

SPECIAL SECOND DIVISION

[CA-G.R. CR No. 35344, June 26, 2014]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ANGELO PADERNAL Y MASUJER AND NORMAN JAMES BAUTISTA
Y MANZANO, ACCUSED-APPELLANTS.**

D E C I S I O N

SALAZAR-FERNANDO, J.:

Before this Court is an appeal from the Decision^[1] dated July 30, 2012 of the Regional Trial Court, National Capital Judicial Region, Branch 5, Manila, in Criminal Case No. 10-273883, entitled "People of the Philippines, Plaintiff versus Angelo Padernal y Masujer, Norman James Bautista y Manzano, ^[**]EEE, **FFF and **GGG, Accused", the dispositive portion of which reads:

"WHEREFORE, premises considered, the Court finds accused Angelo Padernal y Masujer and Norman James Bautista y Manzano, GUILTY beyond reasonable doubt of the crime of Rape under par. 2 Art. 266-A of the Revised Penal Code as amended by R.A. 8353 and are hereby sentenced to suffer the Indeterminate penalty of Six (6) Years and One (1) Day to Eight (8) Years.

With respect to accused EEE, FFF and GGG, the Court also finds them GUILTY beyond reasonable doubt of the crime charged. However, considering that they were minors at the time of the commission of the offense, they are entitled to a privileged mitigating circumstance of minority, thus, the Court hereby sentenced them to suffer the Indeterminate penalty of Two (2) years Four (4) Months and One (1) Day to Four (4) Years and Two (2) Months of Prision Correccional. Furthermore, the sentence imposed upon them is hereby Suspended for a period of Two (2) Years pursuant to Sec. 64 of Republic Act No. 9344, and placed them under the custody of National Training School for Boys, Sampaloc, Tanay, Rizal.

All accused Angelo Padernal y Masujer, Norman James Bautista y Manzano, EEE, FFF and GGG are ordered to jointly and severally indemnify private complainant AAA the amount of P50,000.00, actual and compensatory damages, P50,000.00 as moral damages and P50,000.00 as exemplary damages without subsidiary imprisonment in case of insolvency and to pay the costs of suit.

The Director of the National Training School for Boys (NTSB), Sampaloc, Tanay, Rizal is hereby directed to submit a periodical report on the rehabilitative program of the three (3) aforesaid minors.

Furnish copy of this Decision, the National Training School for Boys, Sampaloc, Tanay, Rizal for their information and guidance.

The bond posted by the five (5) accused for their provisional liberty are hereby cancelled.

SO ORDERED.”

The facts are:

Accused-appellants Angelo Padernal (Padernal for brevity) and Norman James Bautista (Bautista for brevity) together with EEE, FFF and GGG were charged with the crime of Rape under Art. 266-A, par. 2 of the Revised Penal Code, as amended by R.A. No. 8353 in an Information^[2] the accusatory portion of which reads:

“That on or about October 22, 2006, in the City of Manila, Philippines, the said accused conspiring and confederating together, and helping one another, with lewd design did then and there willfully, unlawfully and feloniously commit sexual abuse upon the person of AAA, in the following manner, to wit: by taking advantage of her drunkenness which deprived her of reason, by then and there kissing her on the lips and mashing her breast thereafter taking off her 'tokong' pants and panty and touching her vagina, and then inserting an “object” into her vagina, without her consent and against her will to the damage and prejudice of said AAA.

Contrary to law.”

Upon arraignment, accused-appellants pleaded not guilty to the crime charged.^[3] Thereafter, trial on the merits ensued. The prosecution presented private complainant AAA^[4], BBB, Carlos Federico de Ramos (de Ramos for brevity) and Dr. Jaime Rodrigo Letrero Real as witnesses. Aside from the testimonies of its witnesses, the prosecution offered the following documentary exhibits as evidence: 1) Exhibit “A” - Resolution dated November 17, 2009 issued by the City Prosecutor of Manila; 2) Exhibit “B” to “B-4” - Original copy of private complainant AAA's Salaysay; 3) Exhibits “C” to “C-1” - a faithful reproduction of the Certificate of Baptism of private complainant AAA; 4) Exhibit “D” - Clinical Biochemistry Findings issued by St. Luke's Medical Center; 5) Exhibits “E” to “E-4” - Original copy of the Provisional Medico Legal Report No. 161-10-23-06 and Memorandum dated October 23, 2006; 6) Exhibit “F” - a faithful reproduction of the certificate of live birth of private complainant AAA; 7) Exhibits “G” to “G-2” - Original copy of the Sinumpaang Salaysay of private complainant AAA; 8) Exhibits “H” to “H-1” - Original copy of the Clinical Biochemistry showing the result of the test conducted by St. Luke's Medical Center; 9) Exhibits “I” to “I-3” - Sinumpaang Salaysay of Carlos Federico de Ramos dated May 10, 2007; 10) Exhibits “J” to “J-2” - Faithful reproduction of the handwritten statement of accused-appellant Bautista admitting that he conspired in raping private complainant AAA; 11) Exhibits “K” to “K-1” - Faithful reproduction of the handwritten statement of accused-appellant Padernal admitting that he conspired in raping private complainant AAA; 12) Exhibits “L” to “L-2” - Faithful reproduction of the handwritten statement of accused EEE admitting that he conspired in raping private complainant AAA; Exhibit “M” - Certificate dated December 7, 2010 issued by the School Director of Republic Institute; and 13) Exhibit “N” with submarkings – Sinumpaang Salaysay of DDD dated August 8, 2007.

Private complainant AAA narrated that: in the late afternoon of October 20, 2006, GGG texted her using a different cellphone number not registered in her phonebook; she asked why he was using a different number but she did not receive a reply; in the evening of October 21, 2006, GGG and EEE told her to make a call but she declined telling them that she had no load; she was told to meet them at Rochelle Computer Shop the following day, and she agreed as they were schoolmates; on October 22, 2006, she left their house at around 6:00 o'clock in the evening and passed by the church to attend the mass before proceeding to Rochelle Computer Shop; she was surprised to see all the accused, including accused-appellants, at the computer shop when she was supposed to meet only GGG and EEE; around 8:00 o'clock in the evening when all the accused finished playing inside the computer shop, she requested EEE to accompany her to the house of her classmate to inquire about their project in Filipino; EEE replied that FFF would like to leave his bag first in their house; she agreed thinking that the house of FFF was just near the computer shop, but she found it to be quite far;^[5] she was 16 years old at the time of her testimony on June 29, 2010; she was born on September 22, 1993 and now lives in Alaminos, Pangasinan; she is now in college and is studying at Colegio San Jose de Alaminos taking up Bachelor of Science in Elementary Education; when she was in first year high school she studied at Republic Institute in San Andres Bukid, Manila; at around 6:00 o'clock in the evening of October 22, 2006, she went to Rochelle Computer Shop as per instruction of GGG and FFF; at the computer shop, she talked to GGG, EEE, FFF, de Ramos, accused-appellants Padernal and Bautista; they were all her schoolmates in Republic Institute; she was invited to go to the house of FFF in San Andres Bukid, Manila near Rochelle Computer Shop; they stayed there from 6:30 up to 11:00 o'clock in the evening; they went inside the house and there were no other people there at that time; upon entering the house, she sat on a chair and waited for them to go out; EEE went out to buy liquor (Emperador Lapad); when EEE came back, he invited his friends to drink; EEE forced her to drink and she was able to drink about $\frac{3}{4}$ of 500 ml.; she was not taking any drugs nor drinking beer or alcoholic beverages; it was her first time to drinking liquor and she felt dizzy; when she was already dizzy, one of the accused approached and forced to kiss her, but she could not remember who he was^[6], while some of them touched the sensitive parts of her body and forced her to undress; she did not remember who were touching her and forcing her to undress, but she recalled that FFF, EEE, Bautista, de Ramos and accused-appellant Padernal were present during their drinking session; she affirmed and confirmed the statement she gave to the police; she mentioned the name of GGG when she was giving her statement, but it was not included in her statement; they succeeded in removing her "tokong" and panty but not her t-shirt and bra; after removing her clothes, she was forced to open her legs and she felt something being inserted in her vagina; she recalled that it was EEE who was inserting something in her vagina; the others left while FFF, accused-appellants Padernal and Bautista remained and watched what EEE was doing to her in the sala of the house; she felt pain when EEE inserted something in her vagina; she never had sexual intercourse prior to the incident; she had no boyfriend at that time; thereafter, she was forcibly dressed and was forced to stand up but she could not stand because she was dizzy; after dressing her up, EEE and de Ramos assisted her in going to the jeepney stop, but she vomited before boarding a passenger jeep; de Ramos is not one of the accused as he was going in and out of the house when they were drinking; it was de Ramos who brought her home to Muñoz while EEE left after bringing her to the jeepney stop; she did not know where accused-appellant Padernal was after dressing her up while accused-appellant Bautista, GGG and FFF

went home already; before reaching their house, she saw her aunt, DDD, and her sister, CCC, at the corner of Muñoz St. waiting for her; they asked her where she had been; she was still dizzy at that time but she recalled that she was given a candy and iced water was poured on her face; they also asked de Ramos where he saw her, but she did not hear de Ramos' answer; her aunt DDD and sister CCC brought her home and at about dawn, she was brought to Manila Doctor's Hospital for examination; from there, she was brought to the house of her aunt DDD to sleep; DDD, who is the principal of the elementary school, went to their school to inform them of what happened to her; she brought her to Camp Crame where she executed her sworn statement and had her medical check-up; the doctor issued a Final Medico Legal Report; on October 23, 2010, she was also brought to St. Luke's Hospital for a blood test; she later finished her first year high school through home study; her second year high school was spent at Lord Christian Foundation, but she finished her high school at Colegio de San Jose de Alaminos; she transferred to Alaminos, Pangasinan to forget the incident that happened to her; she also went to see a psychologist, Dr. Manas, at the Philippine General Hospital for about ten (10) times; she told Dr. Manas that she could no longer respect herself and was scared to face others after the incident; Dr. Manas told her to cheer herself up by engaging in other things and activities; and, she no longer entertains suitors after the incident.

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On cross-examination, she confirmed that GGG was no longer with them when they went to the house of FFF.^[8]

Carlos Federico de Ramos testified that: he knows all the accused, being his friends, and they all studied at Republic Institute; he identified all the accused in court; on October 22, 2006, at around 6:00 o'clock in the evening, he was at Rochelle Computer Shop with his friends EEE, FFF, and accused-appellants Bautista and Padernal upon the invitation of EEE; he does not know private complainant AAA personally aside from being the niece of the principal in grade school and the sister of his friend CCC; he was playing with the computer and private complainant AAA and EEE were talking behind him; at around 7:00 o'clock in the evening, EEE asked them to go to the house of FFF; upon reaching the house of FFF, EEE bought liquor, Emperador (lapad); when he entered the house, they were already drinking the liquor; he saw private complainant AAA as if she was about to vomit and her face looked as if she was being forced to drink; he asked private complainant AAA if she really drinks but she just laughed; she got the glass and put it aside as if she does not want to drink anymore; then he saw EEE kissing the neck of private complainant AAA, who was already intoxicated; FFF and accused-appellant Bautista joined in kissing her; he then left and went to his classmate's house located in the same street about five (5) houses away from the house of FFF; after an hour, he went back to the house of FFF and he saw the latter kissing private complainant AAA who was already in shorts; he tried to prevent EEE from kissing private complainant AAA and the former listened to him, but after awhile he kissed her again; when he could not stop him, he went out of the house, then he came back and assisted private complainant AAA and told them to go home; he again went out and waited for EEE, accused-appellants Bautista and Padernal, and private complainant AAA at the gate; he noticed that they were all intoxicated; they then went to Jade at Onyx Street and thereafter, he went home with accused-appellant Padernal; the following day, he went to school at Republic Institute; he was called at the principal's office; DDD, the aunt of private complainant AAA, was there together with their high school principal; all the accused including accused-appellants Padernal and Bautista were also there;

they talked about the incident that happened the other night at the house of FFF; he heard that EEE told accused-appellant Bautista to open the zipper of private complainant AAA's pants and accused-appellant Bautista masturbated; he also heard the latter saying that EEE lied on top of private complainant AAA and tried to penetrate her; after their talk, they were told to go home; and, he identified his sworn statement when it was showed to him.^[9]

On cross-examination, de Ramos averred that: when they were invited to go to the house of FFF, private complainant AAA was supposed to be with them and he did not prevent her from joining them; he also drank two (2) shots of emperador using only one (1) glass; it was EEE who gave the shots to each and everyone of them; he noticed that private complainant AAA was already tipsy and he told her not to drink if she can no longer handle it; however, EEE was forcing her to drink and she eventually accepted it; he did not know that private complainant AAA was the girlfriend of EEE; although he prevented EEE from kissing private complainant AAA, he saw him kissing her again and he was joined by FFF and accused-appellant Bautista; he was not tipsy after taking two (2) shots of emperador; the lights in the house were off and there was music; he saw EEE, FFF and accused-appellant Bautista kissing private complainant AAA because there were lights coming from outside of the house; he saw their faces not just their silhouettes because he was only an arms length away from them; and accused-appellant Padernal was facing him while the others were seated at the floor.^[10]

The testimony of BBB, the father of private complainant AAA, was offered to prove the damages incurred by their family in connection with this case.^[11]

On the other hand, DDD testified that: private complainant AAA is her niece; on October 22, 2006, between 6:00 to 7:00 o'clock in the evening, she was in Mataas na Lupa, San Andres Bukid, Manila; she met her niece and she asked her where she was going; she answered that she was going to church; at around 7:00 o'clock in the evening, she went to the house of her niece to check if she was already home, but the latter was not around; she went back to their house and waited until she fell asleep; later, the siblings of private complainant AAA arrived and told her that private complainant AAA was not yet home; she was surprised upon learning about it, so she talked to private complainant AAA's father and they went to look for her in her classmates' houses, but they did not find her; when she together with private complainant AAA's sister returned, they saw her getting off a passenger jeep with accused-appellant Bautista; she embraced her niece because she was tipsy and she told accused-appellant Bautista that he should have been resting since he came from a camping ("dapat nagpapahinga ka na kasi galing ka rin sa camping"); accused-appellant Bautista backed off and said not to worry ("wag kang mag-alala"); prior to the incident on October 22, 2006, they were in Taysan, Batangas for the boy scout's camping and all the accused were also there; they brought private complainant AAA home and talked to her but the latter was not replying because she was drunk and reeked with liquor; private complainant AAA is an honor student and does not drink alcoholic beverages; after that incident, she saw private complainant AAA's father in their school waiting for their school director, Mr. Dieta, to report the incident; she went to her class and she met a student who told her that EEE and accused-appellants were involved in the incident; she looked for Mr. Dieta and saw him talking to her brother-in-law; she overheard Mr. Dieta asking accused-appellant Padernal what he did and the latter replied that he kissed private complainant AAA; she did not hear anything more because she was sent out; she