

EN BANC

[G.R. No. 133478, January 16, 2002]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
SALUSTIANO CALLOS, ACCUSED-APPELLANT.**

D E C I S I O N

PER CURIAM:

Respect for a woman's life includes giving due regard to her innocence, honor, and purity. When these virtues are violated, the offender reveals his utter disregard for womanhood and the more it becomes appalling when the violator is a girl's own father.

Before us on automatic review is the decision of the Regional Trial Court of the 5th Judicial Region (Branch 15, Tabaco, Albay) imposing upon appellant Salustiano Callos the supreme penalty of death for two counts of rape.

Two informations were filed upon complaint of Lorilyn Callos, appellant's own 12-year old daughter, on January 22, 1996. The Information in Criminal Case No. T-2708 charged:

That on or about November 17, 1994, at more or less 8:00 o'clock in the evening, at Purok 4, Barangay Bantayan, Municipality of Tabaco, Province of Albay, Philippines and within the jurisdiction of the Honorable Court, the above-named accused with lewd design and by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with her 12-year-old daughter, LORILYN CALLOS, against her will, to her damage and prejudice.

(p. 13, Records, T-2708.)

The Information in the second case, Criminal Case No. T-2709, charged a rape committed on November 29, 1994 in the same Purok 4 in Bantayan, Tabaco, Albay.

Upon arraignment, appellant pleaded not guilty and joint trial on the merits accordingly ensued. The evidence presented by both the prosecution and defense is summarized in the People's Brief thusly:

On November 17, 1994, at about 8:00 in the evening, Lorilyn Callos, together with her brothers, Arjay (nine [9] years old), Gerald (seven [7] years old) Jason (five [5] years old), Mark John (three [3] years old), and Jessa May (two [2] years old), was sleeping in their house at Bantayan, Tabaco, Albay (p. 4-11, TSN, May 21, 1996). While they were thus sleeping, Lorilyn was suddenly awakened when appellant (her father) went on top of her. After that, appellant pulled down her panties. Lorilyn pulled it back but appellant prevailed (p. 18, TSN, September 2, 1996).

Thereafter, appellant held her breasts and succeeded in inserting her penis into her "private part." Lorilyn wanted to free herself from appellant but could not do so because appellant pinned her down. Lorilyn felt pain when appellant inserted his penis into her "private part." Feeling helpless, Lorilyn cried. Appellant told her not to cry (pp. 7-8, ibid.).

Lorilyn testified that appellant was on top of her only for a while because one of her brothers woke up. After appellant consummated his beastly desire, Lorilyn noticed there was blood on her "private part" (pp. 4-20, TSN September 2, 1996).

Lorilyn further testified that appellant was always doing it (sexual intercourse) to her but could not recall the dates. Appellant would always threaten her every time she would not follow his evil wishes. Lorilyn's mother knew about the incident but did nothing. She told Lorilyn not to tell her "uncles" about the incident as they might hurt appellant (p. 15, ibid.).

Lorilyn was able to finally reveal her harrowing experience to "Rosemarie" and her "Ate Chu" when the latter found her in their house crying. When asked why she was crying she told her (Ate Chu) about the incident. "Ate Chu" got mad at appellant and told Lorilyn that they should tell her uncle (Ate Chu's father) the incident. Lorilyn instead pleaded to "Ate Chu" not to tell her uncle because appellant would hurt her "again" (p. 16, ibid.).

Despite her mother's threats, Lorilyn continued to narrate her experience in the hands of appellant. She testified that on November 29, 1994, at about 2:00 p.m., she, together with her brothers, was in their house when appellant told Lorilyn's "brothers" to leave the house for them to take a bath in the river. Appellant prevented Lorilyn from leaving the house. He told her that if she disobeyed his wish, he would punish her. After Lorilyn's "brothers" left, appellant told Lorilyn to get inside their house. Lorilyn refused but appellant got a whip and commanded her to do as told. Inside the house, appellant ordered Lorilyn to undress. Lorilyn initially refused but when appellant threatened to whip her with a piece of wood, Lorilyn obligingly followed out of fear. Then, appellant inserted his penis into her "private part." Lorilyn tried to free herself from appellant but failed because appellant was on top of her. While appellant was on top of her, he was sucking and mashing her breast. Lorilyn kept on crying while appellant was doing his demonic acts (pp. 22-24, ibid.).

Thereafter, Lorilyn said to appellant that she would tell her mother what he did to her. Appellant threatened Lorilyn not to tell her mother otherwise he would punish her. Appellant also told Lorilyn not to tell her brothers about the incident. After their brief exchange of words, appellant ordered Lorilyn to change her clothes and leave the house (pp. 24-25, ibid.).

Dr. Amalia Guiruba, the rural health physician of Tabaco, Albay testified that she physically examined Lorilyn on December 1, 1995. She found out that Lorilyn's labia majora and minora are coaptated. She also found

deep lacerations at 6:00 o'clock, 9:00 o'clock and 3:00 o'clock positions which could have been caused by an insertion of an erect penis. She further testified that it is possible that the lacerations could have been inflicted on the date of the rape incidents as appearing in the medico-legal report (Exhibit E) (pp. 15-21, TSN, December 16, 1996).

Resurreccion Barasona, a policeman stationed at Tabaco, Albay testified that on November 30, 1995, Lorilyn and Lourdes Callos went to their police station and lodged a complaint for rape against appellant. Consequently, policeman Barasona entered said complaint in their police blotter identified as Blotter Entry No. 27541 (Exhibit F) (pp. TSN, Jan. 20, 1997).

(pp. 89-94, Rollo.)

In both cases, the trial court, in its decision dated October 24, 1997, found appellant guilty as charged. Consequently, the death penalty was imposed in each case and appellant was ordered to indemnify Lorilyn in the amount of P50,000.00 in each case (p. 29, Rollo).

Appellant in the present automatic review advances the lone, shot-gun argument that the real age of the victim was not duly established. He does not question the propriety of his conviction on the two counts of the crime of rape, limiting himself to merely arguing that the death penalty imposed by the trial court is not in accord with the recent pronouncements of this Court in *People vs. Perez* (G.R. No. 122764, September 28, 1998) and *People vs. Javier* (G.R. No. 126096, July 26, 1999), where we held that the special qualifying circumstances required in Republic Act No. 7659 must be duly alleged and proved before the death penalty may be properly imposed. This notwithstanding, in carrying out our bounden duty to review all cases where the death penalty has been imposed, we perused and examined the record of the case to determine if appellant is at all liable. The record, however, indubitably supports the finding of the trial court relative to its conviction of the appellant for the crime of rape.

As to the incident on November 17, 1994, appellant claimed that he attended a birthday party of his uncle and came home in so drunken a state that he passed out right outside his house. He frankly admitted he did something wrong, that is, he almost molested his daughter had it not been for the timely intervention of his wife. He further testified that he whipped his daughter because she broke the radio.

However, on cross-examination, the following declarations were elicited from appellant:

Q: You said that you had already asked for forgiveness, am I correct?

A: Yes, sir.

Q: And you also said that you had asked for forgiveness because you had done something wrong?

A: Yes, sir.