

## PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MATIAS GRAZA Y FETIL, DEFENDANT-APPELLANT.

*G.R. No. 87928. April 30, 1991*

Ponente: PADILLA, J.

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### PADILLA, J.:

This criminal case was certified to this Court by the Court of Appeals after it had determined that the penalty imposable upon the defendant-appellant is reclusion perpetua.

The established facts are as follows:

"In the afternoon of October 22, 1984, Luz Cerilo, a 7 year old girl, who came from school was walking alone on her way to her house located at San Vicente, Gorong-Gorong, Nabua, Camarines Sur (p. 10, tsn. Nov. 15, 1985). Upon reaching a place near a guava tree, she saw appellant Graza, then about 60 years old (pp. 10, 15, 16, tsn. Nov. 15, 1985). Appellant approached and offered money to the victim, but the latter ran away instead (pp. 9-10, 16, tsn. Nov. 15, 1985). Appellant followed her (p. 15, tsn. May 13, 1986). When appellant caught up with her, he held her on the left arm and pulled her towards a thickly forested area (p. 16, tsn. Nov. 13, 1985; p. 16, tsn. May 13, 1986). He threatened her that she would be imprisoned if she told her parents about what would happen (p. 6, tsn. Nov. 15, 1985). Thereafter, he removed her panty and forcibly laid her down (pp. 5-7, 8, 13, 16, tsn. Nov. 15, 1985). After removing his clothes, appellant went on top of her, his sexual organ inserted in her private part (id.). At this instance, she felt pain and lost consciousness (p. 13, 17, tsn. Nov. 15, 1985). When she regained consciousness, appellant had already left (p. 12, tsn. Nov. 15, 1985). She was too weak and could not easily get up (p. 6, 9, tsn. Nov. 15, 1985). As soon as she was able to stand, she left and proceeded home (p. 12, tsn. Nov. 15, 1985). Upon arrival, she did not inform her mother, Amparo Cerilo, of what happened to her as she was afraid of the threat of appellant (p. 6, tsn. Nov. 15, 1985). As she was still weak, she just laid down (pp. 12-13, tsn. Nov. 15, 1985).

"In the evening of that day, she had a fever and suffered continuous pain on her private part (p. 8, tsn. May 13, 1986; p. 13, tsn. Nov. 15, 1985). Then on October 24, 1984, Amparo saw her daughter wipe her private part (p. 3, 8, tsn. May 13, 1986). When she took a look she saw her daughter's private part dirty and sticky substance coming out of it (p. 3, tsn. May 13, 1986). She noticed also blood on her daughter's dress and bruises on both legs (pp. 16-17, tsn. May 13, 1986). When asked if she was raped, Luz readily answered it was her uncle, appellant Graza who raped her (p. 4, tsn. May 13, 1986). Amparo Cerilo immediately went to her husband and related to him what happened to their daughter (p. 4, tsn. May 13, 1986). Thereafter, she took her daughter to Dr. Luis Elegado for medical examination and treatment (p. 4, id.). Dr. Elegado issued a medical certificate (Exh. 'A', p. 4, Record) which contained the following findings:

'(1) Swollen labia, left and right painful to touch.

'(2) Obliterated hymen'

"Upon the suggestion of Dr. Elegado, she reported the incident to the Barrio Captain who, after conducting an investigation, referred the matter to the Philippine Constabulary for further investigation and this led to the filing of the Information charging appellant with rape. (pp. 14-15, tsn. May 13, 1986)."[1]

The information against the accused reads:

"The undersigned accuses MATIAS GRAZA y Fetil, upon complaint by the offended party, LUZ B. CERILO, of the crime of RAPE, defined and punished under Article 335 of the Revised Penal Code, as amended by R.A. No. 4111, committed as follows:

"That on or about the 22nd day of October, 1984 at barangay San Vicente, Gorong-gorong, Municipality of Nabua, Province of Camarines Sur, Philippines and within the jurisdiction of this Honorable Court, Philippines, the said accused, with lewd designs, by means of force, did then and there wilfully, unlawfully and feloniously have carnal knowledge with one LUZ B. CERILO, a girl seven (7) years of age, against her will and without her giving provocation to it." [2]

Pleading not guilty to the crime charged, the accused, at the trial, set-up the defense of alibi.

"Leonor Cerilo testified that the accused is her husband and the victim Luz Cerilo is the daughter of her brother. On October 22, 1984, she was in their house at Gurong-gorong, Nabua, Camarines Sur, while her husband was working in their ricefield. Her husband started working in the ricefield at 7:00 o'clock in the morning and stopped working at 11:00 o'clock that same morning. The house of Luz Cerilo is located at Tapayas, Balatan, Camarines Sur which is about a kilometer away from their place and that there was no means of transportation in going there. At about 3:00 o'clock in the afternoon, her husband again worked in the field and finished it at 5:00 o'clock that same afternoon (tsn. pp. 2-5, March 31, 1987)." [3]

Discrediting the defense of alibi, the RTC of Iriga, Branch 35 held:

"x x x. But equally true is that between 3:00 to 5:00 o'clock in the afternoon of this fatal day, accused was in their ricefield and that the path to the elementary school where complainant holds (sic) classes from their house pass by this field whereon he works and that along this path are bushes. With this circumstances, alibi may not hold.

"Furthermore, it is established that complain-ant is a niece of the accused because she is the daughter of the brother of his wife. Yet despite this relationship accused never went to or approached complainant or her parents to explain to them of the falsity of the charge as he claims." [4]

Accused was found guilty by the trial court, with no aggravating or mitigating circumstances, and was sentenced to an indeterminate penalty of seventeen (17) years, four (4) months and one (1) day to twenty (20) years of reclusion temporal in its maximum period.

The accused appealed the RTC decision to the Court of Appeals, claiming among other things that the testimony of the victim is of doubtful truthfulness because it is conflicting and unclear, as shown by the following:

"a) x x x

'Q -

After your Pay Atin removed your panty and made you lie down, what did he do next?

'A -

He laid on top of me.

'Q -

And after he was already on top of you, what did he do to you?

'A -

No more.'

xxx xxx xxx

'Q -

Was the pain inside your vagina?

'A -

Yes, sir.

'Q -

And did you notice what was causing that pain?

'A -

No, sir.

'Q -

For how long did your Pay Atin lay on top of you?

'A -

I could not remember.'

xxx xxx xxx

'Q -

Do you know what he did with it? While he was on top of you?

'A -

Yes, Your Honor.

'Q -

What did he do with it while he was on top of you?

'A -

None.' (tsn., pp. 5-7, Nov. 15, 1985).

'Q -

Was it long time or was it just recently?

'A -

Long time.

'Q -

So you were at that time schooling?

'A -

No, your Honor.

'Q -

You remember the date, the day whether it was Monday, Tuesday or Wednesday.

'A -

It was Monday.

'Q -

You were not schooling then?

'A -

I was.' (tsn., p. 15, Nov. 15, 1985)[5]

Before the Court of Appeals, defendant-appellant also submitted the following contentions —

'b)

she (the offended party) did not report to her parents that she had been raped by the appellant for when she reached home after the incident, she merely told her mother that she had a head and stomach ache;

'c)

there was no physical evidence, like injury on her body or signs of new lacerations in her private part;

'd)

that his defense of alibi was duly supported by his wife who confirmed the fact that the appellant was in their house working on October 22, 1984 and never left the place."[6]

In its decision[\*], the Court of Appeals affirmed the RTC findings en toto but modified the imposable penalty on defendant-appellant to reclusion perpetua, with indemnity to the victim in the amount of P20,000.00. Pursuant to Sec. 5, par. 2(D), Art. VIII of the 1987 Constitution which empowers the Supreme Court to review final judgments or orders of lower courts in all criminal cases in which the penalty imposed is reclusion perpetua or higher, the Court of Appeals, as earlier mentioned, certified the case to the Supreme Court.

It is a well-settled principle in this jurisdiction that in crimes against chastity, the testimony of the offended party should not be received with precipitate credulity. When the conviction depends on any vital point on her uncorroborated testimony, such testimony should not be accepted unless her sincerity and candor are free from suspicion.[7] Here we have a vulnerable seven (7) year old girl, frightened out of her wits by threats of imprisonment.[8] For her, silent forbearance was preferable to an agonizing scrutiny of a traumatic experience. Failure to report the incident to her mother cannot, therefore, in any way affect the credibility of her testimony. For one, she positively identified the accused, as the perpetrator of the offense, and she had no previous ill-feeling or motive to testify falsely against him.

Conviction for statutory rape (par. 3, Art. 335, Revised Penal Code) requires only one (1) basic element: carnal knowledge of a female below twelve (12) years of age. Sexual congress with a girl under twelve (12) years old is always rape.[9] Force, intimidation or physical evidence of injury are immaterial.

For alibi to be accepted as a defense theory, a minimum requirement is that it was physically impossible for the accused to be at the scene of the crime when it was committed. In this case, without any explanation, Alfredo Basagra, helper of the accused while working in the fields at the time of the commission of the crime, was not presented as a defense witness. The defense of alibi merits outright rejection where it could have been corroborated by other persons and yet, no such corroborating evidence was presented.[10]

The Court of Appeals decision, as borne out by the records, found:

"x x x. Moreover, it was not physically impossible for him (appellant) to have been at the scene of the crime as it was established that from 3:00 p.m. to 5:00 p.m. of the day in question, he worked in the ricefield, and that along the path from the victim's school to her home, which path she passes by, is the field wherein the appellant worked and along the said path were bushes."[11]

Except for the obviously inadvertent mistake in the second line of the CA decision placing the case venue in Iligan City, instead of Iriga City, we find no reversible error in the decision.

WHEREFORE, the Court of Appeals decision is AFFIRMED. Accused-appellant is sentenced to suffer the penalty of reclusion perpetua and to indemnify the victim Luz B. Cerilo in the amount of P30,000.00 (instead of P20,000.00) in line with prevailing jurisprudence. No pronouncement as to costs.

### **SO ORDERED.**

Melencio-Herrera, (Chairman), Sarmiento, and Regalado, JJ., concur.  
Paras, J., No part. Wife is ponente.

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[1] Brief for the Plaintiff-Appellee, pp. 2-4

[2] CA Decision, pp.1-2

[3] Brief for the Defendant-Appellant, pp. 3-4

[4] RTC Decision, p. 5

[5] CA decision, pp. 2-3

[6] Ibid.

[\*] Penned by Justice Gloria C. Paras, with the concurrence of Presiding Justice Rodolfo A. Nocon and Justice Bonifacio A. Caccac, Jr.

[7] People v. Felipe Marapao and Cesar Relivo, G.R. Nos. 68265-66, August 2, 1990

[8] CA decision, p. 5

[9] People v. Alberto Barro, Jr. y Relon, G.R. No. 86385, August 2, 1990

[10] People vs. Alvarez, G.R. No. 70446, 31 January 1989; People vs. Mendova, 100 Phil. 811

[11] CA decision, p. 6

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