

## EN BANC

[ G.R. Nos. 134536-38, April 05, 2000 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ELISEO ALVERO Y LOREÑO @ "SIYOK," ACCUSED-APPELLANT.**

### DECISION

#### PER CURIAM:

For automatic review<sup>[1]</sup> by this Court is the judgment of 13 April 1998,<sup>[2]</sup> of the Regional Trial Court, Branch 10, of Abuyog, Leyte, in Criminal Cases Nos. 1631, 1632 and 1633, finding accused appellant Eliseo Alvero y Loreño @ "Siyok" (hereafter ELISEO) guilty of the crime of rape in each case committed against his own daughter, and imposing upon him the extreme penalty of death in each case.

ELISEO was charged with the rape of Loregin Cabahug (hereafter LOREGIN), his 15-year old daughter under three separate informations in Criminal Cases Nos. 1631, 1632 and 1633. The accusatory portion of the Information in Criminal Case No. 1631 reads as follows:

That sometime in the month of April 1996, in the Municipality of Abuyog, Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs and by means of force, violence and intimidation, did, then and there, willfully, unlawfully and feloniously have carnal knowledge of one LOREGIN ALVERO Y CABAUG, his 15-year old daughter, against her will and without her consent.

ACTS CONTRARY TO LAW.<sup>[3]</sup>

The Informations in Criminal Cases Nos. 1632 and 1633 are similarly worded, except as to the dates of the commission of the crime, which are "sometime in the month of May 1996," and "sometime in the month of June 1996," respectively.<sup>[4]</sup>

Upon his arraignment on 2 December 1996, ELISEO, with the assistance of counsel *de officio*, entered a plea of not guilty in each of the three cases.<sup>[5]</sup> Thereafter, joint trial ensued.

The prosecution presented the following witnesses: the victim, LOREGIN; the examining physician, Dr. Roy Marie A. Margallo; and the victim's mother, Lourdes Cabahug Alvero. LOREGIN also testified as rebuttal witness. The trial court summarized the evidence for the prosecution as follows:

In the middle part of January 1996, Loregin Alvero y Cabahug, together with her mother, father, brothers and sisters, were in their house in Bgy. Sta. Elena, Purok 4, Bayugan I, Agusan del Sur. They were then sleeping

when her father fondled her breasts. She issued an admonition to her father, after which she transferred to another place in the house to sleep. From January to March of 1996, her mother saw her father molesting her, who then reported this incident of molesting to the barangay officials. A confrontation before the office of the barangay officials took place, during which her father signed on a piece of paper promising not to molest her again, otherwise a case before the Court will be filed against him. For quite sometime, her father did not molest her.

On April 4 of the same year, her father wanted her to accompany him to Bgy. Cumpaitan to harvest palay. She did not want to go with him, however, her mother prevailed upon her, so Loregin went with her father. While on her way, riding on a big bicycle, her father told her that they will go to the place of her cousin, only to find that she was being led to a banana plantation, and when already at the area, her father drew his pisaw (small knife), pulled and dragged her, then delivered a fistic blow on her abdominal area. Immediately, her father took off her panty, unbuttoned his pants, placed himself on top of her and inserted his penis into her vagina, causing her much pain. After the consummation of the sexual assault, her father warned her not to report this matter to her mother, otherwise Loregin will be killed by him. Thereafter, her father told her that they are going home and was made to backride on his bicycle. Along the way, her father told her that they will first go to Bgy. Sta. Irene to buy rice. Her father instead of cycling in the direction towards home, changed his mind and cycled straight ahead and when he became tired, they boarded a bus bound for Surigao. The bicycle was loaded on the bus. In Surigao, they boarded a ferry boat bound for Liloan, arriving in Liloan at nighttime, hence they passed the night at the ferry terminal in Liloan. When morning came, they boarded a vehicle for Maasin. From Maasin, they took the Bachelor bus bound for Baybay, then proceeded to Abuyog. Upon arriving in Abuyog, they slept in the house of auntie Zabeth in Bgy. Combis. The husband of Zabeth is a brother of her father. While they were living in the house of Zabeth for a period of about three weeks, her father would order her to sleep beside him and not beside Zabeth. During this period of three weeks, whenever her father leaves to cut banana stalks, he would bring her along. After cutting a few, he would prod her for a sexual intercourse and on being refused, he would box her on the abdomen and threaten her with a bolo. When already fallen, her father would then remove her panty and take off his pants, insert his penis into her vagina, causing her to suffer pain. After sexually assaulting her, her father would resume cutting banana stalks. These sexual assaults happened in April of 1996.

From the house of Zabeth, they transferred to the house of Lando. The father of Lando and the father of herein accused are brothers. They lived only for a short period of time with Lando, as they transferred to the house of Elena, her grandmother. While living with her grandmother in the month of May, her father would bring her along to the mountain to gather firewood and when already in the mountain, her father would again rape her. In the month of June, Loregin and her father transferred to the house which her father had built near the house of her lola. Sometimes her great grandmother Bayi, would visit them. In the new

house, her father Eliseo raped her several times which series of rape would happen in the early morning.

Complaining witness Loregin, additionally testified that after she filed this complaint for rape against her father, Eliseo wrote her twice, asking for her help so that he can be released from jail which will enable him to go home to Butuan and will not molest her again. The first letter was handcarried to her by an old man, the second by a child, both individuals, she does not personally know. In both letters, her father asked that he be forgiven.

The prosecution requested that these letters be marked as its Exhibit "D" and series, reserving the presentation of the English translation.

On cross examination, complaining witness declared that their house in Bgy. Sta. Irene, Purok 4, consists only of a single space with no room. Her parents have seven children. Loregin has a twin sister named Lyn/Laine, who is smaller than she is. She and her twin sister sleep side by side with each other. Their father and mother likewise sleep side by side, by the wall. The fondling of her breasts by her father started on the month of January up till mid March, which her father usually does between the hours of 10:00 to 11:00 o'clock in the evening. During these times, her father would move away her twin sister. She did not tell her mother about these fondling incidents because she was warned by her father not to tell, otherwise, he will kill her (Loregin). Neither did she tell her twin sister as she might tell her mother, so their father will learn about it and might kill Loregin. One evening in the month of March, their mother saw accused father fondling Loregin's breasts. Their mother confronted herein accused.

On later questions on cross, complaining witness reaffirmed her testimony on direct starting from the time when her mother prevailed on her to go with her father supposedly to harvest palay in Bgy. Cumpaitan, and the rape committed on her at the banana plantation in Bgy. Cumpaitan. The nearest house to the banana plantation where she was raped was but four hundred (400) meters away. That after raping her, her father told her that they will go home; that instead of going home, her father cycled with her riding behind, to Bayugan, then boarded a jeepney for Butuan. The bicycle was loaded on the jeepney. They stayed overnight at the ferry terminal in Liloan. She restated her testimony on direct appertaining the route they took from Liloan up till the time they reached the house of her father's cousin in Abuyog and their living for sometime with her auntie Zabeth. She did not tell her auntie Zabeth, her uncle, her grandmother or any of her relative about the sexual abuse committed on her by her father because of the warning of her father not to tell anyone, otherwise Loregin will be killed by him. Zabeth's husband, who is a brother of Eliseo was then in Manila, hence Zabeth was living only with her children, the eldest of which was only Grade II. While in Combis, her father was hired to work on ricefields several times, but would bring herein complaining witness with him.

Complaining witness was able to befriend a household help of Pedro

Bucton, from whom Loregin inquired whether she knows someone who is in need of a household help. This friendly household help told Loregin that she can come with her. Thus, one time she requested her father to buy carabao meat for their viand. This gave her opportunity to escape, by riding on a motorcycle, while her friend rode on a jeepney. This was on July 19. After the lapse of about three days, her father came looking for her, however, he was not able to detect her presence in the house of Bucton. It was only after about two weeks that her father was finally able to locate her. In the meantime, she already revealed to Pedro Bucton about the sexual abuse committed on her by her own father. The reason why she revealed to Pedro Bucton instead of to any of her relatives, this sexual abuse on her, was because Pedro Bucton did not know her father and would then not be able to tell her father about what she would disclose.

After she revealed to Pedro Bucton of the series of rape committed on her by her own father, she was subjected to medical examination at the Abuyog District Hospital.

Complaining witness firmly stated that the two letters sent to her by her father are in the penmanship of her father, as she knows very well the penmanship of her father.<sup>[6]</sup>

The defense is based solely on the testimony of ELISEO. He interposed the defense of denial. His version of the facts as summarized in the Appellant's Brief is as follows:

Accused Eliseo Alvero y Loreño testified that because of the incident that happened in their house on April 24, 1996, he left said house and arrived at Abuyog, Leyte on April 29, 1996, alone.

On April 24, 1996, he came home from the mountain. He overheard his wife talking with a man inside their room which was then closed. When his wife opened the door, he drew his bolo. His wife embraced him. The man whom he named Albino Butingana whom his wife was conversing with inside the room, jumped out of the window. Said man was only wearing a brief. His wife asked for his forgiveness. He left their house, passed the night in the house of his sister Anatacia Mendoza. The following day, he packed his things, left for the mountain to mortgage his pigs, proceeds of which he used as fare in going to Abuyog. He helped his uncle Alipio in farming and then worked on his own coconut land situated at Brgy. Combic. On May 25, 1996, his nephew Jimmy Alvero came to the farm of his uncle, informing him that his daughter Lorigin [sic] arrived. His daughter told him that his wife send to his place. His daughter stayed at the house of his sister-in-law Elizabeth (Zabeth) Alvero, which is half kilometer away from where he stayed. On June 6, 1996, her daughter came to see him, and told him that she wanted to work as house helper in Abuyog. His daughter was then accompanied by Nora Alvero. She later learned that his daughter was Nora's replacement as household helper of Odo Butcon. On July 10, 1996, he went to the house of Odo Butcon to ask money from Lorigin to be spent for the processing of copra at Brgy. Combis. He did not see his daughter, instead her employer. Bucton told

him that his daughter was not around. On July 22, 1996, after delivering his copra to a store at Tab-oc, Abuyog, Leyte, he saw his daughter in the house of her employer. He alighted from the pedicab. While he was talking with his daughter, Odo Bucton arrived and pulled his daughter inside the house. Said Bucton drew his .38 caliber pistol, prompting him to leave the house and went back to Tab-oc, Abuyog. While sitting at Tab-oc, a policemen accompanied by Odo Bucton arrived, thereafter brought him to the municipal building and placed him inside the prison cell. Odo Bucton harbored ill-feelings towards him, because of boundary dispute.

He also testified that the testimony of Lorigin [sic] about the fondling of her breast, sexual assault in banana plantation, in the mountain and in the hut he built near the house of his grandmother were all lies. He also denied sending his daughter-victim letters which were written in his penmanship inasmuch as all he knew was to sign his name.<sup>[7]</sup>

The trial court gave full faith and credit to the testimony of LOREGIN which "was given in a clear manner without any indication that the same was motivated by any ill feeling"; moreover her testimony was buttressed by the corroborative testimony of her mother, and by the findings in the medical report. It declared as baseless ELISEO's defense that the rape charge was fabricated by LOREGIN's mother for "it is inconceivable that a mother would draw her young daughter into a rape scam with all its attendant scandal and humiliation just because of a supposed feud. No mother in her right mind could possibly wish to stamp her child falsely with the stigma that follows heinous crime that is rape."

Accordingly, in its Judgment of 13 April 1998,<sup>[8]</sup> the trial court decreed as follows:

WHEREFORE, in view of the foregoing considerations, this Court finds the accused ELISEO ALVERO Y LOREÑO GUILTY BEYOND reasonable doubt of the crime of RAPE in Criminal Case No. 1631, committed in the month of April 1996; hereby imposing upon him the penalty of DEATH.

In Criminal Case No. 1632 committed in the month of May 1996, this Court finds the accused ELISEO ALVERO Y LOREÑO GUILTY beyond reasonable doubt of the crime of RAPE; hereby imposing upon him the penalty of DEATH; and

In Criminal Case No 1633, committed in the month of June 1996, this Court finds the accused ELISEO ALVERO Y LOREÑO GUILTY beyond reasonable doubt of the crime of RAPE; hereby imposing upon him the penalty of DEATH.

The accused shall indemnify the victim Loregin Alvero Y Cabahug, the amount of Fifty Thousand (P50,000.00) Pesos in moral damages; and to pay the Costs.

SO ORDERED.<sup>[9]</sup>

The death penalty having been imposed on ELISEO, the records of the case were elevated to this Court for automatic review. In his Appellant's Brief, ELISEO