

SECOND DIVISION

[G.R. No. 116729, January 31, 2000]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MARLON LERIO @ ROMAN, ACCUSED-APPELLANT.**

DECISION

QUISUMBING, J.:

On appeal is the decision dated July 7, 1994, of the Regional Trial Court of Tayug, Pangasinan, Branch 51, convicting accused-appellant of the crime of statutory rape, imposing upon him the penalty of *reclusion perpetua*, and ordering him to indemnify the victim the amount of P50,000.00 as moral damages.

Appellant Marlon Lerio^[1] was 19 years old, single, farmer, and resident of San Macario Norte, Natividad, Pangasinan, while the victim was Jennifer M. Soriano, 11 years old and a grade five (5) student, at the time of the offense charged.

The fact as summarized by the Office of the Solicitor General, and which we find to be supported by the records, are as follows:^[2]

"At around 7:15 in the evening of January 22, 1992, complainant Jennifer Soriano, who at that time was only eleven (11) years old, was on her way to watch television (TV) at the house of Apong Belen Casandig. When she was at the side of the house of Belen Casandig, she was intercepted by appellant Marlon Lerio alias 'Roman'. He grabbed her, covered her mouth in such a way that she cannot shout for help and carried her towards the place where there were piles of dried cogon (tsn., November 11, 1993, pp. 3-4; January 20, 1994, p. 34).

As he carried her, complainant tried to struggle to free herself, but was unable to do so. Appellant laid her down on the piles of cogon and proceeded to divest her of her underwear. While doing so, he went on top of complainant and sexually assaulted her. Jennifer Soriano struggled against his attack but to no avail (tsn., Nov. 11, 1993, pp. 43-45).

When they heard her parents calling her by name, appellant released her and she ran away, carrying her underwear (tsn., January 20, 1994, pp. 43-45).

Floro Volante, the barangay captain of San Macario Norte, Natividad, Pangasinan testified that on the evening of January 22, 1992, Arsenio Soriano, the father of complainant, reported that his (Arsenio Soriano) daughter was raped by Marlon Lerio. He went to complainant's house and later he went to the crime scene together with complainant and her parents. While there, he saw the disarranged piles of cogon. They

likewise discovered a headband belonging to complainant, which the latter picked up. Still in the course of his investigation, he went to appellant's house and questioned him in the presence of his parents (tsn., February 19, 1993, pp. 3-6).

The barangay captain's testimony was corroborated by complainant's mother, Estrelita Soriano. She further testified that she examined her daughter's private parts, which was reddish at the time, and that she saw seminal fluid in her daughter's private part (tsn., August 11, 1993, pp. 28-30).

Dr. Perfecto Tebangin, the Rural Health Officer, testified that he examined the complainant fourteen (14) days after the incident. Although Jennifer Soriano told him that she was raped, he did not see any scratch, scar or hematoma on the latter's body, and that the hymen was still intact (tsn., February 1, 1994, pp. 3-6)."

On June 10, 1992, appellant was charged with the crime of rape under the following Information:^[3]

"I N F O R M A T I O N

The undersigned, upon a verified complaint of ESTRELITA M. SORIANO, hereby accuses MARLON LERIO of the crime of RAPE, committed as follows:

That on or about the 22nd day of January, 1992, in the evening, along the pile of harvested cogon at Barangay San Macario Norte, municipality of Natividad, province of Pangasinan, New Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have sexual intercourse with JENNIFER SORIANO, a minor 11 years of age, against her will and consent to her damage and prejudice.

CONTRARY to Article 335 of the Revised Penal Code.

Tayug, Pangasinan, April 20, 1992

(SGD) CARLOS TRECE R. MAPILI
Assistant Prov'l. Prosecutor

APPROVED
(SGD) JOSE ANTONIO M. GUILLERMO
Provincial Prosecutor"

Upon arraignment, appellant entered a plea of not guilty.^[4]

At the trial, the prosecution presented the following witnesses: (1) Barangay Captain Floro B. Volante; (2) Estrelita M. Soriano, the mother of the victim; (3) Jennifer M. Soriano, the victim; and (4) Dr. Perfecto B. Tebangin, Municipal Health Officer of Natividad, Pangasinan.

For the defense, appellant was the sole witness. His version of the incident is that on the night of January 22, 1992, he was at the house of his grandfather in San Macario, Natividad, Pangasinan watching television with his aunt and cousins. The house of his grandfather was located some two (2) meters away from the house of the victim. At around 7:30 in the evening, he went outside to urinate, and on his way back, he met the victim beside the house. He asked her to accompany him to get some 'komiks' from the house of his uncle. He held her hands and kissed her on the lips, but did not have sexual intercourse with her. He claims that the parents of the victim filed the rape charge against him because they were infuriated when they learned that he kissed their daughter.^[5]

On July 7, 1994, the trial court rendered a decision^[6] finding appellant guilty of statutory rape under Article 335, No. 3 of the Revised Penal Code. The dispositive portion of the decision states:

"WHEREFORE, the Court, finding the accused GUILTY as charged, hereby sentences (sic) him to suffer the penalty of reclusion perpetua, which shall carry with it the accessory penalties of civil interdiction for life and that of perpetual absolute disqualification, in accordance with Articles 335 and 41 of the Revised Penal Code.

However, and as mandated by Article 29 of the same Code, the accused is hereby credited in the service of his sentence with four-fifths (4/5) of the time during which, prior to the finality of this judgment, he shall have undergone preventive imprisonment, there being no writing on record that shows that he ever voluntarily agreed as a detention prisoner to abide by the same disciplinary rules imposed upon convicted persons.

Additionally, the accused is hereby ordered to indemnify Jennifer Soriano for moral damages in the amount of P50,000.00 in accordance with Article 100 of the Revised Penal Code and with Article 2219 of the Civil Code, and to pay the costs.

SO ORDERED."

Hence, the present appeal. Appellant makes the following assignment of errors:^[7]

- I. THE TRIAL COURT GRAVELY ERRED IN GIVING FULL CREDENCE TO THE TESTIMONIES OF THE PROSECUTION WITNESSES WHICH ARE HIGHLY INCREDIBLE, INCONSISTENT AND UNRELIABLE.
- II. THE TRIAL COURT GRAVELY ERRED IN DISREGARDING IN EVIDENCE THE MEDICAL CERTIFICATE ISSUED BY DR. PERFECTO TEBANGIN AND IN NOT GIVING CREDENCE TO THE DEFENSE INTERPOSED BY THE ACCUSED-APPELLANT.
- III. THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND A REASONABLE DOUBT.