

## EN BANC

**[ G.R. No. 167755, November 28, 2008 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
NESTOR VELUZ, ACCUSED-APPELANT.**

### DECISION

**AUSTRIA-MARTINEZ, J.:**

For review before this Court is the February 9, 2005 Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. CR-HC No. 00073 which affirmed the Decision<sup>[2]</sup> dated April 30, 2002 of the Regional Trial Court (RTC) of Baler, Aurora, Branch 96, finding Nestor Veluz (appellant) guilty of one count of rape of a minor mental retardate and sentencing him to suffer the penalty of death, with modification as to the damages awarded to the victim.

The Information, dated December 13, 1999, in Criminal Case No. 2535, reads as follows:

That on October 23, 1999 or earlier in x x x, Aurora and within the jurisdiction of this Honorable Court, the said accused, did then and there, willfully, and unlawfully and feloniously have carnal knowledge for four times of thirteen year old AAA<sup>[3]</sup> who has a mental age only of four (4) to five (5) years old and the said accused was then aware of the mental disability and or physical handicap of the said offended party.<sup>[4]</sup>

When arraigned, appellant pleaded "not guilty."<sup>[5]</sup> Thereafter, trial ensued.

The prosecution presented eight witnesses, namely: 1) Senior Police Officer 3 (SPO3) Loreto Gavina; 2) Nimia C. de Guzman; 3) Dr. Rodolfo Eligio; 4) BBB, the aunt of AAA; 5) AAA; 6) Corazon Rivera; 7) Loreto Cuaresma; and 8) CCC, the father of AAA.

On the other hand, the defense presented two witnesses, namely: 1) appellant and 2) Kathleen Veluz (Kathleen), his daughter.

The prosecution evidence seeks to establish the following facts:

AAA testified that she was called by Kathleen to go to the latter's house; and when inside the house, she was raped by appellant.<sup>[6]</sup>

Corazon Rivera (Rivera) testified that on October 23, 1999, at around 10 a.m., she went to the house of appellant to ask for *saluyot*. Upon reaching his house, Rivera peeped through the window and saw appellant and AAA lying on the elevated bamboo platform (*papag*). Appellant was naked and his buttocks was moving up and down while AAA's blouse was rolled up and both were lying down facing each

other side by side. Rivera watched appellant doing the pumping motion for three minutes and then left to call BBB, the aunt of AAA.<sup>[7]</sup>

Upon reaching the house of appellant, BBB saw appellant and AAA lying naked on the bed. After seeing the scene inside the house of appellant, BBB called appellant and requested that AAA be allowed to go out. Since appellant did not immediately answer, BBB said that she would call a *bantay bayan*. BBB did not find a *bantay bayan* but instead she saw Loreto Cuaresma (Cuaresma), one of the *barangay kagawads*. Cuaresma told BBB to go ahead and that he would follow. When BBB went back to the house of appellant, she saw AAA at the back of the said house, sitting on the ground and perspiring. She asked AAA what happened and the latter answered, "*Iniyot ng matagal*."<sup>[8]</sup> BBB asked AAA when she was "*iniyot*" and the latter answered, "*Nabayagon*."<sup>[9]</sup>

Furthermore, BBB asked AAA how many times she had intercourse. AAA responded by showing her four fingers. In addition, when AAA told BBB that she had intercourse a long time ago, BBB asked if it happened again on that day and the answer was "*wen*" or yes.<sup>[10]</sup>

Cuaresma followed BBB after five minutes. Upon reaching the house of appellant, he saw AAA sitting and perspiring and her hair entangled. Cuaresma observed that AAA looked as if she was out of her mind. Cuaresma asked AAA what appellant did to her and the latter answered, "*Iniyot nak*." When asked how many times, AAA raised her four fingers. Cuaresma asked AAA who molested her and the latter answered that it was appellant. Cuaresma then told BBB to bring AAA home and that he would look for CCC, the father of AAA.<sup>[11]</sup>

Upon locating CCC, Cuaresma told him that he should go home because something happened to AAA. Later, BBB told CCC that AAA was raped by appellant. CCC asked AAA if she was raped by appellant and the latter answered, "Yes."<sup>[12]</sup>

BBB and CCC immediately brought AAA to the XXX police station. SPO3 Loreto Gavina (SPO3 Gavina) told the group to bring AAA to a doctor for a medical examination.<sup>[13]</sup>

AAA was then brought to the YYY Memorial Hospital where Dr. Rodolfo V. Eligio (Dr. Eligio) conducted the examination. Dr. Eligio found that there were incomplete lacerations of the hymen at the 3 o'clock and 7 o'clock positions, but the same were old. Dr. Eligio concluded that AAA could have been "used" a week or two earlier and that in the absence of seminal fluid he could not tell whether AAA was raped on the day she was examined. However, Dr. Eligio clarified that if the ejaculation took place outside the vagina, it would explain why there was no sperm inside the vagina. Furthermore, Dr. Eligio manifested that if a woman had sex three times before and subsequently engages in sex for more than three times, the lacerations caused by the first intercourse would be healed; it does not mean that the subsequent intercourse would not anymore produce lacerations if the penis is big, but if the penis is of normal size, the subsequent intercourse would no longer cause lacerations.<sup>[14]</sup> Dr. Eligio put into writing his findings in a "medico legal certificate."<sup>[15]</sup>

After Dr. Eligio conducted his examination, BBB and CCC brought AAA back to the XXX police station at 5:15 p.m. They told SP03 Gavina that AAA was really raped which prompted the group to look for appellant. Appellant was brought to the municipal building. While AAA and appellant were facing each other, SP03 Gavina asked AAA several times whether she was raped by appellant. AAA answered "yes." SP03 Gavina also asked AAA how many times appellant abused her; AAA raised her four fingers. According to SP03 Gavina, CCC, the father of AAA, was not dictating to her when she was answering his questions. However, SP03 Gavina noticed that AAA had difficulty in speech, that was why her companions were helping her to talk.<sup>[16]</sup> SP03 Gavina then executed a *Sinumpang Salayaysay*<sup>[17]</sup> in connection with the investigation he conducted.

On November 17, 1999, Nimia C. de Guzman (De Guzman), a clinical psychologist, administered several examinations on AAA without the assistance of any relative. As a result of the examinations, De Guzman found out that while AAA was then 14 years old, her mental capacity was only that of a 4-5-year old child. De Guzman put her findings in a Psychological Report.<sup>[18]</sup>

For the defense, evidence is as follows:

Kathleen, 12 years old, testified that on October 23, 1999, she did not call AAA to play; that she was at the house of her uncle on October 22, 1999 because her grandmother died, and that she went home in the morning of October 23, 1999 to get some clothes; and that appellant, her father, was not at their house in the morning of October 23, 1999. In addition, Kathleen claimed that she did not see AAA inside their house nor did she see AAA on her way home that day.<sup>[19]</sup>

Appellant testified as follows: on October 22, 1999, he and his three children were in the house of his brother-in-law because his mother-in-law died. He helped in preparing the tent, repaired the light, and along with Cuaresma, made the coffin of his mother-in-law. Appellant and Cuaresma did not sleep and stayed in the house. On October 23, 1999, appellant brought Cuaresma home at around 8:00 a.m. When appellant reached his house nobody was there and so appellant slept on the *papag*. When appellant woke up, he saw AAA inside the house. He asked AAA to leave, but she refused. Appellant went back to sleep because he trusted AAA and was confident that nothing would get lost in the house.

Appellant was awakened when BBB called AAA. He then realized that AAA was lying on his left arm. Appellant went down the house and told AAA to leave. AAA went out through the window because she was probably afraid of her aunt. Appellant told BBB that AAA was not there, but BBB did not believe him since she saw the slippers of AAA. Appellant claimed that it was not true that he had sexual intercourse with AAA for four times on October 23, 1999 because he was too tired and sleepy.<sup>[20]</sup>

On April 30, 2002, the RTC rendered a decision finding appellant guilty of the crime of rape, the dispositive portion of which reads as follows:

**WHEREFORE**, premises considered, this Court finds accused Nestor Veluz **GUILTY** beyond reasonable doubt of the crime of Rape defined under Article 266-A, par. 1(d) and punished under Article 266-B (10) and hereby sentences him to suffer the penalty of **Death**; and to pay victim

AAA the amount of Seventy Five Thousand Pesos (Php75,000.00) by way of civil indemnity; and to pay the costs.

SO ORDERED.<sup>[21]</sup>

Appellant appealed to the CA.

The CA affirmed the RTC decision with modification as to damages, the dispositive portion of which reads as follows:

x x x x

This Court finds accused-appellant Nestor Veluz **GUILTY** beyond reasonable doubt of the crime of Rape defined under Article 266-A, par. 1(d) and punished under Article 266-B (10). Said accused-appellant is hereby ordered to suffer the penalty of **DEATH** and to pay private complainant AAA the amount of Seventy Five Thousand Pesos (Php75,000.00) as actual damages, Fifty Thousand Pesos (Php50,000.00) as moral damages, Thirty Thousand Pesos (Php30,000.00) as exemplary damages and the costs.

x x x x

**SO ORDERED.**<sup>[22]</sup>

Hence, herein appeal with the following assignment of errors:

#### First Assignment of Error

THE TRIAL COURT ERRED IN FINDING THAT RAPE HAD BEEN PROVEN BEYOND REASONABLE DOUBT AS:

THE FACT OF CARNAL KNOWLEDGE BY THE ACCUSED-APPELLANT OF THE PRIVATE COMPLAINANT WAS NOT ESTABLISHED BY THE INCREDIBLE AND INCONSISTENT TESTIMONIES OF THE PRIVATE COMPLAINANT AND PROSECUTION WITNESSES CORAZON RIVERA AND BBB.

THE PHYSICAL EVIDENCE DO NOT SUPPORT THE TRIAL COURT'S FINDING, AND DISPROVE THE TESTIMONIES OF PRIVATE COMPLAINANT, CORAZON RIVERA AND BBB, THAT ACCUSED-APPELLANT RAPED THE PRIVATE COMPLAINANT ON OCTOBER 23, 1999.

#### Second Assignment of Error

THE TRIAL COURT ERRED IN IMPOSING THE DEATH PENALTY AS THE QUALIFYING CIRCUMSTANCE OF MENTAL DISABILITY WAS NOT PROVEN IN ACCORDANCE WITH STANDARDS SET FORTH BY CONTROLLING CASE LAW.

#### Third Assignment of Error

THE TRIAL COURT ERRED IN AWARDING CIVIL INDEMNITY TO PRIVATE  
COMPLAINANT AS A CONSEQUENCE OF HER ALLEGED RAPE BY  
ACCUSED-APPELLANT.<sup>[23]</sup>

The appeal is not meritorious.

This Court has ruled that in the review of rape cases, the Court is guided by the following precepts: (a) an accusation of rape can be made with facility, but it is more difficult for the accused, though innocent, to disprove it; (b) the complainant's testimony must be scrutinized with extreme caution since, by the very nature of the crime, only two persons are normally involved; and (c) if the complainant's testimony is convincingly credible, the accused may be convicted of the crime.<sup>[24]</sup>

Appellant claims that the testimony of AAA is incredible and inconsistent. However, it is settled that when credibility is in issue, the Supreme Court generally defers to the findings of the trial court considering that it was in a better position to decide the question, having heard the witnesses themselves and observed their deportment during trial.<sup>[25]</sup> In the instant case, the Court finds nothing on record to justify a departure from the findings of the trial court. The testimony of AAA leaves no doubt that appellant had in fact raped her, to wit:

x x x x

Q. When you were already inside their house, did you see Nesty inside their house?

A. No answer sir.

Q. Was Nesty in the sala?

A. Yes sir.

**Q. What did Nesty do when you were there?**

**A. Iniyot po niya ako sir.**

x x x x

Q. Where did he had [sic] sexual intercourse with you?

A. In the upper part of their house sir.

Q. Before he had sexual intercourse with you, what did he do to you?

A. No answer

Q. When you went to the house of Nesty what were you wearing then? Is it pants with t-shirt, shorts with t-shirt or skirt with t-shirt?

A. I was wearing a short sir.

Q. What is your upper garment?

A. He removed my clothes sir. (Inalis po niya ang damit ko).

Q. You said that he removed your clothes, you mean to say that he removed your shorts and your upper dress?

A. Yes, sir.