

## EN BANC

[ G. R. NO. 173050, April 13, 2007 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. AC-MAD PANDAPATAN Y DIMALAPANG, ACCUSED-APPELLANT.**

### D E C I S I O N

**CHICO-NAZARIO, J.:**

For Review is the Decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. CR-H.C. No. 01654 dated 22 February 2006 which affirmed the Decision<sup>[2]</sup> of the Regional Trial Court (RTC) of Pasig City, Branch 261, in Criminal Cases No. 120008-H, 120306-H to 120392-H, dated 14 November 2003, finding accused-appellant Ac-Mad Mandapatan y Dimalapang guilty of qualified rape.

The accused-appellant was charged with eighty-eight counts of rape in eighty-eight separate Informations. Except for the dates of the alleged commission of the crimes, the eighty-eight Informations read alike:

The Prosecution, through the undersigned Public Prosecutor, charges Ac-Mad Pandapatan y Dimalapang with the crime of rape under RA 8353 in relation to RA 7610 (SC A.M. 99-1-13), committed as follows:

On or about [date], in Taguig, Metro Manila, and within the jurisdiction of this Honorable Court, the accused, being the father of complainant [AAA], who is a minor, 15 years old, by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have [sic] sexual intercourse with [AAA], against her will and consent.<sup>[3]</sup>

Upon arraignment, accused pleaded NOT GUILTY to the crimes charged. Thereafter, trial on the merits ensued. The evidence of the prosecution and the defense, as summarized by the trial court, are as follows:

Dr. Mary Ann Gajardo testified that on January 17, 2001, by reason of a letter-request from the Department of Interior and Local Government (DILG), she examined the complainant, [AAA], at the Medico-Legal, Camp Crame, and her findings therefrom were reduced into writing per Medico Legal Report No. M-0195-02 (Exhibits "A" to "A-1"), to wit:

Findings:

Hymen: fleshy, elastic type hymen with presence of shallow healed laceration at 9 o'clock position.

Conclusion:

Physical findings on the genitalia are indicative of penetration.

There are no external signs of application of any form of physical trauma.

She further declared that if the incident took place on January 15, 2001, it was possible that her findings would be "fresh healed" and not "shallow healed", indicating that the incident might have happened within weeks or months before the examination (TSN, p. 16, 6/15/01). On cross, she testified that it was possible that the injury was caused not by penetration but was due to strenuous activity of the victim or masturbation.

Private complainant, [AAA], on direct examination, testified that the accused, Acmad Pandapatan, is her father and that she was born on November 5, 1985 (Exhibits "B" to "B-1"). She declared that in September 2000, she, together with her mother, [BBB], father-accused, Acmad, and younger brother, [CCC], were staying in Bagongbayan, Taguig. She was then in her third year high school and her classes started from 12:00 in the afternoon and ended at 6:00 in the evening. Her mother, BBB, who was a sewer, usually left their house at 6:00 in the morning and went back home at around 7:30 in the evening, while her father-accused, Acmad, who was selling pirated VHS tapes, did not have a regular time of work.

Sometime in the second week of September, 2000, at around seven o'clock in the morning, she was awakened from her sleep when Acmad held her arms, told her not to make a noise and ordered her to stand up and remove her clothes, while pointing a knife at her. When she asked why, Acmad said "huwag maraming daldal". She stood up, removed her t-shirt, shorts and underwear and was made to lie down naked.

While she was lying down, Acmad undressed himself and laid on top of her. Acmad kissed her body from neck to her private part, spread her legs while holding her hands and forced his penis inside her vagina. Whenever she tried to resist, Acmad would strongly hold her hands. She did not know how long Acmad stayed on top of her. She felt pain when Acmad inserted his penis into her genitalia. The knife was beside Acmad while he was raping her and he returned the same to the kitchen after the rape. Thereafter, Acmad told her not to tell her mother or anyone about what happened, otherwise he would kill her. He also said to her that he would kill her mother and her younger sibling should she tell her mother about the rape. She then proceeded to the comfort room and washed herself while her father went out of the house to buy food for breakfast. The incident happened almost everyday while her mother was at work and her brother was in school from the second week of September 2000 until January 15, 2001, except on her mother's day-off on Saturdays and holidays. In all instances, Acmad succeeded in penetrating his penis to her genitalia. In open court, she positively identified the accused to be the person who raped her.

In the evening of January 15, 2001, when Acmad told her to rent a VHS tape, she asked her mother to accompany her and it was at this time

that she told her mother about the incidents. The next day she was brought by her mother to her Tita Renea in Parañaque. On January 17, 2001, she, her mother and Renea went to the office where the television program "Katapat" was broadcast. After a staff of said office called Major Yabut, they went to the DILG office in Quezon City and having narrated the incident, Major Yabut ordered the arrest of Acmad that same day. She then executed a sworn statement (Exhibits "C" to "C-2") and submitted herself to a medical examination at Camp Crame. She understood rape as "na ginamit niya po ako" and "gusto niyang mangyari yung katulad ng sex". The incident affected her personality, in that she became angry at her brother even if he had no fault and would also avoid her friends and classmates. She was angry and "nanghihiyang" because the incident destroyed her family. She wanted Acmad to be put to jail "at kung puwede ay patayin".

On cross, she declared that she learned that rape is bad at the age of 13. Her mother explained to her its meaning when she asked her after she had read in a newspaper "na iyong 6 na taong gulang na bata ay nireyp ng tatay niya". She never realized that what she had read would happen to her. Before the incident, she was close to Acmad. During the first rape, she did not shout for help because Acmad told her not to make a noise and she was not able to talk because she was very much afraid. She did not try to go to the barangay or police authorities to report the matter. Whenever she and Acmad were at home, she would avoid him and would not follow his orders. She did not try to run away from home. She tried to make ways to avoid being raped, like going to school early. In all instances of rape, she kept silent and pretended that nothing happened, until on January 15, 2001, when she could no longer hide it, she decided to tell her mother about the whole matter. Whenever she was raped on Sundays by the accused, her brother was with his friends attending mass. Acmad, who is a Muslim, would not allow her to go with her brother.

[BBB] testified that private complainant [AAA], is her daughter while accused, Acmad, is her husband. As a sewer, she would report for work six (6) days a week, Sunday to Friday, from 7:00 in the morning to 4:00 in the afternoon and would leave their house at around 6:00 in the morning and go home at around 5:00 in the afternoon. On January 15, 2001, when she and [AAA] went out of their house to rent a VHS tape, [AAA] told her that she was raped by Acmad and that the first rape took place in the second week of September and the same was repeated almost everyday, except Saturdays and holidays, until January 15, 2001. The next day, January 16, 2001, in the morning, she brought [AAA] to her mother's place at Better Living and, in the afternoon, she was able to see [AAA] at her sister's house. In the afternoon of January 17, 2001, she and [AAA] accompanied the police to arrest Acmad who was at that time playing "tong-its" at his step-brother's house. Acmad was brought to the DILG office and was identified by [AAA] as the one who molested her. [AAA] was brought to Camp Crame for medical examination. Before the incident, [AAA] was "malambing" and respectful to Acmad. After the incident, AAA became "palasagot" and "bugnutin".

On cross, she declared that she had no personal knowledge regarding the incident. When she asked [AAA] why it took her so long before she revealed the incident, [AAA] said she was afraid that Acmad might kill her and [CCC] (her younger brother).

PO3 Antonio Hernandez testified that in January 2001, he was one of the operatives of the DILG Special Task Force. On January 17, 2001, at around 11:00 in the morning, [BBB] and [AAA] went to the office of Major Yabut and, at around 9:30 in the evening, Major Yabut dispatched a team to arrest Acmad. He, PO1 Besa, and PO1 Quilang, together with [BBB] and [AAA], went to their place. After [AAA] pointed to Acmad, they approached him, introduced themselves and invited him to their office regarding the complaint of [AAA]. He identified the Joint Affidavit of Arrest he jointly executed with PO1 Quilang (Exhibits "E" to "E-3").

On cross, he declared that he had no personal knowledge regarding the rape. At the time they arrested Acmad, they had no warrant of arrest and he was then not doing any illegal act but had voluntarily submitted himself.

Renea Serad testified that in the evening of January 15, 2001, while she was at her house, [AAA] and [BBB] arrived. [AAA] told her that she was raped by Acmad. The following morning, she, [BBB] and [AAA] went to the ABS-CBN and were advised to go to the office of Major Yabut of DILG in Quezon City. She identified the accused in open court.

On cross, she declared that she had no personal knowledge with respect to the alleged rape. Her niece, [AAA], did not tell the details of the rape as she did not ask her about it.

The defense presented the accused, Acmad Pandapatan, who denied the charges.

Acmad testified that sometime in January 2001, at about 2:00 in the afternoon, while he was in his brother's house, he was arrested by policemen who told him that his case was rape. He was brought to an office in Quezon City and was made to sign a document, the contents of which he was not able to read. He had no counsel when he was investigated at the Fiscal's Office. On the dates specified in the informations, he denied having any forceful sexual intercourse with complainant, [AAA], who is his natural daughter (TSN, page 3, 4/3/03). [AAA] filed these cases against him upon instigation of [BBB] who got angry with him because his children by his first wife went to their house.

From September 2000 to January 15, 2001, he, [BBB], [CCC] and [AAA] were renting a room. He drew a sketch of the rooms of the house his family was renting (Exhibits "1" to "1-a", for the defense/Exhibits "E" to "E-1" for the prosecution) and alleged that, if [AAA] was raped, she could have shouted for help from their neighbors. He testified that he usually left their house at 5:30 a.m. Every day. Between 8:30 and 9:30 a.m., he would start his business of selling different items such as playing cards, bracelet and batteries. At 11:00 a.m., he would fetch his son from school

and they would be home by 11:30 a.m. After eating lunch with his son, he would continue selling his wares the rest of the day.

On cross, he admitted that [AAA] is his daughter; that from September 2000 until January 15, 2001, [CCC] and [AAA] were living with him in a house, which is a studio type with no partition, located at xxxx. He claimed that [AAA] has filed these cases of rape against him upon instigation of [BBB] because of a quarrel between [BBB] and his children by his previous wife who used to go to their house. He admitted, however, that there was no serious quarrel or misunderstanding between him and [BBB]. Whenever [AAA] does something wrong, he would scold her but not inflict any serious injury on her. [AAA] would, although left in their house from 6:00 to 9:00 in the morning, sometimes go outside or to her mother's siblings.<sup>[4]</sup>

On 14 November 2003, the trial court rendered its Decision convicting the accused-appellant in Criminal Case No. 120306-H, but acquitting him in Criminal Cases No. 120008-H and 120307-H to 120392-H. The dispositive portion of the Decision reads:

WHEREFORE, in light of the foregoing, the Prosecution, having proved the guilt of the accused, Acmad Malawi Pandapatan, beyond reasonable doubt in Crim. Case No. 120306, he is hereby meted the capital punishment of DEATH.

He is likewise hereby ordered to pay the offended party, [AAA], the amount of P75,000 as civil indemnity, P50,000 as moral damages without the necessity of proving the same. An award of P25,000.00 to complainant as exemplary damages is also in order, to deter fathers with perverse behavior from sexually abusing their daughters.

Insofar as Crim. Case Nos. 120008-H, 120307-H to 120392-H are concerned, said accused is hereby ACQUITTED thereof, for insufficiency of evidence.

The Warden of the Pasig City Jail, Nagpayong, Pinagbuhatan, Pasig City is hereby directed to transfer immediately the accused to the Bureau of Corrections, New Bilibid Prisons, Muntinlupa City.<sup>[5]</sup>

Inasmuch as the penalty it imposed was the death penalty, the trial court forwarded the records of the case to the Supreme Court for automatic review pursuant to Section 10, Rule 122 of the 2000 Rules of Criminal Procedure.<sup>[6]</sup> However, pursuant to our ruling in *People v. Mateo*,<sup>[7]</sup> the case was transferred to the Court of Appeals for appropriate action and disposition.<sup>[8]</sup>

On 22 February 2006, the Court of Appeals affirmed the disposition of the RTC, to wit:

UPON THE VIEW WE TAKE OF THIS CASE, THUS, the appealed Decision dated November 14, 2003 of the Regional Trial Court of Pasig City, Branch 261, in Crim. Case No. 120306-H, finding the accused-appellant AC-MAD PANDAPATAN y DIMALAPANG guilty beyond reasonable doubt of rape and sentencing him to suffer the penalty of death and to pay his