

# FIRST DIVISION

[ CA-G.R. CR-HC NO. 04159, June 19, 2014 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. REY L. ORTINEZ, ACCUSED-APPELLANT.**

## DECISION

**BARRIOS, M. M., J.:**

This is an appeal from the Decision dated 23 September 2009<sup>[1]</sup> of the Regional Trial Court, Branch 52, Guagua, Pampanga where the dispositive portion reads:

"x x x

*WHEREFORE, this court hereby (a) finds accused Rey Ortinez guilty beyond reasonable doubt of statutory rape under Article 335 of the Revised Penal Code; (b) sentences him to suffer the penalty of reclusion perpetua; and (c) orders the accused to pay Hazel Maninang Php50,000.00 moral damages, Php50,000.00 civil indemnity and Php25,000.00 exemplary damages.*

The preventive imprisonment suffered by the accused shall be credited in full in the service of his sentence in accordance with Article 29 of the Revised Penal Code.

*SO ORDERED.*

x x x"

## FACTS OF THE CASE

On 19 October 1999, accused-appellant Rey L. Ortinez was charged with Rape under Article 335 of the Revised Penal Code under the following Information:<sup>[2]</sup>

"x x x

*That on or about the month of July, 1996, at Barangay Del Carmen, Municipality of Lubao, province of Pampanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused REY ORTINEZ, with the use of force, threat and intimidation, did then and there willfully, unlawfully and feloniously had carnal knowledge with the undersigned complainant, AAA<sup>[3]</sup>, eight (8) years old, by inserting his penis into her vagina, against her will and consent.*

*CONTRARY TO LAW."*

When arraigned, accused-appellant pleaded not guilty to the charge. Thereafter, trial on the merits ensued.

From the testimonies of the private complainant AAA, her mother (BBB), and Dr. Ma. Victoria M. Bajao, it is gathered that sometime in July 1996, AAA – then eight (8) years old - was playing “hide and seek” with her playmates when accused-appellant told her that she can hide in his house. AAA agreed and went with appellant to the second floor of his house. AAA was then brought inside a room where accused-appellant forcibly removed her pants. AAA resisted and struggled against accused-appellant's sexual advances, but she was helpless. Thus, accused-appellant succeeded in inserting his penis inside AAA's vagina. AAA felt pain in her vagina and when accused-appellant was done, she saw an excretion from accused-appellant's penis and the latter let the fluid drop on top of her vagina. After AAA's ordeal, accused-appellant told her to put on her pants again and that he would kill her if she would tell anyone what had happened. Afraid and shaken, AAA went home and did not report the incident to anyone.<sup>[4]</sup>

It was only on 14 August 1999 when AAA found the courage to confide to BBB her harrowing experience in the hands of accused-appellant. Thereafter, AAA and BBB reported the matter to the local authorities.

On 16 August 1999, AAA was medically examined by Dr. Maria Victoria Bajao of Jose B. Lingad Memorial Regional Hospital who reported that AAA's hymen had deep healed lacerations at 4, 7, 9, 11 o'clock position incomplete, multiple superficial healed lacerations.<sup>[5]</sup>

On the other hand, relying on the testimonies of accused-appellant and his uncle, Nicasio Labo, the defense invokes denial and alibi. Accused-appellant denied having carnal knowledge with AAA, alleging that for the whole month of July 1996, he was working in a farm harvesting palay from 2:00 a.m. until 6:00 p.m. everyday. After work, he would rest in his house which is about forty (40) meters away from AAA's house.

Furthermore, according to accused-appellant, AAA's parents apparently harbored ill feelings toward his family because his father returned the rice thresher of AAA's parents that his father used to manage and operate.<sup>[6]</sup>

After trial, a guilty verdict was rendered. In this appeal, accused-appellant raised the following assignment of errors:

**I.**

**WITH ALL DUE RESPECT (sic) THE HONORABLE PRESIDING JUDGE FAILED TO APPRECIATE THE FACT THAT THE HONORABLE PROSECUTOR FAILED TO PROVE THAT (sic) GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT; and**

**II.**

**WITH ALL DUE RESPECT (sic) THE HONORABLE PRESIDING JUDGE FAILED TO APPRECIATE THE FACT THAT THE REPORTING OF THE ALLEGED CRIME FOR MORE THAN THREE (3) YEARS UPON ITS ALLEGED COMMISSION CAST DOUBTS TO THE CREDIBILITY AND TRUTHFULNESS OF THE PRIVATE COMPLAINANT'S TESTIMONY.**

**OUR RULING**