

## THIRD DIVISION

[ G.R. No. 186441, March 03, 2010 ]

**SALVADOR FLORDELIZ Y ABENOJAR, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.**

### DECISION

**NACHURA, J.:**

For review are the Court of Appeals (CA) Decision<sup>[1]</sup> and Resolution<sup>[2]</sup> dated July 29, 2008 and February 16, 2009, respectively, in CA-G.R. CR No. 30949. The assailed decision affirmed the Regional Trial Court's<sup>[3]</sup> (RTC's) Joint Judgment<sup>[4]</sup> dated March 9, 2007, convicting petitioner Salvador Flordeliz y Abenojar of nine (9) counts of *Rape* and one (1) count of *Acts of Lasciviousness*, with a modification of the award of damages, while the assailed resolution denied petitioner's motion for reconsideration.

The case stemmed from the following facts:

Sometime in March 1995, ABC, the wife of petitioner and the mother of private complainants AAA and BBB, left for Malaysia as an overseas worker. AAA and BBB were left under the care and custody of petitioner. They resided in a small house in Quezon Hill, Baguio City.<sup>[5]</sup>

In April 1995, while sleeping with BBB and AAA, who was then eleven (11) years old, petitioner woke up AAA, touched her vagina, then played with it. AAA cried and told petitioner that it was painful. The latter stopped, but warned AAA not to tell anyone about it; otherwise, she would be harmed.<sup>[6]</sup> Petitioner allegedly committed the same acts against AAA repeatedly.

Petitioner and his daughters later transferred residence and lived with the former's siblings. Not long after, petitioner was convicted of homicide and imprisoned in Muntinlupa City. Consequently, AAA and BBB lived with their grandparents in La Trinidad, Benguet.<sup>[7]</sup> While petitioner was incarcerated, AAA and BBB visited him and sent him two greeting cards containing the following texts, among others: "happy valentine"; "ur the best dad in the world"; "I love you papa, love BBB, Love BJ"; "till we meet again"; portrait of Jesus Christ with a heart, "this is for you dad"; "flordeliz, AAA P., love AAA and Iyos."<sup>[8]</sup>

In 2001, petitioner was released on parole. He would frequently fetch AAA and BBB from their grandparents' house during weekends and holidays and they would stay with him in Gabriela Silang, Baguio City.<sup>[9]</sup>

Unsatisfied with the abuses committed against AAA, petitioner allegedly started molesting BBB in May 2002.<sup>[10]</sup> In 2003, BBB spent New Year's Day with her father.

On January 3, 2003, while they were sleeping, petitioner inserted his two (2) fingers into BBB's vagina.<sup>[11]</sup> BBB did not attempt to stop petitioner because of fear. Thereafter, they slept beside each other.<sup>[12]</sup> BBB suffered the same ordeal the following night.<sup>[13]</sup>

On February 8, 2003, BBB visited petitioner. Again, petitioner held her vagina, played with it and inserted his fingers, which caused her pain.<sup>[14]</sup>

The same incident allegedly took place on August 3, 2003.<sup>[15]</sup> On October 26, 2003, a day before AAA's birthday, while BBB was with petitioner, the latter committed the same dastardly act. This time, it was for a longer period.<sup>[16]</sup>

During All Saints' Day of 2003, BBB spent two nights with her father and, during those nights (November 1 and 2), she experienced the same sexual abuse.<sup>[17]</sup> The same thing happened on December 28, 2003.<sup>[18]</sup>

Notwithstanding the repeated incidents of sexual abuse committed against her, BBB did not reveal her ordeal to anybody because of fear for her life and that of her mother.<sup>[19]</sup>

AAA and BBB had the chance to reveal their horrifying experiences when their mother ABC arrived for a vacation. AAA immediately told ABC what petitioner did to her. When confronted by ABC, BBB likewise admitted the repeated abuses committed by petitioner. ABC forthwith reported the incidents to the National Bureau of Investigation.<sup>[20]</sup>

After conducting medical examinations on AAA and BBB, the attending physician remarked that there was a "disclosure of sexual abuse and she noted the presence of hymenal notch in posterior portion of hymenal rim that may be due to previous blunt force or penetrating trauma suggestive of abuse."<sup>[21]</sup>

With these findings, petitioner was charged with the crimes of Acts of Lasciviousness,<sup>[22]</sup> committed against AAA, and nine (9) counts of Qualified Rape through Sexual Assault,<sup>[23]</sup> committed against BBB, before the RTC. The crime of acts of lasciviousness was allegedly committed as follows:

That sometime in the month of April 1995 up to 1996 in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and deliberate intent to cause malice and satisfy his lascivious desire, did then and there willfully, unlawfully and feloniously touched and play the private part of the offended party AAA, a minor 14 years of age against her will and consent which act debased (sic), demeaned and degraded the intrinsic worth and dignity of the minor as a human being.

CONTRARY TO LAW.<sup>[24]</sup>

On the other hand, except for the dates of the commission of the crime, each

Information for Rape reads:

That on or about the 8<sup>th</sup> day of February 2003, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation and taking advantage of his moral ascendancy over the private offended party he being the biological father of said offended party, did then and there remove the pants and underwear of said offended party and thereupon fondles her private part and forcibly inserted his finger into the vagina of the offended party BBB, a minor, 11 years of age against her will and consent, which acts constitute Rape as defined under Republic Act 8353 and which acts demeaned, debased and degraded the intrinsic worth and dignity of the minor as a human being.

CONTRARY TO LAW.<sup>[25]</sup>

Upon arraignment, petitioner pleaded "Not guilty" to all the charges. During trial, he interposed the defense of denial and insisted that the charges against him were fabricated by his wife to cover up the infidelity she committed while working abroad.

<sup>[26]</sup> Petitioner also relied on the testimonies of Florabel Flordeliz, Levy Hope Flordeliz and Roderick Flordeliz, whose testimonies consisted mainly of the alleged infidelity of ABC; and petitioner, being a good father, was often visited by his daughters at his residence, where the rooms they occupied were only separated by see-through curtains.<sup>[27]</sup>

On March 9, 2007, the RTC rendered a Joint Judgment<sup>[28]</sup> finding petitioner guilty as charged, the dispositive portion of which reads:

WHEREFORE, premises all duly considered[,], the court finds that the prosecution has established the guilt of the accused beyond reasonable doubt and hereby imposes upon him the following penalties:

1. In **Criminal Case No. 23145-R** for Acts of Lasciviousness, the Indeterminate Penalty of 6 months of Arresto Mayor as the minimum penalty to 6 years of Prision Correccional as the maximum penalty and to indemnify the victim AAA the amount of P20,000.00 as moral damages and to pay the costs.

The penalty shall also carry the accessory penalty of perpetual special disqualification from the right of suffrage (Art. 43, Revised Penal Code)[.]

2. In **Criminal Cases Nos. 23072-R to 23080-R**, the Indeterminate Penalty of twelve (12) years of Prision Mayor as the minimum penalty to twenty (20) years of Reclusion Temporal as the maximum penalty for each case or nine (9) counts of sexual assault considering the aggravating/qualifying circumstance of relationship against the accused and to indemnify BBB the amount of P75,000.00 as moral damages and to pay the costs.

The penalties shall carry with them the accessory penalties of civil interdiction for life and perpetual absolute disqualification (Art. 41, Revised Penal Code).

The accused shall be credited with 4/5 of his preventive imprisonment in the service of his sentences.

In the service of his sentences, the same shall be served successively subject to the provisions of Article 70 of the Revised Penal Code or the Three-Fold Rule.

**SO ORDERED.**<sup>[29]</sup>

On appeal, the CA affirmed petitioner's conviction with a modification of the amount of his civil liabilities.

Petitioner now comes before us, raising the following errors:

### **ACTS OF LASCIVIOUSNESS**

The Honorable Court A Quo gravely erred in affirming the judgment of conviction of the Honorable Regional Trial Court for the crime charged despite the fact that the **guilt of the petitioner has not been proven beyond reasonable doubt with moral certainty.**

### **RAPES THROUGH SEXUAL ASSAULT**

1. The Honorable Court A Quo gravely erred in affirming the judgments of conviction of the Honorable Regional Trial Court in Criminal Cases Nos. 23075-R (*alleged rape through sexual assault sometime in May, 2002*) and 23078-R (*alleged rape through sexual assault on August 3, 2003*) respectively, despite the **complete absence of evidence** to show how the alleged incidents of rape through sexual assault were committed by petitioner on said particular dates.

2. The Honorable Court A Quo gravely erred in affirming the judgments of conviction of the Honorable Regional Trial Court in the other alleged counts of rape through sexual assault despite the fact that the **guilt of the petitioner has not been proven beyond reasonable doubt with moral certainty.**<sup>[30]</sup>

Simply put, petitioner assails the factual and legal bases of his conviction, allegedly because of lack of the essential details or circumstances of the commission of the crimes. Petitioner, in effect, questions the credibility of the witnesses for the prosecution and insists that the charges against him were designed to conceal ABC's infidelity.

We have repeatedly held that when the offended parties are young and immature girls, as in this case, courts are inclined to lend credence to their version of what

transpired, considering not only their relative vulnerability, but also the shame and embarrassment to which they would be exposed if the matter about which they testified were not true.<sup>[31]</sup>

It is not uncommon in incestuous rape for the accused to claim that the case is a mere fabrication, and that the victim was moved by familial discord and influence, hostility, or revenge. There is nothing novel about such defense, and this Court had the occasion to address it in the past. In *People v. Ortoa*,<sup>[32]</sup> we held that:

Verily, no child would knowingly expose herself and the rest of her family to the humiliation and strain that a public trial surely entails unless she is so moved by her desire to see to it that the person who forcibly robbed her of her cherished innocence is penalized for his dastardly act. The imputation of ill motives to the victim of an incestuous rape [or lascivious conduct] becomes even more unconvincing as the victim and the accused are not strangers to each other. By electing to proceed with the filing of the complaint, the victim risks not only losing a parent, one whom, before his moral descent, she previously adored and looked up to, but also the likelihood of losing the affection of her relatives who may not believe her claim. Indeed, it is not uncommon for families to be torn apart by an accusation of incestuous rape. Given the serious nature of the crime and its adverse consequences not only to her, it is highly improbable for a daughter to manufacture a rape charge for the sole purpose of getting even with her father. Thus, the alleged ill motives have never swayed the Court against giving credence to the testimonies of victims who remained firm and steadfast in their account of how they were ravished by their sex offenders.<sup>[33]</sup>

Neither can we sustain petitioner's claim that the charges against him were products of ABC's fabrication to cover up the infidelity she committed while working abroad. No matter how enraged a mother may be, it would take nothing less than psychological depravity for her to concoct a story too damaging to the welfare and well-being of her own daughter. Courts are seldom, if at all, convinced that a mother would stoop so low as to expose her own daughter to physical, mental and emotional hardship concomitant to a rape prosecution.<sup>[34]</sup>

We now proceed to discuss the specific crimes with which petitioner was charged.

*Criminal Case Nos. 23072-R, 23073-R, 23074-R, 23076-R, 23077-R, 23079-R, and 23080-R for Rape Through Sexual Assault*

The RTC, affirmed by the CA, correctly convicted petitioner of Rape in Criminal Case Nos. 23072-R, 23073-R, 23074-R, 23076-R, 23077-R, 23079-R, and 23080-R.

In her direct testimony, BBB clearly narrated that, on seven (7) separate occasions, petitioner woke her up, held her vagina, played with it, and inserted his fingers. During trial, the prosecutor presented a small doll where BBB demonstrated how petitioner inserted his forefinger and middle finger, making an up and down motion between the doll's legs.<sup>[35]</sup>