

EN BANC

[G. R. No. 137283, February 17, 2003]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
RODERICK LEGASPI, ACCUSED-APPELLANT.**

D E C I S I O N

CARPIO MORALES, J.:

Before this Court for automatic review is the Decision^[1] of the Regional Trial Court of Tarlac, Branch 65, in Criminal Case No. 9643 convicting accused-appellant Roderick Legaspi of rape.

The Information dated August 18, 1997 charged accused-appellant as follows:

x x x

That on or about the July 3, 1997 at around 8:00 o'clock in the evening, in the Municipality of █████, Province of █████ and within the jurisdiction of this Honorable Court, the above-named accused by means of force and violence did then and there willfully, unlawfully and feloniously **have carnal knowledge** of complainant AAA, **a child below seven (7) years old.**

CONTRARY TO LAW.

x x x^[2] (Emphasis supplied.)

Accused-appellant was arraigned on October 28, 1997. Duly assisted by his counsel *de officio*, he entered a plea of not guilty.^[3]

The following facts are not disputed.

On July 3, 1997, at around 6:00 p.m., accused-appellant, together with his father Rogelio and two others, had a drinking spree at their family house in █████. At around 8:00 p.m., he asked the more than 6-year old AAA, the niece of his father's common law wife █████, to go out with him for a few minutes. AAA, who was wearing a pair of short pants and a shirt, obliged and the two left the house.^[4]

As two hours had elapsed and accused-appellant and AAA had not yet returned, █████ started looking for them. She later went to the barangay hall to report the matter.^[5]

About past 11:00 p.m. also of July 3, 1997, accused-appellant and AAA returned home.^[6] AAA, who was silent, with her arms placed "across her breast,"^[7] was

already garbed in accused-appellant's t-shirt, without panty and slippers, and with her head and back full of sand.^[8] Accused-appellant on the other hand was only wearing a pair of wet pants.^[9] When █████ asked them where they came from, AAA replied that they came from the river,^[10] about a kilometer away from their house. And when she was asked what accused-appellant did to her, AAA said that he kissed her, boxed the left portion of her stomach, and let her drink dirty water.^[11] While AAA did not say that she was sexually abused, given her appearance, █████ brought her and accused-appellant, who tried to flee but was overtaken, to the barangay hall.^[12]

At the barangay hall, Kagawad Edilberto Villanueva asked AAA what happened, to which she replied that accused-appellant brought her to the river and "went on top of her."^[13] Villanueva, █████, AAA and accused-appellant thereupon proceeded to the municipal hall to report the matter to the police who directed that AAA be brought to the provincial hospital for examination.^[14] AAA was thus immediately brought to the Tarlac Provincial Hospital^[15] where she was examined by Dr. Susan Rhea Maniquis.

From Dr. Maniquis' examination of AAA, the following findings^[16] were noted:

EXT. GENITALIA: absent pubic hair, labia majora completely hiding labia minora, vestibule is erythematous; **(+) complete laceration 6'oclock position, (+) incomplete laceration, 2' oclock position, (+) abrasion 9-10 'oclock positions;** post-fourchette V-shaped, (-) bleeding, (-) hematomas. (Emphasis supplied)

Hence, the filing of a complaint for rape against accused-appellant at the █████ Municipal Trial Court which conducted a preliminary investigation at which accused-appellant failed to file a Counter-Affidavit.^[17] The Provincial Prosecutor accordingly filed the Information against accused-appellant.

Villanueva declared that accused-appellant "admitted that he was raping AAA but he was not able to insert his penis."^[18]

When Dr. Maniquis was interrogated on her findings, she gave the following testimony, quoted *verbatim*:^[19]

X X X

Q: By this finding of yours "vestibule is erythematous", what do you mean by this?

A: The vestibule I am referring to is that diamond shape area of the perineum where the urine comes out, and "erythematous" I mean the reddish color in the vestibule.

Q: **And what could have caused that reddish color in the vestibule?**

A: **It could have been caused by an object that could have insinuated into that opening.**

Q: And by your finding "complete laceration 6:00 o'clock position", what do you mean, doctor?

A: By that, I mean that supposed to be the hymen is intact and there are no lacerations. There are **angulations** along the hymenal wall. And by complete, I mean that the laceration reaches from the surface of the hymen up to the base of the hymen. That is complete. And by incomplete, I mean that it did not reach one-half of the hymen. The depth of the laceration did not reach up to the base of the hymen.

Q: About the "abrasion, 9-10 o'clock position," what do you mean by that?

A: By that I mean that I saw linear abrasion, it was just a scratch mark.

Q: And what could have caused those complete laceration 6:00 o'clock position, incomplete laceration, 2:00 o'clock position and abrasion 9-10 o'clock positions"?

A: Those could have been caused by **trauma**, sir.

Q: Would a sexual intercourse cause these injuries or lacerations?

A: Possibly, sir.

x x x

Q: And in this case you did not find any sperm cells in the genitalia area. If there was alleged sexual abuse on the patient and found that there were no sperm cells in the said genitalia road, then it may rule out the possibility that he lacerations that you found in the hymen were not made by male organ?

A: It is possible that the victim or patient was raped even if there were no sperm cells found in the genitalia area.

Q: But the finding that there were no sperm cells found in the genitalia area is a deep indication that the lacerations were made or could have been made by blunt instrument?

A: It's possible.

x x x

COURT:

Q: What could have caused the abrasion, doctor?

A: That abrasion that I saw on the vestibule could have been caused by a fingernail or any sharp object.

x x x

Q: What is the significance of the 6:00 o'clock position . . .

A: I just want to impart that there was trauma to that area.

Q: Has there been penetration?

A: Not necessarily.

Q: When you say "trauma", **what could have caused this trauma?**

A: It may have been caused by any object or human finger or penis of a maleorgan.

x x x (Emphasis and underscoring supplied).

Accused-appellant insisted that he and AAA just took a bath in the river.

AAA, who refused to testify during the presentation by the prosecution of its evidence in chief, finally took the witness stand on rebuttal. Through her following testimony, ^[20] the prosecution sought to further prove that she was raped.

x x x

FISCAL:

Q: AAA do you know the accused in this case Roderick Legaspi?

A: Yes sir.

Q: And could you tell us if he is inside the court now?

A: Yes sir.

Q: Will you please point at him if he is inside the courtroom?

INTERPRETER:

Witness is pointing to a person or man inside the courtroom wearing a stripe blue and green T-shirt.

Q: AAA on July 3, 1997 you were at home is that correct?

A: Yes sir

Q: And Roderick Legaspi was drinking with somebody on that date is that correct?

ATTY. MARCOS:

Objection your Honor, leading.

COURT:

Witness may answer considering the age of the witness . .
.

A: Yes sir.

Q: On July 3, 1997, Roderick Legaspi asked you to go with him is that correct?

A: Yes sir.

Q: Could you tell us where did Roderick bring you?

A: At the river sir.

Q: Were you able to reach the river?

A: Yes sir.

Q: And what did you do at the river, did you take a bath?

A: No sir.

Q: Did Roderick Legaspi do anything to you when you reached the river?

A: Yes sir.

Q: What did Roderick Legaspi do to you?

A: He removed my clothes sir.

Q: How about your panty did he also remove it?

A: Yes sir.

Q: How about Roderick Legaspi did he also remove his pants?

A: Yes sir.