

FIRST DIVISION

[G.R. No. 110131, May 28, 2001]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FRANCISCO DEACOSTA Y RECENA, ACCUSED-APPELLANT.**

D E C I S I O N

PARDO, J.:

May an accused be convicted of rape where the findings of the NBI medico legal expert and that of the victim's attending physician are inconsistent?

On November 4, 1991, Assistant Provincial Prosecutor of Laguna Calixto O. Grifal filed with the Regional Trial Court, Biñan, Laguna, Branch 25, an information against accused Francisco Deacosta charging him with rape.

Leslie Sapin, the eldest child of spouses Mario and Esperanza Sapin, was born on October 11, 1984. Esperanza's eldest sister, Amelia Deacosta is the wife of accused Francisco Deacosta. Leslie is not only Francisco's niece by affinity but his goddaughter as well.^[1]

At the time of the incident in 1991, the spouses Mario and Esperanza lived in Tandang Sora, Quezon City together with their two other children, Cherry and Efren. Leslie, who was six (6) years old, stayed with her grandparents in Marinig, Cabuyao, Laguna. She was enrolled for the school year when her parents transferred to Quezon City.

Accused Francisco, his wife Amelia, and their 12 year-old daughter Imee lived adjacent to where Leslie lived. A thin wall separated their residence.

On October, 5, 1991, at around 11:00 a. m., Normita Siongson Agustin, complainant's aunt and Esperanza's other sister, looked for Leslie because they were about to take lunch. Usually, Leslie would be playing in front of the house. At that time, however, she was nowhere to be found. Normita went around the area calling Leslie's name until she found her niece coming out of a pigsty. The pigsty, owned by Teresa Opeña, was about 50 to 100 meters from where Leslie lived. While walking home, Normita looked back at the direction of the pigsty and saw accused Francisco coming out therefrom.^[2]

As the young girl looked pale, Normita asked Leslie what had happened. Leslie told her aunt that the accused used ("ginamit") her. Upon reaching home, Leslie again told Normita that accused molested her and narrated what happened in the pigsty.

Leslie said that Francisco took off her panties and unzipped his pants. He lifted Leslie, inserted his penis in her vagina and then kissed her on the lips.^[3] Leslie felt pain in her vagina.^[4]

Thereafter, accused let Leslie masturbate his penis through a push and pull movement.^[5]

Finally, accused gave the girl one peso (P1.00) and let her go.^[6]

Upon learning of the incident, Normita immediately informed her husband who confronted the accused. Francisco, however, strongly denied the accusation.^[7]

A little after noon that same day, Normita brought Leslie to Dr. Lea Villarica-Umil of the Santiago Medical Clinic and Diagnostic Center, Sta. Rosa, Laguna.

Dr. Umil testified that she examined Leslie on October 5, 1991, at about 12:45 in the afternoon. She found the labia minora gaping with fresh lacerations at 6, 3 and 9 o'clock position. The cause of the lacerations could be a blunt instrument, finger or penis.^[8]

On October 7, 1991, Leslie Sapin filed with the Regional Trial Court, Biñan, Laguna a complaint against Francisco Deacosta for rape, as follows:

"The undersigned complainant under oath accuses FRANCISCO DEACOSTA ALIAS FRANK of the crime of "Rape" committed at follows:

"That on or about 11:30 o'clock in the morning of October 5, 1991 and prior thereto at Brgy. Marinig, Cabuyao, Laguna, Philippines, within the jurisdiction of this Honorable Court, the above-named accused by means of force and intimidation and with lewd design, did then and there willfully, unlawfully and feloniously have carnal knowledge to (sic) the undersigned complainant against her will and consent, to her damage and prejudice.

"CONTRARY TO LAW.

"Cabuyao, Laguna, Philippines, October 7, 1991.

"LESLIE SAPIN
" Complainant
"ESPERANZA SAPIN
"(Mother)" ^[9]

SPO1 Apolinar R. Jasareno, Jr. interviewed Leslie on October 7, 1991. She stated that the accused raped her five (5) times on different occasions but she could not remember when.^[10]

On the same date, the NBI conducted a physical examination^[11] of Leslie and found no sign of extragenital physical injury on her body at the time of the examination. Her hymen was intact and its orifice small.^[12]

An uncle of the accused offered P2,000.00 to Leslie's parents to settle the case.^[13] His wife, Amelia, cried while asking Esperanza to agree to settle the case.

On January 21, 1992, the trial court arraigned the accused. He pleaded not guilty.^[14]

On October 28, 1992, the trial court rendered a decision, the dispositive portion of which reads:

"WHEREFORE, premises considered, judgment is hereby rendered, finding accused FRANCISCO DEACOSTA Y RECENA guilty beyond reasonable doubt as principal of the crime of Rape defined and penalized under Article 335, paragraph 1 (3) of the Revised Penal Code and hereby sentences him to suffer the penalty of RECLUSION PERPETUA; to indemnify Leslie Sionzon-Sapin the sum of FIFTY THOUSAND (P50,000.00) PESOS as moral damages; and to pay the costs.

"SO ORDERED."^[15]

Hence, this appeal.^[16]

On July 19, 1993, we accepted the appeal.^[17]

Accused-appellant contends that the lower court erred in not allowing him to present additional evidence. Hence, the case must be remanded to the lower court for the reception of additional evidence for the accused.^[18]

We do not agree.

Accused-appellant failed to specify the additional evidence he intended to present that would justify a remand of the case to the trial court. To do so would cause unnecessary delay especially so since the evidence presented in the trial court were sufficient to convict the accused.

Francisco also contends that the lower court erred in convicting him.

First. He pointed out that the NBI report^[19] found that the victim's hymen was intact. This was inconsistent with the findings of Dr. Umil^[20] that there were vaginal lacerations healed and fresh.

The trial court ruled that the inconsistency is more apparent than real.^[21] The NBI report stated that the hymen was intact. There was no complete penetration. Complete penetration, nonetheless, is not essential for the consummation of rape.

We have consistently ruled that for rape to be consummated, rupture of the hymen or full penetration of the complainant's vagina is not necessary^[22] nor is it