

## EN BANC

[ G.R. No. 150630-31, October 01, 2003 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JAIME OLAYBAR Y ODTUHAN, APPELLANT.**

### DECISION

**VITUG, J.:**

Republic Act No. 8385, otherwise also known as the Anti-Rape Act of 1997, has incorporated a new chapter in the Revised Penal Code. In a new provision, designated Article 266-A, the crime of rape is committed either by *sexual intercourse* or by *sexual assault*. Rape by sexual intercourse, pursuant to the first paragraph of the article, is committed by a *man* who shall have carnal knowledge of a *woman* under any of the following circumstances; *viz*:

- (a) Through force, threat, or intimidation;
- (b) When the offended party is deprived of reason or otherwise unconscious;
- (c) By means of fraudulent machination or grave abuse of authority; and
- (d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

The last of the enumeration, item (d) above, constitutes what is so often referred to as statutory rape. Rape by sexual assault, mentioned in the second paragraph of the same article, is committed by *any person* who, under any of the aforesated circumstances, inserts his penis into another person's mouth or anal orifice, or any instrument or object into the genital or anal orifice of another person.

Appellant Jaime Olaybar y Odtuhan, a.k.a. Jimmy, was charged with two counts of rape, the first for statutory rape under the first paragraph of Article 266-A and the second for rape by means of sexual assault under the second paragraph of the article, in separate informations that read:

#### **Criminal Case No. 00-1600**

"That on or about the 5<sup>th</sup> day of September, 2000, in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, JAIME OLAYBAR y ODTUHAN, by means of force and intimidation did then and there, willfully, unlawfully and feloniously have carnal knowledge of the complainant, AAA, a minor, eight (8) years of age, against her will and consent."<sup>[1]</sup>

#### **Criminal Case No. 00-1601**

"That on or about the 6<sup>th</sup> day of September 2000, in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, JAIME OLAYBAR Y ODTUHAN, did then and there, willfully, unlawfully and feloniously commit acts of sexual assault by inserting his penis into the anus of complainant, AAA, a minor, eight (8) years of age, against the latter's will and by means of force and intimidation."<sup>[2]</sup>

Olaybar entered a plea of "not guilty" to both charges; the cases were consolidated and tried jointly with the prosecution and the defense, in that order, presenting their respective versions of the case.

AAA, an eight-year old child, lives with her family at [REDACTED], in a squatter's area close to a parking lot opposite the Meralco office. On 05 September 2000, around seven o'clock in the evening, AAA was playing with her friends when Olaybar brought her to a parked jeepney in the nearby parking lot. Inside the jeepney, Olaybar made AAA lie down and had his penis inserted into her vagina. After a while, Olaybar made her sit on his lap and put his penis inside her anus. That night, when brought home by Olaybar, AAA told her mother, [REDACTED], that Olaybar molested her. [REDACTED] confronted Olaybar but the latter denied having done anything to AAA. [REDACTED] warned Olaybar never to come near AAA again. The following evening, on 06 September 2000, between seven o'clock and seven-thirty, Olaybar called AAA and, despite the warning made the previous night, he again brought her to a parked jeepney, made her sit on his lap and inserted his penis into her anus. He then escorted her home. AAA, just as before, told her mother of what had transpired. [REDACTED] confronted Olaybar but the latter once more denied any wrongdoing. [REDACTED] sought the help of one Roger Siobert and, this time, Olaybar admitted to Roger what he had done. [REDACTED] went to the police to report the incident.

When brought to the hospital on 07 September 2000, AAA was examined by Dr. Merle P. Tan of the Child Protection Unit of the UP-PGH. The genital and anal examination disclosed the following findings:

### **"GENERAL PHYSICAL EXAMINATION**

HEIGHT 112 cm	WEIGHT 17.5 kg	TANNER STAGE 2
GENERAL SURVEY	No stunting, No wasting, Ambulant, Not In Respiratory Distress	
MENTAL STATUS	Oriented to place and person Conscious	
PERTINENT PHYSICAL FINDINGS / PHYSICAL INJURIES	Breast Tanner Stage: 2 (R)->LOWER EXTREMITIES-> Gluteals-> Abrasion - 4 abrasions about 1-1.5 cm; (L)->LOWER EXTREMITIES-> Gluteals-> Abrasion - 4 abrasions about 1-1.5 cm	

### **ANO-GENITAL EXAMINATION**

EXTERNAL GENITALIA	Tanner Stage 2, Labia Minora:swelling, Labia
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URETHRA AND PERIURETHRAL AREA	Majora: swelling, Clitoris: swelling, Vestibule: swelling
PERIHYMENAL AREA AND FOSSA NAVICULARIS	Swelling, swelling
HYMEN	swelling
PERINEUM	Tanner Stage 2, swelling of whole hymen,
DISCHARGE	Type of Hymen: Annular
IE AND SPECULUM EXAM	Perineal Body: swelling
ANAL EXAMINATION	profuse whitish yellowish
	Not Indicated
	Buttocks: abrasions, Perianal Skin: swelling,
	Anal Verge, Folds, Rugae: swelling, laceration
	of anal folds and rugae at 5 and 7 o'clock

### REMARKS

FORENSIC EVIDENCE COLLECTED	None
LABORATORY EXAMINATION (EXAM AND RESULT)	Trichomonas (Wet Prep)(Laboratory examination results pending.), Monilia (KOH Prep) (Laboratory examination results pending.), Gram Stain (Positive)(gram (-) intracellular diplococci = + 1), Gonorrhea Culture of Vaginal Swab (Positive)(for Neisseria gonorrhoeae;), Gonorrhea Culture of Rectal Swab

### IMPRESSIONS

Disclosure of sexual abuse

Genital findings show clear evidence of blunt force or penetrating trauma."<sup>[3]</sup>

Olaybar had nothing to offer but *alibi* for his defense. He claimed that on the evening of 05 September 2000, around seven o'clock, he was at home, and the following night, on 06 September 2000, at or about the time the second incident was said to have taken place, he was outside the parking lot ("*nasa labasan*"). The complaint, according to him, was filed against him only because AAA's family disliked the idea of people parking their vehicles in the vicinity.

Convinced of the strength of the evidence submitted by the prosecution and the utter weakness of the case for the defense, the trial court convicted appellant Olaybar of the crimes for which he was indicted; the court *a quo* adjudged:

"WHEREFORE in Criminal Case No. 00-1600, accused Jaime Olaybar y Odtuhan is hereby sentenced to suffer the penalty of Death and to pay the victim civil indemnity of P75,000.00 and P50,000.00 moral damages.

"Likewise, in Criminal Case No. 00-1601, accused Jaime Olaybar y Odtuhan is hereby sentence to suffer the penalty of Death and to pay the victim civil indemnity of P75,000.00 and P50,000.00 moral damages.

"It would appear from the testimony of the complainant, AAA that on September 5, 2000, aside from having carnal knowledge of the victim, accused Jaime Olaybar also inserted his finger in her vagina and also inserted his penis into her anus. In view thereof, the City Prosecutor is hereby ordered to conduct an investigation on the liability of the accused for Sec. 10 (a), Art. VI of RA 7610 and Rape, in so far as the above revelation of the complainant which were not alleged in Criminal Case No. 00-1600."<sup>[4]</sup>

With the imposition below of the penalty of death, the records were elevated to this Court for review. Challenging the decision of the trial court, appellant would aver that -

- "I. THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF RAPE WHEN THE LATTER'S GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.
- "II. THE LOWER COURT ERRED IN IMPOSING THE SUPREME PENALTY OF DEATH DESPITE THE ABSENCE OF ANY QUALIFYING CIRCUMSTANCE IN THE INFORMATIONS."<sup>[5]</sup>

While the Office of the Solicitor General argues that no cogent reasons exist to overturn the conviction of appellant, it does agree with the latter, however, that in neither of the two cases, could the penalty of death be aptly imposed.

Like the trial court, which has had an opportunity to observe closely the witnesses in giving their testimony before it, this Court, in its own assessment, also finds the child-victim to be credible; her testimony is sufficiently clear, quite categorical and definitely straightforward. Recalling her ordeal before the trial court, AAA has testified:

"FISCAL BARRERA:

"Q Now, on September 5, 2000 at around 7:00 p.m. where were you?

"A I was home at that time.

"Q While you were in your house fronting Meralco office, Pasay City while in your house, do you recall of any unusual incident that transpired to you?

"A Yes, there was.

"Q What was that unusual incident that happened to you at around 7:00 p.m.?

"A I was called.

"Q Who called you?

"A Jimmy, sir.

"Q This Jimmy who called you, is he inside the courtroom?

"A Yes, sir.

"Q Will you kindly point to Jimmy who called you inside your house?

"A Yes, sir.

"Court Interpreter:

Witness pointing to a person who answered by the name of Jaime Olaybar.

"Fiscal Barrera:

"Q What happened when he called for you whom you identified in open court as Jaime Olaybar?

"A I came near him.

"Q Where did you proceed when you came near him?

"A He brought me to a jeep.

"Q Is that near your house?

"A It is far.

"Q But it is near Meralco?

"A The jeep was beside Meralco.

"Q What happened when Jaime Olaybar brought you to a jeep?

"A He made me to lay down.

"Q And did you lay [sic] down?

"A Yes, sir.

"Q What happened after you were being made by accused Jaime Olaybar to lay down?

"A Then he put his penis inside my vagina (*pinasok ang titi niya sa pepe ko.*)

"Q What happened after he placed his penis inside your vagina?

"A He also inserted his finger inside my vagina.

"Q What else did Jaime Olaybar do to you?

"A '*kinalong po niya ako.*'

"Q What else happened?

"A He inserted his penis inside my anus.

"Q What else happened after he placed his penis inside your anus?

"A After that nothing else happened.

"Q You mean to say, after that you went home?

"A He brought me home.

"Q On the following day, September 6, 2000 between 7:00 to 7:30 p.m., do you know of any unusual incident that happened to you on the night of September 6, 2000?

"A Yes, there was.