

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDGAR B. FERNANDEZ, ACCUSED-APPELLANT.

G.R. No. 94008. February 21, 1992

Ponente: NOCON, J.

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NOCON, J.:

This is an appeal by Edgar B. Fernandez from the decision dated October 17, 1989 of the Regional Trial Court, First Judicial Region, Branch 37, Lingayen, Pangasinan, convicting him of the crime of rape of a seven (7) year old child by the name of Marites C. Soriano, the dispositive portion of which reads:

“WHEREFORE, this Court finds the accused, Edgar B. Fernandez, Guilty beyond reasonable doubt of the crime of Rape and hereby sentences him to suffer the prison term of Reclusion Perpetua, to indemnify the offended party the amount of P20,000.00 and to pay the cost.

SO ORDERED.”

The facts as gathered from the evidence on record are as follows:

It was on March 8, 1985, at about noontime, when Marites Soriano, a seven (7) year old girl and a Grade I student at the Padilla Elementary School at Lingayen, Pangasinan, was walking home after school. The accused, Edgar B. Fernandez, a sixteen (16) year old boy offered Marites Soriano two (2) cashew fruits and led her towards the Colegio of Pangasinan Sur, Lingayen, Pangasinan. The accused then forced her to lie down on the cemented dike as he placed his body over Marites and proceeded to have carnal knowledge with her without the latter’s consent.[1]

Thereafter, the accused left while Marites went home crying and bleeding and immediately reported the incident to her parents. From the Sto. Nino Hospital in Lingayen, Marites was brought by her father to the Pangasinan Provincial Hospital at Dagupan City where a medical report was then issued showing that Marites was sexually abused.[2]

The incident was reported to the police by Marites’ father Eduardo Soriano. But prior thereto, barangay authorities brought a certain Danny Miranda to the house of Marites for the latter to identify if he was the culprit. Danny Miranda is a helper of Municipal Kagawad Jimmy Joves whose house happened to be near the cemented dike where the incident took place and whose short pants and brief were found smeared with blood. Marites however, did not point to Danny Miranda as the offender.[3] At any rate, Danny Miranda’s blood smeared short pants, and brief were brought to the NBI for examination and the NBI report found Miranda’s pants positive for human blood.[4]

On March 23, 1985, Marites was brought by her father to watch a basketball game at the public plaza of Lingayen. There, Marites saw the accused Edgar B. Fernandez as one of the players and confidently pointed to her father the accused as the one who raped her. The accused was then invited by Barangay Tanod Oscar de los Santos to the police station where he was investigated. A police line-up was conducted and again the accused was

pointed to by Marites as the person who raped her.[5]

Accused-appellant's defense is predicated on denial and alibi.

He points to Danny Miranda as the culprit simply because the latter was in possession of the short pants and brief smeared with blood. Moreover, the fact that Danny Miranda worked as a helper in the house near the cemented dike where the incident took place; and that there are cashew trees in the front yard of said house, are circumstances pointing to Miranda as the primary suspect.

We are not convinced by accused-appellant's rationalization. What is decisive and cannot be denied is his positive identification as the malefactor.[6] It is worthwhile mentioning that Marites, a young girl of seven, lost no time in reporting that painful incident to her father and thereafter to the authorities to the extent of even submitting herself to an embarrassing medical examination in her quest for truth and justice.[7] The victim never pointed to Danny Miranda as the one who raped her. It would be unnatural and illogical for a seven (7) year old girl to point to another person as the one who raped her when in truth and in fact, he is not. The harrowing and gruesome experience and the pain will always be remembered and felt by the victim and because of this, Marites could not have mistakenly identified the appellant. Not even the threat of death by the rapist had dissuaded her in reporting and denouncing appellant to the authorities as the person who violated her. No improper motive can be ascribed to Marites other than a desire to tell the truth and redress for a terrible wrong inflicted on her.[8]

As to the appellant's defense of alibi, the trial court in disposing of the same, had this to say:

The defense of alibi (that he was in school at that time) was not satisfactory. It was not proved convincingly, especially taking into consideration the categorical statement of the offended party that the said accused was the one who really sexually abused her. The records of the Pangasinan Memorial College, Lingayen Pangasinan shows that the accused, Edgar B. Fernandez, was present in school on March 8, 1985 but on that precise time, there was no showing that he was in his classroom at the time of the commission of the crime which would show his physical impossibility to be in the scene of the crime. Alibi, in order to be given full faith and credit, must be clearly established and must not leave any room for doubt as to its plausibility and verity, it can not prevail over the positive testimonies of the prosecution witnesses who have no motive to testify falsely against the accused.[9]

What is irrefutable is that Marites unhesitatingly pointed to appellant as the rapist.[10]

Rape is committed by having carnal knowledge of a woman who is under twelve years of age.[11]

Appellant invokes his minority as a privileged mitigating circumstance. At the time of the commission of the offense, appellant was under eighteen (18) years of age. He was exactly sixteen (16) years, three (3) months, and twenty four (24) days old. Evidence shows that appellant was born on November 13, 1968.[12] The appellant is entitled to the mitigating circumstance of minority. Under Article 68, par. 2 of the Revised Penal Code, the imposable penalty for the crime of rape shall be the penalty next lower than that prescribed by law, but always in the proper period.[13]

The penalty for rape is reclusion perpetua, a single indivisible penalty. Considering that the appellant committed a crime of rape while he was under eighteen (18) but over fifteen (15) years of age, he is entitled to the penalty next lower than that prescribed by law, which is reclusion temporal. We apply the Indeterminate Sentence Law to accused-appellant's case because of the established jurisprudence that what is controlling is the penalty actually imposed and not the penalty imposable under the Revised Penal Code.[14]

Appellant cannot avail of Article 192 of PD 603, as amended, or the Child and Youth Welfare Code, for the suspension of his sentence. The said provision applies to those youthful offenders who at the time of the

commission of the crime were over nine (9) and under fifteen (15) years of age. Appellant was already above sixteen (16) years of age when the crime of rape, which he no doubt committed, occurred. Hence, such provision does not apply to him.[15]

WHEREFORE, as MODIFIED with respect to the penalty imposed on the accused-appellant which is reduced to prison mayor in its minimum period or 6 years and 1 day as its minimum penalty to reclusion temporal in its medium period or 14 years, 8 months and 1 day as its maximum penalty, the decision appealed from is hereby affirmed in all other respect, with costs against accused-appellant, whose guilt has been proved with that degree of proof which produces conviction in an unprejudiced mind.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Padilla, and Regalado, JJ., concur.

[1] pp. 9-18, TSN, October 8, 1985.

[2] pp. 17-18, TSN, May 29, 1985; Exhibit "A".

[3] p. 46, TSN, July 9, 1985, p. 16, TSN, Jan. 8, 1986.

[4] Exhibit "4".

[5] pp. 11-12, TSN, Dec. 17, 1986.

[6] *People vs. Mustacisa*, No. L-51777, 159 SCRA 227 (1988).

[7] *People vs. Mancilla*, G.R. No. 47628, 173 SCRA 373 (1989).

[8] *People vs. Cayago*, G.R. 47398, 158 SCRA 586 (1988).

[9] pp. 4-5, RTC decision, citing *People vs. Manalo*, G.R. 45088, 135 SCRA 84 (1985) and *People vs. Sagario*, L-18659, 14 SCRA 468 (1965).

[10] *People vs. Mustacisa*, *supra*.

[11] Article 335, par. 3, Revised Penal Code.

[12] p. 1, RTC Decision dated October 17, 1989.

[13] *People vs. Boduso*, No. L-30450-51, 60 SCRA 60 (1974).

[14] *People vs. Moises*, L-32495, 66 SCRA 151, (1975). This overrules the doctrine enunciated in *People vs. Colman, et. al.*, G.R. L-6652-54, 103 Phil. 6, (1958).

[15] Art. 189, P.D. 603, as amended.

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