

## SECOND DIVISION

[ G.R. No. 197537, July 24, 2013 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NINOY ROSALES Y ESTO, ACCUSED-APPELLANT.**

### D E C I S I O N

**PEREZ, J.:**

This Appeal seeks the reversal and setting aside of the Decision<sup>[1]</sup> dated 26 July 2010 of the Court of Appeals in CA-G.R. CR.-H.C. No. 03043, which affirmed the Decision<sup>[2]</sup> of the Regional Trial Court (RTC) of Caloocan City, Branch 129 convicting appellant Ninoy Rosales y Esto of the crime of rape.

Appellant was charged with rape in an Information,<sup>[3]</sup> the accusatory portion of which reads as follows:

That on or about the 27<sup>th</sup> day of June, 2004, in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, having knowledge that [AAA],<sup>[4]</sup> 39 years old, is mentally retarded and has the mind of child below 18 years old, taking advantage of the victim's mental disability, wilfully, unlawfully and feloniously had sexual intercourse with said [AAA].

Appellant pleaded not guilty on arraignment. Trial on the merits ensued.

The victim, AAA, then 39 years of age, testified that in the morning of 27 June 2004, while she was holding a dog outside her residence in X X X,<sup>[5]</sup> Quezon City, appellant approached her and gave her P200.00 to buy some junk food. Appellant then forced her to go with him to his house located inside a nearby cemetery in Caloocan City. Upon reaching appellant's house, appellant ordered AAA to lie down. He undressed her, sucked her nipple and inserted his penis in her vagina. AAA felt pain. Thereafter, appellant ordered her to put her dress on and took her cellular phone. Appellant sold AAA's phone and bought drinks for his drinking companions. AAA was later fetched by her sister at appellant's house. AAA identified appellant in court as the person who raped her.<sup>[6]</sup>

On 28 June 2004, BBB<sup>[7]</sup> accompanied her daughter AAA to the Women and Children Protection Desk of the Caloocan City Police Station to report the incident.

The police investigator immediately prepared a request so that AAA could be physically examined by a medico-legal.<sup>[8]</sup> After the medical examination, Medico-Legal Report No. M-366-04 was issued by Dr. Filemon C. Porciuncula, Jr. The Report

contains the following pertinent findings and conclusion:

GENITAL:

PUBIC HAIR: Abundant

LABIA MAJORA: Full, convex & coapted

LABIA MINORA: With dark brown, hypertrophied. Labia minora congested & abraded on both sides.

HYMEN: Deep healed lacerations at 3&7 o'clock position.

POSTERIOR FOURCHETTE: Abraded, congested

EXTERNAL VAGINAL ORIFICE: Slight resistance of the examining index finger.

VAGINAL CANAL: Narrow with prominent rugosities.

CERVIX: Firm & closed.

PERIURETHRAL AND VAGINAL SMEARS: Negative for spermatozoa & negative for gram negative diplococci.

CONCLUSION: Subject is non-virgin state physically. There are no external signs of application of any form of trauma.<sup>[9]</sup>

Dr. Lorenda Gozar (Dr. Gozar), a clerical psychologist working with the National Bureau of Investigation, testified on AAA's mental condition. Dr. Gozar had examined AAA and concluded in her Neuro-Psychiatric Examination and Evaluation that AAA has been found suffering from "moderate mental retardation with a Mental Age of (6) six years and (8) eight months and an IQ of (41) forty-one." <sup>[10]</sup>

Appellant, testifying in his own behalf, denied that he raped AAA. He however admitted that he was having a drinking session in his house with AAA when the alleged rape incident occurred. Appellant stated that prior to the incident, AAA has lived in his house for 4 months. He then denied any knowledge of AAA's mental condition.<sup>[11]</sup>

On 19 September 2007, the RTC rendered judgment finding appellant guilty of rape and imposing the penalty of *reclusion perpetua*. The RTC also ordered appellant to pay P50,000.00 as civil indemnity, and P50,000.00 as moral damages.<sup>[12]</sup>

The trial court found AAA's testimony straightforward, notwithstanding her mental condition. The trial court also dismissed appellant's alibi as weak and unreliable.

On 26 September 2007, appellant filed a notice of appeal.<sup>[13]</sup>

On 26 July 2010, the Court of Appeals affirmed the decision of the trial court. Consequently, appellant filed a notice of appeal.<sup>[14]</sup>

On 10 August 2011, this Court informed the parties that it had received the records from the Court of Appeals and required them to file their respective supplemental briefs.<sup>[15]</sup> Both parties manifested that they would no longer file supplemental briefs, since they had exhaustively argued all the relevant issues in the Briefs they had previously submitted before the Court of Appeals.<sup>[16]</sup>

The case is now before us. Appellant assigned two (2) errors in his appeal which were initially passed upon by the Court of Appeals, to wit: 1) whether the trial court gravely erred in considering the evidence adduced by the prosecution despite its apparent incredibility; and 2) whether the trial court gravely erred in rendering a verdict of conviction despite the fact that the guilt of the accused-appellant was not proven beyond reasonable doubt.<sup>[17]</sup>

Appellant contends that AAA's testimony is incredible on the lone argument that the latter did not make an outcry when the alleged lustful advances were made against her.

In *People v. Alipio*,<sup>[18]</sup> the Court rebuked appellant therein for raising a similar argument. The Court went on to state that it is not fair to judge a mentally-retarded person, one who does not have a good grasp of information and who lacks the capacity to make a mental calculation of the events unfolding before her eyes, according to what is natural or unnatural for normal persons.<sup>[19]</sup>

In this case where the victim was proven to be a mental retardate, it could certainly not be expected that AAA would have behaved or acted in accordance with what appellant perceived to be as normal.

At any rate, it is an oft-repeated principle that not every witness to or victim of a crime can be expected to act reasonably and conformably to the usual expectations of everyone. People may react differently to the same situation. One person's spontaneous, or unthinking or even instinctive, response to a horrible and repulsive stimulus may be aggression, while another's may be cold indifference. Yet, it can never be successfully argued that the latter are any less sexual victims than the former.<sup>[20]</sup>

Moreover, when AAA was called to the witness stand, she never wavered in her assertion that appellant raped her. AAA's testimony is clear and concise, thus:

Q: Do you know the accused in this case named Ninoy Rosales?

A: Yes [s]ir.

Q: And why do you know Ninoy Rosales?

A: He is a carpenter in Magnas [s]ir.

Q: Where is this Magnas located?

A: In Quezon City [s]ir.

Q: Near your residence in Quezon City?

A: Far from our house [s]ir.

Q: Do you remember where were you on June 27, 2004 at about 9:00 a.m.?

A: I was outside [s]ir.

Q: Outside your residence?

A: Yes [s]ir.

Q: And while you were outside your residence, what were you doing?

A: I was holding a dog [s]ir.

Q: And while you were holding this dog, do you remember of

any incident that happened on June 27, 2004 at 9:00 a.m.?

A: He [paid] me P200.00 [s]ir.

Q: Who paid you P200.00?

A: *Siya po* [s]ir.

Interpreter: The witness pointed to a person of the accused your Honor.

Fiscal Azarcon

Q: So, you want to impress to this Court that the accused handed to you P200.00?

A: Yes [s]ir.

Q: And can you tell this Court for what purpose is that P200.00 given to you?

A: It is for me to buy "*sitsirya*" (junk foods) [s]ir.

Q: After receiving this P200.00 from the accused in this case, what happened then?

A: He forced me to go with him in the cemetery [s]ir.

Q: And where is this cemetery located?

A: In Caloocan City [s]ir.

Q: And what is the name of that cemetery, if you can remember?

A: No [s]ir.

Q: And was he able to bring you to the cemetery in Caloocan City?

A: Yes [s]ir.

Q: What particular place do you remember in that cemetery in Caloocan City?

A: He brought me there in the cemetery and then he undressed me [s]ir.

Q: Could you remember what house, store or any building did he bring you?

A: In place where there is a concrete wall and a stairway [s]ir.

Q: Where does this stairway goes?

A: In going to their house [s]ir.

Q: House of whom?

A: To the accused [s]ir.

Q: You want to impress to this Court Ms. Witness that the house of the accused is located in the cemetery in Caloocan City?

A: Yes [s]ir.

Q: And he brought you there in that house?

A: Yes [s]ir.

Q: So, what did he do while you were inside his house?

A: He ordered me to lie down, he undressed me and then, he inserted his penis to my genitalia [s]ir.

Q: What were you wearing at that time?

A: Short [s]ir.

Q: And were you wearing panty at that time?

A: Yes [s]ir.

Q: Were you also wearing dress or t-shirt at that time?

A: No more [s]ir.

Q: Before going to the place of Ninoy Rosales, were you dressed at that time?

A: Yes [s]ir.

Q: What kind of dress were you wearing?

A: Red [s]ir.