

## THIRD DIVISION

[ G.R. No. 184874, October 09, 2009 ]

**ROBERT REMIENDO Y SIBLAWAN, PETITIONER, VS. THE PEOPLE  
OF THE PHILIPPINES, RESPONDENT.**

### DECISION

**NACHURA, J.:**

This is a petition<sup>[1]</sup> for review on *certiorari* under Rule 45 of the Rules of Court assailing the Decision<sup>[2]</sup> dated November 16, 2007 and the Resolution<sup>[3]</sup> dated October 3, 2008 of the Court of Appeals (CA) in CA-G.R. CR No. 29316 entitled, "*People of the Philippines v. Robert Remiendo y Siblawan.*"

The case arose from the filing of two criminal informations, both dated March 10, 2008, against petitioner Robert Remiendo y Siblawan (Remiendo), that read—

Criminal Case No. 98-CR-2999

That in or about the month of March 1997, at Badiwan, Municipality of Tuba, Benguet Province, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have carnal knowledge of one [AAA], a girl below 12 years of age.

CONTRARY TO LAW.<sup>[4]</sup>

Criminal Case No. 98-CR-3000

That in or about the month of May 1997, at Badiwan, Municipality of Tuba, Benguet Province, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have carnal knowledge of one [AAA], a girl below 12 years of age.

CONTRARY TO LAW.<sup>[5]</sup>

Upon arraignment, Remiendo pled "not guilty" to both charges. After pretrial, a joint trial ensued before the Regional Trial Court (RTC), Branch 62, La Trinidad, Benguet. Both the prosecution and the defense presented their respective evidence, summarized by the CA in its Decision, to wit:

The prosecution presented the following version of facts:

The complainant [AAA] was born on 16 February 1986. At the time of the commission of the offense, she was a minor below 12 years of age. She

knew accused-appellant Robert Remiendo as he was residing near the house where her family used to stay. Sometime in March 1997, she was sexually assaulted by accused-appellant inside said house. On that day, her parents and brother left for work after breakfast, and she was left alone in the house. Accused-appellant came in, pushed her into the room, and threatened to kill her if she reported what happened. He undressed himself and the complainant. The latter was standing and refused to remove her panty but she obliged when accused-appellant insisted. Then he made her lie on the bed and placed his penis in her vagina. The complainant struggled, moved, and pushed accused-appellant. She felt pain when accused-appellant inserted his penis into her vagina. She cried until accused-appellant left, but she did not shout because accused-appellant warned her not to, or else he would kick her. She put on her clothes after accused-appellant left. Her parents arrived in the afternoon but she did not tell them what happened to her because her mother might whip her.

Sometime in May 1997, [AAA] was again sexually assaulted by accused-appellant, which took place in the house of the latter. At that time, she was on her way to see her mother at her workplace after she had lunch. When she passed by the house of accused-appellant, the latter pulled her into his house and brought her into his room. She cried and shouted but accused-appellant told her to keep quiet. She struggled but was helpless because accused-appellant was stronger. They were alone in the room. Accused-appellant removed his clothes and told her to remove her panty. Afraid, she removed her panty and was made to lie on the bed. Accused-appellant inserted his penis into her vagina and she felt pain. She kept on moving but she could not push away accused-appellant. She moved her shoulders and pushed accused-appellant with both hands but he was stronger. Afterwards, accused-appellant moved away and threatened to kill her if she told anyone what happened. She responded that she would not tell anyone. Later, she executed a sworn statement and identified accused-appellant as the person who raped her.

Dr. Ronald R. Bandonill, Medico-Legal Officer of the National Bureau of Investigation (NBI)-Cordillera Administrative Region, physically examined the complainant on 2 January 1998. Said medico-legal officer testified that [AAA] was thirteen (13) years old and a Grade III pupil at Badiwan Tuba, Benguet at the time of the examination. She was four feet and eleven inches (4'11") tall, weighed 78 pounds, fairly nourished, and fairly developed. She was conscious, coherent, and cooperative. She was ambulatory and had no extra-genital injuries. Upon examination of her genital area, he found old lacerations of the hymen at 5:00 and 7:00 o'clock positions, which meant that her hymen was altered by a hard rigid instrument. The lacerations were done more than three (3) months prior to the examination. To determine the approximate size of the object that the hymenal opening could accommodate, he inserted a test tube. The 2.5-centimeter diameter of said tube was admitted with ease by the hymenal orifice. He noted that the vaginal walls were lax and the ridges inside were smothered. The complainant told him that accused-appellant raped her. He presented a written report of his findings.

On 12 July 1998, psychiatrist Dr. Elsie I. Caducoy conducted an examination of the mental condition of the complainant. The latter was also scheduled for psychological examination to be conducted by Elma Buadken. The result of the examination showed that [AAA] is suffering from psychosis and organicity. She has a below average intelligence quotient of 88, but not on the level of mental retardation. She can perform simple tasks but needs guidance. As to her studies, she can hardly comprehend what is being taught to her. Having psychosis means that her brain is afflicted with a disease. Her medical history showed that she suffered head and body injuries brought about by being sideswiped by a motor vehicle sometime in 1996. She was confined in the hospital for twelve (12) days. Said injuries substantially contributed to her present condition. Organicity, on the other hand, means that the complainant suffers from a cloud of memory, upward rolling of the eyeballs, stiffening of the extremities, loss of consciousness, and epileptic seizures. Her psychosis occurs after seizure. She is not, however, insane. During a seizure, she does not know what is going on, but afterwards she returns to her level of consciousness. With regular medication, her seizures will be greatly minimized. During her interview, the complainant had a seizure and the psychiatrist had to wait until her consciousness level returned. The complainant then revealed that accused-appellant and a certain Reynoso Cera raped her. The psychiatrist opined that during the rape, she did not have a seizure because if she had, she would not have remembered what had happened. The fact that she was able to narrate what happened and who raped her suggested that she was on her conscious level at such time. A written report of the foregoing findings was submitted in court.

The defense presented the following version of facts:

Lea F. Chiwayan, thirteen (13) years old, testified that she was a friend, playmate, and neighbor of the complainant. She testified that she and [AAA] played together and talked about their "crushes." The complainant told Lea Chiwayan that she had a crush on accused-appellant. Sometime in April or May 1997, the complainant said that her brother had molested her, and that he and his father had sexual intercourse with her in their house in Poyopoy, Tuba. Sometime in August 1997, the complainant confided that Reynoso Cera raped her in his house. She told Lea Chiwayan that she did not feel anything because she was used to having sexual intercourse with brother and father. One Saturday afternoon, Lea Chiwayan and the complainant were playing when they saw accused-appellant going to the basketball court near the church. They followed him and watched a basketball game. After the game, Lea Chiwayan went home with the others while the complainant stayed behind. A few seconds after they left, the complainant ran after them and told them that something happened between her and accused-appellant. She said that accused-appellant pulled her towards the back of the church and had sexual intercourse with her. The complainant later took back what she said because she was only joking. She then asked Lea Chiwayan not to tell the accused-appellant. However, Lea Chiwayan told accused-appellant what the complainant told them. Accused-appellant confronted the complainant. He flicked a finger on her head, kicked and spanked her. He

said, "what are you saying, why did I do that, if I like and I do it, I'll not do it with you, you should be ashamed of yourself." He then borrowed the vehicle of a certain Junie, started the engine, and stepped on the gas such that the fumes from the exhaust pipe were directed at the complainant. Later, Lea Chiwayan learned that [AAA] filed a case against accused-appellant.

Dolores L. Daniel, Grade II teacher of [AAA] for the school year 1997-1998, testified that the latter was unruly and a liar. The complainant would pick fights and steal money from her classmates. However, the witness admitted that there was no written record in school that she reprimanded complainant for her behavior. She knew that the complainant had an accident before.

Victor Daniel, a jitney operator, testified that accused-appellant was one of his drivers. He described accused-appellant as a hardworking and industrious person. When he learned that Robert Remiendo was accused of rape, he was outraged because he knew the daily activities of accused-appellant. The latter could not have done such act under his strict supervision.

Accused-appellant testified that he knew the complainant, as she was a townmate of his mother. In September 1996, he and his parents were then residing in Badiwan. When the complainant figured in an accident at that time, he was the one who informed her parents. The first time he saw the complainant was during the time when he was doing some repairs on his jitney. He saw the complainant and her playmates go inside the jitney. He told them to alight from the vehicle. Sometime in June 1997, he again saw the complainant and her sister playing inside the jitney. He told them to alight as they were disturbing him. On the day he was playing basketball at the church grounds in Badiwan, Lea and Emma Chiwayan approached him and asked him if it was true that he raped [AAA]. He asked where the latter was and went to see her. Out of anger, he borrowed the vehicle of Junie, started the engine, directed the exhaust pipe at the complainant, and revved the engine so the smoke would go straight to her. He slapped her and said "if I would like someone, it would not be you because there are a lot of girls better than you." During the Christmas party in Badiwan, he again saw the complainant roaming around the dance area. He told her to get out as she irritated the people dancing. The complainant said nothing and left the dance floor. Thereafter, he saw the complainant laughing and smiling. He learned that he was charged with two (2) counts of rape when he received a subpoena issued by the Office of the Provincial Prosecutor in January 1998.<sup>[6]</sup>

In its Joint Judgment<sup>[7]</sup> dated October 27, 2004, the RTC found Remiendo guilty beyond reasonable doubt of two (2) counts of statutory rape. The RTC disposed as follows:

WHEREFORE, in view of all the foregoing, the court finds ROBERT REMIENDO y SIBLAWAN guilty beyond reasonable doubt of two counts of rape as charged in the Information docketed as Criminal Case No. 98-CR-

2999 and in the Information docketed as Criminal Case No. 98-CR-3000, and hereby sentences him to suffer the penalty of eight (8) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years and one (1) day of *reclusion temporal*, as maximum for each count of rape.

He shall further indemnify the offended party [AAA] the sum of Fifty Thousand Pesos (P50,000.00) by way of civil indemnity, the sum of Thirty Thousand Pesos (P30,000.00) by way of moral damages, and the sum of Ten Thousand Pesos (P10,000.00) by way of exemplary damages.

Pursuant to Administrative Circular No. 4-92-A of the Court Administrator, the Provincial Jail Warden of Benguet Province is directed to immediately transfer the said accused, Robert Remiendo, to the custody of the Bureau of Corrections, Muntinlupa City, Metro Manila after the expiration of fifteen (15) days from date of promulgation unless otherwise ordered by this Court.

Let a copy of this Judgment be furnished the Provincial Jail Warden of Benguet Province for his information, guidance and compliance.

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

Aggrieved, Remiendo interposed his appeal before the CA. In its assailed Decision, the CA affirmed the RTC, modifying only the civil liability imposed upon Remiendo. The *fallo* of the CA Decision reads—

**WHEREFORE**, premises considered, the instant appeal is **DISMISSED**. The Joint Judgment dated 27 October 2004 rendered by the Regional Trial Court, Branch 62, La Trinidad, Benguet, is **AFFIRMED** with **MODIFICATION** on the civil liability of accused-appellant. He is ordered to pay the complainant, for each count of rape, the sum of (a) P50,000.00 as civil indemnity, (b) P50,000.00 as moral damages, and (c) P25,000.00 as exemplary damages.

**SO ORDERED.**<sup>[9]</sup>

Remiendo moved to reconsider the November 16, 2007 Decision, but the CA denied the motion in its October 3, 2008 Resolution; hence, this petition alleging that—

- (a) THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE DECISION OF THE COURT A QUO CONVICTING PETITIONER OF STATUTORY RAPE DESPITE THE ABSENCE OF EVIDENCE TO PROVE THE TRUE AND REAL AGE OF THE PRIVATE COMPLAINANT.
- (b) THE COURT OF APPEALS GRAVELY ERRED IN NOT GIVING PETITIONER THE BENEFIT ACCORDED TO HIM BY REPUBLIC ACT 9344 KNOWN AS THE JUVENILE JUSTICE AND WELFARE ACT OF 2006 INCREASING THE AGE OF CRIMINAL RESPONSIBILITY.<sup>[10]</sup>

Remiendo questions his conviction for statutory rape despite the purported absence of competent proof that AAA was below 12 years old at the time of the alleged commission of the crimes. According to him, the Certificate of Live Birth of AAA