

## FIRST DIVISION

[ G.R. No. 133477, January 21, 2000 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
BENJAMIN RAFALES, ACCUSED-APPELLANT.**

### D E C I S I O N

**DAVIDE JR., C.J.:**

Accused-appellant Benjamin Rafales (hereafter BENJAMIN) appeals from the 16 May 1997 judgment<sup>[1]</sup> of the Regional Trial Court, Branch 2, of Balanga, Bataan, in Criminal Case No. 6115, which convicted him of statutory rape and sentenced him to suffer the penalty of *reclusion perpetua* with the accessory penalties, to pay the victim the amount of ₱40,000 as civil indemnity and to pay the costs.

The information that charged BENJAMIN with rape reads as follows:

That in or about the month of November 1993 at Brgy. Gen. Lim, Orion, Bataan, Philippines and within the jurisdiction of this Honorable Court, the said accused thru force and intimidation, did then and there willfully, unlawfully and feloniously lie and succeed to have sexual intercourse with the offended party, Rochelle Gabriel y Abanador, 11 year old minor girl, against the will and consent of the latter, to her damage and prejudice.<sup>[2]</sup>

BENJAMIN pleaded not guilty upon his arraignment. Trial on the merits followed.

The prosecution first presented as witness the victim Rochelle Gabriel y Abanador (hereafter ROCHELLE). ROCHELLE testified that in 1993, her neighbor BENJAMIN thrice raped her. The first rape took place sometime in November. ROCHELLE was then at her home with her siblings while her parents were at the farm. BENJAMIN arrived, unceremoniously removed ROCHELLE's dress, laid her on the floor, undressed himself, placed himself on top of her and inserted his penis in her vagina. ROCHELLE felt pain. After the act was over, she saw a whitish substance on her vagina.<sup>[3]</sup>

The second incident of rape occurred three days after. It was mid-afternoon. ROCHELLE and playmate Gemma Benaro were playing in the latter's house. BENJAMIN appeared, ordered Gemma to leave, undressed ROCHELLE, laid her on the floor, undressed himself, placed himself on top of her and inserted his penis in her vagina. As before, ROCHELLE felt pain and noticed a white substance on her vagina.<sup>[4]</sup>

The third rape took place a few days after this incident. ROCHELLE and playmate Marissa Rafales were playing cards at the latter's house when BENJAMIN arrived and asked Marissa to leave. BENJAMIN removed ROCHELLE's dress and shorts. He laid her down, undressed himself, stayed on top of her and inserted his penis in her

vagina. ROCHELLE again felt pain and saw a white substance on her vagina.<sup>[5]</sup> Testifying that she was born on 30 August 1983, ROCHELLE was ten (10) years old when these incidents took place.

ROCHELLE did not report or reveal to her parents or anyone else the sexual molestations.<sup>[6]</sup> BENJAMIN's threats to kill her and her family proved too much of a deterrence. Claiming that she had frequent quarrels with her siblings, ROCHELLE ran away from home. She took refuge in the streets and sought the company of streetchildren.<sup>[7]</sup> The police finally found her and brought her to one Vicky Santos, an employee of the Department of Social Welfare and development.<sup>[8]</sup> ROCHELLE stayed with Vicky for four (4) months before she was turned over to the orphanage. Hence, it was only after two (2) years or in 1995 when ROCHELLE finally disclosed her sexual ignominy from BENJAMIN's lecherous arms.

Despite her fears that BENJAMIN would carry out his threats to kill her, ROCHELLE confessed the sexual molestations to Vicky when she confronted her (ROCHELLE) with stories of a child-rape victim. ROCHELLE learned that Vicky heard these stories from Gemma, Marissa, and BENJAMIN's two sisters. Thus, Vicky accompanied ROCHELLE to the police station where she executed a sworn statement<sup>[9]</sup> attesting to the incidents of the rape.

After ROCHELLE's testimony, the other witnesses of the prosecution took the witness stand. Pacita Abanador, ROCHELLE's mother, testified that ROCHELLE was born on 30 August 1983. She also identified BENJAMIN as their neighbor.<sup>[10]</sup>

SPO Rolando Bernabe claimed that he was the investigating police officer who took ROCHELLE and Pacita Abanador's sworn statements.

Dr. Jose Bernardo Gochoco, Jr. who physically examined ROCHELLE two years after the rape incidents affirmed his findings contained in a medico legal report<sup>[11]</sup> that ROCHELLE's hymenal ring and posterior fourchette were intact. He concluded that there was no physical penetration of ROCHELLE's labia majora.<sup>[12]</sup>

For its part, the defense presented its lone witness, accused BENJAMIN. His defense consisted mainly of denial. He denied having raped ROCHELE at any time. He denied the rape charge when he was interrogated at the police precinct. He denied his lechery when a representative of the Department of Social Welfare and Development visited and allegedly urged him while in prison to confess to the crime. Yet he, knew of no reason why ROCHELLE would falsely accuse him of rape.<sup>[13]</sup>

In weighing the evidence thus proffered, the trial court found that the prosecution proved beyond reasonable doubt BENJAMIN's culpability. Affording full credence to ROCHELLE's positive testimony, the trial court disposed:

It could be seen that there is direct testimony by the young victim that the accused laid on top of her and raped her. While there seems to be a variance on how she was raped - in her statement before the police, she was violated four (4) times and she was not sure whether there was penetration or not, but in her declaration in Court she said that she was raped three (3) times and that there was penetration and that she saw

whitish substance in her genitalia genitalia – the stubborn fact is that the victim declared that she felt pain when the penis of the accused was directed at her private parts. The Court holds that the variance between the out of Court statement and the declaration in Court does not serve to discredit the testimony of the complainant that the accused raped her. Affidavits are generally incomplete and discrepancies between the statements of the affiant and those made on the witness stand do not necessarily discredit the witness. (People vs. Soan, 243 SCRA 627)

Neither could the fact that the victim only revealed her ordeal some four (4) months after she was taken custody by the DSWD sufficient reason to discredit totally her testimony. A young girl [sic] below twelve (12) years could not be expected to be as prompt and punctilious in denouncing those who violate her chastity as a woman of age would. She ran away from home after she was molested by the accused and was found by the police roaming at the town plaza of sufficient excuse for her delayed revelation of the dastardly act committed against her. Delay in the prosecuting. [sic] the rape is not an indication of fabricated charges. (People vs. Cabresos, 244 SCRA 362)

That the hymenal ring and fourchette of the victim were intact per the medico-legal certificate do not belie the testimony of the victim that she was raped. In the case of People vs. Castro, 196 SCRA 679, it was held that if the victim is of tender age, the penetration of the male organ could go only as deep as the labia. The visible effect had there been an immediate examination would have been swelling of the parts which suffered traumatic contact of the penis seeking entry. For rape to be committed entrance of the male organ within the labia or pudendum of the female organ is sufficient. Rupture of the hymen or laceration of the vagina are not essential. Entry, to the least extent of the labia or lips of the female organ is sufficient. The victim remaining a virgin does not negate rape.

The fact that the whitish substance was found at the pudendum [sic] is proof enough that the penis of the accused at least knocked at the door of the vagina. This is already considered rape.<sup>[14]</sup>

But while the prosecution proved that BENJAMIN thrice raped ROCHELLE, the information charged him with only one count of rape, thus the trial court held that BENJAMIN could only be convicted of one crime of rape. And since the rape was committed against a victim below twelve (12) years old without any attendant modifying circumstances, the trial court imposed the penalty of *reclusion perpetua*. The dispositive portion reads as follows:

WHEREFORE, the guilt of the accused having been proved beyond reasonable doubt for statutory rape, the accused is sentenced to *reclusion perpetua* with the accessory penalties provided by law. The accused is also ordered to indemnify the victim the sum of ₱40,000.00 and to pay the costs.<sup>[15]</sup>

In his appeal, BENJAMIN contends that the prosecution failed to establish his guilt beyond reasonable doubt. He emphasizes that certain facts, ignored by the trial

court, underscore his innocence and ROCHELLE's lack of credibility, viz.: (1) the delay in the reporting of the rape charge coupled by the probability that ROCHELLE's wanderings and constant company of streetchildren might have undermined the stability of her mind at the time of her testimony; (2) the *ponente's* admission that he did not personally observe the deportment of the witnesses; (3) ROCHELLE's observation that she found a whitish substance on her vagina, where if she was indeed raped, she should have discharged blood; and (4) the failure of ROCHELLE's mother to notice any change in her daughter's behavior, for ROCHELLE should have exhibited the consequent physical and emotional trauma evident in a rape victim.

Antithetic to BENJAMIN's disavowal is the Office of the Solicitor General's prayer (as contained in the Brief for the Appellee) for the affirmance of the challenged decision. Said Office maintains that there is moral certainty that BENJAMIN committed the crime charged. ROCHELLE positively identified BENJAMIN as her rapist. Her straightforward, candid and spontaneous testimony should dispel any doubt on her credibility or of the fact that the crime was actually perpetrated. Her sole testimony established BENJAMIN's conviction. Further, the inconsistencies between ROCHELLE's oral testimony and her affidavit were accurately noted and explained by the trial court. Significantly, BENJAMIN also failed to impute to ROCHELLE any ulterior motive why she would falsely testify against him. The only conclusion is that no such motive existed and that her testimony is worthy of full faith and credit.

The Office of the Solicitor General additionally asserts that BENJAMIN's denunciation of ROCHELLE's conduct after the rape is purely speculative. There is no proof of ROCHELLE's mental imbalance. Her mother's failure to observe any change in her behavior and the absence of a bloody discharge did not militate against the fact that she was ravished. Also inconsequential is ROCHELLE's unlacerated hymenal ring and fourchette, for they do not disprove rape. "A mere knocking at the doors of the pudenda" by the accused's penis suffices to constitute rape. What is important is that there be penetration, no matter how slight, of the male organ within the labia or the pudendum of the female organ.

Finally, the Office of the Solicitor General seeks to increase the civil indemnity from P40,000 to P75,000.

BENJAMIN chose not to file a Reply Brief.

We affirm the conviction of BENJAMIN.

In the review of rape cases, we are always guided by the following principles: (1) an accusation of rape can be made with facility since it is difficult to prove but more difficult for the person accused, though innocent, to disprove it; (2) by reason of the intrinsic nature of rape, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its merits and it cannot draw strength from the weakness of the evidence for the defense.<sup>[16]</sup>

We have meticulously reviewed the records of the case, particularly the transcripts of the stenographic notes of the witnesses and found that the trial court did not err in convicting accused BENJAMIN.

ROCHELLE's sincere, forthright and spontaneous declarations that she was raped by

one whom she respectfully deferred to as "kuya"<sup>[17]</sup> proved with moral certainty BENJAMIN's guilt, thus:

Q Why do you know Benjamin Rfales?

A Because he is our neighbor.

Q Beside that can you tell us why you know him?

A He raped me three times.

Q Now, will you go to the first time that according to you he raped you. Do you remember what month was that when according to you he first raped you?

A November, 1993, sir.

Q Where?

A In our house.

Q Where was your house at the time?

A At Gen. Lim, Orion, Bataan .

Q You stated that he raped you for the first time in your house in 1993, what time was it?

A 1:00 P.M.

Q How did he rape you in your house?

A He came to our house and he removed my dress, sir.

Q And what happened next?

A He lay me down on the floor, and he went on top of me, sir.

Q And when the accused on top of you, what did he do?

A He inserted his penis in my vagina, sir.

Q What did you feel when he inserted his penis in your vagina?

A I was hurt. I felt pain.

xxx

Q Did you notice something in your vagina after Benjamin Rfales stayed on top of you?

A Yes, sir.

Q What was the color?

A White, sir.

COURT

Q Why do you know that it is colored white?

A I saw it on my vagina, sir.

PROS. BERNARDO

Q For how long did the accused stayed [sic] on top of you?

A Less than an hour.