

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
RICARDO VELASCO Y ABENOJAR, DEFENDANT-APPELLANT.***G.R. No. L-31922. October 29, 1976*

Ponente: FERNANDO, J.

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This Court has not been hesitant in the choice of words appropriate for expressing its disapproval of the act of utilizing force to compel a woman to submit to a man's lust. So it should be, but never was the condemnation more vehement than when the victim was a young and helpless child of tender years, in which case the law has wisely seen to it that the mere fact of her being below the statutory age suffices to affix the stamp of criminality on the deed.[1] For her, it would be a traumatic experience likely to cast a blight on the years that lie ahead. Equally so for the parents, it brings untold grief and suffering. As the offended party in this case was only five years of age when the offense of rape for which the accused was indicted and convicted took place, the only question before this Court on appeal is whether there was proof sufficient to establish his guilt beyond reasonable doubt. Precisely because of the sense of pity and sympathy aroused by the misfortune that befell the poor child, this Court scrutinized the records much more carefully. The conclusion reached is that the appealed decision is in conformity with law and that the appellant should be made to expiate for his crime by serving the sentence of reclusion perpetua.

It is a little unusual to notice that counsel for the appellant explicitly stated that he was "quoting the pertinent narration of facts of the trial court in its decision of February 18, 1970, to be [his] statement of facts." [2] Earlier, though, he did assert: "At most, on the basis of the testimonies of the prosecution witnesses, subjected to the above tests, the fact of the commission of the crime might have been proven, but certainly, we submit, not the commission of the crime by the accused." [3] The facts as noted by the trial judge, the Honorable Gregorio T. Lantin, now retired, follow: "It appears that at about 5:30 in the afternoon of the 2nd day of November, 1967, the offended party, Estelita Lopez, a child, five years old, accompanied by her cousin Nenita Lopez, another child, four years old, were at the North Cemetery, Manila. The defendant, Ricardo Velasco y Abenojar, called them, gave Nenita a five-centavo coin and asked her to buy cigarettes for him. After she left, the accused held Estelita by the hand and brought her to an alley. Once in a hidden place between the tombs he kissed her on the lips, took off her panties and placed himself on top of the girl while she was lying down on the ground face up and tried to insert his sexual organ into that of the victim. The girl shouted in pain, 'Aray, Aray.' Arsenio Perez, who happened to see the accused holding the hand of the girl while walking along 24th street in the cemetery as well as when they turned into the alley and who at first thought that the accused was a relative of the girl, upon hearing the shouts of the girl and because of the shouts believed that something bad was being done to the girl, * * * proceeded to the place where the shouts came and upon standing on top of one of the tombs he saw, a short distance away, (2 tombs away) the accused on top of the girl, with his pants and drawers lowered down to his knees, and the dress of the girl raised up and the buttocks of the accused making upward and downward movements. He tried to seek for help and upon seeing Jose Castro on the 24th Street told him, 'Mang Pepe, Mang Pepe, the daughter of Mang Pidiong is being raped' (Ginagahasa ang anak ni Mang Pidiong). Castro proceeded to

the place pointed by Perez with the latter following him, and while standing on top of a tomb a short distance away (about 5 tombs away), Castro saw the defendant on top of the girl. The accused then stood up and raised his pants while the girl rose from the ground crying. Castro approached the defendant and the girl and asked him what happened, and he said the girl lost her way and was crying. The girl was bleeding at the time and he noticed that she even wiped off with her dress the blood on the front part of her thighs. He held the girl by the hand and led her to 24th street and then called the accused. Once there in the street, Castro suddenly twisted one of his arms. Several people came and gave the defendant fist blows while Castro was taking him to the office of the North Cemetery and Pedro Zapata was holding the girl and leading her to the same office. A mobile patrol car arrived and the defendant and the girl were taken in the car to the Reyes Memorial Hospital. Patrolman Matulac of the mobile patrol indorsed the case to Precinct 2 operatives and one of those who responded and took over the case was Det. Corporal Jesus P. Senen. The injuries of the defendant were treated in the hospital. While in the hospital and seated on a wheelchair, the offended party pointed to him * * *. Detective Corporal Senen testified that the defendant verbally admitted to him while in the hospital that he raped the girl, but that the defendant appeared to be drunk at the time. After treatment, he was taken by the Precinct 2 operatives to the precinct where the statements of Estelita and Jose Castro were taken, * * * as well as the statement of Arsenio Perez which was utilized by the defense on cross-examination of the said witness but did not offer it as exhibit. The defendant again admitted verbally to Senen in Precinct 2 that he raped the girl but refused to give a written statement. A Medico Legal examination was conducted in the Medical Examiner's office by Dr. David S. Cabreira at about 8:10 p.m. of November 2, 1967 * * *, and according to the said report the findings were, '(1) Fresh laceration of the hymen at six o'clock position; (2) Vaginal opening is painful and sensitive to touch. Opinion: From the above findings on the subject Estelita Lopez, the undersigned finds that she must have had sexual intercourse recently before this examination.' "[4]

Retired Judge Lantin then considered the evidence for the defense. Thus: "In exculpation, the accused tried to establish that in the afternoon of November 2, 1967, upon instruction of his mother, he went to the North Cemetery to visit the grave of his deceased brother Pablo Velasco. Having been in the same cemetery the whole day of the 1st, selling pansit, gulaman and other foodstuffs together with his parents, sister and wife and was able to go home only at two o'clock in the early morning of November 2, 1967, he felt tired and rested on a cement bench near one of the tombs smoking a cigarette. It was in this situation that Estelita approached him crying. He asked her twice why she was crying, to which no answer was given. He then held her right shoulder and it was while doing so that all of a sudden four men appeared and without any question asked, one of them boxed him on the head above the left ear, while the others participated in boxing him. He was pulled towards the street where more people came and did the same thing to him. He was held by both hands and taken to the office of the cemetery. He fell down to the ground because so many people were giving him fist blows. He was brought to the hospital with his eyes closed because they were painful, having been hit on several parts of his face. When he opened his eyes he was already in the Reyes Memorial Hospital. He, however, could not identify any one of those who mauled him. When asked by the doctor in the hospital what happened, he just said he did not know anything. No policeman questioned him in the hospital and it was only when he was brought to Precinct 2 that he was asked questions, but he told the police investigator that he did not know anything about that which had happened to the child." [5]

After considering the evidence both for the prosecution and the defense, the then Judge Lantin was quite categorical as to the culpability of the accused: "There is no question that rape was the crime committed, but because of the tender age of the child, she was only five years and six months at the time, penetration was impossible due to the infantile character of the vagina, and, therefore, the crime could only be frustrated rape (People v. Eriña, 50 Phil. 998).

In the case of Eriña, however, unlike the present case, the hymen of the victim, who was three years and 11 months old, was not lacerated. Besides, the Supreme Court gave the accused Eriña the benefit of the doubt because there was no conclusive evidence of penetration of the genital organ of the offended party, referring to the labia and not the vagina. In the present case, however, considering the anatomical position of the labia majora and minora that these two external parts of the female sexual organ cover the hymen and the vaginal opening and, therefore, in order to rupture the hymen and produce the medico-legal finding that the 'vaginal opening was painful and sensitive to touch,' the conclusion is inevitable that the sexual organ of the accused must have entered and had passed the labia majora and the labia minora. And pursuant to the case of *People v. Oscar*, 48 Phil. 527, and *People v. Hernandez*, 49 Phil. 980, and the dissenting opinion in the case of *People v. Eriña*, (supra), the crime committed by the accused Ricardo Velasco y Abenojar was consummated rape."^[6]

From the above excerpts of the appealed decision, it is readily discernible that Judge Lantin was true to the tenets of his calling. He was most judicious in his appraisal of the evidence. The fair-mindedness is quite apparent. The language employed is most sober. On a matter that could have aroused the deepest antipathy, considering what was testified to, he preserved, as befits a man on the bench, calmness and objectivity. Counsel for appellant did try hard to create doubts about the guilt of the accused, but it was an effort doomed to futility. The medical examination revealed that the offended party was indeed raped. She was examined on the very night she was violated. The findings showed "fresh laceration on the hymen at six o'clock position," with "the vaginal opening painful and sensitive to touch."^[7] Dr. Cabreira, then sixty-three years of age at the time he testified, after twenty-three years in the service, with more than one thousand medico-legal cases of rape, seduction, and abduction,^[8] could affirm: "From the above findings on the subject * * *, the undersigned opines that she could have had sexual intercourse recently before this examination." The fact is undisputed that on the very afternoon of November 2, 1967, it was the accused, who, after giving the cousin of the victim a five-centavo coin to buy cigarettes for him, led the latter to an alley, kissed her on the lips, divested her of her intimate garments, and placed himself on top of her. It could be, as contended by defense counsel, that the actual act of intercourse was not fully seen by the two eyewitnesses to the occurrence. It is, however, equally undisputed that the cries from the horrified onlookers resulted in the accused being mauled by third parties, who could not repress their sense of indignation and outrage, no doubt heightened by the sight of the young girl bleeding as a result of what was done to her. Fortunately, there was a mobile patrol car available. She, as well as the accused, were taken to the Reyes Memorial Hospital. In the police investigation conducted the same evening, he was identified as the author of the offense by the young girl. The above facts, the records clearly disclose. They have been demonstrated beyond doubt. That is why, as set forth at the outset, the decision calls for affirmance.

1. The first assignment of error criticized the "evaluation of the facts" by the trial judge allegedly for ignoring inconsistencies in the testimony of the witnesses for the prosecution as well as in giving credence to what was testified to by the offended party. Defense counsel would thus have this Court disregard what had been referred to above as a most painstaking and careful study of the evidence of record by Judge Lantin. The impact of a principle reiterated time and time again apparently was not felt by counsel. A reminder from *People v. Baylon*^[9] is in order. Thus: "In essence, appellant, by the defenses interposed, would have us ignore the well-settled doctrine that the determination by the trial judge who could weigh and appraise the testimony as to the facts duly proven is entitled to the highest respect, absent a showing that he ignored or disregarded circumstances of weight or influence sufficient to call for a different conclusion. There was a reiteration of that doctrine in the recent case of *People v. Carandang*, reference being made to an early formulation thereof in *People v. De Otero*, where Justice Malcolm, speaking for the Court, stated: 'After everything is said and done, we come back, as we invariably do in cases of this nature, to a recognition of the rule that the Supreme Court will not interfere with the judgment of the trial court in passing on the credibility of the opposing witnesses, unless there appears in the

record some fact or circum-stances of weight and influence, which has been overlooked or the significance of which has been misinterpreted.' "[10] Again, in a prosecution for rape, *People v. Ordonio*,^[11] such a thought was once more given expression; "What clearly appears then is that once again, reliance on the time-tested doctrine of this Court according deference to what has been ascertained by the trial judge as to which party is more deserving of credence would not be inappropriate."^[12] No merit can therefore be said to attach to the first assigned error.

2. It could be that the weakness of the argument to support the first assigned error is not lost on counsel. That is why in the only other error that should be discussed, the third, he would find fault with Judge Lantin "in finding the accused guilty of consummated rape." There is the clear implication that whatever culpability could be attached to what was done by the accused, it should not be that of consummated rape. To make such an assertion requires a certain degree of temerity. He would disregard completely the finding of an impartial and disinterested witness, one, moreover, who is an expert, Dr. Cabreira, that the offense of rape was indeed consummated. The lower court cited the cases of *People v. Oscar*^[13] and *People v. Hernandez*.^[14] There are quite a number of later cases where this Court left no doubt, in the language of Justice J. B. L. Reyes in *People v. Pastores*,^[15] that for rape to be committed, it suffices "that there is proof of entrance of the male organ within the labia of the pudendum."^[16] Mention may be made of *People v. Canastre*,^[17] *People v. Selfaison*,^[18] *People v. Jose*,^[19] *People v. Obtinalia*,^[20] *People v. Carandang*,^[21] *People v. Royeras*,^[22] *People v. Amores*,^[23] and *People v. Ordonio*.^[24] Moreover, from *United States v. Flores*,^[25] a 1912 decision, to *People v. Yu*,^[26] a 1961 decision, this Court had duly meted out sentences of conviction for the offense of rape committed against young girls of tender years below the statutory age.

3. No purpose would be served in taking into consideration the alleged second assigned error of the trial court in construing as an admission of guilt the failure on the part of the accused to react or say anything when pointed to by the offended party as the perpetrator of such dastardly act, considering that the evidence of record fully proved the commission of the crime of rape. Nothing can be more just and legal then than that he should be held fully accountable.

WHEREFORE , the decision of February 18, 1970 of the lower court finding the accused Ricardo Velasco y Abenojar guilty of the crime of consummated rape and sentencing him to reclusion perpetua is hereby affirmed. Costs against appellant.

Barredo, Aquino, Concepcion, Jr., and Martin, JJ., concur.

Antonio, J., did not take part.

[1] Art. 335 of the Revised Penal Code insofar as relevant reads: "When and how rape committed. - 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 or otherwise unconscious; and 3. When the woman is under twelve years of age, even though neither of the circum-stances mentioned in the two next preceding paragraphs shall be present."

[2] Brief for the Accused, 2.

[3] Ibid.

[4] Ibid, 2-4.

[5] Ibid, 4-5.

[6] Ibid, Annex A, 4.

[7] Exhibit A.

[8] T.s.n., Session of May 17, 1968, 4-16.

[9] L-35785, May 29, 1974, 57 SCRA 114.

[10] Ibid, 118-119. *People v. Carandang*, L-31012, Aug. 15, 1973, is reported in 52 SCRA 259 while *People v. De Otero* is reported in 51 Phil. 201 (1927). Cf. *People v. Cudalina*, L-34969, April 29, 1975, 63 SCRA 499.

[11] L-33829, December 19, 1975, 68 SCRA 397.

[12] Ibid, 403.

[13] 48 Phil. 527 (1925).

[14] 49 Phil. 980 (1925).

[15] L-29800, August 31, 1971, 40 SCRA 498.

[16] Ibid, 509.

[17] 82 Phil. 480 (1948).

[18] 110 Phil. 839 (1961).

[19] L-28232, February 6, 1971, 37 SCRA 450.

[20] L-30190, April 30, 1971, 38 SCRA 651.

[21] L-31012, August 15, 1973, 52 SCRA 259.

[22] L-31886, April 29, 1974, 56 SCRA 666.

[23] L-32996, August 21, 1974 58 SCRA 505.

[24] L-33829, December 19, 1975, 68 SCRA 397.

[25] 21 Phil. 140.

[26] 110 Phil. 793. In between those two decisions, these are the other cases that may be mentioned: *United States v. Tan Teng*, 23 Phil. 145 (1912); *People v. Blance*, 45 Phil. 113 (1923); *People v. Oscar*, 48 Phil. 527 (1925); *People v. Hernandez*, 49 Phil. 980 (1925); *People v. Eriña*, 50 Phil. 998 (1927).

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