595 Phil. 1232

THIRD DIVISION

[G.R. No. 182924, December 24, 2008]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSE PEREZ @ DALEGDEG, ACCUSED-APPELLANT.

D E C I S I O N

CHICO-NAZARIO, J.:

For review is the decision[1] of the Court of Appeals in CA-G.R. CR-H.C. No. 02235 dated 26 November 2007 which affirmed with modifications the decision[2] of the Regional Trial Court (RTC) of Palawan and Puerto Princesa City, Branch 50, in Criminal Case No. 15685, finding appellant Jose Perez @ Dalegdeg guilty of statutory rape committed against AAA.[3] The Court of Appeals reduced the death penalty imposed by the trial court to *reclusion perpetua*, and, in addition to the grant of civil indemnity and moral damages, awarded exemplary damages.

On 18 January 2000, an information was filed before the RTC of Palawan and Puerto Princesa City charging appellant with statutory rape. The accusatory portion thereof reads:

> That on or about the 19th day of September, 1999 at around 9:00 o'clock in the evening, at *Barangay* XXX, Municipality of XXX, Province of Palawan, Philippines, and within the jurisdiction of this Honorable Court, the said accused with lewd design and by the use of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with one, AAA, a minor of six (6) years old, against her will and consent, to her damage and prejudice.[4]

A warrant of arrest was issued against appellant who was arrested and detained, with no bail recommended, at the Provincial Jail of Puerto Princesa City.[5]

When arraigned on 5 June 2000, appellant, with the assistance of counsel *de oficio*, pleaded "not guilty" to the charge.[6]

During the pre-trial conference held on 6 September 2000, appellant tried to plea bargain by manifesting that he was willing to enter a plea of guilty to the lesser offense of Acts of Lasciviousness to which the public prosecutor, upon conferring with the offended party, refused to consent. At said pre-trial conference, appellant likewise admitted the following: (1) that the victim was a six (6)-year-old minor; (2) that the victim was from *Barangay* XXX, Municipality of XXX; and (3) that on September 19, 1999, accused Jose Perez was in *Barangay* XXX, Municipality of XXX. [7]

The prosecution presented four witnesses, namely: BBB,[8] the victim's mother; the

victim AAA;[9] CCC,[10] the victim's father; Dr. Jerry Gundayao,[11] Municipal Health Officer, Rural Health Clinic of XXX, Palawan; and psychologist Shiela Chan.[12] Their collective testimonies reveal:

On September 19, 1999, at around 8:00 p.m., CCC, together with his children DDD, EEE and six-year-old AAA,[13] was at the house of Florencio Bumanlag at *Barangay* XXX, Municipality of XXX, Palawan, watching a movie. At said place, CCC and his two boys, DDD and EEE, were seated in the middle row while AAA was at the front part of the movie house. When the movie ended at around 9:00 p.m., CCC, along with DDD and EEE, went out of the movie house. Noticing that AAA was not with them, CCC instructed his eldest son, DDD, to go back inside and fetch her. As DDD went back, he chanced upon AAA already going out. While DDD and AAA were on their way out of the movie house, CCC noticed AAA crying. He asked AAA what happened, and she told him that appellant hit her on her right eye with a stone and punched her on the abdomen. They proceeded home.

Upon arriving at their house at around 10:00 p.m., BBB, AAA's mother who was taking care of her infant child, immediately noticed AAA crying. After learning from her husband what happened to their daughter, BBB examined AAA's injuries and also noticed that AAA's private part was bleeding. She simply cleaned up AAA and changed her clothes. Thereafter, she asked AAA why her vagina was bleeding, AAA did not answer and began trembling. She told her daughter to sleep and rest.

At around 3:00 a.m. of the next day, AAA woke up and told BBB that she wanted to urinate. BBB told AAA to just continue sleeping since the wounds in her vagina were still fresh. AAA started crying claiming that her vagina was not wounded. After she stopped crying, AAA revealed to BBB what really happened to her. AAA told her that appellant struck her eye with a stone and then punched her stomach. Appellant then brought her at the back of the house of one Oring Ragote where appellant inserted his finger into her vagina followed by his sex organ.[14] While appellant was inserting his organ into AAA's vagina, she lost consciousness because of the pain.

That same morning, after hearing what befell their daughter, BBB accompanied AAA to the *Barangay* Office at XXX, XXX, Palawan and reported the matter to the *Barangay* Captain. She was instructed to have AAA medically examined. Heeding the advice, AAA, this time accompanied by CCC, proceeded to the Health Center in *Barangay* Poblacion, XXX, Palawan where he requested AAA to be examined.[15] Dr. Gundayao conducted the examination and found that AAA had a hematoma and abrasion in the right eye, and contusion on her right dorsal thigh and lower back; her vulva also had contusions and swelling; the *labia majora* had swelling and hematoma and she had fresh hymenal lacerations at 6:00 and 9:00 o'clock positions.[16] Based on his findings, he concluded that AAA had indeed been sexually abused.

After the examination, AAA and CCC proceeded to the XXX Police Station where they executed their affidavits and filed charges against appellant.[17]

A year after the incident, AAA was brought to a psychologist to be examined. Sheila Chan diagnosed AAA to be suffering from Post Traumatic Stress Disorder. Per Psychological Report dated 3 October 2000, AAA was assessed to have "moderate

difficulty in social relationships and symptoms of trauma are expressed through nightmares, dissociation, and conflict with parents and siblings."[18]

On 28 May 2001, the prosecution formally offered[19] its documentary evidence consisting of Exhibits A to F, with sub-markings, to which the defense filed its comment.[20] The trial court admitted all the exhibits on 27 June 2001.

For the defense, appellant and his father, Leonardo Perez, took the stand.

Jose Perez testified that he lives in *Barangay* Malaud in the small island of Buenavista, in Coron, Palawan. To go to *Baragay* XXX, where his relatives lived and where he delivered fish, he sometimes rode his brother's pump boat. On September 19, 1999, he went to *Barangay* XXX to attend the birthday celebration of his friend, but which he was not able to. He returned to *Baragay* Malaud at about 5:00 o'clock in the afternoon upon the prodding of his brother who was in a hurry to set out to sea and fish.

Appellant denied raping AAA, claiming that he was at home with his parents when the alleged rape was committed. He disclosed that he knew how to operate a pump boat and that he used his brother's pump boat in going to and from *Barangays* Malaud and XXX. He said he had no knowledge of any reason or motive why AAA charged him with rape.

Leonardo Perez testified that on September 19, 1999, he, together with his wife and son, the appellant, watched a movie at the house of Florencio Bumanlag. He saw CCC and his children watching the film. Just before the show started, he saw CCC and his daughter, AAA, go out of the movie house. Later, he noticed that his son Jose Perez was carrying AAA and handed her over to CCC. He claimed that no untoward incident happened to AAA or to any of the people at the film showing.

In its decision dated 2 September 2005, the trial court convicted appellant of statutory rape and imposed on him the capital punishment. The dispositive portion of the decision reads:

> WHEREFORE, PREMISES CONSIDERED, the accused JOSE PEREZ ALIAS DALEGDIG is hereby sentenced to suffer the extreme penalty of DEATH. He is also ordered to pay the victim AAA the sum of P75,000.00 as civil indemnity *ex delicto* which is mandatory upon the finding of the fact of rape; and P75,000.00 as moral damages, even without need of proof since it is assumed that the victim has suffered moral injuries.
>
> Further, accused is ordered to pay the cost of suit.[21]

The trial court was convinced that AAA was raped by appellant on that fateful night of 19 September 1999. It accorded credence to the testimony of the victim who, at seven years old, testified in a straightforward and credible manner. She positively identified appellant as the one who committed the dastardly act to her. It found that it was inconceivable for the victim, who was six years old when the sexual assault was perpetrated, to fabricate the charge of defloration and undergo the medical examination of her private parts, subject herself to public trial and tarnish her family's honor and reputation, unless she was motivated by a potent desire to seek justice for the wrong committed against her. The victim's testimony was further

supported by the findings of the Dr. Jerry Gundayao who, upon genital examination, found lacerations in her hymen at the 6:00 o'clock and the 4:00 o'clock positions. Consistent with his findings, Dr. Gundayao concluded that AAA had lost her virginity. In addition, the trial court agreed with the findings of psychologist Shiela Chan that the victim's behavior after the incident was compatible with the behavior of a child subjected to abuse.

The trial court brushed aside appellant's defenses of denial and alibi. It said that the defenses of appellant had conflicting versions. Appellant's claim that he was not at the crime scene at the time when the rape was committed was contradicted by his own father, who said that he was there and saw him handing AAA over to her father CCC. The trial court added that since the crime scene, according to appellant, was only an hour away by boat, and that appellant had access to a pump boat which he knew how to operate, it was not impossible for him to be at the *locus criminis* during the time in question. Inherently weak, appellant's denial must similarly fail in light of his identification by AAA.

The death penalty having been imposed, the trial court forwarded the records of the case to the Supreme Court for automatic review pursuant to Section 10, Rule 122 of the 2000 Rules of Criminal Procedure. However, pursuant to Our ruling in *People v. Mateo*,[22] the case was transferred to the Court of Appeals for appropriate action and disposition.[23]

On 26 November 2007, the Court of Appeals affirmed appellant's conviction but modified the decision of the trial court by reducing the penalty imposed from capital punishment to *reclusion perpetua*, and by awarding exemplary damages. The decretal portion of the decision reads:

> WHEREFORE, the DECISION DATED SEPTEMBER 2, 2005 is AFFIRMED with the following MODIFICATIONS:
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> 1. The death penalty imposed is reduced to RECLUSION PERPETUA pursuant to Republic Act 9346 without eligibility for parole under the Indeterminate Sentence Law.
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> 2. The accused is ORDERED to pay AAA the amount of P50,000.00 as exemplary damages, in addition to the civil indemnity of P75,000.00 and moral damages of P75,000.00 already imposed.
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> Costs of suit to be paid by the accused.[24]

On 4 January 2008, appellant filed a Notice of Appeal.[25] With the Notice of Appeal having been timely filed, the Court of Appeals gave due course thereto and directed the elevation of the records of the case to this Court for automatic review.[26] Thereafter, in our resolution dated 21 July 2008, we noted the elevation of the records, accepted the appeal and notified the parties that they may file their respective supplemental briefs, if they so desired, within thirty (30) days from notice.[27] The parties opted not to file a supplemental brief on the ground they had fully argued their positions in their respective briefs.[28]

Appellant makes a lone assignment of error:

> THE COURT A QUO ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIME OF RAPE DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

In trying to exonerate himself, appellant advances the following arguments, to wit: (1) the truth cannot be determined from the testimony of AAA because the same was made up and coached. The prosecutor was practically suggesting to AAA how the latter should answer. Although leading questions may be asked on direct examination, especially when the witness is a child, the prosecutor should not put words in the mouth of the witness because a young child is open to ideas which, if persistently rammed into her mind, will appear real to her; (2) no eyewitnesses were presented to pinpoint the appellant as the perpetrator of the crime; (3) nobody in the movie house noticed anything untoward happen to AAA or hear AAA cry or make any sound to show that she was being molested or attacked; (4) the public health officer did not say that the fresh hymenal injuries on AAA were compatible with rape; and (5) no seminal fluids were found in AAA's vaginal area.

To determine the innocence or guilt of the accused in rape cases, the courts are guided by three well-entrenched principles: (1) an accusation of rape can be made with facility and while the accusation is difficult to prove, it is even more difficult for the accused, though innocent, to disprove; (2) considering that in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense.[29]

After examining the testimony of the AAA, we find that it was neither made up nor coached. The questions propounded to AAA were leading. A question that suggests to the witness the answer, which the examining party wants, is a leading question. As a rule, leading questions are not allowed. However, the rules provide for exceptions when the witness is a child of tender years, as it is usually difficult for such child to state facts without prompting or suggestion. Leading questions are necessary to coax the truth out of their reluctant lips.[30]

Section 10, Rule 132 of the Rules of Court provides:

> **SEC. 10. Leading and misleading questions.** - A question which suggests to the witness the answer which the examining party desires is a leading question. It is not allowed, except:
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> x x x x
>
> (c) When there is difficulty in getting direct and intelligible answers from a witness who is ignorant, or a child of tender years, or is of feeble mind, or a deaf mute.

In the case at bar, the trial court was thus justified in allowing leading questions to AAA, as she was merely seven years old when and was not yet going to school when she testified. As further explained in *People v. Daganio*[31]:

> The trend in procedural law is to give wide latitude to the courts in exercising control over the questioning of a child witness. The reasons