

## **FIRST DIVISION**

**[ G.R. No. 181591, January 21, 2010 ]**

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. CHRISTOPHER DE JESUS, APPELLANT.**

### **D E C I S I O N**

**CARPIO MORALES, J.:**

By Decision<sup>[1]</sup> of October 19, 2007, the Court of Appeals affirmed the conviction of Christopher de Jesus (appellant) for rape of AAA.<sup>[2]</sup>

The Information against appellant reads:

That on or about the 5<sup>th</sup> day of April, 1999, in the municipality of Malolos, [province of] Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a kitchen knife, and by means of force and intimidation, did then and there willfully, unlawfully and feloniously, with lewd designs, have carnal knowledge of one AAA, against her will and without her consent.

The following facts are not controverted.

At past 12 midnight of April 5, 1999, appellant had sexual intercourse with the then 23-year old AAA, a mother of two and separated from her husband, at the ground floor of her two-storey house in Pamarawan, Malolos, Bulacan. Later that morning, AAA disclosed to her sister that she was raped by appellant, her (AAA's) neighbor and classmate during her elementary schooling. AAA and her sister immediately reported the incident to the barangay captain.

In the afternoon also of April 5, 1999, AAA executed a sworn statement before the local police in Malolos, Bulacan giving details of how she was raped by the then liquor-smelling appellant including his poking of a knife at her and threatening to kill her and her children if she shouted. Still in the afternoon also of April 5, 1999, AAA was medically examined by Dr. Manuel C. Aves, medico-legal officer detailed at the Bulacan Provincial Crime Laboratory, who came up with the following:

Findings:

The victim is in lean physical built, coherent female, the breast, hemispherical, dark brown areola, the abdomen is flat. No signs of physical injury.

The pubic hair is moderate, labia majora, coaptated and full, light pinkish, labia minora. Hymenal remnant at both lateral abrasion and

laceration deep fresh and superior border at 3, 10 o'clock of the hymen. Moderate resistance upon inserting examining finger, prominent rugosities, xxx

Conclusion:

Hymenal remnant at both lateral and superior border abrasion and laceration deep fresh at 3, 10 o'clock of the hymen.<sup>[3]</sup> (Underscoring supplied)

Hence, the filing of the Information for rape against appellant before the Regional Trial Court (RTC) of Malolos.

Denying the charges and interposing the "sweetheart" defense, appellant gave the following version:

After drinking in the afternoon of April 4, 1999 with AAA's brother CCC in the house of AAA, he slept at CCC's room at the second floor of the house and woke up at 12:30 A.M. of April 5, 1999. As he went down to relieve himself, he saw at the ground floor AAA, his sweetheart of five months. On AAA's initiative, the two of them had, as in three previous occasions, sexual intercourse. AAA had, that early morning, suggested as she did days earlier, that the two of them elope, she fearing that her parents might beat her if they came to know of their relationship. As before, he was not warm to AAA's suggestion as he had no money. After their sexual intercourse, they slept on the sofa.<sup>[4]</sup> He woke up at 3:30 A.M. and left for home to enable him to help his mother deliver fish at the "*punduhan*" of their barangay.<sup>[5]</sup>

Appellant surmised that AAA filed the rape complaint against him as he did not accede to her desire to elope with him.

Branch 78 of the RTC of Malolos, finding that force and intimidation attended appellant's sexual congress with AAA, viz:<sup>[6]</sup>

x x x x

The accused's use of a fan knife poked at the complainant before and during the sexual abuse constitutes sufficient **force** as contemplated under Article 335. The accused even went beyond employing force, he likewise **intimidated** the complainant by threatening to kill her and her children should she shout or make any noise.<sup>[7]</sup>

x x x x (emphasis and underscoring supplied),

convicted appellant, disposing as follows:

WHEREFORE, the foregoing considered, this Court hereby finds accused Christopher de Jesus alias Tuping GUILTY beyond reasonable doubt of the crime of Rape defined and penalized under the provisions of Art. 266-A