

## TWELFTH DIVISION

[ CA-G.R. CR-H.C. NO. 05636, October 02, 2014 ]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
RIZALDY ROXAS Y MAGADIA, ACCUSED-APPELLANT.**

### D E C I S I O N

**SALANDANAN-MANAHAN, C., J.:**

*"To an increasing extent, the public is being treated to news reports of crimes of depravity committed by persons who are otherwise normal and in full possession of their faculties. They cannot be charged with being under the influence of intoxicating liquor or illegal drugs, nor of having acted under passion or obfuscation. And yet, in an instant, they are transformed into monsters of abomination.*

*Particularly abhorrent are those who, chancing upon young, innocent and guileless asses, are suddenly seized by an uncontrollable desire to inflict their libidinous urges on these hapless maidens. With hardly a moment's reflection, they stalk their intended victims and eventually violate the latters' chastity without any qualms of conscience or guilt feelings.*

*More detestable is the crime of rape committed upon a girl with a child's mind, for she is utterly defenseless, completely unaware that already, she is being robbed of that most precious gift within woman's power to offer to whomever and whenever she pleases.*

*The case at bench is another heart-rending instance of the violent defloration of a mental retardate who could only dimly discern that already, she was being ravished.*<sup>[1]</sup>

*To those who exalt the Holy Writ as Law and profess to live by the Word, this injunction unbidden comes to mind: "Now we exhort you, brethren, warn them that are unruly, comfort the feeble-minded, support the weak, be patient toward all men."*<sup>[2]</sup>

*Sa mga nilalang ng Maykapal sa balat ng lupa, walang higit na nakamumuhi na gaya ng pinag-uusig sa kasong ito na hindi man nagpakita ng anumang pagpipitagan sa pagkatao ng kababaihan, lalu't lalo na sa mga mga isip-bata. Tila бага nalimutan na sila ay sinilang rin sa isang ina at marahil ay mayroon ding mga kapatid na babae.*

*Ang pagwasak sa puri ng isang nagdadalaga na walang kamalaymalay sa kamunduhan ay gawa ng isang halimaw na nararapat lamang na patawan ng kaukulang kaparusahan ng mga hukuman ng ating lipunan."*

<sup>[3]</sup>

## **The Case**

This is an appeal from the Decision<sup>[4]</sup> of the Regional Trial Court of Manila, Branch 5, convicting the accused-appellant of rape and sentencing him to suffer the penalty of *reclusion perpetua*.

Consistent with the *Decision* of the Supreme Court in *People v. Cabalquinto*,<sup>[5]</sup> the real name of the rape victim in this case is withheld and, instead, fictitious initials are used to represent her. Also, the personal circumstances of the victim or any other information tending to establish or compromise her identity, as well as those of her immediate family or household members, are not disclosed in this decision.

## **The Charge**

On November 28, 2001, an *Information* was filed in the Regional Trial Court of Manila, Branch 5, charging the accused-appellant of rape, defined and penalized under Paragraph 1 (d) of Article 266-A of the Revised Penal Code in relation to Section 5 (b), Article III of Republic Act 7610. The docket number and the accusatory portion of the *Information*<sup>[6]</sup> read as follows:

### **Criminal Case No. 01-197576**

*"That sometime prior to November 11, 2001, in the City of Manila, Philippines, the said accused by means of force, violence and intimidation that is, threatening to kill her should she disclosed (sic) the matter, did then and there willfully, unlawfully, and feloniously had carnal knowledge with AAA, a minor 10 years old, retardate, against her will, thereby causing serious danger and prejudice to the normal growth and development of said AAA.*

*Contrary to law."*

Upon arraignment on January 29, 2002,<sup>[7]</sup> the accused-appellant, assisted by his counsel, entered a plea of not guilty.

## **The Facts**

At the ensuing trial, the prosecution presented the following witnesses, namely: (1) The complainant AAA, (2) Dr. Merle Tan, 3) BBB, mother of AAA, (4) CCC, father of AAA, (5) DDD, cousin of AAA, and (6) SPO4 Medina Oligo.

The prosecution also presented the following documentary evidence, *to wit*: (1) Letter Request of the Philippine National Police (PNP) to the Director of the National Bureau of Investigation (NBI) [*Exhibit "A"*]; (2) Consent [*Pahintulot*] of the mother to conduct physical examination on the minor victim by a medico-legal officer [*Exhibit "B"*]; (3) Provisional Medico-Legal Report No. 2001-11-0039 dated November 14, 2001 [*Exhibit "C"*]; (4) Final Medico-Legal Report [*Exhibits "D" to "D-5"*]; (5) Picture of the truck where the incident transpired [*Exhibits "E" and "F"*]; and (6) Sinumpaang Salaysay of CCC [*Exhibit "G"*] and BBB [*Exhibit "H"*].<sup>[8]</sup>

The prosecution evidence established the following facts:

At the time of the alleged rape, AAA was only ten (10) years old. When she testified on August 27, 2002, she was already twelve (12) years old but was only in Grade II due to mental retardation. She had been in Grade I twice and once in Kindergarten. At her age, AAA should have been in Grade VI already but she has difficulty listening to her teacher although she understands what the latter is telling her.

AAA declared on the witness stand that the accused-appellant had raped her.

When asked to elaborate, AAA explained that on November 11, 2001, Sunday while she was playing in front of their house, the accused-appellant, who was then loading sardines in a delivery truck parked nearby, called her and told her they will have sexual intercourse. AAA agreed and climbed the rear portion of a truck. While they were inside the truck, the accused-appellant undressed her and thereafter, he removed his pants. While AAA was in a lying position, the accused-appellant covered her mouth with his hand, poked a knife at AAA's neck, went on top of her and inserted his penis into her private part. AAA felt pain while being raped. She shouted "*Sumbong Pulis!*" but she did not tell the police or her parents because the accused-appellant threatened to kill her if she tells anybody about it. The accused-appellant inserted his penis into her vagina twice on two different days.

BBB, mother of the private complainant testified that prior to November 11, 2001, she has known the accused-appellant since 1982. Accused-appellant used to work for them as an extra worker or "*pahinante*". On November 11, 2001, she was at their vulcanizing shop while her daughter AAA was playing in front of their house. BBB saw the accused-appellant called AAA and the latter acceded. They talked for about five (5) minutes. During that time, BBB was at the gate of the building talking to her nephew. When BBB noticed that the accused-appellant was drunk, she immediately called AAA. BBB then asked AAA what the accused-appellant told her. AAA replied that the accused-appellant wanted to have sexual intercourse with her. When BBB heard AAA's reply, she was shocked and asked her how many times did the accused-appellant do it to her and AAA answered "twice".

When BBB was talking to AAA, the accused-appellant was no longer there. Furious, BBB told DDD, her husband about the rape incident. It was DDD who apprehended and brought the accused-appellant to the police precinct. DDD corroborated BBB's testimony.

Dr. Merle P. Tan, a consultant at the Philippine General Hospital-Child Protection Unit, testified that she examined AAA on November 14, 2001. The findings on the physical examination on AAA are as follows:

<b>GENERAL PHYSICAL EXAMINATION</b>					
HEIGHT	124 cm.	WEIGHT	27.2. kg.	TANNER STAGE	2
GENERAL SURVEY	No stunting, No wasting, Ambulant, Not In Respiratory Distress				
MENTAL STATUS	Oriented as to person and place. Conscious.				

	<i>Hyperactive</i>
<i>PERTINENT PHYSICAL FINDINGS/PHYSICAL INJURIES</i>	<i>Breast Tanner Stage: 2 No evident injury at the time of examination.</i>
<b>ANO-GENITAL EXAMINATION</b>	
<i>EXTERNAL GENITALIA</i>	<i>Tanner Stage 2, Posterior Fourchette</i>
<i>URETHRA AND PERIURETHRAL AREA</i>	<i>No evident injury at the time of examination.</i>
<i>PERIHYMENAL AREA AND FOSSA NAVICULARIS</i>	<i>No evident injury at the time of examination.</i>
<i>HYMEN</i>	<i>Tanner Stage 2, absent hymen at 6:00 o'clock area, Hymenal remnant 3-5 o'clock and 7-9 o'clock area, Type of Hymen: Crescentic</i>
<i>PERINEUM</i>	<i>No evident injury at the time of examination.</i>
<i>DISCHARGE</i>	<i>None</i>
<i>IE AND SPECULUM EXAM</i>	<i>Not Indicated</i>
<i>ANAL EXAMINATION</i>	<i>No evident injury at the time of examination.</i>
<b>REMARKS</b>	
<i>FORENSIC EVIDENCE COLLECTED</i>	<i>None</i>
<i>LABORATORY EXAMINATION (EXAM AND RESULT)</i>	<i>Trichomonas (Wet Prep) (Negative) (), Monilia (KOH Prep) (Negative) (), Gram Stain (Laboratory examination results pending), Gonorrhea Culture Of Vaginal Swab (Negative) (light growth of staphylococcus and bacillus species).</i>
<b>IMPRESSIONS</b>	
<i>Disclosure of sexual abuse. Genital findings show clear Evidence Of Blunt Force Or Penetrating Trauma. Mental retardation.</i>	

*Name and Signature of Examiner/s: MERLE P. TAN, M.D."*<sup>[9]</sup>

Furthermore, the interview<sup>[10]</sup> conducted on AAA on November 14, 2001 revealed the following facts:

<b>INTERVIEW SUMMARY</b>
<i>The patient disclosed that she was allegedly sexually abused by "Ting". She said he called her to have sex. She demonstrated through the anatomical doll the act done to her. This happened twice. He threatened to kill her if he would disclosed (sic) the matter. (Si Ting, k-----t niya ako. Si Ting taga amin. Dalawang beses (showing it with her hands) huwag daw akong magsusumbong papatayin daw ako").</i>

She found an absent hymen at 6:00 o'clock position which could be probably due to the several incidents of penetration on the hymen.[11 Dr. Tan concluded that the genital findings on AAA show clear evidence of blunt force or penetrating trauma.

[12]

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The witnesses for the defense were (1) accused-appellant Rizaldy Roxas y Magadia, (2) Flordeliza Roxas, common-law partner of the accused-appellant, and (3) his co-worker Dominado Reponte.

The evidence for the defense consisted of denial and alibi. He denied raping AAA and argued that the court *a quo* erred in giving credence to the victim's incredible, inconsistent, and incoherent testimony.

The accused-appellant testified that he was residing at 429 San Nicolas Street, Binondo, Manila and not at AAA's house. On November 11, 2001, he was at San Nicolas Street, Binondo, Manila attending a wake together with the parents of AAA. At that time, he was no longer working at the business establishment of AAA's parents. Prior to November 11, 2001, he was working as a "*pahinante*" with Hakone Sardines Factory, owned and operated by Jessie Sy. Before working at Hakone, he worked as a helper at Tri-Star Sardines which was owned by Mariano Sy.

The accused-appellant claims that the charge was merely fabricated because CCC was furious at him due to the latter's altercation with the cousin of Flordeliza Roxas. The accused-appellant avers that the alleged rape was a means resorted to by CCC to get back at him.

Dorminado Reponte testified that at the time the incident happened, he was a co-worker of the accused-appellant at Hakone Sardines. He is a laborer at Hakone Development. Reponte said that he knows that the accused-appellant molested AAA but he did not report it to the police authorities because they quarreled prior to the incident. He further testified that on November 11, 2001, the accused-appellant did not leave the workplace.

### ***The Trial Court's Ruling***

After trial on the merits, the trial court rendered judgment convicting the accused-appellant of the crime with which he is charged. The decretal portion of the *Decision* reads:

***"WHEREFORE, premises considered, accused RIZALDY ROXAS y MAGADIA is GUILTY of the crime charged and is hereby sentenced to suffer the penalty of RECLUSION PERPETUA and to indemnify private complainant the amount of P30,000.00 as exemplary damages without subsidiary imprisonment in case of insolvency and to pay the costs.***

***SO ORDERED.***"[13]

On appeal, the accused-appellant assails the Decision of the trial court contending that:

***"THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO OVERTHROW THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE IN HIS FAVOR."***[14]