

SECOND DIVISION

[G.R. No. 176062, July 04, 2008]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. EFREN CUSTODIO
Y ESTEBAN, APPELLANT.**

DECISION

CARPIO MORALES, J.:

On appeal is the March 31, 2006 Decision^[1] of the Court of Appeals in CA-GR CR-HC No. 01756 which affirmed with modification the September 27, 2000 Decision^[2] of Branch 21 of the Regional Trial Court in Malolos, Bulacan finding appellant guilty of three counts of simple rape in Crim. Case Nos. 333-M-2000, 334-M-2000, and 335-M-2000.

Except for the dates of commission of the three offenses charged -November 5, 1999, November 6, 1999 and November 7, 1999, the three Informations^[3] uniformly read as follows:

That on or about the ___th day of November, 1999, in the [M]unicipality of Plaridel, province of Bulacan Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and feloniously, with lewd designs, have carnal knowledge of the said [AAA], his niece, 19 years old, against her will and consent.^[4]
(Underscoring supplied)

Appellant, an ambulant cigarette vendor, is the uncle of the victim AAA, he being the younger brother of her father.

From the records of the cases, the following version was established by the prosecution:

In the afternoon of November 4, 1999 at around 2:00 p.m., the then 19 years old high school graduate private complainant AAA met by chance the then 37 years old widower-uncle-appellant along the public market of Malolos, Bulacan. On being told that AAA was scouting for a job, appellant told her that he could help her as he knew of an employer in Capalangan, Apalit, Pampanga.^[5]

On appellant's invitation, AAA at once went with him to Capalangan, arriving there at around 2:45 p.m. Claiming that he forgot the address of the employer, appellant and AAA wandered around the place for more than one and a half hours until it was already dark, drawing AAA to indicate her desire to go home which appellant restrained. At the point of a *balisong*, appellant warned AAA not to shout as they boarded a tricycle and repaired to the house of his friend. He instructed AAA to carry the name "Maritess dela Cruz." On reaching his friend's house, appellant introduced AAA as his wife and claimed that they were married in civil rites three months

earlier.^[6]

The next day, or on November 5, 1999, they left Capalangan and proceeded to Plaridel, Bulacan. They arrived at around 6:00 a.m. at the house of appellant's friend identified as Asing, a tricycle driver, and his wife Wena, an employee at a "feria." Appellant, again introducing AAA as his wife whose parents "did not want him to be her husband," sought Asing's permission, which the latter granted, to let them temporarily stay in his house.^[7]

While at the house of Asing, appellant took AAA's money, telling her that he did it so she would not escape or go home.^[8] AAA did not reveal to the couple her predicament as "the way she look[ed] at them they were like close friends."

At nightfall, while Asing and his wife were away leaving them to themselves, appellant undressed AAA at the point of a *balisong*, Appellant removed his own clothes and had sexual intercourse with AAA, warning her not to report the matter to anyone lest she would be killed.^[9] This was the incident subject of the first Information.

The second incident of rape occurred also at the house of Asing on November 6, 1999 before midnight and, just like the first incident, appellant threatened AAA with "the same `balisong' poked on [her] on November 5, 1999."^[10]

The third incident of rape also still occurred in Plaridel on November 7, 1999 before Asing and his wife returned at around 11:30 p.m. While AAA cried and pleaded for mercy, appellant remained unmoved.^[11]

AAA wanted to escape, but she could not as appellant was closely guarding her; and while appellant slept, he was a "light sleeper," always moving and he even locked the door and placed a chair behind it. Besides, AAA did not know how she could leave as that was her "first time" to be in Plaridel.^[12]

On November 8, 1999, at past noon, AAA's brother CCC who, along with other family members, appear to have conducted a search on her whereabouts and eventually got wind of where she was, repaired to Asing's house together with appellant's brother-in-law tricycle driver DDD. At Asing's house, appellant told CCC that he arranged for AAA's employment as a maid. Fearing for her safety and that of her brother, AAA kept silent as she was fetched. ^[13]

Upon reaching their house on even date, November 8, 1999, AAA narrated her ordeal to her parents and siblings. AAA and her parents at once proceeded to the Municipal Hall where she executed a sworn statement ^[14] and filed complaints^[15] for rape against appellant.^[16]

The following day, or on November 9, 1999, AAA was examined by Dr. Ivan Richard A. Viray, Medico-Legal Officer at the PNP Bulacan Provincial Crime Laboratory in Malolos, Bulacan who came out with the following

FINDINGS:

GENERAL AND EXTRAGENITAL:

PHYSICAL BUILT: Light Built

MENTAL STATUS: Coherent female subject

BREAST: Conical in shape, with pinkish brown areola and nipples from which no secretions could be pressed out

ABDOMEN: flat and soft

PHYSICAL INJURIES: No injuries noted

GENITAL:

PUBIC HAIR: Moderate growth

LABIA MAJORA: full convex and coaptated

LABIA MINORA: in between labia majora, dark brown in color

HYMEN: classic fleshytype with the presence of shallow healed laceration at 3 & 9 o'clock position and deep healing laceration at 5 o'clock position

POSTERIOR FOURCHETTE: v shape

EXTERNAL VAGINAL ORIFICE: offers moderate resistance to examining index finger

VAGINAL CANAL: with slightly flattened nigosities

CERVIX: firm and closed

PERI-URETHRAL AND VAGINAL SMEARS: negative for both spermatozoa and gram(-) diplococci

CONCLUSION:

Subject is in Non-virgin state

There are no external signs of application of any form of trauma.

x x x^[17](Emphasis in the original).

Appellant did not deny having sexual intercourse with AAA in Plaridel. He advanced the "sweetheart theory," however. He claimed that AAA called him "Love" and gave him a handkerchief ^[18] as a token of their love for each other. In return, he gave her a T-shirt, a pair of shorts, and an underwear.^[19]

Appellant went on to claim as follows:

At the time he was staying with AAA's family after he was widowed, she would give hints that she liked him but he ignored them as she is his niece. AAA would always see him in front of Jollibee in Malolos where he was peddling cigarettes.^[20]

On November 4, 1999, AAA went to see him again and told him that she was looking for a job. On his move, they went to Apalit to see a movie following which AAA suggested that they elope. Appellant agreed and they went to the house of his former employer named Jerry in Calumpit, Bulacan where he introduced AAA as his wife and they were allowed to stay overnight.^[21]

In the morning of the following day, November 5, 1999, as AAA wanted to look for a house to rent, they left Calumpit for Plaridel where they rented a house together with another couple.^[22]

The trial court convicted appellant of three counts of simple rape, even if the use of a deadly weapon attended their commission was established, the prosecution having failed to allege the same in each of the Informations.

Thus, the trial court disposed in its Decision of September 27, 2000:

WHEREFORE, all premises considered, this Court finds and so resolves that the prosecution was able to discharge its procedural undertaking. Accordingly, the accused Efren Custodio y Esteban is hereby found GUILTY beyond reasonable doubt of simple RAPE on three counts. Forthwith, in the absence of any mitigating or aggravating circumstances and since the Indeterminate Sentence Law is inapplicable, he is hereby ordered to suffer the penalties of Reclusion Perpetua in all three (3) Criminal Cases No. 333-M-2000, 334-M-2000 and 335-M-2000. In line with recent decisions, he is further condemned to *indemnify [AAA] in the sum of P75,000.00 each of all said three (3) cases and to pay her moral damages in the amounts of P100,000.00 in each of all said three (3) cases.*

With costs against the accused.^[23] (Underscoring in the original; italics supplied)

The records of the cases were forwarded to this Court in view of the Notice of Appeal^[24] filed by appellant. Per *People v. Mateo*,^[25] this Court referred the cases to the Court of Appeals by Resolution of September 29, 2004.^[26]

The appellate court affirmed the factual findings of the trial court. It modified the decision, however, by reducing the amount of civil indemnity in each count, from P75,000 to P50,000, consistent with prevailing jurisprudence. And it likewise reduced the amount of moral damages in each count from P100,000 to P50,000.

The appellate court thus disposed:

WHEREFORE, the appealed judgment is hereby **AFFIRMED with the MODIFICATION** that the adjudged civil indemnity against appellant is reduced from P75,000.00 to P50,000 for each count of rape or a total of P150,000.00. The award for moral damages is reduced from P100,00.00 to P50,000.00 for each count of rape or a total of P150,000.00.^[27] (Emphasis in the original)

After the records of the cases were forwarded to this court following appellant's filing of a Notice of Appeal,^[28] the Court, by Resolution^[29] of March 12, 2007,