

## EN BANC

[ G.R. No. 170634, January 08, 2013 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PEDRO BUADO, JR. Y CIPRIANO, ACCUSED-APPELLANT.**

### DECISION

**BERSAMIN, J.:**

This case tells the revolting story of a lecherous father who made two of his very young daughters his sex slaves for several years right in the family home. The trial court convicted him and prescribed the death penalty for each of the two counts of rape. There would be no hesitation to affirm the penalty, but the intervening passage of the law prohibiting the imposition of the death penalty now spares him from the supreme penalty.

#### The Case

Under final review is the Decision promulgated on April 27, 2005,<sup>[1]</sup> whereby the Court of Appeals (CA) affirmed with modification the May 5, 2003 judgment rendered in Criminal Case No. 912-V-99 and Criminal Case No. 974-V-99 by the Regional Trial Court (Branch 171) in Valenzuela City (RTC),<sup>[2]</sup> finding Pedro Buado y Cipriano Jr. guilty of two counts of rape committed against his two minor daughters.

#### Antecedents

The amended informations alleged as follows:

Criminal Case No. 912-V-99

That sometime April 1999, in Valenzuela, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, actuated by lust, force, threat and intimidation, did then and there willfully, unlawfully and feloniously lie and have carnal knowledge of AAA,<sup>[3]</sup> his daughter, a ten (10) year old minor, against her will and consent, to her damage and prejudice in whatever amounts may be awarded her under the provisions of the Civil Code.

Contrary to Law.

Criminal Case No. 974-V-99

That on or about November 10, 1999 in Valenzuela City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, did then and there willfully, unlawfully and

feloniously he and have sexual intercourse with one BBB, 8 years old, his daughter.

Contrary to Law.<sup>[4]</sup>

The accused, assisted by counsel *de officio*, pled *not guilty* to each of the amended informations.

### **Evidence of the Prosecution**

The Prosecution presented eight witnesses, namely: victims AAA and BBB; their mother CCC and older sister DDD; Dr. Ida de Perio-Daniel; Dr. Mariella S. Castillo; PO2 Luisito M. Dela Cruz; and Rosalina E. Chiong.

The accused and CCC were legally married, and used to live together in F. Bautista Street at Marulas, Valenzuela City with their 13 children, eight of whom are girls. Among their children were AAA and BBB. AAA was born on February 13, 1989,<sup>[5]</sup> and BBB on October 11, 1990.<sup>[6]</sup>

#### **A.**

#### **The rape of AAA**

On April 13, 1999, at about 3:00 p.m., CCC and her children were attending a get-together party in the adjacent house of DDD, then already married. The accused summoned AAA home from the party. Upon AAA getting home, he ordered her to enter the bedroom, and once she was inside, he undressed her and inserted his finger in her vagina.<sup>[7]</sup> He then went on top of her and inserted his penis in her vagina, giving vent to his lust.<sup>[8]</sup> AAA could only cry while he was forcing himself on her.<sup>[9]</sup>

Missing AAA at the party, CCC returned to the house and saw that her husband was there. He cursed her many times, but she simply ignored him and went upstairs, where she found AAA crying. AAA told her mother that her father had just molested her. AAA further told her mother that he had done the same thing to her several times in the past,<sup>[10]</sup> starting when she was still in Grade I. At the time, AAA was already in Grade 4. AAA told her mother that he had also raped her several times in the past only when CCC was not home, but that she had kept silent about the rapes because she had been too afraid of him to complain. Besides, AAA also knew that he kept a gun at home and had a violent temper, having frequently beaten his wife and children for no apparent reason. AAA explained in court that she finally revealed her ordeals to her mother because her sufferings had become unbearable,<sup>[11]</sup> saying: *Nahihirapan po ako.*<sup>[12]</sup>

It was not until June 9, 1999, however, that CCC and AAA mustered the courage to leave home and denounce the father's crimes. They hastened to the National Bureau of Investigation (NBI) to finally lodge a complaint against him. AAA was examined by Dr. Ida Perio-Daniel, who incorporated her findings in Living Case No. MG-99-537,<sup>[13]</sup> to wit:

## GENERAL PHYSICAL EXAMINATION:

Height: 123.0 cms.

Weight: 44 lbs

Fairly nourished conscious, coherent, cooperative, ambulatory subject. Breast infantile. Areola, light brown, 1.4 cm, in diameter, Nipples light brown, flat 0.3 cm. In diameter.

No extragenital physical injury noted.

## GENITAL EXAMINATION:

Pubic hair, no growth. Labia majora and minora, coaptated. Fourchette, tense. Vestibular mucosa, pinkish. Hymen, short, thin, with old healed complete laceration at 6 o'clock position corresponding to the face of a watch, edges rounded non-coaptable. Hymenal orifice, admits a tube 2.0 in diameter. Vaginal walls, tight. Rugosities, prominent.

\* \* \*

## CONCLUSIONS:

1. No evident sign of extragenital physical injury present on the body of the subject at the time of the examination.
2. Old healed hymenal laceration present.

Afterwards, CCC and AAA, still in fear of the accused, did not want to return home. Hence, the NBI referred them for temporary shelter to the Department of Social Welfare and Development (DSWD) Haven in Alabang, Muntinlupa City. The rest of the unmarried children, including the then 9-year old BBB, continued to live with their father.

## **B. The rape of BBB**

The rape of BBB was committed a few months later. At 6:00 a.m. of November 10, 1999, the accused commanded BBB, who was then in the kitchen of their house, to undress and lie down on a piece of plywood laid out on the ground.<sup>[14]</sup> Already naked from the waist down, he pushed her down to the floor, and lubricated his penis and BBB's vagina with cooking oil.<sup>[15]</sup> He next went on top of her, inserted his penis into her genitalia, and made pumping motions.<sup>[16]</sup> He ignored all her pleas for him to stop.<sup>[17]</sup> She stated that he had also raped her many times previously but that she had kept silent about the rapes out of fear of him.<sup>[18]</sup> But she could not anymore bear her pain that last time; hence, she went to her older sister DDD's house and finally reported the rape to DDD.<sup>[19]</sup> When BBB was narrating about her last rape, DDD could only embrace her young sister and cry.

Later on, DDD called up their mother who was then staying at the DSWD Haven in Alabang to tell her about what the accused had just committed against BBB. CCC

advised DDD to bring BBB to the DSWD office in Valenzuela. The DSWD office endorsed BBB to the Child Protection Unit of the Philippine General Hospital (PGH), where Dr. Mariella S. Castillo examined the child. The findings were initially reflected in a provisional medical certificate on November 10, 1999,<sup>[20]</sup> and ultimately in a final medical certificate issued on the same date,<sup>[21]</sup> to wit:

#### GENITAL EXAMINATION:

External Genitalia: normal

Hymen: crescentic, (+) absent hymenal tissue at 6 o'clock, (+) attenuation from 2 o'clock to 6 o'clock, no hematoma, no laceration, no discharge

Anus: Normal

#### LABORATORY EXAMINATION:

Vaginal swab smear: no spermatozoa seen.

#### IMPRESSION:

Disclosure of physical and sexual abuse.

Multiple hematomas on chest and lower extremities.

Hematomas on chest and extremities are consistent with the patient's disclosure

Genital finding of absent posterior hymen and is indicative of prior penetration injury that has healed.

Armed with the provisional medical certificate issued by Dr. Castillo, DDD brought BBB to the Valenzuela Police Station to charge the accused with rape. A police team was immediately dispatched to the house of the accused to invite him for investigation. After the accused was brought in to the station, BBB and her elder sister gave their respective written statements.<sup>[22]</sup> On that occasion, BBB positively pointed to her father as the rapist.<sup>[23]</sup>

### **Version of the Defense**

The accused was his own sole witness. He denied raping AAA and BBB.<sup>[24]</sup> He justified the medico-legal findings on BBB by shifting the blame on his drug addict son EEE, stating that in May 1999, BBB had told him about EEE raping her;<sup>[25]</sup> that BBB even showed him a plastic sachet containing small white granules that EEE had supposedly dropped when he raped her;<sup>[26]</sup> that he hit EEE upon learning about the rape; that he wanted to charge EEE but his wife prevented him from doing so in order to avoid embarrassment to the family; and that after CCC left home, he planned on reporting the rape to the police authorities, but EEE became aware of his

plan and quickly left home and stayed away.

The accused testified that he was a shoemaker earning an average of P15,000.00/month; that although he thought that his income sufficed for him and his family, CCC felt differently, because she was envious of their rich neighbors; that CCC suggested that he change his livelihood and deal in prohibited drugs; that because he refused, CCC became angry and caused AAA and BBB to bring the false charges against him;<sup>[27]</sup> that CCC also wanted to reconcile with her former live-in partner with whom she had cohabited prior to their marriage; that he could not understand why she wanted to do that, but there was nothing he could do about it; that in May 1999, CCC left their conjugal home along with their two youngest daughters; that he had no idea about where they had gone to until he learned that they were sheltered in the DSWD Haven in Alabang; and that they returned home after six months only when he was already in detention.<sup>[28]</sup>

The accused said that he had disciplined his children either verbally or physically (*i.e.*, by hitting them with his bare hands or with a piece of wood).<sup>[29]</sup> In that regard, he admitted having been charged with child abuse in 1999 for spanking FFF, another son, but he insisted that the charge had been dismissed.

### **Ruling of the RTC**

After trial, the RTC convicted the accused, disposing as follows:

**WHEREFORE**, premised on the foregoing, the Court finds accused PEDRO BUADO, JR. y CIPRIANO **GUILTY** beyond reasonable doubt of the crime of two (2) counts of Rape penalized under Article 335 of the Revised Penal Code, as amended by Section 11 of R.A. No. 7659, and sentencing him to suffer in each case the death penalty and to pay in each case the victims the following sums: Seventy Five Thousand Pesos (P75,000.00) as civil indemnity; Fifty Thousand Pesos (P50,000.00) as moral damages and Twenty Five Thousand Pesos (P25,000.00) as exemplary damages.

Pursuant to the Constitution, let the entire records of these cases be forwarded to the Honorable Supreme Court for automatic review.

SO ORDERED.<sup>[30]</sup>

### **Ruling of the CA**

Elevated to the Court on automatic appeal, the records were transferred to the CA for intermediate review pursuant to *People v. Mateo*.<sup>[31]</sup>

In due course, on April 27, 2005, the CA affirmed the conviction, but reduced the death penalty to *reclusion perpetua* in Criminal Case No. 912-V-99,<sup>[32]</sup> as follows: