

FIRST DIVISION

[G.R. No. 126149, December 07, 2001]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
DIONISIO LOZANO, ACCUSED-APPELLANT.**

DECISION

YNARES-SANTIAGO, J.:

Accused-appellant was charged with rape of his twelve-year old neighbor in the early morning of August 29, 1993. The Information filed against him reads:

That on or about the 29th day of August 1993, in the municipality of Tagudin, province of Ilocos Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously have carnal knowledge of one Cynthia L. Lardizabal, a twelve (12) year old girl, by means of force and intimidation and against the latter's will and consent.

Contrary to law.^[1]

Upon arraignment, accused-appellant pleaded not guilty to the charge. After trial, judgment was rendered against the accused-appellant, the dispositive portion of which reads:

Hence accused is sentenced to suffer the penalty of *reclusion perpetua* or imprisonment for life and to indemnify the victim in the following amounts:

1. Fifty Thousand (P50,000.00) Pesos for the crime committed against the victim;
2. Fifty Thousand (P50,000.00) Pesos as moral damages;
3. Fifty Thousand (P50,000.00) Pesos for counsel of victim.

SO ORDERED.^[2]

The facts:

The victim, Cynthia L. Lardizabal, then twelve years old, was living under the care of her grandmother, Emilia Lardizabal, in Barangay Ligdong, Tagudin, Ilocos Sur. Her mother, Dolores Lardizabal, was a single parent who worked as an overseas contract worker in Riyadh, Saudi Arabia.

On August 29, 1993, at about 7:00 in the morning, Cynthia Lardizabal woke up and found accused-appellant on top of her. Accused-appellant threatened her not to

shout or he would kill her family. Cynthia was shocked and she cried, but she heeded accused-appellant's warning because of fear.

After accused-appellant satisfied his lust, he left Cynthia crying in the bedroom. Before leaving, he threatened to kill Cynthia's entire family if she would reveal what happened to her.

Cynthia went down the house to wash her bloodstained panties. Her grandparents saw her crying and asked her what was wrong. She told them that accused-appellant had been inside her room and sexually molested her by inserting his middle finger and penis into her vagina. Her grandparents saw the blood-stained water with which Cynthia was washing her panties.

On September 8, 1993, Cynthia was examined by Dr. Maria May Grace Doromal of the Baguio General Hospital, who found old healed lacerations of the hymen at 6:00, 8:00 and 11:00 positions. Cynthia was also found to be in a non-virgin state.

Accused-appellant raised the defense of denial and alibi. He alleged that on August 29, 1993, between 5:00 and 8:00 in the morning, he was shoveling gravel and sand along the seashore in Libtong, Tagudin, Ilocos Sur. In this appeal, he raised the following alleged errors:

I

THE LOWER COURT ERRED IN DISREGARDING THE DEFENSE OF DENIAL AND ALIBI RAISED BY THE ACCUSED.

II

THE LOWER COURT GRAVELY ERRED IN CONVICTING THE ACCUSED ON THE BASIS OF THE CREDIBILITY OF THE TESTIMONIES OF THE PROSECUTION WITNESSES THAT HIGHLY DEFY HUMAN EXPERIENCE.^[3]

Rape is committed by having carnal knowledge of a woman by force or intimidation, or when the woman is deprived of reason or is unconscious, or when the woman is under 12 years of age.^[4] If the child is *below* 12 years of age, sexual congress alone without proof of force or intimidation suffices for conviction. In the case at bar, the Information alleged that the victim was 12 years old at the time of the rape. Hence, the element of force or lack of consent must be proven. This, the prosecution was able to do. The victim herself testified as follows:

Q And why were you crying at the time?

A Because he came on top of me, sir.

Q Did you not shout, Madam witness?

A I did not, sir.

Q Why not?

A Because he threatened me that if ever I shout he will kill the entire family and I know that he has a gun, sir.

X X X X X X X X X

Q Where did he insert his right forefinger?

A Inside my vagina, sir.

Q And what did you feel at that time, madam witness?

A It was painful, sir.

Q After that, what happened next, madam witness? After the accused inserted his forefinger, what else did he do, if he did any?

A After he inserted his forefinger inside my vagina, he inserted his penis, sir.

Court: Inside my vagina

Interpreter: Inside my vagina

Prosecutor: And what did you feel at that time, Madam witness?

A It was painful, sir.

Q Now what happened after that, madam witness?

A He immediately had sexual intercourse on me, sir.^[5]

The foregoing testimony clearly shows that accused-appellant led Cynthia to believe that he was armed with a gun, and that he threatened to kill Cynthia and her family if she should shout. While the victim cowered in fear, accused-appellant succeeded in consummating his bestial acts on her.

The degree of force or intimidation required for the act to constitute rape is relative, and must be viewed in the light of the victim's perception and judgment at the time of the commission of the offense.^[6] What is vital is that such force or intimidation be sufficient to consummate the purpose that accused had in mind.^[7] Being a child who grew up without a father and who lived away from her mother, it is not far-fetched that the threats made by accused-appellant produced fear in Cynthia's mind which forced her to give in to his sexual advances. The force applied in rape may be constructive^[8] and need not be irresistible.^[9] What is necessary is that the force or intimidation is of such degree as to compel the unprotected and vulnerable victim to bow into submission. Moreover, intimidation is addressed to the mind of the victim.^[10]

Accused-appellant makes capital of the laboratory findings that no sperm cells were found in Cynthia's vagina and that her hymenal lacerations were old. However, the absence of spermatozoa in the victim's genitalia does not negate rape, the slightest penetration even without emission being sufficient to constitute and consummate the offense.^[11] The mere touching of the woman's labia of the pudendum or lips of the female organ by the male sexual organ consummates the act.^[12] Where the victim is a child, the fact that there was no deep penetration of her vagina and that her hymen was still intact does not negate the commission of rape.^[13] On the other hand, the absence of fresh lacerations in the hymen is no indication that she was not raped.^[14] Hymenal lacerations are not an element of rape.

As in most rape cases, the ultimate issue in this case is credibility. On this score, the findings and assessment of the trial court are binding on the appellate court considering that after a thorough review, no facts and circumstances were shown to