

## THIRD DIVISION

[ G.R. No. 136144, January 15, 2002 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROQUE ESTOPITO @ KIKING, ACCUSED-APPELLANT.**

### DECISION

**VITUG, J.:**

Appellant Roque Estopito alias "Kiking" was charged with the crime of rape in a criminal complaint, dated 22 November 1994, viz:

"I, BBB, of legal age, Filipino, married, and resident of xxx, in my minor 12-year [old] daughter AAA's behalf, swear under the law, and charges the Accused ROQUE ESTOPITO alias "Kiking" of the felony of RAPE under article 335 of the Revised Penal Code (as amended) because:

"Last 20 November 1994, at or about 5:00 in the afternoon, in the premises of the back of Magsaysay Elementary School, xxx, Philippines and within this HONORABLE COURT'S jurisdiction, the ACCUSED, against my 12-year old minor daughter AAA's will and consent, through force and intimidation, laid down the minor AAA on a certain cemented floor, embraced, kissed her, touched her body and vagina, removed her underwear ('panty'), and penetrated his penis into her vagina, and thus, the Accused had carnal knowledge with my daughter AAA."<sup>[1]</sup>

The complaint was certified and forthwith filed by the prosecutor as being the accusatory information against Estopito.

Arraigned, the accused entered a plea of "not guilty;" the reception of evidence followed.

#### Evidence for the Prosecution. -

About five o'clock in the afternoon of 20 November 1994, a Sunday, complainant AAA, a Grade III pupil, was playing outside their house with friends in Magsaysay, xxx. Accused Roque Estopito, a neighbor, showed up and asked AAA to buy cigarettes for him at a nearby store. After AAA had bought the cigarettes and handed them over to him, the accused pulled her and had her ride with him on his bicycle. AAA attempted to shout for help but she was prevailed upon to keep quiet. He took the young girl to Magsaysay Elementary School located some two hundred meters away. Upon reaching the school campus, he ordered her to lie down on the cemented floor. He removed her panty. Half-naked, the accused placed himself on top of her and inserted his penis into her vagina. AAA cried in pain. After satisfying his lust, he left but not before giving AAA a stern warning not to tell anyone about what had just happened.

SPO2 Teodoro Estoce, Sr., testified that on the evening of 20 November 1994, around six o'clock, he and a fellow officer were on mobile patrol when they received a call from the radio operator about a reported rape incident in XXX. Proceeding to the vicinity, the officers found the accused already under guard by some people in the area. After he was turned over to them, the police officers repaired to the police station where they placed the accused in the custody of the desk officer.

The next day, 21 November 1994, AAA was brought to Dr. Danilo Ledesma, a medico-legal officer, for physical examination. In his medical report, Dr. Ledesma found AAA to have sustained a 2-cm. abrasion at the fourchette of her genitalia and a linear abrasion in the vestibule. The hymen, however, was still intact.

Evidence for the Defense. -

Taking the witness stand, the accused denied the accusation and claimed that on the day of the supposed incident, he was at "Moring and Son's Welding Shop" working. At 11:30 a.m., he went to the house of his employer, Bonifacio Chatto, to partake of lunch. An hour later, appellant, together with his employer and other co-workers, had a drinking and singing session. At past five o'clock in the afternoon, he was fetched by Boy Ramas, an uncle of AAA, at the residence of his employer. Proceeding to the house of the AAA, he was surprised to find a group of people in the house. At around 6:15 p.m., a police vehicle arrived and police officers started to interview AAA. He, AAA and the latter's aunt were then invited to the police station. The accused was immediately put inside a detention cell while AAA continued to be interrogated. The accused later learned that he was being accused of rape.

The *alibi* given by the accused was corroborated by Rosario Chatto who testified that the accused worked at the welding shop of her husband in the morning of 20 November 1994, had lunch with them and then proceeded to a drinking session and "videoke" singing which lasted up until six o'clock in the evening. The accused, she narrated, did not leave their company except once for about 20 minutes.

In its decision, dated 23 February 1998, the court *a quo* found the accused guilty beyond reasonable doubt of the crime charged; it adjudged:

"FOR THE FOREGOING CONSIDERATIONS, this Court finds accused ROQUE ESTOPITO alias 'KIKING' 'GUILTY,' beyond reasonable doubt of the crime of Rape as defined and penalized under Article 335 of the Revised Penal Code, he is hereby sentenced to suffer the penalty of RECLUSION PERPETUA with all the accessory penalties provided by law.

"Accused is hereby directed to indemnify the victim the sum of Fifty Thousand (P50,000.00) Pesos."<sup>[2]</sup>

In his appeal, Roque Estopito urges the Court to reverse the judgment of the trial court for what he believes to be a failure of the prosecution to amply prove his guilt.

It may be well to presently reiterate the three precepts that have guided the Court in reviewing rape convictions, i.e., (1) that an accusation for rape can be made with facility, it is difficult to prove but even more difficult for the person accused, although innocent, to disprove; (2) that in view of the intrinsic nature of the crime

of rape where only two persons are usually involved, there is need to scrutinize the testimony of the complainant with **extreme caution**; and (3) that the evidence for the prosecution must stand or fall on its own merits, and it cannot be allowed to draw its strength from the weakness of the evidence for the defense.<sup>[3]</sup> The Court likewise constantly keeps in mind the constitutional presumption of innocence requiring it to assure itself that in any judgment of conviction the guilt of the accused is established beyond reasonable doubt.

Closely examining the records, the Court merely finds the following relevant portions of AAA's testimony on the alleged rape; thus -

"Q. What was he doing?

"A. I was told to buy cigarette.

"Q. Who told you to buy cigarette?

"A. Kiking.

"Q. Where were you when he called you and told you to buy cigarette for him?

"A. I was playing.

"Q. Where were you playing?

"A. In our neighbor.

"Q. Who is that neighbor?

"A. Joy-Joy.

"Q. How far is that from the house of Vina?

"A. Adjacent.

"Q. Now, what did you do when he told you to buy cigarette?

"A. I handed [it] to him.

"Q. What did you give?

"A. Cigarette.

"Q. Where did you buy the cigarette?

"A. At Vina.

"Q. You mean to say that Vina is a store?

"A. Yes, Ma'am.

"Q. Now, how far was he from the store when you gave the cigarette to him?

"INTERPRETER:

Witness pointed to a distance which is about five (5) to six (6) meters.

"PROSECUTOR CALIZO:

"Q. So, upon handing the cigarette to him, what did he do or say to you?

"A. Nothing.

"Q. What did he do after?

"A. Nothing.

"Q. What about you, what did you do after giving the cigarette?

"A. I was pulled.

"Q. Who pulled you?

"A. Kiking.

"Q. To where? What direction?

"A. At Magsaysay.

"Q. How did you and Kiking go to Magsaysay?

"A. We rode a bicycle.

"Q. You said he was riding a bicycle. At the time he was asking you to buy a cigarette, was he riding already a bicycle?

"A. Yes.