

## PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ERNESTO SANTOS, @ &#8220;KARIBA&#8221;, ACCUSED-APPELLANT.

G.R. NO. 77912. March 06, 1990

Ponente: GUTIERREZ JR., J.

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### GUTIERREZ JR., J.:

The present appeal prays for an acquittal of the accused-appellant who was convicted of the crime of statutory rape in Criminal Case No. 7790-M by the Regional Trial Court of Bulacan, Third Judicial Region, Branch 14-Malolos. The decision sought to be reversed contains the following dispositive portion:

"WHEREFORE, judgment is hereby rendered, finding the accused guilty beyond reasonable doubt of the crime of rape under Par. 3, Article 335 of the Revised Penal Code and is sentenced (sic) to suffer Reclusion Perpetua or Life Imprisonment. To indemnify the victim P10,000.00 as moral damages. With costs" (RTC Decision, p. 7; Rollo p. 42).

The original complaint in the instant case was filed by the victim's mother on March 6, 1985. On August 9, 1985, an amended information was filed so as to have the victim herself as the offended party assisted by her mother considering that she was a minor at the time of the criminal incident and at the filing of the criminal charge against the accused-appellant. The amended information reads:

"The undersigned Provincial Fiscal on complaint of the offended party Priscilla Marcos assisted by her mother Pilar G. Marcos, accuses Ernesto Santos alias 'Kariba' of the crime of rape, penalized under the provisions of Art. 335 of the Revised Penal Code, committed as follows:

"That on or about the 26th day of November 1984, in the municipality of Obando, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the said accused Ernesto Santos, alias 'Kariba', did then and there wilfully, unlawfully, and feloniously, by means of force, threats and intimidation, have carnal knowledge of the offended party Priscilla Marcos, a minor, against her will and consent.

"Contrary to law." (Records, p. 27)

The offended party at the time of the alleged crime was only nine-years old while the accused-appellant was twenty-five years old.

The pertinent facts as presented by the Solicitor-General are as follows:

"In the morning of November 26, 1984, Pilar and son left their house and proceeded to a hospital to attend to another son. She left behind her daughter Priscilla and three other sons, the eldest of whom was 3 years old, to her sister-in-law, Asuncion Marcos, who was then residing with them since Pilar's husband left to work abroad. (pp. 3-4, & 10 tsn, September 13, 1985; p. 9-10, 16 tsn, October 4, 1985)

"At about 6:00 o'clock that afternoon, as Asuncion went to a store nearby to buy something, the appellant entered their house. And, finding Priscilla to be only with her three kid brothers, appellant undressed her by removing her panty, and ordered her to lie down, which she did. Thereafter, he removed his penis into his own

pants and laid on top of her as he inserted his penis into her vagina. That while the appellant was having sexual intercourse with her, Priscilla felt pains (pp. 4-5, tsn, October 4, 1985; pp. 5-13, tsn, February 5, 1986).

"Meanwhile, as Asuncion was entering the house upon her arrival, she saw the appellant on top of her niece, Priscilla, who were both naked. (sic) The appellant immediately stood up and put on his clothes, as he pushed Priscilla who by then also stood up crying. The appellant left after warning the two not to report the matter to Priscilla's mother (pp. 4-8, tsn, October 4, 1985).

"As soon as Priscilla's mother arrived home at about 7:00 o'clock that evening, Asuncion reported to her what happened to Priscilla. That same evening, they reported the incident to the police, which conducted an investigation of the case. Thereafter, on the basis of the sworn statements of Pilar and Asuncion (Exhibit "B" and "E", respectively), a complaint for rape (Exhibit "D") was filed by Pilar against the appellant (pp. 14-15, tsn, October 4, 1985).

"On November 28, 1984, Priscilla was submitted for medical examination to the Municipal Health Office of Obando, Bulacan (p. 13, tsn, September 13, 1985; pp. 4-5, tsn, May 5, 1986) Obando Municipal Health Officer, Dr. Rufino Bautista, who conducted the examination, issued under date of December 10, 1984 a Medical Certificate (Exhibit "C") stating his findings, as follows:

""- No external physical findings noted except for internal examination of the reproductive organ shows (sic) the following findings:

""I. E. - Erythema of the labia minora

""- Superficial laceration of the hymen at 9:00 o'clock.

""- Hardly admit 3 cms. in diameter test tube and 1/4 of an inch depth has reach. (sic)'

He also stated therein his conclusion that: 'As to my medical evaluation, the glans penis, has entered the canal at 1/4 of an inch only and it was not consummated.' (Appellee's Brief, pp. 3-5; Rollo, pp. 96-98)

Upon arraignment, the accused-appellant, assisted by his counsel, entered a plea of not guilty. After trial on the merits, the lower court, on February 12, 1987, rendered a judgment of conviction from which this appeal was interposed assigning as errors, to wit:

A

"ON THE CRIMINAL ASPECT: THE LOWER COURT ERRED IN CONVICTING THE ACCUSED ERNESTO SANTOS FOR THE CRIME OF RAPE UNDER PARAGRAPH 3, ARTICLE 335 OF THE REVISED PENAL CODE, BEYOND REASONABLE DOUBT.

B

ON THE CIVIL ASPECT: THE LOWER COURT ERRED IN SENTENCING THE ACCUSED ERNESTO SANTOS TO INDEMNIFY THE VICTIM, PRISCILLA MARCOS, THE AMOUNT OF P10,000.00 BY WAY OF MORAL DAMAGES, PLUS COSTS."

It is the contention of the accused-appellant that the testimony of the offended party is inadmissible considering that she was only ten years old when she testified, hence, of such a tender age that she was incompetent to be a witness. In relation thereto, the accused-appellant invokes Rule 130, Section 19, subparagraph (b) which states that:

"Physical disqualification - The following persons cannot be witnesses:

xxx xxx xxx

(b) Children who appear to the court to be of such tender age and inferior capacity as to be incapable of receiving correct impressions of the facts respecting which they are examined, or of relating them truly."

The contention is untenable. As correctly observed by the trial court, the manner by which Priscila narrated how she was abused by the accused-appellant is so clear and convincing that no question can be posed as to the credibility and integrity of her testimony. The aforequoted law is clear as to who may not be witnesses. It is also clearly indicated by the evidence on record that the nine-year old victim in the instant case is outside the ambit of the disqualification contemplated by law. We agree that her testimony in court reveals a full understanding of what she was stating and a truthful account of the crime perpetrated by her assailant. In all the child's innocence and naivety, she could not have possibly concocted the story she related in court as to how she was ravished and assaulted sexually by the accused-appellant.

In the case of *People v. Ricardo Salita y Betus*, (G.R. No. 76531, November 15, 1989), we held that:

"The testimony of the offended party (nine years old) is clear and spontaneous. It is the revelation of an innocent child whose chastity was abused by appellant. It deserves full credence. x x x"

Likewise, in the case of *People v. Fernando Perez*, (G.R. No. 84362 July 7, 1989), we accorded full credence to the testimony of an eight-year old child who imputed the crime of rape to the accused therein. Thus, a mere allegation that a witness is of a tender age is not sufficient to disqualify her from sitting on the witness' stand. Even the sole testimony of a minor of such a tender age will suffice to convict a person accused of a crime as long as the said testimony is credible. (see *People v. Traya*, 147 SCRA 381 [1987]).

The accused-appellant further attempts to discredit the testimony of the offended party by pointing out certain contradictions and inconsistencies, namely: that in her oral testimony in court, the offended party admitted having felt pain at the time the accused allegedly had sexual intercourse with her while during the preliminary investigation, she stated otherwise; that the offended party testified in court that the only part kissed by the accused was her right neck but during the preliminary investigation, she stated that her private parts were also kissed by her assailant; and that in her police statement, the offended party declared that the accused made her to lie down before he had intercourse with her while during the preliminary investigation, she testified that the sexual act was done to her in a standing position.

After a careful perusal of the records of the instant case, we find the alleged variance in the testimonies of Priscilla too trivial so as to actually affect the finding that the accused-appellant is guilty of statutory rape. It is an oft-repeated rule in criminal cases that minor inconsistencies in the testimony of a witness do not affect his credibility. (see. *People v. Detuya*, 154 SCRA 410 [1987]; *People v. Marquez*, 153 SCRA 700 [1987]; *People v. Ferrera*, 151 SCRA 113 [1987]; *People v. Dollantes*, 151 SCRA 592 [1985]; *People v. Pielago*, 140 SCRA 418 [1985]; *People v. Naz*, 138 SCRA 420 [1985]; *People v. Agudo*, 137 SCRA 516 [1985]; *People v. Manalo*, 135 SCRA 84 [1985]).

The testimony of a child victim during the trial of a rape case cannot be a verbatim reproduction of statements given during a preliminary investigation. The depth and intensity of questioning and the atmosphere of the courtroom during trial will naturally result in a more detailed and generally more accurate presentation. Thus, a child who immediately thinks of the kiss on her neck while being questioned during the preliminary investigation may later on state at the trial that her vagina was also kissed. She may have stated earlier that the kissing and molestation started before she was forced to lie down but during the trial she would concentrate on the actual rape while lying down. On the actual rape, however, the testimony of the victim that the appellant mounted and sexually assaulted her is consistent.

Notwithstanding the inconsistencies pointed out by the accused-appellant, there is clear and convincing proof that

Ernesto alias "Kariba" committed the crime of statutory rape. The elements of statutory rape are: (1) that the offender had carnal knowledge of a woman and (2) that such act is committed when the victim is under twelve years of age. In her oral testimony in court, Priscela categorically stated that after she was kissed by the accused-appellant, she was instructed to lie down and afterwards the accused had sexual intercourse with her (TSN, February 5, 1986, p. 5-8). The testimony of the offended party was corroborated by the medical findings and testimony of the physician who conducted the internal examination of the offended party. (Exhibit "C"; TSN, May 5, 1986, pp. 4-12) There is further evidence supporting Priscela's accusation consisting of the oral testimonies and sworn statements of Asuncion Marcos, paternal aunt of Priscela and Priscilla's mother. (TSN, October 4, 1985, pp. 4-9; TSN, September 13, 1985, pp. 3-7) Asuncion actually saw the accused-appellant while he was still on top of her niece. In the absence of any strong motive of the victim to implicate the accused, the victim's testimony as to the crime of rape sufficiently corroborated by witnesses and medical findings of the victim's attending physician at the time of the incident stands the test of credibility. (See *People v. Valdez*, 150 SCRA 405 [1987])

The accused-appellant's claim that the corroborative evidence given by the aunt and mother of the offended must not be given weight for being biased is unmeritorious considering that the fact of relationship alone, either by consanguinity or affinity does not have any effect on the credibility of witnesses. (*People v. Atencio*, 156 SCRA 242 [1987]); *People v. Paras*, 147 SCRA 594 [1987]). More important, as held in the case of *People v. David*, (G.R. Nos. 72355-59, September 15, 1989):

"It is inconceivable that a mother x x x would fabricate a rape charge, subject her daughter to physical examination and the embarrassment of a public trial. x x x (on p. 15; see also *People v. Carino, Sr.*, 167 SCRA 285 [1988])."

With respect to the defense of alibi, the same must fail for it was not enough to simply prove that the accused-appellant was somewhere else when the crime was committed but he must likewise show that it was physically impossible for him to have been at the scene of the crime. (*People v. Alvarez*, G.R. No. 70441, Jan. 31, 1989; *People v. Hortillano*, G.R. No. 71116, September 19, 1989; *People v. Alfonso*, 153 SCRA 487 [1987]; *People v. Urgel*, 134 SCRA 483 [1985].

On cross examination, Ernesto alias "Kariba" testified that his residence is merely four (4) houses away from the offended party's house with a distance of about 20 meters and that the house of one Aling Paz where he claimed he was at the time Priscilla was raped is just opposite the house of the offended party. (TSN, June 6, 1986, pp. 19-23) Hence, physical impossibility is lacking in this case in order that the defense of alibi may be considered.

Finally, on the civil aspect of this case, the amount of P10,000.00 awarded by the trial court by way of moral damages is increased to P50,000.00 in the light of our ruling in the case of *People v. Perez*, *supra* that:

"The sexual violence inflicted upon the eight-year old child is a particularly appalling outrage. The trauma sustained by her is not merely physical and may be expected to remain with her for a long, long time, possibly for life x x x"

WHEREFORE, IN VIEW OF THE FOREGOING, the judgment of conviction by the trial court is hereby AFFIRMED subject to the modification that the amount of moral damages is increased to FIFTY THOUSAND PESOS (P50,000.00)

**SO ORDERED.**

Fernan, C.J., (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

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