

## THIRD DIVISION

[ G.R. No. 177572, February 26, 2008 ]

**PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, vs. JUANITO DELA CRUZ Y RIVERA, Accused-Appellant.**

### DECISION

**CHICO-NAZARIO, J.:**

*Of the so-called heinous crimes, none perhaps more deeply provokes feelings of outrage, detestation, and disgust than incestuous rape. It is indeed difficult to find a more perverted form of sexual aberration than this bestial felony. It is undeserving of society's compassion or tolerance.*

[1]

We are called here to review the Decision rendered by the Court of Appeals in CA-G.R. CR-HC No. 02407 dated 26 October 2006,<sup>[2]</sup> affirming with modification the Decision of the Manila Regional Trial Court (RTC), Branch 163, in Criminal Cases No. 115031-H, No. 115032-H, No. 115033-H, and No. 115034-H dated 21 February 2000,<sup>[3]</sup> convicting the accused-appellant Juanito R. dela Cruz of raping his own daughter, AAA,<sup>[4]</sup> with the use of force and intimidation.

The records bear the following facts:

On 9 November 1998, four separate informations<sup>[5]</sup> were filed with the RTC against appellant for rape, allegedly committed as follows:

#### CRIMINAL CASE NO. 115031-H

That sometime in **March 1995**, in XXX, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, with lewd designs and by taking advantage of his moral ascendancy over his own daughter, AAA, then sixteen (16) years old and by means of force, threat and intimidation, did, then and there, willfully, unlawfully, and feloniously lie and have sexual intercourse with AAA, against her will.

#### CRIMINAL CASE NO. 115032-H

That during the period **January to December 1996**, in XXX, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, with lewd designs and by taking advantage of his moral ascendancy over his own daughter, AAA, then seventeen (17) years old and by means of force, threat and intimidation did, then and there, willfully, unlawfully, and feloniously lie and have sexual intercourse with AAA, against her will.

CRIMINAL CASE NO. 1150**33**-H

That during the period **January to December 1997**, in XXX, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, with lewd designs and by taking advantage of his moral ascendancy over his own daughter, AAA, and by means of force, threat and intimidation did, then and there, willfully, unlawfully, and feloniously lie and have sexual intercourse with AAA, against her will.

CRIMINAL CASE NO. 1150**34**-H

That on or about **July 24, 1998**, in XXX, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, with lewd designs and by taking advantage of his moral ascendancy over his own daughter, AAA, and by means of force, threat and intimidation did, then and there, willfully, unlawfully, and feloniously lie and have sexual intercourse with AAA, against her will.

Subsequently, these cases were consolidated for joint trial. When arraigned on 21 April 1999, appellant, with the assistance of counsel *de officio*, pleaded "Not Guilty" to each of the charges.<sup>[6]</sup> Thereafter, trial on the merits ensued.

The prosecution presented as witnesses AAA and Dr. Armie Soreto-Umil (Dr. Umil). Their testimonies are as follows:

AAA testified that appellant is her father and BBB is her mother; that appellant and BBB are married; that she is the fourth child in a brood of five children born to appellant and BBB; and that she resided with her family at XXX.<sup>[7]</sup>

On **8 March 1995**, AAA went home from work to celebrate with her family the birthday of her younger brother, CCC. Later that evening, she slept inside the house, while appellant had a drinking session with some friends outside the house. BBB was then peddling several merchandise at the Quirino Memorial Hospital (QMH). Subsequently, appellant entered the house and lay down beside her. Appellant fondled her breast and vagina. She resisted but to no avail because appellant punched her in the stomach and slapped her face. Appellant then placed himself on top of her and inserted his penis into her vagina. Thereafter, DDD, her elder brother, entered the house and saw appellant on top of her. Afraid of appellant, DDD ignored the two. The following day, DDD told AAA that he saw the incident and that he will report it to appellant's sister, EEE. AAA did not inform BBB of the incident because of her fear that appellant would make good his threat to kill her and the rest of the family members.<sup>[8]</sup>

Again, in **1996**, appellant, with the use of force, threat and intimidation, raped AAA six times on several occasions inside the house. BBB was selling goods at the QMH during the commission of these rapes.<sup>[9]</sup>

Likewise, in **1997**, appellant, by applying the same physical harm, threat and intimidation, sexually assaulted her several times inside the house. BBB was also out of the house when these bestial acts transpired.<sup>[10]</sup>

On **24 July 1998**, at about 1:00 in the morning, AAA and her siblings were sleeping inside a nipa hut owned by her family and located in front of their house, while appellant was drinking liquor with a certain Rey and Benito Casaljay outside the house. After the drinking session, Rey and Benito left appellant. Appellant then entered the nipa hut, woke her up, and started to make sexual advances on her. She tried to resist appellant's onslaught but failed because appellant punched her in the stomach. Appellant went on top of her and inserted his penis into her vagina. After satisfying his lust, appellant warned her not to tell anyone of the incident or he would kill her and the rest of the family members.<sup>[11]</sup>

Upon being informed by EEE of the incidents, BBB, on 30 July 1998, accompanied AAA to the National Bureau of Investigation (NBI) office at Taft Avenue, Manila, and reported the heinous acts of appellant. AAA also executed a *Sinumpaang Salaysay* regarding the incidents. Thereupon, appellant was arrested and charged with rape.<sup>[12]</sup>

Dr. Umil narrated that she conducted a genital examination on AAA upon the request of NBI Supervising Agent Rosalina Espina-Chiong. Her findings as stated in her medico-legal report are: (1) no evident sign of any extra-genital physical injuries noted on the body of the subject at the time of the examination; and (2) hymen, intact, but distensible, and its orifice wide (2.5 cm. in diameter) as to allow complete penetration by an average-sized adult Filipino male organ in full erection without producing hymenal injury.<sup>[13]</sup>

The prosecution also adduced documentary evidence to buttress the foregoing testimonies of prosecution witnesses, to wit: (1) *Sinumpaang Salaysay* of AAA;<sup>[14]</sup> (2) Medico-Legal Report regarding AAA signed and issued by Dr. Umali;<sup>[15]</sup> and (3) a letter written by appellant in a Marlboro cigarette wrapper addressed to AAA asking her forgiveness.<sup>[16]</sup>

For its part, the defense proffered the lone testimony of appellant to refute the foregoing accusations.

Appellant divulged that AAA is his daughter and BBB is his wife; that he did not rape AAA on 8 March 1995; that a birthday celebration for one of his children, CCC, was held at their house on 8 March 1995 which was attended by several friends; that he did not rape AAA in 1996, 1997, and on 24 July 1998; that BBB, AAA and his other children resided with him in their house at XXX from 8 March 1995 to 24 July 1998; that he had a drinking spree with Rey and Benito at nighttime during the said periods; and that he wrote a letter to AAA but denied that it was the same one presented by the prosecution.<sup>[17]</sup>

The defense also offered as its sole documentary evidence the Medico-Legal Report issued and signed by Dr. Umil.

After trial, the RTC rendered a Decision finding appellant guilty of rape as alleged in the four informations. In Criminal Cases No. 1150**31**-H and No. 1150**32**-H, the Court imposed on appellant the penalty of death. In Criminal Cases No. 1150**33**-H and No. 1150**34**-H, appellant was sentenced to *reclusion perpetua*. The dispositive portion of the decision reads:

WHEREFORE, this Court finds accused Juanito dela Cruz y Rivera, as follows:

1. In Criminal Case No. 1150**31**-H, GUILTY as principal of the offense of qualified rape penalized under then Article 335 of the Revised Penal Code, as amended by R.A. 7659, and sentences him to suffer the supreme penalty of DEATH. Accused is further ordered to pay the offended person, AAA, the amount of Seventy-Five Thousand Pesos (P75,000.00) as civil indemnity plus Fifty Thousand Pesos (P50,000.00) as moral damages.

2. In Criminal Case No. 1150**32**-H, GUILTY as principal of the offense of qualified rape penalized under Article 335 of the Revised Penal Code, as amended by R.A. 7659, and sentences him to suffer the supreme penalty of DEATH. Accused is further ordered to pay AAA the amount of Seventy-Five Thousand Pesos (P75,000.00) as civil indemnity plus Fifty Thousand Pesos (P50,000.00) as moral damages.

3. In Criminal Case No. 1150**33**-H, GUILTY as principal of the offense of simple rape penalized under Article 335 of the Revised Penal Code, as amended by R.A. 7659 [Now Art. 266-A and Art. 266-B under R.A. 8353], and sentences him to suffer the penalty of *reclusion perpetua*. Accused is further ordered to pay AAA the amount of Fifty Thousand Pesos (P50,000.00) as civil indemnity plus the amount of Fifty Thousand Pesos (P50,000.00) as moral damages.

4. In Criminal Case No. 1150**34**-H, GUILTY as principal of the offense of simple rape penalized under Article 266-B of the Revised Penal Code, as amended, and sentences him to suffer the penalty of *reclusion perpetua*. Accused is further ordered to pay AAA the sum of Fifty Thousand Pesos (P50,000.00) as civil indemnity and the amount of Fifty Thousand Pesos (P50,000.00) as moral damages.<sup>[18]</sup>

In view of the death penalty it imposed on appellant in Criminal Cases No. 1150**31**-H and 1150**32**-H, the RTC forwarded the records of the cases to us for automatic review. However, pursuant to our ruling in *People v. Mateo*,<sup>[19]</sup> we remanded the cases to the Court of Appeals for disposition. On 26 October 2006, the appellate court promulgated its Decision affirming with modifications the RTC decision. It held that appellant is liable only for simple rape and not qualified rape in Criminal Cases No. 1150**31**-H and No. 1150**32**-H because the qualifying circumstance of AAA's minority was not duly proven by the prosecution. Thus:

WHEREFORE, the February 12, 2000 Joint Decision, as far as Criminal Case No. 1150**33**-H and Criminal Case No. 1150**34**-H are concerned, is hereby AFFIRMED.

In Criminal Case No. 1150**31**-H and Criminal Case No. 1150**32**-H, finding the accused guilty beyond reasonable doubt of two acts of simple rape, the Court hereby sentences him to suffer the penalty of Reclusion Perpetua, to pay civil indemnity in the amount of P50,000.00, and to pay moral damages in the amount of P50,000.00 in each case.<sup>[20]</sup>

In his Brief, appellant assigns the following errors:

I.

THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE UNBELIEVABLE AND UNCORROBORATED TESTIMONY OF COMPLAINANT AAA;

II.

THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT JUANITO DELA CRUZ OF FOUR (4) COUNTS OF RAPE DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.<sup>[21]</sup>

Rape is committed when the accused has carnal knowledge of the victim by force or intimidation and without consent.<sup>[22]</sup>

In determining the guilt or innocence of the accused in cases of rape, the victim's testimony is crucial in view of the intrinsic nature of the crime in which only two persons are normally involved. The accused may be convicted on the basis of the victim's lone and uncorroborated testimony provided it is clear, positive, convincing, and consistent with human nature.<sup>[23]</sup>

We have painstakingly reviewed the records and found that appellant had carnal knowledge of AAA through force and intimidation on the dates stated in the informations. In her court testimony, AAA positively and categorically identified the appellant as the one who ravished her, viz:

Q. Now, on **July 24, 1998** at about 1:00 in the morning, do you remember where [you were]?

A. Yes, mam.

Q. Where were you then?

A. I was in our house, mam.

Q. Where is your house located?

A. At XXX.

Q. Do you recall of an unusual incident that happened on July 24, 1998 at your house?

A. Yes, mam.

Q. What was that unusual incident?

A. At 1:00 in the early morning my father "*ginapangan niya ako.*"

Q. What do you mean "*ginapangan ka?*"

A. He raped me, mam.

Q. How did your father rape you?

A. He inserted his penis inside my vagina.

Q. When he inserted his penis into your vagina,