

FIRST DIVISION

[G.R. No. 172710, October 09, 2009]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ALBERTO BUBAN, ACCUSED-APPELLANT.**

D E C I S I O N

LEONARDO-DE CASTRO, J.:

Before the Court for automatic review is the decision^[1] dated August 31, 2005 of the Court of Appeals (CA) in *CA-G.R. CR-H.C. No. 00893* which affirmed, with modification, an earlier decision^[2] of the Regional Trial Court (RTC) of Irosin, Sorsogon, Branch 55, in Criminal Case Nos. 1185, 1186, 1187 and 1188, finding herein accused-appellant Alberto Buban guilty beyond reasonable doubt of four counts of rape^[3] committed against AAA,^[4] and sentenced him to suffer the penalty of *Reclusion Perpetua* on each count of rape, to pay the amount of P200,000.00 as moral damages, and the costs of the suit. However, the CA modified the penalties imposed by the RTC by awarding an amount of P200,000.00 as civil indemnity in addition to the award of P200,000.00 as moral damages.

Accused-appellant was charged with four (4) counts of rape under four (4) separate Informations, allegedly committed against his wife's first cousin AAA on October 12, 1995,^[5] November 15, 1995,^[6] January 29, 1996,^[7] and February 24, 1996.^[8] Except as to the aforesaid different dates of the commission of the crimes, the Informations are similarly worded. The information in Criminal Case No. 1188^[9] reads:

That on or about the 12th day of October, 1995, at Barangay San Julian, municipality of Irosin, province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there, willfully, unlawfully and feloniously, with lewd designs and thru force and intimidation, had sexual intercourse with AAA, a minor, without her consent and against her will, to her damage and prejudice.

CONTRARY TO LAW.

On August 21, 1996,^[10] accused-appellant, duly assisted by counsel, entered a plea of not guilty in each of the four (4) cases. The cases were then set for a pre-trial conference. During the said conference, no plea bargaining nor stipulations of facts were arrived at by the parties. Thus, the joint trial on the merits ensued.^[11]

The prosecution presented the testimonies of the victim, AAA; Dr. Nerissa Tagum (Dr. Tagum), Resident Physician of Irosin District Hospital; and EEE, the sister of

AAA's father. The prosecution also offered documentary evidence consisting of the medical certificate^[12] issued by Dr. Tagum to prove that the victim was subjected to a medico-legal examination and the Certificate of Live Birth^[13] of AAA showing that she was born on May 15, 1978.

The RTC summarized the evidence for the prosecution in its Decision as follows:

The victim AAA declared in court - that she is already an orphan, her parents having died while she was still very young. She has two (2) other siblings named BBB (15 years old) and CCC (the youngest). Her brother BBB is residing with his first cousin in Camarines Norte, while her youngest sister CCC is staying with her uncle DDD. Since she was a small child she had been living with EEE the sister of her father in San Julian, Irosin, Sorsogon. EEE has nine (9) children the eldest of whom named GGG is the one married to the accused in this case Alberto Buban. She had known the accused for a long time being the husband of her cousin GGG. The witness POSITIVELY IDENTIFIED the accused in open court when asked to do so (TSN/AAA, dtd. August 27, 1997, p. 6).

The reason why she is testifying in court is because of the RAPE that was committed on her person by the accused ALBERTO BUBAN. Accordingly, she was raped four (4) times by the accused the first of which happened on October 12, 1995; the second on November 15, 1995; the third on January 29, 1996; and the fourth February 24, 1996. All the four incidents of rape happened inside the house of EEE because the accused and his wife GGG used to live with them in the house of EEE. She was only able to file the cases for rape, on March 20, 1996 because that was the time when EEE noticed that her stomach was getting bigger. Due to the persistent questioning of EEE, she finally told her that she was raped by Alberto Buban. EEE was very angry and got mad at Alberto Buban upon learning about it. She was the one who accompanied her to the police station in order to file the criminal complaint (TSN/AAA, dtd. August 27, 1997, pp. 2 to 9).

The declaration of the aforesaid victim was corroborated by the testimony and the findings of Dr. Nerissa Tagum, medico-legal officer, who examined the offended party, AAA. She made the patient undergo an ultra sound testing in order to determine her gestation. During the examination of the patient on March 19, 1996 it was confirmed from the result thereof that she was five to six months pregnant. According to the doctor, the sexual intercourse which caused said pregnancy could have possibly occurred within the period from September 14, 1995 to October 1995. The witness likewise identified the medical certificate (Exhs. "A" to "A-2") she issued and affirmed the signature appearing therein to be hers (TSN/Dr. Tagum, dtd. February 12, 1997, pp. 3 to 6).

EEE the aunt of AAA corroborated further her testimony when she testified that - she is the sister of the father of AAA whom she took into custody when she was about (5) years old after her father died. The first time she was informed that AAA was sexually molested by the accused Alberto Buban was sometime in the end of February, 1996, when she

persistently questioned the victim after noticing that her stomach was bulging. The accused Alberto Buban is the husband of her daughter GGG who stayed with them for a year after their marriage. In the month of February, 1996 the accused and her daughter GGG were already living in a separate house but still visit her very often. Accused Alberto Buban usually passed by her house before reporting for work. She did not tell her daughter GGG about the rape incident although she came to learn about it later. She did not discuss the rape incident with her daughter GGG because the first time she attempted to tell her about it, the latter sided with the accused. In the months of October, 1995 and February, 1996, AAA was about 16 [should be 17] yrs old. From October 12, 1995 to January, 1996 she was able to observe that the stomach of the victim was growing bigger or bulging. At the time the pregnancy of the offended party became apparent, accused Alberto Buban and her daughter GGG were no longer living with them. They transferred to their house across the river in May of 1993. In October, 1995, AAA was in second year high school and was more or less 15 [should be 17] years old. She quits her studies when she became pregnant in February 1996. She didn't have any suitor neither did she see any boy of her age coming to their house. The witness likewise testified that it was the usual habit of the accused Alberto Buban to frequent their place where he usually eats his lunch at least twice (2) a week. In 1995 there were times when the accused passed by her house while she was not around and she came to learn about it because her young daughter who was in Grade II told her. The witness is a businesswoman by occupation. (TSN/EEE, dtd. August 25, 1999, pp. 8 to 16).^[14]

The details of the four (4) rape incidents are summarized by the RTC in this wise:

That on October 12, 1995 at more or less 9:00 o'clock in the evening, the victim was in the house of EEE together with the three (3) year old child she was baby sitting when accused Alberto Buban arrived. He sat at the sala for a while then proceeded to the place where their comfort room was. After walking to and fro for a while, the accused entered the room where the offended party together with the child was, and began undressing her. She pulled down her shorts and panty while she was pleading and crying not to do it. It took the accused sometime to remove her shorts and panty because she was resisting and boxing him. After removing completely her panty he forced her to lie down in bed while she continued to resist and boxed him. The accused then succeeded in having her lie down held her two (2) hands on the side of her body then proceeded to rape her. In inserting his penis, the accused held her vagina and guided his penis into it. As he was able to release her hands she continued to box him but her resistance proved futile as the accused was able to succeed in having carnal knowledge of her. The accused lay on top of her for a long time and while in that position he warned her not to tell anybody, particularly EEE or else something might happen to her. After the incident she just kept on crying. When her companions in the house returned at more or less 11:30 p.m., she did not inform them about what happened because of fear. The victim further testified that

the little boy whom she was baby sitting and already asleep at the time she was being sexually abused was transferred by the accused from the bed to the floor. Hence, the logical reason why the small child did not wake up from his slumber. The witness, likewise POSITIVELY IDENTIFIED the accused in open court (TSN/AAA, dtd 8 October 1997, pp. 2 to 7).

That on November 15, 1995 the accused again had carnal knowledge of her. The sexual abuse happened in the same house where she was staying. Oftentimes, she was left alone in the house because her companions were fond of viewing betamax. On the aforesated date at around 10:00 o'clock in the evening, she was alone in their house in San Julian studying when the accused Alberto Buban came. While she was studying in the sala, the accused asked her for an errand and she was asked to enter the room where the accused was. When she heard the voice of the accused calling her, she felt afraid but nevertheless she entered the room and asked him what she will buy. Upon entering the room, the accused came near infront of her and covered her mouth with his left hand while her left shoulder was being held by his right hand. He pulled her to and placed her in the bed and undressed her. While the accused was pulling and undressing her, she kept on boxing and kicking him but her resistance was not successful, and every time she attempted to run away, the accused would block the way. After the accused undressed himself he forced himself into her by separating her thighs and inserting his penis into her vagina. She felt pain on her back hip, vagina and other parts of her body, although according to the victim, the first rape incident on October 12th was more painful. (TSN, dtd. October 8, 1997, pp. 8 to 12).

The incidents on October 12th and November 15th 1995 were again repeated on January 29, 1996. At about 9:00 o'clock in the evening of January 29, 1996 while she was viewing TV alone in their house the accused came and seated himself in one of the chairs. She felt sleepy after a while so she told the accused to just turn off the TV once he is through and proceeded to her room to sleep. When she went to her room to retire, the accused was still in the sala viewing TV. She was awakened from her slumber when the accused put his hand on her mouth and warned her not to make noise. Despite her plea for the accused to leave and telling him even that she will tell somebody about him, the latter refused to yield and even warned her that something bad might happen to her if she tells somebody. Thereafter, the accused started to remove her shorts and panty and despite her resistance, he succeeded in penetrating her. She felt again the pain that she felt during the two (2) previous rapes that she suffered in the hands of the same accused. After the accused had satisfied his bestial desires he went home and left her alone in her room crying. She did not tell her companions in the house about what happened because of fear of the threat from the accused (TSN, dtd. 8 October 1997, pp. 12 to 14).

The fourth and final sexual abuse suffered by the victim in the hands of the accused happened in the 24th day of February, 1996, she was raped while EEE was out and her other companions was manning the store. On

the aforesated date at about 9:00 o'clock in the morning, she was able to sleep on the long bench situated in their sale while she was whiling away her time, because she was prevailed upon by EEE not to go to school as no one will attend to the house. She was awakened upon feeling that somebody was covering her mouth, and as she opened her eyes she was able to recognize the accused and found out that the door and the window of their house were already closed. When she tried to resist him by boxing him on the chest, he held her two (2) hands with the accused sitting beside her and while she was still in a lying position. Then the accused proceeded to undress her and after he was through removing her underwear, he also undressed himself. She could not run away because the door was locked and the accused was sitting beside her. The accused made her lie down face up, held her by one of his hands, inserted his penis and had carnal knowledge of her. She again felt the pain that she experienced during the three (3) previous rapes. The accused was able to consummate his carnal desires while they were both on top of the bench (which is similar in length and width to the benches inside the computer room). After the accused was through with her, he warned her again not to tell anybody or else something bad might happen to her. The first person to whom she confided the rapes that happened to her was FFF whose husband is the brother of her late father. This happened on March 24, 1996 while FFF was in their house viewing TV. The reaction of FFF was that of anger against the accused Alberto Buban, but she decided not to divulge what she knew, apprehensive that the accused might flee. When she executed her Sworn Statement with the police she was in the company of FFF and EEE. EEE was likewise with her when she was examined by the doctor. She first learned about her pregnancy when she was told by the doctor who examined her. On March 28, 1996 she was transferred to the custody of the DSWD who took care of her up to the time she gave birth to a baby girl on June 3, 1996 at the Sorsogon Provincial Hospital. The child was then brought to Legaspi City by the Social Worker. According to the victim she doesn't feel any love for her child and she doesn't like her child, because whenever she sees the child she remembers the accused Alberto Buban and she hates him. At present she has returned to the custody of EEE. (TSN, dated 8 October 1997, pp. 14-20)^[15]

The defense presented a different version of the facts anchored on the claim that the accused-appellant and AAA were lovers so that their sexual encounters were consensual. As culled from the same Decision of the RTC, the gist of the defense evidence is as follows:^[16]

The defense upon the other hand, admitted that the accused had carnal knowledge of the victim for several times, but claims likewise that the sexual intercourse had the mutual consent of both parties considering that they are "sweethearts." The accused alleged that it was the victim who proposed to him that she likes him. The first sexual intercourse allegedly happened on February 9, 1995 followed by several other sexual encounters which he could no longer count. He admitted to be the first one to have carnal knowledge of the victim AAA. The accused denied,