

EN BANC

[G.R. No. 142556, February 05, 2003]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JESUS PEREZ Y SEBUNGA, ACCUSED-APPELLANT.

DECISION

PER CURIAM:

For automatic review is the Decision^[1] dated October 26, 1999 of the Regional Trial Court of ■■■, ■■■■■■■■, Branch 69, in Criminal Case No. RTC-2116-I, finding appellant Jesus S. Perez ("appellant" for brevity), guilty of raping AAA ("AAA" for brevity) and imposing on appellant the death penalty.

On January 22, 1997, the Second Assistant Provincial Prosecutor^[2] of ■■■■■■■■ filed an Information^[3] charging appellant with the crime of rape "penalized under Article 335 of the Revised Penal Code in relation to Section 5 (b), Article III of Republic Act No. 7610," committed as follows:

"That on or about the 17th day of January, 1997 at 12:00 noon at ■■■■■■■■, Brgy. ■■■■■■■■, in the Municipality of ■■■■■■■■, Province of ■■■■■■■■, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with lewd design and by means of coercion, inducement and other consideration, did then and there, wilfully (sic), unlawfully and feloniously have sexual intercourse with one AAA, a minor of 6 years old, without her consent and against her will, to the damage and prejudice of the latter."

Upon arraignment, appellant, assisted by counsel *de officio* Atty. Genaro N. Montefalcon, pleaded not guilty to the offense charged.^[4] Subsequently, the trial court allowed the withdrawal of Atty. Montefalcon as counsel for health reasons. The trial court appointed Atty. Roberto Blanco as appellant's counsel *de oficio*.^[5]

At the pre-trial, the prosecution and defense stipulated on the following facts:

- "1. The identity of the accused;
2. The accused was at the time of the incident in the vicinity thereof;
3. The victim in this case, AAA, was born on 23 May 1990 as evidenced by her birth certificate;
4. That after the incident, the child was subjected to a medico-legal examination to which a medico-legal certificate was issued by Dr. Editha Divino.

The prosecution marked in evidence the birth certificate of the victim AAA as Exhibit 'A', and the medico-legal certificate issued by Dr. Editha Divino as Exhibit 'B'."^[6]

Thereafter, trial ensued. The prosecution presented the following witnesses: the victim, AAA; the victim's mother, [REDACTED]; the victim's father, [REDACTED]; Virginia Espejo Giron; and Dr. Editha dela Cruz Divino. On the other hand, the defense presented appellant and his employer, Bartolome Tolentino.

The Office of the Solicitor General ("OSG" for brevity) summarized the prosecution's version of the incident in the appellee's brief, to wit:

"On January 17, 1997, about noontime, in [REDACTED], Barangay [REDACTED], six-year old AAA was walking along Sulok on her way to her house in [REDACTED] when appellant Jesus Sebunga Perez approached her (pp. 7-8, TSN, December 15, 1998). Appellant introduced himself as "Johnny" and immediately afterwards, strangled her neck and boxed her abdomen (p. 10, TSN, December 15, 1998). Still in shock, AAA fell down (id.). At that point, a dog arrived and barked at them.

Appellant then proceeded to lower his black denim pants while simultaneously removing AAA's panty. He then inserted his penis inside AAA's vagina (p. 11, id.). AAA felt excruciating pain in her private parts (sic) but was not able to repel her aggressor whose strength and weight totally engulfed her. Her only recourse was to cry while her young body was being ravished (p. 13, id.).

After satisfying his beastly desires, appellant raised his pants and ran away (p. 14, id.). Notwithstanding that her vagina was bleeding profusely and her dress now covered with her own blood, AAA managed to stand up and seek help. She ran to the house of Virginia Giron, which was only fifty (50) meters away from the scene of the crime. In fact, Giron was outside when she heard her dog barking (apparently, it was the same dog barking at appellant while he was consummating his lust on AAA, pp. 2-3, TSN, January 12, 1999; p. 11, TSN, December 15, 1998). Looking at the direction of the noise, she saw a confused AAA approaching her with blood dripping from her private parts and thighs. When Giron asked AAA what happened, the latter shouted "ni-rape ako, ni-rape ako" (p. 4, TSN, January 4, 1999). Giron then summoned her husband and other companions to look for AAA's attacker but was unable to find him. Giron then proceeded to [REDACTED] and [REDACTED], AAA's parents, to inform them of what happened (p. 5, TSN, January 5, 1999; p. 2, TSN, January 19, 1999).

When her parents asked AAA if she knew her assailant, the latter answered the name "Johnny." (id.) The couple brought their daughter to the President Ramon Magsaysay Memorial Hospital for medical examination (p. 2, TSN, February 24, 1999). She was examined by Dra. Editha Dela Cruz Divino, who issued a medico-legal certificate dated January 23, 1997 stating the following:

- a. Bleeding of genitalia coming from median laceration at the vaginal floor around four (4) centimeters in size. Possible cause, a fall and then hitting a sharp object and also an alleged sexual assault (p. 4, TSN, February 24, 1999).
- b. Genitalia had hymenal lacerations at 3, 6, 9 and 12 o'clock positions.

(pp. 4-6 id.)

Because of the extent of the damage on her genitals, AAA undertook an IV sedation operation to repair her lacerations (p. 6, id.) During her confinement at the hospital, the [REDACTED] couple reported the incident to the [REDACTED] PNP Police Station and recounted their daughter's narration including the name of the culprit as "Johnny" who, according to their neighbors, was a worker at the fishpond of Bartolome Tolentino (pp. 11-12, TSN, January 5, 1999). Police operatives then proceeded to the said fishpond and arrested appellant. After her discharge from the hospital, AAA learned that appellant was already apprehended (pp. 3-8, TSN, January 5, 1999). In the police station, she was able to positively identify the appellant as the person who sexually assaulted her (p. 18, TSN, December 15, 1998)."[7]

Appellant denied raping AAA. Appellant testified that on the date of the alleged rape incident, he was working at a fishpond at [REDACTED]. He heard of the rape of a young girl from his manager, Bartolome Tolentino ("Tolentino" for brevity). [8] Appellant further testified that on January 25, 1997, policemen went to the fishpond where he worked. The policemen arrested appellant and brought him to the police station at [REDACTED]. Later, the policemen took him to the municipal jail of [REDACTED].

On cross-examination, appellant testified that his nickname is not "Johnny" but "Jessie." [9] He testified that on January 17, 1997, at around 12 o'clock noon, he left the fishpond and walked home to Barangay Alwa which was about thirty meters from the fishpond. [10]

The defense formally offered the testimony of witness Tolentino to prove that appellant was employed as caretaker of Tolentino's fishpond for almost two years before the alleged rape incident. Appellant was purportedly of good moral character while employed as a fishpond caretaker. The prosecution admitted the offer of testimony. Hence, the trial court dispensed with the testimony of Tolentino in open court. [11]

After trial, the court a quo rendered judgment [12] on October 26, 1999, the dispositive portion of which reads:

"WHEREFORE, foregoing considered, accused Jesus Perez y Sabung (SIC) is found GUILTY beyond reasonable doubt of the crime of Statutory Rape, defined and penalized under Article 335 of the Revised Penal Code with the qualifying circumstance that the victim was only 6 years old at the time of the commission of the offense, in relation to Section 5 (b), Article III, Republic Act 7610, and is sentenced to suffer the penalty of DEATH.

Jesus Perez is directed to pay to the private complainant the amount of Seventy-Five Thousand Pesos (P75,000.00) as and by way of civil indemnity and Fifty Thousand (P50,000.00) as and by way of moral damages.”

Hence, this automatic review.

In his brief, appellant raises the following lone assignment of error:

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

Appellant contends that his identification in open court by AAA was highly irregular. Appellant points out that the prosecutor had already identified him as the man wearing an orange t-shirt when the prosecutor asked AAA to identify her alleged rapist. Appellant stresses that when AAA identified him in open court, she referred to him as a man named “Johnny” and did not give any description or any identifying mark. Moreover, appellant claims he was alone in the cell when AAA identified him after the police arrested him. Appellant bewails that the identification was not done with the usual police line-up.

Appellant’s contention is untenable.

As a rule, leading questions are not allowed. However, the rules provide for exceptions when the witness is a child of tender years^[13] as it is usually difficult for such child to state facts without prompting or suggestion.^[14] Leading questions are necessary to coax the truth out of their reluctant lips.^[15] In the case at bar, the trial court was justified in allowing leading questions to AAA as she was evidently young and unlettered, making the recall of events difficult, if not uncertain.^[16] As explained in ***People v. Rodito Dagamos***:^[17]

“The trend in procedural law is to give wide latitude to the courts in exercising control over the questioning of a child witness. The reasons are spelled out in our Rule on Examination of a Child Witness, which took effect on December 15, 2000, namely, (1) to facilitate the ascertainment of the truth, (2) to ensure that questions are stated in a form appropriate to the developmental level of the child, (3) to protect children from harassment or undue embarrassment, and (4) avoid waste of time. Leading questions in all stages of examination of a child are allowed if the same will further the interests of justice.”

The Court has repeatedly stated that it is highly inconceivable for a child of tender age, inexperienced in the ways of the world, to fabricate a charge of defloration, undergo a medical examination of her private part, subject herself to public trial, and tarnish her family’s honor and reputation, unless she was motivated by a strong desire to seek justice for the wrong committed against her.^[18]

AAA recounted her harrowing experience, thus:

“Q What time was this when Johnny introduced himself to you?
A I do not recall, ma’m.

- Q Was it in the morning, noontime or in the afternoon or in the evening?
A Noontime, ma'm.
- Q So, when Johnny said, 'Ako si Johnny,' what did you do?
A None, ma'm.
- Q After that when Johnny said, 'Ako si Johnny,' what happened?
A He strangled (sinakal) me.
- Q Were there persons around in the place when Johnny strangled you?
A None, ma'm.
- Q So, what did he do then after he strangled you?
A He boxed me on my stomach, ma'm.
- Q When he boxed you on your stomach, what happened to you?
A I was shocked, ma'm.
- Q Did you fall down?
A Before that, I was already lying down, so when he boxed me, I was shocked.
- Q You said that you were already lying down. Who made you lie down?
A The person, ma'm.
- Q Why were you shocked, AAA?
A Because he strangled me and boxed me.
- Q After he boxed you on your abdomen, what happened? What else did he do to you?
A There was a dog that arrived in the place and it barked at us. Then Johnny moved in a hurry by penetrating my private part and after he dressing (SIC) me, he ran away.
- Q You said that Johnny penetrated your private part. With what instrument did he use in penetrating your private part?
A His penis, ma'm.
- Q What was he wearing at that time?
A A black denim, ma'm.
- Q When he used his penis in entering your private part, did he remove his pants?
A No, ma'm.