

## EN BANC

[ G.R. Nos. 131799-801, February 23, 2004 ]

**THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. FELICIANO  
ULIT Y TAMPOY, APPELLANT.**

### DECISION

**CALLEJO, SR., J.:**

Before the Court on automatic review is the Decision<sup>[1]</sup> dated December 17, 1997 of the Regional Trial Court of Makati City, Branch 62, in Criminal Cases Nos. 97-385 to 97-388 finding appellant Feliciano Ulit y Tampoy guilty beyond reasonable doubt of two counts of qualified rape.<sup>[2]</sup> In the same decision, the appellant was convicted of two counts of acts of lasciviousness. For each count of rape, the trial court sentenced him to suffer the supreme penalty of death, while for each count of acts of lasciviousness, the appellant was sentenced to suffer imprisonment "from eight (8) years, eight (8) months and one (1) day of *prision mayor* in its medium period, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal* in its medium period, as maximum." The appellant was, likewise, ordered to indemnify the victim Lucelle Serrano, the amount of P50,000 for each count of rape and P20,000 for each count of acts of lasciviousness.

#### The Indictments

Upon the sworn complaint of the victim Lucelle Serrano, four Informations were filed against her uncle, the appellant. The docket number and the accusatory portion of each Information reads:

#### Criminal Case No. 97-385

That sometime in the month of November 1996, in the City of Makati, Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, who is the uncle of the complainant LUCELLE SERRANO y ULIT, hence, her relative by consanguinity within the third civil degree, while armed with a knife, by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the complainant LUCELLE SERRANO y ULIT, an eleven (11) year old girl, without her consent and against her will, to her damage and prejudice.

CONTRARY TO LAW.<sup>[3]</sup>

#### Criminal Case No. 97-386

That sometime in the month of February 1997, in the City of Makati, Metro Manila, Philippines, a place within the jurisdiction of this Honorable

Court, the above-named accused, who is the uncle of complainant LUCELLE SERRANO y ULIT, hence her relative by consanguinity within the third civil degree, while armed with a knife, by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the complainant LUCELLE SERRANO y ULIT, an eleven (11) year old girl, without her consent and against her will, to her damage and prejudice.

CONTRARY TO LAW.<sup>[4]</sup>

Criminal Case No. 97-387

That sometime in the month of December 1996, in the City of Makati, Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, with lewd design by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously commit acts of lasciviousness upon complainant LUCELLE SERRANO y ULIT, an eleven (11) year old girl, by then and there kissing her and touching her sexual organ, without her consent and against her will, to her damage and prejudice.

CONTRARY TO LAW.<sup>[5]</sup>

Criminal Case No. 97-388

That on or about the 2nd day of March 1997, in the City of Makati, Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, with lewd design by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously commit acts of lasciviousness upon complainant LUCELLE SERRANO y ULIT, an eleven (11) year old girl, by then and there dragging her inside a bathroom and repeatedly kissing her on her cheeks [sic], without her consent and against her will, to her damage and prejudice.

CONTRARY TO LAW.<sup>[6]</sup>

The appellant, assisted by counsel, pleaded not guilty during the arraignment. Joint trial of all the cases ensued.

In the meantime, Lucelle was undergoing psychiatric treatment at the Philippine General Hospital. On May 5, 1997, the prosecution presented her as its first witness.

On direct examination, Lucelle testified that she was born on February 19, 1986.<sup>[7]</sup> In November 1996, her uncle, the appellant, did something to her. When the prosecution asked her what happened, Lucelle did not answer. When asked if she wanted to continue with her testimony, again, she did not respond. The trial was reset to June 2 and 9, 1997. When trial resumed on June 9, 1997, Lucelle was questioned by the prosecution on direct examination, but still, she gave no answer. She cried profusely in open court. When asked by the court if she wanted to proceed with the trial, she remained silent. The trial was reset anew to July 9 and 14, 1997.

In the meantime, the trial court ordered that Lucelle be subjected to physical and psychological examinations at the National Center for Mental Health (NCMH). Dr. Rochelflume Samson examined Lucelle and submitted her Report dated August 29, 1997 with the following remarks and recommendation:

Based on clinical history, mental status examination and psychological evaluation, this patient is suffering from Post-Traumatic Stress Disorder. This illness is characterized by intense fear and feeling of helplessness whenever she recalls her traumatic experience of being raped. It causes her intense psychological distress whenever asked to talk about the rape scene or incident. Thus, she avoids recollections of the trauma.

At present, she is still manifesting symptoms described above. She would be having difficulties testifying in court because of this. She requires psychiatric treatment at the Out-Patient Section.<sup>[8]</sup>

During the trial on July 14, 1997, Lucelle refused to take the witness stand. The trial was reset to July 21, 1997.

During the hearing on October 20, 1997, the prosecution presented Lucelle anew to continue with her testimony on direct examination. She declared that the appellant raped her in November 1996 and many other times thereafter in her residence at No. 7104 San Maximo Street, Makati City. Instead of asking questions to elicit the facts and circumstances before and during the commission of the crimes, the prosecutor asked Lucelle to identify her signature in her sworn statement<sup>[9]</sup> and to affirm the truth of its contents. She did so. The public prosecutor then marked the sworn statement in evidence as Exhibit "H," and then manifested to the court that he had no more questions for the witness on direct examination.

On clarificatory questions by the court, Lucelle testified that she was born on February 19, 1986. The appellant mounted her, removed her pants, poked a knife at her and threatened her.<sup>[10]</sup>

On cross-examination, Lucelle testified that the appellant was her mother's older brother. In November 1996, she was not enrolled in any school. Her father was working at a construction firm, the appellant was employed at the Department of Environment and Sanitation in Makati City, while her grandmother, who lived with her, worked as a maid in Bel Air Subdivison. Her mother worked for one of her father's cousins. On re-direct examination, the prosecution elicited from Lucelle that the appellant raped her in November 1996 at 11:00 p.m. inside the room of her aunt Marina in her grandmother's house at No. 7104 San Maximo Street, Olympia, Makati City, and that her aunt, Marina, and her Ate Sharon were inside the room. When asked where her aunt and Ate Sharon were when she was being raped in her aunt's room, Lucelle did not respond. When asked why she did not respond to the questions propounded to her during the previous hearings and why she had been crying in open court, Lucelle replied that she was afraid of her uncle, the appellant.

In her sworn statement,<sup>[11]</sup> Lucelle alleged that sometime in November 1996, she was sleeping in a room in the house. It was about 6 o'clock in the evening. She was awakened when she felt someone kissing her on the cheek. When she opened her eyes, she saw her uncle, the appellant, armed with a bladed weapon (*balisong*). He poked the weapon on the left side of her neck. He warned her that if she told her

parents, he would kill her. He removed her panties, undressed himself and mounted her. He then inserted his penis into her vagina. She felt pain in her private part and cried. The appellant, thereafter, left the room. Also during the month of November 1996, the appellant continued kissing her whenever her parents were out of the house.

In December 1996, Lucelle was in the room when the appellant entered and kissed her and mashed her private parts. Sometime in February 1997, the appellant again abused her (*sinalbahe*) while she was in the same room. It was about 11 o'clock in the evening. He again warned her not to divulge to her parents what he did to her. At 9:00 p.m. on March 2, 1997, Lucelle urinated in the bathroom and when she was about to go out, the appellant entered, pushed her inside and kissed her on her cheeks several times.

Celso Serrano, Lucelle's father, testified that sometime in November 1996, at dawn, he was in bed and noticed that the appellant was in the bedroom of his cousin-in-law. Sometime later, he went to the bathroom. He then heard his wife ask the appellant where he had come from and the latter replied that he just came from the roof of the house. On another occasion, one early Sunday morning, he noticed blood stains on Lucelle's short pants. When she declared that she had her monthly period, he gave her P5.00 with which to buy sanitary napkins. Lucelle refused to accept the money. He suggested that she wash herself but she just nodded her head. When he asked her why she refused to accept the money, Lucelle replied that she was afraid to tell him because she might be killed.

Lourdes Serrano testified that she was Lucelle's mother. Lucelle was born on February 19, 1986.<sup>[12]</sup> She and her husband Celso Serrano and their daughter Lucelle resided with her mother, Guadalupe Ulit, at No. 7104 San Maximo Street, Olympia, Makati City. Her sister Marina and the appellant, her brother, also resided in the same house. The family slept together in the evenings in the sala of the house while Marina slept in her bedroom. At times, Marina allowed her niece Lucelle to sleep in her bedroom. At 11:00 p.m. on February 19, 1997, Lourdes noticed that Lucelle was not at her side. The appellant, who usually also slept in the sala, was not there either. Lourdes went to Marina's bedroom and saw Lucelle in bed (*papag*), covered with a blanket. Beside her was the appellant who was wearing a pair of short pants and undershirt. When the appellant saw Lourdes, he slid down from the bed, went under the *papag*, and furtively left the room. When Lourdes removed the blanket, she saw Lucelle lying sideways with her knees up to her chin (*nakabaluktot*). Lucelle was trembling with fear. When Lourdes asked Lucelle what happened, she did not respond. Lourdes left the room and went back to the sala. She wanted to talk to the appellant but decided against it when she saw him seated in the sala, playing with his balisong.

Lourdes further testified that at 9:00 p.m. on March 2, 1997, she and her husband were having dinner when she noticed that Lucelle was nowhere to be found. She looked for her daughter in the house, but failed to find her. She then asked her cousin Nita if she had seen Lucelle. Nita replied in the negative. When Lourdes asked Nita if Lucelle was inside the bathroom, Nita responded that the appellant was using it. Momentarily, Lourdes saw the appellant emerge from the bathroom. He was in his short pants and his shirt was on his shoulder. He was perspiring profusely. Lourdes was flabbergasted when she saw Lucelle come out of the bathroom after the appellant. Lucelle was crying and looked pale. When Lourdes asked Lucelle why

she was crying, she told her mother that she had just urinated. The appellant later told her sister Lourdes that he did not do anything to Lucelle.

Believing that the appellant had been abusing their daughter, Celso and Lourdes brought Lucelle on March 5, 1997, to Barangay Chairman Romeo Medina. On their way, Lucelle adamantly refused to tell her parents what the appellant did to her. However, when they reached the barangay headquarters, Lucelle told the barangay chairman that the appellant sexually abused her. Thereafter, Lourdes filed a complaint with the barangay chairman against the appellant for sexually molesting Lucelle.

Barangay Tanod Fernando David testified that on March 6, 1997, the barangay chairman ordered him and Barangay Tanod Antonio Echavez to invite and bring the appellant to the barangay hall. The barangay chairman asked the appellant if he raped Lucelle and the latter replied that he did. A *Sinumpaang Salaysay* was prepared in the Office of the Barangay Chairman in which the appellant admitted that he raped Lucelle in February 1997, and on March 2, 1997, despite her resistance, and that he threatened to kill her and her family if she divulged the incidents to her parents.<sup>[13]</sup> The appellant signed his statement in the presence of the barangay chairman and the barangay tanods.

From the barangay headquarters, the appellant was brought to the Makati City Police Headquarters where Celso, Lourdes and Lucelle filed a complaint against him for rape and acts of lasciviousness. SPO4 Lilia Hogar of the Women's Desk Unit took the sworn statements of Lourdes and Lucelle.<sup>[14]</sup> She conducted a custodial investigation of the appellant who was without counsel during which the latter admitted having raped the victim. SPO4 Hogar also prepared a report on her investigation of the victim's complaint.<sup>[15]</sup>

On July 28, 1997, Dr. Armie M. Soreta-Umil, NBI Medico-Legal Officer, testified that on March 12, 1997, she conducted genital and vaginal examinations on Lucelle and submitted Living Case Report No. MG-97-355 which contained the following findings:

#### GENERAL PHYSICAL EXAMINATION:

Height: 141 cm.

Weight: 78 lbs.

Normally developed, fairly nourished, conscious, coherent, cooperative, ambulatory subject.

Breasts, developing, conical, firm. Areolae, light-brown, 2.6 cms. in diameter. Nipples, light-brown, protruding, 0.8 cm. in diameter.

No extragenital physical injuries noted.

#### GENERAL EXAMINATION:

Pubic hair, fully grown, moderate. Labia majora, gaping. Labia minora, coaptated. Fourchette, lax. Vestibular mucosa, pinkish. Hymen, tall, thick, intact, distensible. Hymenal orifice, admits a tube 2.5 cms. in