

## THIRD DIVISION

[ G.R. No. 131357, April 12, 2000 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ERNESTO GARCHITORENA, ACCUSED-APPELLANT.**

### DECISION

**PANGANIBAN, J.:**

In resolving the sole issue raised by appellant, the Court relies on the time-tested doctrine that the trial court's assessment of the credibility of witnesses should be upheld, if it is not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence which, if considered, would materially affect the result of the case.

#### The Case

Filed before this Court is an appeal by Ernesto Garchitorena, who seeks reversal of the September 30, 1997 Decision<sup>[1]</sup> of the Regional Trial Court of Valenzuela, Metro Manila (Branch 171) in Criminal Case No. 5510-V-96. The Decision found him guilty of rape and sentenced him to *reclusion perpetua*.

In an Information<sup>[2]</sup> dated May 6, 1996, Assistant City Prosecutor Eriberto A. Aricheta charged appellant with rape by means of force and intimidation. The Information reads as follows:

"That on or about February 18, 1996 in Valenzuela, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation employed upon the person of one JENNIFER ACOSTA y ALEJO, did then and there wilfully, unlawfully and feloniously have sexual intercourse with the said JENNIFER ACOSTA y ALEJO, against her will and without her consent."

Upon his arraignment, appellant pleaded not guilty. Trial proceeded in due course. Thereafter, the court *a quo* rendered the assailed Decision, the dispositive portion of which reads:

"WHEREFORE, finding accused Ernesto Garchitorena y Medina [g]uilty beyond reasonable doubt, he is hereby sentenced to suffer the penalty of [r]eclusion [p]erpetua and to pay the costs.

"Accused is likewise sentenced to indemnify the offended party the sum of P50,000.00."<sup>[3]</sup>

#### The Facts

##### Version of the Prosecution

In its Brief,<sup>[4]</sup> the Office of the Solicitor General<sup>[5]</sup> presents the following narration of the facts:

"Jennifer Acosta was nineteen (19) years old at the time she testified in court in 1996. Appellant is her step grandfather, being the live-in partner of her paternal grandmother Rosalina Acosta. Rosalina is separated from her husband. Rosalina and appellant took Jennifer to their custody when the latter was only two (2) years old and until Jennifer was about ten (10) or eleven (11) years old. During that period, however, Jennifer would reside alternately in her grandmother and appellant's house at No. 1078 Sta. Monica Subdivision, Ugong, Valenzuela, Metro Manila and her parents' house at # 2007 La Mesa St., Ugong, Valenzuela. Rosalina and appellant's house is about two hundred (200) steps away, or about five (5) minutes walk [from] Jennifer's parents' house.

"Jennifer was ten (10) or eleven (11) years old when she resided permanently at her parents['] x x x house. But Jennifer would still go to her grandmother's house when she would call for her. Sometimes appellant would fetch Jennifer from her parents' house pretending that her grandmother needed her. If Jennifer would refuse to go with appellant, Clarita would scold her. When she was ten (10) years old, Jennifer noticed that appellant treated her differently, such as placing her on his lap, kissing her on the neck or on the cheeks and touching her private parts. Jennifer calls appellant Daddy because her grandmother told her to address appellant as such. According to Jennifer, appellant started raping her when she reached the age of ten (10), but she could no longer remember how many times appellant raped her. The rapes were committed not only in her grandmother's house but also in her parents' house. She did not tell anyone about the rapes committed by appellant against her because he threatened to kill her, her grandmother and sister should she (Jennifer) do so.

"On February 18, 1996, a Sunday, Jennifer was at the chapel until 11:00 a.m. Thereafter she went home [to] her parents' house and had lunch with her parents and sister. Around 1:00 p.m., she went to her grandmother's house. When she arrived at her grandmother's house, appellant and her grandmother were eating lunch at the kitchen. Since Jennifer had eaten her lunch, she took a little food at her grandmother's house. The kitchen was at the back of the store owned by her grandmother and outside the house. After eating, Jennifer went to the sala of the house and lay down on the sofa while appellant left and her grandmother went to the store. The sala was about twenty (20) to twenty-five (25) meters away from the store. The sofa where Jennifer had [lain] down [on] was beside a window. When one opens the door of the house, one would immediately see the sofa. When Jennifer was lying on the sofa, her head was towards the door, so she could not see the door. She had slept for less than an hour when she was awakened by a kiss planted by appellant on her right cheek. Jennifer was then wearing a T-shirt and a garterized short pants while appellant was wearing a T-shirt and pants. She could no longer remember whether appellant wore long or short pants. When Jennifer opened her eyes, she saw appellant on her

right side and she uttered 'Daddy'. She attempted to stand up, but appellant's right hand held her left hand and appellant kissed her on the lips. Jennifer could not do anything but cry. She could not shout because she was afraid of him. Then, with his right hand, appellant touched her breasts. Thereupon, appellant raised her T-shirt and her bra with his right hand and alternately kissed and touched her exposed breasts. While appellant was doing all these to her, she constantly pleaded with him to stop, but her plea was useless. Thereafter, appellant pulled down her garterized short pants and panty. When her panty was removed, appellant touched her vagina with his right hand and inserted a finger into her vagina. At this point, Jennifer closed her eyes and when she opened them she saw appellant removing his brief. Appellant then placed himself on top of her and masturbated with his right hand. As appellant was on top of her, he kissed her. Jennifer was repelled by that ('nadidiri ako sa kanya'). Then appellant inserted his penis into her vagina. Suddenly, Jennifer's grandmother called out to appellant. Appellant stood up, hurriedly fixed himself up and told Jennifer not to leave because he would come back. But as soon as appellant left, Jennifer fixed herself up and went home.

"When Jennifer arrived at her parent's house, she tried to act normally. But her mother asked why she was frowning and she told her mother that she had a headache. Her mother became suspicious. Then on March 30, 1996, her mother asked her if she had a problem. Jennifer did not answer until her mother slapped her. Then Jennifer told her mother '*Nanay, hirap na hirap na ako*' and told her mother that appellant was molesting her. Her mother said, '*napakawalanghiya niya*'.

"Dr. Noel Minay, a [m]edico-[l]egal [o]fficer of the National Bureau of Investigation, Manila conducted a physical examination on Jennifer on April 2, 1996. Dr. Minay testified that there was no physical injury on the body of Jennifer, but he found an old healed hymenal laceration at [the] 6 o'clock position. His examination revealed that Jennifer was no longer physically [a] virgin."<sup>[6]</sup>

### **Version of the Defense**

In his Brief,<sup>[7]</sup> appellant did not present his version of the facts, but merely stated that Witnesses Rogelio and Rosalinda Acosta both testified that complainant had gone to his residence several times after the date when the alleged rape took place, and that there was thus no indication that the relationship between him and complainant was strained or abnormal.

### **Ruling of the Trial Court**

After examining the evidence presented by both the prosecution and the defense, as well as the demeanor of the witnesses of both sides, the trial court concluded that the prosecution's account was more credible.

The trial court accorded full faith to the victim's narration of the incident which occurred on February 18, 1996. It observed that a girl of tender age would not willingly falsify a rape charge. Her lack of sufficient discretion and judgment, as well

as the threats to her life and the lives of her sister and her grandmother, prevented her from resisting appellant's advances, thus enabling him to perpetrate the crime. The trial court also noted the findings of the medicolegal officer, which lent support to the fact that rape had been committed against the victim.

Hence, this appeal.<sup>[8]</sup>

### **Assignment of Errors**

In his Brief, appellant interposes this lone assignment of error:

"The trial court erred in convicting the accused on the basis of the incredible and conflicting statements of the complainant and despite the positive testimony in favor of the accused."<sup>[9]</sup>

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

The appeal is devoid of merit.

### **Solitary Issue:** **Credibility of the Witness**

Appellant contends that the trial court misapplied the doctrine that a girl of *tender* age would not disclose that she was raped if it were not true, arguing that complainant herein was already 19 years old at the time of the rape. He also contends that her actions of going back to his house and even eating with him after the supposed rape showed that it did not take place. Lastly, he argues that her Appellant contends that the trial court misapplied the doctrine that a girl of *tender* age would not disclose that she was raped if it were not true, arguing that complainant herein was already 19 years old. He further contends that her testimony should not be believed because it contained many inconsistencies.

The contentions of appellant are incorrect. He was convicted on the basis of the victim's testimony which the trial court deemed to be a true and honest narration of the events that occurred on that fateful day. During direct examination, Jennifer clearly testified as to how she had been raped by her grandfather, herein appellant. We quote hereunder the pertinent portion of her testimony:

"FISCAL RAZON: (To the witness)

Q Now, when he arrived, what happened?

A He kissed me.

Q Where were you kissed?

A [On] my cheeks.

Q And after you were kissed, what happened?

A I was awakened. When I was about to stand up, he held my hands.

Q And after holding your hands, what happened?

A Then he again kissed me.

Q Where were you kissed the second time?

A [On] my lips.

Q And after you were kissed on the lips, what did the accused