

## THIRD DIVISION

[ G.R. NO. 175316, March 28, 2007 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ROGER DURANO,  
APPELLANT.**

**YNARES-SANTIAGO, J.:**

Before us for review is the Decision<sup>[1]</sup> dated April 28, 2006 of the Court of Appeals in CA-G.R. CR.-H.C. No. 00204-MIN affirming the Judgment<sup>[2]</sup> rendered by Branch 17 of the Regional Trial Court of Davao City convicting the appellant of two counts of rape.

On July 9, 1999, appellant was charged with four counts of rape and one count of robbery<sup>[3]</sup> docketed as Crim. Case Nos. 43505-99 to 43509-99. He was acquitted of two counts of rape in Criminal Case Nos. 43507-99 and 43508-99 for insufficiency of evidence, and of robbery in Crim. Case No. 43509-99. However, he was convicted of two counts of rape in Criminal Case Nos. 43505-99 and 43506-99.

The Information in Criminal Case No. 43505-99 reads as follows:

The undersigned Prosecutor, at the instance of the complainant, AAA, whose affidavit is hereto attached as Annex "A" and made an integral part hereof, accuses the above-named accused of the crime of RAPE under Article 266-A, par. 1 (a) of the Revised Penal Code in relation to Republic Act 8353, committed as follows:

That on or about April 13, 1999, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused conspiring and confederating with each other, by force, threat and intimidation, with Roger N. Durano, as principal by direct participation, did then and there, wilfully, unlawfully and feloniously have sexual intercourse with AAA, against her will.

CONTRARY TO LAW.<sup>[4]</sup>

while the Information in Criminal Case No. 43506-99 states:

The undersigned Prosecutor, at the instance of the complainant, AAA, whose affidavit is hereto attached as Annex "A" and made an integral part hereof, accuses the above-named accused of the crime of RAPE under Article 266-A, par. 1 (a) of the Revised Penal Code in relation to Republic Act 8353, committed as follows:

That on or about April 13, 1999, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused conspiring and confederating with each other, by force, threat and

intimidation, with Roger N. Durano, as principal by direct participation, did then and there, wilfully, unlawfully and feloniously have sexual intercourse with AAA, against her will.

CONTRARY TO LAW.<sup>[5]</sup>

Appellant pleaded not guilty to both charges.

The facts as summarized by the Solicitor General:

Private complainant is a working student who stays at the convent of the BBB Sisters at Ulas, Davao City (TSN, p. 4, May 10, 2000).

At 3:45 in the afternoon of April 13, 1999, private complainant left the convent and proceeded to Fuji Photograph Center located at San Pedro Street, Davao City for the copying of some pictures. Since the process would take an hour, she decided to watch a movie at Queens Theater (TSN, p. 9, May 10, 2000).

After leaving the movie theater and while she was nearing a gasoline station along Bonifacio Street, private complainant noticed that appellant was following her. She continued walking but she was surprised to see that appellant was already beside her. (TSN, p. 23, May 11, 2000; p. 32, June 30, 2000). Appellant, then, held her right shoulder. He identified himself as a member of the police and junior drug buster and showed private complainant his identification card (TSN, p. 7, 23, May 11, 2000). Appellant told her that she was Grace of Maa, a drug user and a "buntog" (prostitute) and for which reason he had to arrest her (TSN, p. 7, May 10, 2000; p. 32, June 30, 2000).

Private complainant insisted that she was not Grace of Maa and she was neither a drug user nor a prostitute (TSN, p. 8, May 10, 2000). When appellant insisted on arresting her, private complainant agreed to go with appellant to Rizal Park near the Legislative Building to prove that she was not the person of loose morals appellant claimed her to be (TSN, p. 8, May 10, 2000; p. 33, June 30, 2000). In the park, they sat on the grass and talked. She freely talked about her life and even gave her telephone number to appellant to prove to him that she was not Grace of Maa (TSN, p. 37, June 30, 2000).

Appearing to be convinced that she was not Grace of Maa, appellant told her that before she could be released, she needed to sign some release papers. Eager to be released and gripped with fear, she went with appellant and they proceeded to Talisay Lodge (TSN, p. 6, June 30, 2000). She noticed that two men, referred to as "Ricky" and "Dante" by appellant, followed them (TSN, p. 10, May 10, 2000).

At Talisay Lodge, appellant requested for a room. Once inside the room, complainant asked where the release papers were. Appellant replied that before she could sign the papers, she must have sex with him (TSN, p. 11, May 10, 2000). Thus, instead of handing her the papers, appellant forced her to undress. Thereafter, appellant pushed her toward the bed.

He kissed her shoulder, chest and inserted his penis into her vagina. When he could not penetrate his (sic) vagina, he spit on it. He made push-and-pull movements and after ejaculating, he leaned on the floor. He pulled her by the shoulder and while lying on the floor, he inserted his penis on her mouth and made push-and-pull movements. Then he pulled her again to the bed. In the bed, she was made to lie on her back so appellant could insert his penis into her anus. Since he could not penetrate her anus, he went on top of her and made push-and-pull movements for the second time (TSN, pp. 13-17, May 10, 2000). After appellant finished, he went outside. She remained in bed crying. Later, two other men ravished her (TSN, p. 18, May 10, 2000). They left the lodge afterwards.

Initially, private complainant hesitated to report the rape incidents because appellant had threatened her that he would tell the sisters at the convent that she was a "buntog" or prostitute (TSN, p. 21, May 10, 2000). However, she later confided the rape incident to her best friend, CCC, a co-intern in the convent (TSN, p. 7-8, May 14, 2000). Two days after the incident or on April 15, 1999, CCC accompanied her to the Toril Police Station. They were told to proceed to the Women and Child Desk in Davao City, where SPO1 Christine Bitgue attended to them (TSN, pp. 22-24, May 10, 2000).<sup>[6]</sup>

AAA decided to report the incident upon the advice of CCC because on April 15, 1999, appellant showed up at their house on the pretext that complainant has to sign some papers. He also ordered AAA to meet him at the Mercury Drug Store the following day. AAA felt shame and fear upon seeing the appellant.<sup>[7]</sup>

CCC testified that on the night of April 13, 1999, complainant confided to her the rape incident. Complainant appeared agitated and afraid as she was crying and shivering while recounting the incident. The following day, complainant was not her usual self at work. Thus, she advised and accompanied complainant to report the incident to the authorities at the Toril Police Station.<sup>[8]</sup>

Sis. DDD, Treasurer and In-charge of working scholars at the BBB Sisters' Convent, testified that she had known complainant since 1986; that complainant is responsible, honest, open and receptive to advices because of her desire to finish her studies; that complainant never manifested bad behavior during her stay in the convent; that sometime in April 1999, she noticed a change in complainant's behavior as she was always crying and isolating herself from the rest of the group; that complainant eventually confided to her the rape incident.<sup>[9]</sup>

SPO1 Bitgue testified that on April 15, 1999, complainant went to the Women and Child Desk in Davao City crying and trembling. She moved from one table to another and stared at the window from time to time. Thus, she transferred her in a closed room to make her feel safe and comfortable. She then transcribed the narrations made by complainant in the blotter report marked as Exhibit B.<sup>[10]</sup>

Dr. Samuel Cruz, Medical Officer of the City Health Office, examined complainant the following day. He found purplish contusions on her breast and a deep hymenal laceration.<sup>[11]</sup> He testified that the age of the physical injuries is consistent with the

alleged date of infliction.<sup>[12]</sup>

Dr. Marilou Villanueva, a psychiatrist connected with the Davao Medical School Foundation, diagnosed complainant on April 19, 1999. In her psychiatric report,<sup>[13]</sup> she found complainant as suffering from acute stress disorder, post-traumatic stress disorder, and major depression, moderate. She testified that during the rape incident, complainant was experiencing acute stress disorder which impaired her consent.<sup>[14]</sup>

Appellant admitted having sexual intercourse with complainant on April 13, 1999 but alleged that it was consensual. His version of the events was summarized in Appellant's Brief<sup>[15]</sup> as follows:

Accused-appellant ROGER DURANO is 21 years of age, single and a resident of Sasa, Davao City. He was a student of Criminology at the University of Mindanao. On April 13, 1999 at around 3:00 to 3:30 in the afternoon, while he was crossing San Pedro Street, he accidentally bumped AAA, private complainant in the instant case, while the latter was coming out of Fuji Film Center. He immediately apologized to her and she readily accepted his apologies. Thereafter, they parted ways. When accused-appellant passed by San Pedro Church, he saw the private complainant sitting in front of the Legislative Building. Upon seeing her, accused-appellant smiled at her and the latter smiled back. He approached private complainant, who at that time was looking at the pictures she got from the Fuji Film Center. Accused-appellant asked her permission to take a look at those pictures to which private complainant agreed. It was at this point when the two of them introduced each other. Accused-appellant came to know that private complainant was also known as AAA to her friends. Thereafter, accused appellant accompanied AAA to a convent but the nun she was supposed to meet at that time was not around. He asked AAA if the two of them can have a talk at the Osmena Park near the Legislative Building. Although she did not answer, AAA nevertheless went with the accused-appellant. The two of them sat on the park and talked about each other's lives. She told [him] that she was a graduate of x x x with a course in Education. AAA admitted that she had a boyfriend at that time. She likewise told him about her sickly mother and the financial problem she was undergoing at that time. She further confided to him that due to financial distress, her mother has tolerated an affair that she had with a married man. Accused-appellant advised her to stop the relationship with the said married man for she might be charged in court later on. He even offered help to her financial problems.

As the hours went by, their conversation turned serious. Accused-appellant found himself attracted to the private complainant. Right there and then, he expressed his feelings for her, which she accepted. He proposed that they check-in at a lodge that evening. At first, she was hesitant because she was afraid that accused-appellant would just abandon her afterwards. He told her that her fears will not happen and as proof, he promised to visit her after two days. AAA seemed convinced hence she agreed to go to the lodge. The new lovers left the park and

later boarded a passenger jeep. The couple alighted at Talisay Lodge and entered the building. Upon reaching the counter, accused-appellant talked to the one in-charged therein and asked for a room. Before entering the room however, AAA told the accused-appellant to go ahead because she wanted to go to the bathroom first. He lied in bed and in less than a minute, AAA knocked at the door and came in. They embraced and kissed each other. After removing her upper clothing, accused-appellant removed his own shirt. They continued kissing until both of them removed their pants. They were still standing at that time wearing only their underwears (sic). Thereafter they both jumped into bed and made love. They had several rounds of sexual intercourse experimenting on different positions. When they finished, they laid at each other's side and AAA told him that she was indeed very happy with what happened to them. Moments later, they dressed up and went out of the room passing by the same counter. AAA held the arms of the accused-appellant with her face on his back as she was a little bit ashamed of being identified by the people therein.

The couple went out of the lodge and crossed the street. They waited for a passenger jeep and when they saw one, accused-appellant volunteered to bring AAA home. However, AAA told him that she can manage to go home on her own. Accused-appellant promised her though that he would visit her at her house after two days.

On April 15, 1999 at around 8:00 o'clock in the evening, accused-appellant visited AAA as promised. AAA brother was outside the house at that time. He introduced himself and he was told to proceed inside. A woman met him inside and asked for his name. He told him he was Roger Durano, a former classmate of AAA. The two have agreed beforehand that they would introduce each other as former classmates. Thereafter, AAA came out of her room together with her mother, who went towards the balcony. The two of them had a short talk and accused-appellant apologized for not bringing the medicines that he promised for her mother. He said he would visit her again on Sunday. AAA told him to call her at the BBB Convent instead. Accused-appellant was not sure if he could call AAA at the convent, so he asked her to see him at the Mercury Drug Store at 2:00 o'clock in the afternoon on Sunday. Nevertheless, he was able to call her up and told her he would wait at the said drug store up to 4:00 o'clock in the afternoon. Accused-appellant waited but AAA did not arrive. To his great surprise, AAA accused him of raping her. (TSN, August 29, 2000, pp. 2-36; TSN, August 30, 200, pp. 2-36.)<sup>[16]</sup>

On March 15, 2001, the trial court rendered its Decision convicting the appellant of two counts of rape. The dispositive portion of the decision reads:

WHEREFORE, finding the evidence of the prosecution, more than sufficient, to prove, the guilt of accused, Roger Durano only in Crim. Case No. 43,505-99, and Criminal Case No. 43,506-99, in two counts of rape pursuant to Art. 334 of the Revised Penal Code as amended by Republic Act 7659, under Art. 9 of said amendatory act without any aggravating circumstances, proved by the prosecution against accused, Roger Durano, in the commission of the offense charged, said above-mentioned