

## THIRTEENTH DIVISION

[ CA-G.R. CR-HC NO. 06015, May 29, 2014 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. AMADO  
HEMOR Y SUSANO, ACCUSED-APPELLANT.**

### D E C I S I O N

**DIMAAMPAO, J.:**

Accused-appellant Amado Hemor y Susano a.k.a. Dondon (AMADO) insists on his innocence and bewails the *Joint Decision*<sup>[1]</sup> of conviction dated 24 October 2012 of the Regional Trial Court of Valenzuela City, Branch 172. Three Informations charged AMADO with the crime of Rape under Paragraphs 1 and 2, Article 266-A of the Revised Penal Code, as amended by Republic Act (RA) No. 8353,<sup>[2]</sup> the inculpatory averments of which read as follows:

#### CRIMINAL CASE NO. 53-V-07

"That on or about June 13, 2006 in Valenzuela City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, by means of force and intimidation employed upon the person of one AAA,<sup>[3]</sup> 12 years old, did then and there willfully, unlawfully and feloniously have sexual intercourse with the said complainant, against her will and without her consent, thereby subjecting the said minor to sexual abuse which debased, degraded and demeaned her intrinsic worth and dignity as a human being.

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

#### CRIMINAL CASE NO. 54-V-07

"That on or about June 13, 2006 in Valenzuela City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, by means of force and intimidation employed upon the person of one AAA, 12 years old, did then and there willfully, unlawfully and feloniously insert his finger inside the vagina of the said complainant, against her will and without her consent, thereby subjecting the said minor to sexual abuse which debased, degraded and demeaned her intrinsic worth and dignity as a human being.

CONTRARY TO LAW."<sup>[5]</sup>

#### CRIMINAL CASE NO. 55-V-07

"That sometime in July 2006 in Valenzuela City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, by means of force and intimidation employed upon the person of one AAA, 12 years old, did then and there willfully, unlawfully

and feloniously have sexual intercourse with the said complainant, against her will and without her consent, thereby subjecting the said minor to sexual abuse which debased, degraded and demeaned her intrinsic worth and dignity as a human being.

CONTRARY TO LAW."<sup>[6]</sup>

Upon arraignment, AMADO pled not guilty to the charges against him.<sup>[7]</sup> During the pre-trial conference, the prosecution and the defense stipulated on the following: (a) identity of the accused; (b) commission of the alleged offenses within the territorial jurisdiction of the court; and, (c) minority of AAA.<sup>[8]</sup> Trial on the merits then ensued.

The prosecution<sup>[9]</sup> endeavored to prove the facts hereunder:

AAA was a 12-year-old<sup>[10]</sup> elementary student at the time of the alleged rape. Her family lived in a residential compound in Valenzuela owned by one Lydia Susano-Buenavente (Lydia). Inside the compound was a big house with separate rooms being leased to various individuals. The separate rooms had a common comfort room which was located near the big house.

On 13 June 2006, AAA was watching a movie in one of the leased rooms when she was requested by a certain Ate Tess to throw garbage at the dumping area near the common comfort room. On her way there, AAA saw AMADO standing in a dark area of the compound. She had no option but to pass by that area when AMADO suddenly dragged and forcibly pulled her to the comfort room. There, AMADO undressed AAA and pulled her panty down. He ordered her to face down, or, according to AAA: "*pinadapa niya ako*". In a jiff, she was made to hold the toilet bowl and stoop down. AMADO inserted his penis into her vagina. Not satisfied, AMADO inserted his penis to her mouth. After satisfying himself, AMADO told AAA to leave the comfort room and threatened her not to tell anyone about what happened.

Two days after, AAA was again pulled by AMADO towards the direction of the unlighted comfort room. While inside, AMADO first inserted his hands into AAA's vagina and then inserted his penis. After a while, AAA left. Out of fear, she still did not tell her parents about the incident.

The third incident of rape happened a few days later when AAA came from her friend's house and upon arriving at the compound, she saw AMADO at a distance waiting for her. He grabbed and brought her to the comfort room of the big house. Despite her resistance, AMADO managed to remove her clothing, including her panty. He inserted his penis into her vagina and then threatened AAA not to tell anyone. He assured her that should she become pregnant, he would hold himself responsible for it. AAA was afraid that AMADO would kill her and her father and so she kept her silence.<sup>[11]</sup>

In time, AAA narrated to her neighbors the dastardly acts of AMADO. They accompanied AAA to the police station where she divulged to the authorities that AMADO raped her thrice. AAA's mother only learned of the rape incidents after she was summoned by school officials and was informed that her daughter was sexually abused by AMADO, and was also raped by a certain Armando Hemor, AMADO's brother.

AAA was brought to the PNP Crime Laboratory in Camp Crame for examination. PCI Editha Martinez (PCI Martinez), the Medico-Legal Officer, examined her,<sup>[12]</sup> and the test results yielded no evident injury seen on AAA's private parts. The examination, however, did not discount the possibility of AAA being a victim of sexual abuse.<sup>[13]</sup>

Thereafter, AAA was also examined by Dr. Irene Baluyut (Dr. Baluyut) of the Child Protection Unit of the Philippine General Hospital. She uncovered that there was evidence of AAA's vagina being subjected to blunt force or penetrating trauma.<sup>[14]</sup>

During the trial, Dr. Bernadette Madrid (Dr. Madrid), also a medico-legal officer of the PGH Child Protection Unit, confirmed the findings of Dr. Baluyut.<sup>[15]</sup>

As expected, AMADO vehemently denied the accusations hurled against him and professed that he was at work when AAA was allegedly raped on 13 June 2006, 19 June 2006 and 20 July 2006. Lydia corroborated his testimony avowing that she was the owner of the compound which had one house and four rooms being rented out. The rooms had one comfort room that was only two arms-length from her house. One room was rented by her nephew, AMADO, and the other by the family of AAA. On 13 June 2006, Lydia was inside her house and did not hear any sound from the comfort room where the alleged rape of AAA took place.<sup>[16]</sup> AMADO maintained that even the Medico-Legal Report of PCI Martinez disclosed that there were no lacerations found on the private part of AAA.<sup>[17]</sup>

Ploughing through the diverse postures of the prosecution and the defense, the court *a quo* rendered the assailed *Joint Decision*, decreeing—

"WHEREFORE, the court finds the accused AMADO HEMOR y SUSANO guilty beyond reasonable doubt as principal of the crime of rape under Art. 266-A paragraph (1) (a) of the Revised Penal Code in Criminal Case Nos. 53-V-07 and 55-V-07 and rape under Art. 266-A paragraph 2 of the Revised Penal Code in Criminal Case No. 54-V-07 and in the absence of modifying circumstance and applying the indeterminate sentence law he is hereby sentenced to suffer:

1. The penalty of Reclusion Perpetua in Criminal Case No. 53-V-07, and to indemnify AAA in the amounts of P75,000.00 as civil indemnity, Php75,000.00 as moral damages and Php25,000.00 as exemplary damages;
2. The penalty of Reclusion Perpetua in Criminal Case No. 55-V-07, and to indemnify AAA in the amounts of P75,000.00 as civil indemnity, Php75,000.00 as moral damages and Php25,000.00 as exemplary damages; and(,)
3. The penalty of three (3) years two months and one (1) day of prison correccional as minimum and eight (8) years two (2) months and one (1) day of *prision mayor* as maximum in Criminal Case No. 54-V-07 and to indemnify AAA in the amounts of Php30,000.00 as civil indemnity, Php30,000.00 as moral damages and Php30,000.00 as exemplary damages.

The City Jail Warden of Valenzuela City is hereby directed to transfer/commit the accused to the New Bilibid Prison, Bureau of

Corrections, Muntinlupa City immediately upon receipt of this decision and submit report within five (5) days from compliance.

SO ORDERED."<sup>[18]</sup>

Aggrieved, AMADO (now, appellant) interposed this *Appeal* raising this solitary error —

**THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIMES CHARGED DESPITE THE FACT THAT HIS GUILT HAS NOT BEEN PROVEN BEYOND REASONABLE DOUBT.**

***We sustain appellant's conviction.***

In this jurisdiction, the testimony of the private complainant in rape cases is scrutinized with utmost caution. The constitutional presumption of innocence requires no less than moral certainty beyond any scintilla of doubt. This applies with more vigor in rape cases where the evidence for the prosecution must stand or fall on its own merits and is not allowed to draw strength from the weakness of the evidence of the defense. As an inevitable consequence, it is the rape victim herself that is actually put on trial. The case at bench is no exception.<sup>[19]</sup>

At the linchpin of this *Appeal* is the determination of whether or not the prosecution was able to prove beyond reasonable doubt appellant's guilt. The resolution of this issue hinges on the credibility of the prosecution's evidence.

Appellant avows that the testimony of AAA was marred by significant inconsistencies that cast doubt as to the veracity of the charges against him. AAA failed to recall particular dates when she was raped and the various times these rape incidents occurred. AAA's recollection of the abuse was vague and hazy. These whittled down not only her credibility but the truthfulness of her accusations against appellant.<sup>[20]</sup>

After a perspicacious review of the record, We find no cogent reason to deviate from the judgment of conviction. The prosecution demonstrably discharged its onus of proving that appellant committed the crime of rape. In her direct examination, AAA recounted with limpidity and straightforwardness her sexual ordeals in the hands of appellant, viz:

"Q How did this start that first time that (appellant) raped you. How did this begin, could you please tell us?

A I was watching (a) movie in a neighbor's house and Ate Tess ordered me to throw the garbage, sir.

Q What happened next after you were told to dump the garbage, AAA?

A He was already in the dark area where I have to pass by, sir.

Q When you said 'siya', you are referring to (appellant)?

A Yes, sir.

Q What did (appellant) do (to) you when you saw him at the dark area?

A I passed by and after that he pulled me, sir.

Q And what happened next after (appellant) pulled you?

A And then he brought me to the CR, sir.

Q What happened at the CR?

A He undressed me and pulled down my panty, sir.

Q After he took off your panty what happened next?

A He inserted his penis into my vagina, sir.

Q This happened inside the CR?

A Yes, sir.

Q How big is this CR, from that place where you are sitting now, could you indicate?

A Yes, sir.

Q When he placed his private part into your private part, was he sitting down?

A He have (sic) my face down 'pinadapa nya po ako', sir.

Q How did he make you 'pinadapa' in the CR?

A In the CR there was a toilet bowl and he made me hold the bowl and then he made me stoop down, sir.

Q And it was in that position and your body that stoop down and he placed his private part in your private part?

A Yes, sir.

Q So he was able to place his private part into your private part?

A Yes, sir.

Q And what did he do with his private part when it is (sic) already inside your private part?

A After he inserted his private part into my vagina, he put his penis into my mouth, sir.

Q And after that what happened next?

A And after that he ordered me to go out of the CR, sir.

x x x

x x x

Q You cannot remember the date when (appellant) did this to you in the CR?

A I cannot remember, sir.

Q You said that this happened again when (appellant) again raped you. When did this happen again, could you tell us the time and the date when (appellant) did this to you again? How many days after the first time?

A After two (2) days he did it again, sir.