

SECOND DIVISION

[G.R. Nos. 116009-10, February 29, 2000]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
RODERICK LORIEGA AND GARY AREVALO, ACCUSED-
APPELLANTS.**

DECISION

QUISUMBING, J.:

This is an appeal from the decision promulgated on June 6, 1994, by the Regional Trial Court of Legazpi City, Branch 5, in Criminal Case Nos. 5987 and 5988 finding appellants Roderick Loriega and Gary Arevalo guilty of two counts of rape as defined under paragraph (2) of Article 335 of the Revised Penal Code.

Prosecutor German Mata charged appellants with the crime of rape in two separate informations, both dated November 27, 1992. The accusatory portion of one information docketed as Criminal Case No. 5987 states:

"The undersigned Prosecutor II of Albay, upon the sworn complaint of Angielyn Marco, hereby accuses RODERICK LORIEGA and GARY AREVALO, of the crime of RAPE, committed as follows:

'That on or about March 1, 1992 in the evening at San Roque, Daraga, Albay, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused RODERICK LORIEGA, with the indispensable cooperation of his co-accused GARY AREVALO, who was holding the hands of the victim, both accused, conspiring, confederating and helping one another for a common purpose, with lewd design, did then and there willfully, unlawfully and feloniously have carnal knowledge of Angielyn Marco y Aquino, 15 years old, and a deaf/mute, with the use of force and against her will, to the latter's damage and prejudice.'

ACTS CONTRARY TO LAW."^[1]

The other information, docketed as Criminal Case No. 5988, reads:

"The undersigned Prosecutor II of Albay, upon the sworn complaint of Angielyn Marco, hereby accuses RODERICK LORIEGA and GARY AREVALO, of the crime of RAPE, committed as follows:

'That on or about March 1, 1992 in the evening at San Roque, Daraga, Albay, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused GARY AREVALO, with the indispensable cooperation of his co-accused RODERICK LORIEGA, who was holding the hands of the victim, both accused, conspiring, confederating and helping one

another for a common purpose, with lewd design, did then and there willfully, unlawfully and feloniously have carnal knowledge of Angielyn Marco y Aquino, 15 years old, and a deaf/mute, with the use of force and against her will, to the latter's damage and prejudice.'

ACTS CONTRARY TO LAW."^[2]

On motion of the public prosecutor, the two cases were tried jointly as both arose out the same incident and involved the same accused with the same victim.^[3] Upon arraignment, appellants, assisted by counsel, entered a plea of "not guilty" to both charges.^[4] Thereafter, trial on the merits ensued. Subsequently, the trial court rendered its verdict finding appellants guilty as charged. The dispositive portion of its decision reads:

"WHEREFORE, ... decision is hereby rendered as follows:

In Criminal Case No. 5987, both accused Roderick Loriega and Gary Arevalo are hereby found GUILTY beyond reasonable doubt of the crime of RAPE as this is defined and penalized under Article 335 of the Revised Penal Code and hereby sentences EACH OF THE SAID ACCUSED to suffer the penalty of imprisonment of *RECLUSION PERPETUA* with all the accessory penalties provided by law.

In Criminal Case No. 5988, both accused Roderick Loriega and Gary Arevalo are hereby found GUILTY beyond reasonable doubt of the crime of RAPE as defined and penalized under Article 335 of the Revised Penal Code and hereby sentences EACH OF THE SAID ACCUSED to suffer the penalty of imprisonment of *RECLUSION PERPETUA* with all the accessory penalties provided by law.

Both accused are hereby ordered to pay P50,000.00 jointly and severally as damages to the complainant Angielyn Marco and to pay the costs.

SO ORDERED."^[5]

The pertinent facts of this case, as found by the trial court, are as follows:

"The offended party and complainant, Angielyn Marco is a fifteen (15) year old deaf mute girl. She lives with her parents at San Roque, Daraga, Albay, in the very same *barangay* where the two accused Roderick Loriega and Gary Arevalo also live. Angielyn Marco, Roderick Loriega and Gary Arevalo are friends with each other aside from the fact that accused Gary Arevalo is an uncle of complainant Angielyn Marco because Angielyn Marco's great grandmother is the sister of Gary Arevalo's grandmother. Angielyn Marco however does not call Gary Arevalo uncle because the latter prefers to be called as Gary.

Unlike other deaf mutes, Angielyn Marco can talk although not satisfactorily but with limitations because she had been studying for five years at the SPED class at the Bicol University under the tutorship of Miss Elisa Maceres (who acted as the interpreter at the time that Angielyn

Marco was presented as a witness with the express consent of both accused and only after she was sworn under oath). Angielyn Marco can read and write as she has shown to the court during her testimony when she was presented as a witness although with some limitations, as she can communicate in writing in telegram form.

In the early evening of March 1, 1992, Angielyn Marco went out of their house to buy Royal Tru-Orange soft drinks at a nearby *sari-sari* store. There was no Royal softdrinks at the *sari-sari* store however, so she just went home. Along her way home, she met accused Roderik Loriega in front of Gary Arevalo's house. Accused Loriega held Angielyn, pulled and brought her to the house of accused Gary Arevalo. Said accused Arevalo was in the house too. While in the house of accused Arevalo, Angielyn Marco was striped naked and the two accused, Loriega and Arevalo took turns in raping Angielyn Marco. The first to rape her was accused Loriega while accused Arevalo was covering her mouth and holding her hands. After accused Loriega was through, he held the hands of Angielyn Marco and covered her mouth while accused Arevalo was raping her. Angielyn Marco struggled but she is just a petite girl that her strength was no match to the two accused. She was helpless.

After the two accused were through raping Angielyn Marco, they left. Angielyn dressed up and went home. Asked by her parents where she came from she gave no answer and she also did not tell her parents about the rape incident she underwent. Angielyn told no one about her being raped until March 18, 1992 when she confided her to her cousin Nadin Marco about the rape. Nadin Marco, in turn told her father, a brother of Angielyn's father, and the following day, the rape incident was reported to Angielyn's father.

Angielyn was brought by her father to the Municipal Health Office of Daraga, Albay where she was examined and found to have a lacerated hymen at 4:00 o'clock position, a circumstance showing that a foreign body had entered the vagina which could be caused by, among others, sexual Intercourse."^[6]

During the pendency of this case at the prosecutor's office, private complainant, a deaf-mute, was referred to Don Susano Rodriguez Memorial Hospital for determination of her actual mental age. She was given a mental status examination and intelligence quotient (IQ) test. In her testimony, Dr. Chona Belmonte opined that private complainant has an IQ of sixty-nine percent (69%) which falls under the category of "borderline intellectual functioning". Dr. Belmonte likewise declared that private complainant's mental age is just between nine (9) and eleven (11) years, and so she could not manage her affairs without the assistance of others.^[7]

For his defense, Loriega denied the accusation against him. On the contrary, he claimed that it was private complainant who sexually abused him:

"[T]hat at about 6:30 o'clock in the evening of March 1, 1992, he went to the house of accused Gary Arevalo at San Roque, Daraga, Albay. He met Angielyn in front of accused Arevalo's house. Angielyn signalled to him, pointing to a small trail at the side of Arevalo's house leading to a small

study room at the back of Arevalo's house. Thinking that Angielyn wanted to show him something, he followed Angielyn on the trail to the study room. Angielyn entered the room and beckoned him to come in. He was hesitant to come because there were only two of them and somebody might see them, but Angielyn took him by the hand and led him inside the room. It is a small room with a bed, there was no light then. Loriega knows this room well because when the former occupant left, he helped in the fixing of this room to convert it into a study room. Once inside the room, Angielyn started kissing him all around his face and lips. He pushed her away afraid that somebody might see them. Angielyn was persistent. She removed her blouse then removed Loriega's T-shirt and when both were half-naked Angielyn tried to remove his pants but he resisted and did not agree. Angielyn kept on kissing him and he tried to hold her back but Angielyn was persistent. While Angielyn was kissing him, she was also unbuttoning his pants and succeeding in unbuttoning his pants, Angielyn held his sexual organ and kissed it, held his balls and suck his penis until he ejaculated in the mouth of Angielyn who swallowed his sperm because that was what she wanted. At the time that Angielyn was sucking his penis, he was hesitant, confused, such that after his ejaculation, he pushed Angielyn away, buttoned his pants and dressed up. Angielyn also dressed up. He heard the mother of Gary Arevalo telling Gary to cook and he knew that Gary would enter the room because the switch of the light of the kitchen was in that room. When Gary entered and saw them, they were told to leave and they left. Loriega left the room ahead and headed for home. He did not know where Angielyn went from there. On March 12, 1992 he woke up with Angielyn on top of him."^[8]

For his part, Arevalo insisted on his innocence. He gave his own story which tended to corroborate the claim of Loriega:

"[T]hat in the morning of March 1, 1992, he went to *barangay* Sto. Cristo, Daraga, Albay to help his uncle care and train the fighting cocks. He went home at about 7:00 o'clock in the evening at San Roque, Daraga, Albay. When he arrived, his mother told him to cook and when he switched on the light of the kitchen which was located at the study room, he saw Roderick Loriega and Angielyn Marco seated on the bed with Angielyn Marco holding the thigh of Loriega. He told them to leave the room and they did leave the room. He also testified that Angielyn Marco's great grandmother is the sister of his grandmother. The motive in being included in these cases is that there was a previous incident between him and Angielyn's father when he once fetched water and Angielyn's father did not give any water and he had an argument with Angielyn's father when he told him that he does not want to give water when he use[s] a jumper for the water pump and spends nothing for electricity. This angered Angielyn's father."^[9]

In an attempt to lend some degree of persuasiveness to appellants' story and discredit the testimony of the offended party, three other witnesses were presented by the defense. First, Socorro Llave, neighbor of Arevalo, testified that on the whole night of the March 1, 1992, she did not hear, see or notice any untoward incident in the vicinity of her house or in the house of her neighbor. She swore that if there was

unusual occurrence, she would have sensed it because Arevalo' s dog would have barked as it usually does whenever somebody passes by their place.^[10] Second, another neighbor, Rodel Guiriba, declared that private complainant visits the house of Loriega about twenty-five times a month. He swore that he did not notice any change in the relationship between private complainant and Loriega even after the alleged rape happened. He said that the last time he saw private complainant went to Loriega's residence was on March 12, 1992.^[11] Third, Sonny Madelar attested that on March 12, 1992, at about 4:00 P.M. as he was walking home, he noticed several people looking towards the house of Loriega. Out of curiosity, he and his companions proceeded to the backyard of Loriega's house. While there, he fixed his eyes on the open window of the room of Roderick and he saw private complainant place herself on top of Loriega but did nothing more.. He stated that both Roderick and private complainant were not naked at that time.^[12]

The trial court found the defense put up by appellants too flimsy and incredible, and on the basis of the evidence presented by the prosecution held appellants guilty as charged. After the trial court handed its verdict of conviction, sentencing them to *reclusion perpetua*, Loriega and Arevalo readily filed their respective notice of appeal, albeit directed to the Court of Appeals. Apparently realizing their mistake, they immediately filed an amended notice of appeal, this time correctly addressed to this Court.^[13]

As required, Loriega's counsel filed appellant's brief. We dispensed with the filing of Arevalo' s brief as we granted the motion of Arevalo's counsel to adopt the appellant's brief of Loriega as Arevalo's too.^[14] In their bid to obtain reversal of their conviction, Loriega and Arevalo claim that the lower court erred:

"1

IN GIVING FULL CREDENCE TO THE INHERENTLY UNRELIABLE TESTIMONY OF THE OFFENDED PARTY; and

2

IN CONCLUDING FROM THE EVIDENCE OF THE PROSECUTION THAT THE CRIME OF RAPE WAS COMMITTED."^[15]

The fundamental issue to be resolved is whether or not the trial court erred in affording credence to the testimony of the victim.

In casting doubt on the testimony of private complainant, appellants argue that if indeed they committed the offense, then private complainant's hymen should not have just one but two or more lacerations. They contend that not every laceration is a positive proof of rape as laceration could result from other causes such as menstruation. They aver that private complainant, being a virgin, should have bled profusely which, in turn, should have stained her clothes and the scene of the crime. Further, they insist that their seminal discharge should have been found in private complainant's body. They also maintain that private complainant should have experienced difficulty in walking and felt intense pain after the alleged rape.^[16] In short, appellants would like us to believe that they neither deflowered nor had carnal knowledge with private complainant on the date and place alleged by the