

## SECOND DIVISION

[ G.R. No. 116728, July 17, 1996 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
RODELIO CRUZ Y SAN JOSE, ACCUSED-APPELLANT.**

### D E C I S I O N

**PUNO, J.:**

Accused-appellant Rodelio Cruz appeals from a judgment of conviction<sup>[1]</sup> meted out to him by the Regional Trial Court of Antipolo, Rizal for raping his twelve year old niece, Mary Jane Alonzo.

In a Complaint<sup>[2]</sup> dated October 30, 1991, Mary Jane Alonzo charged accused-appellant with the crime of rape committed as follows:

That on or about the 25th day of April, 1991, in the Municipality of Taytay, province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs (sic) and by means of force and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with a twelve (12) year old girl, Mary Jane Alonzo y Cruz, without her consent and against her will.

CONTRARY TO LAW.

Accused-appellant pleaded "not guilty" to the charge.<sup>[3]</sup>

The evidence for the prosecution shows that accused-appellant is the brother of Mary Jane's mother, Belinda Alonzo.<sup>[4]</sup> He lives at the house adjoining the Alonzos' dwelling in Elwood Street, Taytay, Rizal.<sup>[5]</sup> On April 25, 1991, around three o'clock in the afternoon, Mary Jane was about to take a bath, when accused-appellant entered the bathroom of the Alonzos located at the back of their house. Accused-appellant entered through the side of the bathroom which was covered only by jute sack. Once inside, accused-appellant took off his clothes and forcibly undressed Mary Jane. Mary Jane tried to run but accused-appellant blocked her way and forced her to lie down. Then, he mounted her and tried to have sexual intercourse with her.<sup>[6]</sup> By stroke of fate, Mary Jane's brother, Roberto Alonzo, passed by the bathroom and saw accused-appellant lying on top of her. Accused-appellant saw Roberto hurriedly put on his clothes and rushed to their house. Roberto pursued accused-appellant and challenged him to a fight.<sup>[7]</sup> Later that night, Roberto revealed the incident to their father, Juanito Alonzo. The following day, April 26, 1991, Juanito accompanied Mary Jane to the police station where she executed a sworn statement.<sup>[8]</sup> Mary Jane alleged in her sworn statement that accused-appellant deflowered her for the first time in 1988 when she was only nine years old. This was followed by several more assaults, the last of which happened on April 25, 1991

when she was already twelve years old.<sup>[9]</sup> The medical examination conducted by Dr. Vlademir Villaseñor, medico-legal officer of the PNP Crime Laboratory, disclosed the presence of deep healed lacerations in Mary Jane's genitalia, showing that she has had sexual experience in the past.<sup>[10]</sup>

For his defense, accused-appellant denied forcing any sexual intercourse with Mary Jane on April 25, 1991. He claimed that at the time when the alleged rape was committed, he was at the factory of High Grades Packaging Product located at Libid, Kay Tikling, Taytay, Rizal where he worked as machine operator. He went home at four o'clock in the afternoon. Upon reaching their house, he rested for a few minutes, and then went to the bathroom to freshen himself. Their bathroom is located at the back of their house, beside the bathroom of the Alonzos. While in the bathroom, he heard a rustling sound. He peeped through a hole on the wall to determine its source, and saw Mary Jane bathing at the back of their bathroom. Surprised, he immediately covered the hole and continued to wash himself. Moments later, he heard somebody calling his name. It turned out to be Roberto, Mary Jane's brother, who accused him of peeping at Mary Jane.<sup>[11]</sup>

The trial court found the accused guilty as charged. Accused was sentenced as follows:

WHEREFORE, the Court finds the accused Rodelio Cruz y San Jose GUILTY beyond reasonable doubt of the crime of rape defined and penalized under Art. 335 of the Revised Penal Code, and he is hereby sentenced to suffer and undergo imprisonment of reclusion perpetua, to pay the complaining witness the sum of P50,000.00 as moral damages and to pay the costs.

In the service of his sentence he shall be credited with the full benefits of the preventive imprisonment undergone by him, pursuant to Art. 29 of the Revised Penal Code, as amended by R.A. 6127, if he voluntarily agrees in writing to abide by the same disciplinary rules imposed upon convicted prisoners.

SO ORDERED.<sup>[12]</sup>

In this appeal, accused-appellant faults the trial court for finding him guilty of the crime of rape and for giving weight and credence to the improbable and inconsistent testimony of Mary Jane.<sup>[13]</sup>

We disagree with the trial court's conclusion that accused-appellant is guilty of consummated rape. It appears from the records that accused-appellant did not succeed in having sexual intercourse with Mary Jane on April 25, 1991 because her brother happened to pass by the scene of the crime just when accused-appellant was about to ravish her. Mary Jane admitted on several occasions that accused-appellant was unable to consummate the act of rape.<sup>[14]</sup>

In the earlier part of her direct testimony, Mary Jane gave a detailed account on how accused-appellant violated her:

**PROS. JURADO:**

**Q:** Miss Witness, do you remember where you were on April 25, 1991 at around three o'clock in the afternoon?

**WITNESS:**

**A:** Yes, sir.

**Q:** Where were you and what happened to you?

**A:** I was at home and I was in our bathroom.

**Q:** What were you doing in your bathroom?

**A:** I was taking a bath.

**Q:** Was there anything unusual that happened to you when you were taking a bath in your bathroom?

**A:** Yes, sir.

x x x

**Q:** You said that there was something unusual that happened to you. What is that?

**A:** While I was taking a bath in our bathroom my uncle get (sic) inside the bathroom and he forced me to strip.

**Q:** What happened next?

**A:** He would first finger (dadaliriin) me and he wanted his penis inserted inside my vagina.

**Q:** What do you mean by dadaliriin? What was the manner of "dadaliriin"?

**A:** He would first finger my vagina and he would insert his penis into my vagina.

**Q:** Was he successful in placing his finger in your vagina?

**A:** Yes sir.

**Q:** After that what did he do next?

**A:** After that he wanted to place his penis into my vagina.

**Q:** You were talking about "finger" what hand or finger of what

hand was used by the accused in this case?

**A:** His right hand.

**Q:** Which finger did he use?

**A:** I do not know, sir.

x x x

**Q:** After he inserted his finger what did the accused do to you next?

**A:** He wanted to insert his penis into my vagina and caress my body.

**Q:** Was the accused able to insert his penis into your vagina?

**A:** Yes sir.

**Q:** How did the accused do it?

**A:** After he fingered me he inserted his penis into my vagina.

x x x<sup>[15]</sup>

However, in the later part of her direct testimony, Mary Jane clarified that she was actually referring to incidents which happened prior to April 25, 1991. She testified:

xxx

**Q:** How did you(r) brother able to know (sic) about the incident?

**A:** Because my brother saw what Rodelio Cruz did to me.

**Q:** Why do you say that your brother witnessed the said incident?

**A:** Because while we were (witness referring to her and accused Rodelio Cruz) inside the comfort room, my brother passed thru (sic) the comfort room and saw Rodelio lying on top of me.

**COURT:**

This brother of yours is he older or younger than you?

**WITNESS:**

**A:** He is older, sir.

**Q:** How old is he?

**A:** Nineteen (19) years old, sir.

**Q:** Did you see him peeping when both of you are inside the bathroom?

**A:** No, sir.

**Q:** How did you come to know that your brother was peeping?

**A:** Because Rodelio Cruz saw my brother peeping at us and Rodelio Cruz suddenly wear (sic) his clothes and ran to their house and my brother followed him to their house.

**Q:** When did you(r) brother chase him?

**A:** On that very day, April 25.

**Q:** In relation to the rape incident when did your brother chase Rodelio?

**A:** When Rodelio was about to ran to their house my brother followed suit.

**Q:** Do you mean after the accused had finished what he had done to you your brother waited first and gave chase to the accused, is that correct?

**A:** What I am telling this honorable court are those that happened during 1988, 1989, 1990. What I am relating now is about April 25, 1991 when my brother saw that Rodelio Cruz was about to rape me and my brother chased Rodelio and Rodelio ran to their house.

**Q.** Before we started questioning you Miss witness I asked you the particular date and time and you mentioned that the accused raped you on such date and time and a little while back you mentioned that the accused raped you on the dates you are now mentioning how would you cor(r)elate this incident?

**COURT:**

Fiscal did you read the affidavit of the witness?

**PROS. JURADO:**

Yes, your honor.

**COURT:**

And in that affidavit it is mentioned that there are several incidents?

**PROS. JURADO:**