

FIRST DIVISION

[G.R. No. 184177, December 15, 2010]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ANDRES C. FONTILLAS ALIAS "ANDING," ACCUSED-APPELLANT.**

D E C I S I O N

LEONARDO-DE CASTRO, J.:

On appeal is the Decision^[1] dated January 29, 2008 of the Court of Appeals in CA-G.R. CR.-H.C. No. 01792, which affirmed with modification the Decision^[2] dated October 28, 2005 of Branch 69 of the Regional Trial Court (RTC) of Iba, Zambales, convicting accused-appellant Andres Fontillas, also known as "Anding," of qualified rape as defined and penalized under Articles 266-A(1)(c) and 266-B(1) of the Revised Penal Code.

The real name of the private offended party and her immediate family members, as well as such other personal circumstances or any other information tending to establish or compromise her identity, are withheld pursuant to *People v. Cabalquinto*^[3] and *People v. Guillermo*.^[4] Thus, the initials AAA represent the private offended party while the initials BBB, CCC, DDD, and EEE refer to her relatives.

Accused-appellant was indicted for rape qualified by his relationship with and the minority of AAA. The criminal information filed with the RTC read:

That on or about the 8th day of December 2001 at [Barangay] Bamban, Municipality of Masinloc, Province of Zambales, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with lewd design and with grave abuse of authority, did then and there, willfully, unlawfully and feloniously, have sexual intercourse with and carnal knowledge of his own daughter, 13-year old [AAA], without her consent and against her will, to the damage and prejudice of said [AAA].^[5]

Accused-appellant pleaded not guilty on June 24, 2002. After the pre-trial conference on September 23, 2002, trial ensued.

The prosecution presented the testimonies of AAA, the private offended party; Dr. Liezl dela Llana Edaño (Dr. Edaño), the medico-legal who physically examined AAA for signs of sexual abuse; and Narcisa Cubian, a social worker from the Department of Social Welfare and Development, formerly assigned at the Home for Girls in Olongapo City, who testified that AAA was referred and placed under the protective custody of said institution. The prosecution dispensed with the testimonies of Senior Police Officer 3 Zaldy Apsay, the police officer who investigated AAA's complaint;

and Ana A. Ecle (Ecle), the social worker who referred AAA for protective custody at the Home for Girls in Olongapo City, as the defense admitted the subject matter of their testimonies. The documentary exhibits for the prosecution consisted of Dr. Edaño's Medico-Legal Report;^[6] AAA's "Sinumpaang Salaysay" and Verified Complaint;^[7] Ecle's Letter and Social Case Study Report;^[8] and AAA's Certificate of Live Birth.^[9]

The defense, on the other hand, presented the testimonies of accused-appellant who denied AAA's accusation; and EEE, accused-appellant's relative and neighbor, who testified that at around 8:30 p.m. on December 8, 2001, he saw accused-appellant under a tamarind tree, drunk, with his head bowed down.

In its Decision dated October 28, 2005, the RTC decreed:

IN VIEW THEREOF, accused Andres Fontillas y Calpo is found **GUILTY** beyond reasonable doubt of the crime of Incestuous Rape and is hereby sentenced to suffer the supreme penalty of **DEATH**. Accused is ordered to pay the victim P75,000.00 as civil indemnity, P75,000.00 as moral damages and P25,000.00 as exemplary damages.^[10]

The RTC transmitted the records of the case to the Court of Appeals for automatic review. Accused-appellant filed his *Brief*^[11] on July 18, 2006 while the plaintiff-appellee, represented by the Office of the Solicitor General (OSG), filed its *Brief*^[12] on November 16, 2006.

The Court of Appeals summarized the evidence of the parties as follows:

In the evening of 08 December 2001, while private complainant was sleeping in their house in Bamban, Masinloc, Zambales with her younger brother [BBB], she was awakened by the arrival of their father, appellant Andres Fontillas, whom she heard coughing. She stood up and helped appellant enter their house because he was drunk. She let him sleep beside them. After a while, she was roused by appellant who was then taking off her short pants. She cried but he warned her not to make any noise. After removing his own pants, appellant pressed down ("inipit") both her hands and feet and covered her mouth with his hands. She kept quiet because she was afraid of him. Then he inserted his penis into her vagina causing complainant to feel pain in her private part.

After satisfying his lust, appellant went out of the house and proceeded to a store nearby while his daughter stayed in their house pretending that she was washing their clothes. When appellant left, she went to report the incident to her Aunt [CCC] who lived nearby. After hearing her story, her Aunt [CCC] did not allow her to go back to their house. Complainant also informed her Uncle [DDD] about the incident. He then brought her to the police station where she executed a sworn statement. After the investigation, complainant was brought to the Home for Girls where she still presently resides.

Dr. Liezl Dela Llana Edaño, the municipal health officer of the Rural Health Unit of Masinloc, Zambales, conducted the physical examination on the victim and made the following findings:

"Pertinent Findings: Conscious, coherent, ambulatory not in any form of cardio respiratory distress.

Genitalia: (+) old hymenal laceration at 6 & 8 o'clock position. Admits one finger with ease.

No other physical injuries noted at the time of the examination.

Laboratory Exam done: attached"

Denying the charge that he ravished his own daughter, [accused-appellant] testified that he worked as a fisherman and mango sprayer seven days a week because he did not want to waste any opportunity to earn. On cross-examination, he admitted that he had a drinking spree with friends on the night of 07 December and that he got too drunk. He likewise testified that he could not remember what happened that evening but only recalled that he woke up at 6:00 in the morning lying beside the door of their shanty.

The defense also presented [EEE] who testified that in the evening of 08 December 2001, he saw his cousin, accused-appellant herein, under a tamarind tree with his head bowed resting on a bench. He approached appellant and found him very drunk so he left him there. He recounted that in the morning of 09 December 2001, his niece, the private complainant, went to his house and informed him that she was raped by her father.^[13]

After its evaluation of the evidence, the Court of Appeals affirmed the finding of guilt by the RTC but modified the penalty imposed, thus:

WHEREFORE, the decision of the Regional Trial Court (Branch 69) of Iba, Zambales, in Criminal Case No. RTC 3360-I finding accused-appellant Andres Fontillas y Calpo alias "Anding" GUILTY of the crime of incestuous rape is AFFIRMED with MODIFICATION. As modified, the penalty of death is hereby reduced to reclusion perpetua.^[14]

Thereafter, accused-appellant appealed his conviction before us. In a Minute Resolution^[15] dated October 6, 2008, we required the parties to file their respective supplemental briefs. The plaintiff-appellee filed a Manifestation^[16] dated November 17, 2008, informing the Court that it was no longer filing a supplemental brief since

it had already substantially and exhaustively refuted accused-appellant's arguments in its Brief before the Court of Appeals. On the other hand, accused-appellant filed his Supplemental Brief^[17] dated December 5, 2008.

The Accused-Appellant's Brief assigns the following errors on the part of the RTC:

I

The trial court gravely erred in finding that the accused-appellant's guilt was proven beyond reasonable doubt.

II

The trial court gravely erred in convicting the accused-appellant despite the weak evidence presented by the prosecution.

III

On the assumption that the accused-appellant committed the acts complained of, the trial court erred in not considering the severe state of intoxication of the accused-appellant.^[18]

Accused-appellant asserts that the prosecution failed to prove his guilt beyond reasonable doubt. He puts AAA's credibility into question considering AAA's failure to defend herself or to resist the assault, even when accused-appellant supposedly had no weapon. The threat accused-appellant supposedly made was not even directed at AAA. In addition, it would have been impossible that BBB, AAA's brother, was not awakened during the rape, and that their close neighbors, who also happen to be their relatives, did not notice anything unusual on the night of December 8, 2001.

Accused-appellant further argues that his severe intoxication from consuming eight bottles of gin with two drinking buddies on the night of December 8, 2001 was corroborated by EEE, who saw accused-appellant drunk under a tamarind tree, and even by the testimonies of the prosecution witnesses themselves. The RTC and the Court of Appeals should have at least appreciated accused-appellant's intoxication as an extenuating circumstance that would absolve accused-appellant from any criminal liability.

Accused-appellant lastly points out that the physical evidence is irreconcilably inconsistent with AAA's version of the rape incident. Dr. Edaño's medical examination reveals that the lacerations on AAA's vagina were old, which may have been acquired weeks before.

Plaintiff-appellee, for its part, maintains that the prosecution had duly proven accused-appellant's guilt beyond reasonable doubt for the crime of qualified rape. AAA convincingly detailed in court how, when, and where she was raped by her own father. Accused-appellant's moral and physical dominion over AAA is sufficient to submit her to his bestial desire. Moreover, accused-appellant failed to present the required proof that his claim of extreme intoxication from alcohol seriously deprived

him of his reasoning, and that such intoxication was not habitual nor intentional, *i.e.*, intended to fortify his resolve to commit the crime.

We affirm accused-appellant's conviction.

The prosecution was able to establish beyond reasonable doubt that accused-appellant, through force, threat or intimidation, had carnal knowledge of his daughter, AAA, who was only 13 years old at that time. AAA's birth certificate shows that she was born on August 15, 1988 and that accused-appellant is her biological father.

AAA was consistent, candid, and straightforward in her narration that she was raped by her own father, to wit:

Q: In the evening of December 8, 2001, what were you doing inside your house [AAA]?

A: I was sleeping, ma'am.

Q: About what time when you went to sleep?

A: I could not remember, ma'am.

Q: What about your brother [BBB], did he go to sleep with you?

A: Yes, ma'am.

Q: What part of the house did you sleep?

A: Inside of the bedroom, ma'am.

Q: So, how long did you sleep that night of December 8, 2001?

A: I have a long slept, ma'am.

Q: Did you wake-up?

A: Yes, ma'am.

Q: What made you wake-up?

A: When my papa arrived, ma'am.

Q: When you said "papa" you are referring to the accused in this case, Andres Fontillas?

A: Yes, ma'am.

Q: How did you come to know that he arrive in your house at that night?

A: I heard that he was coughing, ma'am.

Q: When you heard him coughing, what did you do?

A: I woke-up ma'am.

Q: What did you do next?

A: I stood up, ma'am.

Q: Where did you go?