

## SECOND DIVISION

[ G.R. No. 144195, May 25, 2004 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. FLORENTINO  
BASCUGIN Y REYES, APPELLANT.**

### DECISION

**CALLEJO, SR., J.:**

Before us on appeal is the Decision<sup>[1]</sup> of the Regional Trial Court of Tagaytay City, Branch 18, finding the appellant Florentino Bascugin y Reyes guilty beyond reasonable doubt of rape, sentencing him to suffer the penalty of reclusion perpetua, and ordering him to pay the victim Ivey Peñano y Hernando the amount of P50,000.00 as moral damages.

The appellant was charged of rape in an Information, which reads:

Undersigned Asst. Provincial Prosecutor, upon prior complaint of the offended party, accuses FLORENTINO BASCUGIN y REYES of the crime of RAPE, committed as follows:

That on or about February 14, 1996 in the Municipality of Alfonso, Province of Cavite, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, with lewd designs, did then and there, willfully, unlawfully and feloniously, undress, abuse and have sexual intercourse with one IVEE PEÑANO y HERNANDO, a 13-year-old minor (born on February 19, 1983), against her will and without her consent, to her damage and prejudice.

CONTRARY TO LAW.<sup>[2]</sup>

The appellant was arraigned, assisted by counsel, and entered a plea of not guilty.

#### The Case for the Prosecution

Ivey H. Peñano was born on February 19, 1983.<sup>[3]</sup> She and her parents, the spouses Isidro and Victoria Peñano, resided in Sitio Pilipit, Barangay Caytitinga, Alfonso, Cavite.<sup>[4]</sup> Ivey was somewhat mentally-retarded.<sup>[5]</sup>

In 1995, when Ivey was only twelve years old and was in Grade V, her maternal granduncle, the appellant Florentino "Tetong" Bascugin, who was then 74 years old,<sup>[6]</sup> raped her twelve (12) times. In 1996, when Ivey was already in Grade VI, the appellant raped her eight (8) times. The appellant sometimes gave her money after having sex with her.<sup>[7]</sup> Ivey felt great pains in her private part whenever she

urinated.<sup>[8]</sup> However, her hymen remained intact and unruptured.

At about noon on February 14, 1996, Valentine's Day, Ivey was on her way from school and passed by the appellant's house. The appellant was at the gate. His wife and four children were out of the house. The appellant asked Ivey to go inside the house, and the latter agreed. However, the appellant brought her to the toilet and told her to undress. He cajoled Ivey not to divulge the incident to her parents and promised to give her P100.00 periodically until she grew up. The appellant also assured her that since he was already 74 years old, she would not get pregnant anymore.<sup>[9]</sup> However, Ivey refused, and told the appellant that her parents might scold her. She also told him that she felt severe pains in her private part whenever she urinated. The appellant persisted, removed her clothes and panties and undressed himself. He even told her to sit on the toilet bowl, and to spread her legs.<sup>[10]</sup> He knelt and bended over her and tried to insert his penis into her vagina. The appellant's penis was in full erection and was somewhat big;<sup>[11]</sup> thus Ivey resisted because of severe pains in her vagina.<sup>[12]</sup> She felt as if her vagina was being wounded (nasusugatan).<sup>[13]</sup> She then told the appellant to stop. He acquiesced, put on his clothes, gave her money and left. Ivey also dressed up and went home.<sup>[14]</sup>

Ivey felt excruciating pain in her private parts. She told her parents what the appellant had done to her. Her father Isidro Peñano brought Ivey to Dr. Eduardo T. Vargas, the Medico-Legal Officer of the National Bureau of Investigation, who examined her and signed Living Case No. MG-96-274 containing the following findings:

#### GENERAL PHYSICAL EXAMINATION:

Height: 146.0 cms. Weight: 72.0 lbs.

Fairly nourished, conscious, coherent, cooperative, ambulatory, subject. Breasts, developing, hemispherical, firm. Areola, light brown, 2.5 cms. in diameter. Nipples, light brown, protruding 1.0 cm. in diameter.

No extragenital physical injuries noted.

#### GENITAL EXAMINATION:

Pubic hair, fully grown, scanty. Labia majora and labia minora, coaptated. Fourchette, tense. Vestibular mucosa, pinkish. Hymen, tall, thick, intact. Hymenal orifice, admits a tube, 2.0 cms. in diameter. Vaginal walls, tight. Rugosities, prominent.

#### CONCLUSIONS:

- 1) No evident sign of extragenital physical injuries noted on the body of the subject at the time of examination.
- 2) Hymen, intact, and its orifice, small (2.0 cms., in diameter) as to preclude complete penetration by an average-sized adult, Filipino male organ in full erection without producing any genital injury.<sup>[15]</sup>

On the same day, Ivey gave a sworn statement to SPO3 Zosimo Crizaldo of the Alfonso Police Station, Cavite.<sup>[16]</sup>

### The Case for the Appellant

The appellant denied the charge. He testified that he was in his house on February 14, 1996 and did not see his grandniece Ivey that day. Before he was arrested, he used to see Ivey and they would greet each other, but he never invited her to his house. Neither was there any occasion when she went to his house. His relationship with Ivey's family was alright except that when he received his pension for the first time years back, her parents tried to borrow money from him, but he refused. The couple resented him for his refusal to lend them money.

On January 31, 2000, the trial court rendered judgment finding the appellant guilty beyond reasonable doubt of the crime of rape, the decretal portion of which reads:

WHEREFORE, the Court finds the accused Florentino Bascugin y Reyes to be GUILTY beyond reasonable doubt of the crime of "Rape" and hereby sentences him to suffer imprisonment of Reclusion Perpetua. Accused is also ordered to indemnify the victim Ivey Peñano the sum of Fifty Thousand Pesos (P50,000.00) as moral damages.

*Cost de oficio.*

SO ORDERED.<sup>[17]</sup>

The appellant now appeals the decision, contending that the lower court erred in deciding that he was guilty of the crime of rape.<sup>[18]</sup>

The appellant asserts that, based on the report and testimony of Dr. Eduardo T. Vargas, Ivey's hymen is intact. Dr. Vargas found no external injuries in her private parts; nor did he find any rupture in the hymen, thus, negating Ivey's claim that the appellant had raped her. The doctor declared that since Ivey did not suffer any extragenital injuries in her private part, there was no medical basis for her claim that she was raped. The appellant avers that based on Ivey's testimony that she was seated on the toilet bowl and the appellant was in a kneeling position, it was highly improbable for him to have attempted to insert his penis into her vagina, much less penetrate her. Furthermore, the testimony of Ivey during the preliminary investigation, in which she claimed that the appellant made her lie down before abusing her, is inconsistent with her testimony before the trial court that she was made to sit on the toilet bowl while the appellant knelt and tried to insert his penis into her vagina. The appellant alleges that the prosecution failed to prove the following: a) that Ivey was forced and intimidated into having sexual intercourse with him; b) that she was under 12 years old when she was allegedly raped; and, c) that she was feeble-minded, mentally defective or a mental retardate. Hence, the appellant asserts, he is not guilty of rape.

For its part, the Office of the Solicitor General contends that the absence of abrasions or contusions on the vaginal wall does not rule out rape, because the slightest penetration is enough. Furthermore, a medical examination is not indispensable in the prosecution of rape. The victim's testimony alone, if credible, will suffice to convict. The claim of the appellant, that it was highly impossible for

his penis to penetrate the vagina of the victim while the latter was sitting on the toilet bowl and the former was kneeling, is unmeritorious as there was no explanation offered. The OSG asserts that when a woman says that she has, in fact, been raped, she says in effect all that is necessary to show that she has been raped. With regard to the inconsistency of Ivey's testimony, the OSG offered the explanation that the victim may be trying to obliterate from her memory the ugly details of her harrowing experience, or that she could have been referring to any of the numerous times that the appellant had sexual intercourse with her. Finally, it is the trial court which assigns values to the testimonies of the witnesses on the stand and weighs their credibility.

The appeal has no merit.

In reviewing rape cases, this Court had always been guided by three well-entrenched principles: (1) an accusation of rape can be made with facility and while the accusation is difficult to prove, it is even more difficult for the accused, though innocent, to disprove; (2) considering that in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense.<sup>[19]</sup>

The findings and conclusions of medical experts are not conclusive on the courts which may substitute their own findings and conclusions for those of experts. The absence of external injuries in the hymenal area or external genitalia of Ivey does not preclude a rape.<sup>[20]</sup>

In this case, the appellant resolutely tried to insert his erect penis into Ivey's vagina, but failed to penetrate her because her hymen was merely 2 cms. in diameter, while his penis was hard and quite big<sup>[21]</sup> and she felt excruciating pains in her private part. Ever since the appellant's prior sexual assaults on her, Ivey had been suffering severe pains in her vagina whenever she urinated:

ATTY. VARGAS:

Did he not do anything to you?

A. Sometimes he asked me to undress, but I refused because I told him that I suffer (sic) pain when I urinate.

Q. Why did you suffer pain when you urinate?

A. Because of his constant sexual intercourse with me.

ATTY. VILLANUEVA:

May I move that the answer of the witness in the vernacular be placed on record.

COURT:

Granted.

WITNESS:

"Kahihindot po niya sa akin."

ATTY. VARGAS:

When you said the word "hindot," what do you mean, Ivey?

A. He told me that I will no longer get pregnant because he is already old.

Q. Now, on that particular date, February 14, 1996, did the accused do (sic) sexual intercourse on (sic) you?

ATTY. VILLANUEVA:

Objection, your Honor, it is very leading.

COURT:

Question which can be answered by yes or no is never leading.

WITNESS:

Yes, sir.

ATTY. VARGAS:

How did he do that?

A. He told me to undress and he asked me to sit on the toilet bowl and then he sexually abused me, sir.

ATTY. VILLANUEVA:

May I move that the answer of the witness in the vernacular be placed on record.

WITNESS:

"Ako po ay pinaghubad niya, naupo sa kubeta at hinindot niya."

ATTY. VARGAS:

What did he do while you were sitting on the toilet bowl?

A. He knelt while I was sitting on the toilet bowl, and then he inserted, tried to insert his penis into my vagina but he could not insert it, sir.

Q. What did you feel when he was not able to insert his organ against (sic) your organ?

A. "Masakit na pong maigi. Parang napapanit." I felt severe pain as if it was being torn, as if I am injured, "nasusugatan."<sup>[22]</sup>

The credibility of Ivey's testimony cannot be assailed by the inconsistency between her testimony during the preliminary investigation, that she was made to lie down before the appellant ravished her, and her testimony during the trial that she was made to sit on the toilet bowl when the appellant tried to insert his penis into her vagina.

First. The inconsistency is peripheral and collateral to the gravamen of the crime – the appellant's carnal knowledge of the private complainant under any of the circumstances provided in Article 335 of the Revised Penal Code, as amended.

Second. During the trial, Ivey was not confronted with her testimony during the preliminary examination and asked to explain the inconsistency.