

## THIRD DIVISION

[ G.R. No. 122246, March 27, 1998 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BOBBY LUSA Y GERVACIO, ACCUSED-APPELLANT.**

### D E C I S I O N

**ROMERO, J.:**

At fourteen, Michelle Lusa was abused, raped and impregnated by her own father, herein accused-appellant Bobby Lusa. Whatever respect and affection she held for her own father was replaced with hatred and antipathy. The eldest of six children, complainant lived with her family at Barangay Alcalde, Tibig, Silang, Cavite.

Sometime in the second week of September 1993 at around 12 o'clock midnight, she was sleeping with her younger brothers and sisters inside one of the rooms in their house. Suddenly, she felt someone touching her private parts. Recognizing the intruder to be no other than her father, complainant instinctively removed accused-appellant's hand and kicked him. Fearful of untimely discovery, the latter hurriedly left the room. Complainant kept mum about the incident.

The first week of October 1993 at 3 o'clock in the morning, complainant was again awakened from her slumber when she felt someone on top of her. Again, she recognized the intruder to be her father who was reeking of liquor. Complainant ventured to stand up but accused-appellant ordered her to stay put and to keep quiet. Accused-appellant forcibly removed complainant's shorts and panty, and, notwithstanding her resistance, succeeded in forcing himself on her. Having spent his lust, accused-appellant warned complainant not to reveal the incident to anybody, else she would be killed.

These sexual assaults were repeated approximately ten times, the last being perpetrated on March 28, 1994. Three days later, complainant disclosed her ordeals to her aunt when the latter accosted her about her growing abdomen. Together with her aunt, she executed her *Sinumpaang Salaysay*<sup>[1]</sup> on April 1, 1994 in which she narrated her painful experience at the hands of her father at the Silang Police Station. On April 4, 1994, she underwent an internal examination by Dra. Engracia A. dela Cruz at the Municipal Health Office where a medical certificate<sup>[2]</sup> was issued with the following findings:

- No contusion
- Hymen not intact
- Vaginal canal admits 2 fingers
- Last menstrual period - Sept. 5, 1993
- Expected date - June 9, 1994

- Age of gestation - 24 weeks

- IDI - April 4, 1994 - Pregnancy Test, Positive

Before her due date, complainant went to Manila and stayed with the family of a certain Bibes. Ma. Elena Hernaes and her brother, Jessie Hernaes offered support and comfort during this trying period.

On July 21, 1994 complainant gave birth to a baby boy at Fabella Hospital. Complainant eventually gave up her child for adoption because she could not support him.

Based on her *Sinumpaang Salaysay* and the medical certificate, complainant filed a complaint<sup>[3]</sup> for rape against her father, herein accused-appellant Bobby Lusa. Consequently, an information<sup>[4]</sup> dated May 30, 1994 was filed charging the following:

“That sometime in the month of September 1993 and subsequent thereto, at Barangay Tibig, Municipality of Silang, Province of Cavite, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, by means of force, violence and intimidation and taking advantage of his superior strength over the person of his daughter who was then fourteen (14) years old, did, then and there, wilfully, unlawfully and feloniously, have carnal knowledge of said Michelle A. Lusa, against the latter’s will and consent, to her damage and prejudice.

CONTRARY TO LAW.”

Upon arraignment, accused-appellant pleaded “not guilty.” Trial on the merits proceeded and on April 12, 1995 the trial court convicted accused-appellant of rape and accordingly sentenced him -

“x x x to suffer the penalty of *reclusion perpetua* or life imprisonment; to pay the offended party Michelle Lusa y Amon the amount of P50,000 by way of indemnity, P25,000 as moral damages, and P25,000 as exemplary damages, without subsidiary imprisonment in case of insolvency in view of the penalty imposed upon the accused, and to pay the costs.

SO ORDERED.”<sup>[5]</sup>

In so ruling, the court *a quo* observed that:

“It is remarkable to note from the evidence appearing on record that as against the clear, positive and straightforward testimony of his accuser, complainant Michelle Lusa, the accused had nothing to offer except his testimony denying having committed in any way the crime of rape imputed against him. Worse, to make sure that such denial would work to his advantage, he even alluded an accusation that Michelle Lusa could be a young woman of low morals, easy-to-get and flirtatious. However, this inference has no positive effect on this Court and that the same should be rejected as a shallow alibi of a desperate person who later came to his senses and after realizing the seriousness of the offense he committed, concocted this last-minute attempt on his part to cover up the effects of his dastardly act, much less conceal his shame for the rape of his very own flesh and blood.

As to the accused’s claim that the instant charge was inspired by his father-in-law’s intense desire to place him in jail for accused’s failure to lend him money and

alleged jealousy, such an excuse is too lame to be legally accepted as true by this Court. On the contrary, the Court, taking into account the relationship between the accused and complainant as father and daughter to each other, is of the firm belief that the latter has no plausible reason to fabricate a story of rape against her own father, file a complaint in the instant case, and expose herself to the public ridicule if not ignominy of having to denounce the accused, her own father, about the sexual abuse done to her, if in truth she was not raped x x x .”

In this appeal, accused-appellant argues that the trial court erred in finding him guilty beyond reasonable doubt of the crime of rape.

This Court is not persuaded. Accused-appellant’s conviction must stand.

Accused-appellant capitalizes on the disparity between complainant’s sworn statement in her *Sinumpaang Salaysay* that she was first raped on September 1993 and her testimony<sup>[6]</sup> in open court that her father only touched her private part on said date. The alleged inconsistencies in the *Sinumpaang Salaysay* and complainant’s testimony in open court are so minor that it does not in any way affect complainant’s credibility. Moreover, it being the first time that her honor was violated, complainant cannot be expected, from lack of experience, to be precise in her testimonies.

It must be taken into consideration that a *Sinumpaang Salaysay* is merely a short narrative subscribed to by the complainant in question and answer form. Thus, it is only to be expected that it is not as exhaustive as one’s testimony in open court. The contradictions, if any, may be explained by the fact that an affidavit can not possibly disclose the facts in their entirety, and may inaccurately describe, without deponent detecting it, some of the occurrences narrated. Being taken *ex-parte*, an affidavit is almost always incomplete and often inaccurate, sometimes from partial suggestions, and sometimes from the want of suggestions and inquiries. It has thus been held that affidavits are generally subordinated in importance to open court declarations because the former are often executed when an affiant’s mental faculties are not in such a state as to afford her a fair opportunity of narrating in full the incident which has transpired. Further, affidavits are not complete reproductions of what the declarant has in mind because they are generally prepared by the administering officer and the affiant simply signs them after the same have been read to her.<sup>[7]</sup>

Accused-appellant next points out that the *Certificate of Live Birth* carried the name of Jessie Hernaes as the father of complainant’s child. That matter cannot, in any way, exonerate accused-appellant from the crime of rape. As explained by complainant, she merely thought that the hospital personnel asked her the name of the father for record purposes, unaware of its significance. Besides, it was Jessie’s mother who volunteered the use of Jessie’s name in the records.<sup>[8]</sup> Apparently, complainant was ashamed to place on record that her son’s father is likewise her own.

Significantly, the lower court found complainant’s testimony to be credible, convincing and straightforward. Courts usually give credence to the testimony of a girl who is a victim of sexual assault, particularly if it constitutes incestuous rape because, normally, no person would be willing to undergo the humiliation of a public trial and to testify on the details of her ordeal were it not to condemn an injustice.<sup>[9]</sup> Needless to say, it is settled jurisprudence that testimonies of child-victims are given full weight and credit, since when a woman, more so if she is a minor, says that she has been raped, she