

## SECOND DIVISION

[ G.R. No. 168448, October 08, 2008 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
FAJARDO NAPUDO, ACCUSED-APPELLANT.**

### D E C I S I O N

**BRION, J.:**

We pass upon the accused-appellant Fajardo Napudo's (*Napudo* or *appellant*) appeal from the decision of the Court of Appeals (CA) dated March 17, 2005 in CA-G.R. CR-H.C. No. 00633, finding him guilty beyond reasonable doubt of the crime of rape committed against AAA. The CA decision affirmed with modification the decision dated November 15, 2000 of the Regional Trial Court<sup>[1]</sup> (RTC), Branch 30, Nueva Vizcaya, in Crim. Case No. 1147 that found the appellant guilty beyond reasonable doubt of the crime of rape, and sentenced him to suffer the penalty of *reclusion perpetua* and to pay the offended party's family Fifty Thousand Pesos (P50,000.00)<sup>[2]</sup> as moral damages and Fifty Thousand Pesos (P50,000.00) as civil indemnity.

Napudo was prosecuted under an Information<sup>[3]</sup> charging him with violation of Article 266-A, paragraph I(a) of the Revised Penal Code, as amended,<sup>[4]</sup> in relation with Republic Act No. 7659 and Republic Act No. 7610. He pleaded not guilty to the charge and was thereafter tried.<sup>[5]</sup> **At the pre-trial, he admitted his sexual intercourse with AAA, but declared these acts to be voluntary and consensual between them because they were sweethearts.**

#### The Prosecution's Version

The prosecution presented evidence consisting of the testimonies of (a) AAA; (b) BBB, her mother; and (c) Dr. Elizabeth Joaquin (Dr. Joaquin), the physician who conducted the medical examination on AAA. The RTC summarized the testimony of AAA as follows:

On December 3, 1998, around 1:30 p.m., she boarded a jeep at Solano, Nueva Vizcaya bound for Kasibu, Nueva Vizcaya. Among her fellow passengers on board the jeep, she recognized Fajardo Napudo, x x x who happened to be a resident also of Malabing and her cousin (her mother and the accused's father being sister and brother). The jeep's destination was up to Wangal, a neighboring barrio of Malabing and from there, she planned to walk to Malabing which was 2 kms. away as there was no means of transportation. They reached Wangal at 9:00 p.m. x x x

While walking towards Malabing, Fajardo Napudo got hold of her bag which was quite heavy so that they could walk faster to Malabing. As the road was muddy, she took off her shoes but again Fajardo volunteered to carry her shoes for her. When she handed her shoes to him, Fajardo took

hold of her left wrist and with his right arm, he held her waistline. It was at this point that she became apprehensive, seated (sic) herself on the muddy ground and cried. She cried for help, afraid that she was about to be molested and inquired from Fajardo why he was doing this to her. Fajardo scolded her and uttered an expletive. Fajardo then pressed both cheeks with his hand and inserted his tongue in her mouth. She bit Fajardo's tongue, afterwhich (sic), he pulled her towards a clump of bamboos 10 m away from the road. She struggled and fought Fajardo by kicking him but he succeeded in bringing her to the clump of bamboos. He then pushed her hard towards the ground and straddled her legs and forced open her blouse. He lowered her pants and panty, afterwhich (sic), he also lowered his pants and brief. The accused, however, failed to insert his penis into her vagina and because she had already lost her strength from fighting him, she lost consciousness. When she came to, she found that she was under a "camarin" which was 30 meters away from the clump of bamboos and she noticed that she was totally naked and her right foot was raised on the arm of the accused. The accused was already on top of her and he was making pumping motions while his penis was inserted into her vagina. Her body and her maidenhood was painful while accused was on top of her. She pushed him away and cried and pleaded why he did those things to her. The accused just stood up, put on his clothes and after putting on her clothes, he accompanied her home. Before they parted ways, the accused threatened that he would kill her if she would report the matter to anybody.<sup>[6]</sup>

AAA afterwards was unable to eat and sleep; she also kept on crying. BBB testified that upon being told by AAA of her sexual ordeal on December 6, 1998, she immediately confronted Napudo but the latter denied the allegation. She then invited Napudo to her house for a confrontation with AAA who called him "gago".<sup>[7]</sup> BBB then consulted the Barangay Captain who instructed her to report the matter to the police authorities. The witness also testified that although AAA resumed her studies after the incident, she never went home and preferred to stay at a boarding house where BBB visited her. Eighteen days after completion of her court testimony, AAA committed suicide by drinking *malathion*, but prior to her death, she ate sparingly, was unhappy, and always cried whenever the rape incident was brought up.

Dr. Joaquin who had physically examined AAA three days after the incident, issued a *medico-legal report* finding laceration in her hymen at 5:00 o'clock position and "abrasion, small-sized near the vaginal orifice on the left side wall."<sup>[8]</sup> She opined that the laceration found in AAA's hymen and the abrasions in her vaginal walls could have been caused by the insertion of a penis since the patient claimed to have been raped.<sup>[9]</sup> On cross-examination, the witness stated that, except for the findings on the complainant's hymen, there were no injuries on the hands, shoulders, breasts or legs of AAA. Dr. Joaquin testified that based on the inflammatory marks on AAA's vagina, the laceration could have been caused three (3) days prior to the medical examination.<sup>[10]</sup> The prosecution rested its case after its formal offer of documentary evidence consisting of: (a) AAA's Sworn Statement dated December 10, 1998;<sup>[11]</sup> (b) the *medico-legal report* dated December 6, 1998;<sup>[12]</sup> and (c) AAA's death's certificate.<sup>[13]</sup>

### Version of the Defense

To prove that the sexual relationship between Napudo and AAA was consensual and that he and AAA were in fact sweethearts, the defense presented the testimonies of the following witnesses: (a) Napudo; (b) Noli Nunag; (c) Larry Guzman; and (d) Perfecto Tabingalan. The RTC summarized the appellant's testimony and the defense's version of the antecedent events as follows:

...he knew AAA as the girl was his barangay mate. He first came to know AAA when she was 16 and in third year high school. Whenever AAA went home to Malabing, they sometimes rode together in a jeep and they used to converse with each other. There were occasions when he was at the parking area that AAA and some students would invite him to watch a movie. From his recollection, they saw movies together, a mutual relationship burgeoned between them and they kissed each other inside the movie house. Merlie was then in third year high school. They used to meet at the Capitol compound on Saturdays but he remembered of one occasion where Merlie met him there on a school day.

Their relationship progressed to a more intimate level when they both attended the wedding of Samuel Baguilat at Dualo, Lagawe on October 22-23, 1998. While the party was going on, he and Merlie sneaked out and proceeded to the kiosk near the school in Dulao, Lagawe, Ifugao where they had their first sexual intercourse x x x

x x x

He denied having forced himself on AAA and asserverated that he and AAA had a relationship long before the incident complained of. The time that he had sexual intercourse with AAA, particularly on October 22, 1998, October 28, 1998, November 13, 1998 and December 3, 1998, more specifically at the "camarin" or shack and at his house, were all voluntarily participated in and acceded to by AAA.<sup>[14]</sup>

**On cross-examination, Napudo admitted that he had no evidence, apart from his statements, to show that he and AAA were lovers.**<sup>[15]</sup>

To corroborate Napudo's sweetheart defense, the defense presented Perfecto Tabingalan (*Tabingalan*), the owner of a hotel named Yellow Bell Lodge, whose testimony was summarized by the RTC in the following manner:

On November 13, 1998, while sitting as desk clerk at the counter, two persons entered and registered their names as Fardo and Merly Napudo. At that time, he presumed that they were husband and wife. He then proceeded to identify the accused in open court as the person who had himself registered as Fardo Napudo. Fardo was with a woman who was beautiful, with fair complexion, quite young and with the profile of a highlander. He had no occasion to talk with them as they immediately entered room no. 6 after checking in. They checked-in at 7:15 p.m. and checked-out between 7:00 and 8:00 the following morning.<sup>[16]</sup>

The witness admitted that he made the entries appearing in the logbook when the guests refused to sign.<sup>[17]</sup> On cross-examination, he also admitted that it was his first encounter with Fardo and Merly Napudo. He described the encounter to be brief. He also admitted that there were occasions when he could not remember the hotel guests.<sup>[18]</sup> Moreover, he testified that he came to know the full name of Napudo through the latter's mother who had tearfully requested that he testify in Napudo's behalf.<sup>[19]</sup>

The other two witnesses - Noli Nunag<sup>[20]</sup> and Larry Guzman<sup>[21]</sup> - testified that on December 3, 1998, they saw Napudo and AAA seated beside each other inside the jeepney they were riding on; when the vehicle bogged down, Napudo and AAA walked together to Malabing.

The defense rested its case after the formal offer of documentary evidence consisting of the hotel proprietor's logbook.<sup>[22]</sup>

#### *The Lower Courts' Rulings.*

The RTC disbelieved Napudo's "sweetheart" defense after considering the absence of external manifestations proving the existence of the relationship. It declared that such defense falls flat on the face of AAA's testimony which it found sincere and worthy of belief - she was unfazed by the accused's attack on her character, on her behavior, and on the lack of physical evidence showing injuries to her person. The RTC held that in any case, even if Napudo and AAA were indeed lovers, that fact alone does not negate the commission of rape.

The Court of Appeals (CA),<sup>[23]</sup> on appeal, agreed with the RTC's findings. The appellate court discredited the testimony of Tabingalan and the hotel logbook; Tabingalan exhibited a very selective manner of remembering hotel guests and had an undependable system of making entries in the hotel logbook. The document was similarly unreliable as it contained blank spaces open to insertions.

In this appeal to us, the appellant attributed the following errors to the Court of Appeals:

1. The court *a quo* gravely erred in ignoring the fact that what transpired between the accused-appellant and the complainant was a consensual affair.
2. The court *a quo* gravely erred in convicting the accused-appellant of the crime of rape based on reasonable doubt.

Napudo anchored his "sweetheart" defense on the following: *first*, the testimonies of Noli Nunag and Larry Guzman who both declared that they saw Napudo and AAA seated beside each other conversing while they were on their way to Malabing that fateful day; *second*, the fact that it was unusual for AAA, a maiden, to walk home at night with Napudo unless she trusted the latter - an indication, in Napudo's view, of their relationship; *third*, Tabingalan confirmed that he saw AAA with Napudo check in at the Yellow Bell Lodge; *fourth*, the fact that, except for the laceration in her hymen, there was no other physical injury found on AAA's body to indicate that she was forced or abused; *fifth*, her conduct after the alleged rape was inconsistent with the claim of rape; and *lastly*, the absence of evidence showing that she tenaciously

resisted the sexual assault despite the fact that the accused-appellant was unarmed.

The Office of the Solicitor General, on the other hand, maintained that the RTC and CA were correct in sustaining Napudo's conviction on the basis of the totality of the prosecution's evidence centered on AAA's credible testimony. It reiterated both the lower courts' conclusion that a "sweetheart" defense does not negate the commission of rape; neither does the absence of physical injuries conclusively prove the charge of rape.

### **OUR RULING**

**After due consideration of the parties' evidence and arguments, we find no error in the factual and legal conclusions of the CA, and therefore affirm the appellant Napudo's conviction.**

The prosecution's case is mainly based on the testimony of AAA as corroborated by the *medical findings* of Dr. Joaquin and the testimony of BBB. On the basis of the records, we find no compelling reason to deviate from the lower courts' findings that the carnal knowledge between Napudo and AAA in the evening of December 3, 1998 was attended by force and intimidation. AAA positively, consistently, and categorically testified on the manner Napudo forced her and succeeded in having sexual intercourse with her against her will.<sup>[24]</sup>

Adding weight to AAA's testimony are the findings of Dr. Joaquin, an *expert witness on matters of rape* as the defense itself admitted,<sup>[25]</sup> whose *medico-legal report* dated December 6, 1998 established a marked compatibility of the physical evidence to the charge of rape. The physical evidence on record revealed:

- (a) The presence of a hymenal laceration and abrasion in AAA's vaginal walls which, as Dr. Joaquin testified, could have been caused by a penis as the complainant claimed to have been raped; <sup>[26]</sup>
- (b) Based on the wound healing, the hymenal laceration was 3-days old which was consistent with AAA's claim that she was raped three days before the medical examination, or on December 3, 1998; <sup>[27]</sup> and
- (c) The medical diagnosis that AAA's first sexual intercourse could not have been earlier than December 3, 1998. <sup>[28]</sup>

Similarly, there is evidence of AAA's physical and mental condition after the rape, which showed consistency with the accusation of rape. BBB described the physical appearance and demeanor of AAA after the rape in this manner: *I saw my daughter sitted [sic] on a chair. Her hair was "disabled" (disheveled) as if she was mentally upset. She was crying. She had sleepless nights and (was) unable to eat.... I inquired from her why she looks like that and what the problem was and she replied: "It is Fajardo" shouted my daughter... "Fajardo raped me".*<sup>[29]</sup> As the records show, AAA's behavior continued even during the hearing of the case; after the rape, she never went home and preferred to stay at her boarding house in Bayombong, Nueva Vizcaya.<sup>[30]</sup> Her disposition was further described by BBB as lonely, sad, and unhappy; she ate sparingly.<sup>[31]</sup> BBB also testified that they never talked about the rape because it made AAA cry.<sup>[32]</sup> **Notably, on November 15,**