

## ELEVENTH DIVISION

[ CA-G.R. CR-HC No. 06603, March 05, 2015 ]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
DANILO SUNGA Y VIRAY, ACCUSED-APPELLANT.**

### DECISION

**LIBREA-LEAGOGO, C.C., J.:**

Before this Court is an appeal from the Decision<sup>[1]</sup> dated 02 October 2013 of the Regional Trial Court, Third Judicial Region, Branch 54, Macabebe, Pampanga in the case entitled "*People of the Philippines v. Danilo V. Sunga*," docketed as *Criminal Case No. 05-3771(M) and Criminal Case No. 05-3835 (M)*, the dispositive portion of which reads:

"WHEREFORE, in view of the foregoing, the prosecution having proven the guilt of accused Danilo V. Sunga beyond reasonable doubt of the offenses of Acts of Lasciviousness and of Qualified Rape, said accused is convicted of the offenses charged and is hereby sentenced to suffer the following penalties:

- a) *In Criminal Case No. 05-3771(M), accused is hereby sentenced to an indeterminate penalty of six (6) months of arresto mayor as minimum, to six years of prision correccional as maximum, and to pay (BBB) P5,000.00 for moral damages and P2,000.00 for exemplary damages, and to pay the cost;*
- b) *In Criminal Case No. 05-3835(M), accused is hereby sentenced to suffer the penalty of reclusion perpetua, and is ordered to pay (AAA) P75,000.00 as civil indemnity; P75,000.00 for moral damages; P30,000.00 for exemplary damages, to deter other persons from sexually molesting their children, and to pay the cost.*

*Considering that accused has undergone preventive imprisonment, he shall be credited in the services of his sentence with the time he has undergone preventive imprisonment subject to the conditions provided for by law.*

**SO ORDERED.**"<sup>[2]</sup>

Accused-appellant filed his Brief<sup>[3]</sup> dated 01 August 2014. Plaintiff-appellee also filed its Brief<sup>[4]</sup> dated 12 January 2015. Accused-appellant filed a Manifestation<sup>[5]</sup> dated 28 January 2015 that the filing of a reply is dispensed with. Thus, the appeal is submitted for decision.

## FACTUAL ANTECEDENTS

The real identities of private complainants and the members of their immediate family are withheld. Private complainant in *Criminal Case No. 05-3835(M)* is referred to as "AAA", private complainant in *Criminal Case No. 05-3771(M)* is referred to as "BBB", the latter's husband is referred to as "CCC," private complainants' mother is referred to as "DDD" and their other sister is referred to as "EEE."<sup>[6]</sup>

Accused Danilo Sunga y Viray was charged with Attempted Rape in an Information<sup>[7]</sup> dated 16 August 2005 docketed as *Criminal Case No. 05-3771(M)* and Rape in relation to R.A. No. 7610 in an Information<sup>[8]</sup> dated 13 October 2005 docketed as *Criminal Case No. 05-3835(M)*, both filed with the Regional Trial Court of Macabebe, Pampanga, and raffled off to Branch 54, the accusatory portions of which read:

### *Criminal Case No. 05-3771(M)*

*"That on or about the 15<sup>th</sup> day of August, 2005, in the municipality of Macabebe, province of Pampanga, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, without the consent and permission of private complainant (BBB), and by means of force and intimidation, did then and there willfully, unlawfully and feloniously commence the commission of the crime of rape directly by overt acts, to wit: while (BBB) is (sic) taking her bath(,) accused suddenly pushed forcefully the door to (sic) open, while the latter at that time is (sic) under the influence of liquor, embraced and kissed repeatedly the private complainant and threatened to the (sic) kill (sic) if she shouted, but said accused did not perform all the acts of execution which would constitute the crime of rape as a consequence by reason of causes other than his own spontaneous desistance, that is, complainant resisted and shouted for help.*

*Contrary to law.*"<sup>[9]</sup>

### *Criminal Case No. 05-3835(M)*

*"That on or about the 29th day of July, 2005 in the municipality of Macabebe, province of Pampanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused **DANILO V. SUNGA**, taking advantage of the tender age and innocence of of the private offended party **(AAA), a 16 year old minor** and of his moral ascendancy over her, being her legitimate father, with lewd designs, did then and there willfully, unlawfully and feloniously had carnal knowledge of (AAA) against her will and consent by inserting his penis into her vagina, thereby debasing, degrading and demeaning her intrinsic worth and dignity as a child and endangering her health as well as her moral, psychological and emotional well-being.*

*Contrary to law.*"<sup>[10]</sup>

In the Inquest Resolution<sup>[11]</sup> dated 16 August 2005, it was stated that the warrantless arrest was found valid, hence, the arresting officers were ordered to deliver accused to the Warden of Pampanga Provincial Jail, City of San Fernando, Pampanga.

In the Order<sup>[12]</sup> dated 30 August 2005 in *Criminal Case No. 05-3771(M)*, the trial court made a judicial determination of probable cause that the offense charged in the Information dated 16 August 2005 has been committed and that the accused is probably guilty thereof; confirmed the detention of the accused at the Pampanga Provincial Jail; and set the case for the arraignment of the accused. When arraigned on 27 September 2005,<sup>[13]</sup> the accused entered a plea of not guilty. Pre-trial in *Criminal Case No. 05-3771(M)* was held and a Pre-trial Order<sup>[14]</sup> dated 06 June 2006 was issued, wherein the parties stipulated on the jurisdiction of the court, the identity of the accused as the person charged in the Information, and the identity of private complainant.

In the Order<sup>[15]</sup> dated 19 January 2006 in *Criminal Case No. 05-3835(M)*, the trial court made a judicial determination of probable cause that the offense charged in the Information dated 13 October 2005 has been committed and that the accused is probably guilty thereof; and set the case for arraignment. When arraigned on 31 January 2006,<sup>[16]</sup> the accused entered a plea of not guilty to the charge of rape in relation to R.A. No. 7610. Pre-trial in *Criminal Case No. 05-3835(M)* was held and a Pre-trial Order<sup>xvii</sup> dated 06 June 2006 was issued, wherein the parties stipulated on the jurisdiction of the court, the identity of the accused as the person charged in the Information, and the identity of private complainant.

Joint trial ensued.

The prosecution presented the following witnesses: "BBB,"<sup>[18]</sup> "AAA,"<sup>[19]</sup> "CCC,"<sup>[20]</sup> Dr. Mariglo Grace Y. Chincuanco<sup>[21]</sup> ("Dr. Chincuanco," for brevity),<sup>[22]</sup> and PO2 Irma Hernandez ("PO2 Hernandez," for brevity).<sup>[23]</sup> The prosecution and the defense stipulated on the testimony of PO2 Roberto C. Arevalo ("PO2 Arevalo," for brevity),<sup>[24]</sup> that he arrested the accused upon the complaint of BBB, and that he executed an Affidavit of Arrest (Exhibit "E").

The first witness of the prosecution, BBB, testified, *inter alia*, that: she knows the accused because he is her father; she identified him in open court; on 15 August 2005, she was inside their house, taking a bath; since accused knew that her mother, husband and their other companions were outside the house, he came in, drunk; she was taking a bath inside the bathroom, but she was not able to lock the door since she knew that her other companions were outside; accused was drunk and wanted to rape her; he went inside the bathroom and touched her body but she was able to fight back; she was so nervous; she shouted and her husband was able to hear her; the bathroom has a curtain that is why she did not see him enter; accused touched her breasts, but she was able to push him and ran away; accused was drunk and looked like a demon; when her husband heard her shouting, he came in; accused is a maniac; he had many victims and from the time that accused did it to them, there were others who have spoken up; he molested a neighbor's 5-year old child; since their childhood, accused was selfish and never gave them food to eat, and were it not for their relatives, they would not have survived; since they

were young, the accused, a drunkard, always beat up their mother;<sup>[25]</sup> her younger sister AAA told them that she was being molested by the accused since she (AAA) was ten (10) years old; when AAA learned that the accused was already detained, AAA came to her, embraced her and told her that the accused had been sexually molesting her; she identified her *Sinumpaang Salaysay* and her signature therein in open court;<sup>[26]</sup> accused had not done anything to her aside from holding her breasts; she did not witness the accused molesting her younger sister AAA, but her younger brother did;<sup>[27]</sup> when the accused was already detained, her younger sister who witnessed the incident asked AAA to speak up; that happened while they were at their house in Caduang Tete; and AAA cried and embraced her saying that she (AAA) was only ten (10) years old when the accused molested her.<sup>[28]</sup>

The next prosecution witness is AAA, who identified the accused in open court.<sup>[29]</sup> She testified, *inter alia*, that: on 29 July 2005, she was at their house; accused undressed her, removed all her clothes and then mashed her body; accused inserted his penis into her vagina; she was very afraid of the accused; she locked herself inside the room; she did not relay that particular incident to anyone because she was afraid; the other members of their household only knew about this incident when her sister BBB caused the incarceration of the accused; when she learned about the incarceration of the accused, she reported the matter to her sister BBB and their mother; she underwent medico-legal examination, and the result was positive;<sup>[30]</sup> when the incident happened, her mother was also inside the house; she and the accused were in the kitchen when the latter inserted his penis into her vagina; her mother was sleeping inside the room; at that time, only the three of them were in the house; that incident was not the first time as there were several other times prior to that; there were no other incident after the 29 July 2005 incident;<sup>[31]</sup> the kitchen was more or less ten (10) meters away from the room where her mother was sleeping; and the incident happened at the floor of the kitchen.<sup>[32]</sup>

The prosecution's third witness is CCC who testified, *inter alia*, that: the accused is his father-in-law as his wife BBB is the daughter of the accused; on 15 August 2005 at about 8:00 in the evening, he was outside their house having a conversation with his friend; his wife shouted "aah help me"; at that time he knew that she was taking a bath inside the bathroom located inside their house; he hurriedly went inside the house, which is about eight (8) to ten (10) meters away from their gate where he was conversing with his friend; when he reached the bathroom, he saw the accused holding his wife who is naked; his wife was being held by the accused who was drunk, and she was shouting; his wife was crying and fighting back; the accused was mashing his wife's body parts; the accused was only wearing shorts without a top; he pushed the accused and held him out of the bathroom; he and his sister-in-law EEE proceeded to the police headquarters of Macabebe, Pampanga, while the accused was in the house; they reported the incident for blotter and filed a case against the accused; he executed a written statement regarding the incident, which he identified in open court; he, his wife and the accused were living in the same house for about five (5) years already; when he pushed the accused away from his wife, he noticed that the accused looked as if he was possessed by a demon; he knew that the accused was drunk because he smelled him;<sup>[33]</sup> when he ran towards the bathroom, the door was closed but not locked because the lock was broken;<sup>[34]</sup> he personally witnessed that the accused was mashing the breast of his wife; the

sentence "*narinig ko na sumisigaw ang aking asawa kaya mabilis akong pumasok sa bahay at noong nakita ko ang akin biyenang si Danilo Sunga na lasing at palabas nag banyo*" in his sworn statement is wrong; when they made the complaint, they were told that the mistake could no longer be erased or removed;<sup>[35]</sup> and when he saw his wife and the accused inside the bathroom, there was no other person therein.<sup>[36]</sup>

The next witness for the prosecution is Dr. Chincuanco who testified, *inter alia*, that: AAA came with her sister and asked her to do medical examination because AAA was sexually assaulted; based on the record of the patient, it was stated that she saw the victim on 16 August 2005; since AAA was still a minor, she asked the consent of the guardian who brought her in; after that, she asked what transpired or why the victim went to their institution for medico-legal examination, and put it on record; upon learning the history of the victim, she asked when it happened and when the initial assault happened; she immediately performed a complete physical examination of the patient, including the general appearance of the patient, but concentrated on the external genitalia of the patient; based on her findings, the labia majora and the minora were noted to be "non-hyperemic", meaning they do not have any swelling or dilemma, but on the examination of the hygienal surface, she noted deep-healed lacerations at 3 and 10 o'clock positions; there were no conclusive medical findings with regard to the hymenal lacerations because the absence of hymenal lacerations would not preview sexual intercourse; sometimes, hymenal surface could be too thick or elastic, and some patients would have previous lacerated hymenal lacerations without even having sexual (intercourse); she could not totally say if AAA was sexually abused, but all she could say is that there were raptures or lacerations of the hymen; it is possible that something was inserted in AAA's genitalia that caused said lacerations at 3 and 10 o'clock positions; she could say that inserting a male organ in the genitalia of a woman would cause the same laceration; the date of the incident was on 29 June 2005 while the examination happened on 16 August 2005; she identified her signature on the medico-legal report;<sup>[37]</sup> the entry in the medico-legal report "DOI June 29, 2005" refers to DOI as "the date of incident"; as reported to her by AAA when the latter came for examination, the last incident happened on 29 June 2005 but according to AAA, she had been sexually assaulted since she was ten (10) years old;<sup>[38]</sup> and the handwritten medico-legal was signed by BBB, who also signed the consent for AAA.<sup>[39]</sup>

PO2 Hernandez testified, *inter alia*, that: she was a member of the PNP since 07 January 2004 until the present; she was assigned to the Macabebe Police Station since September 2004, specifically to the women and children's desk; she reported for duty on 17 August 2005; on that day, AAA and BBB went to their station and filed complaints about their father; she logged in the complaints and reported the matter to their chief of police; she and her co-policemen were then instructed to respond to the place of the incident; she did not accompany her co-police officers; the incident was written in the police blotter by PO1 Edwin Lagura; aside from the said incident, there was also another complaint about the alleged rape filed by BBB, who is also the daughter of the accused; his co-police officers' response was relayed to them through their declarations, and then they filed the cases with the Office of the Provincial Prosecutor; the *Salaysays* were specifically executed by BBB and AAA; said statements were taken by PO3 Joseph Mercado as she was already off duty;<sup>[40]</sup> she was the one who took the declarations of the victims and prepared the police