

## FIFTH DIVISION

[ CA-G.R. CR.-H.C. No. 04919, March 13, 2015 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARIEL S. MENDOZA, ACCUSED-APPELLANT.**

### DECISION

**GARCIA-FERNANDEZ, J.:**

This is an appeal from the decision dated December 9, 2010<sup>[1]</sup> issued by the Regional Trial Court of Iba, Zambales Branch 69 (RTC), finding accused-appellant Ariel S. Mendoza guilty of qualified rape under Articles 266-A and 266-B of the Revised Penal Code in further relation of Art. III, Section 5(B) of Republic Act 7610, otherwise known as "Special Protection of Children Against Abuse, Exploitation and Discrimination Act" (RA 7610), sentencing him to suffer the penalty of reclusion perpetua without eligibility of parole and payment of P75,000.00 as civil indemnity, P75,000.00 as moral damages and P25,000.00 as exemplary damages.

The factual antecedents are as follows:

Accused-appellant was charged in an Information dated February 10, 2010<sup>[2]</sup> which reads:

That sometime in between 2008 and 2009, in Brgy. Luna, Municipality of San Antonio, Province of Zambales, Philippines and within the jurisdiction of this Honorable Court, the said accused, with lewd design, through intimidation, did then and there willfully, unlawfully and feloniously inserted his penis into the vagina and buttocks of his own daughter, five (5) year old AAA<sup>[3]</sup> against her will and consent, and which degraded and demeaned the latter of her intrinsic worth and dignity, to the damage and prejudice of said minor AAA.

Assisted by a counsel *de officio*, accused-appellant was arraigned on April 13, 2010 and he entered a plea of not guilty to the offense charged<sup>[4]</sup>. During preliminary conference on May 5, 2010, accused-appellant admitted that AAA is his daughter, as well as the existence and due execution of AAA's certificate of live birth.<sup>[5]</sup>

#### Evidence for the Prosecution

During her testimony, AAA identified and affirmed the Sinumpaang Salaysay that she executed on April 16, 2009<sup>[6]</sup>. In the salaysay, AAA narrated that the crime happened at her grandfather's house on the day her house was being demolished<sup>[7]</sup>. AAA said that while her grandfather was away, accused-appellant stripped her of all her clothes, told her to lie down, and inserted his penis inside her vagina and anus. When her grandfather returned, AAA dressed up, went out of the house and played

with her dog. She later narrated the incident to her godmother, her auntie, and another person. To quote the salaysay:

- 3 TANONG - AAA, marunong ka bang magsalita at bumasa ng salita o wikang Tagalog?
- SAGOT - Marunong lang pong magsalita ng Tagalog.
- 4 T - AAA, bakit nandito kayo ni mama mo sa opisina ng pulis?
- S - Isusumbong ko po si Ninong Rolex at Papa ko.
- 5 T - Bakit mo isusumbong is Papa mo?
- S - Kasi pinasok po niya yung 'TOTOY' niya sa 'PEPE' ko at saka sa 'PWET' ko.
- 6 T - Paano ipinasok ng PAPA mo ang 'TOTOY' niya sa pepe mo?
- S - Diba ito yung 'TOTOY' niya, ito yung 'PEPE' ko, yun ipinasok niya?  
(Victim demonstrate thru her hands how his [sic] father sexually abused her)
- 7 T - Maalala mo ba kong anu ang itsura ng 'TOTOY' ni PAPA mo?
- S - May balbas at medyo mahaba.
- 8 T - Anung kulay ng balbas ng 'TOTOY' ni PAPA mo?
- S - Kulay itim, katulad ng buhok. (Victim hold her hair)
- 9 T - Anung naramdaman mo noong pinasok ni PAPA mo ang 'TOTOY' niya sa pepe mo?
- S - Masakit po at saka mahapdi.
- 10 T - Pagkatapos ipinasok ng PAPA mo ang 'TOTOY' niya sa 'PEPE' mo, anung ginawa mo?
- S - Nagsumbong po ako kay BBB, ninang at tita<sup>[8]</sup>.
- 11 T - Maalala mo ba kung kailan ipinasok ni PAPA mo ang kanyang 'TOTOY' sa 'PEPE' mo'?
- S - Noong giniba yong bahay namin, umaga po sa loob ng bahay ni LOLO GORYO
- 12 T - Alam mo ba kung anung pangalan ni PAPA?
- S - Opo, ARIEL MENDOZA, pero ang palayaw po niya ay "DAGA"
- 13 T - Maari mo bang ikuwento sa amin kong anu ang ginawa ni PAPA mo sa iyo?
- S - Hinubad po ni PAPA ko ang short ko at panty ko at saka damit ko, tapos pinadapa niya ako, tapos ipinasok niya ang 'TOTOY' niya sa 'PEPE' at saka sa PUWET ko tapos po dumating si LOLO ko, nagbihis na po ako tapos lumabas na po ako, at si PAPA ay naiwan sa loob ng bahay ni LOLO, tapos naglaro po ako kasama ko ang aso ko po.

AAA's mother, CCC<sup>[9]</sup>, testified that when she learned about what happened to AAA, she sought the assistance of the barangay chairman of Bancal, Meycauyan, Bulacan to proceed to Zambales. Later, the Department of Social Welfare and Development (DSWD) had AAA go for a medical examination. On cross-examination, CCC stated

that she was in Bulacan because she had a fight with accused-appellant but did not leave her children under the latter's custody. CCC likewise denied having forced AAA to file the instant case out of anger towards accused-appellant.

The prosecution offered the following documents as exhibits: 1) Sinumpaang Salaysay of AAA (Exh. "A" with submarkings); 2) Sinumpaang Salaysay of CCC (Exh. "B" with submarkings); 3) Joint Affidavit of Arrest of PO1 Walter Primero and PO3 John C. Lazaro (Exh. "C"); 4) Certificate of Live Birth of AAA (Exh. "D" with submarkings) and 5) Initial Medico-Legal Report (Exh. "E").<sup>[10]</sup> All were admitted by the RTC<sup>[11]</sup>.

### Evidence for the Defense

Accused-appellant denied the charge against him and claims that he was charged with rape because CCC is living with another man in Bulacan and CCC coached AAA to prosecute him. He alleges that AAA told the barangay officials that it was his compadre, Rolex Labre, who raped his daughter while Rolex was living with them. Accused-appellant claims that he came to know about the incident when the barangay summoned him after AAA reported the incident and he was the one who told the barangay officials where Rolex Labre resides.

The defense was supposed to present Gregorio Mendoza as its second witness but was dispensed with then the defense stated that Mendoza's testimony would only corroborate with the testimony of the accused-appellant.

Only accused-appellant's affidavit (Exh. "1" with submarkings) was offered by the defense as its documentary evidence<sup>[12]</sup>. The RTC resolved to admit the affidavit in evidence<sup>[13]</sup>.

On December 9, 2010, the RTC promulgated the decision<sup>[14]</sup> finding accused-appellant guilty of qualified rape under Articles 266-A and 266-B of the Revised Penal Code in further relation of Art. III, Section 5(B) of Republic Act 7610, stating that the evidence adduced by the prosecution proved that AAA was sexually molested by the accused-appellant, to quote:

"From the foregoing, the court is convinced that minor victim was raped by her own father-accused. The victim testified in a straightforward and clear manner. She positively identified her own father as the author of the despicable act committed against her.

Rape victims who are of tender age and immature, such that of herein minor-victim, especially of tender age, would not concoct a story of defloration, allow an examination of her private part and thereafter subject themselves to a public trial, if they were not motivated by the desire to obtain justice for the wrong committed against them. Youth and immaturity are generally badges of truth.

For his defense, accused Mendoza claimed innocence. He denied the charges against him and alleged that her [sic] daughter-complainant pointed to a certain Felix Labre, his "compadre", as the person who molested his daughter and that his wife wanted him to be jailed because