

## FIRST DIVISION

[ G. R. No. 127703, January 18, 2002 ]

**DONATO REYES, JR., PETITIONER, VS. COURT OF APPEALS AND  
THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

### D E C I S I O N

**PARDO, J.:**

#### The Case

Appeal *via* certiorari from the decision<sup>[1]</sup> of the Court of Appeals affirming the conviction of the petitioner Donato Reyes, Jr. of two counts of rape<sup>[2]</sup> and sentencing him to the indeterminate penalty of eight (8) years and one (1) day of *prision mayor*, as minimum, to twelve (12) years of *prision mayor*, as maximum, to indemnify jointly and severally with co-accused Junedy Anthony E. Victorino and Remy C. Ramos the amount of P150,000.00 and to pay the costs.<sup>[3]</sup>

#### The Facts

The facts in the words of the trial court as established by the prosecution's evidence are as follows:

"Prosecution evidence in chief shows that there was a brown-out on the evening of May 28, 1993 when Michelle and Corazon were playing 'tayaan' at the health center in Santolan, Pasig. All accused who are their neighbors ran after Corazon, but failing to catch her, they chased Michelle instead who got caught. After catching her, she was dragged towards the men's comfort room where Junedy removed Michelle's shorts and panty and who after removing his shorts laid on top of her and inserted his penis inside her vagina while her hands and feet were held by Remy and Jay R. When Jay R. took his turn in raping Michelle, Remy and Junedy held her hands and feet. A fourth companion of all the accused, Louie Cruz did not do anything to Michelle because he had already left. This is the second time that these accused raped Michelle. The first time happened in 1992 along the highway in Santolan but this was unreported because Michelle did not tell anyone what happened to her then. This time, however, it was a different story altogether because after Michelle was raped in the comfort room by the three accused, she went to Corazon's house and related to her what happened. When Michelle went home that night, she did not tell her mother Elizabeth about the rape incident because of fear. It was only four days later when Elizabeth learned about the incident when Michelle's aunt Angela Briz disclosed the rape incident to her. Michelle was brought to Camp Crame where she was examined by Dr. Ma. Cristina Freyra, a medico-legal officer of the PNP Crime Laboratory Services. Dr. Freyra concluded that her findings were

compatible with loss of virginity for she has found, among others, "an abraded posterior fourchette, elastic fleshy type and congested hymen, with shallow healing laceration at 3 o'clock (Exh. "H") indicative of the entry of a hard blunt object penetrating the hymen. Both Elizabeth and Michelle gave their statements (Exhs. "C" and "D") about the rape incident to SPO4 Nicolas Puros.

"On the other hand, the defense of the accused is denial, that is, they did not rape Michelle either in 1992 or on May 28, 1993. If Michelle really lost her virginity, they were not responsible for it because someone else, maybe her uncle, Danilo Briz, did it. To prove their defense, SPO1 Olindo Ada, Eustaquio Borja, Exequiel Ebreo, Victor Sta. Ana, William Biyo, Nemencio Ramos, Melitona Victorino, Junedy, Remy and Jay R. were presented together with defense Exhibits "1" to "35" admitted in evidence by the Court.

"Defense evidence shows that the three accused and two of their playmates, namely Ebreo and Biyo claimed that during a brown-out at about 6:30 p.m. of May 28, 1993, proceeding from Jay R.'s store where they earlier met at around 6:00 p. m., the group of the three accused, Louie Cruz, Exequiel Ebreo, William Biyo, Fernand, Tana, Ramel, Brando, Bondying and Bilog arrived at the health center in Santolan, Pasig where they played the game of "agawan base". Michelle and Rodwin Francisco a. k. a. Owing joined them in the course of the game. However Biyo, who did not play, left during the game but came back before it was over. The three accused and their playmates did not molest, harass or rape Michelle. After playing, they all rested before going home at around 8:30 p. m. At that time, they did not notice Michelle and Owing anymore. When they arrived at their respective homes, they did not go out anymore because they already went to sleep. On the following day, May 29, 1993, the same thing happened. The three accused and their group assembled at Jay R.'s store at around 6:00 p. m. and later proceeded to the health center where they played a game of "hide and seek" from 6:30 p. m. to 8:30 p. m. during the usual scheduled brown-out. When Michelle and Owing arrived, the three accused and their group allowed them to join their game. Being too noisy, SPO1 Olindo Ada, a fireman, called the attention of the group from the second floor of the health center building where the fire station was located. He told them to quiet down and to transfer to the other side of the basketball court. Ada later that evening also went down from the second floor and approached the group who were already playing at the other side of the basketball court where he told the group to be. Again Ada told them not to be too noisy. He saw Michelle and the others with the use of his flashlight. The group finished playing at around 8:30 p. m. and again, they did not notice Michelle. After resting they all went home and slept and on that night the three accused did not rape Michelle. They never ever did. On June 2, 1993, Junedy and Remy were arrested and detained at Camp Crame, until their release on June 25, 1993 under recognizance for being minors. When Jay R. learned of their arrest, he went into hiding because he was afraid of being placed in jail with criminals who may do him harm. He also got scared when he learned that Michelle's uncle, Danilo Briz and his companions were hunting for him and his fellow accused, Junedy and

Rexy. When Nemecio Ramos learned of the arrest and detention of his brother Remy, Atty. Prospero Crescini was retained as defense counsel and he visited Junedy and Remy at their detention cell. After the visit, Nemencio talked with Investigator Purog, who upon knowing Atty. Crescini to be accused's counsel, suggested to him that instead of paying Atty. Crescini a very high attorney's fee, it would be better to just give that money to the complainant. However, Nemencio informed Purog that Junedy and Remy did not want to settle the case because it may be implied that they committed the crime. The three accused claimed that it may have been Michelle's uncle Danilo Briz who raped Michelle because of his unusual interest in pursuing the case against them. This is in order to cover for his crime. The three accused also claimed the case was filed so that their parents would settle it with Michelle's parents for P1 million. In the morning of June 2, 1993, Melitona C. Victorino, an aunt of Junedy talked with Michelle who she considered very close to her. She asked Michelle if she was raped or molested and the latter laughingly denied she was raped or molested by the three accused. It was also during the first week of June, 1993 that Victor Sta. Ana, while watching television on that evening, heard some people talking outside his house. When he looked out of the window, he saw the aunts of Michelle, namely Angie, Violy, Josie and Marivic talking. Sta. Ana heard them telling Michelle what she was supposed to say in a sort of rehearsal and Michelle was smiling.”<sup>[4]</sup>

On June 7, 1995, the trial court rendered a decision, the decretal portion of which reads:

“WHEREFORE, in view of the foregoing, accused Junedy Anthony Victorino, Remy Ramos and Donato Reyes, Jr., are found guilty beyond reasonable doubt of two (2) counts of rape committed under Article 335, paragraph 3 of the Revised Penal Code with the privilege mitigating circumstances of minority under Article 68 of the same Code. Accused Junedy Anthony Victorino and Remy C. Ramos are sentenced to suffer in prison the indeterminate penalty of 4 years, 3 months and 1 day of prison correccional minimum to 10 years and 1 day of prison mayor maximum for each count of rape, while accused Donato Reyes, Jr., is sentenced to suffer in prison the indeterminate penalty of 10 years and 1 day of prison mayor minimum to 17 years, 4 months and 1 day of prison mayor maximum, also for each count of rape. All accused are ordered to indemnify jointly and severally Michelle Briz in the total amount of P150,000.00 and to pay the cost.

“SO ORDERED.”<sup>[5]</sup>

In time, the accused appealed the above decision to the Court of Appeals.<sup>[6]</sup>

On July 31, 1996, the Court of Appeals promulgated a decision, the dispositive portion of which reads:

“THE FOREGOING CONSIDERED, the appealed Decision while affirmed is hereby modified by imposing upon the appellants, JUNEDY ANTHONY VICTORINO and REMY RAMOS, two (2) counts of rape, or the