

## THIRD DIVISION

[ G.R. Nos. 141724-27, November 12, 2003 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ARNULFO ORANDE  
Y CHAVEZ, APPELLANT.**

### DECISION

**CORONA, J.:**

This is an appeal from the decision<sup>[1]</sup> of the Regional Trial Court of Manila, Branch 18, in Criminal Case Nos. 97-159184, 97-159185, 97-159186 and 97-159187, convicting appellant for two counts of simple rape, one count of statutory rape and one count of frustrated rape, and sentencing him to suffer three counts of *reclusion perpetua* for the simple and statutory rapes, and an indeterminate penalty of 8 years to 14 years and 8 months of imprisonment for the frustrated rape.

Complainant Jessica Castro charged appellant with raping her four times between January 1994 and November 1996. The informations filed against appellant by the City Prosecutor read:

In Criminal Case No. 97-159184 -

That on or about January 14, 1996, in the City of Manila, Philippines, the said accused did then and there willfully, unlawfully and feloniously, by means of force and intimidation, that is, by threatening to kill said Jessica Castro, had carnal knowledge of the latter against her will.

CONTRARY TO LAW.

In Criminal Case No. 97-159185-

That on or about April 15, 1994, in the City of Manila, Philippines, the said accused did then and there willfully, unlawfully and feloniously, by means of force and intimidation, that is, by threatening JESSICA CASTRO Y DE LA CRUZ of death should she resist or report the matter to anybody, had carnal knowledge of said Jessica C. Castro, a minor, under 12 years of age, against her will.

CONTRARY TO LAW.

In Criminal Case No. 97-159186 -

That on or about March 12, 1995, in the City of Manila, Philippines, the said accused did then and there willfully, unlawfully and feloniously, by means of force and intimidation, that is, by threatening Jessica Castro y de la Cruz of death should she resist or report the matter to anybody,

had carnal knowledge of said Jessica C. Castro, a minor, under 12 years of age, against her will.

CONTRARY TO LAW.

In Criminal Case No. 97-159187-

That on or about November 17, 1996, in the City of Manila, Philippines, the said accused did then and there willfully, unlawfully and feloniously, by means of force and intimidation, that is, by threatening to kill said Jessica Castro, had carnal knowledge of the latter against her will.

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

Arraigned on September 5, 1997, appellant pleaded not guilty.<sup>[3]</sup> Thereafter, trial on the merits ensued. However, the trial was subsequently postponed for eight months as Jessica was suffering from psychological and emotional trauma from her horrifying ordeal.<sup>[4]</sup> The lower court ordered the suspension of the trial to enable her to undergo psychological therapy at the Child Protection Unit of the Philippine General Hospital. Trial resumed in November 1998 with the prosecution presenting Jessica as its first witness.

Incidentally, prior to the filing of the aforementioned cases, Jessica also filed a criminal case against her mother, Girlie de la Cruz Castro, and the appellant for child abuse.

The evidence of the prosecution showed that appellant was the common law husband of Jessica's mother Girlie. Appellant, a pedicab driver, started living with Girlie and her three children sometime in 1993 in a two-storey house in Paco, Manila owned by Girlie's mother. They occupied a room on the ground floor which served as their bedroom, kitchen and living room. The adjacent room was occupied by Girlie's brother and his family while the room on the second floor was occupied by Girlie's sister and her family.

Girlie gave birth to two more children by appellant. To earn a living, Girlie sold fish at the Paco Market, buying her stock from the Navotas fish market late at night and sometimes in the early hours of the morning.

The first incident of rape, subject of Criminal Case No. 97-159185, happened sometime in April 1994 when Girlie was at the fish market. Appellant was left in the house with Jessica, her siblings and appellant's two children with Girlie. Jessica was then watching television while her brothers and sisters were sleeping beside her. Appellant grabbed Jessica's right hand and lasciviously jabbed her palm with his finger. He ordered her to undress which she obeyed out of fear as appellant was armed with a knife. Appellant then removed his pants, placed himself on top of complainant and succeeded in partially penetrating her. Jessica felt pain in her vagina and saw it smeared with blood and semen. She tried to leave the room but appellant locked the door and threatened to kill her if she told her mother what happened. Jessica was then only nine years and four months old, having been born on December 19, 1983. <sup>[5]</sup>

The second rape, subject of Criminal Case No. 97-159186, occurred on March 14, 1995 at around 11:00 a.m. when Jessica was 11 years and 3 months old. Girlie was in the market while Jessica and her siblings were left in the house watching television. Soon after, appellant arrived and sent the children, except Jessica, to play outside. Left alone with Jessica, appellant removed his clothes, pulled out a *balisong* and ordered Jessica to undress. He then held her by the shoulder and made her lie down. Then he mounted her. Appellant reached his orgasm shortly after penetrating her slightly. He stood up with semen still dripping from his penis. Apparently still not satisfied, he knelt down, kissed and fingered Jessica's vagina, then mashed her breasts. He only stopped what he was doing when someone knocked at the door. Appellant and Jessica hurriedly put on their clothes and, as appellant opened the door, Jessica went to the bathroom to wash herself.

The third rape, subject of Criminal Case No. 97-159184, occurred on January 14, 1996, when Jessica was 12 years and 6 months old. She arrived from school at around 11:00 a.m. While she was changing her clothes, appellant ordered Jessica's brother and sister to visit their mother at the Paco Market and sent his children to play outside the house. When appellant and Jessica were alone, he removed his pants, got his knife and ordered her to undress. Since she was afraid, Jessica was forced to remove her clothes. Appellant then told her they would do what they did before, pulled her towards him and made her lie down on the floor. While holding the knife, he kissed and fingered her vagina, then mashed her breasts. Thereafter, he placed himself on top of her, partially penetrated her until he ejaculated. When Jessica's brother and sister arrived, appellant hurriedly put on his clothes. Jessica did the same. She then went to the bathroom to wash herself and change her bloodstained underwear.

The last rape, subject of Criminal Case No. 97-159187, occurred sometime in November 1996, at around 11:00 p.m. Girlie was again in the public market while Jessica was at home with her siblings who were all asleep. Appellant told Jessica that they would again do what they did before but she refused, saying that she might get pregnant. Appellant brandished his *balisong* and threatened to kill her. He then covered himself and Jessica with a blanket, removed his pants and her shorts, and placed himself on top of her. His penis slightly penetrated her vagina. He mashed her breasts, inserted his finger into her vagina and kissed it. Jessica pushed him away and told him she wanted to sleep. Then she put on her shorts. Appellant also put on his pants and told Jessica not to tell her mother what he did to her. He assured her that she would not get pregnant because she was not yet menstruating.

Sometime in March 1997, a teacher of Jessica, Mrs. Adoracion Mojica, noticed the unusual treatment of Jessica by appellant. When confronted by Mrs. Mojica, Jessica admitted that appellant had raped her several times. Mrs. Mojica called up Jessica's aunt, Mrs. Antonina de la Cruz, and narrated to her what Jessica had confessed. Mrs. De la Cruz then accompanied Jessica to the police station to file a complaint and to the Philippine General Hospital (PGH), Child Protection Unit, to be examined. Dr. Bernadette J. Madrid, Director of the Child Protection Unit, examined Jessica and the findings revealed the following:

Genital Examination:

Hymen: Estrogenized,

Attenuated from 1 o'clock position to 4 o'clock position and from  
6 o'clock to 12 o'clock position  
Notch at 5 o'clock  
Healed hymenal tear at the 6 o'clock position

Anus: Normal rectal tone, no pigmentation, no scars, normal rugae [6]

For his defense, appellant advanced denial and alibi. He denied ever raping Jessica and testified that, during the alleged second rape incident, he was driving his pedicab. His live-in partner Girlie testified that, during the purported first and second incidents of rape, appellant was with her to buy fish in Navotas and sell them in Paco market. Appellant argued that since Jessica disapproved of his relationship with her mother, she had the motive to falsely accuse him of raping her. Further, he pointed out the improbability of the alleged first and fourth incidents of rape inasmuch as the make-up of the room made it impossible for Jessica's siblings not to wake up during the commission of the crime. Appellant further contended that Jessica's failure to cry out for help, knowing that her mother's relatives were in the same house, made her story of rape unbelievable.

The trial court gave credence to the testimony of Jessica and convicted the appellant:

WHEREFORE, in Criminal Case No. 97-159184, Accused Arnulfo Orande y Chavez is convicted of simple rape under Article 335 of the Revised Penal Code and sentenced to suffer the penalty of reclusion perpetua with all the accessory penalties provided by law.

In Criminal Case No. 97-159185, the accused is also convicted of simple rape under Article 335 of the Revised Penal Code and sentenced to suffer the penalty of reclusion perpetua with all the accessory penalties provided by law.

In Criminal Case No. 97-159186, the accused is likewise convicted of statutory rape under Article 335 of the Revised Penal Code and sentenced to suffer the penalty of reclusion perpetua with all the accessory penalties provided by law.

In Criminal Case No. 97-159187, the accused is convicted of frustrated rape under Article 335 of the Revised Penal Code and sentenced to suffer the indeterminate penalty of 8 years of prision mayor as minimum to 14 years and 8 months of reclusion temporal as maximum, and to pay the costs.

On the civil liability of the accused in the four cases, he is ordered to pay the victim, Jessica Castro, moral, nominal and exemplary damages in the respective sums of P400,000.00, P200,000.00 and P100,000.00.

SO ORDERED. [7]

In this appeal, appellant assigns the following errors:

I. THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-

APPELLANT GUILTY BEYOND REASONABLE DOUBT OF ONE COUNT OF STATUTORY RAPE, ONE COUNT OF FRUSTRATED RAPE AND TWO COUNTS OF SIMPLE RAPE.

II. THE COURT A *QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF FRUSTRATED RAPE DESPITE THE FACT THAT UNDER PREVAILING JURISPRUDENCE THERE IS NO SUCH CRIME.<sup>[8]</sup>

The Office of the Solicitor General argues that appellant's convictions should be upheld as the prosecution was able to prove his guilt beyond reasonable doubt.

The appeal is partly meritorious. This Court finds that the prosecution was able to prove beyond reasonable doubt appellant's guilt for two counts of statutory rape and two counts of simple rape, there being no such crime as frustrated rape in this jurisdiction.

After a thorough review of the records, we find no reason to deviate from the well-established rule that the credibility of witnesses is a matter best assessed by the trial court because of its unique opportunity to observe them firsthand and to note their demeanor, conduct and attitude.<sup>[9]</sup> In the present case, the trial court found Jessica's testimony convincing, logical and credible. Moreover, the court *a quo*:

xxx discerned from her demeanor the intense mental torture, embarrassment, emotional pain and bitterness she suffered whenever she was asked to recall and narrate the humiliating sexual ordeals she had gone through, and her ... desire for justice and the punishment of her defiler. She was continually in tears while testifying and the proceeding was interrupted several times to calm her down.<sup>[10]</sup>

No young woman would allow an examination of her private part and subject herself to the humiliation and rigor of a public trial if the accusations were not true, or if her motive were other than a fervent desire to seek justice.<sup>[11]</sup>

We do not subscribe to appellant's theory that the filing of the rape charges was motivated by Jessica's dislike for him. To charge appellant with rape for the sole purpose of exacting revenge, as appellant implies in his brief, takes a certain kind of psychiatric depravity which this Court does not see in Jessica. The fact that Jessica had to undergo psychological treatment<sup>[12]</sup> after her first testimony in February 1998 belies appellant's defense. The need for such counseling came about *after* the defilement she suffered in the hands of appellant. In fact, it was the incidents of rape that caused her psychological and emotional imbalance which required therapy at the Child Protection Unit of the Philippine General Hospital.

The alleged inconsistencies and improbabilities in Jessica's testimony did not discredit her nor reveal any fabrication. Inconsistencies regarding minor details were attributable to the fact that she was recalling details of incidents that happened three years before, not to mention the fact that these details pertained to something she had very little knowledge of, being then only nine years and three months old when the first rape was committed. We have consistently ruled that errorless recollection of a harrowing experience cannot be expected of a witness (a very young one at that) specially when she is recounting details of an occurrence so