

EN BANC

[G.R. No. 132217, February 18, 2000]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
BONIFACIO TOREJOS Y PAÑARES @ BONING, ACCUSED-
APPELLANT.**

D E C I S I O N

PER CURIAM:

Accused-appellant Bonifacio Torejos y Pañares @ Boning was convicted for raping a three-year-old child and was meted the supreme penalty of death. The Judgment^[1] of the Regional Trial Court (RTC) of Davao City, Branch 17, finding him guilty beyond reasonable doubt of the crime of rape as amended by Republic Act No. 7659 is now before us on automatic review.

Bonifacio Torejos (TOREJOS) was charged with raping Mary Cris Cerna (MARY CRIS) in an information that reads:

"That on or about January 7, 1997, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with Mary Cris Cerna, 3 years of age, against the will of the latter.

CONTRARY TO LAW."^[2]

On October 25, 1984, the accused was arraigned and pleaded not guilty to the crime charged.^[3]

The RTC summarized the facts of the case as culled from the testimonies of the prosecution witnesses as follows:

"On January 7, 1997, at about 3:00 P.M., Rosalie Cerna was coming back to their house from a certain store, where she bought bread and Pop-cola for refreshment of her husband and a carpenter, at that time was working along with her husband, at the side of their house. At a distance of 20 meters and while approaching her house, carrying the Pop-cola and bread, she saw and noticed, accused Bonifacio Torejos beside their house was on top of her daughter, Mary Cris, lying on bed while accused on top of her, doing a pumping movement push and pull action.

At that time, actually saw accused, in that situation, she was shocked and unable to do anything. Instead she proceeded towards their house and when she arrived, accused went to their kitchen, pretending nothing happened, by blowing fire thereat.

Out of fear, she did nothing. Her husband at that time, was beside their house. She told her husband of what she saw and at once her husband inquired from accused about the matter but accused denied and said, he just placed a blanket on top of Mary Cris.

After what happened, she examined the private part of Mary Cris and she saw there a little blood with slight laceration.

Thereafter, they went to the district health clinic at Toril, Davao City, for examination of Mary Cris by Dr. Casquejo.

After his examination, the Doctor issued a Medical Certificate, marked Exh. "B" for the prosecution.

Later they went to Toril Police Station to record the incident in the police blotter an excerpt of said recording was marked Exh. "C" for the prosecution.

Rosalie Cerna explained, at the time she saw what accused did to her daughter, she was not able to do anything because she was so afraid accused, will do something to her daughter. (Tsn. Pp. 2-6, hearing on March 17, 1997).

The husband of Rosalie Cerna, Luciano Cerna on January 7, 1997, at about 3:00 P.M., was beside their house helping his carpenter planing lumber, a certain carpenter only called, "Kano" in their locality.

At that time and date, the accused was in their house because they just finished hauling firewoods, for sale. The accused however, often comes to their house, sometimes three times in a week. His daughter at that time Mary Cris, a 3 year old girl was playing near him when his wife Rosalie Cerna left to buy their snacks or refreshments, but she went on the other side of the house, without noticing her.

His wife came back, after half an hour and he was surprised because she was crying calling for him while he was helping his carpenter at the other side of their house, bringing with her Mary Cris. He became curious about the matter and asked her clearly what was all about and she told him, Mary Cris was molested by accused.

He then asked accused if it is true but accused denied alleging, he merely put blanket on Mary Cris.

He examined the vagina of Mary Cris and he noticed, there was blood and laceration on her private part.

Immediately, he accompanied his wife to the Doctor, for the examination of Mary Cris.

Thereafter, they went to see their Barangay Captain who was not there at that time, so they instead reported the mater with their Barangay Kagawad Alfredo Tañara, who responded immediately to their call for

assistance and arrested accused and turn him over to the police at Toril Poblacion, Davao City.

It was around 8:00 P.M., on January 7, 1997, when the couple Luciano Cerna and Rosalie Cerna came to the house of the Barangay Kagawad of Barangay Bato, Toril, Davao City, requesting assistance about their daughter, allegedly molested by accused, Bonifacio Torejos.

At once the Barangay Kagawad accompanied the couple to the poblacion, to Dr. Casquejo for medical examination.

After treatment and examination of the child, he went back to their barangay and arrested the accused and brought him to the police station at Toril, Davao City. (Tsn. Pp. 8-10, hearing on March 19, 1997).

Dr. Uldario Casquejo, government Doctor of Toril, Davao City, at the same time medico-legal officer, when Mary Cris was brought to his clinic on January 7, 1997, by her parents, accompanied by Barangay Kagawad Alfredo Tañara, at once, conducted his examination after the parents told him, the child was raped by accused. He found out in his examination, in the external and internal vaginal canal of the child, there was lacerated wound at 6:00 position in the vaginal opening.

He explained the wound is 1/4 x 1 cm just superior to the anal area, a size of an 1/8 x 1/4 wound, concluding, it was caused by forced penetration of a penis on the child's vagina."^[4]

Accused-appellant vehemently denied having committed the offense charged. He claimed that he was in the house of the complainant at 3:00 p.m. on January 7, 1997 to get his share in the proceeds of the sale of firewood from Luciano Cerna, the father of Mary Cris, and went to the back of the house to drink water when he saw Mary Cris at the bench about to fall; he went near the child and held her, so that she will not fall to the ground.^[5]

On April 25, 1997, the RTC rendered its decision finding the accused guilty beyond reasonable doubt of the crime of rape the dispositive portion of which reads:

"Accordingly, finding the evidence of prosecution, more than sufficient to prove the guilt of accused, Bonifacio Torejos Y Pañares, of the offense charged, beyond reasonable doubt, is sentenced to suffer a supreme penalty of death, through lethal injection pursuant to Republic Act. No. 8176 in relation to Section 24 of Republic Act 7659, to be executed and implemented as therein provided, in accordance with law.

Moreover, pursuant to Art. 100 in relation to Art. 104, of the Revised Penal Code, governing civil indemnity, accused is ordered, to pay the parents of Mary Cris, Luciano Cerna and Rosalie Cerna, an amount of P30,000.00 as civil indemnity for the wrong done to their minor child, Mary Cris, at the commission of the offense charge, only three (3) years and nine (9) days.

Pursuant to the provision of the 1986 Philippine Constitution, the Branch

Clerk of Court of this court, is ordered, to elevate the entire records of this case with the Clerk of Court, Supreme Court, Manila, for the automatic review of this decision and appropriate action of the Supreme Court, as the case maybe.

SO ORDERED."^[6]

Hence this appeal where the accused-appellant assigns this sole error:

"THE COURT A *QUO* ERRED IN FINDING THE ACCUSED-APPELLANT BONIFACIO TOREJOS Y PAÑARES *ALIAS* "BONING" GUILTY BEYOND REASONABLE DOUBT FOR THE CRIME OF RAPE DEFINED AND PENALIZED UNDER ARTICLE 335 OF THE REVISED PENAL CODE."^[7]

In support of his appeal, the accused-appellant maintains that the evidence presented by the prosecution is "not clear, convincing and unnatural." First of all, the testimony of the mother of the alleged victim, Rosalie Cerna, is contrary to human experience for if she in fact saw the accused-appellant raping her daughter, she would have made an outcry for help to rescue and prevent him from accomplishing his sexual desire. This she did not do. In fact, she did not do anything at the very moment she allegedly saw her daughter being raped. This puts in question her credibility. Second, it is highly improbable that the accused-appellant raped MARY CRIS considering that the alleged rape took place in broad daylight and at a public place. Rape is essentially done in secret away from prying eyes unlike the present case where the rape is alleged to have been committed in a place that was in full view of the victim's father and mother. Finally, Rosalie Cerna herself admitted that MARY CRIS was not crying after the sexual assault was allegedly committed. The victim, who is of tender age, would naturally have cried due to the terrible pain caused by the infliction of a wound on her labia minora. With these factors in mind, it is contended that the prosecution failed to prove the guilt of the accused-appellant beyond reasonable doubt. Therefore, the presumption of innocence in favor of the accused-appellant mandated by the Constitution must prevail and the accused-appellant must be acquitted of the crime charged.^[8]

After a thorough review of the records, we resolve to deny the appeal.

Rosalie Cerna (ROSALIE), the eyewitness and mother of the victim, established the fact of rape and the age of the victim, MARY CRIS. She gave a clear and convincing account of the unfortunate event that transpired as follows:

"FISCAL EVANGELIO:

Q: Mrs. Cerna, are you the same Rosalie Cerna who is the private complainant in this case?

A: Yes, sir.

Q: Do you have a daughter name Marychris Pasyol Cerna?

A: Yes, sir.

Q: How old is your daughter Marychris Cerna?

A: Three years old.

Q: Did you have a birth certificate to prove the fact of the minority of your child?

A: Yes, sir.

Q: Showing to you a copy of the birth certificate of your daughter Marychris Cerna, is this the birth certificate of your daughter?

A: Yes, sir.

FISCAL EVANGELIO:

We request that the birth certificate be marked as Exh. "A" or the prosecution.

COURT:

Mark it.

FISCAL EVANGELIO:

Q: Now for the record Mrs. Cerna, if your daughter is in court, would you be able to point?

A: Yes, she is the one. (witness pointing to Marychris Cerna).

Q: Mrs. Cerna, where is your house located?

A: Barangay Bato, Toril, Davao City.

Q: And who live in your house with you?

A: I and my husband as well as my children.

Q: Do you know the accused in this case?

A: Yes, sir.

Q: Please tell the court, why you know the accused Bonifacio Torejos?

A: Because he frequently visited our house.

Q: What was the reason why this accused used to go to your house?

A: Because oftentimes, he goes with my husband in gathering firewoods.

Q: If he is in court Mrs. Cerna, would you be able to point him out?

A: He is the one. (witness pointing to Bonifacio Torejos)

Q: On January 7, 1997, Mrs. Cerna at about 3:00 o'clock in the afternoon, where were you?

A: I was at that time coming from a place where I bought bread and Popcola.

Q: Why do you have to buy Popcola and bread at that time?

A: For the merienda of my husband.

Q: Where did you buy Pop-cola and bread?

A: From the store.

Q: How far from your house?

A: About 20 meters away.

Q: While approaching your house at that time from the place where you bought Popcola and bread, what did you notice if any?

A: I saw Bonifacio Torejos.

Q: Where?

A: Beside our house.

Q: What was he doing at that time where you first saw him inside your house?

A: He was on top of the body of my daughter.

Q: Are you referring to your daughter Marychris Cerna?

A: Yes, sir.

Q: Describe to this Honorable Court Mrs. Cerna, the exact position of the accused when you saw him on top of your daughter?

A: He had my daughter lie down on the bed and he placed himself on top of my daughter.

Q: While on top, what did you notice?

A: He was moving his body. (witness demonstrating doing pumping push and pull action).