information did not specify whether the crime of rape was committed through sexual intercourse or by sexual assault.*

The Information in this case did not specify with certainty whether appellant committed the rape through sexual intercourse under paragraph 1 of Article 266-A, or rape by sexual assault as described in paragraph 2 thereof. The Information stated that appellant inserted his penis into the genital of "AAA," which constituted rape by sexual intercourse under the first paragraph of Article 266-A. At the same time, the Information alleged that appellant used force and intimidation to commit an act of sexual assault. While these allegations cause ambiguity, they only pertain to the mode or manner of how the rape was committed and the same do not invalidate the Information or result in the automatic dismissal of the case. "[W]here an offense may be committed in any of the different modes and the offense is alleged to have been committed in two or more modes specified, the indictment is sufficient, notwithstanding the fact that the different means of committing the same offense are prohibited by separate sections of the statute. The allegation in the information of the various ways of committing the offense should be regarded as a description of only one offense and the information is not thereby rendered defective on the ground of multifariousness."<sup>[17]</sup> Any objection from the appellant with respect to the Information is held to have been waived failing any effort to oppose the same before trial.<sup>[18]</sup> He therefore can be convicted of rape through sexual intercourse or rape by sexual assault, depending on the evidence adduced during trial.

*The findings of the RTC and the CA on the credibility of "AAA" deserve respect and great weight.*

Both the trial court and the CA held that "AAA" was a credible witness. They ruled that her testimony deserved credence and is sufficient evidence that she was raped by appellant. We find no cogent reason to overturn these findings.

It would be highly inconceivable for "AAA" to impute to her own father the crime of raping her unless the imputation is true.<sup>[19]</sup> In fact, it takes "a certain amount of psychological depravity for a young woman to concoct a story which would put her own father [in] jail for the rest of his remaining life and drag the rest of the family including herself to a lifetime of shame"<sup>[20]</sup> unless the imputation is true.

When a rape victim's testimony on the manner she was defiled is "straightforward and candid, and is corroborated by the medical findings of the examining physician [as in this case], the same is sufficient to support a conviction for rape."<sup>[21]</sup>