

## EN BANC

[ G.R. No. 129397, February 08, 1999 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
NORBERTO SOLEMA LOPEZ, ACCUSED-APPELLANT.**

### D E C I S I O N

#### PER CURIAM:

This Court is tasked, once again, to pass upon by way of automatic review the judgement of conviction imposing the death penalty<sup>[1]</sup> in an incestuous rape, said to have been perpetrated by the accused, NORBERTO LOPEZ Y SOLEMA, on his own daughter Christine Rose A. Lopez.

The accusatory portion of the indictment against the father of the complainant states -

"That sometime in September, 1996 at Barangay Carusocan Norte, municipality of Asingan, province of Pangasinan, and within the jurisdiction of this Honorable Court, the above-named accused being the father of minor CHRISTINE ROSE A. LOPEZ, by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have sexual intercourse with said CHRISTINE ROSE A. LOPEZ, a minor, 15 yrs. of age, against her will and without her consent, to her damage and prejudice."<sup>[2]</sup>

Lopez pleaded "not guilty" to the charge and stood trial.<sup>[3]</sup>

On 04 June 1997, following the reception of evidence presented by the prosecution and the defense, respectively, the Regional Trial Court of Pangasinan, Branch 46,<sup>[4]</sup> found Lopez guilty beyond reasonable doubt of the crime charged; it held:

"WHEREFORE, finding accused NORBERTO @ NESTOR LOPEZ guilty beyond reasonable doubt of the crime of rape aggravated by relationship and age, the Court sentences said accused to suffer the penalty of death, to be implemented in the manner provided by law. Accused is likewise ordered to pay victim Christine Rose Lopez the amount of P50,000.00 moral damages plus P20,000.00 as exemplary damages.

"Norberto Lopez Y Solema is hereby ordered committed to the National Bilibid Prisons fifteen (15) days from today. The Branch Clerk of Court is hereby ordered to transmit the records of this case to the Honorable Supreme Court of the Philippines after fifteen (15) days hereof.

"SO ORDERED."<sup>[5]</sup>

The Solicitor General sums up the prosecution's case against accused-appellant; viz:

"Complainant Christine Rose Lopez is the third child of the spouses appellant Norberto (Nestor) Lopez and Cresencia Aguilar Lopez, the others being Francis (21 years old), Enesto (19 years old) and Lovelyn (11 years old). At the time she testified, Christine was 15 years old (tsn, April 23, 1997, p. 11), on her third year of high school and belonged to the top ten of her class (tsn, May 14, 1997, p. 4).

"Sadly, on February 11, 1997, Christine stopped going to school, out of shame since her relatives (on her maternal side) and their barangay kagawad and neighbors came to know that she was raped by her own father (tsn, April 23, 1997, p. 13).

"Christine narrated that in September 1996, she and her family lived in their one-storey house at Carusocan Norte, Asingan, Pangasinan. As the house is quite small, Christine had to sleep in the sala together with her younger sister Lovelyn, and her parents. Her brother Francis has his own small nook, separated from them by an 'aparador' (Ibid., p. 17). Per their usual sleeping arrangement, Christine occupied the east side of the sala. Next to her is Lovelyn, then her mother and her father. Her father is about 1-1/2 to 2 meters away from her (Ibid., pp. 14-16).

"By force of habit, Christine's mother would usually get up at about 4:00 in the morning to cook breakfast for the family and feed the carabao at the back of their house (Ibid., p. 17).

"Sometime during the first week of September, 1996, at about 4:00 dawn, Christine was suddenly awakened by her father who touched and fondled her breast. Although it was still dark, she could see her father's form. Her father forcibly removed her short pants and panty (Ibid., pp. 19-20). She tried to resist by pushing her father away but she failed (tsn, April 24, 1997, p. 7).

"After divesting her of her short pants and underwear, her father removed his underwear and went on top of her (Ibid., pp. 7-8). He placed his sexual organ inside her sex organ and started a push-and-pull movement. After while, Christine felt him withdraw his organ and a hot substance spilled below her '*puson*'. He got a piece of cloth and wiped the hot substance off her '*puson*'. Her father put on his brief and short pants, stood up and went to the kitchen (tsn, April 23, 1997, pp. 20-21). At the time her father was doing that odious and dastardly act on her, her mother was at the back of their house feeding the carabao, as was her usual routine (Ibid., p. 22).

"This revolting incident came to light only on February 10, 1997. Christine and her mother had just arrived home after a day in the field. Her father was drunk and hurling invectives at them for all the people to hear. Her father was accusing her of carrying on with her brother, Enesto, an incestuous relationship (Ibid., pp. 25-26). Hearing such unsavory remarks, Christine fled to her Uncle George Aguilar's house and slept there (Ibid., pp. 26-27). The next morning (February 11, 1997), she

went to the house of her Aunt Adelina Delmenguez where barangay kagawad Tagarino found her (Ibid., p. 27). Kgd. Tagarino asked her of her father is doing something wrong to her and she affirmed it (Ibid., p. 28). She was taken to the police station, then to the hospital and thereafter to the Office of the Social Worker where her statement was taken (Ibid., pp. 29-30).

"Dr. Gloria Liberato, a physician with the Asingan Community Hospital, testified that she was the one who examined Christine Rose Lopez on February 11, 1997. She found three healed hymenal lacerations at 3:00, 6:00 and 8:00 o'clock positions in Christine's private part (tsn, April 22, 1997, p. 6). She opined that the lacerations were about 4 to 5 months old (Ibid., p. 8)."<sup>[6]</sup>

The defense presented the accused himself, who denied the accusation, and his sister, Candida Atuel, who asserted that the complaint had been merely instigated by their aunts and uncle against accused-appellant for his being a drunkard. The Public Attorney's Office, in its brief a drunkard. The Public Attorney's Office, in its brief for accused-appellant, had only this other matter to say of its evidence -

"In brevity, the accused testified that on the early morning of February 11, 1997, Brgy. Kagawad Tagarino went to his house with his son Ernesto and the latter confronted him about the incident that look pace a night ago wherein he allegedly suspected Ernesto and Christine, both his children, to have an incestuous relationship. There was no truth that he suspected them to have an incestuous relationship. Kagawad Tagarino in return asked him if he was doing something bad to his daughter which he denied. Kagawad Tagarino left together with his son Ernesto. Moments later Kagawad Tagarino returned with some civilian companions and he was brought to the police station at the municipal hall and there, he was incarcerated for allegedly raping his daughter Christine. He denied having raped his own daughter. (TSN, May 14, 1997, pp. 15-19)."<sup>[7]</sup>

In this appeal, the Public Attorney's Office assigned a single, *albeit* encompassing. Error supposedly committed by the trial court in its assessment of the evidence; to wit:

"The trial court committed grave error in apprehension of facts and appreciation of evidence which lead to its conclusion that the accused had raped his daughter."<sup>[8]</sup>

Countless of times, this Court has said that it will be guided in reviewing rape cases by the settled realities that an accusation for rape can be made with facility, and while the commission of the crime may not be easy to prove, it becomes even more difficult, however, for the person accused, although innocent, to disprove; that in view of the intrinsic nature of the crime of rape where only two persons normally are involved, the testimony of the complainant must always be scrutinized with great caution; and that the evidence for the prosecution must stand or fall on its own merits and should not be allowed to draw strength from the weakness of the evidence for the defense.<sup>[9]</sup> In an appeal from a judgment of conviction in these rape cases, the issue boils down, almost invariably, to the credibility and story of the victim and just as often the Court is constrained to rely on the observations given by

the trial court, with its vantage, not equally enjoyed by the appellate court, in the reception of testimony. It has thus since become doctrinal that the evaluation of testimonial evidence by the trial court is accorded great respect precisely for its chance to observe first hand the demeanor on the stand of the witness, a matter which is important in determining whether what has been said should be taken to be truth or falsehood.<sup>[10]</sup>

Like in previous cases, the Court in this instance has meticulously gone over the testimony of the complainant and only thereafter has it ultimately reached the inexorable conclusion that the act complained of did occur. Christine's testimony on the rape perpetrated against her is clear and one that could only have been narrated by a victim subjected to that sexual assault. Thus:

"Q Nevertheless could you tell us the reason why you were awakened from your sleep?

"COURT (intervenes):

"Q Who awakened you?

"A My father, sir.

"FISCAL MANAOIS:

How were you awakened by your father?

"A I was awakened because I felt my father beside me holding me, sir.

"Q What part of your body was held by your father?

"A From my breast down, sir.

"Q After holding you from your breast down, what else did your father do?

"x x x x x x x x x

"A He himself removed my shortpants and my panty, sir.

"FISCAL MANAOIS:

"Q What did you do when your father pulled your shortpants and panty?

"A I tried to fight him but I cannot fight him, sir.

"Q At the time your father went near you and pulled your shortpants and panty, where was your mother?

"A She went to the kitchen and cooked and fed the carabao at the back of our house.

"Q After your father was able to pull down your shortpants and

panty, what did he do?

"A He went on top of me, sir.

"Q After going on top of you, what did you do next?

"A He inserted his organ to my organ, sir.

"FISCAL MANAOIS:

May I place on record, you Honor, that the witness is crying.

"Q After your father was able to place his organ inside your organ, what did he do?

"A He started pushing up and down, sir.

"Q How many times, if you remember?

"A About ten (10) times, sir.

"Q After he made that push and pull motion, while he was on top of you for about ten times, what happened next?

"A He immediately pulled out his organ and hot substance spilled below my stomach (puson).

"Q After that what happened?

"A He got a cloth and wiped what was spilled on my puson, sir."  
[11]

Christine has refused to be shaken by the probings on cross-examination by defense counsel; thus:

"ATTY. BUMACOD:

"Q When you were awoken what was your position when your father went near beside you?

"A I was facing upward, sir.

"Q And you claimed that your father held your breast down, when your father held your breast down you did not react, isn't it?

"A I fought and resisted.

"Q What do you mean you fought?

"A I pushed him away but I cannot.

"Q Madam Witness do you recall . . . I withdraw the question. When your father held your breast down and you said you fought what happened next?