

THIRD DIVISION

[G.R. No. 121539, October 21, 1998]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
HONESTO MANUEL Y PADILLA, ACCUSED-APPELLANT.**

D E C I S I O N

ROMERO, J.:

Accused-appellant Honesto Manuel y Padilla was charged with raping his cousin-in-law, 11-year old Nestcel Marzo in an information that reads:

"That on or about the 23rd day of May 1993, in Quezon City, Philippines, the above-named accused, with lewd design, by means of violence and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge of the complainant NESTCEL MARZO Y GOROSPE, eleven (11) years of age, a minor, against her will, to the damage and prejudice of the latter in such amount as may be awarded under the provisions of the civil code.

CONTRARY TO LAW."

On arraignment, accused-appellant pleaded "not guilty". Whereupon, trial on the merits ensued. The prosecution presented T/Sgt. Nestor Marzo, the victim's father, P/Senior Inspector Jesusa Nieves Vergara, Medico-Legal Officer of the PNP Crime Laboratory, Camp Crame and the alleged victim herself, as witnesses. The defense, on the other hand, presented accused-appellant.

The prosecution established the following facts:

Nestcel Marzo, accompanied by her grandmother, came to Metro Manila from Binalonan, Pangasinan, supposedly to enjoy her vacation with her father who was assigned to the Office of the Civil Defense, PNP Camp Aguinaldo, Quezon City. Since her father was then still in the province, Nestcel was left to the care of spouses Honesto Manuel and Annabelle Manuel in a rented room at the Limpin Tailoring Shop located at the Concessionaire, Camp Aguinaldo, Quezon City. Annabelle was Nestor's niece and Nestcel's cousin. Said shop consists of two rooms, one occupied by a certain Emma, the shop proprietress, while the other was occupied by the spouses. Since Annabelle was still recuperating in a hospital, having just given birth, Nestcel was left in the care of accused-appellant.

Nestcel slept with accused-appellant in their room. On the night of May 23, 1993, Nestcel was awakened from her sleep to see accused-appellant by her side looking down at her. The latter then undressed and embraced her. Thereafter, accused-appellant played with his organ and tried to penetrate her from behind. Before Nestcel could close her legs, she felt accused-appellant's penis touch her vagina and thereafter felt a fluid-like sticky substance flowing thereon.

After having ejaculated, accused-appellant left Nestcel inside the room. The following day, Emma saw Nestcel crying outside the room. After some prodding, Nestcel related to Emma what accused-appellant did to her. Emma immediately reported the matter to Nestcel's uncle who in turn reported it to the police resulting in accused-appellant's arrest.

Nestcel was subjected to a medical examination with the following findings:

"Findings are compatible with recent loss of virginity. There are no external signs of recent application of any form of violence."^[1]

Accused-appellant denied the allegations of the prosecution. He alleged that on that day, he returned home at around 7:00 in the evening from the hospital where his wife had just given birth. After supper, he prepared the mattress. The usual sleeping arrangement would have Nestcel sleeping outside the room, but that night, Nestcel slept beside him. He, therefore, placed a divider between two of them.

At around 10:00 of the same night, accused-appellant claimed to have been awakened when he noticed Nestcel already sleeping beside him. Apparently aroused, he removed her panty. On second thought and realizing the wrong he was about to do, he allegedly desisted, went outside the room and just masturbated to relieve himself of his urge. The following day, he saw Nestcel crying outside the room.

The trial court gave credence to the version of Nestcel and ruled:

"WHEREFORE, the Court finds the accused, Honesto Manuel, guilty beyond reasonable doubt, as principal, of the crime of Rape, defined and penalized in Article 335 of the Revised Penal Code; there being no mitigating circumstances to offset the same, hereby sentences said accused to suffer the penalty of Reclusion Perpetua, with the accessories provided for by law and to pay the costs.

The accused is, likewise, ordered to pay the sum of P30,000.00 as moral damages.

The preventive imprisonment already served by the accused shall be deducted in full from the principal term of his penalty."^[2]

In this appeal, accused-appellant assails the court a quo's decision and submits the following:

1. The trial court gravely erred in giving credence to the untruthful and improbable testimony of prosecution witness Nestcel Marzo.
2. The trial court erred in finding accused-appellant Honesto Manuel guilty of rape beyond reasonable doubt.

This Court finds accused-appellant's testimony neither credible nor trustworthy.

Accused-appellant brands as dubious the testimony of the victim that "the accused undressed her, laid beside her and then held her organ as the accused wanted to

insert his private organ to her organ."

This Court finds nothing dubious about said testimony. On the contrary, the testimony was plausible in its entirety as Nestcel narrated chronologically how accused-appellant acted to consummate the crime.

Accused-appellant further argues that if indeed it was his desire to ravish the complaining witness, he could have consummated his lustful act easily considering that the latter was already naked and helpless.

Said reasoning is, not only irrational, but is belied by medical findings as well as the testimony^[3] of the medico-legal officer, thus:

"COURT:

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Q - The victim you have examined is merely 11 years old?

A - Yes sir.

Q - Considering the nature of her genital organ at the time of your examination, can it be possible that there is some forcible entry?

A - Yes, Your Honor.

Q - But only up to the level of the hymen, there was no complete penetration and because the entry is only up to the hymen, could it be possible that the organ was able to penetrate at that distance?

A - Yes, Your Honor."

Accused-appellant's insinuation that it was Nestcel who brought about such suggestive circumstance of lying by his side is not credible. This Court notes that Nestcel tried to close her legs. Such was an indication of resistance. But even if Nestcel's feeble attempt to close her legs could hardly be considered as an indication of resistance, it should be remembered that Nestcel was then only eleven years old. She could not possibly resist accused-appellant who was trusted by her grandmother to act as guardian.

Be that as it may, this type of rape is statutory in nature. Article 335 of the Revised Penal Code provides: "Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

- (1) By using force or intimidation;
- (2) When the woman is deprived of reason;
- (3) *When the woman is under twelve years of age, even though neither of the circumstances mentioned in the two next preceeding paragraph shall be present.*" (Italics supplied)

No proof of involuntariness on the part of the victim is necessary as she is considered by law to be incapable of consenting to the sexual act. To convict accused-appellant, the only circumstance that need to be proved is the fact of intercourse.^[4]

Accused-appellant finds improbable and unbelievable the accusation considering that