

EN BANC

[G.R. No. 172091, March 31, 2008]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MOISES OLIVA ORBITA, ACCUSED-APPELLANT.**

R E S O L U T I O N

VELASCO JR., J.:

This is an automatic review of the Decision^[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 01302, promulgated on September 28, 2005. The CA Decision affirmed with modification the Judgment^[2] dated May 12, 2003 of the Regional Trial Court (RTC), Branch 140 in Makati City in Criminal Case No. 01-752, finding accused-appellant Moises Orbita guilty of Statutory Rape and imposing upon him the death penalty.

The records show that AAA^[3] was born on January 18, 1995, the eldest of the two children of BBB and CCC, AAA's mother and father, respectively. At the time AAA was raped, she was only six (6) years old.

On March 28, 2001, at around 11:00 in the evening, accused-appellant chanced upon BBB playing card games with her neighbors at their condominium unit where he was employed as a security guard. Dressed at that time in civilian clothes and reeking of alcohol, accused-appellant lingered to watch the game for at least an hour and left at around midnight. BBB, who was attending to her other child, did not notice accused-appellant leave. She recalled, however, seeing AAA sitting on the lap of accused-appellant, a fact confirmed by Maria Rosario Cordero, one of BBB's neighbors present during the card games.^[4] At about this time, CCC was in Pampanga.

At around 1:00 in the morning of March 29, 2001, BBB and Maria Rosario noticed AAA, who was then coming down the stairs leading to the *sampayan* (clothes line) on the rooftop of the condominium, visibly frightened and walking awkwardly. When questioned by BBB, AAA narrated that she was taken to the rooftop by *Kuya* (Brother) Jun, herein accused-appellant. AAA added that once there, accused-appellant turned off the light, undressed her, laid her down near the washing area, and then raped her by inserting first his finger, then his private organ, into her vagina. After satisfying his lust, accused-appellant dressed AAA up and then let her go. After hearing AAA's story, BBB examined AAA's underwear and saw bloodstains on it, which made BBB hysterical. On the same day, the rape incident was reported at the Makati City Police Station. AAA was then taken to the Philippine National Police Crime Laboratory at Camp Crame, Quezon City for examination.^[5]

The medico-legal officer who examined AAA submitted Medico-Legal Report No. 0218-03-28-01, stating that there was disclosure of sexual abuse and that the

"genital findings are clear evidence of recent blunt penetrating trauma."^[6]

Upon AAA's complaint, an Information for Statutory Rape was filed against accused-appellant, as follows:

That on or about the 28th day of March 2001, in the City of Makati, Philippines, a place within the jurisdiction of [the RTC], [accused-appellant], by means of force, violence and intimidation, did and there willfully, unlawfully and feloniously have carnal knowledge of the complainant [AAA] a six (6) year old girl, without her consent and against her will.^[7]

When arraigned, accused-appellant pleaded not guilty to the offense charged.

Accused-appellant interposed the defenses of denial and alibi. According to him, he was at work from 7:00 a.m. of March 27, 2001 to 7:00 a.m. of March 28, 2001. After his duty, he had a drink at around 3:30 in the afternoon, and at 4:00 p.m., he went to the rooftop of the condominium building to gather his clothes and then descended to the ground floor to place them inside his cabinet. Thereafter, he proceeded to the condominium unit of BBB to play *tong-its*, a card game, until 8:30 in the evening, and left and went back to the ground floor and took a rest.^[8]

Accused-appellant testified that BBB and AAA concocted the rape story because BBB allegedly harbored negative feelings against him after he saw BBB embracing somebody on several occasions. Furthermore, accused-appellant cast doubt on AAA's credibility when she allegedly testified inconsistently on describing a male organ.^[9]

The RTC ultimately rendered its Judgment on May 12, 2003, convicting accused-appellant of the crime charged. The *falla* reads:

WHEREFORE, finding [accused-appellant] guilty beyond reasonable doubt for the crime of Statutory Rape, he is hereby sentenced to suffer the penalty of DEATH and ordered to indemnify the offended party in the amount of [PhP 100,000] for actual and moral damages.

Costs against the accused.

SO ORDERED.^[10]

Due to the penalty imposed, the case was forwarded to this Court for automatic review and was originally docketed as G.R. No. 158777. However, in accordance with the ruling in *People v. Mateo*,^[11] this Court, in its Resolution dated April 26, 2005, transferred this case to the CA for intermediate review, and the case was docketed as CA-G.R. CR-H.C. No. 01302.

On September 28, 2005, the CA issued a Decision, affirming the Judgment of the RTC, but modifying the civil liability, as follows: PhP 75,000 as civil indemnity and PhP 50,000 as moral damages.^[12]

The CA held that the RTC properly rejected accused-appellant's defenses of denial and alibi and ruled that these cannot prevail over AAA's positive identification of