

SECOND DIVISION

[G.R. No. 179933, April 16, 2009]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
JOSEPH FABITO, ACCUSED-APPELLANT.**

D E C I S I O N

BRION, J.:

This is an appeal from the June 29, 2007 decision of the Court of Appeals (CA) in CA-G.R. CR-HC No. 00006.^[1] The CA affirmed the February 12, 2001 decision of the Regional Trial Court (RTC), Branch 43, Dagupan City,^[2] finding the appellant Joseph Fabito (*appellant*) guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer the penalty of *reclusion perpetua*.

THE CASE

The prosecution charged three individuals - the appellant, Froilan Paraan (*Froilan*) and Tony Bauzon (*Tony*) - before the RTC with the crime of rape under an Information that states:

That on or about December 8, 1999 at around 4:00 o'clock in the afternoon, at Barangay Ventinilla, Municipality of Sta. Barbara, Province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, JOSEPH FABITO, in conspiracy with his co-accused FROILAN PARAAN and TONY BAUZON, with the use of force and intimidation, did, then and there, willfully, unlawfully and feloniously have sexual intercourse with one [AAA],^[3] minor, aged 14 years old, against her will and without her consent, to her damage and prejudice.

CONTRARY to Article 335 of the Revised Penal Code, as amended.^[4]

All the accused pleaded not guilty to the charge. The prosecution presented the following witnesses in the trial on the merits that followed: AAA; BBB; and Dr. Mary Gwendolyn Luna (*Dr. Luna*). The appellant, Froilan, Tony, Jovito Idos (*Jovito*) and Trinidad Bauzon (*Trinidad*) testified for the defense.

AAA testified that she was born in San Diego, California on October 7, 1985. She went to the Philippines in December 1997 at the age of 12 to pursue her schooling; she enrolled at the Daniel Maramba National High School.^[5]

According to AAA, she went to the house of Tony on December 8, 1999 after classes to look for her boyfriend, Froilan. At Tony's house, she saw the appellant, Froilan and Tony under a mango tree drinking Tanduay. She approached them and Froilan offered him a glass of coke and some crackers. She drank the coke and after five (5) minutes felt dizzy and afterwards fell asleep.^[6]

When she woke up, she was lying on a bed in a room at the second floor of Tony's house. She also noticed that her skirt had been lifted up and her panty had been removed. Tony was then two (2) steps away on her left side, Froilan was two (2) steps away on her right side, while the appellant was on top of her "doing up and down position." When asked to explain what she meant by "doing up and down position," she explained that the appellant inserted his penis into her vagina which caused her pain. She asked the appellant why he was sexually abusing her but the appellant did not reply; instead, he held her hand tightly and continued abusing her. She turned her body from left to right causing the withdrawal of the appellant's penis from her private part. The appellant tried to insert his penis again but was unsuccessful because of her continued movements. Thereafter, Froilan pulled the appellant downstairs. AAA picked up her panty, wore it, and left.^[7] During the rape, Froilan and Tony simply watched and did nothing.^[8]

On cross examination, AAA stated that premarital sex was prevalent in the United States and admitted that she had her first sexual intercourse when she was around eight (8) or nine (9) years old.^[9] She did not shout during the rape incident because she was afraid that the appellant might kill her. She also clarified that when she woke up, the appellant's penis was already inside her vagina. Her vagina did not bleed during the sexual intercourse.^[10]

She further testified that before going to school on December 8, 1999, she drank two (2) shots liquor with her friends because of a family problem; and that neither her teacher nor her classmates noticed that she had consumed liquor because she took *chicklets*. She added that the last subject she attended before her class was dismissed was T.H.E.^[11] She likewise admitted attending the birthday party of her boyfriend's brother the next day.^[12]

On re-direct, she clarified that the sexual intercourse she had when she was eight (8) years old was without her consent; and that the person who sexually abused her was in jail in the United States.^[13]

On re-cross, she recalled that when she was moving her body from left to right, the appellant's face was approximately two (2) inches away from her face. She also explained that the kiss mark on the left side of her neck indicated in the medico-legal certificate was not made during the rape incident, and that she did not know where it came from.^[14]

BBB, the guardian of AAA, testified that her custody over AAA started in 1997 after AAA's arrival from the United States. She recalled that on December 8, 1999, AAA arrived home late and told her that she came from a Bible study.^[15] The next day, she looked for AAA when she failed to return home on her usual schedule. She found her in *Barangay* Ventinilla, Sta. Barbara, Pangasinan, and she scolded her for not coming home on time. AAA then disclosed that she had been raped by the appellant, Froilan and Tony the previous day. Thereafter, they reported the incident to the police and then proceeded to the Region 1 Medical Center for medical examination.^[16]

On cross examination, BBB admitted that she reported the incident to the police

only on December 13, 1999.^[17]

Dr. De Luna, Medical Officer IV of the Region I Medical Center in Dagupan City, narrated that at around 5:15 p.m. of December 10, 1999, AAA arrived at the hospital to undergo medical examination. At the interview prior to the examination, AAA disclosed to her that she (AAA) had been sexually abused. The examination thereafter followed with the following findings:

MEDICO-LEGAL CERTIFICATE

x x x

HEEN T - (+) Kiss mark left side of the neck

Genitalia: Old, healed deep hymen laceration at 1, 4, 5, 7, 8 o'clock
superficial healed hymenal laceration at 10, 11 o'clock

Vagina admits 2 fingers with ease cervix close uteri small adnexia

[F]ree whitish vaginal discharge

x x x

RESULT: "NEGATIVE" for the presence of spermatozoa

x x x x^[18]

She explained that "old, healed laceration" means that the lacerations were not fresh and that there was no bleeding. According to her, these lacerations could have been caused by previous sexual intercourse or by anything placed on the vagina.^[19]

On cross examination, Dr. De Luna added that she did not find any other injuries sustained by AAA other than the lacerations on her vagina.

The defense presented a different version of events.

Froilan testified that AAA was his sweetheart and he did not know why she would charge him with rape.^[20] He narrated that at around 11:00 a.m. of December 8, 1999, he and the appellant went near the river to cut bamboo. Afterwards, they went to Tony's place where, together with Tony, they stayed under a mango tree, conversing and drinking a bottle of Tanduay.^[21] At around 1:00 p.m., Ardee Bauzon (*Ardee*) and AAA arrived. Ardee told him that AAA was looking for him. He noticed that AAA was drunk when she (AAA) sat beside him. Tony's father subsequently arrived and told them to stop drinking. Then they escorted AAA outside Tony's compound and went on their separate ways.^[22]

He also testified that he was at home chopping wood at around 4:00 p.m. of the next day (December 9, 1999) when AAA arrived at his place. He brought her inside the house, where AAA told him that she just attended a birthday celebration in Tuliao. Soon after, he told AAA to go home because her grandmother might scold her; he then escorted her outside, asking Ardee to accompany her home.^[23]

He narrated further that AAA again went to his house on December 10, 1999 carrying her clothes. She asked if she could stay with him. She also told him that something happened to her in Tuliao, and threatened to implicate him if he refused to accept her. BBB afterwards came to fetch AAA.^[24]

Tony testified that the appellant and Froilan came to his house in the morning of December 8, 1999. They brought with them a bottle of Tanduay. He led them to a mango tree inside his compound where they had a "drinking spree."^[25] Afterwards, Ardee and AAA arrived; Ardee informed Froilan that AAA, his girlfriend, had been looking for him. AAA sat beside Froilan and they talked. At around 4:00 p.m., they escorted AAA out of the compound going towards the *barangay* hall, and they then all parted ways.^[26]

On cross examination, Tony stated that he already knew that AAA was the girlfriend of Froilan four (4) months before December 8, 1999. He recalled that when AAA arrived, she was already drunk.^[27] He added that his two-storey house has two (2) rooms, both of which have neither doors nor beds.^[28] He also claimed that he and the appellant did not talk to AAA while they were drinking. On re-direct, he stated that there were about three (3) other houses near his house.^[29] He added that he did not ask AAA to take a rest in his house because his parents might scold him if he brought a woman inside the house.

Jovito, a teacher at the Daniel Maramba National High School, testified that he was AAA's class adviser,^[30] and that AAA had dropped out of school as of October 29, 1999. He also brought with him AAA's attendance sheet and confirmed that she (AAA) has no attendance record for the month of December 1999.^[31] He also confirmed that the last scheduled subject on December 8, 1999 was Filipino II, and that AAA was currently enrolled and was repeating second year high school because she had dropped out the previous year.^[32]

On cross examination, he reiterated that AAA attended classes only from June 1999 until October 29, 1999, but clarified that it was only in the month of June when AAA had a perfect attendance.^[33]

The appellant, for his part, testified that at around 11:00 a.m. of December 8, 1999, he and Froilan were at *Barangay* Ventinilla, Santa Barbara and were cutting bamboo near the river. As they were finishing this task, his best friend Edwin Benito came and gave them a bottle of Tanduay. He and Froilan then proceeded to Tony's house where they saw him under a mango tree; they invited him to have a drink with them.^[34]

The appellant further narrated that Ardee and AAA arrived at around 1:00 p.m., and Ardee informed Froilan that AAA was looking for him. Froilan approached AAA and they talked. They finished drinking at around 4:00 p.m. when Tony's father warned them that AAA's parents might already be looking for her. Thereafter, they escorted AAA out of the compound; all of them then went home. He was surprised to learn the next day that AAA had accused him of rape.^[35]

On cross examination, the appellant denied raping AAA and insisted that he met her for the first time only on December 8, 1999.^[36] He also recalled that on December 8, 1999 when AAA arrived, he assumed that she was drunk because she had reddish eyes and he overheard her saying that she came from a "drinking spree" in *Barangay Tuliao*.^[37]

Trinidad, Tony's mother, recalled that on December 8, 1999, she saw AAA drinking Tanduay together with her son, the appellant, and Froilan under the mango tree located at the back of their house.^[38] According to her, she never saw AAA inside their house.^[39]

On cross examination, she maintained that on December 8, 1999 from 1-4 p.m., she was inside their house together with her husband, their children and grandchildren.^[40] She further narrated that during the drinking spree, she was inside one of the rooms fixing clothes and insisted that she never saw anyone enter the other room. She emphasized that both rooms have no beds or doors.^[41]

The RTC's decision of February 12, 2001 convicted the appellant of the crime of rape, but acquitted his two (2) co-accused. The dispositive portion of the trial court's decision reads:

WHEREFORE, the Court finds accused Joseph Fabito guilty beyond reasonable doubt for the felony of RAPE defined and punishable under Article 266-A of the Revised Penal Code and in conformity with law, he is hereby sentenced to suffer prison term of **RECLUSION PERPETUA** and to pay the offended party the following amounts to wit:

1. Civil Indemnity in the amount of P50,000.00;
2. Moral Damages in the amount of P50,000.00;
3. And cost.

Further, the Court orders his **immediate commitment** to the National Penitentiary without unnecessary delay.

With respect to accused Froilan Paraan and Tony Bauzon for failure to prove their GUILT beyond reasonable doubt they are ordered **ACQUITTED**.

The BJMP Dagupan City is ordered to release said accused (Paraan and Bauzon) from detention in so far as the above case is concerned.

SO ORDERED.^[42] [*Emphasis in the original*]

The appellant directly appealed his conviction to this Court in view of the penalty of *reclusion perpetua* that the RTC imposed. We referred the case to the CA for intermediate review^[43] pursuant to our ruling in *People v. Mateo*.^[44]

The CA affirmed the RTC decision but increased the amounts of civil indemnity and moral damages to P75,000.00, respectively.^[45] According to the CA, the fact that the victim was brought up the American way and was not the "typical innocent barrio lass" does not discount the possibility of rape because even a woman of loose