

EN BANC

[G.R. No. 133904, October 05, 2000]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
RODOLFO DELA CUESTA, ACCUSED-APPELLANT.**

DECISION

YNARES-SANTIAGO, J.:

Rodolfo dela Cuesta was charged with the rape of 16-year-old Cristina Gonzales. The Information^[1] filed against the accused reads:

"That on or about August 10, 1996 and prior thereto, at Brgy. Maitim, Municipality of Bay, Province of Laguna and within the jurisdiction of this Honorable Court, the accused above-named being then the stepfather and guardian and while armed with a bolo, by means of force, violence and intimidation and with lewd designs, did then and there wilfully, unlawfully and feloniously have carnal knowledge with (*sic*) one CRISTINA GONZALES, a sixteen (16) year old girl, against her will and consent, to her damage and prejudice."

On arraignment, accused pleaded "not guilty". Trial on the merits ensued.

The victim's birth certificate^[2] indicates her name to be Cristy Corsanis, born on February 14, 1980. It appears that Cristy was sired by a certain Crispin Gonzales but a year after her birth, her mother Divina Corsanis became the common-law spouse of accused Rodolfo dela Cuesta.

The following facts were established:

At around 10:00 o'clock in the morning of August 10, 1996 while Cristy was looking after their house at Brgy. Maitim, Bay, Laguna, together with her step-brothers and step-sisters, accused ordered her step-brothers and step-sisters to go to the store. When accused and Cristy were left alone, the former forcibly undressed her and kissed her breast. Cristy struggled but her efforts were in vain as accused got his bolo and pointed it at her neck warning her, "*Wag kang sisigaw at magsusumbong kundi ay papatayin kita at ang iyong nanay.*" He then tied her hands behind her back and proceeded to sexually assault Cristy. Accused was oblivious to Cristy's entreaty, "*Tay maawa na kayo sa akin, huwag ninyong gawin sa akin yan.*" Failing in her plea, Cristy tried to reason with the question, "*Tay bakit mo ginagawa ito wala naman akong kasalanan sa inyo?*"

Cristy informed her mother about the incident but instead of coming to her succor, her mother refused to report the incident to the Barangay Captain, saying, "*Tanga ka ba, gusto mo bang mabilanggo and tatay mo? Walang magpapalamon sa mga kapatid mo.*" Failing to get comfort and support from the one person whom she

expects to come to her aid, Cristy herself reported the incident to the Barangay Captain and eventually gave her statement in the Municipal Hall of Bay, Laguna.

In an effort to stop her from filing the complaint, Cristy's mother brought her to the house of accused's sister in San Jose, Dasmaringas, Cavite. However, she was traced by policemen who brought her back to Sta. Cruz, Laguna, and eventually entrusted her to the Department of Social Welfare and Development (DSWD) at Alabang. Accused was thereafter arrested.

Dra. Evelyn Macapagal of the Laguna Provincial Hospital examined Cristy and found the following:

"Pelvic exam: normal external genitalia, nulliparous outlet, vagina admits two fingers with ease, cervix - close, firm, non tender body of uterus-small, no adnexal mass, no tenderness with vaginal bleeding (menstruation)"^[3]

In interpreting her findings, Dr. Macapagal testified that "[n]ormally, vagina admits one finger with difficulty. But in the case at bar, her vagina admits two fingers with ease, that means, not normal for her. Her hymen is not intact anymore."^[4]

Accused, on the other hand, tried to attribute motives for the filing of the complaint against him. He claimed that a certain Susan de Guzman, an employee of PAG-ASA, an organization that arranges for foster parents to give financial help to deserving beneficiaries, instigated Cristy to file the rape complaint against him. According to accused, Susan de Guzman had a special interest in the prosecution of the case against him because of a misunderstanding brought about by a \$500.00 remittance from Cristy's foster parent in which Cristy only got P2,000.00.

Accused also claimed that a certain Rosita Erasga of DSWD at Bay, Laguna instigated the filing of the complaint against him allegedly because of a misunderstanding with regard to the construction of the Pinatubo Housing Project at Bay, Laguna, of which he was the foreman.

Accused also cast aspersions on Cristy's character by suggesting that she had two boyfriends, named Doroteo and Gary, as evidenced by a letter signed by Gary and a bus ticket.

Cristy's mother corroborated accused's testimony. She stated that on the day in question, she was at home washing clothes while accused was working at Silang, Cavite. On that very same day, she claimed that Cristy went to school for her Citizen Army Training (CAT) but when she verified from Cristy's school adviser whether she really attended her CAT, she was told that Cristy was absent. She likewise averred that a certain Doroteo and a lesbian named Teresa were courting Cristy.

Jeffrey dela Cuesta, Cristy's half brother, testified that on the day Cristy was allegedly raped, she attended her CAT while his father was in Dasmaringas, Cavite, working. He testified that he, together with his brothers and sisters, was at home during the date in question.

Noel Calle, accused's co-worker also claimed that on August 10, 1996, he and accused worked overtime at Silang, Cavite.

Finding accused guilty beyond reasonable doubt of rape, the trial court sentenced him to death and to pay the victim, Cristy Gonzales, P50,000.00 in damages.^[5] In this automatic review accused-appellant posits that:

I

THE TRIAL COURT ERRED IN NOT GIVING FULL CREDIT TO ITS OWN FINDING THAT THE TESTIMONY OF DR. EVELYN MACAPAGAL HAD NO DIRECT AND MATERIAL PROBATIVE VALUE TO PROVE THAT THE CRIME OF RAPE WAS COMMITTED.

II

THE TRIAL COURT ALSO ERRED IN NOT DISCREDITING THE ENTIRE TESTIMONY OF COMPLAINANT CRISTINA GONZALES CONSIDERING THAT SAID TESTIMONY WAS DIFFERENT FROM AND CONTRARY TO HER OWN SWORN STATEMENT GIVEN TO THE POLICE.

III

THE TRIAL COURT LIKEWISE ERRED IN NOT GIVING WEIGHT TO THE THEORY OF THE DEFENSE THAT THE CHARGE WAS CLEARLY FABRICATED, PRINCIPALLY INSTIGATED BY THE DSWD AND PROJECT PAG-ASA OFFICIALS WHO NURTURED ANGER AGAINST ACCUSED-APPELLANT.

IV

THE TRIAL COURT FURTHER ERRED IN COMPLETELY DISREGARDING THE TESTIMONIES OF COMPLAINANT'S OWN MOTHER, DIVINA CORSANES (*sic*), AND HALF-BROTHER, JEFFREY DELA CUESTA, THAT NO RAPE WAS COMMITTED ON AUGUST 10, 1996 BECAUSE CRISTINA GONZALES WAS IN SCHOOL AND THAT ACCUSED-APPELLANT WAS WORKING AS CARPENTER AT BIGA, SILANG, OR DASMARINAS, CAVITE.

V

THE TRIAL COURT FINALLY ERRED IN NOT ACQUITTING ACCUSED-APPELLANT OF THE CRIME CHARGED IN THE INFORMATION ON THE GROUND OF REASONABLE DOUBT.

The defense assails the credibility of Cristy by pointing out that the medical findings showed that she had no external abrasion, contrary to her testimony that she struggled by pushing accused-appellant's arms away and kicking him while she was being undressed.

This contention is totally unmeritorious. First, the rape was committed on August 10, 1996, whereas the victim underwent medical examination on August 27, 1996 or seventeen (17) days later. Second, Cristy's testimony shows that she was the one who pushed away and kicked accused-appellant and not the other way around. The absence of external signs of injury does not necessarily negate the commission of

rape, especially when the victim was intimidated by the offender into submission. In this case, accused-appellant pointed a bolo at her neck.

The defense argues that since the trial court declared that "x x x the testimony of Dr. Evelyn Macapagal had no direct and material probative value to prove that the crime of rape was committed," then rape could not have been committed.

The above argument is too simplistic and takes the trial court's conclusion out of context. This Court notes that, after the trial court concluded that Dr. Macapagal's testimony had no direct and material probative value to prove that the crime of rape was committed, the trial court explained in the succeeding paragraph that:

"In the case of People of the Philippines vs. Rodolfo San Juan, (G.R. No. 105556, April 4, 1997) the Honorable Supreme Court ruled that well-settled is the doctrine that lack of lacerated wound does not negate sexual intercourse. Moreover, the fact that hymenal lacerations were found to be healed and that no spermatozoa was found does not necessarily negate rape. A freshly broken hymen is not an essential element of rape. For that matter, in crimes against chastity, the medical examination of the victim is not an indispensable element for the successful prosecution of the crime, as her testimony alone, if credible, is sufficient to convict the accused."

The defense claims that Cristy must have had previous sexual experience long before the date of the alleged rape, considering that Dr. Macapagal found that complainant's vagina admits two (2) fingers with ease which should not be normally the case if indeed she was raped.

The defense's reasoning is flawed if not misleading. Dr. Macapagal only testified that, in her experience as an examining physician, a vagina normally admits one examining finger with difficulty. She did not make any conclusion that Cristy must have had previous voluntary sexual contacts prior to the commission of the rape considering that her vagina admits two (2) fingers with ease. If at all, it indicates that sexual congress had indeed transpired.

Next, the defense insists that the trial court should have discredited Cristy's testimony during the trial, noting that said testimony was different from and contrary to her own sworn statement given to the police.

In particular, the defense invites the attention to the following inconsistencies: (a) on what the victim was doing prior to the arrival of accused-appellant; (b) on the manner or conduct of her struggle to resist the attempt on her virtue; and (c) on who were present when the rape was committed.

This Court does not find any inconsistency between Cristy's testimony^[6] given before the trial court, on the one hand, and her statement^[7] before the police on the other hand. In her testimony, she narrated that she was watching their house when accused-appellant ordered her step-brothers and step-sisters out of the house before he started undressing her. In her sworn statement, she narrated that when accused-appellant arrived, she was washing clothes. Thereafter, accused-appellant ordered her to get some clothes. While doing as she was told, accused-appellant started to undress her.

Chronologically, there is no inconsistency or contradiction between Cristy's testimony before the trial court and her sworn statement. Courts cannot just discredit a witness because there are gaps in her narration of facts, or because her narration was presented not in a chronological manner.

In this case, the alleged inconsistency or discrepancy is more apparent than real. In fact, the testimony fills the gaps in the victim's narration of facts. This Court agrees with the Office of the Solicitor General's observation, thus:

"Relevantly, in the instant case, when Cristina was called upon to testify on direct examination, she was immediately made to identify her affidavit after a few preliminary questions relating to her personal circumstances and identification of the accused (pp. 3-4, TSN, May 22, 1997). Cristina understood that her affidavit had substantially formed part of her testimony especially since her answers to questions that followed delved on supplying omissions or correcting minor details. Accordingly, during cross-examination, Cristina confirmed and clarified that:

Q. And you want to convey to this Honorable Court that the answers to questions No. 1, 2, 3, 4, 5, 6, & 7 were all personally given by you in answer to all these (8) questions?

A. Yes, sir.

Q. And you still confirm or affirm under oath that this is what really happened to you on August 10, 1996 at 10:00 o'clock in the morning in Barangay Maitim, Bay, Laguna?

A. Yes, sir.

Q. Now, I want you to read this statement all over again and please tell this Honorable Court whether you want to deduct or add anything from what you claimed happened to you on August 10, 1996?

A. None, sir.

Q. Are you sure of that?

A. I wish to add something but I will not take away anything from the statement. (pp. 10-11, TSN, June 5, 1997)"

Indeed, the alleged inconsistencies adverted to by appellant were mere minor details which were not mentioned in her affidavit. There are no material inconsistencies. There is nothing in Cristina's affidavit that would indicate that she was alone in their residence when appellant arrived before the sexual abuse. Therefore, it cannot be held to be inconsistent with her declaration on the witness stand that she was in the company of her step-brothers and step-sisters until she was left alone because appellant told them to go to another store. As to the specific household chore she was attending to, it is submitted that the same was sufficiently explained and clarified by Cristina during cross-examination, thus:

"ATTY. DOMINGUEZ: