

THIRD DIVISION

[G. R. Nos. 137414-15, May 29, 2003]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. OSCAR CALAMLAM Y AGNAZATA, ACCUSED-APPELLANT.

DECISION

CARPIO MORALES, J.:

This is an appeal from the January 6, 1999 decision^[1] of the Regional Trial Court (RTC), Branch 34, Calamba, Laguna finding appellant Oscar Calamlam guilty of two counts of rape.

In two informations dated August 27, 1997, appellant was charged before the Calamba RTC with two counts of rape of his daughter AAA, docketed as Criminal Case Nos. 5487-97-C and 5488-97-C. The inculpatory portions of the informations read as follows:

Criminal Case No. 5488-97-C

That sometime in September 1989, at at (sic) Brgy. [REDACTED], Municipality of [REDACTED] Province of [REDACTED] and within the jurisdiction of this Honorable Court, the above-named accused, through force, violence and intimidation and with lewd design did then and there willfully, unlawfully and feloniously have carnal relation with his daughter, one AAA fourteen (14) years old, a minor, against her will and consent to her damage and prejudice.

CONTRARY TO LAW.^[2]

Criminal Case No. 5487-97-C

That on or about July 22, 1997, at Brgy. [REDACTED], Municipality of [REDACTED] Province of [REDACTED] and within the jurisdiction of this Honorable Court, the above-named accused, through force, violence and intimidation and with lewd design did then and there willfully, unlawfully and feloniously have carnal relation with his daughter, one AAA twenty-two (22) years old, against her will and consent, to her damage and prejudice.

CONTRARY TO LAW.^[3]

When arraigned on March 2, 1998, appellant, duly assisted by counsel, pleaded "not guilty" in both cases which were consolidated and jointly tried.

The prosecution established the following:

At about noon in September 1989, in barangay [REDACTED], AAA, then aged 14, arrived home from school and found her father-herein appellant alone. After partaking lunch, she went to their bedroom where appellant pushed her to the bed. Taken aback, she asked him why, but he told her to stop talking and proceeded to punch her stomach and her "side".

Appellant then removed AAA's panty as he did his own underwear, drawing her to cry profusely and to plead with and tell him "*Sabi po ninyo hindi ninyo gagawin ang ginawa ninyo kay ate.*"^[4] Unmindful of her plea, appellant proceeded to part her legs and forcibly insert his penis into her vagina.

After satisfying his lust on AAA, appellant ordered her not to tell her mother, threatening to kill her and her siblings should she do so.^[5]

After the lapse of several days, AAA was and had since been repeatedly sexually abused by appellant until she reached the age of 18.^[6]

On July 22, 1997, while AAA's mother and brothers were watching television in the living room and her sister was studying in the dining room, appellant told her, as she was about to sleep, that he wanted to have sex with her.^[7] She vehemently refused, but he once again punched and slapped her, causing her face to slam against the door. As she could no longer offer any resistance and she could not shout for help, appellant having warned her that if she did he would hurt her, appellant was able to "again do it to [her]".^[8] The following day or on July 23, 1997, AAA went to the Philippine National Police (PNP) Criminal Investigation Group in Canlubang, Laguna with her friend Lychin Rivel to report the sexual assaults against her.

Senior Inspector Joselito Antonio Rodrigo, Medico-Legal Officer of the PNP Crime Laboratory, physically examined AAA, the results of which are reflected in his Medico-Legal Report M-059-97.^[9] Dr. Rodrigo found that she was no longer a virgin; her hymen had a deeply healed laceration at 6:00 o'clock position; and her external vaginal orifice offered moderate resistance to the introduction of the examining index finger.

Thus spawned the filing of the cases at bar.

Appellant denied having sexually assaulted AAA. He asserted that the charges against him were made on account of an altercation he had with her.^[10] He speculated that because he is very strict with her^[11] and beats her up frequently,^[12] she concocted the charges.

Testifying in appellant's defense, his wife [REDACTED] and their son [REDACTED] claimed that AAA never told them about the alleged sexual assaults prior to the filing of the charges.^[13]

AAA's sister [REDACTED] who likewise testified in appellant's defense speculated that her sister filed the charges against their father in her (AAA's) desire to have him incarcerated on account of the beatings he repeatedly inflicted on her.^[14] And she

claimed that AAA forced her^[15] to execute a sworn statement^[16] before the PNP Regional Office in Canlubang declaring that she had seen appellant sexually assaulting her.

Finding for the prosecution, the trial court convicted appellant by the assailed decision of January 6, 1999, the dispositive portion of which reads:

ACCORDINGLY, judgment is hereby rendered as follows:

In Criminal Case No. 5487-97-C, this Court finds accused Oscar Calamlam, Sr. GUILTY beyond reasonable doubt of the crime of Rape as defined and penalized under Article 335 of the Revised Penal Code, as amended, and hereby sentences him to suffer the penalty of Reclusion Perpetua.

Accused is further ordered to indemnify the victim AAA the sum of P50,000.00 as moral and compensatory damages.

In Criminal Case No. 5488-97-C, this Court finds accused Oscar Calamlam, Sr. GUILTY beyond reasonable doubt of the crime of Rape as defined and penalized under Article 335 of the Revised Penal Code, as amended, and hereby sentences him to suffer the penalty of Reclusion Perpetua.

Accused is further ordered to indemnify the victim the sum of P50,000.00 as moral and compensatory damages.

With costs against the accused in both cases.

SO ORDERED.^[17]

Hence, the present appeal, appellant assigning the following errors to the trial court:

I. THE COURT A QUO ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF TWO COUNTS OF RAPE.

II. THE COURT A QUO ERRED IN ORDERING THE ACCUSED-APPELLANT TO INDEMNIFY VICTIM IN THE TOTAL AMOUNT OF P100,000.00 AS MORAL AND COMPENSATORY DAMAGES.^[18]

Appellant posits that AAA's charges are rendered suspect by the delay of almost eight years in filing them from the alleged occurrence of the first rape incident; that AAA's return to their residence, even after the alleged first rape incident, despite the fact that she was already boarding in a house near her place of work, casts serious doubt on her charges;^[19] that it would be impossible for him to have committed the crimes since they lived in one compound with AAA's maternal grandmother and aunt; that her testimony that she did not tell anyone of the rape incidents because she did not want to involve anyone runs counter to her friend Lychin Rivel's testimony that she (AAA) tearfully told her that she would commit suicide if said friend did not help her;^[20] and that the information charging him with the first count of rape does not state the date of the commission of the crime with sufficient certainty as to give him an opportunity to prepare for his defense.^[21]

After a considered review of the records of these two cases, this Court finds that the appeal is meritorious with respect to the second count of rape but not with respect to the first.

AAA's account of the first rape incident is clear and candid, punctuated with tears:

Q: The date of September 1989 do you recall of any unusual incident that happened to you?

x x x

A: The rape sir.

Q: Who raped you?

A: My father.

Q: When you said your father who is your father?

A: Oscar Calamlam Sr.

Q: In what place were you raped?

A: In our house located in [REDACTED].

Q: More or less what time was it?

A: Between 12:15 to 12:30 sir.

Q: Midnight?

A: Noon your honor.

Q: In what portion of the house were you raped by your father?

A: Inside our room.

Q: Can you tell us in brief how your father was able to rape you in your own house in September 1989?

A: I have just came (sic) from the school then at 12:15 noon so I came to the house and I was surprised he was alone. Normally he does no (sic) let my brothers and sister to (sic) leave before 1:00 because theirs (sic) classes start at 1:00 but at that time he was alone.

Q: When you arrived in your house, where did you proceed?

A: In the kitchen because he told me to eat.

Q: Did you eat as told by your father?

A: Yes, sir.

Q: After eating what did you do?

A: I was changing (sic) clothes because I was going to wash dishes.

Q: Where did you change clothes?

A: Inside our room.

Q: What happened when you changed your dress?
A: When I passed by the living room he was no longer in the living room and when I returned to the room he was there.

Fiscal: May I manifest your honor that the witness is crying.
After you found your father inside that room, what did you do?

A: I did not mind him.

Q: What happened next?

A: **He pushed me on the bed and I asked him "Bakit po?" and he told me to stop.**

Q: After you said you were thrown by your father what did your father do to you?

A: He boxed me on my stomach and on my side.

Q: What did you do when you said you were boxed by your father in (sic) your side and in (sic) your stomach?

A: **I fell on the bed and held my hands like this, (Witness raised her hand) and then he removed my panty.**

Q: After removing your panty what did your father do?

A: He also removed her (sic) brief.

Q: After your father removed his brief and you were already lying down, what did you do?

A: I was crying.

Q: Why?

A: Because I already knew then what will happen sir because at that time I asked him "Sabi po ninyo hindi ninyo gagawin sa akin ang ginawa ninyo kay ate."

Fiscal: May we again manifest that the witness is crying.

Q: After telling your father and he removed his brief what did he do?

A: He did what he wanted to do and raped me.

Q: What exactly did he do to you?

A: **He opened my legs and inserted his private part into mine.**

Q: **What were you doing at that time your father was inserting his private part to (sic) your private part?**

A: I was crying because it was painful.

Q: You said he was able to insert his penies (sic) to (sic) your private organ?

A: It was "mahapdi na masakit".

Q: After your father has (sic) inserted his private part in to