

THIRD DIVISION

[G.R. No. 187043, September 18, 2009]

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. LORENZO OLIVA Y ROSELA, APPELLANT.

R E S O L U T I O N

NACHURA, J.:

Lorenzo Oliva appeals from the Court of Appeals (CA) Decision^[1] dated April 21, 2008 in CA-G.R. CR No. HC-02102, affirming his conviction of rape but modifying the amount of damages.

The records disclose the following facts:

Sometime in March 2003, at about 3:00 o'clock in the afternoon, appellant Lorenzo Oliva asked his 11-year-old daughter, "M," to go with him to the farm of Naty Astor. When they arrived at the place, he ordered her to undress. She obeyed the order because she was afraid of him and he had a bolo, about 16 inches long, which he brandished near her head. After removing her short pants and panty, appellant mounted her and inserted his penis into her vagina. It was painful and she cried. About 15 minutes later, he told her to dress up and then she went home. Two of her siblings were home when she arrived, while her mother was washing clothes in the river about 100 meters away. She did not tell any of them about the incident because she feared her father might kill them.

The incident was repeated on September 9, 2003. At about 3:00 o'clock in the morning of that day, appellant awakened "M." She noticed that her shorts and panty were missing. Her sister was sleeping beside her, but appellant pulled her towards the door. Near the door, appellant went on top of her and inserted his penis into her vagina while covering her mouth to silence her. It was then that her mother saw them. "M" was so afraid, and she sat on the stairs while she put on her panty and her shorts. Her mother, who was visibly upset, asked appellant what he was doing but he simply ignored her. Her mother reported the incident to the police authorities. Thereafter, they went to the residence of M's *Lola* Naty Astor to see a doctor.

Dr. Nena L. Cruz, Municipal Health Officer of Sipocot, Camarines Sur, examined "M" on September 1, 2003. Dr. Cruz found old healed hymenal lacerations at the 4 o'clock and 9 o'clock positions in the victim's vagina. She further noted that the victim did not exhibit pain upon insertion of one finger; but, with two fingers, there was a slight resistance.

Appellant was charged with two counts of rape under the following Informations:

CRIMINAL CASE NO. L-3821

That on or about 3:00 o'clock in the morning of September 9, 2003 while the private offended party was sleeping inside their house at B[rg]y. Malaguico, Municipality of Sipocot, Province of Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with lewd designs, did then and there willfully, unlawfully and feloniously succeed in having carnal knowledge with his own daughter, "M," a 12-year-old minor taking advantage of his moral ascendancy over the latter against her will and without her consent to her damage and prejudice in such amount as may be awarded by the Honorable Court.

ACTS CONTRARY TO LAW.^[2]

CRIMINAL CASE NO. L-3822

That sometime [i]n March 2003 in a forested and grassy land owned by Mrs. Naty Astor at B[r]gy. Malaguico, Municipality of Sipocot, Province of Camarines Sur, Philippines while accompanied by the above-named accused to gather firewood, and within the jurisdiction of this Honorable Court, the above-named accused with lewd [design], did then and there willfully, unlawfully [and feloniously succeed in having carnal knowledge] with his own daughter, "M," an 11-year-old minor taking advantage of his moral ascendancy over the latter against her will and without her consent to her damage and prejudice in such amount as may be awarded by the Honorable Court.

ACTS CONTRARY TO LAW.^[3]

When arraigned, appellant pleaded not guilty to the two charges.

During the pretrial, appellant admitted that he is the biological father of "M" and that she was a minor at the time the incidents happened.

The victim's birth certificate shows that she was born on May 9, 1991. Thus, she was only 11 years and 9 months old when the first incident happened; and 12 years and four months old at the time of the second one.

Appellant belied the testimony of "M." He claimed that his wife told him that "M" was molested in the river by her uncle Benjamin, his wife's half-brother. At one time, "M" went with appellant to the farm, and there he asked her if she had been raped by her uncle. When she did not answer, he told her to undress and to lie down. While she was lying down, he examined her vagina and saw that the opening was already big, so he determined that she had sexual intercourse with her uncle. To further determine if she was no longer a virgin, he took a coconut leaf, measured her neck with it, placed it around her head, and let it slide down. When the coconut leaf slid down, he concluded that she was no longer a virgin. As to the incident of September 9, 2003, he said that he was asleep at about 3:00 o'clock in the morning because he was drunk then.