

SECOND DIVISION

[G.R. No. 124920, September 08, 1999]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ERNESTO ROSALES Y RIVERA, ACCUSED-APPELLANT.**

D E C I S I O N

BELLOSILLO, J.:

Ernesto Rosales was accused of raping Isabel dela Cruz, a minor, eleven years of age, before the Regional Trial Court of Parañaque (now a City). On 26 March 1996 the trial court found him guilty as charged, sentenced him to suffer the penalty of *reclusion perpetua* with all its accessory penalties, to indemnify complainant with P50,000.00 as moral damages, and to pay costs.^[1] He now seeks the review of his case.

Isabel de la Cruz, unschooled at eleven, ran away from home in search of a brother. She moved from one place to another seeking shelter in houses of friends. One day she asked permission from Estrella Rosales, wife of accused Ernesto Rosales, if she could stay with them even for one (1) night. The Rosaleses lived in a nipa hut at the squatters area, Fourth Estate Subdivision, Parañaque. Her stay stretched to one (1) month or until the fateful incident narrated hereunder.^[2]

On 20 March 1993, at about 11 o'clock in the morning, while Isabel was playing doll on the *sahig* of the Rosaleses together with her neighbor and friend Flordeliza, accused Ernesto Rosales called her and told her to wash dishes. Heeding his call, the girls stopped playing and Flordeliza went home.

While Isabel was washing dishes Ernesto suddenly poked a knife at her back and warned her not to shout otherwise he would kill her.^[3] Then he started undressing her. He removed her blouse and skirt and mashed her private parts. He then undressed himself and when already naked placed himself on top of her^[4] who was now lying on the floor. He removed her panties, forcibly opened her legs, and finally inserted his penis into her vagina. She suffered severe pain. After he was through with her, Isabel felt her vagina bleeding and saw blood dripping on the floor. Ernesto told her that he would take her to the province. Estrella, wife of Ernesto, was unaware of the rape as she was then washing clothes outside the hut.^[5]

Isabel bore her humiliation in silence for two (2) to three (3) days until she was able to ran away and seek the help of her friend Flordeliza who then narrated Isabel's story to Eva Galicia with whom she stayed before until she moved to the place of the accused.

On 25 March 1993 Eva brought Isabel to the NBI for medical examination. Dr. Maximo L. Reyes, medico-legal officer of the NBI, reporting on her examination

certified: *"Pubic hair, fine, short, scanty. Labia majora and labia minora, coaptated. Fourchette, tense. Vestibule, pinkish. Hymen, originally moderately thick, short, contused from 9:00 to 10:00 o'clock positions corresponding to a face of a watch, and with a healing superficial laceration at 8:00 o'clock position corresponding to a face of a watch, edges of which are congested, edematous and bleed on slight manipulation. Hymenal orifice admits a tube 1.5 cm. in diameter. Vaginal walls, tight. Rugosities, prominent."*^[6] When asked whether the healing superficial hymenal laceration in complainant's vagina was consistent with the insertion of a penis, Dr. Reyes replied that under normal circumstances it could have been caused by the forcible entry of a fully erect penile.^[7]

Thus, on 2 April 1993 an information for rape of a minor, eleven-year old Isabel de la Cruz, was filed against Ernesto Rosales.

Meanwhile, upon stipulation of the parties, the testimony of Estrella Rosales, wife of the accused, was dispensed with the same being then considered corroborative with that of her husband.

The defense is alibi. According to accused Ernesto Rosales, between 12:00 o'clock and 1:00 o'clock in the afternoon of 20 March 1993 he was with his wife Estrella. It was only on 22 March 1993 that he first saw Isabel, the latter having been allowed by his wife to sleep in their house for one (1) night. The next morning, on 23 March 1993, Isabel left for the nearby house of her friend Flordeliza. Isabel never returned. It was only on 25 March 1993, when he was arrested without warrant, that he next saw Isabel.^[8]

On cross-examination, the accused claimed that he did not know a neighbor by the name of Dionisia Policarpio. His wife was a laundry woman but worked on the side as a *hilot*, a practicing midwife without a license. He recalled that on 20 March 1993 his wife was in their house between 6:00 o'clock and 8 o'clock in the evening attending to someone. The accused stressed that he never saw Isabel prior to 22 March 1993.^[9]

Dionisia Policarpio, witness for the defense, testified that at 7:00 o'clock in the morning of 20 March 1993 she went to the house of the accused to give birth to her first child. She was supposedly assisted by Estrella whom she referred to as *Nanay Miling*. According to Dionisia, there were only three (3) of them present when she delivered: herself, *Nanay Miling*, and a neighbor, an old woman. She did not see Isabel although she stayed in Ernesto's house that evening and left only the following morning.^[10] However, Dionisia could not produce any birth certificate for her first-born issued in Parañaque. According to her, she registered her child in Pampanga three (3) weeks later but could not produce any birth certificate issued by the local civil registrar of any municipality of Pampanga. The records also fail to disclose the name of that child as well as its exact date of birth.

The court *a quo* did not sustain the defense and, consequently, declared Ernesto Rosales guilty as charged.

Accused-appellant maintains in this appeal that the prosecution failed to prove his guilt beyond reasonable doubt and that the trial court erred in giving credence to the testimony of Isabel. He argues that since Isabel was a "stowaway" by her own