

EN BANC

[G.R. No. 173471, March 17, 2009]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ERNESTO MALIBIRAN, ACCUSED-APPELLANT.**

DECISION

VELASCO JR., J.:

For automatic review is the Decision^[1] of the Court of Appeals (CA) rendered on March 31, 2006 in CA-G.R. CR-H.C. No. 00064, modifying the June 23, 2003 Decision^[2] of the Regional Trial Court (RTC), Branch 96 in Baler, Aurora in Criminal Case Nos. 2913, 2919, and 2920. The RTC convicted accused-appellant Ernesto Malibiran of three counts of Qualified Rape.

The Facts

On September 18, 2002, three separate Informations for Rape under Articles 266-A and 266-5 of the Revised Penal Code (RPC) were filed with the RTC against Ernesto. Save for the approximate dates and times of commission of the crime against AAA, ^[3] the following information in Criminal Case No. 2913 typified the other two: ^[4]

The undersigned First Assistant Provincial Prosecutor hereby accuses Ernesto Malibiran of the crime of rape committed as follows:

That [before Christmas in December 2001; one morning after Christmas in 2001 but before May 13, 2002; and one afternoon after Christmas in 2001 but before May 13, 2002, respectively] in Dipasaleng, Diniog, Dilasag, Aurora, and within the jurisdiction of this Honorable Court, the said accused did then and there willfully, unlawfully, and feloniously have carnal knowledge of his eight (8) year old granddaughter [AAA].

CONTRARY TO LAW.

Upon arraignment, Ernesto pleaded not guilty to the above charges. A joint trial then ensued. The prosecution presented five (5) witnesses, among them AAA, her mother, BBB, and the doctor who conducted the medical examination on AAA. ^[5]

As summarized by the trial court and adopted for the most part by the CA in the decision subject of this review, the People's version is as follows:

AAA was born on April 30, 1994 to BBB, AAA's mother, and CCC, AAA's father. Ernesto is BBB's father, making him the maternal grandfather of AAA. BBB, AAA, and her siblings stayed from August 2001 to May 2002 with Ernesto in Dipasaleng, Diniog, Dilasag, Aurora. In 2001, AAA was a child of seven. Ernesto raped her several times, i.e., around 20 times, initially before Christmas of 2001, coinciding

with what AAA referred to as before the singing of *Pasko Na Naman Muli*; and after the season, or after the singing of *Pasko Na Naman Muli*. According to AAA, the rape incidents occurred either at noon or in the evening when members of the family were out. Ernesto would usually pull her inside the room, strip her of her shorts, lay her down, go on top of her, and insert his penis into her sex organ, the process accompanied by the mashing and sucking of breasts. In the first of the series of rape incidents, Ernesto threatened AAA with death should she report the matter to her mother.

At about noon of May 13, 2002, BBB, while resting in their house, noticed her father suddenly pulling AAA to the kitchen. When she stood up and approached the two, Ernesto pushed AAA away. When AAA was later asked by BBB what Ernesto did to her, AAA replied that Ernesto had mashed her breast and touched her private part. It was at this juncture that AAA disclosed to her mother about the sexual abuses she had suffered in the immediate past. BBB then twice wrote to and sought the assistance of the municipal social worker, Jessamin Torre, who in turn later reported the matter to the police.

On May 17, 2002, Dr. German Tiongson examined AAA. A medical certificate he later issued indicated, among other things, that AAA's *labia majora* sustained two lacerations.

The justification Ernesto offered by way of exculpation was both denial and alibi. He testified that he could not have raped AAA "before Christmas of December 2001" as the child was, on December 24, 2001, at the nearby house of Marlon Aldave, returning home the following day. Neither could he have committed the crime one morning after Christmas of 2001 but before May 13, 2002 since, according to him, AAA spent Lent with the same neighbor, while practically the entire family was at the house on May 13, 2002. On that day of May, so Ernesto claimed, he hit AAA's arm with a piece of wood for meddling with his cooking, an event which ended in an altercation between him and BBB. He surmised that BBB's act of charging him was motivated by the anger she harbored after he mauled two of her suitors.

Also presented to testify for the defense was Ernesto's son, Orly, to back up Ernesto's account of what transpired on May 13, 2002.

The Ruling of the RTC

On June 23, 2003, the RTC rendered a Decision, finding Ernesto guilty beyond reasonable doubt of qualified rape on all three counts and sentencing him to death. The dispositive portion of the RTC's decision reads:

WHEREFORE, premises considered, the Court finds accused Ernesto Malibiran GUILTY beyond reasonable doubt of THREE (3) counts of RAPE, defined and penalized under Articles 266-A and 266-B of the Revised Penal Code and hereby sentences him to suffer the supreme penalty of DEATH ON THREE (3) COUNTS and orders him to pay [AAA] P225,000.00 as indemnity *ex delicto*; P150,000.00 as moral damages and P75,000.00 as exemplary damages.

The Clerk of Court is hereby ordered to prepare the mittimus for the transfer of the accused to the National Bilibid Prisons, Muntinlupa City,

and to submit the records of the case to the Supreme Court for its automatic review.

SO ORDERED.^[6]

The RTC forthwith elevated the records of the case to this Court for automatic review. In accordance, however, with the ruling in *People v. Mateo*,^[7] the Court, per its August 24, 2004 Resolution,^[8] transferred the case to the CA for intermediate review.

The Ruling of the CA

On March 31, 2006, the CA rendered judgment affirming the RTC's decision, inclusive of the death penalty thus imposed, but only with respect to Ernesto's conviction in Criminal Case Nos. 2913 and 2920. The appellate court acquitted Ernesto of the crime charged in Criminal Case No. 2919 "in view of [AAA's] denial that the rape took place in the morning contrary to that stated in [the information] in Criminal Case No. 2919."^[9] The CA also modified the appealed RTC decision by reducing the amount awarded as civil indemnity and damages. The *fallo* of the CA's decision reads:

WHEREFORE, the decision appealed from is hereby AFFIRMED insofar as the court finds the accused-appellant Ernesto Malibiran guilty of QUALIFIED RAPE in Criminal Case Nos. 2913 and 2920, while the decision in Criminal Case No. 2919 is hereby REVERSED AND SET ASIDE. Correspondingly, the award of damages is MODIFIED. Appellant is ordered to pay the victim indemnity *ex delicto* of P150,000.00, moral damages of P100,000 and exemplary damages of P25,000.00. No pronouncement as to costs.

SO ORDERED.^[10]

Thus, this automatic review is before us, both the People and the defense manifesting their willingness to submit the case on the basis of their respective appeal briefs submitted before the CA.

The Issue

The sole issue, as raised before and passed upon by the appellate court, comes down to the question of whether or not the pieces of evidence adduced are sufficient to convict Ernesto beyond reasonable doubt of two counts of Qualified Rape under Articles 266-A and 266-B of the RPC. In fine, assailed in this recourse are the credibility of the prosecution's witnesses, AAA and her mother in particular, and the adequacy of its evidence.

The Court's Ruling

As a preliminary matter, it should be stressed that while it is not a trier of facts and is not wont to go over and re-assess the evidence adduced during trial, more so when the appellate court joins the trial court in its findings and conclusions, the Court, in criminal cases falling under its review jurisdiction pursuant to Art. VIII,

Section 5 (2)(d)^[11] of the 1987 Constitution, is tasked to assiduously review such cases, as here. This attitude of circumspection in the review of a decision involving rape conviction becomes all the more necessary owing to the pernicious consequences that such conviction bears on both the accused and the offended party.^[12]

By the distinctive nature of rape cases, conviction usually rests solely on the basis of the testimony of the victim, provided that such testimony is credible, natural, convincing, and consistent with human nature and the normal course of things.^[13] Accordingly, we adhere to the following guiding principles in the review of similar cases, to wit:

- (1) an accusation for rape can be made with facility; it is difficult to prove but more difficult for the accused, though innocent, to disprove;
- (2) in view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and
- (3) the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense.^[14]

After a careful deliberation on this case, taking into meticulous account the arguments raised by the parties' in their respective briefs, the Court resolves to affirm the CA decision for the interplay of the following reasons:

First, the testimony of private complainant AAA was categorical and positive as to the molestations committed by Ernesto through force and threats of physical harm;

Second, medical evidence provides confirmatory dimension to the fact of rape;

Third, the defenses of denial and alibi do not foreclose the commission of rape by Ernesto;

Fourth, the qualifying blood relationship between the minor AAA and Ernesto had adequately been proved.

Testimony of Victim Categorical and Credible

As determined by the CA, confirming the findings of the RTC, AAA's testimony was positive and credible, deserving to be accorded great weight. To recall, AAA recounted how her grandfather sexually ravaged her, at least, per her count, about 20 times. The molestations were perpetrated around noon time or in the afternoon when her mother and siblings were out of the house. Describing how AAA deported herself on the witness stand, the trial court said: "Under rigid examinations, AAA remained steadfast and never wavered in her assertion that Erning raped her several times."^[15] Be this as it may, we cannot but agree with the probative value given by the courts *a quo* to AAA's testimony. We reproduce a portion of AAA's testimony which detailed how Ernesto defiled her:

FISCAL RONQUILLO (to the witness)

What happened when your grandfather pulled you inside the room?

A He removed my shorts and he laid me down, Sir.

Q On what did he make you lie down?

A On the floor, Sir.

Q After he made you lie down on the floor, what else happened?

A He inserted his penis into my vagina, Sir.

x x x x

Q After your grandfather inserted his penis into your private part, what else did he do?

A He mashed my breasts, Sir.

x x x x

Q While the penis of your grandfather was in your vagina and you [said] that you were lying on the floor, were you then facing downwards, upwards or sideward?

A Lying upwards, Sir.

Q How about your grandfather, what was his position then?

A He was facing me, Sir.

x x x x

Q While the penis of your grandfather was inside your vagina, what was he doing aside from mashing your breast?

x x x x

A He was "dinedede" sucking my nipple.

Q While doing that, what was the position of your grandfather, was he lying down, standing or sitting down?

A He was lying, Sir.

Q On what was he lying on?

A On my breast. ("Sa dibdib ko po.")

Q Do you mean to say that your grandfather was on top of you?