

SIXTH DIVISION

[CA-G.R. CR-H.C. NO. 01099, September 27, 2006]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NIDO GARTE, ACCUSED-APPELLANT.

D E C I S I O N

COSICO, J.:

Nido Garte was indicted before the Regional Trial Court, Branch 89 of Quezon City for four counts of rape defined and penalized under Article 266-A in relation to paragraph 1, Art. 266-B of the Revised Penal Code, as amended by Republic Act No. 8353, as alleged in the following accusatory portions of the Amended Informations with the corresponding docket numbers in each of the criminal cases, which state:

Criminal Case No. Q-01-106123

"That on or about the first week of April, 2001 in Quezon City, Phiippines, the above-named accused with force and intimidation did then and there, willfully, unlawfully and feloniously commit acts of sexual assault upon the person of one RAQUEL T. GARTE his own daughter a minor 17 years of age by then and there inserting his penis inside her vagina and thereafter had carnal knowledge of her against her will and without her consent, to her damage and prejudice.

CONTRARY TO LAW."¹

Criminal Case No. Q-01-106124

"That on or about the 23rd of May, 2001 in Quezon City, Phiippines, the above-named accused with force and intimidation did then and there, willfully, unlawfully and feloniously commit acts of sexual assault upon the person of one RAQUEL T. GARTE his own daughter a minor 17 years of age by then and there inserting his penis inside her vagina and thereafter had carnal knowledge of her against her will and without her consent, to her damage and prejudice.

CONTRARY TO LAW."²

Criminal Case No. Q-01-106125

"That on or about the second week of April, 2001 in Quezon City, Phiippines, the above-named accused with force and intimidation did then and there, willfully, unlawfully and feloniously commit acts of sexual assault upon the person of one RAQUEL T. GARTE his own daughter a minor 17 years of age by then and there inserting his penis inside her vagina and thereafter had carnal knowledge of her against her will and

without her consent, to her damage and prejudice.

CONTRARY TO LAW.”³

Criminal Case No. Q-01-106126

“That on or about the 8th day of August, 2000 in Quezon City, Phippines, the above-named accused with force and intimidation did then and there, willfully, unlawfully and feloniously commit acts of sexual assault upon the person of one RAQUEL T. GARTE his own daughter a minor 17 years of age by then and there inserting his penis inside her vagina and thereafter had carnal knowledge of her against her will and without her consent, to her damage and prejudice.

CONTRARY TO LAW.”⁴

During the arraignment, accused-appellant Garte pleaded not guilty to the four (4) counts of rape and invoked the defense of denial and *alibi*.⁵ After pre-trial, trial on the merits ensued. The prosecution presented documentary evidence and testimonies of the following witnesses, namely, (1) Raquel T. Garte; (2) Linda Garte; (3) P/S Insp. Mary Ann Gajardo. Meanwhile, opting not to present any documentary evidence, the defense presented the lone testimony of accused-appellant Nido Garte [“Garte”]. Verily, in discrediting accused-appellant’s defense of denial and *alibi*, the trial court gave greater weight to the prosecution’s evidence of accused-appellant’s culpability and found the testimony of the rape victim, Raquel T. Garte (“Raquel”) as credible. Consequently, the trial court adjudged accused-appellant guilty of the crimes charged. The pertinent portions of the said Decision⁶ read as follows:

“WHEREFORE, premises considered, judgment is rendered finding accused Nido Garte guilty for four (4) counts of the crime of Rape defined and penalized under Article 266-A in relation to subsec. 1, Art. 226-B, RPC or R.A. 8353. Accordingly, he is hereby sentenced to suffer death for each count of rape as charged in the four (4) informations docketed as Q-01-106123, Q-01-106124, Q-01-106125, and Q-01-106126.

He is further ordered to pay complainant for each count of rape the sum of P75,000.00 as civil indemnity x x x or a total of P300,000.00 and the sum of P50,000.00, as moral damages for each count of rape, or a total of P200,000.00.

With costs de oficio.

SO ORDERED.”⁷[Decision, pp. 10-11]

This case before the Court is Garte’s appeal from the judgment of conviction.

The Facts

According to the prosecution’s version of the events which led to the filing of the criminal cases of rape against accused-appellant, it appears that Garte and the rape victim are related to one another being father and daughter. Raquel narrated that she was raped four (4) times by her father which rape started on August 8, 2000,

and was repeated again sometime in the first and second weeks of April and yet again on May 23, 2001. The victim testified that during the four (4) occasions when accused-appellant raped her, the latter used a bladed weapon to subdue her resistance and thereafter told her not to report the incidents to her mother. The victim related that whenever she was raped, accused-appellant would start by taking off her clothes, and then proceed in kissing her on various parts of her body and thereafter placing himself on top of her inserting his penis into her private part.

During the first time that she was raped, Raquel told the unfortunate incident ("pambababoy") to her mother, Linda Garte⁸ who did not believe her. During the second rape, she told her half-sister, Nenita Titoy who got mad and told her not to go back to their house. On the third rape incident, she did not inform her mother of what transpired for fear that accused-appellant might kill them. Finally, during the fourth rape incident, unable to contain her ordeals, Raquel again told her mother about the rapes and thereafter, the two of them, together with Nenita Titoy went to Camp Karingal where the victim executed a sworn affidavit⁹. Afterwards, the trio proceeded to Camp Krame where Raquel underwent a medical examination.

Besides Linda Garte, the prosecution presented as corroborating witness, P/S Insp. Mary Ann Gajardo¹⁰, the medico-legal officer who physically examined¹¹ Raquel on June 19, 2001. Gajardo stated that the victim had a deep healed laceration on her genitalia and was in a non-virgin state. Gajardo declared that such laceration might have been caused by a blunt object, such as an erected penis, inserted in the vaginal canal of the victim. Nevertheless, the witness could not approximate the time when such laceration could have been inflicted which, she declared, could have been inflicted in a week, a month or even years.

Meanwhile, the defense presented the lone testimony of accused-appellant Garte¹² who denied the charges against him. He claimed that he hardly sees his daughter as his work as a tricycle driver compels him to leave the house as early as 4 AM, only to return at around 8 PM. Accused-appellant stated that his usual workday was that he would return home to eat lunch and rest for an hour and thereafter proceed to ply his route in Sikatuna Toda. He denied having deviated from such routine and he has no idea why his daughter would impute rape charges against him considering that he and his family had a harmonious relationship with one another.

The Ruling of the Regional Trial Court

In adjudging the guilt of accused-appellant and imposing upon him the supreme penalty of death for each count of rape, the trial court in its May 19, 2005 Decision ruled:

"In a clear, direct, positive, straightforward manner and continuous crying on the witness stand, complainant declared that she was ravished or raped four times by no less than her father. It has been said that a witness who testifies in a categorical, straightforward, spontaneous and frank manner and remains consistent on her accusation is a credible witness. x x x [Id. at 8]

x x x

Similarly, it is clear from the testimony of the complainant that she was raped four times under threats, force and in the presence of a knife and

her efforts to resist the unpardonable act of the accused, who is her father, and pleas for mercy, did not deter his evil lustful spirit in committing the crime. This situation clearly proved the crime of rape. x x x

In light of the foregoing considerations, accused's denial of the offense through alibi is faceless and has no significant force at all in this proceedings.

In the first place, accused was positively identified by the complainant as the author of the crime x x x Secondly, it is admitted by the accused that his route in plying his tricycle was in Sikatuna Area. Hence, it is not physically or inherently impossible for him to be in his house at the time of the commission of the crime simply because it is located in Sikatuna and he can easily negotiate to reach his house with the aid of his tricycle. [Id. at 9]"

With the ruling of the Supreme Court in the case of *People vs. Efren Mateo y Garcia* promulgated on July 7, 2004 in G.R. Nos. 147678-87 which modified the pertinent provisions of law insofar as they provide for direct appeals from the Regional Trial Courts to the Supreme Court in cases where the penalty imposed is death, *reclusion perpetua* or life imprisonment, the instant action is now brought before us in this appeal.

The Present Appeal

The sole assigned error brought before this Court is:

WHETHER OR NOT THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF FOUR (4) COUNTS OF RAPE WHEN HIS GUILT HAS NOT BEEN PROVEN BEYOND REASONABLE DOUBT.

In this regard, accused-appellant lays stress¹³ to the incredibility and inconsistency in the statements uttered by Raquel which cast doubts on the veracity of her claims. For instance, the discrepancies in the two sworn affidavits¹⁴ executed by the latter on the number of times she was raped were left unexplained. Moreover, as per testimony of Raquel, she reported the rape incident twice to her mother who, on the other hand, stated that she was told only once of such matter. Another inconsistency found in the victim's testimony was with respect to the weapon used by accused-appellant during the rape. For, on one hand, during direct examination, Raquel testified that her father used a bladed weapon during the commission of the rapes; and, on the other hand, on cross-examination, she testified that accused-appellant only used a pointed knife once, and a gun on the other rapes. Lastly, the claim that the victim was raped during daytime (lunchtime) is contrary to human experience considering the high probability of being discovered.

In fine, accused-appellant advances that such inconsistent statements cannot suffice to establish moral certainty of his culpability.

On the other hand, the Solicitor General posits¹⁵ that the alleged inconsistencies and contradictions in the victim's testimony cannot discredit her testimony which

she gave in a clear, direct, positive and straightforward manner and tearful account of the sexual ravishment she suffered in the hands of accused-appellant, her own father, for four times. Accused-appellant failed to allege, much less prove, any reason to show that Raquel falsely accused her own father of a crime which may not only cost him his life but also deprive herself and her siblings of a father.

The alleged inconsistencies pointed out by accused-appellant refer to extraneous matters which do not disprove the crimes charged. Furthermore, there is no inconsistency or discrepancy between the Sinumpaang Salaysay and her handwritten affidavit for Raquel should not be expected to remember all the details of the rape and the exact dates of the incidents because of the confusion, fear and pain brought by such experience. It is quite understandable that when Raquel executed her Sinumpaang Saylaysay what was fresh in her young mind were the three recent rape incidents. In addition, accused-appellant's contention that it is unusual that he would rape his own daughter in broad daylight is without merit as there is nothing unusual about a rape being committed in broad daylight. Rape can be committed anywhere and anytime – in public places, or in secluded places, during nighttime or during daytime. Finally, whether accused-appellant used a gun or a bladed weapon is not relevant since it is not an important component of the crime of rape. What is important is that it was shown that the assailant used force or intimidation in cowing the victim into submitting to his desires. The use of a weapon is not an element of the crime of rape so long as the evidence shows the use of force, violence and intimidation. In the same wise, whether Raquel told her mother, once or twice about the rape committed by her father is of no moment. It is likewise not an element of the crime of rape.

Nonetheless, the Solicitor General recommends a modification of the award of damages conformable with jurisprudence as follows: (1) P75,000.00 as civil indemnity for each count of rape; (2) P75,000.00 as moral damages for each count of rape; and (3) P25,000.00 as exemplary damages for each count of rape.

This Court's Ruling

We **affirm** accused-appellant's conviction for each count of rape.

We again lay stress that as long as a witness' testimony is straightforward, candid and unflawed by inconsistencies or contradictions in its material points, and her demeanor is consistent with one who has been victimized to thus bolster credibility with the verity born out of human nature and experience, credibility can be accorded to the rape victim.¹⁶

Accused-appellant's reliance on the alleged discrepancies between Raquel's Sinumpaang Salaysay and handwritten sworn affidavit on the number of times she was raped is untenable. We take note of the steadfast doctrine prevailing in our criminal justice system that inconsistencies found in the ex parte affidavits do not necessarily downgrade the credibility of a witness.¹⁷ Almost always, ex parte affidavits are considered incomplete and often inaccurate.¹⁸ They are products sometimes of partial suggestions and at other times of want of suggestions and inquiries, without the aid of which witnesses may be unable to recall the connected circumstances necessary for accurate recollection.¹⁹