

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RAFAEL ORTIZ Y AQUINO, ACCUSED-APPELLANT.

G.R. Nos. 85053-60. August 30, 1990

Ponente: PARAS, J.

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PARAS, J.:

Charged with the crime of Rape on eight (8) counts filed by Anita Capile for and in behalf of her adopted 11 year old minor daughter, Maria Anita Capile y Amante, was appellant Rafael Ortiz y Aquino. The eight (8) complaints read as follows:

“COMPLAINT

(Crim. Case No. 238-85)

“The undersigned complainant, after having been duly sworn to an oath in accordance with law accuses Rafael Ortiz y Aquino of the crime of Rape, committed as follows:

“That on or about August 18, 1985, in the City of Cavite, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, did, then and there, wilfully, unlawfully and feloniously have carnal knowledge with the undersigned complainant, Maria Anita Capile y Amante, a minor, eleven (11) years of age.

“Contrary to law.

“City of Cavite, October 12, 1985.

“(SGD.) MARIA ANITA CAPILE Y AMANTE

Complainant”

“COMPLAINT

(Crim. Case No. 239-85)

“The undersigned complainant, after having been duly sworn to an oath in accordance with law accuses Rafael Ortiz y Aquino of the crime of Rape, committed as follows:

“That on or about August 25, 1985, in the City of Cavite, Republic of the Philippines and within the jurisdiction of this Honorable Court the above-named accused, with lewd design, did, then and there, wilfully, unlawfully and feloniously have carnal knowledge with the undersigned complainant, Maria Anita Capile y Amante, a minor, eleven (11) years of age.

“Contrary to law.

“City of Cavite, October 12, 1985.

“(SGD.) MARIA ANITA CAPILE Y AMANTE

Complainant”

“COMPLAINT

(Crim. Case No. 240-85)

“The undersigned complainant, after having been duly sworn to an oath in accordance with law accuses Rafael Ortiz y Aquino of the crime of Rape, committed as follows:

“That on or about September 10, 1985, in the City of Cavite, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, did, then and there, wilfully, unlawfully and feloniously have carnal knowledge with the undersigned complainant, Maria Anita Capile y Amante, a minor, eleven (11) years of age.

“Contrary to law.

“City of Cavite, October 12, 1985.

“(SGD.) MARIA ANITA CAPILE Y AMANTE

Complainant”

“COMPLAINT

(Crim. Case No. 241-85)

“The undersigned complainant, after having been duly sworn to an oath in accordance with law accuses Rafael Ortiz y Aquino of the crime of Rape, committed as follows:

“That on or about September 25, 1985, in the City of Cavite, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, did, then and there, wilfully, unlawfully and feloniously have carnal knowledge with the undersigned complainant, Maria Anita Capile y Amante, a minor, eleven (11) years of age.

“Contrary to law.

“City of Cavite, October 12, 1985.

“(SGD.) MARIA ANITA CAPILE Y AMANTE

Complainant”

“COMPLAINT

(Crim. Case No. 242-85)

“The undersigned complainant, after having been duly sworn to an oath in accordance with law accuses Rafael Ortiz y Aquino of the crime of Rape, committed as follows:

“That on or about September 29, 1985, in the City of Cavite, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, did, then and there, wilfully, unlawfully and feloniously have carnal knowledge with the undersigned complainant, Ma. Anita Capile y Amante, a minor, eleven (11) years of age.

“Contrary to law.

“City of Cavite, October 12, 1985.

“(SGD.) MARIA ANITA CAPILE Y AMANTE

Complainant”

“COMPLAINT

(Crim. Case No. 243-85)

“The undersigned complainant, Ma. Anita Capile y Amante, after having been duly sworn to an oath in accordance with law, accuses Rafael Ortiz y Aquino of the crime of Rape, committed as follows:

“That on or about and during the months of August and September 1985, in the City of Cavite, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, did, then and there, wilfully, unlawfully and feloniously have carnal knowledge with the undersigned complainant, Ma. Anita Capile y Amante, a minor, eleven (11) years of age.

“Contrary to law.

“City of Cavite, October 12, 1985

“(SGD.) MARIA ANITA CAPILE Y AMANTE

Complainant”

“COMPLAINT

(Crim. Case No. 244-85)

“The undersigned complainant Ma. Anita Capile y Amante, after having been duly sworn to an oath in accordance with law, accuses Rafael Ortiz y Aquino of the crime of Rape, committed as follows:

“That on or about and during the months of August and September, 1985 in the City of Cavite, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-name accused, with lewd design, did, then and there, wilfully, unlawfully and feloniously have carnal knowledge with the undersigned complainant, Ma. Anita Capile y Amante, a minor, eleven (11) years of age.

“Contrary to law.

“City of Cavite, October 12, 1985.

“(SGD.) MARIA ANITA CAPILE Y AMANTE

Complainant”

“COMPLAINT

(Crim. Case No. 245-85)

“The undersigned complainant, Ma. Anita Capile y Amante, after having been duly sworn to an oath in accordance with law, accuses Rafael Ortiz y Aquino of the crime of Rape, committed as follows:

“That on or about and during the months of August and September, 1985, in the City of Cavite, Republic of

the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, did, then and there, wilfully, unlawfully and feloniously have carnal knowledge with the undersigned complainant, Ma. Anita Capile y Amante, a minor, eleven (11) years of age.

“Contrary to law.

“City of Cavite, October 12, 1985.

“(SGD.) MARIA ANITA CAPILE Y AMANTE

Complainant”

(pp. 27-30, Rollo)

Arraigned on November 30, 1985, the accused, assisted by counsel-de-oficio, Atty. Rosalino Sismaet, Jr., freely and voluntarily entered pleas of not guilty thereto and trial ensued.

The facts, as summarized by the Solicitor General, are as follows:

“Sometime in 1976, Anita Capile, a mother of five (5) children, took into her custody a child barely one (1) year old whom she named Maria Anita Capile (tsn, pp. 3, 6, April 2, 1986). Maria Anita grew up with weak mental capacity, failing twice in Kindergarten and once in Grade I, and taking almost eight (8) years to reach Grade IV (tsn, pp. 9-10, id.; tsn, pp. 2-3, July 16, 1986).

“To train Maria Anita for responsibility, Anita tasked her to get hog feeds, consisting of discarded fruits and vegetables, from the Cavite City Public Market. In the course thereof, her daughter informed her that she got a ‘Lolo’ in the market who gave her (Maria Anita) plenty of hog feeds. She informed her husband about this development, who advised her to get acquainted with the man referred to by Maria Anita as ‘Lolo’ whom she later knew as Rafael Ortiz, the accused-appellant herein (tsn, p. 11, April 2, 1986).

“Since the time that appellant came to know Anita, he became friendly with her family. Every now and then, he would bring to the Capiles plenty of hog feeds he gathered as ‘barienda’ in the Cavite City Public Market. Sometimes coming from the market, he helped Maria Anita push the cart with hog feeds going to their house (tsn pp. 11, 25, id.).

“In view of appellant’s attitude, the Capile spouses trusted him fully and treated him like their own brother. They never asked any question whenever appellant would bring out their daughter Maria Anita on the pretext of attending Sunday masses (tsn, p. 26, id.; tsn, pp. 39, 43, 47, June 9, 1986). Maria Anita, on her part, helped appellant clean his office everyday, usually from 12:00 to 12:30 noon (tsn, p. 37, July 16, 1986). Thus, during the confirmation of Maria Anita, the Capile spouses got him as Maria Anita’s godfather. (tsn, p. 11, April 2, 1986).

“On the fateful day of August 18, 1985, Maria Anita had just turned eleven (11) years old, her birthday being July 23, 1974. About noon time, she went to the public market to gather hog feeds and saw appellant sweeping. She inquired from him if he had any hog feeds, and he answered that the feeds were inside his office and invited her to go with him. Carrying her cart, she went with him to his office (tsn pp. 14-18, June 9, 1986).

“Upon reaching the office, once they were inside, appellant closed and locked the door. Maria Anita was surprised that appellant forced her to go up to the second floor by holding her blouse at the nape. She struggled but it was all in vain. Then, he told her to drink a half-filled bottle of coke stating that it was his leftover. When she refused, he forced her to open her mouth and drink the contents of the bottle which almost choked her. She struggled and kicked him, but he was able to make her consume the softdrink which tasted differently. She fell into sleep (tsn, pp. 19-24, id.).

“She woke up around 2:00 o’clock in the afternoon and felt pain on the pubic region of her stomach. She

found herself naked and saw appellant also naked at the end of the room behind the table. Appellant came near her and poked a gun at her, threatening to shoot her if she told anybody. She got scared, while appellant tried again to kiss her lips and hold her private parts. But she managed to struggle, box and pull appellant's hair. He then ordered her to dress up and go ahead so that nobody would notice her.

"Still feeling the pain on her abdomen, she proceeded to Aling Teria's place still inside the public market to get some hog feeds. Later, appellant helped her push her cart, during which he reiterated his threat until they reached the corner of Trece Martires Street where she walked alone towards their house. She never reported the incident to her parents because of her fear of appellant's threat (tsn pp. 19-37, id.).

"On several occasions thereafter, appellant went to the Capile residence and asked permission from Maria Anita's parents on the pretext that he would bring his goddaughter to the church to which request her parents readily consented. Because of fear of appellant, she went with him; but instead of bringing her to the church, appellant would bring her to some other places like the movie house 'Cine Maria' or the beach in Noveleta (tsn pp. 39-46, id.).

"On one occasion, appellant, after talking to her parents and alleging that they were going to the church, boarded her on a jeepney without any passenger. Later, the jeepney developed an engine trouble and broke down, so that the driver alighted and put the hood up. While the hood was up, appellant tied her hands at the back, blindfolded and gagged her with a handkerchief, and brought her to a grassy portion. It was already dark and no people seemed to inhabit the place. He undressed her and made her lie on her back, while he undressed himself and lay on top of her. Appellant inserted his private parts into hers and was able to penetrate one-half (1/2) of the whole length of his penis. She struggled to remove his penis from her vagina and was able to do so only after she kicked him. She freed herself, removed her blindfold and gag, and dressed up. Appellant again threatened her not to tell anybody which instilled in her a fear that he might shoot her if she went to the market in case she would not obey him (tsn, pp. 47-60, 62-65, id.).

"She was brought home by appellant riding in another jeepney. Upon reaching home, she urinated and saw blood oozing from her private parts. She confided to her mother that her urine contained blood and her mother, thinking that it was a menstruation, advised her to take a bath (tsn, pp. 61, 66-69, id.).

"Every now and then, appellant went to their house and talked to her parents which made her angry, but fear overcame her everytime that appellant stared at her. The incident at the grassy area was again repeated because she was overcome by her fear of appellant who kept on staring at her as if threatening to kill her (tsn, pp. 72-73, id.).

"The same incident was again repeated in the toilet of the public market everytime that she collected hog feeds about 7:00 o'clock in the evening. Appellant would drag her to the toilet, threatening to kill her if she would shout. She offered resistance by kicking and boxing him, but she was always overpowered by appellant. She would even beg mercy from him saying 'ninong do not do it, if my Mama will know she will kill me.' However, her pleas fell on deaf ears and appellant would succeed in raping her. This was repeated more than eight (8) times (tsn., pp. 25-35, July 16, 1986).

"The rape of Maria Anita also happened during noon time when she would go to the market to collect hog feeds. She would be invited by appellant to clean his office. But she would hesitate unless appellant would assure her that he would not rape her; but upon entry, appellant would again force her to have carnal knowledge with him (tsn, pp. 35-38, id.).

"Anita Capile, the mother of Maria Anita, only knew of the crime committed against her daughter when her youngest son was told by somebody that he saw Ortiz petting and holding the private parts of Maria Anita. When confronted, Maria Anita told her parents everything that had been done to her by appellant (tsn, pp. 14-17, April 2, 1986; tsn, pp. 5-6, June 2, 1986)." (pp. 7-14, Brief for the Plaintiff-Appellee, p. 65, Rollo)

Finding that the child was eleven (11) years old when the victim was raped and that the accused was guilty beyond reasonable doubt of the crime of Rape on all eight (8) counts, the trial court sentenced Ortiz to undergo imprisonment term of reclusion perpetua in all eight cases; to indemnify the offended party Maria Anita Capile the amount of twenty thousand pesos (P20,000.00) as moral damages in all cases without subsidiary imprisonment in case of insolvency; and to pay the costs. (p. 11, RTC Decision, p. 54, Rollo).

Appellant now assigns the following errors committed by the trial court, to wit:

I

IN CONCLUDING THAT THE VICTIM WAS ELEVEN YEARS OF AGE AT THE TIME OF THE COMMISSION OF RAPE DESPITE ABSENCE OF EVIDENCE THERETO THUS MAKING THE OFFENSE FALL UNDER STATUTORY RAPE;

II

IN NOT CONSIDERING THAT THE HYMEN OF THE VICTIM WAS FOUND TO REMAIN INTACT DESPITE TESTIMONY OF THE VICTIM THAT THERE WAS FULL PENETRATION OF ACCUSED PENIS IN HER PRIVATE ORGAN.

It is appellant's contention that there was no sufficient showing that Maria Anita was eleven (11) years old at the time of rape because such conclusion was merely anchored on the reckoning of her adopted mother who used her daughter's physical appearance at the time of adoption as basis.

The mother testified on this point.

“Q. How old was she, if you can tell this Honorable Court when you adopted Maria?

A. More than one year.

Q. Why do you say that she was more than one year old when according to you you do not know her date of birth?

A. Through experience, because I am a mother of 5 children and so I can determine.

Q. How big was she at that time?

A. Like this. She was about two feet tall.

Q. And was she able to talk already by the time that you adopted her?

A. No, sir. She could walk but she could not talk.” (pp. 15-16, Brief for the Plaintiff-Appellee, p. 65, Rollo)

As aptly put by the Solicitor General:

“Being a mother of five (5) children, Anita Capile is experienced enough to know the age group to which Maria Anita belongs, for each age group has a peculiar developmental characteristic (Marlow, Pediatric Nursing, 5th ed. pp. 27, 344-356, 508-512).” (p. 16, Brief for the Plaintiff-Appellee; p. 65, Rollo)

Assuming that the child was more than eleven (11) years old, her mental capacity is way below the said age group considering the fact that she failed twice in Kindergarten, once in Grade I, and it took her eight (8) years to reach Grade IV. Moreover, granting arguendo that the child was over twelve (12) years of age when her honor was violated, still there was rape under paragraphs one (1) and two (2) of Article 335 of the Revised Penal Code.

Under paragraph 1 of Article 335, force and intimidation were committed against Maria Anita when she testified

that appellant used force on her to make her agree to his lewd designs by dragging her or tying her hands. Or, there were instances where appellant threatened to kill her if the latter tells anybody of the incidents.

Maria Anita was definitely cowed by appellant considering not only her tender age but, more importantly, the moral ascendancy of appellant who is her godfather and got the confidence of her parents.

Under paragraph 2 of the same Article, Maria Anita was deprived of reason or otherwise unconscious when it was shown that when she was raped on August 18, 1985, she was forced to drink Coca-Cola which tasted different and made her unconscious.

Anent the second assigned error, the absence of hymenal laceration was fully explained by Dr. Carmelita Belgica, the NBI medico-legal who examined Maria Anita, as follows:

“Q. Is it possible, Doctor that although that there was sexual intercourse on a minor, eleven years old for the hymen to remain intact despite such act of coitus?

xxx xxx xxx

A. Yes, sir. It is possible.

Q. How could that be possible, Doctor?

A. It is possible, sir on several situations or occasions like for instance sexual intercourse, that is distensible.

Q. What do you mean distensible?

A. There was sexual intercourse but no complete penetration. The sexual organ of the male would have barely touched the hymenal area but would have touched the external genitalia of the girl.

Q. In your finding as contained in Exh. D, could it be possible that there was a slight penetration?

A. This is possible, sir.” (tsn, p. 5, October 15, 1986).

Thus, the fact that the hymen was not lacerated does not negate rape. Complete or full penetration of the complainant’s private organ was not necessary to consummate the crime of rape. The slightest penetration was sufficient. Neither was the rupture of the hymen essential for the consummation of the crime. It is enough that there is proof of entrance of the male organ within the labia of the pudendum. (People v. Cruz y de Belen, G.R. 82121, December 29, 1989)

Maria Anita Capile testified:

“Q. Was he successful in making a penetration on your vagina with his penis?

A. Yes, sir.

Q. All in all?

A. One-half.” (tsn, p. 82, June 9, 1986)

PREMISES CONSIDERED, the appealed decision is hereby AFFIRMED with the modification that the accused is meted out eight (8) sentences of reclusion perpetua for the eight (8) instances of rape and that the indemnity be increased to fifty-thousand pesos (P50,000.00) in view of the commission of eight (8) different counts of rape.

SO ORDERED.

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

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