

EN BANC

[G.R. No. 134101, September 05, 2001]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FELINO LLANITA Y OPIANA, ACCUSED-APPELLANT.

D E C I S I O N

PER CURIAM:

The accused denied that he raped CATHERINE. He claimed that he was working at a repair shop where he was employed from seven o'clock in the morning up to five o'clock in the afternoon on the date the alleged rape occurred.

On April 22, 1998, the RTC rendered a decision finding the accused guilty beyond reasonable doubt of the crime of rape. The dispositive portion of the decision reads:

"WHEREFORE, premises considered, the accused, FELINO LLANITA, is sentenced to suffer the penalty of DEATH, for committing the crime of rape of the five-year old Catherine Acol on the 25th day of March 1996.

SO ORDERED."^[5]

In view of the imposition of the death penalty, the case is now before this Court on automatic review.

In his brief, the accused-appellant assigns the following error committed by the RTC:

"THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE FACT THAT HIS GUILT HAS NOT BEEN PROVEN BEYOND REASONABLE DOUBT."^[6]

In support of his appeal, the accused-appellant opines that in convicting him, the lower court did not rely on the strength of the prosecution's evidence but on the weakness of his defense. The accused-appellant stresses that it is the burden of the prosecution to prove his guilt beyond reasonable doubt and that he is presumed innocent unless proven otherwise.

The accused-appellant also claims that the testimony of the alleged rape victim, CATHERINE, is unworthy of belief, unnatural and incredible. He points out that although CATHERINE claimed to have been raped on three occasions, she never testified as to the date of any of the rapes, not even for the third rape for which he was charged. Moreover, since CATHERINE testified that she bled during the second

alleged rape, her mother would have noticed the blood stains on CATHERINE's underwear and should have already suspected that her child was molested. It is also claimed by the accused-appellant that CATHERINE's testimony contradicts the findings of the medical report as testified to by Dr. Armie Loreta, who stated that she did not find any fresh lacerations when she examined CATHERINE the day following the commission of the alleged rape.

Finally, the accused-appellant claims that the prosecution never presented any competent evidence to prove the allegation in the information that CATHERINE was five (5) years old. Absent such evidence, no conclusion can be made regarding the age of the victim.

After a meticulous review of the case, we resolve to affirm the judgment of conviction.

The accused-appellant's main defense consists of alibi and denial.

The defense of alibi is the weakest of all defenses for it is easy to contrive and difficult to prove.^[7] A positive identification of the accused made by an eyewitness prevails over such a defense.^[8] Moreover, the denial of the accused-appellant cannot prevail over the categorical testimony of CATHERINE that he raped her. There was no showing that she was motivated to falsely implicate him in the commission of such a heinous crime and the absence of convincing evidence showing any improper motive on the part of the principal witnesses for the prosecution strongly tends to sustain the conclusion that no such improper motive exists, and that their testimonies are worthy of full faith and credit.^[9] In her testimony, CATHERINE narrated in detail how she was raped by the accused-appellant and positively identified him as the perpetrator of the rape.

The accused-appellant's attempt to discredit CATHERINE's testimony by claiming that she never mentioned the precise date and time of the commission of the offense and that her mother did not notice blood in her underwear despite her claim that she bled on two of the alleged rapes is unpersuasive.

It has been consistently held that the date of the commission of the rape is not an essential element of the crime.^[10] Moreover, the victim was subjected to a medical examination upon written request of the Chief of Police on March 26, 1996 as an alleged victim of rape. As regards the allegation that CATHERINE's mother did not notice any blood on CATHERINE's underwear, this is a mere claim made by the defense and is based merely on conjecture. Nenita Acol herself did not testify. It bears stress that the determination of the competence and credibility of a child to testify rests primarily with the trial judge who sees the witness, notices her manner, her apparent possession or lack of intelligence, as well as her understanding of the obligation of an oath.^[11] The findings of the trial court on the credibility of witnesses and their testimonies are accorded great respect unless the court *a quo* overlooked substantial facts and circumstances, which if considered, would materially affect the result of the case.^[12] The evaluation or assessment made by the trial court acquires greater significance in rape cases because from the nature of the offense, the only evidence that can oftentimes be offered to establish the guilt of the accused is the complainant's testimony.^[13] In the present case, we find no

cogent basis to disturb the trial court's finding disregarding the testimony of the accused-appellant and upholding the credibility of the complainant CATHERINE who, despite undergoing a rigorous cross-examination, withstood a barrage of questions, stood firm on her assertions and remained unfaltering in her testimony on the unfortunate incident.

The accused-appellant's claim that CATHERINE's testimony is contradicted by the findings of the medical report^[14] as testified to by Dr. Armie Soreta-Umil, who stated that she did not find any fresh lacerations when she examined CATHERINE the day following the commission of the alleged rape is also unconvincing. Absence of hymenal lacerations does not disprove sexual abuse especially when the victim is of tender age.^[15] To prove rape, it is sufficient to establish that the penis touched the labia of the pudendum of the victim.^[16] In the present case, CATHERINE's testimony, where she stated that the accused-appellant inserted his penis into her vagina, is uncontroverted. Dr. Armie Soreta-Umil herself confirmed that there was possibility of penetration of the tip of the male organ into the vagina despite CATHERINE's tender age.^[17] Moreover, the medical report in fact corroborates CATHERINE's testimony to the effect that she was previously raped on two occasions by accused-appellant since the medical report reveals that there were "old healed complete hymenal lacerations present" on CATHERINE.

Given that the guilt of the accused-appellant has been proved beyond reasonable doubt, should he be meted the supreme penalty of death despite the failure of the prosecution to present in evidence CATHERINE's birth certificate or other documentary evidence as proof of her age?

We rule affirmatively.

Article 335, of the Revised Penal Code, as amended by Section 11 of R.A. 7659, insofar as applicable, reads:

"The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:

xxx

4. when the victim is a religious or *a child below seven (7) years old.*"
(Emphasis supplied)

The prosecution is tasked with the burden of proving the age of the victim beyond reasonable doubt in order to appreciate age as a qualifying circumstance.

In the present case, although the only evidence presented by the prosecution to establish that CATHERINE was below seven (7) years old at the time of the commission of the rape was her own testimony, there is no reason to doubt the sufficiency of the said evidence. Her testimony as to her age was never questioned by the accused-appellant in the lower court and remained unrebutted at the trial. And such testimony regarding her age is admissible although hearsay, for she can have no personal knowledge of the date of her birth, as all knowledge as to one's age is acquired from whatever is told by the parents or relatives and such testimony