

## **FIFTH DIVISION**

**[ CA-G.R. CR-H.C. NO. 04857, March 18, 2015 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
HERMANDO DOREMON Y PROMULGATED, MALINAW @ "MANDO/  
KALABAW", ACCUSED-APPELLANT.**

### **DECISION**

**GARCIA-FERNANDEZ, J.:**

This is an appeal from the decision<sup>[1]</sup> of the Regional Trial Court, Branch 13, Malolos City, Bulacan dated January 5, 2011 which found accused-appellant Hermando Doremon y Malinaw @ "Mando/Kalabaw" guilty beyond reasonable doubt of rape penalized under Republic Act No. 8353 in relation to Republic Act No. 7610 in Criminal Case No. 2476-M-2004.

Accused-appellant was charged in an information<sup>[2]</sup> which reads:

"That on or about the 24<sup>th</sup> day of March 2004, in the City of Malolos, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously, with lewd designs, have carnal knowledge of "AAA", a 14-year old minor, against her will and through force and intimidation, thereby demeaning and degrading her intrinsic worth as a human being.

Contrary to law."

During arraignment, accused-appellant pleaded not guilty to the crime charged.

The prosecution's version of the facts is as follows:

The victim AAA<sup>[3]</sup> testified that she was born on September 23, 1989<sup>[4]</sup>, in Caniogan, Daang Bakal, Malolos, Bulacan. In the evening of March 24, 2004, AAA went out to meet her friend, a certain "Galdi," who was sent by accused-appellant to ask AAA whether the latter would join the fraternity. When AAA answered in the negative, Galdi told her that she can no longer retract her commitment to join because this would force accused-appellant to do something bad to her. Thus, AAA followed Galdi to the rear of the Malolos Maternity Hospital for her initiation into the fraternity.<sup>[5]</sup>

When AAA and Galdi reached the spot where her initiation was to take place, accused-appellant blindfolded the latter.<sup>[6]</sup> Thereafter, accused-appellant started undressing AAA. Soon the latter was lying on the ground and accused-appellant positioned himself on top of her and inserted his penis into her vagina. AAA was not

able to shout for help because she was threatened by accused-appellant.<sup>[7]</sup>

AAA's mother, BBB, testified that she executed an affidavit of non-registration of AAA's birth and that AAA was born in Davao del Sur on September 23, 1989.<sup>[8]</sup>

The Medico-Legal Report and executed by Dr. Reynaldo R. Dave, Jr. on April 8, 2004 showed that AAA is "in a non-virgin state physically and sustained shallow healed lacerations at 7:00 and 8:00 o'clock positions."<sup>[9]</sup>

The defense, on the other hand, presented the facts as follows:

On March 24, 2004 at 10:00 in the evening, accused-appellant was at home together with his siblings, his children and wife while his mother was watching television. He knew the victim AAA as they live in the same barangay. Accused-appellant alleged that AAA filed a case against him because her parents had a grudge against him for the reason that he did not allow his wife to work in the beerhouse, where AAA's mother works as a floor manager. He also denied being a member of a fraternity.<sup>[10]</sup>

On January 5, 2011, the RTC rendered a decision<sup>[11]</sup>, the dispositive portion of which reads:

"WHEREFORE, premises considered, the Court finds the accused guilty beyond reasonable doubt of the crime of rape committed thru carnal knowledge and hereby sentences him to suffer the penalty of RECLUSION PERPETUA.

Accused is likewise directed to indemnify the minor private complainant in the amount of P100,000.00.

SO ORDERED."

Accused-appellant filed this appeal, assigning this lone error to the RTC:

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO OVERTHROW THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE IN HIS FAVOR.<sup>[12]</sup>

Accused-appellant claims that private complainant's testimony is self-serving and implausible; the victim could not seem to make up her mind about the crucial details of her sexual assault which fact renders suspect the trial court's conclusion that private complainant's testimony is consistent in all material respects; that it was unnatural for "AAA" to remain silent and calm while the former allegedly undressed and removed her underwear in the pretext of an alleged initiation; that she could have shouted and struggled or resisted as she was not completely helpless but she chose not to; and that these omissions show that no rape was committed by accused-appellant.

The appeal is bereft of merit.

For a charge of rape to prosper under Article 266-A of the Revised Penal Code, as

amended, the prosecution must prove that (1) the offender had carnal knowledge of a woman; and (2) he accompanied such act through force, threat, or intimidation, or when she was deprived of reason or otherwise unconscious, or when she was under twelve years of age or was demented.<sup>[13]</sup> In the instant case, the prosecution was able to establish beyond reasonable doubt that accused-appellant, through force, threat or intimidation, had carnal knowledge of AAA, who was only fourteen (14) years old at that time. It was established on record that AAA was born on September 23, 1989<sup>[14]</sup>. Thus, accused-appellant can be prosecuted and convicted either under Sec. 5 (b), Article III of R.A. No. 7610 for sexual abuse, or under Article 266-A of the Revised Penal Code, except for rape under paragraph 1(d).<sup>[15]</sup>

AAA was consistent, candid, and straightforward in her narration that she was raped by accused-appellant, to wit:

Fiscal Joson:

Q: Ms. Witness, last time you identified a certain Hernando Doremon, on March 24, 2004 do you recall of any unusual incident that happened to which has connection with that person?

A: Yes, sir.

Q: What was that unusual incident that happened?

A: When he raped me, sir.

Q: What time it happened?

A: 9:00 or 10:00 in the evening, sir.

Q: In what place?

A: In the field, behind Malolos Maternity Hospital, sir.<sup>16</sup>

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Fiscal Joson:

Q: You said pinuntahan po namin, what do you mean by that?

A: That is where he brought me and we talked, sir.

Q: When you said "We" you are talking to the accused and you?

A: Yes, sir.

Q: How did the accused start raping you on that particular date and time and place?

A: He undressed me and removed my bra, sir.

Q: Why did you allow him to undress you?

A: No, sir, I told him that I was backing up.

Q: Why did you not resist?

A: Because he told me that if I back out something will happen to me, sir.

Q: After he removed your clothes what happened thereafter?

A: Ni half body po niya ako and after that he took off my short, sir.

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Fiscal Joson:

Q: When you said that he kissed your half body (sic)?

A: Yes, sir.

Q: When he took off your short and pants what happened next?

A: He inserted his penis in my vagina, sir.

Q: What happened thereafter?

A: (The witness demonstrating her body movement).

Q: When the accused was doing that, how is your body position related to him?

A: I was lying down and he was on top of me, sir.<sup>17</sup>

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Q: Now Ms. Witness, did you like what the accused had done to you?

A: No, sir.

Q: Why did you not shout for help?

A: He was threatening me, sir.

Q: What was he threatening you?

A: That he would kill me if I shout, sir.

Q: Ms. Witness how did the ordeal from the hands of the accused end?

A: When I told him I was hurting and also crying, sir.<sup>[18]</sup>