

FIRST DIVISION

[G.R. No. 130205, July 05, 2000]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
PETRONILLO CASTILLO, ACCUSED-APPELLANT.**

D E C I S I O N

YNARES-SANTIAGO, J.:

This is a case of a 9-year old child who was not believed by her mother that she was raped by the latter's second live-in partner, appellant herein. This notwithstanding, appellant was charged,^[1] convicted and sentenced to suffer *reclusion perpetua* by the trial court.^[2]

The facts narrated in the People's Brief are as follows:

At the time of the commission of the rape, complainant, Michelle Robles, was nine years old, having been born on December 21, 1981. She was then living with her mother, Olivia Flores, in Medalva Village, Phase II, Angono, Rizal. Appellant Petronillo Castillo was the common-law husband of Michelle's mother. Michelle has two (2) siblings by her mother's previous relationship.

On the night of May 1991, Michelle was sleeping in the sala of their home. Her mother and two sisters were sleeping in the bedroom. Momentarily, Michelle was awakened when she felt someone tugging at her panty. She was shocked and was about to scream upon seeing her stepfather, herein appellant, removing her panty. Appellant, however, promptly covered her mouth with the palm of his hand. He then poked a knife at her and threatened to kill her two sisters if she raised a fuss or told anyone. Thereafter, he placed himself on top of Michelle and inserted his penis into her vagina. Michelle felt intense excruciating pain. After a while, appellant stood up and left.

Subsequently, Michelle informed her mother what appellant did to her. Her mother refused to believe her and even accused Michelle of fabricating a story. Frustrated, Michelle informed her aunt, Maria Corazon Flores, about the incident when the latter came to visit at their house. Maria Corazon told her sister the deplorable act committed by appellant against Michelle. Still Michelle's mother refused to believe. Finally, Maria Corazon decided to bring Michelle to the Philippine National Police Headquarters in Camp Crame, Quezon City, for medical examination.

Dr. Vladimir V.

Villaseñor, PNP Medico-Legal Officer, Camp Crame, examined the victim.

Dr.

Villaseñor issued a Medico-Legal Report stating, to wit:

FINDINGS

GENERAL AND EXTRAGENITAL:

Fairly developed, fairly nourished and coherent female child subject. Breasts are undeveloped. Abdomen is flat and tight.

GENITAL:

There is absence of growth of pubic hair. Labia majora are full, convex and coaptated with the pinkish brown labia minora presenting in between. On separating the same is disclosed an elastic, fleshy-type and congested hymen, with shallow healed lacerations at 4 and 8 o'clock. External vaginal orifice admits the tip of the examining index finger.

x x x

xxx

x x x

CONCLUSION:

Subject is in non-virgin state physically.

There are no external signs of recent application of any form of violence.

REMARKS:

Vaginal and peri-urethral smears are negative for gram-negative diplococci and for spermatozoa."^[3]

In this appeal, appellant raises a lone assignment of error:

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT FOR THE CRIME OF RAPE.

The appellant contends that the testimony of private complainant "reveals glaring inconsistencies and allegations that are improbable and contrary to human experience, resulting in the failure of her case to meet the test of moral certainty and guilt of the accused beyond reasonable doubt." According to appellant, complainant testified that he got a knife which he allegedly used to threaten her from telling anybody about the incident, whereas she did not mention about a knife in her affidavit of complaint.

Appellant's contention lacks merit. Although she did not mention a knife in her affidavit, such omission did not diminish or affect her credibility as a witness. Notably, *ex-parte* affidavits are generally considered incomplete and inaccurate and will thus not prevail over a witness' statements on the stand.^[4]

The gravamen of the evil act of rape, at the time of the commission of the crime, is

the sexual congress of a woman by force and without her consent.^[5] Mere contact by the male's sex organ of the female's sex organ consummates rape. However, if the victim is below twelve years of age at the time her honor was violated, proof of force, intimidation or consent is absolutely unnecessary,^[6] not only because force is not an element of statutory rape, but the absence of free consent is conclusively presumed when the woman is below the age of twelve.

From the victim's own testimony, she openly narrated in court her nightmare in the maniacal hands of appellant:

FISCAL SANTOS:

Q You stated that you resided at Medalva Village, Phase II, Angono, Rizal. With whom did you reside during that time on May 1991, Ms. Robles?

A With my mother, sir.

Q You stated you resided with your Mama, what is the name of your Mama?

A Maria Olivia Flores, sir.

Q Will you please tell this court if your Mama was living with somebody else during that time, Michelle?

A Yes, sir.

Q And who was that person with whom your mother was living with, is he presently in court and can you identify him?

A Yes, sir.

Q Will you please look around and see and point to him?

(The witness is pointing to a man wearing a white t-shirt and long pants who when asked by the Court identified himself as Petronillo Castillo).

Q Now, Michelle, on the night of May 1991, do you remember of any unusual event that happened?

A My stepfather removed my blanket.

Q Now, you stated that your stepfather removed your blanket. After your stepfather removed your blanket, what else, if any, transpired, Michelle?

A He also removed my pants and panty, sir.

Q Now, after your step-father Petronillo Castillo has (sic) removed your pants and panty, what else, if any, transpired?

A He placed himself on top of me, sir.

Q After Castillo placed himself on top of you, what if any, did Castillo do afterwards?

FISCAL SANTOS:

May we place on record, Your Honor, that the witness is crying.

Q Again, Michelle, may I repeat the questions. After Castillo had placed himself on your top, what, if any, did he do?

A He got a knife, sir and he told me not to tell this to anybody.

Q When you stated that Castillo got a knife and told you not to tell anyone, what happened when Castillo did not want anybody to know about it, Michelle?

A He raped me, sir, and he threatened to kill me and my two sisters.

Q You stated that Castillo raped you, in what manner did Castillo rape you?

A He inserted his penis inside my vagina.

Q When Castillo inserted his penis inside your private organ, what if any, did you feel, Michelle?

A It was painful, sir.

Q And how long did Castillo remain on your top during that time, Michelle?

A Just for a short while, sir.

Q And did you inform anybody of this incident, Michelle?

A My mother, sir.

Q And what did your Mama do if ever your Mama did anything about the incident?

A She did not believe me, sir, because she thought I was just lying.

Q Aside from your mother, Michelle, did you inform anybody about this incident?

A My aunt, sir.

Q You said your aunt, what is the name of your

- aunt, Michelle?
- A Maria Corazon Flores, sir.
- Q Where and when did you inform your aunt about the incident?
- A In our house, in front of my mother.
- Q When your aunt was informed of this incident, what, if any, did your aunt do about it?
- A My aunt told my mother about it but my mother did not also believe her, so my aunt decided that I would be sent for a medical examination.^[7]

Subjected to questioning by the trial court, the victim did not retract from her testimony:

- COURT: And while on top of you, what did the accused do to you?
- A He inserted his sex organ into my sex organ.
- Q You claimed that the accused inserted his penis into your vagina because you felt pain in your vagina?
- A Yes, Sir.
- Q But it could be, that could be a finger instead of his penis that he inserted in your vagina, is that correct?
- A No, sir.

x x x

x x x

x x x

- COURT: Then after he inserted his sex organ to your sex organ what did the accused do?
- A He stood up afterward.
- COURT: You mean to say, when he inserted his sex organ you did not do anything?
- A He threatened me, sir.^[8]

It is clear from the foregoing that there was sexual intercourse. The victim could not cry for help because her mouth was covered and she was threatened with a knife which impelled her into submission. It has been held that the act of holding a knife by itself is strongly suggestive of force or at least intimidation, and threatening the victim with a knife is sufficient to bring the woman to submission.^[9] At any rate, force or intimidation is immaterial in statutory rape.