

EN BANC

[G.R. No. 146188, December 11, 2003]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. DIONISIO ROTE @
TAMBUTSO, APPELLANT.**

DECISION

CARPIO, J.:

The Case

For automatic review is the Decision^[1] dated 5 October 2000 of the Regional Trial Court of San Jose, Occidental Mindoro, Branch 46, in Criminal Case No. R-4477 finding Dionisio Rote @ Tambutso ("appellant") guilty beyond reasonable doubt of qualified rape. The dispositive portion of the decision reads:

WHEREFORE, the Court finds the accused guilty beyond reasonable doubt of having committed the crime of rape and is sentenced to DEATH.

The accused is further ordered to indemnify the complainant AAA the amount of P75,000.00 plus P50,000.00 for moral damages.

The accused who is presently detained at the Provincial Jail at Magbay, San Jose, Occidental Mindoro, is ordered immediately transferred to the New Bilibid Prisons, Muntinlupa City, Metro Manila.

Costs against said accused.

SO ORDERED.

The Charge

Appellant was charged with the crime of rape under Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659 and Republic Act No. 8353 for raping AAA^[2] ("AAA"). The Information reads as follows:

That on or about the 29th day of October 1998, at around 9:00 o'clock in the evening in [REDACTED], Philippines and within the jurisdiction of this Honorable Court, the accused, with lewd design, by means of force and intimidation, did then and there willfully, unlawfully, and feloniously have carnal knowledge of AAA, who is a minor, against her will and consent.

Arraignment and Plea

When arraigned on 8 January 1999, appellant, with the assistance of counsel,

entered a plea of not guilty. [3] Thus, trial ensued.

The Trial

Version of the Prosecution

The prosecution presented four witnesses: (1) AAA's mother, [REDACTED]; (2) Dr. Wilfred Kenept; (3) AAA herself; and (4) AAA's brother, [REDACTED].

In the People's Brief, the Solicitor General summarized the prosecution's version of the incident as follows:

The offended party was born on May 14, 1989 to [REDACTED] and [REDACTED] (Exhibit D, p. 2, TSN, July 7, 1999). After the death of [REDACTED], [REDACTED] cohabited with appellant without the benefit of marriage (pp. 2, 13, TSN, July 7, 1999; p. 4, TSN, March 15, 1999). Appellant, complainant and her children by her former husband, including the offended party, lived in [REDACTED].

Around 9:00 o'clock in the evening of October 29, 1998, appellant invited the offended party and her brother [REDACTED] to fish at a pond about one hundred (100) meters away from their house. Appellant told [REDACTED] to stay at the road, while he brought the offended party to a place where straws were stacked (dayamihan). He undressed and laid her down and inserted his penis in her vagina. The offended party shouted in pain. Her cries of pain were heard by [REDACTED], who remained nearby. After consummating his lust, appellant threatened the offended party that he would kill her if she would tell her mother about the incident (pp. 4-7, TSN, July 7, 1999).

When the offended party went home, [REDACTED] informed complainant (their mother, [REDACTED]) that he heard her sister cry. Complainant asked the offended party what happened. Instead of answering, the offended party just wept. Complainant noticed that her daughter had a "hickee" on her neck. Breaking her silence, the offended party confirmed that she was sexually abused by appellant (pp. 5-7, TSN, March 15, 1999).

Dr. Wilfred D. Kenept, the Municipal Health Officer of Sablayan, Occidental Mindoro, examined the offended party and found out:

x x x

GENITALIA - normal looking external genitalia. Laceration noted in the Lavia Majora 9 o'clock position, laceration noted in the Labia Minora 3 o'clock and 9 o'clock position.

(Exhibit B, p. 81, Record)[4]

Version of the Defense

The defense presented three witnesses: (1) appellant himself; (2) Dr. Nuela Manzanida; and (3) Ricardo Aguirre.

The Public Attorney summarized the defense's version as culled from the testimonies of its witnesses as follows:

DIONISIO ROTE averred that AAA is his stepdaughter. He denied that he invited [REDACTED] and AAA to go fishing and that he intentionally left [REDACTED] by the road before they went fishing; and that he brought AAA to a "dayamihan" and sexually abused her at around 9:00 o'clock in the evening on October 29, 1998. At that time, he was in the place of a certain Dodong Aguirre in Sitio Cabacungan which is about 50 meters away from their house. He, together with Giovanni Flores and Dodong Aguirre had a drinking spree in the said place from 6:00 o'clock in the evening up to 12:00 midnight. After consuming six (6) bottles of gin, he, together with Giovanni Flores went home. When he arrived home, the children (Netnet and Jess) were already sleeping but his common-law wife was still awake. He likewise denied that on October 30, 1998, at around 6:30 o'clock in the morning the complainant (AAA) had reported to her mother that he sexually abused her at the "dayamihan." Apparently, prior to the filing of the criminal complaint against him, he had a quarrel with his common-law wife when he refused to lend money to her eldest daughter (Alma) who was then planning to build a house. In fact, the common-law wife even told him, "bakit paabutin ng umaga, hiwalay kung hiwalay." He replied that if she does not leave the house the next morning, he would be the one to leave. So, she left the house the next morning and went to Sitio Kastila and she never returned. He further denied that he invited [REDACTED] and AAA to go fishing on October 29, 1998, at around 9:00 o'clock p.m. and that [REDACTED] heard the cry of AAA when the latter was allegedly sexually molested by him. He was arrested on October 30, 1998. (TSN, November 4, 1999, pp. 2-12)

DR. NUELA C. MANZANIDA, Municipal Health Officer of San Jose, Occidental Mindoro, testified that the complainant's hymen could still be intact because Dr. Kenept did not put anything about it in his findings. Based on the Medico Legal Certificate, the lacerations were found only in the labia minora and labia majora which could be caused by other objects aside from the insertion of a human penis. In fact, said lacerations could also be caused by accident. (TSN, February 16, 2000, pp. 2-6)

RICARDO AGUIRRE testified that on October 29, 1998, at around 6:00 o'clock in the evening, while he was sitted (sic) in front of their house, Dionisio Rote and Diovanie (sic) Flores approached him because they were able to buy fish which they later cooked as "pulutan". They had a drinking spree which lasted up to 12:00 o'clock midnight. They were able to consume 3 bottles of gin. During the duration of their drinking spree, there was no occasion that accused Dionisio Rote left the place, In fact, Dionisio went home at around 12:00 o'clock midnight. He knew the complainant (AAA) by face and not by name. At around 7:00 o'clock the following day, he saw the complainant and her mother waiting for a bus going to Sitio Castila, Sablayan. While waiting for the bus, the

complainant and her brother alternately rode a bicycle and roamed around their place. The complainant and her mother were able to board the bus at around 8:00 o'clock in the morning. He learned that the accused was charged by his own stepdaughter only on the afternoon of October 30, 1998. (TSN, March 21, 2000, pp. 2-8)^[5]

The Trial Court's Judgment

The trial court did not give credence to appellant's imputation of ill-motive on the part of his common-law wife, [REDACTED], in bringing the charges against him. The trial court also disbelieved appellant's defenses of denial and alibi which cannot hold up against AAA's positive identification of appellant as her rapist. The trial court stated that appellant failed to show that it was physically impossible for him to be at the scene of the crime at the time of its commission. In the evening of 29 October 1998, appellant could have gone fishing, carried out his evil deed and then proceeded to Ricardo Aguirre's house for a drinking spree since these locations were well within a hundred meters from each other. Lastly, the trial court pointed out that the fact that AAA's hymen has remained intact does not preclude the finding of rape since mere entrance of the male organ within the labia of the pudendum still constitutes rape.

Hence, this automatic review.

Issues

Appellant raises the following assignment of errors:

1. The trial court gravely erred in finding him guilty beyond reasonable doubt of the crime of rape under Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659 and Republic Act No. 8353;
2. The trial court gravely erred in imposing the capital punishment of death on the assumption that he is guilty of the crime charged.

The Court's Ruling

By the very nature of the crime of rape, conviction or acquittal depends almost entirely on the credibility of the victim's testimony because usually only the participants can testify as to its occurrence.^[6] To exculpate himself, appellant tries to discredit and assail AAA's credibility. However, he does not point to any particular portion of AAA's testimony or any other prosecution evidence which casts doubt on his guilt or evinces the improbability of the commission of the crime charged. The only conclusion is that AAA's credibility is beyond dispute and her testimony is worthy of full faith and credence. AAA recounted her ordeal in the hands of appellant in a straightforward, candid and firm manner thus:

- Q: On the evening of October 29, 1998, do you remember having invited (sic) by your stepfather to go with your brother [REDACTED] to go fishing?
- A: Yes, sir.