

SECOND DIVISION

[G.R. No. 181629, September 18, 2009]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ELIZARDO^[1]
CABILES ALIAS "SARDO," APPELLANT.**

D E C I S I O N

CARPIO MORALES, J.:

On review is the August 30, 2007 Decision^[2] of the Court of Appeals in CA-G.R. CR-H.C. No. 00228 which affirmed^[3] that of Branch 19 of the Regional Trial Court of Digos City, Davao del Sur in Criminal Case No. 352(99) finding Elizardo Cabiles alias "Sardo" (appellant) guilty of rape of his minor niece, but modified the death penalty to *reclusion perpetua* and the award of damages.

The accusatory portion of the Information dated August 16, 1999 against appellant reads:

That on or about the 9th day of May, 1995,^[4] at about 8:00 o'clock in the morning thereof, more or less, at Barangay Mahayahay, Municipality of Hagonoy, Province of Davao del Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, through force, threat and intimidation, by using a knife, did then and there willfully, unlawfully and feloniously have carnal knowledge with one [AAA],^[5] his nine (9)-year old niece, against the latter's will and without her consent.

CONTRARY TO LAW.^[6]

The prosecution, through the testimonies of AAA and her father BBB,^[7] gave the following version:

On May 9, 1995,^[8] at around 8:00 a.m., then nine-year old AAA and her younger sister CCC^[9] were playing soccer in their house at Mahayahay, Hagonoy, Davao del Sur when they heard appellant - their uncle, he and their father BBB being allegedly first cousins^[10] - calling them from a nearby grassy area to go over to him as there were big guavas. The sisters dutifully went to where appellant was but found no ripe guavas. On appellant's directive, CCC left to buy bread and cigarettes.^[11]

AAA wanted to follow CCC but appellant held her hand, blocked her way and kicked her left foot, causing her to fall on the ground. Thereupon, appellant pinned down AAA and threatened her with a knife, saying "Do not try to shout because if you will do so, I will kill you right now." He quickly removed her panties, unzipped his pants

and inserted his penis into her vagina. She cried as she felt pain on her vagina, which was oozing with blood. After he sexually abused her, she sat on a "big stone."
[12]

Not long after, CCC arrived with the bread and cigarettes. Appellant gave the bread to CCC and told her to, as she did, leave ahead, leaving AAA alone with him. He once again threatened AAA that if she reported the incident to anyone, he would kill her and her father. Mindful of his parting threat, she went home and kept her ordeal to herself.^[13]

AAA's elder brother later took her to stay home with him^[14] so that she could assist his then pregnant wife. After staying with the couple for two years, AAA returned to her father's home in Mahayahay. While there, in 1999, she noticed that appellant kept following her. Afraid that he might abuse her again, she revealed to her father on June 27, 1999 what appellant had done to her.^[15] She was thus medically examined on July 2, 1999 which disclosed the following findings and conclusion:

GENITAL EXAMINATION:

- Scanty Pubic Hair.
- Labia Minora and Labia Majora coaptated.
- Hymen-old lacerated wound at 3 o'clock - 9:00 o'clock correspond to a wall of a clock.
- Internal Examination-admit one (1) finger with resistance.
- Rugae, prominent.

CONCLUSION:

- Old lacerated wound at 3 o'clock - 9 o'clock correspond to a wall of a clock.^[16]

AAA soon after gave a sworn statement and the MCTC Judge, by Resolution of July 21, 1999, after noting that the already detained appellant "failed to submit any counter-affidavit as directed," found probable cause to indict appellant.^[17]

Denying the accusation, appellant who was 37 years old when he took the witness stand on June 13, 2002, gave the following version:

In April of 1995, he left Mahayahay and lived in Diwalwal, Monkayo, Comval Province where he worked as "trummer." At the time of the alleged rape on May 9, 1995, his cousin BBB and his family were residing in North Cotabato. It was only in November of 1997 that he (appellant) returned to live in Mahayahay at which time BBB and his family also began to reside there, about a hundred meters away from his house.^[18]

His relationship with BBB turned sour in 1998 due to a conflict over a farmland, but the same was settled by them amicably before *barangay* officials, and BBB "was satisfied with the settlement."^[19] Despite the settlement, BBB still harbored ill-feelings against him since "he (BBB) did not talk to me anymore."^[20]

His relationship with AAA was not good either, because a year before she filed the present complaint or in June of 1998, he admonished her for her unbecoming conduct of sleeping in the house of other people, to which she reacted negatively by telling him that he "[had] nothing to do whatever ... may happen to her."^[21] He did not, however, inform AAA's parents about her improper behavior as he had had no chance to do so.^[22]

Defense witness Martin Sarabillo related that, among other things, in 1995 when the alleged rape occurred, his neighbor BBB and family had not returned yet to Mahayahay as he did not see them that year.^[23]

The trial court credited AAA's testimony as trustworthy, and brushed aside appellant's as "stand[ing] on wobbly foundation."

The trial court thus convicted appellant by Decision dated April 2, 2003, disposing as follows:

CONFORMABLY, with all the foregoing, we find the accused ELIZARDO CABILES alias "SARDO", GUILTY beyond reasonable doubt of RAPE as charged, and the Court hereby sentenced him to suffer a supreme penalty of DEATH, to indemnify the complainant the sum of P50,000.00 as moral damages; P30,000.00 as exemplary damages and to pay the costs.

SO ORDERED.^[24]

The records of the case were forwarded to this Court for automatic review. By Resolution of January 25, 2005,^[25] this Court referred the case to the Court of Appeals pursuant to *People v. Mateo*.^[26]

The appellate court, by Decision of August 30, 2007, affirmed the factual findings of the trial court convicting appellant of rape. It, however, modified the sentence to *reclusion perpetua*, finding that "*neither AAA's minority nor her relationship by consanguinity or affinity within the third civil degree to appellant has been duly established,*"^[27] and that he used a knife, a deadly weapon, in committing the crime,^[28] an aggravating circumstance which already qualified the rape. It likewise modified the civil aspect of the case by ordering appellant to pay the victim civil indemnity of P75,000 and increasing the moral damages to P75,000. It thus disposed:

WHEREFORE, the assailed Decision is hereby MODIFIED. Appellant's conviction of the crime of Rape is hereby AFFIRMED. His sentence, however, is reduced to *reclusion perpetua*. Appellant is further ordered to pay private complainant a civil indemnity of P75,000.00 and another P75,000.00 in moral damages, and P30,000.00 in exemplary damages.

SO ORDERED.^[29]