

EN BANC

[G.R. NO. 174199, March 07, 2007]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ROGELIO
ALARCON Y TIOXON APPELLANT,**

D E C I S I O N

TINGA, J.:

Subject of this automatic review is the Decision^[1] promulgated by the Court of Appeals in CA-G.R. CR-HC No. 01000. The appellate court had affirmed the Regional Trial Court's (RTC) judgment in Criminal Case No. 8620-2001-C finding appellant guilty of qualified rape but modified the RTC judgment in Criminal Case No. 8621-2001-C by finding appellant guilty of acts of lasciviousness only instead of rape.

Based on the complaints filed by private complainant AAA^[2], assisted by Sister Laura P. Chavez (Sister Laura), appellant was charged with two (2) counts of statutory rape. In Criminal Case No. 8620-2001-C, the accusatory portion in the Information reads, thus:

That sometime in the month of March 2001 at Brgy. Tuntungin-Putho, Municipality of Los Baños, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused thru force, violence and intimidation and with lewd design, did then and there wil[l]fully, unlawfully and feloniously have carnal relation with one [AAA], a ten (10) year old minor, his own daughter, against her will and consent, to her damage and prejudice.

CONTRARY TO LAW.^[3]

In Criminal Case No. 8621-2001-C, the Information's accusatory portion, except as to the exact date of the commission of the offense, similarly reads, thus:

That sometime in the month of March 2001 at Brgy. Tuntungin-Putho, Municipality of Los Baños, Province of Laguna and within the jurisdiction of the Honorable Court, the above-named accused thru force, violence and intimidation and with lewd design, did then and there willfully, unlawfully and feloniously have carnal relation with one [AAA], a ten (10) year old minor, his own daughter, against her will and consent, to her damage and prejudice.

CONTRARY TO LAW.^[4]

Upon arraignment, appellant pleaded not guilty. Afterwards, trial on the merits ensued.

The prosecution presented the victim, AAA, who recounted the details of her

harrowing experience that began one evening in March 2001 at her home in Los Baños, Laguna, which she shared with her father, the present appellant, and four (4) of her siblings.^[5] While they were all sleeping side by side in one room, AAA was awakened by appellant, who removed her panty and told her to remain quiet. He then forced his penis into her vagina. After finishing the act, appellant hit AAA.

Later that month, just a few days before 24 March 2001, another similar incident occurred. That afternoon, at their home, appellant ordered AAA to lie down. She refused to obey him but appellant started molesting her by removing her panty and letting his penis touch her vagina.^[6] This incident occurred while AAA's two elder (2) siblings were sleeping at home. On 24 March 2001, AAA and her two (2) younger siblings sought refuge at the Tahanan ng Ama Retreat House in Los Baños, Laguna under the management of Sister Laura.^[7]

AAA's half-sister, BBB,^[8] testified that she lived with her four (4) siblings in Barangay Buot, Los Baños, Laguna. At around 12:00 p.m. on 24 March 2001, she left the house because she could no longer endure the beating of her father. Prior to leaving, however, she was informed by AAA that the latter was molested by appellant. BBB advised AAA to proceed to Tahanan ng Ama Retreat House.

On 26 March 2001, Dr. Teresita Samadi-Denani examined AAA and thereafter issued a Rape Case Report,^[9] stating that the vagina admits one finger with ease and a (+) 3, 7'o clock old vaginal tear.

In his defense, appellant denied the charges hurled against him. He claimed that on the dates of the alleged rape incidents, he was working overtime as a welder in Cabuyao, Laguna. He insinuated that Sister Laura may have had an influence in the filing of cases because his children told him that she convinced them to stay at the Tahanan ng Ama.^[10] Asencion Alarcon (Asencion) corroborated his brother's alibi. He allegedly served as the time keeper in the place where appellant worked. He declared that appellant worked from 8:00 am to 9:00 p.m. on March 2, 3, 5, 7, 23 and 24, the dates when he allegedly committed rape and acts of lasciviousness against AAA.^[11] The daily time record however was not presented in evidence.

On 18 April 2005, the trial court rendered a Decision^[12] in Criminal Case Nos. 8620-01-C and 8621-01-C finding him guilty of rape, attended by the special qualifying circumstances of minority and relationship. The trial court dismissed appellant's alibi as self-serving. It held that Asencion failed to submit the time records which would have corroborated appellant's alibi that he was working at a shop in Cabuyao, Laguna on those dates.^[13]

The trial court gave full credence to the categorical and positive testimony of the victim, AAA, which was corroborated by the Rape Case Report. It ruled that the act of AAA in immediately reporting the crime further strengthened her credibility.^[14]

Pursuant to *People v. Mateo*,^[15] appellant filed a Notice of Appeal^[16] before the Court of Appeals.

On 31 May 2006, the Court of Appeals promulgated the assailed Decision affirming

the judgment in Criminal Case No. 8620-2001-C while modifying the conviction in Criminal Case No. 8621-2001-C to acts of lasciviousness, *viz*:

WHEREFORE, the appealed Decision dated April 18, 2005 is affirmed as regards Criminal Case No. 8620-2001-C for qualified rape, subject to the modification that accused-appellant is awarded exemplary damages of P25,000.00 in addition to the civil indemnity of P75,000.00, and the amount of moral damages is increased to P75,000.00.

Pursuant to A.M. No. 00-5-03-SC (Amendments to the Revised Rules of Criminal Procedure to Govern Death Penalty Cases) effective October 15, 2004, let the records of Criminal Case No. 8620-2001-C be elevated to the Supreme Court for its review.

With respect to Criminal Case No. 8621-2001-C, accused-appellant's conviction is modified to acts of lasciviousness and he is accordingly sentenced to suffer an indeterminate penalty of six (6) months of arresto mayor, as minimum, to six (6) years of prision correccional, as maximum. Accused-appellant is ordered to pay private complainant P30,000.00 as civil indemnity, P40,000.00 as moral damages, and P20,000.00 as exemplary damages.^[17]

In downgrading the crime to acts of lasciviousness, the appellate court observed that in Criminal Case No. 8621-2001-C, there was no showing of penetration of the vagina in the recounting of the second incident. The appellate court observed that when AAA testified as to that incident, she merely said, "*Dinidikit po niya,*" when asked how she was molested by appellant.

In a Resolution^[18] dated 3 October 2006, this Court resolved to accept this case. Both parties opted not to file their Supplemental Briefs and instead adopted the arguments in their Appellant's Briefs.

As earlier noted, concerning Criminal Case No. 8621-2001-C, the Court of Appeals modified the trial court's guilty verdict of appellant from rape to acts of lasciviousness. We can no longer review this aspect of the Decision without violating the right against double jeopardy, which proscribes an appeal from a judgment of acquittal or for the purpose of increasing the penalty imposed upon the accused,^[19] as in this case. The instant case was brought to this Court by way of automatic review which is mandatory only where the penalty imposed is death, *reclusion perpetua* or life imprisonment. The present appeal should therefore be treated as an appeal only from that aspect of the appellate court's decision finding appellant guilty of qualified rape.

Appellant challenges the credibility of AAA on three (3) grounds: *first*, considering that the house is small and has only one room, and the fact that they slept side by side, it would be impossible for the other children not to be awakened when the alleged incidents of rape allegedly took place; *second*, AAA nurtured ill-feelings towards appellant because the latter maltreated and beat her and her siblings; and *third*, AAA admitted that the information she relayed before the police came from Sister Laura.^[20]

The issue of a witness's credibility is best addressed to the sound discretion of the

trial court, which had the unique opportunity to observe the witness firsthand and note her demeanor, conduct, and attitude under grueling examination. Hence, on this issue, findings of the trial court will not be disturbed on appeal unless the lower court overlooked, ignored, misapprehended, or misinterpreted certain facts or circumstances so material such as to affect the outcome of the case.^[21] No compelling reason was shown why this Court should depart from the findings of the trial court, which found the testimony of AAA as believable, positive, clear and convincing.^[22]

Recounting her ordeal in the first incident, AAA testified:

FISCAL:

Q- Miss Witness, do you know a person by the name of Roger Alarcon?

WITNESS:

A- He is my father, sir.

Q- Kindly identify him if he is inside the [c]ourt room?

A- (Witness pointing to a man wearing [a] stripe[d] t-shirt and who upon inquiry gave the name of Rogelio Alarcon).^[23]

x x x x

Q- What were you doing just before you were raped by your father for the first time?

A- I was already asleep, sir.

Q- What arose [sic] you when you were raped at that time?

A- My father was waking me up, sir.

Q- How did you wake up?

A- My other siblings were already asleep when he was shaking my shoulders, sir.

Q- Was he saying anything?

A- Nothing, sir.

x x x x

Q- What else did he do when he shake [sic] your shoulder?

A- He removed my panty, sir.

Q- What else did he do when he removed your panty?

A- He told me to keep quiet, sir.

Q- What were you. . . After that time after he removed your panty and keep quiet, what did you feel?

A- "Masakit po", sir.