

## THIRD DIVISION

[ G. R. NO. 171447, November 29, 2006 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF, VS. FEDERICO ARNAIZ Y ARMONIO, APPELLANT.**

### DECISION

**TINGA, J.:**

This treats of the appeal from the *Decision*<sup>[1]</sup> dated 2 December 2005 of the Court of Appeals (CA) affirming the *Decision*<sup>[2]</sup> dated 25 May 1999 of the Regional Trial Court (RTC) of Parañaque City, Branch 259 in Criminal Case No. 97-150 finding Federico Arnaiz y Armonio (accused) guilty of the crime of rape and sentencing him as follows:

WHEREFORE, premises considered, the prosecution having been able to prove the guilt of the accused FEDERICO ARNAIZ [y ARMONIO] beyond reasonable doubt, the Court finds FEDERICO ARNAIZ [ y ARMONIO] GUILTY of the crime of rape punishable under Article 335 of the Revised Penal Code, as amended, by Section 11 of R.A. [No.] 7659 and hereby sentences him to suffer the penalty of *Reclusion Perpetua*[,] which is imprisonment of twenty (20) years and one (1) day to forty (40) years with all the accessories [sic] provided for by law.

Accused FEDERICO ARNAIZ is further ordered to indemnify [AAA<sup>[3]</sup>] the amount of P50,000.00[,], as and by way of actual damages; P200,000.00 as moral damages; P100,000.00[,], as exemplary damages; and to pay the cost of suit.

SO ORDERED.<sup>[4]</sup>

In an Information<sup>[5]</sup> dated 5 February 1997, accused was charged with rape alleged as follows:

That sometime in the month of December, [sic] 1995 in the Municipality of Parañaque, Metro Manila, Philippines 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 of the complainant [AAA], a minor 15 years old, against her will.

CONTRARY TO LAW.<sup>[6]</sup>

The accused pleaded not guilty on arraignment. Forthwith, trial ensued which resulted in his conviction for the crime of simple rape, the qualifying circumstance of relationship not having been alleged in the Information.<sup>[7]</sup> The case was thereafter

elevated to this Court for automatic review.<sup>[8]</sup>

On 9 February 2000, the Court resolved to require the parties to submit their respective briefs.<sup>[9]</sup> The parties complied. However, the Court issued a Resolution<sup>[10]</sup> on 25 August 2004, transferring the case to the CA for intermediate review conformably with the ruling in *People v. Mateo*.<sup>[11]</sup>

The appellate court affirmed the trial court's decision. The case is again before us for our final disposition.

The prosecution presented as witnesses AAA herself, Demelen Renton Dela Cruz of the Forensic Chemistry Division of the National Bureau of Investigation (NBI) and Dr. Anne Soreta Umil of the Medico-Legal Division of the NBI.

AAA testified that sometime in December 1995, at around 4 o'clock in the morning, she was suddenly awakened from sleep when she felt her stepfather, accused Federico Arnaiz, removing her shorts.<sup>[12]</sup> The latter told her to keep quiet.<sup>[13]</sup> He then moved her to the sala away from

her siblings who were sleeping in the same room.<sup>[14]</sup> While pointing a gun at her left temple, accused removed her underwear and undressed himself. He then touched her private parts, ordered her to spread her legs and finally inserted his sexual organ into hers.<sup>[15]</sup> AAA did not struggle for fear that her stepfather will shoot her.<sup>[16]</sup>

After raping AAA, accused went out of the house leaving her crying in a corner of the sala. At around 6 o'clock of the same morning, her mother, BBB<sup>[17]</sup> arrived from the market but AAA, fearing for her life, kept mum about the incident.<sup>[18]</sup> At the time of this incident, she was only fifteen (15) years old.

Thereafter, accused succeeded in raping AAA several times more while her mother was out in the market and each time he threatened her with a gun.<sup>[19]</sup> He also warned her not to leave the house unless she wanted to be shot in the back.<sup>[20]</sup>

It was only when AAA was already seven (7) months pregnant that she finally broke her silence. She relayed her unfortunate experience to her grandmother, CCC,<sup>[21]</sup> who in turn, told AAA's aunt, DDD.<sup>[22]</sup>

Accused's bestial act produced a child, EEE<sup>[23]</sup> to whom AAA gave birth on 27 October 1996.<sup>[24]</sup>

On 1 December 1996, AAA accompanied by CCC and DDD, reported the rape incident to the police and executed a *Salaysay*.<sup>[25]</sup> AAA underwent physical examination the following day.

The forensic biologist, Ms. Demelen Renton Dela Cruz, testified that she conducted blood examinations on the accused, AAA and EEE, per letter request of the Parañaque Police Department. The blood-grouping test she conducted disclosed that

EEE is a possible child of AAA and the accused.<sup>[26]</sup>

Dr. Louella Nario, the medico-legal officer who examined AAA was not able to testify as she passed away before the case was tried.<sup>[27]</sup> In her stead, the prosecution presented Dr. Anne Soreta Umil, a medico-legal officer of the NBI to interpret Dr. Nario's findings. Dr. Umil testified that the result of the medical examination conducted on AAA showed her hymen was reduced to *carunculea myrtoformis*<sup>[28]</sup> due to the fact that she had already given birth. There was no evident sign of extragenital physical injury noted on her body at the time of examination possibly due to the lapse of time from the commission of the rape up to the time the actual physical examination was performed on AAA.<sup>[29]</sup> She stated nonetheless that the presence or absence of extragenital physical injury is not determinative of rape because the extent or severity of such injury would depend on the amount of physical force applied on the victim's body, if any.<sup>[30]</sup>

The defense presented a different version of the facts anchored on the claim that the accused and AAA were lovers so that their sexual encounters were consensual.

The victim's mother, BBB testified for the defense. According to her, AAA is her daughter from a previous relationship. AAA was born on 8 May 1980 and was already five (5) years old when BBB met and eventually married the accused on 6 December 1984.<sup>[31]</sup> BBB testified that since 1995, AAA had become extraordinarily sweet towards her stepfather, attending to his needs and always flirting with him.<sup>[32]</sup> She, however, brushed this aside as she did not want to put any malice to it. She likewise testified that whenever she goes to the market at 4 o'clock in the morning, she no longer has any knowledge of what happens at home. According to her, she did not notice AAA's pregnancy because the latter had a small belly and always wore large shirts.<sup>[33]</sup> When AAA gave birth, BBB inquired several times who the father is but AAA would not answer.<sup>[34]</sup> CCC never discussed the matter with BBB and the latter was surprised when her husband was arrested on 1 December 1996.<sup>[35]</sup> When she asked the police officers why her husband was being arrested, she was told that he was in possession of a gun. She was not aware that he ever owned one and the police officers found none when they searched their house that same day, unarmed with a search warrant.<sup>[36]</sup>

The accused also took the witness stand. He vehemently denied the charges against him, insisting that he and AAA were having an affair. Their alleged relationship started with a kiss sometime in December 1995 when BBB was in the market. They did not profess any love for each other but he knew they had a mutual understanding.<sup>[37]</sup> They continued to be intimate with each other until 12 February 1996 when AAA crawled beside him in bed and they had their first sexual intercourse while his wife was in the market. He testified that he initially tried to resist AAA's advances but she would always stop him from leaving her side.<sup>[38]</sup> They again had sexual intercourse on 4 April 1996 while his wife was out of the house.<sup>[39]</sup> On both occasions, he alleged that he never forced AAA to have sex with him.

He further testified that he did not know that he impregnated AAA. It was only when AAA told him that she wanted to go to Antique to give birth did he learn of her pregnancy.<sup>[40]</sup> When AAA gave birth to EEE, they did not tell his wife who fathered

the child.<sup>[41]</sup>

On 1 December 1996, AAA's aunts, all relatives of his wife, took AAA and EEE away, and had him arrested. Around five (5) to six (6) police officers went to his house, handcuffed him without showing any warrant for his arrest, and proceeded to search their house looking for a gun. When they found none, they brought him to the Coastal Police Headquarters where he finally learned that he was arrested for rape.<sup>[42]</sup>

In convicting the accused, the RTC made the following legal conclusions, thus:

The testimony of [AAA] that she was raped by Federico, her stepfather, whom she positively identified in Court, must be given greater weight and full credence as "no woman especially of tender age would concoct a story of defloration, allow an examination of her private parts and thereafter pervert herself by being subjected to a public trial if she was not motivated solely by a desire to have the culprit apprehended and punished" (People v. Yambao, 193 SCRA 571). x x x Records reveal with crystal clarity that [AAA] was able to narrate what happened to her in a clear and categorical manner although in the course thereof was ashamed (TSN[,] p. 10, November 13, 1997), and crying (p. 26, *ibid*) and despite the lengthy cross-examination by the defense counsel. While the Court noted some inconsistencies in her testimony, they are harmless, trivial, insignificant and did not in any way affect her credibility. Minor lapses are to be expected when a person is recounting details of a traumatic experience like rape, as in this case, which happened almost two (2) years from the time she testified. What is important is that [AAA] was emphatic in describing how she was raped several times by her stepfather which cause (sic) her to be impregnated and bore him a daughter, [EEE], who was born on October 27, 1996 (Exh. "B"). x x x

Likewise, the fact that [AAA] only reported her pregnancy to her grandmother when she was seven (7) months pregnant can be attributable to the threat of Federico for her not to tell anybody as he will kill her siblings (TSN, pp. 26-28, December 4, 1997) and was also afraid to tell her mother. The delay in telling someone about what happened to her should not be taken against her. "Procrastination by the victim in rape cases is not unknown; verily, the failure of the victim to immediately report the rape is never taken to be an indication of a fabricated charge. Young girls usually do conceal for some time the fact of their ordeal particularly when they are threatened against revealing the offense." (People v. Escala, 292 SCRA 48).

x x x x

The Court, however, is not convinced that [AAA] made amorous advances to Federico and was the one who initiated their lovemaking on February 12, 1996. It cannot be gainsaid that she was then only fifteen (15) years old, an adolescent, too young in mind and heart to act in such manner. Not only that, Federico, being the stepfather of [AAA], should have asserted his parental authority and moral ascendancy over her as he is

morally and duty bound to protect her and should have repulsed her advances to him at all cost (sic), if true. x x x But no, instead Federico would like the Court to believe that he succumbed to the temptation of the flesh, flesh of his own minor stepdaughter because of her alleged amorous advances. x x x The "*nagkakaunawaan*" relationship interposed as defense of Federico[,] between him and [AAA][,] to the Court is too incredulous to be true, preposterous and unworthy of belief, because "when a woman says that she has been raped, she says in effect all that is necessary to show that she has indeed been raped." (People v. Pagupat, G.R. Nos. 125313-16, July 31, 1998). Thus, it is highly impossible, nay, improbable for [AAA] to come forward and report that she was raped by her stepfather unless, it is, in fact, the truth. And the rule is that, "an affirmative testimony is far stronger than a negative testimony, especially so when it comes from the mouth of a credible witness" (People v. Sta. Ana, 291 SCRA 188) and the Court does not see any reason to doubt the testimony of [AAA].

Anent the issue that he was arrested without any warrant of arrest, suffice it to say that, "any irregularity attendant to his arrest was cured when he voluntarily submitted himself to the jurisdiction of the trial court by entering a plea of not guilty and (by) participating in the trial" (People v. Rabang, 187 SCRA 682 vis-à-vis People v. Manlulu, 231 SCRA 701).

x x x x<sup>[43]</sup>

Like the RTC, the CA gave full faith and credence to AAA's straightforward and unwavering testimony. It rejected the defense's "sweetheart theory" as highly incredible given AAA's tender age at the time of the rape as well as the fact that accused was like a second father to her, having known him since she was only five years old.<sup>[44]</sup> According great respect to the findings and conclusions of the trial court on the credibility of witnesses, the CA affirmed the RTC's decision in its entirety.

In his Brief,<sup>[45]</sup> the accused alleges that the trial court erred (1) finding that the sexual acts between him and AAA were not consensual in nature; and (2) in finding him guilty beyond reasonable doubt of the crime of rape.<sup>[46]</sup>

The accused insists that he never forced AAA to have sex with him as evidenced by the fact that AAA did not struggle nor did she shout to awaken her siblings. Furthermore, she had all the chance to tell her mother about the alleged rape incidents but she revealed the same only after she had given birth to EEE. He challenges the truthfulness of AAA's accusations stating that her grandmother initiated the complaint for personal reasons and that the delay of one year in reporting the matter signifies falsity in their actuations. The fact that AAA failed to rebut his allegations that she seduced him bolsters his defense, he claims.

The Office of the Solicitor General (OSG) maintains that accused's guilt has been proven beyond reasonable doubt by the positive and categorical testimony of the victim, AAA. That she did not struggle, awaken her siblings nor tell her mother about the rape were all due to the threat and intimidation employed upon her by the