

## SECOND DIVISION

[ G.R. No. 142740, August 06, 2003 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ROBERTO TAMPOS Y AGUSTIN, ACCUSED-APPELLANT.**

### D E C I S I O N

**QUISUMBING, J.:**

On appeal is the decision<sup>[1]</sup> dated January 3, 2000 of the Regional Trial Court of Davao City, Branch 17, in Criminal Case No. 42,631-99. Appellant ROBERTO TAMPOS Y AGUSTIN was convicted of statutory rape and sentenced to suffer the penalty of *reclusion perpetua*.

Appellant was charged in an information<sup>[2]</sup> containing the following allegations:

The undersigned, at the instance of the offended party AAA, whose affidavit hereto attached and form part of this Information accuses the above-named accused of the crime of STATUTORY RAPE, under Art. 335, Par. 3 of the Revised Penal Code in relation to R.A. 7610 and R.A. 7659 and R.A. 8313 it being a heinous offense, committed as follows:

That on or about February 18, 1999, in the City of [REDACTED], Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge with the complainant AAA, who is six (6) years old, against her will.

CONTRARY TO LAW.

Assisted by counsel on arraignment, appellant pleaded not guilty to the charge. At the trial, the prosecution presented five witnesses, namely private complainant AAA, her mother [REDACTED], security guard George Amigable, Ms. Benaranda V. Orosco, and Dr. Samuel Cruz.

Complainant AAA<sup>[3]</sup> testified<sup>[4]</sup> that on February 18, 1999, while on her way to the house of an Uncle George, she noticed appellant Roberto Tampos staring at her. She knew Tampos and even knew where he lived.<sup>[5]</sup> Appellant suddenly pulled her by the right wrist and, using his two hands, lifted and carried her. Appellant brought her to an unlighted area at the back of Almendras Gym where a junked ambulance<sup>[6]</sup> was parked. Appellant then forced complainant to lie on the plywood flooring and proceeded to remove her short pants. She was not wearing any panty at that time. Appellant then removed his own short pants and brief. It was then that she was raped.<sup>[7]</sup> While placing himself on top of AAA, appellant's erect penis was placed in her vagina. Complainant illustrated this by thrusting her right forefinger

towards a circle formed by the fingers of her other hand.<sup>[8]</sup>

According to AAA, appellant covered her mouth to prevent her from shouting. He warned her not to tell her parents about what he did, otherwise, appellant would kill her.<sup>[9]</sup> Appellant then stood up to urinate and it was then that the guard on duty at the Almendras gym apprehended him. At first, AAA did not tell her mother about what happened but eventually had to since her Auntie Betty and two of the latter's children saw her and they had already related the incident to her mother. Her mother accompanied her to the police where she executed an affidavit detailing what had happened. They also went to the doctor where AAA submitted herself to a medical examination.

During cross-examination, complainant testified that appellant's penis did not penetrate her organ.<sup>[10]</sup> On re-direct, however, she said that there was actual contact of the penis and her vagina.<sup>[11]</sup> When asked to point to the part of her body that was touched by the penis, complainant pointed to a part a little above the vagina.

On query by the court, however, AAA clarified that appellant's organ did not "pass" her vagina but only its lower portion. She stated that it was "not on the middle but on the lower portion" or on the lower tip of the vagina.<sup>[12]</sup>

GEORGE AMIGABLE<sup>[13]</sup> was the security guard on duty at the Almendras Gym when the incident occurred. He testified that on February 18, 1999, at past 7:00 p.m., while he was roving around the compound of Almendras Gym, two women reported to him that a child was being raped in the junked ambulance. He rushed to said place and found appellant and complainant both standing up. The witness saw appellant putting his shirt on.<sup>[14]</sup> He then asked the appellant and the child their names which they promptly gave him. The girl appeared to be normal but then she cried when she told him that appellant had raped her.<sup>[15]</sup> He held appellant at once, to prevent him from running away. The other security guard on duty assisted him. He turned over custody of appellant to PO3 Romeo Autor,<sup>[16]</sup> a policeman living nearby. Thereafter, the girl's parents arrived.

Complainant's mother, ██████████<sup>[17]</sup> ██████████<sup>[18]</sup> testified that her daughter was only six years and nine months at the time of the incident. She presented AAA's Birth Certificate,<sup>[19]</sup> indicating that the child was born on July 4, 1992. Mrs. ██████████ knew appellant because he had been a neighbor for three months.<sup>[20]</sup> The children in the area were likewise familiar with appellant since he used to hang out in the vicinity of the chapel where the children usually played.<sup>[21]</sup>

A witness told Mrs. ██████████ about the rape. Later on, AAA also told her about it.<sup>[22]</sup> The child was crying while relating to her what she suffered at the hands of appellant.<sup>[23]</sup> Mrs. ██████████ then assisted her daughter in filing a complaint with the police and accompanied her to the doctor for physical examination.

BENARANDA<sup>[24]</sup> V. OROSCO<sup>[25]</sup> also testified for the prosecution. On the date and time in question, she was asked by one Beatriz<sup>[26]</sup> Danuco to accompany the latter

to the Almendras Gym. Betty said her son Marvin told her there was a little girl at the gym and a man was doing something bad to her.<sup>[27]</sup> Upon reaching the back of the gym, and from a distance of about 4-5 meters, they saw appellant Roberto Tampos. The witness demonstrated how appellant was bending up and down.<sup>[28]</sup> She did not actually see the child at that time because it was dark.<sup>[29]</sup> Thereafter, a security guard arrived and she went home. When she returned to the gym, appellant was already being held by the security guard and surrounded by many people. It was only then that she saw AAA.

Dr. SAMUEL CRUZ<sup>[30]</sup> testified that he conducted the physical/medical examination of complainant on February 19, 1999 or a day after the incident. His findings were reduced to writing as follows:

#### GENITAL EXAMINATION

Pubic hair, no growth. Labia majora and minora, gaping. Fourchette, tense. Vestibule, pinkish, smooth. Hymen, thick, tall, intact. Hymenal orifice, annular, 0.5 cm. in diameter. Vaginal walls and rugosities, can't be reached by examining finger.

#### CONCLUSIONS:

- 1.) No evident sign of extragenital physical injuries noted on the body of the subject at the time of examination.
- 2.) Hymen, intact and its orifice, small as to preclude complete penetration by an average-sized male organ in erection without causing hymenal injury.

REMARKS: Semenology: Positive for Spermatozoa<sup>[31]</sup>

According to Dr. Cruz, his findings indicated that no male organ had penetrated the child's vagina, otherwise, hymenal lacerations would have been present.<sup>[32]</sup> However, he stated that this would not negate the possibility of partial penetration or of contact between the penis and the vagina. Further, Dr. Cruz testified that he took a sample from the opening of the vagina by dabbing a cotton swab therein. Upon laboratory examination<sup>[33]</sup> of the sample conducted by a medical technologist, it was found to be positive for spermatozoa.

The lone testimony of the appellant was presented in his defense.

ROBERTO TAMPOS<sup>[34]</sup> testified that he did not know complainant's name, but he recognized her only by face. He admitted that he was with complainant at around 6:00 to 7:00 p.m. of February 18, 1999. <sup>[35]</sup> He saw her playing on the road leading to the back of Almendras Gym at around 6:00 p.m., while he was on his way to the house of his foreman.<sup>[36]</sup> He said he was a bit drunk at the time.<sup>[37]</sup> He brought her to the back of Almendras Gym, made her sit on a plywood near the junk vehicle and gave her P1.00.<sup>[38]</sup> People were passing by at the time. He placed the girl on his lap and in the process touched her side. He admitted that he intended to touch the girl and then masturbate, which was what actually happened. He slipped his penis out at

the side of his brief and shorts. Appellant denied removing AAA's shorts but said he only lowered them.<sup>[39]</sup> He then saw the girl's vagina but denied that he ever touched it. He did not place himself on top of the girl when he masturbated. He only knelt beside her while AAA lay on the plywood. He touched the girl's thigh but not her private parts. As he was ejaculating, he actually touched AAA's hips. He directed his semen above the hips of the girl.<sup>[40]</sup> Nothing more happened after that. He then left the girl behind and went home. However, he was immediately apprehended by the security guard of Almendras Gym, brought to the guard's office, and taken to the barangay captain.

After trial, the RTC rendered its assailed decision, thus:

WHEREFORE, finding the evidence of the prosecution more than sufficient to prove the guilt of accused beyond reasonable doubt of the offense charged, accused ROBERTO TAMPOS is sentenced to suffer a penalty of RECLUSION PERPETUA and to pay the additional amount of P50,000.00 as moral damages to [REDACTED], another amount of P50,000.00 as civil indemnity together with all accessory penalties as provided for by law. (PP vs. Romeo Ambray y Luterio GR 127177 promulgated on February 25, 1999; PP vs. Melanio Bolatete y Melon GR 127570 promulgated on February 25, 1999).

SO ORDERED.<sup>[41]</sup>

Aggrieved, appellant interposed the present appeal, with the following assignment of errors:

## I

THE LOWER COURT ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE NOTWITHSTANDING THE TESTIMONY OF THE CHILD HERSELF THAT THE ACCUSED PENIS (sic) DID NOT GO INSIDE HER VAGINA BUT MERELY ON HER NAVEL, ABOVE HER VAGINA AND THE LOWER PORTION OF HER VAGINA.

## II

THE LOWER COURT ERRED IN NOT GIVING CREDENCE TO THE TESTIMONY OF ACCUSED-APPELLANT THAT HE MERELY MASTURBATED AND THIS FACT IS CONSISTENT WITH THE MEDICAL FINDINGS ON THE PHYSICAL EXAMINATION OF THE GIRL RIGHT AFTER THE INCIDENT AS WELL AS TO THE TESTIMONY OF THE OTHER WITNESSES PRESENTED BY THE PROSECUTION. <sup>[42]</sup>

More specifically, the issues are: (1) whether appellant had "carnal knowledge" of complainant; and (2) whether the penalty imposed on appellant is appropriate.

Appellant is charged of STATUTORY RAPE under paragraph 3 of Article 335 of the Revised Penal Code. The two elements of statutory rape are: (1) that the accused had carnal knowledge of a woman; and (2) that the woman is below 12 years of age.<sup>[43]</sup> Article 335 of the Revised Penal Code is now in Article 266-A, par. 1-d, in view of the amendments introduced by R.A. 8353. Statutory rape is committed by

having carnal knowledge of a woman under par. d, "when the offended party is under 12 years of age."

In this case, the victim's age is undisputed. She is below 12 years old. Her Birth Certificate shows that she was born on July 4, 1992. Thus, on February 18, 1999, AAA was exactly six (6) years, seven (7) months and fourteen (14) days old. Her mother confirmed this in open court. Hence, the issue is whether there is sufficient evidence to prove carnal knowledge between appellant and AAA beyond reasonable doubt.

Appellant submits that, assuming *arguendo* that AAA's testimony were true, he could not be convicted of rape but only acts of lasciviousness. He insists that there was no penetration of the vagina. He points out that the medical findings show that the hymen was intact and, had there been penetration, hymenal lacerations would have been present. Appellant contends that the acts described do not constitute "carnal knowledge" as the essential element of rape. He sticks to his claim that he merely masturbated. He adds that he only held on to the hips of complainant at that time, without touching her private parts.

For the State, the Office of the Solicitor General argues for the affirmation of the trial court's judgment finding appellant guilty of rape. However, the OSG recommends that the penalty of death be imposed on appellant instead of *reclusion perpetua* only.

Considering the evidence on record, we are one with the trial court in giving credence to the testimonies of the complainant and the other prosecution witnesses. The trial court's assessment of the credibility of witnesses is entitled to great respect on appeal, for it had the opportunity to closely observe the witnesses' demeanor and deportment on the witness stand.<sup>[44]</sup> The trial court found that "the complainant acted without malice in reporting the alleged abuses of accused on her person." In contrast, according to the trial court, appellant's "unsubstantiated and self-serving" denial could not hold up against the "positive declaration and frank manner" by which the victim recounted her ordeal.<sup>[45]</sup> A careful scrutiny of the records leads us to the same conclusion, that the prosecution witnesses and their testimonies are logical and more credible than that of the defense. We have no hesitation in rejecting the testimony of the appellant for being less than candid and truthful.

Instructive is complainant's testimony, which we find worth excerpting, to detail what appellant did to her:

#### DIRECT EXAMINATION

X X X

Q: Now, AAA, tell the court, how did he rape you?

A: He placed his organ to me. (witness demonstrating her right forefinger thrusting it towards the circle of her other finger as if penetrating inside).

Q: What was the position of the accused when he inserted his penis to your private part?

A: His penis erected.