

## SEVENTH DIVISION

[ CA-G.R. CR No. 34467, March 03, 2014 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
BENJAMIN MADRIGALEJOS Y DALDE, ACCUSED-APPELLANT.**

### D E C I S I O N

**TIJAM, J.:**

This is an appeal from the Decision dated September 15, 2011 of the Regional Trial Court (RTC) of Legazpi City, Branch 8, in Criminal Case No. FC-07-0020, finding Accused-Appellant, Benjamin Madrigalejos y Dalde, guilty of Rape by Sexual Assault as defined under Article 266-A(2) of the Revised Penal Code.

Accused-Appellant was charged in an Information<sup>[1]</sup> that reads:

"That between 6 A.M. And 11 A.M. Of October 11, 2006, in Barangay Malobago, Municipality of Manito, Province of Albay, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd and unchaste design, did, then and there, willfully, unlawfully and feloniously insert his finger(s) inside the sexual organ of his granddaughter, AAA<sup>[2]</sup>, a two-year old minor and the daughter of one of his children, against her will and consent, to her damage and prejudice.

ACTS CONTRARY TO LAW."

When arraigned on April 18, 2007, Accused-Appellant pleaded not guilty<sup>[3]</sup> to the charge.

During the pre-trial conference on June 7, 2007, the following statement of facts were admitted:

"A. Admitted

1. The offended party was 2 years & 10 months old at the time of the commission of the offense;
2. Identity of the accused;
3. Accused resides in Malobago, Manito, Albay, the same place where offended party resides;
4. Jurisdiction of the court."<sup>[4]</sup>

The prosecution presented the mother, "BBB", "AAA", Dr. James Belgira and Teresita Azuela. It submitted, among others, the sworn statements of "BBB"<sup>[5]</sup>, Certificate of Live Birth of "AAA"<sup>[6]</sup>, Certificate of Marriage of BBB and the father "CCC"<sup>[7]</sup>,

Medico-Legal Report MLB-91-06<sup>[8]</sup>, and pictures of the residence of "BBB" and that of Accused-Appellant<sup>[9]</sup>.

The prosecution evidence established that "BBB" and "CCC" are husband and wife<sup>[10]</sup> and that "AAA" is their daughter.<sup>[11]</sup> The Accused-Appellant is the father of "CCC" and is thus the grandfather of "AAA".

On October 11, 2006, at six o'clock in the morning, one of the Accused-Appellant's daughters, "DDD", fetched "AAA" from "BBB's" house and brought her to their house across the street. "DDD" went to school and left "AAA" in their house.

"BBB" stayed in her own house attending to her household chores, and saw through the window<sup>[12]</sup> that "AAA" was with the Accused-Appellant in the latter's home. She heard Accused-Appellant say "*putol kamay, putol paa, tanggal mata, hihiwain ang tiyan*". She also heard Accused-Appellant say that "AAA" is no longer dear to him.  
<sup>[13]</sup>

Accused-Appellant's other daughter, "EEE", brought "AAA" back to "BBB's" house at around eleven o'clock in the morning. "BBB" noticed that "AAA" was limping and was complaining of pain on her lower back. "BBB" noticed that "AAA" smelled of human saliva and cigarettes. "BBB" proceeded to check on "AAA's" anus, and when she did not find anything wrong, she checked "AAA's" vagina and found that it was swollen and bloodied. When asked who did that to her, "AAA" replied that the perpetrator will cut her hands and legs, slash her tummy and pull out her eyes. When "AAA" was asked again who did it to her, she (AAA) said that it was the Accused-Appellant.

"BBB" cleaned "AAA's" face and neck but did not touch her vagina and went to the Office of the DSWD at Manito Albay to ask for assistance. She was advised to go to Dra. Bolanos, who referred them to Camp Simeon Ola, at the Crime Laboratory. The doctor at the Crime Laboratory, however, was on assignment, so they went home.

The next day, the Medico-Legal Officer at the Crime Laboratory, Dr. James Belgira ("Dr. Belgira") examined "AAA". He found that she had a slightly dilated hymen with deep healed laceration at eight o'clock position. Dr. Belgira was of the opinion that such injury could be produced by the insertion of a hard, blunt object like a tense finger. The medico-legal report reads as follows:

"xxx  
FINDINGS:  
xxx  
GENITAL:

There is absence of growth of pubic hair. The labia majora are full, convex and coaptated. On separating the same disclosed, a fleshy type and slightly dilated hymen with deep healed laceration at 8 o'clock position. The posterior fouchette is sharp.

#### CONCLUSION:

Finding show clear signs of blunt vaginal penetrating trauma.

There are no extra genital signs of application of any form of physical trauma.

The defense on the other hand, presented the Accused-Appellant, "EEE" and Accused-Appellant's wife "FFF" as witnesses.

Accused-Appellant denied the charge against him. Accused-Appellant claimed that he went to work at the back of their house, around twelve to thirteen meters away where he was constructing a fishing boat. He also claimed that his wife "FFF" and daughter "EEE" never left the house.

Accused-Appellant saw "AAA" go to their house the morning of October 11, 2006 with his daughter "DDD" and that "EEE" took care of "AAA" after "DDD" left for school. When he returned to his home at noon, "AAA" was no longer there.

Accused-Appellant alleged that the standing grudge between him and "BBB's" father is the reason why "BBB" filed the case against him. "BBB's" father allegedly had ill feelings towards him because he refused to support the former's political party and that they did not get along well with each other as officers of a landowner's association.

The RTC rendered a Decision dated September 15, 2011, the dispositive portion of which reads as follows:

**"ALL THE FOREGOING CONSIDERED**, the prosecution having proved the guilt of the accused beyond peradventure of doubt, **BENJAMIN MADRIGALEJOS** is hereby found **GUILTY** of rape by sexual assault as defined under Article 266-A(2) of the Revised Penal Code. There being one aggravating/qualifying circumstance, he is accordingly sentenced to suffer the penalty of **six (6) years and one (1) day of prision mayor as minimum to seventeen (17) years, four (4) months and one (1) day of reclusion temporal as maximum**. He is likewise ordered to indemnify the private offended party, 'AAA', the amount of Php 75,000.00 as moral damages, Php 75,000.00 as civil indemnity and Php 30,000.00 as exemplary damages.

SO ORDERED."

On October 3, 2011, the Accused-Appellant filed the instant appeal raising the following of errors:

#### "I

The trial court gravely erred in finding the minor-victim a competent and credible witness.

#### II

The trial court gravely erred in giving weight and credence to the testimony of the private complainant's mother.

#### III

The trial court gravely erred in convicting the accused despite the prosecution's failure to prove the fact of the crime and the perpetrator's identity.

#### IV

The trial court gravely erred in convicting the accused appellant despite the prosecution's failure to prove his guilt beyond reasonable doubt.”<sup>[15]</sup>

Accused-Appellant claims that the prosecution failed to prove “AAA's” credibility and competency. He also claims that “AAA” was not sworn in as witness and that her testimony was rehearsed.

The Plaintiff-Appellee counters Accused-Appellant's claims stating that every child is presumed qualified to be a witness and that the party seeking to challenge the child's competence has the burden of proving his claim.

*We find that “AAA” was a credible and competent witness.*

In determining the competency of a child witness, the court must consider his capacity (a) at the time the fact to be testified to occurred such that he could receive correct impressions thereof; (b) to comprehend the obligation of an oath; and (c) to relate those facts truly to the court at the time he is offered as a witness. The examination should show that the child has some understanding of the punishment which may result from false swearing. The requisite appreciation of consequences is disclosed where the child states that he knows that it is wrong to tell a lie, and that he would be punished if he does so, or that he uses language which is equivalent to saying that he would be sent to hell for false swearing. A child can be disqualified only if it can be shown that his mental maturity renders him incapable of perceiving facts respecting which he is being examined and of relating them truthfully.<sup>[16]</sup>

During “AAA's” fifth appearance as witness, it was Accused-Appellant's counsel himself, Atty. Rey Daep, who asked the child if she is aware that she is testifying under oath.

“Atty. Daep:

Q: Do you know that you are testifying under oath?

INTERPRETER:

Witness answered by nodding her head.

Q: In the event that you would tell a lie, you know the consequences?

INTERPRETER:

No answer from the witness.

COURT:

Alright, proceed.”<sup>[17]</sup>

Furthermore, as correctly pointed out by the Plaintiff-Appellee, the competence of a child witness is not impaired merely because she was not sworn in. It is well-established that any child regardless of age can be a competent witness if he can perceive and perceiving can make known his perception to others and that he is capable of relating truthfully for which he is examined. The child's competence as a witness are: (a) capacity of observation; (b) capacity of recollection; and, (c) capacity of communication.<sup>[18]</sup>

In this case, while the initial stages of the presentation of "AAA" as witness resulted in a struggle for her to testify, the RTC found "AAA" to be a competent witness:

"Although the undersigned Presiding Judge took over the hearing of this case only at its final stages, a cautious reading of the transcripts of stenographic notes revealed that the private offended party, minor that she is, was able to demonstrate with straightforwardness, san verbal explication, the identity of her abuser and the manner by which the act complained of was committed against her. Even the trauma and the stigma attached to it, though not verbalized, were plainly revealed by actions that only show two things: she was abused and she was devastated."<sup>[19]</sup>

The question of competency of a child-witness rests primarily in the sound discretion of the trial court. This is so because the trial judge sees the proposed witness and observes his manner of testifying, his apparent possession or lack of intelligence, as well as his understanding of the obligation of an oath. Since many of the witness' manners cannot be photographed into the record, the finding of the trial judge will not be disturbed or reversed unless from what is preserved it is clear that such finding was erroneous.<sup>[20]</sup>

Accused-Appellant questions "BBB's" credibility, pointing out that there were inconsistencies in her testimony in court and in her *sinumpaang salaysay*. He claimed that Dr. Belgira's testimony regarding "AAA's" vaginal laceration is insufficient to sustain a conviction since it does not prove that "AAA" was a victim of rape by sexual assault and that it does not identify the Accused-Appellant to have caused the same.

*We find Accused-Appellant's arguments unmeritorious.*

The totality of the evidence when scrutinized and taken together leads to a conclusion that the Accused-Appellant is guilty beyond reasonable doubt of rape by sexual assault.

Rape by sexual assault is committed by any person who, under any of the circumstances mentioned in paragraph 1<sup>[21]</sup> hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice or any instrument or object, into the genital or anal orifice of another person.<sup>[22]</sup>

In this case, it was established that "AAA" was sexually assaulted. "AAA" was able to describe what transpired on October 11, 2006 during her testimony, through a combination of head movements and words:

"COURT:

All right, few questions from the Court.

Q: Did somebody touch your vagina?

INTERPRETER:

Witness answered by nodding her head.

Q: Who?

INTERPRETER:

Witness did not make an answer but instead pointing to the accused inside the chamber.

Q: What did you do when the accused hold (sic) your