

EN BANC

[G.R. No. 135675, June 23, 2004]

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. FEDERICO ORTIZUELA Y EUGENIO, APPELLANT.

D E C I S I O N

PER CURIAM:

For automatic review is the Decision^[1] dated August 24, 1998 of the Regional Trial Court, Branch 262, Pasig City in Criminal Case No. 111103-H finding Federico Ortizuela, herein appellant, guilty beyond reasonable doubt of the crime of rape and imposing upon him the supreme penalty of death. He was ordered to pay his daughter, Rhea Ortizuela y Obillo, P50,000.00 as civil indemnity.

The Information^[2] charging appellant with statutory rape is quoted as follows:

"That on or about April 5, 1996, in Pasig City and within the jurisdiction of this Honorable Court, the accused, with lewd design and by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with his daughter Rhea Ortizuela y Obillo, a minor, ten (10) years old, against her will and consent.

Contrary to law."

Upon arraignment, appellant, assisted by counsel, pleaded not guilty to the charge. Thereafter, trial ensued.

The prosecution presented four (4) witnesses: the victim, Rhea Ortizuela, her maternal uncle Roberto Obillo, her maternal grandmother Dominga Obillo, and Dr. Tomas Suguitan. Their testimonies established that Rhea is the second and only daughter, in a brood of three, of appellant and his wife Norberta Obillo. They live at Palatiw Villa Raymundo, Pasig City in a house owned by Norberta's mother, Dominga. One of the rooms was occupied by spouses Ortizuela, while another was occupied by Dominga.

Rhea, born on November 23, 1985,^[3] was only nine (9) when appellant first sexually abused her on September of 1995. From then on, she has been subjected countless times to appellant's lecherous passion. She could no longer recall, however, the dates when he sexually abused her. The only incident she could vividly remember was his last coitus with her.

It happened on April 5, 1996. Rhea, then ten (10) years old, was sleeping beside her mother, grandmother and two brothers, when appellant carried her into a vacant room. There, he undressed her, placed himself on top of her and forcibly inserted his penis into her vagina. After satisfying his lust, he warned her not to reveal to

anyone what transpired, otherwise, he would kill her mother. Then he carried her back to the room where she slept. Fearful of appellant's threat, she concealed her defloration.^[4]

On September 11, 1996, Rhea, accompanied by her grandmother Dominga, went to the house of his uncle Roberto and revealed what she suffered in the hands of her father. Thereupon, they proceeded to the Police Station at Pasig City to report the incident. The following day, they, together with Norberta, went to the Philippine National Police (PNP) Headquarters, Camp Crame, Quezon City where Rhea was physically examined by Dr. Tomas Suguitan, a resident physician of the PNP Crime Laboratory.

In his Medico-Legal Report^[5] which he confirmed on the witness stand, Dr. Suguitan stated that Rhea's hymen has healed lacerations at 4:00 and 8:00 o'clock positions which could have been caused by a man's erect organ or any blunt object;^[6] and that the lacerations were inflicted months before the examination. He also testified that Rhea is in no longer a virgin and that her external vaginal orifice admits the tip of his smallest finger.

The defense presented three (3) witnesses: appellant, his father Romeo Ortizuela, Sr., and Randy Guimoroy.

Appellant raised the defenses of alibi and denial. He testified that on the day the crime was allegedly committed, he was plying his route as a tricycle driver from 6:00 o'clock in the morning until 6:00 o'clock in the evening. The lacerations found in Rhea's vagina occurred when she rode on a bicycle without a seat. It was the one-inch tube, where the seat was supposed to be attached, which injured her vagina. He further testified that the charge against him was concocted by Dominga, his mother-in-law, and brother-in-law Roberto who detested his spending for alcohol.^[7] In fact, his wife Norberta admitted to him that Roberto forced Dominga to testify against him. In the past, Dominga "instigated" Norberta to charge him with rape. But the complaint was withdrawn when he married her.^[8]

Romeo Ortizuela, Sr. corroborated the testimony of appellant and testified further that Norberta admitted to him that there is no truth to the charge and that Rhea filed the complaint out of fear to her grandmother Dominga.

Randy Guimoroy, cellmate of the appellant at the Pasig City Jail, testified that he was able to talk to Rhea and that she gave him a letter^[9] stating that the rape charge against her father is not true.^[10]

On August 24, 1998, the trial court promulgated its Decision convicting appellant of rape and sentencing him to suffer the penalty of death, thus:

"WHEREFORE, judgment is hereby rendered finding accused FEDERICO ORTIZUELA y Eugenio GUILTY beyond reasonable doubt of the crime of rape, sentencing said accused to: a) suffer the death penalty; b) suffer the accessory penalties consequent thereto; c) pay the offended party the sum of Fifty Thousand Pesos (P50,000.00) by way of civil indemnity; and d) pay the costs.

SO ORDERED.”

Hence, this automatic review.

Appellant, in his brief,^[11] raised this lone assignment of error:

“THE COURT A QUO GRAVELY ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT FOR THE CRIME CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT.”

The Solicitor General, in the appellee’s brief, controverted appellant’s contention and prayed that the impugned Decision be affirmed.

As alleged in the Information, the crime was committed “on or about April 5, 1996.” Thus, the law applicable to this case is Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659,^[12] the pertinent provisions of which provide:

“Sec. 11. Article 335 of the same [Revised Penal] Code is hereby amended to read as follows:

‘Article 335. When and how rape is committed. – Rape is committed **by having carnal knowledge of a woman under any of the following circumstances:**

1. By using force or intimidation;
2. When the woman is deprived of reason or otherwise unconscious;
and
3. When the woman is under twelve years of age or is demented.

The crime of rape shall be punished by reclusion perpetua.

x x x

The **death penalty** shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:

1. when **the victim is under eighteen (18) years of age** and **the offender is a parent**, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.

x x x.” (Underscoring ours)

The amendatory provisions introduced in R.A. 7659 classify rape as either simple or qualified. It is qualified when any of the qualifying/aggravating circumstances enumerated therein which attended the commission of the crime – as for instance the victim is below 18 years of age and the offender is a parent – is alleged in the Information and proven during trial.^[13] The prescribed penalty for qualified rape is death.

For the charge of rape to prosper, the prosecution must prove that (1) the offender

had carnal knowledge of a woman, and (2) he accomplished such act through force or intimidation, or when she is deprived of reason or otherwise unconscious, or when she is under 12 years of age or is demented.^[14]

By its very nature, rape is normally committed without other people around save the perpetrator and the victim themselves. Thus, the sole important issue in rape cases is the credibility of the victim's testimony. When her testimony is convincingly credible, untainted with any material inconsistencies, the accused may be convicted solely on the basis thereof.^[15]

We have scrupulously scrutinized Rhea's testimony, fully aware of the jurisprudential caveat that an accusation of rape can be made with facility, but difficult for the accused to disprove it.^[16] We find credible her account that on April 5, 1996, appellant, her very own father, had carnal knowledge of her through force and intimidation. The pertinent portions of her testimony are quoted hereunder:

"Q: Do you recall if your father (appellant) did anything to you on the night of April 5, 1996?

A: Yes, sir.

Q: What was that?

A: On the evening of April 5 when we were sleeping, my father carried me and transferred me to another room, sir.

x x x

Q: You said that you were carried by your father, where did he bring you?

A: He brought me to another room, sir.

Q: While inside that room, what did he do?

A: He undressed me and laid on top of me, sir.

x x x

Q: When you said that your father laid on top of you, what exactly do you mean?

A: He forcibly inserted his penis inside my vagina, sir.

Q: What happened after that?

A: He again put on my clothes and threatened me, sir.

Q: How did he threaten you?

A: He told me not to tell these things to others and if not he will kill my mother, sir.

Q: What did you tell him?

A: None, sir.

Q: After that, what happened?

A: He put me back on the bed where I was sleeping, sir.

x x x