

## EN BANC

[ G.R. NO. 167147, August 03, 2005 ]

### PEOPLE OF THE PHILIPPINES, APPELLEE, VS. GENARO CAYABYAB Y FERNANDEZ, APPELLANT.

#### D E C I S I O N

##### PER CURIAM:

Appellant Genaro Cayabyab y Fernandez was sentenced to death by the Regional Trial Court of Pasay City, Branch 109, in Criminal Case No. 01-1311, for rape committed against six-year-old Alpha Jane Bertiz.<sup>[1]</sup>

Alpha Jane was born on November 26, 1994,<sup>[2]</sup> and the eldest among the six children of Conrado and Metchie Bertiz.<sup>[3]</sup> She was six years and nine months old when the rape was committed on August 7, 2001.

On that day, at around 6:00 p.m., Alpha Jane was at home in Manlunas St., Lagoon Area, Villamor Airbase, Pasay City, taking care of her younger siblings. Her mother went to buy kerosene, while her father was out. On the guise of teaching arithmetic, appellant went to the victim's house and asked her to lie down on her father's bed. When she refused, appellant removed her clothes and his own clothes, then forced her to lie down on the bed and laid on top of her and inserted his penis into her vagina. Alpha Jane shouted in pain which startled the appellant who sprayed her with tear gas and left.<sup>[4]</sup>

Her mother, Metchie arrived shortly thereafter and Alpha Jane told her what had happened. She immediately reported the incident to the barangay officials and brought Alpha Jane to the Philippine Air Force General Hospital for medical examination. She also sought assistance from the police at the 521st Air Police Squadron who, after gathering information from the victim, arrested the appellant at his house.<sup>[5]</sup> Alpha Jane was brought to the PNP Crime Laboratory at Camp Crame the following day,<sup>[6]</sup> and on August 10, 2001, to the Child Protection Unit (CPU) at UP-PGH<sup>[7]</sup> for further medical examinations, which both found hymenal abrasions and lacerations, respectively, on the victim's genitalia.<sup>[8]</sup>

On August 10, 2001, appellant was charged with rape before the Regional Trial Court of Pasay City in an Information that reads:

That on or about the 07<sup>th</sup> day of August 2001, in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, GENARO CAYABYAB Y FERNANDEZ, did then and there wilfully, unlawfully, and feloniously by means of force and intimidation have carnal knowledge of ALPHA JEAN BERTIS Y JONGCO, a minor six (6) years of age, against her will and consent.

CONTRARY TO LAW.<sup>[9]</sup>

When arraigned, appellant pleaded not guilty to the charge. Trial then ensued.

Appellant raised the defenses of denial and alibi. He testified that on August 7, 2001, he was plying his normal route inside the Villamor Airbase as a tricycle driver from 6:00 a.m. until 7:00 p.m.<sup>[10]</sup> After returning the tricycle to its owner Roberto Gabo at the corner of 14th and 15th Sts., Villamor Airbase, he reached home at around 7:30 p.m and went to sleep after eating dinner.<sup>[11]</sup> At around 9:30 p.m., he woke up to urinate at the back of their house when three (3) policemen arrested and mauled him.<sup>[12]</sup> At the headquarters, he was forced to admit the rape<sup>[13]</sup> while the victim's father asked for money in exchange for his release, which he refused.<sup>[14]</sup>

The trial court gave credence to the testimonies of the prosecution witnesses. It found the victim's testimony consistent with the medical findings of the doctors from the PNP Crime Laboratory and CPU, UP-PGH. Moreover, it applied the rule that an unsubstantiated defense of denial and alibi cannot prevail over a positive and categorical testimony of a minor victim. Finally, it appreciated the qualifying circumstance of minority and imposed the penalty of death. The dispositive portion reads:

In view of all the foregoing, the Court opines that the prosecution has proven the guilt of the accused Genaro Cayabyab y Fernandez beyond reasonable doubt for rape as defined and penalized under Article 335, paragraph 3 and 4 as the victim herein is only six (6) years old and hereby sentence accused Genaro Cayabyab y Fernandez to DEATH and to pay civil indemnity in the amount of Php 75,000.00 and moral and exemplary damages in the amount of Php 50,000.00 with subsidiary imprisonment in case of insolvency.

SO ORDERED.<sup>[15]</sup>

The case was directly elevated to this Court for automatic review. However, pursuant to our decision in *People v. Mateo*<sup>[16]</sup> modifying the pertinent provisions of the Revised Rules on Criminal Procedure insofar as direct appeals from the Regional Trial Court to the Supreme Court in cases where the penalty imposed is death, *reclusion perpetua* or life imprisonment, this case was transferred to the Court of Appeals,<sup>[17]</sup> which affirmed *in toto* the decision of the trial court, thus:

IN VIEW OF ALL THE FOREGOING, the decision of the trial court finding accused-appellant guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer the supreme penalty of death is **AFFIRMED in toto**, and accordingly **certifies** the case and **elevate** the entire records to the Supreme Court for review pursuant to Rule 124, Section 13[a] of the Revised Rules on Criminal Procedure, as amended by A.M. No. 00-5-03-SC.

SO ORDERED.<sup>[18]</sup>

We have painstakingly reviewed the evidence on record and found no cogent reason to disturb the findings of the trial court and the appellate court. There is no doubt that appellant raped Alpha Jane on August 7, 2001 inside their house at Villamor Airbase, Pasay City. This credibility given by the trial court to the rape victim is an important aspect of evidence<sup>[19]</sup> which appellate courts can rely on because of its unique opportunity to observe the witnesses, particularly their demeanor, conduct, and attitude, during the direct and cross-examination by counsel.

On direct examination, Alpha Jane narrated the incident and positively identified appellant as her assailant, thus:

Fiscal Barrera:

Now at around 6:00 p.m. of August 7, 2001 where were you? A. I was inside our house.

Q. You mean your house at lagoon area, Villamor Air Base, Pasay City?

A. Yes, sir.

Q. What about you mother and father where were they on that date and time?

A. My mother bought gas while my father was "naglalakad ng spray gun" for painting.

Q. Who were left in your house on August 7, 2001 at 6:00 p.m. while your mother bought gas and your father was walking with his spray gun used for painting?

A. My brothers and sisters.

Q. While in your house on said date and time do you know of any unusual incident that happened to you?

A. Yes, sir.

Q. What was that unusual incident that happened to you?

A. Kuya Jimmy entered our house.

Q. After Kuya Jimmy entered your house, what happened next?

A. Kuya Jimmy called for me inside our house.

Q. What did you do when Kuya Jimmy called for you?

A. He asked me one plus one and I answered two.

Q. After that what else happened?

A. He asked me to lie down on my father's bed.

Q. Did you follow him?

A. No, sir, I did not follow.

Q. And so what else happened?

A. He removed my clothes "hinubaran niya ako"; he removed my shorts and panty.

Q. After Kuya Jimmy removed your shorts and panty, what happened?

A. "Pinatungan po niya ako", he laid on top of me.

Q. What happened when he laid on top of you?

A. He inserted his penis inside my private part.

Fiscal Barrera:

What did you do when this Kuya Jimmy inserted his penis to your private part?

A. I shouted, sir.

Q. After Kuya Jimmy inserted his penis inside your vagina and you shouted, what happened?

A. "Pinakawalan niya ako", he released me.

Q. Then what happened?

A. "Tinergas niya ako."

Q. After Kuya Jimmy teargas you, what happened?

A. I run away.

Q. Regarding what Kuya Jimmy did to you, did you report it to your mother?

A. Yes, sir.

Q. This Kuya Jimmy whom you said went inside your house and removed your shorts and panty and thereafter inserted his penis inside your vagina on August 7, 2001 can you point at him if you see him?

A. Yes, sir.

Q. If this Kuya Jimmy Cayabyab is inside the courtroom will you be able to identify him?

A. Yes, sir.

Q. Is he inside the courtroom?

Interpreter:

Witness pointed to a person who answered by the name of Genaro Cayabyab.<sup>[20]</sup>

Despite grueling cross-examination by the defense suggesting extortion by the victim's father, Alpha Jane remained steadfast and consistent that it was appellant who raped her. The victim's testimony was supported by the medico-legal report of the medico-legal experts from the PNP Crime Laboratory and CPU, UP-PGH, to wit:

#### ANO-GENITAL EXAMINATION

Hymen: Tanner Stage 2, hymenal transection at 5 o'clock, Type of  
Hymen: Anullar

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#### IMPRESSIONS

Evidence of blunt force or penetrating trauma.  
(Exh. "L", p. 8, Records)