

## SECOND DIVISION

**[ G. R. No. 138648, October 03, 2002 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
VICTOR LOPEZ Y MANING, ACCUSED-APPELLANT.**

### DECISION

**QUISUMBING, J.:**

Before us is an appeal from the judgment of the Regional Trial Court of Oriental Mindoro, Branch 43, in Criminal Case No. R-837, finding appellant Victor Lopez y Maning guilty of the crime of statutory rape and sentencing him to suffer the penalty of *reclusion perpetua*.

The criminal complaint<sup>[1]</sup> against appellant reads:

That on or about the 8th day of August, 1997, at about 6:30 in the evening, more or less, at Barangay B. del Mundo, Municipality of Mansalay, Province of Oriental Mindoro, and within the jurisdiction of this Honorable Court, the above-named accused with lewd and unchaste designs, did then and there, wilfully, unlawfully and feloniously, lay with and have carnal knowledge with one CRISTINA GAJISAN y FRONDA an eleven (11) year old child against her will and without her consent.

CONTRARY TO LAW.<sup>[2]</sup>

On September 16, 1997, appellant pleaded not guilty<sup>[3]</sup> to the charge, and thereafter pre-trial and trial ensued.

The facts of the case, as summarized by the Solicitor General, are as follows:

Private complainant Cristina Gajisan was eleven (11) years old and a Grade 5 student residing at B. del Mundo St., Barangay San Antonio, Mansalay, Oriental Mindoro, while appellant is an acquaintance who lived about two hundred (200) meters away from Cristina's house (TSN, February 4, 1998, p.3; October 21, 1997, p. 20; February 4, 1997, p. 5).

At 6:00 P.M. on August 8, 1997, appellant went to Cristina's house and requested her to buy yellow pad paper for him. Cristina agreed and walked towards a store with appellant following her. At the store, there was no yellow pad paper available, so she proceeded to another store where she was able to buy it. At that point, appellant called for her to follow him to an uninhabited house located about two hundred (200) meters from appellant's house and five (5) meters from the nearest house (Ibid., February 4, 1998, pp. 6-8; August 5, 1998, p.17).

At the aforesaid house, appellant took the yellow pad paper and told her to take a seat while he was writing something. He then told her to go upstairs, which (sic) she obeyed. Appellant followed her and sat beside her. Immediately thereafter, appellant held her arms and thighs, kissed her on the lips and told her to remove her shorts. When she refused, she was made to stand up and appellant himself removed her shorts. All the while, appellant looked at her menacingly (Ibid., February 4, 1998, pp. 9-11).

Cristina was then made to lie face down, with appellant placing himself on her back after taking off his pants and brief. Unsuccessful in penetrating her vagina in that position, appellant made her kneel with her body stooped, her arms supporting her body and her head almost touching the floor. Appellant placed himself behind her and tried to penetrate her vagina. Cristina then felt a painful sensation in her private part and a sticky substance discharged inside. She was not able to shout for help or resist since appellant held her very tightly and threatened to box and tie her. After appellant's ejaculation, appellant stood up and threatened to kill her should she report the incident to her father ( Ibid., pp. 11-12, 13-14, 16; March 25, 1998, pp. 3-4).

At 6:30 P.M. of the same day, Cristina's father Maximiano was at home when Cristina arrived, crying. When he asked her what was the reason (for her crying), she answered that she was abused by appellant. Maximiano brought her to Barangay Captain Ramon Galicia who advised them to consult a certain Dr. Padua so that Cristina could be examined. Since Dr. Padua was not available at that time, they went home. Maximiano and Cristina also gave separate statements to the Manansalay (should be "Mansalay") police authorities (Ibid., October 21, 1997, pp. 18-21, 23-24; February 4, 1998, pp. 15-16).

The following day, August 9, 1997, Maximiano and Cristina went to Dr. Mayflor C. Tirador, Chief of the Medicare Hospital at Manansalay (sic), and to whom a request for her examination was made by the Manansalay (sic) Philippine National Police (PNP). Her findings showed the presence of hematoma or reddening, lacerations of the hymen caused by the forcible penetration by a hard penis, and abrasions in the anus (Ibid., October 21, 1997, pp. 2-4, 7-9, 21).<sup>[4]</sup>

Appellant interposed denial and alibi as his defense. He claimed that on the day and time in question, he was in the house of one Menecia Yap together with his friends, Deolito Yap, Angel Yap and Arnulfo Pablo. He arrived in said house at 5:00 P.M. and played cards until 7:30 P.M. Afterwards, they proceeded to another house located 60 meters away from Menecia's house, where they were joined by one Raul Lardiza. They stayed in the second house until 9:30 P.M., watching a "betamax" movie.

Later, on his way home together with his neighbors Teddy and Anthony Silverio, appellant met *Barangay* Captain Ramon Galicia who invited him for questioning. Appellant was informed of the rape charge, and he was subsequently arrested and confined at the Mansalay Provincial Jail.<sup>[5]</sup> Appellant admitted that Menecia's house is located only 50 meters away from the uninhabited house where Cristina was raped<sup>[6]</sup> and that there was no enmity between him and the Gajisans.<sup>[7]</sup>

No other defense witness was presented to corroborate appellant's testimony.

On April 19, 1999, the trial court rendered the assailed judgment, the dispositive part of which reads:

WHEREFORE, in view of the foregoing considerations, the court finds the accused, Victor Lopez y Maning GUILTY beyond reasonable doubt of the crime of rape punishable by Article 335 of the Revised Penal Code as amended by R.A. 7659 and he is hereby sentenced to suffer imprisonment of reclusion perpetua and to pay the victim, Cristina Gajisan, civil indemnity of P50,000.00 and the costs.

SO ORDERED.<sup>[8]</sup>

Hence, this appeal.

Appellant urges the Court to modify the lower court's judgment and to convict him only for the lesser offense of attempted rape, on the singular ground that:

THE UNCORROBORATED AND PERFORATED TESTIMONY OF THE VICTIM CANNOT SUSTAIN A CONVICTION OF CONSUMMATED RAPE CONSIDERING THAT IT FAILED TO ESTABLISH SUCCESSFUL PENILE PENETRATION WITH APODICTIC CERTAINTY.<sup>[9]</sup>

Simply stated, the issue to be resolved is whether or not the trial court correctly found appellant guilty of consummated rape.

It must first be emphasized that although the verdict of guilt is not being questioned in this appeal, we nonetheless examined the entire records and evidence adduced by the parties in the proceedings below, pursuant to the fundamental rule that an appeal in a criminal case throws the whole case open for review.<sup>[10]</sup> Unfortunately for appellant, however, there is nothing on record which would convince us that modification of the challenged decision is warranted, except for the addition of moral and exemplary damages which the trial court omitted to award the child-victim.

Under Article 335, paragraph 3 of the Revised Penal Code, the only elements of statutory rape are: (1) that the offender had carnal knowledge of a woman; and (2) that the woman is under twelve (12) years of age.<sup>[11]</sup> Mere sexual congress with a woman of such tender age consummates the crime of statutory rape regardless of her consent to the act or lack of it. In this kind of rape, the law presumes the child-victim to be lacking in discernment which would enable her to give intelligent consent to the sexual act. Consequently, the application of force and intimidation or deprivation of reason of said victim is irrelevant in a prosecution for this kind of offense. The absence of struggle or outcry from the victim or even her passive submission to the sexual act will not mitigate nor absolve the accused from liability.<sup>[12]</sup>

The long-settled rule is that when a victim claims that she has been raped, she says all that is necessary to show that the offense has been committed. As long as her testimony passes the test of credibility, it is given full weight and credence and may be the sole basis for conviction of the appellant.<sup>[13]</sup> In addition, the Court has held that there would be no reason for a young, innocent girl to concoct a story of defloration, allow the examination of her private parts, publicly disclose that she has been sexually abused if her motive were other than to fight for her honor and bring