

EN BANC

[G.R. No. 169642, September 14, 2007]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ENRIQUE
CEBALLOS JR. Y CABRALES, APPELLANT.**

D E C I S I O N

CARPIO MORALES, J.:

Enrique Ceballos Jr. y Cabrales^[1] (appellant) was charged with six counts of rape, five on complaint of his minor daughter AAA, and one on complaint of another minor daughter BBB. The Informations were filed on November 23, 1998 and docketed as Criminal Case Nos. C-55119, C-55120, C-55121, C-55122, C-55123 and C-57126 before the Regional Trial Court (RTC) of Caloocan.

The accusatory portion of each of the informations follows:

Criminal Case No. C-55119

That [in] December, 1997 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused with lewd design, and by means of force and intimidation, did then and there wil[l]fully, unlawfully and feloniously lie and have sexual intercourse with his daughter one [AAA], 14 years old^[2], against the latter's will and without her consent, the rape was committed with grave abuse of authority.^[3] (Underscoring supplied)

Criminal Case No. C-55120

That [in] January, 1998 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused with lewd design, and by means of force and intimidation, did then and there wil[l]fully, unlawfully and feloniously lie and have sexual intercourse with his daughter one [AAA], 14 years old, against the latter's will and without her consent, the rape was committed with grave abuse of authority.^[4] (Underscoring supplied)

Criminal Case No. C-55121

That [in] February, 1998 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, and by means of force and intimidation, did then and there wil[l]fully, unlawfully and feloniously lie and have sexual intercourse with his daughter one [AAA], 14 years old, against the latter's will and without her consent, the rape was committed with grave abuse of authority.^[5]

(Underscoring supplied)

Criminal Case No. C-55122

That [in] March, 1998 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, by means of force and intimidation, did then and there wil[l]fully, unlawfully and feloniously lie and have sexual intercourse with his daughter one [AAA], 14 years old, against the latter's will and without her consent, the rape was committed with grave abuse of authority.^[6]
(Underscoring supplied)

Criminal Case No. C-55123

That on or about 5th day of November, 1998 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, and by means of force and intimidation, did then and there wil[l]fully, unlawfully and feloniously lie and have sexual intercourse with his daughter one [AAA], 14 years old, against the latter's will and without her consent, the rape was committed with grave abuse of authority.^[7] (Underscoring supplied)

Criminal Case No. C-57126

That on or about during the period from December 25, 1995 until July 16, 1998 in Caloocan City, Metro-Manila [*sic*] and within the jurisdiction of this Honorable Court, the above-named accused, being then the father of [BBB], a minor of 17 years old,^[8] with lewd design, and by means of force and intimidation, did then and there wil[l]fully, [u]nlawfully and feloniously lie and have sexual intercourse with one [BBB] against the latter's will and without her consent.^[9] (Underscoring in the original)

AAA's birth certificate shows that she was born on October 13, 1984^[10] while BBB's shows that she was born on October 16, 1981.^[11] At the times material to the first five cases, CCC, appellant's wife with whom he has six children, was working abroad in Qatar.^[12]

Culled from the evidence for the prosecution are the following respective versions in the cases:

Criminal Case No. C-55119:

One nighttime in December 1997, AAA and four of her siblings were sleeping at the second floor of their house in Caloocan City when their father-herein appellant touched AAA's breast and vagina, catching her by surprise. Appellant thereafter removed her short pants and underwear and tried to insert his penis inside her vagina but failed, drawing him to, while AAA was in a lying position, instead insert his finger inside her vagina and mash her breasts. She boxed appellant but she was subdued by him. And she cried, but appellant covered her mouth, rendering it difficult for her to breathe. Appellant thereafter dozed off to sleep.^[13]

AAA did not report the incident as appellant had threatened that he would kill the members of the family if she did. She had no opportunity to narrate the incident to her older sisters because every time she was conversing with them, appellant would send her away. And while she had the opportunity to report to her classmates and teacher, she did not do so, apprehensive that they might tease her.^[14]

Criminal Case No. C-55120:

Also at nighttime sometime in January 1998, while AAA was sleeping with her five siblings at the upper floor of their house, she was awakened as appellant forcibly undressed her and again succeeded in inserting his penis inside her vagina. She tried to resist appellant's moves by boxing his chest, but to no avail. And while she cried, appellant again covered her mouth.^[15]

Again, AAA did not narrate the incident to any of her siblings with whom she often quarrelled in the discharge of household chores.^[16]

Criminal Case No. C-55121:

On the night of February 14, 1998, while AAA was sleeping with her siblings, she was again awakened as appellant touched her vagina. He removed her underwear, inserted a finger and then inserted his penis inside her vagina. She resisted by boxing him but appellant held her hands and told her to give in; otherwise, he would harm her. She was frightened, but she did not cry anymore because she did not want appellant to cover her mouth again to render her unable to breathe. ^[17]

She did not also report the incident because appellant had warned her against doing so.^[18]

Criminal Case No. C-55122:

On March 26, 1998, three days before her graduation from grade school, AAA was awakened as appellant took off her clothes and directed her to, as she did, lie down on her side. With appellant at her back, he inserted his penis inside her vagina. She could not offer any resistance, however, on account of her position.^[19] While she initially cried, the fear that appellant would again cover her mouth prompted her to stop. After appellant ejaculated, he went to sleep.^[20]

Every time appellant had sexual intercourse with AAA, he would be kind to her the following morning; otherwise, she expected appellant to beat her buttocks with a fiber glass object,^[21] the same object which he was using to hit her brother's head.^[22]

Asked by the defense counsel during cross-examination, on observing her to be "aggressive" in answering the questions he was propounding, whether that was "how [she] [had been] talking within the household," AAA replied in the negative, but explaining that her "aggressive" manner was reflective of her anger at her father for the "*ginawang kahayupan*" to her and her sister BBB ↓ "*Ginahasa niya po kaming dalawa.*"^[23]

Criminal Case No. C-55123:

On November 5, 1998, between two and three o'clock in the morning, appellant removed AAA's short pants and had sexual intercourse with her. She offered no resistance as she was afraid that he would beat her again. Besides, it would just be an exercise in futility. Appellant thereafter went to sleep, while AAA put on her short pants and went downstairs to clean the house.^[24]

On November 19, 1998, AAA narrated to her classmates in high school what she had been through. On November 21, 1998, SPO4 Bayani Feria of the Northern Police District (NDP) who had in the meantime been informed of AAA's plight, accompanied AAA to the NDP Headquarters where she executed a sworn statement^[25] charging appellant, who was soon after arrested, with rape.

At the Philippine General Hospital (PGH) where AAA was subjected to medico-legal examination, AAA informed the resident doctor on duty at the Emergency Room that she was raped several times by appellant.^[26]

Dr. Bernadette Madrid of the PGH Child Protection Unit, who conducted on AAA general physical and genital examination with the use of a colposcope, an apparatus that enlarges the view of one's genitalia by 15 times and takes pictures of it,^[27] found a deep cleft between 3 o'clock and 4 o'clock positions in AAA's hymen^[28] and a healed laceration at her *fossa navicularis* or "part of the genitalia beside or before the hymen."^[29] In the Provisional Medical Certificate^[30] which she issued, Dr. Madrid gave her impression as follows:

IMPRESSION

Patient with a statement made at the Caloocan Police Station on Nov. 21, 1998. **Physical findings are highly suspicious of sexual abuse.**^[31]
(Emphasis and underscoring supplied)

Criminal Case No. C-57126:

On December 25, 1995, after BBB arrived home from the church together with her aunt, BBB learned that her mother CCC had left the conjugal house and went to her parents' house, after a quarrel with appellant, bringing along her (BBB's) siblings.^[32] At about two o'clock in the morning of even date, BBB was awakened to find appellant on top of her. Appellant succeeded in inserting his penis inside her vagina, following which he went to sleep.^[33]

BBB did not inform her mother CCC about the incident before she left for Qatar in May 1996 as she was threatened by appellant that he would kill them, and he would create a scandal in the neighborhood. ^[34]

After the rape on December 25, 1995, BBB's travails continued as appellant raped her on the average of ten times every month and every birthday of his on July 15 except his birthday in 1998, she having allowed her boyfriend to sleep in their house. The following day, July 16, however, appellant raped her.^[35]

When BBB eventually learned that appellant had also raped her younger sister AAA who even witnessed^[36] appellant having sexual intercourse with her (BBB) to thus prompt her to instruct AAA not to tell anybody what she had witnessed, she broke her silence.^[37]

While BBB was brought to a doctor for medical examination, she was no longer examined as she was at that time already cohabiting with her boyfriend.^[38]

By the account of CCC, mother of AAA and BBB, she left for Qatar on May 17, 1996 and returned to the Philippines in November 1998; and while her husband was in jail, he sent her and her children letters^[39] through his mother DDD asking for forgiveness.^[40]

For the defense, appellant testified as did his mother DDD and sister EEE.

Appellant declared that it was impossible for him to commit the acts complained of as the family of his sister EEE was also living with them^[41] and there were many other people in the house.

With respect to the alleged rape of BBB on December 25, 1995, appellant declared that he could not have committed it as he followed his wife and children who earlier left that day for Pangulo, Malabon.^[42]

Appellant also denied having asked his wife and children for forgiveness bearing on the acts complained of. If he had asked for forgiveness, it had to do with his being strict with them and it was in fact on that account that AAA filed the charges against him.^[43] As for BBB, he could not think of any reason why she filed a case against him.^[44]

Appellant's mother DDD found it impossible too for appellant to rape his daughters because of the presence of people in the house.^[45] She surmised that CCC could have instigated her daughters to file the charges against him in view of his objection to her (CCC's) going abroad.

DDD claimed that AAA and BBB in fact usually went out of the house to avoid being scolded by appellant, adding that she herself usually got mad at the two since they could no longer help in the discharge of household chores.^[46]

Appellant's sister EEE affirmed that her family used to live with appellant and family during which she usually saw AAA and BBB being scolded by appellant. She claimed that before CCC left for Qatar, she witnessed a quarrel between CCC and appellant because of the hardheadedness of their children. She tried to convince both AAA and BBB to withdraw the charges against appellant but the two were adamant, apprehensive that the withdrawal would infuriate their mother CCC and some of their relatives.^[47]

By Decision^[48] of October 14, 2002, the RTC of Caloocan City, Branch 128, found the testimonies of AAA and BBB "straightforward, categorical and convincing" and