

## SECOND DIVISION

[ G.R. NO. 170636, April 27, 2007 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SONNY MAYAO, ACCUSED-APPELLANT.**

### D E C I S I O N

**CARPIO MORALES, J.:**

Accused-appellant Sonny Mayao was charged before the Regional Trial Court (RTC) of Camarines Sur at San Jose with four counts of rape. One, Criminal Case No. T-2047, was dismissed by Branch 30 thereof for failure of the prosecution to present evidence.

The accusatory portions of the informations in the three other cases, Criminal Case Nos. T-2044, T-2045, and T-2046, respectively read as follows:

#### CRIMINAL CASE NO. T-2044

That sometime in 1996 at around 1:00 A.M. in the Municipality of Lagonoy, Province of Camarines Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused[,] with lewd design by means of superior strength and grave abuse of confidence being the stepfather of the victim, did then and there wil[ly]fully, unlawfully and feloniously succeed in having carnal knowledge with [AAA] who was then only 10 years old, against her will and consent to her damage and prejudice as shown by the Medical Certificate marked as Annex "A" hereof.<sup>[1]</sup> (Underscoring supplied)

#### CRIMINAL CASE NO. T-2045

That sometime in the year 1992 at about 12:00 o'clock midnight in Sitio Kinayangan[,]<sup>[2]</sup> Barrio San Sebastian, Municipality of Lagonoy, Province of Camarines Sur, Philippines and within the jurisdiction of this Honorable Court, the said accused, with lewd design, by means of threats force and intimidation, did then and there wil[ly]fully, unlawfully and feloniously succeed in having carnal knowledge with his 8 [sic] -year old niece, [BBB], against her will and without her consent to her damage and prejudice in such an amount as maybe [sic] determined by the Honorable Court, as evidenced by the Medical Certificate marked as Annex "A" hereof.<sup>[3]</sup> (Underscoring supplied)

#### CRIMINAL CASE NO. T-2046

That on or about December 20, 1995 in the evening at Sitio Kinayangan, San Sebastian, Municipality of Lagonoy, Province of Camarines Sur,

Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, with grave abuse of confidence, by the use of force and intimidation[, ] did then and there wil[ ]fully, unlawfully and feloniously succeed in having carnal knowledge with his stepdaughter, [CCC] who was then a minor below 12 years old, against her will and without her consent to her damage and prejudice in such amount as may be determined by the Honorable Court. The Medical Certificate marked as Annex "A" is attached to the records of this case.<sup>[4]</sup> (Underscoring supplied)

The three cases which involve different private complainants were jointly tried.

In Criminal Case No. T-2044, private complainant AAA, who was born on May 5, 1984,<sup>[5]</sup> declared that at around 1 a.m. sometime in 1996, as she lay asleep together with her family in the cramped room of their house at Lagonoy, Camarines Sur, she was awakened as she was being undressed from waist down and her breast being fondled by her stepfather-accused-appellant. She tried to fight but she was overpowered. For about 10 minutes, accused-appellant, who put his penis into her vagina, made a push and pull movement, causing blood to ooze therefrom. She thereafter cried herself to sleep.<sup>[6]</sup>

In Criminal Case No. T-2045, private complainant BBB, born on November 14, 1985,<sup>[7]</sup> declared that sometime in 1992, her parents went to Manila, leaving her with her aunt EEE, wife of accused-appellant and the sister of her mother DDD. While sleeping, she was awakened at around 12 midnight by accused-appellant who was fondling the sensitive parts of her body. Despite her resistance, accused-appellant undressed her and while holding her hands, went on top of her and inserted his penis into her vagina. After satisfying his lust, accused-appellant returned to his wife's bedside. The next morning, she left her aunt's house and stayed with a friend. When her mother returned from Manila, she begged her not to leave her again with accused-appellant, albeit she did not reveal what he had done to her.<sup>[8]</sup>

In Criminal Case No. T-2046, private complainant CCC, who was born on June 26, 1982,<sup>[9]</sup> testified that in the evening of December 20, 1995, while she was alone with her stepfather-accused-appellant as her mother and her siblings were out visiting a relative in Sabang, San Jose, she was awakened by him as he was fondling her breast and private organ. Although she resisted, accused-appellant pinned her down and succeeded in inserting his penis into her vagina. The following morning she told her mother what accused-appellant had done to her but her mother refused to believe her, she telling her that "[her] husband is kind." She thus repaired to the house of her aunt DDD, beside their house, but she did not tell her about the incident.<sup>[10]</sup>

While CCC was in Manila with her aunt DDD in 1998, as the celebrated rape case of Baby Echegaray was reported via television which she watched, CCC was reminded of the experience she had with accused-appellant, drawing her to shed tears which was noticed by DDD. Pressed for the reason why she was in tears, she told DDD about her ordeal. On returning to Bicol, DDD confronted AAA and BBB whom she accompanied, together with AAA, to the National Bureau of Investigation.<sup>[11]</sup>

The three complainants were physically examined on March 24, 1999 at the Bicol Medical Center by Dr. Ma. Vienna Llorin. The results of the examinations revealed the following findings:

**As to AAA:**

PPE:

Old hymenal lacerations at 4,5,6, and 7 o'clock positions<sup>[12]</sup>

**As to BBB:**

PPE:

Nulligravid external genitalia.

Multiple old hymenal lacerations at 3,5,6,8,9 and 11 o'clock positions.

IE:

Admits 2 fingers with ease.<sup>[13]</sup>

**And as to CCC:**

PPE:

Multiple old hymenal lacerations at 3,5,6, and 9 o'clock positions<sup>[14]</sup>.

Accused-appellant denied the accusations.

By his claim, he could not have raped AAA in 1996 since as early as 1989, when her mother EEE moved to live with him at Lagonoy, AAA was left with DDD who was then residing in Kinayangan, San Sebastian, Lagonoy at a house about five meters away from their residence.<sup>[15]</sup>

As for BBB, on direct examination, accused-appellant stated that at the time of the alleged rape "sometime in the year 1992," she was studying in Manila.<sup>[16]</sup> On cross-examination, however, he stated that BBB was at the house of her mother DDD located "at the southern portion of Sabang, near the seashore."<sup>[17]</sup>

With respect to CCC, accused-appellant claimed that at the time of the alleged commission of the rape on December 20, 1995, she was working as a house helper in Sabang for a certain May Conching.<sup>[18]</sup>

To the complainants, accused-appellant imputed ill-motive in that they were driven by their desire to obtain a house and lot as in the case of Baby Echegaray.

Accused-appellant's wife EEE, the mother of AAA and CCC and the aunt of BBB, testified in his favor.

In Criminal Case Nos. T-2044 and T-2046, she declared that AAA and CCC, her daughters from a previous marriage, could not have been possibly raped by accused-appellant as the two were then living with DDD in the latter's house adjacent to theirs; and on December 20, 1995, the alleged date of the commission of the rape of CCC, accused-appellant left for Pangasinan to work as a factory

worker.<sup>[19]</sup>

In Criminal Case No. T-2045, EEE declared that in 1992, when her niece BBB was allegedly raped by accused-appellant, BBB was then living with a certain May Auring at Kinayangan, Lagonoy while she and her husband stayed in Sabang which is approximately ten minutes away by motor boat.<sup>[20]</sup>

The trial court convicted accused-appellant by Joint Decision of November 19, 2002,<sup>[21]</sup> the decretal portion of which reads:

WHEREFORE:

In Criminal Case No. T-2044, the accused Sonny Mayao is hereby sentenced to suffer the penalty of imprisonment of *reclusion perpetua* with inherent accessory penalties provided by law; to indemnify the offended party, [AAA,] the sum of Fifty Thousand Pesos ([P]50,000.00) and the sum of Twenty Thousand Pesos ([P]20,000.00) as moral damages, both of Philippine Currency, and for him to pay the costs.

In Criminal Case No. T-2045, the accused Sonny Mayao is hereby sentenced to suffer the penalty of imprisonment of *reclusion perpetua* with inherent accessory penalties provided by law; to indemnify the offended party, [BBB,] the sum of Fifty Thousand Pesos ([P]50,000.00) and the sum of Twenty Thousand Pesos ([P]20,000.00) as moral damages, both of Philippine Currency, and for him to pay the costs.

In Criminal Case No. T-2046, the accused Sonny Mayao is hereby sentenced to suffer the penalty of imprisonment of *reclusion perpetua* with inherent accessory penalties provided by law; to indemnify the offended party, CCC, the sum of Fifty Thousand Pesos ([P]50,000.00) and the sum of Twenty Thousand Pesos ([P]20,000.00) as moral damages, both of Philippine Currency, and for him to pay the costs.

In Criminal Case No. T-2047, this case should be, as it is hereby ordered dismissed. No costs.

In Criminal Cases Nos. T-2044, T-2045, and T-2046, the accused Sonny Mayao is entitled to full credit of his preventive imprisonment during the pendency of these three (3) cases, if he agreed to abide with the rules imposed upon convicted persons, otherwise, he shall be entitled four fifth (4/5) credit thereof.<sup>[22]</sup> (Italics supplied)

On elevation of the case to this Court, it was referred to the Court of Appeals per *People v. Mateo*.<sup>[23]</sup>

By Decision of June 30, 2005,<sup>[24]</sup> the accused-appellate court affirmed with modification the trial court's decision, disposing as follows:

WHEREFORE, the foregoing considered the Joint Decision of conviction is hereby AFFIRMED with the MODIFICATION that the award of moral

damages is increased to P50,000.00 each for the three rape victims.

Costs against the accused-appellant.<sup>[25]</sup> (Underscoring supplied)

After his Motion for Reconsideration<sup>[26]</sup> was denied, appellant appealed to this Court.

The parties have submitted their respective Manifestations that they are no longer filing supplemental briefs.

Accused-appellant maintains that he could not have successfully raped AAA and CCC inside a small room where several persons were sleeping and with bamboo floorings which usually produce noise whenever there is a movement; specifically with respect to CCC, there was inconsistency as to the alleged time of the rape, she having claimed during the preliminary investigation that she was raped "after lunch," but she claiming in court that she was raped in the evening; and his denial deserves credence as it was corroborated by his wife.<sup>[27]</sup>

Time and again, this Court held that lust is no respecter of time and place. Rape can be committed even when relatives of the victim are just nearby for it is not necessary for the place to be ideal for it to be committed.<sup>[28]</sup>

Thus, in *People v. Mangitngit*,<sup>[29]</sup> this Court rejected the assertion of the therein accused-appellant that rape could not have occurred in the presence of his other children, and without them noticing the commotion.

Aside from AAA's mother EEE, the others who were sleeping at the time of the alleged rape of AAA were children whose ages ranged from three to 10 years old.<sup>[30]</sup> That EEE was not awakened is not improbable.<sup>[31]</sup> The same holds true with growing children, who are wont to sleep more soundly than grown-ups and are not easily awakened by adult exertions, gyrations or suspirations in the night.<sup>[32]</sup>

Thus, this Court observed in *People v. Legaspi*:<sup>[33]</sup>

That [victim's] daughters, aged 3, 6, and 9 years, did not wake up during the assault is not as incredible as accused-appellant would make it out. The failure of the three children to wake up during the commission of the rape was probably due to the fact that they were sound asleep. It is not unusual for children of tender ages to be moved from their sleeping mats and transferred to another bed without eliciting the least protest from them, much less awakening them (People vs. Mustacisa, 159 SCRA 227 [1988]). It is also to be noted that among poor couples with big families living in small quarters, copulation does not seem to be a problem despite the presence of other persons around them. One may also suppose that growing children sleep more soundly than grown-ups and are not easily awakened by adult exertions and suspirations in the night (People vs. Ignacio, 233 SCRA 1 [1994]).<sup>[34]</sup> (Underscoring supplied)

As regards BBB, while accused-appellant, as earlier stated, declared on direct examination that he could not have possibly raped BBB at the alleged date of its commission as she was then studying in Manila, on cross examination, he stated that she was in the house of her mother in Sabang, San Jose. Muddling even more