

## FIRST DIVISION

[ G.R. No. 124053, March 20, 2002 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
CARLITO PALAÑA Y SARANGGOTE, ACCUSED-APPELLANT.**

### D E C I S I O N

**YNARES-SANTIAGO, J.:**

One of the curses of modern times is the facility for a man to snuff out the flicker of innocence in a young girl so tender and precious. For this act of bestiality, accused-appellant Carlito Palaña y Saranggote was charged before the Regional Trial Court of Manila, Branch 12, in Criminal Case No. 92-103795, with rape, committed as follows:

That on or about January 11, 1992, in the City of Manila, Philippines, the said accused, with lewd designs, did then and there wilfully, unlawfully and feloniously, by means of force, violence and intimidation upon the person of one Emelita Tamayo y Gonzales, by then and there mounting on top of her, removing her panty, threatening to kill her should she resist and inserting his penis on the latter's private organ and succeeded in having carnal knowledge of the undersigned complainant, a minor, nine (9) years of age, against her will and consent.

Contrary to law.<sup>[1]</sup>

Accused-appellant pleaded "not guilty" when arraigned. After trial on the merits, the lower court rendered the assailed decision dated October 11, 1995, the dispositive portion of which states:

WHEREFORE, the prosecution having established the guilt of the accused with moral certainty, this Court finds accused CARLITO PALAÑA y SARANGGOTE GUILTY beyond reasonable doubt of the crime of RAPE, defined and punishable under Article 335 of the Revised Penal Code as amended, and accordingly sentences him to suffer the penalty of reclusion perpetua, with the accessory penalties provided by law, and to pay the private complainant the sum of FIFTY THOUSAND (P50,000.00) PESOS as moral damages, without subsidiary imprisonment in case of insolvency, and to pay the costs. His immediate transfer to the National Bilibid Prisons, Muntinlupa City is hereby ordered.

SO ORDERED.<sup>[2]</sup>

Accused-appellant interposed the instant appeal, contending that the trial court erred in finding him guilty beyond reasonable doubt of the crime of rape for lack of sufficient evidence.

From the testimony of the victim, it appears that accused-appellant is the victim's uncle by affinity, he being the husband of her mother's sister. They lived together in the same house in Sta. Mesa, Manila. On January 11, 1992, at around 1:00 in the afternoon, the victim, then 9 years old, was at home with her playmate, Agnes Diaz. Accused-appellant called the victim to his bedroom upstairs and ordered her brother and sister to go downstairs. When accused-appellant and the victim were left alone, he laid her down, took off her panties and inserted his penis into her vagina. The victim felt pain. Later, she saw white substance come out of accused-appellant's penis.

Agnes went upstairs to look for the victim. When she entered the bedroom, accused-appellant told her not to tell anyone what happened or else he will electrocute her. Despite the threat, Agnes told her mother that accused-appellant raped the victim. Agnes's mother, whom the victim referred to as her Tita Lita, in turn told the victim's mother. The latter reported the matter to the police and accompanied her daughter for medical examination.

Accused-appellant argues that it was improbable for the victim not to have made a sound while she was being raped. However, evidence shows that the young victim was silent because she was gagged while she was being raped and accused-appellant threatened to electrocute her and her siblings if she made a noise.<sup>[3]</sup> Thus, in her tender mind, she believed that keeping quiet would not only save her life, but also that of her younger brother and sister. It is not uncommon for a young girl of tender age to be intimidated into silence by the mildest threat against her life.<sup>[4]</sup> In fact, her very silence makes her all the more credible because that would be the natural reaction of a young and inexperienced victim cowed by intimidation. Accused-appellant maintains that there was no duress or threat on the victim's life prior to or during the rape. However, his hollow denial cannot stand against the victim's positive testimony.<sup>[5]</sup>

Further, it should be noted that accused-appellant is the victim's uncle and that they all lived in one house, albeit in separate rooms. The victim's father had long abandoned his family. The victim's mother usually goes out of the house to earn a living, and the three young children are left in the care of her sister and accused-appellant. Under this setup, the victim and her siblings looked up to accused-appellant as a father-figure.

This sense of moral ascendancy could have compelled the victim to keep silent when accused-appellant sexually abused her. Consequently, the delay in reporting to her immediate family what happened to her does not impair her credibility. The absence of a struggle or an outcry from the victim is immaterial in the rape of a child below twelve years of age "because the law presumes that the victim, on account of her tender age, does not and cannot have a will of her own."<sup>[6]</sup> Her silence can thus be attributed to the moral ascendancy<sup>[7]</sup> of accused-appellant over her and also by the fact that his threats were all the more scary to her since they lived in the same house.<sup>[8]</sup> This moral ascendancy and influence of the accused-appellant over the victim substitutes for the violence and intimidation; hence, the latter need not be proved.<sup>[9]</sup>

The absence of duress or threat, assuming there was none, is immaterial in this

case. The records show that when the victim was raped on January 11, 1992, she was nine years old, having been born on August 22, 1982. Whether or not there was resistance is immaterial because statutory rape is committed by one who has carnal knowledge of a woman under twelve years of age.<sup>[10]</sup> More importantly, force or intimidation need not be proved.<sup>[11]</sup>

Accused-appellant also faulted the prosecution for failing to present Agnes, the victim's playmate, to corroborate the latter's testimony. To be sure, there was no need for the prosecution to present Agnes as a corroborating witness. In rape cases, the prosecution is not bound to present witnesses other than the victim herself since the accused can be convicted solely on the testimony of the victim.<sup>[12]</sup> Corroborative testimony is frequently unavailable in rape cases, thus it is not essential to warrant a conviction.<sup>[13]</sup>

The trial court, therefore, did not err in believing and relying on the testimony of the victim. She was only ten years old when she testified, but her narration of the events and her answers to questions on direct and cross-examination were forthright and spontaneous, to wit:

Q Will you please tell us what happened at one o'clock on January 11, 1992?

A He [accused-appellant] ordered me to go up and ordered my brother and sister to go down and thereafter he laid me down and removed my panty.

Q Let's start from the beginning. What were you doing on that afternoon on January 11, 1992?

A I was playing then, sir.

Q With whom?

A I was then playing with Agnes.

PROSECUTOR

Q Who is Agnes?

A Agnes Diaz.

Q When your Tito Lito [accused-appellant] ordered you to go up what did Agnes Diaz do?

A She was playing, sir.

Q You made mention a while ago that your Tito Lito or the accused Carlito Palaña laid you down and removed your panty. What did he do also?

A He inserted his penis to my vagina, sir.

Q And what did you feel when he inserted his penis to your vagina?

A I felt painful.

Q And how many times did he insert his penis to your vagina?

A Many times, sir.

Q And did he insert the whole penis?

A Not fully inserted, sir.

Q Can you demonstrate how he did by using your finger? (Witness demonstrating the forefinger by circle form right hand and protruding finger about one and half of his forefinger.)

Q While inserting his penis what did you see if you saw anything or feel anything?

A White substance came out.

Q While he was inserting his penis where was Agnes?

A She was downstairs. When she went up carrying my slippers she did not see us there at the room because we were inside the room and then when she entered the room where we were she saw my Tito Lito and said not to report to anybody.

Q What did your Tito Lito tell Agnes?

A That if Agnes report the matter to anybody, he will electrocute Agnes.

Q How about you did you report what your Tito Lito did on January 11, 1992?

A Yes, sir.

Q To whom?

A Agnes reported the matter to my Tita Lita and my Tita Lita ordered me to narrate what happened to me and so I narrated.

Q Who is this Tita Lita?

A The mother of Agnes.

Q And what did your Tita Lita say to you when you reported what happened to you?

A She told me to report the matter to my mother.

Q And did you report the incident to your mother?

A I can not report the incident to my mother because my Tito Lito is also there.

Q Did your mother know about it?

A Yes, sir.

Q From whom?

A From Tita Lita.<sup>[14]</sup>

No child, like the victim in this case, would concoct a story of her being raped repeatedly then submit to an examination of her private parts, and then expose herself to humiliation and rejection by telling all in a public trial, unless she was motivated solely by her desire to see her uncle punished for what he had done to her.<sup>[15]</sup> That an innocent and guileless girl like her would brazenly impute the serious crime of rape to any man, much more her uncle, if it were not true, is most improbable or even unthinkable.<sup>[16]</sup>

It is an accepted precept that the testimony of a young and immature rape victim deserves full credence.<sup>[17]</sup> Moreover, the evaluation of the credibility of the victim as a witness is addressed to the sound discretion of the trial court, whose conclusion deserves much weight and respect.<sup>[18]</sup> Despite accused-appellant's protestation, there are no sufficient grounds which would compel us to rule otherwise. The guilt of accused-appellant is well supported by the evidence on record.

Accused-appellant attempted to explain the conclusion of Dr. Marcial Cenido, the Medico Legal Officer who examined the victim, that the latter was no longer a virgin because there was a healed lacerated wound on her hymen.<sup>[19]</sup> He contended that the victim lost her virginity by accident, narrated as follows:

Q And when you were informed by Ian Tamayo that it was Apple [the victim] who got or took your money, what did you do, if any?

A I whipped her with a dress hanger.

Q By the way, did you inquire first from Apple if she was the one who took your money?

A Yes, sir.

Q What was the answer of Apple, Mr. witness?

A That she was not the one who got the money, sir.

Q That prompted you to maltreat or whip Apple?

A I beat her first before asking her.

Q What happened next after that, Mr. witness?

A I whipped her hard and leaving a mark on her left arm. (witness demonstrating by pointing to his left arm).

Q What happened next after beating Apple?

A Maybe, because of the hardness of the beating, she