

[ **G.R. No. 181744, October 02, 2009** ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ROY BACUS,  
APPELLANT,**

**D E C I S I O N**

**CARPIO MORALES, J.:**

His guilt beyond reasonable doubt of Rape having been affirmed by the Court of Appeals, Roy Bacus (appellant) comes to this Court.

The accusatory portion of the Information filed against appellant before the Regional Trial Court (RTC) of Cebu reads:

That on or about the 3<sup>rd</sup> day of February 1999 at around 11:30 o'clock in the evening, more or less, at sitio Kimba, Barangay San Roque, Municipality of Talisay, Province of Cebu, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, a distant neighbor of the victim AAA, asked permission to accompany her in going home which she consented as the accused was also heading on the same path and direction and while walking together and upon reaching the makeshift shanty where factory workers used to stay he told her to wait for a while as he has to get something from the makeshift shanty which she consented to and while she was looking at the other direction, suddenly and unexpectedly, he grabbed her on her waist and the victim, stunned by his actuation, shouted for help and tried to wriggle out from his hold but he covered her mouth with his left hand while his right hand held a knife which he poked on her neck and warned her not to resist and shout otherwise he would kill her and with lewd design, with deliberate intent to have sexual intercourse with her, ordered her to lie down under a parked truck, removed her short and underwear and managed to lie on top of her and through force, threats and intimidation with the use of a knife, did then and there willfully, unlawfully and feloniously have sexual intercourse with her against her will, to the damage and prejudice of the said victim.<sup>[1]</sup> (Underscoring supplied)

From the evidence for the prosecution, the following version is culled:

At around 11:30 p.m. of February 3, 1999, while AAA, then of 17 summers, was on her way home on board a *trisikad* after discharging her chores as "governess" to a family, she passed by a waiting shed where appellant, a childhood friend, was. On appellant's suggestion, albeit she was initially hesitant, she allowed him to accompany her home.

As they passed by a makeshift hut used by construction workers, appellant went

inside the hut and called out "Bay," but nobody answered.

As appellant repaired back to AAA who had remained outside, he suddenly pulled AAA by the waist and covered her mouth, and at knifepoint he told her to lie under a nearby cargo truck which is used to carry hollow blocks.

Still at knifepoint, appellant removed AAA's clothes. He then laid himself on top of her and had sexual intercourse with her.

The following day or on February 4, 1999, on the advice of her employer's mother, AAA divulged what befell her to her father BBB who accompanied her to report to the police station. On even date, at 1:15 p.m., AAA was examined by a medico-legal officer, Dr. Nueva Tagaloguin, who came out with the following findings:

Hymen: (+) complete healing laceration at 5 and 8 O' clock position, (+) incomplete healing laceration at 3 O'clock position.

Orifice: admits 1 finger with ease

Vagina:

Walls: no laceration<sup>[2]</sup> (Underscoring supplied)

Appellant was thereupon arrested. Hence, the filing of the Information against him.

Admitting having had sexual intercourse with AAA, not, however, on February 3, 1999 but the day before or on February 2, 1999, appellant denied having used force on her. His version goes: He and AAA had been sweethearts since November 8, 1998 and had had sexual intercourse on three occasions, the last being on February 2, 1999. On the night of February 3, 1999, AAA, then intoxicated and high on drugs, went to his hut. As her boyfriend, he was privy to AAA's habitual drug use and he in fact repeatedly tried to dissuade her therefrom. As she was showing him a packet of *shabu*, she asked for P200.00 to pay off a debt, but he refused. He was set to bring her home but she refused, so he accompanied her to the waiting shed and gave her P50 for fare.

Raising the improbability of committing rape under the facts and circumstances described by AAA, given, among other things, the limited space under the cargo truck on the stone-lined ground, appellant offered in evidence a photograph of the cargo truck, Exhibit "1."<sup>[3]</sup>

Significantly, AAA admitted that the truck depicted in the photograph was the same truck underneath which she claimed to have been raped. She, however, denied that stones were littered under the truck at the time of the incident.

Finding appellant guilty as charged, Branch 18 of the RTC Cebu disposed:

WHEREFORE, premises considered, JUDGMENT is hereby rendered convicting accused Roy Bacus of the crime of RAPE and he is hereby