

FIFTH DIVISION

[CA-G.R. CR HC NO. 01307, August 15, 2006]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JIMMY
ALCOVENDAS Y HULATON, ACCUSED-APPELLANT.**

D E C I S I O N

ROMILLA-LONTOK, J.:

Before Us on intermediate appeal is the Decision dated February 17, 2004 of the Regional Trial Court of Caloocan City, Branch 128, in Criminal Cases Nos. C-57922-23, convicting the appellant of the crime of Rape in Relation to RA 7610, and sentencing the accused to suffer two (2) penalties of death by lethal injection. The dispositive portion is as follows:

"WHEREFORE, finding the accused Jimmy Alcovendas guilty beyond reasonable doubt of the crime of Rape on two counts, he is hereby sentenced to suffer two (2) death by lethal injection. He is further order to indemnify the offended party the sum of fifty thousand for each offense charged as moral damages.

The Warden of Caloocan City is hereby ordered commit the person of accused Jimmy Alcovendas to the National Bilibid Prison to serve his sentences.

Let the entire record of this case be forwarded to the Honorable Supreme Court for automatic review.

SO ORDERED."

Facts antecedent to the appeal are as follows:

Appellant Jimmy Alcovendas was charged with two (2) counts of Rape, in two separate informations which read as follows:

"Crim. Case no. C-57922:

That sometime during the month of August, 1999, in Caloocan City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused being the paternal uncle of Elina Alcovendas, with lewd design and by means of force and intimidation employed upon the person of one Elina Alcovendas y Quinto, a minor of 11 years of age, did then and there willfully, unlawfully and feloniously lie and have carnal knowledge with said Elina Alcovendas Y Quinto, against the latter's will and without her consent.

Contrary to law.

Crim. Case No. C-57923:

That on or about the 20th day of September, 1999, in Caloocan city, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused being the paternal uncle of Elina Alcovendas, with lewd design and by means of force and intimidation employed upon the person of one Elina Alcovendas y Quinto, a minor of 11 years of age, did then and there wilfully, unlawfully and feloniously lie and have carnal knowledge with said Elina Alcovendas Y Quinto, against the latter's will and without her consent.

Contrary to law.”^[1]

The accused when arraigned pleaded not guilty. Pre-trial and trial were set.

The prosecution presented seven witnesses, namely: Elina Alcovendas, Gina Tarinting, Ernesto Alcovendas, Feliciano Aguilar, SPO4 Eugene De Dios, Estelito Estrella and Dr. Arnel Marquez.

Elina Alcovendas, a daughter of spouses Ernesto and Andrea Alcovendas born on October 10, 1998 (Exhibit “F”), is a student enrolled in Marillac. Accused Jimmy Alcovendas is a brother of Ernesto.^[2]

In the evening of September 20, 1999, Elina was left at home with her two (2) younger siblings. Her mother was at the house of an elder sister. Her father was at work. Accused fetched her to take care of his child. Upon reaching Jimmy's house, he closed the door and undressed Elina who boxed and kicked him. The accused was armed with a bolo. Accused made her lie down. He inserted his penis inside her vagina (“yung ari niya inilagay niya sa ari ko”). He kissed her on the lips. He threatened Elina not to tell anyone about the incident. Elina went home and cried.^[3]

The next day she told her mother about what happened. She was advised not to tell her father for fear that he might kill Jimmy. Elina told a friend, Ate Gina, who accompanied her to report the incident to the barangay officials of their place.

She spoke of another incident of rape committed on her by Jimmy in August, 1999.^[4]

Ernesto Alcovendas is Elina's father. Sometime in October, 1999, Elina told him that Jimmy sexually molested her. Elina related the incident to her Ate Gina on account of Jimmy's threats to kill her. He confronted Jimmy about the matter but the latter denied the accusation.^[5]

Gina Tarinting, another prosecution witness, testified that Elina was entrusted to her by Ernesto as a companion so Elina temporarily stayed with her.

When Elina was staying with her, she attempted to take her back to her family because she was hurting her children but Elina cried “Ayoko, ayoko, Ate, kasi nirerape ako ni Uncle Jimmy.” Elina told her the sexual molestations started since

she was seven (7).^[6]

Dr. Arnel Marquez, the Medico-Legal Officer of the PNP Crime Laboratory, Camp Crame, Quezon City, identified the Medico-Legal Certificate (Exhibit "E") issued by Dr. Jonathan Saranillo in connection with the medical examination on Elina. Said certificate states of healed laceration of the hymen at 6:00 and 9:00 o'clock positions and contains the finding that the "subject is in non-virgin state physically."

Estelito Estrella testified that Elina was accompanied by her father when they lodged a complaint against accused at the barangay. Jimmy was invited for questioning during which Elina identified him to have been molesting her.^[7]

Feliciano Aguilar, a psychologist from DSWD conducted therapy on Elina. He averred that while Elina was still capable of testifying, she was depressed and emotionally disturbed.

After the prosecution has rested, Jimmy Alcovendas presented his defense.

Jimmy Alcovendas denied raping Elina Alcovendas on August 1999 and on September 20, 1999. He said he was at his place of work in Ortigas, on the latter date of the alleged commission of rape, while he was at his house when the rape of August 1999 occurred.^[8]

He alleged that he and his brother had a misunderstanding when he hit the latter with a piece of wood, as he would often go to his house drunk and armed with a knife. This is the reason for lodging false charges of rape against him.^[9]

He further testified that when his brother visited him in the city jail, the latter informed him of his intention to desist because his other children told him that it was actually a neighbor, Rolly, who molested Elina Alcovendas.^[10]

The trial court convicted the accused of the charges.

The accused appealed and assigned the following errors:

I

THE TRIAL COURT GRAVELY ERRED IN FINDING THAT THE CRIME OF RAPE WAS SUFFICIENTLY ESTABLISHED IN CRIMINAL CASE NO. C-57922.

II

THE TRIAL COURT ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE TESTIMONY OF THE PRIVATE COMPLAINANT.

III

THE TRIAL COURT ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED.

Rape is not a simple physical violation-it debases a woman's dignity, leaving a stigma on her honor and scarring her psyche for life.^[11] It is highly inconceivable that a young and innocent girl would concoct a tale of defloration if it was not true.

The gravamen of the offense of rape is sexual congress with a woman by force and without consent. If the woman is under 12 years of age, proof of force and consent becomes immaterial not only because force is not an element of statutory rape, but the absence of a free consent is presumed. Conviction will therefore lie, provided sexual intercourse is proven.^[12]

The narration of Elina on the rape of September 20,1999 was straightforward, categorical and unflawed by any material or significant inconsistency that she was abused. Despite relentless cross-examination by the defense counsel, Elina remained steadfast, candid and never wavered in her testimonies as to the material facts of the case. The candid narration of the victim of how she was raped bears the earmarks of credibility. She testified as follows:

"Q. When your uncle Jimmy Alcovendas came to fetch you in the evening of September 20, 1999, what did he do to you if any?

A. He held me in my hands and he brought me in their house.

Q. Did you ask him why he was brining (sic) you in their house?

A. No, sir.

Q. Did he talk to you why he was bringing you to their house?

A. No, sir.

Q. And when you arrived at the house of your uncle Jimmy, was thre (sic) anyone in the house of your uncle Jimmy?

A. None, sir.

Q. And when you were inside the house of your uncle Jimmy, what did he do to you if any?

A. He closed the door and then he undress me.

Q. Did he talk to you before he undressed you?

A. No, sir, he just undressed me.

Q. When he undressed you, what did you do if any?

A. I fought back.

Q. How did you fight back?

A. I boxed him, sir.

Q. What did he do when you boxed him?

A. Nothing sir, he just continued in his undressing.

Q. Did he threaten you?

A. Yes, sir.

Fiscal Ralar to Witness -

Q. How did your uncle Jimmy threaten you?