

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
DIONISIO IGNACIO Y IBANEZ, DEFENDANT AND APPELLANT.***G.R. NO. L-35494. September 18, 1974*

Ponente: AQUINO, J.

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This is another gruesome rape case. The alleged victim was below twelve years of age. In such a case, the employment of violence or intimidation is not a requisite. The mere carnal knowledge consummates the rape. Full penetration of the female body by the male organ is not essential (Art. 335[3], Revised Penal Code, *People vs. Oscar*, 48 Phil. 527).

The prosecution's evidence shows that at around six o'clock in the evening of October 8, 1970 (after the church bell had rung the Angelus), Rosario Guillermo (Charito), who was then nine years old, having been born on April 24, 1961, was alone in the small room occupied by her family in the house located at General Tirona Street, Bagong Barrio, Caloocan City. She was cooking the evening meal. The room served as a bedroom, living room, dining room and kitchen. The door was open. Her mother, Emilia Ocampo-Guillermo, a fifty-six year old widow and vendor of rice cakes (puto and bibingka), was in the Balintawak market.

Dionisio Ignacio y Ibanez, alias Johnny Bukol, a nineteen-year old, unmarried tricycle driver, entered the room. Charito was acquainted with him because he used to eat and sleep in that room. Without much ado, he seized Charito, stuffed a shirt (kamiseta) into her mouth, removed her panties, tied her hands and feet, carried her and laid her on the floor near the place where she used to sleep and then had carnal knowledge of her. Charito's vagina bled and she almost lost consciousness. She was in that state when her mother, Mrs. Guillermo, arrived home at about eight o'clock that night. When asked by her mother what had happened to her, Rosario answered that "if she will tell he will kill her and her brother and me". On that same night, Mrs. Guillermo took Charito to the Jose Reyes Memorial Hospital where she was treated.

Doctor Marina Alcalde, who examined Rosario, found that there were four lacerated wounds in the vaginal canal each about one-half inch long (Exh. A). The wounds could have been caused by sexual intercourse. They had to be sutured. There was a one-inch lacerated wound at the median portion of the perineum. Charito stayed in the hospital up to October 17.

In the hospital at about two o'clock in the afternoon on the day following the incident, Mrs. Guillermo again asked her daughter what had happened to her. She revealed to her mother and to Remedios Adane, a relative and neighbor, that she was abused by Ignacio (who, according to Mrs. Guillermo, was sleeping at three o'clock in the afternoon of October 8 in the room occupied by her family). Mrs. Guillermo forthwith reported the matter to the Caloocan City police on that same afternoon. The case was assigned to Detective Mario Manalang, who, together with Mrs. Guillermo, immediately proceeded to the hospital where he interviewed Charito. The girl related to him that "on October 8 at about six o'clock in the evening, when her mother went out of the house to deliver some home-made cakes, one Johnny Bukol went to their house, tied her down and put a piece of cloth in her mouth and

criminally attacked her and abused her".

Manalang tried to look for Johnny Bukol, whose real name is Dionisio Ignacio, in Bagong Barrio. He was not there. Later, he was tipped that Ignacio was in Barrio Camarin. On October 12, he went to that barrio. He apprehended Ignacio on the road near his house. He did not resist arrest.

Manalang brought Ignacio (who was accompanied by his mother) to the hospital where Charito identified him as the person who had abused her. Ignacio denied the accusation. Manalang asked Charito if she was telling the truth. Once more, she pointed to Ignacio as the one who had ravished her.

On that same day, October 12, Mrs. Guillermo filed in the Court of First Instance of Rizal, Caloocan City Branch a verified complaint for rape against Ignacio. After trial, the court convicted him of rape and sentenced him to reclusion perpetua (Criminal Case No. C-756[70]). No indemnity was imposed.

Ignacio, in this appeal, assails the credibility of the nine-year old complainant, who was a Grade two pupil in the elementary school of the Araneta University. He contends that his uncorroborated alibi should be given credence.

He denied having sexually abused Charito. He declared that, at the time the incident happened, he was at his mother's house at Camarin Street, Novaliches.

He used to sleep in the house of the owner of the tricycle which he operated in Bagong Barrio. Between that house and the house where Charito's family stayed, there were six houses. He denied having eaten in Charito's room or having entered that place. He said that there was a gambling den in the house where Charito lived. He admitted that he did not know of any motive that would impel Charito and her mother to file a rape charge against him. They had no grudge against him.

Ignacio was well-known to Charito and her mother (Mrs. Guillermo knows also his mother). Charito could not have been mistaken in her identification of Ignacio as the malefactor who had grievously wronged her.

It is hard to believe that she would reveal that she had been deflowered and thus ruin her reputation and that she would allow an examination of her private parts and undergo the trouble and inconvenience of a public trial if her motive was not to bring to justice the person who had abused her (People vs. Canastre, 82 Phil. 480).

Ignacio admitted that a Caloocan policeman brought him to the hospital where Charito identified him as the rapist. The trial court, in appraising Charito's credibility, made the following observations:

"The court has very carefully considered the testimony of Rosario Guillermo (Charito), both in the direct and in the cross-examination in its entirety, and finds it credible and deserving of credit.

"The court has, likewise, very carefully observed her demeanor in the courtroom as well as on the witness stand, her intelligence, appearance, memory, motive and means of knowing the facts to which she testified, and is of the opinion that she was indeed a victim of a dastardly crime of rape.

"She was only nine years old, but she testified intelligently and withstood a long and exhaustive cross-examination x x x she appeared to be physically attractive, and the accused, Dionisio Ignacio, who used to stay in her house, where he eats and sleeps, in all probability could not resist the temptation to assault her as he did on October 8, 1970."

As to appellant's alibi, the trial court noted that from the place in Novaliches where he sojourned, it would take him thirty minutes by jeepney to reach the scene of the crime. The court concluded that it was not impossible for the appellant to be at the place where the crime was committed at the time of its commission. We agree with the trial court's conclusion.

Appellant Ignacio points to the improbability of Charito's version that she was raped while her feet were "tightly tied close together". Charito did not categorically testify that her feet were closely tied together. However, in answer to the leading questions on cross-examination, she seemed to give the impression that her legs were closely bound together when Ignacio abused her.

Doctor Alcalde declared that the lacerations were probably due to the fact that the victim's legs were bound. The one-inch laceration in the perineal area is quite significant. The perineum is that area of tissue between the anus and the posterior part of the external genitalia.

The indubitable fact is that there were lacerations in her vaginal canal. The obvious implication is that a hard object, like the penis, had penetrated her vagina. She sustained injuries in her organ and she bled profusely because Ignacio forcibly copulated with her. The presence of five lacerations, instead of only two or three, might be attributable to the circumstance that her legs were bound and had no freedom of movement.

Appellant Ignacio notes that the trial court assumed that, when Charito testified, she was only ten years old. The point is not crucial but the fact is that when Charito testified on February 2 and 24, 1971, she had not reached the age of ten (she was born on April 24, 1961).

The appellant argues that Charito's credibility was impaired by her statement that she lost consciousness after the rape, whereas the testimony of her mother was that Charito was conscious when she found her sitting near the wall. The explanation for the discrepancy is that Charito might have lost consciousness immediately after she was raped but she regained consciousness later, before her mother arrived.

The fact that the prosecution did not present the medico-legal officer of the National Bureau of Investigation, who examined Charito, does not weaken the prosecution's case. Inasmuch as Doctor Alcalde of the Dr. Jose R. Reyes Memorial Hospital had examined Charito, the prosecution assumed that the testimony of the NBI doctor would be superfluous.

The rape committed by Ignacio was not attended by any of the qualifying circumstances mentioned in article 335 of the Revised Penal Code. The trial court properly imposed on him the penalty of reclusion perpetua. However, it overlooked the indemnity expressly provided for in article 345 of the Revised Penal Code.

The trial court's judgment is affirmed. Appellant Ignacio is further ordered to indemnify Rosario Guillermo in the sum of twelve thousand pesos (People vs. Amiscua, L-31238, February 27, 1971, 37 SCRA 813; People vs. Gonzales, L-33926, July 31, 1974). Costs against the appellant.

SO ORDERED.

Fernando, (Chairman), Barredo, Antonio, and Fernandez, JJ., concur.

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