

## EN BANC

[ G.R. No. 167670, September 07, 2007 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. RODOLFO BIYOC Y WENCESLAO, APPELLANT.**

### D E C I S I O N

**CARPIO MORALES, J.:**

The February 28, 2005 Decision of the Court of Appeals<sup>[1]</sup> which affirmed that of the Regional Trial Court, Branch 76 of San Mateo, Rizal<sup>[2]</sup> convicting appellant Rodolfo Biyoc y Wenceslao for qualified rape is on final review before this Court.

The accusatory portion of the Information charging appellant with qualified rape reads:

That on or about the 5th day of December, 2000, in the Municipality of San Mateo, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, having moral ascendancy over the complainant, [AAA],<sup>[3]</sup> the latter being his daughter by means of force, coercion and intimidation, with lewd design and with intent to cause, gratify his sexual desire or abuse and maltreat complainant [AAA], a minor, 11 years old, did then and there willfully, unlawfully and feloniously have sexual intercourse with said complainant against her will and without her consent which debases, degrades or demeans the intrinsic worth and dignity of said child as a human being.

Contrary to law.<sup>[4]</sup> (Underscoring supplied)

From the evidence for the prosecution, the following version is culled:

At four in the afternoon of December 5, 2000, private complainant AAA was in a room on the second floor of the family house at Nawasa Pipeline, Guitnagbayan I, San Mateo, Rizal taking care of her one-year-old sister. Her father, herein appellant, entered the room and touched her genitals, after which he told her to lie down on the floor.

Overcome by fear, AAA did lie down on the floor as told. Appellant at once pulled her short pants down and touched her genitals again, after which he went on top of her and tried to insert his penis into her vagina. Appellant was not able to fully penetrate AAA's vagina, however, as her elder sister BBB went up the second floor and saw appellant sitting in front of AAA who was lying down, face up. Appellant immediately warned BBB not to tell their mother about what she just saw.<sup>[5]</sup> After BBB left, appellant inserted his penis inside AAA's vagina.

BBB lost no time to report that same day to her mother CCC, live-in partner of

appellant, what she saw.<sup>[6]</sup> CCC thus immediately confronted AAA who did confirm that appellant had inserted his penis inside her vagina that afternoon, and that appellant had been doing the same act to her since she was nine years old. Incensed, CCC accompanied AAA the following day, December 6, 2000, to the Department of Social Welfare and Development (DSWD) to report the incident.<sup>[7]</sup>

From the DSWD, AAA and her mother, accompanied by a social worker, proceeded to the police station of San Mateo, Rizal where they lodged a complaint against appellant. At the police station, AAA and CCC were interviewed by PO1 Florescita S. Javier.

PO1 Javier, together with AAA and CCC thereafter proceeded to the family home, and on their way, they met appellant. PO1 Javier at once informed him of his rights, arrested him, and brought him to the police station.<sup>[8]</sup> AAA's and CCC's statements were thereupon taken.<sup>[9]</sup>

On the same day, December 6, 2000, AAA was examined by Dr. Winston Tan, a medico-legal officer at Camp Crame, Quezon City. The examination revealed the following findings:

FINDINGS: GENERAL AND EXTRAGENITAL:

|                    |  |
|--------------------|--|
| PHYSICAL BUILT:    | Light built  |
| MENTAL STATUS:     | Coherent female child                                  |
| BREAST:            | Undeveloped  |
| ABDOMEN:           | Flat and soft  |
| PHYSICAL INJURIES: | No external signs of application of any form of trauma |

GENITAL:

|               |  |
|---------------|--|
| PUBLIC HAIR:  | Lanugo-type growth                                       |
| LABIA MAJORA: | Full, convex and coaptated                               |
| LABIA MINORA: | Pinkish brown  |
| HYMEN:        | Presence of deep healed laceration at 7 o'clock position |

POSTERIOIR  
FOURCHETTE: Sharp  
EXTERNAL VAGINAL  
ORIFICE:  
VAGINAL CANAL:  
CERVIX:  
PERIURETHRAL AND  
VAGINAL SMEARS:

**NEGATIVE** for  
spermatozoa and for  
gram-negative  
diplococci.

CONCLUSION:

Subject is in non-virgin state physically. There are no external signs [sic] of application of any form of physical trauma. [10] (Emphasis and underscoring supplied)

Upon the other hand, appellant gave the following version:

In the afternoon of December 5, 2000, appellant slept on the second floor of their house with his common-law wife CCC, AAA, and two other younger children. On waking up at four, CCC and one of the younger children were gone, leaving AAA and a younger sister whom she was taking care of. At five p.m., BBB arrived. Appellant and BBB had an altercation over her and her husband being unemployed and their continued stay in the family house, causing financial difficulties to the family. BBB had thus a grudge against him on account of which he surmised that she gave a false report to her mother.

Appellant added that CCC and AAA filed the charge against him because he was jobless, and constantly inebriated and when in that state, he would quarrel with CCC and scold his children.

Appellant finally proffered that even if he was aware of the gravity of the offense lodged against him, he made no attempt to escape which is indicative of his innocence. [11]

By Decision dated June 18, 2002, the trial court found appellant guilty, disposing as follows:

WHEREFORE, premises considered, judgment is hereby rendered finding accused Rodolfo Biyoc y Wenceslao GUILTY BEYOND REASONABLE DOUBT of the crime of Rape (Violation of par. 1 (d), Art. 266-A in relation to Art. 266-B 6th par., (1) of the Revised Penal Code, as amended by R.A. 8353 and further in relation to Sec. 5 (j) of R.A. 8369) and sentencing him to suffer the penalty of DEATH, and to indemnify the private complainant [AAA] in the amount of P75,000.00 and P50,000.00 as moral damages and to pay the costs.

SO ORDERED. [12] (Underscoring supplied)

In his Brief, [13] appellant raised only one assignment of error â€œ "THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT FOR THE CRIME OF RAPE," [14] in support of which, he argued that:

1. The trial court disregarded the fact that the prosecution failed to establish the exact age of the victim and her relationship to the accused. [15]

2. The trial court did not give weight and credence to the accused's testimony thereby depriving him of the presumption of innocence.  
[16]
3. The trial court did not meet the test of moral certainty required for the conviction of the accused.<sup>[17]</sup>
4. The trial court failed to consider the fact that the accused's arrest was legally objectionable.<sup>[18]</sup> (Underscoring supplied)

In his Supplemental Brief which was received by the Court on November 10, 2005, appellant raised additional assignments of error which may be summarized as follows:

1. The trial court erred in appreciating AAA's testimony that she had long been sexually molested by appellant, it being hearsay and, in any event, no criminal charges were filed therefor, and
2. The findings in the medico-legal report did not support the claim of the prosecution that AAA was raped on December 5, 2000.<sup>[19]</sup>

Appellant contends that the prosecution was unable to prove the age of AAA in accordance with the guidelines laid down by this Court in *People v. Pruna*, viz:

In order to remove any confusion that may be engendered by the foregoing cases, we hereby set the following guidelines in appreciating age, either as an element of the crime or as a qualifying circumstance.

1. The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party.
2. In the absence of a certificate of live birth, similar authentic documents such as baptismal certificate and school records which show the date of birth of the victim would suffice to prove age.
3. **If the certificate of live birth or authentic document is shown to have been lost or destroyed or otherwise unavailable, the testimony, if clear and credible, of the victim's mother or a member of the family either by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the offended party pursuant to Section 40, Rule 130 of the Rules on Evidence shall be sufficient under the following circumstances:**
  - a. If the victim is alleged to be below 3 years of age and what is sought to be proved is that she is less than 7 years old;
  - b. If the victim is alleged to be below 7 years of age and what is sought to be proved is that she is less than 12 years old;

c. If the victim is alleged to be below 12 years of age and what is sought to be proved is that she is less than 18 years old.

4. In the absence of a certificate of live birth, authentic document, or the testimony of the victim's mother or relatives concerning the victim's age, the complainant's testimony will suffice provided that it is expressly and clearly admitted by the accused.
5. It is the prosecution that has the burden of proving the age of the offended party. The failure of the accused to object to the testimonial evidence regarding age shall not be taken against him.
6. The trial court should always make a categorical finding as to the age of the victim. [20] (Emphasis and underscoring supplied)

From the accusatory portion of the information quoted above, AAA was alleged to be 11 years old at the time of the alleged rape. The certificate of live birth or similar authentic documents were not presented. There is no showing that the prosecution claimed that the said documents had been lost, destroyed or were otherwise unavailable, hence, CCC's testifying on AAA's age does not suffice to prove that AAA was below the age of 12.

Since age was not adequately proven, it cannot be used to qualify the offense of rape in this case.

As for appellant's relationship to AAA, contrary to his claim that it was not proven, he himself admitted in open court that she is his daughter.

ATTY. GARILLO:

Q. Mr. Biyoc, where did you reside on December 5, 2000?

A. At Nawasa Pipeline, sir.

Q. With whom were you residing in that place?

A. My family sir.

Q. What is the name of your wife?

A. [CCC], sir.

Q. You have sons and daughters?

A. Yes, sir.

Q. How many are they?

A. Nine (9) sir.

Q. What is the name of your eldest?

A. BBB and [DDD] because they are twins, sir.

Q. Who is your second?

A. [EEE], **[AAA]**, [FFF], [GGG], [HHH] and [III], sir.

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