

EN BANC

[G.R. Nos. 130517-21, July 16, 2002]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
CANDIDO SOLOMON Y MARQUEZ, DEFENDANT-APPELLANT.**

D E C I S I O N

KAPUNAN, J.:

For automatic review is the decision of the Regional Trial Court of Zamboanga City, Branch 16,^[1] finding appellant Candido Solomon y Marquez guilty of five (5) counts of rape and imposing upon him five (5) death penalties.

Except as to the date of commission of the crime, the five (5) complaints filed in these cases are similarly worded. The complaint filed in Criminal Case No. 14114 reads:

That on or about June 16, 1995, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, by means of threats and intimidation, did then and there willfully, unlawfully and feloniously, have carnal knowledge of his own step-daughter, the undersigned CHARLYN FERNANDEZ y ANGELES, 15 years of age, against her will.

Contrary to law.^[2]

The complaints in Criminal Cases Nos. 14115 to 14118 allege that the crime of rape was perpetrated against the same complainant four more times on July 5, 1995,^[3] July 10, 1995,^[4] August 3, 1995,^[5] and August 12, 1995.^[6]

Upon arraignment, the accused, herein appellant Candido Solomon y Marquez, pleaded not guilty to each charge of rape.^[7]

Complainant Charlyn Fernandez^[8] was born on October 22, 1982 to spouses Felizardo and Julia Fernandez. The couple had five other children with ages ranging from eleven to twenty-five years. In 1985, the couple separated.

Soon thereafter, Charlyn's mother started living together with appellant. At the time of Charlyn's testimony, Julia had borne appellant five children: Pilar (7), twins Fernando and Angeline (5), Valentino (3), Robert (1), and Carding (5 months). Pilar and Fernando have passed away.

During the time material to these cases, Charlyn was living with appellant, Julia, the couple's three surviving children, and Charlyn's full-blood siblings, Felizardo, Jr. and Joven. They lived in a one-room nipa house with stairs leading to the lumber floor where the family slept. Their nearest neighbor lived around 300 meters away.

Charlyn was at home when the first alleged rape took place at around 1:00 p.m. on June 16, 1995. She and her half-brothers, three year-old Valentino and one year-old Robert, were sleeping when she felt someone on top of her. That person turned out to be appellant. He was holding her right shoulder as his left hand removed her panty, having first succeeded in peeling off her shorts while she slept. Charlyn struggled and kicked. Frightened, she cried and repeatedly shouted, "No ma ya Pang!" ("Pang, do not do it!")

After taking off Charlyn's panty, appellant knelt near Charlyn's feet and inserted his right index finger into Charlyn's vagina, pushing and pulling it ("ta tucha-tucha") inside her for some time. Charlyn tried to stand up but appellant pushed her down. He assured her that he would "not inflict" pain on her. After removing his shorts and briefs, appellant spread Charlyn's legs and inserted his penis into her vagina. He told Charlyn, "No man alboroto. Si man alboroto tu, ay mata yo contigo." ("Do not make any noise. If you will make noise, I will kill you.") Charlyn felt appellant's penis inside her vagina and experienced pain as appellant moved "up and down." Charlyn pushed and kicked him but he proved too heavy for her. It was the first time Charlyn experienced sexual intercourse and her vagina bled.

Charlyn did not know if appellant ejaculated but he stood up, put on his briefs and shorts, and went out of the house. Charlyn sat up and cried. Her brothers, who awoke as appellant inserted his finger into her sex organ, were also crying.

The second rape took place less than a month later, on July 5, 1995, at about 1:00 p.m. Charlyn was again sleeping on the floor with her brothers Valentino and Robert when she felt someone on top of her. Appellant was trying to remove her shorts and panty with his left hand. His other hand held her forearm. Charlyn pushed and kicked him but he pressed her down. He warned her, "Do not keep on moving because [I] will choke [you]." Charlyn cried, "*Pang, no ma ya Pang!*" Appellant knelt by her feet and removed his shorts and briefs with one hand and pressed her down with the other. Charlyn cried and tried to stand up. Appellant then lay on top of her and inserted his penis into her vagina. While Charlyn did not see appellant's penis, she felt its size inside her. As appellant performed the sexual act, Charlyn again cried out, "*No ma ya, Pang!*" Appellant answered, "Do not keep on moving because I will not inflict any pain on you." After completing the sex act, appellant sat beside Charlyn and put on his briefs. Charlyn sat by the corner and cried. Appellant warned her not to report the incident to her mother otherwise he would kill all of them. He then went out of the house. Charlyn's brothers remained sleeping and did not witness what happened.

The third rape occurred on July 10, 1995. Charlyn was at home putting her brothers Valentino and Robert to sleep when appellant arrived and asked Charlyn for a cake of soap. After Charlyn handed him one, appellant left and Charlyn went to sleep on the floor beside her brothers. About thirty minutes later, Charlyn felt someone on top of her. Appellant had returned and was pressing her arm with his hand. His foot also pressed against hers. She cried, "*No ma ya, Pang!* You are always doing it to me." Appellant released her arm and used the hand he was holding it with to remove Charlyn's panty. He knelt by her feet and removed his shorts and briefs. His right hand pressed Charlyn down to prevent her from standing. Appellant then began to mount her as Charlyn cried and tried to push him away. Despite her struggles, appellant succeeded in inserting his penis into Charlyn's vagina. He told her not to push him as he was not inflicting pain upon her. Charlyn felt pain as appellant performed "up and down" motions. She cried, "*No ma ya, Pang.*"

Afterwards, appellant stood up, got dressed, and went out of the house. Charlyn sat up and cried.

Robert and Valentino were awake when the incident took place.

The horrors Charlyn underwent in the hands of appellant did not end that day. Appellant would have his way with Charlyn two more times.

Charlyn and her brothers were sleeping on the floor of their house in the afternoon of August 3, 1995. At around 4:00 p.m., Charlyn was again startled to find her stepfather on top of her. She kicked him, not wanting to be raped again. She pushed him away and cried to no avail. His left hand removed her panty as his other hand pressed down on her, preventing her from standing up. Appellant removed his shorts and briefs. He placed himself on top of her, inserted his penis into her vagina, and moved up and down. Charlyn felt her vagina ache. She tried to push him away but he was too heavy for her. Satisfied, appellant stood up and walked away. Her brothers again witnessed what happened.

On August 12, 1995, Charlyn again was left to care for her brothers Valentino and Robert. Charlyn was in the midst of slumber when appellant mounted her. He told her not to make any noise so as not to awaken her brothers. Charlyn shouted, "No ma ya, Pang!" Appellant held her two arms and pressed her against the floor. He knelt up and removed his short and briefs as his other hand pressed down her chest, preventing her from standing up. He removed her shorts and panty, inserted his penis into her vagina, and moved up and down. She cried as she felt pain in her vagina. Thereafter, he stood up, got dressed and left her lying in tears. This time, her brothers had not awakened to see Charlyn raped.

On each occasion that she was raped, Charlyn's mother was in the market, selling tuba. She did not tell her mother about the rapes because she was afraid that appellant would carry out his threat to kill them should she report the incidents.^[9]

Charlyn, on the witness stand, said she could recall the exact dates when she was raped since she made an effort to remember them. She also remembered the time the rapes occurred because she and her brothers usually took their naps at the same time in the afternoon.^[10]

Unable to bear appellant's molestations any longer, Charlyn left home for Tugbungan in September 1995. Charlyn asked Julia's permission to work as a maid in the home of Dr. Allan Navarro, a cousin of Julia.

Charlyn revealed to her Kuya Allan that appellant raped her. Allan, in turn, told Julia about the sexual abuse that Charlyn suffered in the hands of appellant. On March 15, 1996, Julia visited Charlyn and confronted her. The latter admitted that appellant indeed raped her.

Subsequently, Julia reported the alleged rape incidents to Barangay Captain Bing Ungab, who in turn reported the matter to the police. In the afternoon of April 15, 1996, the police fetched Charlyn and appellant and brought them to the police station, where Charlyn executed a written statement.^[11] She also submitted to a physical examination, which revealed that she was seven months pregnant. The police then brought Charlyn to the Department of Social Welfare and Development, where she stayed for a month.

Charlyn noticed that her belly was bulging sometime in March 1996 while she was staying with Allan Navarro. Subsequently, Charlyn delivered a baby boy at the Zamboanga Medical Center. She gave the baby to Luis Acejaas, her brother's employer, because she could not afford to buy milk for him. She was sure that appellant sired her baby because he was the only one who ever had sexual intercourse with her.

Charlyn, before the rape incidents, had been closer to appellant than to her own father. She called him "Papa" and described him as a "good stepfather" to her. She said she had no idea why he raped her.^[12] She denied that she filed the complaint because her pregnancy had become evident.^[13]

Charlyn's mother Julia testified she and her husband Felizardo separated in 1985. That same year, appellant asked Julia's father permission to live with Julia. Julia and appellant did not marry because appellant himself was married. Appellant and his wife had nine (9) children of their own. Appellant was a tuba gatherer. To complement appellant's occupation, Julia engaged in the sale of the native liquor two kilometers away from their house in Cawit. She would start selling tuba in the morning and return home between 6:00 and 7:00 p.m. everyday.

When Allan informed her of Charlyn's pregnancy, Julia confronted her daughter. Charlyn told her that it was her "stepfather" who impregnated her. Julia brought Charlyn to her sister Lydia's house. Charlyn confided to Lydia that she was pregnant with appellant's child.

At home in Cawit, Julia asked appellant why he impregnated Charlyn. Appellant cried and asked her forgiveness. He explained that things "simply happen" and pleaded that they settle the matter. Julia told him she "could not do anything because there is a law." Apprehensive of what Charlyn's brother might do to appellant, Julia decided to complain to the barangay captain, who encouraged her to settle the matter among them. Nevertheless, the barangay captain still reported the matter to the police.^[14]

Inspector Diosdado Apias testified on the investigation conducted after the police brought appellant to the police station.^[15] He confirmed that a certain kagawad accompanied Charlyn and Julia to the police, that Charlyn signed the complaint, that PO2 Imlan referred the case to SPO2 Concepcion for investigation, and that the police took appellant into custody.^[16]

Dr. Rodolfo Valmoria, PNP Medico-Legal Officer of the Philippine National Police, conducted Charlyn's physical examination. He prepared Medico-Legal Report No. M-134-96^[17] dated April 16, 1996 stating:

FINDINGS:

Absence of pubic hair. Labia majora full, convex and gaping, labia minora dark brown in color and presenting in between is a fleshy type hymen with deep healed lacerations at 7, 8, 11, 2 and 3 o'clock positions and shallow healed at 9 o'clock position. Vaginal canal narrow, easily admits examining index finger. Abdomen distended, fundic level 6 fingers above the umbilicus. Fetal heart beat appreciable at left middle quadrant of the abdomen, 2 inches left of the umbilicus, 126/minute. Breasts

hemispherical in shape, congested, no secretions noted. Areolae and nipples dark brown in color.

Urethral, vaginal and cervical smears neg for grm neg diplo, no pus cells, neg for sperm cell, bacilli many.

CONCLUSION:

Subject is of non-virgin state physically.
Pregnancy compatible 7-8 months.

Testifying in court, Dr. Valmoria stated that the various hymenal lacerations indicated that the subject had engaged in "several sexual contact[s]." He estimated the subject's last menstrual period to be either August or September 1995.^[18] Dr. Valmoria did not find any external physical injuries on Charlyn's body.^[19]

The defense presented appellant, 55, as its only witness. Candido Marquez admitted that he had sexual intercourse with Charlyn on several occasions but claimed that he "did not force" himself on Charlyn.

One time, appellant intentionally touched Charlyn's breast as he got the baby Charlyn was carrying. Charlyn did not protest. He repeated the act on several other occasions but each time Charlyn did not get mad and just smiled at him. Appellant realized that she would not complain should he initiate sexual relations with her.

On June 16, 1995, at around 10:00 p.m., appellant was drying copra at the coconut kiln with Charlyn and Felizardo, Jr. Junior was at a distance, piling coconut husks when Charlyn picked up an old galvanized iron sheet and placed it on top of an old truck. Appellant was watching her over the coconut pile when Charlyn called him. He did not mind her at first. Charlyn then got the radio from Junior, brought it to the truck, and turned down the volume. She invited him to come to her, "Pang, aqui ya lang kita hunto dormi." ("Pang, we'll sleep here together.") By then, Junior was sleeping on a pile of coconut husks. When appellant went to Charlyn, she said, "Pang, aqui lang kita dos." ("Pang, we'll stay here together.") He lay down beside her in a supine position. She turned to him and placed her left leg (tanday) over his private part (na demiyo pututoy). Ten minutes later, she started moving her leg upward. Appellant started to entertain "second thought[s]" as his penis hardened. Since Charlyn did not complain when he touched her before, appellant took a chance and asked her to remove her shorts. Charlyn obliged. Appellant then unzipped his shorts. They engaged in sexual intercourse for around twelve minutes "in a side view position," facing each other.

Appellant and Charlyn again had sexual intercourse in Upper Cawit on July 5, 1995, at around 10:30 a.m. Appellant was then peeling coconuts with Charlyn and her brother Jovit. Thirsty, appellant told Jovit to fetch water. Charlyn then got a sack, spread it on the ground, and lay down. After ten minutes, appellant got tired and sat down beside her. Charlyn touched his left side with her left hand. It occurred to him that Charlyn again wanted to experience what happened between them by the coconut kiln so they had sexual intercourse.

Appellant and Charlyn engaged in their third sexual encounter on July 10, 1996 while in the house of a certain Pendong. Appellant arrived at around 11:00 a.m. and instructed Charlyn to cook the fish he had brought home. After taking their lunch, Valentino, Robert and Angeline went down the house to play. Appellant and Charlyn