

FIRST DIVISION

[G.R. No. 146590, July 17, 2003]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. DOMINGO
OPERARIO Y GORIMO, APPELLANT.**

D E C I S I O N

YNARES-SANTIAGO, J.:

Appellant Domingo Operario y Gorimo was charged with rape in an Information that reads:

That on or about the 30th day of September 1997 in Quezon City Philippines, the said accused by means of force and intimidation to wit: by then and there willfully, unlawfully and feloniously remove the shorts and panty of the complainant, a minor, 8 years of age and thereafter inserted his penis inside the vagina of said complainant and thereafter have carnal knowledge of her against her will and without her consent.

CONTRARY TO LAW.^[1]

On arraignment, appellant pleaded "not guilty". Trial on the merits thereafter followed.

After her father died, eight (8)-year old Janice Cristino moved in with her Aunt Norma and her husband, appellant Domingo Operario, at their house at Bayanihan Street, Barangay Commonwealth, Quezon City. Complainant was then a Grade 2 pupil at the Fairview Elementary School. After her classes in the morning, she would help her aunt tend their rolling store on Dahlia Street, Quezon City.

On September 30, 1997, at 7:00 p.m., complainant went home with her Aunt Norma and cousins Daday and Tata. They found appellant drinking gin. Norma berated her husband and they had a heated argument. After dinner, Norma slept in the living room while appellant slept in their bedroom. Janice slept in the other bedroom with Daday and Tata.

The following morning, Norma, Daday and Tata left for the store. Complainant and appellant were left alone in the house. When complainant woke up, appellant ordered her to transfer to his room. He threatened to hurt her if she did not obey him.

When complainant entered the bedroom, appellant forcefully removed her shorts, t-shirt and panties. Then he took off his clothes and lay on top of complainant. She cried in pain as appellant's penis penetrated her organ. He inserted his middle finger into her vagina which caused her more pain. After sexually abusing her, he gave complainant money and ordered her to dress up.

Complainant narrated her ordeal to her cousin Michelle who, in turn, informed her grandmother, Teodorica del Rosario. Together, they accompanied complainant to the police station to report the incident. Dr. Ma. Cristina Freyra of the PNP Crime Laboratory examined complainant and found that her private organ indicated a "congested and abraded *labia minora*, abraded posterior fourchette x x x and congested but intact hymen." The doctor concluded that Janice was still "in virgin state physically."^[2] She explained that the word "congested" signifies "discoloration on the area affected brought about by rubbing of a hard object like an erect penis."^[3]

In his defense, appellant denied the charges and claimed that there was never any opportunity for him to rape his niece on the night of September 30, 1997. He alleged that at the time of the incident, complainant slept inside a room together with her two cousins, while he slept inside his bedroom.

Norma corroborated her husband's testimony, saying that after their quarrel, appellant went to the bedroom to sleep. The next morning, she woke up Janice at 5:00 a.m. and gave her a bath. Norma testified that she had been personally bathing Janice because she had been complaining that her private parts were itchy. Norma then brought Janice to school.

On November 29, 2000 the Regional Trial Court of Quezon City, Branch 86, rendered a decision^[4] convicting appellant of rape. The dispositive portion reads:

WHEREFORE, PREMISES CONSIDERED, JUDGMENT is hereby rendered finding the accused Domingo Operario y Gorimo 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. 7659 and the Court hereby sentences him to suffer the penalty of *reclusion perpetua* and to indemnify the private complainant, Janice Cristino, the amount of P50,000.00 as civil indemnity and moral damages in the amount of P30,000.00.

SO ORDERED.^[5]

Appellant appealed the decision on the following assignment of errors:

1. The trial court erred in rendering a decision of conviction based upon an accusation which was later on declared by no less than the alleged victim, Janice Cristino, that it did not happen at all because during the alleged dates of occurrence of the imputed crime, the accused did not even have the opportunity to get near her;
2. The trial court erred in making an unfounded conclusion that the itchiness of the genitals of the victim indicates that she was sexually abused not far from the date when she filed the complaint and in declaring that it is inconceivable that an eight year old child would fabricate or concoct a story of defloration against the person she considered as her parents, if there is no truth to her allegation, without considering the unrebutted circumstances that there was no evidence of molestation as admitted by no less than the young girl

Janice Cristino, and because itchiness of the vagina is not an evidence that a girl or woman had been sexually molested.^[6]

Appellant basically anchors his defense on Janice's admission during cross-examination that there was no opportunity for her and appellant to get near each other either on September 30, 1997 or on October 1, 1997.^[7] Nonetheless, we are fully cognizant that leading questions during cross-examination, while designed to test the credibility of the witness and her testimony, traps complainant into answering either with a "yes" or a "no". By its very nature, leading questions are suggestive. The complainant in this case was of a very young age and was vulnerable to suggestion. It is, therefore, not surprising that she answered all the leading questions propounded on her in the affirmative.

The trial court firmly believed that "the crime charged was perpetrated by the accused against the complainant as the testimony of Janice Cristino appears to be very credible despite minor inconsistencies."^[8] Besides, an ample margin of inaccuracies should be accorded to a child witness who was obviously gripped with tension on the witness stand.^[9]

Moreover, the trial court found that Norma's testimony to the effect that she personally brought Janice to school on October 1, 1997 before proceeding to the market, was inconsistent with the testimony of another defense witness, Evelyn Silbosa, who testified that nobody accompanied complainant to school on October 1, 1997. As correctly observed by the trial court, "their apparently biased testimony could not overcome the straightforward, sincere and honest testimony of Janice who could not have fabricated or concocted the charges to the prejudice of her own benefactor who had been acting as her second parent and who had considered her as his own daughter."

In her direct examination, Janice testified thus:

FISCAL SANTOS:

Q. What happened when you were left alone with Domingo?

A. When I woke up, he wanted me to transfer to his room.

Q. Did you transfer to the room of Domingo?

A. He just called for me and told me that if I will not follow his orders he will hurt me, sir.

Q. So, you transferred to the room of Domingo?

A. Yes, sir.

Q. What happened there?

A. He undressed me, sir.

Q. What were you wearing at that time?

A. I was wearing shorts and t-shirt.

Q. What about panty?

A. Yes, sir. I was wearing panty.

Q. What apparel did Domingo remove from you?

- A. My short pants.
- Q. What about the panty?
- A. Yes, sir. Also the panty.
- Q. What happened after that?
- A. He also removed his short pants and his brief.
- Q. Then, what transpired?
- A. He forcibly tried to insert his penis on my vagina, sir.
- Q. What did you feel, if any?
- A. It hurt me, sir, and I was crying.
- Q. What happened after that?
- A. He told me that if I will continue to cry, he will slap me and then, he inserted his finger on my vagina.
- Q. What finger?
- A. His middle finger, sir.
- Q. What did you feel?
- A. I just kept on crying because it hurt me.
- Q. What happened after that?
- A. He asked me to wear my clothes again and then he gave me money, sir.
- Q. After that, what happened?
- A. He asked me to transfer to the living room sir.^[10]

Well-settled is the rule that a conviction for rape may be based solely on the testimony of the victim, as long as the same is competent and credible. This is primarily because the crime of rape is usually committed in a private place where only the aggressor and the rape victim are present.^[11]

Besides, no woman, least of all a child, would concoct a story of defloration, allow an examination of her private parts and subject herself to public trial or ridicule if she has not, in truth, been a victim of rape and impelled to seek justice for the wrong done to her. Testimonies of child-victims are given full faith and credit, since when a girl says that she has been raped, she says in effect all that is necessary to show that rape was indeed committed. Youth and immaturity are generally badges of truth and sincerity.^[12]

Appellant alleges that complainant concocted the charge of rape against him because he shouted and scolded at her on the night of September 30, 1997. However, we find this motive too inconsequential vis-à-vis the grave nature of the accusation of rape. Likewise, his submission that his wife's relatives had gripes against him fails to persuade. The rule is that where there is no evidence that the principal witness for the prosecution was actuated by improper motive, the presumption is that she was not so actuated and her testimony is entitled to full credence.^[13]