

EN BANC

[G.R. No. 167383, September 22, 2008]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
AMADEO TINSAY, ACCUSED-APPELLANT.**

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

Before the Court for review is the Decision^[1] of the Court of Appeals (CA) promulgated on February 9, 2005, the dispositive portion of which reads as follows:

WHEREFORE, premises considered, the assailed Decision dated 28 March 2003, promulgated on 03 April 2003, of the Regional Trial Court of Malolos, Bulacan, Branch 13 in Crim. Case No. 1266-M-00 convicting appellant **AMADEO TINSAY** of qualified rape penalized under Article 266-A, in relation to Article 266-B of the Revised Penal Code, as amended by R.A. No. 8353 and sentencing him to suffer the capital penalty of **DEATH** is **AFFIRMED**, with the **MODIFICATION** that appellant is ordered to pay the victim **AAA**^[2] the amounts of Php75,000.00 for civil indemnity, Php75,000.00 for moral damages and Php25,000.00 for exemplary damages.

In accordance with Section 13, Rule 124 of the Amended Rules to Govern Review of Death Penalty Cases (A.M. No. 00-5-03-SC, effective 15 October 2004, this case is **CERTIFIED** to the Supreme Court for review.

Let the entire record of this case be elevated to the Supreme Court.

SO ORDERED.^[3]

A thorough examination of the records reveals that the CA's narration of facts^[4] is accurate, and thus, reproduced hereunder.

The appellant was charged before the Regional Trial Court, Third Judicial Region, Malolos, Bulacan, in Criminal Case No. 1266-M-2000 with the crime of rape, in an Information dated 17 April 2000 which reads:

The undersigned Asst. Provincial Prosecutor accuses Amadeo Tinsay of the crime of rape, penalized under the provisions of Art. 266-A in relation to Art. 266-B of the Revised Penal Code, as amended by R.A. 8353, committed as follows:

That on or about the 22nd day of January 2000, in the municipality of Malolos, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-

named accused, being the father of the offended party AAA, an 11-year-old-minor, did then and there willfully, unlawfully and feloniously, with lewd designs, have carnal knowledge of said AAA against her will and without her consent.

Contrary to law.

x x x x (Emphasis supplied)

During the arraignment and pre-trial of the case conducted on 05 April 2001, the appellant, assisted by the designated counsel de oficio, Atty. Nicasio Perona, pleaded not guilty to the offense charged.

Trial on the merits ensued.

The prosecution presented three (3) witnesses, namely, BBB, wife of the appellant and mother of the victim; Dr. Ivan Richard A. Viray, Medico-Legal Officer of the Philippine National Police (PNP) Regional Crime Laboratory, Malolos, Bulacan and the victim herself AAA.

The defense presented two witnesses, namely, the appellant himself and Captain Ralph Apilado, appellant's flight instructor at the Omni Aviation in Clark Field, Pampanga.

The prosecution presented BBB as its first witness. She testified that she married the appellant on 23 October 1985, offering in evidence the certified true copy of their Marriage Contract issued by the Office of the Civil Registrar General. She and the appellant have three (3) children and the victim is their second child who was born on 25 September 1988. She presented the certified true copy of the victim's Certificate of Live Birth issued by the Office of the Civil Registrar-General. She testified that the name Amadeo Roxas Tinsay appearing on the Certificate of Live Birth as the father of the victim is the accused in this case. She also identified the appellant in court.^[5]

BBB recalled that on 22 January 2000 she arrived at their house in Malolos coming from her office in Kaunlaran Credit Cooperative in Atlag, Malolos, Bulacan and saw the appellant and the victim went out of their bedroom together. The victim did not immediately tell her what happened. She later learned that the victim was raped by the appellant when the victim's teacher, Mrs. Concepcion Morales, asked her to go to school and there, her daughter told her what happened on 22 January 2000. The victim did not tell her everything that happened but only the words, "Kung ano ang ginagawa sa iyo ng Papa, ginagawa niya sa akin." She talked to the appellant in her office and the latter told her that he did it and that he was sorry and asked for her forgiveness. She did not report it immediately to the police. But on 10 February 2000, after thinking it over, she went to the police station to find out the truth of what happened to her daughter.^[6]

She and her daughter went to a doctor for her daughter's medical examination. She stated that the result of the medical examination

showed that her daughter was raped. Because of the incident, she incurred expenses for transferring to another residence and in going to and from the Department of Social Welfare and Development in the amount of Php30,000.00. She also resigned from her work as a result of the incident. She cried in the witness stand and testified that what happened was very painful to her as a mother; that she did not expect it to happen; that she is the family bread winner as her husband has no job and yet he did it. She cannot sleep and work because of what happened; her daughter could not sleep and always cried and her two other children do not want to get out of the house as they were ashamed; and that her husband did it to her daughter in their bedroom in the house in Balite, Malolos, Bulacan where she and her husband sleep.^[7]

The prosecution's second witness was Dr. Ivan Richard Viray, the medico-legal officer of the PNP Regional Crime Laboratory Office in Malolos, Bulacan who conducted the examination on the victim. x x x He reduced his examination in writing with the conclusion: "Subject is in non-virgin state physically. There are no external signs of application of any form of trauma." He arrived at the conclusion that the victim is in "non-virgin state" based on his findings that: "Hymen: Elastic Fleshy type with the presence of deep healed laceration at 6 & 9 o'clock positions." He explained that deep healed laceration means that the laceration in the hymen is more than a week old; that if the lacerations were less than a week, it would still be fresh or in healing process; that the alleged time and date of the commission of the offense which is, 22 January 2000 at about 11:00 a.m. is compatible with the findings of his physical examination conducted on the victim. He explained that the possible cause of laceration in the hymen of the victim is the insertion of a hard object which may be an erect penis or a bottle or any other hard object.^[8]

The prosecution's third witness is the victim herself AAA. She testified that she was born on 25 September 1988 as shown in her Certificate of Live Birth that was previously marked as Exhibit "A". Her mother is BBB and her father is Amadeo Tinsay whom she identified as the accused in the case and positively identified in open court.^[9]

The victim testified that on 22 January 2000 she was residing in Balite, Malolos, Bulacan and stayed in the house with her father, mother and brothers; that on 22 January 2000, at about 11:00 and 12:00 noon, she was molested by her father, referring to the appellant which happened in the bedroom of her mother and father. At that time, the appellant was carrying a bag and told her that it was given to him by her mother's friend and was intended to be given to her. The appellant removed her shorts, after that her panty and afterwards, her father inserted his penis inside her vagina. The appellant was holding his penis and he would point it to her vagina and insert it to her vagina. When the appellant inserted his penis to her vagina, she was lying face upward on the bed in the room and the appellant was laying face down inserting his penis to her vagina. She was hurt when the appellant was inserting his penis to her vagina and she was trying to move backward but the appellant was

pulling her legs. The appellant told her that it would only take a while. She told the appellant to stop because she did not want anymore after which the appellant stopped and the latter put on her shorts and her panty. The appellant was wearing maong shorts and sando at that time. The appellant removed first his sando then, he removed his shorts and then, his brief. After the appellant put on to [sic] her panty and shorts, she returned to her room. She then, told her cousin, CCC, what happened to her. She also recalled having examined by the PNP Crime Laboratory and having executed a sworn statement before the police which she identified before the trial court. In par. 7 of her sworn statement, she stated that her answer to the question, "Pumasok ba ang ari niya sa ari mo?" was "Hindi po" because she said, "Kasi di eksaktong pasok sa ari ko" and "Di naman pasok na pasok yong ari niya sa ari ko." She stated that she felt pain at that time even though she said, "di naman pasok na pasok," because she said "kasi po pinipilit ipasok pero ayaw ko." When asked how deep the appellant entered his penis to her vagina, she demonstrated with her two fingers a length of about 2 inches. Then, she said she felt "medyo nalungkot po" because of what happened because she still loved her father at that time.^[10]

During her cross-examination, the victim testified that between the hours of 11:00 and 12:00 noon on 22 January 2000, she was at home in their living room; that the appellant and her lola were also at home; that her lola was in the terrace; and that at around 12:30 p.m. on 22 January 2000, she was watching television. On re-direct examination, she testified that while watching television, she was called by appellant to come to the room while her lola was still in the sala; that in the room, she was asked by the appellant to sit beside him.^[11]

x x x x

The defense presented two (2) witnesses, namely, the appellant himself and Captain Ralph Apilado.

Appellant testified that during the alleged commission of the offense, he had no job but that he was training as a student pilot in Aviation Corporation at Clark Field, Pampanga. He presented a pilot logbook showing that he attended the training from October 1999 up to February 2000. On 16 January 2000, he went to Angeles, Pampanga and stayed there up to 02 February 2000. On 22 January 2000, he was at Clark Pampanga but he was not on training and only stayed in his boarding house located at Angeles, Pampanga. In his pilot logbook, there were several entries on various dates but no entry was made on 22 January 2000. The appellant testified that no entry was made because he did not have a scheduled flight on that date. The appellant testified that the probable reason why the private complainant filed a case against him for rape was because of some family problems. These problems pertained to his being unemployed and because he told his wife that he had a girlfriend. He said he has already asked forgiveness from his wife and he was already forgiven. There was also a problem regarding his training as a student pilot because his wife did not approve of his training after she

learned that he had a girlfriend and because it would entail substantial financial expenses.^[12]

During his cross-examination, the appellant said that there were cut leaves in his pilot logbook because there were so many errors in it but he was not the one who cut the leaves. He also confirmed that there was no entry in the logbook pertaining to the date 22 January 2000. He also testified that Angeles City is only 45 minutes away from Balite, Malolos, Bulacan. He stated that the entries in the logbook signified that one is in the barracks and at the same time has a scheduled flight. On 22 January 2000, he was only in the barracks but he had no scheduled flight that is why there was no entry in his logbook for that date.^[13]

The second defense witness was Captain Ralph Apilado who testified that he was the flight instructor of the appellant in Omni Aviation located at Clark Field, Pampanga. On 22 January 2000, he was not at the office because it was his day off and he did not see the appellant. He testified that even if the students are housed in the barracks, they are free to go if they want to and they can go home to visit their family and return again to the barracks.^[14]

x x x x

On 03 April 2003, the Decision dated 28 March 2003 was promulgated by the trial court, finding the appellant guilty beyond reasonable doubt of the crime of rape punished under Article 266-A in relation to Article 266-B of the Revised Penal Code, as amended by R.A. No. 8353, and directing the accused to indemnify the victim in the amount of Php150,000.00 x x x.

The case was elevated to this Court for automatic review in view of the penalty of death imposed on appellant. However, in accordance with the ruling in *People v. Mateo*,^[15] and the amendments made to Sections 3 and 10 of Rule 122, Section 13 of Rule 124, and Section 3 of Rule 125 of the Revised Rules on Criminal Procedure, the Court transferred this case to the CA for intermediate review.

On February 9, 2005, the CA promulgated the herein assailed Decision, affirming the RTC Decision.

The prosecution filed a Supplemental Brief alleging that the CA Decision should be affirmed subject to modification regarding the amount of moral and exemplary damages awarded to the victim by the CA.

Appellant opted not to file a supplemental brief with this Court, but in his appeal brief, he argued that his guilt was not proven beyond reasonable doubt because of inconsistencies in the testimony of AAA and her sworn statement. He contends that the award of indemnity in the amount of P150,000.00 was improper.

The appeal has no merit.

As is the case in most rape proceedings, the crux of the matter revolves around the