

## EN BANC

[ G.R. NO. 166723 [FORMERLY G.R. NOS. 147653-54], August 02, 2007 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ELMERATO DELA CRUZ Y FLORES, APPELLANT.**

### D E C I S I O N

#### **QUISUMBING, J.:**

For review is the Decision<sup>[1]</sup> dated January 26, 2005 of the Court of Appeals in CA-G.R. CR.-HC No. 00007. The decision affirmed with modification the judgment<sup>[2]</sup> dated November 29, 2000 of the Regional Trial Court (RTC) of Bulacan, Branch 21. The RTC found accused Elmerato dela Cruz, guilty of two counts of rape and imposed the penalty of *reclusion perpetua* for each count. The Court of Appeals increased the penalty to death in each case.

The informations that led to dela Cruz's conviction are as follows:

#### **CRIMINAL CASE NO. 2779-M-99**

That on or about the 10th day of April, 1999, in the municipality of xxx, province of Bulacan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused brother-in-law of the victim did then and there wilfully, unlawfully and feloniously, by means of force, intimidation and with lewd design have carnal knowledge of the said AAA, 16 years of age, against her will and without her consent.

Contrary to law.<sup>[3]</sup>

#### **CRIMINAL CASE NO. 2780-M-99**

That on or about the 19<sup>th</sup> day of April, 1999, in the municipality of xxx, province of Bulacan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused brother-in-law of the victim did then and there wilfully, unlawfully and feloniously, by means of force, intimidation and with lewd design have carnal knowledge of the said AAA, 16 years of age, against her will and without her consent.

Contrary to law.<sup>[4]</sup>

When arraigned, dela Cruz entered pleas of not guilty. At the pre-trial conference, the parties entered into the following stipulation of facts:

1. That the offended party/complainant is the sister-in-law of the accused in this case;

2. That they lived together at x x x, Bulacan for a period of two months;
3. That the accused and his wife have a neighbor by the name of Susan;
4. That the offended party was born on April 12, 1983;
5. That the offended party was examined by Dr. Manuel Aves and that the findings of said Doctor was that the victim was found suffering from "multiple healed laceration" and to be in a non-virgin state.<sup>[5]</sup>

During trial, the prosecution established that AAA and her mother XYZ were living with AAA's half-sister, BBB, and the latter's husband, dela Cruz. On April 10, 1999, between 5 o'clock and 6 o'clock in the morning, when XYZ and BBB had already left the house, AAA was awakened by the weight of a shirtless dela Cruz on top of her. He held on to both her hands and threatened to kill her and her mother. He then successively held her breasts, removed her shorts and underwear as well as his own shorts and forced her legs apart. AAA resisted and begged dela Cruz not to take advantage of her, to no avail. Dela Cruz succeeded in having carnal knowledge of her. AAA was in pain and crying when dela Cruz left the room.<sup>[6]</sup>

On April 19, 1999, between 5 o'clock and 6 o'clock in the morning dela Cruz again entered AAA's room, placed himself on top of her, held both her hands thereby thwarting her attempts to push him away,<sup>[7]</sup> threatened to kill her, removed her shorts and underwear, forcibly spread her legs, and then had carnal knowledge of her.

On May 17, 1999, dela Cruz tried to rape AAA again, but she succeeded in resisting him. She related the incidents to their neighbor, a certain Ate Susan, who in turn told XYZ.

The incidents were reported to the police, and AAA was examined by Dr. Manuel Aves of the Philippine National Police (PNP) Crime Laboratory in Malolos, Bulacan. He issued the Biological Science Report stating that AAA had multiple deep healed lacerations at the 3, 4, 6, 8, 10 and 12 o'clock positions.

XYZ corroborated AAA's testimony on the circumstances surrounding the report to the police authorities and the filing of the complaints. She added that she noticed that dela Cruz had been acting queerly and could not look her straight in the eye.

On the other hand, dela Cruz denied having raped AAA. He admitted having sexual intercourse with AAA, but he claims that she consented to said acts. He testified that on June 10, 1999, he was then only wearing briefs when AAA entered his room at about 9 a.m. When asked why she entered his room, AAA answered, "*Ano din ba talaga ang gusto mo.*" Thereupon, he kissed and embraced AAA who did not resist. Carried away by their lust, he and AAA eventually had sex twice on that day.

Ronald dela Cruz, the nephew of accused, also testified for the defense. He stated that AAA was his girlfriend and that he had sex with her on March 10 and 19. She was not a virgin when they first had sex. He learned that AAA had a relationship with his uncle and thus broke up with her.

The RTC found appellant guilty beyond reasonable doubt of the crime of Rape in Criminal Cases Nos. 2779-M-99 and 2780-M-99. The dispositive portion of the November 29, 2000 Decision reads:

WHEREFORE, all premises considered, this Court resolves and so holds that the accused is GUILTY beyond reasonable doubt, of the crime of Simple Rape on two counts.

Accordingly, Elmerato dela Cruz y Flores is hereby sentenced in both Criminal Cases Nos. 2779-M-99 and 2780-M-99, to suffer the penalty of Reclusion Perpetua. Further, he is hereby ordered to indemnify AAA in the sum of P75,000.00; to pay her the sum of P100,000.00 for moral damages; and another sum of P50,000.00 for compensatory damages.

With costs against the accused.

SO ORDERED.<sup>[8]</sup>

Seasonably, the accused appealed.

Following *People v. Mateo*,<sup>[9]</sup> the case was transferred and referred to the Court of Appeals. Upon review, the Court of Appeals rendered its decision affirming with modification the decision of the lower court. The *fallo* of the Court of Appeals decision reads:

WHEREFORE, the judgment appealed from is **AFFIRMED** and with the **MODIFICATION** that the penalty imposed should be **DEATH** in EACH of the two (2) cases of rape and the retained civil liabilities awarded should also be for EACH case. Costs against the accused-appellant.

Pursuant to Section 13 (a), Rule 124 of the Amended Rules to Govern Review of Death Penalties, the case, together with the entire record, is hereby forthwith certified, and ordered elevated, to the Supreme Court for review.

SO ORDERED.<sup>[10]</sup>

Appellant opted not to file a supplemental brief and instead relied on his appellant's brief which raises the following issues for our resolution:

I.

THE TRIAL COURT ERRED IN NOT FINDING THAT THE SEXUAL ENCOUNTERS BETWEEN PRIVATE COMPLAINANT AND THE ACCUSED-APPELLANT WERE CONSENSUAL[; AND]

II.

THE TRIAL COURT ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF TWO (2) COUNTS OF RAPE[.]<sup>[11]</sup>