

## FIRST DIVISION

[ G.R. No. 177355, December 15, 2010 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
MONTANO FLORES Y PARAS, ACCUSED-APPELLANT.**

### D E C I S I O N

**LEONARDO-DE CASTRO, J.:**

Accused-appellant Montano Flores is now before us on review after the Court of Appeals, in its Decision<sup>[1]</sup> dated November 21, 2006, in CA-G.R. CR No. 00502, affirmed *in toto*, the October 13, 2004 Decision<sup>[2]</sup> of the Regional Trial Court (RTC), Branch 62, Gumaca, Quezon, in Criminal Case No. 7098-G, which found Flores guilty beyond reasonable doubt of the crime of **Qualified Rape** as defined and penalized under Article 266-A of the Revised Penal Code and imposed on him the penalty of DEATH and the payment of Seventy-Five Thousand Pesos (P75,000.00) as civil indemnity, Fifty Thousand Pesos (P50,000.00) as moral damages and Twenty-Five Thousand Pesos (P25,000.00) as exemplary damages.

On August 17, 2001, Flores was charged before the RTC of Rape. The accusatory portion of the Information reads:

That on or about the 18<sup>th</sup> day of June 2001, at Barangay Payte, Municipality of Pitogo, Province of Quezon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, armed with a bladed weapon, with force, threats and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of one [AAA],<sup>[3]</sup> a minor, 13 years of age at the time of the commission of the offense, against her will.

That the crime of rape was committed with the qualifying circumstances of victim being under 18 years of age, the accused is her stepfather, being the common-law spouse of her mother, and that the rape was committed in full view of the victim's mother, [BBB].<sup>[4]</sup>

Flores pleaded not guilty to the charge upon arraignment on February 12, 2002. Trial on the merits ensued after the termination of the pre-trial conference.

The prosecution's first witness was Dr. Purita T. Tullas, the Medical Officer of Gumaca District Hospital who examined the victim AAA. She produced the Medico-Legal Certificate dated June 19, 2001, wherein she made the following findings:

P.E. \* No signs of external physical injury

I.E. : Vulva - presence of moderate amount  
of pubic hair

Labia majora and minora well coaptated  
Contusion labia minora, left

Vaginal orifice - admits 5<sup>th</sup> finger  
with resistance

Hymen - fresh lacerations at 3, 6,  
and 9 o'clock

Vaginal smear - negative for sperm cells.[5]

Dr. Tullas testified that the labia minora was slightly swollen and reddish which means that there was a forceful penetration probably by a male sex organ, and that the lacerations could have been inflicted within 24 hours before the examination. The doctor also said that it was most likely AAA's first sexual experience as the orifice of her vagina was still tight and AAA felt pain when she was examined. Dr. Tullas said that the absence of sperm cells was probably because AAA had washed her organ before she went to the hospital for examination. Dr. Tullas further testified that AAA was around 13 years old as her body only started to physically develop.[6]

BBB, the victim's mother, was presented next. She testified that AAA was 13 years old at the time of the incident, and that AAA was her daughter with her late husband. She confirmed that Flores was her live-in-partner for ten years prior to the incident and that they all lived together in one house. BBB swore that on the fateful evening of July 18, 2001, at around eight o'clock, Flores ordered her to ask her daughter AAA to sleep with them. Both AAA and BBB obeyed Flores for fear of his wrath. At around ten o'clock in the evening, BBB was awakened by the pinch of her daughter, BBB was then shocked to see that Flores was already on top of her daughter, who was shouting "*Aray, Aray, Nanay, Aray.*" She felt angry but could not do anything because Flores not only had a bladed weapon poked at her neck, but he also threatened to kill her if she shouted. BBB endured this horrifying episode for the next thirty minutes. The following day, BBB accompanied her daughter AAA to the *Barangay* Captain to report the incident. They went to the municipality's Department of Social Welfare and Development then proceeded to the Gumaca District Hospital.[7]

The third witness for the prosecution was the victim herself, AAA. She testified that she knew Flores because he was the common-law spouse of her mother. She identified him in open court and said that she filed this case against him because he raped her. She testified that on the night she was raped, she was sleeping between Flores and her mother, BBB, when she was awakened by Flores who removed her shorts and panty. Flores then proceeded to insert his penis into her vagina, making a push and pull movement. She shouted in pain and tried to wake her mother up by pinching her. However, AAA realized that her mother will not be able to help her as

she felt the bladed weapon Flores had poked at BBB's neck.<sup>[8]</sup>

Flores, for himself, denied raping AAA. He claimed that BBB was his mother-in-law and not his live-in partner. He alleged that he and AAA had been "sweethearts" for four years prior to the incident and that it was the first time he and AAA had sexual relations due to his enormous respect for her. He also claimed that it was AAA who slept beside him and he was the one awakened by AAA, whom he found on top of him. He averred that AAA was already 19 years old at the time of the incident and even produced a Certification from the Office of the Municipal Civil Registrar<sup>[9]</sup> of General Luna, Quezon to prove that AAA was no longer a minor at the time of the sexual intercourse. He also claimed that he and AAA talked after this case was filed and they agreed to get married, but AAA could not withdraw the case for fear of her mother. Flores further claimed that the reason why this charge was filed against him was because he refused to live with BBB, who wanted Flores for herself.<sup>[10]</sup>

On October 13, 2004, the RTC handed down a guilty verdict against Flores and imposed on him the supreme penalty of death:

WHEREFORE AND IN VIEW OF ALL THE FOREGOING, the Court finds accused **MONTANO FLORES** guilty beyond reasonable doubt of the crime of Qualified Rape defined and punished under Article 266-A of the Revised Penal Code as amended by R.A. 8353 and imposes upon him the penalty of **DEATH**, and in addition, to pay the amount of Php75,000.00 as civil indemnity, Php50,000.00 as moral damages and Php25,000.00 as exemplary damages.<sup>[11]</sup>

In its decision, the RTC debunked Flores' "sweetheart defense." The RTC said that AAA's testimony was frank, candid, and straightforward,<sup>[12]</sup> and AAA was able to establish that Flores was able to have carnal knowledge of her, and his guilt for the crime of rape.<sup>[13]</sup> The RTC further held that AAA's allegations were not only corroborated by her own mother's testimony, but also by the medico-legal findings of Dr. Tullas. The RTC found Flores' imputation of ill motive on BBB was incredible as no mother would subject her own daughter to such humiliation and shame, just because she was shunned by the man she desires. In sum, the RTC said that all the essential elements of rape were proven and duly established, and Flores' blanket denial cannot overcome the categorical assertions of AAA.<sup>[14]</sup>

On intermediate appellate review, the Court of appeals was faced with the sole issue of whether or not the RTC erred in sentencing him to death:

### **LONE ASSIGNMENT OF ERROR**

THE TRIAL COURT GRAVELY ERRED IN IMPOSING UPON THE ACCUSED-APPELLANT THE SUPREME PENALTY OF DEATH IN VIEW OF THE FAILURE OF THE PROSECUTION TO PROVE THE PRIVATE COMPLAINANT'S MINORITY.<sup>[15]</sup>

Flores claimed that the RTC erred in sentencing him to death considering that AAA was already 18 years old at the time of the alleged rape. Flores averred that although AAA was stated to be 13 years old in the Information, AAA was in fact no longer a minor, as shown in the Certification issued by the Office of the Municipal Civil Registrar of General Luna, Quezon. The Court of Appeals agreed with Flores that AAA was indeed already 18 years old when she was raped. However, this did not prevent the Court of Appeals from affirming the imposition of the death penalty as the rape was committed in full view of AAA's mother, hence, under the Revised Penal Code, the death penalty shall still be imposed. The dispositive portion of the Court of Appeals' decision reads:

**WHEREFORE**, finding no reversible error, the appealed Decision dated October 13, 2004 of the Regional Trial Court, Branch 62, Gumaca, Quezon, finding appellant **MONTANO FLORES** guilty of the crime of **QUALIFIED RAPE** is hereby **AFFIRMED in toto**. However, in lieu of the death penalty imposed by the trial court, appellant is hereby sentenced to suffer the penalty of **RECLUSION PERPETUA**, pursuant to Republic Act No. 9346. With regards to civil indemnity, the accused is hereby **ORDERED TO PAY** the victim the amount of P75,000.00 as civil indemnity.

And in addition, accused is also ORDERED to pay the victim P50,000.00 as moral damages and P25,000.00 as exemplary damages.<sup>[16]</sup>

On December 6, 2006, Flores filed his Notice of Appeal and subsequently filed a Manifestation that he is adopting the arguments in his Appellant's Brief in this appeal.

Flores is now before this Court with the same lone assignment of error, wherein he questions the propriety of the imposition of the death penalty upon him in view of the fact that AAA's minority was not conclusively proven by the prosecution.

This Court has made a thorough and exhaustive review of all the records of this case and has found no reason to reverse the judgment below.

We agree with Flores that AAA's age was not proven with certainty. This Court has held that for minority to be considered as a qualifying circumstance in the crime of rape, it must not only be alleged in the Information, but it must also be established with moral certainty.<sup>[17]</sup> Noting the divergent rulings on the proof required to establish the age of the victim in rape cases, this Court, in *People v. Pruna*,<sup>[18]</sup> has set out the following guidelines in appreciating age, either as an element of the crime or as a qualifying circumstance:

1. The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party.

2. In the absence of a certificate of live birth, similar authentic documents such as baptismal certificate and school records which show the date of birth of the victim would suffice to prove age.
3. If the certificate of live birth or authentic document is shown to have been lost or destroyed or otherwise unavailable, the testimony, if clear and credible, of the victim's mother or a member of the family either by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the offended party pursuant to Section 40, Rule 130 of the Rules on Evidence shall be sufficient under the following circumstances:
  - a. If the victim is alleged to be below 3 years of age and what is sought to be proved is that she is less than 7 years old;
  - b. If the victim is alleged to be below 7 years of age and what is sought to be proved is that she is less than 12 years old;
  - c. If the victim is alleged to be below 12 years of age and what is sought to be proved is that she is less than 18 years old.
4. In the absence of a certificate of live birth, authentic document, or the testimony of the victim's mother or relatives concerning the victim's age, the complainant's testimony will suffice provided that it is expressly and clearly admitted by the accused.
5. It is the prosecution that has the burden of proving the age of the offended party. The failure of the accused to object to the testimonial evidence regarding age shall not be taken against him.

[19]

In the case at bar, not only did the prosecution fail to present AAA's birth certificate, but BBB, the victim's mother herself, gave contradictory statements on the true age of her daughter. At one time she said that AAA was 13 years old, and yet when asked about the year of AAA's birthday, she declared that it was 1982. AAA herself did not know the exact year she was born. The Certification from the Municipal Civil Registrar<sup>[20]</sup> of General Luna, Quezon that both parties offered as evidence of AAA's age has no probative value because it was not a certification as to the true age of AAA but as to the fact that the records of birth filed in their archives included those registered from 1930 up to the time the certificate was requested, and that records for the period of 1930 - June 23, 1994 were razed by fire.

However, as the Court of Appeals correctly ruled, Flores still cannot escape the penalty of death. Flores forgot the important fact that aside from AAA's minority, the qualifying circumstance that the rape was committed in full view of AAA's mother was also alleged in the Information, to wit:

That on or about the 18<sup>th</sup> day of June 2001, at Barangay Payte, Municipality of Pitogo, Province of Quezon, Philippines and within the