

SECOND DIVISION

[G.R. No. 182057, February 06, 2009]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
RESTITUTO C. VALENZUELA, ACCUSED-APPELLANT.**

D E C I S I O N

BRION, J.:

This is an appeal from the October 17, 2007 decision^[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01784 affirming with modification the September 8, 2005 decision of the Regional Trial Court (RTC), Branch 48, Masbate City.^[2] The RTC decision found the appellant Restituto Valenzuela y Centeno (*appellant*) guilty beyond reasonable doubt of two (2) counts of rape and imposed on the appellant the death penalty in each case.

ANTECEDENT FACTS

The prosecution charged the appellant before the RTC with the crime of rape under two (2) Informations that read:

Criminal Case No. 8880

That sometime in the year of 1994, and dates subsequent thereto, at Brgy. Concepcion, Municipality of Aroroy, Province of Masbate, Philippines, within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent and with lewd design, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with his daughter, [AAA],^[3] then a nine-year old girl, against her will.

CONTRARY TO LAW^[4]

Criminal Case No. 8881

That sometime in the month of December, 1997, at Brgy. Concepcion, Municipality of Aroroy, Province of Masbate, Philippines, within the jurisdiction of this Honorable Court, the above-named accused with deliberate intent and with lewd design, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with his daughter, [AAA], a twelve-year-old girl, against her will.

CONTRARY TO LAW.^[5]

The appellant pleaded not guilty to both charges. The prosecution presented the following witnesses in the trial on the merits that followed: AAA; Dr. Marilou A. Hernandez (*Dr. Hernandez*); and BBB. The appellant took the witness stand for the defense.

The RTC summarized AAA's testimony regarding the 1994 rape as follows:

Sometime in the year 1994 at about 10:00 in the morning while BBB, the mother of AAA was not at home in Brgy. Concepcion, Aroroy, Masbate, as she was hired to weed in the farm of her neighbor; and said AAA was the only child left at their house since her younger brothers were then playing somewhere, the accused ordered his daughter, AAA, to get inside the bedroom.^[6] Once inside the bedroom, accused Restituto Valenzuela undressed his own daughter, AAA, then sucked her breast, kept on kissing her whole body. She tried to struggle but to no avail. Only her shorts and panty were removed and her dress was just raised. Then her father inserted his finger in her vagina. After a few minutes, Restituto Valenzuela inserted his penis into the vagina of AAA who felt the pain.^[7] Then the accused began the push and pull or pumping on top of his daughter. The victim kept on crying. After that sexual intercourse, the accused stood up and warned his daughter not to tell that incident to anybody or else he will harm her. AAA noticed blood in her vagina. She did not tell that incident to anybody for fear of the threats of her own father. When her mother arrived, she just pretended that nothing unusual happened to her.^[8]

x x x [*Footnotes referring to the pertinent parts of the record supplied*]

AAA further testified that the appellant repeatedly raped her from 1994 to 1998, the last incident being in January 1998.^[9] She gave birth on October 20, 1998, and pointed to the appellant as the father of the child.^[10]

Dr. Hernandez, the Municipal Health Officer of Aroroy, Masbate, narrated that she conducted a physical examination of AAA on August 7, 1998 at the Rural Health Family Planning Center. The examination revealed that AAA was already seven (7) months pregnant.^[11]

According to Dr. Hernandez, she did not find any laceration or injuries on AAA's private part. She attributed the absence of injury to lapse of time; whatever injury there was had healed since the last rape incident happened way back in December 1997.^[12]

BBB, the mother of AAA, testified that the appellant is her common-law husband, and that AAA is their eldest daughter. She recalled that on August 5, 1998, she noticed that AAA was becoming fat and that her stomach was bulging. Thereafter, AAA told her that she had been sexually abused by the appellant. She also learned that AAA had previously disclosed to her uncle, CCC, that the appellant was sexually abusing her (AAA).^[13]

At BBB's instructions, the sexual abuse was reported to the police, leading to the appellant's arrest.^[14]

The appellant was the sole defense witness and gave a different version of the events which the RTC summarized as follows:

Accused Restituto Valenzuela claimed that BBB is his common-law wife. They lived together as husband and wife for quite a long time already. He forgot the date when they started living together as husband and wife. Nor does he know exactly how many years they have lived together. But he is aware that they have eight children. The complainant AAA is his daughter with BBB.^[15]

He denied the charges that he raped his own daughter, AAA. The two charges of rape allegedly committed in 1994 and 1997 against his own daughter, AAA, was *[sic]* all fabricated by his brother-in-law, DDD. The latter was then mad at him because in one instance there was a trouble in the store where he was then drinking and said brother in law was there and he was able to club DDD. The latter insinuated AAA to file these two cases of rape against him, her own father. That his own daughter had been persuaded by his brother-in-law to file these two charges of rape against him. He was also aware that AAA delivered a child and he had been pointed to be the father of the child. The said accused denied having raped his own daughter, AAA. He claimed that he had not done everything *[sic]* that his own daughter had charged against him thru the insinuations of the material uncle of said AAA.^[16]
[Footnotes referring to the pertinent parts of the record supplied]

The RTC convicted the appellant on two (2) counts of qualified rape in its decision of September 8, 2005. The dispositive portion of this decision provides:

WHEREFORE, having been found **GUILTY beyond reasonable doubt** of Qualified Rape, accused **RESTITUTO VALENZUELA y CENTENO** is hereby sentenced to suffer the capital penalty of **DEATH by lethal injection** in both Criminal Cases Nos. 8880 and 8881, to indemnify the victim AAA the sum of Fifty Thousand Pesos (Php50,000.00); to pay the said victim the sum of Seventy-Five Thousand Pesos (Php75,000.00) as for moral damages; and to pay the costs of the proceedings.

SO ORDERED.^[17] *[Emphasis in the original]*

The appellant appealed the RTC decision to the CA under docket number CA-G.R. CR-HC No. 01784. The CA affirmed the RTC decision with the following modifications: (a) the penalty of death was reduced to *reclusion perpetua*; (b) the award of civil indemnity was increased to P75,000.00; and (c) the award of moral damages was reduced to P50,000.00.^[18]

The appellant contends in his Brief that the RTC erred in finding him guilty of the crimes charged as the prosecution failed to prove his guilt beyond reasonable doubt.
^[19]

THE COURT'S RULING

We resolve to **deny** the appeal in Criminal Case No. 8880 and to **grant** the appeal

in Criminal Case No. 8881.

I. Criminal Case No. 8880

Sufficiency of the Prosecution Evidence

Rape is defined and penalized under Article 335^[20] of the Revised Penal Code, as amended,^[21] which provides:

ARTICLE 335. *When and how rape is committed.* - Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

1. By using force or intimidation;
2. When the woman is deprived of reason or otherwise unconscious;
and
3. **When the woman is under twelve years of age** or is demented.

x x x

Rape under paragraph 3 of this article is termed *statutory rape* as it departs from the usual modes of committing rape. What the law punishes in statutory rape is carnal knowledge of a woman below twelve (12) years old. Thus, force, intimidation, and physical evidence of injury are immaterial; the only subject of inquiry is the age of the woman and whether carnal knowledge took place.^[22] The law presumes that the victim does not and cannot have a will of her own on account of her tender years; the child's consent is immaterial because of her presumed incapacity to discern evil from good.^[23]

AAA, while recounting her ordeal, positively identified the appellant as the perpetrator; she never wavered in this identification. To directly quote from the records:

ASSISTANT PROSECUTOR ERNESTO M. SULAT, JR.:

Q: Do you recall any having experienced any unusual incident with your father when you are just nine (9) years of age?

[AAA]:

A: Yes, sir.

Q: Will you tell the Court what happened?

A: **In 1994, I was raped by my father.**

COURT:

Q: How did it happen?

A: When my mother was not around.

x x x

ASSISTANT PROSECUTOR SULAT. JR.:

Q: And what happened when you were told by your father to get inside the room?

A: Then there I was **raped** by him.

COURT:

How did it happen?

A: He forced me and he undressed me.

COURT:

Proceed.

ASSISTANT PROSECUTOR SULAT. JR.:

Q: Can you tell the Court, what happened next?

[AAA]:

A: When my father undressed me, he sucked my breast.

COURT:

You mean to say, at the age of nine (9) your breast is [*sic*] already developed?

A: No, not yet, but there is [*sic*] already small breast.

Q: Then what happened after that?

A: He kept on kissing me, in my whole body.

Q: In that instance, what did you do?

A: I tried to struggle.

COURT:

Proceed.

ASSISTANT PROSECUTOR SULAT. JR.:

Q: You said, you were undressed by your father, what portion of your dress [was] taken off?

[AAA]:

A: He removed my short [*sic*].