

EN BANC

[G.R. No. 133926, August 06, 2003]

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. RUBEN DALISAY Y HERNANDEZ, APPELLANT.

DECISION

SANDOVAL-GUTIERREZ, J.:

For automatic review is the Decision^[1] dated May 5, 1998, of the Regional Trial Court, Branch 4, Pallocan, Batangas City, in Criminal Case No. 8776 convicting Ruben Dalisay y Hernandez, appellant, of statutory rape, and imposing upon him the supreme penalty of death. He was further ordered to indemnify the victim, AAA (AAA for brevity), his own daughter, the sum of P200,000.00 as moral and exemplary damages and to pay the costs.

On February 10, 1997, a criminal complaint was filed with the said court by AAA against appellant, her own father, alleging as follows:

"That on or about the 26th day of September 1996, at Barangay [REDACTED], Municipality of [REDACTED], Province of [REDACTED], Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously lay and have carnal knowledge with the said AAA, daughter of the accused and below twelve (12) years old, against her will and consent.

"Contrary to law."^[2]

Upon arraignment, appellant pleaded not guilty to the crime charged. Trial ensued thereafter.

AAA's testimony is as follows: On September 26, 1996, she was 11 years old, having been born on September 26, 1985.^[3] Her mother, [REDACTED], has been working abroad, leaving her and her two siblings, [REDACTED] and [REDACTED], under appellant's care. They reside in Barangay [REDACTED].

In the evening of September 26, 1996, appellant arrived home from work.^[4] AAA was then lying on bed when suddenly he removed her pants and underwear. **She resisted but he boxed her on her thigh.**^[5] So when he told her to hold his penis, **she fearfully obliged.** Then he touched her vagina and licked it. Thereafter, while in a kneeling position, he placed his penis at the entrance of AAA's vagina and inserted his private organ into hers. He then proceeded to make push and pull movements (*nakanyog*).^[6] **AAA felt pain**, but she did not complain because **she was afraid of him.**^[7] When she held appellant's penis and tried to remove it,

something sticky came out. Appellant then wiped his penis and AAA's vagina with a blanket. After that, he again licked her vagina, wiped it and went to sleep.^[8]

AAA further testified that appellant has sexually abused her since she was in grade III, or in 1994. She estimated that he had raped her seventeen (17) times, although she could no longer remember the exact dates when they took place.^[9] She did not tell anyone about those previous incidents because she was afraid he would harm her, as he used to do in the past.^[10]

The following day, September 27, AAA went to school and pretended as if nothing happened. However, her Grade V teacher, Luminada Sangcate, noticed that AAA looked depressed that day. When she inquired, AAA answered that she was raped (*hinalay*) by her father.^[11] Immediately, Luminada reported the matter to the school principal who, in turn, relayed the same to their Barangay Chairman. On September 30, 1996, a meeting was held among the Barangay Chairman, the school principal, and appellant's brother, Feliciano Dalisay, who all conferred with AAA^[12] and decided to bring her to the Mabini Police Station where she executed an affidavit on the incident.^[13]

Incidentally, AAA's sister, ■■■, also filed a complaint for acts of lasciviousness against appellant. Both sisters were brought to the Lingap Center of Mabini for temporary custody pending the resolution of their cases.^[14]

Lucila Bacay, a Social Worker at Mabini, testified that on October 4, 1996, she interviewed the appellant and he admitted that he raped AAA. He explained though that he could not understand why he did it to his own daughter.^[15]

For his part, appellant denied the charge, claiming that his wife's relatives instigated AAA to file the complaint against him because they wanted to take from him the custody of his children which he resented.^[16]

Dr. Emma Panaligan, Medico-Legal Officer of the Batangas Regional Hospital, testified that on September 30, 1996, she examined AAA after the latter complained that she was raped by the appellant. She confirmed her Medico-Legal Certificate dated October 2, 1996,^[17] stating that AAA's "external genitalia" is "infantile" and has a "non-gaping *labia majora*;" that her "hymen is intact," and "no sperm cell was seen" during the examination.^[18] She explained that the normal size of the penis of an adult person could not fully penetrate AAA's vagina "considering the small size and the condition of her external genitalia."^[19]

On May 5, 1998, the trial court rendered the assailed Decision convicting appellant of statutory rape, the dispositive portion of which reads:

"Premises considered and upon the evidence, accused Ruben Dalisay y Hernandez is found Guilty beyond reasonable doubt of Statutory Rape as charged in the criminal complaint filed by her minor daughter AAA and defined and penalized under Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659. Wherefore, he is sentenced to suffer the capital punishment of Death to be made and exacted in the manner provided for under existing law which is by lethal injection. He is further

directed to indemnify complainant AAA with the sum of Two Hundred Thousand Pesos (P200,000.00) as moral and exemplary damages and to pay the costs.

"SO ORDERED."^[20]

Hence, this automatic review.

In his brief, appellant claims that the trial court erred:

"I

x x x in giving full weight and credence to private complainant's testimony, which is insufficient to establish the commission of the offense by the appellant; and

"II

x x x in failing to appreciate in appellant's favor the testimony of Dr. Emma Panaligan who physically examined the private complainant."

The trial court convicted appellant of statutory rape because he had carnal knowledge of AAA who was "below 12 years of age" when the crime was committed.

The law governing the instant case is Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659,^[21] which partly provides:

"Article 335. *When and how rape is committed.* - Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

1. By using force or intimidation;
2. When the woman is deprived of reason or otherwise unconscious;
and
3. When the woman is under twelve years of age or is demented.

"The crime of rape shall be punished by *reclusion perpetua*.

x x x"

Based on the above-quoted provisions, the essential elements of statutory rape are: (1) the offender had carnal knowledge of a woman; and (2) the woman is below 12 years of age.^[22]

The trial court found AAA's testimony credible and trustworthy, thus:

"x x x suffice it to state that the demeanor of the complainant, AAA, as she gave her testimony has led this court to give her utmost credibility. She was barely eleven years of age and the manner by which she courageously gave evidence to what her father had done to her showed no taint whatsoever that she was not telling the truth. Her tears which

flowed from her eyes as she narrated the 'gift' from hell which her father gave her on the very night of her birthday accentuated the truth of her unfortunate and devilish ordeal x x x."^[23]

In a prosecution for rape, the complainant's credibility becomes the single most important issue, and when her testimony satisfies the test of credibility, an accused may be convicted solely on the basis thereof.^[24]

Indeed, AAA's testimony has sufficiently and convincingly proved that appellant had carnal knowledge of her on the night in question. Her candid and straightforward testimony, punctuated by her tears when she narrated how she was sexually ravished by her very own father, are earmarks of a truthful witness and thus, must be given full faith and credit.^[25] AAA described how appellant raped her, thus:

"Q :Now, **on September 26, 1996 in the evening** while you were in bed, do you remember if there was anything done to you by your father?

A: **He inserted his organ to my organ**, sir.

Q: And, that was inside your house?

A: Yes, sir.

Q: And, where is your house located at that time?

A: At Barangay [REDACTED], sir.

Q: Now, before your father was inserting his private organ to you, were you wearing any underwear?

A: None, sir.

Q: Why?

A: Because he removed it first, sir.

Q: How about your pants, did you wear your pants at that time?

A: Yes sir, but it was also removed by my father.

Q: Now, was the place where you were undressed by your father lighted?

A: It was dark, sir.

Q: And, how did you know that the private organ of your father was being inserted in you?

A: Because my father asked me to hold his organ, sir.

Q: Did you hold his organ when he told you that?

A: Yes, sir.

Q: And, after it was held by you, what did he do next?

A: He touched also my organ, sir.

Q: And, what else did he do, if any?

A: After touching my private organ he licked it (*nilawayan at hinimud*).

PROS. JUDIT:

May we request that the Tagalog answer of the witness be incorporated to the record.

Q: **After doing that (*nilawayan at hinimud*), what else did he do?**

A: **He inserted his organ into my organ, sir.**

Q: **Was his private part able to penetrate yours?**

A: **In the entrance, sir.**

Q: **And what did you feel when his private organ was inserted to you?**

A: **It was painful, sir.**

Q: Did you complain to your father?

A: I cannot complain, sir.

Q: Why?

A: **Because I'm afraid (*natatakot po ako*), sir.**

PROS. JUDIT:

May we request to put on record that when the witness answered '*natatakot po ako*,' she was teary eyed, Your Honor.

X X X

Q: And was this the first time that your father inserted his penis to you on September 26, 1996, or was there any other incident?

A: There were other times, sir.

Q: And previous to this incident, how many times if you can recall?

A: What I estimated was seventeen (17) times, sir.

Q: And, since when did he first do this to you?

A: When I was still in grade 3, sir.

COURT:

Do you mean to say when you were still in grade 3 your father had already inserted his penis to your organ?

A: Yes, Your Honor."^[26] (Emphasis ours)

Upon cross-examination, AAA remained steadfast in her story that appellant sexually ravished her against her will on the night in question.

"On Cross-examination:

ATTY. ASILO:

Q: Was there somebody else who told you to file this instant case against your father?

A: None, sir.