

FOURTEENTH DIVISION

[CA-G.R.CR HC NO. 01745, September 27, 2006]

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

D E C I S I O N

VIDAL, M.D., J.:

This is an Intermediate Review¹ of the Decision² dated 30 October 2003 of the Regional Trial Court, National Capital Judicial Region, Branch 208, Mandaluyong City, convicting Accused-Appellant FELIX ORTOA y OBIA (hereinafter Appellant) of the crime of Qualified Rape in Criminal Case No. MC01-327-FC committed against his own daughter, herein Victim MARI GRACE B. ORTOA (hereinafter Victim), a 13-year old minor. The decretal portion of the Decision reads:

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 MARI GRACE ORTOA 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.

SO ORDERED.³

THE ANTECEDENTS

The Information charging the Appellant of Rape reads:

That on or about the 3rd 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 his own daughter, MARI-GRACE B. ORTOA, 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.

CONTRARY TO LAW

City of Mandaluyong

06 April 2001⁴

Appellant was thereafter arraigned and, with the assistance of counsel, pleaded **not guilty** to the crime charged.⁵

On 19 June 2001, pre-trial was held and terminated with the following stipulations:

- 1. Identity of the accused;**
- 2. Victim Mari Grace Ort[o]a is a minor;**
- 3. Accused and the victim Mari Grace Ort[o]a live in the same house situated at 536 Calbayog St., Bgy. Highway Hills, Mandaluyong City;**
- 4. Victim Mari Grace Ort[o]a was thirteen (13) years old at the time of the commission of the offense;**
- 5. Cristeta Balbuena is the common-law-wife of the accused and mother of the victim Mari Grace Ortua;**
- 6. Accused, common-law-wife Cristeta Balbuena and the victim are living in the same house situated at 536 Calbayog St., Bgy. Highway Hills, Mandaluyong City;**
- 7. Accused is a barber;**
- 8. Accused has other daughter by the name of Marjorie Ort[o]a;**
- 9. The place of work of the accused is less than one (1) kilometer from the residence situated at 536 Calbayog St., Bgy. Highway Hills, Mandaluyong City[.]⁶**

Thereafter, trial on the merits ensued.

THE FACTS

As synthesized by the court *a quo*:

Prosecution's version:

Thirteen year-old Mary Grace Ortoa testified that on 3 April 2001, at about 4:00 p.m., she was in the house with her mother and her siblings when she left defecating. She told her mother that she had to go. Her mother and her siblings left the house to go to their auntie's house with was located in an alley nearby. The

whole family lives in a 15 square-meter-long room of a two-storey shanty in Mandaluyong so that when one feels the call of nature, the whole family has to leave and the other member defecates in a plastic bag.

She didn't feel like relieving herself anymore right after her family left. Thereafter, her father, herein accused, Felix Ortoa, arrived and asked where her mother and siblings were. She told him they were in her tita's house. His [sic] father closed the windows and the door and asked her to undress. She did not accede so Ortoa removed her shorts and panty. He then asked her to spread her legs. When she did not obey, her father spread her legs. She told him she does not like it, her father replied "*Sandali lang ito.*"

Thereafter, accused Ortoa, whose pants' zipper was open, mounted his daughter, Mari Grace and forced his penis in the latter's vagina. Mari Grace felt pain inside of her as her father made a push and pull movement while his penis was inserted in her vagina. After satisfying his beastly desires, Ortoa ordered Mari Grace to put on her panty and her shorts then he stood up and opened the door and the windows.

A few minutes later, her mother arrived and saw her lying on the make-shift bed. Her mother asked Ortoa what he was doing in the house. He replied there were not much customers in the barber shop where he works so he went home to rest. Ortoa stayed and rested in their house for an hour then left for work. Right after the accused left, Mari Grace's mother took the opportunity to ask her what happened and Mari Grace told her what transpired. She told her mother she was not yet ready to file a complaint against her father then because she was afraid of her father who ordered her not to tell anyone because "*ano ang mangyayari sa pamilya natin kung magrereklamo ka?*"

Mari Grace further testified that the 3 April 2001 incident was not the first time that her father sexually abused her. She was still very young when Ortoa began raping her. At first, he was just using his finger in her vagina. She did not tell her mother because then, at the age of three, she thought it was just a game, which her father was doing to her.

When Mari Grace was twelve years old, her father got her pregnant. Accused made her take medicines which eventually led to miscarriage. Her mother learned about this because she was constantly vomiting.

Ma. Cristeta Balbuena testified that she is the common-law wife of herein accused, Felix Ortoa and that Mari Grace, private complainant in this case, is their eldest daughter. On 3 April 2001, Mari Grace requested her and her two children to leave their house so that Mari Grace can relieve herself. Cristeta

brought her children with her to the house of their Tita Ining who lives nearby. As Cristeta was conversing with her tita, she felt unusual so she immediately went home. She saw Felix Ortoa in front of the door of their house while Mari Grace was lying on the makeshift bed on the verge of crying with her shorts seemed to hastily pulled up.

Cristeta knew that Felix raped her daughter again because Mari Grace once confided to her that her father goes home at around 1:00 p.m. to 3:00 p.m. to wait for Mari Grace to go home. He would have the bed set up and before Mari Grace eats, he would first rape the latter.

Cristeta asked Ortoa why he was home. Ortoa retorted, "don't I have the right to be here? Why is your face like that again, as if you're always '*sinasalisihari*'?"

After the confrontation, Ortoa left and Cristeta asked Mari Grace what happened. Mari Grace related the rape incident which just happened to her mother. Cristeta thereafter sought the help of Ortoa's employer, who made arrangements with the police for the arrest of accused and investigation of Mari Grace. She likewise accompanied Mari Grace to the medico-legal for her physical examination.

During the investigation at the police station, while both Mari Grace and Cristeta were crying as Mari Grace was relating her harrowing experience from the hands of her father, her other daughter Marjorie joined them and told her, "*Ako rin po Ma, ginagawa din sa akin ni Papa iyong ginagawa niya kay Ate.*" Marjorie, who is ten years old, confided to Cristeta that her father was sexually abusing her since she was eight.

Dra. Ma. Cristeta Freyra testified that she conducted an examination on the person of Mari Grace Ortoa and issued Medico Legal Report No. M-234-01. Her examination of Mari Grace revealed a deep healed laceration at 5, 7 and 9 o'clock position inflicted by a hard blunt object, possibly an erected male organ, more than seven (7) days prior to the examination.

PO2 Sonia Gaviana, investigator of the Women's and Children Protection Office, testified that she investigated this case and that she took down the statement of Mari Grace Ortoa and the statement of the mother, Cristeta Balbuena. PO2 Gaviana further testified that she also prepared an arrest report and referral for medical examination of the victim.⁷

Defense' version:

The defense presented its lone witness in the person of accused Felix Ortoa. He claimed that she was arrested on 4 April 2001 because a complaint for rape against him had been filed by his

own daughter, Mari Grace Ortoa. He raised the defense of denial and alibi.

Ortoa testified that sometime in February 2000, his wife, Cristeta Balbuena and her daughter Mari Grace got angry at him when Cristeta caught him having a relationship with a certain Emily in the barbershop where he works and threatened to send him to prison. He testified that her daughter Mari Grace got pregnant by a certain Michael, the latter's boyfriend, but he denies knowing whether Mari Grace actually gave birth because from 1996 up to the time he was arrested in 2001, he stayed in his place of work in Shaw Boulevard, which accused described as very far from their house in Calbayog St., Mandaluyong.⁸

After the presentation of Appellant as witness, both the defense and the prosecution were ordered to submit their respective memoranda, after which, the case was submitted for decision.⁹

Giving credence to the evidence of the prosecution the court *a quo* rendered the Judgment, *supra*, subject of the instant review.

THE ISSUE

Before Us, Appellant interposed the lone assigned error, *viz*:

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF QUALIFIED RAPE.¹⁰

In support thereof, Appellant questions the credibility of the victim and her mother MA. CRISTETA BALBUENA (hereinafter CRISTETA) on the ground that they allegedly harbor resentment towards him (Appellant) due to the latter's illicit relationship and on his "strictness" to the victim.¹¹

OUR RULING

Well-settled is the rule that an accusation is not synonymous with guilt. As our constitution puts it: *every accused is presumed innocent until the contrary is proved*. Hence, it is incumbent upon the prosecution to demonstrate the culpability of the accused and overthrow the presumption of innocence with proof beyond reasonable doubt, lest the Court should acquit him. However, once such crime is established, he must be impartially punished.

Upon the other hand, incestuous rape of a daughter by a father has always been bitterly and vehemently denounced as more than just a shameful and shameless crime. Indeed, rape is a nauseating crime that deserves the condemnation of all decent persons who recognize that a woman's cherished chastity is hers alone to surrender of her own free will. Whoever violates such chastity will descend to the level of the odious beast. And the act becomes doubly repulsive where the outrage is perpetrated on one's own flesh and blood, for the culprit is reduced to lower than the lowly animal, and forfeits all respect as a human being.¹²