

FIRST DIVISION

[G.R. No. 181083, January 21, 2010]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
HERMINIGILDO SALLE SOBUSA, ACCUSED-APPELLANT.**

D E C I S I O N

LEONARDO-DE CASTRO, J.:

On automatic review is the Decision^[1] dated July 27, 2007 of the Court Appeals in CA-G.R. CR-HC. No. 00315 which affirmed with modification the Decision^[2] dated October 1, 2003 of Branch 30, Regional Trial Court (RTC) of Iloilo City in Criminal Case No. 52407 convicting beyond reasonable doubt accused-appellant Herminigildo Salle Sobusa of qualified rape defined and penalized under Articles 266-A and 266-B of the Revised Penal Code, as amended.

Consistent with our ruling in *People v. Cabalquinto*^[3] and *People v. Guillermo*,^[4] this Court withholds the real name of the private offended party and her immediate family members as well as such other personal circumstance or information tending to establish her identity. The initials AAA represent the private offended party and the initials BBB and CCC refer to the mother and biological father, respectively, of the private offended party. DDD shall stand for the name of the elder sister of the mother of the private offended party.

The information against accused-appellant reads:

That sometime, a few days before the Holy Week of the year 2000, in the Municipality of San Miguel, Province of Iloilo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lust and lewd design, by means of force and intimidation, did then and there willfully, unlawfully and feloniously did lie and succeed in having carnal knowledge of [AAA], his step-daughter, a minor, ten (10) years of age, against her will and consent.^[5]

Accused-appellant pleaded not guilty on his arraignment.^[6] The pre-trial conference of the parties followed. The Pre-Trial Order^[7] dated January 29, 2001, issued by the RTC, contains the respective admissions of the parties as follows:

ADMISSION:

1. The defense admits that Herminigildo Sobusa is the same person accused in this case.

2. The defense admits the identity of the offended party [AAA] as the stepdaughter of the accused.
3. The accused admits that the mother of the complainant and the accused are married.
4. The accused admits that the complainant is the daughter of the wife of the accused.
5. That the offended party [AAA] is a minor, ten (10) years of age, at the time of the incident a few days before the Holy Week of the year 2000.
6. The defense admits the existence of the Medico-Legal Certificate of [AAA] dated May 30, 2000 issued by Dr. Leah D. Cambronero-M.D. OB-Gyne, Western Visayas Medical Center, Mandurriao, Iloilo City.
7. The defense admits the existence of the entries of the Police Blotter of the PNP Station San Miguel, Iloilo regarding the aforesaid rape incident.
8. The prosecution admits that [AAA] was under the custody of her auntie at Santa Barbara, Iloilo, a few weeks before the alleged incident.

The trial court summarized the evidence in chief presented by the parties during the trial which we quote as follows:

EVIDENCE FOR THE PROSECUTION

The private complainant in this case is **[AAA]**, an 11 year-old x x x. She is the daughter of [BBB] and [CCC] out of wedlock. She was born on October 3, 1989 as evidenced by her Certificate of Live Birth.

Her mother, BBB, was married to herein accused Herminigildo Sobusa x x x as shown by their [Certificate] of Marriage. Accused Sobusa is a widower with children and working as a security guard of the Philippine National Bank. After the marriage of her mother and the accused, she lived with her grandmother x x x.

When her grandmother died in October, 1999, she lived with her mother and stepfather, herein accused Herminigildo Sobusa. However, when her mother BBB left for Taiwan in November, 1999, she was left by her mother under the custody of her [aunt DDD], the elder sister of her mother in XXX. She transferred to the house of her [aunt DDD] in December, 1999, and she stayed there for only one month and a half because her stepfather wrote her mother a letter that she was always sick, thus, in February, 2000, she was transferred by her [aunt DDD] to

the house of her stepfather, Herminigildo Sobusa, in XXX. She was only then in Grade IV x x x.

She lived in the house of her stepfather in XXX, until April, 2000, only because before the Holy Week of the year 2000 (April 17 to 21, 2000), she was raped, according to her, by herein accused Herminigildo Sobusa. When she was raped, she narrated the following story:

Sometime before April 17, 2000, at about a quarter of nine in the evening while she was sleeping, she was awakened when she felt that somebody was mashing her whole body. When she woke up, she saw her stepfather whom she called as her papa (referring to accused Sobusa), as the one mashing her whole body. Accused Sobusa then immediately covered her mouth by using his palm. She did not also shout because [she] was afraid of the accused. Thereafter, accused undressed himself and pulled down her shorts with her panty to her knees and inserted his penis into her (complainant) vagina and made a push and pull movement. While doing these acts, accused was lying on the complainant's back while the latter was lying face down. Accused also let her lie on her back, mashed her whole body and kissed her, and thereafter, he (accused) stood up and went to the comfort room. She did not notice something coming out from the accused's sex organ.

She resisted to free herself but to no avail. According to her (complainant), there was only a slight penetration because she did not feel the pain but she was very sure that what was inserted into her vagina was the penis of the accused and not his finger because his fingernails were sharp and pointed and besides the penis of the accused is bigger in size than the finger of the accused. She did not feel the pain although she has not yet experienced having sexual intercourse with a man. She was very sure that it was the accused who raped her because the accused also let her lie on her back, and also because of the reflection of the light in her room.

After doing said sexual act, complainant pulled her pillow and placed it between her thighs and the following morning, she discovered that the pillow was wet with bloodstains. She then told her papa (referring to accused) about the bloodstains but the accused told her just to keep quiet because he will just wash the pillow and the panty. At first, she did not tell anybody about it, however, her Tita Bebing, the half sister of her papa (accused), overheard the same. Upon inquiry by her Tita Bebing, she told her about the incident but her Tita told her just to keep quiet. In May 2000, however, she also told her two friends x x x about the incident that happened to her and her friends advised her to tell everything to her [aunt DDD] which the complainant did. Thereafter, they reported the incident to the barangay captain and the latter also reported the same to the Municipal Hall x x x and a warrant was issued for the arrest of the accused.

x x x x

Dra. Ma. Theresa Cedullo x x x a resident physician assigned at the

OB-Gyne Department, Western Visayas Medical Center, Mandurriao, Iloilo City (government hospital), and currently in her fourth year residency acting as Chief and Senior Resident of the OB-Gyne Dept., testified that Dr. Leah Cambronero, the physician who examined herein complainant [AAA], at the time of her examination on the victim, was a Medical Officer IV of the Department of Health, Western Visayas Medical Center (OB-Gyne Dept.). However, after she graduated from her residency training, she resigned from the WVMC and engaged in private practice in Puerto Princesa Palawan.

She identified the Medico Legal Certificate issued by Dr. Leah Cambronero as well as the signature and findings appearing therein. The findings and/or diagnosis appearing in said Medico Legal Certificate is hereunder quoted as follows:

x x x x

"IMPRESSION: INCOMPLETE OLD HEALED HYMENAL LACERATION AT 10 & 12 O'CLOCK POSITION, FUNGAL INFECTION."

The doctor further explained that the findings which says "old healed laceration at 10 & 12 o'clock positions" means that there is a presence of hymenal laceration, however, it does not traverse to the whole length of the hymen, and the same was no longer bleeding. She further added that the old healed hymenal laceration could have been inflicted on the victim a month or more prior to the date of the examination conducted by Dr. Cambronero, depending however on the healing process of the patient. This incomplete old healed laceration according to the witness could be caused by trauma, like a hard penis used in the area, blood clots during menstruation, by manipulation on the area either by the child herself or by another person or by the use of other objects. In this case, there is a possibility that the hymenal laceration was caused by trauma through the forcible insertion of a stiff or hard penis into the vagina of the victim.

According to the doctor, the introitus of the victim admits one finger with difficulty which means that the patient has not been able to give birth yet. Because of the presence of numerous pus cells, she added, although the patient was not subjected to urinalysis, this signifies that there was fungal infection. Hygiene is one factor which may cause fungal infection and also estrogenic infection which would be transferred to the victim by another source. Hence, it is possible that this fungal infection suffered by the victim was caused by sexual intercourse committed on the victim.

x x x x

[DDD], the elder sister of **[BBB]**, the mother of herein complainant, corroborated the testimony of **[AAA]** on some material aspects x x x.

On April 25, 1997, her sister **[BBB]**, was married to herein accused Herminigildo Sobusa as evidenced by the Certificate of Marriage x x x but nobody in their family had attended said marriage since their family did not approve of said marriage considering that accused Sobusa is a

drunkard and has children with his previous wife. In fact she only knew about said marriage in 1999.

According to her, when her sister left for Taiwan and Hongkong in 1999 and 2001, respectively, [AAA] was left under her custody by her sister because among her brothers and sisters, she was the only one left living in XXX. Thus, in December, 1999, [AAA] lived with her in XXX. However, herein complainant only stayed with her for only two months because her sister, [BBB] wrote her a letter to transfer [AAA] to XXX, thus, in the middle of February 2000, complainant transferred to XXX, to the house of his stepfather Herminigildo Sobusa.

Complainant lived with her stepfather together with Pane and Bebe, the stepsisters of the accused, the grade IV son of the accused with another woman and the three-year old son of the accused with [BBB].

On May 23, 2000, herein complainant visited her in their house in XXX, and that was the time the complainant told her that she was raped by accused Sobusa. She then confronted accused Sobusa about the incident in the afternoon of the same day but the latter denied having raped [AAA]. She then told her cousin Anselma Sarisola and their relatives about the incident and they decided to have [AAA] examined. They reported the incident to the Police Station of San Miguel, Iloilo, as evidenced by the excerpt of the Police Blotter. They also referred this case to the DSWD Lingap Center in Bo. Obrero which took [AAA] into custody x x x.

x x x x

SPO3 Romeo Villasis, Police Investigator of San Miguel, Iloilo, identified the excerpt of the Police Blotter and explained that it was PO3 Brion, Women and Child Desk Officer who made the entry of the incident in the official blotter book, however, he based his certification on another logbook also entered by PO3 Brion x x x. Nevertheless, both the prosecution and the defense stipulated that the entry which says: "child, female and temporarily residing at XXX" also appeared in the official blotter book presented by the witness.

EVIDENCE FOR THE ACCUSED:

Accused Herminigildo Sobusa, 43 years old, married and a resident of Sta. Teresa, San Miguel, Iloilo, and a security guard assigned at the Philippine National Bank, Iloilo Branch, on his behalf, testified as follows:

x x x x

He only came to know about the filing of this Rape case against him in May, 2000 and upon knowing this, he voluntarily surrendered to SPO1 Juanito Molinas, Jr. of San Miguel PNP and he was placed in the lock up cell.

He vehemently denied having raped [AAA] because being employed as