

## FIRST DIVISION

[ G.R. No. 182239, March 16, 2011 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
HERMIE M. JACINTO, ACCUSED-APPELLANT.**

### D E C I S I O N

**PEREZ, J.:**

Once again, we recite the time-honored principle that the defense of alibi cannot prevail over the victim's positive identification of the accused as the perpetrator of the crime.<sup>[1]</sup> For it to prosper, the court must be convinced that there was physical impossibility on the part of the accused to have been at the *locus criminis* at the time of the commission of the crime.<sup>[2]</sup>

Nevertheless, a child in conflict with the law, whose judgment of conviction has become final and executory only after his disqualification from availing of the benefits of suspended sentence on the ground that he/she has exceeded the age limit of twenty-one (21) years, shall still be entitled to the right to restoration, rehabilitation, and reintegration in accordance with Republic Act No. 9344, otherwise known as "*An Act Establishing a Comprehensive Juvenile Justice and Welfare System, Creating the Juvenile Justice and Welfare Council under the Department of Justice, Appropriating Funds Therefor and for Other Purposes.*"

Convicted for the rape of five-year-old AAA,<sup>[3]</sup> appellant Hermie M. Jacinto seeks before this Court the reversal of the judgment of his conviction.<sup>[4]</sup>

#### The Facts

In an Information dated 20 March 2003<sup>[5]</sup> filed with the Regional Trial Court and docketed as Criminal Case No. 1679-13-141<sup>[1]</sup>,<sup>[6]</sup> appellant was accused of the crime of RAPE allegedly committed as follows:

That on or about the 28th day of January, 2003 at about 7:00 o'clock in the evening more or less, at barangay xxx, municipality of xxx, province of xxx and within the jurisdiction of this Honorable Court, [Hermie M. Jacinto], with lewd design did then and there willfully, unlawfully and feloniously had carnal knowledge with one AAA, a five-year old minor child.

CONTRARY TO LAW, with the qualifying/aggravating circumstance of minority, the victim being only five years old.<sup>[7]</sup>

On 15 July 2003, appellant entered a plea of not guilty.<sup>[8]</sup> During pre-trial,<sup>[9]</sup> the defense admitted the existence of the following documents: (1) birth certificate of AAA, showing that she was born on 3 December 1997; (2) police blotter entry on the rape incident; and (3) medical certificate, upon presentation of the original or upon identification thereof by the physician.

Trial ensued with the prosecution and the defense presenting witnesses to prove their respective versions of the story.

#### *Evidence for the Prosecution*

The testimonies of AAA,<sup>[10]</sup> her father FFF,<sup>[11]</sup> and rebuttal witness Julito Apiki [Julito]<sup>[12]</sup> may be summarized in the following manner:

FFF and appellant have been neighbors since they were born. FFF's house is along the road. That of appellant lies at the back approximately 80 meters from FFF. To access the road, appellant has to pass by FFF's house, the frequency of which the latter describes to be "every minute [and] every hour." Also, appellant often visits FFF because they were close friends. He bore no grudge against appellant prior to the incident.<sup>[13]</sup>

AAA likewise knows appellant well. She usually calls him *kuya*. She sees him all the time - playing at the basketball court near her house, fetching water, and passing by her house on his way to the road. She and appellant used to be friends until the incident.<sup>[14]</sup>

At about past 6 o'clock in the evening of 28 January 2003, FFF sent his eight-year-old daughter CCC to the store of Rudy Hatague to buy cigarettes. AAA followed CCC. When CCC returned without AAA, FFF was not alarmed. He thought she was watching television at the house of her aunt Rita Lingcay [Rita].<sup>[15]</sup>

Julito went to the same store at around 6:20 in the evening to buy a bottle of Tanduay Rum.<sup>[16]</sup> At the store, he saw appellant place AAA on his lap.<sup>[17]</sup> He was wearing sleeveless shirt and a pair of short pants.<sup>[18]</sup> All of them left the store at the same time.<sup>[19]</sup> Julito proceeded to the house of Rita to watch television, while appellant, who held the hand of AAA, went towards the direction of the "lower area or place."<sup>[20]</sup>

AAA recalled that appellant was wearing a *chaleko* (sando) and a pair of short pants<sup>[21]</sup> when he held her hand while on the road near the store.<sup>[22]</sup> They walked towards the rice field near the house of spouses Alejandro and Gloria Perocho [the Perochos].<sup>[23]</sup> There he made her lie down on harrowed ground, removed her panty and boxed her on the chest.<sup>[24]</sup> Already half-naked from waist down,<sup>[25]</sup> he mounted her, and, while her legs were pushed apart, pushed his penis into her vagina and made a push and pull movement.<sup>[26]</sup> She felt pain and cried.<sup>[27]</sup> Afterwards, appellant left and proceeded to the Perochos.<sup>[28]</sup> She, in turn, went straight home crying.<sup>[29]</sup>

FFF heard AAA crying and calling his name from downstairs.<sup>[30]</sup> She was without slippers.<sup>[31]</sup> He found her face greasy.<sup>[32]</sup> There was mud on her head and blood was oozing from the back of her head.<sup>[33]</sup> He checked for any injury and found on her neck a contusion that was already turning black.<sup>[34]</sup> She had no underwear on and he saw white substance and mud on her vagina.<sup>[35]</sup> AAA told him that appellant brought her from the store<sup>[36]</sup> to the grassy area at the back of the house of the Perochos;<sup>[37]</sup> that he threw away her pair of slippers, removed her panty, choked her and boxed her breast;<sup>[38]</sup> and that he proceeded thereafter to the Perochos.<sup>[39]</sup>

True enough, FFF found appellant at the house of the Perochos.<sup>[40]</sup> He asked the appellant what he did to AAA.<sup>[41]</sup> Appellant replied that he was asked to buy rum at the store and that AAA followed him.<sup>[42]</sup> FFF went home to check on his daughter,<sup>[43]</sup> after which, he went back to appellant, asked again,<sup>[44]</sup> and boxed him.<sup>[45]</sup>

Meanwhile, at around 7:45 in the evening of even date, Julito was still watching television at the house of Rita.<sup>[46]</sup> AAA and her mother MMM arrived.<sup>[47]</sup> AAA was crying.<sup>[48]</sup> Julito pitied her, embraced her, and asked what happened to her, to which she replied that appellant raped her.<sup>[49]</sup> Julito left and found appellant at the Perochos.<sup>[50]</sup> Julito asked appellant, "Bads, did you really rape the child, the daughter of [MMM]?" but the latter ignored his question.<sup>[51]</sup> Appellant's aunt, Gloria, told appellant that the policemen were coming to which the appellant responded, "Wait a minute because I will wash the dirt of my elbow (sic) and my knees."<sup>[52]</sup> Julito did find the elbows and knees of appellant with dirt.<sup>[53]</sup>

On that same evening, FFF and AAA proceeded to the police station to have the incident blotted.<sup>[54]</sup> FFF also had AAA undergo a physical check up at the municipal health center.<sup>[55]</sup> Dr. Bernardita M. Gaspar, M.D., Rural Health Physician, issued a medical certificate<sup>[56]</sup> dated 29 January 2003. It reads:

Injuries seen are as follows:

1. Multiple abrasions with erythema along the neck area.
2. Petechial hemorrhages on both per-orbital areas.
3. Hematoma over the left upper arm, lateral area
4. Hematoma over the upper anterior chest wall, midclavicular line
5. Abrasion over the posterior trunk, paravertebral area
6. Genital and peri-anal area soiled with debris and whitish mucoid-like material
7. Introitus is erythematous with minimal bleeding
8. Hymenal lacerations at the 5 o'clock and 9 o'clock position

Impression

**MULTIPLE SOFT TISSUE INJURIES  
HYMENAL LACERATIONS**

Upon the recommendation of Dr. Gaspar,<sup>[57]</sup> AAA submitted herself to another examination at the provincial hospital on the following day. Dr. Christine Ruth B. Micabalo, Medical Officer III of the provincial hospital, attended to her and issued a medico-legal certificate dated 29 January 2003,<sup>[58]</sup> the pertinent portion of which reads:

P.E. = Findings is consistent with Dr. Bernardita M. Gaspar findings except No. 6 and 7 there is no bleeding in this time of examination. (sic)  
<sup>[59]</sup>

#### *Evidence for the Defense*

Interposing the defense of alibi, appellant gave a different version of the story. To corroborate his testimony, Luzvilla Balucan [Luzvilla] and his aunt Gloria took the witness stand to affirm that he was at the Perochos at the time of the commission of the crime.<sup>[60]</sup> Luzvilla even went further to state that she actually saw Julito, not appellant, pick up AAA on the road.<sup>[61]</sup> In addition, Antonia Perocho [Antonia], sister-in-law of appellant's aunt, Gloria,<sup>[62]</sup> testified on the behavior of Julito after the rape incident was revealed.<sup>[63]</sup>

Appellant claimed that he lives with his aunt, not with his parents whose house stands at the back of FFF's house.<sup>[64]</sup> He denied that there was a need to pass by the house of FFF in order to access the road or to fetch water.<sup>[65]</sup> He, however, admitted that he occasionally worked for FFF,<sup>[66]</sup> and whenever he was asked to buy something from the store, AAA always approached him.<sup>[67]</sup>

At about 8 o'clock in the morning of 28 January 2003, appellant went to the Perochos to attend a birthday party. At 6:08 in the evening, while the visitors, including appellant and his uncle Alejandro Perocho [Alejandro], were gathered together in a drinking session, appellant's uncle sent him to the store to buy Tanduay Rum. Since the store is only about 20 meters from the house, he was able to return after three (3) minutes. He was certain of the time because he had a watch .<sup>[68]</sup>

Appellant's aunt, Gloria, the lady of the house, confirmed that he was in her house attending the birthday party; and that appellant went out between 6 and 7 in the evening to buy a bottle of Tanduay from the store. She recalled that appellant was back around five (5) minutes later. She also observed that appellant's white shorts and white sleeveless shirt were clean.<sup>[69]</sup>

At 6:30 in the evening,<sup>[70]</sup> Luzvilla, who was also at the party, saw appellant at the kitchen having a drink with his uncle Alejandro and the rest of the visitors.<sup>[71]</sup> She went out to relieve herself at the side of the tree beside the road next to the house of the Perochos.<sup>[72]</sup> From where she was, she saw Julito, who was wearing black short pants and black T-shirt, carry AAA.<sup>[73]</sup> AAA's face was covered and she was wiggling.<sup>[74]</sup> This did not alarm her because she thought it was just a game.<sup>[75]</sup>

Meanwhile, appellant was still in the kitchen when she returned.<sup>[76]</sup> Around three (3) minutes later, Luzvilla saw Julito, now in a white T-shirt,<sup>[77]</sup> running towards the house of Rita.<sup>[78]</sup> AAA was slowly following behind.<sup>[79]</sup> Luzvilla followed them.<sup>[80]</sup> Just outside the house, Julito embraced AAA and asked what the appellant did to her.<sup>[81]</sup> The child did not answer.<sup>[82]</sup>

Luzvilla also followed FFF to the Perochos. She witnessed the punching incident and testified that appellant was twice boxed by FFF. According to her, FFF tapped the left shoulder of the appellant, boxed him, and left. FFF came in the second time and again boxed appellant. This time, he had a bolo pointed at appellant. Appellant's uncle Alejandro, a barangay councilor, and another Civilian Voluntary Organization (CVO) member admonished FFF.<sup>[83]</sup>

On sur-rebuttal, Antonia testified that, at 7 o'clock in the evening, she was watching the television along with other people at the house of Rita. Around 7:10, Julito, who was wearing only a pair of black short pants without a shirt on, entered the house drunk. He paced back and forth. After 10 minutes, AAA came in crying. Julito tightly embraced AAA and asked her what happened. AAA did not answer. Upon Antonia's advice, Julito released her and went out of the house.<sup>[84]</sup>

Appellant further testified that at past 7 o'clock in the evening, FFF arrived, pointed a finger at him, brandished a bolo, and accused him of molesting AAA. FFF left but returned at around 8 o'clock in the evening. This time, he boxed appellant and asked again why he molested his daughter.<sup>[85]</sup>

On 26 March 2004, the Regional Trial Court rendered its decision,<sup>[86]</sup> the dispositive portion of which reads:

WHEREFORE, finding accused Hermie M. Jacinto guilty beyond reasonable doubt of rape committed upon a 5-year old girl, the court sentences him to death and orders him to pay [AAA] P75,000.000 as rape indemnity and P50,000.00 as moral damages. With costs<sup>[87]</sup>

The defense moved to reopen trial for reception of newly discovered evidence stating that appellant was apparently born on 1 March 1985 and that he was only seventeen (17) years old when the crime was committed on 28 January 2003.<sup>[88]</sup> The trial court appreciated the evidence and reduced the penalty from death to *reclusion perpetua*.<sup>[89]</sup> Thus:

WHEREFORE, the judgment of the court imposing the death penalty upon the accused is amended in order to consider the privileged mitigating circumstance of minority. The penalty impos[a]ble upon the accused, therefore[,] is reduced to *reclusion perpetua*. xxx

Appealed to this Court, the case was transferred to the Court of Appeals for its disposition in view of the ruling in *People v. Mateo* and the *Internal Rules of the Supreme Court* allowing an intermediate review by the Court of Appeals of cases