

EN BANC

[G.R. No. 137454, November 18, 2002]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JERRY
CANTUBA Y DEBLOIS, ACCUSED-APPELLANT.**

D E C I S I O N

CARPIO MORALES, J.:

At 4:00 o'clock in the afternoon of June 10, 1997, Belinda Lampas arrived home from work to find her daughter Jennifer, said to be then five years old, limping and holding her private part. "*Bakit, anak?*" she asked, and after dressing Jennifer up and seeing her panty bloodied, Jennifer narrated that their neighbor, *Kuya* Jerry, brought her to the nearby house of his sister, made her lie down and undressed her. Jennifer went on to tell that Jerry "*kantot*" her.^[1]

Jennifer would more than two months later testify in court that she was earlier playing in front of their house at Road 4, Dupax, Diliman Quezon City that afternoon of June 10, 1997 when the neighbor she referred to as *Kuya* Jerry, Jerry Cantuba (accused-appellant), approached her, took her to his sister's house nearby which drew her to cry and scream for help, undressed her after which he undressed himself and that he touched her, "[n]ot just [with] his hands but also another part of his body," she pointing to the male private part which he inserted in her vagina.^[2] The prosecution would later present the blood stained panty,^[3] dress,^[4] and shorts^[5] of Jennifer.

Belinda lost no time in going to the house of the *purok* leader, Ynigo, who was not around, however. Ynigo's daughter thereupon accompanied her and Jennifer to Camp Crame that evening of June 10, 1997^[6] where the latter was medically examined by Dr. Manuel Reyes, Medico-Legal Officer of the Philippine National Police Crime Laboratory Service. Upon parting Jennifer's *labia majora* and *labia minora*, the doctor found a "congested vestibule and posterior fourchette and an elastic, fleshy-type and markedly congested hymen with deep fresh bleeding lacerations at 2 and 10 o'clock positions." The doctor further found that the "external vaginal orifice admit[ted] [the] tip of [his] smallest finger." Specifically with respect to the fresh lacerations, the doctor inferred that they were caused by the "[f]orcible insertion of a hard blunt object" such as an erect penis, consistent with sexual intercourse which occurred less than 24 hours from the time of the examination. He thus concluded that his findings were "consistent with recent loss of virginity".

Still later on the same evening of June 10, 1997, Belinda sought the assistance of one Dominador, a "BSDO in Balara," who "arrested" accused-appellant and brought him to Precinct 6 in Old Balara, Quezon City^[7] where she executed her sworn statement^[8] and assisted Jennifer in filing a complaint^[9] against him.

Accused-appellant was accordingly charged by Jennifer with rape before the Quezon City Regional Trial Court (RTC) allegedly committed as follows:

That on or about the 10th day of June 1997 in Quezon City, Philippines, the said accused by means of force and intimidation, to wit: by then and there wilfully, unlawfully and feloniously undress JENNIFER LAMPAY Y AVILA, a minor, 5 years of age and thereafter have carnal knowledge with the undersigned complainant against her will and without her consent.

[10]

When arraigned, accused-appellant pleaded not guilty. Trial ensued thereafter.

Belinda, and Dr. Reyes testified to the foregoing account as did Jennifer as reflected earlier. In addition, the prosecution presented Elvira Valismo, a clinical psychologist at the Research and Study Center for Children who examined Jennifer about two weeks after the alleged abuse, and who declared that Jennifer was not communicative except with other children and was especially withdrawn from adult males. Elvira further declared that when Jennifer was confronted with questions regarding the incident, she would turn silent, and that gauged from the Wexler Intelligence Skills for Children, Jennifer was not functioning at the maximum level of her intelligence. Elvira thus concluded that Jennifer suffered from depression and trauma as a result of the abuse. [11]

Accused-appellant, 36 at the time he testified on direct examination on February 3, 1998, a construction worker and a resident of 34 Dupax Street, Diliman, Quezon City gave the following version:

At 10:00 o'clock in the morning of June 10, 1997, on seeing that his neighbor of eighteen years Avelino Magno (Magno), a garbage collector, was working by himself, "making hollow blocks and plastering the walls" of the house of a neighbor-waiter Ricky Bautista at 43 Dupax Street, he decided to lend Magno a hand, albeit he (accused-appellant) did not get paid for it.

Accused-appellant and Magno later took lunch at past noon, and an hour or so later they resumed their work. At 4:00 o'clock in the afternoon, Magno went home while he proceeded to the nearby house of Zaldy Salas (Zaldy) where the two watched television up to 6:00 in the evening. He then repaired to his uncle's house at 34 Dupax St. where he resided, about ten meters away from Jennifer's. [12]

Magno corroborated accused-appellant's testimony. He claimed, however, that after work was done in the afternoon, he and accused-appellant both went to the house of Zaldy where they watched television. [13]

Accused-appellant foisted the theory of mistaken identity, alluding to one Jerry Teves as the true perpetrator of the crime. By accused-appellant's account, Teves, whom Jennifer also called "Kuya Jerry," is a small man past 20 years, of medium build, good looking, and a cousin of Jennifer's father who used to live with them. [14]

Accused-appellant's brother, Joffrey Cantuba, related that he shares a twenty four square meter two storey house at Road 44, Dupax St. with his wife Celestina and four children, his brother Jay and his wife and their four children, and his sister Rosalie and her husband and their five children.

Joffrey also related that their other sister, Rosemarie, died on June 2, 1997 and was interred on June 8, 1997, two days before the incident in question. The laundry having accumulated on account of the family tragedy, his wife Celestina and his brother's wife spent the whole day of June 10, 1997 washing clothes just outside their house, along the street. All the time that he fetched water for them from 9:00 o'clock in the morning until 3:30 or 4:00 o'clock in the afternoon, he did not notice Jerry enter their house.^[15]

Joffrey's wife Celestina declared on the witness stand that on June 10, 1997, she was washing clothes near the entrance of their house from morning until afternoon during which she never saw his brother-in-law- accused-appellant or Jennifer.^[16]

On rebuttal, Edna Bianes, a resident of 75 Dupax Street, Diliman, Quezon City, testified that from 9:30 in the morning to 3:30 in the afternoon of the day in question, she was washing clothes with Celestina near the artesian well.

Also on rebuttal, Jennifer affirmed that it was accused-appellant, and not Jerry "Teves" (whose real surname is "Obregon"), who molested her.^[17]

On January 13, 1999, Branch 76 of the Quezon City RTC rendered judgment finding accused-appellant guilty of rape and sentencing him to suffer the death penalty:

WHEREFORE, finding the accused guilty beyond reasonable doubt of rape described and penalized under ARTICLE 335 of the Revised Penal Code as amended by Republic Act 7659, the court hereby imposes the death penalty on the accused Jerry Cantuba. He is also ordered to indemnify the offended party in the amount of P50,000.00 as moral damages and to pay the costs.

SO ORDERED.^[18]

Accused-appellant now assigns the following errors on the part of the trial court:

I

THE TRIAL COURT ERRED IN FINDING ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED.

II

EVEN ASSUMING THAT APPELLANT IS TRULY GUILTY OF THE CRIME OF RAPE, NONETHELESS, THE TRIAL COURT ERRED IN IMPOSING UPON HIM THE SUPREME PENALTY OF DEATH.^[19]

The Court entertains no doubt that Jennifer was a victim of rape. Her candid testimony and that of her mother, the medico-legal findings of the doctor which are reflected in his Initial Laboratory Report^[20] and Medico-Legal Report No. M-2063-9,^[21] and the object evidence establish beyond reasonable doubt that she was raped.

Accused-appellant maintains his innocence, however. He points out that the house where Jennifer was allegedly raped "swarmed with occupants" consisting of three couples and their children. Were the claim of rape true, he submits, the incident would have caught someone else's attention. He adds that Jennifer, confronted by

the trauma of the incident, could have mistaken him for her other *Kuya* Gerry. Finally, he maintains that his alibi was amply corroborated by Magno.

Accused-appellant's appeal is bereft of merit.

There is no proof that the house where the offense was committed was indeed swarming with people at the time of its commission. In any case, the Court has held that rapists are not deterred from committing their odious act by the presence of people nearby or the members of the family; ^[22] that lust does not respect time or place; and that rape is not only committed in seclusion. ^[23]

And Jennifer was on direct examination certain that it was accused-appellant, not the other *Kuya* Gerry, who molested her:

Q. Jennifer, you mentioned that last time that you know a certain Jerry who is not the Jerry Cantuba in the case.

Yes, maam.

In this Jerry that you said you know, the same person as Jerry Cantuba?

No, maam.

Which of the Jerry touched you and raped you?

x x x

A Jerry Cantuba.

ATTY. MORALES:

Q Is this Jerry Cantuba the same Jerry Cantuba you earlier pointed to? Is he the same one in the courtroom today?

A Yes, maam. ^[24]

Any nagging doubts on the true identity of the rapist were laid to rest by Jennifer when on rebuttal she declared:

Q Jennifer, you mentioned the last time that you talked to the Judge and the people here that a certain Jerry Cantuba molested you, is that correct?

A Yes, maam.

Q Now, how many persons named Jerry do you know?

A Two.

Q Are these two persons named Jerry in the courtroom today?

A Yes.

Q Would you like to show us these two persons named Jerry?

A Yes.

ATTY. MORALES:

Witness pointing to Jerry Cantuba and a person named Jerry Obregon.

Q Jennifer, do you know the family name of the other Jerry which is not Jerry Cantuba?

A No, maam.

Q Now, Jennifer, which of these two Jerries molested you?

A Jerry Cantuba.

Q And who is Jerry Cantuba again, which one?

A (Witness pointing to Jerry Cantuba)

ATTY. MORALES:

That will be all, your honor. [\[25\]](#)

The alleged corroboration by Magno of accused-appellant's testimony with respect to accused-appellant's whereabouts at 4:00 o'clock in the afternoon of June 10, 1967 fails. For accused-appellant claimed that he proceeded to the house of Zaldy where he watched television while Magno left for home, whereas Magno claimed that the two of them proceeded to Zaldy's house and both watched television.

The trial court thus correctly rejected not only accused-appellant's theory of mistaken identity but his alibi as well, giving great weight to Jennifer's heartrending testimony:

The Court listened carefully to her story told in brief, sometimes unfinished sentences, the child evading the sight of the accused, prompting us to hold the trial in chambers, with the accused just by the door. It was a candid moment of a very young girl's demeanor: she would lower her face, as if in shame, then would stop answering questions as if in pain. It seemed to the court that every recollection of the bits and pieces of the incident inflicted upon her more hurt and sufferings that sear whatever is left of her young life.

It is difficult to imagine that this young girl, already deprived of her childhood and purity; bruised by her traumatic experience would falsely point to the accused as her tormentor, if it were not the truth. The attempt of the accused to foist doubt into the mind of the court by suggesting that it might be the other Jerry (Teves/Obregon) who did it, proved insensible as the little girl stuck to her earlier declaration pointing to Jerry Cantuba as the perpetrator of the rape. And the court believed her. The court gives her narration full faith and credence and rejects the alibi offered by the accused. [\[26\]](#)

In [People v. Marquez](#), [\[27\]](#) this Court ruled:

All told, the proffered alibi of accused-appellant can not stand against the positive identification by the private complainant that he is the culprit. Basic is the rule that alibi which is easy to concoct can not prevail over the positive identification; what is more, appellant utterly failed to prove that it was physically impossible for him to be at the scene of the crime