

## EN BANC

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

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

### D E C I S I O N

**CALLEJO, SR., J.:**

On automatic appeal is the Decision<sup>[1]</sup> 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,<sup>[2]</sup> the facts of the case are as follows:

When the spouses ██████████ and ██████████ were married on July 26, 1986, they resided in the house of ██████████, ██████████'s mother and her second husband and ██████████'s stepfather, Placido Luna in Talisayan, Zamboanga City.

Subsequently, ██████████ and ██████████ constructed their small house on a lot about 18 meters away from the house of Placido and ██████████. However, ██████████ and ██████████ had 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 brother of Placido, lived about eight meters away from the house of ██████████. On March 8, 1987, AAA, the first child of ██████████ and ██████████, was born,<sup>[3]</sup> followed by ██████████, ██████████ and ██████████. By the time AAA was six years old, she was enrolled in 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 ██████████ and ██████████ 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,

vegetables and dry goods for their store. Their children AAA and [REDACTED] were still sleeping. When AAA woke up, she went to the house of [REDACTED] for breakfast and to join the latter's children, [REDACTED], [REDACTED] and [REDACTED], on their way to school. Upon reaching the school, AAA was told that her teacher was sick and that she can go home. On her way to their house, she met her aunt [REDACTED] who told her that she ([REDACTED]) was going to the store. AAA then proceeded to their house. At or about 7:00 a.m., [REDACTED] told his sister that he wanted to defecate. AAA and [REDACTED] went to the house of Placido so that [REDACTED] could use the toilet situated near the kitchen of said house. Upon reaching the house of Placido, [REDACTED] was ordered by Placido to fetch water from the well outside the house after defecating. While [REDACTED] was using the toilet, Placido told AAA to go inside the house as he will give her some food. AAA did as told. However, once inside the house, Placido who was wearing a pair of short pants but no underwear, pulled AAA toward the sala and pushed her to the bed.<sup>[4]</sup> Placido then removed her panty and hid it. He unzipped his short pants, pulled out his penis, got cooking oil from the divider and applied it to his erect penis to facilitate its entry into her vagina. Placido warned AAA not to shout, otherwise he will kill her. He touched AAA's private parts, mounted her, spread her legs, held her hands and inserted his penis inside her vagina. He then made forward and backward thrusts. However, the penis of accused-appellant was big and only a little portion of it was able to enter her vagina. Accused-appellant was so heavy that AAA felt pain on her shoulders and vagina. Momentarily, AAA felt her sex organ wet. Placido later dismounted but warned AAA not to tell anybody or he will kill her parents. He then returned AAA's panty, proceeded to the kitchen and left the house. AAA wiped her sex organ with her panty and later rinsed it. Petrified by the threats of Placido, AAA did not tell anybody, not even her Auntie [REDACTED], about what Placido did to her that morning. Later, she met her Auntie [REDACTED] and played with the children. AAA had lunch in the house of her aunt. At about 5:00 p.m., Placido and [REDACTED] arrived home bringing a karaoke.

At about 7:00 p.m., that same day, [REDACTED] was about to sleep when [REDACTED] told her mother that he saw Placido naked from the waist down and his penis erect, and AAA lying in bed without her panty. Sensing that his mother doubted his story, [REDACTED] told his mother to ask AAA. Appalled, [REDACTED] called AAA and asked if the story related by [REDACTED] was true. AAA then told her mother: "*Mamang ya man rape conmigo si Lolo.*" (Mamang, I was raped by Lolo). In between sobs, AAA revealed that Placido had been raping her since she was six years old, while she was still in Grade I. [REDACTED] then inspected her daughter's body and found that AAA had some contusions near her left and right eyes. She asked AAA where she got the said contusions. AAA told her that she was boxed by Placido. [REDACTED] then told her daughter that they will go to the doctor the next day. She further told her children not to reveal to their father what she told her because [REDACTED] might kill Placido or the latter might be able to escape.

The next day, at 4:00 a.m., [REDACTED] 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<sup>[5]</sup> which contained his findings:

SPECIMEN SUBMITTED:

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 on 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.<sup>[6]</sup> ██████ also signed a sworn statement (complaint)<sup>[7]</sup> 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 medico-legal report of Dr. Valmoria.<sup>[8]</sup>

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 14<sup>th</sup> 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.<sup>[9]</sup>

On December 26, 1995, ██████ offered to ██████ and ██████ P50,000.00 upon her retirement if they will no longer pursue the complaint for rape against her husband Placido. ██████ and ██████ refused the offer. ██████ told ██████ that her daughter AAA was not an animal. Incensed by the rebuff, ██████ demanded that the spouses ██████ and ██████ demolish their house, as the lot where their house stood was owned by a certain Vargas for whom Placido and ██████ worked as caretakers of the property. ██████ and ██████ vacated the property.

Accused-appellant adduced evidence that on December 12, 1995, Jesus Luna, the husband of ██████'s daughter ██████, brought to Placido a petition involving the Talon-talon lot to be filed in court, for his signature. However, Placido refused to sign the petition. He preferred just to go to the Hall of Justice on December 14, 1995 with his wife ██████ to sign the petition.

On December 14, 1995, at 5:00 a.m., Placido and ██████ locked their house and gave the key thereof to ██████. At 5:45 a.m., the couple took the Biel Bus on their way to Don Gregorio Evangelista Memorial School in Sta. Catalina. The bus stopped in front of the City Hall. The couple alighted from the bus and took a passenger jeepney to the school. At about 6:50 a.m., they reached the school. ██████ attended the flag-raising ceremony while Placido waited for his sister, Corazon Luna Dulaca, inside ██████'s classroom. At 8:00 a.m., Rubia Baiti, a co-teacher of ██████, went to the classroom of ██████ to borrow money which her son needed badly. Rubia did not have a single centavo at the time. She saw Placido and greeted him. Placido told Rubia that he was waiting for his wife. At about said time, Corazon arrived in the school. At 8:20 a.m., Placido and Corazon proceeded to the Public Attorney's Office. Placido signed the petition regarding their lot in Talong-talon in said office at 9:45 a.m. The signing was witnessed by Melania Abil,<sup>[10]</sup> the stenographer of the Public Attorney's Office. Thereafter, Placido and Corazon returned to the school arriving thereat at 10:50 a.m. Rubia saw Placido in the classroom of ██████ at about 11:00 a.m. Later, Placido and ██████ had lunch in the latter's classroom. ██████ told her husband not to go home yet as after classes they will get the Sony karaoke which she bought on installment from Golden Bell. Placido acceded and waited for his wife. At 4:45 p.m., Placido and ██████ went to Golden Bell to claim the Sony karaoke. ██████ acknowledge receipt of the merchandize.<sup>[11]</sup> From there, they took a tricycle to the Biel Bus Station where they took the bus to Talisayan. They reached Talisayan at about 6:00 p.m. The next day, December 15, 1995, at about 6:00 p.m., ██████ arrived in the house of Placido and inquired from ██████ if Placido was at home. When ██████ replied in the affirmative and opened the door of the house, police officers of the Criminal Investigation Service of the Philippine National Police entered the house and seized Placido for the alleged rape of his granddaughter, AAA.

Several days thereafter, the spouses ██████ and ██████ demanded, in the presence of Barangay Chairman Danny Hasil, that ██████ give them either the amount of P20,000.00 in consideration of their desistance in pursuing the case against Placido, or the amount of P6,000.00 so that they can demolish their house and relocate in Ayala. As Placido was already detained, ██████ refused and ordered the spouses ██████ and ██████ to demolish their house.

At one time, █████ invited Placido and █████ to be her business partners in a small store that she was going to put up. The spouses agreed to infuse some money. However, after some time, the store closed. █████ was not able to return the money that the couple had contributed and in lieu thereof, █████ gave them unsold items from her store which items Placido and █████ sold in their own small store. █████ had other business proposals, the latest of which was the putting up of a store at Recodo in Mar Fishing. She asked Placido and █████ to finance the same. However, Placido and █████ refused. At another time, before the December 14, 1995 incident, █████ went to █████ asking for P15,000.00 so she can buy a house in Ayala. However, █████ refused to give her money. All these incidents led █████ to concoct her story that Placido raped AAA.

█████, the daughter-in-law and sister-in-law of accused-appellant, 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 █████'s children then left for school at 7:00 a.m. █████ left at about 8:00 a.m. At noontime, 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.<sup>[12]</sup> 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 aforesaid, 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.**<sup>[13]</sup>

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