

## EN BANC

[ G.R. No. 172368, December 27, 2007 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
FLORANTE ELA, ACCUSED-APPELLANT.**

### D E C I S I O N

#### **VELASCO JR., J.:**

On July 8, 2003, the Cavite Regional Trial Court, Branch 18, Tagaytay City rendered its Decision<sup>[1]</sup> in Criminal Case No. TG-2774-97, finding accused-appellant Florante Ela guilty of Rape and imposing the penalty of Death with no accessory penalties.

On automatic review, this case was docketed in this Court as G.R. No. 160086. However, through this Court's April 12, 2005 Resolution, this case was transferred to the Court of Appeals (CA), and docketed as CA-G.R. C.R.-H.C. No. 01023, in accordance with the Court's ruling in *People v. Mateo*.<sup>[2]</sup>

This case originated in the April 21, 1997 complaint-affidavit executed by private complainant AAA<sup>[3]</sup> before the Office of the City Prosecutor of Tagaytay City, wherein she alleged that her father raped her in the early morning hours of April 14, 1997 at their own home at Tagaytay City. At the time of the commission of the felony, AAA was only 13 years old.

As established by the prosecution, on April 14, 1997, at around two o'clock in the morning, AAA was asleep at her residence, specifically on the lower portion of a double-decker bed, while her three younger sisters, aged 7, 5, and 3 years old, slept on the upper portion. Accused-appellant, the victim's biological father, entered the room, turned off the light, pressed a sharp object against her neck, and told her not to shout. Accused-appellant then proceeded to undress her and, after placing himself on top of her, inserted his penis into her vagina. She tried to resist but could not do so effectively because accused-appellant was choking her. She was able to scream and shout "Ate!" referring to her married step-sister BBB<sup>[4]</sup> who slept in the same house.

BBB was awakened by the scream, turned on the light and peeped into AAA's room through a hole in the wall to investigate. Accused-appellant and the victim were already dressed by the time BBB peeped into the room. She saw accused-appellant lying in bed with his arms around AAA. AAA had her back turned towards accused-appellant. Thinking that nothing was going on, BBB went back to sleep.

In the morning after the rape occurred, while AAA was fetching water, BBB approached her and asked why she screamed during the night. At first AAA didn't answer, but later in the afternoon, she told BBB that accused-appellant raped her.

After hearing AAA's story, BBB accompanied AAA to the police on April 15, 1997 and

they both executed sworn testimonies.

The city prosecutor found probable cause and filed the proper information, as follows:

The undersigned City Prosecutor of Tagaytay City upon sworn compliant filed by private complainant [AAA], a minor 13 years of age, accuses Florante Ela, father of complainant, of the crime of RAPE as defined and penalized under Art. 335 of the Revised Penal Code, committed as follows:

That on or about April 14, 1997 at Tagaytay City and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did, then and there, willfully, unlawfully and feloniously have carnal knowledge with his daughter, [AAA], a minor 13 years of age, against the latter's will and consent.

Contrary to law.

Upon arraignment, the accused-appellant pleaded not guilty. Trial then proceeded.

During her testimony, the trial court noted that the victim began to weep when she testified that accused-appellant raped her. AAA stated that this was not the first time she was raped by accused-appellant. She alleged that she was raped at least 10 times previously and that the rapes occurred when her mother was not around. AAA further alleged that she never told her mother about the previous rape incidents for fear of being ridiculed.

Dr. Manuel Reyes, a medico-legal officer of the PNP, who conducted the physical examination of AAA testified that on April 18, 1997, he submitted Medico-Legal Report No. M-1430-97 embodying his findings, the pertinent portions of which state as follows:

Deep recently healed lacerations at 3, 6, 9 and 12 o'clock;

Shallow recently healed lacerations at 2, 5, 7 and 11 o'clock;

Subject is in non-virgin state physically.<sup>[5]</sup>

For his part, accused-appellant admitted that AAA is his eldest daughter but denied having raped her, claiming that he was in Laguna at the time of the alleged incident. He alleged that he went to Laguna to work as a carpenter on April 6, 1997 and went home only during the latter part of the month, implying that he was not home on April 14, 1997. He further alleged that he did not know why AAA would accuse him of raping her; and the fact that AAA failed to immediately tell her mother of the rape right after it occurred cast serious doubt on the credibility of the victim.

Testifying on behalf of accused-appellant, CCC, accused-appellant's wife and AAA's mother, stated that she went to Camarines Sur to attend her mother's wake on April 12, 1997, and stayed there for about two days. Upon her return, BBB told her that accused-appellant raped AAA, prompting her to go to Dasmariñas, Cavite where accused-appellant was working to ascertain the truth from him. CCC claimed that