

EN BANC**[G.R. No. 142930, March 28, 2003]****THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. KAKINGCIO CAÑETE, APPELLANT.****D E C I S I O N****CALLEJO, SR., J.:**

Before the Court on automatic review is the Decision^[1] of the Regional Trial Court of Leyte, Branch 36, in Criminal Case No. 2523, convicting appellant of rape, imposing on him the death penalty and ordering him to pay damages to the victim in the amount of P50,000.

Evidence of the Prosecution

The spouses ██████████ and ██████████ had three children, one of whom was AAA, who was born on March 24, 1983. In 1986, the spouses decided to live separately. ██████████ resided in Pook West, Cubala, Biliran, with some of her children by ██████████. The latter decided to live in Basey, Samar, and brought AAA with him. Thereafter, ██████████ decided to live with his older brother, Kakingcio Cañete, and the latter's common-law wife, ██████████, whom AAA called Yaya ██████████, and their two children, five and four years old, respectively, in Barangay ██████████. After some years, ██████████ and AAA decided to return to and live in Basey, Samar. In the meantime, ██████████ became blind and a paralytic. In January 1996, Kakingcio had ██████████ and AAA fetched from Basey, Samar, and brought to Barangay ██████████, to live with him and his family. By then, AAA was already twelve years old. She noticed that her uncle Kakingcio was nice and amiable to her.

On February 1, 1996, ██████████ visited her daughter in Montebello, Kananga, Leyte, leaving behind Kakingcio and their two young children and ██████████ and AAA. At about 8:00 p.m., AAA was already asleep. ██████████ was sleeping near her feet. The house was dark. Momentarily, AAA was awakened when she felt someone caressing her. When she opened her eyes, she saw her uncle Kakingcio who was wearing a pair of short pants but naked from waist up. He was beside her with his left palm touching her forehead, down to her face, hand and feet. She could smell liquor from his breath. He poked an 8-inch long knife on her neck and whispered to her: "Ma, don't tell your yaya because I will do something to you." Kakingcio then removed his short pants, lifted her skirt and pulled down her panties. He threatened to kill her if she made a sound. AAA was terrified. Kakingcio then inserted his private organ into AAA's vagina and made a *push and pull* movement of his body. AAA felt pain in her private part and could do nothing but cry as Kakingcio ravished her. In the process, AAA lost consciousness. When she regained consciousness, it was already 6:00 in the morning of February 2, 1996. She was weak and could hardly stand up. She noticed blood in her vagina. By then, Kakingcio had already left the house. AAA

could do nothing but cry.

Kakingcio arrived back home after lunch time. AAA hid from her uncle.

On February 3, 1996, at 8:00 in the evening, AAA was asleep in the sala of their house. She was awakened when she felt her pants being pulled down. She was aghast when she saw Kakingcio beside her pulling down her pants. She resisted and ran out of the house to escape from Kakingcio. She rushed to the house of a neighbor *Ka Caring* to whom AAA revealed that her uncle raped her and that he was about to rape her again. Caring advised AAA not to return to their house. AAA slept in the house of Caring. AAA returned to their house the next day, February 4, 1996. By then, Kakingcio was no longer in the house.

On February 5, 1996, ██████ went up the hill to gather camote tops. She was then armed with a bolo. AAA followed ██████ to the hills and revealed to her that Kakingcio raped her on February 1, 1996. ██████ was livid with rage. She rushed back to the house and confronted Kakingcio with the charge of AAA. ██████ and Kakingcio quarreled. She berated him for having taken advantage of his own flesh and blood. She told him to leave the house. Kakingcio agreed on the condition that he would bring his personal belongings with him. After Kakingcio left, ██████ accompanied AAA to the barangay captain and complained against Kakingcio. The Barangay Captain wrote a letter to the local police authorities requesting assistance to ██████ and AAA. On February 9, 1996, Dra. Bibiana A. Cardente, the Municipal Health Officer of ██████, examined AAA. The doctor prepared and signed a medico-legal certificate on her examination of AAA which contains her findings:

“Physical Examination Findings:

Breast: normal, no abrasions, no lacerations, no hematoma

Abdomen: normal

Extremities: normal

Pelvic Examination: scanty pubic hair noted

External Genitalia: grossly normal

Internal & Speculum Examination Findings:

Introitus: non-parous, admits 2 fingers with slight difficulty

Cervix: pinkish, soft hymenal healed old lacerations at 6 o'clock and 9 o'clock

Discharges: scanty brownish discharges

Uterus: small

Adnexa: negative for masses and tenderness”^[2]

AAA was entrusted to the Lingap Center in Pawing Palo, Leyte.

On April 26, 1996, an Information was filed with the Regional Trial Court of Leyte, Branch 36, charging Kakingcio with rape, thus:

“That on or about the 1st day of February, 1996, in the municipality of ██████, Province of ██████, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent and with lewd designs and by use of force and intimidation then armed with the short bladed weapon, did then and there wilfully, unlawfully and feloniously have carnal knowledge with AAA, a minor (12 years old) against her will to her damage and prejudice.

CONTRARY TO LAW.^[3]

When arraigned on September 18, 1996, Kakingcio, assisted by counsel, pleaded not guilty to the crime charged.

When he testified, Kakingcio denied having sexually assaulted AAA. He interposed the defense of alibi. He claimed that he was a farmer. He planted root crops such as banana. On February 1, 1996, he went to the house of Romulo Lukaba located at Barangay [REDACTED], about three kilometers from his house, for the purpose of accompanying and helping Rolly Lukaba, the son of Romulo, gather coconuts in the coconut plantation of Romulo in the mountains. It took Kakingcio thirty minutes to reach the place. At about 9:00 in the evening, Kakingcio, Rolly and Romulo drank tuba. By 10:00 in the evening, Rolly and Kakingcio went to sleep. Romulo, however, left the two. The next day, Rolly and Kakingcio went back to the mountains and gathered coconuts.

Kakingcio returned to their house on February 7, 1996.

Kakingcio testified that he was not aware of any reason why his wife and AAA would charge him with rape.

On February 4, 2000, the trial court rendered a decision finding Kakingcio guilty beyond reasonable doubt of rape and imposing on him the penalty of death in view of the presence of the special qualifying circumstance of the minority of private complainant AAA and her relationship to Kakingcio and the special aggravating circumstance of use of a deadly weapon and without any mitigating circumstance in the commission of the crime.

In his appellant's brief, appellant Kakingcio assails the decision of the trial court contending that:

I

THE TRIAL COURT ERRED IN PARTICIPATING DIRECTLY AND ACTIVELY IN THE PRESENTATION AND RECEPTION OF THE PROSECUTION'S EVIDENCE THEREBY FAILING TO UPHOLD THE "COLD NEUTRALITY OF AN IMPARTIAL JUDGE."

II

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF RAPE DESPITE WANT OF CLEAR, POSITIVE AND CONVINCING IDENTIFICATION.

III

THE TRIAL COURT ERRED IN GIVING UNDUE WEIGHT AND CREDENCE TO THE INCREDIBLE TESTIMONY OF THE PRIVATE COMPLAINANT AND IN DISREGARDING THE EVIDENCE ADDUCED BY THE DEFENSE.

IV

ON THE ASSUMPTION HOWEVER THAT THE ACCUSED-APPELLANT IS GUILTY OF RAPE, THE TRIAL COURT ERRED IN IMPOSING UPON HIM THE PENALTY OF CAPITAL PUNISHMENT DESPITE THE FACT THAT THE QUALIFYING CIRCUMSTANCE OF RELATIONSHIP WAS NOT ALLEGED IN THE INFORMATION, HENCE, THE APPROPRIATE PENALTY SHOULD ONLY BE RECLUSION PERPETUA.^[4]

On the first three assignments of errors, the appellant avers that the prosecution had a difficulty proving that the appellant raped the private complainant in light of her testimony that when the appellant mounted her, he still had his short pants on. When the prosecution tried to elicit from the offended party how appellant's penis could have been inserted into her vagina with his pants still on and the appellant's counsel objected to the question, the presiding judge himself took the cudgels for the prosecution and propounded questions on the private complainant. Worse, the presiding judge posed leading questions to the private complainant. The presiding judge was biased and partial to the prosecution. To buttress his contention, the appellant's counsel cited a portion of the transcript of the stenographic notes taken during the trial on September 17, 1997:12345

PROS. PERIDA:

Q So, after he laid himself over you with his trouser what else happened?

A His penis was inserted into my vagina, sir.

Q Where did he let his penis exit considering that he is then wearing a short pants?

ATTY. DILOY:

Objection your Honor! It is leading.

COURT:

Q How did he manage to have his penis inserted to your vagina?

A No, sir, because when he placed himself on top of me he pulled down his shorts and thereafter he inserted his penis into my vagina.

Q At that time what was your apparel going up from your vagina?

A I was wearing then a t-shirt and skirt, sir.

Q About your skirt?

A He pulled up my skirt, sir.

Q What about your t-shirt?

A He did not do anything about my t-shirt.

Q After placing his penis on your vagina, what else transpired?

A He keeps on kissing me sir.

Q At that time he keeps on kissing you, where was his penis

in relation to your vagina?
A It was inside my vagina sir.^[5]

The appellant further stresses that when AAA was raped it was nighttime and the place where she was molested was dark. She could not have recognized and identified the appellant as her rapist. Furthermore, AAA failed to report the rape immediately to the police authorities.

The Court does not agree with the appellant's submission. In *People v. Ancheta*,^[6] this Court emphasized that a presiding judge enjoys a great deal of latitude in examining witnesses within the course of evidentiary rules. The presiding judge should see to it that a testimony should not be incomplete or obscure. After all, the judge is the arbiter and he must be in a position to satisfy himself as to the respective claims of the parties in the criminal proceedings. In *People v. Zheng Bai Hui*,^[7] this Court reiterated that:

In any case, a severe examination by a trial judge of some of the witness for the defense in an effort to develop the truth and to get at the real facts affords no justification for a charge that he has assisted the prosecution with an evident desire to secure a conviction, or that he had intimidated the witnesses for the defense. The trial judge must be accorded a reasonable leeway in putting such questions to witnesses as may be essential to elicit relevant facts to make the record speak the truth. Trial judges in this jurisdiction are judges of both the law and the facts, and they would be negligent in the performance of their duties if they permitted a miscarriage of justice as a result of a failure to propound a proper question to a witness which might develop some material bearing upon the outcome. In the exercise of sound discretion, he may put such question to the witness as will enable him to formulate a sound opinion as to the ability or the willingness of the witness to tell the truth. A judge may examine or cross-examine a witness. He may propound clarificatory questions to test the credibility of the witness and to extract the truth. He may seek to draw out relevant and material testimony though that testimony may tend to support or rebut the position taken by one or the other party. It cannot be taken against him if the clarificatory questions he propounds happen to reveal certain truths which tend to destroy the theory of one party.

In this case, the relevant direct-examination questions posed by the public prosecutor of the private complainant and her corresponding answers, the objections thereto by the appellant's counsel and the questions propounded by the trial court were as follows:

Q After taking off your panty or underware (*sic*) what else transpired?
A He placed himself on top of me sir.

Q Please describe to us your uncle at that moment when he placed himself over your body!
A He placed himself on top of me in a prone position.

Q What was he wearing at that time when he was carressing (*sic*) your face down to your arm?