

PEOPLE OF THE PHILIPPINES, PLAINTIFF, VS. PRIMO CAMPUHAN Y BELLO, ACCUSED.*G.R. No. 129433. March 30, 2000*

Ponente: BELLOSILLO, J.

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On 3 April 1990 this Court in *People v. Orita*[1] finally did away with frustrated rape[2] and allowed only attempted rape and consummated rape to remain in our statute books. The instant case lurks at the threshold of another emasculation of the stages of execution of rape by considering almost every attempt at sexual violation of a woman as consummated rape, that is, if the contrary view were to be adopted. The danger there is that that concept may send the wrong signal to every roaming lothario, whenever the opportunity bares itself, to better intrude with climactic gusto, sans any restraint, since after all any attempted fornication would be considered consummated rape and punished as such. A mere strafing of the citadel of passion would then be considered a deadly *fait accompli*, which is absurd.

In *Orita* we held that rape was consummated from the moment the offender had carnal knowledge of the victim since by it he attained his objective. All the elements of the offense were already present and nothing more was left for the offender to do, having performed all the acts necessary to produce the crime and accomplish it. We ruled then that perfect penetration was not essential; any penetration of the female organ by the male organ, however slight, was sufficient. The Court further held that entry of the labia or lips of the female organ, even without rupture of the hymen or laceration of the vagina, was sufficient to warrant conviction for consummated rape. We distinguished consummated rape from attempted rape where there was no penetration of the female organ because not all acts of execution were performed as the offender merely commenced the commission of a felony directly by overt acts.[3] The inference that may be derived therefrom is that complete or full penetration of the vagina is not required for rape to be consummated. Any penetration, in whatever degree, is enough to raise the crime to its consummated stage.

But the Court in *Orita* clarified the concept of penetration in rape by requiring entry into the labia or lips of the female organ, even if there be no rupture of the hymen or laceration of the vagina, to warrant a conviction for consummated rape. While the entry of the penis into the lips of the female organ was considered synonymous with mere touching of the external genitalia, e.g., labia majora, labia minora, etc.,[4] the crucial doctrinal bottom line is that touching must be inextricably viewed in light of, in relation to, or as an essential part of, the process of penile penetration, and not just mere touching in the ordinary sense. In other words, the touching must be tacked to the penetration itself. The importance of the requirement of penetration, however slight, cannot be gainsaid because where entry into the labia or the lips of the female genitalia has not been established, the crime committed amounts merely to attempted rape.

Verily, this should be the indicium of the Court in determining whether rape has been committed either in its attempted or in its consummated stage; otherwise, no substantial distinction would exist between the two, despite the fact that penalty-wise, this distinction, threadbare as it may seem, irrevocably spells the difference between

life and death for the accused - a reclusive life that is not even perpetua but only temporal on one hand, and the ultimate extermination of life on the other. And, arguing on another level, if the case at bar cannot be deemed attempted but consummated rape, what then would constitute attempted rape? Must our field of choice be thus limited only to consummated rape and acts of lasciviousness since attempted rape would no longer be possible in light of the view of those who disagree with this ponencia?

On 27 May 1997 Primo Campuhan y Bello was found guilty of statutory rape and sentenced by the court a quo to the extreme penalty of death,[5] hence this case before us on automatic review under Art. 335 of the Revised Penal Code as amended by RA 7659.[6]

As may be culled from the evidence on record, on 25 April 1996, at around 4 o'clock in the afternoon, Ma. Corazon P. Pamintuan, mother of four (4)-year old Crysthel Pamintuan, went down from the second floor of their house to prepare Milo chocolate drinks for her two (2) children. At the ground floor she met Primo Campuhan who was then busy filling small plastic bags with water to be frozen into ice in the freezer located at the second floor. Primo was a helper of Conrado Plata Jr., brother of Corazon. As Corazon was busy preparing the drinks, she heard one of her daughters cry, "Ayo'ko, ayo'ko!"[7] prompting Corazon to rush upstairs. Thereupon, she saw Primo Campuhan inside her children's room kneeling before Crysthel whose pajamas or "jogging pants" and panty were already removed, while his short pants were down to his knees.

According to Corazon, Primo was forcing his penis into Crysthel's vagina. Horrified, she cursed the accused, "P - t - ng ina mo, anak ko iyan!" and boxed him several times. He evaded her blows and pulled up his pants. He pushed Corazon aside when she tried to block his path. Corazon then ran out and shouted for help thus prompting her brother, a cousin and an uncle who were living within their compound, to chase the accused.[8] Seconds later, Primo was apprehended by those who answered Corazon's call for help. They held the accused at the back of their compound until they were advised by their neighbors to call the barangay officials instead of detaining him for his misdeed. Physical examination of the victim yielded negative results. No evident sign of extra-genital physical injury was noted by the medico-legal officer on Crysthel's body as her hymen was intact and its orifice was only 0.5 cm. in diameter.

Primo Campuhan had only himself for a witness in his defense. He maintained his innocence and assailed the charge as a mere scheme of Crysthel's mother who allegedly harbored ill will against him for his refusal to run an errand for her.[9] He asserted that in truth Crysthel was in a playing mood and wanted to ride on his back when she suddenly pulled him down causing both of them to fall down on the floor. It was in this fallen position that Corazon chanced upon them and became hysterical. Corazon slapped him and accused him of raping her child. He got mad but restrained himself from hitting back when he realized she was a woman. Corazon called for help from her brothers to stop him as he ran down from the second floor.

Vicente, Corazon's brother, timely responded to her call for help and accosted Primo. Vicente punched him and threatened to kill him. Upon hearing the threat, Primo immediately ran towards the house of Conrado Plata but Vicente followed him there. Primo pleaded for a chance to explain as he reasoned out that the accusation was not true. But Vicente kicked him instead. When Primo saw Vicente holding a piece of lead pipe, Primo raised his hands and turned his back to avoid the blow. At this moment, the relatives and neighbors of Vicente prevailed upon him to take Primo to the barangay hall instead, and not to maul or possibly kill him.

Although Primo Campuhan insisted on his innocence, the trial court on 27 May 1997 found him guilty of statutory rape, sentenced him to the extreme penalty of death, and ordered him to pay his victim P50,000.00 for moral damages, P25,000.00 for exemplary damages, and the costs.

The accused Primo Campuhan seriously assails the credibility of Ma. Corazon Pamintuan. He argues that her

narration should not be given any weight or credence since it was punctured with implausible statements and improbabilities so inconsistent with human nature and experience. He claims that it was truly inconceivable for him to commit the rape considering that Crysthel's younger sister was also in the room playing while Corazon was just downstairs preparing Milo drinks for her daughters. Their presence alone as possible eyewitnesses and the fact that the episode happened within the family compound where a call for assistance could easily be heard and responded to, would have been enough to deter him from committing the crime. Besides, the door of the room was wide open for anybody to see what could be taking place inside. Primo insists that it was almost inconceivable that Corazon could give such a vivid description of the alleged sexual contact when from where she stood she could not have possibly seen the alleged touching of the sexual organs of the accused and his victim. He asserts that the absence of any external signs of physical injuries or of penetration of Crysthel's private parts more than bolsters his innocence.

In convicting the accused, the trial court relied quite heavily on the testimony of Corazon that she saw Primo with his short pants down to his knees kneeling before Crysthel whose pajamas and panty were supposedly "already removed" and that Primo was "forcing his penis into Crysthel's vagina." The gravamen of the offense of statutory rape is carnal knowledge of a woman below twelve (12), as provided in Art. 335, par. (3), of the Revised Penal Code. Crysthel was only four (4) years old when sexually molested, thus raising the penalty, from reclusion perpetua to death, to the single indivisible penalty of death under RA 7659, Sec. 11, the offended party being below seven (7) years old. We have said often enough that in concluding that carnal knowledge took place, full penetration of the vaginal orifice is not an essential ingredient, nor is the rupture of the hymen necessary; the mere touching of the external genitalia by the penis capable of consummating the sexual act is sufficient to constitute carnal knowledge.[10] But the act of touching should be understood here as inherently part of the entry of the penis into the labias of the female organ and not mere touching alone of the mons pubis or the pudendum.

In *People v. De la Peña*[11] we clarified that the decisions finding a case for rape even if the attacker's penis merely touched the external portions of the female genitalia were made in the context of the presence or existence of an erect penis capable of full penetration. Where the accused failed to achieve an erection, had a limp or flaccid penis, or an oversized penis which could not fit into the victim's vagina, the Court nonetheless held that rape was consummated on the basis of the victim's testimony that the accused repeatedly tried, but in vain, to insert his penis into her vagina and in all likelihood reached the labia of her pudendum as the victim felt his organ on the lips of her vulva,[12] or that the penis of the accused touched the middle part of her vagina.[13] Thus, touching when applied to rape cases does not simply mean mere epidermal contact, stroking or grazing of organs, a slight brush or a scrape of the penis on the external layer of the victim's vagina, or the mons pubis, as in this case. There must be sufficient and convincing proof that the penis indeed touched the labias or slid into the female organ, and not merely stroked the external surface thereof, for an accused to be convicted of consummated rape.[14] As the labias, which are required to be "touched" by the penis, are by their natural situs or location beneath the mons pubis or the vaginal surface, to touch them with the penis is to attain some degree of penetration beneath the surface, hence, the conclusion that touching the labia majora or the labia minora of the pudendum constitutes consummated rape.

The pudendum or vulva is the collective term for the female genital organs that are visible in the perineal area, e.g., mons pubis, labia majora, labia minora, the hymen, the clitoris, the vaginal orifice, etc. The mons pubis is the rounded eminence that becomes hairy after puberty, and is instantly visible within the surface. The next layer is the labia majora or the outer lips of the female organ composed of the outer convex surface and the inner surface. The skin of the outer convex surface is covered with hair follicles and is pigmented, while the inner surface is a thin skin which does not have any hair but has many sebaceous glands. Directly beneath the labia majora is the labia minora.[15] Jurisprudence dictates that the labia majora must be entered for rape to be consummated,[16]

and not merely for the penis to stroke the surface of the female organ. Thus, a grazing of the surface of the female organ or touching the mons pubis of the pudendum is not sufficient to constitute consummated rape. Absent any showing of the slightest penetration of the female organ, i.e., touching of either labia of the pudendum by the penis, there can be no consummated rape; at most, it can only be attempted rape, if not acts of lasciviousness.

Judicial depiction of consummated rape has not been confined to the oft-quoted "touching of the female organ,"[17] but has also progressed into being described as "the introduction of the male organ into the labia of the pudendum,"[18] or "the bombardment of the drawbridge." [19] But, to our mind, the case at bar merely constitutes a "shelling of the castle of orgasmic potency," or as earlier stated, a "strafing of the citadel of passion."

A review of the records clearly discloses that the prosecution utterly failed to discharge its onus of proving that Primo's penis was able to penetrate Crysthel's vagina however slight. Even if we grant *arguendo* that Corazon witnessed Primo in the act of sexually molesting her daughter, we seriously doubt the veracity of her claim that she saw the inter-genital contact between Primo and Crysthel. When asked what she saw upon entering her children's room Corazon plunged into saying that she saw Primo poking his penis on the vagina of Crysthel without explaining her relative position to them as to enable her to see clearly and sufficiently, in automotive lingo, the contact point. It should be recalled that when Corazon chanced upon Primo and Crysthel, the former was allegedly in a kneeling position, which Corazon described thus:

Q

How was Primo holding your daughter?

A:

(The witness is demonstrating in such a way that the chest of the accused is pinning down the victim, while his right hand is holding his penis and his left hand is spreading the legs of the victim).

It can reasonably be drawn from the foregoing narration that Primo's kneeling position rendered an unbridled observation impossible. Not even a vantage point from the side of the accused and the victim would have provided Corazon an unobstructed view of Primo's penis supposedly reaching Crysthel's external genitalia, i.e., labia majora, labia minora, hymen, clitoris, etc., since the legs and arms of Primo would have hidden his movements from Corazon's sight, not to discount the fact that Primo's right hand was allegedly holding his penis thereby blocking it from Corazon's view. It is the burden of the prosecution to establish how Corazon could have seen the sexual contact and to shove her account into the permissive sphere of credibility. It is not enough that she claims that she saw what was done to her daughter. It is required that her claim be properly demonstrated to inspire belief. The prosecution failed in this respect, thus we cannot conclude without any taint of serious doubt that inter-genital contact was at all achieved. To hold otherwise would be to resolve the doubt in favor of the prosecution but to run roughshod over the constitutional right of the accused to be presumed innocent.

Corazon insists that Primo did not restrain himself from pursuing his wicked intention despite her timely appearance, thus giving her the opportunity to fully witness his beastly act.

We are not persuaded. It is inconsistent with man's instinct of self-preservation to remain where he is and persist in satisfying his lust even when he knows fully well that his dastardly acts have already been discovered or witnessed by no less than the mother of his victim. For, the normal behavior or reaction of Primo upon learning of Corazon's presence would have been to pull his pants up to avoid being caught literally with his pants down. The interval, although relatively short, provided more than enough opportunity for Primo not only to desist from but even to conceal his evil design.

What appears to be the basis of the conviction of the accused was Crysthel's answer to the question of the court -

Q

Did the penis of Primo touch your organ?

A:

Yes, sir.

But when asked further whether his penis penetrated her organ, she readily said, "No." Thus -

Q

But did his penis penetrate your organ?

A:

No, sir.[20]

This testimony alone should dissipate the mist of confusion that enshrouds the question of whether rape in this case was consummated. It has foreclosed the possibility of Primo's penis penetrating her vagina, however slight. Crysthel made a categorical statement denying penetration,[21] obviously induced by a question propounded to her who could not have been aware of the finer distinctions between touching and penetration. Consequently, it is improper and unfair to attach to this reply of a four (4)-year old child, whose vocabulary is yet as underdeveloped as her sex and whose language is bereft of worldly sophistication, an adult interpretation that because the penis of the accused touched her organ there was sexual entry. Nor can it be deduced that in trying to penetrate the victim's organ the penis of the accused touched the middle portion of her vagina and entered the labia of her pudendum as the prosecution failed to establish sufficiently that Primo made efforts to penetrate Crysthel.[22] Corazon did not say, nay, not even hint that Primo's penis was erect or that he responded with an erection.[23] On the contrary, Corazon even narrated that Primo had to hold his penis with his right hand, thus showing that he had yet to attain an erection to be able to penetrate his victim.

Antithetically, the possibility of Primo's penis having breached Crysthel's vagina is belied by the child's own assertion that she resisted Primo's advances by putting her legs close together;[24] consequently, she did not feel any intense pain but just felt "not happy" about what Primo did to her.[25] Thus, she only shouted "Ayo'ko, ayo'ko!" not "Aray ko, aray ko!" In cases where penetration was not fully established, the Court had anchored its conclusion that rape nevertheless was consummated on the victim's testimony that she felt pain, or the medico-legal finding of discoloration in the inner lips of the vagina, or the labia minora was already gaping with redness, or the hymenal tags were no longer visible.[26] None was shown in this case. Although a child's testimony must be received with due consideration on account of her tender age, the Court endeavors at the same time to harness only what in her story appears to be true, acutely aware of the equally guaranteed rights of the accused. Thus, we have to conclude that even on the basis of the testimony of Crysthel alone the accused cannot be held liable for consummated rape; worse, be sentenced to death.

Lastly, it is pertinent to mention the medico legal officer's finding in this case that there were no external signs of physical injuries on complaining witness' body to conclude from a medical perspective that penetration had taken place. As Dr. Aurea P. Villena explained, although the absence of complete penetration of the hymen does not negate the possibility of contact, she clarified that there was no medical basis to hold that there was sexual contact between the accused and the victim.[27]

In cases of rape where there is a positive testimony and a medical certificate, both should in all respects complement each other; otherwise, to rely on the testimonial evidence alone, in utter disregard of the manifest variance in the medical certificate, would be productive of unwarranted or even mischievous results. It is

necessary to carefully ascertain whether the penis of the accused in reality entered the labial threshold of the female organ to accurately conclude that rape was consummated. Failing in this, the thin line that separates attempted rape from consummated rape will significantly disappear.

Under Art. 6, in relation to Art. 335, of the Revised Penal Code, rape is attempted when the offender commences the commission of rape directly by overt acts, and does not perform all the acts of execution which should produce the crime of rape by reason of some cause or accident other than his own spontaneous desistance. All the elements of attempted rape - and only of attempted rape - are present in the instant case, hence, the accused should be punished only for it.

The penalty for attempted rape is two (2) degrees lower than the imposable penalty of death for the offense charged, which is statutory rape of a minor below seven (7) years. Two (2) degrees lower is reclusion temporal, the range of which is twelve (12) years and one (1) day to twenty (20) years. Applying the Indeterminate Sentence Law, and in the absence of any mitigating or aggravating circumstance, the maximum of the penalty to be imposed upon the accused shall be taken from the medium period of reclusion temporal, the range of which is fourteen (14) years, eight (8) months and (1) day to seventeen (17) years and four (4) months, while the minimum shall be taken from the penalty next lower in degree, which is prision mayor, the range of which is from six (6) years and one (1) day to twelve (12) years, in any of its periods.

WHEREFORE, the Decision of the court a quo finding accused PRIMO "SONNY" CAMPUHAN Y BELLO guilty of statutory rape and sentencing him to death and to pay damages is MODIFIED. He is instead found guilty of ATTEMPTED RAPE and sentenced to an indeterminate prison term of eight (8) years four (4) months and ten (10) days of prision mayor medium as minimum, to fourteen (14) years ten (10) months and twenty (20) days of reclusion temporal medium as maximum. Costs de oficio.

SO ORDERED.

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

[1] People v. Ceilito Orita alias "Lito," G.R. No. 88724, 3 April 1990, 184 SCRA 105.

[2] People v. Eriña, 50 Phil. 998 (1927)

[3] See Note 1.

[4] People v. Quinañola, G.R. No. 126148, 5 May 1999.

[5] Decision penned by Judge Benjamin T. Antonio, RTC-Br. 170, Malabon, Metro Manila (Crim. Case No. 16857-MN)

[6] An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Code, as amended, other Special Penal Laws, and for Other Purposes, effective on 31 December 1993.

[7] "Ayoko," apparently is a contraction of "ayaw ko." "Ayoko, ayoko" means "I don't like, I don't like."

[8] Corazon's brother Vicente Plata responded to her call, as well as others living within the compound namely, Criselda Carlos Manalac, Fernando Bondal, Jose Carlos and Reynoso Carlos.

[9] Accused alleged that the charge of rape was merely concocted by Ma. Corazon Pamintuan because of his

refusal to buy medicine for her, and perform the other tasks asked of him by her relatives.

[10] See the following American cases where the doctrine originated: *Kenny v. State*, 65 L.R.A. 316; *Rodgers v. State*, 30 Tex. App. 510; *Brauer v. State*, 25 Wis. 413, as cited in *People v. Oscar*, 48 Phil. 528 (1925)

[11] G.R. No. 104947, 30 June 1994, 233 SCRA 573.

[12] *People v. Bacalso*, G.R. No. 89811, 22 March 1991, 195 SCRA 557; *People v. Hangdaan*, G.R. No. 90035, 13 September 1991, 201 SCRA 568; *People v. De la Peña*, G.R. No. 104947, 30 June 1994, 233 SCRA 573; *People v. Clopino*, G.R. No. 117322, 21 May 1998, 290 SCRA 432; *People v. Quinañola*, G.R. No. 126148, 5 May 1999.

[13] *People v. Navarro*, G.R. No. 96251, 11 May 1993, 221 SCRA 684.

[14] In *People v. Quinañola* (G.R. No. 126148, 5 May 1999) the Court held the word "touching" to be synonymous with the entry by the penis into the labia declaring that "x x x the crime of rape is deemed consummated even when the man's penis merely entered the labia or lips of the female organ, or as once said in a case, by the `mere touching of the external genitalia by the penis capable of sexual act' x x x x"

[15] *Mishell, Stenchever, Droegemueller, Herbst Comprehensive Gynecology*, 3rd Ed., 1997, pp. 42-44.

[16] *People v. Escobar*, G.R. Nos. 122980-81, 6 November 1997, 281 SCRA 498; *People v. Galimba*, G.R. Nos. 111563-64, 20 February 1996, 253 SCRA 722; *People v. Sanchez*, G.R. Nos. 98402-04, 16 November 1995, 250 SCRA 14; *People v. Lazaro*, G.R. No. 99263, 12 October 1995, 249 SCRA 234; *People v. Rejano*, G.R. Nos. 105669-70, 18 October 1994, 237 SCRA 627; *People v. Salinas*, G.R. No. 107204, 6 May 1994, 232 SCRA 274; *People v. Palicte*, G.R. No. 101088, 27 January 1994, 229 SCRA 543; *People v. Arce*, G.R. Nos. 101833-34, 20 October 1993, 227 SCRA 406; *People v. Garcia*, G.R. No. 92269, 30 July 1993, 244 SCRA 776; *People v. Tismo*, No. L-44773, 4 December 1991, 204 SCRA 535; *People v. Mayoral*, G.R. Nos. 96094-95, 13 November 1991, 203 SCRA 528; *People v. Hangdaan*, G.R. No. 90035, 13 September 1991, 201 SCRA 568; *People v. Caballes*, G.R. Nos. 93437-45, 12 July 1991, 199 SCRA 152; *People v. Bacalso*, G.R. No. 89811, 22 March 1991, 195 SCRA 557.

[17] *People v. Clopino*, G.R. No. 117322, 21 May 1998, 290 SCRA 432.

[18] See Note 4.

[19] *People v. Escobar*, G.R. Nos. 122980-81, 6 November 1997, 281 SCRA 498.

[20] TSN, 7 October 1996, p. 20.

[21] In *Dulla v. CA* (G.R. No. 123164, 18 February 2000) the Court considered the testimony of a child aged three (3) years and ten (10) months old sufficient and credible even if she answered "yes" or "no" to questions propounded to her. However, the victim therein, who was much younger than Crysthel in the instant case, demonstrated what she meant when unable to articulate what was done to her, even made graphic descriptions of the accused's penis and demonstrated the push and pull movement made by the accused. Yet conspicuously, the Court in the *Dulla* case found the accused guilty only of acts of lasciviousness on the basis of certain inconsistencies in the testimony of the victim on whether or not petitioner took off her underwear.

[22] In *People v. Clopino* (G.R. No. 117322, 21 May 1998) the Court rejected the argument of the accused that he should only be convicted of either attempted rape or acts of lasciviousness. It adopted the reasoning of the Solicitor General and declared that it was impossible for the penis of accused-appellant not to have touched the labia of the pudendum in trying to penetrate her. However, such logical conclusion was deduced in the light of evidence presented that accused-appellant made determined attempts to penetrate and insert his penis into the

victim's vagina and even engaged her in foreplay by inserting his finger into her genitalia. The same inference cannot be made in the instant case because of the variance in the factual milieu.

[23] Decisions finding the accused guilty of consummated rape even if the attacker's penis merely touched the female external genitalia were made in the context of the presence of an erect penis capable of full penetration, failing in which there can be no consummated rape (*People v. De la Peña*, see Note 11)

[24] See Note 16, p. 21.

[25] *Ibid.*

[26] *People v. Villamayor*, G.R. Nos. 97474-76, 18 July 1991, 199 SCRA 472; *People v. Palicte*, G.R. No. 101088, 27 January 1994, 229 SCRA 543; *People v. Sanchez*, G.R. Nos. 98402-04, 16 November 1995, 250 SCRA 14; *People v. Gabris*, G.R. No. 116221, 11 July 1996, 258 SCRA 663; *People v. Gabayron*, G.R. No. 102018, 21 August 1997, 278 SCRA 78.

[27]

Q

Will you tell the Court, what do you mean by this No. 1 conclusion appearing in Exhibit "A" which I quote "no evident sign of extra-genital physical injury noted on the body of the subject at the time of the examination?"

A:

That means I was not able to see injuries outside the genital of the victim, sir.

Q:

I presumed (sic) that you conducted genital physical examination on the victim in this case?

A:

Yes sir.

Q:

And you also made the result of the genital physical examination shows (sic) that there is no injury on any part of the body of the patient, correct, Doctor?

A:

Yes sir.

Q:

There was no medical basis for saying that might have a contact between the patient and the accused in this case?

A:

Yes sir (TSN, 8 October 1996, pp. 3-4)

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