

## FIRST DIVISION

[ G.R. No. 183696, October 24, 2008 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. NELSON ARRAZ,  
APPELLANT.**

### R E S O L U T I O N

**CARPIO, J.:**

This is an appeal from the 23 November 2007 Decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. CR-H.C. No. 02357. The Court of Appeals affirmed the 15 June 2006 Decision<sup>[2]</sup> of the Regional Trial Court, Branch 63, Calabanga, Camarines Sur, in Criminal Case No. RTC'04-907 finding appellant Nelson Arraz guilty beyond reasonable doubt of qualified rape with the modifications that (1) the death penalty be reduced to *reclusion perpetua* without eligibility for parole; and (2) the awards of moral damages and exemplary damages be reduced to P50,000 and P25,000, respectively.

The prosecution charged appellant with raping his 14-year old niece in an Information that reads:

That on or about the 20<sup>th</sup> day of April 2003, at around three o'clock in the morning in Sitio Libtong, Barangay Lupi, Tinambac, Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused willfully, unlawfully, and feloniously through force and intimidation has carnal knowledge with her [sic] niece, [AAA],<sup>[3]</sup> fourteen years old, against her will, to her damage and prejudice.

The crime is committed with the following attendant aggravating/qualifying circumstances:

The victim is under eighteen years of age and the offender is a relative by consanguinity within the third civil degree.

ACTS CONTRARY TO LAW.<sup>[4]</sup>

Upon arraignment, appellant pleaded not guilty. During the pre-trial, appellant admitted that AAA is his niece. Thereafter, trial ensued.

The prosecution presented AAA, who was born on 2 January 1989 as shown in her birth certificate, and thus was only 14 years old when the rape happened. AAA testified that on 20 April 2003, she went to sleep at 8:00 in the evening. Then, at 3:00 a.m. of the following day, she was awakened because appellant was kissing her. Appellant held her hand and placed himself on top of her. AAA fought but appellant was much stronger than her. Appellant removed AAA's shorts and inserted his penis into her vagina which made her feel pain causing her to cry. Afterwards,

appellant threatened to kill AAA if she would report what happened to her. AAA did not inform her grandmother about the rape because AAA believed that her grandmother would side with appellant, being her grandmother's favorite son. AAA instead reported the incident to someone whom she believed to be a member of the New People's Army (NPA) because she wanted appellant dead. The alleged member of the NPA turned out to be an officer of the Philippine Army who brought AAA to the Department of Social Welfare and Development of Tinambac.

The prosecution likewise presented Dr. Jane Perpetua Fajardo (Dr. Fajardo), Medico Legal Officer of the National Bureau of Investigation (NBI), who testified that she conducted a medico genital examination on AAA. Dr. Fajardo found an old healed hymenal laceration at 6:00 o'clock position, which is most commonly caused by sexual intercourse.

The defense presented appellant and his mother as witnesses. Appellant denied the charges against him, stating, among others that at the time of the commission of the crime, he stayed at his house taking care of his sick wife, then tended to his carabao, and thereafter attended the reading of the *Pasyon*. However, appellant admitted that at around 12 midnight of 21 April 2003, he tried to kiss AAA's lips but nothing happened afterwards. Appellant claimed that he was tempted to kiss AAA because he saw her lying on a bed alone and he was drunk then. Appellant further alleged that AAA filed the present criminal case because she was probably angry at him for trying to kiss her on the lips.

Appellant's mother, Gloria Arraz, essentially testified that she did not notice anything unusual about AAA at around the time of the rape and that AAA did not inform her about the rape.

The trial court convicted appellant of rape defined and penalized under paragraph 1(a) of Article 266-A in relation to Article 266-B of the Revised Penal Code, as amended by Republic Act No. 8353. The trial court pertinently ruled as follows:

In the case at bar, the information alleges that the rape was committed "on or about the 20<sup>th</sup> day of April, 2003." In this regard, Section 11 of Rule 110 of the Revised Rules on Criminal Procedure provides, as follows:

"Sec. 11. Date of commission of the offense. -- It is not necessary to state in the complaint or information the precise date the offense was committed except when it is a material ingredient of the offense. The offense may be alleged to have been committed on a date as near as possible to the actual date of its commission.

The discrepancy should likewise be disregarded because the accused testified and admitted that he went to the house where [AAA] was staying at 12 midnight of April 21, 2003 and that when he saw [AAA] lying in bed alone and being drunk at that time, he was tempted. He also admitted that he tried to kiss [AAA] on said date. x x x Moreover, such mistakes or inaccuracies are of no moment as the factual issue now before this court is whether the rape incident happened or not. As emphatically enunciated by the Supreme Court in a number of cases, "in rape cases, the date is not an essential element of the crime and, therefore, need not be accurately stated."

x x x x

Although the accused claims that he only tried to kiss [AAA], such denial crumbles in the face of the positive testimony of [AAA] and the physical evidence showing that sexual intercourse was committed on her. The physical evidence shows that she had an old hymenal laceration at 6:00 o'clock position, complete with edges rounded and non-coactable. The hymenal orifice was wide (2.5 cm. in diameter) as to allow complete penetration by an average-sized adult Filipino male organ in full erection without producing injury.

x x x x

The court finds the testimony of [AAA] clear and free from serious contradiction. Although it appears that she did not shout or cry out for help while the accused was trying to force himself upon her, this does not diminish her credibility. People react in different ways. x x x The reason given by [AAA] why she did not shout or cry for help was that she believed that her grandmother would side with the accused. x x x<sup>[5]</sup>

The dispositive portion of the 15 June 2006 Decision<sup>[6]</sup> of the Regional Trial Court, Branch 63, Calabanga, Camarines Sur, reads:

WHEREFORE, in view of the foregoing, the prosecution having proven the guilt of the accused beyond reasonable doubt, judgment is hereby rendered finding the accused guilty beyond reasonable doubt of the crime of rape as defined and penalized under letter (a) paragraph 1 of Art. 266-A of the Revised Penal Code as amended by Rep. Act 8353 in relation to Art. 266-B thereof.

Accordingly, the accused NELSON ARRAZ is hereby sentenced to suffer the supreme penalty of DEATH, and to indemnify the victim, [AAA], in the amount of P75,000.00 as civil indemnity, P75,000.00 as moral damages, and P30,000.00 as exemplary damages.

SO ORDERED.<sup>[7]</sup>

On appeal, appellant contended that the trial court erred in finding him guilty beyond reasonable doubt. He claimed that (1) there was a discrepancy in the date of the commission of the crime; (2) AAA did not display any unusual behavior after she was allegedly raped; (3) it was impossible to rape AAA considering that she was sharing the room with her grandmother who was only two meters away from her and was separated only by a curtain; and (4) AAA did not make an outcry when her grandmother was so near when the rape happened.

The Court of Appeals rejected appellant's contentions. The appellate court held that the "perceived discrepancy in the date of the commission of the rape is inconsequential." The date of the commission of the rape is not an essential element of the crime. The Court of Appeals went on to explain the discrepancy in the date by stating that the crime was committed in the early morning of 21 April 2003, which is already considered a new day or the next day after [AAA] went to sleep at around

8:00 o'clock in the evening of 20 April 2003.

The fact that AAA did not shout or make an outcry does not diminish her credibility, for such failure to shout for help does not negate rape. AAA was only 14 years and 3 months old at the time she was raped and is the niece of appellant. Thus, it cannot be denied that appellant exercised a great amount of influence and wielded authority over AAA.

The Court of Appeals also found unmeritorious appellant's claim of impossibility to commit the crime of rape in the presence of other persons. The presence of people has never deterred the commission of rape.

The Court of Appeals also held that there is no standard form of behavioral response when one is confronted by a shocking or a harrowing experience. AAA's reporting of the incident to someone she believed to be a member of the NPA, and not to her grandmother because appellant was the latter's favorite, may be considered a normal reaction.

The Court of Appeals gave credence to AAA's testimony rather than appellant's bare denial. AAA's testimony was simple, candid and straightforward.

The dispositive portion of the decision of the Court of Appeals reads:

WHEREFORE, the Decision appealed from, convicting accused-appellant NELSON ARRAZ of the crime of qualified rape, is thereby AFFIRMED with the MODIFICATIONS that (1) the penalty of death be reduced to reclusion perpetua without eligibility to [sic] parole; and (2) the awards of moral damages and exemplary damages are reduced to P50,000.00 and P25,000.00, respectively.

SO ORDERED.<sup>[8]</sup>

Hence, this appeal.

The sole issue in this case is whether appellant is guilty of rape defined and penalized under Article 266-A<sup>[9]</sup> in relation to Article 266-B<sup>[10]</sup> of the Revised Penal Code, as amended.

The appeal has no merit.

The lower courts did not err in giving credence to the testimony of AAA. AAA clearly and straightforwardly testified that appellant raped her, thus:

Q     Aside from kissing you, what else did your Tio Nelson do to you?

A     He held my hand and placed himself on top of me.

Q     What did you do when you said your Tio Nelson got held [sic] of your hand and went on top of you?

A     I fought him but he was much stronger than me.