

EN BANC

[G.R. No. 148869-74, December 11, 2003]

THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. REMARIO PALMA Y ROMERA ALIAS "MARIO," APPELLANT.

DECISION

VITUG, J.:

Appellant REMARIO PALMA y ROMERA stood indicted before the court below for six (6) counts of qualified rape which, except for the week and month of commission, were similarly worded, viz:

In Criminal case No. 8173

"That on or about the second week of October, 1997 in the morning, at [REDACTED], Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation did then and there willfully, unlawfully and feloniously have carnal knowledge of his own daughter AAA (a minor), a girl who is below 10 years of age, against her will."^[1]

In Criminal Case No. 8174

"That on or about the second week of October, 1997 in the afternoon, at [REDACTED], Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation did then and there willfully, unlawfully and feloniously have carnal knowledge of his own daughter AAA (a minor), a girl who is below 10 years of age, against her will."^[2]

In Criminal Case No. 8175

"That on or about the second week of October, 1997 in the evening, at [REDACTED], Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation did then and there willfully, unlawfully and feloniously have carnal knowledge of his own daughter AAA (a minor), a girl who is below 10 years of age, against her will."^[3]

In Criminal Case No. 8176

"That on or about the first week of November, 1997 in the morning, at [REDACTED], Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation did then and there willfully, unlawfully

and feloniously have carnal knowledge of his own daughter AAA (a minor), a girl who is below 10 years of age, against her will."^[4]

In Criminal Case No. 8177

"That on or about the first week of November, 1997 in the afternoon at [REDACTED], Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation did then and there willfully, unlawfully and feloniously have carnal knowledge of his own daughter AAA (a minor), a girl who is below 10 years of age, against her will."^[5]

In Criminal Case No. 8178

"That on or about the first week of November 1997 in the evening, at [REDACTED], Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation did then and there willfully, unlawfully and feloniously have carnal knowledge of his own daughter AAA (a minor), a girl who is below 10 years of age, against her will."^[6]

At his arraignment, appellant entered a plea of "not guilty" to the charges. During the trial that followed, the prosecution placed on the witness stand AAA, the private complainant, and Dr. Zosima A. Padillo, the examining physician, while the defense presented appellant Remario R. Palma.

The young AAA testified that she was subjected to sexual abuse by Remario R. Palma on various occasions. She was then staying with appellant in [REDACTED], at a time when her "nanay" was working abroad for a living. One morning, in the second week of October 1997, appellant told AAA to lie down with her legs spread apart. He inserted his penis into her vagina, kissed her repeatedly, and licked her breast. In the afternoon of the same day, appellant again licked her vagina and inserted his thumb into the genital canal. When evening came, appellant arrived home drunk and, upon chancing on AAA, fondled her vagina until he fell asleep. The next round of sexual assault occurred in the morning of the first week of November 1997. Appellant took off her shorts and underwear. He also rid himself of his own shorts and briefs. He carried AAA to the living room and went around the room with his penis touching the latter's vagina. During one afternoon of the same week, appellant inserted his middle finger into her private part, withdrew his finger and licked it. In yet another occasion, appellant shed off AAA's panty and shorts. He was about to molest her when her brother arrived. He hastily put on his brief and shorts, telling her to do likewise.

AAA named [REDACTED] to be her real mother and said that appellant was not her biological father. AAA explained that she would call appellant her "father" only because he happened to be the husband of her "nanay," [REDACTED], the sister of her mother [REDACTED].

Dr. Zosima A. Padillo, who had conducted a medical examination on AAA, testified that there was incomplete laceration on the victim's genital.

Appellant denied all the charges hurled against him, claiming that AAA was only coached by his wife. The couple had parted ways since before and had not been living together. Once, his wife visited him in jail and insinuated that the case could be dropped if he would agree to pay AAA P30,000.00. He added that the healed lacerations on the girl's genital could have been the result of her fondness to ride bicycles. He recounted that AAA would often climb trees and so sit on the branches as if she were riding a horse. When she was only one year and seven months old, AAA injured her vagina when she fell down the stairs of their house. The defense presented a hospital record from St. Christopher Hospital where an entry, dated 15 December 1989, indicated that AAA had indeed fallen down the stairs a week before the medical check-up. Finally, appellant claimed that, in March 1998, one Norman Marimon had fondled AAA and even attempted to rape her.

The trial court found the account of AAA to be credible, straightforward and trustworthy, thereby discrediting the asseverations made by appellant. In **Criminal Case No. 8173**, it found appellant guilty of rape.^[7] In **Criminal Case No. 8174**, appellant was adjudged guilty of acts of lasciviousness when he inserted his thumb into the victim's vaginal orifice one afternoon during the second week of October 1997. In **Criminal Case No. 8175**, appellant was convicted of acts of lasciviousness for having fondled the vagina of the victim in the evening of the same day. In **Criminal Case No. 8176**, the trial court found appellant guilty of rape in carrying AAA around the room of their house with his penis "touching" her vagina during the first week of November 1997. In **Criminal Case No. 8177**, appellant was convicted of acts of lasciviousness when he inserted his middle finger into the vagina of the complainant at another time during the first week of November 1997. The trial court concluded:

"WHEREFORE, in view of the foregoing, judgment is rendered finding accused Remario Palma y Romera, alias `Mario' GUILTY of two counts of rape and three counts of acts of lasciviousness perpetrated against one AAA.

"As a consequence of this judgment and as provided for in Art. 266-B of the Revised Penal Code, accused Palma being the victim's guardian and uncle and therefore, a relative within the third degree of affinity, each count of rape committed by him is punishable by death, which penalty shall be enforced by way of lethal injection.

"For the counts of acts of lasciviousness, he shall serve the penalty of imprisonment for a period of six (6) months of *arresto mayor* as minimum to four (4) years and two (2) months of *prision correccional* as maximum for each count. He shall serve his sentence for these three crimes successively.

"Accused is also ordered to pay private complainant a civil indemnity of One Hundred Fifty Thousand (P150,000.00) Pesos for the two counts of rape committed by him; P30,000.00 for the three acts of lasciviousness and moral damages in the amount of Two Hundred Thousand (P200,000.00) Pesos.

"Any period of detention served by accused shall be credited in his favor conformably with Art. 29 of the Revised Penal Code.

"He shall serve his sentence at the Bureau of Prisons facility at Muntinlupa City, Metro Manila."^[8]

Appellant, in an automatic appeal of his case to this Court, would contend that-

"I

"THE COURT A QUO GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT OF THE CRIMES OF RAPE AND ACTS OF LASCIVIOUSNESS DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

"II

"THE COURT A QUO GRAVELY ERRED IN IMPOSING THE SUPREME PENALTY OF DEATH TO ACCUSED-APPELLANT DESPITE THE INACCURATE DESIGNATION IN THE INFORMATION OF THE RELATIONSHIP BETWEEN THE VICTIM AND THE ACCUSED."^[9]

According to appellant, the testimony of AAA should not be given credence for it would be inconceivable, as well as contrary to human experience, for her to be able to accurately say that "only a part [two-thirds] of the penis [has been] inserted into her vagina." With respect to the second conviction for rape, appellant argues that the mere epidermal contact or a slight brush or a scrape of the penis on the vagina or *mons pubis of the victim* is not, and does not constitute, rape.^[10] Appellant seeks, at all events, the reversal of his conviction in each of the six criminal cases, including the three counts for acts of lasciviousness, claiming that the charges against him have all been fabricated. Finally, appellant questions the imposition on him by the trial court of the death penalty.

Like the court a *quo*, this Court finds the testimony of AAA to be forthright, spontaneous and unflawed in almost all material respects.

In open court, AAA testified:

"Q Now in the second week of October 1997, in the morning do you recall where you were at that time?

"A I remember, sir.

"Q Where were you?

"A I was in our house, sir.

"Q Where is this house of yours situated?

"A It is situated, sir, in [REDACTED].

"Q While you were there in your house Miss AAA, do you recall of any unusual incident?

"A I can recall, sir.

"Q What was the unusual incident about?

"A I was raped, sir.

"Q Who raped you?

"A Remario Palma.

"Q Remario Palma whom you pointed to a while ago?

"A Yes, sir.

"Q Where were you raped?

"A In the bedroom of our house, sir.

"Q How did the accused rape you?

"A He made me lie down with my legs separated.

"Q Where, what part of the house?

"A On the floor, sir.

"Q You mean, there was no bed at that time?

"A There was none, sir.

"Q While he made you lie down, what did he do next if any?

"A He inserted his penis into my vagina.

"Q And what did you feel?

"A I felt pain, sir.

"Q Did the whole penis penetrate your vagina?

"A Only part of the penis of the accused was inserted into my vagina, sir. (Witness indicating about 2/3 of her middle finger.)

"Q Now after that, after he inserted his penis into your vagina what else if anything happened to you?

"A He kissed my lips repeatedly.

"Q What else, what other parts of your body was being touched?

"A He licked my neck and my upper chest.

"Q In the afternoon at that same week of October 1997, do you recall where [you were] at that time?