

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALBERTO BARRO, JR. Y RELON, ACCUSED-APPELLANT.

G.R. No. 86385. August 02, 1990

Ponente: PARAS, J.

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PARAS, J.:

Here is a case of rape committed a great number of times over a period of two (2) years by an uncle against his niece.

The niece is Jho-An Cortez y Barro, an 11-year old minor when she filed the complaint in the Regional Trial Court of Pasig while the accused uncle is Alberto R. Barro, Jr., a full-blood brother of Jho An's mother.

The facts as found by the trial court are quoted hereunder:

"(Jho-an Cortez) testified that she and her sister Mary Ann, who was 9 years old at the time of the incident, were living with their uncle and the accused herein at 223 Daang Hari St., Bicutan, Tagig, Metro Manila and that prior to September 21, 1987, her uncle also used to undress her during the night and then inserted his penis in her vagina ("pepe"); and that whenever she offered any resistance or refusal, her uncle gets angry and would slap her and that she would cry and on several occasions, her sister May saw and witnessed these sexual acts committed on her person and on such occasions too, the only thing that May and she could do, was cry. And because of this problem that she bore on her shoulders, she asked her friend Lilay, whose father is one Antonio Martinez and who has a house located nearby, if she may live with them and Antonio Martinez agreed so that sometime on September 16, 1987, she and May left the rented room of their uncle and went to live in the house of Lilay Martinez. But then, her uncle traced their whereabouts and brought them back to his rented room in Daang Hari St. and on September 21, 1987 in the evening, again her uncle undressed her and then she was sexually ravaged. So that thereafter, she and May again left the rented room of her uncle and proceeded to the house of Antonio Martinez and presumably sought his assistance such that she and her sister were brought to the Tagig Police Station where she complained against her uncle before Pat. Felixberto Maog and then proceeded to the Camp Crame General Hospital so that ostensibly Jho--An might be physically examined. One of the physicians in said hospital endorsed them to the PC Crime Laboratory where Lt. Col. Desiderio Moraleda, Chief of the Medico-Legal Branch, personally conducted an examination on the person of Jho-An Cortez (Corona) and found that certain deep, healed lacerations in the 3 and 6 o'clock positions in the vaginal wall of the private complainant are present indicating that an object has deeply penetrated her vagina and caused the hymen to be broken. In his medical report, Dr. Moraleda stated that Jho-An Cortez is no longer a virgin and in his testimony before the Court, he made manifest that the cause of such lacerations could have been made by a penis inserted during sexual intercourse."

(pp. 3-5, Brief for the Plaintiff-Appellee; pp. 94-96, Rollo)

In its decision promulgated on December 7, 1988, the trial court[1] found:

"x x x the accused Alberto Barro, Jr. y Relon guilty beyond reasonable doubt of the crime of rape as charged; and therefore hereby sentences him to life imprisonment (reclusion perpetua); and to indemnify the

complainant herein the amount of P15,000.00." (p. 84, Rollo)

Accused seeks the reversal of the aforesaid judgment of conviction to one of acquittal. He argues that the trial court erred in giving full weight and credence to the testimonies of the prosecution witnesses and in disregarding the theory of the defense and that the trial court erred in convicting him of the crime of statutory rape, because his guilt thereof has not been proved beyond reasonable doubt. (p. 50, Rollo)

Appellant Barro maintains that complainant Jho-An is not a reliable witness because she was born on June 24, 1973 and not on June 24, 1976 as claimed by her, implying that at the time of the incident, Jho-An was already more than twelve (12) years old.

Anent the aforesaid contention, the evidence of the prosecution was the certification of the Chief of the Archives dated January 4, 1988, showing that Jho-An was indeed born on June 24, 1976 in Catbalogan, Samar. On the other hand, it was only the uncorroborated testimony of appellant's brother, Jose Barro, who alleged that he (Jose) was present at the time of Jho-An's birth in 1973, that was relied on by the defense that Jho-An was born in 1973. This self-serving assertion obviously cannot prevail over the undisputed evidence of the prosecution. Appellant himself confirmed the fact that Jho-An was born in 1976.

"Fiscal:

"Q. And Jho-An Cortez specifically on August or September (1987), was only ten (10) or eleven (11) years old?

x x x

"A. Barro, Jr.:

"A. Eleven (11) on June 24, 1987, sir."

(tsn, 9/19/88, pp. 5-6)

Where the acts complained of were committed when the complainant was still below twelve (12) years of age, it is categorized as simple rape or rapes without the attendance of any of the qualifying circumstances mentioned in Article 335 of the Revised Penal Code, the basic element of which is the carnal knowledge of a woman below 12 years of age. Carnal knowledge of a girl under twelve years old is always rape.[2]

Appellant contends that there was no spermatozoa in Jho-An's private organ when she was examined.

That the medical technician found no spermatozoa in the smear taken from the cervix is immaterial in the crime of rape. What is essential in this crime is evidence of penetration of the offender's sex organ into the complainant's sex organ.[3]

The trial court observed that Jho-An, during her testimony, was articulate and intelligent for her age, displaying no hesitation but only candor in the narration of the events constituting the crime of rape by her uncle against her person. In passing upon the merits of complainant's testimonial evidence, the trial court made the following appropriate findings:

"Her version of what happened to her is so credible that it made a lasting impression on the mind of the Court.

"It is axiomatic that 'when a woman testified that she had been raped, she said all that was necessary to show that rape has been committed'. The complainant has steadfastly testified before the court that she has been sexually abused by her uncle and the accused herein.

xxx xxx xxx

"Being an intelligent girl, such heinous incursions on her person by her uncle caused heavy burden on the young shoulders such that she considered this, according to her, a grave problem that she decided, even at her tender age, to separate from her uncle and to flee from his rented room and suiting her thoughts into action, she, together with her sister, did so by going to the house of Antonio Martinez. But then, they were found and brought back by her uncle to the same rented room of unpleasant memories and thereat, again was sexually abused. She could no longer take this lying down and so sought the help of Antonio Martinez and they proceeded to the police station to lodge her complaint. All these steps were taken by a minor of 11-years whose only guide was her native intelligence and intuitive wisdom as her expression of repugnance to being sexually assaulted by her uncle. She sought the help of the authorities because, as expressed by her in her testimony before the Court, she could not show pity on her uncle because of what he did to her." (pp. 107-109, Rollo)

WHEREFORE, the decision appealed from is hereby **AFFIRMED**, with the modification that the indemnity is hereby increased to P20,000.00.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, and Regalado, JJ., concur.
Sarmiento, J., on leave.

[1] Penned by Judge Apolonio R. Chavez, Jr.

[2] People vs. Derpo, G.R. 41040 and 43908-10, December 14, 1988

[3] People vs. Sato, G.R. 47911, July 27, 1988

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