

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FULGENCIO MONTES Y GRAFIL ALIAS "FULGEN";
DEFENDANT-APPELLANT.**

G.R. No. 97137. March 04, 1994

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

FULGENCIO MONTES Y GRAFIL alias "Fulgen" was convicted by the court a quo for the rape of seven-year old Avelina Y. Bonga. He was sentenced to reclusion perpetua and to indemnify his victim in the amount of P30,000.00, without subsidiary imprisonment in case of insolvency, and to pay the costs.[1]

Avelina Y. Bonga was born in 1981 to the spouses Francisco and Coleta Bonga of Paric, Samar. After Francisco died, Coleta left for Saudi Arabia to work. Before leaving, she entrusted Avelina to her sister, Elena Y. Borja.[2] Coleta left her three (3) other daughters with their grandmother "Ayo Yape" or "Apo Ayo."

In the afternoon of 9 December 1981, Avelina went to the house of her grandmother some 300 meters away from her aunt's residence. At around five-thirty in the afternoon, while Avelina was under the house of her grandmother playing with a cousin, accused Fulgencio Montes, a 51-year old farmer, arrived. He was a tenant in the nearby coconut farm of Julita Alde. Without a word, Fulgencio grabbed Avelina and gagged her mouth. Then he dragged her towards the coconut grove about 100 meters away. There he removed his pants and then her panties. He made her sit on his lap, in squatting position, and inserted his penis into her vagina. Avelina cried as she felt pain. Then she noticed a whitish fluid coming out of his penis after which Fulgencio stood up, gave her P1.00 and then told her to go home as he would still gather coconuts.[3]

Avelina went home. She told her sisters, later her aunt Elena, about what Fulgencio did to her. The following morning, Elena and Avelina reported the rape to the police. At three o'clock in the afternoon, Avelina was examined by Dr. Hilarion A. Macapanas, Jr., OIC of the Eastern Samar Provincial Hospital. His findings were: External Examination – fairly developed, fairly well-nourished child x x x no contusion or hematoma in the body; Genital Examination – fresh laceration of the hymen at 7:00 o'clock; Microscopic Examination – vaginal smear positive for spermatozoa; Conclusion – (1) genital injury noted on Avelina Bonga and (2) vaginal smear positive for spermatozoa.[4]

On 11 December 1981, Elena Y. Borja, as guardian of Avelina, filed a complaint for rape against Fulgencio.

The accused professes innocence. His version is that he knew Avelina since she was born and that he lived just 20 meters away from her grandmother's house.[5] On 9 December 1981, he was at a nearby coconut plantation gathering coconuts. Then at three o'clock in the afternoon, it started to rain and so he sought shelter in the house of Avelina's grandmother. While he was sitting on a step of the ladder, he overheard "Ayo Yape" scolding Avelina because her mother did not send money. Elena also arrived. She was in an angry mood. Without any permission, she took three coconuts from those he had earlier gathered.[6]

Then he went back to the plantation where he worked until five o'clock in the afternoon. On his way home, he saw Avelina playing but did not pay attention to her.[7]

On cross-examination, Fulgencio claimed that Elena filed the complaint against him because she was angry but could not accuse him of any other crime. Out of respect for Elena and her mother, however, he chose not to sue Elena for theft of the three coconuts.[8]

Juan Barbo, another farmer, corroborated the story of Fulgencio and added that he and Fulgencio arrived simultaneously at the house of Avelina's grandmother when they sought shelter from the rain. But after the downpour, each went his own separate way.[9]

After trial, the court a quo gave more credence to the prosecution, and on 23 October 1989, rendered judgment convicting Fulgencio.[10]

Fulgencio contends in this appeal that the trial court erred in finding him guilty of rape. While he does not question the medical findings, he denies being the rapist. He theorizes that after the sexual assault, Avelina could have been in such a state of shock that she could not positively identify her attacker who, in all probability, could have been a stranger or a mere passer-by. Fulgencio claims that Avelina's impressionable mind, she being only seven, was conditioned by her aunt Elena to believe that he was her defiler because Elena "hated" him enough to implicate him.[11]

This is untenable. As observed by the Solicitor General, the hatred which Elena supposedly harbored against Fulgencio is a mere figment of the imagination. If anyone should be irked it should be Fulgencio because Elena took three heads of coconut from his stack without even letting him know. But assuming that Elena was indeed furious at the accused, which is not adequately shown in the evidence, such animosity could not be of such degree as to drive Elena to induce her young, niece to falsely accuse Fulgencio of the dastardly act.

On the other hand, we have the candid and forthright narration of Avelina detailing how she was raped by Fulgencio. Thus –

ATTY TAN:

x x x x

Q What did Fulgencio Montes do if any when you saw him on the ground in the house of your grandmother at sitio Paric x x x x

A He took hold of me and dragged me to the coconut plantation.

Q And what did Fulgencio Montes do when you were already in the coconut plantation grove?

A He took off his pants and when he was naked he let me sat on his lap and placed his penis inside my vagina.

Q What else happened after Fulgencio Montes made you sat (sic) on his lap and after he placed his penis into your vagina?

A After that he ordered me to go home, he gave me one peso and ordered me to go home x x x x when I was at home I was crying already.

x x x x

Q x x x When you were dragged by Fulgencio Montes towards the coconut grove did you not resist?

A I did not.

Q Why didn't you, what did he tell you?

A He was holding my hands and at the same time gagging my mouth.

Q Did you make an outcry?

A I did not because my mouth was gagged.

Q You said that Fulgencio Montes took off his pants and when he was naked he placed his penis inside your vagina. Why? Were you not wearing panty at the time?

A I had a panty.

Q What happened to the panty you were wearing?

A He took off the panty.

Q What was the position of Fulgencio Montes when he allegedly placed his penis inside your vagina?

A He was sitting.

Q And what was your position then, how was he positioned and what was your position then?

A (Witness now demonstrating to the Honorable Court on a sitting, squatting position).

Q Were you seated on the lap of Fulgencio Montes?

A Yes, sir.

Q Did you feel pain?

A Yes, sir.[12]

In sharp contrast, Fulgencio's bare insinuation that Avelina was merely used by her aunt to falsely implicate him in the crime of rape is totally absurd. At the risk of being banal, it is hard to believe that a maternal aunt would callously sacrifice her niece and expose her to public scrutiny and the humiliation of a trial just to appease her rankled feelings. We are convinced more than ever that Elena was motivated by an earnest desire to bring the rapist of her niece to justice.

Moreover, the lame excuse that Fulgencio was at the house of "Ayo Yape" during the alleged rape cannot prevail over Avelina's categorical statement that it was he who dragged her towards the coconut grove and placed his penis inside her vagina. As he himself admitted, he has known Avelina since her infancy and they were practically neighbors in sitio Paric.

Indeed, it is not difficult to see why the trial court believed the testimony of a mere child. The reason is plain enough. She was simply telling the truth. In a long line of decisions, this Court has demonstrated its marked receptiveness to the testimony of rape victims who are young and immature girls,[13] like Avelina.

In rape cases, the accused may be convicted solely on the word of the complaining witness whose testimony is credible, natural and convincing.[14] In this case, the testimony of Avelina was corroborated by her aunt Elena. It was further strengthened by Dr. Macapanas, Jr., who examined her one day after the rape and found a fresh hymenal laceration as well as spermatozoa in her vagina which could have been caused by the penetration of a male organ.[15] This medical conclusion, coupled with Avelina's testimony that Fulgencio placed his penis inside her vagina, is sufficient to establish the essential requisite of carnal knowledge under Art. 335 of the Revised Penal Code.[16]

The essence of statutory rape as provided in Art. 335, par. 3, of the Revised Penal Code is the carnal knowledge of a woman below twelve years old. Sexual intercourse then with a girl under twelve is always rape, and force, intimidation or physical sign of violence is inconsequential.[17] Avelina then was only seven years old.

We are convinced beyond any cavil of doubt, as was the court a quo, that Fulgencio raped Avelina in the afternoon of 9 December 1981. Considering the very tender years of the innocent victim and the moral depravity and debasement of the perpetrator, the civil indemnity of P30,000.00 awarded by the court below should be increased to P50,000.00.[18]

WHEREFORE, the judgment of the court a quo finding accused-appellant FULGENCIO MONTES y GRAFIL alias "FULGEN" guilty of rape and imposing upon him a prison term of reclusion perpetua is AFFIRMED, with the modification that the civil indemnity of P30,000.00 awarded to his victim, Avelina Y. Bonga, is increased to P50,000.00. Costs against accused-appellant.

SO ORDERED.

Cruz, (Chairman), Davide, Jr., Quiason, and Kapunan, JJ., concur.

[1] Decision penned by Judge Auxencio C. Dacuycuy, Regional Trial Court, Br. 1, Borongan, Samar.

[2] TSN, 22 August 1982, pp. 2-3, 8.

[3] Id., pp. 14-17.

[4] Exh. "C," Records, p. 3.

[5] TSN, 17 January 1989, pp. 3-4.

[6] Id., pp. 5-8.

[7] Id., pp. 11-12.

[8] Id., pp. 24-25.

[9] TSN, 14 August 1989, pp. 4-5, 8.

[10] See Note 1.

[11] Appellant's Brief, p. 7.

[12] TSN, 22 August 1983, pp. 14-15.

[13] See *People v. Bruca*, G.R. Nos. 76019-20, 6 November 1989, 179 SCRA 64.

[14] *People v. Alvarez*, G.R. No. 73071, 11 September 1992, 213 SCRA 722; *People v. Segundo*, G.R. No. 88751, 27 December 1993.

[15] TSN, 25 February 1985, p. 27.

[16] *People v. Castillo*, G.R. No. 84310, 29 May 1991, 197 SCRA 657.

[17] *People v. Palicte*, G.R. No. 101088, 27 January 1994.

[18] *People v. Obejas*, G.R. No. 102336, 27 January 1994.

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