

## EN BANC

[ G.R. No. 169245, February 15, 2008 ]

**PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, vs. NELSON  
ABON Y NOVIDO, Accused-Appellant.**

### DECISION

**VELASCO JR., J.:**

*Of all so called heinous crimes,  
none perhaps more deeply provokes feelings of outrage,  
detestation and disgust than incestuous rape.*<sup>[1]</sup>

—former Chief Justice Andres R. Narvasa

The credibility of the testimony of a young incestuous rape victim cannot be diminished by an unsupported allegation that she is mentally disturbed. Considering that family honor is at stake, a minor rape victim will not fabricate a story that she was raped by her own father unless it was true.

### The Case

This is an automatic review of the June 6, 2005 Decision<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00507 entitled *People of the Philippines v. Nelson Abon* which affirmed the June 23, 1998 Decision<sup>[3]</sup> of the Urdaneta City, Pangasinan Regional Trial Court (RTC), Branch 48, convicting accused-appellant Nelson Abon of the crime of qualified rape and sentencing him to suffer the penalty of death.

### The Facts

On the last week of May 1995, at about 11 p.m., in Binalonan, Pangasinan, accused-appellant entered the room where his daughter, AAA,<sup>[4]</sup> who was then 13 years old, and his son, BBB, were sleeping. Accused-appellant moved BBB away from AAA, and, thereafter, embraced AAA. He removed AAA's pajama, then his shorts and brief, and went on top of AAA. AAA called her grandmother, who was sleeping at the next room, but the latter was not awakened by AAA's call. Accused-appellant silenced AAA and threatened to strangle her if she made any noise.<sup>[5]</sup>

Accused-appellant succeeded in inserting his penis inside AAA's vagina, and then made a push and pull movement of his penis inside her vagina for about 20 to 30 minutes. Thereafter, he left.<sup>[6]</sup>

The following morning, AAA told her grandmother about the incident but the latter dismissed her granddaughter's tale. AAA then went to Cristeta Bayno's house and told her about the molestation. AAA also told Bayno that she was previously raped

by her grandfather. Bayno brought AAA to her uncle, who told them to report the matter to the police.<sup>[7]</sup>

Bayno assisted AAA in reporting the matter to the police. Thereafter, AAA was physically examined and the findings showed that her hymen was already ruptured and she had old lacerations inflicted approximately three months before the date of the examination.<sup>[8]</sup>

An Information for qualified rape was filed against Nelson, which reads:

That on or about the last week of May 1995 at [B]arangay Linmansangan, [M]unicipality of Binalonan, [P]rovince of Pangasinan and within the jurisdiction of this Honorable Court, said accused who is the father of the victim, by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge on the person of AAA, a [13-year old woman], against her will.<sup>[9]</sup>

When arraigned, accused-appellant pleaded not guilty to the crime charged.<sup>[10]</sup> During the trial, he interposed denial and alibi as his defenses. He alleged that he had been working in Binangonan, Rizal from March 1995 to August 1995. He also claimed going to Binalonan, Pangasinan only once during that period, and that was in June 1995. He did not see his children then because they were in Pozzorubio, Pangasinan where they were studying. Furthermore, he stated that AAA filed the case against him for the reason that he used to whip her very hard on the buttocks with a yard-long piece of wood.<sup>[11]</sup>

On June 23, 1998, the RTC rendered a Decision, the dispositive portion of which reads:

Wherefore, the Court sentences [accused-appellant] to suffer death penalty as provided for by Section 11 of Republic Act [No.] 7659 and to pay the amount of [PhP] 50,000 as moral damages to the victim AAA aside from paying exemplary damages in the amount of [PhP] 30,000 for other fathers not to follow the bad example shown by the accused.

SO ORDERED.<sup>[12]</sup>

Due to the penalty imposed, the case was forwarded to this Court for automatic review and was originally docketed as G.R. No. 135056. However, in accordance with the ruling in *People v. Mateo*,<sup>[13]</sup> this Court, in its September 14, 2004 Resolution, transferred this case to the CA for intermediate review.

### **The Ruling of the Court of Appeals**

The CA affirmed the trial court's judgment of conviction, but it modified the award of damages. The CA upheld the credibility of the complaining witness, AAA. It observed that accused-appellant failed to show any inconsistency in AAA's testimony, and neither did he prove any ill-motive which would prompt AAA to concoct her incest rape story. The appellate court also dismissed accused-appellant's defenses of denial and alibi as these were not supported by trustworthy evidence.

The modification in the award of damages consisted in the grant of PhP 75,000 as

civil indemnity and the increase in the award of moral damages to PhP 75,000. The award of exemplary damages was, however, decreased to PhP 25,000.

### **The Issues**

On October 17, 2006, accused-appellant filed a Supplemental Brief before this Court, raising the following issues for our consideration:

1. Whether or not the Honorable Court of Appeals erred in affirming the decision of the court a quo finding the appellant guilty beyond reasonable of the crime of qualified rape; [and]
2. Whether or not the Honorable Court of Appeals erred in increasing the amount of damages awarded by the court a quo.<sup>[14]</sup>

### **The Court's Ruling**

The appeal has no merit.

#### **Preliminary Matter: Rules on Appeal**

An appeal is a proceeding undertaken to have a decision reconsidered by bringing it to a higher court authority.<sup>[15]</sup> It is not a right but a mere statutory privilege<sup>[16]</sup> to be exercised only in the manner and in accordance with the provisions of law.<sup>[17]</sup>

Recent developments in criminal law and jurisprudence have brought about changes in the rules on appeal, specifically in cases where the penalty imposed is death, *reclusion perpetua*, or life imprisonment. To clarify the present rules, we shall discuss these developments.

Section 3 of Rule 122 of the 2000 Rules on Criminal Procedure states:

SEC. 3. *How appeal taken*.—(a) The appeal to the Regional Trial Court, or to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction, shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and by serving a copy thereof upon the adverse party.

(b) The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its appellate jurisdiction shall be by petition for review under Rule 42.

(c) The appeal to the Supreme Court in cases where the penalty imposed by the Regional Trial Court is death, *reclusion perpetua*, or life imprisonment, or where a lesser penalty is imposed but for offenses committed on the same occasion or which arose out of the same occurrence that gave rise to the more serious offense for which the penalty of death, *reclusion perpetua*, or life imprisonment is imposed, shall be by filing a notice of appeal in accordance with paragraph (a) of this section.

(d) No notice of appeal is necessary in cases where the death penalty is

imposed by the Regional Trial Court. The same shall be automatically reviewed by the Supreme Court as provided in section 10 of this Rule.

(e) Except as provided in the last paragraph of section 13, Rule 124, all other appeals to the Supreme Court shall be by petition for review on certiorari under Rule 45.

The provision provides that where the penalty imposed by the RTC is *reclusion perpetua* or life imprisonment, an appeal is made directly to this Court by filing a notice of appeal with the court which rendered the judgment or final order appealed from and by serving a copy thereof upon the adverse party. On the other hand, a case where the penalty imposed is death will be automatically reviewed by the Court without a need for filing a notice of appeal.

However, *Mateo*<sup>[18]</sup> modified these rules by providing an intermediate review of the cases by the CA where the penalty imposed is reclusion perpetua, life imprisonment, or death. Pursuant to Mateo's ruling, the Court issued A.M. No. 00-5-03-SC 2004-10-12, amending the pertinent rules governing review of death penalty cases, thus:

## **Rule 122**

**Sec. 3. *How appeal taken.*—(a) The appeal to the Regional Trial Court, or to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction, shall be by notice of appeal filed with the court which rendered the judgment or final order appealed from and by serving a copy thereof upon the adverse party.**

(b) The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its appellate jurisdiction shall be by petition for review under Rule 42.

**(c) The appeal in cases where the penalty imposed by the Regional Trial Court is *reclusion perpetua*, life imprisonment or where a lesser penalty is imposed for offenses committed on the same occasion or which arose out of the same occurrence that gave rise to the more, serious offense for which the penalty of death, reclusion perpetua, or life imprisonment is imposed, shall be by notice of appeal to the Court of Appeals in accordance with paragraph (a) of this Rule.**

(d) No notice of appeal is necessary in cases where the Regional Trial Court imposed the death penalty. The Court of Appeals shall automatically review the judgment as provided in Section 10 of this Rule.

x x x x

**Sec. 10. *Transmission of records in case of death penalty.*—**In all cases where the death penalty is imposed by the trial court, the records shall be forwarded to the Court of Appeals for automatic review and judgment within twenty days but not earlier than fifteen days from the promulgation of the judgment or notice of denial of a motion for new trial