

## NINTH DIVISION

[ CA-G.R. CR-HC No. 05906, March 28, 2014 ]

**PEOPLE OF THE PHILIPPINES PLAINTIFF-APPELLEE, VS.  
EMETERIO MEDINA Y DAMO, ACCUSED-APPELLANT.**

### DECISION

**LAMPAS PERALTA, J.:**

The present appeal assails the Decision dated September 22, 2011<sup>[1]</sup> in Criminal Case No. 9540 of Branch 11, Regional Trial Court, Laoag City, finding accused-appellant Emeterio Medina y Damo guilty beyond reasonable doubt of rape committed against four (4) year-old AAA,<sup>[2]</sup> daughter of accused-appellant's cousin.

#### THE ANTECEDENTS

The victim in this case, AAA, was born on December 31, 1995.<sup>[3]</sup> She was four (4) years old at the time of the incident and twelve (12) years old when she testified in court. She lived with her family in BBB.<sup>[4]</sup> Accused-appellant, a neighbor, was the cousin of her father, CCC.<sup>[5]</sup> AAA referred to accused-appellant as "Uncle Teriong."<sup>[6]</sup>

In the morning of May 9, 2000, AAA's mother, DDD, instructed her to buy vinegar at Aunt Iding's store.<sup>[7]</sup> On the way to the store, accused-appellant pulled AAA into his house which was only ten (10) meters away from AAA's house,<sup>[8]</sup> and led her inside a room.<sup>[9]</sup> He made AAA lie on a bed, removed her undergarment, and placed himself on top of her.<sup>[10]</sup> Accused-appellant spat on his fingers and wiped the saliva on AAA's vagina. He proceeded to remove his pants and inserted his penis into AAA's vagina.<sup>[11]</sup> AAA felt "hurt" and was crying.<sup>[12]</sup> She did not shout because accused-appellant told her that if she shouted, he would thrust a ballpen in her mouth.<sup>[13]</sup> When accused-appellant was through, he put AAA's clothes back on.<sup>[14]</sup> AAA did not go to the store anymore<sup>[15]</sup> and instead, went home and narrated the incident to her mother, DDD.<sup>[16]</sup> DDD did not believe her at first, but when AAA told her that liquid which looked like milk came out of accused-appellant's penis, she believed AAA.<sup>[17]</sup>

The factual findings of the trial court, based on the prosecution evidence, were summarized in its Decision dated September 22, 2011 as follows:

"On May 9, 2000 'she (I) was about to buy vinegar because her (my) mother told her (me) to go and buy x x x.' (Ibid) She was supposed to buy vinegar at the store of 'Aunt Iding.' (Ibid) She did not reach the store of Aunt Iding because 'Uncle Teriong took her (me)' (Ibid) 'The accused took her to the room of their house.' (Ibid, page 4) She was 'In front of

their (accused's) kitchen' (Ibid) when 'he pulled her (me).' 'He used his right hand' (Ibid) in pulling her.

The accused brought her 'Inside their room x x x In a bed.' (Ibid, page 5) She could not remember what she was wearing as outer garment on her lower body. However, she remembers that she was wearing a panty.

The accused 'removed her (my) pants and undergarments.' (Ibid) Then, 'He removed his pants and inserted his penis into her (my) vagina.' (Ibid) At the time, 'she (I) was lying down on her (my) back x x On the bed.' (Ibid) This, because 'He let her (me) lie down.' (Ibid) 'He was lying down on top of her (me) fronting her (me) and that was when he inserted his penis inside her (my) vagina.'

She was 'hurt' (Ibid) when the accused inserted his penis inside her (my) vagina. 'He got some saliva from his mouth and wiped it on her (my) vagina.' (Ibid, page 6) She 'was crying.' (Ibid)

After she was able to leave the room, 'she (I) went to report it to her (my) mother.' (Ibid)"

On cross-examination, she testified that when she went to buy vinegar she was wearing "with sleeves"(TSN, February 19, 2008, page 9) and "Short pants." (Ibid) As regards the distance between their house and the house of the accused, she indicated a distance of "around ten meters." (Ibid, page 10)

She did not shout while the accused inserted his penis inside her vagina "Because he told her (me) that if I would shout, he would thrust a ballpen in her (my) mouth." (Ibid) Hence, what she did was just cry.

After the incident, she did not proceed to the store. She pointed to the accused as the one who put on her clothes.

The accused did not say anything to her after the incident.<sup>[18]</sup>

On August 21, 2000, an information was filed with the trial court charging accused-appellant with "Rape" committed as follows:

"That on or about the 9th day of May, 2000, in the city of Laoag, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused called to his house AAA, a 4-year old girl and a neighbor of the accused in BBB, and inside his house he took AAA into a room and did then and there willfully, unlawfully and feloniously remove her pants and then let her lie down on a bed (papag) and thereafter have carnal knowledge of her without her consent

CONTRARY TO LAW."<sup>[19]</sup>

After finding probable cause "sufficient in law for the prosecution"<sup>[20]</sup> of accused-appellant, the trial court issued a warrant of arrest dated August 24, 2000.<sup>[21]</sup> However, said warrant of arrest was not served because accused-appellant could "not be contacted."<sup>[22]</sup> Thus, in an Order dated February 26, 2001,<sup>[23]</sup> the trial court ordered that (i) the "case be placed in the archives to be automatically revived upon the apprehension" of accused-appellant, and (ii) an "alias warrant of arrest be issued against" accused-appellant.

Accused-appellant remained at large for six (6) years. On November 12, 2007, upon information from DDD that accused-appellant had returned home and was seen at their family house, police officers immediately went to BBB and arrested accused-appellant.<sup>[24]</sup> On November 13, 2007, accused-appellant was turned over to the trial court by the National Bureau of Investigation (NBI), Laoag District Office and was subsequently detained at the Bureau of Jail Management and Penology (BJMP), Laoag City.<sup>[25]</sup>

Upon arraignment, accused-appellant pleaded "not guilty" to the charge.<sup>[26]</sup> During the pre-trial,<sup>[27]</sup> the parties stipulated on the following:

- "1. The Court has jurisdiction over the case;
2. The identity of the accused is admitted in that whenever prosecution witnesses refer to Emeterio Medina y Damo, they refer to the same accused charged and arraigned under the information;
3. The private complainant was born on December 31, 1995;
4. The private complainant was only four (4) years, four (4) months and nine (9) days old on May 9, 2000;
5. The accused was in Laoag City on May 9, 2000;

6. The private complainant and the accused are neighbors at BBB;
7. The existence of the medical results of the examination of the private complainant on May 10, 2000 is admitted;
8. The existence of the gynecology cytology report issued by the Mariano Marcos Memorial Hospital and Medical Center is admitted; and
9. CCC, the father of the private complainant is the first degree cousin of the accused."

Trial ensued. The prosecution presented AAA,<sup>[28]</sup> DDD,<sup>[29]</sup> Jewell C. Diaz,<sup>[30]</sup> Administrative Aide III of the Medical Records Section of the Mariano Marcos Memorial Hospital and Medical Center, Dr. Mona Liza Pastrana<sup>[31]</sup> and Dr. Maria Geraldine Andaya La Madrid<sup>[32]</sup> as its witnesses. On the other hand, the defense presented accused-appellant<sup>[33]</sup> as its sole witness.

In a Decision dated September 22, 2011,<sup>[34]</sup> the trial court convicted accused-appellant of qualified rape and sentenced him as follows:

**"WHEREFORE**, judgment is hereby rendered finding accused **EMETERIO MEDINA y DAMO, GUILTY BEYOND REASONABLE DOUBT** of qualified rape. He is hereby sentenced to a penalty of **RECLUSION PERPETUA**. Further, he is hereby directed to pay the private complainant the amounts of P75,000.00 as civil indemnity, P75,000.00 as moral damages and P25,000.00 as exemplary damages.

SO ORDERED."<sup>[35]</sup>

Thus, accused-appellant filed the present appeal which is premised on the following assignment of errors:

"I

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

THE COURT A QUO GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE PRIVATE COMPLAINANT'S INCONSISTENT AND INCREDIBLE TESTIMONY.”<sup>[36]</sup>

#### THE ISSUE

Whether the trial court erred in finding accused-appellant guilty beyond reasonable doubt of rape.

#### THE COURT'S RULING

The present appeal is premised on the argument that the trial court based accused-appellant's conviction on AAA's “unbelievable testimony.” Allegedly, “AAA admitted that there were many houses in the neighborhood” and “a few people were around during that time,” hence, it was “unlikely that nobody noticed the bestial act that was supposedly being done to her by accused-appellant.”<sup>[37]</sup> Furthermore, AAA's family filed the rape case against accused-appellant because they were allegedly envious “as his niece from Hawaii was helping him out.”<sup>[38]</sup>

The arguments are puerile and unfounded.

It must be stressed that AAA was only four (4) years old at the time of the complained incident, and twelve (12) years old when she testified in court. Accused-appellant managed to remain at large for six (6) long years before he was eventually arrested. In finding accused-appellant guilty of rape, the trial court gave credence to the testimony of AAA who, despite her tender age, candidly and positively testified on the material details of the incident as follows:

#### AAA on direct examination

“Q Now AAA, let us go to the date of May 9, 2000. Do you remember of any unusual incident on May 9, 2000?

A Yes, ma'am.

Q Where were you on May 2000 in the morning?

A I was about to buy vinegar because my mother told me to go and buy, ma'am.

Q Where were you supposed to buy vinegar?