

## SEVENTH DIVISION

[ CA-G.R. CR-H.C. NO. 00129, October 03, 2006 ]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
SALVADOR DERPO, ACCUSED-APPELLANT.**

### D E C I S I O N

**BERSAMIN, L.P., J.:**

The accused appeals his convictions for statutory rape and for attempted rape handed down by the Regional Trial Court (RTC), Branch 55, in Irosin, Sorsogon.

First, the facts.

The accused was charged with 2 counts of statutory rape under separate informations filed in the RTC, as follows:

#### **Criminal Case No. 1417<sup>1</sup>**

That on January 2, 2000 at more or less 7:00 o'clock in the evening, at Barangay Gulang-Gulang, Municipality of Irosin, Province of Sorsogon, and within the jurisdiction of this Honorable Court, the above-named accused, with force and intimidation, and with abuse of his moral ascendancy, did then and there willfully, unlawfully and feloniously with lewd designs, had carnal knowledge of JULIE ANN JUDIN Y FANSIPANI, his 7 year old niece, and a virgin of good reputation against her will and without her valid consent, to her damage and prejudice.

The offense is aggravated by relationship, the accused being the uncle of the said victim.

#### **Criminal Case No 1418<sup>2</sup>**

That on January 2, 2000 at more or less 7:00 o'clock in the evening, at Barangay Gulang-Gulang, Municipality of Irosin, Province of Sorsogon, and within the jurisdiction of this Honorable Court, the above-named accused, with force and intimidation, and with abuse of his moral ascendancy, did then and there, willfully, unlawfully and feloniously with lewd designs, had carnal knowledge of IVY JUDIN Y FANSIPANI, his 10 year old niece, and a virgin of good reputation, against her will and without her valid consent, to her damage and prejudice.

The offense is aggravated by relationship, the accused being the uncle of the said victim.

Upon his arraignment on June 14, 2000, Salvador Derpo pleaded not guilty to each information.<sup>3</sup>

### **EVIDENCE OF THE PROSECUTION**

In the joint trial of the cases, 4 witnesses testified for the State namely: offended parties Julie Ann Judin and Ivy Judin; their father Antonio Judin; and Dr. Runnel John Rebutillo, the rural health physician who examined the offended parties immediately after the sexual assault. Their story follows.

On January 2, 2000, at between 6 and 7 o'clock pm, Julie Ann Judin, then 7 years old, and her sister, then 10-year old Ivy Judin, obtained permission of their father, Antonio Judin, to watch television in a neighbor's house.<sup>4</sup> As they were on their way, Derpo, allegedly their uncle, invited them to enter his house so that he would give each P50.00. Enticed by the offer, they entered his house, but Derpo, instead of giving the money, locked the door and began undressing 7-year old Julie Ann, whom he laid down on the floor and then placed himself on top of her (*dinapaan niya*), kissing her on the face.<sup>5</sup> The act was witnessed by Ivy who later testified that Derpo failed to insert his penis into Julie Ann's sexual organ. Ivy recalled him saying to Julie Ann that "if she is already grown up that is the time for him to do it."<sup>6</sup> He shifted his attention to Ivy, undressing her and making her lie on the floor. He then mounted Ivy and consummated the sexual act on her. Ivy felt extreme pain in her genitalia when he inserted his penis in her vagina. Ivy was helpless to resist but she cried out loudly as he violated her. She noticed afterwards that her sexual organ was bleeding and that she experienced pain there.<sup>7</sup> To aggravate Ivy's ordeal, he ordered Julie Ann to watch and look at what he was doing to her sister.<sup>8</sup> Although frightened, Julie Ann could not run away because the house was locked by the accused.<sup>9</sup> After the rape, he threatened to kill them if they told anyone about what he had done.<sup>10</sup> At about then, the girls heard their father's whistle signaling them to go home. The accused allowed the girls to get out of his house.<sup>11</sup>

Antonio Judin narrated that he went looking for his daughters at about 7:00 pm on January 2, 2000 to summon them to supper; that his daughters had earlier asked his permission for them to watch a TV show in a neighbor's house; that he failed to locate them;<sup>12</sup> that exhausted by his search, he stood by a bridge near the house of the Barangay Captain and whistled;<sup>13</sup> that his daughters probably heard his whistle because he then saw them come out of the house of Derpo; that he became immediately apprehensive, prompting him to ask his children what they were doing in Derpo's house; that his daughter did not answer his query immediately; that he held them by their shoulder and briskly walked them home;<sup>14</sup> that as soon as they reached their house, he scolded them and demanded to know why they were in Derpo's house; and that because of his prodding, his daughters then told him about what Derpo had done to them.

Antonio further narrated that he was overcome with rage and hatred for Derpo that he slapped his daughters;<sup>15</sup> and that as soon as he regained his composure, he rushed his daughters to the Irosin District Hospital for physical examination.<sup>16</sup>

Dr. Runnel John Rebutillo, the resident physician at the Irosin District Hospital,



hymen remaining intact because sexual abuse did not always cause laceration due to certain individuals having elastic hymen.

Dr. Rebutillo explained that the protocol was to interview the patients to determine what had happened to them and to record the interview. He remembered that Julie Ann revealed that she was molested in exchange for money but that she suffered no actual penetration because the man placed his penis between her legs, merely touching the vagina.<sup>19</sup> For her part, Ivy disclosed to him that she was also sexually molested.

The victims were next brought to the police station for the filing of the criminal complaints.

### **EVIDENCE OF THE DEFENSE**

The Defense had 4 witnesses, namely: the accused himself, Cirpiano May, Buenaventura Derpo, and Miguel Bayrante. Their version follows.

At around 7:00 *pm* on January 2, 2000, the 2 complainants went to buy ice at Derpo's store but the latter told them that no ice was available. Later on, he heard a whistle from Antonio Judin, summoning his children home. Inasmuch as the house of the Judins was only about 40 meters away from his own house, Derpo heard Antonio whipping his 2 daughters. He heard Antonio inquiring from his daughters where they had come from, to which the 2 had replied that they had come from Derpo's store. Derpo then heard Antonio insisting to his daughters to tell the truth, that he had come from the store and that they had been raped. Derpo said that he was even challenged by Antonio, who was drunk at that time.

Derpo insisted that the accusations against him were false and leveled only because Antonio envied his family's lifestyle and at the same time wanted to extort money from him, utilizing his 2 innocent children for the purpose.<sup>20</sup>

According to Buenaventura Derpo, the son of the appellant, Antonio demanded P250,000.00 in exchange for Derpo's release.<sup>21</sup> Miguel Bayrante, who had accompanied Buenaventura when they went to see Antonio at his house, corroborated Buenaventura.<sup>22</sup>

### **THE RTC DECISION**

On February 18, 2003,<sup>23</sup> the RTC promulgated its decision disposing as follows:

WHEREFORE, premises considered, the Court finds accused Salvador Derpo GUILTY beyond reasonable doubt of STATUTORY RAPE defined and penalized in Article 335 of the RPC, as amended by R.A. 7659 and R.A. 8353, in Crim. Case No. 1418, and sentenced him to RECLUSION PERPETUA. The period of detention is credited in his favor in accordance with Art. 219 of the RPC; to indemnify the victim of the sum of P50,000.00 as civil indemnity; P50,000.00 as moral damages plus P25,000.00 exemplary damages.

In Crim. Case No. 1417, the Court finds accused Salvador Derpo GUILTY beyond reasonable doubt of Attempted Rape, the penalty for attempted rape is

two (2) degrees lower than the imposable penalty of Reclusion Perpetua for simple rape. Two (2) degrees lower is Prision Mayor or 6 years 1 day to 12 years. Applying the indeterminate Sentence Law, and in the absence of any mitigating or aggravating circumstance, the maximum of the penalty to be imposed upon the accused shall be taken from the medium period of Prision Mayor, the range of which is 8 years, 1 day to 10 years, while the minimum shall be taken from the penalty next lower in degree, which is Prision correccional, the range of which is from 6 months and 1 day to 6 years in any of its periods. To pay the victim P25,000.00 as moral damages and P10,000.00 exemplary damages.

SO ORDERED.<sup>24</sup>

### **ASSIGNMENT OF ERROR**

Hence, this appeal, wherein the accused assigns a lone error to the RTC, to wit:

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIMES CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

### **ARGUMENTS OF APPELLANT**

In substantiation of his assignment, Derpo argues that the testimonies of the 2 victims did not jibe on material aspects; that despite her testimony that she and her sister had been raped, Julie Ann admitted on cross-examination that Derpo did not sexually penetrate her and her sister and that they were only forced by their father to file a criminal complaint against Derpo;<sup>25</sup> that the alleged rape of Ivy did not occur as borne out by the absence of spermatozoa from her vagina and by the laceration that was found to have already healed when she was examined only a few hours following the alleged sexual assault;<sup>26</sup> and that the credibility of the complainants as witnesses was open to question in view of their contradictory statements, rendering the Prosecution not able to discharge the burden to establish the guilt of the accused beyond reasonable doubt.

### **COUNTER- ARGUMENTS OF APPELLEE**

The Office of the Solicitor General (OSG) counters that the argument of Derpo is misplaced since the rape of Julie Ann was undoubtedly not consummated, which was precisely why the trial court convicted Derpo only of attempted rape; that with regard to the rape of Ivy, it is already settled in jurisprudence that the absence of spermatozoa from the female sexual organ is not evidence that a woman was not raped; that the testimony of Julie Ann that Derpo failed to insert his penis into the vagina of Ivy was purely hearsay; that the ill motive for the filing the charges against him imputed by the accused to the father of the victims should be rejected as a desperate attempt of the accused to exculpate himself from conviction; that the trial court correctly regarded the imputation as flimsy and weak; that it was improbable for 7-year old Julie Ann and 10-year old Ivy to concoct or contrive a harrowing tale of defloration to their father unless they had been truly aggrieved; and that no father in his right mind would sacrifice his daughters' honors to give vent to the alleged grudge knowing that his daughters' psyche would be damaged