

THIRD DIVISION

[G.R. No. 121378, May 21, 1998]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
RONALD SUMAMPONG Y PARAJES, DONALD TE Y RANERIO,
AURELIO RIVAS Y VERANO AND JOVY ORELLO Y TORRALBA,
ACCUSED-APPELLANTS.**

DECISION

ROMERO, J.:

Accused-appellants Ronald Sumampong, Donald Te, Jovy Orello and Aurelio Rivas (at large) were indicted for the crime of rape before the Regional Trial Court of Davao City in an information which reads as follows:

"That on or about February 25, 1992, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, conspiring, confederating and helping one another, by rendering complainant weak and semiconscious and depriving her of reason by making her drink liquor, did then and there wilfully, unlawfully and feloniously have carnal knowledge with the complainant against her will.

Contrary to law."^[1]

Upon arraignment on September 25, 1992, appellants pleaded not guilty to the offense charged. After trial on the merits, the court *a quo*,^[2] rendered judgment on May 25, 1994 convicting appellants, the dispositive portion of which reads:

"WHEREFORE, in the light of all the foregoing considerations, this Court finds the accused: Ronald Sumampong y Parajes, of legal age, single, resident of Quezon Blvd., Davao City; Donald Te y Ranerio, of legal age, single, a resident of Quezon Blvd. and Jovy Orello y Torralba, a minor, a resident of Quezon Blvd., Davao City GUILTY beyond reasonable doubt of the crime of Rape defined and penalized under Art. 335, of the Revised Penal Code and accordingly order all accused, except Jovy Orello who appears to be under 18 years old at the time the offense was committed, to suffer the penalty RECLUSION PERPETUA with all the accessories provided by law. And as to the civil aspect of this case, the accused Ronald Sumampong and Donald Te are further ordered to each pay Annaliza Abella P50,000.00 by way of indemnity and another P50,000.00 as moral damages plus the cost.

Jovy Orello who was born on June 21, 1977 (Birth Certificate, p. 43, Records) is therefore extended the benefit of the privileged mitigating circumstance of minority and the application of the Indeterminate Sentence Law. Accordingly he is hereby sentenced to suffer EIGHT (8) Years and ONE (1) day of Prison Mayor as Minimum and FOURTEEN (14)

years and EIGHT (8) Months, ONE (1) day of Reclusion Temporal as Maximum together with the accessories provided by law; also, accused's (sic) is further ordered to pay Annaliza Abella by way of indemnity the amount of P50,000.00 and P30,000.00 as moral damages.

SO ORDERED.”^[3]

The prosecution's version of the incident follows:

On February 16, 1992, Annaliza Abella suffered head injuries when she fell from a jeepney in Toril, Davao City. In spite of her delicate condition, her mother left for Cotabato and entrusted her under the care of her godmother, Perpetua Vasquez, who resides in Quezon Boulevard, Davao City.

On February 25, 1992, after having breakfast, Abella went for a stroll in the neighborhood. At around 11:00 o'clock in the morning, while stopping by the house of Te, the latter emerged therefrom and befriended her. Te invited her to their house where he introduced her to his sisters. Thereafter, he proceeded to Rivas' house which is only seven (7) meters away from his residence.^[4]

Upon his return, Te enticed Abella to go with him and visit Rivas which invitation the latter accepted. After she was introduced to Rivas, they took lunch together. At around 1:30 o'clock p.m., Sumampong and Orello arrived and subsequently engaged the others in a drinking spree which lasted until 5:00 o'clock p.m. At this juncture, Abella, feeling dizzy, after she was urged to drink two (2) shots of Tanduay rum allegedly for the sake of "*pakikisama*,”^[5] rested on a bench. Realizing that Abella was tipsy, appellants brought her upstairs where she was made to lie down on the floor. Suddenly, she noticed that Sumampong pulled down her short pants and underwear. She resisted the latter's advances but, he nonetheless succeeded in consummating his bestial desires with the aid of Orello who grasped her hands while Te and Rivas forced her legs apart. Moments later, she passed out.

When Abella failed to return that evening, a search, led by Perpetua Vasquez, was conducted. In the course of the inquiry, a neighbor revealed that Abella was last seen in the house of Rivas. Forthwith, they proceeded to the said place and found Abella asleep on the second floor. With the aid of a fifteen-year old boy, Perpetua brought her back to their house.

On February 26, 1992, at 6:00 o'clock in the morning, after regaining consciousness, Abella narrated her ordeal to Perpetua who immediately brought her to the City Health Office. Medico-legal officer Danilo P. Ledesma testified that his findings, although showing no "external sign of violence,"^[6] disclosed the presence of spermatozoa in her vagina, thus, confirming her story of defloration the previous night.

After the said examination was completed, Perpetua and Abella proceeded to the Sta. Ana Police Station to report the incident accusing appellants as the perpetrators of the offense charged. Acting on this information, the police immediately arrested the malefactors. However, only three of them were brought to trial as Rivas presumably went into hiding.

Appellants, on the other hand, merely proffered alibi as defense.