

EN BANC

[G.R. NO. 168737, February 16, 2006]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. EDGARDO
BARCENA Y POCA, APPELLANT.**

DECISION

PER CURIAM:

For automatic review is the Decision^[1] of the Court of Appeals in CA-G.R. CR-H.C. No. 00770 dated May 31, 2005 which affirmed the Judgment^[2] of the Regional Trial Court of Narvacan, Ilocos Sur, Branch 22 in Crim. Case No. 1952-N finding appellant Edgardo Barcena guilty beyond reasonable doubt of the crime of qualified rape and sentencing him to suffer the death penalty and to indemnify the victim in the amount of P75,000.00 and P50,000.00 as moral damages.

Appellant Barcena was charged with rape as defined and penalized under Article 335 of the Revised Penal Code as amended by Republic Act (R.A.) No. 7659 in an Information that reads:

The undersigned Provincial Prosecutor upon sworn complaint filed by the offended party with the Municipal Circuit Trial Court, accuses Edgardo Barcena Y Poca of the crime of Rape, defined and penalized under Article 335 of the Revised Penal Code, as amended by Republic Act 7659, committed as follows:

That on or about the 10th day of April, 1997, in the municipality of Narvacan, province of Ilocos Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, who is the common-law spouse of Nenita Barcena, mother of the victim Estrella Cabida Y Delos Santos, did then and there wilfully, unlawfully and feloniously have carnal knowledge of said Estrella Cabida Y Delos Santos, a minor, 15 years of age, by means of force and intimidation and against the latter's will and consent.

Contrary to law.^[3]

Appellant pleaded not guilty to the charge. Thereafter, trial on the merits ensued.

The facts of the case are as follows:

The victim, Estrella Cabida, was born on March 2, 1982 and was 15 years of age when the rape incident happened on April 10, 1997. She was living with her mother, Nenita Cabida^[4] and her common-law spouse, the appellant Barcena at Dinalaoan, Narvacan Ilocos Sur.

Estrella testified that at 10:00 o'clock in the morning of April 10, 1997, she was alone in their house when appellant suddenly embraced her from behind and dragged her towards the bedroom despite her vigorous attempts to free herself from his clutches. Appellant repeatedly slapped Estrella, forcibly stripped her of her clothing, mounted her and then inserted his penis into her vagina. Estrella could not tell how long the appellant stayed on top of her but after a while, he put on his clothes and ordered her to do the same. He warned her not to tell anybody about the assault or he would kill her. Four days later, she revealed the harrowing experience to her cousin who accompanied her to the barangay captain.

Dr. Estela Cabigas-Cabatu, resident physician of the Central Ilocos Sur District Hospital, testified that she found healed lacerations at 2 o'clock, 4 o'clock, and 8 o'clock positions of the hymen of the victim. She opined that for a 15-year old girl with no history of delivery, the presence of healed lacerations is abnormal and could have been caused by the introduction of a foreign object into her genitalia, such as a penis during sexual intercourse.^[5]

Appellant raised the defenses of denial and alibi. He testified that since 1992 he was living in the house of his live-in partner Nenita Cabida, the mother of Estrella, at Dinalaoan, Narvacan Ilocos Sur. On April 10, 1997, he left the house at 6 o'clock in the morning and reported for work at the Cachola's Rice Mill where he was a mill operator and went home at 6 o'clock in the evening. He insisted that he was in good terms with Nenita's six children, including Estrella, who would not have accused him of rape had she not been prodded by her relatives who were resentful of him because he squandered the money Nenita was sending from abroad. While admitting that he misspent the money, he claimed that he never neglected to provide for the education and the subsistence of her children. He also stated that on April 10, 1997, Nenita was working abroad and arrived in the country only in November 1997.

Interestingly, despite appellant's allegation that Nenita was abroad when the alleged rape was committed, the latter testified that on April 10, 1997, she and the appellant left the house at 6 o'clock in the morning and went to Cachola's Rice Mill where she worked as a cook. On cross-examination, she insisted that her daughter would not have filed the instant case against the appellant had she not been influenced by other persons.

The presence of the appellant at the rice mill on April 10, 1997 was corroborated by the rice mill operator, Manuel Cachola, who testified that appellant reported for work as a machine operator on that day.

In a decision dated October 13, 2000, the trial court found the appellant guilty beyond reasonable doubt of the crime of rape and sentenced him to suffer the extreme penalty of death, the decretal portion of which reads:

All things having been considered, this Court finds the accused EDGARDO BARCENA y POCA "GUILTY" beyond reasonable doubt of the offense of rape as charged in the aforequoted Information through the use of force or intimidation as amended by Republic Act No. 7659, making the same a "qualified rape" having been committed and duly proven at the trial as alleged in the Information with the attendant circumstance of, "that the victim is under eighteen (18) years of age, and the offender x x x is the

common-law-spouse of the parent of the victim.

Perforce with heartfelt regrets, this Court has to dutifully impose the supreme penalty of DEATH upon the accused Edgardo Barcena and to indemnify the victim in the amount of P75,000.00, pay moral damages in the amount of P50,000.00 and the costs of the suit.

SO ORDERED.^[6]

The Court of Appeals affirmed the decision of the trial court, the dispositive portion of which reads:

UPON THE VIEW WE TAKE OF THIS CASE, THUS, the appeal is hereby DISMISSED for lack of merit. The accused-appellant EDGARDO BARCENA y POCA is hereby sentenced to the capital penalty of DEATH and condemned to indemnify the victim in the amounts of Php 75,000.00 as civil indemnity and Php 50,000.00 as moral damages as well as the costs of this suit.

ACCORDINGLY, let the entire record of this case be forwarded for review to the Supreme Court pursuant to A.M. No. 00-5-03-SC, which took effect on October 15, 2004.

SO ORDERED.^[7]

Hence, this appeal based on the following assignment of errors:

I

THE LOWER COURT GRAVELY ERRED IN FINDING ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED.

II

THE LOWER COURT GRAVELY ERRED IN GIVING FULL AND (*sic*) WEIGHT AND CREDENCE TO THE TESTIMONY OF PRIVATE COMPLAINANT ESTRELLA CABIDA.^[8]

Appellant contends that the conduct of complainant prior to, during, and after the alleged sexual assault was inconsistent with the charge of rape. Complainant's reaction was too perfunctory and unconcerned about her alleged ordeal which put into serious doubt the charge of rape.

Appellant further asserts that if Estrella was indeed raped on April 10, 1997, she should have shouted for help since her brothers and cousins were just nearby playing cards at a neighbor's house. He insists that the charge of rape could not have occurred because there was no resistance from the victim; that Estrella's credibility is put to doubt by her failure to report the incident to her mother Nenita, and to her siblings; that it was only after four days that she reported the incident to the barangay captain whose house was only a few meters away from her house; and that more than four months had elapsed before she filed the complaint with the Narvacan Police.

Appellant also assails the veracity of Estrella's birth certificate considering that it is merely an unauthenticated photocopy of the original, and it cannot be fully ascertained if the complainant was really 15 years of age at the time of the alleged rape incident.

The trial court dismissed the arguments advanced by the defense and gave full credence to the categorical and forthright testimony of Estrella who was steadfast in her testimony even when cross-examined by the defense counsel. It further observed that the victim broke down three times during her testimony. Her narration of how the appellant, through force and intimidation, succeeded in having carnal knowledge of her against her will and consent exhibits all the badges of truth as there is no scintilla of falsehood in her testimony that would suggest a concocted tale of defloration. The bestiality committed by appellant is detailed in the following narration of the victim at the witness stand:^[9]

Q. What did you do or what was your reaction when the accused suddenly embraced you from behind?

A. I was struggling.

x x x x

Fiscal Rojas:

Q. And why were you trying to struggle free from the hold of the accused who embraced you from behind?

A. To go away from him, sir.

Q. And were you successful in extricating yourself from the embrace behind of the accused?

A. No, sir.

Q. Why, what did the accused do so that you were not able to struggle free from his embrace?

A. Because he embraced me tightly.

Fiscal Rojas:

Q. So, what happened next Madam witness when you were not able to break free from his tight embrace?

A. He undressed me completely.

Q. Where, right there at the sala?

A. No, sir.

Q. Where?

A. In the room, sir.

x x x x

Q. And how did you end up in the bedroom with the accused when you said earlier that the accused was then tightly embracing you in the sala of the house?

A. He pulled me to his room.

Q. And while the accused was pulling you towards his room, what did you do if any?

A. I struggled and struggled, sir.

On cross-examination, Estrella elaborated more on how she was defiled by the appellant:^[10]

Atty. Corrales:

Q. In your direct testimony you narrated what the accused did to you on that date, April 10, 1997. When the accused held you he used both his hands in embracing you, is that correct?

A. Yes, sir.

Q. And that was all the accused did?

A. He even kissed me when we were still in the sala, sir.

Q. My question is about your being embraced by the accused if he used his both hands in tightly embracing you?

A. Yes, sir.

Q. According to you he used his both hands in embracing you after that he pulled you to the room using his both hands?

A. Yes, sir.

Q. When you were in the room he kissed you, is that correct?

A. Yes, sir.

Q. Where were his hands at the time he kissed you?

A. He was still embracing me sir.

Q. With both his hands?

A. Yes, sir.

Court:

Q. From your behind or in front of you?

A. In front of me, Your Honor.

Atty. Corrales:

Q. When he undressed you he used both his hands, is that correct?

A. He used only one hand because his other hand was holding me, sir.

Q. Holding your body is that correct?

A. Yes, sir.

Q. How long did it take him to undress you?

A. I do not know, sir.

Q. You were dressed with pant[s] then, is that correct?