

## EN BANC

[ G.R. No. 177742, December 17, 2008 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
JOSELITO A. LOPIT, ACCUSED-APPELLANT.**

### DECISION

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

Before us on automatic review is the Decision<sup>[1]</sup> of the Court of Appeals (CA) dated June 30, 2006 in *CA-G.R. CR-H.C. No. 01896* which affirmed, with modifications, the decision<sup>[2]</sup> of the Regional Trial Court (RTC) of Bulanao, Tabuk, Kalinga, Branch 25, in Criminal Case No. 85-2003, finding herein accused-appellant guilty beyond reasonable doubt of the crime of **Qualified Rape** committed against his own daughter and sentencing him to suffer the extreme penalty of death.

Consistent with *People v. Cabalquinto*,<sup>[3]</sup> the Court withholds the real name of the rape victim. Instead, fictitious initials of AAA are used to represent her. Also, the personal circumstances of the victim or any other information tending to establish or compromise her identity, as well as those of her immediate family or household members, is not disclosed in this decision.<sup>[4]</sup> In this regard, the mother is referred to as BBB.

In three (3) separate Informations<sup>[5]</sup> dated September 15, 2003, accused-appellant was charged with three (3) counts of rape committed against his own 14-year old daughter AAA on September 5, 7, and 9, 2003. Except for the dates of the commission of the crime, the Informations were identically worded, thus:

CRIM. CASE NO. 85-2003

The undersigned accuses [accused-appellant], a detention prisoner at the PNP of Tabuk, of the crime of RAPE, defined and penalized under Republic Act Numbered 8353, committed as follows:

That on or about September 5, 2003 at San Julian, Tabuk, Kalinga, and within the jurisdiction of this Honorable Court, the accused, through force, threat and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of her daughter [AAA], who is a minor, fourteen (14) years of age, against her will.

CONTRARY TO LAW.<sup>[6]</sup>

On November 4, 2003, accused-appellant, duly assisted by Atty. Marcelino K. Wacas of the Public Attorney's Office (PAO), entered a plea of "not guilty" in Criminal Case Nos. 85-2003, 86-2003 and 87-2003. <sup>[7]</sup>

On November 10, 2003, the PAO lawyer verbally moved to be relieved as counsel for accused-appellant and with the latter's concurrence, the motion was granted. In his stead, Atty. Daniel Dapeg of the Integrated Bar of the Philippines Legal Aid Pilot Project was appointed as accused-appellant's counsel *de officio*.<sup>[8]</sup>

During the pre-trial conference held on November 12, 2003, accused-appellant, assisted by counsel, manifested his desire to plea-bargain. In open court, he expressed willingness to plead guilty in Criminal Case No. 85-2003, on the condition that the Informations in Criminal Case Nos. 86-2003 and 87-2003 be withdrawn. Victim AAA, assisted by her mother BBB and the provincial prosecutor, expressed her conformity thereto.<sup>[9]</sup>

Thus, accused-appellant entered a new plea of "guilty" to the crime of rape in Criminal Case No. 85-2003.<sup>[10]</sup> This was done with the assistance of counsel *de officio* and after the trial court conducted searching inquiry into the voluntariness and full comprehension of the consequences of the accused-appellant's plea.

Thereafter, the trial court commenced with the reception of evidence to prove accused-appellant's guilt and degree of culpability.

The prosecution presented the victim AAA and her mother BBB as witnesses, while accused-appellant testified on his own defense.

After trial, the court *a quo* rendered its Decision on November 28, 2003 imposing upon the accused-appellant the supreme penalty of death thus:

Accordingly, judgment is hereby rendered finding the accused guilty beyond reasonable doubt of the crime of rape attendant the qualifying and aggravating circumstances of minority and relationship, victim [AAA] being 15 years old and daughter of [accused-appellant] and hereby sentences the said accused the supreme penalty of death and to indemnify minor victim P75,000.00, by way of civil indemnity, moral damages in the amount of P100,000.00 and P50,000.00 by way of exemplary damages, plus cost.

Transmit the record of the case to the Office of the Clerk of Court, Supreme Court of the Philippines for review.

SO ORDERED.<sup>[11]</sup>

The records of these cases were forwarded to this Court for automatic review, in view of the death penalty imposed.

In our Resolution<sup>[12]</sup> of August 10, 2004, We accepted the appeal and directed the Chief, Judicial Records Office, to send notices to the parties to file their respective briefs and to the Director of the Bureau of Corrections, to confirm the detention of the accused at the National Penitentiary. Accused-appellant filed his Appellant's Brief<sup>[13]</sup> on April 11, 2005, while the People, through the Office of the Solicitor General (OSG), filed its Appellee's Brief<sup>[14]</sup> on May 31, 2005.

Conformably with this Court's decision in *People v. Mateo*,<sup>[15]</sup> accused-appellant's appeal by way of automatic review was transferred to the CA where it was docketed as *CA-G.R. CR-H.C. No. 01896*.

The prosecution, through the testimonies of the victim (AAA) and witness (BBB), the victim's mother, established the following facts:

[AAA], then fourteen (14) years old having been born on October 2, 1988, is the daughter of the [accused-appellant] and BBB, a barangay midwife; they were married on May 10, 1986. On September 5, 2003 at around 2:00 in the afternoon, [AAA], a third year high school student at Tabuk National High School was in their house together with her mentally retarded sister CCC. At that time, their mother [BBB] was in San Julian Elementary School. Suddenly [AAA]'s father [accused-appellant], a farmer, arrived drunk and forced the victim to have sexual intercourse with him. She struggled but her efforts were in vain since [accused-appellant] was strong. [Accused-appellant] removed his pants and pinned the victim on the bed, pulled down her pants and inserted his penis into her vagina. [AAA] cried. After doing the bestial act, [accused-appellant] left but not before threatening [AAA] that he would kill her, her mother and siblings if she reported the matter. As further testified by the victim, she had been sleeping with her father on the cement floor of their unfinished house for some time and that her father started staying with them only in 2002 since he had been staying in Laguna as a soldier in the Philippine Army.

Terrified and disgusted by what happened to her, the victim left home on September 10, 2003. She stayed in the house of Rita Carbonel in San Francisco, Tabuk, Kalinga. On September 11, 2003, [BBB] came looking for her and it was only then that the victim revealed the sexual assaults committed by her father. Without delay, [BBB] accompanied her daughter to the police headquarters where the victim's statement was taken.

[BBB] testified that she and [accused-appellant] were married on May 10, 1986 at Calanasan, Cagayan. Although she did not present any document to prove such assertion nor did she expressly and categorically state that [accused-appellant] was the victim's father, the victim repeatedly referred to [accused-appellant] as her father all throughout her testimony. Their relationship was never refuted by the [accused-appellant] who in fact admitted in open court that [AAA] was one of his daughters.

On the other hand, accused-appellant testified on his own version of the events which transpired on September 5, 2003:

For his part, [accused-appellant] testified that on September 5, 2003, he came home drunk and fell asleep naked on the cemented floor; that he was awakened when someone placed a mat and a blanket for him. He thought that his daughter was his wife, so he had sex with her. [Accused-appellant] manifested remorse and declared that he pleaded guilty as he had no money to fight his case also to secure a reduction of the penalty that will be imposed on him.

On June 30, 2006, the CA promulgated the herein challenged decision affirming in most part the decision of the trial court with modification only in the amount of the award of moral and exemplary damages. Pertinently, the CA decision reads in part:

With respect to the civil aspect of the crimes, We sustain the award of civil indemnity in the amount of P75,000.00 since rape was committed in its qualified form. However, the trial court's award of P100,000.00 as moral damages and P50,000.00 as exemplary damages must be modified. In line with existing jurisprudence, the award of moral damages should be in the amount of P75,000.00, without need of further proof. Likewise, exemplary damages is reduced to P25,000.00 in line with existing jurisprudence.

A final note: Notwithstanding current moves for the abolition of the death penalty, no legislation or rules have yet been promulgated relative thereto as of the time of the writing of his Decision, hence We are constrained to affirm the penalty imposed by the court a quo which We find to be conformable to the facts and existing law.

WHEREFORE, premises considered, the appealed Decision is hereby AFFIRMED with MODIFICATION that the award of moral damages is reduced to P75,000.00 and exemplary damages to P25,000.00 or a total of P100,000.00. Let the record of this case be elevated to the Honorable Supreme Court for review pursuant to Rule 124, Section 13 of the Revised Rules on Criminal Procedure as amended by A.M. No. 00-5-03-SC.

SO ORDERED.

On April 23, 2007, the CA forwarded the records of the case to this Court for automatic review.<sup>[16]</sup>

In the Resolution<sup>[17]</sup> dated June 26, 2007, We required the parties to simultaneously submit their respective supplemental briefs. However, the parties filed separate manifestations stating that they were waiving the filing of supplemental briefs and instead opted to stand by their respective briefs filed with the CA.

In his Brief, accused-appellant alleged that the trial court gravely erred in imposing on him the supreme penalty of death.

Before delving into the main issue of the case, it is necessary to determine whether the trial court has satisfied the requirement as mandated by Rule 116 of the Rules on Criminal Procedure, which provides:

SEC. 3. Plea of guilty to capital offense; reception of evidence.- When the accused pleads guilty to a capital offense, the court shall conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea and require the prosecution to prove his guilt and the precise degree of culpability. The accused may also present evidence on his behalf.

Explicitly, when the accused pleads guilty to a capital offense, the court shall conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea and require the prosecution to prove his guilt and the precise degree of his culpability. The accused may also present evidence on his behalf. Under the foregoing Rule, three things are enjoined upon the trial court when a plea of guilty to a capital offense is entered: (1) the court must conduct a searching inquiry into the voluntariness of the plea and the accused's full comprehension of the consequences thereof; (2) the court must require the prosecution to present evidence to prove the guilt of the accused and the precise degree of his culpability; and (3) the court must ask the accused if he desires to present evidence on his behalf and allow him to do so if he desires.<sup>[18]</sup>

We explained the rationale of the rule in *People v. Albert*,<sup>[19]</sup> thus:

The rationale behind the rule is that courts must proceed with more care where the possible punishment is in its severest form--death--for the reason that the execution of such a sentence is irrevocable and experience has shown that innocent persons have at times pleaded guilty. The primordial purpose then is to avoid improvident pleas of guilt on the part of an accused when grave crimes are involved since he might be admitting his guilt before the court and thus forfeit his life and liberty without having fully understood the meaning, significance and consequences of his plea. Moreover, the requirement of taking further evidence would aid the Supreme Court on appellate review in determining the propriety or impropriety of the plea.

It is not enough to inquire as to the voluntariness of the plea; the court must explain fully to the accused that once convicted, he could be meted the death penalty; that death is a single and indivisible penalty and will be imposed regardless of any mitigating circumstance that may have attended the commission of the felony. Thus, the importance of the court's obligation cannot be overemphasized, for one cannot dispel the possibility that the accused may have been led to believe that due to his voluntary plea of guilty, he may be imposed a lesser penalty,<sup>[20]</sup> which was precisely what happened here.

The trial court proffered the following questions to accused-appellant to determine the voluntariness and full comprehension of his change of plea from "not guilty" to "guilty," thus:<sup>[21]</sup>

COURT

Q Mr. Lopit y Abulao you have been arraigned yesterday with the Information for Rape in Criminal Case No. 85-2003, did you confer with your newly designated counsel *de oficio* regarding your plea?

WITNESS  
A Yes, Your Honor.

Q After having been confer (sic) with him that you entered a plea of guilty for the Information of Rape you voluntary done (sic) of your own perception?

A Yes, Your Honor.