

## EN BANC

**[ G.R. No. 143703, November 29, 2001 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSE MUSA Y VILLARAZA, ACCUSED-APPELLANT.**

### DECISION

**MENDOZA, J.:**

This case is here on automatic review of the decision,<sup>[1]</sup> dated April 25, 2000, of the Regional Trial Court of Legazpi City, Branch 6, finding accused-appellant Jose Musa guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer the penalty of death and to pay the victim, Vanessa Rochelle Musa, P75,000.00 as indemnity, P50,000.00 as moral damages, P20,000.00 as exemplary damages, and the costs.

The information against accused-appellant charged--

That on or about October 5, 1997 at around 1:00 o'clock in the afternoon, more or less, at Barangay Bongabong, Municipality of Camalig, Province of Albay, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd and unchaste design and with the use of force, threat and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with VANESSA ROCHELLE MUSA, who is his niece and only 12 years of age, against the latter's will and consent, to her damages and prejudice.

ACTS CONTRARY TO LAW.<sup>[2]</sup>

When arraigned on March 3, 1998, accused-appellant pleaded not guilty to the charge, whereupon he was tried.

The prosecution presented as its witnesses Vanessa Rochelle Musa, Ariel Musa, Lolita Musa, SPO4 Rico Nocillado, and Dr. Melvyn Orbe. Their testimonies established the following facts:

Vanessa Rochelle Musa is the daughter of Lolita Musa and Arturo Musa, while accused-appellant is the latter's brother.<sup>[3]</sup> At the time of the commission of the crime, Vanessa was around 12 years old, having been born on July 9, 1985.<sup>[4]</sup>

On October 5, 1997, Vanessa Rochelle and her six-year old brother, Ariel, were left alone in their house in Bongabong, Camalig, Albay by their parents who went to Camalig to deliver handicrafts. At around 1 o'clock in the afternoon of that day, accused-appellant, referred to as Tata Jose by the children,<sup>[5]</sup> arrived at the house. He gave Ariel P1.00 and told him to go out, even as he ordered Vanessa Rochelle to go inside the bedroom.

Once inside, accused-appellant made Vanessa Rochelle lie on the bed and removed her clothes. After he had undressed himself, accused-appellant went on top of Vanessa Rochelle and had sexual intercourse with her. Vanessa Rochelle asked accused-appellant to stop as he was hurting her, but her pleas went unheeded. After accused-appellant was through, Vanessa Rochelle saw a whitish substance coming out of his penis. Accused-appellant left afterward, but not before warning Vanessa Rochelle not to tell her mother or anyone else what he had done to her.

The incident was seen by Ariel Musa, who was on the porch, through a hole in the wall. When her parents arrived that night, Vanessa Rochelle did not tell them what had happened to her because she was afraid of what accused-appellant might do if she did.<sup>[6]</sup> But, on November 24, 1997, while Lolita Musa and her children were feeding the hogs, Ariel, upon seeing accused-appellant, blurted out, "Tata Ote is already crazy." When asked what he meant, Ariel said that accused-appellant did something wrong to Vanessa Rochelle. Ariel told his mother that accused-appellant gave him P1.00 to make him play outside, but, through a hole in the wall, he saw accused-appellant lie on top of Vanessa Rochelle and have sexual intercourse with her.

Lolita then confronted Vanessa Rochelle and asked her if what her brother had said was true. She also asked Rowena, another daughter, if the same thing had happened to her. When her daughters confirmed what accused-appellant had done, Lolita took them to the health center for medical examination. They then proceeded to the Philippine National Police (PNP) station in Camalig, Albay<sup>[7]</sup> and filed a complaint for rape against accused-appellant.<sup>[8]</sup>

Dr. Melvyn Orbe, the municipal health officer of Camalig, Albay, conducted the physical examination of Vanessa Rochelle Musa and prepared a report, dated November 28, 1997, which contained the following finding: "Hymen intact with slight discharges (purulent)."<sup>[9]</sup> In his testimony in open court, he explained that Vanessa Rochelle complained of hypogastric pain and itchiness in the vaginal area, for which reason he conducted a urinalysis and an internal examination of the victim. Dr. Orbe testified that the urinalysis conducted revealed the presence of pus in the urine. He found that Vanessa had a slight purulent discharge from her vagina, indicating a secondary bacterial infection. Dr. Orbe also found multiple healed vaginal lacerations which were caused by the forcible penetration of an object, such as a finger or a penis, into the vagina. As these lacerations were healed, he concluded that the cause for the same occurred sometime before the examination.

On cross-examination, Dr. Orbe testified that the multiple lacerations on the vagina of the victim could not have been caused by menstrual flow or riding a bike. He opined that the most proximate cause of the lacerations was the insertion of the penis because of the presence of the infection and the lacerations. He admitted that the insertion of a finger or a hard object, such as the mouth of a bottle, could also bring about infection and lacerations. But, he explained, the lacerations produced by the insertion of the mouth of a bottle would be massive and would cause bleeding. He said that the lacerations could occur at the hymen or in the vagina itself. The fact that the lacerations were found in the vaginal area did not necessarily mean that the same would also be found on the hymen. Upon further questioning by the trial court, Dr. Orbe explained that the hymen of the victim was intact because it was so

elastic that the same could not have been lacerated if the penetration was done slowly.<sup>[10]</sup>

The defense presented the testimonies of accused-appellant and his sister, Charlina Musa. They testified that on October 5, 1997, from 8 o'clock in the morning until 5 o'clock in the afternoon, they were at the Freedom in Christ Christian Ministry in Tula-Tula, Camalig, Albay, preparing for the arrival of 19 missionaries from Australia. They had their lunch inside the church and did not leave the same until the end of the service. Charlina, however, admitted that the distance from the church to the house of the victim could be covered in 30 minutes by foot. Charlina likewise admitted that Vanessa Rochelle was her niece, the latter's father, Arturo Musa, being her brother. Charlina testified that Vanessa Rochelle, together with her mother, her sister, Rowena, and her younger brother, attended the church services that day.<sup>[11]</sup>

On April 25, 2000, the trial court rendered a decision, the dispositive portion of which states:

WHEREFORE, premises considered, the accused **Jose Musa** is hereby found guilty beyond reasonable doubt of the crime of rape of [his] 12 year old full blooded niece, Vanessa Rochelle Musa, a relative within the third degree of consanguinity. Accordingly, he is hereby sentenced to suffer the supreme penalty of death, to pay Vanessa Rochelle Musa the sum of P75,000.00 as indemnity, P50,000.00 as moral damages, P20,000.00 as exemplary damages and the costs.

SO ORDERED.<sup>[12]</sup>

Hence this appeal. Accused-appellant contends--

I. THE COURT A QUO ERRED IN SENTENCING THE ACCUSED-APPELLANT TO DEATH NOTWITHSTANDING THE FACT THAT THE QUALIFYING CIRCUMSTANCE OF AGE OF THE VICTIM WAS NEVER DULY ESTABLISHED BY THE PROSECUTION, NOR THE EXACT DEGREE OF CONSANGUINITY ANENT THE QUALIFYING CIRCUMSTANCE OF RELATIONSHIP.

II. THE COURT A QUO ERRED IN CONVICTING THE ACCUSED-APPELLANT OF RAPE ALTHOUGH THE TESTIMONY OF THE ALLEGED VICTIM HERSELF AND THE FINDINGS OF THE DOCTOR DO NOT SUPPORT THE SAME.<sup>[13]</sup>

*First.* To begin with, it is settled that the accused may be convicted on the sole testimony of the victim in a rape case, provided that such testimony is credible, natural, convincing, and consistent with human nature and the normal course of things.<sup>[14]</sup> In this case, both complainant and her brother Ariel testified against their uncle, herein accused-appellant. Their testimonies are confirmed by the results of the medical examination of complainant.

Accused-appellant, however, questions the credibility of Vanessa Rochelle and claims that her lack of resistance belies her claim of rape. The trial court found that the testimony of Vanessa Rochelle sufficiently proved the commission of the crime of rape. We have time and again held that the determination of the competence and

credibility of a child to testify lies primarily with the trial court, which had the opportunity to observe the demeanor and intelligence of the witness on the stand. The findings of the trial court are thus entitled to great weight and credit, unless it has overlooked certain facts and circumstances of substance and value which, if properly considered, would alter the outcome of the case.<sup>[15]</sup>

Vanessa Rochelle testified in this wise:

Q Now, where were you then on October 5, 1997 at about 1:00 o'clock in the afternoon when you said you did not go to school because there was no classes being Sunday?

A I was in the house.

Q Where?

A At Bongabong, Camalig, Albay.

Q Now, while there in your house what were you doing then?

A I was studying my lesson.

Q You were doing your homework?

A Yes, Madam.

Q Now, at that time that you were in your house doing your homework on October 5, 1997 did you have any companion in the house?

A Yes, Madam.

Q Who were or who was your companion?

A Ariel Musa.

Q How is Ariel Musa related to you?

A [He] is my brother.

Q How about your father and your mother were they not in your house on October 5, 1997?

A No, Madam.

Q Do you know where were they?

A They went to Camalig proper.

Q What about Ariel what was he doing at that time while you were doing your homework on October 5, 1997?

A He was playing.

Q Where, inside the house or outside the house?

A Outside the house.

Q Where outside the house? Is it far from the house or just near the house?

A At the porch.

Q So, Ariel Musa who was playing at the porch of your house was also inside your house?

A Yes, sir.

Q Now, while you were doing your homework and Ariel Musa was playing at the porch of your house, do you recall if somebody came to your house?

A Yes, sir.

Q And who is this person who came to your house?

A "Tata Jose."

Q When you say, "Tata Jose", are you referring to Jose Musa. The accused in this case?

A Yes, sir.

Q Now, why do you call him "Tata Jose"?

A Because he is the brother of my father.

Q Now if this "Tata Jose" or Jose Musa is present here in court, will you please point to him?

A (Witness pointing to a certain person who is inside the room and upon being asked of his name, stood up and identified himself as Jose Musa).

Q All right, when this "Tata Jose" or Jose Musa arrived in your house on October 5, 1997 while you were doing your homework and your brother was playing, what did this "Tata Jose" or Jose Musa do, if any?

A He asked me to come with him inside.

COURT:

Q Inside what?

A Inside our room.

Q Did you go with him inside the room?

A Yes, Madam.

Q Now, while inside that room what happened if any?

A While there inside the room he let me l[ie] down and removed my clothes and then he also removed his clothes and lay on top of me and inserted his penis into my vagina.

COURT:

Q When you say he removed your clothes what clothes were removed from you by Jose Musa?

A My shorts and panty.

Q What about your blouse if any or T-shirt?

A It was also removed before he lay down on top of me.

Q And when you say he also removed his clothes, what clothes were removed by him?

A His shorts and brief.

COURT:

All right, continue Fiscal.