

## SECOND DIVISION

[ G.R. No. 183565, April 08, 2009 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
EDUARDO ABOGANDA, ACCUSED-APPELLANT.**

### D E C I S I O N

**VELASCO JR., J.:**

This is an appeal from the January 25, 2007 Decision of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00027 entitled *People of the Philippines v. Eduardo Aboganda* which affirmed the March 10, 2003 Decision of the Regional Trial Court (RTC), Branch 13 in Carigara, Leyte in Criminal Case Nos. 3029 and 3030 for Rape.

#### **The Facts**

On June 8, 2000, accused-appellant Eduardo Aboganda was indicted under the following Informations:

#### **Criminal Case No. 3029**

That on or about the month of February, 2000, in the municipality of [XXX], Province of Leyte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent and with lewd designs and by use of force and intimidation, then armed with a sharp bladed weapon (pisao), did then and there willfully, unlawfully and feloniously had carnal knowledge with [AAA], his daughter, against her will, to her damage and prejudice.

CONTRARY TO LAW.<sup>[1]</sup>

#### **Criminal Case No. 3030**

That on or about the month of March 2000, in the municipality of [XXX], Province of Leyte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent and with lewd designs and by use of force and intimidation, did then and there willfully, unlawfully and feloniously had carnal knowledge with [AAA], his own daughter, against her will, to her damage and prejudice.

CONTRARY TO LAW.<sup>[2]</sup>

On July 17, 2000, accused-appellant pleaded not guilty to both counts of rape.

During trial, the prosecution presented the following witnesses: the victim, AAA, Alicia Advincula, Dr. Eduardo Toledo, and Dr. Edna Lagunay. The defense had

accused-appellant as its lone witness.

AAA testified that she was 13 years old. She told the court that she was alone in the house in the evening of February 17, 2000. Her father, accused-appellant, arrived at around 8:00 p.m. He asked her where her grandmother was and she replied that she did not know. He then brought her with him to look for her grandmother. Once they were on the roadside, he held her wrist and led her to her grandmother's house. She asked him what they were going to do there since her grandmother was not inside. Once in the yard, accused-appellant immediately closed the bamboo gate and told AAA that they will stay there for a while. She then went inside and sat there. Accused-appellant started to undress himself and told her to do the same or else he would stab her with the small bolo (*pisaw*) he was holding. She became afraid but accused-appellant then told her not to be scared as he would not harm her. He, however, grabbed AAA, undressed her, and pinned her to the ground. She pleaded with him saying, "Please do not do that to me, because I do not like that." He ignored her appeal and instead told her not to complain or her neck will be slashed. He placed himself on top of her and held the *pisaw* to her throat. He then inserted his penis into her vagina in a push-and-pull movement. He was laughing while he was satisfying his lust. After a while she saw a sticky substance come out of his penis. He then told her to dress up and go back to their own house. Once home, her brother, BBB, asked AAA why she was crying and she replied it was nothing as she was afraid of her father, who was sitting near them.<sup>[3]</sup>

AAA testified that on March 26 2000, she was sleeping at her grandmother's house when her father arrived to tell her to cook rice at their own house. She followed his order and went to their house. Accused-appellant was the only one home as her brothers were taking a bath in the river. As she was about to prepare the rice, he held her wrist and dragged her to the room. He took off his shirt and started undressing her. She begged him not to, but he answered, "Don't you know that this thing I am doing is the reason for the death of Echegaray?" He then pinned her down and told her, "We will do it again."<sup>[4]</sup> He inserted his penis into her vagina and made a pumping motion while holding both her hands. He only stopped when three persons arrived and he had to meet them downstairs.

Sometime in April, AAA reported the matter to her uncle, the *barangay* captain. She decided to reveal the rape incidents after her father insisted that she leave her grandmother's house and stay with him at their house.<sup>[5]</sup>

Social worker Advincula testified that she conducted psycho-social sessions with AAA. AAA was referred to her by the Municipal Social Welfare Office in XXX, Leyte. She stated that AAA confided about her family situation that her late mother was a battered wife while she and her siblings were maltreated by their father.

Another prosecution witness, Dr. Toledo, told the court that he prepared a joint medico-legal report with Dr. Lagunay. He examined AAA's external physical injuries and found no signs of such injuries.

The other medico-legal doctor, Dr. Lagunay, testified that her findings show that "the positive hyperemic at lower half of [AAA's] labia minora is the reddening of the lower labia caused by friction secondary to scratching, a possibility of insertion of the penis."<sup>[6]</sup>

Accused-appellant's testimony was summarized by the RTC, as follows:

That he is 38 years old, married, blacksmith and a resident of Brgy. [XXX, XXX], Leyte; that he is the accused in these criminal cases; that he knows the private complainant [AAA] being her daughter; that on February 17, 2000, at about 6:00 o'clock after taking their supper, he was in his house in [Sitio XXX, Brgy. XXX, XXX], Leyte resting with his children [BBB] and [CCC], because his wife, [DDD] was in Manila; that after taking their supper at 8:00 o'clock in the evening, he went to sleep and woke up at 5:00 o'clock the following day; that he did not leave the house the whole day, because he prepared their meal; that after taking breakfast with his children, he started cleaning his blacksmith shop situated on the front side of their house and worked there until 11:00 o'clock without going somewhere else; that he did not leave because after working at 11:00 o'clock he had to prepare again for their lunch; that when he finished preparing for their lunch, he rested for a while and ate at 1:00 o'clock; that after eating he went back to his work; that he denies the allegation of [his] daughter [AAA] that on February 17, 2000 at about 8:00 o'clock in the evening while she was at her grandmother's house, he arrived thereat, under the influence of liquor asking for the whereabouts of her grandmother and when [AAA] told him that she does not know where she was, they left to look for her and when they failed to find her, they went back to the house of her grandmother and threatened [AAA], immediately undressed her, let her lie down and took off her dress and sexually molested her; that this accusation is only a drama of his wife and her auntie, [EEE] so that he will be forced to leave Brgy. [XXX] and go home to Samar and be killed by the rebels; that the reason for this is because, [EEE] is his mortal enemy because he is the only Filipino in-law and resents the fact that he is always drunk; that the whole day on March 26, 2000, he was also at home in Sitio [XXX, Brgy. XXX, XXX], Leyte with his two children, [BBB] and [CCC]; that in the morning of that day when he woke up at 5:00 o'clock he did the housekeeping first, then he prepared their breakfast and after eating, he started working at his blacksmith shop at 8:00 o'clock in the morning until 11:00 o'clock when he started preparing for their lunch; that they ate their lunch 1:00 o'clock in the afternoon; that he did not leave the house that day; that he did not meet his daughter [AAA] at any time of that day; that he did not go to the house of [EEE], [AAA's] grandmother that same day; that he denies the allegation of [AAA] that at 7:00 clock in the morning of March 26, 2000, he fetched her from the house of [EEE] to go to their own house and cook rice and while thereat and while the other children were in the river, he molested her and raped her inside his house and after he molested her daughter, he even uttered the statement, "Don't you know that what I am doing now is the reason [for] the death of Echegaray?"; that the accused while testifying stated that, "If any doctor here in the world could provide evidence that [I even kissed] my daughter, I will accept the penalty of death!"; that all these charges against him are just orchestrated by his mother-in-law, [EEE] who is his mortal enemy, because he was the one who fought for the right of his wife's inherited land at Brgy. [XXX, XXX], Leyte; that on February 17, 2000 and March 26, 2000, [AAA] was with her grandmother, [EEE], because [EEE] had no

companion so his wife suggested that AAA [live] with her;

On cross examination, accused stated that his wife is [DDD]; that they have five children and [AAA] is the second from [FFF]; that his kids call him "Tatay"; that [AAA] respects him as a father; that he has been supporting [AAA's schooling] and she respects him out of his support for her; that [EEE] also stays in Barangay [XXX, XXX], Leyte about 50 meters away from their house; that it will not take 15 minutes in going to the house of [EEE] from their house; that [AAA] would usually go and visit them in their house; that he did not meet [AAA] on February 17, 2000 and also on March 26, 2000 although they were just living in the same sitio and barangay; that the reason why his daughter would accuse him of raping her is because this was orchestrated by her grandmother; that he knows that this case was filed at the initiative of both barangay captain Mely and [EEE]; that he vehemently denied the accusation of raping his daughter, despite the testimonies of the doctors; that [EEE] was the first cause of the enmity between him and his daughter.<sup>[7]</sup>

After trial, the RTC held in favor of the prosecution. The dispositive portion of its Decision reads:

WHEREFORE, premises considered, applying Article 266 A and 266 B of the Revised Penal Code as amended, and the amendatory provision of R.A. No. 8353, (The Anti-Rape Law), in relation to Section 11 of R.A. 7659, (The Death Penalty Law), the Court [finds] accused, EDUARDO ABOGANDA, GUILTY, beyond reasonable doubt for the crime of Incestuous RAPE charged under Criminal [Case] Nos. 3029 and 3030 and sentenced to suffer the maximum penalty of DEATH and to pay Civil Indemnity to the victim, [AAA], the sum of Seventy Five Thousand (P75,000.00) Pesos, for each count of Rape and pay moral damages in the amount of Fifty Thousand pesos (P50,000.00) for each count and;

Pay the Cost.

SO ORDERED.<sup>[8]</sup>

On appeal, accused-appellant questioned the vagueness of the date and time alleged in the informations against him as well as his erroneous conviction for incestuous rape. The CA, however, affirmed the RTC Decision. Citing *People v. Sernadilla*,<sup>[9]</sup> the CA reasoned that an information is valid so long as it distinctly states the statutory designation of the offense and the acts or omissions constituting it. The appellate court likewise ruled that the information suffices if there is an approximation of the date the offense was committed, more so in the case of rape when the time it was committed is not an essential element of the crime.

The CA agreed with accused-appellant in ruling that he cannot be convicted of incestuous rape in view of the failure of the informations to allege AAA's minority. The conviction for qualified rape was, however, still affirmed since accused-appellant was shown to have used a deadly weapon when he committed the offenses. It disposed of the case as follows: