

## FIRST DIVISION

[ G.R. Nos. 98121-22, July 05, 1996 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMEO SALAZAR Y RAPIS, ACCUSED-APPELLANT**

### D E C I S I O N

**HERMOSISIMA, JR., J.:**

This Court is called upon to review the conviction of appellant on two complaints for rape filed before the Regional Trial Court, Branch 60, Cadiz City, ordering appellant Romeo Salazar to suffer the penalty of *reclusion perpetua* and to pay the victim the amount of P30,000.00 as indemnity for each rape.<sup>[1]</sup>

The accusatory portion of the first complaint alleges-

"That on or about 10: 00 o'clock (sic) in the evening of April 2, 1989 at So. Macabal-Ong, Brgy. Magsaysay, Cadiz City, Negros Occidental, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with violence, force and intimidation and with the use of bladed weapon, did then and there, willfully, unlawfully and feloniously have carnal knowledge with complainant Josephine Lopez y Sepriano, single, 12 years old, against her will."<sup>[2]</sup>

A second complaint alleging the same facts, averred that the complainant was also raped in the evening of April 3, 1989.<sup>[3]</sup> When arraigned, appellant entered the plea of not guilty to both charges. Upon the order of the trial court, with the conformity of the parties, the cases were tried jointly.

The conviction by the trial court rested on its findings of fact hereunder summarized.

Josephine Lopez y Sepriano was 12 years and six months old when the alleged rapes were committed. She resided at Sitio Macabal-Ong, Brgy. Magsaysay, with her younger sisters (Hazel and Bobit); her elder brother (Insik); her mother Rosalia Lopez, as well as with Romeo Salazar herein appellant, the common-law-husband of her mother.<sup>[4]</sup> Appellant provided for the support and education of Josephine, her elder brother and her two younger sisters.<sup>[5]</sup>

Josephine testified that on April 2, 1989 she, together with her younger sisters, were left under the care of appellant,<sup>[6]</sup> because her mother had gone to Sitio Talabaan, Cadiz City. That evening, Josephine slept on the floor upstairs, together with her younger sisters. At around 10:00 in the evening, she was roused from deep sleep when she felt someone lying beside her. The person, who turned out to be

appellant Romeo Salazar, then pointed a knife at her neck and threatened her not to tell her mother as to what he intended to do to her, otherwise he will kill her. Thereafter, appellant removed her panty, inserted his organ into her genital organ and executed push and pull movements. Josephine bled and, as she felt pain, cried. After appellant consummated the act, he again admonished the victim not to relate to her mother what had transpired. Appellant then went downstairs and Josephine went back to sleep.<sup>[7]</sup>

In the evening of April 3, 1989, Josephine slept upstairs with her younger sisters as usual. At around eight o'clock in the evening, appellant went back to his victim and, again, intimidating her with a knife, had sexual intercourse with her. She still felt pain and so, she cried in the process. Appellant, threatened her again not to report to her mother.<sup>[8]</sup> Josephine admitted that she neither screamed nor protested appellant's two sexual attacks because of fear.<sup>[9]</sup>

The following day, April 4, 1989, when the victim's mother, Rosalia, returned home, Josephine immediately reported to her that appellant raped her during the past two nights. After considering the consequences if the rape be publicly known, Josephine and Rosalia reported the incident to the police authority on April 17, 1989.

Subsequently, on the same date, Josephine, accompanied by her mother, went to the City Health Office at Cadiz City for physical examination. There, she was examined by Dr. Grace M. Doromal, Assistant City Health Officer. Dr. Doromal issued a medico-legal report which stated that:

"No outward signs of physical injuries like hematomas or abrasions.

Internal examination:

Vulva well coaptated, with moderate vaginal discharge noted whitish and non-foul smelling, old hymenal lacerations at 3° clock, 6° clock, 9° clock and 10° clock positions and hymen retracted, introitus admits 2 fingers with ease, no bleeding noted, no tenderness."<sup>[10]</sup>

Dr. Doromal noted that the "old hymenal lacerations" could have been inflicted on or about two (2) weeks before she examined Josephine on April 17, 1989 and could have been caused by repeated sexual penetration.<sup>[11]</sup>

Appellant, on the other hand, admitted having engaged in sexual intercourse with the victim in the evenings of April 2 and 3, 1989. However, he testified that the sexual act was consummated with the consent of the victim.

Appellant claimed that, in the evening of April 2, 1989, he went home at about 9:00 in the evening. He saw Josephine reading a book while her sisters and brother were already sleeping. He allegedly suffered pain in his stomach and so, he requested Josephine to get a glass of hot water, to which she complied. When Josephine went back to bed, he lay down beside her. Then, he hugged and they engaged in the sexual act.

The following day, Josephine prepared breakfast and had even asked money from him for expenses for food before he left for work.<sup>[12]</sup>

In the evening of the same date, appellant again slept with his step children. Josephine transferred beside him because he held her hands. They then engaged in sexual intercourse for fifteen (15) minutes while the rest of the children were asleep.<sup>[13]</sup>

In this appeal, appellant interposes a lone assignment of error, to wit:

"THE TRIAL COURT ERRED IN GIVING CREDENCE (sic) THE TESTIMONIES OF THE PROSECUTION WITNESSES AND IN FINDING THE ACCUSED GUILTY AS CHARGED."<sup>[14]</sup>

Appellant assails his convictions for rape, contending that the victim voluntarily submitted herself to his lustful desires contrary to her claim that she was intimidated into engaging in sexual intercourse with him.

Appellant's contention deserves scant consideration.

We should accord great weight and respect to the findings of fact of the trial court.<sup>[15]</sup> The trial court is in a better position to determine questions involving credibility, it having heard the witnesses and observed their deportment and manner of testifying.<sup>[16]</sup> We do not see any reason in this case to overturn the trial court's findings as to facts.

Under Article 335, par. 1 of the Revised Penal Code, rape is committed by having carnal knowledge of a woman by using force or intimidation.

When appellant threatened the victim with a knife during the sexual intercourse, intimidation, as an element of rape, was therefore, present. It is not necessary that force and violence be employed. Intimidation is sufficient, and this includes the moral kind, i.e., threatening the victim with a knife.<sup>[17]</sup> When this kind of intimidation exists and the victim is cowed into submission as a result thereof, thereby rendering resistance futile, it is unreasonable to expect her to resist with all her might and strength.<sup>[18]</sup> Such intimidation, in this particular case, was enough to render Josephine Lopez incapable of offering any resistance because of fear for her life.<sup>[19]</sup>

Furthermore, moral ascendancy and influence by appellant who is the stepfather of the 12 year-old victim and threat of bodily harm rendered her subservient to appellant's lustful desires.<sup>[20]</sup> These factors are enough to explain the absence of an outcry on the part of Josephine immediately before and during the two occasions when appellant had carnal knowledge of her.

Besides, only feeble resistance to sexual ravages of this nature can be expected from a girl of such a tender age. This is precisely the reason why sexual intercourse with a girl twelve years or under is considered rape without proving force or intimidation. And, what is the difference in mental fitness and attitude between a