

SECOND DIVISION

**[G.R. No. 176157 [Formerly G.R. No. 155937],
June 18, 2009]**

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ELPIDIO IMPAS Y
POLBERA, APPELLANT.**

D E C I S I O N

QUISUMBING, J.:

On appeal is the Decision^[1] dated September 25, 2006, of the Court of Appeals in CA-G.R. CR-H.C. No. 01457, affirming with modification the Decision^[2] dated July 5, 2002 of the Regional Trial Court (RTC) of Antipolo City, Branch 73, in Criminal Case No. 93-10413. The trial court had convicted appellant for raping AAA,^[3] allegedly his daughter.

Appellant was charged under the following information:

That on or about the 7th day of November 1993, in the Municipality of Antipolo, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs and by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the undersigned complainant, AAA, a minor, eleven (11)^[4] years of age, against her will and consent.

CONTRARY TO LAW.^[5]

On arraignment, the appellant pleaded not guilty. Thereafter, trial on the merits ensued.

Based on the testimonies of AAA, the victim; BBB, the sister of AAA; and Dr. Jesusa Nieves-Vergara, Medico-Legal Officer of Philippine National Police Camp Crime Laboratory, the prosecution established the following facts:

On November 7, 1993, around seven o'clock in the evening, AAA was inside their house. She was with appellant (allegedly her father), her sister BBB and her brothers CCC and DDD. BBB, CCC and DDD were nine, seven and five years old, respectively, at that time.^[6]

While watching television with her siblings, AAA was suddenly pulled by the appellant towards the room of their house and was told to look for his shorts. AAA asked her brother to look for the shorts but the latter did not obey her, so she looked for them herself.^[7]

After AAA found his shorts, appellant again pulled AAA towards the room, and this time, he took off AAA's shorts and panty. AAA cried and tried to resist appellant's advances. In response to AAA's resistance, appellant forced, boxed, and then pushed her towards the bed. Appellant then laid on top of her and inserted his penis into her private part while embracing her tightly. After completing his beastly act, appellant told AAA not to tell anyone what he did. AAA, however, confided to BBB that appellant raped her. AAA and BBB likewise reported the incident to their mother, EEE, when the latter arrived home later that evening.^[8]

EEE thereafter sought the help of FFF, AAA's aunt. A week after the incident, FFF accompanied AAA to the police station to file a complaint for rape against appellant.

AAA was examined on November 24, 1993 by Dr. Jesusa Nieves-Vergara. Dr. Vergara found that AAA had healed lacerations on her hymen and that AAA was eight to nine weeks pregnant.

For his part, appellant denied the charge against him and raised the defense of alibi. He alleged that on November 7, 1993, he was in Quiapo, Manila, as a stay-in plumber because he had a three-month contract to install water pipes. During the said three-month period, he went home one Saturday night and was arrested for a charge of rape. He attributed the charge to a misunderstanding regarding the financial needs of his wife's brothers and sisters. He also admitted that he was similarly charged and convicted for raping AAA before Branches 71 and 72 of the RTC of Antipolo City.^[9]

After trial, the RTC convicted appellant for simple rape in its Decision dated July 5, 2002. The dispositive portion of the decision reads:

WHEREFORE, premises considered, accused ELPIDIO IMPAS y POLBERA is hereby found guilty beyond reasonable doubt for the crime of rape and is hereby sentenced the penalty of *reclusion perpetua* and to indemnify the victim in the amount of P50,000.00 pesos as moral damages. The period during which the accused undergoes preventive imprisonment shall be credited in his favor.

SO ORDERED.^[10]

In convicting the appellant, the RTC relied on the testimonies of the three witnesses of the prosecution. The RTC found weak appellant's defenses of denial and alibi in light of the affirmative, categorical and consistent testimonies of AAA and BBB. The RTC also stated that the only consolation that appellant could get in this case is that since he had only been charged for simple rape, he could only be adjudged guilty and penalized for the same.^[11]

In view of the RTC's imposition of the penalty of *reclusion perpetua* on appellant, the case was elevated to us for automatic review. However, we transferred and referred this case to the Court of Appeals, in line with *People v. Mateo*.^[12]

In its decision dated September 25, 2006, the Court of Appeals affirmed with modification the RTC decision. The dispositive portion of the appellate court's decision reads:

WHEREFORE, premises considered, the instant appeal is **DENIED**. The assailed Decision appealed from dated July 5, 2002 of the RTC of Antipolo City, Branch 73, is hereby **AFFIRMED** with modification with respect to the civil aspect, directing accused-appellant to pay the private complainant the amount of P50,000.00 as civil indemnity and P25,000.00 as exemplary damages, in addition to the P50,000.00 moral damages awarded by the court *a quo*.

SO ORDERED.^[13]

In his appeal, the appellant assigned a single error:

THE LOWER COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED.^[14]

Before us, the main issue now for resolution is whether appellant's guilt concerning the charge of rape has been proven beyond reasonable doubt.

Appellant contends that what AAA actually narrated before the court were the details of the alleged first rape incident, which was the subject of another case, and not the details of the alleged third rape incident which is the subject of this case. He contends that AAA's statements in court were the same as her allegations in her Sworn Statement concerning the details of the first rape incident and that AAA even admitted during her cross examination that she referred to the first rape incident when she testified that appellant raped her while her two brothers and her sister were in the sala. Such being the case, appellant cannot be convicted of the crime charged, the evidence not being in conformity with the allegations in the information and the conviction being in violation of his right to be informed of the nature and cause of the accusation against him.

The appeal has no merit.

At the outset, it is worth noting that the appellant in his brief did not deny raping AAA on or about November 7, 1993. What he merely contended was that AAA exclusively testified on the details of her alleged first sexual encounter with the appellant and it did not allegedly touch on the last rape incident which is the subject of this case.^[15]

A careful scrutiny of the records of this case would reveal that the aforesaid contention is bereft of merit. During her testimony, AAA explicitly said that the appellant raped her three times on different occasions and that the last one was committed sometime in November 1993. She had also tearfully recounted how the appellant pulled her towards the room of their house and how the appellant raped her for the third time.^[16]

By the said categorical and straightforward testimony alone, it would have been sufficient to prove that the appellant indeed raped AAA sometime in November 1993.

In the case of *People v. Bejic*,^[17] we had held that: