

EN BANC

[G.R. No. 121205-09, June 29, 1999]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CESAR LARENA Y SARDONIDO, ACCUSED-APPELLANT.

D E C I S I O N

YNARES-SANTIAGO, J.:

A harrowing tale of bestial despoliation unfolds as a young woman, in the threshold of her teens, accuses her own father of having five (5) counts of forcible sexual intercourse with her. Such lustful incest can only merit, if not the penalty of death, a life behind bars for the rest of the offender's mortal life.

Herein accused-appellant Cesar Larena y Sardonido was meted the supreme penalty of death by the Regional Trial Court of Zamboanga, Branch 16, for four of the five (5) counts of rape committed against his daughter, Dolores Larena y Casiñas, and *reclusion perpetua* for the rape committed prior to the effectivity of Republic Act No. 7659.^[1]

Hence, this automatic review.

Except as to the dates of the commission of the crimes charged, that is, December 5, 1993 in Criminal Case No. 12940,^[2] January 20, 1994 in Criminal Case No. 12941,^[3] February 10, 1994 in Criminal Case No. 12942,^[4] March 12, 1994 in Criminal Case No. 12943^[5] and April 19, 1994 in Criminal Case No. 12944,^[6] the identical complaints allege as follows:

"The undersigned, under oath, hereby accuses Cesar Larena y Sardonido of the crime of rape, committed as follows:

That on or about December 5, 1993 in the City of Zamboanga, 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 carnal knowledge of the undersigned, a girl 13 years of age, against her will.

Contrary to law."

The facts as culled from the records are as follows.

Dolores Larena y Casiñas was born on April 3, 1981. She is the eldest in a brood of eight of herein accused-appellant Cesar Larena, a *tubâ* gatherer, and Teresa Casiñas. Two of Dolores' siblings, Pedro and Cesar, Jr., died in infancy. Pedro died at birth while Cesar Jr. died of tetanus infection on December 7, 1993, when he was a month old.

When Teresa was pregnant with Dolores, the couple had a quarrel and accused-appellant left their house. Accused-appellant returned when Dolores was four (4) months old.^[7] He married Teresa in 1984 when they already had two children. There is no doubt, however, that Dolores is accused-appellants' daughter with Teresa since he testified in court that Dolores is his daughter and the blood running in her veins is also his blood.^[8]

Dolores and her family live in Cawit, Zamboanga City. Their house is located near a mangrove and is made of coconut lumber, measuring 10 by 18 feet, with two bedrooms and no living room. The floor of the house is elevated from the ground by about five steps. It has a kitchen without walls elevated by about three steps from the ground. There is a fluorescent lamp between the two bedrooms and another one in the kitchen. Accused-appellant and his wife, together with their two younger children, Rizal, 5, and Maricor, 3, sleep in one of the bedrooms while Dolores, Maricel, 12, Mary Ann, 10, and Milagros, 9, sleep in the other bedroom.

Dolores was only twelve years and eight months old when she was allegedly raped by her father for the first time on December 5, 1993. She is described by the trial court as a "puny, homely, timid girl" with a low and barely audible voice. She stands four feet and six inches and weighs thirty one (31) kilos only.^[9] At the time of the trial, she was enrolled by the Department of Social Welfare and Development (DSWD) at the Don Pablo Lorenzo Memorial High School, Sta. Maria, Zamboanga City as a first year high school student.

Dolores testified that on the evening of December 4, 1993, she and her mother Teresa, kept watch over Cesar Jr. who was confined at the Brent Hospital for tetanus infection. The following morning, or on December 5, 1993, she went home to get clothes to bring back to the hospital. While she was inside her parents' room, at around 8:00 o'clock in the morning, her father, herein accused-appellant Cesar Larena, suddenly entered, embraced her from behind and kissed her on the cheek. Sensing her anxiety to get out from the room, accused allegedly held her hands and asked her where she was going. Dolores replied that she wanted to leave the room but accused told her not to go out. He then pulled her and pushed her down on the floor. When Dolores was already lying face down on the floor, accused removed her panties. He then took off his own short pants and underwear, went on top of her, forcibly spread her legs sidewise and inserted his penis into her vagina.

While her father was trying to insert his penis into her vagina, Dolores pleaded, "Do not do that, Pang."^[10] Her plea, however, fell on deaf ears as her father told her, "I will have sex with you; but don't tell your mother."^[11] It took some time for accused-appellant to insert his penis inside Dolores' vagina because the latter was a virgin.^[12] When he was able to penetrate her, accused-appellant moved up and down while holding her shoulders.^[13] Then, he pulled out his penis and ejaculated outside Dolores' vagina.^[14] After satisfying his lust, accused-appellant warned Dolores that if she will report the incident to her mother, he will kill all of them. Accused-appellant made Dolores stand up but the latter could only sit down because she felt weak from the overwhelming pain in her belly, legs and vagina. She also saw blood coming out of her vagina. Wary of her father's threat, she did not tell her mother about the incident when she went back to the hospital.

On January 20, 1994, at around midnight, while Dolores was sleeping in the room she shared with her sisters, Maricel, Mary Ann and Milagros, she woke up to find her father beside her. He lay down beside her, covered himself and Dolores with the blanket and removed her shorts and panties. While she was struggling to pull her panties up, accused-appellant tried to place his legs over her. When he succeeded in removing her panties, he also removed his underwear and inserted his penis into her private part. The hapless girl could not even shout for help even if she wanted to because accused-appellant told her that if she will shout, he will kill them all.^[15] After having sexual intercourse with her, accused-appellant returned to his room. Dolores did not tell her mother about the incident, fearing her father's warning that he would kill all of them if she reports to her mother.

Again, on February 10, 1994, at around midnight, while Dolores was sleeping in the room she shared with her sisters, she woke up and saw that her father was already inside the room sitting beside her. She tried to stand up and leave the room but her father held her and prevented her from going out. He forced her to lie down and told her that he will have sexual intercourse with her. He warned her that if she will report the incident to her mother, he will kill all of them. He proceeded then to take off her panties and thereafter his briefs. Accused-appellant succeeded in raping Dolores but as he was about to ejaculate, he pulled out his organ and ejaculated outside her vagina since he did not want to impregnate her.^[16] His bestial lust having again been satisfied, accused-appellant put on his briefs and returned to his own room. Again, for fear of her father's threats to kill all of them, Dolores kept her silence.^[17]

At around midnight of March 12, 1994, Dolores woke up from her sleep because mosquitoes were biting her. She then saw her father inside the room sitting beside her. Accused-appellant told her of his intention to have sexual intercourse with her but Dolores, this time, said that if he will insist in doing so, she will report it to her mother. Accused-appellant merely reiterated his threat that he will kill her if she does. He removed her panties and then his briefs and, for the fourth time, succeeded in having sexual intercourse with her. As in previous instances, accused-appellant took great care in not ejaculating inside her but outside, on the mat and blanket.^[18]

On April 19, 1994 at around 4:30 in the morning, accused-appellant woke up Dolores and told her to boil water in the kitchen. While Dolores was putting the kettle on the stove, accused-appellant, who was sitting on a coconut grater, pulled her towards him. At that time, he was wearing only a shirt and briefs while Dolores was wearing a t-shirt and a skirt. Accused-appellant then removed her underwear, lifted her and made her sit on his lap with her back towards him. He put out his penis from the side of his briefs, separated her legs and inserted his penis inside her vagina. While she was sitting on her father's lap with his penis inside her vagina, her father held her and moved her body up and down. At this point, her mother went down to the kitchen and saw them. She pulled Dolores from her father's lap as the latter made Dolores stand up. Accused-appellant himself stood up from the coconut grater he was sitting on and hurried to a nearby table.^[19]

Complainant's mother, Teresa Larena, testified that when she went down to the kitchen at around 5:00 o'clock in the morning of April 19, 1994, she saw her

husband sitting on a coconut grater with his erect penis exposed. Her daughter, Dolores, was sitting on Cesar's lap with her skirt raised and her back towards him. When accused-appellant saw Teresa, he pushed the complainant away from him and put his penis inside his brief. Teresa, shocked beyond belief, was not able to say anything. After some prodding from her mother, when accused-appellant was no longer around, complainant revealed that her father had sexual intercourse with her five times but she never revealed it to anyone because of accused-appellant's threat to kill all of them.^[20]

Dolores' fear of accused-appellant is understandable. Once when she was in Grade II, her father spanked her, lifted her and then threw her on the floor as a result of which she got sick. He whipped her many times and sometimes kicked her.^[21] He used a piece of wood and bamboo stick to beat her on the thigh and legs. According to complainant, accused-appellant also used to spank his other daughters including his son and he used to hit his wife, Teresa, whenever they quarrelled. Teresa never fought back because accused-appellant threatened to hack her with a scythe.^[22]

After Dolores revealed to her mother the abuses committed against her by accused-appellant, she was advised not to stay in their house anymore. Dolores went to the house of her teacher, Mrs. Erlinda Filoteo, and stayed there for two weeks before she returned home.

On April 24, 1994, Dolores, accompanied by her mother and uncle, lodged a complaint at the Western Police Station in Ayala, Zamboanga City, alleging that her father sexually abused her five times, specifically in the months of December 1993, and January, February, March and April 1994. Her statement was taken at the police station. Thereafter, accused-appellant was detained at said station.

On April 25, 1994, Dolores was examined by Dr. Rodolfo Valmoria, Regional Chief, PNP Crime Laboratory Service Regional Unit 9, Zamboanga City "(t)o determine the presence or absence of physical virginity." Dr. Valmoria's medical report revealed the following:

FINDINGS:

Absence of pubic hair. Labia majora full, convex and gaping. Labia minora light brown in color and presenting in between is a fleshy type hymen with deep healing lacerations at 3, 4, 9, 12 and 6 o'clock positions.

Vaginal canal is narrow moderately admits index finger.

Abdomen is flat and tight, no injuries noted.

Breasts hemispherical in shape, light brown aerolae and nipples and no secretion or injuries.

Gram staining revealed negative for sperm cells and pus cells.

CONCLUSION:

Subject is of non-virgin state physically.^[23]

Accused-appellant Cesar Larena, in the meantime, was released on April 26, 1994 after having been detained for 24 hours. On May 5, 1994, Teresa and Dolores Larena filed an affidavit of desistance, withdrawing the complaint for 5 counts of rape filed by Dolores against her father.^[24] Consequently, the complaint, which was then pending before the Office of the City Prosecutor, was dismissed.

On May 18, 1994, Dolores executed an affidavit before Atty. Jose Manuel S. Mamauag of the Commission on Human Rights, Regional Field Office No. IX, Zamboanga City reiterating her complaint against her father. Dolores stated that she was forced to sign the affidavit of desistance on May 5, 1994 because she was warned that should she pursue her complaint against her father, nobody will take care of her and her younger siblings.^[25] Moreover, she was desperately scared of her father who used to inflict physical violence on her and the rest of the family. Dolores since then lived at the Lingap Center of the Department of Social Welfare and Development (DSWD) at San Roque, Zamboanga City.

On October 29, 1994, five (5) criminal complaints for rape, all signed by Dolores, were then filed in court against herein accused-appellant Cesar Larena y Sardonido. He was arrested and detained on the same day and no bail was recommended for his temporary liberty in all cases.

Herein accused-appellant categorically denied having sexual intercourse with his daughter Dolores. He denied having raped Dolores on December 5, 1993. He said he could not possibly do it "because the blood in her veins are also my blood."^[26] He also said that it was not possible for him to have sneaked inside the bedroom where Dolores was sleeping at around midnight of January 20, 1994 and had carnal knowledge against her will because the room was locked and there is no way he could enter it.

Accused-appellant also denied having sexual intercourse with Dolores on February 10, 1994 and on March 12, 1994 in the middle of the night inside the bedroom where she was sleeping with her sisters because "there is a lock" and because Ma. Dolores is his daughter and he could not do it to her.^[27] Accused-appellant averred that at around 5:00 a.m. of April 19, 1994, Dolores was carrying firewood in the kitchen when she slipped and fell on his lap while he was sitting on a coconut grater. As he was helping his daughter stand up, his wife happened to see them.^[28] Accused-appellant admitted wearing only his briefs at that time.^[29]

Accused-appellant insisted that he knew of no reason why his daughter would accuse him of the crime of rape. He contended that it is actually his wife who is trying to poison the mind of herein victim against him. He recalled that he had a misunderstanding with his wife on April 24, 1994, the very day he was arrested. On that day, he threw a "Petromax" gaslamp and ruined it beyond repair so his wife threatened to find a way to put him in jail.^[30] On October 21, 1994, he again had a quarrel with his wife when he bet P30.00 in a "wahoy" game. His wife abandoned him, taking with her all their 6 children while accused-appellant was out gathering *tubâ*.^[31] She returned on October 28, 1994, accompanied by three policemen who arrested him and brought him to the Central Police Station, the City Prosecutor's Office, and finally to the city jail where he was detained.^[32]