

## SECOND DIVISION

[ G.R. No. 127878, July 25, 2003 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MAURO DE JESUS Y MAGNAYE, ACCUSED-APPELLANT.**

### DECISION

**AUSTRIA-MARTINEZ, J.:**

Before us is an appeal from the decision,<sup>[1]</sup> dated September 19, 1996, of the Regional Trial Court (Branch 26), Manila, convicting accused Mauro de Jesus y Magnaye of statutory rape in Criminal Case No. 94-138700, sentencing him to suffer the penalty of *reclusion perpetua* and ordering him to indemnify the private complainant in the amount of P50,000.00 by way of moral damages, P25,000.00 by way of exemplary damages, and to pay the costs of the suit.

Based on the sworn complaint filed by ██████████ and the sworn statement of her daughter, AAA,<sup>[2]</sup> assisted by her mother, both dated August 16, 1994, an Information was filed accusing Mauro de Jesus y Magnaye of raping his daughter, committed as follows:

That in or about July, 1990 and subsequently thereafter, in the City of Manila, Philippines, the said accused, father of AAA, with lewd design, did then and there willfully, unlawfully and feloniously have carnal knowledge of said AAA, five (5) years old, against her will and consent.

CONTRARY TO LAW.<sup>[3]</sup>

On November 21, 1994, accused was arraigned and pleaded not guilty. Thereafter, trial ensued.

The prosecution presented its witnesses, namely: AAA, P/Insp. Manuel Noroña, SPO3 Ricardo Ocampo, ██████████, and Dr. Ma. Cristina Freyra.

AAA testified: She is five years old. Sometime in the month of July 1990, when she was two years old,<sup>[4]</sup> her father placed his finger in her vagina while giving her a bath. Still not content, he put his penis in her vagina on several occasions while she was sleeping in their room. He usually did these when her mother was not home. Even if she felt pain in her private part, she did not confide to her mother for fear that her father would spank her.<sup>[5]</sup>

██████████, mother of AAA, testified that she and her common-law husband Mauro have five daughters, namely: ██████████,<sup>[6]</sup> AAA, ██████████,<sup>[7]</sup> ██████████, and ██████████. According to her, she repeatedly observed Mauro insert his finger in the sex organ of all her daughters at night, as she had been awakened by the cries of the children in the middle of the night. She had confronted Mauro about

the incidents but the latter would refuse to listen. Instead, they would end up quarreling. Because Mauro alone earns for the family as refrigerator technician, he would always threaten her and say that for every mouth he would feed there should be something in exchange. She tried to keep her silence because she would like her family to remain intact and also in the hope that Mauro would change. When things went serious that she could no longer bear it, she reported the matter to the barangay chairman on August 1, 1994. On the same day, she brought her daughters, except [REDACTED], to the Philippine General Hospital (PGH) to have them examined. However, the hospital advised her to bring them to the National Bureau of Investigation (NBI) instead. The NBI findings revealed a negative result. Because she knew that Mauro had relatives at the NBI, she did not believe the results. She knew that Mauro did something to her daughters. On advice of her neighbor, *Aling Lingling*,<sup>[8]</sup> she went to the Department of Interior and Local Government (DILG) which referred her to the Criminal Investigation Unit of the Philippine National Police (PNP).<sup>[9]</sup>

On August 16, 1994, AAA was taken to the PNP Crime Laboratory where she was examined by Dr. Ma. Cristina B. Freyra. Dr. Freyra issued the following report:

**FINDINGS:**

**GENERAL AND EXTRAGENITAL:**

Fairly developed, fairly nourished and coherent female child. Breasts are undeveloped. Abdomen is flat and soft.

**GENITAL:**

There is absence of pubic hair. Labia majora are full, convex and coaptated with the pinkish brown labia minora presenting in between. On separating the same disclosed an elastic, membrane-type hymen with shallow healed laceration at 3 o'clock. External vaginal orifice admits the tip of the examining index finger.

**CONCLUSION:**

Subject is in non-virgin state physically.

There are no external signs of application of any form of violence.

**REMARKS:**

Vaginal and peri-urethral smears are negative for gram-negative diplococci and for spermatozoa.<sup>[10]</sup>

On the basis of the letter-indorsement from DILG Undersecretary Alexander P. Aguirre,<sup>[11]</sup> an investigation was conducted by Team 3 of the Police Criminal Investigation Unit (PCIU) of the PNP Criminal Investigation Service Command (CISC) stationed at Camp Crame, Quezon City. On August 17, 1994, the team went to the residence of Mauro at 2716 Old Panaderos St., Sta. Ana, Manila and arrested him at around 1:15 o'clock in the afternoon. Mauro was immediately brought to the headquarters of the PCIU, CISC for investigation and proper disposition.<sup>[12]</sup>

On the basis of the foregoing evidence, the prosecution rested its case.

The defense presented as its witnesses, herein appellant Mauro de Jesus, his father Bayani de Jesus and Dr. Annabelle L. Soliman.

Appellant denied the allegations against him. According to him, he met ██████ in 1985 while he was working as receiving clerk and rewinder in the Technical House in San Marcelino, Manila while she was working in a nearby beer house. They started living together in 1986 and five daughters were born to them, namely, ██████, ██████, AAA, ██████, ██████, and ██████. He was later forced to leave work because of his troubled relationship with ██████. He testified that when ██████ has no money, she becomes irritable, starts a quarrel with him, and even beats and maltreats their children. In fact, in one of her bouts of irritability and bursts of anger, she quarreled with him, got a knife and slashed his left forearm. On August 1, 1994, he said his wife caused him to be incarcerated in Precinct 6 of Manila on charges of raping his four daughters. He stayed in prison for four days but was later released on August 4, 1994 because the NBI findings showed negative results of rape. However, on August 16, 1994, he was again arrested and detained on the same grounds. He vehemently denied that he ever sexually abused any of his children and claimed that the charges are mere fabrications of his wife. Further, he said he loves his daughters and the only reason AAA testified against him was because her mother threatened her.<sup>[13]</sup>

Bayani de Jesus, father of appellant, corroborated the testimony of his son. According to him, ██████ is his son's common-law spouse since 1985. They both lived with him in Sta. Ana, Manila. He testified that his son and ██████ are not in good terms because the latter often exhibits abnormalities. ██████ beats her children without cause, using belt, wood, or anything she can take hold of.<sup>[14]</sup>

Dr. Annabelle L. Soliman, the NBI Medico-Legal Officer who first examined AAA on August 1, 1994, testified that she did not find any injury on the latter and that penetration was not possible since her hymen was intact. Her medical report states in pertinent parts, thus:

GENERAL PHYSICAL EXAMINATION:

. . .

Fairly nourished, normally developed, conscious, coherent, cooperative, ambulatory subject.

Breasts, infantile. Areola, brown, measures 1.0 cm. in diameter. Nipples, brown, flat, measures 0.2 cm. in diameter.

No extragenital physical injury noted.

GENITAL EXAMINATION:

\* \* \* \* \*

Pubic hair, no growth. Labia majora and minora, coaptated. Fourchette,

tense. Vestibular mucosa, pinkish. Hymen, short, thin, intact. Hymenal orifice measures 0.4 cm. in diameter. Vaginal walls and Rugosities cannot be reached by the examining finger.

\* \* \* \* \*

#### CONCLUSIONS:

1. No evident sign of extragenital physical injury noted on the body of the subject at the time of examination.
2. Hymen, intact and its orifice small (0.4 cm. in diameter) as to preclude complete penetration by an average-sized, adult male organ in full erection without producing genital injury.<sup>[15]</sup>

On September 19, 1996, the trial court rendered a decision<sup>[16]</sup> finding appellant guilty and sentencing him to *reclusion perpetua*. The dispositive portion of the decision reads:

WHEREFORE, PREMISES CONSIDERED, this Court finds the accused, MAURO DE JESUS y MAGNAYE, GUILTY beyond reasonable doubt of the crime of statutory rape as defined and penalized under Article 335 of the Revised Penal Code and hereby sentences him, to suffer the penalty of Reclusion Perpetua plus the accessory penalty provided by law and to indemnify private complainant AAA the sum of P50,000.00 by way of moral damages, the sum of P25,000.00 by way of exemplary damages, and to pay the cost of the suit.

As the accused is a detention prisoner, he is credited with the full length of time he was under detention.

SO ORDERED.<sup>[17]</sup>

Hence, this appeal. Appellant assails the judgment of conviction, contending that -

1. THE COURT `A QUO' COMMITTED A GRAVE ABUSE OF DISCRETION IN ITS APPRECIATION OF THE EVIDENCE PRESENTED BY BOTH SIDES, FAVORING THE PROSECUTION'S AND, PALPABLY SUPPLANTING ITS OWN PRE-CONCEPTIONS OVER THAT OF THE DEFENSE.
2. CONSIDERING THE HIGHLY DOUBTFUL TESTIMONIES OF THE COMPLAINANT AND HER MOTHER, WHICH TESTIMONIES HAVE SERIOUS INCONSISTENCIES SHARPLY CONTRADICTED BY THE PHYSICAL EVIDENCE ESTABLISHED DURING THE FIRST MEDICAL EXAMINATION OF THE COMPLAINANT BY THE NBI, BUT WHICH PHYSICAL EVIDENCE WAS INEXPLAINABLY DISREGARDED BY THE COURT `A QUO', THE CONVICTION OF THE ACCUSED IS UNJUSTIFIED AND MUST BE REVERSED.<sup>[18]</sup>

In rape cases, the following principles have been formulated to guide the courts in the decision of these cases: (1) it is difficult to prove rape, but even more difficult for the person accused, though innocent, to disprove it; (2) in view of the intrinsic

nature of the crime of rape, where only two persons are usually involved, the testimony of the complainant is scrutinized with extreme caution; and (3) the evidence of the prosecution stands or falls on its own merits and cannot be allowed to draw strength from the weakness of the defense.<sup>[19]</sup>

Based on a careful study of the records of the instant case, the Court finds the evidence presented by the prosecution insufficient to establish the guilt of appellant for the crime of statutory rape.

The appellant in this case stands charged of raping his own daughter. The victim, AAA, testified that she was around two years old when her father allegedly abused her in July, 1990. To be exact, as declared by her mother, ██████ in her Sworn Statement that AAA was born on October 31, 1988,<sup>[20]</sup> she was 1 year and 9 months old. On the date she testified, that is, on November 29, 1994, AAA had just turned six years old. How she is able to recall an incident that happened four years before she testified and relate in court her experience when she was barely two years old is something that is quite perplexing to the mind of the Court.

It is well-established that any child, regardless of age, can be a competent witness if he or she can perceive, and perceiving, can make known his or her perception to others, that is, he or she is capable of relating truthfully facts for which the child is examined.<sup>[21]</sup> The requirements of a child's competence as a witness are: (a) capacity of observation, (b) capacity of recollection and (c) capacity of communication.<sup>[22]</sup> A child may be a competent witness where he or she has sufficient capacity to understand the solemnity of an oath and to comprehend the obligation it imposes, and where he or she has sufficient intelligence to receive just impressions as to the facts of which the child is to testify and relate them correctly, although he or she is very young.<sup>[23]</sup>

This Court finds cogent reason to re-evaluate the trial court's assessment regarding the credibility of AAA as a witness. We entertain serious doubts as to the competence of the six-year old AAA to testify on the incident that happened over four years past when she was less than two years old. She testified on direct examination that her father inserted his finger as well as his penis in her vagina several times when, in fact, on cross-examination, she testified that she did not know what *ari* means:

Q In July 1990 do you remember who you were with?

A My father.

Q And the whole time that you are with your father in 1990, do you remember if there were still other people inside your house?

A Yes, sir.

Q And who were they?

A My sisters.

Q When you said your father was inserting his penis into your vagina while you were sleeping, your sisters were also there, is that correct?

A Yes, sir.