

## THIRD DIVISION

[ G.R. No. 181899, November 27, 2008 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROLLY MONTESA Y LUMIRAN, ACCUSED-APPELLANT.**

### DECISION

**CHICO-NAZARIO, J.:**

For review is the Decision of the Court of Appeals in CA-G.R. CR HC No. 00314, dated 22 December 2006,<sup>[1]</sup> affirming with modifications the Decision of the Regional Trial Court (RTC), Branch 61, of Kabankalan City, Negros Occidental, in Criminal Case Nos. 98-2035 and 98-2036,<sup>[2]</sup> finding accused-appellant Rolly Montesa y Lumiran guilty of rape and imposing upon him the supreme penalty of death in each of the cases.

The records of the case generate the following facts:

On 29 December 1997, two separate informations<sup>[3]</sup> were filed with the RTC charging appellant with rape, thus:

In Criminal Case No. 98-2035

That on the **19<sup>th</sup>** day of September, 1997, in the Municipality of XXX, Province of XXX, Philippines, and within the jurisdiction of this Honorable Court, the above-name accused, armed with a bladed weapon, by means of force, violence and intimidation, did then and there, willfully, unlawfully and feloniously have carnal knowledge of and/or sexual intercourse with AAA,<sup>[4]</sup> 12 years old, against her will, and in her own house.

In Criminal Case No. 98-2036

That on the **21<sup>st</sup>** day of September, 1997, in the Municipality of XXX, Province of XXX, Philippines, and within the jurisdiction of this Honorable Court, the above-name accused, by means of force, violence and intimidation, armed with a bladed weapon, did then and there, willfully, unlawfully and feloniously have carnal knowledge of and/or sexual intercourse with AAA, 12 years old, against her will, and in her own house.<sup>[5]</sup>

Subsequently, these cases were consolidated for joint trial. When arraigned on 29 April 1998, appellant, assisted by his counsel *de officio*, pleaded "Not guilty" to the charges.<sup>[6]</sup> Trial on the merits thereafter followed.

The prosecution presented as witnesses AAA, BBB, Dr. Roena C. Abilla (Dr. Abilla), Felicito D. Patricio (Felicito), Police Officer 1 Jose Dennis T. Santes (PO1 Santes), and Pepito Bonilla (Pepito). Their testimonies are summarized as follows:

**AAA**, herein victim, testified that she and her mother, BBB, had been residents of XXX. Their house had two floors with two rooms at the ground floor and four rooms at the second floor. She and BBB occupied one of the rooms on the ground floor while the other room was rented by a certain Monalyn who operated a small eatery thereat. The second floor was leased to several tenants.<sup>[7]</sup>

On 15 September 1997, BBB left the house and went to *Barangay* (Brgy.) Damutan, Hinoba-an, Negros Occidental.

On the evening of 19 September 1997, AAA went out of the house and watched a "Betamax" movie in the house of a certain Emmy. She saw appellant and several other persons also watching it. After the show, she went home arriving therein at around 10:00 p.m. She was alone in the room of their house because BBB was still in Brgy. Damutan. While she was about to sleep, she saw appellant beside her bed. Appellant was naked from the waist down to the feet and armed with a 14-inch jagged knife. She also noticed that the cover of the room's window was removed. Thereupon, appellant took the room's kerosene lamp and blew out the light. Appellant approached her, pointed the knife to her neck, and warned her not to shout. Appellant soaked his penis with his saliva, removed AAA's shorts and panty, and placed himself on top of her. Appellant inserted his penis into her vagina and made a push and pull movement. AAA felt pain in her vagina. She could not shout for help because appellant pointed the knife to her neck and threatened to stab her. She tried to free herself but appellant pinned her down strongly. Later, she felt a fluid in her vagina. Appellant rested for a while beside her. Thereafter, appellant again placed himself on top of her, inserted his penis into her vagina and made a pumping motion. Appellant then stood up, wiped his penis, and warned her not to tell anyone of what happened or he would kill her. Appellant left her and passed through the room's window.<sup>[8]</sup>

On the morning of 20 September 1997, Monalyn confronted AAA and asked if appellant went to her room the night before and touched her private parts. Afraid of appellant's threat to kill her, she replied that appellant merely kissed her.<sup>[9]</sup>

On 21 September 1997, at about 10:00 p.m., AAA was again sleeping alone in the room of their house. Later, appellant entered her room through the room's window. Appellant had no underwear and pants and was armed with a knife. Appellant took the kerosene lamp and blew out the light. She could not shout because appellant pointed the knife to her. Appellant approached her, wet his penis with his saliva, and placed himself on top of her. She resisted but appellant overpowered her. Appellant then inserted his penis into her vagina. She felt pain in her vagina. As appellant stood up, she saw liquid on appellant's penis. Appellant warned her not to tell BBB of what happened or he would kill her. Appellant took her panty and left the room through the window.<sup>[10]</sup>

On the morning of 22 September 1997, AAA took a shower and left the house. She went to the house of her classmate named Maricel and stayed there for six days because she was afraid that appellant would rape her again. On 27 September

1997, BBB arrived at Maricel's house to fetch her. AAA embraced BBB and cried. She told BBB that appellant raped her. Thereafter, she and BBB went to the police to report the incidents and later on to Dr. Abilla for physical examination.<sup>[11]</sup>

AAA declared that she knew appellant because she always saw him then in the canteen of Monalyn. She also stated that appellant stayed in the house of a certain Bong Lupega which was fifty (50) meters away from her house.<sup>[12]</sup>

**BBB**, a widow, narrated that AAA is her fifth and youngest child. Since her four other offspring were all married and had families of their own, only AAA remained in her custody and care. She and AAA were residents of XXX from 1989 to 1998. Their house had two floors with two rooms at the ground floor and four rooms at the second floor. She and AAA occupied one of the rooms on the ground floor while the other room was rented by Monalyn who operated a small canteen thereat. The second floor was leased to several tenants.<sup>[13]</sup>

On 15 September 1997, BBB left the house and went to Brgy. Damutan, Hinoba-an, Negros Occidental. She harvested rice in her farm located in the said *barangay*. Afterwards, she plowed the field of a certain Junior Bonilla which was also situated in the same *barangay* for which she was paid P100.00 a day.<sup>[14]</sup>

On 27 September 1997, BBB went home. Upon arriving at the house, she noticed that AAA was not around. She went out of the house to look for AAA. She found AAA in the house of Maricel. Thereupon, AAA embraced her and cried. AAA told her that she was raped by appellant. She and AAA reported the incidents to the police and lodged a criminal complaint for rape against appellant. The police referred them to Dr. Abilla for AAA's physical examination. Subsequently, Dr. Abilla conducted a physical examination on AAA.<sup>[15]</sup>

BBB averred that she had known appellant because she always saw him eating in the canteen of Monalyn. She also averred that appellant stayed in the house of Bong Lupega which was 50 meters away from her house.<sup>[16]</sup>

**Dr. Abilla**, Municipal Health Officer of Hinoba-an, Negros Occidental, declared that she conducted a physical and vaginal examination on AAA on 27 September 1997 and on 7 October 1997. During the 27 September 1997 examination, she observed that AAA's vagina was protruding and stretched out. She also noted healed hymenal tear in the 6:00 o'clock and 9:00 o'clock positions on AAA's vagina. Further, the fourchette<sup>[17]</sup> was not anymore in an acute angle but already rounded. According to her, the foregoing findings indicated that AAA's vagina was penetrated.<sup>[18]</sup>

With respect to the 7 October 1997 examination, Dr. Abilla disclosed that when she inserted a small-size speculum into AAA's vagina with ease, there were moderate purulent discharges manifested on the vaginal canal. She explained that purulent discharges referred to a yellowish substance or "*na-na*" in layman's term. She concluded that AAA was infected with gonorrhea, a sexually transmitted disease.<sup>[19]</sup> She issued an official medical report on her foregoing findings,<sup>[20]</sup> to wit:

27 September 1997:  
To: Officer-on-Duty

Physical examination of AAA showed signs of entry into the vagina.<sup>[21]</sup>

10 October 1997:

Physical Exam : Findings:

Vaginal Exam : No pubic hair

Labia minora are protruding and stretched out.

Healed hymenal tear at 6 and 9 o'clock position.

Fourchette is rounded, no longer in acute angle.

Speculum Exam: (done on October 7, 1997, 4:00 pm)

A small size speculum was inserted into the vagina with ease and vaginal canal showed moderate purulent discharges.

No hematomas, lacerations, contusions, abrasions, on other parts of the body.

Conclusion : Physical examination shows sign of entry on vagina.

Presence of moderate amount of purulent discharges in the vaginal canal indicates infection, most likely gonorrhea.<sup>[22]</sup>

**SPO1 Santes**, desk officer of the Hinoba-an Police Station, testified that on 27 September 1997, AAA and BBB arrived at the said station and reported the incidents. Thereafter, an information was received by the station that appellant was staying in a house at Tabuk Suba, Brgy. 1, Hinoba-an, Negros Occidental. Upon the order of his superior, SPO1 Santes proceeded to the said place and found appellant. He invited appellant to the station to which the latter acceded. When he and appellant arrived at the station, AAA pointed to appellant as the one who raped her.<sup>[23]</sup>

**Felicito**, a longtime resident and *Sitio* Leader of XXX in the year 1997, recounted that he had known appellant because he always saw him buying something in her daughter's store at XXX; that he frequently saw appellant in the house of BBB; that appellant used to work as a machine operator in Philex Mining Corporation (Philex) located at Brgy. Damutan; that appellant used to sleep in Bong Lupega's house which was around 50 meters away from his house at XXX; that he had known BBB because the latter's house was about 50 meters away from his house; and that during the period of September 1997, he saw appellant in XXX.<sup>[24]</sup>

**Pepito**, a retired member of the Hinoba-an Police Station and resident of XXX, testified that he retired as policeman on 20 November 1998; that he was the Intelligence Division Head of the Hinoba-an Police Station prior to his retirement; that on 27 September 1997, AAA and BBB went to the Hinoba-an Police Station and reported the incidents; that he instructed SPO1 Santes to make a report as regards the incidents; and that AAA pointed to appellant as her rapist.<sup>[25]</sup>

The prosecution also proffered documentary evidence to bolster the testimonies of

its witnesses, to wit: (1) medical certificate of AAA dated 10 October 1997 issued by Dr. Abilla (Exhibit A);<sup>[26]</sup> (2) written report on the physical examination of AAA dated 28 September 1997 signed by Dr. Abilla (Exhibit B);<sup>[27]</sup> (3) sworn statement of BBB (Exhibit C);<sup>[28]</sup> (4) sworn statement of AAA (Exhibit D);<sup>[29]</sup> (5) blotter of the Hinoba-an Police Station regarding the incidents (Exhibit E);<sup>[30]</sup> and (6) criminal complaint for rape against appellant signed by BBB and filed before the Municipal Trial Court of Hinoba-an (Exhibit F).<sup>[31]</sup>

For its part, the defense presented the testimonies of appellant, Randy Katindig (Katindig), and Dr. Eriberto Layda (Dr. Layda) to refute the foregoing accusations. Appellant denied any liability and interposed the defenses of alibi and frame-up.

**Appellant**, a resident of *Barangay 2, Poblacion, Hinoba-an, Negros Occidental*, testified that he was hired by Philex in 1994 as a worker on its site at Brgy. Damutan, Hinoba-an, Negros Occidental. On 15 April 1997, Philex dismissed him for robbery. Thereafter, he frequently went to Basay, Negros Occidental, to solicit help from friends.<sup>[32]</sup>

On 19 September 1997, appellant left his house and went to Basay, arriving there at 10:30 a.m. He met his friend, Katindig, at about 4:20 p.m. Subsequently, he and Katindig proceeded to the house of a certain Polly at Bal-os, Negros Occidental. Polly was the younger brother of appellant's friend and a former co-employee named Junior. Appellant stayed in Polly's house from 19 September 1997 up to 22 September 1997. He never left Polly's house during the said period.<sup>[33]</sup>

Appellant denied knowing AAA and BBB and having stayed in the house of Bong Lupega. He claimed he never went to XXX. Also, AAA and BBB were merely instigated by Junior Bonilla to file the instant cases since the latter was terminated from work in Philex because of him.<sup>[34]</sup>

**Katindig**, a resident of Brgy. 2, Poblacion, Hinoba-an, Negros Occidental, narrated that he came to know appellant in January 1997. On 19 September 1997, Katindig left his residence and went to Basay, arriving there at 4:00 p.m. He proceeded to the house of a certain Diego to meet a certain Major Balodo. He met appellant in Diego's house. Appellant invited him to Polly's house at Bal-os to which he acceded. Upon their arrival at Polly's house, appellant and Polly talked. Subsequently, Katindig left Polly's house and returned to Basay to meet Major Balodo. The former returned to Polly's house that evening and joined the latter and appellant in a drinking spree. Thereafter, the three of them slept in Polly's house at about 9:00 p.m. Katindig woke up the following morning of 20 September 1997 and left Polly's house. He went back to the latter's house at about 5:00 p.m. of the same day and had a drinking session with him and appellant. They all slept in Polly's house that evening.<sup>[35]</sup>

On the morning of 21 September 1997, Katindig left Polly's house and proceeded to Basay. He returned to the latter's house in the afternoon of the same day and talked with him and appellant. They slept in Polly's house that evening. On 22 September 1997, at around 2:00 p.m., he left the house and proceeded to Dumaguete. Later, his wife told him that appellant was arrested for rape. Appellant told him that he was a victim of a frame-up.<sup>[36]</sup>