

## PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GREGORIO CURA Y DALUSONG, ACCUSED-APPELLANT.

*G.R. No. 112529. January 18, 1995*

Ponente: REGALADO, J.

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### REGALADO, J.:

Herein accused-appellant Gregorio Cura seeks the reversal of the judgment rendered on August 10, 1993 by Branch 171, Regional Trial Court of Valenzuela, Metro Manila in Criminal Case No. 1740-V-92, wherein he was found guilty beyond reasonable doubt of the crime of rape and sentenced to suffer the penalty of reclusion perpetua, to indemnify the offended party in the amount of P20,000.00, and to pay the costs. [1]

The prosecution of said case was commenced by a “Criminal Complaint” filed on September 14, 1992 against appellant by the offended party, in the accusatory portion whereof she alleges:

“That on or about the 11[th] day of September, 1992 in Valenzuela, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a knife, by means of force and intimidation, did then and there, wilfully, unlawfully and feloniously lie with and have sexual intercourse with me, JOVELYN ALCANTARA Y VIRAY, 10 years old, against my will and without my consent.” [2]

When arraigned, the accused pleaded not guilty and, during the trial, the prosecution presented its evidence, recapitulated by the trial court as follows:

“The Prosecution called the following witnesses and submitted the documentary evidence to wit: Exhibit A- Medical Certificate dated September 12, 1992 issued by Dra. P. dela Paz Toreja of the Valenzuela District Hospital to patient Victoria Alcantara; x x x Exhibit B- Sworn Statement of victim Jovelyn Alcantara given to PO3 Angeles I. Miranda on September 12, 1992; x x x Exhibit C- Sworn Statement of victim Jovelyn Alcantara given to PO3 Josefino Canary, Jr. on September 12, 1992; x x x Exhibit D - Living Case No. MG 92-783 of the NBI; Exhibit E - Sinumpaang Salaysay dated September 12, 1992 of SPO4 Jose del Rosario.” [3]

from which evidence we culled the factual antecedents as submitted by the prosecution and hereunder summarized, with the testimonies of complainant and her mother set out in more detail.

At around 11:00 P.M. of September 11, 1992, three household members, namely, Victoria Alcantara, mother of the victim; Jovelyn Alcantara, the minor victim; and Gregorio Cura, husband of the victim's mother or the child's stepfather, were sleeping in a rented one-room house at 387 Tangke Street, Valenzuela, Metro Manila. All of them slept in one common area, so that, in relation to each other, Jovelyn was sleeping on the right side of her mother, while appellant was on the left side of Victoria. [4] It is admitted by the parties that appellant is the victim's stepfather, since Jovelyn is Victoria's daughter by another man. [5] It was also established that Jovelyn was born on July 9, 1982 so that, at the time of the incident, she was only ten years old.

While she was in deep slumber, Jovelyn was awakened when she felt the weight of the half-naked body of appellant Cura on top of her own almost nude body. She noticed that her shorts and panty had been pulled down

and that he was poking a knife at her neck [6] while, at the same time, he was inserting his sex organ into her vagina. Appellant was holding the knife with his right hand and using his left hand in order to completely disrobe her. [7] After appellant had thus undressed her, he inserted his penis little by little into her private part, using a finger of his right hand at the same time. Momentarily, appellant laid aside the knife near her head. She tried to grab the knife but appellant leaned forward and reached out for the knife ahead of her, after which he attempted to box her. [8]

When he had inserted his organ, he started kissing her cheek and neck and then he proceeded to kiss her private part while he was in a kneeling position. His right hand was then holding both hands of the victim which were under her back. [9] Jovelyn felt pain when appellant inserted his middle finger into her vagina. [10] She noticed that the kitchen knife held by appellant was around one foot in length, including its handle, with a width of about 3 inches. [11] Jovelyn was able to see the knife, because the room was not very dark as the two plywood windows were partly open. She could not resist nor could she shout for fear that she might be stabbed. She tried to wake up her mother, but to no avail as her mother remained asleep. [12]

While appellant was in the process of the sexual assault, Victoria Alcantara awoke and saw appellant on top of Jovelyn who was lying on her back, [13] while his private part was inserted in her genitals. His shorts were pulled down, while her daughter's T-shirt was lifted up to her shoulders. [14] She observed that her husband was awake while her daughter was in a state of shock ("nakatulala"). The accused immediately stood up, but Victoria kicked him several times, [15] so that the knife dropped from his grip. [16] Victoria picked up the knife but appellant mauled her. [17]

After the incident, Victoria and Jovelyn proceeded to the residence of Victoria's elder sister at Balut, Tondo, Manila. The following morning, they reported the incident to her sister and a complaint was filed against appellant. They executed and signed a statement at the police headquarters. [18] Victoria and Jovelyn later went back to their residence, accompanied by the mother of appellant, for the purpose of retrieving their personal belongings. [19] However, they failed to get the same, since appellant refused to give them. Instead, Victoria was manhandled by appellant, so they ran away but appellant chased them and when he was able to catch up with them, he again maltreated Victoria. [20] Later, on September 14, 1992, Jovelyn was brought to the National Bureau of Investigation (NBI) for physical and medical examination. [21]

The defense presented a different account of the incident, with appellant denying the commission of rape and arguing that the same was impossible. According to him, Victoria Alcantara is his legal wife, hence he is not just her common-law husband. He claimed that on the day in question, he reported for work at the refrigeration and air conditioning shop where he was employed, and went home at 6:30 P.M. Upon arrival, he prepared their supper and after eating, he read the Bible. Later, when Jovelyn was already asleep, he made love to Victoria in the same room where Jovelyn was sleeping. Then he rested and continued reading the Bible, but a picture taken of him with another girl fell from the book and was seen by Victoria.

According to him, Victoria went berserk when he told her that the girl in the picture is more beautiful than she, and Victoria tore the picture. She then called him a "pindeho," so he roughed her up. [22] Right after the incident, Jovelyn and Victoria repaired to the house of appellant's mother, Luisa Cura, whose house was only two houses away from their residence. The latter was informed of the quarrel between her son and her daughter-in-law, [23] so Victoria and Jovelyn were invited by Luisa to pass the night at the nearby house of her daughter, Rosalyn. While they were there, Victoria complained in the presence of Jaime Umali, Rosalyn Umali, and another daughter-in-law of Luisa that she had been mauled by appellant. [24]

When Luisa was on her way out of Rosalyn's house, she met her son near the door when he peeped at his wife and

daughter inside, and appellant told her that he and his wife quarreled over a photograph. [25] Luisa further testified that the following morning, she accompanied Victoria and Jovelyn to their house to retrieve their personal belongings, [26] but an exchange of harsh words took place between her son and Victoria. [27]

The defense presented a police officer, SPO4 Jose del Rosario, who narrated that in the morning of September 12, 1992, he was called by the landlord of appellant to pacify a family quarrel. He admonished Victoria to refrain from throwing stones and other things which were likely to cause damage to the landlord's property. During that incident, he did not observe any unusual reaction on the part of Victoria. [28]

In his brief, appellant contends that the trial court gravely erred (1) in giving credence to the testimonies of Victoria Alcantara and Jovelyn Alcantara who were obviously lying, (2) in finding that Jovelyn was raped, and (3) in convicting appellant when his guilt was not proved beyond reasonable doubt. [29]

The defense denies that appellant committed the felony charged and argues that complainant's mother repeatedly lied because she was motivated by intense jealousy and a desire for revenge. It contended that the child was not actually raped but was coached and rehearsed to impute to appellant the commission of the alleged rape. Appellant asserts that the medical finding of the NBI doctor that there was an "old healed lacerated wound" in complainant's hymen belies the fact that rape was committed three days prior to the physical examination conducted on complainant.

Statutory rape is a crime committed against a female below twelve years of age, punishable under the third paragraph of Article 335, Revised Penal Code. In the case at bar, appellant's denial of the charge is prefaced by an assertion that he treated the victim as his own child and that, in truth, he was even giving her financial support. Aside from the fact that it is clearly non sequitur, that denial is inherently a weak defense and cannot prevail over positive testimonies. [30]

Appellant posits that it was impossible for him to commit the crime as Victoria, complainant's mother, was sleeping beside the victim. Contrary to this assertion, the Court has held a number of times that rape can be committed even in places where people congregate, in parks along the roadside, within school premises, inside a house where there are other occupants, and even in the same room where other members of the family are also sleeping. [31] It is not impossible nor incredible for the members of the victim's family to be in deep slumber and not be awakened while the sexual assault on her was being committed. Lust is no respecter of time and place. [32]

Appellant capitalizes on the absence of fresh lacerated wounds on complainant's hymen. He argues that the victim did not suffer any genital injuries and this could not be so if the victim was truly abused. This asseveration is not only overly sweeping but it overlooks settled doctrines based on the judicial experience of this Court.

In the crime of rape, complete or full penetration of the complainant's private part is not necessary. Neither is the rupture of the hymen essential. What is fundamental is that the entrance, or at least the introduction of the male organ into the labia of the pudendum, is proved. The mere introduction of the male organ into the labia majora of the victim's genitalia, and not the full penetration of the complainant's private part, consummates the crime. [33]

At most, the absence of any new laceration in the girl's hymenal opening merely shows that there was no force committed on her by appellant when he ravished her. It does not, however, negate the commission of the crime of rape against the child. Appellant was charged with statutory rape, which does not require force or intimidation as an element of the offense. [34] The absence of extensive abrasions on the vaginal wall does not rule out rape, as the slightest penetration is enough. Absence of external signs of physical injuries does not negate rape. [35]

The fact that there was no deep penetration of the victim's vagina and that her hymen is still intact does not negate the commission of rape. If the victim is a child, rape can be done without penetration. Without penetration, the

male organ is only within the lips of the female organ, but there is interlabia or sexual intercourse with little, none or full penetration. [36]

We have heretofore held that lack of fresh lacerated wounds does not negative sexual intercourse. Moreover, the fact that hymenal lacerations were found to be “healed round edge” and no spermatozoa was found do not necessarily negate rape. [37] A freshly broken hymen is not an essential element of rape. [38] For that matter, in crimes against chastity, the medical examination of the victim is not an indispensable element for the successful prosecution of the crime, as her testimony alone, if credible, is sufficient to convict the accused thereof. [39]

Appellant cannot exculpate himself by riding on the alleged inconsistencies in the testimonies of private complainant and her mother. Errorless testimonies cannot be expected especially when a witness is recounting details of a harrowing experience. Private complainant's testimony deserves the badge of credence as it is free from substantial self-contradictions. No improper motive can be ascribed to her other than a sincere desire to tell the truth and to tell it all. [40]

Appellant derides Victoria for having allegedly lied on certain aspects in her testimony and submits that her entire declaration in court should be expunged under the doctrine of *falsus in uno, falsus in omnibus*. This maxim, however, deals only with the weight of evidence and is not a positive rule of law, and the same is not an inflexible one of universal application. [41] The modern trend of jurisprudence is that the testimony of a witness may be believed in part and disbelieved in part, depending upon the corroborative evidence and the probabilities and improbabilities of the case. [42] That is the present rule in the Philippines, [43] and appellant cannot, on the mere account that complainant's mother may have erred on certain facts, thereby discredit such portions of her testimony as are otherwise credible.

We cannot envisage any evil motive behind the filing of rape charges against appellant under the circumstances of this case. It is inconceivable that a mother of a minor child would fabricate a rape charge and then subject her daughter to physical examination and the embarrassment of a public trial. A mother would not sacrifice her daughter's honor to give vent to a grudge knowing that such an experience would damage her daughter's psyche and tar her for life. [44] The alleged motive of the victim's mother in fabricating the charges against appellant is not convincing and is at best speculative. Indeed, it is unthinkable for a mother to concoct a horrible tale that her daughter was raped, in her desire to exact vengeance and, in so doing, expose her daughter and her family to the humiliation and embarrassment of a public trial. [45]

Conclusions as to the credibility of witnesses in rape cases lie heavily on the sound judgment of the trial court which is generally accorded great weight and respect, if not conclusive effect. Accordingly, in the appreciation of the evidence, the appellate court accords due deference to the trial court's views on who should be given credence, since the latter is in a better position to decide the question of credibility of witnesses, considering its opportunity to observe their demeanor, as well as their deportment and manner of testifying during the trial. Its findings on the credibility of witnesses carry great weight and respect and will be sustained by the appellate court unless the trial court overlooked, misunderstood or misapplied the facts or circumstances of weight and substance which will alter the assailed decision or affect the result of the case. [46] We do not find any arbitrary oversight or omission by the court below.

The defense further invokes the testimony of SPO4 Jose del Rosario that there was no unusual reaction on the part of the victim when he visited their house to admonish Victoria Alcantara to refrain from further throwing things against the window to avoid damage to the owner's property. Said observation made by the police officer are conjectural and argumentative, primarily because there was no chance for him to verify or confirm his observations. In fact, he did not further delve into the matter since he was on duty in a certain operation. There

was no further inquiry made by him as to the reason for the wife's outrage or why the spouses were quarreling, [47] assuming arguendo that his narration of the supposed incident is true.

After a thorough review and meticulous assessment of the evidence on record, including the victim's sworn statement [48] wherein she stated that it was the fourth time she was raped by appellant, and considering the factual findings on which the impugned decision is based, we do not decry any cogent reason to depart from the holding of the lower court.

WHEREFORE, on the foregoing premises, the judgment of the court a quo is hereby **AFFIRMED**, with the **MODIFICATION** that the award of civil indemnity in favor of complainant is increased to P40,000.00, in view of the greater perversity shown by accused-appellant Gregorio Cura y Dalusong in his mode of commission of the offense and the tender age of his victim.

**SO ORDERED.**

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

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[1] Rollo, 83. Judge Adriano R. Osorio penned the decision.

[2] Ibid., 6.

[3] Ibid., 74.

[4] TSN, December 11, 1992, 4.

[5] Ibid., October 19, 1992, 12; December 7, 1992, 4.

[6] Ibid., October 30, 1992, 9-12.

[7] Ibid., December 21, 1992, 8.

[8] Ibid., id., 14-19.

[9] Ibid., id., 10-11.

[10] Ibid., December 11, 1992, 6-7.

[11] Ibid., December 21, 1992, 6.

[12] Ibid., December 11, 1992, 6.

[13] Ibid., December 7, 1992, 9.

[14] Ibid., October 19, 1992, 6.

[15] Ibid., December 7, 1992, 9.

[16] Ibid., December 11, 1992, 17.

[17] Ibid., October 19, 1992, 6, 15.

[18] Ibid., October 19, 1992, 7-10.

[19] Ibid., October 30, 1992, 13-14.

[20] Ibid., id., 14-16.

- [21] Ibid., October 19, 1992, 11-12.
- [22] Ibid., June 9, 1993, 12.
- [23] Ibid., March 26, 1993, 6-9.
- [24] Ibid., May 19, 1993, 5; June 9, 1993, 14.
- [25] Ibid., March 26, 1993, 16-19.
- [26] Ibid., May 19, 1993, 6.
- [27] Ibid., March 6, 1993, 23-24.
- [28] Ibid., May 12, 1993, 3-6.
- [29] Rollo, 54.
- [30] People vs. Ylarde, G.R. No. 100521, July 5, 1993, 224 SCRA 405.
- [31] People vs. Villorente, et al., G.R. No. 100198, July 1, 1992, 210 SCRA 647.
- [32] People vs. Dabon, G.R. No. 102004, December 16, 1992, 216 SCRA 656; People vs. Codilla, et al., G.R. Nos. 100720--23, June 30, 1993, 224 SCRA 104.
- [33] People vs. Ylarde, supra.
- [34] People vs. Espino, G.R. No. 104948, March 7, 1994, 230 SCRA 788.
- [35] People vs. Arnan, G.R. No. 72608, June 30, 1993, 224 SCRA 37.
- [36] People vs. Palicte, G.R. No. 101088, January 27, 1994, 229 SCRA 543.
- [37] People vs. Santiago, G.R. No. 46132, May 28, 1991, 197 SCRA 556.
- [38] People vs. Madridano, et al., G.R. No. 93435, October 22, 1993, 227 SCRA 363.
- [39] People vs. Abordo, et al., G.R. No. 101187, July 23, 1993, 224 SCRA 725; People vs. Dio, G.R. No. 106493, September 8, 1993, 226 SCRA 176; People vs. Arce, G.R. Nos. 101833-34, October 26, 1993, 227 SCRA 406;
- [40] People vs. Ibay, G.R. No. 101631, June 8, 1994.
- [41] People vs. Pacis, et al., L-32957-58, July 25, 1984, 130 SCRA 540.
- [42] People vs. Refuerzo, 82 Phil. 576 (1949).
- [43] People vs. Malillos, L-26568, July 29, 1968, 24 SCRA 133; People vs. Surban, et al., L-37518-19, June 29, 1983, 123 SCRA 218; People vs. Baao, G.R. No. 68574, July 7, 1986, 142 SCRA 476.
- [44] People vs. Yambao, G.R. No. 77778, February 6, 1991, 193 SCRA 571.
- [45] People vs. Liquiran, et al., G.R. Nos. 105693-96, November 19, 1993, 228 SCRA 62.
- [46] People vs. Codilla, supra; People vs. Lucas, G.R. Nos. 108172-73, May 25, 1994.
- [47] TSN, May 12, 1993, 6.
- [48] Sinumpaang Salaysay, Original Record, 4.

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