

THIRD DIVISION

[G.R. Nos. 136592-93, November 27, 2003]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. MANOLITO
PANCHO, APPELLANT.**

D E C I S I O N

SANDOVAL-GUTIERREZ, J.:

This is an appeal from the Joint Decision^[1] dated June 19, 1998 of the Regional Trial Court, Branch 15, Malolos, Bulacan, finding appellant Manolito Pancho guilty beyond reasonable doubt of rape in Criminal Case No. 837-M-96 and attempted rape in Criminal Case No. 838-M-96. In Criminal Case No. 837-M-96, the trial court sentenced him to suffer *reclusion perpetua*, while in Criminal Case No. 838-M-96, the penalty of 10 years and 1 day, as minimum, to 12 years, as maximum of *prision mayor*, was imposed upon him.

The Informations in both Criminal Case Nos. 837-M-96 and 838-M-96 read:

For Criminal Case No. 837-M-96 (For Rape):

"That in or about the month of August, 1994, in the municipality of Malolos, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously, by means of force, threats and intimidation and with lewd designs, have carnal knowledge of said Michelle L. dela Torre, 11 years of age, against her will and without her consent.

"Contrary to law."

For Criminal Case No. 838-M-96 (For Attempted Rape):

"That in or about the month of December, 1995, in the municipality of Malolos, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously, by means of force, threats and intimidation and with lewd designs, have carnal knowledge of said Michelle L. dela Torre, 11 years of age, against her will and without her consent.

"Contrary to law."

Upon arraignment, appellant, assisted by counsel, pleaded not guilty to the crimes charged.

Thereafter, trial ensued. The evidence for the prosecution shows that complainant

Michelle dela Torre was born on April 2, 1984^[2] to spouses Exequiela Lacanilao and Eduardo dela Torre. After Michelle's father passed away, her mother contracted a second marriage with appellant. Michelle and her two (2) brothers live with the couple at Look First, Malolos, Bulacan.

On August 1, 1994, at around 6:00 o'clock in the morning, Michelle, who was then only ten years old, went home after spending the night at her aunt's house. While she was about to undress, appellant suddenly dragged her and forced her to lie down on the floor. Although frightened, she struggled by kicking and boxing him. However, he forcibly removed her clothes and underwear. Then he took off his clothing. Appellant started kissing and holding her breast and eventually had carnal knowledge of her. She felt pain when he inserted his organ into her vagina which bled. She tried to resist but he held her both arms. He was on top of her making push and pull movements for four (4) minutes. Then he dressed up, threatening to kill her should she complain or tell anyone about the incident.

Sometime in December, 1995 at the family's new residence at Bayugo, Meycauayan, Bulacan, appellant arrived from work. When Michelle opened the door and saw him, she got scared. While he was approaching her, she managed to hit him. Then she attempted to jump out of the window, but he dragged her by her feet. At that instance, her uncle (Tito Onio) suddenly arrived. ^[3] Immediately, appellant stopped, thus thwarting his bestial desire.

After sometime, Michelle mustered enough courage to report the incidents to her mother, but the latter casually ignored her. So, she turned to her grandmother Natividad Lacanilao, who brought her, sometime in February, 1996, to the National Bureau of Investigation (NBI) for examination by a medico-legal officer.^[4] Thereafter, they proceeded to the Malolos Police Station where she executed a sworn statement.^[5]

Dr. Ida P. Daniel, a Medico-Legal Officer of the NBI, testified that she conducted a medico-genital examination of Michelle dela Torre. Her findings,^[6] which she confirmed on the witness stand, are as follows:

"GENERAL PHYSICAL EXAMINATION:

Height: 132.0 cms

Weight: 78.0 cms

Normally developed, fairly nourished, conscious, coherent, cooperative, ambulatory subject.

Breasts, developing, conical, firm. Areolae, brown, 2.5 cms in diameter. Nipples, brown, protruding, 0.5 cm in diameter.

No sign of extragenital physical injury noted.

"GENETAL EXAMINATION:

Pubic hair, fine, scanty. Labia majora and minora, coaptated. Fourchette, tense. Vestibular mucosa, pinkish. Hymen, moderately tall, moderately

thick, intact. Hymenal orifice, annular, admits a tube 2.0 cms in diameter with moderate resistance. Vaginal walls, tight. Rugosities, prominent.

"CONCLUSIONS:

1. No evident sign of extragenital physical injury 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."

For his part, appellant strongly denied the charges, contending that it was impossible for him to commit the crimes considering that during the incidents, his wife and her two sons were also inside the house.^[7] Moreover, the charge of rape is totally belied by the finding of the NBI Medico-Legal Officer that Michelle's hymen has remained intact with no sign of extra-genital or genital injuries.

After trial, the lower court rendered a Joint Decision dated June 19, 1998, the dispositive portion of which reads:

"In view of all the foregoing and by proof beyond reasonable doubt, the Court hereby renders judgment as follows:

1. With respect to Criminal Case No. 837-M-96, the Court finds the accused guilty beyond reasonable doubt of the crime charged and hereby sentences accused MANOLITO PANCHO to suffer the penalty of RECLUSION PERPETUA.
2. With respect to Criminal Case No. 838-M-96, the Court finds the accused guilty beyond reasonable doubt of the crime of Attempted Rape, and hereby sentences accused MANOLITO PANCHO to suffer an imprisonment of TEN (10) YEARS and ONE (1) DAY to TWELVE (12) YEARS.
3. To indemnify the victim Michelle dela Torre the amount of P20,000.00 - each case.

"The period of the accused's detention is credited in his favor.

"SO ORDERED."

In this appeal, appellant ascribes to the trial court the following errors:

"I

THE LOWER COURT ERRED IN FINDING ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIMES OF RAPE AND ATTEMPTED RAPE, DESPITE INSUFFICIENCY OF EVIDENCE.

"II

THE LOWER COURT ERRED IN DISREGARDING THE DEFENSE PUT UP BY ACCUSED-APPELLANT."

As alleged in the Informations, the crimes charged were committed sometime in August, 1994 and December, 1995. Thus, the governing law is Article 335^[8] of the Revised Penal Code which, as amended by Republic Act No. 7659 (The Death Penalty Law),^[9] provides:

"ART. 335. *When and how rape is committed.* - Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

1. By using force or intimidation;
2. When the woman is deprived of reason or otherwise unconscious;
and
3. When the woman is under twelve years of age or is demented.

"The crime of rape shall be punished by *reclusion perpetua*.

xxx

"The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:

1. When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree or the common-law spouse of the parent of the victim.
2. xxx."

A. - **G.R. No. 136592** for rape:

Rape under the above provisions is either simple or qualified. It is qualified when the age of the victim (below 18) and her relationship with the appellant are both alleged in the Information and proved.^[10] In this case, the prosecution failed to allege in the Information the qualifying circumstance that appellant is the victim's step-parent. Thus, he may only be convicted of simple rape.

Simple rape is committed under **any** of the following circumstances:

1. By using force or intimidation;
2. When the woman is deprived of reason or otherwise unconscious; and
3. When the woman is under twelve years of age (statutory rape) or is demented.

In the Information, appellant is being charged of statutory rape considering that Michelle was then below 12 years old.

The gravamen of the offense of statutory rape is carnal knowledge of a woman below twelve (12) years old. ^[11] In statutory rape, force, intimidation or physical evidence of injury is immaterial.^[12] Where the girl is below 12 years of age,

violence or intimidation is not required, and the only subject of inquiry is whether carnal knowledge took place.^[13]

As shown by her Certificate of Live Birth,^[14] Michelle was born on April 2, 1984. Thus, on August 1, 1994 when the incident took place, she was only 10 years and 3 months old.

Michelle identified appellant in open court as the culprit who raped her. She testified as follows:

"FISCAL:

Q: Ms. Witness, you claim in your testimony that you were raped by your step father Manolito Pancho last August 1, 1994, will you please tell this Honorable Court how Manolito Pancho raped you?

A: About 6:00 o'clock in the morning I went home, sir.

Q: And where is your home located?

A: I went home at Look First, Malolos, Bulacan.

Q: And what happened when you went home at Look, Malolos, Bulacan?

A: Manolito Pancho dragged me and forced me to lie on the floor.

Q: And what happened when after Manolito Pancho lay you on the floor?

A: He took off all my clothes.

Q: And what clothes you are wearing at that time, Ms. witness?

A: I was wearing a t-shirt and short, sir.

Q: What else Manolito Pancho removed?

A: My clothes, short and panty, sir.

Q: And what was your appearance after these clothes were removed by Manolito Pancho?

A: I was naked, sir.

Q: How about Manolito Pancho, what did he do after he removed your dress?

A: He also took-off his clothes, sir.

Q: What clothes did he remove?

A: His t-shirt, short and brief, sir.

Q: After Manolito removed all these: his short, brief and t-shirt, what did he do?

A: He placed himself on top of me.

Q: And what happened after he placed himself on top of you?

A: He inserted his penis on my vagina.

Q: Were you able to see his organ when he inserted it on your vagina?

A: Yes, sir.