

## THIRD DIVISION

[ G.R. No. 108505, December 05, 1997 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARIEL  
OLIVA Y CORTERO, ACCUSED-APPELLANT.  
D E C I S I O N**

**PANGANIBAN, J.:**

In statutory rape, only two elements need to be established: (1) that the accused had carnal knowledge of the offended party, and (2) that the offended party was below 12 years of age at the time of the sexual assault. Force or intimidation, not being an essential element of the crime, need not be proven.

**The Case**

This is an appeal from the Decision <sup>[1]</sup> of the Regional Trial Court of Pasig, Branch 158, convicting Ariel Oliva y Cortero of rape and imposing upon him the penalty of reclusion perpetua. The dispositive portion of the assailed Decision reads:

“WHEREFORE, in view of the foregoing, accused ARIEL OLIVA y CORTERO is found guilty beyond reasonable doubt of the crime of Rape under paragraph 3 of Article 335 of the Revised Penal Code and is sentenced to suffer in prison the penalty of reclusion perpetua and to indemnify the victim Jennelyn Santacera in the amount of P30,000.00 and to pay the costs.” <sup>[2]</sup>

Pursuant to the complaint <sup>[3]</sup> filed on January 27, 1992 by seven-year-old Jennelyn Santacera with the assistance of her mother, Gloria Santacera, Appellant Ariel Oliva y Cortero was charged with rape before the Regional Trial Court of Pasig. The felony was allegedly committed as follows:

“That on or about the 26th day of January, 1992, in the Municipality of Pasig, Metro Manila, Philippines and within the jurisdiction of this Honorable Court the above-named accused, by means of threats, force and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge of the undersigned complainant, Jennelyn Santacera, a minor seven (7) years of age, against her will and consent.” <sup>[4]</sup>

When arraigned in Filipino on February 24, 1992, appellant, with the assistance of his counsel de oficio, Eugenio C. Mendinueto, pleaded not guilty. <sup>[5]</sup>

Trial ensued in due course. Thereafter, the lower court rendered its assailed Decision. In view of the penalty imposed, the appeal was filed directly with this

### **Facts of the Case**

The prosecution presented as witnesses (1) Gloria Santacera, mother of the private complainant; (2) Jennelyn Santacera, [7] the victim; (3) SPO1 Rogelio Lorbes, [8] the investigating officer and (4) Dr. Vladimir Villaseñor [9] of the PNP Crime Laboratory who conducted the physical examination on the victim after the alleged rape. On the other hand, the defense presented Appellant Ariel Oliva, [10] Jaime Cortero [11] and Romeo Oliva, [12] the latter two being appellant's uncle and father, respectively.

### **Version of the Prosecution**

The facts as viewed by the prosecution are narrated in the Appellee's Brief:

"Gloria Santacera and her three (3) children Jennelyn (complainant herein), Marlon and Bonabie Joyce were residing at Kamias St., Tanimang Bayan, Manggahan, Pasig, Metro Manila (TSN, March 23, 1992, p.2; April 7, 1992, p. 2). Complainant is her only daughter who was then seven (7) years old (ibid. p. 6, Exhibit "B"). The Santaceras' were renting a one-room house owned by Jaime Cortera (TSN, March 24, 1992, p. 2) who had a house adjacent to them. Jaime Cortera's nephew, appellant herein and his mother "Inang" (ibid. p. 8) were both staying in his house.

On January 25, 1992, at around 7:00 p.m., appellant arrived at the house of Gloria Santacera after having a drinking spree with his co-workers in their office (ibid., p. 3; TSN, July 1, 1992, p. 2). Although appellant was apparently drunk, Gloria Santacera let him in because he had already earned her trust. Moments later, a certain Tirso came in and he joined the conversation of appellant and Gloria Santacera (ibid., p. 4). Appellant then bought two (2) big bottles of San Miguel Beer for him and Tirso to drink (ibid., p. 5; ibid., p. 3).

The drinking spree, however, did not last long because Tirso went out of the house while appellant was left behind (TSN, March 23, 1992, p. 5). Due to his insobriety, appellant fell asleep and he subsequently lay down on the floor near the door at the sala (ibid., p. 5). Gloria Santacera tried to drive him out but he did not bother to get up (ibid., p. 5).

Since it was already past eight o'clock in the evening, Gloria Santacera called upon her three (3) children to sleep in the sala (ibid., p. 7). The children slept under a mosquito net near appellant with complainant in between her brothers, Marlon and Bonabie Joyce (ibid., p. 7).

After the children had slept, Gloria Santacera decided to go out and have a chat with her neighbors because she could not get a good sleep. Several hours later, she returned to the house to check her children (TSN, March 24, 1992, p. 9). Seeing that her children were having a deep sleep, she again went out of the house with her friends to see the

dance at the other side of the street (ibid, p. 9).

At around 1:00 a.m., complainant was awakened when she felt that she was no longer wearing her panty (TSN, April 7, 1992, p. 6). She looked for her panty and she saw appellant outside of the mosquito net unzipping his pants. Thereafter, appellant hastily positioned himself on top of complainant, held his penis (TSN, April 7, 1992, p. 3) and placed it to her vagina (ibid., p. 7).

While appellant was still on top of complainant, he kissed her and then boxed her on her mouth (ibid., p. 3). Afterwards, he took his knife in his back pocket and thrust it to complainant's neck threatening her that if she would cry out for help (ibid., p. 3) she would be killed (TSN, March 23, 1992, p. 4; March 25, 1992, p. 5). Complainant followed his order and appellant returned his knife in his pocket. At this instance, complainant's brothers were roused from their sleep and they still saw appellant on top of complainant. They began to cry and went towards the corner of the house. When their mother arrived, complainant opened the door and her mother saw appellant inside the mosquito net still lying on the floor and zipping his pants (TSN, March 23, 1992, p. 3; March 25, 1992, p. 4).

Complainant and her brother Marlon told the incident to their mother that prompted appellant to leave immediately the house. When Gloria Santacera confronted appellant in the house of his grandmother, he merely admitted that he just kissed complainant (ibid., p. 4; Exhibit "A").

### **Version of the Defense**

The version of the defense is narrated in the appealed Decision as follows:

"Accused denied the acts imputed to him because he could not commit the offense charged since he had treated the victim like a sister. He admitted though that he was already drunk when he arrived at the victim's house on the date of the incident. He even ordered two more bottles of San Miguel Beer Grande and drank with a certain Tirso and the victim's mother. After two shots of beer, accused fell asleep and woke up only when the victim's mother was shouting, accusing him of having raped the victim (TSN, July 1, 1992, pp. 3-5). She threatened to have him "salvaged" by her relatives. She also reported the incident to accused' (sic) uncle, Jaime Cortero who beat him up. From the victim's house accused went across to his grandmother to sleep, until he was awakened by policemen, who invited him to the police station upon victim's mother's complaint of rape. The only reason why he was charged of this offense was accused (sic) misunderstanding with victim's mother. Accused (sic) uncle, Jaime Cortero corroborated his testimony.

Romeo Oliva, father of the accused testified to prove the good moral character of the accused. He stated that his son had not been charged

nor investigated of any offense aside from this case and that his son is a good child and industrious.”

### **Lone Assignment of Error**

Appellant ascribes this alleged error to the impugned Decision:

“The court a quo erred in convicting accused-appellant of the crime charged (rape) although the evidence presented against him did not prove his guilt beyond reasonable doubt.” [13]

In the main, this appeal<sup>[14]</sup> assails the credibility of the prosecution witnesses and the sufficiency of the evidence presented to prove appellant’s guilt beyond reasonable doubt. The following allegedly make Gloria Santacera’s testimony unacceptable: (1) she could not have seen appellant zip his pants when she came back from the dance since she had previously closed the door of her rented house when she left; (2) Gloria’s own testimony during trial, that appellant merely slapped the child, conflicts with the declaration in her affidavit that Jennelyn told her she was boxed by the appellant on the mouth; and (3) Gloria’s description of the weapon used by the appellant as a double-bladed knife differs from the victim’s testimony that the said weapon was a fan knife. [15] Appellant also argues that the medico-legal report contravened the prosecution’s account that the victim was raped, slapped, or boxed by the appellant. Furthermore, the victim’s assertion that appellant did not remove his pants is tantamount to an admission that there was no sexual congress. [16]

### **This Court’s Ruling**

#### **The appeal lacks merit.**

#### **Sufficiency of Prosecution Evidence**

After careful deliberation on this case, particularly on the evidence presented by the parties and the arguments raised in their respective briefs, the Court resolves to affirm the appellant’s conviction.

Statutory rape is committed when the offender has carnal knowledge of a woman under twelve years of age.<sup>[17]</sup> Born on June 4, 1984,<sup>[18]</sup> the victim was only seven years old at the time of the alleged rape on January 26, 1992. That appellant had raped her is clear from her plain and straightforward testimony:

Q When you felt the accused removing your panty, what portion of your body was your panty on at the time you woke up?

A It was already removed, sir.

Q So when you saw that, you mean to tell us that it has been totally removed from your body?

A Yes, sir.

Q And where was your panty placed when you saw it?

A On the floor mat, sir.

Q And where was Ariel at that juncture?

A He was unzipping his pants, sir.

Q Where was he? Was he inside or outside the mosquito net?

A Outside, sir.

Q What was he wearing? Long or short pants?

A He was wearing long pants, sir.

Q Was he able to unzipper his pants?

A Yes, sir.

Q How long did it take Ariel to unzipper his pants?

A Just a while, sir.

Q What else did he do after unzipping his pants?

A He placed his penis on my vagina.

Q Do you mean to tell us that he did not remove his pants?

A No, sir.

Q So after unzipping his pants, he went inside the mosquito net. Is that what you mean?

A Yes, sir.

Q Do you mean to say that when he was already inside the mosquito net after unzipping his pants, he immediately placed his penis on your vagina?

A Yes, sir.

Q At that juncture, did you not cry for help?

A No I did not cry.

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Q Why did you not cry?

A Because he threatened me that if I would cry out for help, he would kill me.

Q You heard him say that?

A Yes, sir.

Q Will you tell us the exact words uttered by him?

A Kapag maingay ako, papataying (sic) niya ako at huwag daw akong magsumbong sa Mama ko.

Q And when he did that, were your brother and sister who are (sic) on your both sides awakened?

A They were awakened, sir.