

## FIRST DIVISION

[ G.R. No. 157269, June 03, 2004 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JAIME "JIMBOY"  
ANTONIO Y MACARIO, APPELLANT.**

### D E C I S I O N

**YNARES-SATIAGO, J.:**

This is an appeal from the decision<sup>[1]</sup> of the Regional Trial Court of Zamboanga City, Branch 15, in Criminal Case No. 17134, finding appellant Jaime Antonio y Macario @ "Jimboy" guilty beyond reasonable doubt of the crime of rape, sentencing him to suffer the penalty of *reclusion perpetua* with all its accessory penalties, and ordering him to pay the victim P100,000.00 as moral damages and the costs of suit.

The Information against appellant reads:

That on or about September 4, 2000, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force or intimidation, did then and there willfully, unlawfully and feloniously, have carnal knowledge of MARICEL REBOLLOS y CASIMIRO, a 12 year old girl, against her will.

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

When arraigned, appellant pleaded not guilty to the crime charged. Thereafter, trial on the merits ensued.

The facts of the case are as follows:

Complainant Maricel Rebollos, a grade four drop out, left her home to work as a household helper with the Balber family at the Fishing Port Complex, Sangali, Zamboanga City. She was born on June 10, 1987 and, at the time of the rape, was only 13 years old. Appellant, the brother of Rowena Balber, was 34 years old. Appellant was visiting at the house of his sister when the alleged rape happened.

On September 4, 2000, at around 7:00 a.m., Maricel and appellant were the only ones left in the house since Rowena Balber and her husband left for work and their children were in school. While Maricel was folding the washed clothes, appellant suddenly shut the door and pushed her towards the bed. He removed her shorts and panties. He took off his clothes and, while pinning down Maricel's hand on the bed, inserted his penis into her vagina. Maricel felt pain. After satisfying his lust, appellant warned her not to tell anyone and left towards the fishing port.

Maricel went to the house of her friend Sharmaine Salazar, and together they proceeded to the Sangali Police Station to report the incident. Her report was

blottered at around 9:20 a.m. Thereafter, she was brought to the Zamboanga City Medical Center for medical examination. Since then, Maricel remained in the custody of the DSWD at the Lingap Center, San Roque, Zamboanga City.<sup>[3]</sup>

Dr. Ritzi Apiag, a Medico-Legal Officer of Zamboanga City Medical Center, testified that on September 4, 2000, at around 12:45 p.m., she conducted a physical examination on Maricel, which yielded the following results:

Physical Findings:	Breasts:	Developed with age
	Skin:	(-) bruises
	Mons pubis:	Hair sparsely distributed
	Labia majora & minora:	Slightly gaping
	Hymen:	(+) healed incomplete lacerations at 8 o'clock position
	Introitus:	Admits 2 fingers with ease

Sperm Analysis:      (+)<sup>[4]</sup>

For his part, appellant admitted that he had sexual intercourse with Maricel, but claimed it was voluntary and out of mutual consent. He alleged that they were lovers and that they were planning to live together but were waiting for the proper time to tell his sister. On the night before the alleged rape, appellant slept over at the house of his sister with Maricel beside him. They kissed each other while they were together in bed. The following morning, when they were left alone in the house, Maricel asked him to close the door. They both took off their clothes and Maricel lay on the bed. Appellant made love to her while in a standing position. The sexual congress lasted for about 15 minutes. Appellant then left to buy fish. When he returned, Maricel was crying because a neighbor saw what happened. Maricel went out of the house while appellant cooked the fish for breakfast. After eating and washing the dishes, he went back to sleep. Later, policemen arrived and arrested him for the alleged rape of Maricel Rebollos.<sup>[5]</sup>

On July 11, 2002, the trial court rendered judgment, the dispositive portion of which reads:

WHEREFORE, the Court finds JAIME "JIMBOY" ANTONIO y MACARIO guilty beyond a reasonable doubt of the crime of RAPE, as principal and as charged, and in the absence of any aggravating or mitigating circumstance attendant in the commission of the offense, does hereby sentence him to suffer the penalty of a RECLUSION PERPETUA, with its accessory penalties, to indemnify the offended party the sum of One Hundred Thousand Pesos (P100,000.00), Philippine Currency, in moral damages, and to pay the costs.

SO ORDERED.<sup>[6]</sup>

Hence, this appeal based on the following assignment of errors:

I. THE LOWER COURT ERRED IN CONCLUDING THAT THE ELEMENTS OF THE CRIME OF RAPE ARE PRESENT.

A. THERE WAS NO THREAT OR INTIMIDATION NOR WAS OFFENDED PARTY DEPRIVED OF REASON OR IS OTHERWISE UNCONSCIOUS (sic).

B. THERE WAS NO FRAUDULENT MACHINATION OR GRAVE ABUSE OF AUTHORITY.

C. THE OFFENDED PARTY IS ABOVE TWELVE (12) YEARS OLD AND IS NOT DEMENTED.

II. THAT THE EVIDENCE PRESENTED SHOWED THAT THE ACCUSED MIGHT HAVE COMMITTED ANOTHER CRIME.<sup>[7]</sup>

A thorough appraisal of the evidence on record sustains the finding of guilt by the trial court. It is at once manifest from the testimonies of both the complainant and the appellant that the latter's "sweetheart theory" cannot persuade.

Once again, we reiterate the rule that findings of fact of the trial court carry great weight and are entitled to respect on appeal absent any strong and cogent reason to the contrary, since it is in a better position to decide the question of credibility of witnesses. In the determination of the veracity of the testimony, the assessment by the trial court is accorded the highest degree of respect and will not be disturbed on appeal unless it is seen to have acted arbitrarily or with evident partiality.<sup>[8]</sup> None of the exceptions exists in the case at bar.

In rape, *the gravamen* of the offense is carnal knowledge of a woman against her will or without her consent.<sup>[9]</sup> In convicting appellant, we agree with the trial court that the evidence on record adequately proves carnal knowledge by force and intimidation. It held:

Under this premise, the court lent credence to the testimony of the offended party that she was pushed to the bed by the accused after the latter closed the door. And on the bed, she was raped by the accused. This act of pushing the offended party to the bed may not be that force that cannot be resisted. However, considering the tender years of the offended party, coupled with the undue influence that the accused exercised over her, the accused being the brother of Rowena Balber who generously took her in after she ran away from her sister, the act of pushing suffices. Force or intimidation is not limited to physical force. As long as it is present and brings the desired result, all consideration of whether it was more or less irresistible is beside the point.

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Repeating for emphasis, the offended party in the case at bar is only a little over thirteen (13) years of age. At that point in time, she was not in the possession and exercise of sufficient mental capacity to make an