

THIRD DIVISION

[G.R. No. 128818, June 17, 1999]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FELICIANO U. SAGAYSAY, ACCUSED-APPELLANT.**

D E C I S I O N

VITUG, J.:

Feliciano U. Sagaysay appeals from the decision of the Regional Trial Court of Barili, Cebu, Branch 60, in Criminal Case No. CEB-BRL-005, convicting him of the crime of rape, imposing upon him the penalty of *reclusion perpetua*, and ordering him to pay the offended party the amount of P50,000.00 as indemnity and another sum of P25,000.00 as exemplary damages.

Earlier, Sagaysay was charged in an information that read:

"The undersigned, at the instance and upon a sworn complaint filed by the offended party, accuses FELICIANO U. SAGAYSAY of the crime of Rape, committed as follows:

"That on or about the 8th day of October, 1995, at 7:00 o'clock in the evening, more or less, at Barangay Tapon, Municipality of Dumanjug, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with JULIE PULGO, a girl below twelve (12) years of age, against her will and consent."

"CONTRARY TO LAW."^[1]

Trial ensued following a plea of "not guilty" by the accused.

The evidence for the prosecution, synthesized in the People's brief, is narrated in this wise; viz:

"On October 8, 1995, at around 7:00 o'clock in the evening, Julie Polgo asked permission from her mother, Demetria, to watch television in the house of Macaria Sameon, their neighbor, which was located about 150 meters away in Barangay Tapon, Dumanjing, Cebu. Her mother consented (pp. 5-9, TSN, January 11, 1996).

"While Julie walked towards her destination and having gone about 30 meters away from their house, appellant Feliciano Sagaysay suddenly appeared. He approached Julie and grabbed her. Julie tried to escape but appellant clutched her left arm tightly and dragged her towards a thicketed area, about 60 meters away (pp. 5-9, TSN, supra).

"When they reached a secluded spot, appellant, who was armed with a knife, proceeded to undress Julie. He removed her panty. Appellant also took off his clothes. Then he carried Julie bodily. Julie tried to shout for help but in vain because she was gagged with a handkerchief tightly knotted at the back of her neck (pp. 5-9, TSN, supra). Terrorized by appellant who carried a knife, Julie did not anymore attempt to run away.

"Appellant kissed Julie all over and mashed her breasts. He then removed his brief. He forced Julie to lie down on her back and initiated acts of sexual intercourse. Julie saw appellant's penis. When it slightly penetrated her vagina, she cried out because of excruciating pain (pp. 5-9, TSN, supra).

"After satisfying his lust, appellant forcibly dragged Julie towards his house, about 150 meters away. There, Julie was forced to spend the night (pp. 9-10, TSN, supra).

"The following morning, Julie's parents together with their children and neighbors looked for Julie. Appellant appeared and told them that Julie was asleep in their house. So, they all went there to fetch her (pp. 5-6, 25, TSN, MARCH 6, 1996).

"When they saw Julie inside the house, she broke down in tears. When they got home, she immediately told them that appellant raped her (pp. 5-6, TSN, supra).

"The incident was reported to the police and Julie was physically examined by Dr. Octavio Ortiz on October 11, 1995. A Medical Certificate (Exhibit B) was issued with the following findings:

- "1. contusion and swelling of labia minor (right side);
- "2. contusion at the right side of the perineum;
- "3. whitish secretion seen at the vaginal orifice; and
- "4. Hymen not lacerated.

"That the injuries were brought about or caused by direct contact with a dull object which will take fifteen to twenty days to heal under favorable condition with no complications; that the perineum is the side where the vagina is located."^[2]

Accused-appellant, anchoring his defense mainly on denial, presents a different version of the case; his story-

"On 8 October 1995, the date the alleged sexual assault was committed, accused-appellant attended to his daily chores. He fed his cows and thereafter, he went to earn his living as a 'trisikad' driver ferrying passengers in Dumanjug, Cebu (ibid., pp. 6-7).

"At 5:00 o'clock in the afternoon, accused-appellant and Juan Polgo, the father of Julie, went fishing. An hour later, they proceeded to the house of a certain Nata, an aunt of accused-appellant, where they drank `tuba.' After another hour had passed, they went home. At their house, accused-appellant cooked the fish he caught and then took his supper. Afterwards, he smoked and proceeded to the chapel where he stayed for thirty minutes (ibid., pp. 7-10).

"Accused-appellant met Julie at the chapel. When he was on his way home, he then noticed that she was following him. Reaching their house, he advised her to go home but she refused to for fear of being whipped. And since she was insistent in not going home, he provided her with mat and pillow to sleep on (ibid., pp. 12-13).

"Early the following morning of 9 October 1995, Juliet Polgo arrived at the house of accused-appellant looking for her younger sister Julie. Accused-appellant readily informed Juliet that her sister was sleeping upstairs. Juliet went inside the house, pulled Julie and brought her outside. While there, Juliet grabbed and squeezed with her right hand the vagina of her sister (ibid., pp. 16-19).

"Melchora Antiampo, a neighbor of accused-appellant, witnessed what Juliet did to her younger sister. At that time, Melchora accompanied a nephew to a barber shop to have a haircut when Juliet passed by and asked the barber if her sister Julie was at accused-appellant's house. Receiving an affirmative response, Juliet proceeded thereat. Melchora followed as she noticed that Juliet was very angry (TSN, 16 May 1996, pp. 5-6).

"Julie went straight to the upper floor of the house of accused-appellant where she found Julie. Juliet then grabbed her sister, pinched and squeezed her vagina, and led her home. Julie could only cry and shout in pain (ibid., pp. 6-8)."^[3]

Insisting on his innocence, the accused, in the present appeal from the decision of the trial court convicting him of rape under Article 335 of the Revised Penal Code, has generally averred:

"THAT THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT OF RAPE DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT."^[4]

Appellant would have it that no statutory rape was possible since the complainant herself admitted at the witness stand that she was already twelve (12) years old when sexually molested by appellant. The statement about her age should be clarified. When recalled by the trial court during the hearing on 16 May 1996, the complainant categorically stated that she was born on 16 October 1983. Hence, at the time of the commission of the rape on 08 October 1995, Julie Polgo, was still, at least by a few days, under twelve years of age. At any rate, the age of a woman would become inconsequential in a prosecution for the crime of rape once established that carnal knowledge had taken place with the use of force and intimidation.^[5] These attendant circumstances were shown to have been employed

by the accused.

The victim gave a vivid account of the incident in her testimony before the court; thus:

"Q. Now, Miss Witness, going back to the incident of October 8, 1995, around 7:00 o'clock in the evening, do you remember where were you during that time?

"A. I asked permission from my Mother to watch T.V.

"Q. Tell us, what part of the place did you ask permission from your mother to watch T.V.

"A. In our house.

"Q. What time was that when you asked permission?

"A. Around 7:00 o'clock in the evening, more or less.

"Q. Did your mother permit you?

"A. Yes, Sir.

"Q. Where was that place where you intended to see the T.V.?

"A. At our neighbor's house.

"Q. Tell us the owner, your neighbor who owns the T.V.

"A. Macaria Sameon.

"Q. How far is it from your house to the house of Macaria Sameon? From where you are sitting, how far is the house?

"A. From here to that coconut tree.

"x x x x x x x x.

"ATTY. LAZARTE:

"Q. Were you able to watch T.V.?

"A. No, Sir.

"Q. Why, what happened?

"A. The accused dragged me.

"Q. How far were you when someone dragged you from your house?

"A. About thirty (30) meters, more or less.

"Q. Did you notice who was that person who dragged you when