

## THIRD DIVISION

[ G.R. No. 134562, April 06, 2000 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
FEDERICO LUSTRE Y ENCINAS, ACCUSED-APPELLANT.**

### DECISION

**VITUG, J.:**

A far cry from a "May-December" affair, this case involves an alleged sexual molestation of a barrio lass on the threshold of womanhood by a seventy-six year old man who happened to be the common-law husband for over two decades of the young victim's grandmother.

Appellant was charged with rape defined and penalized under Article 335 of the Revised Penal Code in an Information that read:

"That on or about 8:00 o'clock in the evening of June 5, 1994 at Barangay Matacong, San Lorenzo Ruiz, Camarines Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did, then and there, willfully, unlawfully, and feloniously have carnal knowledge of his step-granddaughter, Lilibeth S. Hotamares, against the latter's will and by means of force and intimidation, to her damage and prejudice.

"CONTRARY TO LAW."<sup>[1]</sup>

When arraigned, appellant pleaded not guilty to the charge, thereby warranting the trial on the merits to proceed.

The events of 05 June 1994 and thereabouts are recalled by the prosecution and the defense from the testimony of their respective witnesses.

Lilibeth Hotamares -

In the evening of 05 June 1994, Lilibeth was lying down when the accused, whom she identified to be her *Lolo* Federico, knocked at the door. Wildly kicking the door, the accused uttered, "*Lilibeth, Lilibeth, magluwas ka diyan ta kung dai ka magluwas ako ang malaog at kakastahan kita.*"<sup>[2]</sup> Out of fear, Lilibeth felt constrained to come out of the house. With the accused tightly gripping her right hand, she was dragged all the way to her Lolo's house approximately 10 to 15 meters away. She was too afraid to yell for help. Once inside the house, she was made to lie down on the kitchen bench with her hands on the sides. Her shirt still on but her panty pulled down, the accused, who by then was already naked, licked her private parts. Thereafter, the accused mounted her and began the pumping motion to consummate the carnal assault. She could only cry in pain while the accused was

gratifying himself.

Before returning home, the accused warned her not to tell on him, otherwise he would "hack" her. She said that this warning precluded her from reporting the incident to anyone, and had it not been for the insistence of her mother, Lourdes Hotamares, she would not have filed the rape charge. She was not aware of any previous misunderstanding or discord between the accused and her mother.

#### Maria Hotamares -

On 05 June 1994, at around 8 o'clock in the evening just as when Maria and the other siblings, including her elder sister Lilibeth, were in bed, the accused knocked at their door, kicking it and forcibly trying to open it. He ordered Lilibeth to come out of the house, saying "*Lilibeth, Lilibeth, magluwas ka, kung dai ka magluwas, kakastahan taka!*"<sup>[3]</sup> Out of fear, Lilibeth did just as she was told, It occurred to her to follow her sister at a distance. Later peeping through the open window of the house of the accused, she saw half-naked Lilibeth lying down on the kitchen bench while the accused was performing cunnilingus on her until shortly thereafter when he placed himself on top of her and began the sexual congress.

Lilibeth came back home crying, but Maria did not dare ask her about the incident. She simply thought of telling her mother everything that she had witnessed at some opportune time. In open court, she identified the accused as being her sister's ravager.

#### Lourdes Hotamares -

On 05 June 1994, Lourdes was with Remedios Lustre, her mother-in-law, in Mandulongan attending the wake of the latter's sister. Her daughter Maria divulged to her sometime in the same month of June 1994 the assault on Lilibeth's honor by the accused, the common-law-husband of her mother-in-law. She decided not to confront the accused because she was afraid that he might attempt to escape. Instead, she brought Lilibeth to the Camarines Norte Provincial Hospital for medical examination.

She did not have any personal grudge or harbor any ill feelings against the accused before the incident.

#### Remedios Lustre -

On 04 June 1994, Remedios and her daughter-in-law, Lourdes Hotamares, went to Mandulongan to attend the wake of her sister. The accused followed her in the afternoon but sought her permission the next day to get *palay* in Awitan and to later proceed to their house in San Lorenzo Ruiz, Camarines Norte. The accused went back to Mandulongan in the afternoon of 06 June 1994. She came to know of the sexual molestation of her granddaughter by the accused only the following month of July 1994.

She started living with the accused in 1973 but ended the affair sometime in 1995.

#### Dr. Marcelito Abas -

A medico legal officer, he examined the victim on 08 July 1999. He found her to have sustained multiple hymenal lacerations at 12, 3, 7, 8, and 9 o'clock positions. He opined that these lacerations could have been caused by the penetration of any blunt, round, or smooth instrument.

#### Federico Lustre -

On 03 June 1994, the accused went to Mandulongan, Daet, Camarines Norte, arriving thereat at around 1 o'clock in the morning to attend the wake of his sister-in-law. He was with Remedios and Lourdes. Although he considered Remedios as his wife who eventually used his family name, he, however, was not really married to her. On 05 June 1994, he went back to Matacong, San Lorenzo Ruiz, for a two-night stay to attend to his fighting cocks. He arrived at Barangay Matacong at around 3 o'clock in the afternoon. As soon as he had taken his meal, he laid on the sofa due to a persistent stomach trouble. His son Ernesto arrived and invited him to stay at the latter's house. He accepted the invitation. After taking some herbal medicines his son had provided, he slept on a floor mat at around 7 o'clock in the evening and woke up at or about 5 o'clock the next morning.

He vehemently denied the accusation against him.

He confessed to having had a very healthy sexual life with his common-law-wife although his penis was incapable of being as stiff as before, i.e., prior to an operation on his testicles, and that his sexual appetite had dwindled by reason of age. He was confined at the Camarines Norte Provincial Hospital from 24 June 1988 to 08 July 1988 due to swollen testicles. Dr. Ramon P. Odiamar performed the operation on him.

#### Ernesto Lustre -

Ernesto, son of the accused, was in his house on 05 June 1994 at about 6:30 in the evening. He was in the coconut plantation from 6 o'clock in the morning until 4 o'clock in the afternoon of 05 June 1994. He got home at around five and from there proceeded to his father's house. He saw that his father was suffering from stomachache. Ernesto invited his father to his house if he thought he could no longer put up with the pain. His father acceded. At home, Ernesto applied herbal medicine on his father. He slept from 11 o'clock in the evening to 4 o'clock the following morning.

#### Marilyn Susano -

Marilyn was the Record Officer II of the Camarines Norte Provincial Hospital charged with, among other things, signing medical certificates for record purposes. She identified in court her signatures appearing on the medical certificate issued to Federico Lustre. Dr. Ramon Odiamar, who conducted the operation on the appellant's testicles, later ceased to be connected with the hospital following his resignation sometime in 1993.

After the trial, the Regional Trial Court, Branch 36, Daet, Camarines Norte, rendered its decision on 21 April 1997; it adjudged:

"WHEREFORE, premises considered, the guilt of the accused Federico Lustre y Encinas for the crime charged having been proven beyond reasonable doubt, he is hereby sentenced to suffer the extreme penalty of death. However, considering that Art. 83 of the Revised Penal Code provides that the death sentence shall not be inflicted upon any person over SEVENTY YEARS OF AGE and accused Federico Lustre y Encinas is already 76 years old, the DEATH SENTENCE is ordered COMMUTED to the penalty of RECLUSION PERPETUA. Furthermore, accused is ordered to pay the offended party the amount of P50,000.00 as indemnity."<sup>[4]</sup>

Insisting on his innocence and pleading for his acquittal on the ground of reasonable doubt, appellant ascribes to the lower court the following errors:

"1. The trial court erred in giving full faith and credence to the testimony of the prosecution witnesses and disregarding the theory honestly advanced by the defense.

"2. The trial court erred in finding accused guilty beyond reasonable doubt of the crime charged."<sup>[5]</sup>

Appellant submits that the actuation of Lilibeth during the alleged rape is incongruous with the deportment of a virtuous and inexperienced girl about to be sexually violated. She did not voice any alarm or objection nor did she show any sincere struggle to resist or fight the alleged carnal assault. If at all, Lilibeth has but manifested total acquiescence or resignation, thereby rendering the alleged sexual act voluntary.

The Court is not convinced. It bears stressing that the absence of struggle on the part of the victim does not necessarily negate the commission of rape. Appellant undoubtedly exercises moral ascendancy and influence over 13-year old Lilibeth, the latter having considered the former as her grandfather, a state that should be enough to cow her into submission to his depraved and demented lust. Intimidated indeed, she has been left with no choice but to fearfully succumb to the pleasure and will of her rapist. Verily, her failure to shout for help or fight back cannot be equated as being one of voluntary submission to the criminal intent of the accused.

<sup>[6]</sup> Fear, in lieu of force or violence, is subjective. Addressed to the mind of the victim of rape, its presence cannot be tested by any hard-and-fast rule but must instead be viewed in the light of the perception and judgment of the victim at the time of the crime.<sup>[7]</sup> In addition, the Court has repeatedly observed that different people act differently to a given stimulus or type of situation, and there is no standard form of behavioral response that can be expected from those who are confronted with a strange, startling or frightening experience.<sup>[8]</sup>

Appellant would want the Court to believe that his advanced age and previous operation has rendered him sexually inutile. The Court is not impressed. Advanced age is not known to render sexual intercourse impossible nor to deter sexual interest and capability.<sup>[9]</sup> In fact, Lilibeth's credibility is strengthened by appellant's own admission in the course of the trial that since undergoing the medical operation on his testicles sometime in 1990, he has seldom experienced sustained erection which could have prompted him to resort to oral sex. Lilibeth, in her testimony on 26 October 1995, narrates: