

SECOND DIVISION

[G.R. No. 207765, July 26, 2017]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JULITO DIVINAGRACIA, SR., ACCUSED-APPELLANT.

DECISION

LEONEN, J.:

"Pa, don't do that[,] Pa."^[1]

Child victims of rape by their very own fathers usually continue to live in an environment where the perpetrators consistently underscore the weakness and worthlessness of their victims. In addition to the continued economic dependence of the child victims, this ensures enormous difficulty to find a safe space for them to reveal their ordeal and ensure protection. The animosity and intolerable indignity that child victims experience often lead them to find the courage to seek succor from someone who appears to have moral ascendancy over their perpetrator. This is often their mother, although at times, it may also be a relative.

This case is the story of the courage of AAA and BBB, sisters who were sexually molested by their father.

This resolves the appeal, through Rule 124, Section 13, paragraph (c)^[2] of the Rules of Court, as amended by Administrative Matter No. 00-5-03-SC dated September 28, 2004, of the October 7, 2009 Joint Judgment^[3] of Branch 28, Regional Trial Court, Mandaue City in Criminal Case Nos. DU-8072 and DU-8074. The trial court found accused Julito Divinagracia, Sr. (Divinagracia) guilty beyond reasonable doubt of one (1) count of rape in relation to Republic Act No. 7610 and one (1) count of acts of lasciviousness in relation to Republic Act No. 7610. The Court of Appeals,^[4] upon intermediate review, affirmed the trial court's Decision.

This Court restates the facts as found by the lower courts.

Divinagracia and CCC were husband and wife with seven (7) children.^[5] The family lived in a one (1)-room house at Jagobiao, Mandaue City near the boundary of Riverside, Consolacion.^[6]

Sometime in November 1996,^[7] Divinagracia and CCC quarrelled,^[7] prompting CCC to leave and spend the night at her sibling's house. Their daughters AAA and BBB were then left by themselves^[8] since their other siblings were either at their grandmother's house or with their friends.^[9]

Later that evening, while AAA and BBB were sleeping side by side inside their house, BBB suddenly woke up to her father's tight embrace from behind and felt him

roughly running his hand over her leg and breasts. BBB then felt her father poking his hard penis against her buttocks. BBB begged her father to stop, saying that she still had to go to school the following day. Divinagracia moved away from BBB and went out of the house.^[10]

BBB was nine (9) years old at that time.^[11]

A few minutes later, Divinagracia went back inside the house and lay down beside AAA.^[12] AAA woke up and asked her father where her mother was. Divinagracia pinched her ear and ordered her to keep quiet.^[13]

AAA noticed that BBB, who was then lying beside her, slowly moved away. AAA tried to follow BBB, but Divinagracia pulled AAA towards him and made her face him. Divinagracia pulled down AAA's shorts and put his finger inside her vagina. Afterwards, Divinagracia got on top of AAA and inserted his penis inside her vagina. AAA's father then continued to molest her.^[14]

AAA cried to her sister for help but BBB could do nothing but weep and cover her ears.^[15] AAA was eight (8) years old at that time.^[16]

The following day, AAA was shocked and scared to find blood stains on her shorts. Divinagracia merely laughed when he saw AAA's distress.^[17]

When CCC arrived later that day, AAA told her that she was molested by Divinagracia. AAA did not say that she was raped because she was afraid that her parents would only quarrel again. However, CCC did not believe her daughter. AAA claimed that CCC told Elvira Aburido (Aburido), Divinagracia's sister, about the molestation.^[18]

On January 19, 1999, or a little over two (2) years after the incident, Sister Mary Ann Abuna (Sister Mary Ann), CCC's sister and a nun,^[19] visited her family in Cebu.^[20]

That same day, AAA told Sister Mary Ann that she wanted to stop her schooling and begged to go with her back to Manila because she did not want to see her father anymore. Sister Mary Ann asked AAA's sisters if their father had changed his ways. BBB and their other sister responded that he had not reformed and even almost raped them.^[21]

Sister Mary Ann asked the sisters to leave Cebu and go back with her to Manila to prevent their father from further molesting them. She brought AAA, BBB, their other sister, and CCC back with her to Manila. A few days later they all went to Pampanga where Sister Mary Ann was a missionary.^[22]

While in Pampanga, AAA saw CCC crying because she wanted to go back to Cebu. AAA then went to Sister Mary Ann and declared that if CCC would return to Cebu, she would not go back with her. It was at this point that AAA opened up to Sister Mary Ann about the sexual abuse she suffered from her father.^[23]

Sister Mary Ann brought AAA to the Hospital Ning in Angeles City to be examined by a doctor.^[24] After examining AAA, Dr. Lauro C. Biag (Dr. Biag) issued a medical certificate,^[25] a portion of which read:

Genitalia: labia majora/minora - well coaptated.

Hymen: orifice 0.7 cm old healed complete laceration on 11, 8, 2 o'clock.

old healed incomplete laceration 5 & 10 o'clock.

(-) abrasion, (-) hematoma, (-) discharge^[26]

Sister Mary Ann helped the girls file their respective complaints^[27] against their father. At first, BBB was hesitant to file a complaint but she finally agreed because AAA would not stop crying and was always afraid.^[28]

On November 13, 2000, Divinagracia was charged with rape and acts of lasciviousness in relation to Republic Act No. 7610.^[29] Pertinent portions of the Information for rape read:

That on or about the month of November 1996 in the Municipality of Consolacion, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with deliberate intent, by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge with [AAA], his own daughter an [8-year-old] girl at that time, against her will and consent.

CONTRARY TO LAW.^[30]

The Information for acts of lasciviousness read:

That on or about the month of November 1996 in the Municipality of Consolacion, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with force and intimidation and with lewd designs, did then and there wilfully, unlawfully and feloniously commit an act of lasciviousness against [BBB], his own daughter, a [12-year-old] girl by embracing her, pressing his penis against her buttocks and touching her breasts, against her will and consent.

CONTRARY TO LAW.^[31]

Divinagracia, assisted by counsel, pleaded not guilty to the charge of rape against him.^[32] During pre-trial, defense admitted the following facts and stipulations:

1. The existence of a birth certificate of the private offended party. Her birth certificate shows that she was born in Consolacion, Cebu on October 29, 1988;
2. The accused is the father of the private offended party;
3. On November 1996 and prior thereto, the accused had been living together with his wife and children at Riverside, Consolacion, Cebu;

4. The existence of a medical certificate of the private offended party signed by a certain Dr. Lauro Biag, Medical Officer III of Hospital Ning Angeles City[.]^[33]

The prosecution, in turn, admitted the following facts and stipulations:

1. The house where the family of the accused stays at Riverside, Consolacion, Cebu is a one room affair, is about 6x8 meters which is more or less half of the area of this courtroom;
2. The whole family which includes seven (7) children, the accused and his wife slept in the same house;
3. The next door neighbor is about four (4) feet away from the house of the accused;
4. Elvira Divinagracia Aburido, sister of the accused, also lives at Riverside, Consolacion, Cebu;
5. The complaint against the accused was filed at the Provincial Prosecutor's Office on July 31, 2000.^[34]

The complaints for rape and acts of lasciviousness against Divinagracia were eventually consolidated for trial.^[35]

Divinagracia, assisted by counsel, also pleaded not guilty to the charge of acts of lasciviousness against him.^[36] Defense then admitted the following facts and stipulations during pre-trial:

1. The accused is the father of the complaining witness;
2. The accused and the private complainant (his daughter) were residing at Riverside, Consolacion, Cebu at the time this incident occurred in November 1996 and prior thereto. As a matter of fact, according to Atty. Rodriguez, all the members of the family of the accused lived together at this place at this given time;
3. The existence of a Certificate of Live Birth and Baptismal Certificate of the complaining witness.^[37]

On the other hand, the prosecution admitted the following stipulations:

1. All the seven (7) children including the father and the mother lived together in a one-room house at Riverside, Consolacion, Cebu;
2. The mother of the complaining witness is a housewife;
3. The uncles and aunties of the complaining witness also live in Consolacion, Cebu;
4. The next door neighbor of the family of the complaining witness at Riverside, Consolacion, Cebu is about 4 feet away from their house;

5. The records show a [Si]numpaang Salaysay executed by the complaining witness and subscribed before the City Prosecutor of Angeles City on November 1999.^[38]

The prosecution presented the following as witnesses: AAA, BBB, Sister Mary Ann, and Dr. Naomi Poca (Dr. Poca).

Dr. Poca, a pediatrician who was also a child protection specialist,^[39] interpreted the medical findings of Dr. Biag, who failed to attend the hearings due to the distance of Angeles City, Pampanga from Mandaue City, Cebu.^[40]

Dr. Poca testified that the healed lacerations at 11:00, 2:00, and 10:00 positions are "more likely congenital rather than acquired".^[41] However, the lacerations at 8:00 and 5:00 positions could have only been caused by penetration into the vagina.^[42] Moreover, given AAA's disclosure, Dr. Poca opined that the healed laceration at 8:00 position suggested sexual abuse.^[43]

The defense presented the following as its witnesses: Divinagracia, his neighbors Pamela Sison (Sison), Alvin Ho (Ho), Darwin Isok (Isok), and his sister Aburido.

Divinagracia denied abusing his daughters^[44] and claimed that they had a happy^[45] family life. He further claimed that he only found out about the complaints for molestation against him when he was arrested in 2001.^[46] Divinagracia then accused his wife's family of plotting against him.^[47]

Sison testified that Divinagracia and his family had been her neighbors as far back as the 1980s. Sison claimed that CCC used to go to her house all the time to complain about her financial problems and quarrels with Divinagracia.^[48] Sison further averred that despite beating his wife, Divinagracia appeared to be a loving father because he was very affectionate and sent his children to school, even if he was financially hard-up most of the time.^[49]

Ho, who had been Divinagracia's neighbor since 1992, attested that Divinagracia would often quarrel with and hit CCC.^[50] He claimed that it was impossible for Divinagracia to abuse his children because they were always playful.^[51] He added that he had never seen the children look weak and tired or heard them complain.^[52]

Isok claimed that he was friends with some of Divinagracia's children as they all lived in the same neighborhood.^[53] Isok testified that he was close with and fond of Divinagracia's family, yet he never heard of any problems between Divinagracia and his children.^[54]

Aburido testified to being Divinagracia's sister and aunt to AAA and BBB.^[55] She claimed that she was not close to Divinagracia and his family but that her nieces and nephews would sometimes ask her for rice. Her brother would also go to her whenever he had any financial problem. Aburido claimed that she first found out