

## EN BANC

**[ G.R. No. 146803, January 14, 2004 ]**

**THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. CLEMENTINO  
LOU Y GALINDO ALIAS "JUNIOR," APPELLANT.**

### DECISION

**VITUG, J.:**

On appeal to the Court is the decision, dated 09 November 2000, in Criminal Case No. 3635 of the Regional Trial Court, Branch 6,<sup>[1]</sup> of Prosperidad, Agusan del Sur, finding appellant Clementino Lou y Galindo guilty beyond reasonable doubt in the commission of the crime of rape "defined and penalized under Article 335 of the Revised Penal Code, as amended by R.A. No. 7659, Section 11 thereof." The trial court imposed upon appellant the death penalty and the payment of fifty thousand pesos (P50,000.00) by way of civil indemnity to the victim.

The accusatory information read:

"That on April 22, 1996 at about 12:00 o'clock midnight in the premises and vicinity particularly at the house of the victim located at Bayugan 3, Rosario, Agusan del Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with the use of his superior strength, with intent of lewd design, did then and there, wilfully, unlawfully and feloniously with force and intimidation, succeed in having sexual intercourse with his stepdaughter ELGIE S. BULAQUEÑA, a girl who was then fifteen (15) years old, and a woman of good reputation, against her will and consent to the damage and prejudice of the said victim which damage consists of actual, compensatory and moral damages."<sup>[2]</sup>

At his arraignment, appellant, with the assistance of counsel, pled not guilty to the charge.

The prosecution presented its evidence tending to prove that –

At midnight of 22 April 1996, Elgie S. Bulaqueña was already asleep in their house in Purok 8, Balite, Sinug-ang, Bayugan III, Rosario, Agusan del Sur, when she was awakened by appellant. He lifted her skirt, removed her panty, and tried to insert his penis into her vagina but initially failed as she made "some movements." Although he finally succeeded in inserting his penis into her vagina, the penetration, however, was not completely achieved. Elgie cried, but, afraid of his threat to kill her, Elgie remained in the room and did not tell her mother, Judith Bulaqueña, about what had transpired. Instead, she asked the help of her uncle who, thereupon, accompanied her to the police station. The police had Elgie medically examined at the rural health center.

Dr. Rebecca R. Aquino examined Elgie on 24 April 1996, and prepared a medico-legal report. She found Elgie to have had "completely healed lacerations" at the 3 and 8 o'clock hymenal positions but that there were no abrasions, hematoma and contusions. Dr. Aquino explained that the laceration could have been caused by sexual intercourse, "medical instrumentation," the "passage of clotted blood thru menstruation," or "severe physical exertion."

On 25 April 1996, Elgie, assisted by her mother Judith, filed a complaint for rape, on three counts, against appellant, *one* committed "on or about 3:00 o'clock day time of 1995," the *second* "on February 7, 1996 [at] 2:00 o'clock in the afternoon" and the *third* on "April 22, 1996 [at] 12:00 o'clock night time right in the residence of the victim particularly at Balite, Purok 8, Bayugan 3, Rosario, Agusan del Sur."<sup>[3]</sup> (Still, for unexplained reasons, the Provincial Prosecutor of Agusan del Sur filed the information, hereinbefore quoted, charging only one crime of rape, *i.e.*, that which was averred to have been committed at midnight on 22 April 1996.)

Appellant testified in his defense. He claimed that Judith, Elgie's mother, was his common-law wife from 1991 to 1996. Judith thereafter lived with another man. On 22 April 1996, appellant said he was at home with his two children by Judith and two other persons, Marlon Ayaton and Rosendo Barrios, who were then working for him. Appellant denied having sexually molested Elgie on the evening of 22 April 1996. The "truth," he claimed, was that, at about ten o'clock that night, he mauled Elgie after seeing her in bed with Marlon and Rosendo. Days later, policemen invited him to the police station and put him in jail. He was told that Elgie had accused him of raping her three times.

The trial court saw the case for the prosecution; it found appellant guilty beyond reasonable doubt of the crime of rape for which it meted the death penalty.

In this automatic review of the case, appellant, through counsel, would contend that –

"I.

"THE TRIAL COURT ERRED IN FINDING ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE.

"II.

"EVEN ASSUMING THAT ACCUSED-APPELLANT WAS TRULY GUILTY OF HAVING RAPED THE PRIVATE COMPLAINANT, NONETHELESS, THE TRIAL COURT ERRED IN IMPOSING UPON HIM THE SUPREME PENALTY OF DEATH."<sup>[4]</sup>

In reviewing rape cases, the Court is so guided, as usual, by these principles: That –

"x x x *First*, the prosecution has to show the guilt of the accused by proof beyond reasonable doubt or that degree of proof that, to an unprejudiced mind, produces conviction. *Second*, unless there are special reasons, the findings of trial courts, especially regarding the credibility of witnesses, are entitled to great respect and will not be disturbed on appeal. *Third*,

the disposition of rape cases are governed by the following guidelines: (1) an accusation for rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (2) in view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution, and (3) the evidence for the prosecution must stand or fall on its own merits and cannot draw strength from the weakness of the evidence of the defense.”<sup>[5]</sup>

The crime of rape can be committed by, among other ways, “having carnal knowledge of a woman” with the use of force or intimidation.<sup>[6]</sup> Intimidation is subjective, and it is addressed to the mind of the person against whom it is employed at the time and occasion of the crime. While there is no hard and fast rule to test its presence,<sup>[7]</sup> one accepted norm, nevertheless, is whether the intimidation produces a reasonable fear in the mind of the victim that if she were to resist or were not to yield to the desires of the malefactor, the threat would be carried out.<sup>[8]</sup>

The victim was still young when she began to live with her mother and appellant, her mother’s common-law husband, whom she recognized to be a “stepfather.” The relationship between appellant and the victim was far from ideal. Appellant repeatedly maltreated the girl, a fact that he himself admitted. The threat of another round of abuse proved all too real that midnight of 22 April 1996, when appellant verbalized his intention to harm her upon entering her room. It was not unnatural that the young girl would be cowed by appellant. The victim testified:

“Q What happened while you were sleeping in your house?

“A While I was sleeping I was awakened, sir.

“Q What happened?

“A He got inside the room and said ‘Do not tell. If you will tell I will kill you,’ sir.

“Q And what did he do to you if any?

“A He lifted my skirt and removed my panty and inserted his penis to my vagina, sir.

“Q What did you do when he inserted his penis to your vagina?

“A I kept on crying, sir.

“Q And after that what happened if any?

“A After that he went out and my mother arrived, sir.

“Q What did you do after your mother arrived in your house?

“A I still remained inside the room and I did not tell my mother because if I told her he would kill me, sir.”<sup>[9]</sup>

Contrary to the claim of appellant, the victim’s submission to his lust was not free from struggle. She did resist the sexual advances.

“Q You said that accused inserted his penis in your vagina, can you tell us how deep was the penetration?

“A At first it did not insert because I made some movements,