

THIRD DIVISION

[G.R. NO. 174472, June 19, 2007]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
BENIGNO FETALINO Y GABALDON, ACCUSED-APPELLANT.**

D E C I S I O N

CHICO-NAZARIO, J.:

For Review is the Decision^[1] of the Court of Appeals promulgated on 31 May 2006 in CA-G.R. CR-H.C. No. 02162 entitled, "*People of the Philippines v. Benigno Fetalino y Gabaldon*," affirming, with modification, the Judgment^[2] dated 29 July 2004 of the Regional Trial Court of Mandaluyong City, Branch 213, in Criminal Cases No. MC-99-1445, MC-99-1446, MC-99-1447-H, MC-99-1448-H, and MC-99-1449-H.

Appellant stood charged with two counts of acts of lasciviousness and three counts of rape allegedly committed against the person of his own daughter, AAA.^[3] The Informations, all signed by Assistant City Prosecutor Carlos A. Valenzuela, state:

In Criminal Case No. MC-99-1445

That on or about the 21st day of March 1999, in the City of XXX, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, by force and intimidation, did, then and there willfully, unlawfully and feloniously commit acts of lasciviousness upon the person of [his] daughter AAA, a girl sixteen (16) years of age, and subjected to sexual abuse, by inserting his finger into her vagina against her will and consent.^[4]

In Criminal Case No. MC-99-1446

That on or about the 22nd day of March 1999, in the City of XXX, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, by force and intimidation, did, then and there willfully, unlawfully and feloniously commit acts of lasciviousness upon the person of [his] daughter, AAA, a girl sixteen (16) years of age, and subjected to sexual abuse, by inserting his finger into her vagina against her will and consent.^[5]

In Criminal Case No. MC-99-1447-H

That on or about the 23rd day of March 1999, in the City of XXX, Philippines, a place [within] the jurisdiction of this Honorable Court, the above-named accused, with lewd design, by means of force and intimidation, did, then and there willfully, unlawfully and feloniously have

carnal knowledge of [his] daughter AAA, a girl sixteen years of age, and subjected to sexual abuse, all against her will and consent.^[6]

In Criminal Case No. MC 99-1448-H

That on or about the 24th day of March 1999, in the City of XXX, Philippines, a place [within] the jurisdiction of this Honorable Court, the above-named accused, with lewd design, by means of force and intimidation, did, then and there willfully, unlawfully and feloniously have carnal knowledge of [his] daughter AAA, a girl sixteen years of age, and subjected to sexual abuse, all against her will and consent.^[7]

In Criminal Case No. MC 99-1449-H

That on or about the 25th day of March 1999, in the City of XXX, Philippines, a place [within] the jurisdiction of this Honorable Court, the above-named accused, with lewd design, by means of force and intimidation, did, then and there willfully, unlawfully and feloniously have carnal knowledge of [his] daughter AAA, a girl sixteen years of age and subjected to sexual abuse, all against her will and consent.^[8]

On 20 April 1999, the arraignment for Criminal Cases No. MC-99-1445 and MC-99-99-1446 was held at which time appellant pleaded not guilty to the charges of acts of lasciviousness.^[9] On 10 February 2000, he entered a similar plea to the three counts of rape in Criminal Cases No. MC-99-1447-H, MC-99-1448-H, and MC-99-1449-H.^[10] Joint trial of the five cases thereafter ensued with the prosecution presenting five witnesses, namely: AAA, the private complainant; BBB, AAA's mother and appellant's live-in partner; Dr. Winston S. Tan (Dr. Tan), Medico-Legal Officer of the Philippine National Police (PNP) Crime Laboratory in Camp Crame, Quezon City; SPO4 Julieta Espiritu (SPO4 Espiritu), Chief of the Women's Desk of the PNP, XXX City; and POS Rolando Tejada (POS Tejada).

AAA was called to the witness stand as a hostile witness by the prosecution. The reason behind this unusual move was explained by the prosecutor during the offer of AAA's testimony:

Before we proceed your honor, may we manifest that we are presenting this witness as our hostile witness in view of her declaration before this representation that she is no longer interested in prosecuting this case against the accused your honor, and in view likewise, of the manifestation given before this honorable court by the counsel for the accused that the victim and the mother of the victim came to see him to ask her (sic) to desist.^[11]

AAA testified that appellant raped her on three separate instances in March 1999. She recalled that the events transpired in their house which was then undergoing renovation.^[12] Appellant allegedly undressed her and inserted his private organ into her vagina for which she felt pain and cried. She claimed that she tried to resist appellant's bestial attack and that she struggled with him by trying to remove his hands. She could not shout for help as appellant threatened her with harm. After satisfying his lust, appellant told her not to report the incident to anybody or else he

would kill her and her mother. She, however, finally revealed her sad experiences to her mother sometime in 1999. Thereafter, she was brought to the crime laboratory in Camp Crame, Quezon City for a medical examination. The physical examination was conducted by Dr. Tan whose test confirmed that AAA was already in a non-virgin state physically. The pertinent portion of Dr. Tan's medico-legal report states:

GENITAL:

There is absence of pubic hair. Labia majora are full, convex and coaptated with the pinkish brown labia minora presenting in between. On separating the same disclosed an elastic, fleshy-type hymen with deep healed lacerations at 7 and 9 o'clock and shallow healed laceration at 6 o'clock positions. External vaginal orifice offers strong resistance to the introduction of the examining index finger. Vaginal canal is narrow with prominent rugosities. Cervix is firm and closed.^[13]

Dr. Tan confirmed having performed the medical examination on the person of AAA. According to him, their office received a request from the XXX Police Station for the conduct of a "medico-legal/physical examination" on AAA who was a victim of an "alleged sexual abuse/molestation perpetrated by her biological father."^[14] AAA and BBB were then subjected to a brief interview after which they both signed the consent form for the said examination.^[15] Dr. Tan likewise explained that the most common cause of a hymenal laceration is the insertion into the vagina of an erect male genitalia or any other object of the same consistency.^[16]

BBB, AAA's mother, stated that she and appellant were engaged in a common law relationship and together they begot five children^[17] including AAA. On the evening of 25 March 1999, BBB came home from Divisoria where she earned a living as a vendor. When she reached their house, a certain Paul Quiambao, a carpenter she hired to do some minor repairs in their abode, came to see her and informed her that he saw appellant on top of AAA. In the vernacular, Paul allegedly told BBB that AAA was "*ginagalaw*" by appellant. Immediately after Paul left, BBB talked to AAA to confirm the harrowing news that she had just received. AAA finally had the courage to reveal to her mother that her predicament in the hands of her own father started on 22 March 1999 and it occurred everyday thereafter until 25 March 1999. She and AAA then proceeded to the *barangay* hall to report the misdeeds of appellant. After this, their *barangay* captain and members of the police came to their house to look for appellant who allegedly tried to flee after seeing the authorities. He was eventually arrested and taken to the police station. The *barangay* officials then instructed her and AAA to go to the police station in order for them to file a complaint against appellant.

In the police station, she and AAA gave their respective sworn statements to the investigating officer.^[18]

SPO4 Espiritu testified that she was the investigator assigned to the case. During her investigation, AAA complained that in the afternoon of 21 March 1999, when the latter arrived home from school, appellant entered her room and, at knife point, embraced and kissed her. Unsatisfied with these initial condemnable acts, appellant thereafter inserted his finger into AAA's vagina. This incident would be repeated the following day, 22 March 1999.

Unfortunately for AAA, her ordeal would even take a turn for the worse for on 23 March 1999, appellant apparently became more emboldened and could no longer contain his bestial desires; thus, he proceeded to have carnal knowledge of AAA. AAA had to suffer such abuse on two more separate instances which occurred on 24 and 25 March 1999.

The prosecution presented, as its last witness, POS Tejada, who was a member of the team which responded to the complaint of AAA and BBB on 26 March 1999. His turn at the witness stand was brief, as appellant's counsel admitted the substance of POS Tejada's would-be testimony which pertained mainly to the circumstances surrounding the arrest of appellant.

For his part, appellant offered the hackneyed defense of denial to refute the charges brought against him. Appellant narrated that he and BBB had been live-in lovers for almost 25 years. He admitted that AAA was indeed one of their children.^[19] In 1977, he was imprisoned for murder and was ordered released from detention on 23 February 1996. From the time he regained freedom, he allegedly stayed in the house of one of his legitimate children located somewhere in Paco, Manila. During the time material to the case, however, he was at the house he used to share with BBB and their children located at No. XXX St., XXX Drive, XXX City. Said house was undergoing renovation at that time.

Appellant claimed that the present criminal charges were brought against him in retaliation for the physical injuries he inflicted upon BBB during one of their heated arguments which became frequent as he wanted BBB and her new live-in partner to move out of their house in XXX St. In fact, according to appellant, BBB even charged him with physical injuries which was raffled off to a different branch of the court.

To bolster appellant's claim of innocence, the defense presented CCC, another one of his children with BBB. In CCC's recollection, at the time the criminal acts complained of took place, she was in their house together with AAA, their brother DDD, and appellant. She, however, insisted that nothing unusual happened during those dates. She remembered that although appellant was in their house, he spent most of his time inside his room fixing his belongings.

As for its last witness, the defense recalled BBB to the witness stand in order to prove that the only reason she executed her sworn statement before the police was because she was angry with appellant for having stabbed her during one of their fights.

After trial, the court *a quo* found appellant guilty as charged in all the cases filed against him. The dispositive portion of the trial court's judgment states:

IN VIEW OF THE FOREGOING, judgment is hereby rendered in Criminal Case Nos. MC-99-1445 and MC-99-1446, finding the accused BENIGNO FETALINO Y GABALDON, GUILTY, beyond reasonable doubt of Acts of Lasciviousness defined and penalized under Article III, Section 5[b] of Republic Act 7610, and he is hereby sentenced to suffer for each of the two (2) charges, the penalty of twelve (12) years and one (1) day to fourteen (14) years of *reclusion temporal*, as minimum and maximum,

respectively.

Decision is also hereby rendered in Criminal Cases Nos. MC-99-1447-H, MC-99-1448-H and MC-99-1449-H finding the accused, BENIGNO FETALINO Y GABALDON, GUILTY beyond reasonable doubt for the crime of RAPE defined and penalized under Article 335 of the Revised Penal Code, as amended by the Republic Act 7659 and R.A. 8353. Finding the victim to be under eighteen (18) years of age at the time of the commission of the crime, and that the offender is the father, this court imposes upon same BENIGNO FETALINO Y GABALDON, for EACH charge, the supreme penalty of DEATH through lethal injection, as provided for in R.A. 8177, amending Section 24, of R.A. 7659 in the manner and procedure therein provided.

Moreover, pursuant to [A]rticle 100 in relation to Article 104 of the Revised Penal Code, governing civil indemnity, accused is furthermore ordered to indemnify the minor victim, AAA, the amount of Php50,000.00, by way of moral damages in line with the reward made under the case of *People vs. Bonday* (222 SCRA 216) and another Php25,000.00 for exemplary damages to deter other sexual perverts or two legged-beast from sexually assaulting or molesting hapless and innocent girls.

As the penalty imposed is [TRIPLE] DEATH, the City Jail Warden is directed to immediately commit the person of BENIGNO FETALINO Y GABALDON to the National Prisons at Muntinlupa, Metro Manila.^[20]

In view of the death penalty imposed by the trial court, the cases were automatically elevated to this Court for review. However, in our Resolution dated 13 December 2005,^[21] we ordered the remand of these cases to the Court of Appeals pursuant to our holding in *People v. Mateo*.^[22]

In its assailed Decision, the appellate court modified the decision of the trial court by acquitting appellant of the two charges of rape and by downgrading the penalty imposed in Criminal Case No. MC-99-1447-H from death to *reclusion perpetua* –

WHEREFORE, the judgment of the Regional Trial Court, Branch 213 of Mandaluyong City convicting accused-appellant Benigno Fetalino of the crime of two (2) counts of acts of lasciviousness in Criminal Case Nos. MC-99-1445 and MC-99-1446 and for rape in Criminal Case No. MC-99-1447-H is *AFFIRMED* with the *MODIFICATION* that the penalty of death imposed by the trial court for the crime of rape should be reduced to *reclusion perpetua*. Accused-appellant is ordered to pay complainant AAA the following amounts:

1. the total amount of P50,000.00 as moral damages;
2. P50,000.00 as civil indemnity; and
3. P25,000.00 as exemplary damages.

As regards Criminal Case Nos. MC-99-1448-H and MC-99-1449-H, accused is hereby *ACQUITTED* for failure of the prosecution to prove his guilt beyond reasonable doubt.^[23]