

## THIRD DIVISION

[ G.R. No. 186232, September 27, 2010 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ELPIDIO PAROHINOG ALEJANDRO, ACCUSED-APPELLANT.**

### D E C I S I O N

**VILLARAMA, JR., J.:**

The instant appeal assails the Decision<sup>[1]</sup> dated October 15, 2008 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 00261-MIN affirming with modification the April 15, 2003 Decision<sup>[2]</sup> of the Regional Trial Court (RTC) of Isulan, Sultan Kudarat, Branch 19, convicting appellant of five (5) counts of rape.

In five (5) Informations all dated August 16, 2001, appellant Elpidio Parohinog Alejandro was charged for the rape of AAA,<sup>[3]</sup> his daughter, as follows:

Criminal Case No. 2804

That sometime in January 6, 1997 at Poblacion II, Municipality of Lebak, Province of Sultan Kudarat, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with lewd and unchaste design, and by means of force and intimidation, did then and there, wil[l]fully, unlawfully and feloniously, lie and succeeded in having carnal knowledge of one [AAA], his thirteen (13) year old daughter.<sup>[4]</sup>

Criminal Case No. 2805

That sometime on the third week of July 1998, at Poblacion II, Municipality of Lebak, Province of Sultan Kudarat, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with lewd and unchaste design, and by means of force and intimidation, did then and there, wil[l]fully, unlawfully and feloniously, lie and succeeded in having carnal knowledge of one [AAA], his fourteen (14) year old daughter.<sup>[5]</sup>

Criminal Case No. 2806

That sometime on the first week of September 1999, at Barurao II, Municipality of Lebak, Province of Sultan Kudarat, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with lewd and unchaste design, and by means of force and intimidation, did then and there, wil[l]fully, unlawfully and feloniously, lie and succeeded in having carnal knowledge of one [AAA], his fifteen (15) year old daughter.<sup>[6]</sup>

#### Criminal Case No. 2807

That on or about 3:00 o'clock (sic) in the afternoon of April 1, 2000, at Barurao II, Municipality of Lebak, Province of Sultan Kudarat, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with lewd and unchaste design, and by means of force and intimidation, did then and there, wil[l]fully, unlawfully and feloniously, lie and succeeded in having carnal knowledge of one [AAA], his sixteen (16) year old daughter.<sup>[7]</sup>

#### Criminal Case No. 2808

That on or about 4:30 o'clock (sic) in the afternoon of February 14, 2001, at Barurao II, Municipality of Lebak, Province of Sultan Kudarat, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with lewd and unchaste design, and by means of force and intimidation, did then and there, wil[l]fully, unlawfully and feloniously, lie and succeeded in having carnal knowledge of one [AAA], his seventeen (17) year old daughter.<sup>[8]</sup>

Subsequently, all five Informations were consolidated for joint trial. When arraigned on November 12, 2001, appellant pleaded not guilty to all charges.<sup>[9]</sup> Trial on the merits ensued.

The prosecution presented the testimonies of five witnesses: private complainant AAA, BBB, AAA's mother, Teofilo Sanchez, Dr. Johnny Y. Tan and PO1 Mary Grace T. Salvio. On the basis of the evidence for the prosecution, the rape incidents occurred as follows:

In the evening of January 6, 1997, AAA, thirteen (13) years old at that time and in first year high school, and her two younger brothers were sleeping in their house in Lebak, Sultan Kudarat, while their father, appellant herein, was out having a drinking spree. At that time, BBB was in Cotabato where she took her oath as teacher. Around 11:30 p.m., AAA was awakened when she felt someone was touching her private parts. Thereafter, she realized that it was appellant. She tried to resist but appellant boxed her on the right eye rendering her unconscious. She only regained consciousness the following morning. When she urinated that morning, she felt pain in her vagina and noticed traces of blood in her urine. She however did not report the incident to anybody because appellant threatened her that it will be embarrassing on her part.

In the third week of July 1997, at around 2:30 in the afternoon, AAA, then fourteen (14) years old and in second year high school, was sleeping inside the room of their house. At that time, BBB was in school and AAA's brothers were out of the house. She was then awakened by the noise of the *trisikad* of appellant being parked outside their house. Appellant then entered the room and lied down beside her. She tried to resist but appellant pulled her hair and prevented her from shouting. Appellant then removed his pants and AAA's panty and then inserted his penis into her vagina while mounting on top of her. AAA pleaded him to stop but her plea fell on deaf ears. After satisfying his beastly desire, appellant told AAA not to tell

anyone as it will cause the family embarrassment.

In the first week of September 1999, between 2:30 and 3:00 in the afternoon, while AAA's mother and brothers were in school, AAA, who was then fifteen (15) years old, was alone with appellant in their house. Appellant then ordered her to go upstairs to look for some clothes to which she obliged. He then followed AAA to the room and prevented her from going out. Appellant then hugged her and attempted to touch her private parts. She tried to shout but appellant prevented her from doing so. He then laid her down on the floor, removed her shorts and panty, kissed her and then succeeded in inserting his penis into her vagina. Like the two previous incidents, she did not report to her mother what happened out of fear.

The fourth incident occurred on April 1, 2000 around 3:00 in the afternoon. AAA, who was sixteen (16) years old at that time, was again alone in the house while her mother and brothers were in school. When her father arrived, she tried to get out of the house to avoid him but he prevented her from leaving and ordered her to buy him a match. When AAA brought him the match, appellant pulled her inside the room and succeeded in removing her pants and panty. He then removed his own pants and again succeeded in inserting his penis into her vagina. Again, out of fear and shame, AAA chose to be quiet about the incident.

The last incident happened on February 14, 2001 around 4:00 p.m. AAA, then seventeen (17) years old, was fetched by appellant from school and was brought home so she could clean the house. Appellant then left but came back after a while and ordered her to stop cleaning. He then pulled her into the room and started hugging and kissing her. Appellant then laid her down on the floor, removed her shorts and panty, removed his own pants and again succeeded in inserting his penis into her vagina. Appellant thereafter left the house to fetch BBB and his two sons.

On May 8, 2001, AAA, accompanied by her maternal grandfather, left for General Santos City to study. As appellant was against her studying there, he decided to go to General Santos City himself to bring AAA home. Upon learning that her father was coming to fetch her, AAA decided to tell her granduncle, Teofilo Sanchez, Jr. (Teofilo) with whom she was staying, what appellant had been doing to her. Teofilo then hid her in another house in General Santos City. When appellant arrived on May 10, 2001, Teofilo told him that AAA was in Davao City for vacation. Failing to see AAA, appellant left for Cotabato City. Teofilo thereafter called Rene Sanchez (Rene), AAA's uncle and BBB's brother, who is residing in Lebak, and told him what AAA confessed to him. After that phone call, Rene told BBB about the molestation AAA underwent in the hands of her father. BBB then went to General Santos City to fetch AAA and to hear the truth straight from her daughter.

When AAA and BBB reached Lebak on May 15, 2001, instead of going home, they proceeded to Rene's house. Around 4:00 in the afternoon, they went to the residence of Dr. Johnny Y. Tan, Lebak Municipal Health Officer, to have AAA examined.

The results of the medical examinations revealed the following:

1. Old healed, hymenal laceration located at 3 o'clock; 7 o'clock; [and] 11 o'clock position[s].

2. No vaginal discharges noted.<sup>[10]</sup>

Per Dr. Tan's account, the laceration "probably happened quite long before the examination" and "could have been caused by an object forcibly inserted into a small partially covered vaginal covering (sic) or probably by sexual intercourse."<sup>[11]</sup>

Around 10:00 p.m. that same night, AAA and BBB went to the Lebak Municipal Police Station. After investigation, PO1 Mary Grace T. Salvio of the Women and Children Complaint Desk took AAA's statement and prepared the criminal complaint against appellant. The following day, May 16, 2001, the complaint was filed with the Municipal Circuit Trial Court of Lebak-Kalamansig and the corresponding warrant of arrest was issued against appellant.<sup>[12]</sup> On May 17, 2001, appellant was arrested.<sup>[13]</sup>

During trial, AAA's birth certificate<sup>[14]</sup> which showed that she was born on May 25, 1983 and appellant is her father was presented as proof of her minority during the rape incidents as well as her relationship with appellant.

Appellant, as lone witness for the defense, denied the charges against him. He claimed that as *trisikad* driver, he was out of the house everyday from 6:30 a.m. until 6:00 p.m. Appellant testified that in the evening of January 6, 1997, it was the birthday of his youngest son and that they had visitors including the parents and siblings of his wife. He testified that his in-laws even stayed in their house until 11:00 p.m. that night. Appellant claimed that he cannot do what he is being accused of because he loves his children.

As to the July 1998 and September 1999 rape incidents, he denied the allegations against him and claimed that he was out of the house and was busy working.

As to the April 1, 2000 incident, appellant testified that the whole family went to the beach in Sodoy that day. He claimed that they left for the beach at 10:00 a.m. and returned home at 3:00 p.m. He denied that he molested AAA in the afternoon of said date.

As to the February 14, 2001 incident, appellant simply denied that he sexually molested AAA.

On April 15, 2003, the RTC promulgated a decision finding appellant guilty of five counts of rape, the *fallo* of which reads:

WHEREFORE, upon all the foregoing considerations, the Court finds the accused, Elpidio P. Alejandro, guilty beyond reasonable doubt of five (5) counts of rape, as separately charged against him in Criminal Case Nos. 2804, 2805, 2806, 2807 and 2808.

Accordingly, as mandated by law and existing jurisprudence, the Court hereby sentences the accused, ELPIDIO PAROHINOG ALEJANDRO:

- (a) - to suffer the extreme penalty of DEATH;
- (b) - to indemnify the private offended party, [AAA]:

- 1- the amount of FIFTY THOUSAND (P50,000.00) PESOS, as moral damages;
- 2- the amount of SEVENTY[-]FIVE THOUSAND (P75,000.00) PESOS, by way of civil indemnity, consistent with the current prevailing jurisprudence;
- 3- the amount of TWENTY-FIVE THOUSAND (P25,000.00) PESOS, as exemplary damages; and

to pay the costs.

IN CRIMINAL CASE NO. 2805

- (a) - to suffer the extreme penalty of DEATH;
- (b) - to indemnify the private offended party, [AAA]:

- 1- the amount of FIFTY THOUSAND (P50,000.00) PESOS, as moral damages;
- 2- the amount of SEVENTY[-]FIVE THOUSAND (P75,000.00) PESOS, by way of civil indemnity, consistent with the current prevailing jurisprudence;
- 3- the amount of TWENTY-FIVE THOUSAND (P25,000.00) PESOS, as exemplary damages; and

to pay the costs.

IN CRIMINAL CASE NO. 2806

- (a) - to suffer the extreme penalty of DEATH;
- (b) - to indemnify the private offended party, [AAA]:

- 1- the amount of FIFTY THOUSAND (P50,000.00) PESOS, as moral damages;
- 2- the amount of SEVENTY[-]FIVE THOUSAND (P75,000.00) PESOS, by way of civil indemnity, consistent with the current prevailing jurisprudence;
- 3- the amount of TWENTY-FIVE THOUSAND (P25,000.00) PESOS, as exemplary damages; and

to pay the costs.

IN CRIMINAL CASE NO. 2807