

## EN BANC

[ G.R. No. 146458, January 20, 2003 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CAPT.  
MARCIAL LLANTO Y LEUTERIO, ACCUSED-APPELLANT.**

### DECISION

**PUNO, J.:**

The one battle the accused Capt. Marcial Llanto lost was fought against himself. He utterly failed to measure up to the yardstick of an officer and a gentleman when he was subdued by the beast in him and he committed lechery upon his minor kin.

On February 29, 2000, an information for rape was filed against the accused Llanto, *viz*:

"That on or about (the) twelfth day of November, 1999 at Pasay City and within the jurisdiction of this Honorable Court, the above-named accused, actuated by lust, with use of a knife, through force, violence and intimidation, and by taking advantage of his moral ascendancy over his twelve (12) year old minor niece AAA, did then and there willfully, unlawfully and feloniously have carnal knowledge of AAA against her will and consent, to her damage and prejudice in whatever amounts may be awarded to her under provisions of the Civil Code.

CONTRARY TO LAW."<sup>[1]</sup>

The accused pleaded not guilty. Trial ensued.

The records show that AAA was born to [REDACTED] and [REDACTED] on December 20, 1986. Her parents separated when she was six months old and from then on her maternal grandmother took care of her until she was eight years old. Her mother lives with her (AAA's) uncle in Litex, Quezon City while her father lives with his common law wife in Calamba, Laguna.

In 1995, AAA was entrusted to the care of the accused and his wife, Felicitas Balisi Llanto, the sister of AAA's father. The accused is a member of the Philippine Air Force. They lived in Clark Airbase, then moved to Mactan Airbase, Lapu-Lapu City, Cebu, and in 1999, transferred to a house in Villamor Airbase in Pasay City.

On November 12, 1999, only AAA and the accused were home. The accused's wife was then in Tuguegarao, Cagayan, while one of their two sons was in Laguna and the other was in Cebu. At about 9:00 p.m., while AAA was studying downstairs, the accused told her that it was already time to go to bed. The accused pulled her to his room upstairs, removed her shirt, bra and panty. AAA cried. He tied her hands, mashed her breasts, kissed her private part, and inserted his two fingers into her vagina, causing her pain. He inserted his organ into her private part. The whole

time, she could not fight the accused as he tied her hands and held a knife. After satiating his lust, he threatened her not to tell on him, then untied her hands. That was not the first time the accused ravished her. When they lived in Cebu, the accused violated her about three times a week when only the two of them were left in the house.

The next day, November 13, 1999, AAA told the accused that she would go to school, but instead proceeded to her aunt, [REDACTED], the sister of the accused's wife. She divulged to [REDACTED] her ordeal in the hands of the accused. [REDACTED] brought her to the National Bureau of Investigation (NBI) where AAA executed a sworn statement<sup>[2]</sup> and filled out a complaint sheet.<sup>[3]</sup> Dr. Annabelle Soliman examined her and made a medico-genital report.

AAA denied the claims of the accused's family that they scolded her for repeatedly stealing money from them. She also explained that she did not include in her sworn statement that the accused tied her hands when he committed the lechery on her because she was not asked what the accused did first before consummating coitus with her.<sup>[4]</sup>

Dr. Annabelle Soliman, medico-legal officer of the NBI, testified that she examined AAA on November 17, 1999 upon her complaint that the accused had been raping her since 1996, the last of which was on November 12, 1999. AAA was twelve years old at the time of the examination. The findings showed that the victim's hymen was tall, thick, intact, and distensible or elastic and there was no sign of extra-genital injury. During the examination on AAA, a tube 2.5 centimeters in diameter was inserted into her hymenal opening without any injury. Her hymenal opening is wide at 2.5 centimeters in diameter so as to allow complete penetration by an average-sized adult Filipino male organ in full erection, about 2.5 centimeters, without producing genital/hymenal injury.<sup>[5]</sup> Dr. Soliman opined that it is possible for the hymen to remain intact even if it had been penetrated several times as the rupture of the hymen depends on the manner of insertion and the opening of the orifice. If the insertion is gentle, it might not break the hymen. If a woman is struggling when being raped, the penis might not fully penetrate the hymen, thus leaving it intact.<sup>[6]</sup>

Rosalina Chiong, NBI agent, corroborated AAA's testimony that she filled out a complaint sheet.<sup>[7]</sup> Chiong prepared a request for medico-legal examination<sup>[8]</sup> then took the victim's sworn statement.<sup>[9]</sup> She also received a copy of the examination results.<sup>[10]</sup> During her testimony, Chiong presented a photocopy of a certification from the Office of the Civil Registrar indicating that AAA was born to [REDACTED] and [REDACTED] on December 20, 1986.<sup>[11]</sup>

The accused took the witness stand. He is a captain of the Philippine Air Force assigned as officer-in-charge at the Air Force Holding Center of Villamor Air Base. Previously, he was assigned at Camp Lapu-Lapu, Laoag, Cebu City. He is married and has two children, Jessel aged 25 and Jonnel, 24.

He narrated that AAA started to live with his family in 1994 when she was eight years old. Although she is only his niece, her father being the younger brother of his wife, he and his wife treated AAA like a real daughter. They cared for her, supported her schooling and provided her food, clothing and other needs. AAA loved him and

his wife and had been like a good daughter to them.

When the accused was assigned at Villamor Air Base in Pasay, AAA stayed with the accused's wife at Clark Air Base. In 1996, when the accused was transferred to the Visayas Command, the accused's family, along with AAA, moved to Cebu. The accused stayed in the Bachelor Officers Quarters in Camp Lapu-Lapu, Cebu while AAA resided with the accused's wife at the Junior Officers Quarters at Mactan Air Base, Lapu-Lapu, Cebu, an hour's drive from where the accused was staying. He rarely went home to Mactan Air Base because of his hectic schedule.

In June 1999, the accused was re-assigned to Manila. The accused, his wife Felicitas and AAA transferred to San Pedro, Laguna and stayed with Felicitas' sister, Elizabeth Balisi. From there, they transferred to the Airmen's Village on July 16, 1999.

On November 12, 1999, the alleged date of the rape, the accused was with his elder son, Jessel, at Mahada Alpha, Barangay Mayapa, Calamba, Laguna. He left Villamor Air Base at 2:00 p.m. and arrived at Mahada Alpha at 5:00 p.m. At past 5:00 p.m., he met his son Jessel outside the factory of Yukusha, Philippines where the latter worked. He informed Jessel that his younger brother Jonnel called up to ask about his petition papers for Canada. After they talked, Jessel borrowed the accused's car and had a joy ride with his co-workers while the accused proceeded to the house Jessel rented. The accused talked with Alma Saberola, the daughter of Jessel's landlord. When Jessel arrived at about 7:30 p.m., he told the accused that the car's headlights were not functioning. The accused checked the headlights and tried to fix them in vain. So, he decided to spend the night in Jessel's place as it was difficult to drive in the dark. He left Calamba the following morning at 7:00 a.m.

AAA repeatedly stole money from the accused and his wife, but asked for forgiveness. At first, the accused forgave her, but the last straw came on November 13, 1999 when he came home from Calamba. He found out that the one thousand pesos in the pocket of his pants hanging on the wall was missing. When AAA arrived, he confronted her about it. The accused and his wife severely scolded her and even threatened her with a hammer to reform her, but she did not say a word and just went out of the room. The accused followed her and she returned five hundred pesos as she had already spent the other five hundred. Later that day, he brought AAA to Calamba to tell Jessel that he was fed up with her, then the two went back home to Villamor Air Base. He decided to stop financing her schooling and to return her to her parents. At 8:00 p.m., the accused went to his office and spent the night there. The following day, the accused found out that AAA ran away from home. He asked her whereabouts from her relatives and classmates and learned that AAA did not go to school nor was she with her Aunt [REDACTED] or her father. He did not report the matter to the barangay and police authorities, nor did he make it known at the Villamor Air Base. He suggests that she ran away because of his decision to stop supporting her schooling.

The accused claims that AAA filed charges of rape against him upon instigation of her mother, [REDACTED], and a certain Silverio Escobar to extort his P500,000.00 retirement benefits. Escobar, an NBI agent who was his wife's *kababayan*, called him up one time and told him that a complaint was filed against him, then asked for P500,000.00. The accused did not give Escobar the money as his conscience was clear. Besides, he did not have any money. The following day, the accused received a subpoena. It was then that he learned that AAA, accompanied by

her mother, filed a complaint against him.

It appears that AAA filed another complaint for rape against the accused and the case is pending at the Regional Trial Court of Cebu.<sup>[12]</sup>

The son of the accused, Jessel Llanto, corroborated his father's testimony that he was with him on November 12, 1999. His father visited him in Calamba, Laguna to ask if the petition papers for Canada had already been sent by his aunt, his father's sister. They met at about 5:30 at the factory where Jessel worked. They then proceeded to Jessel's place at about 6:00 p.m. and there talked about the petition papers. Alma Saberola and the other children of Jessel's landlord and some of Jessel's friends were there. After about an hour, Jessel borrowed the accused's car and with a friend named Jonathan and another companion, went to a friend's place at Palo Alto, Calamba, Laguna. On their way home, they passed a very big hump, but they were not able to slow down, causing the front of the car to jerk and destroy the headlights. When they reached home, Jessel told his father that the headlights were not working. As it was dangerous to drive in the dark, his father decided to spend the night there and left the following morning for Villamor Air Base. Later that day, at around 6:00 p.m., his father returned to Calamba with AAA and told Jessel that he would return AAA to her parents as he was fed up with her stealing. Jessel treated AAA like his younger sister and begged his father to give her another chance.<sup>[13]</sup>

Alma Saberola, Jessel's landlady and sister of Jessel's co-worker, corroborated the accused's testimony. She met the accused when he visited Jessel in her house on November 12, 1999. The accused arrived in her house at about 5:30 p.m. while Jessel was out for a joy ride using the accused's car. When Jessel brought the car home, its headlights no longer functioned. The accused thus decided to spend the night at Jessel's place and left at about 7:00 a.m. the following day.<sup>[14]</sup>

Felicitas Balisi, wife of the accused, testified for the defense. She is the older sister of [REDACTED], AAA's father. She has two children with the accused. In 1993, when AAA was only seven years old, she started living with her and her family. Felicitas was not particularly delighted with AAA as she was hard-headed and not nice. She repeatedly stole money from them from the time she started living with them. She and her husband brought AAA with them wherever he was assigned, first at Clark Air Base, then at Mactan Air Base in Cebu City. In June 1999, Felicitas' family stayed with her sister, Elizabeth Balisi, in San Pedro, Laguna as the accused was assigned at Villamor Air Base in Pasay. The following month, AAA no longer lived with Felicitas' family. Felicitas rented a house for AAA and her mother, [REDACTED]. They were later joined by AAA's brother, [REDACTED], who used to live with Felicitas' sister, [REDACTED], as the latter supported his studies.

In November 1999, the accused confided to her that he had a problem with a certain Silverio Escobar who was asking for half a million pesos from him. Escobar was a neighbor of the [REDACTED] in Ogak, Norte, Tuguegarao and he used to play with Felicitas in the [REDACTED] residence in their childhood days. Escobar also asked money from Felicitas in October 1999 when she was in Tuguegarao. He threatened her that if she did not give the amount, he would kill her husband. Escobar represented to her that he was an NBI agent, but Felicitas learned from the Chief of the Operation Unit of the NBI that he was not. She saw Escobar talk with AAA's mother several

times from September to November 1999. In the year 2000, he reiterated his demand for money, but this time in whatever amount she could afford. He told Felicitas that the accused raped AAA. She was shocked and refused to believe him, and told him that she had no money at that time. But as he was insistent, she gave him P1,000.00, in addition to the P5,000.00 she gave him in October. Felicitas contradicted herself in another part of her testimony and stated that she learned of the rape charges filed by AAA against her husband in 1999, but could not remember the exact date as her memory was dulled by an operation for myoma she underwent.<sup>[15]</sup>

██████████, elder sister of AAA's father, sided with the accused. She refuted AAA's testimony that right after the accused raped her, AAA reported to her and she accompanied AAA to the NBI, then the latter stayed with her. ██████████ went to the accused's house on November 1, 1999 and observed that the relationship between AAA and the accused seemed normal; AAA did not reveal to her anything unusual about their relationship. Even the accused and his wife spoke highly of AAA as a very good and obedient girl. After ██████████ saw AAA and her mother on the last week of November 1999, she never saw AAA again. AAA's mother, ██████████, informed her that she was already in the custody of the DSWD.

According to ██████████, a certain Silverio Escobar often goes to her house and talks to ██████████ who lived with ██████████ for about a year, from July 1999 to March 25, 2000. Escobar introduced himself as an NBI agent, but ██████████ learned from her friends that he was lying. AAA's brother also lived with ██████████ for four years.<sup>[16]</sup>

The defense also offered the testimony of Arsenio C. Pascual, surgeon and lawyer, and Dr. Marilyn Ricardo, gynecologist, for them to give their expert opinion regarding the medical certificate Dr. Soliman issued. They were supposed to testify that although the finding that the hymen is intact is dispensable in rape cases in general, it negates the charge of rape in AAA's case as she claimed to have been raped at least three times. But the trial court did not allow the presentation of these two witnesses as according to it, this Court has ruled that a medical certificate is not even necessary in rape cases. The prosecution likewise pointed out that their testimonies were not necessary as the Court has ruled that there could be sexual intercourse without laceration of the hymen and they never examined the victim.<sup>[17]</sup>

The trial court upheld the version of the prosecution and sentenced the accused to the supreme penalty of death, viz:

"WHEREFORE, in view of the foregoing, the Court finds the accused Capt. Marcial Llanto y Leuterio guilty beyond reasonable doubt of RAPE and is hereby sentence (sic) to DEATH and ordered to pay the victim civil indemnity in the amount of Php 75,000.00 and moral damages in the amount of Php 50,000.00."<sup>[18]</sup>

Hence, the case is before us on automatic review. The defense assails the decision on the ground that the trial court misappreciated the facts and misapplied the law, and gravely abused its discretion in not admitting the testimonies of their medico-legal experts.

The appeal is partially meritorious.