

EN BANC

[G.R. Nos. 145309-10, April 04, 2003]

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. VIRGILIO FLORES Y AQUINO, APPELLANT.

D E C I S I O N

CORONA, J.:

Before us on automatic review is the Decision^[1] of the Regional Trial Court, Branch 166, Pasay City, in Criminal Cases Nos. 111100-H to 111101-H, finding appellant, Virgilio A. Flores, guilty of two counts of rape and sentencing him to suffer the penalty of death in each case.

In her *Sinumpaang Salaysay* dated September 10, 1996,^[2] then 8-year-old Loribelle Ruth D. Flores charged her own father, Virgilio A. Flores, with rape on at least 20 occasions from April 1995 to August 1996. Despite the numerous accusations, however, only two separate Informations were filed in court, viz:

In Criminal Case No. 111100-H^[3]

That sometime in April 1995 in Pasig, Rizal and within the jurisdiction of this Honorable Court, the above-named accused, by taking advantage of his moral ascendancy and paternal relationship as father of the offended party Loribelle Ruth D. Flores, did then and there wilfully, unlawfully and feloniously have carnal knowledge with Loribelle Ruth D. Flores, at his mother-in-law's house, repeating the same sexual abuse throughout the period of April 1995 to August 1996, with the use of force, threats, or intimidation, against said minor's will and consent, to her damage and prejudice.

Contrary to law.

In Criminal Case No. 111101-H^[4]

That sometime in August 1996 in Pasig, Rizal and within the jurisdiction of this Honorable Court, the above-named accused, by taking advantage of his moral ascendancy and paternal relationship as father of the offended party Loribelle Ruth D. Flores, did then and there wilfully, unlawfully and feloniously have carnal knowledge with Loribelle Ruth D. Flores, at his mother-in-law's house, repeating the same sexual abuse throughout the period of April 1995 to August 1996, with the use of force, threats, or intimidation, against said minor's will and consent, to her damage and prejudice.

Contrary to law.

Upon arraignment on December 4, 1996, appellant

Virgilio A. Flores pleaded "not guilty" to both charges.^[5]

The prosecution presented the following as its witnesses: the victim herself, Loribelle Ruth D. Flores, Angelica Somera, Dr. Ida Daniel and Dalisay Dueñas, the victim's grandmother.

Loribelle Ruth D. Flores was born on October 24, 1986, as evidenced by her birth certificate issued by the Local Civil Registrar of Binangonan, Rizal.^[6] She used to live with her maternal grandmother, Dalisay Dueñas, in Santolan, Pasig City. Loribelle testified that, sometime in April 1995, her father, Virgilio A. Flores, together with her mother, Lorraine, and four siblings paid her a visit at her grandmother's house.^[7] That evening, the whole family slept in one room, side by side in one bed, except for her grandmother. Later that night, she was roused from sleep by the weight of her father who was on top of her. She was shocked to find out that she had no more underwear and shorts. Appellant started kissing her cheeks, neck and lips. Thereafter, he pulled down his pants and let Loribelle hold his penis against her vagina. When she refused, appellant forcibly pressed his penis against her private part but failed to fully penetrate because she felt pain and cried. Thereafter, the appellant ejaculated and warned her not to tell her mother. Fearing that her parents might quarrel, Loribelle decided not to disclose what transpired. Nevertheless, her mother discovered what happened when the latter noticed the following day that she was not wearing any underwear. But she merely confronted the appellant and the controversy somehow died down.

Sometime in August 1996, the appellant fetched Loribelle from school and brought her to her grandmother's house. As she was about to watch TV, the appellant sat beside her. At first she thought that appellant was also going to watch but, to her surprise, he forced her to lie down on the floor and went on top of her. He then kissed her on the cheeks, lips and neck. Thereafter, the appellant removed her shorts and underwear, before pulling down his own shorts and briefs. Again, there was no complete penetration of her private part because of the intense pain. Loribelle informed her mother of this incident when she visited the latter in Binangonan, Rizal. While her mother was saddened, the latter did nothing.

Loribelle disclosed that, she and her three sisters, Sarah Joy, Hazel and Catherine Grace, who also filed charges of sexual molestation against the appellant, were staying at the Reception and Study Center for Children, Department of Social Welfare and Development (DSWD).

Angelica Somera, an agent of the National Bureau of Investigation (NBI), testified that she, together with a colleague, Cynthia Mariano, took the statements of Loribelle Flores on September 10, 1996 and her sister, Hazel Flores, the next day. Both girls declared that their father, appellant Virgilio A. Flores, sexually abused them. When she took Loribelle's statement, the latter appeared sick and indisposed.

NBI medico-legal officer, Dr. Ida Daniel, M.D., testified that she conducted a physical examination on Loribelle. In her medical report, the following findings appear: (1) no evident sign of extra-genital physical injury noted on the body of the subject at the time of examination; (2) hymen, intact and its orifice small (1.0 cm. in

diameters) as to preclude complete penetration by the average sized adult, Filipino male organ in full erection without producing any genital injury.^[8] Dr. Daniel likewise declared that, despite the fact that the hymen remained intact, the same did not preclude the possibility of labial penetration.

Dalisay Dueñas testified that she learned of appellant's sexual molestations of her granddaughter sometime in August 1996 when her daughter, Lorraine, narrated the circumstances surrounding these cases to her. She later confirmed the same from Loribelle herself. Consequently, Dalisay and Lorraine decided to report the matter to the NBI.

For his defense, appellant Virgilio A. Flores vehemently denied that he raped his own daughter. During the trial, appellant testified that, from April 1995 to August 1996, he was a mission pastor at the Buhangin United Methodist Church. He claimed that the accusation was instigated by his mother-in-law who harbored a personal grudge against him for kissing his sister-in-law, not to mention the monetary benefits she stood to gain from the filing of these cases.

Lorraine was presented by the defense on June 3, 1998 to refute the allegations of her own mother, Dalisay, and daughter, Loribelle. She testified that, since April 6, 1998, she had been staying with her in-laws after she was driven away by her mother for declining to support the latter's allegations of rape against her husband, the appellant. She denied reporting, with her mother, the rape of her daughter to the NBI as there was no truth to the charge. She learned of her mother's scheme against her husband only on September 18, 1996 when NBI agents, accompanied by her mother, went to their house and arrested her husband. Her mother even told her not to interfere, otherwise, she would also be incarcerated.

Lorraine also testified that it was her mother and some relatives who forced her to be interviewed on "Balitang K," "Magandang Gabi Bayan" and "Firing Line". After each interview, she received financial assistance from the TV stations but the money went to her mother who allegedly claimed that the same would not have been possible had it not been for her. She also declared that her mother implicated the appellant out of dislike for him. She revealed that her mother wanted to have a house of her own and she saw this as her opportunity to raise the necessary funds. Her daughters were under the custody of the DSWD when she testified in court.

On March 19, 1999, the trial court rendered its decision convicting the appellant, Virgilio A. Flores, of two counts of rape. The dispositive portion reads:

WHEREFORE, the Court finds accused VIRGILIO FLORES Y AQUINO GUILTY beyond reasonable doubt of the crime of RAPE on two (2) counts as charged in the Informations, and is hereby sentenced to suffer the supreme penalty of Death in each case and indemnify the private complainant Loribelle Ruth Flores Fifty Thousand (P50,000.00) Pesos, also in each case, plus the costs of suits.

Hence, this appeal.

Appellant raises the following assignments of error:

THE COURT A QUO ERRED IN GIVING DUE WEIGHT AND CREDENCE TO THE UNRELIABLE AND UNCORROBORATED TESTIMONY OF THE COMPLAINING WITNESS, THEREBY CASTING GRAVE DOUBT AS TO THE CRIMINAL CULPABILITY OF THE ACCUSED-APPELLANT.

II

THE TRIAL COURT ERRED IN NOT GIVING CREDENCE AND WEIGHT TO THE OPINION OF AN EXPERT WITNESS THAT NO PENETRATION OCCURRED WHETHER EXTERNAL OR INTERNAL ON THE PART OF THE VICTIM TO PRECLUDE THAT RAPE WAS COMMITTED AGAINST THE COMPLAINANT.

At the core of the instant review is the credibility of the alleged victim, Loribelle. Appellant assails her narration of the alleged sexual assaults as not worthy of belief for being contrary to human nature and experience. Appellant claims that the single bed where all the members of his family slept side by side that night in April, 1995 was soft. Hence, it was impossible for his wife and four children not to be roused from sleep by the constant movement since, per testimony of his daughter, she was allegedly evading him at the time he was attempting to insert his penis into her vagina.

When credibility is at issue, this Court generally defers to the findings of the trial court, considering that it was in a better position to pass judgment on the credibility of witnesses, having personally heard them when they testified and observed their deportment and manner of testifying. There are of course exceptions to this rule, such as when the evaluation was reached arbitrarily or when the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which, if considered, would affect the result of the case.^[9]

After a careful consideration of the evidence, we affirm appellant's conviction. The uncorroborated testimony of Loribelle was sufficient to establish the guilt of the appellant beyond reasonable doubt. Her testimony was clear, categorical and convincing, and therefore credible. We quote from her testimony:

ATTY. OCHAVE:

At the last hearing last March 5, 1997, you testified that you were raped by your father, the accused Virgilio Flores sometime on April 1995, is this correct?

A Yes, sir.

XXX XXX XXX

Q And, how did it happen?

A I was asleep but I was suddenly awakened when I felt that my father was on top of me.

Q What happened after you felt that your father was on top of you?

A He kissed my neck, the side of my lips.

Q What happened next after he kissed you?
A He touch (sic).

Q What did he touch?
A My flower.

Q What do you mean by flower?
A My "pek-pek".

Q After he touched your "pek-pek," what happened next?
A He was trying to insert his bird to my flower.

Q What do you mean by the word bird?
A "Ari."

Q Was he able to enter you?
A No.

Q What happened? Why he was not able to enter you?
A Because I felt pain.

Q Where did you feel the pain?
A In my flower.

Q What cause (sic) the pain in your flower?
A Because he tried to insert his "ari" to my flower.

Q Was the "ari" able to touch your flower?
A Yes.

Q Can you describe to us exactly how it touched your flower?
A "Idinikit po niya".

Q What was your reaction when you felt that his "ari" was touching your flower?
A I was trying to "umiilag po ako."

Q Can you show to us how you were "umiilag"?
A I was trying to evade "umiiwas."

Q After that what happened next?
A He stopped doing it. ^[10]

xxx xxx xxx

Q On your testimony on March 5, 1997, you also mentioned that sometime in August, 1996 when