

SECOND DIVISION

[G.R. No. 224597, July 29, 2019]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
DANTE CUBAY Y UGSALAN, ACCUSED-APPELLANT.**

D E C I S I O N

LAZARO-JAVIER, J.:

The Case

This appeal^[1] seeks to reverse and set aside the Decision^[2] dated November 24, 2015 of the Court of Appeals in CA-G.R. CR-HC No. 01145-MIN, which affirmed the trial court's verdict of conviction^[3] against accused-appellant Dante Cubay y Ugsalan for forty-four (44) counts of rape. Its dispositive portion reads:

WHEREFORE, the appeal is DENIED. The Joint Judgment dated 30 January 2013 of the Regional Trial Court (RTC) of Manolo Fortich, Bukidnon, Branch 11 in Criminal Case Nos. 08-05-3536 to 08-05-3579 finding accused-appellant Dante Cubay guilty beyond reasonable doubt of forty-four (44) counts of rape is AFFIRMED in *toto*.

SO ORDERED.^[4]

The Informations

Appellant Dante Cubay y Ugsalan was charged with forty-four (44) counts of rape under separate Informations which, except for the material dates, uniformly read, thus:

That on or about the 7th day of September, 2007, in the evening, at XXX, province of Bukidnon, Philippines particularly at the Special Education Dormitory (SPED) and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have sexual intercourse with [AAA], (an) 18 year-old (who) suffered (a) physical defect (hearing impaired) against her will, to the damage and prejudice of [AAA] in such amount as (may be) allowed by law.

CONTRARY to (and) in violation of R.A. 8353.^[5]

The forty-four (44) Informations bore the following details, *viz*:

	<i>Case Number</i>	<i>Date of Commission</i>
1.	Crim. Case No. 08-05-3536	September 7, 2007

2. Crim. Case No. September 10,
08-05-3537 2007
3. Crim. Case No. September 11,
08-05-3538 2007
4. Crim. Case No. September 12,
08-05-3539 2007
5. Crim. Case No. September 13,
08-05-3540 2007
6. Crim. Case No. September 14,
08-05-3541 2007
7. Crim. Case No. September 17,
08-05-3542 2007
8. Crim. Case No. September 18,
08-05-3543 2007
9. Crim. Case No. September 19,
08-05-3544 2007
10. Crim. Case No. September 20,
08-05-3545 2007
11. Crim. Case No. September 21,
08-05-3546 2007
12. Crim. Case No. September 24,
08-05-3547 2007
13. Crim. Case No. September 25,
08-05-3548 2007
14. Crim. Case No. September 26,
08-05-3549 2007
15. Crim. Case No. September 27,
08-05-3550 2007
16. Crim. Case No. September 28,
08-05-3551 2007
17. Crim. Case No. October 1, 2007
08-05-3552
18. Crim. Case No. October 3, 2007
08-05-3553
19. Crim. Case No. October 4, 2007
08-05-3554
20. Crim. Case No. October 5, 2007
08-05-3555
21. Crim. Case No. October 8, 2007
08-05-3556
22. Crim. Case No. October 9, 2007
08-05-3557
23. Crim. Case No. October 10,
08-05-3558 2007
24. Crim. Case No. October 11,
08-05-3559 2007
25. Crim. Case No. October 12,
08-05-3560 2007
26. Crim. Case No. November 6,
08-05-3561 2007
27. Crim. Case No. November 7,
08-05-3562 2007
28. Crim. Case No. November 8,
08-05-3563 2007
29. Crim. Case No. November 9,

- | | | |
|-----|---------------------------|-------------------|
| | 08-05-3564 | 2007 |
| 30. | Crim. Case No. 08-05-3565 | December 7, 2007 |
| 31. | Crim. Case No. 08-05-3566 | December 6, 2007 |
| 32. | Crim. Case No. 08-05-3567 | December 5, 2007 |
| 33. | Crim. Case No. 08-05-3568 | December 4, 2007 |
| 34. | Crim. Case No. 08-05-3569 | December 3, 2007 |
| 35. | Crim. Case No. 08-05-3570 | November 13, 2007 |
| 36. | Crim. Case No. 08-05-3571 | November 14, 2007 |
| 37. | Crim. Case No. 08-05-3572 | November 15, 2007 |
| 38. | Crim. Case No. 08-05-3573 | November 16, 2007 |
| 39. | Crim. Case No. 08-05-3574 | January 14, 2008 |
| 40. | Crim. Case No. 08-05-3575 | January 15, 2008 |
| 41. | Crim. Case No. 08-05-3576 | January 16, 2008 |
| 42. | Crim. Case No. 08-05-3577 | January 17, 2008 |
| 43. | Crim. Case No. 08-05-3578 | January 18, 2008 |
| 44. | Crim. Case No. 08-05-3579 | November 12, 2007 |

The cases were raffled to the Regional Trial Court, Branch 11, Manolo Fortich, Bukidnon.

Arraignment and Plea

On arraignment, appellant pleaded "not guilty" to all the charges.^[6] Thereafter, the cases were consolidated and jointly tried.

During the trial, complainant AAA, her attending doctor Rubee Ann Go-Gotil, her two aunts BBB and CCC, SPED Teacher DDD, and sign language experts Joshua Asuela, Jr. and Roygie Gantalao testified for the prosecution. On the other hand, appellant Dante Cubay alone testified for the defense.

The Prosecution's Version

Complainant is a congenital deaf mute.^[7] Her hearing impairment was classified as "profound" and her level of education in formal sign language, low, *i.e.* that of a grade two (2) pupil. But she is teachable in the informal or basic sign language.

In 2003, complainant started studying at XXX Special Education (SPED) Center - a special school for children with disabilities, *i.e.* mental, visual, and hearing

impairment.^[8] The SPED Center and dormitory were located inside XXX Elementary School, XXX, Bukidnon. The school required SPED students to stay in the dormitory. Complainant stayed in the dormitory during school days and went home to her grandfather's house at XXX, Bukidnon on weekends.^[9]

Appellant is the school watchman assigned at XXX Elementary School, XXX SPED Center, and the SPED dormitory. His wife is the dormitory's caretaker.^[10]

Complainant's aunt, BBB is a SPED teacher in XXX SPED Center.^[11] One time, complainant's teacher DDD told BBB that she (DDD) saw complainant eating snacks with appellant. To quell rumors about complainant and appellant, BBB convinced her father (complainant's grandfather) to have complainant move in with her.^[12] Complainant initially agreed but when her grandfather came to fetch her, she refused to go because she was afraid her grandfather would scold her. Three (3) days later, she voluntarily went to her grandfather's house which was closer to the house of her other aunt CCC.^[13]

Complainant's physical and behavioral changes, including her frequent headache and stomach ache aroused her aunts' suspicion. Then CCC learned complainant had missed her menstrual period, CCC caused complainant to take a pregnancy test which yielded a positive result.^[14] When asked who the father of her child was and who molested her, complainant motioned the name "Dante," herein appellant. She then charged appellant with rape before the XXX Police Station.^[15]

With the assistance of sign language interpreters Joshua Asuela, Jr. and Roygie Gantalao, complainant testified that sometime in September 2007, while she was studying inside her dormitory room, appellant entered her room, undressed her, touched her body, and inserted his penis in her vagina. She pushed appellant, but it was in vain.^[16] The incident was repeated several times, specifically on September 7, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 24, 25, 26, 27, and 28, 2007; October 1, 3, 4, 5, 8, 9, 10, 11, and 12, 2007 November 6, 7, 8, 9, 12, 13, 14, 15, and 16, 2007; December 3, 4, 5, 6, and 7, 2007; and January 14, 15, 16, 17, and 18, 2008. The rape incidents happened at night during school days inside complainant's dormitory room. Complainant consequently conceived and gave birth to a child in June 2009.^[17]

On January 28, 2008, Dr. Rubee Ann Go-Gotil examined complainant and found old healed hymenal lacerations at 3 and 9 o'clock positions. She also confirmed complainant's pregnancy. Her Living Case Report^[18] contained her findings.

The prosecution presented as documentary evidence: Living Case Report dated January 29, 2008^[19] (Exhibit "A"); Certification dated January 30, 2008^[20] (Exhibit "B"); and Complainant's Sworn Statement dated January 27, 2008^[21] (Exhibit "C").

The Defense's Version

Appellant denied the charges. He admitted he had sexual congress with complainant for more than forty-four (44) times but asserted they were all consensual. Complainant filed the rape charges only because her pregnancy and illicit affair with

him brought embarrassment to her family.

On February 27, 2007, he got employed as watchman of XXX SPED School and Dormitory in XXX Elementary School. He worked from 7:30 in the evening until 4:30 in the morning and resided in the school dormitory. His wife also worked and resided in the SPED dormitory as caretaker tasked to look after the blind students. He met complainant on the same day he got employed. She and her friend EEE frequently roamed around the school premises and visited him in his post at night. Complainant communicated with him through sign language which EEE, a polio victim with no hearing impairment, would interpret to him.^[22]

On February 28, 2007, complainant spoke signs to appellant. EEE said complainant was telling him he was handsome and she liked him. He knew complainant liked him because she even wrote him a letter which his wife had torn. Complainant told him she wanted them to be friends even after he confided to her he was already married. They had since become lovers. Complainant visited him in his post every night. She became close to him and even gave him a stuff toy, watch, and a photo of them together with dedication at the back.^[23]

On October 3, 2007, complainant went to his sleeping quarters and gave him a watch and a stuff toy.^[24] Because of the heavy rains that night, his companion who occupied the quarters with him did not arrive. He told complainant to go home but the latter refused and even slept beside him. Complainant pinched him, then they started kissing, tickling, and hugging each other. They eventually had sexual intercourse. Complainant never resisted but consented to everything they did. She even sucked his lips when he inserted his sex organ into hers. After October 3, 2007, they had many more nights of sexual congress in his quarters, all with complainant's full consent. Complainant was already of legal age when they started having sexual intercourse.^[25] He had sexual intercourse with complainant more than forty-four (44) times.^[26] EEE and his wife's male cousin named Rey knew about his sexual congress with complainant as they, too, were lovers.^[27]

Complainant charged him with rape only because her aunt BBB had threatened her.^[28]

The defense offered in evidence the stuff toy (Exhibit "1"); a ladies' watch (Exhibit "2"); and a picture (Exhibit "3").^[29]

The Trial Court's Ruling

By Joint Judgment^[30] dated January 30, 2013, the trial court found appellant guilty of forty-four (44) counts of rape, thus:

WHEREFORE, premises above considered, the court finds DANTE CUB AY y Ugsalan GUILTY beyond reasonable doubt of rape of AAA for 44 counts and hereby sentences him to suffer the penalty each of RECLUSION PERPETUA in Criminal Case Numbers 08-05-3536 up to Criminal Case No. 08-05-3579 and he is further ordered:

A - To pay AAA -