

EN BANC

[G.R. No. 150867, February 05, 2004]

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. SILVENO ESTADO Y AMISTOSO JR., A.K.A. "NONO," APPELLANT.

D E C I S I O N

PANGANIBAN, J.:

Inasmuch as the victim's alleged age was not proven by the prosecution, appellant may be convicted only of simple rape and penalized with *reclusion perpetua*, not death.

The Case

For automatic review before this Court is the August 30, 2001 Decision^[1] of the Regional Trial Court (RTC) of Imus, Cavite (Branch 21), in Criminal Case No. 6396-98, finding Silveno Estado y Amistoso Jr., a.k.a. "Nono," guilty beyond reasonable doubt of rape. The decretal portion of the Decision reads:

"WHEREFORE, finding the accused guilty beyond reasonable doubt of the felony of rape, the accused, Silveno Estado y Amistoso, Jr., is sentenced to die by lethal injection and to pay the victim an indemnity of P50,000.00 plus moral damages of another P50,000.00 plus the cost of this suit."^[2]

In an Information dated May 7, 1998,^[3] appellant was charged as follows:

"That on or about the 3rd day of February, 1998, at Barangay Binakayan, Municipality of Kawit, Province of Cavite, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with lewd design, by means of force and intimidation, did, then and there, wilfully, unlawfully and feloniously have sexual intercourse with one RONALYN C. SANBUENAVENTURA, a five (5) year-old minor, against her will and consent."^[4]

During his arraignment on July 22, 1998,^[5] appellant, with the assistance of his counsel,^[6] pleaded not guilty to the rape charge.

The Facts

Version of the Prosecution

The Office of the Solicitor General (OSG) summarizes the factual version of the prosecution in this wise:

"Around 8:30 o'clock in the evening of February 3, 1998, appellant and Noel Villanueva came looking for Ramon Sanbuenaventura at the latter's residence at Barangay Binakayan, Kawit, Cavite. Not finding him there, the two men were accompanied by Ronalyn, Ramon's five year old daughter, to the residence of Candido 'Bimboy' Devez some four houses away where a birthday party was being held.

"Upon their arrival at the Devez residence, Noel Villanueva went up to find Ramon while appellant and Ronalyn remained outside to wait. Fe Devez, wife of Bimboy, saw the child and appellant waiting outside the house. Ariel Bordaje, a construction worker who lived nearby, was standing near the door of his house when he saw appellant and Ronalyn pass by on their way to the Devez residence. He also saw the two waiting outside Bimboy's house. He noticed that appellant was wearing a black t-shirt.

"After about thirty minutes, Ramon came out of the house and instructed Ronalyn to go home. Both Ariel Bordaje and Fe Devez saw the child walk away towards the direction of the Boracay Highway followed by appellant some five meters behind.

"Ronalyn was waylaid by appellant and brought to a place on the highway called 'Tambakan'. There, appellant took off the child's panty and then made her lie on a sofa. Appellant covered Ronalyn's mouth with his hand to prevent her from making any noise while he raped her. After he was done, appellant gave the child P2.00. Ronalyn proceeded to walk home.

"Around 9:30 p.m., Ramon's wife arrived at the Devez residence looking for Ronalyn. The child was later found walking along Boracay Highway, crying and in shock. She was no longer wearing any underwear and blood was dripping down her legs. Fe Devez went to the place when she heard the commotion caused by the discovery of the victim. She helped clean up the child.

"Ronalyn was brought to the hospital for a medical examination. The examining physician, Dr. Anabelle Soliman, found no extra-genital injuries on the child. However, fresh hymenal lacerations were present.

"In the meantime, Ramon Sanbuenaventura, Noel Villanueva and a barangay tanod proceeded to the appellant's house. Appellant ran away when he saw them. He was later arrested by barangay officials.

"The following day, Ariel Bordaje was requested by Ronalyn's mother to look for the child's red shorts and slippers. He found the items as well as the black t-shirt worn by the appellant the night before along the western portion of the Boracay Highway. The items were submitted to the NBI for laboratory examination. Forensic Chemist Juliet Gelacio Mahilum prepared Report No. B-98-124.

"Incidentally, the birth certificate of Ronalyn showing her date of birth as March 11, 1992 that was presented and marked as 'Exhibit C' during the direct testimony of her mother, Adulfa Cordello, was inadvertently not

offered in evidence by the prosecution. However, there was an admission made by the defense as to the date of the birth of the child and that the child was five years old at the time of the rape.”^[7] (Citations omitted)

Version of the Defense

Appellant narrates his version of the facts in this manner:

“On February 3, 1998, around 9:00 o’clock in the evening, Ronalyn Sanbuenaventura, 5 years old at that time and resident of Binakayan, Kawit, Cavite, was seen by witness Fe M. Devez in the company of Noel (Noel Villanueva) and Nono (Silveno Estado) [arriving] at the house of said witness, whose husband named Bimboy is celebrating his birthday; Noel went up the [stairs] of the house, while Nono was left downstairs together with the child Ronalyn; that the child’s father, Ramon Sanbuenaventura was at said house having a drinking session during said birthday and upon seeing his child downstairs told her to go home as it was already late in the night; that while the child was about to walk for home, she was called by appellant and the two of them (Ronalyn and Nono) walk together away from said house; that after about 30 minutes, the child Ronalyn came bloodied.

“On Preliminary Examination of Complainant Ramon P. Sanbuenaventura, he stated that Nono and Noel went to his house looking for him; that not finding him at his house, Noel and Nono were accompanied by [his] daughter Ronalyn in going to the house of his pareng Bimboy and upon reaching said house, Noel went up the house while Nono was left downstairs; that [he] instructed his daughter to go home and did not know that Nono followed his daughter in going home; a few moments later his wife came looking for their daughter; that at about 10:00 o’clock in the evening, his said daughter Ronalyn came bloodied at her legs and without underwear (salawal) crying; knowing that it was only Nono who is in the company of his daughter, he looked for Nono at their house but upon seeing them, Nono run away prompting him to call for assistance of the barangay and appellant was arrested (nahuli) under the dike of fishpond.

“At the trial conducted by the Regional Trial Court, presided by Honorable Executive Judge Roy S. Del Rosario, Complainant Ramon P. Sanbuenaventura did not testify.

“Prosecution witness Ronalyn Sanbuenaventura testified in court (while being carried [in] the arms of her mother) and the court stenographer who took the stenographic notes can attest to the manner in which the child witness while testifying occasionally is [couched and] convinced by her mother.

“Prosecution witness Fe Devez testified that on February 3, 1998 at 9:00 o’clock in the evening, she saw the child Ronalyn in the company of appellant at her house while attending to her own child [to] go to sleep; that at about 9:30 P.M. on the same date, she again saw Ronalyn along the road called Boracay in Binakayan, Kawit; that said child was crying

and there were many persons that time; that she helped in cleaning Ronalyn removing blood on her legs; that the child was shocked.”^[8]
(Citations omitted)

Ruling of the Trial Court

The trial court ruled that appellant’s alibi could not prevail over the victim’s positive identification of him as the perpetrator of the felony. It found “no shadow of doubt that the accused raped Ronalyn on February 3, 1998.” Finding that she was only five (5) years old at the time of the rape, it imposed on him the penalty of death.

Hence, this automatic review before us.^[9]

The Issues

Appellant raises for our consideration the following alleged errors of the trial court:

I.

“Both the Municipal Trial Court and the Regional Trial Court erred in not appreciating the fact that accused-appellant was not assisted by a counsel from the time he was arrested and detained, hence, his constitutional right to counsel was violated.

II.

“The lower court erred in convicting the accused based on conflicting and inconsistent testimonies of prosecution witnesses thereby arriving in erroneous findings.

III.

“It is grievous error on the part of the honorable judge below convicting the appellant in the face of a clear reasonable doubt.”^[10]

The Court’s Ruling

The appeal is partly meritorious.

First Issue: **Right to Counsel During** **Custodial Investigation**

Invoking Section 12 of Article III of the Constitution, appellant contends that when he was arrested by the police, he was not accorded his right to counsel.

We are not persuaded. His reliance on Section 12 (1) of Article III of the Constitution is misplaced. For clarity, this provision is quoted as follows:

“Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have

competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.”

Fr. Joaquin Bernas, a recognized authority on constitutional law, explains that this section may be invoked only during a custodial investigation:

“The criminal process includes the investigation prior to the filing of charges, the preliminary examination and investigation after charges are filed, and the period of trial. The *Miranda* rights or the Section 12(1) rights were conceived for the first of these three phases, that is, when the enquiry is under the control of police officers. It is in this situation that the psychological if not physical atmosphere of custodial investigations, in the absence of proper safeguards, is inherently coercive. Outside of this situation, Section 12(1) no longer applies.”^[11]

To repeat, *custodial investigation* has been defined as questioning initiated by police officers after a person has been taken into custody or significantly deprived of freedom of action.^[12]

In the present case, however, appellant was not subjected to custodial investigation. The records show that although he was arrested, the law officers neither questioned him on the incident, nor took his statement or confession. In fact, none was presented before the trial court. He was convicted on the basis mainly of the victim’s credible testimony, not on any written admission by him.

Second Issue: **Credibility of Prosecution Witnesses**

Appellant questions the trial court’s evaluation of the testimonies of the prosecution witnesses. He alleges inconsistencies in the testimony of Ronalyn regarding what she told her father after she had been found bloodied and without underpants. He further alleges that her testimony on her mental state after the purported rape contradicted that of Fe Devez.

An examination of the records shows no inconsistencies in the testimonies of the prosecution witnesses. Considering the extreme youth of Ronalyn, her testimony was understandably less detailed than that of Fe Devez. Moreover, the supposed inconsistencies in the victim’s testimony refer to minor details of the aftermath of the incident.

Time-honored is the doctrine that discrepancies referring only to minor details and collateral matters — not to the central fact of the crime — do not affect the veracity or detract from the essential credibility of witnesses’ declarations, as long as these are coherent and intrinsically believable on the whole.^[13] The Court has recognized that even the most candid of witnesses make erroneous, confused or inconsistent statements, especially when they are young and easily overwhelmed by the atmosphere in the courtroom.^[14]

Third Issue: **Sufficiency of Evidence**