

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MOISES OLIVA ORBITA, ACCUSED-APPELLANT.***G.R. No. 172091. March 31, 2008*

Ponente: VELASCO JR., J.

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This is an automatic review of the Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 01302, promulgated on September 28, 2005. The CA Decision affirmed with modification the Judgment[2] dated May 12, 2003 of the Regional Trial Court (RTC), Branch 140 in Makati City in Criminal Case No. 01-752, finding accused-appellant Moises Orbita guilty of Statutory Rape and imposing upon him the death penalty.

The records show that AAA[3] was born on January 18, 1995, the eldest of the two children of BBB and CCC, AAA's mother and father, respectively. At the time AAA was raped, she was only six (6) years old.

On March 28, 2001, at around 11:00 in the evening, accused-appellant chanced upon BBB playing card games with her neighbors at their condominium unit where he was employed as a security guard. Dressed at that time in civilian clothes and reeking of alcohol, accused-appellant lingered to watch the game for at least an hour and left at around midnight. BBB, who was attending to her other child, did not notice accused-appellant leave. She recalled, however, seeing AAA sitting on the lap of accused-appellant, a fact confirmed by Maria Rosario Cordero, one of BBB's neighbors present during the card games.[4] At about this time, CCC was in Pampanga.

At around 1:00 in the morning of March 29, 2001, BBB and Maria Rosario noticed AAA, who was then coming down the stairs leading to the sampayan (clothes line) on the rooftop of the condominium, visibly frightened and walking awkwardly. When questioned by BBB, AAA narrated that she was taken to the rooftop by Kuya (Brother) Jun, herein accused-appellant. AAA added that once there, accused-appellant turned off the light, undressed her, laid her down near the washing area, and then raped her by inserting first his finger, then his private organ, into her vagina. After satisfying his lust, accused-appellant dressed AAA up and then let her go. After hearing AAA's story, BBB examined AAA's underwear and saw bloodstains on it, which made BBB hysterical. On the same day, the rape incident was reported at the Makati City Police Station. AAA was then taken to the Philippine National Police Crime Laboratory at Camp Crame, Quezon City for examination.[5]

The medico-legal officer who examined AAA submitted Medico-Legal Report No. 0218-03-28-01, stating that there was disclosure of sexual abuse and that the "genital findings are clear evidence of recent blunt penetrating trauma." [6]

Upon AAA's complaint, an Information for Statutory Rape was filed against accused-appellant, as follows:

That on or about the 28th day of March 2001, in the City of Makati, Philippines, a place within the jurisdiction of [the RTC], [accused-appellant], by means of force, violence and intimidation, did and there willfully, unlawfully and feloniously have carnal knowledge of the complainant [AAA] a six (6) year old girl, without her consent and against her will.[7]

When arraigned, accused-appellant pleaded not guilty to the offense charged.

Accused-appellant interposed the defenses of denial and alibi. According to him, he was at work from 7:00 a.m. of March 27, 2001 to 7:00 a.m. of March 28, 2001. After his duty, he had a drink at around 3:30 in the afternoon, and at 4:00 p.m., he went to the rooftop of the condominium building to gather his clothes and then descended to the ground floor to place them inside his cabinet. Thereafter, he proceeded to the condominium unit of BBB to play tong-its, a card game, until 8:30 in the evening, and left and went back to the ground floor and took a rest.[8]

Accused-appellant testified that BBB and AAA concocted the rape story because BBB allegedly harbored negative feelings against him after he saw BBB embracing somebody on several occasions. Furthermore, accused-appellant cast doubt on AAA's credibility when she allegedly testified inconsistently on describing a male organ.[9]

The RTC ultimately rendered its Judgment on May 12, 2003, convicting accused-appellant of the crime charged. The fallo reads:

WHEREFORE, finding [accused-appellant] guilty beyond reasonable doubt for the crime of Statutory Rape, he is hereby sentenced to suffer the penalty of DEATH and ordered to indemnify the offended party in the amount of [PhP 100,000] for actual and moral damages.

Costs against the accused.

SO ORDERED.[10]

Due to the penalty imposed, the case was forwarded to this Court for automatic review and was originally docketed as G.R. No. 158777. However, in accordance with the ruling in *People v. Mateo*,[11] this Court, in its Resolution dated April 26, 2005, transferred this case to the CA for intermediate review, and the case was docketed as CA-G.R. CR-H.C. No. 01302.

On September 28, 2005, the CA issued a Decision, affirming the Judgment of the RTC, but modifying the civil liability, as follows: PhP 75,000 as civil indemnity and PhP 50,000 as moral damages.[12]

The CA held that the RTC properly rejected accused-appellant's defenses of denial and alibi and ruled that these cannot prevail over AAA's positive identification of accused-appellant as her offender. As to his contention that the credibility of AAA's testimony became doubtful when she could not describe a male private organ, the CA debunked it and ruled that a description of the male organ is certainly not an element of the crime of rape. Further, it held that AAA could not be expected to respond with perfect accuracy in describing a male organ, as she was still in her very tender age at that time, which could buttress rather than weaken AAA's credibility.[13]

Thus, we have this automatic review.

We adopt the lone assignment of error raised by accused-appellant in his Brief in G.R. No. 158777. It reads:

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED GUILTY OF THE CRIME OF RAPE DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[14]

We affirm the courts a quo. We have scoured the records of this case and found no reversible error that may have been committed by the trial and appellate courts. We believe that said courts properly convicted accused-appellant.

We qualify.

Conviction or acquittal in rape cases, more often than not, depends almost entirely on the credibility of the

complainant's testimony. For, by the very nature of this crime, it is usually only the victim who can testify as to its occurrence. The accused may be convicted solely on the testimony of the victim, provided that such testimony is credible, natural, convincing, and consistent with human nature and the normal course of things. And, in the evaluation of the credibility of the complainant's testimony, the sound determination and conclusion by the trial court are accorded much weight and respect.[15]

The trial court correctly rejected accused-appellant's self-serving and unsubstantiated pretense that BBB, AAA's mother, harbored ill feelings towards him. We agree with the CA's holding that he failed to substantiate his claim of ill motive on the part of BBB, as it is unnatural for a mother to use her offspring as a tool of malice, especially if it would subject her daughter to embarrassment and even stigma.[16] Indeed, no mother would sacrifice her own daughter.

Anent AAA's alleged failure to accurately describe what a male organ looks like, such minor error does not affect her credibility. Considering her tender age, she cannot be expected to accurately describe it. What prevails is AAA's testimony—it being simple and straightforward—which the offender would have no other recourse but to rebut as his last ditch effort, by posing his insignificant defense, a trap he had set up which he himself fell into. AAA's testimony was strongly supported by the evidence of the prosecution culled from the records that leaves no doubt as to her credibility. And what reinforces the credibility of her testimony is the fact that she was only six years old when she testified and, indubitably, her statements rang true.

Weighed against the positive testimony of the complaining witness, accused-appellant's denial, unsubstantiated by convincing evidence, loses evidentiary value.[17]

The guilt of accused-appellant having been established beyond reasonable doubt, we now examine the propriety of imposing the death penalty and civil penalties on accused-appellant.

We apply to this case Republic Act No. 9346, otherwise known as An Act Prohibiting the Imposition of the Death Penalty in the Philippines, which imposes reclusion perpetua on accused-appellant in lieu of the death penalty. Also, under this law, he shall not be eligible for parole.

Regarding the civil penalties, we follow the Court's ruling in *People v. Audine*, settling the civil indemnity for PhP 75,000, moral damages for PhP 75,000.00, and exemplary damages for PhP 25,000.00,[18] all to be awarded to AAA.

WHEREFORE, the Decision of the CA dated September 28, 2005 in CA-G.R. CR-H.C. No. 01302 is AFFIRMED with MODIFICATIONS, as follows: (1) the penalty of RECLUSION PERPETUA without eligibility for parole is hereby imposed on accused-appellant; and (2) accused-appellant is hereby ordered to indemnify the victim in the amount of PhP 75,000 as civil indemnity, PhP 75,000 as moral damages, and PhP 25,000 as exemplary damages.

### **SO ORDERED.**

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Corona, Carpio Morales, Azcuna, Tinga, Chico-Nazario, Nachura, Reyes and Leonardo-de Castro, JJ., concur.

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[1] Rollo, pp. 3-20. Penned by Eliezer R. de Los Santos and concurred in by Associate Justices Eugenio S. Labitoria (Chairperson) and Jose C. Reyes, Jr.

[2] CA rollo, pp. 17-26. Penned by Judge Leticia P. Morales.

[3] In accordance with Republic Act No. 9262, otherwise known as the Anti-Violence Against Women and Their Children Act of 2004, and its implementing rules, the real names of the victim and her immediate family members are withheld; instead, fictitious initials are used to represent them to protect their privacy. See *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[4] Rollo, p. 4.

[5] *Id.* at 4-5.

[6] *Id.* at 7.

[7] CA rollo, p. 7.

[8] Rollo, p. 8.

[9] *Id.* at 8-9.

[10] *Supra* note 2, at 26.

[11] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[12] *Supra* note 1, at 19.

[13] Rollo, pp. 9, 16-17.

[14] CA rollo, p. 41.

[15] *People v. Padilla*, G.R. No. 137648, March 30, 2001, 355 SCRA 741, 747.

[16] *People v. Perez*, G.R. No. 129213, December 2, 1999, 319 SCRA 622, 642.

[17] *Velasco v. People*, G.R. No. 166479, February 28, 2006, 483 SCRA 649, 664; *Ferrer v. People*, G.R. No. 143487, February 22, 2006, 483 SCRA 31, 52; *People v. Alviz*, G.R. Nos. 144551-55, June 29, 2004, 433 SCRA 164, 172.

[18] G.R. No. 168649, December 6, 2006, 510 SCRA 531, 553.

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