

## FIRST DIVISION

[ G.R. No. 149808, November 27, 2003 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. BENJAMIN LOPEZ, APPELLANT.**

### DECISION

**YNARES-SANTIAGO, J.:**

Appellant Benjamin Lopez was charged before the Regional Trial Court of Panabo, Davao, Branch 34, in Criminal Case No. 97-196 with the crime of rape in an Information<sup>[1]</sup> which reads:

That on or about August 16, 1997, in the municipality of [REDACTED], Province of [REDACTED], Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with long firearm and batangas knife, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of AAA, a 15 year old girl, against her will.

CONTRARY TO LAW.

On arraignment, appellant pleaded "not guilty." Trial on the merits ensued.

The prosecution presented as witnesses AAA, Jonathan Gaita and Dr. Eleanor Salva while the defense presented Guillermo Garbino, Crestito Ellar, Rolando Deocampo, Bonifacio Geraldo and the accused himself.

The facts:

On August 16, 1997 at 11:00 p.m., complainant AAA, Rene Sarita, Jonathan Gaita and a certain "Tata" were walking towards San Francisco, Panabo, Davao after attending a barrio fiesta. They stopped to take a short rest at Mabuhay National High School. Suddenly, a tall, medium-built and barefoot man appeared from nowhere carrying a long firearm. He was sporting a moustache and was wearing a black t-shirt and short pants with a jacket tied around his waist.

The man, who turned out to be appellant, pointed the gun at them and told AAA's companions to leave. He threatened to shoot them if they will not heed his instructions, so Rene, Jonathan and "Tata" were constrained to flee for safety and leave behind AAA with the intruder.

Appellant pointed the gun at AAA's back and forced her to walk towards Puyad Farms, a banana plantation nearby. AAA begged appellant to let her go but to no avail. Upon reaching the banana plantation, appellant forced AAA to undress. She tried to fight back, but appellant pressed a knife at her back. He then forcibly removed AAA's undergarments, fondled her breasts, kissed her neck, and succeeded

in having sexual intercourse with her.

On August 18, 1997, AAA went to Dr. Eleanor Salva to undergo a gynecological examination. Dr. Salva found that AAA suffered recent abrasions on the right upper portion and lower portion of her *labia majora* , about two to three days old. She concluded that AAA was indeed a victim of rape.

That same day, AAA executed an Affidavit-Complaint<sup>[2]</sup> at the [REDACTED] Police Station against appellant for rape.

Appellant denied the charge against him. He averred that from 7:00 p.m. to midnight of August 16, 1997, he was in the vicinity of the basketball court where an amateur singing contest was being held. After midnight, he went home together with Guillermo Garbino and Leonardo Corcuera. On their way home, they met AAA who informed them that she was raped near the school by a man who was wearing short pants and mask. According to appellant, he even gave AAA a glass of water and also requested a passerby to accompany her to Dalisay Village where she lives.

Cristito Ellar, whose house was about ten meters away from the place where the singing contest was held, testified that on August 16, 1997 from around 10:30 p.m. to 12:30 a.m., appellant was near the vicinity of the basketball court and that he never saw him leave. He admitted, however, that there is a banana plantation nearby which can be reached in five minutes from the basketball court.

Another defense witness, Rolando Deocampo, testified that on the night of the incident, he saw appellant at the multi-purpose hall discharging his duties as a Civilian Volunteer Organization member. He left the multi-purpose hall at around 12:30 a.m. and, while on his way home, he met AAA who was visibly distraught. He asked her what the matter was but the latter ignored him and proceeded towards the multi-purpose hall.

Guillermo Garbino also testified that on the night of the incident he saw appellant near the vicinity of the multi-purpose hall and he even asked him to get rattan chairs from the house of ex-barangay captain Leonardo Corcuera. After the amateur singing contest, he went home with other persons, including appellant. On their way home, they met AAA, who told them that she was raped by someone she could not identify because he was wearing a black bonnet.

Bonifacio Geraldo testified that he was the one who took down AAA's statement in the blotter wherein she stated that she failed to identify the person who raped her because he was wearing a bonnet and that it was nighttime.

On June 6, 2001, the trial court rendered a decision,<sup>[3]</sup> the dispositive portion of which reads:

WHEREFORE, the Court finds Benjamin Lopez with having raped AAA and sentences him to suffer the penalty of *reclusion perpetua*, to pay AAA indemnity ex delicto of P50,000.00 and moral damages of P50,000.00 and to suffer accessories provided by law.

SO ORDERED.