EN BANC

[G.R. No. 135241, January 22, 2003]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PLACIDO LUNA DELOS REYES, ACCUSED-APPELLANT.

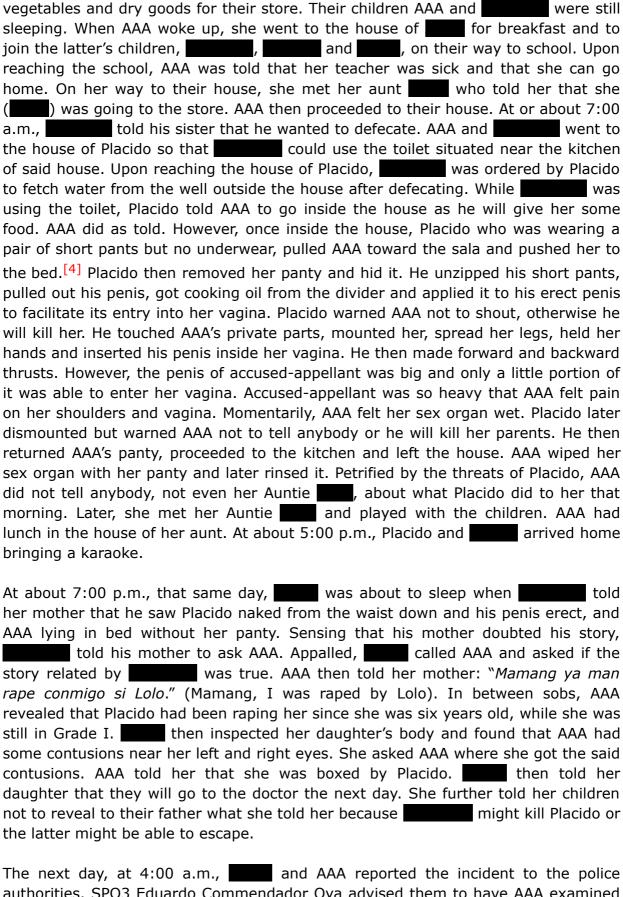
DECISION

CALLEJO, SR., J.:

On automatic appeal is the Decision^[1] dated July 24, 1998 of Branch 13 of the Regional Trial Court of Zamboanga City convicting accused-appellant Placido Luna y Delos Reyes of the crime of rape and meting on him the supreme penalty of death. The court likewise ordered accused-appellant to indemnify private complainant AAA in the amount of Fifty Thousand (P50,000.00) Pesos.

Culled from the testimonial and documentary evidence of the prosecution, [2] the facts of the case are as follows: were married on July When the spouses and 26, 1986, they resided in the house of the second in the second in the house of the second in the second i husband and stepfather, Placido Luna in Talisayan, Zamboanga City. Subsequently, and constructed their small house on a lot about 18 no toilet in their house and used the toilet in the house of Placido to relieve themselves. 's sister and her husband, Jesus Luna, who was also the 8, 1987, AAA, the first child of and and was, was born, [3] followed by Grade I. Placido started sexually abusing AAA but she concealed the same from her parents because accused-appellant threatened to kill her if she did. She complained to her mother that her organ was painful but unaware of her daughter's plight, just told her daughter to wash her private part. worked as a factory worker at Mar Fishing, earning about P5,000 to P6,000 a month. She also maintained a small store inside Mar Fishing where she sold viands to her fellow workers. , on the other hand, was a carpenter. His mother was employed as a teacher at the Don Gregorio Evangelista Memorial School in Sta. Catalina while Placido busied himself as a laborer. While at work, the spouses entrusted their children to whom the children called Auntie instructed her children that if they had to answer the call of nature, they use the toilet in the house of their Lolo Placido and Lola

By 1995, AAA was already in Grade III. had stopped schooling. On December 14, 1995, at about 4:30 a.m., then on maternity leave (she was pregnant with their fourth child), and went to the market to buy fish,



The next day, at 4:00 a.m., and AAA reported the incident to the police authorities. SPO3 Eduardo Commendador Oya advised them to have AAA examined by a doctor to confirm that she was indeed sexually abused. AAA was brought to the PNP Regional Criminal Laboratory Section where Dr. Rodolfo Valmoria interviewed and conducted a genital examination on her. AAA walked normally. Dr. Valmoria signed a Medico-Legal Report No. M-343-95^[5] which contained his findings:

Living person of one AAA, 9 yrs. old, single, Fil., and a resident of Talisayan, Zamboanga City.

PURPOSE OF LABORATORY EXAMINATION:

To determine extent of injuries sustained and status of physical virginity.

FINDINGS:

Healing contusions, left zygomatic region and right infra-orbital region.

Absence of **pubic** hair. Labia majora full, convex and gaping. Labia minora pinkish in color and presenting in between is a fleshy tape of hymen with deep healing lacerations at 5 and 11 o'clock positions. There are marked erythema at both left and right vulvar mucosa.

Vaginal canal in (sic) narrow, only admits tip of examining little finger, subject complains of pain on insertion of tip of examining little finger. Abdomen is flat and tight, complains of pain at hypogastric region or palpation. Breasts infantile.

Urethral and vaginal smears revealed the following results: Negative for spermatozoa cell, pus cell-moderate (3+) and bacilli few.

CONCLUSION:

Barring unforeseen complications the above-named injuries is estimated to resolve within 3 to 5 days more.

Subject is of non-virgin state physically.

and AAA proceeded to the police station where AAA gave her sworn statement to SPO3 Oya. [6] also signed a sworn statement (complaint) before the police officer. The police authorities then arrested Placido on December 15, 1995 on the basis of the sworn declarations of and AAA and the medicolegal report of Dr. Valmoria. [8]

On December 17, 1995, AAA and filed with the Regional Trial Court a complaint for Rape against Placido, which reads:

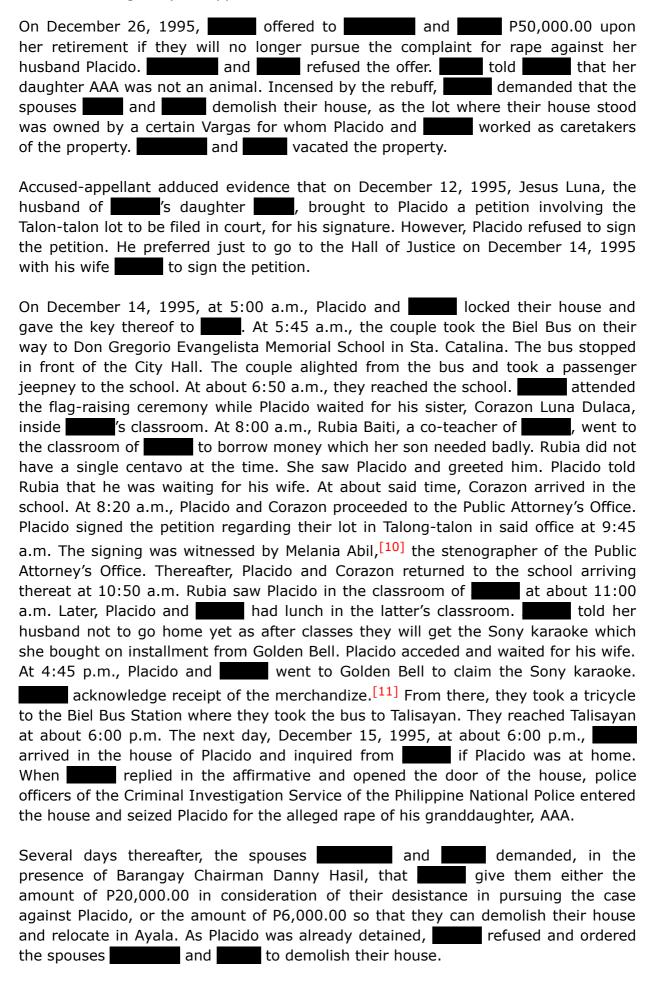
COMPLAINT

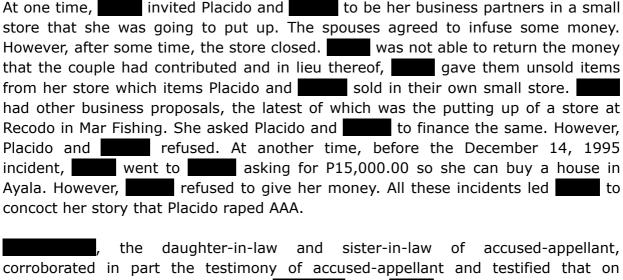
The undersigned, under oath, hereby accuse PLACIDO LUNA y DELOS REYES of the crime of RAPE, committed as follows:

That on or about the 14th day of December, 1995, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, did then and there willfully, unlawfully and feloniously, have carnal knowledge of the undersigned AAA, a girl, eight (8) years old, and against the latter's will.

CONTRARY TO LAW.

Zamboanga City, Philippines, December 17, 1995. [9]





corroborated in part the testimony of accused-appellant and testified that on December 14, 1995 at 7:00 a.m., and arrived in the house of Placido and to cook food for their supper and for to iron out her clothes since there was no electricity in the house of the couple. AAA and continue, AAA and her children returned home from school and ate lunch. The children thereafter returned to their school.

Dr. Rodolfo Valmoria, whom accused-appellant presented as witness, testified that with the use of a device, he measured the length and circumference of the penis of accused-appellant at normal size and when erect and signed a Medico-Legal Report No. M-213-96.^[12] Considering the length and circumference of the erect penis of accused-appellant vis-a-vis the size of the vagina of private complainant who was only eight years old on December 14, 1995, if the penis of accused-appellant penetrated the vagina of private complainant, there would be a deep laceration of the hymen and of the perineum which is the external surface of the external vaginal canal made of subcutaneous tissues and small blood vessels. The small blood vessels would be disrupted. However, when he examined the vagina of private complainant, it would admit only the tip of the examining little finger and hence there was no actual penetration of her vagina by a penis contrary to the testimony of private complainant that the penis of accused-appellant penetrated her vagina. He also stated that when AAA arrived in her office for a genital examination, she acted normally.

As aforestated, the trial court rendered judgment convicting Placido of qualified rape, the decretal portion of which reads:

WHEREFORE, in consideration of all the foregoing, the Court finds the accused **Placido Luna y delos Reyes** guilty beyond reasonable doubt of the crime of "RAPE" and hereby sentences him to suffer the supreme penalty of **DEATH**, to indemnify the herein victim **AAA** the amount of **P50,000.00** and to pay the costs.

SO ORDERED.[13]

Accused-appellant assails the decision of the court a quo contending that: