

EN BANC

[G.R. No. 127749, March 09, 2000]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BEN GAJO, ACCUSED-APPELLANT.

D E C I S I O N

PER CURIAM:

She is fondly called *Den-den*. At five (5) *Den-den*, whose full name is Precious Castigador, was slim, active and playful. Obedient, she could be depended upon by her parents to do errands like buying things from the nearby sari-sari store.^[1] A Kinder I/Day Care pupil at Matag-ub Day Care Center in Janiuary, Iloilo, she found respite from school by playing with the other kids in her neighborhood. On the 24th of October 1995, however, as fate would have it, a person she and her family trusted so much stealthily snatched from her her pristine innocence. She was raped by her *Tito Boy*, accused-appellant Ben Gajo.

Den-den was playing with her cousins that afternoon of 24 October 1995 near the house of accused-appellant Ben Gajo who is her maternal uncle, being a first cousin of her mother, Nelida Castigador. They lived close to each other in Matag-ub, Janiuary, Iloilo. At around 2:30 o'clock in the afternoon, Gajo called for *Den-den* who readily went up to his house and into his room. Upon closing the door, accused-appellant immediately removed *Den-den*'s panty, licked her genitalia and inserted his finger into the girl's vagina. Accused undressed, removed his brief, inserted his penis into her vagina and made a push-and-pull movement. Suddenly, the voice of *Den-den*'s father, Virgilio Castigador, was heard calling her and her brother to go home. Gajo told her to put on her panty and let her go. *Den-den* ran home together with her small brother who was playing with the other kids.^[2]

Virgilio Castigador, the father of the victim, was rinsing the blankets his wife Nelida, an elementary school teacher in Tuyongan, Calinog, Iloilo,^[3] left when the incident happened.^[4] That afternoon of 24 October 1995 Virgilio called for his two (2) kids, *Den-den* and *Bernie Dame*, for their siesta. While he was fixing something, he noticed *Den-den* perspiring. He turned her over to wipe her back and he saw that her panty was stained with blood. Shocked and unsure of what to do, Virgilio went to see his father-in-law and told him about it.^[5] They asked *Den-den* what happened and when she told them what her *Tito Boy* had done to her, Virgilio summoned his wife to come home immediately. When Nelida arrived Virgilio went to the Janiuary Police Station to report the incident while she and *Den-den* went to the Janiuary District Hospital.^[6]

At the Janiuary District Hospital, Dr. Aurora Edabelle Ballera, Medico-Legal Officer IV, examined Precious Castigador at around 7:25 o'clock in the evening of 24 October 1995. Precious complained of pain in her vagina.^[7] It was discovered that she had

fresh hymenal lacerations at the 6 and 9 o'clock positions, i.e., the lacerations were recent since there was still bleeding with blood clots.^[8] The vaginal smear yielded red blood cells and squamous cells due to the lacerations but negative for spermatozoa.^[9] According to Dr. Ballera, it was possible that the alleged rape happened at around 2:00 o'clock in the afternoon or within the twenty-four (24) hour period.^[10] A hard erect penis could have caused the lacerations although handling and touching the hymen with a finger or the insertion of a stick or instrument could also bring about the lacerations.^[11]

Acting on the complaint of the victim's father, the Provincial Prosecutor of Iloilo filed an Information for rape against Ben Gajo for "having carnal knowledge of Precious Castigador, a minor who was then only five (5) years old."^[12]

Lilia Gajo, the mother of accused-appellant, maintained that her son was innocent and could not fathom why Virgilio Castigador could concoct such a story. She knew for a fact how her son loved his niece *Den-den* and believed that he could not have done it.^[13] She also claimed that they had a good relationship with the Castigadors.^[14]

Accused-appellant Ben Gajo testified that in the afternoon of 24 October 1995 he went to the house of Cornelia Bolivar to pay her the palay he owed her.^[15] When he arrived home at around 2 o'clock that afternoon he saw his nephews and nieces playing; he joined them. He even swung *Den-den* and another niece, Cynthia Gajo, up in the air.^[16] When he got tired, he told the kids to stop playing while he went to visit his chickens. After a while, Virgilio called for *Den-den* and asked her to go home.^[17] Later, when the kids were already gone, the accused left for his farm some 600 meters away. He returned at around 6 o'clock in the evening.^[18] When the police arrested him he was bewildered since he was not informed who the complainant was. It was only when he reached the police station that he learned it was Virgilio Castigador who made the complaint. He attributed the false rape charge to a past stone-throwing incident between the Gajos and the Castigadors.^[19]

After trial the court *a quo* found the accused guilty of statutory rape and sentenced him to *reclusion perpetua* and to indemnify his victim in the amount of P50,000.00.^[20] He now comes to us assailing his conviction. He contends that the trial court erred in not appreciating his evidence; instead, it gave credence to the evidence of the prosecution albeit failing to establish his guilt to a moral certainty.

We are not persuaded by accused-appellant. The case for the prosecution rested largely on the testimony of the victim herself, five (5)-year old Precious *Den-den* Castigador. At the outset she was sworn to tell the truth and she showed that she understood its meaning when she told the court that *Papa Jesus* would be mad at her if she told a lie.^[21] The trial court observed that she gave an honest and straightforward account of what transpired on that day she was raped by accused-appellant -

- Q: When Ben Gajo brought you inside that room, what happened?
A: He took off my panty.
Q: After Ben Gajo took off your panty, what did he do?

A: He inserted his finger into my vagina.
 Q: What else did Ben Gajo do to you aside from putting his finger into your vagina ?
 A: He also licked my vagina.
 Q: How about Ben Gajo, what did he do after that?
 A: He made a push and pull movement.
 Q: How did Ben Gajo do that push and pull movement in your vagina, was he standing or was he sitting?
 A: He was standing.
 Q: How about Ben, what did he do with his pants?
 A: He also took off his pants.
 Q: How about the panty of Ben Gajo, what did he do with that?
 A: He also took off his panty.
 Q: After Ben Gajo took off his pants and his panty, what did you see in the person of Ben Gajo.
 A: His egg.
 Q: What else did you see?
 A: His penis.
 Q: Upon seeing this egg and penis of Ben Gajo, what did he do after he took off his pants and panty?
 A: He put his penis to my vagina.
 Q: How did he do that?
 A: Ma-an ka na. I don't know.
 COURT: Did Ben Gajo insert his penis in your vagina?
 A: Yes, Your Honor.
 Q:
 A: Yes, Your Honor x x x x
 PROS. You said that the penis of Ben Gajo was put inside your
 CHIN: vagina, now my question is, how did you feel when the penis of Ben Gajo was inside your vagina?
 A: It was a little hot.
 Q: Why, did you hold that penis of Ben?
 A: Yes, sir.
 Q: While Ben is putting his penis inside your vagina, what happened?
 A: I was called by my Papa x x x x
 Q: Now after your Papa called you, what did you do?
 A: I went home.
 Q: How about your panty which was earlier removed?
 A: I wore it again. ^[22]

A child-witness is generally not capable of lying and as long as she can perceive and make known her perception her credibility is unquestionable. Children whose mental maturity is such as to render them incapable of perceiving the facts respecting which they are examined and of relating them truthfully are not disqualified to be witnesses. ^[23] A child of any age may be permitted to testify so long as the trial judge is satisfied that the child possesses the ability to observe, recollect and communicate. ^[24] Minor children with capacity to perceive and make known their perception can be believed in the absence of any improper motive to testify. ^[25] There is no rule defining any particular age at which children may be said to be capable or incapable of receiving accurate impressions and to relate them truthfully.