

SECOND DIVISION

[G.R. No. 180921, August 27, 2009]

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. BERNARDO RIMANDO, JR. Y BASILIO, ALIAS "JOJO," APPELLANT.

D E C I S I O N

CARPIO MORALES, J.:

Caught *in flagrante* by his own mother and police authorities of molesting his own minor daughter AAA,^[1] the Court of Appeals, by Decision^[2] of June 14, 2007, affirmed with modification the January 19, 2006 Decision of Branch 67 of the Regional Trial Court in Bauang, La Union convicting Bernardo Rimando, Jr. y Basilio alias "Jojo" (appellant) of rape.

The accusatory portion of the Information filed against appellant reads:

That on or about the 31st day of October, 1999, in the Municipality of Naguilian, Province of La Union, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation and actuated by lust, did then and there willfully, unlawfully and feloniously have sexual intercourse with his daughter [AAA], a 10-year old minor, against her will and consent, to the damage and prejudice of the offended party.

CONTRARY TO LAW.^[3] (Underscoring supplied)

Through the testimonies of AAA, her paternal grandmother DDD, and P03 Judy Calica, the prosecution proffered the following version:

AAA, who was born on June 17, 1989 to BBB^[4] and appellant in Compostela, Davao, as shown by her Certificate of Live Birth,^[5] was five years old when her parents separated. Since her parents' separation, her paternal grandparents, CCC and DDD, took care of her and her two sisters, then aged 11 and 13. Together with appellant, they lived in his parents' house at Bato, Naguilian, La Union. One room was occupied by appellant and AAA, the second by appellant's youngest brother, and the third by his parents and AAA's sisters.^[6]

When AAA was in Grade 2, appellant, on several occasions, removed her underwear and let her sit on his penis. Every time he did this, she felt pain as his penis partly penetrated her vagina. He would later place himself on top of her and try to insert his penis into her vagina during which she would merely cry in helplessness as he threatened to kill her and her sisters if she revealed to anyone about what he had

been doing to her.^[7]

In the early evening of October 31, 1999, while AAA, who was then 10 years old and in Grade 3, was watching television with her sisters and grandparents at the sala of their house, appellant arrived home drunk. With a loud voice, he summoned AAA and ordered her to sleep in their room which is adjacent to the sala. While she refused as she was not yet sleepy, she obliged after he shouted and got angry at her.

On entering the room, AAA lied down on bed and covered her body with a blanket. Appellant followed her, lied down beside her and removed her blanket. As he began removing her short pants and panties, she cried as she uttered "*huwag, pa.*" He warned her, however, not to create any noise, threatening to slap her. After he removed her short pants and panties, he pulled his short pants down to his knees, placed himself on top of her, held his penis and tried many times to insert it into her vagina.

When appellant was able to place a portion of his penis into AAA's vagina, he started pushing up and down. As she felt pain in her vagina, she continued crying. She was scared to shout for help, however, "because he said if I will be noisy, he will kill us." He continued the act for quite sometime and stood up only when policemen and her grandparents entered their room.^[8]

The policemen, P03 Judy Calica, P03 Elesio Mosuela and P02 Christopher Buslay of the Naguilian Police Station, repaired to the house on the request of AAA's grandfather CCC, he and his wife DDD having suspected that their son-herein appellant was molesting AAA when they heard her cry and utter "*huwag, pa.*"

On arriving at the house, as the policemen heard someone crying, AAA's grandmother DDD led them to appellant's room and slowly opened the unlocked door. There they saw on the bed the naked appellant mounted between the legs of AAA who was lying without any panties and crying, her left hand being held by him as his right hand was holding his penis which he was trying to insert into her vagina.

As DDD switched on the light of the room, appellant immediately jumped out of bed and put on his short pants, while AAA held her private organ, telling the policemen and DDD that it was painful.

Appellant was thereupon arrested and brought to the Naguilian District Hospital for medical examination and to the police station for investigation.^[9]

Denying the accusation, appellant gave the following version:

After arriving home from work on the night in question, while his three daughters including AAA and his parents were watching television at the sala, he went to sleep. While lying inside his room, he heard somebody knocking at his door. Later becoming aware of the presence of policemen, he woke up AAA whose presence in the room he could not explain. The policemen at once brought him out of the room without telling him the reason why, and took him to the Naguilian Hospital and to the police station.

Appellant ventured that his indictment could have been triggered by his having berated his mother DDD for telling other people that he is a drunkard and had been maltreating his children.

By Decision of January 19, 2006, the trial court found appellant guilty of qualified rape, disposing as follows:

WHEREFORE, the Court finds the accused Bernardo Rimando, Jr. y Basilio GUILTY beyond reasonable doubt of the crime of qualified rape defined in and penalized by Article 226-B, of the Revised Penal Code, as amended, and sentences him to suffer the supreme penalty of DEATH by lethal injection.

The accused is further ordered to pay the victim [AAA] the amount of Seventy Five Thousand (P75,000.00) Pesos as civil indemnity and Fifty Thousand (P50,000.00) Pesos as moral damages and to pay the costs.

SO ORDERED.^[10]

Per *People v. Mateo*,^[11] the records of the case were forwarded to the Court of Appeals for review by Order dated February 21, 2006 issued by the trial court.^[12]

The appellate court, by Decision of June 14, 2007, affirmed the factual findings of the trial court but modified the sentence to *reclusion perpetua* in light of Republic Act No. 9346^[13] which proscribes the imposition of death penalty. It likewise modified the award of civil damages by increasing the moral damages to P75,000.00 and additionally awarding AAA P25,000.00 as exemplary damages, consistent with prevailing jurisprudence.^[14] It thus disposed:

WHEREFORE, the **DECISION DATED JANUARY 19, 2006** is **AFFIRMED** subject to the **MODIFICATION** that **BERNADO RIMANDO, JR.** is **SENTENCED** to suffer *reclusion perpetua* without eligibility for parole.

The accused is **ORDERED** to pay to AAA the amounts of P75,000.00 as civil indemnity; P75,000.00 as moral damages; P25,000.00 as exemplary damages; and the costs of suit.

SO ORDERED. (Emphasis in the original)

In his Brief, appellant faults the trial court