

EN BANC

[G.R. No. 126285, September 29, 1998]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RODEL FUERTES Y OCAMPO, ACCUSED-APPELLANT.

D E C I S I O N

REGALADO, J.:

Accused-appellant Rodel O. Fuertes was charged in Criminal Case No. 370-94 of the Regional Trial Court of Olongapo City, Branch 72,^[1] with the crime of rape committed against a minor after the effectivity of Republic Act No. 7659.

The information therefor alleges:

"That on or about the tenth (10) day of July 1994, in the City of Olongapo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused by means of force, did then and there wilfully, unlawfully and feloniously have carnal knowledge of one Jacklyn Lee Anas, a minor below 12 years old, against the latter's will and consent.

CONTRARY TO LAW.^[2]

At his arraignment, appellant pleaded not guilty to the indictment filed against him.^[3] After due trial, the court *a quo* rendered a decision^[4] on April 16, 1996 finding appellant guilty beyond reasonable doubt as charged, sentencing him to suffer "imprisonment of thirty (30) years and one (1) day to forty (40) years of *reclusion perpetua*," and ordering him to indemnify the offended party in the sum of P50,000.00 as moral damages and to pay the costs of the criminal suit.

In limine, we take this opportunity to call the attention of the judicial and prosecutorial authorities of the need for greater prudence in the drafting of accusatory pleadings by being more accurate in the terminology employed therein. Here, for instance, the indictee is charged with raping "*a minor below 12 years old*." Aside from the grammatical lapse, the phrase referring to a minor below twelve years of age could obviously include a minor below seven years of age. Under Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659, when the victim is a child less than seven years of age, the death penalty shall be imposed; hence the penalty of *reclusion perpetua* imposable on the rapist of a minor under said amended provision applies only where the victim is *seven years old or over but under twelve years of age*. While the imprecision in the present information does not constitute a reversible error, since the same is correctable by a bill of particulars, that ambiguity can spawn delay in the normal course of the proceedings if technical but dilatory objections are resorted to under such an opening therefor.

Coming back to the case at bar, the prosecution tried to prove the criminal liability

of appellant through the testimonies of Marites Anas,^[5] Jacklyn Lee Anas^[6] and Dr. Mary Ann Abad,^[7] supplemented by relevant documentary evidence. Anthologized from the evidence thus presented by the People, the case presents the factual antecedents which follow.

At the time of the incident, the victim in this sordid drama, Jacklyn, was a forth grade student and was almost ten years old, having been born on September 9, 1984. On the night of July 10, 1994, she was sleeping alone on the floor inside their rented house at Apitong Street, Purok 6, Old Cabalan, Olongapo City. Her mother, Marites Anas, left earlier in the afternoon to go to work at the "Iron Eagle" as a pool watcher. The house wherein Jacklyn and Marites lived is owned by one Mila Pamugas who lives in the house adjacent thereto.

In the middle of her sleep, Jacklyn woke up when she became aware of the presence of someone crawling near her. The trespasser, who was already naked at this point, kissed Jacklyn on the neck and went on top of her. Thereafter, the intruder forcefully removed her clothes and inserted his penis into her vagina. Jacklyn cried and resisted but did not call for help as her molester warned her not to shout, otherwise he would kill her.

After a while, the assailant lay beside Jacklyn and asked her if she knows him. Jacklyn recognized her attacker as herein appellant whom she had seen drinking with the sons of Mila Pamugas three times before the incident. After Jacklyn answered appellant in the affirmative, appellant gave his name to Jacklyn and left.

On the following day, Marites arrived at around six thirty in the morning and saw her naked and taciturn daughter. When Jacklyn did not answer her repeated queries, Marites examined her daughter and found kiss marks^[8] on the latter's neck. After further and persistent questioning from Marites, Jacklyn finally told her mother that Rodel Fuertes raped her. Maritess then checked Jacklyn's lower body and discovered blood stains and pubic hair on her daughter's panty.

Marites immediately went to their barangay captain to report the incident and, upon advice of the latter, she brought her daughter to the Olongapo City General Hospital for physical examination. The medico-legal certificate^[9] thereafter issued by Dr. Abad pertinently disclosed the following findings:

NECK: (+) erythema posterior neck 0.5 x 1 cm.
lateral 0.5 x 1 cm.

GENITALIA: normal looking external genitalia, hymen not intact, Negative (-) pubic hair, (+) multiple fresh lacerations at 2, 3, 5, 7, 10 and 11 o'clock positions.

(+) pubic hair and blood stained - panty

Smears show occasional gram (+) cocci singly in pairs and few puscells
Negative (-) spermatozoa

Dr. Abad later explained on the witness stand that the lacerations she found on Jacklyn's hymen could have been caused by the insertion of a male organ into the latter's vagina.

From the hospital, mother and daughter went to the police headquarters to give their respective statements^[10] surrounding the incident and to file a complaint against appellant. The records show that Jacklyn was then only nine years and ten months old^[11] when she was sexually molested.

In answer to the charge against him, appellant^[12] claimed before the lower court that he was somewhere else at the time of the commission of the rape. He testified that he was in his residence located at 1938 National Highway, Old Cabalan, Olongapo City the whole evening of July 10, 1994. Allegedly with him at the time was one of his brothers. Appellant waited for his wife to arrive from work and when she came home at around nine o'clock in the evening, they ate their dinner.

Appellant stayed in the house until he had to go to another brother at 6 Arriola Street, Gordon Heights, Olongapo City to ask for money for his medicine. He left his house at around seven thirty in the morning of July 11, 1994. Thereafter, while he was talking with his brother, Napoleon, in front of the latter's house, a policeman and a purok leader arrived and brought appellant to the police station.

Appellant declared on the witness stand that he had lived at 4-A Apitong Street, Old Cabalan, Olongapo City from 1972 to 1989. While residing at the said address, appellant befriended the three sons of Mila. Even after he had transferred to his new dwelling at the National Highway, appellant would still visit the sons of Mila to drink softdrinks with them. He admitted that he only have to take one jeepney ride to reach Apitong Street from the National Highway. The commute takes about fifteen to twenty minutes.

To corroborate appellant's testimony regarding his arrest, the defense presented Napoleon Fuertes.^[13] This witness declared that in the morning of July 10, 1994, two people arrived at his house to arrest his brother. One of them was a male *barangay tanod* while the other was a female who according to Napoleon, is the herein complainant. Even during his cross-examination, Napoleon asserted that it was on that date, July 10, that his brother was arrested.

In this appeal, appellant assigns three errors^[14] on the part of the lower court in convicting him of rape. Simply stated, appellant faults the trial court for concluding that he had been properly identified as the culprit and for disregarding his alibi.

After a careful study of the records, we are inclined to agree with the trial court that it was appellant who raped Jacklyn in the night of July 10, 1994. The principal witness for the prosecution clearly established, without doubt, the identity and guilt of appellant, Jacklyn, on her part, had enough time and opportunity to study the facial and physical features of her assailant.

During the rape, Jacklyn was as close to appellant as is physically possible. As we have heretofore, held a man and a woman cannot be physically closer to each other than during the sexual act.^[15] This propinquity gave Jacklyn the opportunity to completely look at the face and other bodily attributes of appellant. In addition, instead of leaving immediately after satisfying his lust, appellant took his time by asking Jacklyn if she knows him. Jacklyn consequently had ample time and opportunity to ascertain the identity of appellant. These, coupled with Jacklyn's prior