

## EN BANC

[ G.R. Nos. 136733-35, December 13, 2001 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ELADIO VIERNES Y ILDEFONSO, APPELLANT.**

### DECISION

**PANGANIBAN, J.:**

Under the Rules of Court, a judgment of conviction in a criminal prosecution may be modified only upon motion of the accused. As a rule, the prosecution is prohibited from seeking, and the trial court from granting, a more severe penalty than that imposed in the original decision. This is especially true in a case in which the new and amended penalty imposed is death.

### The Case

Before us is an appeal<sup>[1]</sup> from the April 6, 1998 Decision and the May 21, 1998 Order<sup>[2]</sup> of the Regional Trial Court (RTC) of Lipa City (Branch 12) in Criminal Case Nos. 0532-97, 0533-97 and 0534-97. The assailed Decision convicted appellant of two counts of rape and one count of attempted rape. It disposed as follows:

"WHEREFORE, the Court finds the accused, ELADIO VIERNES y ILDEFONSO, guilty beyond reasonable doubt in Crim. Case No. 0532-97 of the crime of Rape, as defined and penalized under Article 335, par. 3 of the Revised Penal Code, as amended by Republic Act No. 2532 and Republic Act No. 4111; in Crim. Case No. 0533-97 of the crime of Attempted Rape, as defined and penalized under Article 335, par. 3 in relation to Article 51 of the Revised Penal Code, as amended by Republic Act No. 2532 and Republic Act No. 4111; and, in Crim. Case No. 0534-97 of the crime of Rape, as defined and penalized under Article 335, par. 1 of the Revised Penal Code, as amended by Republic Act No. 2532 and Republic Act No. 4111, and sentences him, as follows:

"1. CRIM. CASE NO. 0532-97 - to suffer the penalty of RECLUSION PERPETUA, to indemnify Catherine Linatoc in the amount of P50,000.00, to pay P10,000 as moral damages pursuant to Article 2219 (3) of the Civil Code, as well as exemplary damages in the amount of P5,000.00 pursuant to Article 2229 of the same Code and the costs of this suit;

"2. CRIM. CASE NO. 0533-97 - to suffer an indeterminate penalty of FOUR (4) YEARS, TWO (2) MONTHS and ONE (1) DAY of Prision Correccional, as Minimum, to EIGHT (8) YEARS and ONE (1) DAY of Prision Mayor, as Maximum, to indemnify Catherine Linatoc in the amount of P25,000.00, and to pay the

costs of this suit; and

"3. CRIM. CASE NO. 0534-97 - to suffer the penalty of RECLUSION PERPETUA, to indemnify Catherine Linatoc in the amount of P50,000.00, to pay P10,000.00 as moral damages pursuant to Article 2219 (3) of the Civil Code, as well as exemplary damages in the amount of P5,000.00 pursuant to Article 2229 of the same Code and the costs of this suit."<sup>[3]</sup>

On the other hand, the assailed Order increased the penalties as follows:

"WHEREFORE, the Court finds the accused, ELADIO VIERNES y ILDEFONSO, guilty beyond reasonable doubt in Crim. Case No. 0532-97 of the crime of Rape, as defined and penalized under Article 335, par. 3 of the Revised Penal Code, as amended by Republic Act No. 7659; in Crim. Case No. 0533 of the crime of Attempted Rape, as defined and penalized under Article 335, par. 3 in relation to Article 51 of the Revised Penal Code, as amended by Republic Act No. 7659, and in Crim. Case No. 0534-97 of the crime of Rape, as defined and penalized under Article 335, par. 1 of the Revised Penal Code, as amended by Republic Act No. 7659, and sentences him, as follows:

"1. CRIM. CASE NO. 0532-97 - to suffer the penalty of DEATH, to indemnify CATHERINE LINATOC in the amount of P50,000.00, to pay P10,000 as moral damages pursuant to Article 2219 (3) of the Civil Code, as well as exemplary damages in the amount of P5,000.00 pursuant to Article 2229 of the same Code and the costs of this suit;

"2. CRIM. CASE NO. 0533-97 - to suffer an indeterminate penalty of TEN (10) YEARS and ONE (1) DAY of Prision Mayor, as Minimum, to FOURTEEN (14) YEARS, EIGHT (8) MONTHS and ONE (1) DAY of Reclusion Temporal, as Maximum, to indemnify Catherine Linatoc in the amount of P25,000.00 and to pay the costs of this suit; and

"3. CRIM. CASE NO. 0534[-97] - to suffer the penalty of DEATH, to indemnify Catherine Linatoc in the amount of P50,000.00, to pay P10,000.00, as moral damages pursuant to Article 2219 (3) of the Civil Code, the amount of P5,000.00, as exemplary damages, pursuant to Article 2229 of the same Code and the costs of this suit."<sup>[4]</sup>

Three criminal Complaints, all dated August 21, 1997, were filed by Catherine Linatoc (assisted by her mother Lina Dela Cruz-Linatoc) before Second Assistant City Prosecutor Danilo S. Sandoval. The Complaint in Criminal Case No. 0532-97 charged appellant with rape committed as follows:

"That on or about the 29<sup>th</sup> day of September, 1996 at about 10:00 o'clock in the morning at Barangay Tibig, Lipa City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then the common law husband of the mother of the victim, did then and there willfully, unlawfully and feloniously, by means of force and intimidation have carnal knowledge of the undersigned complainant who

is a minor below 12 years old, against her will and consent to her damage and prejudice in such amount as may be awarded to her under the provision of the Civil Code."<sup>[5]</sup>

The Complaint in Crim. Case No. 0534-97 likewise charged him with consummated rape:

"That on or about the 18th day of August 1997 at about 12:00 o'clock noon, at Barangay Tibig, Lipa City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then the common law husband of the mother of the victim, did then and there wilfully, unlawfully and feloniously, by means of force and intimidation have carnal knowledge of the undersigned complainant who is a minor of 12 years old against her will and consent to her damage and prejudice in such amount as may be awarded to her under provisions of the Civil Code."<sup>[6]</sup>

Finally, in Criminal Case No. 0533-97, appellant was charged with attempted rape:

"That on or about the month of March 1997, around noon time, at Barangay Tibi, Lipa City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then the common law husband of the mother of the victim, by means of force and intimidation and with lewd design pursuant to his carnal desire, did then and there wilfully, unlawfully and feloniously commence the commission of the felony of rape directly by overt acts against the undersigned complainant who is a minor below 12 years old, by then and there undressing her and going on top of her with his exposed private organ but did not perform all the acts of execution which should have produced the said felony because the undersigned offended party resisted."<sup>[7]</sup>

Criminal Case Nos. 0532-97 and 0534-97 were raffled to the Regional Trial Court of Lipa City, Branch 12; and Criminal Case No. 0533-97, to Branch 85 of the same court. Later, all the cases were consolidated in Branch 12.<sup>[8]</sup>

On arraignment, appellant pleaded not guilty.<sup>[9]</sup> After trial in due course, the lower court rendered the assailed Decision.

In a Motion for Reconsideration dated May 18, 1998, Prosecutor Sandoval asked that the imposed penalties be increased pursuant to Republic Act (RA) No. 7659. The RTC granted the Motion via the assailed Order.

### **The Facts** **Version of the Prosecution**

In its Brief,<sup>[10]</sup> the Office of the Solicitor General presents the following narration of facts:

"Catherine Linatoc stood quietly by the door of the toilet of appellant's - her mother's common-law husband - house. Her skirt's hemlines were slowly falling to her knees vainly covering the panty that were pulled down mid-way her lower legs. This was the third of a series of dismaying

sex that she and appellant had been through. Like the others before this one, there was by appellant much pulling, shoving and forcible grasping of her hands, thus rendering her immobile for three minutes or so.

"The third rape happened in appellant's house in Tibig, Lipa City, around noontime of August 18, 1997. Appellant then bidden [sic] the two brothers and a step-brother of Catherine Linatoc to clean the his tricycle, which was parked on the side of the street across his house. They followed his order. Appellant also instructed Catherine Linatoc to fetch water for the house toilet. She obliged, returning with two pails of it. She deposited them by the door of the toilet. Turning about, Catherine Linatoc was surprised to find appellant behind her. In quick succession, appellant pushed her to the wall, pulled her skirts up, drag her panty mid-way her lower leg, and rushed his own pants down. Grasping her hands tightly with one hand, appellant began inserting his penis into her vagina. She resisted to no avail. His penis established a comfortable slide into and out of her [organ], as the pace quickened for about three minutes. The gyration was furious. After appellant spurted out, he backed off and left saying nothing.

"Frightened and crying, Catherine Linatoc went to her great-grandmother's abode in San Guillermo, Lipa City. She reported the incident to this elder, and recounted some more. Catherine Linatoc told her great-grandmother of two other acts of sexual abuse by appellant. The first one, she narrated, happened on September 29, 1996, about ten in the morning[;] and the second, on March 1997 around noon-time.

"The first rape happened on September 29, 1996 in appellant's house. Catherine Linatoc was on the ground floor of the house when so suddenly appellant sprung from wherever he was, grabbed and carried her to the second floor. The second floor was just three steps from the ground floor. He then undressed her, taking off her sando, skirt and panty. He undressed himself too, and then floored both their bodies, [his] on top of her. He caressed her breasts and started inserting his penis into her vagina. Appellant held her hands tightly and fought off her struggle. There was push and pull for about three minutes, then appellant came through. Appellant dressed up, and before walking away, apologized to her. It would be the first and last rape, he said.

"There was soon the second sexual abuse. In March 1997, about noontime, using the same strategy as he did in the [first] rape, appellant unburdened himself on Catherine Linatoc. From nowhere, appellant appeared. He dragged her to the second floor where he undressed her and himself. He mightily threw her to the floor, his sweaty body covering her's. Appellant engaged in the now familiar gyration once again. This time, however his penis landed on the thighs of the victim as insertion, because of her struggle and vagina's virginal qualities, became frustratingly difficult. Between her thighs appellant thrust his penis. He satisfied himself just the same.

"The great-grandmother was helpless to remedy the abuse done to Catherine Linatoc. They waited for the father of Catherine Linatoc,

Orlando Linatoc, who arrived four days later. The mother of Catherine Linatoc, Lina Viernes, also arrived. Catherine Linatoc had her medico-legal examination with these results:

'x x x lacerated hymen on the 3:00 and 9:00 o'clock positions with small amounts of whitish discharge.'

"The medico-legal examination was performed by Dr. Helen S. Dy. The present criminal complaints against appellant were thereafter filed."<sup>[11]</sup>

### **Version of the Defense**

Appellant denies the charges against him. Claiming to have been elsewhere at the time of the commission of the alleged crimes, he submits the following counterstatement of the facts:

"1) ELADIO, at the lower court, stated that he is the common law husband of Lina de la Cruz-Linatoc (mother of the alleged victim ... Catherine Linatoc). He is a security guard and at the same time, a tricycle driver. On September 29, 1996 he was living with Lina, together with Catherine, his two sons and other relatives. On September 28, 1996 he scolded Catherine. As a consequence thereof, Catherine went to the house of her great grandmother and stayed therein even beyond September 29, 1996. Therefore, it is impossible for him (ELADIO) to have attacked Catherine sexually on September 29, 1996. It is not true that he attempted to rape Catherine in March of 1997 because he was on duty at that time. Their company logbook will bear witness thereto. (Exhibit `2', Original Records) On August 18, 1997 it is not true that he raped Catherine since he was plying his tricycle then. (TSN, pp. 2-13, December 11, 1997; and pp. 2-22, January 8, 1998)

"2) Lina de la Cruz at the Court below, testified that she confirms claim/s [sic] of ELADIO that Catherine was no longer in their house on September 29, 1996 and that ELADIO could not have abused Catherine sexually. Catherine's charge for March 1997 and August 18, 1997 were not also true. (TSN, pp. 2-7, February 3, 1998).

x x x

x x x

x x x

### **"D. Sur-Rebuttal Evidence**

"ELADIO, as a sur-rebuttal witness, denied to have asked the settlement of the case."<sup>[12]</sup>

### **Ruling of the Trial Court**

The court *a quo* held that the testimony of Catherine Linatoc -- both on direct and on cross-examination -- was clear, positive and steadfast. Corroborated by the medicolegal examination conducted on her, it was replete with details that jibed on material points. The prosecution successfully proved that she was the daughter of appellant's common-law wife and that, at the time of the crime, she was 12 years old.