

**FIRST DIVISION****[ G.R. No. 114183, February 03, 1997 ]****PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JESUS  
BORJA Y SONSA, ACCUSED-APPELLANT.  
D E C I S I O N****BELLOSILLO, J.:**

AAA, 12 years old, a sixth grade pupil, went to court on 12 May 1993 and, assisted by her mother BBB, charged her neighbor Jesus Borja y Sonza with rape. In the trial that lasted for five (5) months the accused repeatedly professed his innocence by filing a *Motion for Reinvestigation*, a *Motion to Dismiss* and a *Demurrer to Evidence* all of which were however denied by the Regional Trial Court of xxx, Metro Manila. On 2 December 1993 the trial court found the accused guilty of rape and imposed upon him a prison term of *reclusion perpetua*. It also ordered him to indemnify the complaining witness in the sum of P20,000.00 and to pay the costs.

Accused-appellant is now before this Court imputing four (4) errors to the court a quo: (a) giving undue weight and credence to the implausible, inconsistent if not contradictory, testimonies of complainant and her mother anent the incident in question; (b) concluding that complainant was sexually abused by appellant considering that she did not offer any tenacious resistance plus the fact that she did not sustain any genital injuries; (c) disregarding the evidence put up by appellant; and, (d) rendering a verdict of conviction despite the fact that appellant's guilt was not proved beyond reasonable doubt.<sup>[1]</sup>

The evidence for the prosecution shows that on the night of 1 May 1993, the eve of the town fiesta of xxx, AAA was visiting at a friend's house four (4) or five (5) meters away from where she lived. As she and her friend CCC were conversing, the lights went off plunging the area into darkness. CCC invited her for supper but she declined. When CCC left to eat, AAA stayed behind. While she was alone appellant Jesus Borja, who was standing by the door of the house, called her. Responding, the girl approached him believing that he would send her on an errand. However, as soon as she got near, appellant pulled her and dragged her into the toilet located at the back of the house. There Borja undressed her and laid her on the cement floor, pulled down his own pants, and placed himself on top of her. He mashed her breasts and put his penis inside her organ. She felt pain; she cried. During the sexual molestation Borja threatened to kill AAA if she divulged the incident to anyone.

A little later, someone knocked at the toilet door. Borja quickly withdrew his penis from complainant's genitalia and hurriedly left passing through a hole in the toilet. AAA opened the door and saw the woman knocking. The woman asked her what she was doing inside the toilet and she replied that she was just urinating. Thereafter AAA left for home and went to sleep. She did not tell anyone about the sexual assault.

The following morning, as AAA bathed with the help of her mother, BBB noticed that there was something unusual in the shape of her daughter's vagina. BBB asked what happened but AAA could only keep mum. A few days later BBB consulted a fortune teller on the suspicion that her daughter was a victim of witchcraft. Upon arriving home she spanked AAA, slapped her, which forced her to reveal what happened to her. She told her mother that their neighbor Mang Jesus<sup>[2]</sup> raped her.

On 11 May 1993 BBB reported the rape of her daughter to the police authorities and caused the arrest of appellant Jesus Borja. She also brought her daughter to the National Bureau of Investigation (NBI) for physical and genital examination.

The Living Case Report No. MG-93-440<sup>[3]</sup> prepared by NBI Medico-Legal Officer xxx who examined AAA contains the finding that there was no evident sign of extra-genital physical injury on the body of the complainant at the time of the examination. It also stated that AAA's hymen was intact and its orifice was small (1.5 cm. in diameter) as to preclude complete penetration by an average-sized adult male organ in full erection without producing hymenal laceration.

Jesus Borja denied the charge and interposed alibi to extricate himself from criminal culpability. He claimed that on 1 May 1993 he was out the whole day selling puto and returned home only at almost six o'clock in the afternoon. Since his wife was cooking supper he took care of their baby. After supper he went to bed. That was already eight o'clock in the evening. Ten days later he was arrested by the police.

In assailing the alleged failure of the prosecution to sufficiently establish his guilt appellant leans heavily on the three (3) overriding principles invoked in rape cases: (a) an accusation for rape can be made with facility; it is difficult to prove, but more difficult for the person accused, though innocent, to disprove; (b) in view of the intrinsic nature of the crime of rape where only two (2) persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and, (c) the evidence for the prosecution must stand or fall on its own merit and cannot be allowed to draw strength from the weakness of the evidence for the defense.<sup>[4]</sup>

Appellant bewails the failure of the trial court to consider the aforecited guidelines in the assessment of the evidence for the prosecution. He contends that no evidence at all was offered to prove that he had actual carnal knowledge of complainant and that he employed force and intimidation in assaulting her womanhood. Citing the Living Case Report No. MG-93-440 (Exh. "D") submitted by the prosecution, he argues that since the examination conducted on AAA revealed the absence of extra-genital physical injury, that her hymen was intact and that its orifice was too small to preclude complete penetration, this can only indicate that he did not sexually assault her. He also expostulates that the major inconsistencies that abound in the testimonies of complainant and her mother merely demonstrate the inherent weakness of the case against him.

We have conducted a meticulous and painstaking examination of the records as well as the transcripts of stenographic notes and we find no cause to overturn the findings of fact and the conclusion of the court below. Verily, appellant raped complainant. With all the characteristic naiveté of a 12-year old girl, fortified by her

sincerity and candor, the complaining witness recounted in detail her horrifying experience -

Q. Now, did you obey or did you approach the accused when he called you?

A. Yes, sir.

Q. And what happened when you approached him?

A. He pulled me.

Q. To what portion were you pulled?

A. He pulled me to an unoccupied house.

Q. And where is that an unoccupied house?

A. Located near the house where CCC is living.

Q. And when you were pulled to an unoccupied house, in what portion of the house were you brought? Is it in the kitchen? In the toilet or in the bedroom?

A. Inside the toilet.

Q. Now, when you were inside the toilet, what happened?

A. He undressed me.

Q. And after undressing you, what did the accused do to you, if any?

A. He placed himself on top of me.

Q. And while the accused was on top of you, what did the accused do, if any?

A. He mashed my breast, sir.

Q. And what else, if any?

A. He put his penis in my private organ.

Q. Why did you say that it was the penis of the accused that was inserted to your private organ?

A. Because I suffered pain.<sup>[5]</sup>

Then again -

Q. Now, Madam Witness, you stated that when the accused's penis was inserted into your vagina, you suffered pain. Now, how long did he insert his penis into your private part?

A. For a short time, sir.

Q. And what did you do when this accused inserted his penis into your vagina?

A. I cried.

Q. Why did you not fight back?

A. Because he was threatening me and I did not fight back because he