Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee,*	**G.R. No. 183827**
	Present:
- versus -	CARPIO, *Chairperson,* BRION, DEL CASTILLO, PEREZ, *and* PERLAS-BERNABE, *JJ.*
ENERIO ENDING *y* ONYONG, *Accused-Appellant.*	Promulgated: NOV 1 2 2012

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DECISION

DEL CASTILLO, *J.*:

The controversy in this case involving incestuous rape is essentially one of credibility, a weighing of the evidence of the prosecution against that of the defense. In this regard, the settled doctrine is that the findings of the trial court on the credibility of a witness, especially when affirmed by the appellate court, is entitled to great weight and respect.[1] Absent any showing that the trial court overlooked, misunderstood or misapplied material facts or circumstances, which if considered would have changed the outcome of the case, this Court finds no reason to overturn the findings of the trial court thereon,[2] as in the instant case.

Enerio Ending *y* Onyong (appellant) assails the September 28, 2007 Decision[3] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00047

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1 *People v. Saludo*, G.R. No. 178406, April 6, 2011, 647 SCRA 374, 387.
2 *People v. Tubat*, G.R. No. 183093, February 1, 2012, 664 SCRA 712, 719.
3 CA *rollo*, pp. 97-110; penned by Associate Justice Mario V. Lopez and concurred in by Associate Justices Romulo V. Borja and Elihu A. Ybañez.

affirming with modification the October 17, 2001 Decision[4] of the Regional Trial Court (RTC), Branch 13, Oroquieta City in Criminal Case Nos. 1567-13-1295, 1568-13-1296 and 1569-13-1297 finding him guilty beyond reasonable doubt of three counts of rape.

Factual Antecedents

In three separate Informations,[5] appellant was indicted for raping his own daughter, "AAA."[6] Except for the dates of occurrence, the recitals of the Informations were similarly worded. For brevity, we quote the accusatory portion in Criminal Case No. 1567-13-1295, to wit:

> That on or about January 2, 2001 at about 3:00 in the afternoon at barangay "CCC," municipality of "DDD," province of Misamis Occidental, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with lewd designs ordered his own daughter "AAA," to help him pasture their cows at the land of her grandfather and while there accused [forcibly] brought her beneath [sic] a banana plantation then willfully, unlawfully and feloniously did then and there through threat, force and intimidation have carnal knowledge with [sic] his own daughter "AAA," a minor, 15 years old against her will and consent.
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> CONTRARY TO LAW, with qualifying circumstance of relative within the 2nd degree of consanguinity.[7]

When arraigned on April 3, 2001, appellant pleaded not guilty on all the three Informations.[8] Thereupon, pre-trial and trial ensued.

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4 Records, Vol. 2, pp. 58-61; penned by Judge Ma. Nimfa Penaco-Sitaca.

5 Information for Criminal Case No. 1567-13-1295, records, Vol. I, pp. 2-3; Information for Criminal Case No. 1568-13-1296, records, Vol. II, pp. 2-3; Information for Criminal Case No. 1569-13-1297, records, Vol. III, pp. 2-3.

6 "The identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. 7610, An Act Providing for Stronger Deterrence And Special Protection Against Child Abuse, Exploitation And Discrimination, And for Other Purposes; Republic Act No. 9262, An Act Defining Violence Against Women And Their Children, Providing For Protective Measures For Victims, Prescribing Penalties Therefor, And for Other Purposes; and Section 40 of A.M. No. 04-10-11-SC, known as the Rule on Violence against Women and Their Children, effective November 5, 2004." (*People v. Dumadag*, G.R. No.176740, June 22, 2011, 652 SCRA 535, 538-539.)

7 Records, Vol. I, p. 2.

8 Id. at 24.

Version of the Prosecution

"AAA" is the second eldest in a brood of four siblings born to appellant and "BBB." At the time she testified, "AAA" was just 15 years old[9] having been born on November 6, 1985.[10]

"AAA" recounted that on January 18, 2000, she woke up early as it was the day of the National Elementary Achievement Test or NEAT. After taking a bath at a well near their house, she went inside her room to dress up. Shortly thereafter, her father (appellant) entered the room, embraced her and forcibly pulled the towel wrapped around her naked body. Appellant then pushed her to the floor, lowered his pants to his thigh, straddled her and inserted his penis into her vagina. She felt pain in her vagina but did not run or shout as it would be futile to do so since her mother was away attending a dawn rosary prayer while her brothers were still at the well. Besides, she was afraid because appellant was carrying a bolo and told her not to tell her mother about the incident, otherwise he would kill them both.

"AAA's" ordeal was repeated sometime in the 4th week of January 2000 at about 7:00 p.m. Appellant requested her to help in chopping dried coconut meat at the copra drier of her grandfather.[11] As soon as she entered the copra drier, appellant forced her to lie down on a piece of wood, undressed her, placed himself on top of her, embraced her and then inserted his private organ into her vagina. After the assault, "AAA" went home. She still did not tell anybody about her ordeal because of her father's threats. Unfortunately for "AAA," this sexual assault was not the last and her misfortune was still far from over.

On January 2, 2001, at about 3:00 p.m., "AAA" went to "CCC" to help her father pasture their cow. Shortly after her arrival, appellant forced her to lean on a rock while he lowered his pants. He then took off her panty, inserted his penis into

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9 TSN, July 5, 2001, p. 2.
10 Id. at 3.
11 Id. at 14.

her vagina, kissed her and fondled her breasts. After this latest ordeal, "AAA" again kept mum and did not tell her mother of what befell her.[12]

Days after, "AAA" told her classmate "EEE" and their teacher "FFF" of what happened to her.[13] After learning of appellant's bestial acts committed against her student, "FFF" told the school principal about what happened to "AAA." The school principal, in turn, notified "AAA's" grandfather. It was "AAA's" grandfather who then informed "BBB" of her daughter's ordeal. "FFF," together with the guidance counselor, reported the incident to the police. "AAA" submitted herself to a medical examination, the result[14] of which showed the presence of old lacerations in her private parts.

Version of the Defense

Appellant testified in his own behalf and presented no other witnesses. In his Brief, he summarized his testimony thus:

> [Appellant] is 47 years old, married, and a resident of "CCC," [Municipality] of "DDD," Misamis Occidental. He has four x x x children, one of whom is "AAA" x x x. Sometime in 1998, he and his wife sent "AAA" to the house of his parents-in-law because she [had] been raped by a certain "GGG," wherein a complaint [had] been filed before the *barangay*. Eventually, the said case was amicably settled. As far as the instant case is concerned, [appellant] could not think of any reason, why her own daughter, whom he loves so dearly would file charges of rape against him. In the first place, "AAA" was then living with her grandparents at the time the alleged incident occurred. [He] recounted though that sometime in 1999 during a town fiesta in Oroquieta City, he reprimanded "AAA" for seeing [her] boyfriend "HHH". [He] warned her not to see her boyfriend again. He remembered that when he scolded her, he was then armed with a scythe. During their confrontation, h[e] slapped her. He knew that her daughter harbored ill feelings toward him.[15]

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12 Id. at 4-6.
13 Id. at 7.
14 See Medical Certificate, Exhibit "A"; records, Vol. III, p. 8.
15 CA *rollo*, pp. 42-43.

Ruling of the Regional Trial Court

After trial, the RTC was firmly convinced that "AAA" was telling the truth about her defilement and that it was appellant, her own father, who abused her. Thus, in its Decision[16] of October 17, 2001, the RTC declared appellant guilty of three counts of rape and imposed upon him the penalty of death for each count of rape with damages.

Appellant seasonably appealed to this Court. However, pursuant to the Court's pronouncement in *People v. Mateo,*[17] the case was transferred to the CA for intermediate review.

Ruling of the Court of Appeals

The CA, in its Decision[18] of September 28, 2007, upheld the RTC's judgment of conviction after likewise being morally convinced that appellant consummated his debauched design over his daughter through intimidation, threat and force. However, considering the proscription on the imposition of the death penalty, it reduced the penalty imposed from death to *reclusion perpetua*, but increased the amounts of moral and exemplary damages awarded to "AAA."

Hence, the present appeal.

Issue

Raising as his lone assignment of error the argument that the court *a quo* erred in declaring him guilty beyond reasonable doubt of three counts of rape, appellant would have this Court disregard the testimony of "AAA." According to him, he could not have raped "AAA" at the time of the alleged incidents since she

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16 Records, Vol. 2, pp. 58-61.
17 G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.
18 CA *rollo*, pp. 97-110.

was then living with her grandparents and not with him. Also, "AAA" was ill-motivated in filing the charges against him.

Our Ruling

As appellant's arguments neither impress nor convince this Court, the present appeal must perforce fail.

Appellant's denial and alibi deserve no merit.

The defense of appellant is anchored on denial and alibi which do not impress belief. As often stressed, "[m]ere denial, if unsubstantiated by clear and convincing evidence, has no weight in law and cannot be given greater evidentiary value than the positive testimony of a rape victim."[19] In this case, appellant's testimony, particularly his denial, was not substantiated by clear and convincing evidence. Also, for his alibi to prosper, appellant must establish that he was not at the *locus delicti* at the time the offense was committed and that it was physically impossible for him to be at the scene of the crime at the time of its commission.[20] Appellant failed to establish these elements. The fact that "AAA" was living with her grandparents did not preclude the possibility that appellant was present at the crime scenes during their commission. Appellant himself admitted that the distance between his residence and that of "AAA's" grandparents is only approximately 7½ kilometers and which can be traversed by riding a *pedicab* in less than 30 minutes.[21] In other words, it was not physically impossible for appellant to have been at the *situs* of the crimes during the dates when the separate acts of rape were committed. Moreover, it has been invariably ruled that alibi cannot prevail over the positive identification of the accused. Here, appellant was positively identified by "AAA" as the perpetrator of the crimes without showing

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19 *People v. Perez*, G.R. No. 182924, December 24, 2008, 575 SCRA 653, 678-679.
20 *People v. Aycardo*, G.R. No. 168299, October 6, 2008, 567 SCRA 523, 534.
21 TSN, August 27, 2001, pp. 6-7.

any dubious reason or fiendish motive on her part to falsely charge him. The contention of appellant that "AAA" was motivated by hatred because he prevented her from having a boyfriend is unconvincing. There is nothing novel in such a contrived defense. "Motives such as resentment, hatred or revenge have never swayed this Court from giving full credence to the testimony of a rape victim."[22] It is a jurisprudentially conceded rule that "[i]t is against human nature for a young girl to fabricate a story that would expose herself as well as her family to a lifetime of shame, especially when her charge could mean the death or lifetime imprisonment of her own father."[23]

The Court, like the courts below, finds that "AAA" was without doubt telling the truth when she declared that her father raped her on three separate occasions. She was consistent in her narration on how she was abused by her father in their own house, in the copra drier, and even in a nearby pasture land. After she was forced to lie down, appellant removed her clothes, went on top of her, inserted his penis into her vagina and threatened her with death if she would report the incidents. Hence, appellant's attempt to discredit the testimony of "AAA" deserves no merit. "[W]hen credibility is in issue, the [Court] generally defers to the findings of the trial court considering that it was in a better position to decide the question, having heard the witnesses themselves and observed their deportment during trial."[24] Here, there is nothing from the records that would impel this Court to deviate from the findings and conclusions of the trial court as affirmed by the CA.

Qualifying circumstances of minority and relationship duly established

Under Article 266-B of the Revised Penal Code (RPC), as amended by Republic Act (RA) No. 8353 or The Anti-Rape Law of 1997, the concurrence of

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22 *People v. Aure*, G.R. No. 180451, October 17, 2008, 569 SCRA 836, 864.
23 *People v. Dela Cruz*, G.R. No. 177572, February 26, 2008, 546 SCRA 703, 718.
24 *People v. Veluz*, G.R. No. 167755, November 28, 2008, 572 SCRA 500, 511.

minority and relationship qualifies the crime of rape. To warrant the imposition of the death penalty however, both the minority and the relationship must be alleged in the Information and proved during the trial.

In the instant case, both circumstances were properly alleged in the Informations and proved during trial. The Informations alleged that "AAA" was 15 years old when the crimes were committed. Her minority was established not only by her Certificate of Live Birth[25] but also by her testimony that she was born on November 6, 1985.[26] Anent "AAA's" relationship with appellant, the Informations sufficiently alleged that "AAA" is appellant's daughter. This fact was likewise openly admitted by the appellant[27] and further bolstered by the said Certificate of Live Birth indicating appellant as "AAA's" father. Moreover, the relationship between appellant and "AAA" became the subject of admission during the pre-trial conference.[28]

The Penalty

Pursuant to Article 266-B of the RPC, the presence of the above-mentioned special qualifying circumstances increases the penalty to death. In view, however, of the passage of RA No. 9346[29] proscribing the imposition of death penalty, the proper penalty imposable on appellant, in lieu of death and pursuant to Section 2 thereof, is *reclusion perpetua*. Thus, the CA correctly sentenced appellant to *reclusion perpetua*. Notably, however, the assailed Decision of the appellate court failed to provide that appellant shall not be eligible for parole pursuant to Section 3 of the said law; hence, the same needs to be modified in said respect. Accordingly, appellant is declared not eligible for parole.

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25 Exhibit "B," records, Vol. I, p. 45.
26 TSN, July 5, 2001, p. 3.
27 TSN, August 27, 2001, p. 1.
28 Records, Vol. I, p. 30.
29 AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES. - Although the incidents in this case happened in 2001 or before RA No. 9346 took effect in 2006, the law is nevertheless applicable to herein appellant in view of the principle in criminal law that penal laws which are favorable to the accused are given retroactive effect pursuant to Article 22 of the Revised Penal Code.

The Pecuniary Liabilities

The Court upholds the award of ₱75,000.00 as civil indemnity since this is mandatory upon conviction for rape if the crime is qualified by circumstances which warrant the imposition of the death penalty, as in this case. The award of ₱75,000.00 as moral damages is likewise upheld as the same is awarded without need of pleading the basis thereof, other than the fact of rape. However, the award of exemplary damages is increased to ₱30,000.00 in line with prevailing jurisprudence.[30] Likewise, interest at the rate of six percent (6%) *per annum* shall be imposed on all the damages awarded from the date of finality of this judgment until fully paid.[31]

WHEREFORE, the appeal is **DISMISSED**. The September 28, 2007 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 00047 is **AFFIRMED with modifications** in that appellant Enerio Ending *y* Onyong is declared not eligible for parole, the amount of exemplary damages awarded to "AAA" is increased to ₱30,000.00 for each case, and interest at the rate of six percent (6%) *per annum* is imposed on all the damages awarded from the date of finality of this judgment until fully paid.

SO ORDERED.

MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

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[30] *People v. Mariano*, G.R. No. 168693, June 19, 2009, 590 SCRA 74, 94.
[31] *People v. Alverio*, G.R. No. 194259, March 16, 2011, 645 SCRA 658, 670.

ARTURO D. BRION
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Associate Justice
Chairperson

CERTIFICATION

I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice