

EN BANC

[G.R. No. 146569, October 06, 2003]

**THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JOHN NEQUIA,
APPELLANT.**

DECISION

PER CURIAM:

This is an automatic review of the Decision^[1] of the Regional Trial Court (RTC) of Iloilo City, Branch 23, convicting the appellant of qualified rape, sentencing him to death by lethal injection and directing him to pay the victim AAA, civil indemnity and moral damages.

The Antecedents

On May 10, 1999, an information was filed with the RTC, charging John Nequia with rape. The accusatory portion of the Information reads:

That on or about January 23, 1999, in the Municipality of [REDACTED], Province of [REDACTED], Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with grave abuse of confidence, he, being the stepfather of the victim, with lewd design and by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously succeed in having carnal knowledge of one AAA, a 13 year-old minor, against her will and/or consent.

CONTRARY TO LAW.^[2]

The accused, assisted by counsel, was arraigned on June 21, 1999 and entered a plea of not guilty.

The Case for the Prosecution

During their coverture, [REDACTED] and her live-in partner [REDACTED] had three children, AAA, [REDACTED] and [REDACTED]. AAA, the eldest, was born on February 2, 1986. [REDACTED] eked out a living as a franchise dealer of Avon products.

[REDACTED] and [REDACTED] eventually separated. In March 1995, [REDACTED] and the accused lived as husband and wife in [REDACTED]. The children stayed with them. [REDACTED] and the accused were later married on December 5, 1997.

On December 31, 1995, [REDACTED] was in their house cooking. The accused insinuated that he wanted to have sex with her. [REDACTED] told her husband not to bother her because she was busy cooking. The accused went up to the second floor of their house. When the accused came down, he kissed [REDACTED]. She upbraided her husband

and told him: "Ga, your mouth is smelling vagina." He told her that he would just wash his mouth. After doing so, the accused went to the *camalig*. For her part, [REDACTED] went up to the second floor of their house and saw her daughter [REDACTED], who was then about eight years old, lying on the floor covered with a blanket. When [REDACTED] pulled the blanket away, she noticed that her daughter's panties were inverted. Suspecting that the accused had sexually abused her daughter, [REDACTED] proceeded to the *camalig* and confronted him. She demanded to know what he did to [REDACTED]. The accused kept silent. [REDACTED] then told the accused that she would send her daughter to live with her parents and sisters in Barangay [REDACTED] in [REDACTED]. The accused got angry. [REDACTED] then pleaded to him: "If you will not admit [it], please don't repeat it again [*sic*]." [REDACTED] told [REDACTED] to be on guard henceforth. [REDACTED] did not report the incident to the police authorities hoping that the accused would not abuse her daughter again. As a precautionary measure, [REDACTED] brought her daughters AAA and [REDACTED] to her parents' house at the end of the school year, and asked them if her daughters could stay there for a while. Her parents agreed. However, [REDACTED], who was then about five years old, stayed with his mother and the accused in Pakiad.

At 7:00 a.m. of January 23, 1999, a Saturday, [REDACTED] left their house to collect her customers' accounts. The accused, his mother Linda and [REDACTED] were left in the house. At about 9:00 a.m., AAA, who by then was twelve years old, arrived at the house and asked the accused to make a flower vase for her as a school project. The accused agreed. By noontime, he had not yet finished his stepdaughter's project. After lunch, he ordered AAA and [REDACTED] to go up to the second floor to sleep. The two children did as they were told. AAA and [REDACTED] lay down on the floor face up beside each other. AAA could not sleep and merely closed her eyes, while her brother slept soundly.

Momentarily, the accused went up to the second floor, forcibly held AAA's hands and placed them behind her back. The accused hit her buttocks with his hand and placed a pillow on her face to prevent her from shouting or making any noise. AAA found it hard to breathe. She wanted to shout, but she could not. The accused then removed her clothes and panties, licked her vagina with his tongue and inserted his fourth finger. He then mounted AAA and inserted his penis into her vagina. AAA felt excruciating pain. After the accused was satiated, he dismounted from AAA and removed the pillow from her face. The pain AAA felt in her vagina made her cry out loud. Alarmed, the accused hastily put his clothes on and dressed up AAA as well. In his hurry, he forgot to put on AAA's panties. The accused then hurriedly went down to the ground floor. *Lola* Linda went up and inquired what the accused had done to her, but AAA could only cry. AAA then put on her panties and woke up her brother. The two left the house and went to their maternal grandparents' house at Pulo Maestra Vita. AAA did not tell her grandparents *Lola* Etring and *Lolo* Emil, and her aunties Aya and Bingbing what the accused had done to her. She was afraid that if she did, the accused might harm her and her family.

At about 6:00 p.m. of the same day, the accused fetched [REDACTED] at Barangay Cagbang and brought her home. In the days that followed, [REDACTED] noticed that the accused was not his usual self. He seemed absent-minded. She asked her sister-in-law Milagrosa Senarlo, what caused the unusual behavior of her husband. Milagrosa replied that she did not know, but suggested that [REDACTED] talk to her daughter AAA.

On January 26, 1999, [REDACTED] went to the Pakiad Elementary School where AAA was

studying. She wanted to talk to her daughter. She was unable to do so, however, because AAA was taking her tests at the time.

January 27, 1999 was [REDACTED]'s birthday. She returned to the school and talked with AAA in the school canteen. When [REDACTED] asked her daughter what happened to her on January 23, 1999, AAA replied that nothing happened. However, [REDACTED] noticed that AAA was kicking her feet on the ground and that she had started crying. AAA then admitted that something indeed happened to her. [REDACTED] urged her daughter to reveal the incident and to consider the information as AAA's birthday gift to her. Touched by her mother's request, AAA finally told her mother that she was raped by the accused shortly after lunch on January 23, 1999. She told her mother how the accused sexually abused her. [REDACTED] was shocked by her daughter's revelation. [REDACTED] did not confront the accused because she was sure that he would not admit to any wrongdoing.

Nevertheless, [REDACTED] accompanied AAA to the Western Visayas Medical Center in Iloilo City on February 12, 1999. Dr. Encarnacion A. Rubinos examined AAA and later signed a medico-legal certificate containing the following findings:

INTERNAL EXAMINATION FINDINGS:

COMPLETE HYMENAL TEAR, OLD, HEALED AT
5:00 and 7:00 o'clock POSITIONS.

LABORATORY FINDINGS: NO SPERMATOZOA SEEN

**IMPRESSION: COMPLETE HYMENAL TEAR, OLD,
HEALED AT 5:00 & 7:00 O'CLOCK POSITIONS.**^[3]

On February 4, 1999, [REDACTED] and Municipal Social Worker Raquel Baldovese accompanied AAA to the [REDACTED] Police Station where they reported the incident, as well as the December 31, 1995 occurrence when the accused had also apparently sexually abused the younger [REDACTED].^[4] On February 15, 1999, Chief of Police Antonio B. Bersamin filed a criminal complaint for rape against the accused with the Municipal Trial Judge of [REDACTED]. Appended to the complaint was the affidavit executed by AAA.

The Evidence of the Accused

The accused denied the charge. He claimed that [REDACTED] instigated the charge against him because she wanted to leave him but he prevented her from doing so. He testified that he was heavily indebted and that in 1998, [REDACTED] was asked to pay his debts. At 6:30 a.m. on January 23, 1999, he accompanied his wife [REDACTED] to Barangay [REDACTED]. He returned to the house and saw AAA who asked him to apply *shellac* on her bamboo project. He told AAA that he had no *shellac* but that his brother-in-law Roger Planta, [REDACTED]'s brother, had some. After a short time, the accused left to pass by Roger's house and to fetch [REDACTED]. On the way, he also passed by the house of a friend, Nestor Espada, at Barangay Abilang Sur. Fifteen minutes later, he arrived at Roger's place. The accused asked Roger if he had *shellac* and the latter replied that he had already used them up. Roger then invited the accused to a drinking spree. The accused agreed. They were joined by Torpo, and later by Joseph. The drinking spree ended at around 2:30 p.m. Thereafter, the accused proceeded to Barangay Cagbang where he fetched [REDACTED]. The couple

arrived home at 6:30 p.m. By then, AAA had already left the house with her brother.

Milagrosa Senarlo, the sister of the accused, testified that she lived about ten meters away from her brother's house. ██████'s relationship with her brother turned sour when ██████ started arriving home late. The accused became "absent-minded" because he and ██████ were heavily indebted. ██████ had been to Hongkong in 1998 and spent so much money for her trip. They also gambled at Pakiad.

The witness also testified that in the early morning of January 23, 1999, the accused and ██████ left their house and went to Barangay Cagbang. The accused returned at 9:00 a.m. AAA, who was wearing pants and a blouse, arrived at the house with her school project. The accused then left. His mother Linda told AAA to leave her project in the house. As it was getting late, Linda accompanied AAA and ██████ to the nearby store. From there, AAA and ██████ left for Pulo Maestra Vita by themselves. According to the witness, AAA and ██████ were even playing together on their way to the store.

The next day, January 24, 1999, the accused and ██████ went to the city to see a movie. AAA brought her brother ██████ back to the house of the accused at 4:30 p.m. in a tricycle.

After due proceedings, the trial court rendered judgment convicting the accused of qualified rape and sentencing him to death. The decretal portion of the decision reads:

WHEREFORE, judgment is hereby rendered finding the accused GUILTY beyond reasonable doubt of the crime of Rape defined and penalized under Arts. 266-A and 266-B of Republic Act 8353 hereby sentencing the accused John P. Nequia to the supreme penalty of DEATH by lethal injection, further condemning the said accused to pay the victim AAA the sum of P75,000.00 by way of civil liability and the amount of P75,000.00 moral damages.

The Warden, Iloilo Rehabilitation Center, Iloilo City where the accused is detained is ordered to immediately remit said accused to the National Penitentiary. Let the entire records of this case be elevated to the Honorable Supreme Court, Manila for automatic review.

SO ORDERED.^[5]

The appellant assails the decision of the trial court, raising the lone assignment of error that -

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME OF CONSUMMATED RAPE DESPITE UNCERTAINTY OF ITS COMMISSION.^[6]

The appellant asserts that, as can be gleaned from AAA's affidavit and the complaint filed with the MTC, the appellant did not insert his penis into AAA's vagina. AAA admitted when she testified that she did not see the penis of the appellant. She admitted that she was lying beside her brother ██████ when the appellant raped her, and was forced to close her eyes when the appellant had sex with her.

The appellant contends that although the prosecution proved that he inserted his fourth finger into the private complainant's vagina, such act does not constitute rape (sexual assault) under the Anti-Rape Law.^[7] He argues that the insertion of a human finger into the victim's vagina has been excluded in Senate Bill No. 950 and House Bill No. 6265. He also cited Memorandum Circular No. 22, dated September 28, 2000 of the then Secretary of Justice Artemio Tuquero. Furthermore, there is no evidence that the appellant threatened the victim with physical harm. The prosecution thus failed to prove with certainty that the appellant raped AAA.

According to the appellant, the victim and her mother ██████ were even smiling and were in a happy mood during the trial. Despite ██████'s knowledge that the appellant had abused her daughter, she never confronted him. ██████ even admitted that despite her knowledge that the appellant had raped her daughter, she still agreed to have sex with the appellant, and prodded the latter to have more sex although he had already ejaculated.

The contention of the appellant does not hold water. AAA testified that the appellant licked her vagina with his tongue, inserted his fourth finger, then his penis into her vagina, although she did not know how deep the penetration was. She felt pain in her vagina as the appellant penetrated her:

Q At around 12:30 o'clock *[sic]* at noon, can you tell this Honorable Court what were you doing at that time inside the house of your stepfather?

A He told us to go to sleep.

Q You said "us", who was your companion at that time?

A My younger brother.

Q Your younger brother ██████?

A Yes, sir.

Q When your stepfather told you to sleep, did you sleep?

A I slept on the upper portion.

Q You mean the house of your stepfather and mother has a *[sic]* 2 storey?

A Yes, sir.

Q That place, the upper part of the house where you were told by your stepfather to sleep, how many rooms are there?

A One.

Q And where did you and your brother sleep that noon of January 23, 1999 because you were told to sleep?

A At the upper portion.

Q On the bed?

A No, sir.

Q Where?

A On the floor.