

EN BANC

[G.R. No. 123152, November 17, 1999]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
RODRIGO LASOLA Y JAIME, ACCUSED-APPELLANT.**

DECISION

PER CURIAM:

For automatic review here is a judgment rendered by Branch 16^[1] of the Regional Trial Court of Zamboanga City, convicting Rodrigo Lasola y Jaime of two counts of rape of an under-aged relative and sentencing him to suffer the penalty of *reclusion perpetua* for one count and the supreme penalty of death for the other count.

Filed on April 6, 1995 by the victim, Rudymer Lasola, and her mother, Myrna Lasola, the Complaint against Rodrigo Lasola y Jaime in Criminal Case No. 13196, alleges:

"That sometime in the year 1991, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge of his own daughter, the undersigned RUDYMER LASOLA y MAGOS, who was the (sic) nine (9) years old, against her will."^[2]

Filed on the same day, the other Complaint against the said felon, docketed below as Criminal Case No. 13197, avers:

"That on or about April 4, 1995, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above named accused being the father of the undersigned RUDYMER LASOLA y MAGOS, by means of force or intimidation, did then and there, willfully, unlawfully and feloniously have carnal knowledge of the undersigned, 12 years of age, against her will."^[3]

With accused - appellant entering a plea of Not Guilty, upon arraignment on May 5, 1995, with the assistance of his counsel, Atty. Pablo Barrera, the two cases were tried jointly, resulting in the rendition of subject judgment of conviction dated November 3, 1995, with the following decretal portion:

"WHEREFORE, the court finds accused RODRIGO LASOLA Y JAIME GUILTY BEYOND REASONABLE DOUBT OF THE CRIMES OF RAPE defined and penalized under Article 335 of the Revised Penal Code, as amended by Section 11 of R.A. No. 7659, committed against his daughter, Rudymer Lasola y Magos, with the aggravating circumstances of abuse of relationship and abuse of confidence, and sentences him as follows:

1. In Criminal Case No. 13196, to suffer the penalty of RECLUSION PERPETUA and its accessory penalties considering that the crime of Rape charged therein was committed before the effectivity of R.A. No. 7659 on December 31, 1993;
2. In Criminal Case No. 13197, to suffer the penalty of DEATH and its accessory penalties, in the manner provided by law; and
3. To pay the offended party Rudymer Lasola y Magos, moral damages in the sum of P50,000 in each of the two (2) cases or a total of P100,000 and exemplary damages in the amount of P25,000 or a total of P50,000, and to pay the costs.

Let the complete records of these cases be forwarded to the Supreme Court for automatic review and judgment as provided by law.

SO ORDERED.^[4]

In arriving at its aforesaid finding of guilt, the trial court gave credence to the version of the victim, and culled the inculpatory facts and events, thus:

"Rudymer Lasola y Magos was born, per her Certificate of Live Birth (Exh. 'G'), on October 5, 1982 at Kayatian, Poblacion, Siocon, Zamboanga del Norte. She is the only child of accused Rodrigo Lasola and his wife Myrna Magos who were living together as husband and wife since 1980 without the benefit of marriage. In April 1995, they were residing at Pasonanca, Zamboanga City, in a small hut without any room measuring only two meters in width and four meters in length with nipa shingles as roof and sacks as its walls. Its floor which is made of plywood is about 17 inches from the ground.

Rudymer is a frail, petite child with 'morena' complexion. She finished Grade III at Pasonanca Elementary School. She testified without much emotion, as if enfeebled by the cruel fate that has befallen her at a tender age. At about 9:00 in the evening of April 4, 1995, she was in the house of Tata Quijano (Marialyn Quijano) watching a television program together with her mother, Myrna Lasola, and an old woman whom she calls 'Lola', and the children of Tata Quijano, and Tata Quijano herself. The house of Tata Quijano is adjacent to that of the Lasolas. Myrna Lasola works as a laundry-woman for Tata Quijano and her family. While Rudymer was watching the TV show, her father, Rodrigo Lasola, arrived. He ordered her to go home because there is no one in their house. Rudymer obeyed and went home. She fell asleep. She was awakened by her father who ordered her to take off her short pants and panty. She obeyed because her father had a bolo and told her that if she will not obey, he will kill her. Her father ordered her to spread her legs ('Iya akong gipabika'). He took off his short pants and brief, went on top of her, and inserted his erect penis inside her vagina ('Iyang gipasulod ang iyang utin ug lagay') xxx

While Rodrigo was on top of Rudymer doing the sexual act, Myrna Lasola arrived. When she saw what Rodrigo was doing, she upbraided the latter saying "nganong gibuhat nimo ni sa imong anak' (why did you do this to your daughter'). Rodrigo got mad and shouted at her: "Buwisit ka; mogawasay na; naabot ka pa; demonyo ka' (`It is about to come out; you arrive; you devil'). Rodrigo got a bolo and chased Myrna. When he realized that he was naked from the waist down, he stopped chasing Myrna who ran to the house of Tata Quijano. After pulling her short pants and panty, Rudymer followed her mother. Myrna told Tata Quijano what happened and the latter reported the incident to her brother-in-law, SPO2 Efren Asoy, a policeman assigned in the Police Training Center in Pasonanca.

Rudymer declared that prior to April 4, 1995, her father already had sexual intercourse with her many times (tsn, p. 32, May 15, 1995). The first was in 1991 when she was nine years old. She could not remember the exact date. It was after her ninth birthday, maybe in the month of November. While she was sleeping, her father woke her up and ordered her to take off her short pants and panty. Then he went on top of her and inserted his penis into her vagina. Blood came out of her sex organ. Her father warned her not to report the incident to her mother otherwise he will kill her. xxx

xxx xxx xxx

After the first sexual intercourse, her father had repeated sexual congress with her until her mother caught them in the evening of April 4, 1995 in the act of sexual intercourse. She never reported the incidents to her mother because his father threatened to kill her if she will report to her mother. Her father used to beat her and maul her mother (tsn, p. 38, May 15, 1995).

The facts as testified on by the victim, Rudymer, were corroborated on material points by the testimony of her mother Myrna, who actually witnessed what transpired on April 4, 1995. To her testimony, Myrna added that she "remembered that she saw blood in Rudymer's panty and blanket when she was nine (9) years old"^[5] and that accused - appellant was lazy, often drunk and used to beat her and Rudymer.

The prosecution likewise presented Tata Quijano and PO2 Renato de la Pena, who brought Rudymer to the Zamboanga City Medical Center for physical examination. Conducted by Dr. Rodolfo M. Valmoria, the medico-legal examination yielded the following report:

` FINDING:

Scant growth of pubic hair. Labia majora full, convex and slightly gaping. Labia minora is light brown in color and presenting in between is a fleshy type hymen with deep healed lacerations at 12 and shallow healed lacerations at 9 and 3 o'clock positions.

Vaginal canal narrow and hardly admits examining index finger. Abdomen is flat and tight. Breast infantile and flat with dark brown areolae and nipples.

Vaginal and cervical smears negative for spermatozoa and grm negative diplo. Pus cells many.

CONCLUSION:

Subject is of non-virgin state physically^[6]

Accused-appellant interposed the defense of denial. He theorized that his wife and daughter concocted the charges against him "because his wife is always mad at him."^[7] His testimony also revealed that as early as 1991, his wife already suspected him of raping Rudymer^[8] and that notwithstanding the accusations made by his wife, he did not get angry at the latter.^[9] Accused-appellant admitted that his wife told him about the blood on their daughter's blanket and underwear. However, he claimed that the blood on Rudymer's panty was that of Myrna because she used the panty of Rudymer as napkin when menstruating.^[10]

Accused-appellant did not present any witness other than himself.

Convinced that accused-appellant is guilty beyond reasonable doubt of the offenses charged, the trial court *a quo* handed down the decision under automatic review. Although accused-appellant was sentenced to *reclusion perpetua* only in one case, with respect to which automatic review is not required, the penalty imposed in the other case being death, the two cases which were tried jointly below, have to be decided jointly in this decision.

Upon elevation of the cases to this Court, the Free Legal Assistance Group, Anti-Death Penalty Task Force, entered its appearance for the defense. In attacking the judgment of conviction under review, accused-appellant placed reliance on the lone *albeit* encompassing ground, that:

"The judgment of conviction is inconsistent with the evidence presented and did not take into consideration the clear motive behind the filing of the complaint."^[11]

In more than one instance,^[12] this Court has had the opportunity to lay down the basic principles and guidelines for the determination of rape cases, to wit: 1) an accusation for rape can be made with facility, it is difficult to prove but more difficult for the person accused, though innocent, to disprove; 2) in view of the intrinsic nature of the crime of rape where two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and 3) the evidence of the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense.

More in point to the present case is this Court's ruling in *People vs. David Silvano*^[13] that in cases of qualified rape of an under-aged relative, the prosecution must allege and prove the ordinary elements of 1) sexual congress, 2) with a woman, 3) by force and without consent, and in order to warrant the imposition of the death