

EN BANC

[G.R. No. 122423, June 17, 1999]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ILDEFONSO PUERTOLLANO Y DELA CRUZ, ACCUSED-APPELLANT.**

DECISION

ROMERO, J.:

Appellant Ildefonso Puertollano was found guilty beyond reasonable doubt by the Regional Trial Court of Laguna of the crime of rape against his ten-year old daughter, Mary Joy, in consequence of which, he was sentenced to death. He now seeks reversal of his conviction.

The information dated August 19, 1994 charged appellant with rape committed as follows:

"That on or about July 19, 1994 at Brgy. Mayapa, Municipality of Calamba, Province of Laguna and within the jurisdiction of this Honorable Court, the accused above-named, thru force, violence and intimidation and with lewd designs, did then and there wilfully, unlawfully and feloniously have carnal knowledge with one Mary Joy Puertollano @ Mary July Puertollano, his daughter, a minor, against the latter's will and consent."

The facts as presented by the prosecution are as follows:

On July 19, 1994, at about one o'clock in the afternoon in Mayapa, Calamba, Laguna, Mary Joy Puertollano, who was then ten years of age, was ordered by her father, appellant Ildefonso Puertollano, who was drunk at the time, to stay at home and forego her afternoon classes. Obediently, she went upstairs to put her brother and sisters to sleep.

Later, appellant instructed Mary Joy to come down and wash the dishes. After she had washed the dishes, appellant ordered her to close the doors and the windows of their house. Thereupon, appellant told Mary Joy to remove her skirt. Mary Joy refused and instead left to go to the house of her uncle, Jose Fernandez, which was located nearby. When asked by her uncle why she was crying, Mary Joy replied that her father did not allow her to go to school. Shortly thereafter, she heard her father calling for her, "Mary Joy, halika na, pumasok ka na." Meekly, she obeyed and went back to their house. Once inside, she was not allowed to leave.

Appellant removed his pants and underwear. Then he forced Mary Joy to take off her clothes. When Mary Joy refused, appellant took them off. He then lifted Mary Joy and touched her body. Attempting to insert his penis into her vagina, he encountered extreme difficulty so he placed the girl on a bench, laid himself on top of her and held her thighs. Five times, he attempted to have sexual intercourse with

vigorous motions, all of which inflicted excruciating pain on Mary Joy. As she could not take it any more, she moved her buttocks aside.^[1]

Jose Fernandez, Mary Joy's uncle, witnessed through a hole in the wall of appellant's house how the latter sexually assaulted his daughter. While appellant was performing his dastardly act, he shouted, "Walanghiya ka, pati anak mo, kinakain mo, dugo mo iyan, kinakain mo pa." Upon hearing this, appellant arose and let go of Mary Joy. Forthwith, Jose Fernandez summoned his neighbors and instructed his wife to call the barangay tanods. The tanods came, took appellant with them and called the police.

Dr. Danilo Ramirez examined Mary Joy and found the presence of abrasion and hyperemia at the vulva. He explained that these could have been caused by constant friction on a blunt object. While her hymen was still intact, its edges were blunted. He opined that the edges could have been damaged by insertion of a finger or penis of a man. The other parts of her body had no signs of physical injury like contusions and others.^[2]

On October 9, 1995, the trial court rendered judgment as follows:

"WHEREFORE, the foregoing considered, accused Ildefonso Puertollano is hereby found guilty beyond reasonable doubt of the crime of Rape against his daughter, Mary Joy Puertollano, a 10 year old girl at the time of commission, and as such, he is hereby sentenced to suffer the penalty of Death as provided for under Republic Act No. 7659. Ildefonso Puertollano is likewise ordered to indemnify Mary Joy Puertollano the amount of P50,000.00 and to pay the costs.

The OIC-Clerk of Court is directed to forward the records of the case to the Honorable Supreme Court of the Philippines for automatic review and judgment by the Honorable Supreme Court en banc, within twenty (20) days but not earlier than fifteen (15) days after this promulgation, if no new pleading for reconsideration or new trial is filed by the accused.

The transcript of stenographic notes shall also be forwarded within ten (10) days after the filing thereof by the stenographic reporter.

SO ORDERED."

As the death penalty is involved, the case is now before the Court for automatic review.^[3]

Appellant contends that the trial court erred in giving undue weight and credence to the "unreliable and unworthy" testimony of Mary Joy and of her supporting witnesses. Further, appellant claims that even supposing that he was guilty, the trial court erred in convicting him of consummated rape for the crime committed is only attempted rape. His brief states:

"x x x. Complainant testified in substance that appellant lifted her and placed her on the bench. While seated on the bench, appellant moved back and forth his buttocks towards her (TSN, December 12, 1994, pp. 33-34). Because of such awkward position of complainant and that of

appellant as described to by the former, it is highly impossible for appellant to have consummated the crime imputed against him. This is made more glaring by complainant's own admission during trial that appellant was not able to insert his penis into her private part (TSN, December 12, 1994, p. 36). Worse, complainant did not feel the penis of appellant during the sexual attack which belies penetration even the slightest one (Ibid, p. 52). Withal, complainant admitted that she was lifted by appellant while the latter was in a standing position thereby making it even more difficult to consummate the alleged sexual assault. (Ibid, p. 51)

The testimony of Jose Fernandez anent the assailed incident should not have been taken hook, line and sinker. Peeping through a hole about one (1) centimeter, he allegedly saw appellant 'as if in a sitting position' moving his buttocks with a push and pull motions (TSN, December 12, 1994, p. 10). Even so, his testimony remains suspect and does not establish whether or not appellant was able to consummate the sexual act. The reason is that he admitted in open court that without an eyeglass he could not read (Ibid, p. 13). With such defect, how could he accurately described what he allegedly saw, with his eyes focusing on a distant object and the hole is only one (1) centimeter? During trial it was not shown that he was wearing an eyeglass during the incident in question. Not only that. A certain Leonila @ Bilog who allegedly called the attention of Jose Fernandez about the incident was not presented as witness to corroborate the latter's testimony thereby weakening the prosecution's cause. Whatever Jose Fernandez allegedly saw in that small opening in the wall is mere hazy recollections which could not be denominated as clear, positive and convincing.

Hence, the crime committed is only Attempted Rape in view of the timely arrival of Jose Fernandez who shouted at the appellant thereby preventing him from consummating the sexual act."^[4]

After a meticulous perusal of the records of this case, we believe that the crime of rape against the minor Mary Joy has been proved beyond reasonable doubt.

The testimony of Jose Fernandez and the victim herself point to the inexorable conclusion that the act complained of occurred.

The narration of Mary Joy of the rape committed against her is clear, convincing and straightforward:

"FISCAL AGOSILA:

When you said that he was trying to insert his penis to your vagina what was he actually doing?

A (Witness making a motion forward and backward) moving his buttocks 'inuuga po niya.'

Q When your father was moving his buttocks in push and pull motions, what was he doing to your buttocks?

A He was holding my buttocks, Sir.

FISCAL AGOSILA:

Now, was your father able to insert his penis to your vagina?

ATTY. HERNANDEZ:

Leading, Your Honor.

COURT:

Witness may answer.

A No, Sir.

Q Why?

A I removed it because it is very painful.

Q For how many times did your father tried to insert his penis to your vagina?

A Around five (5) times, Sir.

Q Now, you said that you removed your buttocks because it is very painful, on what part of your body it is painful?

A (Witness pointing to her thigh).

FISCAL AGOSILA:

What else?

A My vagina, Sir.

FISCAL AGOSILA:

Now, after that Ms. Witness that he was trying to insert his penis to your vagina, what happened if any?

A None, Sir, then my Tito Libreng arrived and shouted, Sir.

Q Now, you said that your father was trying to insert his penis to your vagina, which part of your vagina was touched to the penis of your father?

A `yun pong nilalabasan ng ihi.'

Q Now, Ms. Witness, when your Tito Libreng shouted what did your father do?

A He put me down, Sir.

X X X X X X X X X

FISCAL AGOSILA:

What happened after that, if any?

A My father told me, 'Mary Joy, tulungan mo ako sabihin mo sa kanila wala akong ginagawa sa iyo.'

Q And what did you tell to your father?

A None, Sir.

Q After that what happened next?

A He told me that he will be incarcerated, Sir.

Q Was your Tito Libreng able to get inside your house?

A No, Sir.

Q And what happened after that?

A Tito Libreng instructed me to open the door, Sir.

Q Did you follow?

A Yes, Sir.

Q And what happened after that?

A Nothing, Sir, and the brgy. tanod apprehended my father, Sir."

As the trial court observed:

"The Court found Mary Joy Puertollano to be sincere. She attended the whole trial processes. To the Court, the demeanor exhibited by Mary Joy and that of her mother during the proceedings is obviously a (sic) displayed of an ardent desire to see to it that justice is obtained. Mary Joy Puertollano's narrations of event was characterized by candor and lack of guile, without any inconsistencies pointed out by the defense."

The testimony of Mary Joy's uncle, Jose "Libreng" Fernandez, only serves to further corroborate the veracity of her version of the events:

"FISCAL AGOSILA:

And what did you see upon peeping at the wall . . . through the wall?

A I saw Ildefonso Puertollano.

COURT INTERPRETER:

Witness demonstrating how he peeped through the wall.