

## PEOPLE OF THE PHILIPPINES, APPELLEE, VS. DIONISIO CABUDBOD Y TUTOR AND EDGAR CABUDBOD Y LACROA, APPELLANTS.

*G.R. No. 176348. April 16, 2009*

Ponente: QUISUMBING, J.

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### QUISUMBING, J.:

This is an appeal from the Decision[1] dated September 26, 2006 of the Court of Appeals in CA-G.R. CR-H.C. No. 01975 which had affirmed with modification the Joint Decision[2] dated May 8, 2002 of the Regional Trial Court (RTC) of xxx, Branch 109 in Criminal Cases Nos. 00-1879, 00-1880 and 00-1881. The appellate court had found appellants Dionisio T. Cabudbod and Edgar L. Cabudbod guilty of qualified rape and simple rape through force and intimidation, respectively, committed against AAA.[3]

The Informations filed on October 26, 2000 charging appellants and German L. Tordecillas with rape, read as follows:

#### CRIMINAL CASE NO. 00-1879

That on or about the 14[th] day of October 2000, in xxx, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused DIONISIO CABUDBOD y TUTOR, being the guardian of AAA, a minor 11 years of age, did then and there willfully, unlawfully and feloniously by means of force and intimidation, have carnal knowledge of said AAA, against her will and consent.

Contrary to law.[4]

#### CRIMINAL CASE NO. 00-1880

That on or about the 9[th] day of October 2000, in xxx, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused EDGAR CABUDBOD did then and there willfully, unlawfully and feloniously by means of force and intimidation, have carnal knowledge of complainant AAA, a minor eleven (11) years of age, against her will and consent.

Contrary to law.[5]

#### CRIMINAL CASE NO. 00-1881

That on or about the 13[th] day of October 2000, in xxx, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named youth offender German Tordecillas y [Lacroa], a 16 years old minor, did then and there willfully, unlawfully and feloniously by means of force and intimidation, have carnal knowledge of [the] complainant AAA, a minor eleven (11) years of age, against her will and consent.

Contrary to law.[6]

Appellants pleaded not guilty to the charges. Accordingly, joint trial ensued.

The prosecution presented as witnesses AAA, Orpha Juan, Reynaldo R. Gubaton, Ma. Erlinda N. Aguila, SPO4

Milagros A. Carrasco and Dr. Mariella S. Castillo. Taken together, their testimonies present the following narrative:

AAA was only five years old when Fernando, appellant Dionisio T. Cabudbod's son, brought her to their house.[7] She was 11 years old at the time the rape was committed, as shown in her Certificate of Live Birth.[8]

On October 9, 2000,[9] between 8:00 to 9:00 p.m., AAA's foster brother, appellant Edgar L. Cabudbod, entered the room in the second floor where AAA was sleeping. Edgar removed her underwear and warned her not to shout. Edgar undressed himself, kissed her private part and raped her. Edgar has raped AAA three times prior to October 9, 2000.

On October 13, 2000,[10] at around 5:00 p.m., AAA was inside their house watching television while her foster mother BBB was outside playing bingo. German L. Tordecillas, AAA's foster cousin, went to their house and joined her in watching television. Suddenly, German held her hands and pointed a knife at her. He ordered her to lie down on the wooden bed in the sala and removed her shorts and underwear. He undressed himself and raped her. German warned her not to tell anyone about the incident otherwise he would kill her. German has molested AAA before for more than 10 times.

On October 14, 2000,[11] at around 8:00 p.m., AAA's foster father, appellant Dionisio T. Cabudbod, entered the room in the second floor where AAA was sleeping. BBB and AAA's foster brothers were then watching television downstairs. AAA was awakened when Dionisio locked the door. He immediately covered her mouth with a piece of cloth, removed her underwear and raped her. Dionisio warned her not to tell anyone about the incident otherwise he would kill her. Dionisio has raped AAA before for more than 10 times.

During cross-examination,[12] AAA testified that she did not tell BBB about the rape incidents because they were not close and she was afraid of the appellants. It was only three years after the first rape that she confided to her classmate, Melvina Tallon, about what happened to her. Melvina accompanied her to their school guidance counselor, Orpha Juan, to whom AAA related what happened in the presence of their class adviser, Ms. Elizabeth Conwi. Thereafter, they reported the incident to Barangay Captain Reynaldo R. Gubaton. Reynaldo referred AAA to Ma. Erlinda N. Aguila of the Department of Social Welfare and Development, in xxx for proper assistance.

Dr. Mariella S. Castillo[13] of the Child Protection Unit of the Philippine General Hospital physically examined AAA. Based on the Final Medico-Legal Report[14] she issued, AAA has healed hymenal lacerations at 5 o'clock and 6 o'clock positions and a scar tissue in the fossa navicularis. Dr. Castillo concluded that there was a penetration caused by a blunt object or an erect penis.

For their part, appellants denied the charges and claimed that AAA fabricated it to seek revenge against them.

Edgar[15] testified that on October 9, 2000, between 8:00 to 9:00 p.m., he was not in their house since he was driving a passenger jeepney from 6:00 p.m. to midnight. Thus, it was impossible for him to commit the crime charged. He added that he treated AAA as his own sister but AAA harbored ill feelings against him since he teased her as "ampon" to which she replied, "may araw ka rin." He averred that AAA sought revenge since Dionisio beat her for stealing the latter's money.

German[16] was only 16 years old at the time the rape was committed, as shown in his Certificate of Live Birth.[17] He testified that he was at home on October 13, 2000, at around 4:00 p.m. When he passed by the Cabudbod's house to buy softdrinks, he noticed that the spouses Cabudbod were inside the house and a birthday party was being held in front of their house. He could not have raped AAA since he was in the store of his ninong from 4:00 to 6:00 p.m. He added that he always quarreled with AAA since he teased her as "ampon" to which she replied, "may araw ka rin sa akin."

Dionisio[18] testified that his son Fernando brought AAA to their house in 1995. She was from San Pablo, Laguna and they did not know her biological parents. They decided to adopt her because they pitied her and they wanted to have a daughter. However, the adoption was not legal and they merely simulated her Certificate of Live Birth by making it appear that she was their own child born on September 3, 1989.

Dionisio[19] contended that on October 14, 2000, between 6:00 a.m. to 9:00 p.m., he was with Edgar at xxx repairing their passenger jeepney. It was already past 9:00 p.m. when they returned home. He said that he could not molest AAA because he treated her as his own daughter. He added that it was also impossible for German to rape AAA on October 13, 2000 since he and BBB were home at that time.

BBB[20] corroborated the testimonies of the appellants.

After trial, the trial court rendered a joint decision convicting Dionisio of qualified rape; Edgar of simple rape through force and intimidation; and German of simple rape through force and intimidation and with the use of a deadly weapon. The trial court believed AAA's testimony since it was supported by the findings of Dr. Castillo. It ruled that appellants' defense of denial and alibi could not prevail over the categorical and positive testimony of AAA. AAA's testimony deserved full credence especially when she has no motive to testify against appellants who are her foster family and benefactor. The trial court also found that the spouses Cabudbod took AAA into custody when she was only five years old. Thus, it took the qualifying circumstance of relationship against Dionisio as her guardian. The dispositive portion of the decision reads:

WHEREFORE, in *People vs. Dionisio Cabudb[o]d*, Criminal Case No. 00-1879, the Court opines that the prosecution has proven the guilt of the accused Dionisio Cabudb[o]d y Tutor, beyond reasonable doubt and hereby sentence[s] him to Death. He is likewise ordered to pay Php50,000.00 civil indemnity and moral damages in the amount of Php50,000.00, with subsidiary imprisonment in case of insolvency.

In Criminal Case No. 00-1880 entitled *People vs. Edgar Cabudb[o]d*, the Court opines that the prosecution has proven the guilt of the accused Edgar Cabudb[o]d y Lacroa, beyond reasonable doubt and hereby sentence[s] him to reclusion perpetua. He is likewise ordered to pay Php50,000.00 civil indemnity and moral damages in the amount of Php50,000.00, with subsidiary imprisonment in case of insolvency.

And in Criminal Case No. 00-1881 entitled *People vs. German Tordecillas*, the Court opines that the prosecution has proven the guilt of the accused German Tordecillas y Lacroa, beyond reasonable doubt and with the privilege[d] mitigating circumstance of minority, he is hereby sentence[d] to prison mayor of ten (10) years and one (1) day to twelve (12) years. He is likewise ordered to pay Php50,000.00 civil indemnity and moral damages in the amount of Php50,000.00, with subsidiary imprisonment in case of insolvency.

SO ORDERED.[21]

Edgar, German and Dionisio appealed. German later withdrew his appeal and accepted the trial court's decision.[22] In their brief, Edgar and Dionisio raised the following as errors of the trial court:

I.

THE PHYSICAL AS WELL AS THE MEDICAL EVIDENCE DISPROVED ALLEGATIONS OF RAPE COMMITTED BY ACCUSED-APPELLANTS, DIONISIO CABUDBOD Y TUTOR AND EDGAR CABUDBOD ON OCTOBER 9, 2000 BETWEEN 8:00 TO 9:00 P.M. AND OCTOBER 14, 2000 BETWEEN 8:00 TO 9:00 P.M., RESPECTIVELY.

II.

MAJOR INCONSISTENCIES AND ADMISSIONS IN THE OVERALL TESTIMONY OF COMPLAINANT FAVOR THE INNOCENCE OF HEREIN ACCUSED-APPELLANTS, AND RENDER

COMPLAINANT'S CREDIBILITY SUSPECT.

III.

COMPLAINANT'S CLAIM OF HER AGE AS ELEVEN (11) YEARS OLD IS NOT SUFFICIENTLY SUPPORTED BY EVIDENCE.

IV.

COMPLAINANT HAD THE MOTIVE TO CRY RAPE AGAINST ACCUSED-APPELLANTS, BROUGHT ABOUT BY SEVERAL FACTORS.[23]

On September 26, 2006, the Court of Appeals affirmed the trial court's decision, with the following modifications:

WHEREFORE, the Joint Decision of the Regional Trial Court of xxx, Branch 109, in Criminal Case Nos. 00-1879 and 00-1880 is hereby AFFIRMED with Modification in that the Accused-appellant Dionisio Cabudbod, who is guilty beyond reasonable doubt of the crime of qualified rape and sentenced to suffer the penalty of DEATH, is ordered to pay the Private Complainant P75,000.00 [as] civil indemnity, P75,000.00 as moral damages and P25,000.00 as exemplary damages.

However, in view of the subsequent passage of R.A. No. 9346, approved on June 24, 2006, which repealed R.A. No. 8177 and R.A. No. 7659, the penalty imposable upon the Accused-appellant Dionisio Cabudbod is reduced from Death to RECLUSION PERPETUA.

SO ORDERED.[24]

Hence, the present appeal.

Simply put, the issues are: (1) Were the physical and medical evidence sufficient to prove that appellants raped AAA? (2) Did the inconsistencies in AAA's testimony render her credibility suspect? (3) Was AAA's minority sufficiently proven? (4) Was AAA impelled by ill motive to accuse appellants of rape?

First. There is no gainsaying that medical evidence is merely corroborative, and is even dispensable, in proving the crime of rape.[25] A medical certificate is not necessary to prove the commission of rape and a medical examination of the victim is not indispensable in a prosecution for rape.[26] In the instant case, the medical evidence showed that AAA has healed hymenal lacerations at 5 o'clock and 6 o'clock positions and a scar tissue in the fossa navicularis. Indeed, this Court has sustained convictions for rape despite the fact that healed, and not fresh, hymenal lacerations were detected after an examination conducted on the same day, the following day, or three days after the commission of the rape.[27] Lacerations, whether healed or fresh, are the best physical evidence of forcible defloration.[28] Thus, the absence of fresh hymenal lacerations does not prove that appellants did not rape AAA.[29] On the contrary, the healed hymenal lacerations confirmed, rather than belied, AAA's claim that appellants have raped her even prior to October 9, 13 and 14, 2000. In fact, Dr. Castillo even testified that it is possible to have a penetration without incurring a new injury.[30]

Second. We have held time and again that a few discrepancies and inconsistencies in the testimony of the victim referring to minor details and not in actuality touching upon the central fact of the crime do not impair the victim's credibility.[31] To every question asked, AAA gave straightforward and forthright answers which were credible and worthy of belief.[32] The linchpin of her testimony is that appellants raped her. On this matter, she did not waver or contradict herself. What appellants make much of are trivial issues that cannot foreclose the fact that they had carnal knowledge of AAA.[33] Thus, whether she was raped in the ground floor or second floor of the house,[34] or whether October 9, 2000 was a Saturday or a Monday,[35] or whether Dionisio was in xxx City or xxx Province on October 9, 2000,[36] are trivial details. An ample margin of error and understanding should be

accorded AAA since minor lapses are to be expected when a person is recounting the details of a horrifying experience. Hence, she cannot be expected to mechanically retain and then give an accurate account of every single lurid detail of her harrowing experience. Far from eroding her credibility, her lapses could instead constitute signs of veracity for they show that her testimony was neither rehearsed nor contrived.[37]

In contrast, appellants could only offer denial and alibi in their defense. Denial and alibi are weak defenses which must be supported by strong evidence of non-culpability to merit credibility. These are negative self-serving evidence which cannot be given greater weight than the testimony of a credible witness who testified on affirmative matters. Between the positive declarations of a prosecution witness and the negative statements of the accused, the former deserves more credence.[38] In addition to AAA's positive declarations, appellants' alibi[39] placed them within the periphery of the locus criminis. In order for the defense of alibi to prosper, it is not enough to prove that appellants were somewhere else when the offense was committed; it must, likewise, be demonstrated that they were so far away that it was not possible for them to have been physically present at the place of the crime or its immediate vicinity at the time of its commission.[40]

Third. Under Republic Act No. 7659,[41] the penalty of death shall be imposed in the crime of rape when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim. Being in the nature of qualifying circumstances, and not ordinary aggravating circumstances which merely increase the period of the penalty, minority and relationship must be specifically pleaded in the information and proved during trial with equal certainty as the crime itself.[42]

The information in Criminal Case No. 00-1879 specifically alleged that AAA was a minor at the time she was raped and that the offender, Dionisio, is her guardian. During the trial, the prosecution proved the presence of the qualifying circumstances of minority and relationship through documentary and testimonial evidence.[43] As shown in her Certificate of Live Birth, AAA was born on September 3, 1989. Therefore, at the time the rape was committed on October 9, 2000, she was 11 years old. Her relationship to Dionisio was likewise proved by the testimonies of AAA, BBB and all three accused. Dionisio's defense that he and BBB merely simulated AAA's Certificate of Live Birth should not be given credence since a Certificate of Live Birth is a public document[44] which has in its favor the presumption of regularity. Thus, he who alleges forgery must prove the same by clear, positive and convincing evidence.[45]

Fourth. The imputation of ill motive on the part of AAA against appellants hardly merits consideration. The alleged ill-feelings harbored by AAA against her foster father and brother are too flimsy to justify the filing of charges punishable by death or reclusion perpetua. The acts imputed against appellants are not ordinary criminal offenses that can be hurled with facility. In relating her experiences in public, not only the victim, but her entire family as well, had to go through the humiliation of a trial. Surely, only the genuine desire to seek justice impelled AAA to come out in the open and reveal her unfortunate fate in the hands of her foster father and brother.[46]

Finally, the Sinumpaang Salaysay (Salaysay ng Pag-urong ng Demanda)[47] dated June 1, 2005 executed by AAA deserves scant consideration. An affidavit of desistance is not looked upon with favor on appeal following a conviction, let alone as being the sole consideration for the reversal of that conviction. There must be other circumstances which, when coupled with retraction or desistance, create doubts on the veracity of the testimony given by witnesses during the trial.[48] As we have discussed earlier, the records do not here cast such doubts.

WHEREFORE, the appeal is DENIED. The Decision dated September 26, 2006 of the Court of Appeals in CA-G.R. CR-H.C. No. 01975 which affirmed with modification the Joint Decision dated May 8, 2002 of the Regional Trial Court of xxx, Branch 109 in Criminal Cases Nos. 00-1879, 00-1880 and 00-1881 is AFFIRMED.

Costs de oficio.

**SO ORDERED.**

Carpio Morales, Tinga, Velasco, Jr., and Brion, JJ., concur.

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[1] Rollo, pp. 4-22. Penned by Associate Justice Noel G. Tijam, with Associate Justices Remedios A. Salazar-Fernando and Arturo G. Tayag concurring.

[2] Records, Vol. 2, pp. 268-288. Penned by Judge Lilia C. Lopez.

[3] See *People v. Ching*, G.R. No. 177150, November 22, 2007, 538 SCRA 117, 121. Pursuant to Republic Act No. 9262, otherwise known as the "Anti-Violence Against Women and Their Children Act of 2004" and its implementing rules, the real name of the victim, together with the real names of her immediate family members, is withheld and fictitious initials instead are used to represent her, both to protect her privacy (*People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419, 421-426).

[4] Records, Vol. 1, p. 4.

[5] *Id.* at 16.

[6] *Id.* at 25.

[7] TSN, March 14, 2001, p. 3.

[8] Records, Vol. 2, p. 171.

[9] TSN, March 14, 2001, pp. 11-12.

[10] *Id.* at 8-10.

[11] *Id.* at 5-7.

[12] *Id.* at 15-16, 22; TSN, April 18, 2001, p. 8; TSN, April 20, 2001, pp. 16-17; TSN, April 30, 2001, pp. 3-9.

[13] TSN, March 27, 2001, pp. 2, 6-7.

[14] Records, Vol. 2, p. 12.

[15] TSN, May 9, 2001, pp. 11-13 & 21-22.

[16] TSN, May 17, 2001, pp. 4-11; TSN, May 21, 2001, pp. 2-4 & 8-9.

[17] Records, Vol. 1, p. 265.

[18] TSN, May 29, 2001, pp. 3-4; TSN, June 13, 2000, pp. 2-4 & 7.

[19] TSN, June 5, 2001, pp. 9-11 & 15.

[20] TSN, June 19, 2001, pp. 4-15.

[21] Records, Vol. 2, pp. 287-288.

[22] CA rollo, pp. 91-93.

[23] *Id.* at 103-104.

[24] Rollo, p. 21.

[25] *People v. Arango*, G.R. No. 168442, August 30, 2006, 500 SCRA 259, 279 citing *People v. Bohol*, G.R. Nos. 141712-13 & Crim. Case No. 98-0465, August 22, 2001, 363 SCRA 510, 519.

[26] *People v. Arango*, supra at 280; *People v. Boromeo*, G.R. No. 150501, June 3, 2004, 430 SCRA 533, 541.

[27] *People v. Bismonte*, G.R. No. 139563, November 22, 2001, 370 SCRA 305, 320.

[28] *People v. Malones*, G.R. Nos. 124388-90, March 11, 2004, 425 SCRA 318, 335; *People v. Acala*, G.R. Nos. 127023-25, May 19, 1999, 307 SCRA 330, 345.

[29] *People v. Erardo*, G.R. No. 119368, August 18, 1997, 277 SCRA 643, 655.

[30] TSN, March 27, 2001, p. 8.

[31] *People v. Pascua*, G.R. No. 151858, November 27, 2003, 416 SCRA 548, 554.

[32] *People v. Gilbero*, G.R. No. 142005, January 23, 2002, 374 SCRA 413, 419.

[33] *People v. Perez*, G.R. No. 113265, March 5, 2001, 353 SCRA 609, 616.

[34] TSN, April 20, 2001, pp. 3-4.

[35] *Id.* at 6-7.

[36] *Id.* at 2.

[37] *People v. Perez*, supra.

[38] *People v. Amante*, G.R. Nos. 149414-15, November 18, 2002, 392 SCRA 152, 167; *People v. Alvero*, G.R. Nos. 134536-38, April 5, 2000, 329 SCRA 737, 756.

[39] Edgar testified that on October 9, 2000, between 8:00 to 9:00 p.m., he was not in their house since he was driving a passenger jeepney from 6:00 p.m. to midnight. On the other hand, Dionisio testified that on October 14, 2000, between 6:00 a.m. to 9:00 p.m., he was with Edgar at xxx repairing their passenger jeepney.

[40] *People v. Cadampog*, G.R. No. 148144, April 30, 2004, 428 SCRA 336, 353.

[41] An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Code, as Amended, Other Special Penal Laws, and For Other Purposes, approved on December 13, 1993.

[42] *People v. Musa*, G.R. No. 143703, November 29, 2001, 371 SCRA 234, 248.

[43] *People v. Ching*, supra note 3, at 131.

[44] *Heirs of Pedro Cabais v. Court of Appeals*, G.R. Nos. 106314-15, October 8, 1999, 316 SCRA 338, 343.

[45] *Macaspac v. Puyat, Jr.*, G.R. No. 150736, April 29, 2005, 457 SCRA 632, 644.

[46] *People v. Guillermo*, G.R. No. 173787, April 23, 2007, 521 SCRA 597, 604.

[47] CA rollo, pp. 233-234.

[48] *People v. Lou*, G.R. No. 146803, January 14, 2004, 419 SCRA 345, 351.

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