

THIRD DIVISION

[G.R. No. 133921, June 01, 2000]

PEOPLE OF THE PHILIPPINES, plaintiff-appellee, vs. JOHNNY DELA CRUZ Y AVENDAÑO, accused-appellant.

DECISION

VITUG, J.:

JOHNNY DELA CRUZ Y AVENDAÑO appeals from the decision of the Regional Trial Court, Branch 12, of Malolos, Bulacan, in criminal case No. 94-M-97 finding him guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer the penalty of *reclusion perpetua* and, with respect to the civil liability, to indemnify private complainant the amount of P30,000.00 by way of moral damages.

Avendaño was charged, on 29 September 1996, in an information that read:

"That on or about the year 1984, in the municipality of Obando, Province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously, with lewd design, by means of force, threats and intimidation, have carnal knowledge of the offended party Wendellyn C. Rivera, 7 years of age, against her will and consent."^[1]

At his arraignment, the accused entered a plea of "not guilty."

The Solicitor General, seeking an affirmance of the judgment of conviction rendered by the trial court, summed up the evidence submitted by the prosecution.

"Private complainant, 20-year old Wendellyn Rivera recounted the details of the assault against her chastity perpetrated by her uncle, herein appellant Johnny de la Cruz, when she was still barely seven (7) years of age.

"Sometime in April of 1984, complainant was peddling native delicacies (pastillas, puto, cuchinta) around their neighborhood in Barangay Dinuangan, Obando, Bulacan to help her mother earn a living during her school vacation (pp. 5-6, *tsn*, March 25, 1997). When complainant approached appellant's house, she asked him if he would buy. Appellant said 'yes' and told her his money was inside his house. He placed his arm around her shoulder and brought her along with him inside his house, saying 'he would get money.' When they entered a room inside the house, appellant locked the door (p. 7, *id.*). Complainant felt nervous and suspected something wrong was going to happen to her. (p. 8, *id.*). Leaving the food on the bed where she had placed it, complainant tried to go out. But appellant held her left arm (*id.*) and placed his face against her face and on her neck as he slowly made her sit on the bed (*id.*). She

cried 'pauwiin nyo na ako' but he forced her to lie down on the bed (p. 9, id.). Despite complainant's pleas, appellant continued kissing her and caressing her private parts as he removed all her clothes (pp. 9 to 12, id.) While complainant was shaking with fear pleading that she be allowed to go home, appellant unzipped his pants, pulled out his penis, laid on top of her, and started a pumping motion (pp. 9, 11 & 13, id.). She cried out that it hurt and he stopped, got a rag and wiped her private parts where she felt something wet (pp. 13 to 15, id.). Appellant gave complainant back her clothes so she could go home but warned her not to tell anybody about the incident otherwise something bad would happen (p. 15, id.). Afraid of the threats, the young complainant decided to keep the incident all to herself (p. 16, id.). For a number of years, she managed to avoid and stay away from appellant (p. 17, id.).

"Twelve years thereafter, sometime in May 1996, while complainant and her younger sister were walking along a church alley, they ran into appellant. The latter grabbed complainant's breast as he passed. She cursed him with the words 'Putang ina mo, hayup ka!', but appellant just laughed and walked away (p. 5, tsn, April 17, 1997). Wendellyn felt fear that appellant might do to her sister what he had done to her in the past (ibid.).

"Every night thereafter, complainant experienced nightmares making her relive appellant's sexual assault on her person a long time ago (pp. 6-7, ibid.). She attempted to commit suicide twice because she found these nightmares unbearable (p. 7, id.)."^[2]

The Public Attorney's Office, acting for accused-appellant, gave its version of the evidence presented by the prosecution.

"Complainant Wendellyn Rivera testified that she is now 20 years old. She was born on September 11, 1976. In April 1984, when she was 7 years old, she was raped by the accused in his house. He is the first cousin of her father.

"She was then selling junk food to help her mother earn a living. She was selling pastillas, puto, cochinta. She asked the accused if he would buy food from her and he said, yes. He told her the money was inside his bedroom and he would get it. He placed his arm on her shoulder and brought her along with him to his house particularly to his bedroom. When they were inside the room, suddenly he locked the door.

"She felt nervous. She tried to go out of the room but he prevented her by holding her left arm.

"He started placing his face on her face and her neck. She was standing and he slowly made her sit on the bed. Her junk food, she placed on the edge of the bed because she tried to get out of the room. She was crying and then he forced to lie down on the bed. She begged him, 'Pauwiin ninyo na po ako'. And then he raped her. He even licked her all over her body with his tongue. When she told him she felt hurt, he stopped. He got a piece of rug and wiped her private organ. Afterwards, he gave her

clothings to put them on so she could go home. He warned her not to tell anybody what happened or something bad will happen to her. She opened the door and with his hands on her shoulder, he let her go out. She carried her junkfood with her.

"She went out to the barrio and sold all her junk food because she did not want to go home at with her eyes still fresh from crying. She was able to go home lunch time. She did not tell her parents anything. She tried to keep to herself what happened. She was afraid of his threat and of what her father would do to him if she told him what happened.

"From 1984 up to the time the complaint was filed, she saw the accused in their barrio. She saw him outside their yard, sometimes inside their yard drinking with her uncle. Everytime she saw him, she ran away because he had a menacing look at her. Everytime, he was in their yard, she saw to it that she stayed among her friends. This was to prevent him from getting a chance to do what he did to her again. (TSN, March 25, 1997, pp. 1-18).

"She also did not report the incident to her teachers. She did not want them to know something bad happened to her.

"Last May, 1996 when she was with her younger sister walking through an alley, they met him again and he grabbed her breast. She became afraid that he might again do what he did to her before. She was also afraid he would do the same thing to her sister. She told him, 'Putang ina mo, hayup ka'. He just laughed and walked away. Every night she had nightmares of what happened to her.

"After she decided to file this case, she decided to have herself examined by the NBI.

"After the incident, she suffered stomach ache from 1 to 3 days. She also attempted to commit suicide twice last year (1996). It was too hard to have those nightmares and she could not confide to anyone what happened to her. (TSN, April 17, 1997, pp. 1-9).

"When her mother inquired about her nightmare, she just told her that everytime she went to sleep she felt as if somebody was moving beside her. (TSN, May 13, 1997, pp. 1-7).

"Even when she was already of age, she tried to keep it to herself instead of telling her parents. However in 1995 she told two (2) close friends, Suzette de los Reyes and Dulce Manalaysay.

"Her parents did not know about her nightmares. (TSN, June 3, 1997, pp. 1-11).

"She did not know if she suffered any bleeding at that time. She did not notice any blood at that time. She felt a wet feeling in her private part but she did not know if it was blood. She did not notice anything colored red. She does not have a boyfriend because she is a manhater. She did

not want to get married because she did not want to experience what she had experienced with the accused (TSN, June 27, 1997, pp. 1-10).

"DR. ANNIE SORETA-UMIL testified that she examined Wendellyn Rivera on September 24, 1996. There were contusions or 'pasa' on the right breast and the forearm. These were caused by a blunt instrument.

"The hymen was intact but distensible as to allow a complete penetration by an adult size male Filipino organ. Distensible means it is elastic. It is similar to a rubber band, even if it is penetrated, it goes back to the original shape. So it is possible she was raped but her hymen was still intact. She could not say if complainant was raped or not raped because there is no medical basis. (TSN, July 25, 1997, pp. 1-15).

"Since she examined the victim on September 24, 1997, the age of the contusion is about 7 to 10 days. A contusion that happened 10 years ago will not appear on September 24, 1996.

"She found no laceration or injury to the genitalia. Since the child was 7 years old at that time and the hymenal organ is small then so if there was a complete penetration, the hymen will rupture or have a laceration. If after 10 years she submitted herself for examination she would still show the rupture of the hymen or its laceration. Once the hymen is ruptured, it will always show the laceration. (TSN, July 28, 1997, pp. 15-23)."^[3]

Following the above recital of what it deemed to be a resume of the evidence for the prosecution, the defense gave a brief account of the alibi claimed by accused-appellant.

"Accused Johnny dela Cruz testified that in 1984 he was a fisherman as he still is. They fished from Monday to Saturday. They would leave at 3 a.m. and returned home in the afternoon at 4:00 or 5:00 p.m. In 1984, he and his wife had one child. His wife was a plain housewife who usually stayed in the house taking care of their child.

"His house has no bedroom.

"He learned he was being charged with the rape of the complainant only in 1996. He does not remember buying junk food from her in 1984 and inviting her to his bedroom where he raped her. He denied that he threatened her. (TSN, Oct. 17, 1997, pp. 1-7).

"Estrella de la Cruz testified that accused is her husband. In April 1984 they had only one child. At that time she took care of the child at home. Her husband then was a fisherman at sea.

"She did not believe her husband raped Wendellyn in April 1984 because their house is very small. The window is on the same level as the street. Besides she was always in the house taking care of the children. (TSN, Nov. 11, 1997, pp. 1-6).