

EN BANC

[G.R. No. 144974, February 13, 2004]

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. RUBEN GUSMO Y CAÑELAS, APPELLANT.

D E C I S I O N

PER CURIAM:

For automatic review is the Decision^[1] dated June 27, 2000 of the Regional Trial Court of Daet, Camarines Norte, Branch 41, in Criminal Case No. 8633 convicting appellant Ruben Gusmo of qualified rape, sentencing him to suffer the supreme penalty of death and ordering him to pay the victim, six-year-old Jonalyn Cobita, the sum of P50,000 as moral damages and P20,000 as exemplary damages.

The Indictment

The appellant was charged with qualified rape, the accusatory portion of which reads:

That on or about 10:00 o'clock in the evening of the 29th day of August, 1995 at Sitio Lubhang, Barangay Calangkawan Sur, municipality of Vinzons, province of Camarines Norte and within the jurisdiction of this Honorable Court, the above-named accused urged by sexual lust and by means of force, unlawfully, feloniously, and criminally, did then and there, commit sexual intercourse with one Jonalyn Cobita, a minor girl of 6 years old thereby causing hymenal laceration, hymenal avulsion, vaginal laceration, median perineal laceration on her genital organ to her damage and prejudice.

CONTRARY TO LAW.^[2]

Upon arraignment, the appellant, with the assistance of his counsel *de officio*, pleaded not guilty to the charge.^[3] Trial thereupon ensued.

The Case for the Prosecution^[4]

Jonalyn Cobita was born on September 16, 1988.^[5] In August of 1995, she was barely seven years old, and was in grade one.^[6] She lived with her widowed maternal grandmother Emilia S. Avila at *Sitio Lubhag, Barangay Calangkawan Sur, Vinzons, Camarines Norte*.^[7]

On August 29, 1995, the eve of the *barangay* fiesta of Calangkawan Sur, a dance was staged at the *barangay* multi-purpose hall.^[8] Emilia went to see the dance with her granddaughter in tow.^[9] Jonalyn was wearing a pair of short pants and a t-shirt.

At about 10:00 p.m., Jonalyn asked permission from her grandmother to watch television in a nearby house. Emilia acceded but did not admonish Jonalyn not to go too far.^[10] Jonalyn was alone when she watched television outside the house. Suddenly, appellant Ruben Gusmo came from out of nowhere and forcibly grabbed her from behind.^[11] The appellant then dragged her to a secluded grassy place, and turned her around. In the process, she noticed that the appellant was of medium height, with curly eyelashes, sporting a crewcut hairstyle and wore a blue-colored t-shirt.^[12] The appellant, who was merely one or two feet from her, boxed her on the stomach rendering her unconscious.^[13]

Meanwhile, Emilia was watching the merrymaking in the hall while seated within its periphery. She was so engrossed that she forgot about her granddaughter.^[14]

Jonalyn regained consciousness and discovered that the appellant was gone.^[15] She felt intense pains in her stomach,^[16] most specially in her vagina.^[17] She noticed blood on her shirt and short pants^[18] She cried helplessly.^[19] Her pain notwithstanding, she instinctively ran towards the dance hall and told her grandmother that a man brought her to a grassy place.^[20] Surmising that Jonalyn was raped because of the blood that oozed from her shorts, Emilia asked Jonalyn who was the culprit. Jonalyn answered that she did not know his name. Jonalyn nonetheless described the culprit as of medium height, *maiksi ang buhok na parang kalbo*.^[21]

Thereafter, Emilia hurriedly looked for a policeman. After finding one on a beat patrol, she reported the incident. As suggested by the policeman, she and Jonalyn boarded a tricycle and went to the Vinzons Police Station where they had the incident entered in the police blotter.^[22] Thereupon, Emilia brought Jonalyn to the Camarines Norte Provincial Hospital where she underwent medical examination.^[23] Dr. Marcelito Abas conducted the medical examination and prepared the Medico-Legal Certificate which indicated the following findings:

Hymenal laceration, 1:00, 2:00, 3:00 o'clock;
Hymenal avulsion, lower half, right, lower third, left;
Vaginal laceration, second degree, 2.5 inches, 5:00 o'clock, 1 inch, 7:00 o'clock;
Median perineal laceration, second degree, 1 inch.^[24]

As a result of her injuries, Jonalyn was confined in the hospital for about a week.^[25]

In the meantime, policemen of the Vinzons Police Station learned that the suspect was "semi-*kalbo*." The incident and the description of the suspect were relayed to the other police stations.

In the wee hours of the next morning, the police authorities of the nearby town of Talisay nabbed five suspects, including the appellant^[26] and turned them over to the Vinzons Police Station. Only two of the suspects had a crewcut hairstyle. SPO3 Joel Guinto inspected the appellant's underwear but found no bloodstains on it. After an investigation, three of the suspects were released, leaving the appellant and Rudy Cañelas. They were booked and detained pending proper identification by the

victim.^[27]

At about 8:00 a.m. of the same day, SPO3 Joel Guinto and SPO4 Pablo Maralit were ordered to bring the appellant and Cañelas to the Camarines Norte Provincial Hospital where Jonalyn was confined for identification purposes.^[28] The policemen had the appellant and Cañelas stand behind each other and three others in front of Jonalyn. SPO4 Maralit asked Jonalyn who was the one who raped her. Jonalyn looked at the men in front of her and pointed to the appellant as the culprit. Thereafter, the police released Cañelas while the appellant was again put behind bars.^[29]

The Case for the Appellant^[30]

The appellant testified that he was married, then 32 years old and lived in *Purok 3*, Barangay I, Mercedes, Camarines Norte. He eked out a living as a fisherman.^[31] In the afternoon of August 29, 1995, Dalisay Cañelas, his aunt, paid him a visit and invited him to her place at *barangay* Calangkawan Sur, Vinzons, to attend the fiesta and her child's baptism the next day.^[32]

At around 5:00 p.m., the appellant, after soaking 53 *bañeras* (tubs)^[33] of fish, boarded his pedicab and went to the house of Cañelas.^[34] He was accompanied by Rudy, Victor, Edwin, all surnamed Cañelas, Marco Antonio Rivera, Juan Allciera, Ruben Almogera, and Juan Allciera.^[35] They arrived at Cañelas' house at *Barangay* Calangkawan Sur at around 7:30 p.m. After resting for a while, they had dinner. After dinner, the group chatted with each other until 8:30 p.m. when they called it a night. All the guests slept at the porch of the house.^[36]

The following morning, the appellant and a majority of his companions rose up very early at about 1:00 a.m. to return home. They wanted to make sure that they arrived home in good time, for their soaked fish should be hauled and set for drying before the sun arose. After bidding their host farewell, the appellant and some of the visitors, Marco Antonio Rivera, Rudy Cañelas, Ruben Almogera and Edwin Cañelas left^[37] on board pedicabs and bicycles. Upon reaching the town of Talisay, they were flagged down by three policemen and brought to the nearby police station. When they asked why they were at the police station, they were told that two of them fit the description of the suspected rapist from *Barangay* Calangkawan Sur. The police ordered them to strip down, and after examining their respective clothes and genitals, they were ordered to dress up.^[38] After a while, a police mobile patrol from Vinzons' Police Station arrived. Five of them including the appellant were turned over by the Talisay police to the policemen from Vinzons.^[39] Subsequently, upon their arrival at the Vinzons Police Station, the suspects were once again ordered to strip naked. Their clothes and genitals were again examined by the police investigators, after which, three of their companions were ordered released.^[40] The appellant and Rudy Cañelas were booked and detained as they fit the physical description of the rapist.^[41]

At about 8:00 a.m. of the same day, the police took the appellant and Cañelas to the hospital where Jonalyn was confined for identification.^[42] Arriving thereat, the police found Jonalyn in the ward accompanied by her grandmother. Beside them was

another patient by the name of Luz Tayubana, a housekeeper from *Barangay I, Mercedes, Camarines Norte*, who knew the appellant since childhood.^[43] One of the police officers asked Jonalyn who between the two suspects had raped her. The question elicited no answer as Jonalyn just stared at the two. Emilia repeated the question, but Jonalyn kept silent and continued gazing at the two suspects. Emilia forthwith pointed to the appellant as the one who raped her granddaughter.^[44] Thereupon, one of the police officers put his arms around the appellant and brought him and Cañelas downstairs. As they made their way out of the hospital, a reported from a radio station asked the police who was identified by the victim and the police nonchalantly pointed to the appellant.^[45]

On June 27, 2000, the court rendered judgment finding the appellant guilty beyond reasonable doubt of qualified rape. The *fallo* of the decision reads:

WHEREFORE, IN VIEW OF THE FOREGOING FACTS AND CIRCUMSTANCES, accused Ruben Gusmo is hereby found guilty beyond reasonable doubt of the crime of rape defined and penalized under Article 335 of the Revised Penal Code as amended by R.A. No. 7659 otherwise known as "An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Code, and for other Purposes." Accordingly, accused Ruben Gusmo is hereby sentenced to suffer the maximum penalty of death and to pay the victim Jonalyn Cobita the sum of FIFTY THOUSAND (P50,000.00) PESOS as moral damages and the additional amount of TWENTY THOUSAND (P20,000.00) PESOS as exemplary damages and to pay the costs.

SO ORDERED.^[46]

In his brief, the appellant maintains his innocence and assigns the following errors committed by the court *a quo*:

I

THE COURT A QUO GRAVELY ERRED IN FINDING THAT THE PROSECUTION HAD ESTABLISHED THE REAL IDENTITY OF THE CULPRIT THEREOF BEYOND REASONABLE DOUBT.

II

THE COURT A QUO GRAVELY ERRED IN FINDING THE HEREIN ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE UNDER ARTICLE 335 OF THE REVISED PENAL CODE, AS AMENDED.

^[47]

The appellant contends that the trial court erred in finding that Jonalyn positively identified him as the person who raped her.^[48] He cites Jonalyn's testimony on cross-examination where she said that she did not see the face of the person who raped her; that the grassy area to which she was dragged was dark; and that she lost consciousness when the culprit boxed her on her abdomen. Thus,

ATTY. DIALOGO:

Q Ms. Witness, isn't it a fact that when you were snatched as you claim by a person whom you did not know at that time, you were snatched at your back because you were facing the T.V.

A Yes, sir.

Q And because you were snatched from your back you did not see the face of the person who snatched you, isn't it?

A Yes, sir.

Q And you were brought by that person to a grassy place which was dim at that time?

A Yes, sir.

Q And this place is far from the house where you were watching T.V. isn't it?

ATTY. DIALOGO :

And when you were brought to a dim and grassy place, this man was still holding you in such a way that your back was facing him, isn't it?

A Yes, sir.

Q And immediately after you were placed in that grassy area he boxed your stomach, isn't it?

A Yes, sir.

Q In fact, immediately before you were boxed you were not able to see the face of the man because it was very dark, isn't it? Did you see his face or not?

A No, sir.

Q And after you were boxed in the stomach you lost consciousness?

A Yes, sir.

Q In fact you did not feel that you were being raped because you were unconscious?

A Yes, sir.

Q And when you regained consciousness you did not see the man anymore?

A No more. (TSN, March 14, 1996, pp. 16-17)
(Underscoring supplied)^[49]