

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CARLOS DELA CRUZ Y VENAN-CIO ALIAS 'BOSYO', ACCUSED-APPELLANT.

G.R. No. 75267. September 10, 1990

Ponente: FELICIANO, J.

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FELICIANO, J.:

There are not many crimes more morally repugnant than the sexual violation of a young child. This case involves such a crime: rape committed, with the bravado of evil, in a place dedicated to prayer and worship of the Supreme Being. Accused appellant was charged with raping a 7-year old girl in Criminal Case No. SM-2219 in a complaint which read as follows:

"Criminal Complaint

The undersigned complainant, Marciano Venancio, father of the minor, Brigida Venancio, accuses Carlos dela Cruz y Venancio alias 'Bosyo' of the crime of rape, penalized under the provisions of paragraph 3, Art. 335 of the Revised Penal Code, committed as follows:

That on or about the 6th day of September, 1980, in the municipality of Sta. Maria, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the said accused Carlos dela Cruz y Venancio alias 'Bosyo', with lewd designs, did then and there wilfully, unlaw-fully and feloniously had carnal knowledge with a seven-year old girl, Brigida C. Venancio, against her will and consent committed with force and violence.

Contrary to law."^[1] (Underscoring supplied)

The accused during arraignment pleaded not guilty. After trial and in due course of time, on 20 February 1985, the trial court rendered a decision, the dispositive portion of which stated:

"WHEREFORE, finding the accused Carlos dela Cruz y Venancio, guilty beyond reasonable doubt of the crime of rape defined and penalized under Article 335(3) of the Revised Penal Code, as amended, he is hereby sentenced to Reclusion Perpetua. He is furthermore ordered to indemnify the victim Brigida Venancio, in the amount of P30,000.00.

SO ORDERED."²

The evidence of the prosecution tended to establish the following:

At about 8:00 o'clock p.m. on 6 September 1980, Brigida Venancio -- then barely seven (7) years old³ -- was walking through a heavy rain, alone and without an umbrella, bound for her grandparents' house. While Brigida was passing by the Chapel in Sta. Cruz, Sta. Maria, Bulacan, the accused Carlos dela Cruz y Venancio, a blood relative of Brigida (the record does not disclose in what civil degree), suddenly reached out from the doorway and grabbed Brigida's arm and pulled her inside the Chapel. In the Chapel, where it was dark the lights being off, the accused led her to the last pew, pinned her down on the pew and removed her panty.⁴ Accused also removed his

pants and immediately introjected or sought to introject his penis into little Brigida's private organ. While so engaged, the accused covered Brigida's mouth with his one hand and twisted her arm with his other arm. Accused succeeded in placing his organ on top and at least partially into Brigida's private part.⁵ Shortly, there-after, while the two (2) lay down on the pew, head to head, with panty and pants on, respectively, two (2) young parishioners Luzviminda Mendoza and Marilou Carpio, entered the Chapel for a scheduled prayer rally and switched on the lights. Luzviminda Mendoza saw Brigida, who immediately stood up almost simultaneously with the accused, dazed and soaking wet.⁶ Another parishioner Mrs. Francisca Mendoza, Brigida's teacher in Grade I primary school, arrived in the Chapel a little later. She too saw Brigida and the accused and wondered why she was still abroad rather than at home at such a late hour.⁷ Mrs. Mendoza advised Brigida to go home immediately which Brigida did. On her way back to her parents' house, Brigida met Luzviminda Mendoza's father, Mang Domeng, who on noticing her dazed condition accompanied her home to her doorstep.⁸

After the rally, Luzviminda who was an aunt of Brigida, did not go home directly but went to the house of Brigida's parents⁹ and asked the mother why Brigida was soaking wet and still not at home at that late hour. After Luzviminda had left, the mother asked Brigida what had happened. Brigida then told her mother she had been violated by Carlos "Bosyo" dela Cruz.¹⁰

The next day, 7 September 1980, Brigida and her parents and accompanied by Marilou Carpio went to the office of the Police Station Commander of Sta. Maria, Bulacan, and reported the rape of Brigida by the accused and had the matter reflected on the police blotter.¹¹ In the afternoon of the same day, Brigida was brought by her parents to the National Bureau of Investigation ("NBI") office in Manila for medical examination.¹² The examination was conducted by Dr. Nieto M. Salvador who issued a Medico Legal Report dated 7 September 1980 which set forth the following

"FINDINGS

General Physical Examination:

Height: 67 cms. Weight: 20 kgs.

Normally developed, fairly nourished, conscious, coherent, cooperative, ambulatory subject.

Breasts infantile.

No evident sign of extragenital physical injuries noted.

Genital Examination:

Pubic hair, absent. Labia majora and minora, coaptated. Fourchette, tense. Vestibule, reddish and congested.

Hymen, intact. Hymenal orifice, minular admits a tube 0.5 c.m. in diameter.

Conclusion:

Hymen intact."¹³

Brigida's parents, however, did not think very much of the medical examination conducted by Dr. Salvador. Brigida's mother later testified in court that she believed the examination had been done hurriedly and cursorily and haphazardly.¹⁴ Notwithstanding the conclusion of Dr. Salvador's report that Brigida's "hymen [was] intact", Brigida's parents were determined to pursue their complaint on behalf of Brigida. They were not, however, able to lodge one immediately against the accused, since the police investigator was not in his office whenever they went to the police station.¹⁵ Thus, on 18 September 1980, Brigida and her mother went to the Philippine Constabulary Criminal Investigation Service ("CIS") at Camp Crame for assistance. There, Brigida was again examined by PC

Medico-Legal officer Dr. Desiderio Moraleda who made the following

"FINDINGS:

General and Extragenital:

Fairly developed, fairly nourished and coherent female subject. Breasts are undeveloped. Abdomen is flat and tight. There are not external signs of recent application of any form of trauma.

Genital:

There is absence of pubic hair. Labia majora are full, convex and gaping with the pale brown labia minora presenting in between. On separating the same are disclosed a congested vulvar mucosa, a tight and intact fourchette and an elastic, fleshy-type hymen with a deep, healed laceration at 6 and shallow, healed laceration at 3 and 9 o'clock. External vaginal orifice offers strong resistance to the introduction of the examining index finger.

Vaginal and peri-urethral smears are negative for gram-negative diplococci and for spermatozoa.

Remarks:

Subject is in non-virgin state physically."¹⁶

The defense's version of the facts was simply that the rape never happened. The accused testified that he had come from work and stopped by and stayed at the Chapel waiting for the rain to stop.¹⁷ He dozed off, he said, and upon waking up, found a child sleeping on a pew some little distance from where he himself had fallen asleep. He testified that he saw Mrs. Francisca Mendoza talk to the child; that he had not done anything to Brigida; that he had not inserted his organ into Brigida's private part; and he had not removed her panty nor lain on top of her.¹⁸

The accused's bare denial was not corroborated by any other witness. Luzviminda Mendoza's testimony, even if presented by the defense, strongly suggested that something out of the ordinary had happened on the evening of 6 September 1980 inside the Sta. Cruz Chapel; for, as noted, she proceeded to Brigida's home right after the prayer rally, indicating that finding the child Brigida with the accused in the Chapel in such a condition -- soaked to the skin and dazed -- had aroused her concern.

Upon the other hand, the testimony of the child Brigida in open court was starkly simple and straightforward. She said:

"Atty. Regalado:

Q: Brigida, do you know a person by the name of Carlos dela Cruz or 'Bosyo'?

A: Yes, sir.

Q: If he is inside this courtroom, can you point to him?

A: That man (witness pointing to a man who responded to the name of Carlos dela Cruz).

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Q: Ida, you earlier said that you have a complaint please tell us what that complaint was? You are complaining against whom?

A: Bosyo, sir.

Q: Why? Ida, did you also complain to your mother about Bosyo?

A: Yes, sir.

Q: What did you complain to your mother about?

A: Bosyo undressed me, sir.

Q: Are you also making the same complaint here or what?

A: The same, sir.

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Court:

Proceed.

[Atty. Regalado:]

Q: On the night that you reported to your mother, what exactly did you tell your mother on the night you reported it to your mother?

A: That Bosyo 'hinubaran po ako ni Bosyo at inilabas niya ang kanyang titi at inilagay sa kiki ko po'.

Q: What else did he do to you?

A: He covered my mouth with his hands.

Q: What else?

A: He twisted my arm, sir.

Q: Will you please show the Honorable Court how your arm was twisted by the accused?

A: This way, sir. (Witness holding her right wrist by her left hand and twisting the same.)

Q: Now Bosyo you said 'hinubaran ka . . .'

Court:

Was the panty removed?

Atty. Hernandez:

We agree to that translation, your Honor.

Court:

Go ahead.

Atty. Regalado:

Q: When Bosyo pulled down your panty, will you please state before this Honorable Court how he put down your panty?

A: (Witness showing that her panty was being put down.)

Q: When your panty was down already, what did Bosyo do, if any?

A: He put his penis on my vagina, sir. (Witness demonstrated by movements)

Court:

Were you sitting or standing at the time or were you lying?

A: I was lying sir.

Q: And how did he do it?

A: (Witness demonstrated the manner how Bosyo laid on top of her.)

Court:

Proceed:

Atty. Regalado:

Q: At the time, what place was that where you said you were lying?

A: On a long bench, sir.

Q: Approximately, if you can remember what time was that in the evening?

A: Around 8:30 in the evening, sir.

Q: Where did the incident happen?

A: Inside the chapel, sir.

Q: You said chapel, what chapel was that?

A: Sta. Cruz, Sta. Maria, Bulacan, sir.

Court:

Aside from you and Bosyo, were there other persons there?

A: None, sir.

Atty. Regalado:

Q: How many minutes did this Bosyo had the opportunity of putting his penis in your vagina?

A: Quite a few seconds, sir.

x x x x x x x x"19

(Underscoring supplied)

The trial court which heard Brigida's testimony from beginning to end, found that her statements had the ring of truth and were convincing. The trial court said:

"The Court is not unmindful of that judicial pronouncement deeply embedded in jurisprudence that the accusation for rape is easily made, hard to prove, but harder to be defended by the party accused, though innocent. (U.S. v. Flores, 26 Phil. 262). In this case, however, it is inconceivable and it is extremely difficult for the Court to believe that a seven year old girl, unmotivated and so blissfully innocent, could concoct a narration such as she testified to in Court. That she did not complain to her Aunt or to her teacher when the two found her in the Chapel with the accused is understandable. She was so young, just a child. She must have been shocked by what has been done to her by the accused. No wonder she was speechless. She could not comprehend what happened. The pain in her vagina when she urinated upon reaching home however must have been such that constrained her to tell her mother what the accused did to her.

Against the narration of a guileless 7 year old girl, the mere denial and protestation of innocence of a 25 year

old man cannot prevail. The Court is thoroughly convinced of the truth of Brigida Venancio's story. No more need be said."²⁰ (Underscoring supplied)

We find no basis for disagreeing with the evaluation of the trial court.

The appellant, however, insists that the charge against him had not been established beyond reasonable doubt. He urges that there is significant variance between the result of the medical examination conducted on Brigida by the NBI doctor, Dr. Nieto M. Salvador, who found Brigida's hymen to have been "intact" and the result of the examination conducted a few days later by the Philippine Constabulary CIS physician, Dr. Desiderio Moraleda who concluded that Brigida was then "in a non-virgin state". Accused submits that the finding of Dr. Salvador should prevail over that of Dr. Moraleda since the findings of the former were obtained barely twenty-four (24) hours after the alleged rape had occurred while Dr. Moraleda examined Brigida some eleven (11) days after the violation. Accused further argues that even assuming the truth of Brigida's testimony in open court, such testimony indicated that the accused's male member was merely placed on top of the private part of the victim Brigida and had not passed into it,²¹ and that there was no proof at all that his male member had penetrated into the female opening of the victim.

Apropos the above argument, we note, firstly, that medical findings are not indispensable in the prosecution of the crime of rape.²² We note, secondly, that the fact that a woman's hymen is found intact does not show that there had been no penetration by an accused's male organ. It is well-settled doctrine that the slightest penetration of the pudenda is quite sufficient for the consummation of the crime of rape. In *People v. Abonada*,²³ the Court pointed out that "the medical finding that the hymen is intact does not negate rape. Penetration of the penis by entry into the lips of the female organ even without rupture or laceration of the hymen suffices to warrant conviction for rape".²⁴ Moreover, Dr. Salvador testified that he had found physical evidence of "manipulation" of the vagina or the vestibule thereof, which is consistent with entry into the lips of the female part of Brigida:

"Court:

Q: You use the word manipulation, what was manipulated?

A: The attempt to insert a finger or in some other cases wherein the man attempts to insert his erected penis on the child whose genitalia is not yet ripe, with that particular act, there is no way that the penis can go inside the vaginal opening because at this age, the vaginal opening is still narrow, normal, .5 cms.

Q: In this particular case of Brigida, there were signs that there were manipulations?

A: I think so because the appearance is reddish which is not normal, it should be pink-ish."²⁵ (Underscoring supplied)

Dr. Moraleda's finding, upon the other hand, was that Brigida's hymen had in fact been lacerated, showing that there must have been some penetration. The fact that Dr. Moraleda's examination of Brigida took place eleven (11) days after the examination by Dr. Salvador does not impair the credit worthiness of Dr. Moraleda's findings. It is important to note, moreover, that the testimony of the child Brigida herself is quite consistent with the findings and testimony of both Dr. Salvador and Dr. Moraleda that there had been some penetration at least of the labia of Brigida's female part. Brigida's testimony stated, in relevant part:

"Court:

Q: Ida, you said he put his penis into your vagina, does his penis get into your vagina or not?

A: Only on top, sir.

Q: It did not go in?

A: No, sir.

Q: And did you feel any pain or you did not feel any pain?

A: Yes, sir. I felt pain, sir.

Q: Why did you feel pain, what pain? Where was the pain on your vagina or your body as a whole?

A: In my vagina, sir.

Q: Was medical report?

Fiscal:

The record of the fiscal's office show there were two medical examinations.

Court:

Q: Ida, you said a short time did you urinate at that time?

A: Yes, sir.

Q: What about this Bosyo did he urinate?

A: No, sir.

Q: How do you know you urinated?

A: (Witness does not answer.)

Q: Did you know whether something came out from the penis of Bosyo?

A: Sticky fluid and dropped on my thigh.

Q: But you said you urinated, when did you urinate at the time or when?

A: When I went home, sir.

Q: Did you notice any or rather did you notice whether or not there was blood around the area of your vagina?

A: No, sir."²⁶ (Underscoring supplied)

Brigida's statement that she had felt pain in her private part would have been incomprehensible if there had been absolutely no penetration, not even of the labia, by the accused's male organ. It appears to the Court, that the 7-year old Brigida was much too young to be capable of distinguishing between the penis merely lying outside the vagina and on top of the pubes, from the erect penis poking into the labia in the effort to get into the vaginal canal, but being unable to do so because of the unripe or infantile condition of the canal. We agree with the conclusion of the trial court that there had in fact been some penetration at least of the labia and that consequently, the crime that was committed was consummated rape.

It was proven at the trial that the violation of the child Brigida took place in the Sta. Cruz Chapel in Sta. Maria, Bulacan, a building dedicated to and actively used for religious worship. The criminal information did not apparently specify the place of the commission of the rape. Nonetheless, the trial court could have and should have found the presence of the generic aggravating circumstance of commission of the offense in a place dedicated to religious worship.²⁷ The trial court made no mention of such aggravating circumstance in its decision. Because the appropriately imposable penalty of reclusion perpetua is an indivisible penalty, and was in fact imposed by the trial court, the finding that we here make of the presence of this generic aggravating

circumstance, does not impact upon the imposable penalty.²⁸

WHEREFORE, the Decision of the trial court dated 20 February 1985 must be, as it is hereby, **AFFIRMED**. Costs against appellant.

SO ORDERED.

Gutierrez, Jr., Bidin, and Cortes, JJ., concur.
Fernan, C.J., (Chairman), on leave.

2 Trial Court Decision, p. 9; Rollo, p. 32.

3 Brigida was born on 4 December 1973. See Certificate of Live Birth, Record, p. 282.

4 TSN, 2 February 1981, pp. 10-12; 4 May 1982, pp. 4-5.

5 Id., p. 13.

6 TSN, 9 August 1984, p. 4.

7 TSN, 6 July 1984, pp. 4-6.

8 TSN, 4 May 1982, p. 15.

9 Id., p. 9.

10 TSN, 12 November 1982, pp. 3-4.

11 Id., pp. 7-8.

12 TSN, 25 April 1983, pp. 6-7.

13 Folder of Exhibits, p. 1.

14 TSN, 25 April 1983, pp. 10-11.

15 Id., p. 7.

16 Record, p. 286.

17 TSN, 7 September 1984, p. 5.

18 Id., pp. 12-14.

19 Trial Court Decision, pp. 2-4; Rollo, pp. 25-27.

20 Id., p. 8; Rollo, p. 31.

21 TSN, 2 February 1981, pp. 10-31.

22 *People v. Orteza*, 6 SCRA 109 (1962).

23 169 SCRA 530 (1989).

24 169 SCRA at 534.

25 Trial Court Decision, p. 6; Rollo, p. 29.

26 TSN, 2 February 1981, pp. 3-14.

27 Article 14 (5), Revised Penal Code. See also *People v. De Guzman*, 164 SCRA 215 (1988); *People v. Soriano*, 134 SCRA 542 (1985); *People v. Tapac*, 28 SCRA 191 (1969); *People v. Martinez Godinez*, 106 Phil. 597 (1959).

28 Article 63, Revised Penal Code.

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