

FIRST DIVISION

[G.R. Nos. 139240-43, November 12, 2002]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROLANDO ASPURIA ALIAS "LANDO PUKOL", ACCUSED-
APPELLANT.**

D E C I S I O N

YNARES-SANTIAGO, J.:

Accused-appellant Rolando Aspuria alias "Lando Pukol" was charged with rape by complainants Anne Rachel T. Cabañero and Jennifer M. Niduaza in four (4) separate informations which read:

Criminal Case No. A-3285

That sometime in the month of July, 1992, at Barangay San Vicente Norte, Municipality of Agoo, Province of La Union, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the minor Anne Rachelle T. Cabañero against her will, to the damage and prejudice of said minor.

Criminal Case No. A-3286

That on or about the 31st day of December, 1995, at Barangay San Vicente Norte, Municipality of Agoo, Province of La Union, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the minor Anne Rachelle T. Cabañero against her will, to the damage and prejudice of said minor.

Criminal Case No. A-3287

That sometime in the month of April, 1993, at Barangay San Vicente Norte, Municipality of Agoo, Province of La Union, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the minor Anne Rachelle T. Cabañero against her will, to the damage and prejudice of said minor.

Criminal Case No. A-3288

That sometime in the month of July 1992, at Barangay San Vicente Norte, Municipality of Agoo, Province of La Union, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with

lewd design and by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the minor Jennifer M. Niduaza against her will, to the damage and prejudice of said minor.

Accused-appellant pleaded "not guilty" to all charges. Trial on the merits then ensued.

Sometime in July 1992, complainants Anne Rachelle Cabañero and Jennifer Niduaza, both five and a half (5 ½) years old, were playing in the yard of Felipe Gamboa in San Vicente Norte, Agoo, La Union when accused-appellant, a neighbor whom they looked up to as their uncle, called them. He invited them to come inside Felipe Gamboa's house, of which he was the caretaker, to watch television. Anne Rachelle and Jennifer readily obliged. As soon as they were inside the house, accused-appellant closed the door and the windows and turned off the television set. He then ordered them to undress and when they refused, he threatened to undress them himself. Though hesitant, they removed their short pants and panties.

Accused-appellant laid Anne Rachelle down on the floor while Jennifer sat down in one corner of the house. He then kissed Anne Rachelle on the lips, licked her private parts, forced her to suck his penis, lay on top of her and penetrated her. Anne Rachelle felt pain. She also felt something wet come out of accused-appellant's organ. When he was through with Anne Rachelle, accused-appellant turned to Jennifer and ordered her to lie down. Anne Rachelle was ordered to take Jennifer's place at the corner of the house. Accused-appellant then proceeded to sexually assault Jennifer. After satisfying his lust, he warned them not to report what he did to anybody, or else he will kill them and their parents.

Sometime in 1993, Anne Rachelle underwent the same ordeal, this time in the house of her grandmother Rosalina Tamayo. Anne Rachelle, together with her brother Bryan, was helping Rosalina gather sun-dried unmilled rice near their house when accused-appellant came to borrow a bottle of vinegar. Rosalina asked Anne Rachelle to get the bottle of vinegar inside the house. Anne Rachelle refused and instead asked Bryan to get it but, upon Rosalina's insistence, Anne Rachelle reluctantly did as told. Accused-appellant followed her to the house. As soon as they were inside, accused-appellant carried her to one of the rooms, despite her pleas to let her go. He ordered her to take off her clothes, which she did. He then kissed her lips and her genitals and forced her to do the same to him. Accused-appellant then laid her on the bed, lowered his pants and brief and forced himself on her. He reiterated his threat to kill her and her parents should she report what he did to her. Shaken by her experience, Anne Rachelle just stayed in the house and did not return to Rosalina and Bryan.

In the afternoon of December 31, 1995, Anne Rachelle was in her Aunt Sabel's house playing with her younger sister, Angelica, while watching over their baby cousin, Rose Beth. When she went out to relieve herself at a corner behind the house, accused-appellant called her and ordered her to buy for him bread and cigarette. He did not give her money, so she bought the items with her own money worth P2.00. When she handed the bread and cigarette to accused-appellant, the latter pulled her inside the house and forced her to undress. Again, he kissed her lips and genitals and ordered her to lick his penis. When she refused, he threatened to twist her mouth until she gave in. He then lowered his pants and briefs and laid her on the floor. He went on top of her and forced himself on her. After he was

through, he warned her not to tell anybody what he did, otherwise he will kill her and her parents.

Two years later, on April 11, 1997, Anne Rachelle revealed her ordeal in the hands of accused-appellant to her cousin Normalyn Aspuria who, in turn, told her grandmother Rosalina.

Dr. Melanie Bumanlag of the Doña Gregoria Memorial Hospital certified that upon examination of her genital organ, Anne Rachelle had "old scar (healed) multiple hymenal laceration".^[1] As for Jennifer, Dr. Bumanlag certified that she had "old scar (healed) hymenal lacerations at 4 o'clock, 6 o'clock and 7 o'clock" positions.^[2]

Accused-appellant denied the charges against him. He testified that in July 1992 he was with his father in a farm in San Marcos, more than four (4) kilometers away from their house. He denied going to the house of Anne Rachelle's grandmother in April 1993. He averred that on December 31, 1995, he was in Masantol, Pampanga in the house of his brother-in-law, Rolando Sunga, to spend the New Year's eve, and showed a picture bearing the said date. He stayed in Masantol, Pampanga for ten (10) days.

The trial court gave more credence to the prosecution's evidence and rendered a decision,^[3] the dispositive portion of which reads:

WHEREFORE, IN VIEW OF ALL THE FOREGOING considerations, the accused Rolando Aspuria alias "Lando Pukol" is hereby found GUILTY beyond reasonable doubt of the crimes charged. He is hereby sentenced as follows:

1. In Criminal Case No. A-3285, the accused is hereby sentenced to suffer the penalty of reclusion perpetua and to indemnify the victim Anne Rachelle T. Cabañero in the amount of P50,000.00.
2. In Criminal Case No. A-3286, the accused is hereby sentenced to suffer the penalty of reclusion perpetua and to indemnify the victim Anne Rachelle T. Cabañero in the amount of P50,000.00.
3. In Criminal Case No. A-3287, the accused is hereby sentenced to suffer the penalty of reclusion perpetua and to indemnify the victim Anne Rachelle T. Cabañero in the amount of P50,000.00.
4. In Criminal Case No. A-3288, the accused is hereby sentenced to suffer the penalty of reclusion perpetua and to indemnify the victim Jennifer M. Niduaza in the amount of P50,000.00.

In this appeal, accused-appellant assails the credibility of the prosecution's evidence. In particular, he points out an alleged inconsistency in the testimony of Rosalina. At first, she testified that, according to Normalyn Aspuria, only Anne Rachelle was raped. But when Rosalina personally confronted Anne Rachelle, the latter allegedly informed her that Jennifer was also raped. Accused-appellant alleges that the "uncertainty" in Rosalina's testimony affects her credibility.

The contention deserves no consideration. We agree with the observation of the Solicitor General, to wit:

The fact that Anne Rachelle disclosed to her cousin Normalyn only her violation, not Jennifer's, was immaterial. She was disclosing only her

"secret". It was only during the confrontation with her grandmother that she deemed it necessary to reveal that Jennifer was raped too.^[4]

Accused-appellant also argues that Rosalina supplied much of the information being sought by Dr. Bumanlag instead of Anne Rachelle and Jennifer. Accused-appellant claims that when Dr. Bumanlag asked Anne Rachelle and Jennifer about the perpetrator's identity, both merely referred only to a certain man.

Again, as correctly observed by the Solicitor General, complainants were not expected to identify the perpetrator with certainty at the time of the medical examination, especially since Dr. Bumanlag merely asked general questions.^[5]

Accused-appellant next submits that the medical examination conducted by Dr. Bumanlag was incomplete and inconclusive. He cites the testimony of Dr. Ronald Bandonill, a National Bureau of Investigation Medico-Legal Officer, who testified that the Medico-Legal Certificate contained only the conclusion of the external examination conducted but did not specify the character of the hymen examined. He explained that there is a certain kind of hymen that is notched or fimbriated which could be mistaken as a laceration. Also, accused-appellant points out that the last rape incident happened about two years before the medical examination was conducted on Anne Rachelle and Jennifer such that the lacerations found in their vaginas may no longer be conclusively attributed to the rape incidents. He also assailed the qualification of Dr. Bumanlag saying that she has handled only 10 cases of rape and it was her first time to testify in court.

Accused-appellant's submission fails to persuade. As the Solicitor General astutely observed:

The fact that Dr. Bumanlag handled only 10 cases of rape and it was her first time to testify in court (TSN, Oct. 23 1997, pp. 5-6) do not per se affect her findings nor make it incomplete. The suggestion that other factors could have caused complainant's hymenal lacerations was pure possibility. It could not detract strength from their positive and categorical testimonies. Even Dr. Ronald Bandonill of NBI Baguio City did not discount the possibility that their hymenal lacerations could have been caused by sexual intercourse. (TSN, Jan. 28, 1999, p. 7)^[6]

In crimes against chastity, the medical examination of the victim's genitalia is not an indispensable element for the successful prosecution of the crime. The examination is merely corroborative in nature.^[7]

Accused-appellant further argues that he could not have perpetrated the crimes considering that Anne Rachelle's grandmother and brother were just outside the house gathering and drying unmilled rice. By the same token, he points out that Anne Rachelle did not shout for help or do anything to call her grandmother's and brother's attention, which she could have done as accused-appellant was then unarmed and the threats were only made after the rape incident.

Accused-appellant's arguments are devoid of merit. This Court has consistently held that for rape to be committed, it is not necessary for the place to be ideal, for rapists bear no respect for locale and time when they carry out their evil deed. The presence of people nearby does not deter rapists from committing their odious act.

^[8]