

THIRD DIVISION

[G.R. No. 126714, March 22, 1999]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ERNESTO MARCELO, ACCUSED-APPELLANT.**

DECISION

VITUG, J.:

In separate criminal complaints, Ernesto Marcelo was charged with three counts of rape; viz:

"CRIM. CASE NO. Q-93-51490

"That on or about the 11th day of March 1993, in Quezon City, Philippines, the above-named accused, by means of force and intimidation, did then and there, wilfully, unlawfully and feloniously have carnal knowledge of the complainant, JOSEFINA P. CANTILLO, a minor, seven (7) years of age, all done against her will and without her consent, to the damage and prejudice of the said offended party.

"CONTRARY TO LAW."

"CRIM. CASE NO. Q-93-51491

"That on or about the 10th day of March 1993, in Quezon City, Philippines, the above-named accused, by means of force and intimidation, did then and there, wilfully, unlawfully and feloniously have carnal knowledge of the complainant, JOSEFINA P. CANTILLO, a minor, seven (7) years of age, all done against her will and without her consent, to the damage and prejudice of the said offended party.

"CONTRARY TO LAW."

"CRIM. CASE NO. Q-93-51492

"That on or about the 6th day of March 1993, in Quezon City, Philippines, the above-named accused, by means of force and intimidation, did then and there, wilfully, unlawfully and feloniously have carnal knowledge of the complainant, JOSEFINA P. CANTILLO, a minor, seven (7) years of age, all done against her will and without her consent, to the damage and prejudice of the said offended party."

"CONTRARY TO LAW."^[1]

When arraigned, the accused pleaded not guilty to the commission of the crimes charged. Trial thereupon ensued.

The inculpatory facts presented by the prosecution were narrated by the Regional Trial Court of Quezon City, Branch 81, which tried the case. Briefly -

In October 1992, Carmelita Cantillo, then a 38 year-old widow, went to live in a small rented room in Block 16, Lot 11, St. Peter Street, Villanova Subdivision, Novaliches, Quezon City, together with her two daughters, six-year old Josefina and two-year old Jael. Not far from where Carmelita and her two daughters resided was a small sari-sari store owned by accused Ernesto Marcelo which also doubled as his residence. Every now and then Carmelita would buy certain store items from the accused. Josefina would usually drop by at the store after her classes to get some snacks. On these occasions, the accused Marcelo would now and then hand free candy items to Josefina and her younger sister Jael. This show of generosity and accommodating attitude on the part of the accused led Carmelita to look up to him as a kind person and to regard him as a family friend. Josefina and Jael, at his prodding, even learned to call him "Papa" or "Daddy."

Carmelita testified that she and her two daughters were in the store of the accused in the morning of 05 March 1993 when Che-che, the daughter of the accused, had suggested that Josefina and Jael could make it a point to stay awhile at the store after school classes or whenever they would be free so that they could play with her brother, Claver. The following morning of 06 March 1993, a Saturday, at about eleven o'clock, Josefina and Jael went to the store. In the afternoon, at about two o'clock, Carmelita herself dropped by to personally entrust her daughters to the care of the accused. She told Marcelo that she was going to do some washing in Marikina and that she would only be able to fetch her two daughters the following Monday. At around noon of Monday, 08 March 1993, Carmelita came to fetch Josefina and Jael and to bring Josefina, who was suffering from "primary complex," to Caritas Clinic in Pandacan, Manila, for a medical check-up. At the clinic, Josefina told her mother that she would feel pain in her vagina whenever she urinated. Carmelita, however, did not attach too much importance to it. In the evening of the following day of 09 March 1993, Carmelita noticed for the first time that Josefina would insert her hand inside her panty to keep it from touching her vagina. The next two succeeding days, 10 and 11 March 1993, saw Carmelita leaving Josefina after school with the accused and then fetching her later in the day. In the early evening of 12 March 1993, Carmelita again noticed Josefina inserting her hand inside her panty to keep it from touching her vagina. She had a feeling that something untoward had happened to Josefina but she refused to imagine that Marcelo would be capable of doing any dastardly act to her daughter. At home in the evening of 13 March 1993, Carmelita once more noticed the strange behavior of Josefina. Carmelita finally confronted Josefina. The latter thereupon admitted that on several occasions when she was in the store of the accused, the latter would ask her to "play" and then he would insert his finger and later his penis inside her vagina. Josefina's graphic description of these incidents was "*Ipinapasok po niya ang titi niya sa pepe ko.*"^[2]

An alarmed and nervous Carmelita repaired to the City Hall in Novaliches and sought the help of a social worker who after interviewing Carmelita and Josefina, referred the matter to the Quezon City General Hospital which, in turn, endorsed the case to Camp Crame. On 16 March 1993, Josefina was examined by Dr. Vladimir Villasenor

of the PNP Crime Laboratory.^[3] His findings revealed that there was a laceration of Josefina's hymen from the edge up to the middle part or about thirty percent (30%) of its entire width. The medico-legal report stated that Josefina had already experienced sexual intercourse and was in a "non-virgin state physically."^[4]

The defense, through the Public Attorney's Office, gave its version of the case; thus:

"ERNESTO MARCELO denied the charges of rape against him. He testified that he first met Carmelita and her two daughters Josefina and Jaezel on March 5, 1993. He was sitting in front of his store when Carmelita and her two (2) daughters passed by. Josefina smiled at him and called him Daddy. He asked Carmelita if the child's father was still alive and Carmelita replied that the child's father is already dead. Their conversation, however, was only for a short while because Carmelita was then bringing Josefina to school. Later in the morning, after Carmelita fetched Josefina from school, the three (3) went directly to his store. Marcelo invited them inside his store and since it was already lunch time, he invited them to have lunch. Carmelita and her two (2) daughters left after one (1) hour.

"The following day, March 6, 1993, Carmelita and her two (2) daughters arrived in his store. Carmelita told him that she was going to Marikina to wash clothes and asked his permission to leave her children with him. In answer, he told Carmelita to talk to his daughter Cheryll because it would be Cheryll who will take care of the children. Carmelita then talked to Cheryll who agreed. It was Cheryll and her friend Margarita who took care of the two (2) children. At 6:00 o'clock in the evening, he went to the house of his neighbor and compadre Danilo Bautista, located just across the street. He stayed there until 2:00 o'clock in the next morning. When he returned to his store, Cheryll and Margarita were still awake and chatting. While Josefina and Jaezel already fast asleep on a bed inside his store. He did not go to sleep anymore.

"On March 7, 1993 at about 11:00 to 12:00 noon, Carmelita arrived to fetch her daughters but left only his store at past 6:00 o'clock in the evening. After March 7, 1993, Carmelita and her two (2) daughters were in his store almost everyday. (TSN, July 17, 1995, pp. 3-11)

"He further testified that his store is just a small one and part of the house they used to own. Since there is no comfort room inside the store, they used the comfort room inside the house at the back of the store. The comfort room was accessible through a door at the end of the store's kitchen. However, when his sister sold the house, the new owner padlocked the door going to the comfort room. Since February 1993 and up to December 1993, he and his family used the comfort room of his neighbor Danilo Bautista located just across the street.

"He also admitted that on one occasion he brought Josefina with him to Makati. On the returned trip they took an aircon bus. The bus was then full and it was impossible for him to have caressed and fondled Josefina's private parts as claimed by her. The last time he saw Carmelita and her daughters was towards the end of March 1993 when the latter borrow

P1,500.00 from him. (TSN, October 10, 1995, pp. 2-10).

"CHERYLL MARCELO testified that on March 6, 1993 at about 9:00 o'clock in the morning, Carmelita arrived at their store and asked permission from his father to leave her two (2) children, Josefina and Jael, in the store. Her father in turn asked her if Carmelita could leave her children to her which she agreed. The whole day, Josefina and Jael played with her brother Claver. In the evening, Josefina and Jael slept in the only bed inside the store side by side with her, Claver and her friend Margarita. The following morning at about 11:00 o'clock, Josefina and Jael were fetched by their mother.

"She further testified that their sari-sari store was very small. It has no divider between the store and the bedroom neither has it comfort room inside. When their father sold the house to their present landlady, they had been using the comfort room of their neighbor Danilo Bautista, located just across the street since January, 1993.

"She further testified that before her father was charged, Carmelita borrowed money from her father. Her father, however, did not give money to Carmelita and since then she never saw Carmelita and her two (2) daughters again. (TSN, March 13, 1995, pp. 3-13).

"DANILO BAUTISTA testified that the accused is his neighbor at Villa Nova Subdivision, Novaliches, Quezon City. He knew the accused since 1990. Since January 1993, he allowed the accused and his family to use the comfort room in his house because there is no comfort room in Marcelo's store. Accused Marcelo and his family used his comfort room up to December 1993. (TSN, April 24, 1995, pp. 2-6)."^[5]

After the parties had rested their respective propositions, the trial court found for the prosecution on two of the three counts of rape imputed against the accused, thereby sentencing him to suffer two terms of *reclusion perpetua* and to indemnify the offended party in the amount of P50,000.00 for each count of rape by way of moral damages.

In this appeal, accused assails the judgment of conviction rendered against him and puts up the following assignment of errors:

"1. The Court a quo erred in finding accused-appellant guilty beyond reasonable doubt of the crime of two (2) counts of statutory rape defined and penalized under par. 3, Article 335 of the Revised Penal Code and sentencing him to suffer imprisonment for two (2) terms of *reclusion perpetua* despite the weakness and insufficiency of prosecution evidence.

"2. The trial court likewise erred in giving due weight and credible to the testimony of complainant Josefina Cantillo and her mother, Carmelita Cantillo despite its inherent inconsistencies, contradictions and improbabilities which renders their testimonies untruthful.

"3. The trial court erred in rejecting accused-appellant defense of denial."

^[6]

The defense contends that if it were true that the laceration of the victim's hymen has been caused by the insertion of the accused-appellant's genital organ into the victim's vagina, the laceration of the hymen would not have been merely a shallow laceration from the edge up to the middle part or about thirty percent of its width considering the tender age of the victim.

The Court is not convinced by the above urgings of appellant.

The medical findings of Dr. Vladimir Villasenor would hardly leave room for doubt but that, in fact, there was carnal knowledge of the young victim by appellant. The medico-legal report disclosed these findings by the examining physician:

"GENERAL AND EXTRAGENITAL:

"Fairly developed, fairly nourished and coherent female child. Breasts are undeveloped. Abdomen is flat and tight.

"GENITAL:

"There is absence of pubic hair. Labia majora are full, convex and coaptated with the light brown labia minora presenting in between. On separating the same is disclosed an elastic, fleshy-type and congested hymen with shallow healed laceration at 9 o'clock. External vaginal orifice offers admits the tip of the examining index finger.

"CONCLUSION:

"Subject is in non-virgin state physically.

"There are no external signs of recent application of any form of violence.

"REMARKS:

"Vaginal and peri-urethral smears are negative for gram negative diplococci and for spermatozoa."^[7]

The testimony of Josefina on her harrowing ordeal could not be more vivid than as so testified to by her; thus:

"Q Were you and your sister ever left alone in the house of Ernesto Marcelo?

"A Everytime his children will go to school me and my sister Bing were left behind.

"Q Do you remember any instances when the children of the accused Ernesto Marcelo went to school and you were left together with your sister alone in the house of Ernesto Marcelo in that instance did Marcelo ever touch you?

"A Sir, before he played with me he closed his store and then he called me to the bed and that he told me that we will play.