

EN BANC

[G.R. NO. 174277, February 08, 2007]

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. SAMUEL DIUNSAY-JALANDONI, APPELLANT.

DECISION

YNARES-SANTIAGO, J.:

Before us for review is the June 13, 2006 Decision^[1] of the Court of Appeals in CA-G.R. CR-H.C. No. 01002, which affirmed with modification the March 15, 2005 Decision^[2] of the Regional Trial Court of Quezon City, Branch 86, in Criminal Case No. Q-00-91317, finding appellant Samuel Diunsay-Jalandoni guilty of qualified rape; sentencing him to death; and, ordering him to indemnify the victim in the sum of P75,000.00 as civil indemnity and P50,000.00 as moral damages, and to pay the costs.

Appellant was charged with Rape in an Information^[3] dated April 3, 2000 which reads:

That on or about the 31st day of March 2000 in Quezon City, Philippines, the above-named accused with force and intimidation did then and there wilfully, unlawfully and feloniously commit an act of sexual assault upon the person of AAA a retardate by then and there dragging said complainant inside the guard out post located inside xxx Subdivision xxx, this city by removing her shorts and inserting his penis inside her vagina and thereafter had carnal knowledge of her against her will and consent.

Upon arraignment, appellant pleaded not guilty, after which, trial on the merits ensued.

The prosecution presented six (6) witnesses, namely: (1) AAA, the private complainant, (2) BBB, mother of private complainant, (3) Wilfredo Aganon, a construction worker, (4) Chris Pastor, Aganon's co-worker, (5) Dr. Ma. Cristina Morelos, a psychiatrist, and (6) Nimia de Guzman, a psychologist.

The evidence for the prosecution tends to show that on March 31, 2000 at about 10 o'clock in the morning, Wilfredo Aganon and Chris Pastor, both construction workers, were passing by x x x Subdivision in x x x, Quezon City on the way to their jobsite. When they came across a guard outpost, they noticed appellant, an ice cream vendor, pushing AAA on the floor of the outpost and in the act of unzipping his pants. From a distance of about 10 meters, Pastor said to appellant, "Hoy, bawal yan, bitay ang aabutin mo diyan." However, the two did not intervene any further and proceeded to walk towards their jobsite.

AAA testified that after appellant pushed her into the outpost and forcibly laid her on

its floor, appellant held her thighs and punched her stomach. He ordered her to keep silent, otherwise, he would maul and kill her. Thereafter, he unzipped his pants and removed his briefs, and undressed her. He then placed himself on top of her, and succeeded in inserting his penis into her vagina.

Meanwhile, Aganon and Pastor had not traveled far when they heard AAA shout, "Tama na po, tama na po, ayaw ko na." Upon hearing AAA's cry, Aganon and Pastor went back to the guard outpost. Before they could reach the outpost, they saw appellant immediately stand up and ring his ice cream bell while AAA pulled up her short pants. Aganon and Pastor then reported the incident to the subdivision guards and homeowners. They brought appellant to the Barangay Hall and thereafter turned him over to the x x x Police Station where he was detained pending the filing of formal charges against him.

After the rape incident, BBB asked her daughter about the surrounding circumstances leading thereto. She found out that this was not the first time that appellant had raped her daughter and that appellant had previously threatened AAA not to reveal to anyone what he had done to her, otherwise, he would harm her.

Dr. Ma. Cristina Morelos, a psychiatrist, and Nimia C. De Guzman, a psychologist, both from the National Center for Mental Health (NCMH), testified on the mental capacity of AAA. Psychological tests showed that AAA's current mental capacity was at a severe level of mental retardation with the mental age of a four-year old although at the time of the commission of the rape, AAA was already 21 years old.

She had a very limited attention span and concentration. She was also easily cajoled and pleased, and responded with unthinking eagerness to do anything requested of her as long as her needs were satisfied. During her testimony, De Guzman also noted that when she interviewed AAA, the latter answered spontaneously and narrated vividly how she was raped by appellant. She pointed out that a person with the mental age of a four-year old could not fabricate a story; and relates events as he or she experiences them. Neither could such a person be coached on the witness stand because of his or her limited attention span.

The defense presented the testimonies of Rosauo Gonzales and appellant himself.

Gonzales was presented as a hostile witness it appearing that he was listed as a prosecution witness but was not presented by the prosecution. He testified that on March 31, 2000, he was the officer on duty in the Barangay Hall located at x x x, Quezon City; that at around one o'clock in the afternoon, a certain Chris Pastor, together with several others, went to the Barangay Hall to turnover appellant; that he was told that a crime was committed in the guard outpost and Pastor was a witness to its commission; that appellant was subsequently turned over to the x x x Police Station.

Appellant denied the charges against him. He claimed that he was selling ice cream at x x x Subdivision in x x x, Quezon City, when AAA approached his ice cream cart to buy ice cream. He was not feeling well so he sat down to rest on the guard outpost. He claimed that AAA was "makulit" and kept on hitting him ("binubunggo bunggo") while he was sitting on the floor of the outpost. AAA held him by the shoulders so he stood up and pushed her. When AAA fell on the floor of the outpost, she was shocked. He wanted to help her stand up but she shouted. He was about to leave the place when Pastor and Aganon approached him and asked, "What did

you do with the girl?" to which he replied, "Wait a moment, how could I do that thing that you are accusing me at this time and place." He was then brought to the Barangay Hall and placed in the detention cell. Thereafter, at around one o'clock in the afternoon, he was brought to the Police Station and was placed inside the detention cell without first being interrogated.

On March 15, 2005, the trial court rendered its Decision convicting appellant of qualified rape. It ruled that aside from the use of force, threat or intimidation and the fact that the victim was a mental retardate, the rape was attended with the special qualifying circumstance under Article 266-B(10)^[4] of the Revised Penal Code (RPC), as amended by Republic Act (R.A.) No. 8353, because appellant knew of AAA's mental disability at the time of the commission of the crime as shown by the fact that appellant called AAA "makulit" and "abnormal." Thus, it imposed the supreme penalty of death and ordered him to pay damages:

WHEREFORE, premises considered judgment is hereby rendered finding the accused Samuel Diunsay-Jalandoni guilty beyond reasonable doubt of the crime of rape committed against AAA and hereby sentences him to suffer the penalty of death, and to indemnify the private complainant the amount of P50,000.00 as civil indemnity and P50,000.00 as moral damages, plus costs.^[5]

Conformably with our ruling in *People v. Mateo*,^[6] the records of this case were forwarded to the Court of Appeals for review. On June 13, 2006, the Court of Appeals rendered its assailed Decision affirming appellant's conviction and increasing the amount of civil indemnity from P50,000.00 to P75,000.00:

WHEREFORE, the appealed DECISION is hereby AFFIRMED with MODIFICATION. Accused-appellant Samuel Diunsay-Jalandoni is hereby sentenced to suffer the penalty of death. He is also ordered to indemnify AAA the amount of P75,000.00 as civil indemnity and P50,000.00 as moral damages.

In his *Brief*,^[7] appellant contends that it was impossible for him to have committed the crime because it was done in broad daylight, along a subdivision street and within the public's view. He claims that it is inconceivable for him to have committed such dastardly acts in the guard outpost and in such manner and time, and that even a hardened criminal is not indiscriminate in his actions.

We are not persuaded.

We note that the pictures of the guard outpost, as shown by the pictures presented in evidence,^[8] had an opening and three side walls which were about waist high. The walls of the outpost were high enough to conceal the crime taking place on the floor thereof. Thus, there is no merit in appellant's contention that he could not have raped AAA inside the guard outpost because the place was in plain view of passersby. Besides, during the commission of the crime, no other person was traversing the street where the rape took place, aside from Aganon and Pastor.

As we have often ruled, lust is not a respecter of time and place. Rape can be committed even in places where people congregate, in parks, along the roadside, within school premises, inside a house or where there are other occupants, and

even in the same room where there are other members of the family who are sleeping.^[9] Indeed, when the bestial passion of man is aroused, rape could be committed anywhere. We find, therefore, the commission of the rape on the floor of the guard outpost to be neither impossible nor inconceivable.

Appellant asserts that the prosecution failed to establish the fact of commission of the alleged rape because it failed to present the doctor who conducted the medico-legal examination of AAA.

The contention lacks merit.

The records show that after the rape incident, BBB brought AAA to the Philippine National Police Crime Laboratory in Camp Crame, Quezon City to undergo a medical examination. The *Initial Medico-Legal Report*^[10] prepared by Dr. James M. Beljira showed the presence of "deep healed laceration at 4 o'clock and shallow healed laceration at 9 o'clock positions," and was "negative for spermatozoa." The report concluded that AAA is in a "non-virgin state physically" and that there are "no external signs of application of any form of physical trauma." However, for reasons not borne by the records, the prosecution failed to present Dr. Beljira to authenticate and affirm the contents of this report.

However, this omission is not fatal. In a long line of cases, we have ruled that a medical examination is not essential in the prosecution of a rape case because it is merely corroborative in character.^[11] Further, the absence of external signs of violence does not negate the commission of rape. Nor is the absence of spermatozoa material in the prosecution of a rape case. A freshly broken hymen is, likewise, not an essential element of rape, and healed lacerations do not negate rape because full penetration is not necessary to consummate rape. Penetration of the penis by entry into the labia of the pudendum of the vagina, even without rupture or laceration of the hymen, is enough to justify a conviction for rape.^[12]

What matters greatly is the clear, unequivocal and credible testimony of the victim.^[13] To be sure, an accused may be convicted on the basis of the lone, uncorroborated testimony of the rape victim, provided that her testimony is clear, convincing and otherwise consistent with human nature. In the instant case, we find AAA's unflinching testimony, which related the details of her traumatic experience, coupled with the corroborating testimonies of Aganon and Pastor, who saw appellant with AAA under incriminating circumstances shortly before and soon after the rape incident, to be sufficient for conviction of rape. Pertinent portions of AAA's testimony sufficiently described her horrible ordeal thusly:

Q. Did [appellant] approach you on that particular day [March 31, 2000]?

A. He approached me, sir, then he undressed me. My shorts was removed.

Q. Where did this undressing take place?

A. At the guardhouse. He told me to lie down, then he placed himself on top of me.

Q. When he undressed you, what happened next?