

## THIRD DIVISION

[ G.R. No. 132551, March 22, 2000 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSE DEDACE, ACCUSED-APPELLANT.**

### DECISION

**PANGANIBAN, J.:**

Rape is consummated when the penis touches, no matter how slightly, the victim's sexual organ. Full or complete penetration is not necessary. In this case, we affirm appellant's conviction, because the victim credibly testified that the appellant's organ "touched" hers, and the medical report showed lacerations in her hymen and abrasions in her external genitalia.

#### The Case

Jose Dedace appeals the October 30, 1997 Decision<sup>[1]</sup> of the Regional Trial Court of Hilongos, Leyte, Branch 18, in Criminal Case No. H-630, in which he was convicted of rape.

In an Amended Complaint<sup>[2]</sup> dated March 11, 1995, Joyce Marie D. Mojado accused Jose Dedace of rape. Assistant Provincial Prosecutor Rodolfo E. Rubio treated the Complaint as the Information and filed it in the aforementioned court on June 9, 1995. The accusatory portion thereof reads as follows:

"That on or about 10:00 o'clock [o]n the morning of Saturday, March 4, 1995, in San Antonio St., Poblacion, Inopacan, Leyte, and within the preliminary jurisdiction of this Honorable Court, the said accused entered the house of spouses Medardo Mojado and Inocenta D. Mojado and once inside held Joyce Marie D. Mojado, 7 years old and a Grade 1 pupil and who was then and there alone in the living room and by means of force and intimidation drag[ged] her to the bedroom and willfully, unlawfully, and feloniously succeeded in having carnal knowledge of Joyce Marie D. Mojado.

"CONTRARY TO ART. 335 of the R.P.C. in relation [to] heinous crime under RA No. 7659."

Upon arraignment, appellant, assisted by Counsel Joaquin Viterbo, pleaded not guilty. After due trial, the lower court rendered the assailed Decision, the dispositive portion of which reads:

"WHEREFORE, premises considered, the Court finds the accused JOSE DEDACE GUILTY beyond reasonable doubt of the crime of rape under Article 335 of the Revised Penal Code, as amended, and hereby SENTENCES him to suffer the penalty of RECLUSION PERPETUA. In addition, the accused shall pay the victim JOYCE MARIE MOJADO and/or her parents the sum of FIFTY THOUSAND PESOS (P50,000.00), Philippine Currency as moral damages.

"In the service of his sentence, accused is hereby credited with the full time of his preventive imprisonment if he agreed to abide by the same disciplinary rules imposed upon convicted prisoners, otherwise, he will only be entitled to 4/5 of the same.

"With costs against the accused.

"SO ORDERED."

Hence, this appeal.<sup>[3]</sup>

### **The Facts** **Version of the Prosecution**

The prosecution's version of the facts, as summarized by the solicitor general in the Appellee's Brief,<sup>[4]</sup> reads as follows:

"Shortly before 10:00 o'clock in the morning of March 4, 1995, seven-year-old Joyce Marie Mojado was watching a television show with others at the house of their neighbor whom she called Manang Eva in the immediate vicinity of San Antonio Street, Poblacion, Inopacan, Leyte. While watching the TV, Joyce was called by appellant Jose Dedace and when she approached him, he gave her P2.00 and then told her to enter the house of her parents where she was living. Joyce knew Dedace as they were neighbors and she obeyed his instruction and innocently went inside their house.

"Once they were inside the house, Dedace further told Joyce to go inside the room of her Manang Annie whose full name is Anecita Cabargada. Annie is the housemaid of Medardo Mojado and his wife. When Joyce Marie and appellant went inside the room of the housemaid, Annie was washing clothes at the well in the yard of Mojado's house.

"While they were in Annie's room, appellant removed the short pants and panty of the child victim Joyce Marie Mojado, leaving on her body the t-shirt she was wearing that day. On the bed in Anecita Cabargada's room, Dedace then spread the two legs of Joyce Marie and made her sit on his lap, after which he partly removed his own short pants and started making sexual intercourse with the child.

"While appellant was [i]n the act of ravishing the little girl, the latter saw white liquid substance coming from the penis of appellant and some

drops of it were scattered on the floor. She also saw some of the white substance on her vagina.

"At this juncture, housemaid Anecita Cabargada or Annie entered the room. She had not finished washing the dirty clothes as there were many of them to wash that day. Instead, she went to the kitchen to prepare the meals for lunch, it being already 10:00 o'clock in the morning when she looked at the clock inside the house of the Mojados. She, however, went first to her room.

"When Annie entered her room she immediately saw the child and appellant in an embarrassing situation. Annie saw Dedace facing towards the window and quickly putting back his short pants. Joyce also put on her short pants. Annie promptly asked them what they were doing in her room, but there was no answer. Upset with the thought that something bad had happened in her room between appellant and Joyce who had been placed under her care as the housemaid of the Mojado spouses, Annie went to the kitchen to drink water. When she returned to her room, Dedace was no longer there and Joyce was already outside.

"When Annie again asked Joyce what they were doing in her room, the latter naively replied that Dedace made sexual intercourse with her. On hearing this, Annie shouted and started looking for appellant. She went to the house of appellant's father and she was informed that appellant was not there. So, she brought Joyce to the house of the Mayor of Inopacan, Leyte where Joyce and Annie were interrogated, [after] which, a policeman was called to look for Dedace.

"That same day, March 4, 1995, Anecita Cabargada, accompanied by a certain Nita Villaruel, brought Joyce Marie Mojado to the Western Leyte Provincial Hospital, Baybay, Leyte for examination. Annie did this because Joyce's parents were not in Inopacan, at that time and the child was entrusted to her care.

"As a result of the bestial sexual assault perpetrated by appellant on the child Joyce Marie Mojado, she sustained the following injuries enumerated in the Medico-legal Certificate issued by Dr. Azucena Polo-Mirambel who examined her on March 4, 1995, to wit:

` Pelvic Examination:

External Genitalia - Multiple abrasions at the perineal area;

- abrasions and inflammation on both labia minora and labia majora;

- Healed hymenal lacerations at 3:00 o'clock and 6:00 o'clock position[s]."

### **Version of the Defense**

Resorting to denial, appellant<sup>[5]</sup> views the facts as follows:

"The prosecution presented three (3) witnesses at the trial, namely: (1) Joyce Marie Mojada, the victim and offended party; (2) Anecita Cabargada, a housemaid and (3) Dr. Azucena Polo Mirambel.

"The first witness, Joyce Marie Mojado, the victim herein testified that on March 4, 1995 at more or less 10:00 o'clock in the morning while she was watching T.V. at her neighbor's house, Jose Dedace called her up and gave her P2.00. Then she was ordered by the accused to enter their house and told to enter the room of Annie, the housemaid. While she and the accused were inside the room, the latter took off her short pants and her panty while said accused partly opened his shorts. After [which] accused spread her legs and told her to sit on his lap. Accused then started making sexual intercourse with her. That the penis of accused did not penetrate her vagina but was touched by it. Thereafter she saw white liquid coming from the penis of accused. When their housemaid arrived in the room, accused stood up putting on his short pants. The housemaid, asked the accused what he was doing but he did not answer [and] instead went out of the house. She told the housemaid that Jose Dedace had made sexual intercourse with her. That she was brought to the hospital for check up.

"The second witness, Anecita Cabargada, the housemaid, testified that at around 10:00 o'clock a.m. of March 4, 1995 while washing clothes outside the house of the Mojados, she did not notice anybody entering the house nor were there any persons in the sala of the same. Without finishing her work, she went to the kitchen to prepare their meals. When she entered her room, she saw Jose Dedace, the accused hurriedly putting on his short pants and [so was] Joyce Mojado. She asked what they were doing but nobody answered. Because of what she saw, she felt upset and went out of the room to drink water. When she returned to her room, the accused was not around anymore and she found Joyce Marie outside the room. She asked the child, Joyce, what the accused did to her and the latter told her that accused made sexual intercourse with her. She immediately went out to seek x x x help, brought the child to the mayor and later brought her to the hospital for check up.

"The third witness, Dr. Azucena Polo-Mirambel, testified that she physically examined the victim in the afternoon of that same day and found fresh abrasions at the perineal area, fresh abrasion and inflam[m]ation of the labia minora and labia majora, and healed laceration[s] at 3 and 6:00 o'clock position[s]. That the three abrasions and inflam[m]ation could have been caused by an erect penis or hitting x x the floor .

"To prove the innocence of the accused, the defense presented him as the only witness. In his testimony, he testified that he did not commit the crime as charged. That he was just masturbating when the offended

party appeared and in order that she could not tell Anecita Cabargada of what he was doing until he finished masturbating, he grabbed her by her vagina and let her sit on his lap."

### **Assignment of Errors**

In his Brief, appellant imputes to the trial court this error:

"The trial court erred in convicting accused-appellant of rape despite the fact that appellant had no sexual intercourse with the complainant."<sup>[6]</sup>

Otherwise stated, appellant questions the sufficiency of the prosecution evidence.

### **The Court's Ruling**

The appeal is devoid of merit.

#### **Main Issue:**

#### **Sufficiency of Prosecution Evidence**

Appellant is charged with statutory rape as defined and penalized in paragraph 3 of Article 335<sup>[7]</sup> of the Revised Penal Code. The gravamen of statutory rape is carnal knowledge of a woman below twelve (12) years of age. It is well-settled that complete or full penetration of the complainant's private part is not necessary to consummate rape. What is essential is that there be penetration of the sexual organ, no matter how slight.<sup>[8]</sup> The Court in *People v. Bacani*<sup>[9]</sup> elucidated thus:

"The law may now be considered as settled that complete, or total penetration of complainant's private organ is not necessary to consummate the crime of rape. The slightest penetration will suffice. Neither is the rupture of the hymen essential for the offense of consummated rape. It is enough that there is proof of entrance of the male organ within the labia of the pudendum. Therefore, it is unnecessary to show to what extent penetration of the woman's body has been made. It is adequate if the woman's body is entered."<sup>[10]</sup>

That sexual intercourse had not been complete was apparent from the testimony of the complainant herself, who admitted that the penis of the accused had not entered her vagina. However, she maintained that it touched her organ. We thus agree with the trial court's affirmation of the victim's declaration.

As a general rule, the evaluation of the credibility of witnesses is a matter that peculiarly falls within the authority of the trial court, as it had the opportunity to observe the demeanor of the witnesses on the stand. For this reason, appellate courts accord its assessments of witnesses with great weight and even finality,