

## THIRD DIVISION

[ G.R. No. 193188, August 10, 2011 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
JUANITO APATTAD, ACCUSED-APPELLANT.**

### D E C I S I O N

**VELASCO JR., J.:**

#### **The Case**

This is an appeal from the August 28, 2009 Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 03173, which affirmed, with modification, an earlier Decision<sup>[2]</sup> in Criminal Case Nos. 10172-10175 of the Regional Trial Court (RTC), Branch 4 in Tuguegarao City, Cagayan. The RTC found accused Juanito Apattad guilty beyond reasonable doubt of three (3) counts of rape.

#### **The Facts**

Accused was charged in four (4) separate informations, the accusatory portions of which read:

#### CRIMINAL CASE NO. 10172

That sometime in the year 2001, in the evening[,], in the Municipality of Peñablanca, Province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused, **JUANITO APATTAD**[,], father of the offended party, **[AAA]**,<sup>[3]</sup> **a minor below 12 years of age**, thus have moral ascendancy over the complainant, with lewd design and by the use of force, did, then and there, willfully, unlawfully and feloniously have sexual intercourse with his own daughter, the herein offended party, **[AAA]**, **a minor woman below 12 years of age** against her will.

CONTRARY TO LAW.<sup>[4]</sup> (Emphasis in the original.)

#### CRIMINAL CASE NO. 10173

That sometime in the year 2002, in the evening[,], in the Municipality of Peñablanca, Province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused, **JUANITO APATTAD**[,], father of the offended party, **[AAA]**, **a minor below 12 years of age**, thus have moral ascendancy over the complainant, with lewd design and by the use of force, did, then and there, willfully, unlawfully and feloniously have sexual intercourse with his own daughter, the herein offended party, **[AAA]**, **a minor woman below 12 years of age** against her will.

CONTRARY TO LAW.<sup>[5]</sup> (Emphasis in the original.)

CRIMINAL CASE NO. 10174

That on or about June 10, 2003, in the Municipality of Peñablanca, Province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused, **JUANITO APATTAD**[,] father of the offended party, **[AAA], a minor below 12 years of age**, thus have moral ascendancy over the complainant, with lewd design and by the use of force, did, then and there, willfully, unlawfully and feloniously have sexual intercourse with his own daughter, the herein offended party, **[AAA], a minor woman below 12 years of age** against her will.

CONTRARY TO LAW.<sup>[6]</sup> (Emphasis in the original.)

CRIMINAL CASE NO. 10175

That on or about June 11, 2003, in the Municipality of Peñablanca, Province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused, **JUANITO APATTAD**[,] father of the offended party, **[AAA], a minor below 12 years of age**, thus have moral ascendancy over the complainant, with lewd design and by the use of force, did, then and there, willfully, unlawfully and feloniously have sexual intercourse with his own daughter, the herein offended party, **[AAA], a minor woman below 12 years of age** against her will

CONTRARY TO LAW.<sup>[7]</sup> (Emphasis in the original.)

On June 1, 2004, the accused, with the assistance of his counsel, pleaded not guilty to all the charges against him.<sup>[8]</sup> Subsequently, on June 8, 2004, pre-trial conference was held and was terminated on the same day, with the parties stipulating on the following:

- (a) The identities of the accused and AAA;
- (b) AAA is the daughter of the accused;
- (c) AAA was a minor, being born on October 14, 1994, and was only ten (10) years old during the commission of the crime;
- (d) The existence of the Certificate of Live Birth of AAA; and
- (e) The existence of the Medico Legal Report of AAA issued by Dr. Mila Lingan-Simangan, Health Officer of Peñablanca, Cagayan.<sup>[9]</sup>

Thereafter, trial on the merits ensued. During trial, the prosecution offered the oral testimonies of AAA and Dr. Mila Lingan-Simangan. On the other hand, the defense

presented as its witnesses the accused himself and Louie Calimag.<sup>[10]</sup>

### **Version of the Prosecution**

AAA testified that sometime in 2001, while she was sleeping with her sisters, the accused pulled and positioned her just below the feet of her siblings, and right then and there, succeeded in molesting her.<sup>[11]</sup> AAA was just seven (7) years old then.<sup>[12]</sup>

On June 10, 2003, the accused sexually abused AAA again. While she was sleeping beside her younger sister in their room, accused carried her from the bed through the window and placed her on the floor.<sup>[13]</sup> Afterwards, accused removed his own shirt and used it to cover the mouth of AAA.<sup>[14]</sup> Accused then removed his underwear and AAA's underwear, and inserted his penis inside AAA's vagina, while telling her not to report the incident to her mother.<sup>[15]</sup> When the accused was finished in satisfying his lust, he put AAA's clothes back on, carried her back to bed, and untied the shirt covering AAA's mouth.<sup>[16]</sup>

The same incident happened on June 11, 2003, when accused carried AAA once again through the window, placed her on the floor, covered her mouth, undressed her, and inserted his penis into her vagina.<sup>[17]</sup> The accused also threatened to kill her if she reports the incident to her mother.<sup>[18]</sup>

When AAA finally told her mother on June 13, 2003 that she was being abused by her own father, her mother whipped her for not telling her about it immediately.<sup>[19]</sup> Thereafter, they went to the Department of Social Welfare and Development (DSWD) office in Peñablanca, Cagayan, where AAA was interviewed by a certain Ms. Abrena, a DSWD personnel.<sup>[20]</sup> Afterwards, they proceeded to the police station where AAA executed a sworn statement narrating what happened. Dr. Mila Lingan-Simangan (Dr. Simangan) also subsequently conducted a physical examination on AAA.<sup>[21]</sup>

On cross-examination, AAA explained that the reason why it was only on June 13, 2003 that she reported the incidents to her mother was because she was afraid that her father would kill them.<sup>[22]</sup> AAA also confirmed that her parents often quarrel and shout at each other.<sup>[23]</sup> She even admitted that she had seen her father slap her mother and that because of this, she sympathized and took pity on her.<sup>[24]</sup> When asked whether she would do anything that her mother would tell her to do, AAA answered in the affirmative.<sup>[25]</sup> However, on re-direct examination, AAA clarified that her mother did not teach her to claim that she was raped and that she was only telling the truth.<sup>[26]</sup>

Dr. Simangan, the prosecution's other witness, testified that on June 16, 2003, she conducted a physical examination on AAA and discovered that the latter had a healed hymen laceration at 4 and 7 o'clock positions, and that her vagina admitted the tip of the fifth finger easily.<sup>[27]</sup> She stated that the laceration could have been caused by a blunt object.<sup>[28]</sup> She also testified that after conducting the physical examination, she interviewed AAA and the latter gave her the name of the person

who raped her.<sup>[29]</sup> However, Dr. Simangan admitted that she can no longer remember the name that was mentioned by AAA.<sup>[30]</sup> Dr. Simangan also identified the Medico-Legal Report that she prepared.<sup>[31]</sup>

### **Version of the Defense**

The accused denied the accusation of rape hurled against him and claimed that his wife was the one who initiated the criminal complaint against him because she thinks that he has a mistress.<sup>[32]</sup>

The other defense witness, Louie Calimag (Calimag), testified that from June 3, 2003 until July 8, 2003, he employed the services of the accused to help him in the operation of the chainsaw.<sup>[33]</sup> As part of their routine, he and the accused would saw logs in the forest from 7:00 a.m. to 5:00 p.m., go back to his house, and sleep there at night.<sup>[34]</sup> Calimag further testified that when the accused was arrested by the police in the forest on July 8, 2003, he was also with him.<sup>[35]</sup> Thus, when he found out that the accused was arrested for rape allegedly committed on June 10 and 11, 2003, Calimag claimed that he did not believe this because the accused stayed in his house on those days.<sup>[36]</sup>

Calimag likewise added that after the accused was arrested, he saw AAA, who admitted to him that she was not raped by the accused and that it was her mother who instructed her to give false information. AAA allegedly told him that her parents had a fight due to her father's illicit relationship with another woman.<sup>[37]</sup>

On cross-examination, Calimag admitted that the house of the accused was only three (3) kilometers away from his house and that the accused's house may be reached by jeepney in an hour and by foot in four (4) hours.<sup>[38]</sup>

### **Ruling of the Trial Court**

Between the two versions of the incident, the trial court gave credence to the version of the prosecution and rendered its Decision dated October 24, 2007, finding the accused guilty of three (3) counts of rape. The decretal portion reads:

ACCORDINGLY, this Court finds accused JUANITO APATTAD GUILTY beyond reasonable doubt of the crime of rape for three (3) counts in Criminal Cases Nos. 10172, 10174 and 10175 and hereby imposes upon him the penalty of RECLUSION PERPETUA for each case. He is further ordered to pay [AAA] the amount of One Hundred Fifty Thousand (P150,000.00) Pesos as civil indemnity.

Accused is acquitted in Criminal Case No. 10173 for lack of sufficient evidence.

No pronouncement as to costs.<sup>[39]</sup>

On December 19, 2007, accused-appellant filed his *Notice of Appeal*<sup>[40]</sup> of the

Decision dated October 24, 2007 rendered by the trial court. On April 15, 2008, the CA, where the case was docketed as CA-G.R. C.R.-H.C. No. 03173, issued a notice to file brief to the parties.<sup>[41]</sup>

On September 5, 2008, accused-appellant filed his *Brief for the Accused-Appellant*,<sup>[42]</sup> while the People of the Philippines, through the Office of the Solicitor General, filed its *Brief for the Plaintiff-Appellee*<sup>[43]</sup> on March 27, 2009.

### **Ruling of the Appellate Court**

As stated above, the CA, in its Decision<sup>[44]</sup> dated August 28, 2009, affirmed with modification the judgment of conviction by the trial court, the dispositive portion of which reads:

**WHEREFORE**, in view of the foregoing, the instant appeal is **DISMISSED**. The assailed Decision of Branch 4 of the Regional Trial Court of Tuguegarao City in Criminal Case Nos. 10172, 10174 and 10175 is hereby **AFFIRMED** with the **MODIFICATION** that the civil indemnity awarded should be P75,000.00 for each count of rape. In addition, moral damages and exemplary damages in the amounts of P75,000.00 and Php25,000.00 respectively, for each count of rape are hereby awarded.

SO ORDERED.<sup>[45]</sup>

On September 22, 2009, accused-appellant filed his *Notice of Appeal*<sup>[46]</sup> from the CA Decision dated August 28, 2009.

In Our Resolution dated October 4, 2010, We notified the parties that they may file their respective supplemental briefs. Both parties manifested that they are no longer filing supplemental briefs and they are adopting their respective main briefs before the CA.

### **The Issues**

Accused-appellant contends in his *Brief*<sup>[47]</sup> that:

THE COURT A QUO GRAVELY ERRED IN FINDING ACCUSED-APPELLANT GUILTY DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

### **The Court's Ruling**

We sustain accused-appellant's conviction.

### **Denial and alibi are inherently weak defenses**

In his *Brief*, accused-appellant contends that while, generally, the defense of alibi is frowned upon by the court, it assumes significance when it is corroborated by