

THIRD DIVISION

[G.R. No. 119165, September 26, 1997]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
SERGIO BETONIO, ACCUSED-APPELLANT.
D E C I S I O N**

PANGANIBAN, J.:

The rape of a thirteen-year-old girl by her uncle who took advantage of his moral ascendancy and who on appeal had the gall to claim a "forbidden love affair" with the victim, goes beyond the reprehensible into the intolerable. We stress that in rape cases, the trial court's assessment of the credibility of witnesses -- the complainant's, most of all -- is usually accorded respect by appellate courts and is often determinative of an appeal's outcome.

The Case

This is an appeal from the Decision ^[1] dated May 7, 1993 of the Regional Trial Court of Tagbilaran City, 7th Judicial Region, Branch 3, ^[2] in Criminal Case No. 7220, finding appellant guilty of rape.

On April 30, 1991, Bertila A. Betonio, mother of Victim Loreta Betonio, filed a Complaint^[3] before the 9th Municipal Circuit Trial Court of the Municipality of Guindulman, Province of Bohol, charging Accused-appellant Sergio Betonio of rape. An amended Complaint dated June 18, 1991, this time signed by Loreta, was thereafter filed.^[4] After preliminary investigation, Third Asst. Provincial Prosecutor Dionisio P. Calibo, Jr. filed before the Regional Trial Court the following Information dated June 25, 1991:

The undersigned, Third Assistant Provincial Prosecutor, upon a sworn amended complaint signed and filed by the offended girl (a minor) and her mother, a copy of which is marked as Annex "A" and attached to the record, hereby accuses Sergio Betonio of Bato, Guindulman, Bohol of the crime of Rape committed as follows:

That on or about the month of April, 1990, in the municipality of Guindulman, province of Bohol, Philippines and within the jurisdiction of this Honorable Court, the above-named accused who is an uncle of the victim, through force and intimidation and with the use of a knife, did then and there, willfully, unlawfully and feloniously have sexual intercourse with his niece, Loreta Betonio, a virgin, who was only a little over 12 years of age at the time of the incident, against the will and without the consent of the latter; to the damage and prejudice of the offended party.

Acts contrary to the provisions of Article 335 of the Revised Penal Code as amended by R.A. 2632 and 4111 with the aggravating circumstance of abuse of confidence as the accused was then entrusted with the custody of the minor victim.” [5]

During his arraignment, appellant, assisted by Counsel de Oficio Perpetuo G. Magallano, pleaded not guilty. After trial, the appellant was found guilty beyond reasonable doubt. The dispositive portion of the assailed Decision reads:

WHEREFORE, premises considered, this Court finds the accused Sergio Betonio guilty beyond reasonable doubt of the crime of Rape, and hereby sentences him to an imprisonment of reclusion perpetua, and to suffer the accessory penalties imposed by law. He is further sentenced to pay the offended party the amount of P3,000.00 by way of reimbursement of actual expenses, and another sum of P50,000.00 as moral damages, but without subsidiary imprisonment in case of insolvency.

With cost de oficio.

SO ORDERED.”[6]

The Facts

Version of the Prosecution

The prosecution presented three witnesses: (1) Dr. Jean Tabuga de Paz, who conducted a medical examination of the victim, Loreta Arquita Betonio; (2) the complainant herself and (3) her mother, Bertila Arquita Betonio.

Their testimonies were summarized by the trial court as follows:

The first witness to testify for the prosecution was Dr. Jean Tabuga de Paz, 30 years old, married, resident physician of the Governor Celestino Gallares Memorial Hospital, Tagbilaran City, graduate of Medicine from the Remedios Trinidad Romualdez Foundation University, Tacloban City.

She testified that she graduated Medicine in 1987 from the aforesaid Remedios Trinidad Romualdez Foundation University, College of Medicine; that she passed the medical board examinations in February, 1989; that she had her post-graduate internship training at the Governor Celestino Gallares Memorial Hospital in 1988; that during her PGI training years, she had examined some rape victims; that after passing the board examination, she was appointed municipal health officer of Buluan, Maguindanao, from April, 1989 to October, 1990; and that in October, 1990, she transferred at the Gov. Celestino Gallares Memorial Hospital as resident physician until at present.

(She) also testified that as a resident physician of the Gov. Celestino Gallares Memorial Hospital, she had so far examined four (4) rape victims, but she did not know if the first three cases reached the Court.

What she remembered is that the first case was settled amicably before the barangay court, the second was likewise settled, the third one, the rapist went at large, and the fourth was the present case.

She further testified that she personally examined the victim Loreta Betonio, who was then 13 years old, on May 2, 1991; that on account of the examination, she issued a certified medico-legal certificate (Exhibit A), with the following findings:

"P.P.E.: LMP = April 1991 - With newly

grown hair at the head

about 3 cm long

* With several cigarette burn

scars, left, hand

* Medium speculum inserted with

ease

* Cervix smooth with scanty mucoid

discharged

"I.E.: I = With myrtiform carbuncles

admits 2 fingers with ease

= Allegedly raped for several

times anytime during the

periods in between April

1990 - 1991

= Negative for spermatozoa"

She likewise testified that she also prepared a handwritten medical record (Exhibits A-1 and A-2), and a zerox copy thereof was likewise certified by her (Exhibit A-3). That from her examination of the victim, she was first raped in April, 1990 and then in 1991.

On cross-examination by Atty. Teofilo D. Baluma, Dr. de Paz admitted that she has limited experience on rape cases; that of the cases she has examined, this is the first case that reached the court. She also testified that at the time of the examination of the victim, there were newly grown hair on the victim's head,

showing that she was shaved. She also admitted that she sympathized with the misfortune of the victim, but that she was not bias [sic] in her favor. On the new hair growing on the head of the victim, she explained that her hair on the head were [sic] probably cut off about a month to the time she made the examination. She also testified that per information given her by the victim, the latter was raped on many occasions, and that the last one was on April 28, 1991, four days before her examination on May 2, 1991. She also admitted that at the time of the examination, the victim was accompanied by Miss Anita Dospueblos, the chief of the DSWD of Bohol. She further declared that there were burn scars found at the left hand of Loreta, but they were not signs of burning from fraternity or sorority rituals.

The second witness to testify for the prosecution was Loreta Arquita Betonio, 14 years old, single, high school student, and temporarily residing in Cagayan de Oro City, care of DSWD, Region 10, more particularly at sitio Macanhan, barangay Carmen, Cagayan de Oro City.

She declared that she is the victim and complainant in the instant case; that she knows the accused Sergio Betonio, who is her uncle, he being the younger brother of her father Romeo Betonio; that her co-complainant Bertila Betonio is her own mother with whom she is living with in Cagayan de Oro City, care of DSWD, Region 10, Cagayan de Oro City. She also declared that her father's whereabouts is not known. She likewise declared that she was born in barangay Bato, Guindulman, Bohol; that her mother used to live in barangay Balagnan, Balingasag, Misamis Oriental, together with her father. However, she could not recall when her father left the conjugal home. What she remembered, however, is that she was born on December 10, 1977, and that her family lived in Balagnan, Balingasag, for about one and a half years, until she was brought to barangay Bato, Guindulman, Bohol, to live with her uncle accused Sergio Betonio and her grandfather Norberto Betonio.

She further declared that living with her then in her grandfather's house were her grandmother Ursula Betonio, uncle Norberto Betonio, Jr., Julie Betonio, Lita Betonio, Zosima Betonio and Sergio Betonio, but thereafter they all left the ancestral home of her grandmother to look for a living, leaving her, her grandfather and Sergio Betonio. She also testified that she took her primary and elementary grades in the Guindulman Central Elementary School, which was about five kilometers from Bato, Guindulman; that her grandmother spent for her schooling in Grade I; that when she was in Grade II, it was her aunt Lilia who worked in Cebu who shouldered her school expenses; that when she was in Grade III, it was her uncle accused Sergio Betonio who spent for her schooling; and from Grades IV to VI, it was her two aunts Zosima and Lolita, who were in Manila, who answered for her school expenses.

She likewise testified that on March 5, 1987, her grandmother Ursula died, leaving her grandfather and uncle Sergio Betonio in the ancestral home. That it was after the death of her grandmother when her aunts Lita and Zosima went to Manila to work as domestic helpers, while her aunt Julie worked in a bakery in Guinacot, Guindulman. Her uncle Norberto, Jr. also went to Cebu to look for a living, thus leaving her, her grandfather and uncle Sergio Betonio; and that it was in April, 1990, that she was raped by Sergio Betonio in their house at Bato, Guindulman, Bohol; that Sergio Betonio threatened her with a knife when he sexually molested her. She was in fact told by Sergio not to report the rape incident to anybody. She also declared that she was deflowered inside the room at midnight.

She further declared that she felt pain as Sergio sexually abused her. In fact, she cried because of pain; that she did not, however, shout because she was threatened; that she did not report the incident to her grandfather because Sergio told her not to report to anybody otherwise he would kill her. That for the sexual assault, she felt pain on her vagina and found the same bleeding; that for the rape that was committed on her person, she was ashamed, worried and sad. That she was examined and treated by Dr. Jean de Paz, who issued in her favor a medical certificate (Exhibit A). She further declared that she was shavened [sic] (gui-upawan) by Sergio on March 28, 1991, and on the following day, for reason of jealousy, Sergio undressed her in front of many people, including teenagers.

She also testified that on one occasion while cooking nilugao (porridge), her uncle Sergio Betonio approached her and took a lighted firewood and hit with it her left arm resulting to her injuries and permanent scars.

On cross-examination by Atty. Baluma, Loreta Betonio declared that she executed an affidavit in connection with this case (Exhibit C); that she had her complaint filed before Judge Abundio T. Payot of the 9th MCTC of Guindulman-Duero, Bohol. She also affirmed the truthfulness of her affidavit which was in Cebuano, and which was translated into English. She also admitted that, indeed, she was sent to school by accused Sergio Betonio, among others. She further declared that her grandfather's house has a neighbor -- the house of her aunt-in-law Diding, who is married to his uncle Rufo Betonio; that their houses are just 3 meters apart from each other; that despite the knowledge of her uncle Rufo of what Sergio did to her, yet he was afraid to confront Sergio. She, however, admitted that she did not personally report the incident to Diding and Rufo because of her fear of Sergio who threatened to kill her if she would report it to anybody.

She further declared that she started living with her grandfather when she was only 1 and 1/2 years old, until she was 13 years old; that she slept in a small room, one of the two rooms in the second storey of the house. There was no bed in her room, which was about 2 and 1/2 meters wide. She also declared that when her grandmother was still alive, she slept with her, but after her death on March 5, 1987, she slept with her aunt Lita until the latter left for Manila to work thereat; that she continued sleeping alone in the room where she used to sleep with Lita; that it was at this point of time that Sergio ordered her to massage him, and when she would refuse, he would box her, that is why she was forced to obey Sergio's command to massage him. Not only contented or [sic] ordering her to massage him, he would order her to sleep with him right after massaging him. She further declared that at that time she was not yet menstruating because she had her first menstruation only in November, 1990. She likewise declared that sometime in 1990, Sergio went to Cebu to work as a carpenter, but because he was asthmatic, he decided to stop working and returned to Bohol. She also declared that her mother came to Bohol after receiving an anonymous letter from Guindulman, Bohol, which turned out to be written by her aunt Gorgonia Betonio Olano, asking her mother to come to Bohol to rescue her.

She further declared that she knows Marjun Timbal, their neighbor; that Marjun Timbal is older than her; that he was not courting her. She also admitted that she was examined by Dr. Ernesto Piezas and Dr. Jean de Paz. It was Dr. Piezas who first examined her, but she was examined again by Dr. de Paz because of their fear that