

FIRST DIVISION

[G.R. NO. 166040, April 26, 2006]

**NIEL F. LLAVE, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

DECISION

CALLEJO, SR., J.:

Before the Court is a Petition for Review of the Decision^[1] of the Court of Appeals (CA) in CA-G.R. CR No. 26962 affirming, with modification, the Decision^[2] of the Regional Trial Court (RTC) of Pasay City, Branch 109, in Criminal Case No. 02-1779 convicting Petitioner Neil F. Llave of rape.

On September 27, 2002, an Information charging petitioner (then only 12 years old) with rape was filed with the RTC of Pasay City. The inculpatory portion of the Information reads:

That on or about the 24th day of September 2002, in Pasay City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, NEIL LLAVE Y FLORES, aka NIEL F. LLAVE, a minor over nine (9) years of age and under fifteen (15) but acting with discernment, by means of force threat and intimidation, did then and there willfully, unlawfully, feloniously have carnal knowledge of the complainant, DEBBIELYN SANTOS y QUITALES, a minor, seven (7) years of age, against her will and consent.

Contrary to law.^[3]

The Case for the Prosecution

The spouses Domingo and Marilou Santos were residents of Pasay City.^[4] One of their children, Debbielyn, was born on December 8, 1994.^[5] In 2002, she was a Grade II student at the Villamor Air Base Elementary School in Pasay City^[6] and attended classes from 12:00 noon to 6:00 p.m.^[7]

Domingo eked out a living as a jeepney driver, while Marilou sold quail eggs at a nearby church.^[8] Adjacent to their house was that of Teofisto Bucud, a barbecue vendor who would usually start selling at 6:30 p.m.^[9] Next to Teofisto's residence was a vacant house.^[10]

Debbielyn testified that on September 24, 2002, she arrived home at past 6:00 p.m. She changed her clothes and proceeded to her mother's store. Marilou asked her daughter to bring home the container with the unsold quail eggs.^[11] Debbielyn did as told and went on her way. As she neared the vacant house, she saw petitioner,

who suddenly pulled her behind a pile of hollow blocks which was in front of the vacant house. There was a little light from the lamp post.^[12] She resisted to no avail.^[13] Petitioner ordered her to lie down on the cement. Petrified, she complied. He removed her shorts and underwear then removed his own. He got on top of her.^[14] She felt his penis being inserted into her vagina. He kissed her.^[15] She felt pain and cried.^[16] She was sure there were passersby on the street near the vacant house at the time.

It was then that Teofisto came out of their house and heard the girl's cries. He rushed to the place and saw petitioner on top of Debbielyn, naked from the waist down. Teofisto shouted at petitioner, and the latter fled from the scene. Teofisto told Debbielyn to inform her parents about what happened.^[17] She told her father about the incident.^[18] Her parents later reported what happened to the police authorities.^[19] Debbielyn told the police that petitioner was a bad boy because he was a rapist.^[20]

Teofisto testified that at about 6:25 p.m. on September 24, 2002, he went out of their house to get his barbecue grill. He heard someone moaning from within the adjacent vacant house.^[21] He rushed to the place and saw petitioner, naked from waist down, on top of Debbielyn, making pumping motions on her anus.^[22] The girl was crying. He shouted at petitioner, "*Hoy, bakit ginawa mo 'yan?*"^[23] Petitioner hurriedly put his shorts on and fled.^[24] Neighbors who had heard Teofisto shouting arrived.^[25] Later, Teofisto gave a written statement to the police investigator regarding the incident.^[26]

Domingo Santos testified that at about 6:30 p.m. that day, he was inside their house. His daughter, Kimberly Rose, suddenly told him that Debbielyn had been raped near the vacant house by petitioner.^[27] He rushed to the place and found her daughter crying. When he asked her what happened, she replied that she had been abused. He brought Debbielyn to their house and then left.^[28] He then looked for petitioner and found him at his grandmother's house. A *barangay tanod* brought petitioner to the barangay hall.^[29] On September 25, 2002, he brought her daughter to the Philippine General Hospital Child Protection Unit at Taft Avenue, Manila where she was examined by Dr. Mariella S. Castillo.

Dr. Castillo declared on the witness stand that she was a physician at the Child Protection Unit of the Philippine General Hospital. On September 25, 2002, she interviewed the victim who told her "*Masakit ang pepe ko,*" "*Ni-rape ako.*"^[30] Dr. Castillo also conducted a genital examination on the child, and found no injury on the hymen and perineum, but found scanty yellowish discharge between the *labia minora*.^[31] There was also a fresh abrasion of the perineal skin at 1 o'clock position near the anal opening.^[32] She declared that the findings support the theory that blunt force or penetrating trauma (such as an erect penis, finger, or any other foreign body^[33]) was applied to the perineal area^[34] not more than six or seven days before.^[35] The abrasion could have been caused on September 24, 2002. She found no spermatozoa in the vaginal area or injury at the external genitalia;^[36] neither did she find any other injury or abrasion on the other parts of the victim's

body.^[37] She concluded that her findings were consistent with the victim's claim that she was sexually abused by petitioner.

Barangay Tanod Jorge Dominguez, for his part, testified that on September 24, 2002, Marilou Santos arrived at the *barangay* hall and reported that her daughter had been raped by petitioner who was then in his aunt's house at Cadena de Amor Street. *Barangay* Captain Greg Florante ordered him and *Barangay Tanod* Efren Gonzales to proceed to Cadena de Amor Street and take the boy into custody, and they did as they were told.^[38]

The Case for the Accused

Petitioner, through counsel, presented Dr. Castillo as witness. She declared that the abrasions in the perineal area could have been caused while the offender was on top of the victim.^[39] She explained that the distance between the anus and the genital area is between 2.5 to 3 centimeters.^[40] The abrasion was located at ¼ of an inch from the anal orifice.

Petitioner testified and declared that he was a freshman at the Pasay City South High School.^[41] He had been one of the three outstanding students in grade school and received awards such as Best in Mathematics.^[42] He also finished a computer course and received a Certificate of Completion from the Philippine Air Force Management Information Center.^[43] He denied having raped the private complainant. He declared that at 6:30 p.m. on September 24, 2002, he was outside of their house to buy rice in the *carinderia*^[44] and he saw her on his way back.^[45] He also met his father, who asked him what he had done to their neighbor. He was also told that the victim's father was so angry that the latter wanted to kill him.^[46] He did not ask his father for the name of the angry neighbor. He was also told to pass by Cadena de Amor Street in going to his aunt's house. Petitioner also declared that his mother prodded him to go to his aunt's house.^[47] Later, Domingo and *Barangay Tanod* Jorge Dominguez arrived at his aunt's house and brought him to the *barangay* hall. He did not know of any reason why Debbielyn and her parents would charge him with rape.^[48]

Petitioner also declared that he played cards with Debbielyn.^[49] While confined at the Pasay City Youth Home during trial, he had a crush on "Issa," a young female inmate. Using a piece of broken glass (*bubog*) about half-an-inch long, he inscribed her name on his right thigh, left leg and left arm.^[50]

Nida Llave testified and identified her son's Certificate of Live Birth, in which it appears that he was born on March 6, 1990.^[51] She declared that at about 6:30 p.m. on September 24, 2000, Marilou Santos and Marilyn Bucud arrived in their house looking for her son. According to Marilyn, her son had raped the private complainant. She went to their house to look for her son and came across Domingo Santos who threatened to kill her son. She and her husband proceeded to the house of his sister Josefina at Cadena de Amor Street where petitioner had hidden for a while.^[52]

At the conclusion of the trial, the court rendered judgment convicting Neil of the crime charged. The decretal portion of the decision reads:

FROM ALL THE FOREGOING, the Court opines that the prosecution has proven the guilt of the xxx Niel Llave y Flores beyond reasonable doubt when he forcibly pulled the complainant towards the vacant lot, laid on top of her and had carnal knowledge with the [complainant] against her will and consent who is only seven (7) years old (sic). Moreover, he being a minor, he cannot be meted with the Death penalty.

WHEREFORE, the Court finds the CICL [Child in Conflict with the Law] Niel Llave y Flores guilty beyond reasonable doubt, and crediting him with the special mitigating circumstance of minority, this Court hereby sentences him to *prision mayor* minimum, Six (6) years and One (1) day to Eight (8) years, and pay civil indemnity of Fifty Thousand Pesos (Php50,000.00).^[53]

The trial court declared that based on the evidence of the prosecution that petitioner pushed the victim towards the vacant house and sexually abused her, petitioner acted with discernment. It also considered petitioner's declaration that he had been a consistent honor student.^[54]

Petitioner appealed the decision to the CA, where he averred the following in his Brief as appellant therein:

I

THE LOWER COURT ERRED WHEN IT DISREGARDED THE MATERIAL INCONSISTENCIES OF THE TESTIMONY OF COMPLAINING WITNESS WITH THAT OF THE MEDICAL REPORT ON THE FACTUAL ALLEGATION OF BLEEDING.

II

THE LOWER COURT ERRED WHEN IT GAVE CREDENCE TO THE TESTIMONY OF THE PROSECUTION WITNESS TEOFISTO BUCUD WHO HAS REASON TO FABRICATE A SCENARIO AGAINST ACCUSED-APPELLANT BECAUSE HE HAS PERSONAL VENDETTA AGAINST THE LATTER'S FAMILY/RELATIVES.

III

THE LOWER COURT ERRED IN UPHOLDING THE THEORY OF THE PROSECUTION OF RAPE BY HAVING CARNAL KNOWLEDGE, BEING CONTRARY TO THE PHYSICAL EVIDENCE.^[55]

The CA rendered judgment affirming the decision with modification as to the penalty meted on him.

WHEREFORE, the decision subject of the instant appeal is hereby MODIFIED in that the accused-appellant is sentenced to an indeterminate penalty of two (2) years and four (4) months of *prision correccional* medium as the minimum to eight (8) years and one (1) day of *prision*

mayor medium as the maximum. Additionally, the accused-appellant is ordered to pay the complaining witness the amount of P50,000 by way of moral damages and P20,000 by way of exemplary damages.

SO ORDERED. [56]

Petitioner filed a Motion for the Reconsideration, [57] contending that the prosecution failed to adduce proof that he acted with discernment; hence, he should be acquitted. The appellate court denied the motion in a Resolution [58] dated November 12, 2004 on the following finding:

As regards the issue of whether the accused-appellant acted with discernment, his conduct during and after the "crime" betrays the theory that as a minor, the accused-appellant does not have the mental faculty to grasp the propriety and consequences of the act he made. As correctly pointed out by the prosecution, the fact that forthrightly upon discovery, the accused-appellant fled the scene and hid in his grandmother's house intimates that he knew that he did something that merits punishment.

Contrary to the urgings of the defense, the fact that the accused-appellant is a recipient of several academic awards and is an honor student further reinforces the finding that he [is] possessed [of] intelligence well beyond his years and is thus poised to distinguish, better at least than other minors his age could, which conduct is right and which is morally reprehensible. [59]

Petitioner now raises the following issues and arguments in the instant petition before this Court:

ISSUES

I

WHETHER OR NOT EVIDENCE WAS SUFFICIENT TO CONVICT PETITIONER BEYOND REASONABLE DOUBT.

II

WHETHER OR NOT PETITIONER, WHO WAS A MINOR ABOVE 9 YEARS BUT BELOW 15 YEARS OF AGE AT THE TIME OF THE CRIME, ACTED WITH DISCERNMENT.

III

WHETHER OR NOT PETITIONER WAS DENIED DUE PROCESS OF LAW.

ARGUMENTS

I

THE MATERIAL INCONSISTENCIES BETWEEN THE TESTIMONY OF COMPLAINING WITNESS WITH THE MEDICAL REPORT BELIE THE FINDING OF RAPE.

II