

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
DANIETO S. GARCINES, ALIAS NENE, DEFENDANT-APPELLANT.**

G.R. No. L-32321. June 28, 1974

Ponente: AQUINO, J.

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AQUINO, J.:

Danieto S. Garcines appealed from the decision of the Court of First Instance of Occidental Misamis, finding him guilty of rape, sentencing him to reclusion perpetua and ordering him to pay Rosella Tan an indemnity of five thousand pesos and the costs (Criminal Case No. OZ-42).

The prosecution's evidence reveals the following facts:

On February 18, 1970 Rosella L. Tan, a thirteen-year-old first year high school student of the Immaculate Conception College in Ozamis City, was residing with her parents, Dominico Tan and Simeona Lanaha-Tan, at Gomez Extension Street of that city. At around six o'clock in the morning of that day, she pursued her customary errand of buying bread at Remy's store near the supermarket.

After buying bread and while she was on her way home on Gomez Extension Street, Danieto Garcines called her. She had known him for a long time because he was a neighbor (her house is the fifth house from his store). He was a sixty-two year old, white-haired, married man. He was standing near the door of his own store. Rosella approached him. He told her that he wanted to buy bread from her. When she was about to open the bag containing the bread, he said: "I will just buy inside the store". She countered that if his intention was just to buy bread, it was not necessary for her to enter his store. Garcines allayed her fears by saying that he would not harm her. Relying on that assurance, she entered his store.

When she was already inside the store, Garcines closed the door and ordered her to place the bread on the table. She became apprehensive after the door was closed. The store was small. It was lighted by a kerosene lamp. It was in semi-darkness.

Rosella told Garcines: "If you need bread, why did you close the door?" He commanded her to keep quiet and to remove her pantie. He was standing in front of her near the door. She was speechless and afraid (19, Record). When she did not remove her pantie, Garcines said: "If you will not remove your pantie, I am a policeman and I have a pistol and something will happen to you". He pointed to his pistol hanging against the wall behind him. Rosella was alarmed. She was trembling and crying. She removed her pantie. She could not shout because she was seized with fright. He was a big man. No other persons were inside the store. The windows were closed. On previous occasions during a one-month period, she used to go inside Garcines' store to sell him bread on her way home.

After removing her pantie, Garcines embraced her. He ordered her to lie down on the bench. As she did not comply with his instruction, he lifted her and placed her on the bench. She was crying and shaking. She realized that Garcines wanted to abuse her. He unzipped his pants and brought out his organ. He raised her dress, held her

shoulders and inserted his organ into her vagina. She suffered pain. She did not shout because she "was afraid of him and the gun" (23, Record). He embraced her tightly for a long time. Then, he stood up and directed her to put on her pantie and to place two pieces of bread on the table. She put on her pantie. He paid her ten centavos for the bread.

Before she left his store, he cautioned her not to report the incident to her mother; otherwise, something would happen to her or her family. She went home. Her mother, who was worried because it took Rosella about an hour to buy bread, asked her why she was delayed. She told her mother that there was a delay in the delivery of the bread. She did not apprise her mother that Garcines had abused her because she remembered his threats. She was fearful that something evil would happen to her family. Mrs. Tan noticed that Rosella's hair was dishevelled. She appeared to be weak. She went to the kitchen and removed her pantie. She noticed that it was bloodstained. She washed it.

Five days later, or on February 23, 1970, the thirty-eight year old Mrs. Tan received by mail an anonymous letter addressed to her husband. It was delivered to her by Jesus Ayam, the mail-carrier, who later testified to that fact. It contained the disturbing information that every morning, when Rosella was on her way home from Remy's store, she would pass by the house of Garcines and tarry inside his store. Garcines would close the door and sexually abuse Rosella. The outrage was well-known to the residents of Gomez Extension Street.*

Mrs. Tan waited for Rosella to come home from school. Before noontime, Rosella arrived home. Mrs. Tan went upstairs and told her daughter to read the letter. Then, she asked her daughter as to whether she understood the contents of the letter. Rosella said that she knew the contents but she denied the truth thereof. Mrs. Tan asked her again. Rosella embraced her and confessed to her that the contents of the letter were true. Mrs. Tan slapped Rosella for not telling the truth. The girl cried.

Mrs. Tan repaired immediately to the house of the Mayor in order to complain about the wrong done to Rosella. As the Mayor was out, Mrs. Tan narrated the incident to his wife. The Mayor's wife brought Mrs. Tan to Ondo Suez, the Mayor's secretary. Suez contacted the police. Garcines was arrested in the afternoon and brought to the city jail.

On that same afternoon of February 23rd, Mrs. Tan brought her to the hospital. She was examined by Doctor Vicente Saquin. His examination revealed that the vaginal canal was "slightly congested" and that:

"Cervix (a) right side 11:00 o'clock contusion with slight hematoma can be noted.

(b) left side 2:00 o'clock, erosion and slight bleeding can be noted.

Admits 2-1/2 (two and 1/2) fingers.

Perineal (perineal) area is slightly inflamed but no laceration can be noted." (Exh. B).

Doctor Saquin said that an examination made five days after the rape would not disclose the presence of spermatozoa in the organ of the victim. Congestion in the vaginal canal means that it is inflamed or it is reddish. The inflammation of the perineal area had existed for around six days. Doctor Saquin prescribed some medicines (Exh. B-1, B-2).

Also in the afternoon of the same day, the statements of Garcines, Rosella and Mrs. Tan were taken by the police. In his statement, Garcines admitted that he knew Rosella because she was his neighbor and because in the morning he bought bread from her. She entered his store to place the bread on the table (Exh. D-1).

While in the police headquarters, Troping, the wife of Garcines, informed Mrs. Tan that he (Garcines) desired an amicable settlement of the case (9 tsn). Mrs. Garcines approached Mrs. Tan three times. The policemen scolded

Mrs. Garcines.

At around five o'clock in the afternoon of the same day, Dominico Tan, a forty-five year old businessman, the father of Rosella, arrived home from Pan-ay, Clarin. As he was about to come out of his own store, Troping Ledesma, the aforementioned wife of Garcines, had a confrontation with Tan. She said: "Ming (nickname of Dominico), I was commanded by Nene Garcines to come here because he is willing to pay P50 to settle this case amicably." Surprised by that offer, Dominico asked: "Why?" Mrs. Garcines replied: "Nene Garcines abused your daughter, Rosella Tan".

That unexpected and distressing piece of information enraged Dominico. He shouted: "What? My daughter was abused by your husband Nene Garcines?" He asked her where Garcines was and she told him that he was already in jail. The dialogue took place in the presence of Dominico's other daughter, Marylou, who was tending his store. He left Mrs. Garcines and went to Don Mariano Marcos Street to look for his wife and his daughter Rosella.

After the exposure of the scandalous affair, Tan noticed that his daughter was sometimes in a pensive mood. On certain occasions, she would cry or refuse to eat. She did not tidy up her hair. She stopped playing balikaka and takyan with other children. She had to stop her studies beginning February 23rd because the Sisters of the college refused to accommodate her anymore.

On February 28, 1970 Mrs. Tan brought Rosella to the clinic of Doctor Lily Tagaloguin-Fuentes for another examination. Doctor Fuentes did not know that Rosella had been examined by Doctor Saquin. She certified that her examination of Rosella's genital organ revealed:

- "1. swelling and edema of the vaginal wall.
2. complete laceration of the hymen.
3. with the use of the speculum blood clots are found in the vaginal canal near the cervix.

Diagnosis: complete loss of virginity." (Exh. C).

She found that the vulva was "completely swollen". The moderately thin membrane of Rosella's hymen was lacerated.

On that same date, February 28th, the Fiscal conducted a preliminary investigation of the case. Two lawyers represented Garcines at the investigation. His counsel cross-examined Rosella. The investigation was continued on April 11 and 13, 1970. On the latter date, Dominico Tan swore to a complaint for rape against Garcines. The complaint was filed in the Court of First Instance on April 22, 1970.

After the trial, the lower court rendered on June 27, 1970 the judgment of conviction already mentioned. Appellant Garcines' sole assignment of error is that the judgment "is entirely not supported by the evidence and is contrary to law". His defense was a denial. His testimony was not corroborated. He testified that at five-thirty in the morning his wife was already awake, preparing food in the store to be served to customers. He stressed that many persons in the vicinity were doing their daily tasks at six o'clock. The stores of Guanco, Pacing Leonardo and a vulcanizing shop were near his (Garcines') store. His house was distinct and apart from the store.

His counsel assumed that, according to the prosecution's evidence, the alleged rape was perpetrated in a "public place". That assumption is incorrect. The rape was consummated inside Garcines' store after he had closed the door. The case of *People vs. De la Cruz*, 48 Phil. 533, relied upon by the appellant, does not support his theory. In the *De la Cruz* case, this Court disbelieved the version of the complaining girl that she was raped by the defendant in his car while it was parked in Gay Square, a public plaza in Iloilo. In the instant case, the rape was committed

in a private place hidden from public view.

Garcines argues that, if the rape was really committed, it "could not have escaped the keen interest" of his neighbors. That contention is refuted by the anonymous letter, Exhibit A. As already noted, in that letter a neighbor notified Rosella's father that she was being sexually abused by Garcines and that the whole neighborhood was aware of his outrageous conduct. The case of *U. S. vs. Tacubanza*, 18 Phil. 436, cited by the appellant, was an attempted rape case. It does not support appellant's contention. In the *Tacubanza* case, the charge was dismissed because the prosecution's evidence itself showed that two disinterested witnesses had knowledge of the alleged attempted rape but the prosecution did not bother to present them. Moreover, this Court found that the neighbors were attracted to the place where the attempted ravishment was allegedly perpetrated, not by the cries of the complaining girl but by the cries of her companion, a seven-year old boy. The prosecution's evidence was regarded as insufficient to prove the charge.

Garcines contends that the neighbors should have been presented as witnesses. That contention is untenable because Garcines admitted already in his statement and testimony that Rosella used to enter his store early in the morning and that he bought bread from her. His act of buying bread from her was evidently a ploy or pretext for asking her to enter his store. Rosella was not a vendor of bread. Garcines could have easily bought bread from the bakery. His behavior revealed that he had a preconceived design to take advantage of her innocence, physical inferiority and immaturity. It was his act of enticing the guileless girl to enter his store which was observed by the neighbors and which led them to conclude, as indicated in Exhibit A, that his suspicious conduct was *contra bonos mores*.

Appellant's contention that the prosecution did not prove that he used force in having carnal knowledge of Rosella does not mean that no rape was committed. The crime can be committed by employing intimidation. Rosella was thirteen years, four months and twenty days old at the time she was raped. She was an immature teenager. She could easily be coerced or cowed by a big old farmer and former security guard like Garcines (his brother was a policeman). Her case is not far removed from that of an eleven-year-old girl with whom voluntary carnal intercourse is considered rape (Art. 335[3], Revised Penal Code).

Intimidation includes the moral kind such as the fear caused by threatening the girl with a knife or pistol (2 Cuello Calon, *Codigo Penal*, 12th Ed. 537).

The last point raised by Garcines is that the testimony of Doctor Saquin that Rosella's hymen was not lacerated should prevail over the testimony of Doctor Fuentes that Rosella had completely lost her virginity. During the trial the private prosecutor branded Doctor Saquin as "a hostile witness". When the doctor was asked as to whether he was related to the accused, he gave this unequivocal answer: "I do not know whether we are relatives or not".

The trial court noted that Mrs. Tan suspected that Doctor Saquin was biased. So, she requested Doctor Fuentes to make another internal examination. As already stated, the findings of the two physicians on Rosella's virginity were contradictory.

After a review of their certifications and testimonies, we are of the opinion that the positive finding of Doctor Fuentes, a thirty-two-year old, married, practising lady physician, that Rosella had completely lost her virginity, is more credible than the dubious declaration of Doctor Saquin that her hymen had no laceration.

Garcines admitted, when interrogated by the trial judge, that he could not tell why Mrs. Tan and Rosella would testify falsely against him. He said that Rosella's parents were his "close friends" and, that he had no misunderstanding with them.

It is unthinkable that an unmarried teenager, a high school student, would endure the shame and humiliation of

being publicly known that she had been ravished, allow an examination of her private parts and undergo the trouble and expense of a court proceeding if her motive was not to bring to justice the person who had grievously wronged her (People vs. Canastre, 82 Phil. 480; People vs. Savellano, L-31227, May 31, 1974).

There being no aggravating nor mitigating circumstances, the penalty of reclusion perpetua imposed by the trial court is in accordance with law (Arts. 63 and 335, Revised Penal Code). The indemnity of P5,000 should be raised to P10,000 (People vs. Amiscua, L-31238, February 27, 1971, 37 SCRA 813).

WHEREFORE, the judgment of the lower court is affirmed with the sole modification that the indemnity of P5,000 should be raised to P10,000. Costs against the appellant.

SO ORDERED.

Zaldivar, (Chairman), Fernando, Barredo, and Fernandez, JJ., concur.
Antonio, J., did not take part.

* The English translation of the handwritten letter in the Visayan dialect is as follows:

"Ming:

"I hope that you will not get angry with this letter, because this is just to inform for the good of you in the family. Two months had passed more or less that we observed that your daughter every morning after she buys bread, will pass by or get inside the store of Nene Garcines, and then Nene will close it. And when inside already, she was seen that she was abused by the old man. All the young and old folks here in Gomez, knows already but are keeping silent.

"That is why Ming, observe and see for yourself your daughter, because she is yet too young to be spoiled by an old man. See for yourself and observe so that you will believe for yourself than believing the letter and so that you will not doubt the people.

"Observe it, do not ask directly your daughter according to the letter. Make it personally because your daughter is a pity, she is yet too young - or else from your house, upon going home, watch her.

"Only this (Maora)

"You ought not to be told, because we are not concerned. But because the girl is very young." (Sic)

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