

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BONIFACIO TOREJOS Y PAÑARES @ BONING, ACCUSED-APPELLANT.

G.R. No. 132217. February 18, 2000

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PER CURIAM:

Accused-appellant Bonifacio Torejos y Pañares @ Boning was convicted for raping a three-year-old child and was meted the supreme penalty of death. The Judgment[1] of the Regional Trial Court (RTC) of Davao City, Branch 17, finding him guilty beyond reasonable doubt of the crime of rape as amended by Republic Act No. 7659 is now before us on automatic review.

Bonifacio Torejos (TOREJOS) was charged with raping Mary Cris Cerna (MARY CRIS) in an information that reads:

"That on or about January 7, 1997, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with Mary Cris Cerna, 3 years of age, against the will of the latter.

CONTRARY TO LAW."[2]

On October 25, 1984, the accused was arraigned and pleaded not guilty to the crime charged.[3]

The RTC summarized the facts of the case as culled from the testimonies of the prosecution witnesses as follows:

"On January 7, 1997, at about 3:00 P.M., Rosalie Cerna was coming back to their house from a certain store, where she bought bread and Pop-cola for refreshment of her husband and a carpenter, at that time was working along with her husband, at the side of their house. At a distance of 20 meters and while approaching her house, carrying the Pop-cola and bread, she saw and noticed, accused Bonifacio Torejos beside their house was on top of her daughter, Mary Cris, lying on bed while accused on top of her, doing a pumping movement push and pull action.

At that time, actually saw accused, in that situation, she was shocked and unable to do anything. Instead she proceeded towards their house and when she arrived, accused went to their kitchen, pretending nothing happened, by blowing fire thereat.

Out of fear, she did nothing. Her husband at that time, was beside their house. She told her husband of what she saw and at once her husband inquired from accused about the matter but accused denied and said, he just placed a blanket on top of Mary Cris.

After what happened, she examined the private part of Mary Cris and she saw there a little blood with slight laceration.

Thereafter, they went to the district health clinic at Toril, Davao City, for examination of Mary Cris by Dr. Casquejo.

After his examination, the Doctor issued a Medical Certificate, marked Exh. "B" for the prosecution.

Later they went to Toril Police Station to record the incident in the police blotter an excerpt of said recording was marked Exh. "C" for the prosecution.

Rosalie Cerna explained, at the time she saw what accused did to her daughter, she was not able to do anything because she was so afraid accused, will do something to her daughter. (Tsn. Pp. 2-6, hearing on March 17, 1997).

The husband of Rosalie Cerna, Luciano Cerna on January 7, 1997, at about 3:00 P.M., was beside their house helping his carpenter planing lumber, a certain carpenter only called, "Kano" in their locality.

At that time and date, the accused was in their house because they just finished hauling firewoods, for sale. The accused however, often comes to their house, sometimes three times in a week. His daughter at that time Mary Cris, a 3 year old girl was playing near him when his wife Rosalie Cerna left to buy their snacks or refreshments, but she went on the other side of the house, without noticing her.

His wife came back, after half an hour and he was surprised because she was crying calling for him while he was helping his carpenter at the other side of their house, bringing with her Mary Cris. He became curious about the matter and asked her clearly what was all about and she told him, Mary Cris was molested by accused.

He then asked accused if it is true but accused denied alleging, he merely put blanket on Mary Cris.

He examined the vagina of Mary Cris and he noticed, there was blood and laceration on her private part.

Immediately, he accompanied his wife to the Doctor, for the examination of Mary Cris.

Thereafter, they went to see their Barangay Captain who was not there at that time, so they instead reported the mater with their Barangay Kagawad Alfredo Tañara, who responded immediately to their call for assistance and arrested accused and turn him over to the police at Toril Poblacion, Davao City.

It was around 8:00 P.M., on January 7, 1997, when the couple Luciano Cerna and Rosalie Cerna came to the house of the Barangay Kagawad of Barangay Bato, Toril, Davao City, requesting assistance about their daughter, allegedly molested by accused, Bonifacio Torejos.

At once the Barangay Kagawad accompanied the couple to the poblacion, to Dr. Casquejo for medical examination.

After treatment and examination of the child, he went back to their barangay and arrested the accused and brought him to the police station at Toril, Davao City. (Tsn. Pp. 8-10, hearing on March 19, 1997).

Dr. Uldario Casquejo, government Doctor of Toril, Davao City, at the same time medico-legal officer, when Mary Cris was brought to his clinic on January 7, 1997, by her parents, accompanied by Barangay Kagawad Alfredo Tañara, at once, conducted his examination after the parents told him, the child was raped by accused. He found out in his examination, in the external and internal vaginal canal of the child, there was lacerated wound at 6:00 position in the vaginal opening.

He explained the wound is 1/4 x 1 cm just superior to the anal area, a size of an 1/8 x 1/4 wound, concluding, it was caused by forced penetration of a penis on the child's vagina."^[4]

Accused-appellant vehemently denied having committed the offense charged. He claimed that he was in the house of the complainant at 3:00 p.m. on January 7, 1997 to get his share in the proceeds of the sale of firewood from Luciano Cerna, the father of Mary Cris, and went to the back of the house to drink water when he saw Mary Cris at the bench about to fall; he went near the child and held her, so that she will not fall to the ground.^[5]

On April 25, 1997, the RTC rendered its decision finding the accused guilty beyond reasonable doubt of the crime

of rape the dispositive portion of which reads:

"Accordingly, finding the evidence of prosecution, more than sufficient to prove the guilt of accused, Bonifacio Torejos Y Pañares, of the offense charged, beyond reasonable doubt, is sentenced to suffer a supreme penalty of death, through lethal injection pursuant to Republic Act. No. 8176 in relation to Section 24 of Republic Act 7659, to be executed and implemented as therein provided, in accordance with law.

Moreover, pursuant to Art. 100 in relation to Art. 104, of the Revised Penal Code, governing civil indemnity, accused is ordered, to pay the parents of Mary Cris, Luciano Cerna and Rosalie Cerna, an amount of P30,000.00 as civil indemnity for the wrong done to their minor child, Mary Cris, at the commission of the offense charge, only three (3) years and nine (9) days.

Pursuant to the provision of the 1986 Philippine Constitution, the Branch Clerk of Court of this court, is ordered, to elevate the entire records of this case with the Clerk of Court, Supreme Court, Manila, for the automatic review of this decision and appropriate action of the Supreme Court, as the case maybe.

SO ORDERED."[6]

Hence this appeal where the accused-appellant assigns this sole error:

"THE COURT A QUO ERRED IN FINDING THE ACCUSED-APPELLANT BONIFACIO TOREJOS Y PAÑARES ALIAS "BONING" GUILTY BEYOND REASONABLE DOUBT FOR THE CRIME OF RAPE DEFINED AND PENALIZED UNDER ARTICLE 335 OF THE REVISED PENAL CODE."[7]

In support of his appeal, the accused-appellant maintains that the evidence presented by the prosecution is "not clear, convincing and unnatural." First of all, the testimony of the mother of the alleged victim, Rosalie Cerna, is contrary to human experience for if she in fact saw the accused-appellant raping her daughter, she would have made an outcry for help to rescue and prevent him from accomplishing his sexual desire. This she did not do. In fact, she did not do anything at the very moment she allegedly saw her daughter being raped. This puts in question her credibility. Second, it is highly improbable that the accused-appellant raped MARY CRIS considering that the alleged rape took place in broad daylight and at a public place. Rape is essentially done in secret away from prying eyes unlike the present case where the rape is alleged to have been committed in a place that was in full view of the victim's father and mother. Finally, Rosalie Cerna herself admitted that MARY CRIS was not crying after the sexual assault was allegedly committed. The victim, who is of tender age, would naturally have cried due to the terrible pain caused by the infliction of a wound on her labia minora. With these factors in mind, it is contended that the prosecution failed to prove the guilt of the accused-appellant beyond reasonable doubt. Therefore, the presumption of innocence in favor of the accused-appellant mandated by the Constitution must prevail and the accused-appellant must be acquitted of the crime charged.[8]

After a thorough review of the records, we resolve to deny the appeal.

Rosalie Cerna (ROSALIE), the eyewitness and mother of the victim, established the fact of rape and the age of the victim, MARY CRIS. She gave a clear and convincing account of the unfortunate event that transpired as follows:

"FISCAL EVANGELIO:

Q:

Mrs. Cerna, are you the same Rosalie Cerna who is the private complainant in this case?

A:

Yes, sir.

Q:

Do you have a daughter name Marychris Pasyol Cerna?

A:

Yes, sir.

Q:

How old is your daughter Marychris Cerna?

A:

Three years old.

Q:

Did you have a birth certificate to prove the fact of the minority of your child?

A:

Yes, sir.

Q:

Showing to you a copy of the birth certificate of your daughter Marychris Cerna, is this the birth certificate of your daughter?

A:

Yes, sir.

FISCAL EVANGELIO:

We request that the birth certificate be marked as Exh. "A" or the prosecution.

COURT:

Mark it.

FISCAL EVANGELIO:

Q:

Now for the record Mrs. Cerna, if your daughter is in court, would you be able to point?

A:

Yes, she is the one. (witness pointing to Marychris Cerna).

Q:

Mrs. Cerna, where is your house located?

A:

Barangay Bato, Toril, Davao City.

Q:

And who live in your house with you?

A:

I and my husband as well as my children.

Q:

Do you know the accused in this case?

A:

Yes, sir.

Q:

Please tell the court, why you know the accused Bonifacio Torejos?

A:

Because he frequently visited our house.

Q:

What was the reason why this accused used to go to your house?

A:

Because oftentimes, he goes with my husband in gathering firewoods.

Q:

If he is in court Mrs. Cerna, would you be able to point him out?

A:

He is the one. (witness pointing to Bonifacio Torejos)

Q:

On January 7, 1997, Mrs. Cerna at about 3:00 o'clock in the afternoon, where were you?

A:

I was at that time coming from a place where I bought bread and Popcola.

Q:

Why do you have to buy Popcola and bread at that time?

A:

For the merienda of my husband.

Q:

Where did you buy Pop-cola and bread?

A:

From the store.

Q:

How far from your house?

A:

About 20 meters away.

Q:

While approaching your house at that time from the place where you bought Popcola and bread, what did you notice if any?

A:

I saw Bonifacio Torejos.

Q:

Where?

A:

Beside our house.

Q:

What was he doing at that time where you first saw him inside your house?

A:

He was on top of the body of my daughter.

Q:

Are you referring to your daughter Marychris Cerna?

A:

Yes, sir.

Q:

Describe to this Honorable Court Mrs. Cerna, the exact position of the accused when you saw him on top of your daughter?

A:

He had my daughter lie down on the bed and he placed himself on top of my daughter.

Q:

While on top, what did you notice?

A:

He was moving his body. (witness demonstrating doing pumping push and pull action).

Q:

At that time, when you saw the accused on top of your daughter, at that time, what did you do?

A:

I was not able to do anything because I was afraid.

Q:

And what happened afterwards?

A:

I proceeded to walk towards the house.

Q:

Did you actually reach your house.

A:

Yes, sir.

Q:

And when you reach the house, where was the accused?

A:

He was at our dirty kitchen, he was trying to blow the fire on that dirty kitchen.

Q:

At that time, what did you do?

A:

Nothing.

Q:

and how about your husband, where was your husband?

A:

He was just beside our house.

Q:

And at about 8:30 in the evening, what did you do?

A:

We went to the place of Barangay Kagawad.

Q:

You said we, who were your companion in going to the Barangay Kagawad?

A:

Myself and my husband and my daughter.

Q:

You want to impress the Honorable Court, you talk with your husband about the incident?

A:

Yes, sir.

Q:

What was the reaction of your husband?

A:

He asked Bonifacio Torejos about it.

Q:

Are you referring to the accused Bonifacio Torejos?

A:

Yes, sir.

Q:

And what was the answer or response of the accused when asked by your husband?

A:

According to him, he just placed a blanket.

Q:

Going back to what you saw, as what happened to your daughter, you said, you saw the accused on top of your daughter after that Mrs. Cerna what did you do with your daughter?

A:

I tried to examine her private parts.

Q:

What did you notice or observe on her private parts?

A:

There was a little blood and there was slight laceration.

Q:

You said that you and your husband went to a certain Barangay Kagawad, can you tell us the exact name of the Barangay Kagawad to whom you first reported?

A:

Barangay Kagawad Alfredo Tañara.

Q:

Now, what made you decide to report first the incident to the Barangay Kagawad?

A:

Because at that time, we have no Barangay Captain at that time.

Q:

After reporting the incident to the Barangay Kagawad Tañara, where (sic) did you do next?

A:

We went to the District Health Clinic of Toril.

Q:

Who was the Doctor who attend to you, if you know.

A:

Dr. Casquejo.

Q:

Was your child Marychris examined by Dr. Casquejo?

A:

Yes, sir."[9]

ROSALIE is sure that MARY CRIS was raped since she saw TOREJOS "insert his organ to the vagina of my daughter, but it was not yet in, he tried to insert." [10]

Accused-appellant's attempt to discredit ROSALIE is unconvincing. The assessment of credibility of witnesses is primarily the function of the trial court. It is well established in this jurisdiction that the findings of the trial court on the credibility of witnesses and their testimonies are accorded great respect unless the court a quo overlooked substantial facts and circumstances which, if considered, would materially affect the result of the case.[11] The evaluation or assessment made by the trial court acquires greater significance in rape cases because from the nature of the offense the only evidence that can oftentimes be offered to establish the guilt of the accused is the complainant's testimony.[12] We find no cogent and legal basis to disturb the finding of the trial court upholding the credibility of the complainant ROSALIE who "despite hard questions of the court, to test and ascertain her credibility of viewing the incident, clearly stood firm on what happened." [13]

The fact that ROSALIE did not do anything when she saw TOREJOS ravishing her daughter does not cast doubt on her credibility. She explained that she did not do anything when she saw TOREJOS raping her daughter because she was engulfed with fear; she was afraid of what TOREJOS might do to MARY CRIS and to her younger brother who was nearby.[14] This is understandable considering that she was experiencing the initial shock of what was happening. The workings of the human mind under emotional stress are unpredictable, such that people react differently to startling situations: some may shout; some may faint; some may be shocked into insensibility; others may openly welcome their intrusion.[15]

TOREJOS' claim that ROSALIE and LUCIANO's accusation of rape against him was motivated by an argument over the partition of LUCIANO's and TOREJOS' income (amounting to P800.00) from selling firewood does not inspire belief. Said misunderstanding is not a sufficient reason for the couple to fabricate and falsely implicate the accused in such a heinous crime. It is unnatural for a parent to use her offspring as an engine of malice, especially if it will subject a daughter to embarrassment and even stigma.[16]

Besides, ROSALIE's testimony is corroborated by the testimonies of Dr. Uldarico C. Casquejo (CASQUEJO) and Luciano Cerna (LUCIANO).

CASQUEJO testified on the findings[17] contained in the medical certificate[18] he executed after he conducted an examination on MARY CRIS. In his testimony, CASQUEJO stated that MARY CRIS sustained a laceration in her vaginal opening (labia minora) just superior to the anal area which he concluded to be caused by the forced penetration of a penis.[19]

LUCIANO testified that on the afternoon of January 7, 1997, his wife ROSALIE called him while he was planing lumber. To his surprise, he found ROSALIE crying while cradling their daughter MARY CRIS. He asked her why she was crying and she told him that MARY CRIS was molested by TOREJOS. LUCIANO confronted TOREJOS who denied molesting MARY CRIS and claimed that he merely placed a blanket on top of her. LUCIANO then inspected the vagina of MARY CRIS and discovered that there was blood and a laceration.[20]

TOREJOS' contention that it was improbable for him to rape MARY CRIS considering that the place where it was alleged to have happened was in full view of MARY CRIS' parents is also untenable. Lust is no respecter of time or place and rape has been successfully consummated in places where people congregate, like parks or school premises, and even in a house where there are other occupants.[21] Besides, the evidence reveals that TOREJOS raped MARY CRIS at a time when no one was watching her since ROSALIE went to the store to buy refreshments while LUCIANO was tending to his carpenter who was doing work on the house next-door. TOREJOS obviously took advantage of the helpless child at a time he knew when no one was around.

Finally, the fact that MARY CRIS did not cry after she was raped does not prove that rape was not committed. While the presence of pain may be indicative of rape, the presence or absence of pain becomes irrelevant to prove the rape in the present case considering the overwhelming evidence presented by the prosecution which is of itself sufficient to establish beyond reasonable doubt that MARY CRIS was raped.

The crime of rape is punished under Article 335 of the Revised Penal Code as amended by R.A. 7659. It reads:

"Art. 335. When and how rape is committed. – 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 or demented.

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

4. when the victim is a religious or a child below seven (7) years old.

x x x"

The information filed against TOREJOS specifically alleges that he raped MARY CRIS, a three-year-old child. We therefore affirm the judgment of the RTC imposing the death penalty for being in accordance with law.

Four (4) members of the Court, although maintaining their adherence to the separate opinions expressed in *People vs. Echegaray*[22] that R.A. 7659 insofar as it prescribes the penalty of death is unconstitutional, nevertheless submit to the ruling of the majority that the law is constitutional and that the death penalty should accordingly be imposed.

We however modify the amount of damages awarded by the RTC. The RTC ordered TOREJOS to pay P30,000.00 as civil indemnity to the parents of MARY CRIS. Considering that the crime was committed under circumstances which justify the imposition of the death penalty, the amount of civil indemnity is increased to P75,000.00.[23] Moreover, we also order TOREJOS to pay moral damages in the amount of P50,000.00 in accordance with prevailing jurisprudence.[24] Finally, the civil indemnity and moral damages should be awarded to MARY CRIS as the offended party.

WHEREFORE, the appealed decision of the Regional Trial Court is hereby AFFIRMED with the MODIFICATION that accused-appellant Bonifacio Torejos is ordered to pay the offended party, Mary Cris Cerna the amounts of P75,000.00 as civil indemnity and P50,000.00 as moral damages.

Upon finality of this decision, let certified true copies thereof as well as the records of this case be forthwith forwarded to the Office of the President for possible exercise of his pardoning power.

No pronouncement as to costs.

SO ORDERED.

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

[1] Penned by Judge Renato A. Fuentes

[2] Rollo, p. 7.

[3] Record, p. 15-a.

[4] Decision, pp. 2-4; Rollo, pp. 13-15.

[5] T.S.N., April 7, 1997, pp. 4-5.

[6] Decision, pp. 17-18; Rollo, pp. 28-29.

[7] Appellant's Brief, pp. 7-8; Rollo, pp. 56-57.

[8] Appellant's Brief, pp. 7-17; Rollo, pp. 56-66.

[9] T.S.N., March 17, 1997, pp. 2-5.

[10] Ibid., at p. 14.

[11] People vs. Chua, G.R. No. 127542, March 18, 1999 at p. 9.

[12] People vs. Alitagtag, G.R. Nos. 124449-51, June 29, 1999 at p. 8.

[13] Judgment, p. 11; Rollo, p. 22.

[14] T.S.N., March 17, 1997, pp. 6 and 10.

[15] People vs. Bersabe, 289 SCRA 685 at p. 698 [1998].

[16] People vs. Galleno, 291 SCRA 761 at p. 774 [1998].

[17]

"FINDINGS:

EXTERNAL Physical Examination of the Vaginal opening:

- 1) Hymen is intact.
- 2) 1/4 x 1/2 cm. lacerated wound at 6:00 o'clock of the vaginal opening.
- 3) 1/8 x 1/4 cm. lacerated wound at 7:00 o'clock of the vaginal opening."

[18] Record, p. 7.

[19] T.S.N., March 19, 1997, pp. 4-5.

[20] T.S.N., March 19, 1997, pp. 16-17.

[21] People vs. Alitagtag, Supra, at p. 10.

[22] 267 SCRA 682 [1997].

[23] People vs. Sugano, G.R. No. 127574, July 20, 1999 at p. 16; People vs. Alba, G.R. Nos. 131858-59, April 14, 1999 at p. 21.

[24] Ibid.

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