

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BEN GAJO, ACCUSED-APPELLANT.*G.R. No. 127749. March 09, 2000*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-127749/>**PER CURIAM:**

She is fondly called Den-den. At five (5) Den-den, whose full name is Precious Castigador, was slim, active and playful. Obedient, she could be depended upon by her parents to do errands like buying things from the nearby sari-sari store.[1] A Kinder I/Day Care pupil at Matag-ub Day Care Center in Janiuary, Iloilo, she found respite from school by playing with the other kids in her neighborhood. On the 24th of October 1995, however, as fate would have it, a person she and her family trusted so much stealthily snatched from her her pristine innocence. She was raped by her Tito Boy, accused-appellant Ben Gajo.

Den-den was playing with her cousins that afternoon of 24 October 1995 near the house of accused-appellant Ben Gajo who is her maternal uncle, being a first cousin of her mother, Nelida Castigador. They lived close to each other in Matag-ub, Janiuary, Iloilo. At around 2:30 o'clock in the afternoon, Gajo called for Den-den who readily went up to his house and into his room. Upon closing the door, accused-appellant immediately removed Den-den's panty, licked her genitalia and inserted his finger into the girl's vagina. Accused undressed, removed his brief, inserted his penis into her vagina and made a push-and-pull movement. Suddenly, the voice of Den-den's father, Virgilio Castigador, was heard calling her and her brother to go home. Gajo told her to put on her panty and let her go. Den-den ran home together with her small brother who was playing with the other kids.[2]

Virgilio Castigador, the father of the victim, was rinsing the blankets his wife Nelida, an elementary school teacher in Tuyongan, Calinog, Iloilo,[3] left when the incident happened.[4] That afternoon of 24 October 1995 Virgilio called for his two (2) kids, Den-den and Bernie Dame, for their siesta. While he was fixing something, he noticed Den-den perspiring. He turned her over to wipe her back and he saw that her panty was stained with blood. Shocked and unsure of what to do, Virgilio went to see his father-in-law and told him about it.[5] They asked Den-den what happened and when she told them what her Tito Boy had done to her, Virgilio summoned his wife to come home immediately. When Nelida arrived Virgilio went to the Janiuary Police Station to report the incident while she and Den-den went to the Janiuary District Hospital.[6]

At the Janiuary District Hospital, Dr. Aurora Edabelle Ballera, Medico-Legal Officer IV, examined Precious Castigador at around 7:25 o'clock in the evening of 24 October 1995. Precious complained of pain in her vagina.[7] It was discovered that she had fresh hymenal lacerations at the 6 and 9 o'clock positions, i.e., the lacerations were recent since there was still bleeding with blood clots.[8] The vaginal smear yielded red blood cells and squamous cells due to the lacerations but negative for spermatozoa.[9] According to Dr. Ballera, it was possible that the alleged rape happened at around 2:00 o'clock in the afternoon or within the twenty-four (24) hour period.[10] A hard erect penis could have caused the lacerations although handling and touching the hymen with a finger or the insertion of a stick or instrument could also bring about the lacerations.[11]

Acting on the complaint of the victim's father, the Provincial Prosecutor of Iloilo filed an Information for rape against Ben Gajo for "having carnal knowledge of Precious Castigador, a minor who was then only five (5) years

old."[12]

Lilia Gajo, the mother of accused-appellant, maintained that her son was innocent and could not fathom why Virgilio Castigador could concoct such a story. She knew for a fact how her son loved his niece Den-den and believed that he could not have done it.[13] She also claimed that they had a good relationship with the Castigadors.[14]

Accused-appellant Ben Gajo testified that in the afternoon of 24 October 1995 he went to the house of Cornelia Bolivar to pay her the palay he owed her.[15] When he arrived home at around 2 o'clock that afternoon he saw his nephews and nieces playing; he joined them. He even swung Den-den and another niece, Cynthia Gajo, up in the air.[16] When he got tired, he told the kids to stop playing while he went to visit his chickens. After a while, Virgilio called for Den-den and asked her to go home.[17] Later, when the kids were already gone, the accused left for his farm some 600 meters away. He returned at around 6 o'clock in the evening.[18] When the police arrested him he was bewildered since he was not informed who the complainant was. It was only when he reached the police station that he learned it was Virgilio Castigador who made the complaint. He attributed the false rape charge to a past stone-throwing incident between the Gajos and the Castigadors.[19]

After trial the court a quo found the accused guilty of statutory rape and sentenced him to reclusion perpetua and to indemnify his victim in the amount of P50,000.00.[20] He now comes to us assailing his conviction. He contends that the trial court erred in not appreciating his evidence; instead, it gave credence to the evidence of the prosecution albeit failing to establish his guilt to a moral certainty.

We are not persuaded by accused-appellant. The case for the prosecution rested largely on the testimony of the victim herself, five (5)-year old Precious Den-den Castigador. At the outset she was sworn to tell the truth and she showed that she understood its meaning when she told the court that Papa Jesus would be mad at her if she told a lie.[21] The trial court observed that she gave an honest and straightforward account of what transpired on that day she was raped by accused-appellant -

Q: When Ben Gajo brought you inside that room, what happened?

A: He took off my panty.

Q: After Ben Gajo took off your panty, what did he do?

A: He inserted his finger into my vagina.

Q: What else did Ben Gajo do to you aside from putting his finger into your vagina ?

A: He also licked my vagina.

Q: How about Ben Gajo, what did he do after that?

A: He made a push and pull movement.

Q: How did Ben Gajo do that push and pull movement in your vagina, was he standing or was he sitting?

A: He was standing.

Q: How about Ben, what did he do with his pants?

A: He also took off his pants.

Q: How about the panty of Ben Gajo, what did he do with that?

A: He also took off his panty.

Q: After Ben Gajo took off his pants and his panty, what did you see in the person of Ben Gajo.

A: His egg.

Q: What else did you see?

A: His penis.

Q: Upon seeing this egg and penis of Ben Gajo, what did he do after he took off his pants and panty?

A: He put his penis to my vagina.

Q: How did he do that?

A: Ma-an ka na. I don't know.

COURT: Did Ben Gajo insert his penis in your vagina?

A: Yes, Your Honor.

Q:

A: Yes, Your Honor x x x x

PROS. CHIN: You said that the penis of Ben Gajo was put inside your vagina, now my question is, how did you feel when the penis of Ben Gajo was inside your vagina?

A: It was a little hot.

Q: Why, did you hold that penis of Ben?

A: Yes, sir.

Q: While Ben is putting his penis inside your vagina, what happened?

A: I was called by my Papa x x x x

Q: Now after your Papa called you, what did you do?

A: I went home.

Q: How about your panty which was earlier removed?

A: I wore it again.[22]

A child-witness is generally not capable of lying and as long as she can perceive and make known her perception her credibility is unquestionable. Children whose mental maturity is such as to render them incapable of perceiving the facts respecting which they are examined and of relating them truthfully are not disqualified to be witnesses.[23] A child of any age may be permitted to testify so long as the trial judge is satisfied that the child possesses the ability to observe, recollect and communicate.[24] Minor children with capacity to perceive and make known their perception can be believed in the absence of any improper motive to testify.[25] There is no rule defining any particular age at which children may be said to be capable or incapable of receiving accurate impressions and to relate them truthfully. In each instance, the possession or lack of intelligence of an infant to be a witness is to be determined by such examination as the trial judge deems necessary for the purpose.[26]

The defense capitalizes on the victim's admission that she did not cry at all when she was being raped, which is contrary to human nature. But persons react differently when confronted with situations like this one. One cannot expect a child of five (5) years to act the same way a ten (10)-year old or an older woman would. Crying is almost

always brought about by the horrifying experience a woman has undergone and the shame and scandal that she has to go through after the dastardly act has been committed. Not so in the case of a five (5)-year old who has not fathomed the ways of man. If she did not cry while she was being raped, it could be because she was afraid of what was being done to her. Fear would oftentimes overwhelm the victim or stupefy her into inaction.[27] This kind of apprehension comes to one when somebody older and close to her does something she does not comprehend but she just keeps quiet because the other person might get mad. Thus -

Q: When your Tito Boy according to you undressed you and removed your panty and then you said he touched your vagina with his finger it was painful, isn't it?

A: Yes, sir.

Q: Did you cry?

A: No, sir.

Q: Why did you not cry?

A: Because I was afraid of him.

Q: Did you not tell him not to do that to you because you will report that to your father?

A: No, sir.

Q: Again, when according to you he removed his pants and then removed his panty and while standing made a push and pull movement, did you not cry?

A: No, sir.

Q: Why did you not cry?

A: Because it was painful.

Q: Yes, it was painful, why did you not cry because it was painful?

A: Ti mo.

Q: While he did that to you and causing pain, did you not ask your Tito Boy to stop it?

A: No, sir.

Q: Did you not tell him that you will report him to your father?

A: No, sir.[28]

The medico-legal result corroborates Precious' testimony that she was sexually abused due to the superficial wounds she sustained. Although the defense makes much of the fact that no spermatozoa were found, this does not negate rape. To sustain a conviction for rape, the important consideration is not the emission of semen, but the penetration of the male organ. Full penetration is not even required as proof of entrance or the slightest penetration of the male organ within labia or pudendum of the female organ is sufficient.[29] Den-den recounted how the penis of her Tito Boy went inside her vagina and how painful it was. Spermatozoa or their absence, accused-appellant's penis nonetheless found its way into the child-victim's vagina. That is all that is needed to convict him of rape.

Ascribing the rape charge to the stone-throwing incident which happened in the past between their families is too flimsy to be believable since accused-appellant has admitted, and even his mother Lilia, that both families have

already patched things up and have since maintained a good relationship.[30] Besides, a stone-throwing incident is a reason of such meager proportions for Virgilio to drag his young daughter into a rape case for the purpose of revenge. No man in his right mind would needlessly subject his child to this humiliating ordeal just to get even with another. This can only be conjured by a sick mind. Rather plausible is the fact that accused-appellant actually sexually abused his five (5)-year old niece and that the latter was only telling the truth.

In sum, the arguments of the defense are too puerile and inconsequential as to dent, even slightly, the overall integrity and probative value of the prosecution's evidence.

However, the Court a quo erred in imposing the penalty of reclusion perpetua. Under RA 7659 which amended Art. 335 of the Revised Penal Code, and which took effect on 31 December 1993, the death penalty shall be imposed if the crime of rape is committed against a child below seven (7) years of age.[31] It was alleged in the Information that the victim Precious Castigador was five (5) years old when she was raped on 24 October 1995 and the prosecution presented her birth certificate during the trial showing that she was born on 9 September 1990.[32] Accordingly the imposable penalty should be death.

Further, the award of civil indemnity should be increased from P50,000.00 to P75,000.00 as held in the recent case of *People v. Sacapa*±o[33] where rape was committed or effectively qualified by any of the circumstances under which the death penalty is authorized to be imposed by the present law.

The trial court also failed to award moral and exemplary damages. This was error. Moral damages in rape cases should be granted without need of showing that the victim suffered the trauma of mental, physical and psychological sufferings that constitute the bases thereof.[34] In this case, the Department of Social Welfare and Development (DSWD) recommended that Precious Castigador be given a psychosocial intervention/psychological examination for her to cope with the situation.[35] Further, exemplary damages should have also been awarded to serve as a deterrent to those men who, by their sheer strength and relationship with their victims, are able to overpower them into submitting to their lustful desires.

Four (4) members of the Court maintain their position that RA 7659, insofar as it prescribes the death penalty, is unconstitutional. However they submit to the ruling of the Court by a majority vote that the law is constitutional and that the death penalty should be imposed accordingly.

WHEREFORE, the Decision of the Regional Trial Court of Iloilo City, Br. 37, finding accused-appellant BEN GAJO guilty of statutory rape is AFFIRMED with the MODIFICATIONS that he is sentenced to suffer the penalty of DEATH and ordered to pay the victim Precious Den-den Castigador the increased amount of P75,000.00 as civil indemnity, P50,000.00 as moral damages, and P25,000.00 as exemplary damages. Upon finality of this Decision, let the records of the case be forwarded to His Excellency, the President, for the possible exercise of his pardoning power. Costs against accused-appellant.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Buena, Gonzaga-Reyes, Ynares-Santiago, and De Leon, Jr., JJ., concur.

Pardo, J., on leave.

[1] RTC Records, p. 51.

[2] TSN, 2 April 1996, pp. 5-8.

[3] Id., p. 4.

- [4] TSN, 14 March 1996, p. 3.
- [5] Id., p. 5.
- [6] Id., pp. 6-7.
- [7] TSN, 29 February 1996, p. 10.
- [8] Id., p. 7.
- [9] Id., pp. 8-9 and 12.
- [10] Id., p. 8.
- [11] Id., pp. 12-13.
- [12] RTC Records, p. 1.
- [13] TSN, 23 April 1996, p. 18.
- [14] Id., pp. 16-17.
- [15] TSN, 4 June 1996, p. 9.
- [16] Id., pp. 10-11.
- [17] Id., p. 11.
- [18] Id., p. 13.
- [19] TSN, 4 June 1996, p. 19.
- [20] Decision penned by Judge Jose D. Azarraga, RTC-Br. 37, Iloilo City; RTC Records, p. 102.
- [21] TSN, 2 April 1996, p. 3.
- [22] TSN, 2 April 1996, pp. 6-8.
- [23] Sec. 21 (b), Rule 130, Rules on Evidence.
- [24] Apostol, Sergio A.F., Essentials of Evidence, 1991, p. 108.
- [25] People v. Gacho, G.R. No. 60990, 23 September 1983, 124 SCRA 677.
- [26] U.S. v. Buncad, 25 Phil. 530 (1913).
- [27] People v. Dominador Tabion, G.R. No. 132715, 20 October 1999.
- [28] TSN, 2 April 1996, pp. 13-14.
- [29] People v. Ernesto SacapaÃ±o, G.R. No. 130525, 3 September 1999.
- [30] TSN, 4 June 1996, p. 21.
- [31] Art. 335. When and how rape is committed. - Rape is committed by having carnal knowledge of a woman under any of the following circumstances x x x x The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances: x x x x (4) When the victim is a religious or a child below seven (7) years old.
- [32] RTC Records, p. 6.
- [33] See Note 31.
- [34] Ibid.
- [35] TSN, 1 April 1996, p. 19.

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