

THIRD DIVISION

[G.R. No. 119219, September 30, 1996]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
EDUARDO LIGOTAN Y FABELLA, ACCUSED-APPELLANT.**

D E C I S I O N

MELO, J.:

The incident that transpired on the evening of February 27, 1994 will continue to hound Pinky like a nightmare, for it was on the said date and time that her honor and maidenhood, even before it has fully blossomed, were sullied by a man who acted more as a beast rather than a thinking being. The bestial act is already reprehensible per se, but what made it more obnoxious is that the prey was only a 7-year old child who at that time had not even begun schooling.

Pinky Valiente, with the assistance of her mother, Evelyn P. Valiente, charged Eduardo Ligotan, herein accused-appellant, with rape before the Regional Trial Court of the National Capital Judicial Region (Quezon City, Branch 76) in a complaint alleging:

That on or about the 27th day of February, 1994 in Quezon City, Philippines, the said accused by means of force and intimidation, to wit: by then and there wilfully, unlawfully and feloniously, by removing the underwear of the said Pinky Valiente y Pantinople, a minor seven (7) years old, and placing himself on top of her and thereafter have carnal knowledge with the undersigned complainant against her will and without her consent.

CONTRARY TO LAW. (p. 5, Rollo.)

The prosecution's version of the incident, based on the testimony of Pinky Valiente, Evelyn Valiente, Edwin Borja, Dr. Rosalinda Cosidon, and SPO2 Francisco Floresca, is as follows:

On February 27, 1994 at about 10 o'clock in the evening, Pinky Valiente was sleeping in their house at Fairview, Quezon City, together with her 4-year old brother Bugoy, and her 2-year old sister Melanie. At that time, Pinky's parents were at her grandparents' house, a walk of about 30 minutes away. Pinky was suddenly awakened as accused-appellant was already on top of her. Pinky then noticed that she was no longer wearing her shorts. Accused-appellant then raised Pinky's feet and inserted his penis into her organ. But since his penis could not fully penetrate or fit in, accused-appellant inserted his index and middle finger into Pinky's organ which caused her to feel pain. Accused-appellant threatened her that he would kill her if she would complain. Thereafter, Pinky immediately left the room leaving accused-appellant behind and went to the adjoining house owned by her Aunt Gina. Accompanied by her Uncle Jun-Jun, the brother of his father, Pinky went to her

grandparents' house. Upon reaching the house, Evelyn, her mother, noticed that she was crying and seemed to be afraid. Evelyn asked Pinky why she was crying but the latter replied that she had just urinated. Pinky just slept and did not reveal to anyone what accused-appellant did to her.

Five days after the incident, specifically on March 1, 1994, Pinky finally broke her silence by relating her ordeal to her Aunt Evangeline. On the night of the same day, Pinky confided to her mother that she was raped by accused-appellant on the night of February 27, 1994. Evelyn who was then pregnant, suffered bleeding and gave birth the next day.

A few days after she delivered, Evelyn accompanied Pinky to the barangay hall to file a complaint against accused-appellant. Pinky narrated the incident to Edwin Borja, the Executive Officer of the Barangay. Accused-appellant was invited to the barangay hall for investigation but he denied the charges. Upon realizing that the case was beyond barangay jurisdiction, Edwin Borja referred the matter to the Lagro Police Station for possible investigation. SPO2 Francisco Floresca, the police investigator at the Lagro Police Station to whom the case was assigned, interrogated Pinky and her mother and thereafter prepared the statements as well as the letter-referral for inquest by the City Prosecution of Quezon City.

Dr. Rosalina Cosidon, Medico-Legal Officer of the PNP Crime Laboratory, Camp Crame, Quezon City, conducted a medical examination on Pinky upon the request of the PNP-CIS. The Medico-Legal Report M-0402-94 prepared by Dr. Cosidon showed a shallow healed laceration at 3 o'clock at the hymen which could have been caused by the forcible entry of a hard blunt object compatible with an erect male penis, and a congested labia minora. The said report likewise revealed that Pinky was no longer a virgin.

On the other hand, the defense is based solely on the uncorroborated testimony of accused-appellant.

Accused-appellant testified that he worked as a gardener for the spouses Boy and Evelyn Valiente, parents of Pinky; that he used to stay in the house of Gina Valiente, sister of Boy Valiente, whose houses were separated only by a lawanit wall; that on the afternoon of February 27, 1994, he went to the house of Rafael Valiente, father of Boy Valiente where he, Boy, and a certain Danilo Lopez had a drinking spree; that at about 6:30 that evening, Evelyn arrived to fetch Boy, who, however, refused to go home; that thirty minutes later, the 3 children of Boy and Evelyn arrived; and, that Boy and his family spent their night in the house of Rafael Valiente. Accused-appellant, continuing, declared that he left the house of Rafael Valiente at 7:30 that evening and went to the Hard Diamond Beerhouse to drink with his two friends, Nognog and Nonoy; that his companions left the beerhouse at 1:30 a.m., leaving him behind asleep; that he was only awakened when he was asked to pay the bill of P375.00; and, that after paying the bill, he left the beerhouse at around 2 a.m. In fine, accused-appellant denied the charge of rape, saying that he did not know why he was being so charged, but that perhaps the Valientes wanted him out of the place he was staying in because he had an altercation once with Boy Valiente when he tried to pacify the latter who was then quarreling with his cousin, Eduardo Macalalay.

The trial court, convinced on the merits of the prosecution's case, rendered a

decision finding accused-appellant guilty beyond reasonable doubt of the crime charged and sentenced him to an imprisonment term of reclusion perpetua and to indemnify the victim in the amount of P50,000.00 as moral damages, and to pay the costs.

Not satisfied, accused-appellant has interposed the instant appeal, contending that the trial court gravely erred in finding the testimony of Pinky Valiente to be credible despite clear inconsistencies when pieced together with the testimony of her mother regarding events before and after the alleged commission of the crime of rape, thereby negating positive identification of the culprit; and in disregarding his claim of alibi which gained strength due to the prosecution's failure to establish the true identity of the offender.

The appeal is bereft of merit.

The gravamen of the offense of statutory rape, as provided for in Article 335, paragraph 3 of the Revised Penal Code, as amended, is the carnal knowledge of a woman below 12 years old. Sexual congress then with a girl under 12 years is always rape. Thus, force, intimidation or physical evidence of injury is immaterial (People vs. Palicte, 229 SCRA 543 (1994)). In the present case, Pinky Valiente was only 7 years old at the time she was violated and deflowered.

This is how Pinky Valiente candidly narrated her ordeal in the hands of accused-appellant:

- Q.** Who was with you at the time you were sleeping in your house?
- A.** My brother and my sister.
- Q.** And what are their names?
- A.** Bugoy and Melanie.
- Q.** How old are they, if you know?
- A.** Bugoy is 4 and Melanie is 2.
- Q.** By the way, where is your house in which you were sleeping located?
- A.** Fairview, Quezon City.
- Q.** You said you were sleeping inside your room together with your brother Bugoy and sister Melanie, in what particular portion of the room were you then where you and your brother and sister were sleeping?
- A.** On a papag, sir.
- Q.** And while you were sleeping on the papag, was there anything unusual that happened?
- A.** Yes, sir.
- Q.** What happened?
- A.** He entered the room. (Witness pointing to the direction of the accused)
- Q.** Do you know his name?
- A.** Yes, sir.
- Q.** What is his name?
- A.** Ed.

FISCAL SANTOS:

Is the identity of the accused admitted? May we know from the defense, your honor.

ATTY. RIVERA:

Yes, your honor.

FISCAL SANTOS:

- Q.** You said that Ed, the accused herein, entered your room. What happened after that?
- A.** He put off the light.
- Q.** After putting off the light, what else did he do?
- A.** He removed his clothes.
- Q.** What clothes did he remove?
- A.** His shorts.
- Q.** After Eddie removed his shorts, what else did he do?
- A.** He also removed my clothing.
- Q.** What did Eddie remove from you?
- A.** My shorts.
- Q.** Were you wearing a panty at the time?
- A.** No, sir.
- Q.** After Eddie removed your shorts, what else did he do?
- A.** He placed himself on top of me.
- Q.** After that, what did he do?
- A.** He raised my two feet.
- Q.** After raising your feet, what else did he do?
- A.** His penis could not penetrate.
- Q.** Could not penetrate what, Ms. Witness?
- A.** My vagina.
- Q.** You mean, Ms. Witness, Eddie inserted his penis into your vagina but it would not fit in?
- A.** Yes, sir.
- Q.** And after that, what happened?
- A.** "Dinukot."
- Q.** What do you mean by "dinukot"?
- A.** My pepe, dinukot.
- Q.** How did he dinukot your pepe?

INTERPRETER:

Witness pointing to her index and middle finger as the one inserted by Eddie in her vagina.