

SECOND DIVISION

[G.R. No. 128363, May 27, 2004]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. EMILIANO
CAPAREDA, APPELLANT.**

D E C I S I O N

CALLEJO, SR., J.:

This is an appeal from the Decision^[1] of the Regional Trial Court of Cagayan de Oro City, Branch 25, in Criminal Cases Nos. 92-2054, 92-2085, 92-2086 and 92-2087 convicting the appellant Emiliano Capareda of four (4) counts of rape under Article 335, paragraph 1 of the Revised Penal Code.

The appellant was charged of rape under four (4) separate Informations, the accusatory portions of which except for the date of the offense charged are similarly worded, *viz*:

Criminal Case No. 92-2054

That sometime in the month of June 1992, at 8:00 o'clock, P.M., more or less, at Zone 4, Pasil, Kauswagan, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with force and intimidation, did then and there, willfully, unlawfully and feloniously, have carnal knowledge with complainant-victim, RIZALYN LUFERA, accused forcing himself sexually on the latter, a 13-year-old minor, against her will.^[2]

Criminal Case No. 92-2085

That sometime in the month of July 1992, at 8:00 o'clock in the evening, more or less, at Zone 4, Pasil, Kauswagan, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with force and intimidation, did then and there, willfully, unlawfully and feloniously, have carnal knowledge with complainant-victim, RIZALYN T. LUFERA, accused forcing himself sexually on the latter, a 13-year-old minor, against her will.^[3]

Criminal Case No. 92-2086

That sometime in the 2nd week of the month of July 1992, at 8:00 o'clock, P.M., at (sic), more or less, at Pasil, Kauswagan, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with force and intimidation, did then and there, willfully, unlawfully and feloniously, have carnal knowledge with complainant-victim, RIZALYN LUFERA, accused forcing himself sexually

on the latter, a 13-year-old minor, against her will.^[4]

Criminal Case No. 92-2087

That sometime in the month of June 12, 1992, (sic) at 8:00 o'clock, P.M., more or less, at Zone 4, Pasil, Kauswagan, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with force and intimidation, did then and there, willfully, unlawfully and feloniously, have carnal knowledge with complainant-victim, RIZALYN LUFERA, accused forcing himself sexually on the latter, a 13-year-old minor, against her will.^[5]

Upon his arraignment on March 16, 1994, the appellant pleaded "not guilty" to the charge.^[6] Thereafter, a joint trial ensued.

The Case for the Prosecution

Rizalyn Torres Lufera was born on June 19, 1979.^[7] She and her younger brother Ricardo Torres and their mother Jocelyn Torres Lufera resided in the two-storey house of the latter's parents, the spouses Cariño and Victorina Torres, at Zone 4, Pasil, Kauswagan, Cagayan de Oro City.^[8] Rizalyn's parents had been separated since she was still an infant. She grew up under the joint care of her mother and her grandparents, as well as her aunts and uncles.^[9]

The ground floor of the house had two bedrooms, one occupied by Rizalyn's grandparents and the other occupied by her three unnamed uncles who were then still studying. Rizalyn, her mother and her younger brother Ricardo, occupied one of the three rooms in the second floor.^[10]

The appellant Emiliano Capareda was the brother-in-law of Cariño Torres, being the second husband of Anita Torres Vda. de Dagsang, Cariño Torres' sister.^[11] The couple resided in Banlag, Valencia, Bukidnon. Sometime in the last week of May 1992, a relative of Anita and Cariño died.^[12] The appellant, together with his wife Anita and her son by her previous husband, Almor Dagsang, attended the interment and, thereafter, stayed for some time in the house of Cariño Torres.^[13] The couple occupied the living room in the second floor, as the two other rooms were respectively occupied by Rizalyn's uncle and her two single aunts.^[14] Nevertheless, Emiliano and Anita had their clothes placed in Rizalyn's room and had access therein.^[15]

In June 1992, Rizalyn was thirteen years old^[16] and a first year high school student at the Misamis Oriental General Comprehensive High School. She was a bright student and belonged to the first section of the science class.^[17] To maintain her academic status, every night, after taking dinner and doing her part of the household chores, Rizalyn would go up to their room and study her lessons.^[18]

At around 8:00 p.m. on June 10, 1992, while Rizalyn was studying her lessons, the appellant entered the room to get some things and to change his clothes.^[19] Ricardo, Rizalyn's brother, and the other occupants of the house were on the ground

floor.^[20] Rizalyn was shocked when suddenly, the appellant held her by her shirt collar and poked his right clenched fist at her.^[21] He gave Rizalyn dagger looks and warned her, saying, "*Hoy, 'Zalyn bantay lang kon mutug-an ka sa imong Mama*" ("*Hoy, 'Zalyn beware if you will report to your mother*"). He then pushed her to the floor and laid on top of her. The appellant removed his short pants and briefs and pulled down Rizalyn's shorts and underwear. He spread her thighs, inserted his penis into her vagina and made push and pull movements. Rizalyn felt severe pain in her vagina and cried. Satiated, the appellant stood up and wiped his penis. He put on his briefs and short pants and left the room, leaving the sobbing Rizalyn alone. She kept the shocking experience to herself because of the appellant's warning.^[22]

At around 8:00 p.m. on June 12, 1992, Rizalyn was in her room studying. She was reading a book while lying prostrate on the floor, face down. The appellant collared her anew. She was more terrified this time because the appellant was armed with an eighteen-inch bolo. The appellant warned her that if she reported the matter to her mother, he would kill all of them. Fearing for her life, as well as those of her mother and brother, Rizalyn complied when the appellant ordered her to lie flat on the floor. The appellant undressed himself, then Rizalyn, and again inserted his private organ into her vagina.^[23]

The appellant raped Rizalyn anew two more times in July 1992. The appellant sneaked upon Rizalyn while the latter was studying in her room and, while holding a bolo, threatened to kill her and her family if she reported the matter to her mother. The appellant then proceeded to rape her. Petrified, Rizalyn did nothing but to submit herself to the appellant's bestial desires. Since the appellant was still living with them and kept close watch on her actions, Rizalyn kept her harrowing ordeal to herself. She noticed the appellant giving her menacing looks whenever she conversed with a relative.^[24]

Meanwhile, Jocelyn noticed that Rizalyn had not had her monthly menstruation. She also noticed Rizalyn vomiting every now and then and had frequent fevers and colds.^[25] Jocelyn confronted Rizalyn, who then confessed that the appellant had raped her on four separate occasions, in June and July 1992, while she was alone in her room. Jocelyn was shocked at her daughter's revelation.^[26]

On August 31, 1992, Jocelyn brought Rizalyn to the Northern Mindanao Regional Training Hospital at Cagayan de Oro City^[27] where Dr. Olivia Sumampan of the Obstetrics and Gynecology Department conducted an examination on her. The examination disclosed that Rizalyn was already six (6) weeks pregnant.^[28] Because of her pregnancy, Rizalyn was forced to discontinue her schooling effective the first week of September 1992.^[29] Rizalyn signed a criminal complaint charging the appellant for the crime of rape. Earlier, or on September 4, 1992, she had given a sworn statement to the Criminal Investigation Section of the Integrated National Police. On December 4, 1992, a warrant was issued for the appellant's arrest.

On March 26, 1993,^[30] Rizalyn Torres Lufera gave birth to a baby girl. Sometime in February 1994, SPO2 Exudio Vidal of the PNP-CIS Regional Office apprehended the appellant at Barangay Tipolo, Quezon, a locality in Bukidnon bordering Davao.^[31]

The Case for the Appellant

The appellant admitted to having had sexual intercourse with Rizalyn. However, he claimed that she consented to have sexual intercourse with him since they were sweethearts. Prior to June 1992, when he and his family frequented the house of Cariño Torres, he and Rizalyn would go swimming at sea. On those occasions, he and Rizalyn developed feelings of mutual understanding ("*Nagkasabot ang among kasingkasing*"). Since the second week of June 1992 until August 1992, he and Rizalyn had sexual intercourse almost every night and at dawn in the ground floor, and in the second floor of the house of the Torreses. The only times that he and Rizalyn did not have sexual intercourse was when he went to Bukidnon or to Scions, Calaanan, Cagayan de Oro City.^[32]

The appellant's testimony was corroborated by his stepson, Almor Dagsang, who was then barely twelve years old. He testified that he saw the appellant and Rizalyn having sexual intercourse on two occasions. He belied Rizalyn's asseveration that his stepfather raped her because it was Rizalyn who made advances on the appellant. He recounted that one early morning, while his mother and the other occupants of the house were away, Rizalyn went upstairs and seduced the appellant into having sexual intercourse with her. Almor was about three meters away from Rizalyn and the appellant. Even as the appellant tried to persuade Rizalyn to stop for fear that someone might see them, Rizalyn refused because she was enjoying the sexual intercourse. Almor, ashamed at what he saw, just closed his eyes.

On another occasion, while they were watching the television one evening, Almor told the appellant that he was already going upstairs to sleep. Rizalyn stopped him and told him to continue viewing the television and that she would just be the one to lie down with her step-grandfather. Later that night, he saw Rizalyn and the appellant hugging each other.^[33]

On April 3, 1996, the trial court promulgated its Decision^[34] convicting the appellant of the crimes charged. The dispositive portion of the decision reads:

WHEREFORE, premises considered, this Court finds the accused Emiliano Capareda guilty beyond reasonable doubt of the consummated crime of Rape as charged in the four (4) separate complaints, and sentences the accused Emiliano Capareda for the four (4) separate crimes, Criminal Case No. 92-2054; Criminal Case No. 92-2085; Criminal Case No. 92-2086; and Criminal Case No. 92-2087, to suffer an imprisonment of Reclusion Perpetua for each crime committed on Rizalyn Torres Lufera and to indemnify the offended party the sum of P50,000.00 and to acknowledge the offspring Marjorie Torres Lufera as his child and accused is ordered to provide a monthly support of P2,000.00 per month which shall be correspondingly increased as the need of the child arise.^[35]

The appellant assails the decision of the trial court contending that:

THE COURT A QUO ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT FOR THE CRIME CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT.^[36]

The appellant contends that the prosecution failed to prove beyond cavil that he coerced, intimidated or forced Rizalyn into having sexual intercourse with him. He avers that Rizalyn consented to have sexual intercourse with him, as shown by her failure to resist when he undressed her and inserted his private organ into her vagina.

According to the appellant, Rizalyn did not even shout while she was being undressed, and even when he lay on top of her. Her mouth was not covered, but she did not even shout despite the extreme pain she experienced as the appellant inserted his penis into her vagina. The appellant asserts that Rizalyn could have ran while the appellant was undressing her, or stomped her feet to call the attention of her relatives who were on the ground floor of the house. Rizalyn did not seek anyone's help. As it was, Rizalyn lay motionless, without exerting any degree of resistance. All the foregoing circumstances, the appellant concludes, are proof of her consent to the sexual congress with him.

We are not convinced. Case law has it that the failure of the victim to shout or offer tenacious resistance does not make voluntary the victim's submission to the criminal acts of the accused.^[37] Resistance is not an element of rape and the absence thereof is not tantamount to consent.^[38] The law does not impose upon a rape victim the burden of proving resistance.^[39] In fact, physical resistance need not be established in rape when intimidation is exercised upon the victim and she submits herself against her will to the rapist's lust because of fear for life or personal safety.^[40] Indeed, it has been said that, in rape cases, it is not necessary that the victim should have resisted unto death or sustained injuries in the hands of the rapist. It suffices that intercourse takes place against her will or that she yields because of a genuine apprehension of great harm.^[41]

We have also held that intimidation must be viewed in the light of the perception of the victim at the time of the commission of the crime, not by any hard and fast rule.^[42] The test is whether the threat or intimidation produces fear in the mind of a reasonable person – that if one resists or does not yield to the desires of the accused, the threat would be carried out.^[43] In the instant case, Rizalyn was cowed into submission because of the appellant's very real and present threat of physical harm on her person. The appellant was armed with an eighteen-inch long bolo and threatened Rizalyn when he raped her on June 12, 1992 and in July 1992. She was barely thirteen years old at the time of the rape incidents and, at such a tender age, must have been overcome with fear of serious physical harm, thus, did not resist the bestial desires of the appellant.

We note that Rizalyn's father left his family when she was yet an infant. Helpless and homeless, Jocelyn and her children had to live with Rizalyn's grandparents at Zone 4, Pasil, Kauswagan, Cagayan de Oro City. Rizalyn grew up without her father and looked up to her uncles and her grandfather as the only tangible and credible male models of moral and spiritual leadership that only a father could have been. The same could be said of her relationship with and her regard for the appellant, who was the husband of her grandmother, Anita Torres.

The appellant further argues that Rizalyn's demeanor in the aftermath of the sexual intercourse was inconsistent with the normal human conduct and behavior of one