

## EN BANC

[ G.R. NO. 168649, December 06, 2006 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSE  
ALVIZO AUDINE, ACCUSED-APPELLANT.**

### D E C I S I O N

**CHICO-NAZARIO, J.:**

Before Us for review is the Decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. CR-H.C. No. 00338 which affirmed with modification the Decision<sup>[2]</sup> of the Regional Trial Court (RTC) of Marikina City, Branch 272, finding accused-appellant Jose Alvizo Audine guilty of two (2) counts of rape committed against his fourteen-year old daughter, AAA<sup>[3]</sup> and sentencing him to suffer the capital punishment for each count.

On the basis of the complaint filed by AAA, two informations for Rape<sup>[4]</sup> against accused-appellant were filed with the RTC of Marikina City. The accusatory portions thereof read:

Criminal Case No. 2001-4093-MK

That on or about the 24<sup>th</sup> day of December 1999, in the City of Marikina, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, who is the father of the minor victim, by means of force, coercion and intimidation, with the use of small knife which is a bladed weapon, and with lewd design or intent to cause or gratify his sexual desire upon complainant AAA, a minor and fifteen (15) years old, did then and there willfully, unlawfully and feloniously have sexual intercourse with said complainant against her will and consent which debases, degrades or demeans the intrinsic worth and dignity of said child as a human being.<sup>[5]</sup>

Criminal Case No. 2001-4094-MK

That on or about the 8<sup>th</sup> day of January 2000, in the City of Marikina, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, who is the father of the minor victim, by means of force, coercion and intimidation, with the use of a small knife which is a bladed weapon, and with lewd design or intent to cause or gratify his sexual desire upon complainant AAA, a minor and fifteen (15) years old, did then and there willfully, unlawfully and feloniously have sexual intercourse with said complainant against her will and consent which debases, degrades or demeans the intrinsic worth and dignity of said child as a human being.<sup>[6]</sup>

The cases were raffled to Branch 272. Finding probable cause, a warrant of arrest was issued against accused-appellant who was arrested and detained at the Marikina City Police Station.

When arraigned on 10 June 2002, accused-appellant, with the assistance of counsel *de officio*, pleaded "not guilty" to the two counts of rape.<sup>[7]</sup> Thereafter, the cases were consolidated and jointly tried.

During the pre-trial, the following stipulation of facts<sup>[8]</sup> was entered into by the prosecution and the defense:

1. The jurisdiction of this court to try these cases;
2. The identity of the accused as AAA;<sup>[9]</sup>
3. The existence and due execution of Medico Legal Report No. M-187-01 issued and prepared by Dr. Ruby Grace D. Sabino dated January 17, 2001;
4. The existence of the medico legal examination issued and prepared by Dr. Ruby Grace D. Sabino addressed to the PNP Crime Laboratory;
5. The existence and due execution of the initial of the Medico Legal Report No. M-187-01 dated January 16, 2001; and
6. The existence of the manifestation of consent signed by the victim and the Department of Social Welfare and Development who is the guardian of the victim.

The prosecution presented four witnesses, namely: private complainant AAA, Dr. Ruby Grace D. Sabino, SPO4 Nenita Sadullo Abanes and Lucila Sulte Arresu. For the defense, only accused-appellant took the stand.

The records bear the following:

It appears from the evidence adduced by the prosecution that AAA, the only daughter of the accused-appellant, was born on August 4, 1985.

On November 7, 1999, the accused-appellant was supposed to bring AAA to the house of his wife's cousin in Bulacan. Instead, he brought her to the house of his own cousin, Arminda Arginosa, at XXX, XXX City.

On December 24, 1999, AAA was alone reading magazines in the house of her aunt when the accused-appellant arrived and ordered her to get his clothes from the master's bedroom. AAA did as told. But the accused-appellant almost at once followed AAA inside the room and pushed her towards the bed. She fought back but the accused-appellant boxed her in the abdomen. The accused-appellant then forcibly took off AAA's dress and shorts. AAA continued resisting the accused-appellant and pleaded with him to stop, but to no avail. The accused-appellant kissed AAA's body, laid on top of her, and inserted his penis into her vagina, satiating

his lust. After the violation, the accused-appellant warned AAA not to tell anybody about the rape. AAA feared for her life because the accused-appellant pointed a knife at her before and after the rape incident.

The second violation occurred on January 8, 2000. AAA was sleeping alone in her room when she felt something pressing on her thigh. It was again the accused-appellant, a knife pointed at her abdomen, who was undressing her. It was the same knife the accused-appellant used during the December 24, 1999 incident. AAA shouted and fought back, but as in the first incident, the accused-appellant again boxed her in the stomach. The accused-appellant masturbated first before inserting his male member into AAA's vagina. At the conclusion of the bestial assault, he threatened to kill AAA and her siblings if she reported the rape to anybody. After the incident, the accused-appellant left for Quezon Province.

As a result of her successive violations, AAA got pregnant. On August 19, 2000, she gave birth to a baby boy, who however died five (5) days later.

Since she was in virtual isolation, AAA went to see medical social worker Lucila Arresu and revealed to the latter that the accused-appellant had raped her. Armed with that information, Lucila called up the Marikina City Police. SPO4 Nenita Abanes interviewed AAA and took down her statement.

On January 16, 2001, Dr. Ruby Grace Sabino conducted a physical examination on AAA. She found the condition of AAA's genitalia exhibiting signs of penetration. According to her, AAA's hymen has "carunculae myrtiformis" or, in layman's term, there is already a rose bead appearance on it, which is an indication that AAA has already given birth.

Interposing disavowal or alibi, the accused-appellant simply denied the charges against him. He claimed that on December 24, 1999 and January 8, 2000, he was in Sariaya, Quezon working in his tailoring shop.

He further testified that in September 1999, AAA was missing for three (3) days. His family searched for her and learnt that she had eloped with her sweetheart BBB.

He claimed that it was not his idea to take AAA anywhere, since she was still studying in Quezon Province. It was AAA's mother who prevailed upon him to bring their daughter to XXX City to prevent AAA from seeing her friends, who had badly influenced her, as well as her boyfriend, with whom she later eloped.<sup>[10]</sup>

On 5 December 2002, the trial court, convicting accused-appellant of two counts of rape and imposing on him the death penalty for each count, disposed of the cases as follows:

WHEREFORE, in the light of the foregoing, the accused, JOSE ALVIZO AUDINE, is found GUILTY beyond reasonable doubt of two (2) counts of Rape (RA 8353) filed against him and is sentenced to suffer the extreme

penalty of DEATH in each case. The accused is further ordered to indemnify the private complaint in the amount of ONE HUNDRED THOUSAND PESOS (PhP100,000.00) and FIFTY THOUSAND PESOS (PhP50,000.00) as moral damages so as to serve as deterrent to this disturbing trend, plus the costs of the suit.<sup>[11]</sup>

Ignoring accused-appellant's defenses, the trial court ratiocinated:

The accused interposed a number of defenses. First, that of alibi. Jose Audine stated that the December 24, 1999 and January 8, 2000 alleged rape incidents could not be true as he was already in Sariaya, Quezon then, having returned to the province right after taking AAA to her cousin Arminda Arganosa's house in XXX. Second, the accused denied having raped her daughter and stressed that her daughter had ran away with her boyfriend, BBB, in Sariaya, Quezon on September of 1999 giving an implication that the pregnancy could be attributed to that. He only wanted to stop AAA from seeing her "womanizer-cum-addict" boyfriend, BBB. He corroborated AAA's testimony that he filed a rape case in Sariaya, Quezon against BBB.

However, realizing the futility of his defense, the accused shifted his defense in the middle of the trial. According to the accused, his cousin Arminda Arganosa was arrested for illegal possession of a big amount of shabu in Dalampasigan Beach in Dalahican, Sariaya, Quezon, and Arminda suspected that he was behind her arrest. He also accused Arminda of acting as a "pimp" to her daughter as she vowed to get even with Jose Audine, an allegation too incredible to believe considering AAA's pregnancy was very noticeable then. In *People vs. Balgos*, 323 SCRA 372, it was held that an "accused's shift of theory, upon realizing the futility of his earlier defense, rather than help his cause, only further damaged his credibility."<sup>[12]</sup>

Considering that the penalty it imposed was the death penalty, the trial court forwarded the records of the case to the Supreme Court for automatic review pursuant to Section 10, Rule 122 of the 2000 Rules of Criminal Procedure.<sup>[13]</sup>

However, pursuant to our ruling in *People v. Mateo*,<sup>[14]</sup> the case was remanded to the Court of Appeals for appropriate action and disposition.

On 18 February 2005, the Court of Appeals rendered its decision affirming the conviction of accused-appellant, together with the imposition of the death penalty for each count of rape, but modified the awards of civil indemnity and damages. The dispositive portion thereof reads:

UPON THE VIEW WE TAKE OF THIS CASE, THUS, the appealed Decision dated December 5, 2002 of the Regional Trial Court of Marikina City, Branch 272, in Criminal Cases Nos. 2001-4093-MK and 2001-4094-MK, finding the accused-appellant JOSE ALVIZO AUDINE guilty beyond reasonable doubt of two counts of rape and sentencing him in each case to suffer the penalty of death is AFFIRMED, with the MODIFICATION that for each count of rape, the accused-appellant is also CONDEMNED to pay the private complainant, AAA, the amounts of P75,000.00 as civil indemnity, P50,000.00 as moral damages, and P25,000.00 as exemplary

damages.

Should no motion for reconsideration be filed in this case by the accused-appellant within the allowable reglementary period, or after the lapse thereof, let the entire records of this case be forwarded to the Honorable Supreme Court for appropriate action hereon.<sup>[15]</sup>

On 15 March 2005, accused-appellant filed a motion for reconsideration<sup>[16]</sup> of the decision but same was denied by the Court of Appeals on 28 June 2005.<sup>[17]</sup> In accordance with Section 13, paragraph 2 of Rule 124, the entire records of the case were elevated to the Supreme Court for review. Thereupon, the parties were required to submit supplemental briefs within thirty (30) days from notice.<sup>[18]</sup> Accused-appellant opted not to file a supplemental brief on the ground he had exhaustively argued all the relevant issues in his appellant's brief. On the part of the Office of the Solicitor General, despite notice, no response was received therefrom.

Accused-appellant makes a lone assignment of error:

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.<sup>[19]</sup>

In trying to discredit private complainant AAA, accused-appellant cites several circumstances that tend to create doubt as to his guilt, to wit: (1) It is quite unimaginable how the accused-appellant could still manage to undress AAA while he was holding her hands and at the same time pointing a knife at her who was then putting up a fight; (2) It is unbelievable that accused-appellant could have penetrated her considering that she was kicking him while he was inserting his penis into her vagina; (3) The failure of AAA to exercise any precaution in securing herself, like locking her room or arming herself with a weapon, to prevent accused-appellant's sexual advances considering her alleged horrible experience with accused-appellant; (4) The delay in reporting the incidents notwithstanding the absence of the accused-appellant who was in the province all the time, renders doubtful her charges of rape; (5) The charges of rape were filed by AAA as revenge against accused-appellant whom she considered as the person who separated her from her lover; (6) AAA's admission that she executed a sworn statement charging BBB with rape which she later recanted, indicates that she can concoct untruthful stories under oath.

In the review of rape cases, we are almost invariably guided by the following principles: (1) an accusation of rape can be made with facility; it is difficult to prove but more difficult for the accused, though innocent, to disprove; (2) in view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense.<sup>[20]</sup>

Accused-appellant's contention that he could not have committed the rapes the way private complainant described them deserves scant consideration. We fully agree with the Court of Appeals when it ruled: