

## THIRD DIVISION

[ G.R. Nos. 109396-97, July 17, 1996 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMEO OARGA Y SISON, ACCUSED-APPELLANT.**

### D E C I S I O N

**NARVASA, C.J.:**

This case -- at least, the prosecution's version of it -- tells a story made all too familiar by what seems to have become the alarming frequency of its occurrence: of a young girl fallen victim to the lewdness of one who in relation to her stood in *loco parentis*, if not in strict law, by all norms of acceptable conduct.

By her account, Lorelie Trinidad's ordeal started in the evening of May 20, 1990 while asleep in the home she shared with her mother, Josephine Trinidad, three siblings, and appellant Romeo Oarga, her mother's "live-in partner" (paramour). A fan-knife (*balisong*) tucked at his waist, Oarga woke her up and ordered her to shed her clothes and panties, at the same time removing his trousers. Then he made her lie down on the cement floor and, placing his knife by her side, went on top of her and forced himself into her. The pain Lorelie felt at the forcible penetration caused her to hold on convulsively to Oarga's waist and to plead with him to stop. Heedless of her pleas, he threatened her with the knife, bit her nipples and kissed her on the neck and lips. Then, evidently satiated, Oarga stood up and told her to put on her clothes, go back to sleep and not to tell her mother what happened. Lorelie felt something sticky on her thigh which she wiped off. She was not yet twelve (12) at the time.<sup>[1]</sup>

That shattering experience was repeated barely a fortnight later, on June 3, 1990, this time while Lorelie was watching television with her brother and sisters on the second floor of their house. Oarga summoned all of them downstairs. There, he told her brother and sisters to go back upstairs, but Lorelie to stay behind. It was about seven o'clock in the evening and her mother was out, engaged in her customary work as a laundry woman. Oarga put out the light, told Lorelie to lie down on the floor, and then sexually violated in much the same way as on the previous occasion.

<sup>[2]</sup>

Lorelie left her house shortly afterwards, moving to Lumban, Laguna. It was not until December 1, 1990, however, that she wrote her mother to tell her that she had left home because she had been repeatedly abused by Oarga; she had not revealed this earlier because he had threatened to kill her; and she was afraid it might happen again.<sup>[3]</sup>

Her mother thereupon sought out Lorelie and brought her to the hospital for examination, where it was forthwith confirmed that Lorelie was no longer a virgin. Mother and daughter then repaired to the police station in Sta. Cruz, Laguna to

report Romeo Oarga's rapes and give their sworn statements about these. Josephine Trinidad filed in Lorelie's behalf two complaints for rape against Romeo Oarga before the Municipal Trial Court of Sta. Cruz, Laguna, which were docketed as Criminal Cases Numbered SC-4340 and SC-4341.<sup>[4]</sup> Only two(2)complaints for rape were filed against Romeo Oarga, notwithstanding Lorelie's claim that she had been sexually assaulted ten times, more or less.<sup>[5]</sup>

Romeo Oarga having entered a plea of not guilty on both counts, a joint trial of the cases ensued. On February 26, 1993 the Regional Trial Court, Sta. Cruz, Laguna (Judge Fernando M. Paclibon, Jr. presiding) rendered a decision finding Oarga guilty beyond reasonable doubt in the two cases, the dispositive portion whereof reading as follows:

"WHEREFORE, IN THE LIGHT OF ALL THE FOREGOING, the court finds the accused Romeo Oarga guilty beyond reasonable doubt as principal for the crime of rape defined and punished under Art. 335 of the Revised Penal Code and hereby imposed upon him as follows:

In Criminal Case No. SC-4340, to suffer the penalty of RECLUSION PERPETUA and to pay jointly the offended party Lorelie Trinidad and complainant-mother Josephine Trinidad the sum of P50,000.00 as MORAL DAMAGES, P25,000.00 as EXEMPLARY DAMAGES and to pay the cost.

In Criminal Case No. SC-4341, to suffer the penalty of RECLUSION PERPETUA and to pay jointly the same offended party and the same mother-complainant the sum of P50,000.00 as MORAL DAMAGES and P25,000.00 as EXEMPLARY DAMAGES and also to pay the cost.

SO ORDERED."<sup>[6]</sup>

Romeo Oarga has appealed, and before this Tribunal now seeks acquittal attributing to the Court a quo the following errors:

I. \*\* IN GIVING WEIGHT AND CREDENCE TO THE TESTIMONY OF PRIVATE COMPLAINANT LORELIE TRINIDAD; and

II. \*\* IN FINDING \*\* (him) GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE ON TWO (2) COUNTS.

The defense contends that Lorelie Trinidad should not be believed; her testimony is not credible and not in accord with human experience. It argues that when Romeo Oarga sexually assaulted Lorelie for the first time, "she did not try to call for help or shout to attract people nearby;" when she was raped on May 20, 1990, she did not "scream or call the attention of the persons sleeping upstairs;" and when she was again raped by appellant on June 3, 1990, she did not "try to resist the advances made by him" nor scream to "call the attention of the ten (10) people upstairs."

The contention is without merit. When a female under twelve years of age is the victim of rape, it is utterly of no consequence that no force or intimidation is used by the rapist, or that his prey is not deprived of reason or rendered unconscious. It suffices that there is carnal knowledge of the latter, without more. This is apparent from the terms of Article 335 of the Revised Penal Code, viz.:<sup>[7]</sup>

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

1. By using force or intimidation;
2. When a woman is deprived of reason or otherwise unconscious; and
3. *When the woman is under twelve Years of age, even though neither of the circumstances mentioned in the two next preceding paragraphs shall be present."*

There is no dispute of the fact that Lorelie was born on November 4, 1978, this being evidenced by her Certificate of Live Birth, and hence, she was under twelve at the time of the commission of both rapes: May 20, 1990 and June 3, 1990. When Romeo Oarga had carnal knowledge of her on said dates, he committed two felonies of rape, even if on neither occasion he had used force or intimidation or Lorelie been "deprived of reason or otherwise unconscious." That there was no struggle or outcry from Lorelie is not therefore exculpatory or even mitigating.

The fact is that Romeo Oarga, who indisputably had moral dominance over Lorelie, standing as he did in the position of surrogate parent, did use force and intimidation in initiating and consummating his lascivious attacks against her - a circumstance that this Court finds amply proven by the evidence on record. He threatened her with a fan-knife (*balisong*) all the while he was about satisfying his lewd desires. To an innocent eleven-year old girl, that threat must have engendered a deep-seated fear that if she dared resist or try to frustrate Romeo Oarga, she, her brothers and sisters and even her mother would be killed. Intimidation is addressed to the mind of the victim and is, therefore subjective. Its presence cannot be tested by any hard-and-fast rule, but must be viewed in the light of the victim's perception and judgment at the time of the crime. The workings of the human mind under emotional stress are unpredictable; people react differently in such situations: some may shout; some may faint; some may be shocked into insensibility; others may openly welcome their intrusion.<sup>[8]</sup>

But such force or intimidation, as repeatedly pointed out, is not a factor in determining the existence of rape in the two cases at bar, where mere sexual conjugation suffices to give rise to the crime, the victim being under twelve. Such force or intimidation would serve merely to aggravate the liability for the offense.

After examination and analysis of the evidence, the Court agrees with the Trial Tribunal's assessment that superior credibility should be accorded to Lorelie's testimony. Her account of the concupiscent invasion of her person is simple, straightforward, believable, viz.:<sup>[9]</sup>

**"Q.** Now on, May 20, 1990, do you recall of any unusual incident that transpired or happened between you and herein accuse in the town of Santa Cruz?

**A.** Yes, sir. I was sleeping with my two sisters and one brother when he awakened me.