

## THIRD DIVISION

[ G.R. NO. 176266, August 08, 2007 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FELIX ORTOA Y OBIA, ACCUSED-APPELLANT.**

### DECISION

**CHICO-NAZARIO, J.:**

For Review is the Decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. CR HC No. 01745, which affirmed with modification the Decision<sup>[2]</sup> of the Regional Trial Court (RTC) of Mandaluyong City, Branch 208, finding accused-appellant Felix Ortoa y Obia guilty of raping his own thirteen-year old daughter, AAA.<sup>[3]</sup>

Appellant was charged with rape, defined and penalized under Article 335 of the Revised Penal Code, as amended, in relation to Republic Act No. 7610.<sup>[4]</sup> The Information against him reads:

That on or about the 3<sup>rd</sup> day of April, 2001, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs and by means of force and intimidation, did, then and there willfully, unlawfully and feloniously have carnal knowledge with (sic) his own daughter, AAA, a minor (13 years old), against her will and consent, thus debasing and/or demeaning the intrinsic worth and dignity of the child as a human being.<sup>[5]</sup>

Upon arraignment, appellant, duly assisted by counsel *de officio*, entered a plea of not guilty.<sup>[6]</sup> Trial on the merits ensued.

The prosecution's version of the incidents is anchored principally on the testimonies of AAA; her mother, BBB; Dr. Ma. Cristina Freyra (Dr. Freyra), who conducted the physical examination on the victim; and Police Officer Sonia Gaviana (PO Gaviana), the officer-in-charge of the case.

AAA testified that in the afternoon of 3 April 2001, she was at home together with her mother and four siblings. Suddenly, she felt the need to defecate. As they were occupying a small house, she asked her mother and siblings to leave her alone so that she could relieve herself using a plastic bag - a practice their family has been accustomed to do given the cramped space of their abode. And so her mother and her siblings went to the nearby house of a relative leaving AAA by herself. It was at that time when appellant arrived home from the barbershop where he worked. Appellant then closed the windows and the door of their house, removed AAA's underwear and shorts, and proceeded to molest her on their makeshift bed. After satisfying his sexual urge, appellant ordered her to put on her panty and shorts. A few minutes later, her mother and her siblings arrived. AAA was still lying then on

the bed while her father was sitting on one of its edges. After about an hour, appellant decided to go back to work. With appellant gone, BBB asked AAA about what had just happened and the latter revealed her harrowing ordeal in the hands of her own father. BBB then went to see appellant's employer, a certain Diosdado Daylo, to seek his help.

AAA also stated that it was not the first time that appellant had sexually molested her. She alleged that appellant started raping her when she was about three years old by inserting his finger in her vagina. Thinking that appellant was merely playing a game with her, AAA did not tell anyone about such incident. Eventually, however, her mother discovered appellant's reprehensible conduct when AAA got pregnant. When asked if she delivered a child, AAA claimed that she had an abortion after appellant made her take medicines.

BBB testified that she and appellant were in a common law relationship and together they have seven children. She recalled that on 3 April 2001, she was at home with some of her children including AAA. AAA then requested her and her other children to leave the house as the former was experiencing stomach ache and had to relieve herself. She then took her other children to the house of her aunt. While conversing with her relative, BBB claimed that she suddenly felt nervous. Sensing that something unusual was happening, she hurriedly went home. When she arrived, she found AAA lying on the makeshift bed with appellant sitting thereon. She noticed that AAA was on the verge of crying and her shorts seemed to be hastily pulled up. She knew then appellant had again done the unthinkable to their daughter AAA. When she confronted appellant about what he had just done in their house at that time, he allegedly retorted, "Why is your face like that again as if you're always *sinasalihan*."<sup>[7]</sup> After their brief confrontation, appellant went back to the barbershop. It was at that moment when BBB was able to finally talk to AAA. The latter allegedly told her that she was again raped by appellant. Later that day, she went to discuss the matter with Daylo who assured her of his help in going to the police.

The following night, BBB, together with AAA and Daylo, went to the police station where they were referred to PO Gaviana. While she and AAA were being interviewed by said police officer, her younger daughter, CCC, purportedly said, "*Ako rin po Ma, ginagawa din sa akin ni Papa iyong ginagawa niya kay Ate*."<sup>[8]</sup> This statement made her feel even worse since it turned out that two of her daughters had fallen prey to appellant's bestial desires. BBB also corroborated AAA's testimony regarding the latter's pregnancy and the abortion induced by appellant.

Dr. Freyra, a medico-legal officer of the Eastern Police District Crime Laboratory, testified that on 5 April 2001, their office received a request for the medical examination on AAA.<sup>[9]</sup> Pursuant to their office procedure, she interviewed AAA pertaining to her personal circumstances and the reason for the physical examination. AAA disclosed that appellant started molesting her when she was a child. Appellant's malevolence was manifested when he satisfied himself by inserting his finger into AAA's vagina when she was a young child until ultimately, he started thrusting his penis into her sexual organ.

After the interview, Dr. Freyra said that she conducted the physical examination on AAA which yielded the following findings:

## FINDINGS:

### GENERAL AND EXTRAGENITAL:

Fairly developed, fairly nourished and coherent female subject. Breasts are Hemispherical with pale brown areola and nipples from which no secretions could be pressed out. Abdomen is flat and soft.

### GENITAL:

There is scanty growth of pubic hair. Labia majora are full, convex and coaptated with pinkish brown labia minora presenting in between. On separating the same disclosed an elastic, fleshy - type hymen with deep healed lacerations at 5.7 and 9 o'clock positions. External vaginal orifice offers moderate resistance to the introduction of the examining index finger. Vaginal canal is narrow with prominent rugosities. Cervix is normal in size, color and consistency. x x x.<sup>[10]</sup>

PO Gaviana testified that on 4 April 2001, she interviewed AAA and BBB regarding AAA's complaint of rape against appellant, and that AAA and BBB executed their respective sworn statements<sup>[11]</sup> in her presence. After the interview, AAA was referred to the crime laboratory for medico legal examination.

Appellant vigorously denied the charge hurled at him. According to appellant, AAA was the eldest of his seven children with BBB. He claimed that on 3 April 2001, he was working at the barbershop located in F 161 Shaw Boulevard, Mandaluyong City and he stayed there from 9:00 o'clock in the morning until 9:00 o'clock in the evening. He also averred that from 1996 until the time of his arrest, he was a stay-in employee of the barbershop. He asserted that the charge of rape was merely concocted by BBB out of anger after she discovered his affair with a certain Emily. BBB was allegedly so enraged that she threatened to send him to jail because of said relationship. AAA, who found out about Emily through BBB, shared the latter's animosity towards him. As regards AAA's aborted pregnancy, appellant said that he learned about her condition from BBB but he did not do anything about it except to ask the latter as to how AAA got pregnant. He claimed ignorance of the circumstances surrounding the pre-termination of AAA's pregnancy. All that he knew was that AAA already had a boyfriend named Michael who never visited AAA at their house.

The trial court refused to believe appellant's account of the case and rendered a decision finding him guilty as charged, thus:

### DISPOSITION

WHEREFORE, the Court finds accused FELIX ORTOA y OBIA guilty beyond reasonable doubt of the crime of QUALIFIED RAPE under Article 335 of the Revised Penal Code, as amended by RA 7659 in relation to RA 7610, and sentences him to suffer the penalty of DEATH to be implemented in the manner as provided by law. The accused is hereby ordered to pay AAA the sum of P75,000.00 as civil indemnity, P50,000.00 as moral damages, and P30,000.00 as exemplary damages.

The Clerk of Court is hereby ordered to prepare the Mittimus and to

transmit the complete records of this case to the Honorable Supreme Court for automatic review.

The City Warden of Mandaluyong, Bureau of Jail Management and Penology is hereby ordered to deliver forthwith the person of FELIX ORTOA y OBIA to the National Bilibid Prisons, Muntinlupa City, with proper escort and security.<sup>[12]</sup>

The case was automatically elevated to this Court in view of the death penalty imposed by the trial court. On 26 July 2005, we resolved to transfer this case to the Court of Appeals pursuant to our holding in *People v. Mateo*,<sup>[13]</sup> which allowed intermediate review by the appellate court of cases where the penalty imposed is death, *reclusion perpetua*, or life imprisonment.

On 27 September 2006, the Court of Appeals rendered the assailed Decision affirming, with modification, the decision of the court *a quo*. The dispositive portion of the Decision states:

WHEREFORE, premises considered, herein appeal is hereby DISMISSED for evident lack of merit and the assailed Judgment is hereby AFFIRMED with MODIFICATION imposing the penalty of RECLUSION PERPETUA upon the Appellant without possibility of parole.<sup>[14]</sup>

Appellant is once again before Us praying for his acquittal upon the ground that the trial court gravely erred in finding him guilty beyond reasonable doubt of the crime of qualified rape.<sup>[15]</sup>

Appellant insists that the trial court should not have given "full faith and credence"<sup>[16]</sup> to AAA's testimony. He points out that the trial court should have taken into account AAA and BBB's motive in filing the case against him as it is possible that they were only moved by resentment towards him. Particularly in the case of AAA, she admitted during her testimony that she felt bitter about her father's strictness towards her while BBB could have been provoked by his illicit relationships and his irresponsibility.<sup>[17]</sup>

In addition, appellant harps on the inordinate delay in reporting his alleged wrongdoing when he was supposed to have even impregnated AAA in the past. He argues that it is highly inconceivable for a mother such as BBB to stand idly by while her own child suffered enormous distress. In such a situation, appellant argues, BBB's immediate reaction should have been to report the incident to the authorities particularly in the absence of an allegation that he threatened them with harm.

After thoroughly reviewing the records of this case and thoughtfully weighing the parties' respective claims, we hold that a denial of this appeal is in order.

In resolving rape cases, this Court has been traditionally guided by three principles: (a) an accusation of rape can be made with facility; it is difficult for the complainant to prove but more difficult for the accused, though innocent, to disprove; (b) in view of the intrinsic nature of the crime of rape where only two persons are involved, the testimony of the complainant must be scrutinized with extreme caution; and (c) the evidence for the prosecution must stand or fall on its own merits, and cannot be

allowed to draw strength from the weakness of the evidence for the defense.<sup>[18]</sup>

In the crime of rape, the conviction of an accused invariably depends upon the credibility of the victim as she is oftentimes the sole witness to the dastardly act. Thus, the rule is that when a woman claims that she has been raped, she says in effect all that is necessary to show that rape has been committed and that if her testimony meets the crucible test of credibility, the accused may be convicted on the basis thereof.<sup>[19]</sup> Ultimately and oftentimes, the resolution of the case hinges on the credibility of the victim's testimony - a question that this Court usually leaves for the trial court to determine, for it is doctrinal that factual findings of trial courts, particularly the assessment of the credibility of witnesses, are given much weight and accorded the highest respect on appeal.<sup>[20]</sup> This is only proper considering that the trial court has the unique and singular opportunity to personally observe a witness' demeanor, conduct, and attitude under grueling examination.<sup>[21]</sup> It is already well-settled that an appellate court would generally not disturb the factual findings of the trial court in the absence of a clear showing that the court had failed to appreciate facts and circumstances which, if taken into account, would materially affect the outcome of the case.<sup>[22]</sup>

In the case before us, AAA recalled her cruel experience in the following manner:

Fiscal Tacla: Now, what happened? Is there anything that happened on April 3, 2001, at your residence?

Witness: "*Pinatungan niya po ako,*" he raped me.

Fiscal Tacla: What did your father do first on that day?

Witness: He closed the windows and the door.

Fiscal Tacla: What happened next?

Witness: He asked me [to] undress, sir.

Fiscal Tacla: Your upper dress or what?

Witness: He told me to remove my panty and my shorts.

Fiscal Tacla: What did you do when your father told you to remove your shorts and panty?

Witness: I did not agree.

Fiscal Tacla: So anything happened?

Witness: There was, sir.

Fiscal Tacla: What was it?

Witness: He told me to spread my legs, sir.