

## EN BANC

**[ G. R. No. 147662-63, August 15, 2003 ]**

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. FREDDIE FONTANILLA, APPELLANT.**

### D E C I S I O N

**CARPIO MORALES, J.:**

On December 19, 2000, in Criminal Case Nos. U-10628 and U-10629, the Regional Trial Court of Urdaneta City, Branch 46, found appellant Freddie Fontanilla guilty of rape and imposed upon him the penalty of death.

The inculpatory portions of the two Informations<sup>[1]</sup> filed against appellant in June 2000 read as follows:

Criminal Case No. U-10628

That on or sometime in the month of November, 1999, at Brgy. [REDACTED], Laoac, Pangasinan, and within the jurisdiction of this Honorable Court, the above-named accused, a stepfather and relative by affinity within the third civil degree of herein complainant, AAA, a minor, 14 years old, through force, threats and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with said complainant, against her will, to her damage and prejudice.

CONTRARY to Article 335, Revised Penal Code, as amended by Rep. Act Nos. 7659 and 8353.

Criminal Case No. U-10629

That on or sometime in January, 2000 at Brgy. [REDACTED], Laoac, Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused, a stepfather and relative by affinity within the third civil degree of herein complainant AAA, a minor, 14 years old, through force, threats and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with said complainant, against her will, to her damage and prejudice.

CONTRARY to Art. 335, Revised Penal Code, as amended by Rep. Act Nos. 7659 and 8353.

When arraigned on July 5, 2000,<sup>[2]</sup> appellant, duly assisted by counsel, pleaded not guilty to the charges, whereupon joint trial commenced.

Culled from the records of the case are the following facts established by the

prosecution:

Private complainant AAA was born in Manaoag, Pangasinan on November 30, 1984<sup>[3]</sup>.

On January 21, 1986, [REDACTED], who claimed to be AAA's mother, albeit the registered name of her mother is [REDACTED]'s sister [REDACTED], married appellant.<sup>[4]</sup> The couple begot four children.<sup>[5]</sup> AAA stayed with the couple and the four children.

Sometime in November 1999, after watching television, the then 14-year old AAA went to the bedroom which she shared with her family to retire for the evening. Her "mother" not having arrived,<sup>[6]</sup> she did not lock the door to the room. While she was asleep as were her "half-siblings," she was roused when appellant approached her. As she inquired from him why, he proceeded to remove her short pants and panty after which he removed his own short pants and underwear. He then went on top of her and held his penis and inserted it into her vagina which caused her pain, he making push and pull movements.<sup>[7]</sup> She attempted to push him away but to no avail as he firmly held her hands. After sometime, sensing that somebody arrived in the house, he put on his underwear and short pants and left. As she was crying, she too put on her short pants and panty. Appellant having threatened to kill her "mother" should she divulge what he did to her,<sup>[8]</sup> she did not report it to anybody.

Sometime in the second week of January 2000, at nighttime, again while her "half-siblings," the eldest of which was 10 years old<sup>[9]</sup> were sleeping, AAA sensed that appellant was "at [her] back." Telling her to sleep, he proceeded to remove his short pants and underwear and then removed her short pants and panty and inserted his penis into her vagina.<sup>[10]</sup> Her efforts to push him away were fruitless as he was too strong. After making push and pull movements, appellant ejaculated.<sup>[11]</sup> He then put on his underwear and short pants and was about to sleep beside her half-siblings when somebody knocked on their bedroom door. Appellant thereupon checked who it was and it turned out to be AAA's "mother" [REDACTED], who "came to know what he did to [her]"<sup>[12]</sup> as she ([REDACTED]) "was peeping at the window of our room" when he was "doing the act"<sup>[13]</sup> Her mother thus shouted at him and told AAA to sleep with her.

On April 14, 2000, AAA, accompanied by [REDACTED], went to the Laoac, Pangasinan Police Station where she executed a sworn statement<sup>[14]</sup> reporting the rape incidents. On the same day, they proceeded to the Provincial Prosecutor's Office at Urdaneta, Pangasinan where AAA filed the criminal complaints of even date against appellant. Still on the same day, they went to the Don Amadeo J. Perez, Sr. Memorial General Hospital in Urdaneta where Dr. Bernardo C. Macaraeg conducted a physical examination on her which yielded the following results:

External Genitalia - nulliparous introitus, no abrasions, no lacerations.

Internal Genitalia - Hymen with healed superficial lacerations at 5, 7 and 11 o'clock positions.<sup>[15]</sup>

In mid 2000, AAA, on the advice of [REDACTED] "because of the gossip [going on] in [the] place,"<sup>[16]</sup> left the family residence for Marikina where she has since been living with an aunt.

Appellant denied the accusations. [REDACTED] in fact testified for appellant, she denying having witnessed the alleged rape on the second week of January 2000 and even proffering that on the dates of the alleged incidents, he was not in their house.

The trial court found appellant guilty as charged in its decision on review, the *fallo* of which reads *verbatim* as follows:

WHEREFORE, JUDGMENT is hereby rendered:

1. In CRIM. CASE NO. U-10628, CONVICTING FREDDIE FONTANILLA beyond reasonable doubt of the crime of Rape and the Court sentences him to suffer the penalty of DEATH to be implemented in the manner as provided for by law; to indemnify AAA the sum of P75,000.00 as moral damages and the further sum of P50,000.00 as exemplary damages;
2. In CRIM. CASE NO. U-10629, CONVICTING FREDDIE FONTANILLA beyond reasonable doubt of the crime of Rape and the Court sentences him to suffer the penalty of DEATH to be implemented in the manner as provided for by law; to indemnify AAA the sum of P75,000.00 as moral damages and the further sum of P50,000.00 as exemplary damages.

The Clerk of Court is hereby ordered to prepare the mitimus and to transmit the entire records of Crim. Cases Nos. U-10628 and U-10629 to the Honorable Supreme Court of the Philippines for automatic review.

The Jail Warden, Bureau of Jail Management and Penology (BJMP), Urdaneta District Jail, Urdaneta City, is hereby ordered to deliver the living person of Freddie Fontanilla to the National Bilibid Prisons, Muntinlupa City, immediately upon receipt of this Decision.

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

Appellant filed on February 8, 2001 a Motion for New Trial and To Defer Transfer of Accused to the National Penitentiary,<sup>[18]</sup> alleging that AAA had, a few days after the promulgation of the decision of the trial court, executed an affidavit of recantation<sup>[19]</sup> wherein she stated that appellant never raped her and that all the allegations she made against him were not true, she having been "only coached and taught what to state and say" in her sworn statement and during the trial.

By Order of February 19, 2001,<sup>[20]</sup> the trial court denied appellant's motion.

Hence, the automatic review of the cases pursuant to Article 47 of the Revised Penal Code, as amended.

Appellant maintains his innocence and assigns the following errors to the trial court:

- I. THE COURT A QUO GRAVELY ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT FOR THE CRIME CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT.
- II. THE COURT A QUO GRAVELY ERRED IN GIVING FAITH AND CREDENCE TO THE INCREDULOUS TESTIMONY OF THE PRIVATE COMPLAINANT.
- III. THE COURT A QUO GRAVELY ERRED IN NOT CONSIDERING THE AFFIDAVIT OF RECANTATION SUBMITTED BY THE PRIVATE COMPLAINANT.<sup>[21]</sup>

Appellant, casting doubt on the motive of AAA in filing the cases against him, contends that her testimony reveals that even as a child, she deeply resented his relationship with [REDACTED], and that she disliked him as he was very strict with her and would not give her permission whenever she wanted to go out with her friends.

Appellant surmises that AAA wanted [REDACTED] to leave him and when she did not have her way, she left Laoac after fabricating the rape charges against him. He surmises too that AAA was prevailed upon by her maternal uncle, Benjamin Ramos, to file the charges as he (appellant) did not allow her to go with him (Benjamin) to a beach when the latter invited her to go with him.<sup>[22]</sup>

Assailing the credibility of AAA's testimony, appellant submits that it was impossible for her "half-siblings" to have remained asleep during the alleged rape incidents despite the commotion and outcry she claimed to have made.<sup>[23]</sup>

And appellant harps on the testimony of [REDACTED] that she did not see appellant having sexual intercourse with AAA<sup>[24]</sup> on the second week of January 2000.

Finally, appellant faults the trial court for denying his motion for new trial.

After a considered review of the records of the cases, this Court affirms appellant's conviction.

Appellant's bare denial, juxtaposed with AAA's clear and categorical account of the incidents, which account is replete with details that could have only been narrated by a victim thereof, deserves scant consideration. As did the trial court, this Court finds her testimony unavailing.<sup>[25]</sup> Thus she declared:

Q: On that particular month of November 1999 while watching television was there an unusual thing that happened?

A: There was, sir.

Q: What is that?

A: When I switch (sic) off the television I went to our room but my mother was not around she went out with her sister and Freddie Fontanilla arrived drunk, sir.

Q: You said you went to your room, do you have companions

when you said you went to your room?

A: I have, sir.

Q: Who?

A: My four siblings, sir.

x x x

Q: Your four (4) siblings what were they doing then?

A: They were sleeping, sir.

Q: And when you went inside your room what did you do then?

A: I arranged my things then I intend (sic) to sleep, sir.

Q: Then when you intend (sic) to sleep what happened?

A: When I was already sleeping all of a sudden someone entered, my stepfather entered my room, sir.

Q: By the way, will you describe that room, is there a lock?

A: There is a lock but we did not lock, because my mother has not yet arrived, sir.

Q: What happened next when Freddie Fontanilla suddenly entered your room?

A: When Freddie Fontanilla entered the room he went near me and I asked him "why papa" and he suddenly removed my shorts, sir.

Q: What were you wearing that time?

A: I was wearing shorts and blue t-shirt, sir.

Q: After he removed your shorts what else did he do if any?

A: He went on top of me and he placed his organ to my organ, sir.

Q: Before that, what was your father wearing that time?

A: He was wearing shortpants, sir.

Q: What did he do with that (sic) shortpants?

A: He removed his shorts, sir.

Court: You mean you were not wearing panty?