

FIRST DIVISION

[G.R. No. 115983, April 12, 1996]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
CLEMENTE ULPINDO, ACCUSED-APPELLANT.**

D E C I S I O N

PADILLA, J.:

This is an appeal from the judgment of the Regional Trial Court (RTC) of Tagudin, Ilocos Sur, Branch 25^[1] which convicted herein accused-appellant of the crime of rape allegedly committed upon then seven-year old Regina Pelayo.

The information,^[2] dated 19 July 1991, alleged that:

"xxx

xxx

xxx

That on or about the last week of December, 1990, in the municipality of Tagudin, province of Ilocos Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously have carnal knowledge of one Regina Pelayo, a seven (7) year old girl, by means of force and against the latter's will and consent.

Contrary to law."

The facts of the case, culled from the testimonies of witnesses for the prosecution and the defense, are as follows:

Regina Pelayo could no longer remember exactly the day or month when she was allegedly abused by accused-appellant,^[3] but she recalled that one afternoon, while she was sweeping their backyard, and while her mother, brothers and sisters were all asleep in their house, accused-appellant approached her and pulled her to his kitchen, then "went on top of her" for more or less five (5) minutes amidst her continued shouting and crying. Thereafter, accused-appellant threatened to kill her if she told her mother about the incident.

The material part of Regina's testimony on the alleged rape, consisting of two and a half (2-1/2) pages, is reproduced below:

"PROSECUTOR CARDENAS:

Q What, if any, Madam Witness, did this Menteng do to you?

A There is, Sir.

Q What was that?

A He went on top of me, Sir.

Q And while this Menteng who is also known as Clemente Ulpindo, went on top of you, did you feel anything painful?

A Yes, sir, there was.

Q What particular part of your body that was painful when he went on top of you?

A On my vagina, Sir.

Q Did you not shout when Clemente Ulpindo was doing that to you?

A I shouted, Sir.

Q And still Clemente Ulpindo was on top of you even if you are shouting?

A Yes, Sir.

Q Where did he do that to you?

A In their kitchen, Sir.

Q Did you go to their kitchen?

A Yes, Sir.

Q Why did you go to their kitchen?

A He pulled me, Sir.

Q Do you remember, Madam Witness, what month or year when you were abused by Menteng?

A I cannot remember anymore, Sir.

Q And when he went on top of you and you were feeling pain in your vagina, what happened next?

A I got sick, Sir.

Q Did you tell that to your mother?

A No, Sir.

Q Why not?

A Because Menteng told me, Sir, that if I will tell it to my mother, he will kill me.

Q Who told you that? Who threatened you?

A Clemente Ulpindo, Sir.

Q And you were then afraid of him?

A Yes, Sir.

Q So, that was the reason why you did not tell what happened to you right away to your mother?

A Yes, Sir.

Q When your mother brought you to her for check-up?

A Yes, Sir.

Q When Clemente Ulpindo went on top of you, how long did he do that to you?

A More or less five (5) minutes, Sir.

Q And, during that period of five (5) minutes, you continuously shouted and cried?

A Yes, Sir.

PROSECUTOR CARDENAS:

That would be all, your Honor."^[4] (italics supplied)

On cross-examination, Regina stated that she was picking mangoes in accused-appellant's yard when the latter arrived, scolded her, then dragged and whipped her with a belt which hit her vagina. When she cried, accused-appellant released her. Thus:

"COURT:

Are you sweeping or are you doing something else?

A I was sweeping the yard, your Honor.

ATTY. LORENZO:

You are sweeping what?

A The scattered dirt in our yard, Sir.

Q Madam Witness, can you tell to this Honorable Court if Menteng have (sic) mango trees surrounding his house?

A There are, Sir.

Q At that time you were sweeping your yard, you were picking fruits?

A Yes, Sir.

Q And in fact, when Menteng arrived, he scolded you?

A Yes, Sir.

Q And in fact, Mang Menteng grabbed you and whipped you with a belt?

A He whipped me, Sir.

Q And in the process of whipping you, your vagina was hit?

A Yes, Sir.

Q And when your mother asked you what happened to your vagina, you told her that it was hit when Menteng whipped you?

A No, Sir.

Q And when Mang Menteng dragged you, you cried because you were hit when he whipped you?

Yes, Sir.

A

Q After you were whipped by Mang Menteng and your vagina was hit, he let you go?

A Yes, Sir.^[5] (Italics supplied)

Resurreccion Pelayo, Regina's mother, testified that sometime during the first week of January 1991, Regina started complaining about pains in her crotch. Resurreccion examined her child's vagina and found it to be swollen. To ease the swelling, Resurreccion applied pain relievers over the affected area but Regina's vagina remained swollen. On 7 January 1991, when Regina was chilling due to high fever, Resurreccion decided to bring her to the Barangay Health Center for treatment.^[6]

Jessimar Lascota, a midwife, testified that she attended to Regina and her mother on 7 January 1991. After taking Regina's temperature, she ordered Regina to lie down upon learning from Resurreccion about Regina's condition. When Regina took off her panty, Jessimar immediately noticed the bluish discoloration on Regina's vagina, particularly the *labia majora*, which was visibly bruised.

According to Jessimar, she asked Regina repeatedly if she had inserted something inside her vagina but the child refused to answer. When Jessimar threatened not to treat her unless she spoke, Regina blurted out the name of "Menteng" and told Jessimar that "Menteng" gave her some money and then inserted his penis inside her vagina.^[7] Suspecting that Regina might have been raped, Jessimar told Resurreccion to comfort her daughter which she did.

Regina then told her mother Resurreccion that she was "raped by Menteng" and that she was afraid to tell this to her mother because Menteng threatened to kill her.^[8] Resurreccion further averred that Regina told her that accused-appellant called her (Regina) to his house and upon her entering the kitchen, he brought Regina upstairs, then undressed her and even applied oil in his penis before mounting her.^[9]

Resurreccion admitted that while she could not pinpoint the exact day when the rape occurred, she surmised that it happened the day before Regina was whipped by accused-appellant. Resurreccion confirmed that Regina indeed went to accused-appellant's front yard to pick some mangoes and when accused-appellant caught her in the act of stealing, accused-appellant whipped Regina with a belt.^[10]

Resurreccion regarded accused-appellant as a very selfish neighbor. Moreover, she had long harbored the suspicion that accused-appellant was part of a group who had stolen their cows.^[11] Since then, they were not on speaking terms with him.

Upon Jessimar's advice, Resurreccion brought Regina to the emergency room of the district hospital of Southern Ilocos Sur where she was examined by Dr. Eugene Daus who made the following findings:

DIAGNOSIS:

Gen. Survey:

FIN, FID, Febrile, ambulatory, no. in C-R distress

PPE:

HEENT: Pinkish, palpebral conj., anicteric esclera, no nasal/aural discharge

C/L:)
Heart:) essentially normal
abdomen)
extremities)

Genitalia) Labia majora - erythematous change
Hymen - healed lacerations at 6 & 9 o'clock

OPD IE - admits tip of finger freely.^[12]

Dr. Dauz testified that the erythematous change (reddish discoloration of the skin) on Regina's labia majora could not be attributed to penile penetration of the vagina but could be caused by the whipping action of a hard object.^[13] However, the condition of Regina's vaginal orifice indicated that Regina was no longer a virgin and the hymenal lacerations could have been caused by, among other factors, the head of an erect penis penetrating the vaginal canal of a 7-year old girl like Regina.

Dr. Dauz expounded that it is almost impossible for a belt to have caused the hymenal lacerations found on Regina's vagina considering the anatomical location of the hymen. If ever, the victim must be either in a prone or supine position in order for the whipping action to produce such injuries.^[14]

Testifying for the defense, Clemente Ulpindo, Jr. said that in the morning of 2 January 1991, from Barrio Tagudin, Ilocos Sur, he and his father went to visit their former house in Ranget. Arriving at said place, he saw the Pelayo sisters, Regina, Ileen and Abbygail, picking mangoes inside their compound. He saw Regina shaking the branches atop one of the mango trees, and he shouted at them. Caught in *flagrante*, Regina hastily skidded down (nagalus-us) the tree as her other sisters, Abbygail and Ileen, ran away. When Regina touched the ground, he saw his father, Clemente Ulpindo, whip Regina with a belt and in the process Regina was hit in her crotch.

Accused-appellant corroborates his son's story as he strongly denied that he gave money to Regina to lure her inside his house and rape her. He stated that the Pelayos were his neighbors in Ranget until he moved out to reside in Borono, Tagudin, Ilocos Sur. During the last week of December 1990, he was in Ranget everyday doing carpentry work in a house owned by Quirino Andaya. His son, Clemente Ulpindo, Jr., accompanied him to work.^[15]

Accused-appellant asserted that there was only one occasion when he saw Regina Pelayo, and that was when he and his son went to inspect their property in Ranget. When they arrived at the place, accused-appellant saw the Pelayo sisters picking mangoes beside their house. Previously, he had already caught the same children inside his property but he promptly dismissed these incidents as petty matters. But this time, he got angry with the children when he saw that many unripe fruits were being destroyed in the process. Clemente, Jr. shouted at the children who scampered away. Regina, who was left on top of a tree, immediately slid down. He hit Regina with his belt^[16] which went between her legs as Regina ran towards their house.