

EN BANC

[G.R. NO. 169430, October 31, 2006]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. HENRY
BIDOC Y ROQUE, ACCUSED-APPELLANT.**

D E C I S I O N

CHICO-NAZARIO, J.:

For review is the Decision^[1] of the Court of Appeals in CA-G.R. CR-H.C. No. 00778 dated 6 June 2005 which affirmed *in toto* the Joint Decision^[2] of the Regional Trial Court (RTC) of Luna, Apayao, Branch 26, dated 13 July 2001 in Criminal Cases No. 10-2000 and 11-2000 finding herein appellant Henry Bidoc y Roque guilty beyond reasonable doubt of two counts of rape committed against his 14-year old daughter, and sentencing him to suffer the supreme penalty of death for each count, and to indemnify the victim in the amount of P75,000.00 as civil indemnity, plus moral and exemplary damages in the amount of P70,000.00, and the costs of the suit.

On 9 May 2000, appellant Roque was charged in two separate Informations with the crime of rape, as defined and penalized under Article 335 of the Revised Penal Code, as amended by Republic Act No. 8353^[3] and Republic Act No. 7610,^[4] committed against his very own daughter, on 21 November 1999 and sometime in December 1999, respectively. The two Informations stated:

Criminal Case No.10-2000

The undersigned Assistant Provincial Prosecutor, accuses HENRY BIDOC, of the crime of RAPE defined and penalized under Article 335 of the [RPC] as amended by R.A. [No.] 8353 and [R.A. No.] 7610 committed as follows:

That on or about November 21, 1999 at Sitio xxx, Brgy. xxx, [Municipality of] xxx, [Province of] xxx^[5] and within the jurisdiction of the Honorable Court, the above-named [appellant] did then and there willfully, unlawfully and feloniously with the use of force and intimidation and taking advantage as a father over his daughter AAA,^[6] 14 years old, succeeded having sexual intercourse against her will.^[7]

Criminal Case No. 11-2000

The undersigned Assistant Provincial Prosecutor, accuses HENRY BIDOC y [Roque] of the crime of RAPE defined and penalized under Article 335 of the Revised Penal Code as amended by R.A. [No.] 8353 and [R.A. No.] 7610, committed as follows:

That on or about December, 1999 at Sitio xxx, Barangay xxx, [Municipality of] xxx, {Province of] xxx and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and feloniously with the use of force and intimidation and taking advantage as a father over his daughter AAA, 14 years old, succeeded having sexual intercourse against her will.^[8]

On 5 June 2000, the appellant was arraigned in both cases to which he entered a plea of NOT GUILTY to the charges against him. After pre-trial, a joint trial on the merits ensued.

The prosecution presented the following witnesses: AAA, the victim; SPO1 Reynante Agculao; and Dr. Thelma Dangao. As rebuttal witness, the prosecution offered the testimony of the victim's mother, BBB.

AAA testified that she was only 14 years of age when the first rape incident happened on 21 November 1999. She narrated that on the said date, she was in their house at Sitio xxx, Barangay xxx, Municipality of xxx, Province of xxx. At that time, her mother, BBB, was washing clothes in a brook, which was quite far from their house. Her sister, CCC, who was then six years old, went with their mother, while her other siblings DDD and EEE, who were then three and two years old, respectively, were playing outside their house. On that very moment, when only AAA and her father, herein appellant, were left inside the house, the latter started kissing her and went on removing her clothes. She resisted but the appellant was much stronger, hence, despite her resistance, appellant succeeded in undressing her. When she was already naked, appellant inserted his penis into her vagina, did all what he wanted and thereby succeeded in having sexual intercourse with her. As a result, she felt so much pain in her private part. Worse, after satisfying his lust, appellant even threatened to kill her if she will reveal to anybody what had happened. Terribly frightened and hardly able to comprehend the situation, she could only cry out in utter helplessness and desperation. When her mother came back, she did not tell what happened for fear that appellant might carry out his threat.^[9]

On the evening of December 1999, AAA was raped for the second time by herein appellant. On that occasion, only AAA and appellant were present at their house, because her mother brought her two siblings, DDD and EEE to the hospital located in the Municipality of xxx, Province of xxx while her other sibling, CCC went to the house of their grandmother. In their place of residence, they have no neighbor or neighbors near them. The nearest house could not be seen from their house. When asked how the second rape incident happened, she narrated that the appellant first removed all her clothing and when she was already naked, while lying down, appellant inserted his penis into her vagina and kissed her. After the sexual act, appellant told her not to reveal what happened to anybody or else he will kill her.^[10]

In the early part of January 2000, AAA took chances in going to the PNP Station located in Kabugao, Apayao, and reported that she was raped twice by the appellant. She was alone when she reported the incidents to SPO1 Agculao, an investigator of Kabugao Municipal Police.^[11]

SPO1 Agculao corroborated the matter of reporting the two rape incidents to the

PNP Station in Kabugao, Apayao. He testified that on 6 January 2000, AAA voluntarily came to the police station to report that her own father, herein appellant, had raped her. He then conducted an investigation at the Investigation Section of PNP Kabugao regarding the complaint of AAA. The result of the said investigation was reduced into writing. As part of the investigation, he asked AAA to undergo a medical examination. He brought her to the Rural Health Office for the medical examination and even made a request to Dr. Dangao for the issuance of a medical certificate.^[12]

At the Rural Health Office, Dr. Dangao, who was then the Rural Health Officer of Kabugao, Apayao, conducted a medical examination on AAA. She declared in court that her examination indicated that AAA's genital area reveals healed hymenal lacerations at 3, 7, and 10 o'clock positions, and the vaginal opening admits one finger with ease. She further avowed that the said lacerations could have been caused by any penetration, by any hard object or a man's penis. She also mentioned in court that those lacerations could have occurred during the months of November or December 1999.^[13]

On the part of the defense, it presented the testimony of the following witnesses: Ruben Bidoc, John Lawani, Teodoro Lawani, SPO1 Felipe Erving, Julio Bidoc, and herein appellant.

In the testimony of Ruben, the brother of the appellant, he claimed that on the first week of November 1999, he and the appellant went to Ripang, Conner, Apayao, to work for the construction of the house of Bongbong Lawani and they only left the said place at the end of November 1999. He averred that Ripang, Conner, Apayao, is an hour ride away from Sitio xxx where the incident happened and on the nights of 20 and 21 November 1999, he and the appellant slept in the house of Bongbong's father in Ripang, Conner, Apayao. According to him, on 21 November 1999, the date when the alleged rape incident happened, appellant never left Ripang. In fact, on the said date, he and appellant were constructing the house of their cousin, Bongbong Lawani, together with the latter's father and brother.^[14]

John Lawani merely corroborated the testimony of Ruben that the appellant was in Ripang, Conner, Apayao, working as a carpenter in the house of Bongbong when the alleged rape incident happened on 21 November 1999. He knew this fact because his house is only twenty meters away from Bongbong's house. With respect to the second rape incident, which had happened sometime in December 1999, he stated that during said month, appellant was working as a carpenter at Kabetayan Bridge, Kabugao. He was sure of this because he was the contractor of that bridge, but he was not sure if appellant went home during said month. ^[15]

Another defense witness, Teodoro, also testified that the appellant had worked as a carpenter in the house of Bongbong in the month of November 1999. He was not sure however if appellant stayed there during the entire month of November 1999. ^[16]

SPO1 Felipe Erving asserted he noticed AAA was staying in the house of her grandfather since the opening of the schoolyear until the months of November and December 1999. He knew this fact because his house is only one hundred meters away from the house of Julio, the father of the appellant, and whenever he was

home, he always saw AAA in her grandfather's place. On 3 January 2000, he alleged that AAA came to their house and asked for help, because her father had whipped and slapped her. He brought her to the barangay captain, but the latter was not around so he told AAA to just wait for the captain. Instead of waiting, she left. He stressed that there is a distance of one and one-half kilometers between the house of the appellant and that of Julio, a distance of two kilometers between appellant's house to that of his house, and the nearest house to the house of the appellant is one hundred meters away. Nonetheless, he divulged in court that during the whole month of November and December 1999, he was not in Sitio xxx because he was assigned at the PNP Station of Kabugao, Apayao.^[17]

Julio substantiated the declaration of SPO1 Erving that her granddaughter, AAA stayed in his house during the schoolyear until November and December 1999. Nevertheless, he stated that during weekends, AAA goes back to the house of her parents and on his cross-examination, he attested that as a Department of Public Works and Highways (DPWH) maintenance man, he stayed at work the whole day and even ate his lunch on his worksite. Hence, most of the time, he did not know what was going on in his house because he was out for work the whole day.^[18]

Appellant was the final witness presented by the defense. The justification offered by him by way of exculpation, was both denial and alibi. He denied having committed the offenses charged against him. He claimed that from the first week until the last week of November 1999 he was at Ripang, Conner, Apayao, together with his brother, working as a carpenter in the construction of Bongbong's house, while in the month of December 1999, he was at Barangay Kabetayan, Kabugao, Apayao, also working as a carpenter in the construction of a bridge. According to appellant, her daughter was motivated in filing the present cases against him to get even with him because he slapped her on 3 January 2000 in front of her "*barkadas*" and he even threatened to kill her for fear that she might get pregnant because of her going out at night and coming home late. However, during his cross-examination, he admitted that AAA goes home whenever his wife fetches the former.^[19]

To refute the aforesaid testimony of the accused, the prosecution presented BBB, the wife of the appellant and the mother of AAA. In her testimony, she disclosed that appellant left their house in the month of August (no year was stated) but during the months of November and December 1999, her husband, herein appellant, was at their house in Sitio xxx, Barangay xxx, Municipality of xxx, Province of xxx. She also mentioned that her daughter AAA often came home to their house during said months and she alternately slept in her grandfather's house and in their house. She further attested that whenever AAA came home, appellant was in their house. When the court asked her, she affirmed that appellant did not work during said months.^[20]

On 13 July 2001, after consideration of the respective evidence of the prosecution and defense, the trial court rendered the assailed Joint Decision convicting the appellant for two counts of rape, the decretal portion of which reads, thus:

WHEREFORE, finding the [appellant], HENRY BIDOC y ROQUE guilty beyond reasonable doubt of the two (2) counts of rape charged against him, this court hereby sentences said [appellant] to suffer the Supreme

Penalty of DEATH in each of the case filed against him.

The [appellant] is further ordered to indemnify the victim [AAA] the amount of SEVENTY FIVE THOUSAND PESOS (P75,000.00) as civil indemnity plus moral and exemplary damages in the amount of SEVENTY THOUSAND PESOS (P70,000.00), all in Philippine Currency, and the costs of the suit.^[21]

The records of this case were originally transmitted before this Court on automatic review.

In his brief, appellant assigns the following errors, viz:

- I. The trial court gravely erred in convicting appellant of two counts of rape not on the basis of the strength of the prosecution's evidence but rather on the weakness of the defense's evidence.
- II. The trial court gravely erred in not considering the Information in Criminal Case No. 11-2000 as insufficient to support a judgment of conviction for failure of the prosecution to state the precise date of commission of the alleged rape, it being an essential element of the crime charged.

Pursuant to *People v. Mateo*,^[22] the records of the present case were transferred to the Court of Appeals for appropriate action and disposition.

Accordingly, the Court of Appeals, taking into consideration the assignment of errors stated by the appellant in his Appellant's Brief and after a thorough study of the records of the case, rendered a Decision on 6 June 2005, affirming *in toto* the Joint Decision of the RTC of Luna, Apayao. The dispositive portion of the decision reads as follows:

WHEREFORE, the assailed [J]oint [D]ecision of Branch 26 of the RTC of Luna, Apayao, is hereby AFFIRMED *in toto*. Pursuant to A.M. No. 5-03-SC, let this case be certified to and elevated to the Hon. Supreme Court for further review.^[23]

Aggrieved, appellant filed a Motion for Reconsideration on 27 June 2005, which was denied by the Court of Appeals in its Resolution dated 17 August 2005 for lack of merit.

The case was then certified and elevated to this Court for further review. On 27 September 2005, this Court resolved to accept the present case and to require the parties to simultaneously submit their respective supplemental briefs. The Office of the Solicitor General filed a Manifestation and Motion stating that it will no longer file any supplemental briefs, but instead, it will merely adopt its Appellee's Brief filed on 25 March 2003. Correspondingly, appellant filed a Manifestation in lieu of supplemental brief manifesting he will merely adopt his Appellant's Brief where his innocence had been assiduously discussed.

After a careful review of the records of this case, this Court affirms appellant's conviction.