

FIRST DIVISION

[G.R. No. 133385, December 07, 2001]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
PABLITO DELOS REYES, ACCUSED-APPELLANT.**

DECISION

YNARES-SANTIAGO, J.:

Maritess Collo is the third of five children of Evelina Punzalan and Mario Collo. She was born on October 8, 1983 in Biñan, Laguna. She lives with her parents, brothers and sisters in a shanty located in Daang Bakal, Pook, Sta. Rosa, Laguna. Due to Evelina's illicit relationship with accused-appellant, her husband Mario left them. Accused-appellant eventually moved into Evelina's house. Maritess was then only nine years old. As she grew up, Maritess regarded accused-appellant as her stepfather, whom she used to call "Kuya Ambo."

On June 12, 1995, at about 4:00 in the morning, while Maritess was asleep in their living room, she felt accused-appellant's hand touch her thighs. Her mother, Evelina, was not home at that time having gone to the market.

Maritess tried to resist him but accused-appellant overpowered her. He grabbed her hands tightly and kissed her on the lips and cheek. Then he mounted on top of her. He was clad only in briefs. He fondled her breasts and kissed her all over the body. Maritess pleaded for him to stop, but he ignored her and forcibly removed her shorts and underwear.

Shortly thereafter, Pablito took off his briefs and inserted his penis into Maritess's vagina. She further pleaded to him, "*Tama na po, tama na po.*" She felt severe pain which made her cry. When she urinated later, she saw blood come out of her vagina.

Pablito threatened Maritess not to report the incident to anybody, or else he will kill her whole family. Fearing for her life, Maritess kept her harrowing experience to herself. However, the next day, she narrated the incident to her cousin, Eya, who in turn relayed it to her brother, Rey. After some time, Rey confided the incident to Maritess's father, Mario.

Upon learning of her daughter's ordeal, Mario brought Maritess to the health center for medical examination. Dr. Soledad Rosanna Cunanan, the Municipal Health Officer of Sta. Rosa, Laguna submitted a medical certificate stating that there was an old healed hymenal laceration in Maritess's genitalia at 5:00 o'clock position.

Consequently, accused-appellant was charged with the rape of Maritess Collo, under the following Information, docketed as Criminal Case No. 9615-B:

That on or about June 12, 1995, in the Municipality of Sta. Rosa, Province of Laguna, Philippines and within the jurisdiction of this Honorable Court,

accused Pablito delos Reyes y Brasal, with lewd design and by means of force, violence and intimidation, did then and there wilfully, unlawfully, and feloniously have carnal knowledge of the said Marites Collo y Punzalan, a thirteen (13) years of age, against her will and consent, to her damage and prejudice.

CONTRARY TO LAW.^[1]

Accused-appellant pleaded not guilty when arraigned. After trial, the Regional Trial Court of Biñan, Laguna, Branch XXV, rendered judgment as follows:

WHEREFORE, this Court hereby finds the **accused Pablito de los Reyes y Brazal GUILTY** beyond reasonable doubt of the crime of **RAPE** as charged in the information and there being present the aggravating circumstance of his relationship as stepfather to private complainant, Maritess Collo, **hereby sentences him to RECLUSION PERPETUA and to pay said private complainant the sum of FIFTY THOUSAND PESOS (P50,000.00)** as moral damages.^[2]

Accused-appellant interposed an appeal directly to this Court on the lone assignment of error that the prosecution failed to establish his guilt beyond reasonable doubt.^[3] After a careful review of the evidence on record, no sufficient reason exists that would justify the reversal of the assailed decision.

The victim in this case was born on October 8, 1983. At the time of the rape on June 12, 1995, she was below twelve years old. However, the Information alleges that she was thirteen when she was raped. Thus, the crime with which accused-appellant was charged can not be considered statutory rape. However, there is overwhelming evidence on record that accused-appellant employed force and intimidation on the victim.

In her sworn testimony, Maritess categorically stated that:

- a. While I was sleeping, I noticed or I felt that there was "*gumagapang na kamay sa aking hita*". Later, I came to know that it was Pablito delos Reyes.

- q. Now, when you felt that Miss Witness, what did you do?
 - a. I was surprised, sir.

- q. After that what did Pablito delos Reyes do, if any?
 - a. He held my two (2) hands very tightly, sir.

- q. What did you do when Pablito delos Reyes held your both hands tightly?
 - a. I cried and told him "I do not like, I do not like." "*Ayaw ko, ayaw ko.*"

- q. Why were you uttering "*ayoko, ayoko*"?
 - a. I refused to be molested by him, sir.

- q. After holding your both hands tightly, what else did Pablito delos Reyes do, if any?

- a. He kissed my lips and cheeks, sir.
- q. After Pablito delos Reyes kissed you while he was on top of you, what else did he do to you?
- a. He forcibly removed my shorts and panty, sir.
- q. Was he able to remove your shorts and panty?
- a. Yes, sir.
- q. What did you do when Pablito delos Reyes was trying to remove your shorts and panty?
- a. I told him "*huwag, kuya Ambo*" because I called him Kuya Ambo, sir.
- q. Did he accede to your pleas?
- a. No, sir.
- q. Why? What did he do next?
- a. He mashed my breasts and kissed all my body and breasts, sir.
- q. After that what else did Pablito delos Reyes do to you, if any?
- a. After that he removed his briefs and he inserted his penis to my vagina.
- q. Was Pablito delos Reyes able to insert his penis to your vagina?
- a. Yes, sir.
- q. What did you feel when Pablito delos Reyes inserted his penis to your vagina?
- a. It was painful, sir.
- q. When you felt pain, what did you do?
- a. I cried, sir.
- q. While the penis of Pablito delos Reyes was inside your vagina, what else did Pablito delos Reyes do, if any?
- a. He made an up and down movement, sir, (Witness demonstrating by moving her right hand down and up, down and up.) and "*yumuyugyog sa akin.*"
- q. What did you do when you felt that Pablito delos Reyes was "*yumuyugyog?*"
- a. I told him "*tama na po, tama na po.*"
- q. Did he accede to your pleas?
- a. No, sir.
- q. What did Pablito delos Reyes do next after that "*yumuyugyog?*"
- a. He removed his penis from my vagina, sir.
- q. After removing his penis, what did Pablito delos Reyes do, if any?
- a. He threatened me that I should not tell the matter to anybody