

## EN BANC

[ G.R. No. 143708, February 24, 2003 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ROGELIO SAMBRANO Y TINDERO, ACCUSED-APPELLANT.**

### DECISION

#### PER CURIAM:

On automatic review is the decision<sup>[1]</sup> dated April 19, 2000, of the Regional Trial Court of Bataan, Branch 3, in Criminal Case No. 6937, finding appellant guilty beyond reasonable doubt of raping the daughter of his common-law spouse and sentencing him to suffer the ultimate penalty of death, to indemnify the victim in the amount of P75,000.00 as well as to pay moral damages of P50,000.00.

The criminal complaint filed by the victim's mother, ██████████, alleged:

That on or about October 20, 1998 at Brgy. ██████████, Philippines and within the jurisdiction of this Honorable Court, the said accused, motivated by lust and lewd design, did then and there willfully, unlawfully and feloniously have carnal knowledge or sexual intercourse with **AAA**, a five year old minor and a daughter of the undersigned who is the common-law spouse of the accused, against the will and consent of the said **AAA**, and to her damage and prejudice.

CONTRARY TO LAW.<sup>[2]</sup>

On November 6, 1998, appellant, assisted by counsel, was arraigned and pleaded "not guilty" to the rape charge. Trial ensued thereafter.

The prosecution presented four witnesses, namely: ██████████, Dr. Emelita Firmacion, Pet Byron Buan and the child-victim AAA.

██████████ testified that her daughter, AAA, was born on December 1, 1992.

<sup>[3]</sup> According to her, AAA was five (5) years old when appellant raped her. She said appellant is her common-law spouse. She recalled that on October 20, 1998 at around 10:00 A.M., she was in the yard, washing their dirty clothes. AAA and appellant were also there. Appellant helped the witness by pumping the artesian well. After AAA had taken a bath in the yard, her mother told her to go home so she could get ready for school. Their house is only 25 meters away from the place. When the witness finished rinsing the clothes, she likewise told appellant to go home while she remained to hang the clothes to dry. Thereafter, she too went home.

<sup>[4]</sup>

Upon reaching their house, she was surprised to see her daughter still at home. AAA looked pale and seemed afraid. When asked why she was still home, AAA replied

that she was looking for something. ██████ noticed that AAA's clothes were crumpled so she raised her daughter's skirt so as to change her clothes. It was then she saw that AAA's panties were inside out and had blood stains on it. She asked her daughter about the bloodstains to which the latter allegedly replied "*inindot daw siya ng tatay niya.*"<sup>[5]</sup> Realizing what her daughter meant, ██████ looked for appellant to confront him. She asked appellant about her daughter's bloodied underwear but appellant told her to ask AAA instead. AAA by then was already crying. She nagged him about the bloodied underwear but he kept evading the issue. Moments later, their lessor, Barangay Councilor Rafael Guinto, arrived and witnessed the commotion. She forthwith asked for his assistance. Councilor Guinto called for the police who came and arrested appellant.<sup>[6]</sup> According to the witness, the police accompanied her and AAA to the Bataan Provincial Hospital where the doctor examined AAA.<sup>[7]</sup>

DR. EMELITA Q. FIRMACION, physician at the Bataan Provincial Hospital, testified that she conducted a physical and genital examination on AAA on October 20, 1998 at around 1:50 P.M. Her examination showed that the victim's *labia majora* and *minora* were well opposed; there were fresh lacerations on the victim's hymen at the 3 o'clock and 9 o'clock positions, and there was presence of *erythma* around the vaginal opening.<sup>[8]</sup> She stated that the victim's hymen could have been lacerated within the 24-hour period prior to the examination. She also testified that there are several causes of hymenal laceration, namely: penetration of an erect penis (without causing hymenal laceration); insertion of foreign body; insertion of the finger; instrumentation; heavy exercises like gymnastics; and masturbation.<sup>[9]</sup>

PET BYRON T. BUAN,<sup>[10]</sup> a forensic biologist of the National Bureau of Investigation (NBI), testified that on March 24, 1999, he examined two pairs of underwear, both belonging to the victim. The specimens were brought to the NBI laboratory upon the request of the victim's mother. He conducted a blood test examination on the two pairs of underwear and found that these had reddish brown stains, which yielded positive results for the presence of human blood showing the reactions of group "O". He also got and examined fresh blood samples from AAA, the result of which showed that the blood belongs to group type "O".<sup>[11]</sup>

On cross-examination, he admitted that he had no personal knowledge of the ownership of the underwear brought to him for examination and that he merely relied on the labels on the containers of the specimens submitted to him for laboratory testing.<sup>[12]</sup>

AAA was the last witness for the prosecution. She testified on November 11, 1999. She was six years old at the time of her testimony. She declared that on October 20, 1998, appellant undressed her and inserted his penis inside her organ ("*yong titi po niya nilagay sa kiki ko*").<sup>[13]</sup>

The defense presented appellant ROGELIO SAMBRANO as its sole witness. The trial court summed up his version of the incident as follows:

He denied that he raped AAA. He said that the medical certificate can disprove the rape. However when counsel told him that the medical report shows lacerations on the private part of the child and that her

panties had blood similar to her own type of blood, he told this story: In that morning at 10:00 A.M., he was cleaning the pigpen while AAA was watching him. AAA climbed the balustre and when he placed her down, she complained of aches. It was only ██████████ who was saying that he raped her daughter. AAA was taught by her mother to testify against him. He denied that he helped ██████████ in pumping the artesian well. He insisted that at about 10:30 A.M. on October 20, 1998, he was taking a rest for having just cleaned the pigpen. He was not able to get a good sleep the night before as he had watched his pig which was then giving birth. He was therefore tired and woke up at 8:00 A.M.<sup>[14]</sup>

The trial court found the prosecution's version credible and convicted appellant as follows:

WHEREFORE, finding accused Rogelio Sambrano guilty beyond reasonable doubt as principal by direct participation of the crime of rape, the Court hereby sentences him to suffer DEATH in accordance with the prevailing law and orders him to indemnify his victim AAA the amount of P75,000.00 and pay her moral damages in the amount of P50,000.00.

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SO ORDERED.<sup>[15]</sup>

Hence, this automatic review. Appellant raises the sole error that:

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED GUILTY, BEYOND REASONABLE DOUBT, OF THE CRIME OF RAPE DESPITE THE INSUFFICIENCY OF EVIDENCE FOR THE PROSECUTION.<sup>[16]</sup>

The issues for resolution are (1) whether the charge against appellant was proven beyond reasonable doubt, and if so, (2) whether the penalty imposed on him is appropriate. Unavoidably, we must look into the credibility of the witnesses to resolve these issues.

Appellant assails the testimony of the victim AAA. He claims that private complainant was not able to describe how she was allegedly raped. According to appellant, this only shows that the alleged rape was just an accusation maliciously and wickedly concocted by the private complainant's mother ██████████, who would do anything to be with her paramour.<sup>[17]</sup> Likewise, appellant claims that it is inconceivable for him to even attempt to rape AAA at that time, considering that his common-law spouse was just nearby and could have easily discovered or witnessed the dastardly act imputed against him.<sup>[18]</sup> Appellant argues that there were no eyewitnesses to the crime such that it is possible that when AAA testified that "*inindot siya ng tatay niya*", what she actually meant was that the accused inserted his finger in her vagina and not his penis. This allegation is bolstered by the fact that AAA was not able to describe the manner in which the alleged rape was committed upon her, according to appellant.<sup>[19]</sup>

The Office of the Solicitor General (OSG), for the appellee, contends that the medical evidence corroborates the child-victim's testimony.<sup>[20]</sup> The OSG argues that appellant's allegation that the rape charge was a mere fabrication of the victim's mother so that she could live with her supposed lover is not only false and

unsubstantiated, but also ridiculous.<sup>[21]</sup> According to the OSG, the trial court did not err in assigning greater value to AAA's testimony. Appellant's simple denial is unworthy of belief, said the OSG, as it is a mere attempt to contrive a defense in his favor to absolve him of his criminal liability.<sup>[22]</sup>

In reviewing rape cases, this Court is guided by three 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 person accused, although innocent, to disprove; (2) considering the intrinsic nature of the crime, only two persons being usually involved, the testimony of the complainant should be scrutinized with great caution; (3) the evidence for the prosecution must stand or fall on its own merit, and cannot be allowed to draw strength from the weakness of the evidence for the defense.<sup>[23]</sup> With these guidelines in mind, after carefully considering the testimony of the victim and the appellant as well as the other witnesses, we are convinced that the findings of the trial court on the credibility of the victim and the other witnesses for the prosecution must be sustained. AAA's testimony on the witness stand is remarkable for its simplicity and candor, thus:

Q: What did the accused do to you?

A: (Witness whispering) "Ni-rape po niya ako."

Q: When you said rape, what did the accused do to you?

A: He undressed me, sir.

Q: After that, what did he do to you?

A: He put his penis inside my sex organ, sir ("*Yong titi po niya nilagay po sa kiki ko*")

Q: What did you feel when the accused put his private organ to your private organ.

A: Pain sir.<sup>[24]</sup>

Under rigorous cross-examination, AAA remained unperturbed by the confusing questions of the defense counsel. It is understandable that at her age, she could not fully explain the nature of "rape". As correctly pointed out by the prosecution, rape has a technical definition.<sup>[25]</sup> We should not expect a six-year-old child to define the term "rape" with exact precision, given her vocabulary and command of language. Despite this limitation, however, it is noteworthy that she never wavered in her claim that appellant imposed upon her his unwanted lust, thus:

ATTY. GUIAO:

AAA, who told you that you were raped?

A: Roger, madam.

Q: Your mother, did your mother tell you that you were raped?

A: No, madam.

Q: The person from the DSWD, did they tell you that you were raped?

A: No madam.

Q: How did you know that you were raped?

A: "Si Roger po, sinabi po niya sa akin."

Q: But you do not know if you were really raped, is that correct?

PROS. LASAM:

The witness had already answered that she was raped, Your Honor.

ATTY. GUIAO:

I am just asking her if she knows the essence of the term rape, Your Honor. That is material Your Honor, to test her credibility. When you said "Ang titi po niya nilagay sa kiki ko", what do you mean?

A: I do not know, madam.

ATTY. GUIAO:

The answer is "*hindi ko po alam.*" You do not know that because it did not really happen, am I correct?

A: No, madam, he did it.

Q: What did he really do?

PROS. LASAM:

That is self-explanatory, Your Honor. She already answered that.<sup>[26]</sup>

AAA's testimony is supported by the medical findings of Dr. Firmacion on the presence of fresh lacerations on the victim's hymen. The lacerations may have been incurred, within the 24-hour period, consistent with her mother's testimony that she had AAA examined immediately after the rape incident. Laceration of the hymen, whether fresh or healed, is the best physical evidence of defloration.<sup>[27]</sup>

Now on appeal, appellant modified his theory from total denial to just a claim that contact between him and the victim was only attempted rape. He relied on *People vs. Campuhan*<sup>[28]</sup> to bolster his testimony. But appellant's belated change of theory does not aid his cause. Appellant's reliance on the case of *Campuhan*, is misplaced. In *Campuhan*, when the court asked the victim if the penis of the accused touched her organ, her reply was "yes." When asked further if his penis "penetrated" her organ, she said "no". The medical finding that there was no physical evidence of rape was more conclusive, thus:

This testimony alone should dissipate the mist of confusion that enshrouds the question of whether rape in this case was consummated. It has foreclosed the possibility of Primo's penis *penetrating* her vagina, however slight. Crysthel made a categorical statement denying penetration, obviously induced by a question propounded to her who could not have been aware of the finer distinctions between *touching* and *penetration*. Consequently, it is improper and unfair to attach to this reply of a four (4)-year old child, whose vocabulary is yet as underdeveloped as her sex and whose language is bereft of worldly sophistication, an adult interpretation that because the penis of the accused *touched* her organ there was sexual entry. Nor can it be deduced