

## SECOND DIVISION

[ G.R. No. 170567, November 14, 2008 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
CONRADO DIOCADO @ "JUN," ACCUSED-APPELLANT.**

### DECISION

**BRION, J.:**

We review<sup>[1]</sup> in this Decision the decision dated October 25, 2005 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00280<sup>[2]</sup> that affirmed the decision dated August 18, 2004 of the Regional Trial Court (RTC), Branch 44, Masbate City in Criminal Case No. 8775.<sup>[3]</sup> The RTC decision found accused-appellant Conrado Diocado (*Diocado*) alias "Jun" guilty beyond reasonable doubt of the crime of rape, defined and penalized under Article 335 of the Revised Penal Code, and sentenced him to suffer the penalty of *Reclusion Perpetua*; to pay the amount of P50,000.00 as civil indemnity, P50,000.00 for moral damages, P10,000.00 as exemplary damages; and to pay the costs.<sup>[4]</sup>

### BACKGROUND

On April 30, 1998, Diocado was indicted for the crime of rape under the following *Information*<sup>[5]</sup>:

That on or about February 7, 1998, in the afternoon thereof at Sitio Matungao, Brgy. Tugbo, Municipality of Masbate, Province of Masbate, Philippines, within the jurisdiction of this Honorable Court, the above-named accused, with lewd design did then and there willfully, unlawfully, and feloniously had carnal knowledge with AAA, an 11 year old girl, against her will.

Contrary to law.

Diocado, assisted by counsel *de officio*, pleaded not guilty to the charge. In the trial on the merits that ensued, the prosecution presented the testimonies of: (1) Dr. Artemio Capellan (*Dr. Capellan*), the Municipal Health Officer of Masbate; (2) private complainant AAA;<sup>[6]</sup> and (3) BBB, the private complainant's older sister. The defense presented: (1) Diocado himself; (2) CCC (his wife and the mother of AAA); (3) Maria Manlapaz; and (4) Joey Cantojos.

The RTC summarized the prosecution's version of events based on the testimony of AAA, as follows:

... it appears that at about 5:00 o'clock in the afternoon of February 7, 1998, [AAA] was in their house in Matungao, Tugbo, Masbate together with Conrado, the live-in partner of her mother [CCC], who was then

frying fish, felt urinating, so she went to the bathroom to take a pee. When she was about to go out from the bathroom, she was barred from doing so by Conrado who, armed with a knife, had followed her inside. Threatening her with the knife, Conrado proceeded to undress her by removing her shorts and panty after which she was told to bend forward. While on that bending position, Conrado touched and fingered her vagina, then inserted his penis therein. AAA felt pain in her vagina and could just only cry. She could not move away from Conrado because she was being held by the same at her waist. Neither could she shout because Conrado would sometimes cover her mouth with his hand or threaten her with the knife. She, however, noticed that, after a while a white fluid came out from the penis of Conrado. When Conrado was done with her, he went out of the bathroom and proceeded upstairs. She, in turn, put on her clothes, went back to the kitchen and still crying, continued frying fish...

AAA further testified on cross-examination that she could not shout for help during the sexual assault because she was afraid of Diocado who was holding a knife.<sup>[7]</sup>

The physical and medical examination conducted by Dr. Capellan yielded the following findings: <sup>[8]</sup>

EXTERNAL FINDINGS:

1. Abrasion linear in shape posterior location right/left thigh.
2. Lacerated wound right hypochondrium area.

INTERNAL FINDINGS:

1. Old healed laceration 9:00 & 12:00 o'clock in position in the face of the clock.

x            x            x

CONCLUSION:

Physical virginity lost.

According to Dr. Capellan, the old healed lacerations were due to the rupture of AAA's hymen caused by the penetration of a penis.<sup>[9]</sup> Dr. Capellan further testified that the lacerations in the private complainant's hymen were already healed because AAA had an elastic type of hymen (*i.e.*, the type that easily heals).<sup>[10]</sup> Although the injury to the private complainant's hymen might have been caused by carabao, horseback, or bicycle riding, Dr. Capellan considered the external findings conducted on AAA; they showed that the abrasion and lacerated wounds were caused by a sharp object like fingernails or a stone that gave the impression of sexual abuse.<sup>[11]</sup>

BBB testified that she confronted CCC with what had happened to AAA, but CCC insisted that it was not true.<sup>[12]</sup> She was later informed that AAA had been placed

under the custody of the Department of Social Welfare and Development.<sup>[13]</sup>

Aside from testimonial evidence, the prosecution submitted documentary evidence consisting of the Medical Certificate executed by Dr. Capellan (Exhibit "A" with submarkings); the affidavit of AAA (Exhibit "B" with submarkings); and the complaint signed by AAA (Exhibit "C" with submarkings).

Diocado relied on the defenses of *denial* and *alibi* adduced through testimonial evidence, and presented a different version of events. The RTC summarized Diocado's story, as follows:

... He declared that in the afternoon of February 7, 1998, he was at the Circle E Lodging House and Restaurant where he works as a carpenter with a 7:00 o'clock in the morning until 5:00 o'clock in the afternoon work schedule. On that particular day, being a Saturday and a payday, he was not able to go home at 5:00 o'clock because he waited for the manager for his salary. At around 6:00 p.m. the manager arrived and after receiving his salary, he went home. When he arrived home at past 6 in the evening, his wife CCC, who was then tending a sari-sari store, was there, together with their children DDD, EEE and FFF. x x x They took their supper at around 7:00 o'clock in the evening and after resting for a while, Conrado, together with his wife and the three children, went next door to the house of his parents to watch TV. At 9 o'clock they went home.

Conrado further testified that on the night in question, his step-daughter AAA (the private offended party) was not at their house as she was then at the house of Shirlyn Ramirez<sup>[14]</sup> to do some laundry work, and it was only on February 9, 1998 that she returned home because she was fetched by her older brother. x x x

CCC corroborated Diocado's testimony and narrated that she was at their house at around 5:00 p.m. of February 7, 1998, taking care of her children with Diocado. <sup>[15]</sup> AAA was also there but she (AAA) later went out without permission; she only came back at around 8:00 p.m.<sup>[16]</sup> CCC narrated that she heard no complaint from AAA that night or the day after;<sup>[17]</sup> AAA also never gave her any reason for leaving home that night.<sup>[18]</sup>

On cross-examination, CCC admitted that the reason AAA left home was because she (CCC) did not believe AAA's story that Diocado sexually abused her.<sup>[19]</sup> Subsequently recalled to the witness stand (six months later), she varied her testimony, this time declaring that at 5:00 p.m. of February 7, 1998, they had a lady visitor (whose name she did not know) in their house waiting for Diocado who was still at work;<sup>[20]</sup> and it was only her three children who watched the television that night while she and Diocado rested.<sup>[21]</sup> She again insisted that AAA's accusation against Diocado was not true and claimed that their bathroom was not enclosed by a curtain but had a door without a lock.<sup>[22]</sup> She maintained that she did not know of any motive why AAA would falsely accuse Diocado.<sup>[23]</sup>

The other defense witness, Maria Manlapaz, testified that at 5:00 p.m. of February

7, 1998, she went to the house of CCC (who was alone) to collect money from her but was told to wait for Diocado.<sup>[24]</sup> At 6:30 p.m., Diocado arrived and gave her P100.00 as payment.<sup>[25]</sup> On cross-examination, she admitted that she came to know CCC in 1998 at the Bureau of Jail and Management Penology (BJMP) when her husband and Diocado were both in jail.<sup>[26]</sup>

Joey Cantojos, a roomboy who also acted as a paymaster at Circle E Lodge and Restaurant, confirmed that Diocado was there at around 5:00 p.m. of February 7, 1998; and that Diocado went home at around 6:30 p.m. after receiving his salary.<sup>[27]</sup>

The RTC's decision of August 18, 2004 gave greater weight to the prosecution's evidence and rejected Diocado's defenses of *denial* and *alibi*. It believed the testimony of AAA which it described as "straightforward, and unshaken" despite her tender years and the rigorous cross-examination she underwent. In arriving at its conclusion, the RTC also considered that AAA's testimony was compatible with the physical evidence confirming the fact and the manner of her sexual abuse.

In contrast, the court discredited the accused-appellant's defenses of *denial* and *alibi* and took note of the contradictions in the testimonies of defense witnesses CCC and Maria Manlapaz. The trial court also found that the testimony of Joey Cantojos did not disprove Diocado's guilt as it was not physically impossible for him to be at the scene of the crime. Similarly, the RTC debunked -- for lack of supporting evidence -- Diocado's claim that AAA had improper motive to falsely accuse and testify against him.

Diocado appealed his conviction to the CA, but the appellate court affirmed the RTC's decision. He now supports the present appeal with the argument that the RTC and CA committed reversible error when they anchored his conviction on AAA's incredible testimony.

### **THE ASSIGNMENT OF ERRORS**

#### I.

THE LOWER COURT GRAVELY ERRED IN CONVICTING DIOCADO BASED SOLELY ON THE INCREDIBLE TESTIMONY OF PRIVATE COMPLAINANT.

#### II.

THE LOWER COURT GRAVELY ERRED IN FINDING DIOCADO GUILTY BEYOND REASONBALE DOUBT [OF] THE CRIME OF RAPE.

### **OUR RULING**

We **DENY** the appeal and affirm Diocado's conviction.

*First*, we have held in a long line of cases that the findings of the trial court on the credibility of witnesses and of their testimonies are accorded great respect.<sup>[28]</sup> It is the trial judge who sees the behavior and demeanor of the witnesses in court, their possession or lack of intelligence, as well as their understanding of the obligation of

an oath.<sup>[29]</sup> The trial court's evaluation or assessment acquires greater significance in rape cases because of the nature of the offense; oftentimes, the only evidence available is the victim's testimony.<sup>[30]</sup>

Our own independent examination of the records discloses no compelling reason to disturb the findings of the RTC, particularly its view that the testimony of AAA was straightforward and unshaken despite her tender years as she narrated the sexual abuse she suffered in the hands of Diocado. We thus gave great weight to her testimony on direct examination on October 14, 1999 when she testified:<sup>[31]</sup>

Q Please do so?

A After urinating, my stepfather entered the bathroom armed with a knife threatening me not to go out.

Q What else did the accused do?

A After threatening me with his knife, he undressed me.

x x  
x

Q What part of your clothing was undressed by the accused?

A My short and panty.

x x  
x

Q After that, what happened next?

A I was made to bend down (which means in the local dialect "towad").

Q Can you make it clear, Witness, can you demonstrate in what way you were required to bend your body or towad?

A I was made to bend down (witness demonstrating by bending her body with her head down with her buttocks up).

Q While in that position, what did the accused do if there was any?

A First, he fingered me.

Q What do you mean by you were fingered?

A He fingered my vulva.

Q After your vulva was fingered by the accused, what happened next?

A He inserted his penis into my vagina.

Q Did the penis of the accused able to penetrate your vagina?

A Yes, sir.

She remained steadfast in this narration and her identification of Diocado as the perpetrator despite the rigorous cross-examination she underwent.<sup>[32]</sup> Her credibility was strengthened when she cried at certain points of her testimony as