# PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JUANITO QUINAGORAN Y CALUNA, ACCUSED-APPELLANT.

*G.R. No. 105327. September 30, 1999*

Ponente: GONZAGA-REYES, J.

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**GONZAGA-REYES, J.:**

Before us is an appeal from the decision dated September 25, 1991 rendered by Branch 148 of the Regional Trial Court of Makati in Criminal Case No. 2174 finding the accused guilty of statutory rape and sentencing him to suffer the penalty of reclusion perpetua, and to pay the victim P30,000.00 as civil indemnity, P25,000.00 as moral damages and P10,000.00 as exemplary damages, and the cost of the suit.

On November 15, 1990 the alleged rape victim, assisted by her mother, filed a Complaint which states as follows:

> COMPLAINT
> The undersigned complainant accuses Juanito Quinagoran y Caluna of the crime of rape, committed as follows:
>
> That on or about the 14th day of November 1990, in the Municipality of Makati, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have carnal knowledge with the offended party who is below 12 years of age.
>
> Contrary to law.[1]

The accused is a 33 year old bachelor who works as a security guard, formerly at the CK Bagoong Factory in Malabon.[2] The victim Sarah Jane Tan is a seven year old first grader who lives with her parents in a rented house within a residential compound with several leased rooms and houses. The unit leased by Sarah Jane's parents does not have an indoor toilet.[3]

At about eight o'clock in the evening of November 14, 1990 Sarah Jane asked permission from her mother, Ketchy Tan, to go to the outhouse a few meters from their residential unit. It took a while for Sarah Jane to return so that her mother called her. At first she did not answer and the second time her mother called she answered and entered the house. As Sarah Jane stepped into the kitchen, coins fell from her shirt. Her mother asked her where those coins (about P1.80) came from but Sarah just glanced at her mother without giving a direct answer. Her mother asked her again and Sarah pointed to the house near the comfort room and stated that the man who was living near the comfort room gave her the coins. It was only when her mother repeatedly asked her what that man required of her in exchange for the coins that Sarah Jane narrated to her mother that in exchange for the coins the man kissed her cheeks, lips and breast, and then pulled down her panty, kissed her vagina; she was made to lie on the floor and the man pulled down his shorts and brief and then inserted his penis into her vagina and something sticky came out of his organ[4] The owner of the house told Ketchy Tan that the man living near the comfort room was Titoy Quinagoran. Ketchy and Sarah Jane went to the barangay hall that same evening to lodge a complaint.[5] Invited for questioning at the barangay hall, the appellant confronted Ketchy Tan and denied the accusation. Appellant was arrested later that evening .[6]

On December 6, 1990 the accused was arraigned and pleaded “not guilty” to the accusation .[7]

Living Case Report No. MG-90-882 dated November 15, 1990 was presented in evidence by the prosecution, it states:[8]

> FINDINGS
> GENITAL EXAMINATION:
>
> Pubic hair, no growth. Labia majora, slightly gaping. Labia minora, coaptated. Fourchette, tense. Vestibule, congested. Hymen, cresentic, thin, short and intact. Hymenal orifice, admits of a tube 0.8 cm., in diameter. Vaginal walls and rugosities, cannot be reached by the examining finger.
>
> CONCLUSIONS:
>
> 1.
>
> No evident sign of extragenital physical injuries noted on the body of the subject at the time of examination.
>
> 2.
>
> Hymen, intact and its orifice small (0.8 cm. In diameter) as to preclude complete penetration by an average sized adult male organ in full erection without producing genital injury.

Both the Senior Medico Legal Officer, Dr. Maximo L. Reyes, who supervised the examination and the medico-legal officer who actually examined Sarah Jane, Dr. Ronald R. Bandonil, testified in court.[9]

> "DR. RONALD R. BANDONIL
>
> Q:
>
> Would you tell us briefly the physical condition of the genitals of the victim when you first saw her?
>
> A:
>
> The victim was ambulatory or standing. She was walking. She is a child of about 4 feet 10 inches, fair complexion and short hair. And during my examination I noted that there was inflammation around the vestibular mucosa or it is the area surrounding the hymenal and vaginal opening. The inflammation was severe and it was reddish. Aside from that there was no other notable findings.
>
> Q:
>
> Will you please tell us where in this findings are those notable findings?
>
> A:
>
> In the report there is an entry stating the vestibule is congested and it is the most notable finding.
>
> Q:
>
> Will you please explain in layman’s terms, what do you mean by congested vestibule?
>
> A:
>
> A congested vestibule is a reddish inflamed area which surrounds the hymenal or vaginal opening. This inflamed area is severe and it is red and it is hot.”

Dr. Maximo L. Reyes, the Senior Medico Legal officer affirmed the findings of Dr. Bandonil that the only notable finding in Sarah Jane’s genitals is the severe inflammation of the vestibular mucosa or the area surrounding the


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vaginal opening. On cross-examination, Dr. Reyes discounted the possibility that such congestion was caused by a bump while the child was at play or during the child's daily bath or by scratching and stated that under such circumstances the labia or the posterior area of the vagina should also show some sign of reddening which is not found in Sarah's case; only the innermost part of her vagina near the hymenal opening is inflamed. Dr. Reyes stated that the reddening of Sarah's vestibular mucosa may have been caused by an erect penis pounding against it.[10]

The defense presented the appellant's sister-in-law, Anita Quinagoran. She stated that her residential unit is near the comfort room which Sarah Jane uses daily. She likewise stated that the appellant seldom came to her house and that he usually stayed in his place of work in Navotas. She testified that on the night of the alleged incident, the appellant was watching TV with other neighbors and no untoward incident happened that night until barangay officials came to the house and invited the accused for questioning about the rape of Sarah Jane. The accused came back to the house from the barangay hall and later in the evening four policemen came to arrest him.[11]

The accused-appellant denied the charges against him. He testified that he never saw that child before the confrontation at the barangay hall.[12] On cross-examination, the accused admitted that since October 7, 1990 he rented a room near the comfort room beside the unit occupied by his brother and sister-in-law, Anita Qunagoran.[13]

On September 25, 1991 the trial court rendered judgment as follows[14]:

> "Wherefore, premises considered, and finding the accused guilty beyond reasonable doubt of the crime of rape, defined and penalized under Art. 335 of the Revised Penal code, he is hereby sentenced to suffer the penalty of RECLUSION PERPETUA. As the accused is civilly liable, he is further ordered to pay the amount of P30,000.00 for and as indemnity; also the accused is hereby ordered to pay the sum of P25,000.00 for and as moral damages; and P10,000.00 for and as exemplary damages.
>
> With costs against the accused.
>
> SO ORDERED."

This appeal filed by the Public Attorney's Office in behalf of the accused raises the following assignments of error:

> I
>
> THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE HEARSAY TESTIMONY OF KETCHY TAN AND THE IMPROBABLE AND UNBELIEVABLE TESTIMONY OF SARAH JANE TAN
>
> II
> THE TRIAL COURT ERRED IN GIVING PROBATIVE VALUE TO THE MEDICAL FINDINGS OF THE GENITALIA OF SARAH JANE TAN CONSIDERING THAT:
>
> 1)
>
> The doctor (Dr. Maximo Reyes) who prepared and signed the Medico-Legal Report was not the one who actually examined the victim Sarah Jane Tan; and
>
> 2)
>
> The doctor (Dr. Ronald Bandonil) who actually examined Sarah Jane Tan did not yet possess the necessary expertise to do so, he, being, a mere trainee of the National Bureau of Investigation at the time of examination.

III

THE TRIAL COURT GRAVELY ERRED IN NOT ACQUITTING THE ACCUSED-APPELLANT ON THE GROUND THAT HIS GUILT WAS NOT PROVED BEYOND REASONABLE DOUBT.

The main contention of the appellant is that Sarah Jane's testimony is pure fabrication, laced with improbabilities and major inconsistencies, e. g., that at first Sarah Jane stated in court that she entered the house of the appellant and later in her testimony she stated that the accused pulled her into his house. The appellant argues that it is quite improbable for a child of tender years not to cry nor to try to free herself from an admittedly painful experience. Moreover, if indeed the appellant inserted his penis into Sarah Jane's vagina the medico legal findings would have been different, and Sarah Jane's hymen would not be intact. Finally, it is argued that the trial court erred in giving weight to the testimony of Sarah Jane's mother that her daughter was raped by the appellant on the ground that it is hearsay evidence. In the same vein the testimony of Dr. Maximo Reyes, the Medico-Legal officer, who signed the report should be held inadmissible because he did not actually examine Sarah Jane. Dr. Bandonil who actually examined Sarah does not qualify as an expert witness. He himself admitted in court that he was still under training at the NBI Medico-Legal Department at the time of Sarah's examination. On these premises, appellant claims, the medical findings, the victim's testimony and the testimony of the victim's mother are all infirm and cannot sustain the judgment of conviction.

The Solicitor-General argued in the appellee's brief that first, the trial court did not consider the testimony of the victim's mother as evidence of the rape but only of the circumstances prior to and subsequent to the rape of her daughter. The trial court also allowed the said testimony only as part of the narration of what Sarah reported to her mother. Secondly, Sarah's testimony is not at all improbable. She did not cry nor try to escape the painful experience because the accused threatened to cut her tongue or throw her into the river. Irresistible force is not required in rape much less, in this case where the victim is below 12 years old. And in the absence of any concrete showing to the contrary, the assessment of the trial court as to the credibility of the witnesses should be respected. The appellant's objection to the admission in evidence of the testimonies of Drs. Reyes and Bandonil is not material as a medical certificate is not a pre-requisite to prove the commission of the crime of rape. Finally, the appellee states that the evidence show the guilt of the accused beyond reasonable doubt and aside from the amount of indemnity which should be increased to P50,000.00.

The appeal is without merit.

Art. 335 of the Revised Penal Code states:[15]

> Art. 335. When and how rape is committed-Penalties.-Rape is committed by having carnal knowledge of a woman under any of the following circumstances:
>
> 1) By using force and 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 circumstances mentioned in the next two preceding paragraphs shall be present:
>
> The crime of rape shall be punished by reclusion perpetua.

The court is constrained to note that Sarah Jane's birth certificate was not presented in evidence to show that she is below twelve years old. We note however, that after having been duly apprised of the import of an oath, Sarah testified on direct and on cross examination that she is seven years old and that she is in Grade 1.[16] The defense did not contest Sarah's age before the trial court nor before this Court. The trial court which had first hand opportunity to see and observe Sarah in person allowed the trial to proceed without requiring further evidence of Sarah's age, which must have been readily apparent to both parties and to the trial court. The case before us falls under par. 3 of the above quoted provision.

The quoted provision is clear that mere sexual congress with a woman below twelve years of age consummates the crime of statutory rape regardless of her consent to the act or the lack of it. The law presumes that a woman of tender age does not possess discernment and is incapable of giving intelligent consent to the sexual act.[17] Thus, it was held that carnal knowledge of a child below twelve years old even if she is engaged in prostitution is still considered statutory rape.[18] The application of force and intimidation or the deprivation of reason of the victim becomes irrelevant. The absence of struggle or outcry of the victim or even her passive submission to the sexual act will not mitigate nor absolve the accused from liability.[19]

The arguments advanced by the appellant to assail the evidence for the prosecution are puerile. The cited inconsistencies and improbabilities in Sarah Jane's testimony have no material relevance to the guilt or innocence of the accused. Appellant's contentions in essence suggest Sarah Jane's apparent consent to the sexual act or the improbability of the commission of the crime, had she resisted. The common reaction of women of age when exposed to a traumatic experience such as rape cannot be expected of women below 12 years old.[20] Sarah Jane's own admission that the appellant did not restrain her during the sexual act and that she did not make an outcry[21] does not negate the commission thereof. Whether she entered the appellant's house out of curiosity or that the appellant pulled her into the house is immaterial in statutory rape. The same holds true about her failure to resist the appellant or to create an outburst for help. The rupture of the hymen is also not necessary for rape to be consummated. In most cases of statutory rape where total penetration of the victim's organ is improbable due to the smallness of the vaginal opening, it has been held that actual penetration of the victim's organ nor the rupture of the hymen is not required;[22] the mere entrance of the male organ into the lips of the female organ or labia of the pudendum consummates the crime of rape.[23]

Sarah Jane's testimony was properly given full weight and credence by the trial court. She narrated in court what the accused-appellant, whom she identified in court, required of her in exchange for the coins:

> Q: Will you please explain to us the occasion when you saw him?
> A: Dati ko na siyang nakikita.
>
> Q: Where did you see him?
> A: At our neighbors. He was watching T. V.
>
> Q: Do you know where this place is?
> A: Yes, ma'am.
>
> Q: Where is it?
> A: Beside the house near the toilet.
>
> Q: Whose toilet is that?
> A: JJ's toilet.
>
> Q: Is your house located near that toilet?
> A: No ma'am. It is farther.
>
> Q: Why did you see him in the toilet?
> A: Because I usually use that toilet
>
> Q: What did he do when you saw him at the comfort room or what was he doing?
>
> Atty. Manalo: She saw the accused watching TV at the house near the toilet.
>
> Court: Proceed from there.
>
> Atty. Ballera


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Q: On what other occasion did you see the accused?
A: Yes, ma'am

Q: Will you please explain to us those other occasions?
A: I usually saw him before.

Q: Did the accused ever talk to you?

Atty. Manalo: Leading, your honor.

Court: You may propound leading questions in order to elicit facts from the minor, that is allowed under the Rules.

Atty. Ballera.

Q: On November 14, 1990 did you see the accused?
A: Yes, ma'am.

Q: Where did you see him?
A: At their house.

Q: What did he do in his house?
A: He was lying.

Q: Who was his companion?
A: None.

Q: Why were you in his house? I will reform, your honor. Where were you when you saw him lying down in his house?
A: I was there at our house, it was only told by my mother.

Q: But did you see him lying in his house?

Atty. Manalo. Already answered your honor. The witness already said that she was told by her mother that the accused was lying in his house.

Court: The child is of tender years, I will allow that.

A: No ma'am.

Atty. Bellera.

Q: Did you ever have the chance to enter this house?
A: Yes, ma'am.

Q: What did you do?
A: He pulled me.

Q: And what did he do?
A: He pulled down his short and his brief and he also put down my panty.

Q: What else did he do if any?
A: He inserted his penis to my organ.

Q: How did you feel when he did that?
A: There was something sticky

Q: Did he say anything to you when he did this?

A: There was ma'am

Q: What did he say?
A: That I will not report the matter and he told me that I will go back again the following day and if ever I will report he will cut off my tongue.

Q: Did you go back the following day?
A: Yes, sir.

Q: What happened when you went back?
A: He again entered penetrated his penis to my organ.

Q: Aside from telling you not to tell your mother did he not tell you anything else?
A: No more.

Q: Did he give you anything?
A: He gave me something.

Q: What is it?
A: Money.

Q: How much is it?
A: At first P1.00, the second time, P2.00 and the third time P3.00 and the fourth is P1.80.

Q: When he first gave you P 1.00 what did he say?
A: That I will not report.

Q: What did he do when he gave you P1.00?
A: He was going to his house.

Q: When he gave you P2.00 did he tell you anything?
A: Yes, ma'am.

Q: What is it?
A: That I will not report or else I will be thrown away into the river.

Q: Why did he give you the money of P2.00?
A: In order to rape me.

Q: When he gave you the P3.00 what did he say to you?
A: That I will not report the matter or else I will be thrown away into the river.

Q: Did he do anything to you?
A: yes, sir.

Q: What is it?
A: He inserted his penis to my organ.

Q: When he gave you P1.80 did he also tell you anything?
A: Yes, ma'am.

Q: What is it?
A: That I will not report and if ever I will report the matter he will throw me into the river and he will scold me and asked me to return the following day.

Q: Did you go back the following day?
A: No, ma'am.

Q: Why?
A: Because I already reported the matter to my mother.[24]

On cross-examination, Sarah Jane stressed that she testified of her own knowledge and was not coached by anyone, as suggested by the defense counsel during her direct examination. She further testified as follows:

Atty. Manalo

Q: Why did you go to the police station on November 14, 1990 past 8:30 in the evening?

Atty. Ballera: The same objection (no basis), your honor.

Court: I will overrule the objection.

A: Because I told my mother in the evening of what that man did to me. Witness pointing to the accused.

Atty. Manalo

Q: Have you seen this man before November 14, 1990?
A: Yes, sir.

Q: How many times?
A: Several times.

Q: Where did you see him on those occasions?
A: We will always go outside that is why when I go to the comfort room I always see him.

Q: Now, do you know that to tell a lie is bad?
A: Yes, sir.

Q: And that the Lord will get mad at you?
A: Yes, sir.

Q: Why did you say yesterday when you were asked by your lawyer that on the evening particularly about 8:30 of November 14, 1990 you said that you were at your house, is it true that you were really in your house?
A: Yes sir when I was about to go to the CR the man pulled me inside his room.

Q: Were you told of what you are going to tell when somebody will ask you inside the court?

Atty. Ballera: Objection, your honor.

Court: Witness may answer

A: No, sir.[25]

A reading of the transcript of stenographic notes shows that Sarah Jane candidly testified of her own knowledge and her responses exhibited no sign of inhibition, nor of prior coaching or rehearsal. While she was able to identify the appellant in court as the man who threatened and abused her and subsequently gave her money (coins) she admitted that she does not know his name and that she heard his name only from the police.[26] She also admitted in court that she came back to the appellant's house four times and four times he performed the same sexual acts on her.[27] When Dr. Maximo Reyes, the Medico-Legal officer who signed the NBI Report testified for the prosecution and was asked to identify the child he examined, Sarah Jane guilelessly uttered loud enough for the court to hear that the man on the witness stand is not the one who examined her.[28] Such utterance gave the court the impression that Dr. Reyes is not qualified to affirm the contents of the medico-legal report so that the prosecution had to call to the witness stand Dr. Bandonil, the medico-legal officer who actually examined Sarah Jane. And most revealing of Sarah's childhood innocence is that when she was asked if she could read, she


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answered, “I only know how to write.”[29] Sarah’s behavior in court which under ordinary circumstances may have unduly weakened the evidence for the prosecution, only mirrored her honesty and spontaneity in this case. We reiterate the long-settled rule that when a child-victim claims that she has been raped , she says all that is necessary to show that the offense has been committed as long as her testimony passes the test of credibility, and such testimony is given full weight and credence and may be the sole basis of conviction of the accused.[30]

The other objections raised by the appellants are equally inconsequential. The testimony of Ketchy Tan was not considered by the trial court as evidence of the rape of her daughter but only as part of her narration that Sarah Jane confided to her what the appellant did to her. The admission made by Dr. Reyes that he was not the one who actually examined Sarah does not invalidate the Living Case Report presented in evidence by the prosecution. Dr. Reyes testified that he is the senior and supervising Medico-legal officer of the team who examined Sarah and that Dr. Bandonil examined Sarah in his presence and under his supervision. It was explained by Dr. Reyes that Dr. Bandonil’s signature does not appear on the report because as a matter of office procedure only the senior or supervising medico-legal officer signs it.[31] Nevertheless, as correctly contended by the appellee, a medical certificate is not indispensable to prove the commission of rape,[32] and whether or not the testimonies of Drs. Reyes and Bandonil or the Living Case Report presented by the prosecution will not be given weight and credence does not derogate from the finding of this Court, after a studied examination of the evidence on record, that the appellant is guilty beyond reasonable doubt of the crime charged.

The decision appealed from is affirmed including the imposition of the penalty of reclusion perpetua under Art. 335 of the Revised Penal Code except insofar as the pecuniary liabilities of the appellant awarded by the trial court to the victim. The awards for civil indemnity and the moral damages are hereby increased to P50,000.00 for each award or a total of P100,000.00.[33] The award for exemplary damages is deleted as no aggravating circumstance was pleaded nor proved to have attended the commission of the crime.[34]

WHEREFORE, the decision of the trial court finding the appellant guilty beyond reasonable doubt of statutory rape and the imposition of the penalty of reclusion perpetua is affirmed with the modifications that the awards for civil indemnity and moral damages are increased to P50,000.00 per award and the award for exemplary damages is deleted.

**SO ORDERED.**

Melo, (Chairman), Vitug, Panganiban and Purisima, JJ., concur.

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[1] OR, p. 1.

[2] Juanito Quinagoran, April 23, 1991, pp. 5-8.

[3] Sarah Jane Tan, Tsn., December 20, 1990, p. 3, 8.

[4] Ketchy Tan, Tsn., December 17, 1990, pp. 4-7.

[5] Ibid., pp. 8-9.

[6] Juanito Quinagoran, Tsn., April 29, 1991, pp. 5-13.

[7] p. 8, OR.

[8] Annex B, p. 6, OR.

[9] Dr. Bandonil, Tsn., February 25, 1999, pp. 8-12.


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[10] Dr. Maximo L. Reyes, Tsn., January 29, 1991, pp. 6-13;19-25.

[11] Anita Quinagoran, Tsn., April 22, 1990, pp. 5-35.

[12] Juanito Quinagoran, Tsn., April 29, 1991, pp. 4-13.

[13] Ibid., pp. 38-39.

[14] RTC Decision, p. 38, Rollo.

[15] The crime subject of this case was committed in 1990 or prior to the effectivity of RA 7659 on December 31, 1993 and RA 8353 on October 22, 1997.

[16] Sarah Jane Tan, Tsn., December 18, 1990, p. 4; Tsn., December 20, 1990, p. 3; Tsn., January 22, 1991, p. 14.

[17] People vs. Conchada, 88 SCRA 683; People vs. Henson, 270 SCRA 634;

[18] Aquino, Revised Penal Code, vol. III, 1997 ed., pp. 412-414, citing People vs. Perez, CA, 37 O.G. 947; People vs. Parido, 44 O.G. 2964.

[19] People vs. Garga, G.R. No. 109396-97, July 17, 1996.

[20] People vs. Tadulan, 272 SCRA 233.

[21] Sarah Jane Tan, Tsn., January 22, 1991, pp. 9-10.

[22] People vs. Gabayron, 278 SCRA 78; People vs. Escober 282 SCRA 500.

[23] People vs. Conchada, supra.,; People vs. Dela Peña, 276 SCRA 558.

[24] Sarah Jane Tan, Tsn., December 18, 1990, pp. 28-39.

[25] Sarah Jane Tan, Tsn., December 20, 1990, pp. 12-15.

[26] Ibid., p.8.

[27] Ibid., pp.16-20.

[28] Ibid., January 29, 1991, p. 9.

[29] Ibid., December 20, 1990, p. 4.

[30] People vs. Gabayron, 278 SCRA 78; People vs. Ayo, G.R. no. 123540, March 30, 1999.

[31] Reyes, Tsn., January 29, 1991, pp. 6-7,18.

[32] People vs. Julian, 270 SCRA 733.

[33] People vs. Bolatete, G.R. No. 127570, prom. February 25, 1999.

[34] Art. 2230. Civil Code; People vs. Mengote G. R. No. 130491, March 25, 1999.

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