

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROBERTO YTAC, DEFENDANT-APPELLANT.***G.R. No. L-47568. January 28, 1980*

Ponente: DE CASTRO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/72994da1ac04/>**DE CASTRO, J.:**

Charged with rape in the Court of First Instance of Davao Oriental, Roberto Ytac was convicted and sentenced to reclusion perpetua, to indemnify the offended party in the amount of P10,000.00, to acknowledge the offspring in the event there should be, to support said offspring, and to pay the costs, with the full period of his detention, credited in his favor.

From the evidence of the prosecution, it appears that:

"Mary Ann Boligao, the victim in this case, is a pitiful child. On the date she was abused - July 25, 1974 - she was only five years and two months old, she having been born on May 10, 1969 (p. 3, t.s.n., July 14, 1976). Since birth, Mary Ann could not walk and talk (p. 4, id.). Her mother, Saturnina Boligao, was the sole breadwinner in the family because her father was then confined at the national penitentiary (p. 5, t.s.n., February 4, 1977). Luckily, Macaria Sanchez, a companion of Saturnina, who were both engaged in the buy and sell of fish, lived with the family in Magsaysay Beach, Mati, Davao Oriental, and occasionally took care of Mary Ann and her younger brother, Gerry Boligao, whenever Saturnina left the house (pp. 5-6, id.; pp. 5-6, t.s.n., July 14, 1976).

"About 5:00 o'clock on the afternoon of July 25, 1974, Saturnina Boligao went to the Envir Theater to see a movie, leaving in her house her two children, Macaria Sanchez and accused Roberto Ytac (p. 6, t.s.n., June 7, 1976; pp. 5-7, (t.s.n., July 14, 1976). The accused and Saturnina are second cousins, hence, the former used to go to the house of the latter (p. 7, t.s.n., July 14, 1976).

"Around 6:00 o'clock that afternoon, Macaria Sanchez and Gerry Boligao went to Dading's Store about twenty fathoms away to buy viand, leaving inside the house accused Roberto Ytac and Mary Ann Boligao (pp. 6-7, t.s.n., June 7, 1976). After buying the viand, Macaria returned home (p. 7, id.). Upon reaching the house, Macaria saw blood coming out from the vagina of Mary Ann who was then lying down flat on her back while the accused was squatting in front of the child with the zipper of his trousers half-closed. Macaria wiped the blood from Mary Ann's private organ and asked accused Roberto why he abused the child who was invalid and abnormal. Roberto told Macaria that he gave Mary Ann a banana but he denied having abused the child (pp. 7-8, id.). Mary Ann's clothes were all wet with water, but near the hemline of her dress, near the vagina was a substance which appeared and smelled like semen (pp. 8-9, 24, id.). Macaria asked Roberto why the child's clothing was wet and the latter replied that he gave the child water to drink (p. 9, id.).

"Macaria wiped the blood off and changed the child's clothing but the blood continued to ooze out from the vagina (pp. 9-10, id.). In view of this development, Macaria summoned the neighbors and requested them to fetch the child's mother. Shortly, Saturnina arrived but Roberto was no longer around (p. 10, id.). Seeing blood oozing out of Mary Ann's vagina, Saturnina cried and inquired from Macaria what happened. Upon being informed about the incident, Saturnina brought Mary Ann to the Davao Oriental Provincial Hospital where she

was examined and treated by Dr. Antonio Tagabucba (pp. 9-11, t.s.n., July 14, 1976 who found and recorded in a medical certificate the following:

'BOLIGAO, MARY ANNE, 5 years of age, Female, Filipino Child, residing at Magsaysay, Mati, Davao Or. was examined and treated in this hospital on July 25, 1974 and found:

': Erythema, labia majora, inferior

': Introetus admits 1 finger with difficulty

': Hymenal laceration at 4' o'clock fresh with minimal hemorrhage

': Spermatozoa Examination-Negative

': Probable healing period - - - - barring complication.

'ts/t/J. ANTONIO D. TAGABUCBA,
M. D. 'Chief of Hospital'

(Exhibit A)."

The only error assigned by counsel de officio is that there was no insertion of the penis into the vagina of the victim which the court failed to so find, and therefore no rape was committed.

In contending that there is no insertion of the penis into the vagina of the victim, appellant claims that the only laceration is a 4 o'clock laceration. If there had been insertion, the whole width and breadth of the hymen would have been involved. There should have also been spermatozoa inside the vagina, as is the natural impulse of a man who inserts his penis into the vagina of a woman, to have emission-ejaculation, as a result of the act.

The victim in this case was only a five-year old girl, mentally retarded, unable to talk nor stand. It is unfortunate that she could not herself narrate what happened to her or what appellant did to her. But facts and circumstances have been proven beyond dispute that convince anyone that the hapless girl was a victim of the rape under the law (Article 375, par. 3, Revised Penal Code), and under prevailing jurisprudence. For under the law, rape is committed when the victim is under twelve years of age, even without the use of force and intimidation, or even if the woman is not deprived of reason or otherwise not unconscious.

As to the need of insertion in order that rape is deemed consummated, prevailing jurisprudence has it that complete penetration is not needed. In the early case of *People vs. Oscar*, 48 Phil. 527, it was held that insertion of the penis in its full length into the genital organ of the offended party, and that absence of emission of semen is no ground to hold that consummated rape has not been committed.

In the case of *People vs. Rivera*, 147 Mich. 643, it was held that perfect penetration is not essential. Any penetration of the male organ into the female body is sufficient. Still in other American cases, "entry of the labia or lips of the female organ, merely, without rupture of the hymen or laceration of the vagina is sufficient to warrant conviction." (*Kenny vs. State*, 65 L.R.A. 316; *Rodgers vs. State*, 30 Tex, App. 510; *Brauer vs. State*, 25 Wis. 413, cited in Appellee's Brief, p. 11).

Citing *Taylor vs. State* (111 Ind. 279) and *People vs. Crowley* (102 N.Y. 234) Stewart, in his *Legal Medicine* p. 137, said that it is undoubtedly the law that penetration even to the least extent will be sufficient to establish the crime, and this may be inferred from the circumstances of the crime.

In the present case, upon being examined by the doctor, just after the commission of the offense, the victim was found to have a fresh laceration of the hymen, and also "erythema" at the labia majora of the girl's genital organ, which according to the doctor, could have been caused by any hard object, like the penis of a man (pp. 7-8, t.s.n.,

December 11, 1975). According also to state witness, Macaria Sanchez, a substance near the hemline of the victim's dress near the vagina looked and smelled like semen. The same witness testified that appellant's zipper is half-closed, and he was squatting in front of the victim who was lying flat on her back, blood oozing out from the vagina of the girl. When Macaria arrived, the door was closed, which was not so when she left the house.

The foregoing facts and circumstances, together with appellant's immediate departure from the house when confronted by Macaria about what she saw of the girl, instead of denying or explaining the implicit accusation against him, convincingly demonstrates appellant's guilt for having abused the girl, and thereby committing rape against her.

It is thus futile for appellant to claim innocence with his assertion that the injury found on the genital organ of Mary Ann, considering its size and the size of his male organ, could have been caused by an object other than appellant's penis being forcibly inserted into the girl's genitals. Without positively and expressly saying so, in the present instance, appellant seems to suggest that possibly a finger caused the injury or the laceration noted, not by his penis, specially as no spermatozoa was found under the vagina. But as to this suggestion which was made more unmistakably in the court below, the trial court observed:

"The defense weakly tried to show that the injury to the child's sexual organ, more specifically the rupture of the hymen and the bleeding could have been caused by either the rough floor of the sala or the fingers of his right hand which he placed on the child's 'anus' when the latter cried and he pacified her." (pp. 10-11, Decision; pp. 15-16, Rollo).

In his present appeal, it is significant to note that appellant made no positive assertion by way of insisting on his theory as intimated above. He must have realized the weakness of it all, and to insist on it would merely reveal the utter incredibility of his defense.

As already noted, a substance that looked and smelled like semen was seen by Macaria Sanchez, who should know whereof she testified on this particular matter, being a married woman, on the hemline of Mary Ann's dress near the vagina. Appellant's zipper was only half-closed, clearly indicating that the penis had been brought out. It would be naive to suggest that under these circumstances, appellant's penis was not inserted into the vagina of the girl, but something else, to explain the laceration of the hymen and the oozing of blood. The absence of spermatozoa in the vagina, which is no legal obstacle to holding that rape has been committed, as held in a good number of cases *People vs. Selfaison*, 1 SCRA 235; *People vs. Jose*, 37 SCRA 450; *People vs. Carandang*, 52 SCRA 259 -- to mention a few. That semen spilled more visibly on the victim's dress may be inferred from appellant's act of dousing the girl with water, in an attempt, obviously, to wash off some tell-tale substance on the dress of the hapless victim. We must hold that appellant's guilt has been proved beyond reasonable doubt.

WHEREFORE, We find the decision appealed from in accordance with law and the evidence, as to the penalty imposed which is that of reclusion perpetua, although it may have to be noted that the aggravating circumstances of dwelling and abuse of confidence attended the commission of the crime, which however will not affect the penalty as herein imposed, which is a single, indivisible penalty, in accordance with Article 63 of the Revised Penal Code, and the rape as herein committed not being one punishable by death, under Article 335 of the same Code. The indemnity however, should be raised from P10,000 to P12,000 (*People vs. Amiscua*, 37 SCRA 813) and the portion of the decision requiring the appellant to acknowledge and support the offspring is hereby deleted in view of its manifest superfluity, the victim being yet incapable of bearing a child. Accordingly, modified as herein indicated, the judgment appealed from is affirmed in all other respects, with costs.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Fernandez, Guerrero, and Melencio-Herrera, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.