

EN BANC

[G.R. No. 133888, March 01, 2001]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ALFREDO NARDO Y ROSALES, ACCUSED-APPELLANT.**

D E C I S I O N

PER CURIAM:

This case is before this Court on automatic review from the Regional Trial Court of Legazpi City, Albay, Branch III, which imposed on accused-appellant the death penalty for rape in Criminal Case No. 7170.

The victim, Lorielyn R. Nardo, is the eldest daughter of accused- appellant. She was born on September 11, 1981 and, at the time of the incident, was fourteen (14) years old.^[1]

On February 24, 1996, around noon, Lorielyn was in their house located in Barangay 3, Camalig, Albay, together with her father, accused- appellant Alfredo Nardo, two younger brothers, Leonel and Louie, and maternal grandfather, Vicente Remot. At 1 :30 o'clock in the afternoon, after they had lunch, Vicente left for work. Alfredo told his sons, Leonel and Louie, to go out. He then ordered Lorielyn to get his cigarettes in his bedroom. When Lorielyn went inside the bedroom, her father followed her. He embraced Lorielyn from behind and began mashing her breasts. Lorielyn pleaded, "*Papa, please stop it. Have mercy.* " Her father ignored her. Instead, he undressed her and pushed her to the bed. Lorielyn started to cry , while Alfredo took off his clothes. Then, he lay on top of her and had sexual intercourse with her. He kissed her from the neck down. She tried to free herself but Alfredo took hold of a knife from a nearby cabinet and pointed it at her right ear. He threatened to kill their whole family if Lorielyn told anyone what he did. When he was finished, Alfredo left the house. During all this time, Lorielyn's mother, Elizabeth Nardo, was washing clothes about five houses away.^[2]

Elizabeth returned home at about 3:00 o'clock p.m. She saw Lorielyn crying while washing the dishes. She asked Lorielyn why she was crying, but her daughter said nothing.^[3]

On March 19, 1996, Lorielyn was washing clothes when her father approached her and whispered, "*We will play tonight near the river.* " Lorielyn understood this to mean that her father wanted to have sexual intercourse with her again. She finished the laundry and left the house. She took a passenger jeepney to Barangay Libod, Camalig, Albay and proceeded to the house of her aunt, Carol Navera. She stayed there until her aunt arrived at around 5:00 o'clock in the afternoon. When it became late, Carol told Lorielyn to go home, but she decided to spend the night at her aunt's house because she was afraid to undergo the ordeal from her father again.^[4]

The next day, Lorielyn's brother, Leone, was sent by her father to fetch her, but she refused to go with him. Her aunt asked her again why she did not want to go home. She merely said she had a problem. She slept at her aunt's house again that night. The following day, her mother came to fetch her. Lorielyn told her mother she did not want to go home. She said, *"Mama, do you want me to become pregnant in that house?"* Her mother asked, *"Who will impregnate you there?"* Lorielyn replied, *"Your husband."* Her mother retorted that Alfredo could not do that to her, then left.
[5]

Lorielyn stayed at her aunt's house until March 22, 1996. On that date, Carol again asked Lorielyn what her problem was. Finally, she told her aunt that her father raped her. Immediately, Carol went to report the matter to the police. She later returned home with two policemen, and together they brought Lorielyn to the Camalig Police Station. The rape was entered in the police blotter.^[6] The policemen then brought Lorielyn to the Municipal Health Office of Camalig, Albay, where she was examined by Dr. Melvyn F. Orbe, the Municipal Health Officer.^[7] From there Lorielyn was brought to the Municipal Trial Court of Camalig-Albay to file a formal complaint for rape against her father, Alfredo Nardo.^[8]

On May 29, 1996, an Information for rape was filed against Alfredo Nardo, charging as follows:

That on or about the 24th day of February 1996, at more or less 1:30 o'clock in the afternoon, at Brgy. No.3, Municipality of Camalig, Province of Albay, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being the father of the herein victim, with lewd and unchaste design, by means of violence, force and intimidation, armed with a knife, did then and there wilfully, unlawfully and feloniously have carnal knowledge with her (*sic*) own daughter, LORIELYN R. NARDO, a 14 year old girl, against her will and consent, to her damage and prejudice.

ACTS CONTRARY TO LAW^[9]

At the arraignment on August 8, 1996, accused-appellant pleaded not guilty.^[10]

The prosecution presented Dr. Melvyn Orbe, who testified on the following findings as a result of his examination of the victim, Lorielyn Nardo:

Pelvic Examination:

whitish to yellowish discharge

irritation lateral aspect of the posterior vulva at 3 o'clock.

healed laceration hymenal in origin posterior aspect of the fourchet^[11]

Dr. Orbe stated that based on these findings, it is possible that Lorielyn had sexual intercourse.^[12]

Carolina Navera, testifying for the prosecution, corroborated Lorielyn's statement that the latter went to her house on March 20, 1996. Lorielyn cried and told her that

she did not want to go home because she had a problem. Elizabeth, Lorielyn's mother, came to fetch her but she refused to go home, saying that she was raped by her father. Upon hearing this, Elizabeth left and told Carolina not to let Lorielyn leave her house. After Elizabeth was gone, Carolina went to the police station. She returned later with two policemen, who then brought Lorielyn to the police headquarters. [13]

Ma. Francia Aguilar, the social welfare officer of the Department of Social Welfare and Development, also testified that in the evening of March 22, 1996, she responded to a report of a rape incident. She met the victim, Lorielyn Nardo, at the house of Cely Bantog, a social worker, at Camalig, Albay. She interviewed Lorielyn and her mother, Elizabeth, for the purpose of preparing a Social Case Study report. [14] Thereafter, she endorsed Lorielyn to the DSWD Center for Girls in Sorsogon, Sorsogon to undergo therapeutics. [15]

SPO3 Jose Nuylan, a member of the Camalig police force, testified that he investigated the rape incident and took the statement of Lorielyn Nardo. [16]

Elizabeth Nardo, the victim's mother, was called to the witness stand. She testified that she and Alfredo are not married, but they have been living together. They have seven children, the eldest of whom is Lorielyn. She stated that Lorielyn was born on September 11, 1981 at Anei, Claveria, Misamis Oriental; that Lorielyn's birth certificate was burned in the Municipal Building of Misamis Oriental. [17] However, Elizabeth presented and identified Lorielyn's baptismal certificate showing that she was born on September 11, 1981. [18]

The defense, on the other hand, presented lawyer Santer G. Gonzales, the employer of accused-appellant. He testified that accused-appellant worked as a helper at his farm in Quirangay, Camalig, Albay. On February 24, 1996, accused-appellant arrived at his farm before 8:00 o'clock in the morning. He was followed by his father-in-law, Vicente Remot, who lived with him in the same house. It started to rain hard, so they decided not to work that day. Vicente Remot went home at around 8:30 or 9:00 o'clock in the morning. Accused-appellant stayed behind. After a while, Paterno Ramas, a neighbor of Atty. Gonzales, arrived. They started to drink. None of them left the farmhouse since Atty. Gonzales kept bottles of gin and cigarettes in stock. They were joined later in the afternoon by Didjo Mular, another friend of Atty. Gonzales. They drank about five bottles of gin and sang while Atty. Gonzales played the guitar. The rain subsided at around 3:30 o'clock in the afternoon, so they stopped drinking. At 4:00 o'clock in the afternoon, accused-appellant left. [19] The farm is located around 400 to 500 meters away from Barangay 3, where accused-appellant and the victim reside, and can be reached in 15 minutes. [20]

When asked to comment on the victim, Lorielyn Nardo, Atty. Gonzales described her as one capable of telling a lie. He narrated that once, she went to his farm to collect the amount of P50.00 as daily wage of her grandfather, Vicente Remot, but she gave only P35.00 to her mother. Elizabeth thus went to Atty. Gonzales' to ask about the deficiency. They later learned from Lorielyn's younger sister that she spent the missing P15.00 on snacks. [21]

Vicente Remot, accused-appellant's father-in-law, corroborated Atty. Gonzales'

testimony that he reported for work at the latter's farm in the morning of February 24, 1996, but he was unable to work because of the rain, so he went home instead, leaving accused-appellant in the farm. At 1 :00 o ' clock in the afternoon of that day, he was at home watching television with Elizabeth and his grandchildren, including Lorielyn. He refuted Lorielyn's claim that he left after lunch to work, saying that he stayed in the house the whole afternoon since it was raining.[22]

Elizabeth also testified that on February 24, 1996, she was at home watching television with her father and children, namely, Lorielyn, Lewcherd, Lailani, Leonel, Louie Boy and Leo Boy. All her children were at home because it was a Saturday. She claimed that Lorielyn filed the complaint for rape against her father because he was very strict with her. She learned from Lorielyn's best friend that she had a problem with her boyfriend, a certain Erwin Loreno. At one time, Lorielyn asked permission to attend a holy retreat, but Elizabeth found out from the school that there was no such retreat. Lorielyn lied on another occasion, when she told Mrs. Bonifacia "Paz" Nieva that her grandfather was sick so she can borrow money.[23]

Mrs. Bonifacia Nieva testified that her daughter was a classmate of Lorielyn. Once, Lorielyn visited her saying that she was sent by Elizabeth to borrow money because her grandfather was sick. Mrs. Nieva gave Lorielyn P200.00. Later, when she went to see Elizabeth to collect payment, she found out that Lorielyn ' s grandfather did not get sick. Lorielyn admitted to her that she lied about it to be able to borrow money.[24]

The prosecution recalled Lorielyn to the witness stand by way of rebuttal evidence. She refuted Atty. Gonzales' statement that she did not turn over in full the salary of her grandfather in the amount of P50.00. She denied that she lied to her mother about a holy retreat held by her school. Anent the amount of P200.00 she borrowed from Mrs. Nieva, she asserted that it was her father who ordered her to do that, and that she gave the whole sum of P200.00 to him.[25]

On clarificatory questioning by the presiding judge, Lorielyn maintained that her grandfather, Vicente Remot, indeed came home in the morning of February 24, 1996, but he left again to go to Atty. Gonzales' farm after lunch. That afternoon, her mother was at the public faucet located far away from their house washing clothes. The judge wondered aloud why she was doing the laundry in the afternoon when this is usually done in the morning. Lorielyn replied that her mother had started doing the laundry in the morning but that she was not able to finish it, so she returned in the afternoon to continue her chore. She denied having any male friends, saying all her friends are girls. When asked once more by the judge, Lorielyn reiterated that her father had sexual intercourse with her.[26]

Carolina Nieva and Elizabeth Nardo were presented as sur-rebuttal witnesses. They testified in sum that Lorielyn had a boyfriend.[27]

Accused-appellant was presented as the last witness. He denied that he raped his daughter on February 24, 1997, saying that he was at the farm of Atty. Gonzales. He scolded Lorielyn when he learned from her sister and brother that she was always going around with a boy. He also stated that

Lorielyn got mad at him because he did not permit her to leave the house whenever

she wanted to.^[28]

On March 3, 1998, the trial court rendered judgment as follows:

WHEREFORE, IN VIEW OF ALL THE FOREGOING CONSIDERATIONS, this court finds the accused ALFREDO NARDO Y ROSALES GUILTY BEYOND REASONABLE DOUBT of the crime of RAPE and sentences him to suffer the penalty of DEATH. The said accused is likewise ordered to pay Lorielyn Nardo the amount of Fifty Thousand Pesos (P50,000.00) for moral damages.

For humanitarian reasons, however, it is recommended that the DEATH penalty be commuted to RECLUSION PERPETUA.

SO ORDERED.^[29]

Accused-appellant raises the following assignment of errors:

I

THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE TESTIMONY OF THE VICTIM LORIELYN AND DISREGARDING THE EVIDENCE FOR THE DEFENSE.

II

THE TRIAL COURT ERRED IN REFUSING TO RECITE THE REASONS WHY IT WAS RECOMMENDING EXECUTIVE CLEMENCY FOR THE ACCUSED.^[30]

Accused-appellant assails the trial court's finding that Atty. Gonzales was his employer and therefore was likely to testify in his favor; and that he could not have noticed accused-appellant leave the farm in the afternoon of February 24, 1996 because he had one drink too many. Accused-appellant contends that the court should not have been too quick to condemn him when his witness was a lawyer. Furthermore, he argues that Lorielyn's conduct after the alleged rape, specifically from February 25 to March 19, 1996, during which she stayed in the house with her father and continued to do her daily chores, creates a doubt on the veracity of the charge.

In the Reply Brief for accused-appellant,^[31] defense counsel reveals that Lorielyn wrote her the following letter:

7-13-99

Dear Atty. De Guzman:

Ako nga po pala si Lorielyn Nardo na anak ni Alfredo Nardo na nakabinbin pa sa ngayon sa Maximum Security Compound NBP I-D Muntinlupa City. Sumulat po ako sa inyo upang humingi ng tulong na gawin po sana ang lahat, wala po talagang kasalanan ang aking ama ako na po mismong nag-akusa ang nagsasabi na walang katotohanan ang lahat ng mga sinabi ko na pinagsamantalahan niya ako. Nagawa ko lang po yon dahil