

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ALEXANDER SOAN Y BELARMINO, ACCUSED-APPELLANT.**

G.R. No. 112087. April 21, 1995

Ponente: PUNO, J.

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PUNO, J.:

Appellant was charged with and convicted for the revolting act of raping his daughter's ten-year-old[1] playmate. He now comes before this Court seeking exculpation on grounds of reasonable doubt.

On February 10, 1992, private complainant MA. ESTHER U. TOQUILAR executed a Complaint[2] against appellant ALEXANDER BELARMINO SOAN, accusing him of rape. The preliminary investigation yielded probable cause against appellant, and he was accordingly charged in an Information, dated March 9, 1992, as follows:

"That on or about December 14, 1991, in the Municipality of Biñan, Province of Laguna, Republic of the Philippines and within the Jurisdiction of this Honorable Court, accused Alex Soan,[3] by means of threats and intimidation, motivated by lewd design, did then and there wilfully, unlawfully and feloniously have sexual intercourse with one Ma. Esther Toquilar y Urbe a girl ten (10) years of age, against her will and consent, to her damage and prejudice.

"CONTRARY TO LAW."[4]

The case was docketed as Crim. Case No. 7319-B, and raffled to the Regional Trial Court of San Pedro, Laguna, Branch 31.[5] Upon arraignment on June 8, 1992, appellant pleaded not guilty to the charge against him. Trial ensued.

Private complainant stood as sole eyewitness to the crime.[6] Her testimony was corroborated and supplemented by three other prosecution witnesses, namely: EMILY URBE TOQUILAR;[7] LITA BALAWANG CRONICO;[8] and DR. JOSE M. LOPEZ.[9] Together, they told the following story.

Private complainant lives with her parents and younger brother in a one-room apartment unit located at A. Bonifacio Street, Canlalay, Biñan, Laguna. Lita Cronico and her family occupied another unit of the same apartment. Next door from private complainant's residence is a house owned by the Alcantara family. In October, 1991, appellant and his family rented and moved into the first floor of the Alcantara's house. Appellant's rented portion sits adjacent to the Alcantaras' concrete comfort room which opens on to the street.[10]

Late in the morning of December 14, 1991, private complainant stood outside the door of their apartment. Her infant brother, who was left to her care by their parents who were both out working, lay sleeping in his crib inside their home. She heard appellant whistle and saw him motion for her to come near. She balked. He threw her dagger looks and waved his clenched fist in the air. Frightened by his actions, she reluctantly went to him.[11]

Appellant pulled private complainant into the Alcantaras' comfort room and bolted its galvanized-iron door.[12] Inside, he warned her that if she told on him, he would kill her.[13] He took off her shorts and panty, and hung

them on the lavatory's faucet. He temporarily let go of her, but she did not try to escape. She merely stood quietly by the door, with her stare fixed on the corner of the small room. In the background din, she heard him unzip his pants.[14]

Appellant, who was naked from the waist down, sat on the toilet bowl. He carried private complainant and mounted her on his lap, facing him.[15] Forcibly, he pierced her maidenhood with his sexual organ. Two minutes later,[16] he said he was finished and ordered her to stand up. She slipped off his lap. He pulled up his brief and pants, and she, too, put her lower garments back on. Before he allowed her to leave the comfort room, he warned her to keep mum about the entire episode on pain of her entire family's death.[17]

Lita Cronico saw private complainant walk out of the Alcantaras' comfort room followed, a couple of minutes later, by appellant. He told Lita that he had gone home to get his folding bed. Then, he left, Lita assumed, to go back to work at the Pacita Complex in San Pedro, Laguna.[18]

Her suspicion aroused, Lita called on private complainant who was already back in their apartment, taking care of her baby brother. Lita asked the girl what she did inside the Alcantaras' comfort room. Private complainant answered that she had gone there to look for something.[19] Dissatisfied with the explanation, Lita told appellant's wife, Vicky, what she saw. Lita, however, kept the information from private complainant's mother, Emily. Lita and Emily had earlier had an altercation and were not on speaking terms at that time.[20]

It was only on February 4, 1992 when Emily finally learned about the cruel fate her daughter suffered at the hands of appellant. On her way home from Alabang that evening, she was met by their neighbor, Mercedes Alcantara, who told her that Lita Cronico and Vicky Soan had a secret she should know about. Later, at Emily's home, Lita revealed to Emily what she saw two months earlier. Private complainant was called in and confronted with Lita's report. The child visibly trembled in fear and did not answer. Sensing that her daughter's silence was caused by the presence of Lita and Mercedes, Emily asked the two visitors to leave. Left alone with her mother, private complainant made a clean breast of her sad experience with appellant.[21]

The following day, Emily and her aunt, Fely San Jose, brought private complainant to Dr. Jose Lopez for physical and internal examination.[22] He found private complainant's genitalia to have a "superficial healed laceration of the hymen at 9:00 o'clock position." [23] No other significant findings were revealed by his examination.[24]

When questioned by the trial court judge, private complainant revealed that appellant had also sexually abused her inside the Alcantara's comfort room on the afternoon of December 13, 1991.

Appellant endeavored to shield himself from conviction with the defenses of denial and alibi.[25] He claimed that, on December 13 and 14, 1991, he was at work in his brother-in-law's repair shop located at the Pacita Complex in San Pedro, Laguna.[26] He found support in the testimonies of his brother-in-law and a co-repairman that he always worked six days a week (Mondays to Saturdays), from 9:00 a.m. to 7:00 p.m. during the period from November to December 23, 1991.[27]

Appellant's denial was echoed by his wife. She told the court that when she confronted private complainant with Lita's story, the child denied it and said it was untrue.[28] She likewise said that the story was later negated by appellant who brushed it off as the fruits of idle gossip.[29]

After trial, appellant was adjudged guilty beyond reasonable doubt of the crime of rape, and sentenced to reclusion perpetua. He was also ordered to pay private complainant Forty Thousand Pesos (P40,000.00) as civil indemnity, and costs.

Before this forum, appellant now argues that the trial court grievously erred in:

"I. XXX NOT CONSIDERING THE CONDUCT OF THE COMPLAINANT IMMEDIATELY BEFORE, DURING AND ESPECIALLY AFTER THE ALLEGED ACT OF RAPE IN ARRIVING AT ITS FINDINGS OF FACTS.

"II. XXX TAKING AND BELIEVING THE TESTIMONIES OF THE PROSECUTION WITNESSES ESPECIALLY THE COMPLAINANT ON THEIR (SIC) FACE VALUE ONLY AND FURTHER GRIEVOUSLY ERRED IN NOT APPRECIATING THE MATERIAL INCONSISTENCIES IN SAID TESTIMONIES TO ACQUIT THE APPELLANT ON REASONABLE DOUBT.

"III. XXX FINDING THAT RAPE WAS CONSUMMATED WHEN THE TESTIMONY AND THE SWORN STATEMENTS OF THE COMPLAINANT DID NOT SHOW THAT THE ACCUSED EVER PENETRATED HER AND THE ONLY TIME THAT THE COMPLAINANT STATED THAT SHE WAS PENETRATED WAS WHEN SHE WAS ASKED BY THE PUBLIC PROSECUTOR A VERY LEADING QUESTION PRACTICALLY PUTTING WHAT THE PROSECUTOR WANTED IN THE MOUTH OF THE COMPLAINANT.

"IV. XXX NOT EVALUATING THE MOTIVE OF LITA CRONICO, THE PROSECUTION WITNESS, WHO DESPITE HER REPEATED PRONOUNCEMENT THAT SHE SAW NOTHING UNUSUAL IN THE CONDUCT OR BEHAVIOR OF THE COMPLAINANT RIGHT AFTER SHE SAW HER LEFT (SIC) THE COMFORT ROOM TWO (2) MINUTES BEFORE THE APPELLANT DID, STILL PERSISTED IN SPREADING HER STORY FIRST TO THE WIFE OF THE APPELLANT, THEN TO MERCEDES ALCANTARA THEN TO THE MOTHER OF THE COMPLAINANT, TRIGGERING THE FILING OF THIS CRIMINAL COMPLAINT."

The appeal has no merit.

Appellant denounces as unnatural the following actions of private complainant before, during and after the charged rape: first, that it is "inconceivable that she would react as if she were hypnotized and obeyed whatever xxx appellant told (her) to do (on December 14, 1991) xxx considering that the appellant was not armed and the compound where they were living in was composed of several small apartments which were just a meter apart from each other;"[30] second, that while the charged rape was taking place, "she did nothing;"[31] third, that she was not crying or acting in an unusual manner when she left the comfort room; and fourth, that she denied any wrongdoing on appellant's part to both Lita Cronico and Victoria Soan after the rape allegedly occurred.

We are not persuaded.

It must be remembered that private complainant was no more than a mere child when her innocence was violently taken away. It would, thus, not be correct for us to apply the norms of behavior expected under the circumstances from mature women. As we held in the recent case of *People v. Ibay*, 233 SCRA 15 (1994):

"xxx Behavioral psychology teaches us that different people react to similar situations dissimilarly. Most women would resist a sexual assault with a wild struggle. Others become virtually catatonic because of the mental shock they experience. Yet, it can never be successfully argued that the latter are any less sexual victims than the former. As we held in an earlier case:

'xxx The fact that there was no struggle or outcry from the offended party is immaterial in the rape of a child below twelve years of age. There could still be a conviction despite the absence of force and intimidation because law presumes that the victim, on account of her tender age, does not and cannot have a will of her own.'

"xxx It is not unlikely that a girl of such tender age would be intimidated into silence by the mildest threat against her life. A young girl, unlike a mature woman, cannot be expected to have the courage and intelligence to immediately report a sexual assault committed against her especially when a death threat hangs over her

head. To her simple, unsophisticated mind, appellant's threat was not an idle one xxx."

In the case at bench, private complainant's action and reaction were consistent with reason. Her complete obedience to appellant's commands, her lack of struggle against him, and the studied silence she kept about her terrible ordeal were all compelled by her genuine fear of appellant who needed no weapon to instill it in her. In her mind, she was convinced of the potential yet real danger he posed to her and her family.

Appellant next argues that the trial court erred in finding the prosecution witnesses, especially private complainant, credible. He insists that their testimonies were marred by material inconsistencies, hence, he deserves acquittal.

We do not agree.

Firstly, we cannot patronize appellant's posturing that it was physically impossible for the rape to be committed inside the Alcantara's comfort room considering its measurements and dimensions. As aptly observed by the Office of the Solicitor General in its brief:

"Before the trial court rendered its decision wherein it found appellant guilty of the crime of rape, it conducted an ocular inspection of the vicinity where the incident took place xxx.

"If sexual intercourse between appellant and (private complainant) Esther were impossible in the comfort room in question, the trial court would have expressly stated so and specifically ruled on the matter especially in light of the defense counsel's determined effort to establish that the intercourse could not have taken place in such cramped quarters xxx. During the direct examination of Vicky (Victoria) Soan, the trial court made it of record that during the ocular inspection, measurements were taken of the comfort room and the toilet bowl xxx.

"Besides, (private complainant) Esther categorically testified that appellant had intercourse with her in a sitting position no matter how awkward it was. According to (private complainant) Esther, appellant placed her on his lap and inserted his penis into her vagina xxx. Contrary to appellant's pretensions, sexual intercourse is possible if a woman sat on a man's lap facing him. For reasons known to him alone, appellant chose this position in having intercourse with Esther in the comfort room with the slanted ceiling. No matter how, his lust and devilish mind saw him through in the position he assumed with the child.

"Furthermore, the comfort room was not as small and cramped as appellant would make it to be. It was agreed upon during (private complainant) Esther's direct examination that the comfort room was three and a half feet wide and three and a half to four feet long xxx.

"It was also agreed upon at the time (private complainant) Esther was cross-examined that the walls of the comfort room were more or less seven feet high xxx." [32] (Italics supplied).

Additionally, we note that, contrary to appellant's contention, private complainant, due to fear, did not put up a struggle while she was on his lap. Thus, it could not have been "very hard if not impossible for them to reach coitus position" [33] in the manner reported by private complainant.

Secondly, we cannot adopt appellant's suggestion that we dismiss private complainant as an incredible witness because her testimony contradicted her Sinumpaang Salaysay, and is inconsistent with the natural course of things.

The alleged discrepancies between private complainant's testimony and her affidavit, dated February 10, 1992, [34] cannot dent her credibility. As we have held before:

"The general rule has always been that discrepancies between the statements of the affiant in his affidavit and those made by him on the witness stand do not necessarily discredit him since ex parte affidavits are generally

incomplete. Affidavits are generally subordinated in importance to open Court declarations because they are oftentimes executed when an affiant's mental facilities are not in such a state as to afford him a fair opportunity of narrating in full the incident which has transpired. Further, affidavits are not complete reproductions of what the declarant has in mind because they are generally prepared by the administering officer and the affiant simply signs them after the same have been read to them." [35]

Neither is private complainant's narration of how she was raped so far removed from the natural course of things as to render her testimony unbelievable. Appellant makes too much of the fact that private complainant, though able to remember even the small details surrounding her assault, failed to mention anything about the pain she felt when appellant imposed his manhood into her. Because of her tender age and the sensitivity of the matter she had to testify on, she understandably needed to be guided carefully. The transcript shows that she was never asked -- even by defense counsel -- about the pain or discomfort she experienced during the forced coitus. It is, thus, not unexpected that she did not say anything on the matter. Besides, it should not be considered unusual for a person under great stress, as private complainant was at the moment she was ravaged by appellant, to forget certain details of the traumatic experience even as others are forever registered in her memory.

Clearly, there is no need to stray from the established rule that findings of fact of trial courts, particularly with respect to the credibility of witnesses who personally appeared and testified before them, must be respected on appeal. The inconsistencies and improbabilities in the testimonies of the prosecution witnesses which appellant adverts to do not exist in the most part. And, where they do, such imperfections touch only those facts which are immaterial to the commission of statutory rape.

Appellant also argues that the prosecution failed to prove that appellant was able to insert his penis into private complainant's vagina.

Again, we cannot sustain appellant.

It is well-settled that complete penetration of the female organ is not necessary to constitute rape.[36] What is essential is that there be penetration of the sexual organ, no matter how slight.[37] In the case at bench, private complainant testified thus:

"xxx xxx xxx

"FISCAL BALINADO: While you were there on the lap of the accused after carrying you, what happened next?

"a. He is forcing to insert his private organ to my private part, sir.

"FISCAL BALINADO: At this juncture, Your Honor, I would like to make it of record that the young girl stoop down in tears.

"ATTY. NAOE: On the other hand, Your Honor, it appears that the Witness is ... contrary to the manifestation of the fiscal....

"FISCAL BALINADO: What? What is contrary to my manifestation? She is crying, there is even a sound of cry.

"COURT: Are you still in a position to continue with your testimony?

"FISCAL BALINADO: At this juncture, after almost more than a minute, the young girl still continue (sic) crying.

"INTERPRETER: Your Honor, the witness made a gesture that she cannot continue with her testimony.

"COURT: In view of the manifestation of private complainant Esther Toquilar that she could no longer continue with her direct testimony, let the hearing today be continued on July 20, 1992 at 8:30 a.m., as previously scheduled. Likewise, this case is set on July 27 and August 5, 1992;"[38] (Italics supplied.)

and;

"xxx xxx xxx"

"FISCAL: You stated during the last hearing that while you were on the lap of the accused, he tried to insert his private organ to you private part. Do you remember that answer and question?

"a. Yes, sir.

"q. Was he able to insert his private organ to your private organ?

"a. Yes, sir.

"q. How long did he stay there in that position?

"a. Maybe about two (2) minutes, sir.

"xxx xxx xxx"[39] (Italics supplied.)

Furthermore, the results of private complainant's physical examination support her testimony on the matter. Her sexual organ bore a superficial healed laceration on the hymen.

Appellant's fourth assigned error deserves the scantest consideration. Lita Cronico's motive in telling private complainant's mother what she saw on December 14, 1991 does not have any bearing on appellant's guilt or innocence in the case at bench.

Independently, of the errors raised in this appeal, we find that appellant was correctly convicted of the crime of statutory rape, an offense the gravamen of which is the carnal knowledge of a woman below twelve years of age.[40] In the case at bench, private complainant positively identified appellant as the one who forcibly inserted his penis into her vagina on December 14, 1991, when she was only ten-and-a-half (10½) years old. Nothing more is needed to support appellant's conviction, and nothing in the records of the case injects any reasonable doubt necessary for its reversal. Appellant cannot find solace in his inherently weak defense of alibi for, try as they may, his witnesses were unable to concretely place him away from the scene of the crime at the particular time it occurred. That he had gone to work on December 14, 1991 does not erode the strength of the prosecution's case. By his own admission, the distance between his place of work and home could be covered in as short as eighteen (18) minutes.[41] Clearly, it would not have been an impossible task on his part to dash home from work in the late morning of December 14, 1991, hurriedly commit the atrocity against private complainant, and then slip back to work unnoticed by his busy companions.

For private complainant Esther Toquilar, there is no more turning back to the care-free days of childhood innocence. We hold that is enough reason to raise the award of damages in her favor to Fifty Thousand Pesos (P50,000.00), in accord with decided cases.

IN VIEW WHEREOF, the instant appeal is DISMISSED, and the conviction of appellant ALEXANDER BELARMINO SOAN is AFFIRMED. The Decision, dated March 1, 1993, of the Regional Trial Court of San Pedro, Laguna, Branch 31 in Crim. Case No. 7319-B is MODIFIED by increasing the award of damages to Fifty Thousand Pesos (P50,000.00). Cost against appellant.

SO ORDERED.

Narvasa, C.J., (Chairman), Regalado, and Mendoza, JJ., concur.

[1] It is not disputed that she was born on June 8, 1981.

[2] Original Records, p. 5.

[3] The Information was later amended by changing accused name from "Alex Soan" to "Alexander Soan." (See TSN of July 15, 1992, p. 5.)

[4] Original Records, p. 1; Rollo, p. 9.

[5] Presided over by Judge Stella Cabuco-Andres.

[6] Private complainant Esther "Cindy" Uribe Toquilar testified on July 15, July 27, August 11, and August 26, 1992. She was then eleven (11) years old.

[7] Private complainant's mother, she testified on September 2, 1992.

[8] Testified on September 9, 1992. She also testified as a hostile witness for the defense on January 5, 1993.

[9] The doctor who conducted a physical examination of private complainant. He testified on July 27, 1992.

[10] See TSN of July 26, 1992, pp. 11-15.

[11] TSN of July 15, 1992, p. 7.

[12] Ibid.

[13] Id., at p. 8.

[14] Id., at p. 12.

[15] Id., at p. 9.

[16] Id., at p. 12; TSN of July 27, 1992, p. 3.

[17] Ibid., at pp. 4, 5.

[18] TSN of January 5, 1993, p. 15.

[19] TSN of September 9, 1992, pp. 5-7.

[20] Ibid., at pp. 7-9.

[21] TSN of September 2, 1992, pp. 6-8.

[22] Ibid., at p. 9.

[23] Exh. "C", p. 6, Original Records.

[24] Ibid.

[25] Others who testified in his behalf are: his wife, VICTORIA USON SOAN; his brother-in-law, RONELIO USON AQUINO; and his co-worker, EUGENIO SORIANO MOSCOSA.

[26] See TSN of October 5, 1992, pp. 3-12. See also TSN of January 13, 1993, pp. 18-20.

[27] See TSN of October 12, 1992, pp. 2-13. See also TSN of January 13, 1993, pp. 3-14.

[28] TSN of January 5, 1993, p. 21.

[29] Ibid., at p. 23.

[30] Appellant's Brief, p. 13; Rollo, p. 63.

[31] Ibid.

[32] Brief for Plaintiff-Appellee, pp. 17-21; Rollo, pp. 132-136.

[33] Appellant's Brief, p. 20; Rollo, p. 70.

[34] Original Records, pp. 7 and 7-A.

[35] *People v. Sarellana*, 233 SCRA 31 (1994), citing *People v. Ponferada*, 220 SCRA 46 (1993). See *People v. Dumpe*, 183 SCRA 647 (1990). See also *People v. Gonzales*, 99 SCRA 697 (1980).

[36] See *People v. Castro*, 196 SCRA 679 (1991); *People v. Bacalzo*, 195 SCRA 557 (1991).

[37] See *People v. Castillo*, 197 SCRA 657 (1991); *People v. Genores*, 193 SCRA 263 (1991).

[38] TSN of July 15, 1992, pp. 12-13.

[39] TSN of July 27, 1992, pp. 2-3.

[40] See *People v. Espino*, 230 SCRA 788 (1994).

[41] TSN of October 5, 1992, p. 12.

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