

THIRD DIVISION

[G.R. No. 113345, February 09, 1996]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
LEONARDO GAGTO Y GARAMPIL, ACCUSED-APPELLANT.**

D E C I S I O N

DAVIDE, JR., J.:

Accused-appellant Leonardo Gagto y Garampil appeals from the decision^[1] in Criminal Case No. 93-2882 of the Regional Trial Court (RTC) of Pasay City, Branch 109, finding him guilty of the crime of rape, defined and penalized under Article 335(3) of the Revised Penal Code, and sentencing him to suffer the penalty of *reclusion perpetua* and to pay the complainant P30,000.00, without subsidiary imprisonment.

The accused-appellant was tried under a complaint,^[2] the accusatory portion reading as follows:

That on or about the 16th day of April, 1993, in Pasay, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused LEONARDO GAGTO y GARAMPIL, by means of force and intimidation employed upon the person of Jenneline Blanche y Nacis, a minor, under 12 years of age, did then and there wilfully, unlawfully and feloniously have carnal knowledge with the undersigned, against her will and consent.

Contrary to Law.^[3]

Lopez. The decision was dated 26 November 1993 but promulgated on 7 January 1994.

The complaint was subscribed and sworn to by the complainant, Jenneline Blanche, a ten-year old lass, assisted by her mother Loreta Blanche. As testified to by the latter during trial,^[4] and un rebutted by the accused-appellant, Jenneline was born on 21 July 1982.

Accused-appellant Leonardo Gagto, 46 years old, was an uncle^[5] and next-door neighbor of Jenneline Blanche. Their houses were only a yard apart and, in fact, shared the same address^[6] before and during the occurrence of the incident in question. While Jenneline and her two younger brothers lived with their mother Loreta in their house,^[7] Jenneline's father (Loreta's husband) had been living in

Novaliches with another woman.^[8] "Tatang," as the Blanche children called the accused-appellant,^[9] lived in his house with his wife and their four sons.^[10]

The evidence for the prosecution, as established by the testimonies of its witnesses, viz., complainant Jenneline Blanche; Loreta and Jaime Blanche, the complainant's mother and brother, respectively; Dr. Louella Nario, Medico-Legal Officer of the National Bureau of Investigation (NBI); and Sotero Hernandez, NBI agent, was summarized by the trial court as follows:

That in the evening of April 16, 1993 complainant Jenneline Blanche y Nacis a nine-year old fourth grader was left home with her brothers by the mother Loreta Blanche y Nacis, a manicurist to earn a living as the family was left and abandoned by the husband. That complainant with her brothers retired at about 9:00 p.m. That later that evening complainant was awakened from her sleep when she felt and saw her uncle Leonardo Gagto y Garampil (whom the children fondly call Tatang, he being the husband of their father's sister) removed her panty and licked [sic] her vagina, placed himself on top of her and insert his penis in her vagina. That she cried "aray" and the accused stopped, sat on the sofa and cuddled her saying he will not marry anymore and that it will be only the two of them adding she must not tell anyone not even her mother, gave her P20.00 and left. That the next morning, the child woke up late and the mother started asking her why she woke up late. The child to the surprised [sic] of the mother disclosed that Tatang or her uncle entered the room [and] slept with her in bed. She further disclosed that her uncle removed her panty, licked her vagina, went on top of her and inserted his penis in her vagina. She further disclosed that her uncle has been abusing and taking advantage of her since she was in her third grade. That everytime that her mother was away the accused sends her brothers out by giving them P2.00 to P3.00 (TSN, May 18, 1993, p. 15; June 15, 1993, p. 5.). That posthaste the mother informed the child's grandmother and confronted the accused's wife of his criminal acts upon her child. Fearing for her and her children's safet[y], she sent her two (2) sons to her estranged husband while she and her daughter stayed at 518 Altura St., Sta. Mesa, Manila. That on April 19, 1993, mother and daughter went to the NB! to report the crime where their sworn statement[s] were taken (Exhibit "B" & "C") and the child was subjected to a general physical and genital examination as evidenced by Exhibits "A" & "A-I".^[11]

The results of the general physical and genital examination referred to above are contained in the Living Case Report (Exhibit "A" or Exhibit "1") of Dr. Nario.^[12] In the upper portion thereof, after the word commission, is indicated the following: "1991 at abt.?" While under the heading GENITAL EXAMINATION, the following appears:

Pubic hair, no growth. Labia majora and minora, slightly gaping. Fourchette, tense. Vestibular mucosa, congested. Hymen, thin, short,

intact. Hymenal orifice, annular, admits a tube, 0.5 cm. in diameter with moderate resistance. Vaginal walls, and rugosities, cannot be reached by the examining finger.

Finally, after the heading CONCLUSIONS, Dr. Nario entered the following:

1. No evident sign of extragenital physical injuries noted on the body of the subject at the time of examination.
2. Hymen, intact and its orifice, small (0.5 cm. in diameter) as to preclude complete penetration by an average sized, adult, Filipino, male organ in full erection without producing any genital injury.

Turning to the defense, it presented the accused-appellant and his wife, Anita Gagto, as witnesses. The trial court, in turn, summarized the defense evidence in this manner:

That accused Leonardo Gagto y Garampil is a mason-carpenter and lives at 34 Macopa St., CAA Housing, MIA, Pasay City for 23 years with his wife Anita and their 4 sons ages ranging from 15 to 23 years of age.

That accused is the uncle of private complainant Jenneline Blanche as his wife is the sister of Jenneline's father. That their houses share a common address since they are merely 4 meters apart. That Loreta Blanche and her family had lived there for 10 years, even after her separation with Jenneline's father 5 years ago. That accused goes to work regularly from 7:30 a.m. to 5:30 p.m. everyday, even on Sundays, and has been working at the house of Nimfa Cruz at Concord Subdivision from June of 1992 up to before his arrest. That on April 15, 1993, accused went to work at 7:30 a.m. as his place of employment was only walking distance of about 20 minutes away. That he arrived home at 6:00 p.m. and proceeded to watch t.v. up to around 10:00-11:00 p.m. when he went upstairs to go to sleep. That his wife Anita was then fetching water at a nearby faucet in front of their house about 8 meters away and finished her task at about 10:30 p.m. That his wife noticed the door of the Blanches' as already closed. Thereafter, Anita waited at the stairs of their house until her son arrived at 11:00 p.m. and prepared his food. That all the time Anita was waiting for her son, accused was already asleep. That the next day, Anita saw Jenneline, her brothers and Loreta, the latter talked to Anita who was informed of what happened to her child. That Anita claimed she knows nothing of what happened. That however the accused claims that his niece's charges are anchored merely on a child's retaliation against his having chastised her for her bad behavior and cited 3 instances which may have prompted the filing of said charges: FIRST, the time accused scolded Jenneline for reading bold comics especially the column of Xerex in the newspaper Abante as it is not good for her but accused claims Jenneline being hard-headed, left and ran away from him

(TSN, July 14, 1993, p. 5); SECOND, that another instance was that on April 3, 1993 at around 12:00 midnight at a wake near their place, accused saw Jenneline playing "truth or consequence" with an empty bottle, the consequence being the losing participant will kiss and embrace the accused. That when Jenneline's turn came, she kissed and embraced him but shouted "Ni Rape Ako (Idem.): THIRD, that on April 12 or 13, 1993 accused was informed that Jenneline was out despite the fact that her brothers were home crying. Accused went looking for Jenneline at the house of his nephew, called out Jenneline's name but it was his nephew, Bonifacio Garlego who answered "uncle, Jenneline is here, kinukulit ako." That is by tickling and embracing Bonifacio, the latter being older at 21 years of age. It was because of this that accused slapped Jenneline and asked her why she was there as it is too late in the evening and her brothers are alone in their house (Ibid., p. 6). Accused admits giving his niece and nephews money but only because they ask for it (Ibid., p. 7) and specifically in the case of Jenneline, when she gets high grades. Accused also admits being quite fond of Jenneline, not having a daughter of his own (Ibid., p. 11). Also, everytime accused arrives home, he goes to the house of his niece and nephews and to check on them and see if they have food to eat. That accused denies he goes to Jenneline's house only when her mother is out. Accused admits knowing the whereabouts of his niece and nephew on April 16, 1993 because his wife was even the one who brought the children to Novaliches but not because they cannot endure what he is doing to Jenneline. Lastly, accused stated that his niece Jenneline was able to say these things because Jenneline was being kidded and chided by the people in their place said that she should not marry any other person but wait for them (July 14, 1993, p. 6).^[13]

Additionally, the accused-appellant tried to strengthen his defense by capitalizing on the finding of Dr. Nario that Jenneline's hymen was "intact."^[14]

In convicting the accused-appellant, the trial court gave full credit "to the categorical and spontaneous testimonies of the complainant child who categorically testified in open court that it was the accused Leonardo Gagto y Garampil. . . who raped and abused her not only on April 16, 1993 but several times when mother was not home."^[15]

As to the accused-appellant's contention that the complainant's intact hymen was further proof that she was not raped, the trial court ruled:

Penetration of the penis by entry into the lips of the female organ even without rupture or laceration of the hymen suffices to warrant [a] conviction of rape (P. vs. Abonada, SCRA 169, Jan. 27, 1989, page 533).

^[16]

Insisting on his innocence, the accused-appellant seasonably interposed the instant

appeal and imputed to the trial court the commission of the following errors:

I

. . . IN FINDING THE ACCUSED GUILTY OF RAPE.

II

. . . IN NOT APPRECIATING THE MEDICAL CERTIFICATE WHICH SHOWED THAT THE OFFENSE WAS ALLEGEDLY COMMITTED IN 1991 AND NOT ON APRIL 15, 1993).^[17]

As to the first assigned error, the accused-appellant contests the trial court's appreciation of the physical evidence. He initially argues that repeated sexual congress - more than twenty times as alleged by the complainant - would leave some mark on her that would be detected by the genital examination. Although he admits "that rupture of the hymen is not necessary to prove the commission of rape," he contends that more than twenty instances of sexual intercourse "could cause such rupture."^[18] He likewise relies on the finding of Dr. Nario that the complainant's fourchette is V-shaped, as is the case with virgins, and no laceration was found in her vagina. He then postulates that if indeed he repeatedly had sexual intercourse with Jenneline, her fourchette would be round at the bottom. He thus concludes that the genital examination negates "the offense of rape or sexual intercourse on various occasions," and defeats the accusation "that the accused \. inserted his penis inside (complainant's) vagina , , ,

As to the second assigned error, the accused-appellant insists that the medical certificate showed that the offense was committed in 1991 and not on 15 April 1993. Further, he emphasizes that Dr. Nario testified that Jenneline told her she was sexually abused in 1991.^[19] Simply then, no rape was committed on 15 April or 16 April 1993.

After a painstaking scrutiny and review of the evidence, we find the imputed errors to be without merit and the supporting arguments unpersuasive.

The medical findings cited by the accused-appellant are insufficient to disprove the prosecution's evidence that he raped Jenneline. By now, it is well-settled that a medical examination is not even necessary in a prosecution for rape, as long as the evidence on hand convinces the court that conviction is proper.^[20] Besides, Dr. Nario clarified that the results of Jennellene's examination precluded only penetration of the hymen:

- Q** What [were] the result[s] of your examination?
- A** Well the most significant findings, [sic] [was] the presence of an intact hymen with a small