

EN BANC

[G.R. No. 175325, February 27, 2008]

PEOPLE OF THE PHILIPPINES, Appellee, vs. CONCHITO AGUSTIN, Appellant

D E C I S I O N

CARPIO MORALES, J.:

Conchito Agustin^[1] (appellant) was convicted for two counts of qualified rape on complaint of AAA, then a minor, by Branch 11 of the Regional Trial Court of Tuao, Cagayan.

The accusatory portion of each of the informations against appellant follows:

In Criminal Case No. 961-T:

That on or about July 7, 2001, in the Municipality of Tuao, Province of Cagayan and within the jurisdiction of this Honorable Court, the said accused Conchito Agustin [y] Villanueva[,], **uncle within the third civil degree** of the offended party [AAA], **a minor** 11 years old, thus have moral ascendancy over the complainant, with lewd design and by the use of force, did then and there, willfully and feloniously have sexual intercourse with the offended party, [AAA] a minor under 18 years of age against her will.

Contrary to law.^[2] (Emphasis and underscoring supplied)

In Criminal Case No. 962-T:

That on or about July 19, 2001, in the Municipality of Tuao, Province of Cagayan and within the jurisdiction of this Honorable Court, the said accused CONCHITO AGUSTIN y VILLANUEVA, uncle within the 3rd degree of the offended party [AAA], a minor 12 years old, thus have moral ascendancy over the complainant, with lewd design and by the use of force, did then and there, willfully and feloniously have sexual intercourse with the offended party, [AAA] a minor under 18 years of age against her will.

Contrary to law.^[3] (Emphasis and underscoring supplied)

AAA, born on July 10, 1989,^[4] is the daughter of BBB, said to be a sister of CCC who is appellant's wife.

Appellant lives in a barangay of Tuao, Cagayan where AAA and her parents also live.

From the version of the prosecution, the following facts are gathered:

In the morning of July 7, 2001, AAA, then three days shy of 12 years, was cleaning the second floor of appellant's house on his request. While she was applying wax on the floor, appellant suddenly pushed her to the floor and started removing her short pants. She resisted by boxing appellant's chest and pushing him away, and summoned for help by shouting "**arayatendak**" which, in Ilocano, means "help me."^[5]

Appellant just the same went on top of AAA, pinned her legs with his knees and held her hands. He then removed his short pants and underwear and inserted his penis into AAA's vagina. As appellant heard his daughter calling for him and ascending the stairs to the second floor, appellant immediately withdrew his penis and threatened AAA not to tell her parents about the incident.^[6]

In the evening of July 19, 2001, while AAA and her mother BBB were at appellant's house, his wife CCC-sister of BBB having just arrived from Hongkong where she was working,^[7] AAA felt the need to urinate. She thereupon went outside, about 30 meters away from the house. Appellant suddenly appeared, forcibly grabbed her and carried her to a nearby house then under construction where he laid her down on some sacks of rice, put his legs on top of hers, and removed her short pants and underwear. Despite AAA's vigorous resistance and shouts for help, appellant succeeded in inserting his penis into her vagina. She later felt a liquid substance secreting from appellant's penis. Again appellant threatened her^[8] against divulging the incident to anyone.

After appellant left, AAA dressed up. On her way out of the unfinished house, she was seen by her aunt CCC who was prompted to summon her and bring her to one of the rooms of her and appellant's house and ask her why she was at the unfinished house. It was then that AAA revealed what appellant had done to her.^[9] As AAA's mother BBB overheard AAA and CCC talking, she joined them at which AAA again related what appellant had done to her and his threats against revealing the same.^[10]

The result of the medico-legal examination conducted on AAA the following day, July 20, 2001, revealed that her hymen had "*positive superficial healed laceration at 4 o'clock [sic], 6 o'clock and 9 o'clock positions.*"^[11]

Denying the accusation, appellant gave the following version at the witness stand:

In the early morning of July 7, 2001, he went to his farm at Battung, Tuao, Cagayan, more than one and a half kilometers away from his house, to supervise the planting of rice and stayed there up to about noontime. He then fetched his daughter and headed for and arrived home at around 12:45 p.m.^[12]

On July 19, 2001, as the relatives of his wife who had just arrived from Hongkong were going to their house, he helped prepare food from 5:00 p.m. until 8:00 p.m. when the relatives started arriving. He, together with the guests, thereupon had supper, punctuated with drinks with his brothers-in-law. At past 9:00 p.m., AAA and company went home. It was thus impossible for him to have raped AAA at the unfinished house. ^[13]

By Judgment of September 14, 2004,^[14] the trial court convicted appellant, as charged, and imposed upon him the death penalty in both cases. Thus it disposed:

WHEREFORE, the Court finds that the evidence on record established beyond reasonable doubt the guilt of the accused Conchito (Monchito) Agustin for two (2) counts of rape committed on [AAA], a minor, eleven years of age or twelve years of age, defined and penalized under Article 266-B of the Revised Penal Code, as amended by Republic Acts No. 7659 and 8353, and hereby sentences the said accused Cochito [sic] (Monchito) [sic] Agustin:

1. In Criminal Case No. 961-T, to suffer the supreme penalty of death by lethal injection;
2. In Criminal Case No. 962-T, to suffer the same penalty of death by lethal injection;
3. In each of the aforesaid cases, to pay the victim civil indemnity of P75,000.00 each or P150,000 plus moral damages of P25,000.00 each count or a total of P50,000.00 for moral damages.^[15] (Underscoring supplied)

Before the Court of Appeals,^[16] appellant raised as lone error of the trial court his conviction despite failure of the prosecution to establish his guilt beyond reasonable doubt.^[17]

The appellate court held that even if appellant were at the farm on July 7, 2001 when the first rape occurred, it was not physically impossible for him to have raped the victim at his house, it being barely one and a half kilometers away; and even if there were many people in his house on July 19, 2001, it was not physically impossible for him to have committed rape at the nearby unfinished house.

By Decision of June 13, 2006, the appellate court affirmed that of the trial court.^[18]

In the meantime or on June 24, 2006, President Gloria Macapagal-Arroyo signed into law Republic Act (R.A.) No. 9346, "AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES."

The Court, acting on appellant's Notice of Appeal,^[19] required the parties by Resolution of March 13, 2007,^[20] to simultaneously submit supplemental briefs within 30 days from notice, if they so desired. Both parties filed their respective Manifestations^[21] that they were no longer filing any supplemental brief.

The conviction of appellant must be upheld.

In rape cases, if the testimony of the victim passes the test of credibility, the accused may be convicted solely on that basis.^[22]

Passing on the testimony of AAA respecting the July 7, 2001 incident, the trial court observed:

In the cases at bench, the testimony of private complainant [AAA] [as regards] to the two (2) counts of rape was subjected by the Court to the minutest of scrutiny. As to her testimony regarding the July 7, 2001 sexual assault, the Court finds no reason to disbelieve [AAA] when she claims that she was forcibly deflowered by the herein accused in the second floor of the latter's house at Mungo, Tuao, Cagayan. There appears no plausible reason for the young victim to falsely charge the accused who is her uncle-in-law, with rape. Thus, in the absence of any showing of an illicit motive to falsely impute so grievous a crime as qualified rape against the herein accused, the testimony of the young victim is entitled to full credence... for no young and decent Filipina would publicly admit that she was ravished unless that is the truth because her natural instinct is to protect her honor. x x x^[23] (Citations omitted; emphasis and underscoring supplied)

On appellant's claim that AAA's mother merely concocted the rape charges to avoid payment of a loan, the trial court discredited the same in this wise:

...[T]he Court is hard put to believe that a mother of a young innocent girl such as the 12-year old [AAA] would expose her daughter to the shame of having her private parts examined and, thereafter, to undergo the rigors of a public trial where, more often than not, the victim is subjected to humiliating and rigorous cross-examination by the defense counsel. x x x^[24]

Appellant has maintained his alibi. To successfully invoke alibi, however, an accused must establish with clear and convincing evidence not only that he was somewhere else when the crime was committed but also that it was physically impossible for him to have been at the scene of the crime at the time of its commission.^[25]

In appellant's case, it was easy for him to go back from the farm to his house on July 7, 2001 since the distance between the two is only one and a half kilometers and, by his claim, he even rode on a "*culiglig*," a motorized farm equipment which had become the common means of transportation in rural areas, thus shortening his travel time. As the trial court held:

...The defense of alibi of the accused falls flat on its face after he admits that the farm which he claims to have supervised its planting to rice is barely a kilometer [sic]^[26] from his house. Well-established is the rule that for alibi to prosper, it is not enough for the accused to prove that he was elsewhere when the crime was committed – he must also prove that it would have been physically impossible for him to have been at the scene of the crime at the time of its commission ... The defense of alibi put up by the accused as regards the July 7, 2001 rape obviously cannot be given much credit by this Court.^[27] (Underscoring supplied)

As for appellant's argument that the act complained of on July 19, 2001 could not have been committed due to the presence of other people, the same must fail. The Court has repeatedly held that lust is no respecter to time and place. Thus, the nearby presence of relatives of the victim,^[28] the cramped condition and the presence of other people in the room, or the high risk of being caught, have been held insufficient and ineffective to deter the commission of rape.^[29]