

## SECOND DIVISION

[ G.R. No. 136397, November 11, 2003 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ALBERTO DAGAMI,  
APPELLANT.**

### DECISION

**CALLEJO, SR., J.:**

This case was certified and elevated to this Court by the Court of Appeals pursuant to Section 13, Rule 124 of the Rules of Court<sup>[1]</sup> after it had reviewed the decision<sup>[2]</sup> of the Regional Trial Court, Branch 8, Palo, Leyte, which convicted the accused-appellant of rape. The CA affirmed the decision of the trial court with modification, increasing the penalty imposed to *reclusion perpetua* and the amount of indemnity.

The antecedents are as follows:

On the basis of a criminal complaint<sup>[3]</sup> of the victim AAA, an Information for rape was filed against appellant, the accusatory portion of which reads:

That on or about the 31<sup>st</sup> day of October, 1991, in the Municipality of Palo, Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused ALBERTO DAGAMI did, then, and there willfully, unlawfully and feloniously by means of force, intimidation and threat have carnal knowledge with AAA, against her will and consent.

ACTS CONTRARY TO LAW.<sup>[4]</sup>

The appellant pleaded not guilty to the charge. Trial forthwith ensued.

#### **The Case for the Prosecution**<sup>[5]</sup>

Thirty-six-year-old AAA and her three children lived in a farm located at *Barangay* [REDACTED].<sup>[6]</sup> Her husband, [REDACTED], was serving sentence at the New Bilibid Prison, Muntinlupa,<sup>[7]</sup> for the killing of a certain Hinlo, Jr.<sup>[8]</sup>

In the early morning of October 31, 1991, while AAA and her children were sleeping in the *sala* of their house, she was awakened by a noise in the kitchen.<sup>[9]</sup> Curious, she lifted the mosquito net to check what it was.<sup>[10]</sup> She was shocked when she saw the appellant from the kitchen's doorway, bearing down upon her.<sup>[11]</sup> With the aid of a kerosene lamp that was lighted in the kitchen's table,<sup>[12]</sup> she recognized the appellant, who also happened to be a neighbor. He pointed a short firearm at AAA

and warned her not to shout or else she would be killed. Terrified, she raised her hands.<sup>[13]</sup> The appellant thereupon grabbed her hand and pulled her towards the kitchen floor.<sup>[14]</sup> AAA fell prostrate to the ground, face down.<sup>[15]</sup> The appellant grappled with her and turned her over.<sup>[16]</sup> He then went astride her legs and straddled them.<sup>[17]</sup> AAA resisted and struggled to free herself, but the appellant poked his gun against her abdomen and manhandled her.<sup>[18]</sup> He then raised her duster up to her neck<sup>[19]</sup> and stripped down her underwear.<sup>[20]</sup> The appellant proceeded to fondle her vagina<sup>[21]</sup> and to take off his shorts.<sup>[22]</sup> With the gun pressed against her chest,<sup>[23]</sup> AAA could not cry out.<sup>[24]</sup> The appellant then mounted her, pinning both her arms on the floor.<sup>[25]</sup> He inserted his penis into her vagina,<sup>[26]</sup> and made push-and-pull movements while inside her.<sup>[27]</sup> Satiated, the appellant stood up, and at gun- point, warned AAA not to divulge the incident to anyone, otherwise he would kill her.<sup>[28]</sup> Thereupon, the appellant jumped out of the window and disappeared.<sup>[29]</sup> AAA, trembling and in a daze, could not do anything but cry.<sup>[30]</sup>

In the afternoon of the same day, AAA, went to her father at *Sitio* David, *Barangay* San Agustin, Palo, Leyte, and revealed her ordeal at the hands of the appellant.<sup>[31]</sup> The following day, accompanied by her father, she reported the incident to *Barangay* Captain Roberto Dagami, the appellant's brother, who told them to lodge their complaint with the police authorities.<sup>[32]</sup>

On November 2, 1991, AAA submitted herself to a medical examination at the Tacloban City Medical Center. She was examined separately by Dr. Giovanni Zilmar of the Surgery Department, and Dr. Isabelita M. Alo of the OB-GYNE Department.<sup>[33]</sup> On November 6, 1991, the attending physicians issued a Medico- Legal Report which stated that:

### FINDINGS

- Contusion, 1 cm. right forearm middle 3<sup>rd</sup> anterior aspect.
- Abrasions anterior chest wall right.
- Abrasions, left anterior axillary line.

#### OB-GYNE findings:

##### Pelvic examination findings:

- Normal external genitalia.
  - Parous introitus
1. Abrasion 1 cm. right labia minora at 7:00 o'clock position with erythema.
  2. Abrasion 1 cm. left labia minora at 5:00 o'clock position.
  3. Abrasion, 0.5 cm. fourchet with erythema.
  4. Lacerations, superficial, 1-2 mm. in length # 3 at para-urethral

- orifice.
- Vagina admits 2 finger with ease.

Cervix - pinkish with eversion, small, firm, closed, non-tender.

Uterus - 6 cms from S/P

Discharge - Whitish, scanty

Spermatozoa examination - No spermatozoa seen.

UCG exam - Negative for UCG.

X-X-X-X-X-X <sup>[34]</sup>

Dr. Alo recalled that when she examined AAA, she noticed a redness on the entrance of her vagina. <sup>[35]</sup> She opined that abrasions Nos. 1, 2, 3, and 4, above, sustained by AAA could have been caused by the rubbing or by the force and friction of a sexual act. <sup>[36]</sup> She explained that though there were no traces of spermatozoa in AAA's vagina, this does not negate rape since the same could have been expelled out or had simply died after 72 hours. <sup>[37]</sup>

Dr. Zilmar, elaborating on his finding, declared that the contusion on the right forearm and the abrasions on the left anterior axillary line and right chest of AAA could have been caused by the forceful application of a blunt force and/or a struggle. <sup>[38]</sup>

On November 6, 1991, AAA reported the incident to the police authorities. <sup>[39]</sup>

In the meantime, in January 1992, AAA received a letter from her husband [REDACTED] advising her of his coming release from prison in April of that same year. Thus, in March 1992, AAA left for Manila to fetch her husband. <sup>[40]</sup>

### **The Case for the Appellant** <sup>[41]</sup>

The appellant testified that he was a next-door neighbor of AAA in *Barangay* [REDACTED]. <sup>[42]</sup> He eked out a living as a farmer <sup>[43]</sup> and doubled up as a Chief *barangay tanod* at night. <sup>[44]</sup> He denied having raped AAA and vigorously claimed that they were lovers. <sup>[45]</sup> He began courting her in August of 1991 and being a convict's wife, won her love effortlessly. <sup>[46]</sup> The following month, they had sexual intercourse three times in her house, usually at around 11:00 p.m. <sup>[47]</sup> The appellant said that as Chief *barangay tanod*, he had a convenient excuse to his wife for his nocturnal escapades. <sup>[48]</sup> As his lover, he brought AAA *palay* during harvest season. <sup>[49]</sup>

On October 30, 1991, at about 10:00 p.m., AAA summoned him to her house. AAA showed him a letter from [REDACTED], informing her of his forthcoming release from prison in May 1992. She told him that she was carrying their love child. <sup>[50]</sup>

To the appellant's surprise, his brother told him that AAA filed a criminal complaint

against him.<sup>[51]</sup> He immediately went to AAA's house to straighten things out. The appellant was accompanied by his mother. He confronted AAA but elicited no answer.<sup>[52]</sup> He then told AAA's mother, [REDACTED], of his illicit love affair with her daughter and that the latter was pregnant. [REDACTED] got furious and started calling her daughter names.<sup>[53]</sup> Unable to control herself, [REDACTED] went berserk and started beating up AAA. The appellant explained that this particular event accounts for the injuries of AAA as reflected in the medico-legal report.<sup>[54]</sup>

The appellant further testified that AAA went to Manila to remove herself from the prying eyes and ears of her barriomates. There, months after or on June 29, 1992, she gave birth to a baby boy at the Cogio Hospital.<sup>[55]</sup> He was present when AAA delivered their child. The child was thereafter given up for adoption, and was adopted by [REDACTED].<sup>[56]</sup>

The appellant asserted that AAA merely fabricated the rape charge to save herself from the shame and ignominy of having been impregnated by him, and, likewise, to escape the wrath of her ex-convict husband.<sup>[57]</sup>

[REDACTED] corroborated the appellant's claim that the latter was AAA's paramour. She testified that despite being a neighbor and a *kumadre* of AAA, she came forward to shed light on the truth.<sup>[58]</sup> She was a farmhand of AAA's mother who knew of the love affair between the appellant and AAA. In March 1991, she saw them twice in a very uncompromising situation.<sup>[59]</sup> The first was during a harvest, when the appellant and AAA were kissing and caressing each other inside a *nipa* hut located in the rice-field.<sup>[60]</sup> The other was when the appellant dropped by the house of AAA. The two kissed in her presence.<sup>[61]</sup>

[REDACTED], 80 years old, testified that on October 31, 1991, at about 7:00 p.m., she was at her porch when she heard [REDACTED] shouting at AAA at the top of her voice and berating her about the illicit relationship.<sup>[62]</sup> From AAA's window she witnessed [REDACTED] punch, scratch, and pinch AAA on different parts of her body.<sup>[63]</sup> The incident attracted the attention of the neighbors who rushed to the house of AAA.<sup>[64]</sup>

[REDACTED], 56 years old, is the maternal aunt of AAA and resided at Bonifacio St., Bangkal, Makati City.<sup>[65]</sup> She said that sometime in November 1991, AAA went to her place, seeking financial help for her rape case.<sup>[66]</sup> Initially, she obliged, but when she found out from AAA's parents and other relatives that the charge was but a sham, she stopped extending financial assistance.<sup>[67]</sup> Thereafter, AAA returned home to Leyte. In January 1992, AAA again went back to Manila where she gave birth to a child on June 29, 1992 at the Antipolo Municipal Hospital. She said that the child was adopted by AAA's sister, [REDACTED].<sup>[68]</sup>

The prosecution then recalled AAA to the witness stand as a rebuttal witness. She

testified that after the release of her husband from prison, they left *Barangay* [REDACTED] and settled down at her husband's place at Moroboro, La Paz, Leyte.<sup>[69]</sup> She indignantly denied that the appellant was her sweetheart and that she had consensual sexual relations with him.<sup>[70]</sup> She said that she was neither impregnated by the appellant, nor had given birth to a child on June 29, 1992 sired by the appellant.<sup>[71]</sup> Her youngest child was born on April 23, 1995 and its father was her husband, [REDACTED].<sup>[72]</sup> She averred that in June 1992, her Aunt [REDACTED] approached her and sought the dropping of the case by offering money, which she flatly refused.<sup>[73]</sup> According to AAA, her mother and her aunt [REDACTED] were not in speaking terms, as the two were squabbling over some property left by her maternal grandmother.<sup>[74]</sup> She further said that the *nipa* hut located at the rice-field being alluded to by [REDACTED] as their love tryst was an open hut without any wall.<sup>[75]</sup>

On July 3, 1996, the trial court rendered judgment convicting the appellant. The dispositive portion of the decision reads:

WHEREFORE, IN THE LIGHT OF THE FOREGOING, the Court finds accused ALBERTO DAGAMI, alias Bebot, guilty beyond reasonable doubt, as principal, of the consummated offense of RAPE, as defined and penalized under Art. 335 of the Revised Penal Code, with the use of a deadly weapon, a handgun, and applying the pertinent provisions of the Indeterminate Sentence Law, convicts him to suffer an indeterminate penalty ranging from TEN (10) YEARS and ONE (1) DAY of prision mayor, as minimum, to SEVENTEEN (17) YEARS and FOUR (4) MONTHS of reclusion temporal, as maximum, with the accessory penalties provided for by law.

Pursuant to Art. 345 of the RPC, the accused is hereby condemned to: (1) indemnify the offended party, AAA, the sum of P30,000.00; & (2) to acknowledge and support the offspring resulting from the accused's illegal act subject of this indictment.

With costs de oficio.

SO ORDERED.<sup>[76]</sup>

The appellant appealed to the Court of Appeals.<sup>[77]</sup> On October 26, 1998, the CA promulgated its decision<sup>[78]</sup> affirming the decision of the trial court but with modifications. The decretal portion of the decision of the CA reads:

WHEREFORE, the judgment convicting the accused-appellant Alberto Dagami is **AFFIRMED**, with the **MODIFICATIONS** that (a) the penalty of imprisonment to be imposed is *reclusion perpetua*; (b) that Alberto Dagami indemnify AAA in the sum of fifty thousand pesos (P50,000.00); (c) that the order for the recognition and support be deleted.

Considering the imposable penalty and pursuant to Rule 124, Section 13