

**[ G.R. Nos. 133999-4001, August 31, 2000 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CESAR MELENDRES Y BEJO, ACCUSED-APPELLANT.**

**D E C I S I O N**

**DAVIDE JR., C.J.:**

Before us for automatic review<sup>[1]</sup> is the decision<sup>[2]</sup> of 30 April 1998 of the Regional Trial Court of Roxas City, Branch 14, in Criminal Cases Nos. C-4766, C-4767 and C-4768 finding accused-appellant Cesar Melendres y Bejo (hereafter CESAR) guilty beyond reasonable doubt of three (3) counts of rape committed against Helen Balinario (hereafter HELEN). The dispositive portion of the decision reads as follows:

IN VIEW OF THE FOREGOING ESTABLISHED FACTS, the Court finds the accused GUILTY beyond reasonable doubt of the three (3) counts of the crime of Rape committed on three different occasions—in the months of November and December 1994 and January 1995, all in Brgy. Jamulawon, Panay, Capiz with the use of a gun and through the use of threats and intimidation against the daughter of his common-law wife, complainant Helen Balinario, who was then 11 years of age.

Accordingly, accused Cesar Melendres y Bejo is sentenced to suffer the extreme penalty of three (3) DEATHS in accordance with the doctrine of the Supreme Court enunciated in *Pp. vs. Jose* 37 SCRA 450; to recognize Rey Balinario, the offspring of his bestial acts, as his natural child entitled to his support; and to indemnify the complainant in the amount of One Hundred Fifty Thousand Pesos (P150,000.00) as damages and to pay the costs.

SO ORDERED.

These cases were originally commenced with the filing of a criminal complaint by HELEN, assisted by her mother Visitacion Balinario, on 24 April 1995 before the Municipal Circuit Trial Court of Pontevedra-Panay, Province of Capiz. After appropriate proceedings, with CESAR opting not to file his counter-affidavit, the court issued a resolution<sup>[3]</sup> on 7 August 1997 recommending the filing of an information for rape.

On 11 September 1995 Capiz Asst. Provincial Prosecutor Edwin Devano filed against CESAR three separate informations for rape before the Regional Trial Court of Roxas City which docketed the cases as Criminal Case No. C-4766, Criminal Case No. C-4767, and Criminal Case No. C-4768. The accusatory portions of the informations read as follows:

Criminal Case No. C-4766:

That sometime on one evening in the month of November 1994, at Brgy. Jamul-awon, Panay, Capiz, Philippines, and within the jurisdiction of this

Honorable Court, abovenamed accused, motivated with lewdness, and taking advantage of the fact that the offended party, HELEN BALINARIO was soundly asleep and unconscious, did then and there wilfully, unlawfully and feloniously succeeded in having carnal knowledge of the latter against her will, and thereby resulting to the pregnancy of the latter.

The crime was aggravated by the fact that the offended party is the stepdaughter of the accused and a girl of only eleven (11) years of age at the time of the commission of the offense.

CONTRARY TO LAW.<sup>[4]</sup>

Criminal Case No. C-4767:

That sometime in one evening in the month of December 1994, at Brgy. Jamul-awon, Panay, Capiz, Philippines, and within the jurisdiction of this Honorable court, said accused, with lewdness and by means of threats and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge of the complainant HELEN BALINARIO against her will and thereby resulting to the pregnancy of the latter.

The crime was aggravated by the fact that the offended party is the stepdaughter of the accused and a girl of only eleven (11) years of age at the time of the commission of the offense.

CONTRARY TO LAW.<sup>[5]</sup>

Criminal Case No. C-4768:

That sometime in one evening in January 1995, at Brgy. Jamul-awon, Panay, Capiz, Philippines, and within the jurisdiction of this Honorable Court, abovenamed accused, motivated by lewd design and by means of force and intimidation did then and there wilfully, unlawfully and feloniously succeeded in having carnal knowledge, with complainant HELEN BALINARIO against the will of the latter, and thereby resulting to her pregnancy.

The crime was aggravated by the fact that the offended party is the stepdaughter of the accused and a girl of barely over twelve (12) years of age only at the time of the commission of the offense.

CONTRARY TO LAW.<sup>[6]</sup>

The cases were consolidated and after CESAR entered a plea of not guilty in each case during his arraignment,<sup>[7]</sup> joint trial was had.

The evidence for the prosecution established the following facts:

HELEN, who was born on 23 December 1982<sup>[8]</sup> testified that sometime in the month of November 1994, at around 6:00 in the morning, her mother, Visitacion, left for Sigma, Capiz, together with her younger sister Hendreza, to buy merchandise in connection with her buy-and-sell business. HELEN was then left behind with CESAR to do the household chores.<sup>[9]</sup> Visitacion and Hendreza did not return home that

night so HELEN and CESAR had their supper together. As they were about to finish eating, CESAR gave her a glass of water which she drank. Thereafter, HELEN immediately felt dizzy and sleepy so she asked permission from CESAR to go to sleep early.<sup>[10]</sup>

When she woke up late the next morning, HELEN felt pain all over her body, especially on her thighs and genitalia. Sensing such pain and noticing bloodstains on her undergarment when she urinated, HELEN touched her vagina and discovered some blood on it.

She changed her underwear, after which saw CESAR and talked to him, but CESAR responded by warning her not to tell anybody about the incident and even tried to calm her by saying it might be due to her menstrual flow.<sup>[11]</sup> But as she just had her menstrual period HELEN knew it could not be the reason.<sup>[12]</sup> HELEN then suspected that CESAR did something to her.

Later that day, at around 5:00 in the afternoon, Visitacion and Hendreza arrived but as HELEN heeded the warning of CESAR she kept her suspicions to herself.

In December 1994, a few days before her birthday, Visitacion again left for Sigma, Capiz. She was not accompanied by Hendreza. At around 5:30 p.m. that day CESAR instructed Hendreza to buy cigarettes for him. With Hendreza away, CESAR surreptitiously entered the room where HELEN was folding and fixing their sun-dried laundry. Immediately, CESAR poked a gun at HELEN and mounted her, causing HELEN to fall on her back to the floor. HELEN tried to extricate herself from CESAR, who was then removing his underwear, but as CESAR was much stronger, her efforts proved futile. CESAR placed his handgun aside and forcibly removed HELEN's undergarments against her objections and struggles. Stripped of all her clothes, CESAR spread HELEN's legs and applied saliva on his penis. HELEN pleaded with CESAR but was instead pressed down to the floor. Then CESAR forced his penis into her vagina. HELEN felt pain, but she could not shout, as she was afraid of CESAR's threats that he would shoot them all. She endured the excruciating pain until her ordeal was over.<sup>[13]</sup>

Afraid of CESAR's threats, HELEN kept mum about the incident.

As his lust was not satiated, CESAR ravished HELEN again sometime in January 1995, when Visitacion left once more with Hendreza for Sigma, Capiz. At around 8:00 in the evening of that day, CESAR asked her to help him set traps for crabs in the fishpond. HELEN did as she was told.<sup>[14]</sup> On their way home, after placing the traps, CESAR suddenly pushed HELEN down the dike and forcibly mounted her. HELEN tried to escape and this time firmly told CESAR "you have already done this to me and that I have to tell mama" but her warning was simply ignored by CESAR who instead pulled down his shorts with one hand and embraced HELEN with the other hand to keep her from moving. Then CESAR spread her legs, took off her undergarments and inserted his penis into her vagina. HELEN again felt the pain as CESAR's penis intruded her womanhood. She begged and cried for him to stop but again to no avail as CESAR inflicted his bestial desire on her.<sup>[15]</sup>

They returned home that evening without talking to each other except for the warning that CESAR gave HELEN that she should not tell anyone about the incident.

[16] For fear that he would kill her and her family, HELEN, again, kept secret what CESAR did to her.

In March 1995, suspecting that she was pregnant as she missed her menstrual period, HELEN finally mustered enough courage to tell her mother that she had been raped by CESAR several times. Thus, they consulted Dr. Delfin of the Roxas Memorial General Hospital.[17] The examination revealed that HELEN had been pregnant for six (6) months and that her hymen exhibited old lacerations which could have been sustained a few months earlier.[18] Thereafter, HELEN and Visitacion executed their respective sworn statements which were the basis for the filing of the criminal complaint before the court.

In his defense, CESAR who was single and 38 years old at the time he testified, declared that there is no truth to HELEN's allegation that last November 1994, he gave her a glass of water which made her dizzy and sleepy. What happened was that after taking his supper, he told HELEN he would make rounds at the fishpond, but as HELEN pleaded for him to go home early as she was afraid to be left alone, he returned home at around 7:30 that evening.[19] While he was lying on the mat, HELEN laid beside him and told him that she would sleep with him as she was afraid to sleep alone. Aroused with the warmth of HELEN's legs, he told her: "for the meantime, you will have to do the obligation of your mother who is not here at present," to which HELEN replied: "I am afraid because this might reach the knowledge of my mother." CESAR then retorted: "it will never reach the knowledge of your mother except when you yourself tell her." Thereafter, he asked for the consent of HELEN who simply remained silent. Moments later, HELEN started to embrace him; so, he also embraced and kissed her until eventually they had sexual intercourse.[20]

CESAR also denied having used a firearm to force HELEN to have sexual intercourse with him one evening in December 1994. According to him, Jeffrey Layo, the fishpond owner, prohibited him from possessing a firearm. However, CESAR recalled that in December 1994, he brought HELEN to the fishpond to place crab traps. On their way home, HELEN asked his permission to watch television at their neighbor's house. He refused. However, he later on acceded as HELEN made insinuations that she would not have intercourse with him if he would not allow her to watch television. Thus, they had sexual intercourse before HELEN left to watch television at their neighbor's house.[21]

CESAR likewise denied having sexual intercourse with HELEN one evening in January 1995, at the dike owned by Jeffrey Layo because the guards securing the area kept roaming around. Besides, there was no reason for them to engage in sexual intercourse at the dike when they could freely do it at home,[22] which they in fact did in that month at their house.

Finally, CESAR volunteered that after their January 1995 intercourse, he and HELEN had sexual intercourse several times more. In fact, they were planning to elope.[23] But as the pregnancy of HELEN became evident and reached the knowledge of Visitacion, a complaint for rape was then lodged against him, and he was arrested by the police on 22 April 1995.[24]

The trial court gave full faith and credit to HELEN's testimony and found CESAR's allegation that he and HELEN were lovers as highly incredible considering the

established fact that HELEN, who was then barely eleven (11) years old was too young to be in love with him whom she called "tatay CESAR," being the common-law husband of Visitacion. In all the instances he ravished her, her mother was in a faraway barangay and HELEN was alone with him. She became "easy prey to the insatiable and satanic desire of" CESAR. The trial court further observed that "instead of acting in *loco parentis* (substitute parent) he ravaged his innocent and hapless step-daughter (sic) Helen Balinario, who was too young and innocent of the 'old ways of the world' like a hungry predator."

The trial court thus declared that rapes were committed as established by the evidence, each of which was attended by the qualifying circumstance of being committed by the common-law husband of the victim's mother, who is below eighteen (18) years old, under Article 335 of the Revised Penal Code, as amended by R.A. No. 7659. Accordingly, it rendered the judgment quoted at the beginning of this *ponencia*.

In his Appellant's Brief, CESAR submits this assigned error:

THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT OF THREE (3) COUNTS OF RAPE DESPITE THE FACT THAT HIS GUILT WAS NOT PROVED BEYOND REASONABLE DOUBT.

In support of his lone assignment of error CESAR argues that in respect of the November 1994 alleged rape, no adequate evidence was offered as even HELEN merely had a suspicion as to what had happened after she felt dizzy and slept immediately after drinking water offered by CESAR. As to the sexual intercourses in December of 1994 and January 1995, "there are ample evidence showing that the sexual intercourses between private complainant and accused-appellant... were done freely and voluntarily," as shown by the following circumstances: (1) HELEN, despite her age, made mention during the trial of the unusual and uncommon terms as "orgasm" and "withdrawal," thereby showing that she is quite knowledgeable on matters concerning sex, which could only be because of actual sexual encounters in the past; (2) her ability to describe CESAR's sexual organ, thereby indicating familiarity with it, which could only be possible as a result of her sexual encounters with CESAR; (3) her cooperation as CESAR put back her panty; and (4) the unreasonable delay in reporting the incidents, which was done only after the discovery of HELEN's pregnancy.

On the whole, CESAR asserts that the totality of the evidence for the prosecution confirms the fact that he and HELEN were, indeed, lovers.

In the Appellee's Brief, the Office of the Solicitor General asserts that since CESAR admitted having had sexual intercourse with HELEN, who was then below twelve (12) years old, then the former's conviction for rape is inevitable even if HELEN had given her consent to such acts.

We find no cogent reason to overturn the finding of the trial court on the culpability of CESAR.

The trial court convicted the appellant for three (3) counts of rape under Article 335 of the Revised Penal Code which reads:

Article 335. *When and how rape is committed* - Rape is committed by having carnal knowledge of a woman under any of the following