

## THIRD DIVISION

[ G.R. No. 187154, April 23, 2010 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. EDWIN DALIPE Y PEREZ, APPELLANT.**

### D E C I S I O N

**MENDOZA, J.:**

This is an appeal from the August 29, 2008 Decision <sup>[1]</sup> of the Court of Appeals, in CA-G.R. CR H.C. No. 01801, affirming with modification the Decision<sup>[2]</sup> of the Regional Trial Court of Quezon City, Branch 79, which found the accused, Edwin Dalipe y Perez, guilty beyond reasonable doubt of having committed three (3) counts of statutory rape<sup>[3]</sup> and two (2) counts of acts of lasciviousness<sup>[4]</sup> against his stepdaughter AAA.<sup>[5]</sup>

The Information<sup>[6]</sup> in Criminal Case No. Q-95-63737 indicting the accused reads:

The undersigned Public Prosecutor, upon complaint filed by AAA, accuses EDWIN P. DALIPE of the crime of RAPE (3 counts) penalized under Article 335 of the Revised Penal Code as amended by R.A. 7659, committed as follows:

That on or about the first Friday of May 1992, or immediately prior and subsequent thereto, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused through abuse of moral ascendancy and influence over AAA, his stepdaughter, then under eighteen (18) years of age, did then and there willfully, unlawfully and feloniously lie and have carnal knowledge of said AAA, against her will or consent, to her damage and prejudice.

CONTRARY TO LAW.

The allegations in the Informations in Criminal Cases Nos. Q-95-63738<sup>[7]</sup> and Q-95-63739<sup>[8]</sup> are the same, except as to the dates of commission of the rape charges which are "Friday of the second week of July 1992" and "July 29, 1995," respectively.

The information in Criminal Case No. Q-95-63740 reads:

The undersigned Public Prosecutor, upon prior sworn complaint of AAA, assisted by Ma. Fatima Niñon, a Social Worker from the Department of Social Welfare and Development, accuses EDWIN P. DALIPE of the crime

of ACTS OF LASCIVIOUSNESS penalized under Section 5, paragraph (b) of R.A. 7610, otherwise known as the Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act, committed as follows:

That on February 17, 1994, Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with lewd design, did then and there willfully unlawfully and feloniously touch, hold, fondle the breasts and insert his finger inside the private parts of AAA, a victim of child abuse, against her will or consent, accused being the stepfather of said victim, to her damage and prejudice.

CONTRARY TO LAW.

The information in Criminal Case No. Q-95-63741<sup>[9]</sup> is the same, except as to the date of commission of the charge of acts of lasciviousness which is "on or about the first week of June 1994."<sup>[10]</sup>

During the trial, the prosecution presented, as witnesses, AAA herself; Karen Sangalang, her classmate; and Dr. Floresco P. Arizala, the NBI Medico Legal Officer. The thrust of the evidence of the prosecution, as summarized in the Appellee's Brief, <sup>[11]</sup> is as follows:

Private complainant AAA was born on December 28, 1983 (Exh. A, Record, p. 133). Her parents GGG and FFF were married only on August 10, 1984, after the birth of AAA (Exh. C, Record, p. 135). It appears, however, that FFF separated from her husband GGG and thereafter lived with appellant Edwin Dalipe. AAA thus grew up recognizing Dalipe as the "husband" of her mother and called the latter her "papa." AAA said that appellant mauled her and her two brothers, DDD and EEE. (TSN, dated March 18, 1996, pp. 12-13, 15).

AAA was raped by appellant for the first time on May 19, 1992 in their house located at No. 22 Salvador Street, Loyola Heights, Quezon City. She testified that she had been watching television with her two brothers in their room when appellant entered and sent her two brothers outside. With the two boys gone, appellant locked the door and dragged AAA to her bed. He held her two hands and removed her shorts. Appellant took off his shorts, went on top of AAA, and forced his penis into her private parts. She tried to push appellant away, but the latter only tightened his grip on AAA. He then proceeded to have sexual intercourse with AAA, who felt pain ("*masakit*" and "*mahapdi*") in her private parts. After around three minutes, AAA felt a hot and sticky fluid come out of appellant's penis, after which appellant stood up. Appellant put his clothes on and went out of the room (TSN, dated March 18, 1996, pp. 14-21).

AAA also left her room and went to the room of her *Lola* BBB to tell the latter what appellant had done to her. Her grandmother only replied that she had known that appellant had been abusing her. After reporting to

her grandmother, AAA went to her *Lola* BBB's store, located at the ground floor of the house, and hid herself out of fear that appellant would repeat his dastardly deed. Later on, she played with her two brothers on the ground floor of the house. Upon the return of her mother, who had been selling goods at Shoppersville, AAA reported to her that appellant had raped her. But, her mother only became angry with her. AAA could only cry as her mother told her that she had been learning too much foolishness in school (TSN, dated March 18, 1996, pp. 22-27).

That night, nevertheless, AAA slept in her bed in their room together with appellant and her mother in one bed and her two brothers in their respective beds (TSN, dated March 18, 1996, pp. 24-25).

AAA was raped for the second time by appellant on the second Friday of July 1992. Around 8 o'clock that evening, AAA and her two brothers were sleeping in their room when AAA was awakened. As the room was dark, she could only see the silhouette of appellant as he inserted his finger into her private parts. AAA took his hands off her and pushed appellant causing him to fall down. In response, appellant used one hand to grab both hands of AAA and used his other hand to remove her clothes. Appellant took his clothes off, went on top of AAA, and forcibly inserted his penis into her private parts. When he finished with her, appellant stood up, put his clothes on, and went back to bed. Before leaving AAA, however, appellant told her not to report what had happened to her mother because the latter would only become angry with her and drive her away (TSN, dated March 26, 1997, pp. 5-12).

AAA went to the room of her *Lola* BBB and told the latter that appellant had again molested her. Her *Lola* BBB became mad at appellant and called him a bad person and shameless ("*salbahe*" and "*walanghiya*"). AAA stayed in her grandmother's room for a long time. Later that night, AAA returned to their room to report the incident to her mother. When AAA told her what had befallen her at the hands of appellant, FFF became angry with her daughter and called her a liar. At that time, appellant was also in the room and could hear what was taking place. Afterwards, AAA went to where her two brothers had been playing and joined them, after which she fell asleep (TSN, dated March 26, 1996, pp. 12-16).

AAA also testified with regard to the acts of lasciviousness committed by appellant against her. She said that around midnight of February 17, 1994, she was sleeping in their room when she was awakened by appellant, who had inserted his finger into her private parts. AAA then took his hand off her private parts. Realizing that AAA was already awake, appellant returned to the bed he shared with FFF. At that time, AAA's two brothers were also sleeping inside the room. On the other hand, FFF was lying on bed, but she was not asleep. AAA overheard FFF telling appellant, "*Bakit pati bata pinapatulan mo?*" ("Why do you have to make advances even to a child?"). AAA did not hear what appellant had said to her mother, but she listened to them talking for a long time. AAA no longer went back to sleep that night (TSN, dated March 26, 1996, pp. 16-20).

AAA later told her mother that appellant had inserted his finger into her private parts. But her mother only called her a liar and did not believe her. (TSN, dated March 26, 1996, pp. 20-22).

The second acts of lasciviousness committed by appellant against AAA took place on the first week of June 1994. Around 8 o'clock in the morning, AAA was awakened when she caught appellant inserting his finger into her private parts. AAA removed his hand, but appellant grabbed both her hands even as he inserted his other hand into her private parts. Appellant only stopped when he had seen that AAA was crying. He left AAA while she continued to cry inside her room (TSN, dated March 16, 1996, 23-26).

Appellant raped AAA for the last time in the evening of July 29, 1995. At past 9 o'clock of that night, AAA and her two brothers were sleeping in their room. FFF had not yet come home. AAA was awakened when she felt appellant's hand inside her shorts and underwear. She saw that appellant had inserted his finger into her private parts. AAA tried to remove appellant's hand, but appellant held both her hands. She then attempted to push appellant. However, appellant ignored her and proceeded to remove her clothes, after which he took off his shorts and underwear. He then put himself on top of AAA, sucked her breasts, and inserted his penis into her private parts. After appellant had consummated the sexual act, he stood up, put on his clothes, and returned to the bed he shared with FFF (TSN, dated March 27, 1996, pp. 3-8).

AAA again went to the room of her *Lola* BBB to report to the latter that appellant had again raped her. Her Lola BBB then confronted appellant, who denied what AAA had said and called the latter a liar. When FFF returned, AAA also told her mother what appellant had done to her. Again, FFF did not believe AAA and said that the latter had been making up lies about appellant. Afterwards, AAA went beside one of her brothers, afraid that appellant would come back to her (TSN, dated March 27, 1996, pp. 8-14).

In August 1995, AAA told her classmate, Karen Sangalang (hereafter, Karen), about the rapes committed against her by appellant. Karen, in turn, informed her teachers, Mrs. Villamin and Ms. Manzano, about AAA's plight. When her teachers asked her, AAA confirmed that she had been raped by appellant. Her teachers thus took AAA to the DSWD office and, later on, to the NBI office, where she executed a statement, dated August 3, 1995, regarding the rapes and acts of lasciviousness committed by appellant against her. AAA was then brought by a social worker, Fatima Ninon, to CHIME in Alabang, Muntinlupa, where she was given food and clothing. Placed under the custody of the DSWD, AAA stayed in a housing facility called Cottage VI located in Alabang, Muntinlupa, where she remained until November 1995 when she began living with her real father, GGG (TSN, dated March 27, 1996, pp. 14-35; Exhibit "D", Record, pp. 136-141).

Karen Sangalang testified that around 2 o'clock in the afternoon of

August 1, 1995, she, AAA, and other students had been waiting in school for the people tasked to fetch them when she noticed that AAA looked sad and teary-eyed. Karen asked AAA what had been troubling her, to which the latter replied that she had a problem that she could not tell anybody about. When Karen offered to help her, AAA confided to her that appellant had been molesting her ("*ginagalaw siya ng stepfather niya*"). AAA also told Karen that her mother did not believe her when she reported to the latter what had been done to her by appellant. The following day, August 2, Karen accompanied AAA to their adviser, Mrs. Villamin, to tell the latter about AAA's plight. Mrs. Villamin then took Karen [AAA] to the guidance counselor to report the rapes committed against Karen [AAA]. Later on, AAA was brought to the DSWD (TSN, dated August 27, 1996, pp. 3-7).

Dr. Floresto P. Arizala was the NBI medico-legal officer who conducted the physical examination of AAA. His findings are as follows:

#### GENERAL PHYSICAL EXAMINATION:

Height: 148.0 cm. Weight: 84 lbs.  
Normally developed, fairly nourished, conscious,  
coherent, cooperative, ambulatory subject  
Breast, developing, Areolae, light brown, 3.5 cm. in  
diameter.  
No extragenital physical injuries noted.

#### GENITAL EXAMINATION:

Pubic hair, fully grown, moderate. Labia majora and labia minora, coaptated. Fourchette, tense. Vestibular mucosa, pinkish. Hymen, originally annular, tall, thick with an old healed superficial laceration at 5:00 o'clock position corresponding to a face of a watch, edges of which are rounded, non-coaptable. Hymenal orifice, admits a tube 2.0 cm. in diameter. Vaginal walls, tight. Rugosities, prominent.

#### CONCLUSIONS:

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

(Exhibit "F," Record, p. 146)

Dr. Arizala explained that he first recorded the external injuries on the body of AAA and afterwards proceeded with the actual genital