

THIRD DIVISION

[G.R. No. 176065, April 22, 2008]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RAMON ARIVAN Y FORNILLO, ACCUSED-APPELLANT.

D E C I S I O N

CHICO-NAZARIO, J.:

For review is the Decision^[1] dated 20 October 2005 of the Court of Appeals in CA-G.R. CR-H.C. No. 01163 which affirmed the Decision^[2] dated 9 August 2002 of the Regional Trial Court (RTC) of Quezon City, Branch 107, in Criminal Case No. Q-99-80302, finding herein appellant Ramon Arivan y Fornillo guilty beyond reasonable doubt of the crime of rape committed against AAA.^[3]

Appellant Ramon Arivan y Fornillo was charged with raping AAA in a criminal complaint^[4] which reads:

The undersigned accuses **RAMON ARIVAN Y FORNILLO**, of the crime of **RAPE**, committed as follows:

That [on] or about 31st day of December 1998, in Quezon City, Philippines, while [AAA] was looking for her brother, the said [appellant] offered to help her but however brought her to a shanty and while there, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with her, against her will and without her consent.^[5]

Upon arraignment, the appellant, assisted by counsel *de officio*, pleaded NOT GUILTY to the crime charged. The pre-trial conference yielded no positive results, thus, the same was declared closed and terminated. Thereafter, trial on the merits ensued.

The prosecution presented the following witnesses: AAA, the victim; SPO1 Reynaldo Pangilinan (SPO1 Pangilinan), the police officer who apprehended the appellant; Dr. Emmanuel Reyes (Dr. Reyes), Medico-Legal Officer of the Philippine National Police (PNP) Crime Laboratory, Camp Crame, Quezon City, who conducted a physical examination on AAA; and SPO4 Mila Billones (SPO4 Billones), the investigating officer assigned at Police Station 6, Batasan Hills, Quezon City.

AAA testified that in 1996, she was taken by her mother from their house in xxx City to stay in the house of her uncle, CCC and aunt, DDD located at xxx, Barangay xxx, xxx City.^[6] Her 17-year old brother, BBB, likewise stayed in said house. AAA admitted that she already stopped schooling^[7] and while she was living with her uncle and aunt, she worked as a scavenger and was able to gain friends.^[8]

On 31 December 1998, about 11:30 in the evening, AAA went outside the house of her uncle and aunt to look for her brother because it was New Year's Eve and she, her brother, uncle and aunt were supposed to eat together. While she was looking for her brother, the appellant approached and asked her where she was going. When she told him that she was looking for her brother, the appellant offered to help her look for her brother and he even told her that he knew where her brother was.^[9] AAA remembered that she had seen the appellant earlier that day talking to her brother. Thinking that the appellant was her brother's friend, she readily agreed to go with him.^[10] They walked together and the appellant took her to a place with a hut or shanty located in Payatas, Quezon City.^[11] Upon arrival thereat, both AAA and the appellant crossed the fence. AAA called for her brother three times but no one answered.^[12] She got irritated with the appellant for misleading her. She decided to leave the place^[13] but appellant held her right hand preventing her from leaving. AAA tried to remove appellant's grip on her hand and she succeeded. But then again, when she was about to go out, the appellant was able to hold her hand and force her to enter the shanty or hut.^[14] AAA was not able to shout for help as she was threatened by the appellant that if she would do so, he would kill her brother. The appellant tried to cover her mouth to prevent her from shouting but he did not succeed because she kept on struggling. Despite the appellant's failure to cover her mouth, she was not able to shout as the appellant threatened her again that if she will shout, he will kill her brother. Afraid, she did not shout.^[15]

Once inside the hut or shanty, the appellant dragged her to a room where there was a mosquito net. The place was dark. When she turned her head, her forehead hit a hard object, which made her a little bit dizzy.^[16] Thereafter, the appellant forced her to lie down and forcibly removed her garterized^[17] shorts and panty. She pushed the appellant to prevent him from pulling down her shorts and panty, but her efforts remained futile. The appellant was able to get on top of her, held her two hands outwards and spread her legs. AAA kept on struggling by pushing the appellant away. She struggled to free herself by moving her body from side to side and by crossing her legs, but to no avail. She likewise tried to shout but the appellant covered her mouth. Despite her tenacious resistance, the appellant kept on forcing himself on her and also threatened her that if she would not accede to his lustful desire, he would kill her and her brother. Out of fear, she finally gave in. The appellant then kissed her on the lips and also succeeded in inserting his penis into her vagina and made push and pull movements for several times. She felt pain.^[18] After satisfying his lust, the appellant stood up, got dressed and threatened her not to tell anyone what had happened; otherwise, he would kill her, her brother and her aunt. Then, the appellant left. When the appellant left, she also stood up, put on her clothes and went home running and crying.^[19]

When AAA reached their house, her uncle saw her and asked her why she was running and crying. She immediately told him that she was raped but she did not know the name of her ravisher. Her uncle told her that they should report the incident to the police.^[20] At dawn of 1 January 1999, AAA and her uncle left the house to go to the police station. While waiting for a ride, AAA saw the appellant standing beside a barbeque stand. She immediately pointed to appellant as her malefactor. Her uncle got mad and was about to approach the appellant when a jeepney arrived, which they boarded.^[21] They went to a police station in their

area; however, since there was no police investigator present thereat, they went to another police station. Not having been attended to as there was also no police investigator present because it was New Year, they then proceeded to Police Station 6, Batasan Hills, Quezon City. It was already 6:00 in the evening when they arrived thereat.^[22]

At Police Station 6, she narrated to the police officer what happened to her. After she made her complaint, she stayed at the police station while SPO1 Pangilinan and her uncle, CCC, immediately proceeded to Payatas, the place where the alleged rape incident happened. In Payatas, SPO1 Pangilinan and AAA's uncle saw the appellant walking along the street or near the dumpsite. AAA's uncle immediately pointed the appellant to SPO1 Pangilinan as the person who abused his niece. SPO1 Pangilinan approached the appellant and invited him to go with them to the police station. The appellant voluntarily submitted. The appellant was apprehended on the evening of 1 January 1999. Upon their arrival at Police Station 6, another uncle of AAA was also present. When AAA saw the appellant at the police station, she readily pointed to him as her abuser. And she came to know the name of the appellant when his statements were being taken by the police as she was present thereat. The following day, or on 2 January 1999, AAA, together with her uncle, CCC, went to Camp Crame for her medical examination.^[23]

SPO1 Pangilinan corroborated the testimony of AAA that the latter made a complaint at Police Station 6 as regards the alleged rape incident. He likewise affirmed that upon receiving the complaint of AAA, he, together with AAA's uncle, immediately proceeded to the place where the alleged rape incident happened. And when they arrived at the said place, they saw the appellant walking around. He was able to recognize the appellant as AAA's uncle pointed the appellant to him. He then invited the appellant to go with them at Police Station 6. Upon their arrival at Police Station 6, AAA positively identified the appellant as her malefactor. Thereafter, he turned over the case to SPO4 Billones, the investigator assigned at Police Station 6.^[24]

SPO4 Billones testified that on 1 January 1999, she met AAA at Police Station 6. AAA was then accompanied by her uncle, CCC. They reported to her the rape incident that happened to AAA on 31 December 1998 at around 11:30 p.m. After AAA informed her that she was raped, she made a referral for AAA to be examined at the PNP Crime Laboratory in Camp Crame. SPO4 Billones similarly affirmed that on 1 January 1999, when the appellant was brought to their station, AAA was there and she positively identified the appellant as the person who raped her. Thereafter, SPO4 Billones referred the case to the inquest fiscal.^[25]

Dr. Reyes declared in court that on 2 January 1999, he met AAA at Medico-Legal Office in Camp Crame. She was brought there by her uncle with a request from Police Station 6, Batasan Hills, for a medico-legal examination^[26] as AAA was allegedly raped on 31 December 1998. He conducted an extra-genital examination of AAA's body and found an abrasion on AAA's forehead on the frontal region measuring 0.5 by 3 centimeters. According to him, said abrasion could have been caused by the rubbing of the skin against a hard rough surface object, which was sufficient to cause a scrape. On the examination of AAA's genital organ, he found that there was an abundance of pubic hair; the *labia majora*, which is the most external portion of the vagina, was full, convex and coaptated. He also found the *labia minora* with abrasion. He explained that the same ordinarily appears in the

vaginal canal even if sexual intercourse occurred in a brutal manner but the woman was stimulated or wet. He likewise found that the hymen of AAA was already remnant, which means that there was a possibility that AAA had previously engaged in sexual intercourse prior to the alleged rape incident. He did not find any laceration in the hymen of AAA and there was also an absence of spermatozoa in AAA's vagina. Dr. Reyes examined AAA about 36 hours after she was allegedly raped. He, however, admitted that his findings jibe with the allegations of AAA. He then concluded that AAA was in a non-virgin state physically. Dr. Reyes reduced into writing the medical examination he conducted on AAA.^[27]

For its part, the defense presented the testimonies of the appellant and his brother, Rizaldy Arivan (Rizaldy), to refute the allegations of AAA.

The appellant vehemently **denied** that he raped AAA. He even claimed that AAA was his girlfriend. He testified that he met AAA for the first time in November, 1998 at the dumpsite in Payatas, Quezon City. He started courting her also in November, 1998 and they became sweethearts beginning December, 1998.

Appellant claimed that on 31 December 1998, at around 9:00 to 10:00 o'clock in the evening, when he was about to go to the church for it was New Year's Eve, he met AAA in the street. Holding each other's hand, they walked going to church. According to the appellant, the church was near his brother's house and it was also in Payatas. On their way to the church, they met some of his friends who were also scavengers, namely: Angelo, Exel, Aldrin and Noli, who was also called "Handsome." He averred that AAA knew his friends because his friends also saw her at the dumpsite. After the mass, which according to the appellant lasted for two hours, or at about 12:00 midnight, he, AAA, and his friends went straight to his brother's house where they ate and lighted some firecrackers. He said that his brother knew that AAA was his girlfriend. Then, at about 1:00 a.m. of 1 January 1999, they left his brother's house and proceeded to Angelo's house. At that time, AAA was still with him. When they arrived at Angelo's house, they ate and talked with Angelo's wife. He claimed that Angelo knew that AAA was his girlfriend. They stayed in Angelo's house until 1:30 a.m. of 1 January 1999.

Thereafter, appellant went to his house, which was only eight houses away. In going to his house, he was with Noli and AAA. His other friends stayed at a party near Angelo's house. In his house, he got his jacket and cap and had them worn by AAA. They stayed in his house for less than 30 minutes. Then, they proceeded to another friend's house, Ver, who was also his neighbor. On the way to Ver's house, they met AAA's brother who told AAA to go home as their grandfather was looking for her. AAA retorted that her brother should not bother with her. When they arrived at Ver's house, Ver's mother was there. Appellant told AAA to go home because he had to attend to something and that he will go somewhere else. AAA kept on following him and Noli. They left Ver's house at around 3:00 a.m. They likewise went to Marlon's house as there was a party near his house. AAA and Noli went to the said party while the appellant stayed at Marlon's house where he and Marlon had a drinking session. After two hours, Noli returned. AAA was left at the said party because she met some acquaintances there. At about 5:30 a.m., appellant and Noli left Marlon's house and instructed AAA to follow them at his house. When they arrived at his house, they likewise drank beer. Excel, also a friend, arrived. At around 6:30 a.m., AAA arrived and ate breakfast with them. After they had their breakfast, AAA's aunt arrived looking for her. AAA motioned to the appellant not to

tell her aunt that she was there. The appellant then told AAA's aunt that AAA was not with them. AAA's aunt left. AAA's aunt came back at 8:00 a.m., still looking for her. AAA's aunt did not find her for she was able to run to a neighbor's house through a broken wall. Again, AAA's aunt left angrily. When appellant went inside his house, he was surprised when he did not find AAA. Louie, his neighbor, went to his house and told him that AAA was in their house. He told Louie to tell AAA to just follow him at Aldrin's house. At the latter's house, they drank some beer and sang in the karaoke. AAA followed him there and they stayed there for three hours. Suddenly, AAA's uncle arrived. AAA tried to run but her uncle was able to get hold of her hand and succeeded in pulling her out of the house.

Subsequently, appellant and his companions went home. When he arrived at his house, where the alleged rape incident happened, he went to sleep. Noli, who also lived there, likewise slept. The appellant woke up at around 7:00 p.m. of 1 January 1999. Then, he and Noli had coffee. When he and Noli were about to go to the dumpsite, he was apprehended by the police and by some barangay officials. He asked them why he was being apprehended and was told that he was being accused of raping AAA. He was then brought to Police Station 6, where he was incarcerated for about seven days. He claimed that he and AAA did not have any sexual relation and he did not know any reason why AAA was accusing him of such a grave offense.

[28]

Rizaldy, appellant's brother, testified that on 31 December 1998, at around 11:00 p.m. until 1:00 a.m. of 1 January 1999, he was at his house with his family. Suddenly, his brother and his girlfriend, AAA, arrived. After half an hour, appellant's "*barkadas*" likewise arrived. While eating, he even noticed that his brother and AAA were so sweet to each other to the point of feeding each other. Afterwards, his brother lay down on AAA's lap. His brother, with AAA on his side, later on told him that AAA was the woman whom he will marry. The group stayed in his house for about an hour. Thereafter, they proceeded to one of the appellant's friends.[29]

Rizaldy disclosed that he knew AAA as he always saw her with the appellant at the dumpsite. On 29 October 1998, he asked his brother if he was courting AAA, to which the appellant replied yes. Only on 31 December 1998 did he learn that appellant and AAA were already sweethearts for he saw his brother lie down on the lap of AAA when they were at his house. He admitted that the first time he came to know that there was a complaint filed against his brother was on 2 January 1999. That was also the date when he found out that his brother was brought to the police station. Upon knowing that his brother was already at the police station, he did not do anything. He did not even volunteer to give a statement at the police station to shed light as to what really happened or to help his brother. It was only in the year 2000 that he learned that the case filed against his brother was for rape. He only knew that he was going to testify in court when a subpoena was sent to his house in May, 2001.[30]

On 9 August 2002, the trial court rendered a Decision finding the appellant guilty beyond reasonable doubt of the crime of rape; the dispositive portion of the said Decision reads as follows:

WHEREFORE, IN VIEW OF THE FOREGOING, this Court finds the [appellant], RAMON ARIVAN Y FORNILLO guilty beyond reasonable doubt of the crime of rape. He is hereby sentenced: