

THIRD DIVISION

[G.R. No. 141647-51, March 06, 2002]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
SAILITO PEREZ Y GAZO, ACCUSED-APPELLANT.**

DECISION

VITUG, J.:

Of the many cases that bewail the Court, rape, in its varying facets, lately appears to lurk almost everywhere threatening the very fiber of the social psyche of a supposed civilized society.

Sailito Perez y Gazo was charged with five counts of statutory rape in separate Informations; *viz*:

CRIMINAL CASE NO. 19117

"That on or about the 23rd day of January, 1998, in the Municipality of Malabon, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused being the uncle of Jobelyn Ramos y Denola, a minor of 11 years of age, with lewd design, and exercising ascendancy over said Jobelyn Ramos y Denola and by means of force, violence and intimidation, wilfully, unlawfully and feloniously, did then and there have sexual intercourse with Jobelyn Ramos y Denola against her will and without her consent."^[1]

CRIMINAL CASE NO. 19118

"That on or about the 13th day of January, 1998, in the Municipality of Malabon, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused being the uncle of Jobelyn Ramos y Denola, a minor of 11 years of age, with lewd design, and exercising ascendancy over said Jobelyn Ramos y Denola and by means of force, violence and intimidation, wilfully, unlawfully and feloniously, did then and there have sexual intercourse with Jobelyn Ramos y Denola against her will and without her consent."^[2]

CRIMINAL CASE NO. 19119

"That on or about the 3rd day of February, 1998, in the Municipality of Malabon, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused being the uncle of Jobelyn Ramos y Denola, a minor of 11 years of age, with lewd design, and exercising ascendancy over said Jobelyn Ramos y Denola and by means of force, violence and intimidation, wilfully, unlawfully and feloniously, did

then and there have sexual intercourse with Jobelyn Ramos y Denola against her will and without her consent."^[3]

CRIMINAL CASE NO. 19120

"That on or about the 31st day of January, 1998, in the Municipality of Malabon, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused being the uncle of Jobelyn Ramos y Denola, a minor of 11 years of age, with lewd design, and exercising ascendancy over said Jobelyn Ramos y Denola and by means of force, violence and intimidation, wilfully, unlawfully and feloniously, did then and there have sexual intercourse with Jobelyn Ramos y Denola against her will and without her consent."^[4]

CRIMINAL CASE NO. 19121

"That on or about the 27th day of January, 1998, in the Municipality of Malabon, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused being the uncle of JOBELYN RAMOS Y DENOLA, a minor of 11 years of age, with lewd design, and exercising ascendancy over said Jobelyn Ramos y Denola and by means of force, violence and intimidation, wilfully, unlawfully and feloniously, did then and there have sexual intercourse with Jobelyn Ramos y Denola against her will and without her consent."^[5]

At his arraignment, the accused pleaded NOT GUILTY to the accusations in all five Informations. The cases having arose from similar incidents involving the same complainant and the same accused, joint trials were held.

The Version of the Prosecution –

On the night of 13 January 1998, Jobelyn Ramos, then eleven (11) years old, was with her four younger siblings sleeping in the *sa/a* of their house at Cancio Street, Dampalit, Malabon, Metro Manila. The accused, said to be an uncle of Jobelyn, entered the house, approached Jobelyn and unceremoniously pulled down her shorts and underwear. Followingly, the accused removed his shorts, pinned the girl down and "pressed" his penis against her vagina. Her struggles failed to dissuade the accused. He sucked her breast and attempted to penetrate Jobelyn. With his penis still touching Jobelyn's private part, he threatened to kill her family if she were to report the incident to anyone.

In the early morning of 23 January 1998, Jobelyn was roused from slumber when she felt the accused caressing her hair. He covered her with a blanket upon seeing her awake. He pulled down her shorts and underwear and placed himself on top of her. He tried to force his penis into her but she struggled to forestall the assault. Amidst sobs, Jobelyn told the accused that she would report his abuses to her mother. He repeated his prior threat and, again, she was forced into silence.

On 27 June 1998, Jobelyn once more saw the accused inside their house. She pretended to be asleep in the hope, although vainly, that the accused would not disturb her. Instead, the accused forced her to lie face-up but she remained still.

Unperturbed, he inserted his penis into her anus after removing her shorts and underwear. She suffered excruciating pain.

On 31 January 1998, Jobelyn again sensed the presence of the accused in their house. She covered herself with a blanket with her face down on the floor. The accused told her to lie on her back. She refused and instead buried her face in her pillow while the accused was urging her to suck his penis which he claimed to be ambrosial. When Jobelyn did not yield to his insistence, he threw the blanket at her.

On 03 February 1998, while Jobelyn was clearing their table after supper, the accused came up to her and felt her buttocks. Jobelyn begged him to leave her alone. The accused told her to sleep near the wall of her house but her younger sister protested. The accused ordered the siblings to sleep under his watchful eyes. When he thought that everyone else was asleep, he pinned down Jobelyn and again went on with his beastly deeds. After his penis touched the private organ of Jobelyn, he licked it before spitting on the slit of the bamboo floor. Loreto, the younger brother of Jobelyn, witnessed the incident. Eventually, their mother was informed of the horrible experience that Jobelyn had been going through.

The Version of the Defense

The accused interposed the defense of denial and imputed ill-motive on the part of Jobelyn's mother which had led to the filing of the criminal charges.

The accused testified that during all the time that the incidents were allegedly taking place, he was plying a tricycle to earn his living. He would start from three o'clock in the afternoon, or sometimes at six o'clock in the early evening, and would only retire at around five or seven o'clock the following morning. He claimed that Jobelyn's mother, Babylyn Ramos, had been harboring a grudge against his family for not lending the amount of P1,800.00 that she had sought to borrow.

Conrada G. Perez, mother of the accused, stated that her son, Sailito Perez, born on 17 September 1980 as so shown by his birth certificate,^[6] was only seventeen (17) years old when the crimes charged were supposed to have been committed. Corroborating her son's declarations, she said that the accused was working to earn a living, plying a motorcycle, during the days and the hours when the incidents allegedly took place, and that the reason for the filing of the criminal complaints was her failure to lend Babylyn Ramos P1,800.00 which the latter had tried to borrow.

The court *a quo* found for the prosecution, and it rendered judgment finding the accused in Criminal Cases No. 19117-MN, No. 19118-MN, and No. 19119-MN, guilty of the crime of Statutory Rape and, in Criminal Cases No. 19120-MN and No. 19121-MN, guilty of the offense of Acts of Lasciviousness. It adjudged:

"WHEREFORE, premises considered, judgment is hereby rendered as follows:

"1. In **Criminal Case No. 19117-MN**, the Court finds **Sailito Perez y Gazo** guilty beyond reasonable doubt of the crime of **Statutory Rape**, and appreciating the privileged mitigating circumstance of minority, hereby sentences him to suffer the penalty of ***reclusion perpetua***;

"2. In **Criminal Case No. 19118-MN**, the Court finds **Sailito Perez y Gazo** guilty beyond reasonable doubt of the crime of **Statutory Rape**, and appreciating the privileged mitigating circumstance of minority, hereby sentences him to suffer the penalty of ***reclusion perpetua***;

"3. In **Criminal Case No. 19119-MN**, the Court finds **Sailito Perez y Gazo** guilty beyond reasonable doubt of the crime of **Statutory Rape**, and appreciating the privileged mitigating circumstance of minority, hereby sentences him to suffer the penalty of ***reclusion perpetua***;

"4. In **Criminal Case No. 19120-MN**, the Court finds **Sailito Perez y Gazo** guilty beyond reasonable doubt of the crime of **Acts of Lasciviousness** and appreciating the privileged mitigating circumstance of minority, hereby sentences him to suffer an indeterminate penalty of **twelve (12) years and one (1) day, as minimum, to fourteen (14) years, eight (8) months and one (1) day, as maximum, both of *reclusion temporal***; and

"5. In **Criminal Case No. 19121-MN**, the Court finds **Sailito Perez y Gazo** guilty beyond reasonable doubt of the crime of **Acts of Lasciviousness** and appreciating the privileged mitigating circumstance of minority, hereby sentences him to suffer an indeterminate penalty of **twelve (12) years and one (1) day, as minimum, to fourteen (14) years, eight (8) months and one (1) day, as maximum, both of *reclusion temporal***.

"Moreover, accused Perez is hereby ordered to pay the total amount of P225,000.00 by way of civil indemnity and P150,000.00 as moral damages to the victim Jobelyn Ramos y Denola in connection with Criminal Cases Nos. 19117-MN, 19118-MN and 19119-MN, respectively."

[7]

The convicted accused, in the Appellant's Brief, ascribed errors to the court *a quo* thusly:

"I

"THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE ON THE BASIS OF THE UNCORROBORATED TESTIMONY OF THE ALLEGED VICTIM.

"II

"THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED GUILTY FOR THE COMMISSION OF THE OFFENSE OF RAPE WHEN THE EVIDENCE ADDUCED TEND TO PROVE OTHERWISE.

"III

"THE COURT A QUO COMMITTED A REVERSIBLE ERROR IN NOT IMPOSING THE PROPER PENALTY FOR THE COMMISSION OF THE CRIME OF ACTS OF LASCIVIOUSNESS."^[8]

In support of the first assigned error, appellant would argue that it was not right for the trial court to have heavily relied on the testimony of Jobelyn which he described to be incredible. He stressed that the medico-legal officer found no evident signs of extra-genital physical injury on the person of Jobelyn.

Anent the second assigned error, appellant would have it that the trial court, in Criminal Cases No. 19117-MN, No. 19118-MN, and No. 19119-MN, corresponding to the alleged sexual molestations on 23 January 1998, 13 January 1998, and 03 February 1998, respectively, clearly overlooked the fact that not a single act of penetration, even at the slightest degree, had occurred in all the said incidents.

In the third assigned error, appellant questioned the various penalties imposed by the court below.

Here, once again, the Court must state that, in reviewing rape cases, it is guided by the settled principles (a) that an accusation of rape can be made with facility; it is difficult to prove but more difficult for the person accused, although innocent, to disprove; (2) that, in view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of the complainant should be scrutinized with extreme caution; and (3) that the evidence for the prosecution must stand or fall on its own merits, and it cannot be allowed to draw strength from the weakness of the defense.^[9] Expectedly, courts would closely examine the testimony of the complainant with the thought in mind that any judgment on the case would depend heavily on the credibility of the offended party. The time-honored doctrine, nevertheless, has always been that the assessment by the trial court on the credibility of the witness is accorded great weight unless there are strong reasons to warrant otherwise.^[10] The Court has closely examined the testimony of the complainant, and it finds nothing that can permit it to depart from the rule; indeed, just the opposite would appear to be true.

In a straightforward and unflinching manner, Jobelyn narrated the incidents that had transpired. pauleen

"Q What was that unusual incident which happened in your house on January 13, 1998?

"A Our uncle entered our house, sir.

"Q What happened next after your uncle entered your house?

"A He took off my shorts and my panty and he pulled my dress up, sir.

"Q What did he do next after he removed your panty and raised your dress up?

"A He pinned me, sir (dinaganan ako).

"Q When he pinned you, was he in clothes or not?