

EN BANC

[G.R. Nos. 131861-63, August 17, 1999]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
BENJAMIN LIM Y BELTRAN, ACCUSED-APPELLANT.**

D E C I S I O N

PER CURIAM:

This is an appeal from the decision,^[1] dated June 5, 1997, of the Regional Trial Court, Branch 17, of Davao City, finding accused-appellant Benjamin Lim y Beltran guilty of three counts of rape and sentencing him to *reclusion perpetua* for the rape committed in 1993 and to death for the two rapes committed in 1994 and 1996. Accused-appellant was further ordered to indemnify the complainant, Jovelyn Morada, P30,000.00 for each rape committed against her.

Complainant Jovelyn Morada is the daughter of accused-appellant's common-law wife Vivian Cebrian. Her birth certificate (Exh. B),^[2] shows she was born on April 23, 1981 out of the marriage of Vivian Cebrian and Jose Morada, Sr.

Upon her complaint, three informations for qualified rape were filed against accused-appellant in the Regional Trial Court of Davao City where the cases were docketed as Criminal Case Nos. 37,372-96, 37,373-96, and 37,374-96. The informations alleged:

Criminal Case No. 37,372-96

"The undersigned accuses the above-named accused of the crime of RAPE, under Art. 335, in relation to Art. 344 of the Revised Penal Code upon the instance of complainant Jovelyn C. Morada whose affidavit is hereto attached and form[s] part of this information, committed as follows:

"That sometime in the year of 1993, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, being a stepfather of the complainant the common-law husband of her mother, by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge with the complainant, who was then only 12 years old, against her will.

"Contrary to law."^[3]

Criminal Case No. 37,373-96

"The undersigned accuses the above-named accuse[d] of the crime of RAPE, under Art. 335, in relation to Art. 344 of the Revised Penal Code, upon the instance of complainant Jovelyn C. Morada whose affidavit is

hereto attached and form[s] part of this information, committed a follows:

"That on or about August 18, 1996, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, being step-father of the complainant, the common-law-husband of her mother, by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge with the complainant, who is only 15 years old, against her will.

"Contrary to law."^[4]

Criminal Case No. 37,374-96

"The undersigned accuses the above-named accused of the crime of RAPE, under Art. 335, in relation to Art. 344 of the Revised Penal Code upon the instance of complainant Jovelyn C. Morada whose affidavit is hereto attached and form[s] part of this information, committed as follows:

"That sometime in the year of 1994, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, being step-father of the complainant, the common-law-husband of her mother, by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge with the complainant, who was then only 13 years old, against her will.

Contrary to law."^[5]

To all the charges against him accused-appellant pleaded not guilty,^[6] whereupon the cases were jointly tried.

The prosecution's main witness was complainant Jovelyn Morada. She testified^[7] that on August 19, 1996, at around three o'clock in the morning, while she was asleep in their house in Panacan, Davao City, she was awakened by accused-appellant. She found herself removed from the place where she slept beside her younger sister. Jovelyn said she tried to break from accused-appellant's hold but she could not free herself. Nor could she scream as accused-appellant threatened to kill her. Describing how she had been raped, Jovelyn said that accused-appellant pulled down her skirt and then her panties and then inserted his penis in her vagina. Accused-appellant left the room shortly before Jovelyn's sister woke up and turned on the light, but not after he was through with complainant.

According to Jovelyn, accused-appellant also raped her in the same house in 1993 and 1994. Both rapes, like the one committed in 1996, were committed at dawn. When she was first raped by accused-appellant, Jovelyn did not tell her mother because she was afraid of her. However, when accused-appellant raped her for the second time, Jovelyn mustered enough courage to tell her mother, but the latter did not believe her. When she was raped for the third time on August 19, 1996, Jovelyn again told her mother. This time, according to Jovelyn, Vivian Cebrian believed her.

SPO1 Steven Batacan was the desk officer at the Panacan station where Jovelyn

filed a complaint for rape against accused-appellant at 7:10 in the evening of August 19, 1996.^[8] SPO1 Batacan testified^[9] that Jovelyn was accompanied by her aunt Esterlita Cebrian. When he asked Jovelyn where her mother was, Jovelyn answered that her mother was attending to her business in Panacan, Davao City. Based on Jovelyn's complaint, a team of policemen arrested accused-appellant.

Vivian Cebrian, the victim's mother, testified^[10] that Jovelyn was the youngest of her six children by her husband, Jose Morada, Sr., whom she married in 1968. After separating from her husband, she met accused-appellant in Manila in 1981. She later moved to Butuan City, Agusan del Norte and then to Davao City in 1990 but her relationship with accused-appellant, who was also married, continued. As a result of their relationship five children were born, the last of whom was dead at birth.

Regarding the charges of rape brought by her daughter against her common-law husband, Vivian claimed that Jovelyn told her about her disgrace only on August 19, 1996. Jovelyn told her that accused-appellant touched her (Jovelyn), but Vivian said "I do not know what part of her [Jovelyn's] body" had been touched. She said she told her daughter that she would confront accused-appellant when she returned home, and that if she found that what Jovelyn had said was true, she would leave accused-appellant. Vivian said she was going to confront accused-appellant after coming home that day, but the police had already arrested accused-appellant before she could do so.

Esterlita Cebrian is the wife of Vivian's brother and the aunt of Jovelyn. She testified^[11] that on August 19, 1996 Jovelyn told her that she had been raped by accused-appellant, but her mother did not believe her. Esterlita said she went to see Vivian to inform her of what had happened to Jovelyn, but Vivian also refused to believe her. Esterlita and Jovelyn, therefore, went to the police station without Vivian and made a report.

Milagros Basmayor, social worker, interviewed Jovelyn after she had filed the complaint against accused-appellant. According to Ms. Basmayor,^[12] she was told by Esterlita that Jovelyn's mother did not believe her daughter thinking that Jovelyn was "not mentally fit." Ms. Basmayor said she found that this was not the case.

Dr. Danilo P. Ledesma, medico-legal officer of Davao City, conducted a medical examination of Jovelyn on August 20, 1996. His findings are as follows:

GENERAL PHYSICAL EXAMINATION:

Height: 149.0 cms. Weight: 41.0 kgs.

Fairly nourished, normally developed, conscious, coherent, cooperative, ambulatory subject.

Breasts: Fully developed, hemispherical, firm. Areolae, light brown, 3.5 cms. in diameter. Nipples, light brown, 0.8 cm. in diameter.

No extragenital physical injuries noted.

GENITAL EXAMINATION:

Pubic hair, fully grown, moderate. Labia majora and minora, gaping. Fourchette, lax. Vestibule, pinkish, smooth. Hymen, thick, tall, intact, distensible. Hymenal orifice, annular, admits a tube, 2.5 cms. in diameter. Vaginal walls, tight. Rugosities, prominent.

CONCLUSIONS:

1.) No evident signs of extragenital physical injuries noted on the body of the subject at the time of examination.

2.) Hymen, intact, but distensible and its orifice, wide (2.5 cms. in diameter), as to allow complete penetration by an average-sized male organ with erection without causing hymenal injury.

REMARKS: Semenology: Negative for spermatozoa.^[13]

Dr. Ledesma explained^[14] that women with the kind of hymen ("thick, tall, and x x x elastic") which the victim Jovelyn Morada has can get pregnant and give birth to a child without laceration of her hymen. He also said that the absence of sperm in the vaginal canal was not a sign that there was no sexual intercourse as the sperm could have been washed.

The defense then presented its evidence. Accused-appellant claimed he was impotent and could not have raped Jovelyn. He testified^[15] that when he was 55 years of age, he had an accident, as a result of which his hips were broken and he could no longer have an erection. According to accused-appellant, in 1985 he separated from his first wife and decided to live with the victim's mother, Vivian Cebrian, by whom he has four children. He said that in 1990 he fell from a jeep and became impotent. Thereafter, he lived in Santiago, Agusan del Norte and only visited Vivian and her children in Panacan, Davao City.

After testifying for the prosecution, Vivian Cebrian again took the witness stand, this time as witness for the defense. She testified^[16] that she earned a living selling fish in the public market in Panacan, Davao City. She was in the market from 4:30 to 6:00 a.m., after which she usually stayed home to take care of her children. This had been her routine since 1992. Since that year, her common-law husband, herein accused-appellant, had been living in Santiago, Agusan, del Norte. Accused-appellant visited her in Davao City once or twice every three months. Vivian testified that accused-appellant could no longer have an erection as a result of an accident he had in 1992. She said she tried to "masturbate his sex organ, but it will not stand." She said they had a child, Ianbe Cebrian Lim, born on May 5, 1992, but that was before accused-appellant had an accident in July, 1992. She said accused-appellant did not seek medical treatment for his condition because they could not afford the cost.

Asked why she did not help her daughter Jovelyn in filing this case, Vivian answered she did not believe the charges were true. She claimed that her sister-in-law and Jovelyn did not consult her in filing the charges against accused-appellant.

Vivian Cebrian's daughter by accused-appellant, Richie Lim, was the next witness. Richie testified^[17] that Jovelyn had a boyfriend named Rico and that, one time, she saw them embracing and kissing each other. She said the two eloped and stayed in the house of Rico's parents for two days before Jovelyn was fetched by her (Richie's) parents. Jovelyn was severely scolded. Resenting the scolding, she charged accused-appellant with rape.

Accused-appellant agreed to be examined to determine his claim that he was impotent. Dr. Gene L. Gulanes, the examining physician, found the following:

"GENERAL PHYSICAL EXAMINATION:

Fairly nourished, normally developed, conscious, coherent, cooperative, ambulatory subject with the following vital signs: BP= 200/110 mmHg. PR= 117 beats/min. RR= 28/min.

Ht.= 156.0 cms. Wt= 54.0 kgs.

GENITAL EXAMINATION:

Pubic hair, fully grown, penis measuring 1 inch, circumcised, flaccid, soft, after thirty (30) minutes of stimulating his penis, no erection was noted.

CONCLUSIONS:

- No erection was noted
- Essential Hypertension

This certification is issued in connection with his/her application for whatever purpose it may serve.

Davao City, Philippines, 4/22/97.

[Signed]
BENJAMIN LIM

[Signed]
GENE L. GULANES, M.D.
MEDICAL OFFICER VI"^[18]

Dr. Gulanes testified^[19] that the stimulation of the penis to produce an erection was done manually. He said that accused-appellant did not show him any medical certificate of the accident allegedly suffered by him in 1990. Dr. Gulanes said that it was possible for accused-appellant to have had sexual intercourse from 1992 to 1996 and that as "impotency is usually related to emotional and psychological [problems]," such could not be determined by mere stimulation for 30 minutes of accused-appellant's sexual organ.

Milagros Basmayor, social worker, was presented as witness on rebuttal. She produced a certified true copy of a Certificate of Fetal Death (Exh. F)^[20] of Baby Boy Cebrian Lim delivered on October 17, 1994 at the Davao Medical Center. The boy's parents are listed in the certificate as "Benjamin Beltran Lim" and "Vivian Morgado [sic] Lim." Basmayor testified^[21] that she came to know that the baby was stillborn from Jovelyn, who said she and her aunt took Vivian to the Davao Medical