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[G.R. No. 139211, February 12, 2003]

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. GORGONIO VILLARAMA ALIAS "BABY", APPELLANT.

D E C I S I O N

CORONA, J.:

On November 2, 1996, the spouses [redacted] and [redacted] went to the cemetery to light candles for the dead, leaving behind their three young children, [redacted] (8 years old), [redacted] (6 years old) and AAA (4 years old), playing inside their house without adult supervision. That perhaps was the biggest mistake of their lives and one the couple will always regret. On that fateful day, their youngest child fell prey to the rapacious desires of a beast in the person of the child's own uncle, appellant Gorgonio Villarama.

Approximately between five to six o'clock in the afternoon, appellant, 35-year-old Gorgonio Villarama, elder brother of the victim's mother [redacted], arrived at the [redacted]' house and found the three children by themselves.[1]

Thereupon, appellant ordered the two older children, [redacted] and [redacted], to pasture the goats, leaving the youngest, AAA, with him.[2] Once alone, appellant undressed AAA and made her lie down while he pulled down his pants and briefs to his knees, and thereafter mounted his niece AAA.[3]

This was the scene which greeted the prosecution's eyewitness, [redacted], younger brother of AAA's father [redacted], when he arrived at his brother's house to return the bolo he borrowed from the latter.[4] [redacted] peeped through the open window to check why his niece was crying and saw appellant, with briefs and pants slipped down to the knees, on top of AAA who was naked.[5] When appellant noticed [redacted]'s presence, he hurriedly stood up and scurried away through the backdoor.[6] [redacted] immediately entered the house and dressed up the crying child. [redacted] then called his mother, the victim's paternal grandmother, who was in the house nearby.[7] The grandmother asked AAA what happened but the child did not answer and just continued crying.[8]

[redacted] and [redacted] got home at about six o'clock in the evening. They were met by [redacted]'s parents who told them what happened.[9]

[redacted] immediately went to her daughter who had not stopped crying and asked AAA what happened and why was she crying.[10] It was then that AAA spoke and told her mother that her uncle Baby, herein appellant, removed her panties, made her lie down and then inserted his penis inside her vagina.[11]

That same evening, the [redacted] family, including [redacted]'s father, who was a barangay tanod, looked for appellant. They found him at a party in a neighbor's house half a kilometer from theirs. They apprehended appellant and delivered him, first, to the barangay captain and later on, to the Merida Police.[12] Appellant allegedly admitted the commission of the crime and said that he only did it out of drunkenness.[13]

On November 4, 1996, AAA was brought to Dr. Jane Grace Solaña, a physician at the Rural Health Center of Merida, for examination. Dr. Solaña found the girl complaining of pain in her vagina and detected contusions in her *labia minora*. The doctor wrote her findings in the following medical report:

> Reddish discoloration w/ tenderness
> (contusion), medial aspect (R) & (L) labia minora.
>
> CONCLUSIONS:
>
> 1. The above described physical injuries are found in the body of he subject, the age of which is compatible to the alleged date of infliction.
>
> 2. Under normal circumstances, without subsequent complication and/or deeper involvement present, but not clinically apparent at the time of the examination, the above described physical injuries is expected to improve in 7 to 10 days.[14]

Appellant was charged with rape as then defined and penalized under Article 335 of the Revised Penal Code, as amended by RA 7659,[15] in the following information:

> That on or about the 2nd day of November 1996, at Sitio [redacted], Barangay [redacted], Municipality of [redacted], Province of [redacted], Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the herein offended party AAA, who is 4 years old, against her will and without her consent, while inside their residential house of the victim, the accused who is her uncle, held her hand, remove her short pants and was made to lie down and was made to spread her legs, lay on top of her and insert his penis over (sic) the victim's genital organ to accomplish his lewd design, to her damage and prejudice.
>
> CONTRARY TO LAW.[16]

Upon arraignment, appellant, assisted by counsel, entered a plea of not guilty. Trial on the merits ensued.

The prosecution presented four witnesses: eyewitness [redacted], Dr. Jane Grace Solaña, the physician who examined the victim, and the victim's parents [redacted] and [redacted].

The defense presented two witnesses: appellant Gorgonio Villarama and Bernaldo

Claros, cousin of appellant.

Appellant denied the accusation against him. He claimed that at about five o'clock in the afternoon of November 2, 1996, he was in the house of his aunt, Patricia Claros, butchering a pig. He, however, admitted that at 6 o'clock that same evening, he went to the victim's house about a kilometer away from his aunt's house, after a 30-minute walk. Upon reaching the place, he discovered that his sister [redacted] and her husband were not home, but their three children were playing inside the house. Appellant then told the children to tell their mother that he was going to spend the night in their house because it was already late and he could not find any means of transportation to go to Ormoc City where he lived.[17]

Thereafter he smoked a cigarette in the balcony and admitted having cradled the victim because the child allegedly clung to his shoulder. Appellant claims that it was that cradling which eyewitness [redacted] chanced upon when the latter arrived to borrow the bolo of his brother [redacted]. According to appellant, they were not able to find the bolo so [redacted] left. Not long after, appellant also left, heeding the invitation of a friend to attend the birthday party of the latter's wife.[18] Upon arriving at the friend's house, appellant helped in grating coconut and joined the celebrations. It was then that he was arrested by the victim's paternal grandfather, a barangay tanod, and brought before the barangay captain who informed him of the accusation against him. The Mayor of Merida thereafter arrived with police officers and brought him to the Merida jail.[19]

On cross examination and in response to questions propounded by the trial court, appellant also admitted ordering the victim's two older siblings to pasture the goats, leaving him alone with the victim AAA.[20]

Appellant's cousin, Bernaldo Claros, corroborated appellant's testimony that they butchered a pig together. However, Claros also testified that he left appellant at about 5:30 in the afternoon to go to the house of his elder brother Oligario Claros, Jr. where he spent one hour before going back to his mother's house, and, upon his return, he found appellant still there. Thereafter, they attended a friend's birthday party. They arrived at the party at 6:30 in the evening and stayed there until the barangay tanod arrested appellant.

On April 30, 1999, the Regional Trial Court of Ormoc City, Branch 35, Eighth Judicial Region, in Criminal Case No. 50630-0 rendered a decision[21] finding accused-appellant Gorgonio Villarama guilty as charged and imposing the death sentence on him. The trial court disposed thus:

> Wherefore, for all the foregoing consideration, the Court finds the accused Gorgonio Villarama alias "Baby" guilty beyond reasonable doubt of the crime of Rape, and hereby sentences him, it being proven that the crime of rape was committed under the attendant circumstance of the victim being under eighteen (18) years of age and the accused, the offender being an uncle and therefore relative by consanguinity within the third civil degree, to the penalty of DEATH pursuant to Art. 335 of the Revised Penal Code, as amended by Sec. 11, RA 7659.
>
> The accused is also penalized to pay the private offended party the sum

of P50,000.00 as indemnity.

SO ORDERED.[22]

Appellant now questions said conviction in this automatic review before us and anchors his appeal on the general catch-all argument that the trial court erred in finding him guilty beyond reasonable doubt.

Appellant makes much capital of the non-presentation of the victim AAA on the witness stand and invokes the doctrine of willful suppression of evidence which raises the presumption that such evidence was adverse to the prosecution.

This argument is utterly without merit.

At the outset, it must be stressed that it is the prosecution which controls the presentation of its witnesses.[23]

Unlike countless other rape cases perpetrated in relative isolation and secrecy, where only the victim can testify on the forced coitus, the offense here was providentially witnessed by another person, an adult, who was definitely more articulate in describing the sensitive details of the crime.

Moreover, Dr. Jane Solaña's testimony sealed the case for the prosecution when she testified on the presence of a contusion on the victim's genital organ, specifically the labia minora. Thus, the prosecution deemed the evidence sufficient to overwhelm the constitutional presumption of innocence of appellant.

While the victim's testimony of the assault would have added support to appellant's conviction, the same was not indispensable. As aptly pointed out by the Solicitor General, the intent of the prosecution was to spare the victim from further trauma which could have resulted from being placed on the witness stand. The prosecution's apprehension in presenting the victim can be inferred from the records:

TESTIMONY OF [redacted]

PROS. BELETA
/continuing

Q Now, since that incident up to this time, do you notice of (sic) any physical changes in her?

A Yes, ma'am.

Q Will you please tell this Honorable Court.

A Right after the incident, she was sick, she seemed to be, she cannot sleep and she seemed to be scared.[24]

TESTIMONY OF [redacted]

Q Prior to that incident, could your child talk intelligently?

A Yes, she could talk intelligently.

Q After the incident, how did you observe her speech? Could she also talk intelligently the way she talked prior to the incident?

A No longer.[25]

PROS. BELETA

Q After this incident of November 2, 1996, can you tell this court the behavior of your child AAA. Did you find any unusual behavior?

A Yes, ma'am.

Q Can you tell this Court, what is that unusual behavior?

A We can no longer hear her speak, she used to have fever, and she was so sickly. If you talk to her, it would seem nothing and she would easily cry.

Q Before the incident, do you find her to be jolly?

A Yes, ma'am.

Q Would you consider her very sick?

A Yes, ma'am.[26]

The Court is not convinced that the prosecution suppressed any evidence. The victim was present in the court room a few times during the trial. The defense could have called AAA to the stand as a hostile witness but it did not.

Time and again, the Court has held that the non-presentation of certain witnesses by the prosecution is not a sufficiently plausible defense.[27] There should thus be no unfavorable inferences from the failure of the prosecution to present AAA. If appellant believed that her testimony would have exculpated him, then he should have presented AAA. And the coercive processes of the court would have been at his disposal had AAA refused to testify.[28]

Appellant likewise asserts that the testimonies of the victim's parents were hearsay since they did not witness the actual rape and were only relating the rape as allegedly told to them by AAA.

This too fails to convince us.

There are several well-entrenched exceptions to the hearsay rule under Sections 37 to 47 of Rule 130 of the Rules of Court. Pertinent to the case at bar is Section 42 which provides: