

FIRST DIVISION

[G.R. No. 117737, December 27, 1996]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
NEMECIO B. CERVANTES, ACCUSED-APPELLANT.**

D E C I S I O N

VITUG, J.:

The accused, Nemecio B. Cervantes, appealed to this Court from the judgment of the Regional Trial Court of Pasay City, in Criminal Case No. 92-0567, convicting him of the rape of a 16-year old girl. He was charged with the commission of the offense in an information that read:

"The undersigned State Prosecutor of the Department of Justice upon prior sworn complaint of Rosalyn M. Salvador, the offended party, hereby accuses NEMECIO B. CERVANTES of the crime of rape penalized under Article 335 of the Revised Penal Code, committed as follows:

"That in or about June 1991, in Pasay City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a knife, did then and there willfully, unlawfully and feloniously threatened and succeeded in having sexual intercourse with the said ROSALYN M. SALVADOR against her will and consent, to her damage and prejudice.

"CONTRARY TO LAW."^[1]

The Solicitor General, adopting by and large the findings of the trial court, gives a brief narration of the evidence for the prosecution.

"VICTIM ROSALYN SALVADOR (who was crying until the end of her testimony) testified that sometime on June 1991 at 7:00 p.m., she was alone inside their house at No. 87 R. Higgins Street, Pasay City, because her mother was in the store at Villamor Airbase, her eldest brother was with a friend and the younger one, was playing. While watching a TV show (pp. 6-7, tsn, Sept. 14, 1992), accused Nemecio Cervantes whom she fondly called 'Kuya Dodong,' who was renting part of their house for more than 6 years, knocked on the door of the victim's house. Rosalyn Salvador peeped at the window to find out who was knocking at the door, she discovered, it was Nemecio Cervantes. The latter asked for some water, so, the victim opened the door and gave him water (pp. 7-10, supra). The accused did not drink the water; instead, he entered the house then dragged the victim inside the comfort room. The accused kept on kissing the face, neck and all parts of the body of the victim who was crying and resisting (pp. 10-11, supra). Later on, the victim was asked by the accused, with a knife poked on the middle portion of her

throat, to take off her t-shirt and short pants and to lay down, to which she gave in (pp. 11-12, supra). The accused removed victim's bra and panty and inserted his penis to the vagina of Rosalyn Salvador. She felt pain (pp. 11-13, supra). Immediately thereafter, the accused left the victim in the comfort room with a warning not to tell anybody; otherwise, she and her brothers will be killed by the accused (pp. 13-14, supra). The victim washed her face and her entire body then she met her mother in the store. She never told her mother earlier about the rape because of the death threat (pp. 14-15, supra).

"Sometime on August 1991 and November 1991, the same rape incident happened between Rosalyn Salvador and Nemecio Cervantes under the same circumstances of death threats to her, her brothers and her mother (pp. 17-18, supra).

"The victim first reported the rape incident to her Tita then to her mother on February 3, 1992 (pp. 18-19, supra). She was accompanied by her Tita and her mother to the NBI where she executed a sworn statement (Exhs. B to B-6). By reason of the sexual abuse, Rosalyn Salvador failed to go to school for few months and she got failing grades. As to moral damages, she cannot quantify the same in terms of money. Her feelings was 'pagkainis at pagkasuklam' to Nemecio Cervantes (pp. 21-22, tsn, Sept. 14, 1992).

"Dr. Ruperto Sombilon, Jr., Medico Legal Officer, NBI, Manila, testified that on February 2, 1992 at 8.30 p.m., he conducted a genital examination on the person of Rosalyn Salvador. His findings were old-healed hymenal lacerations, in 3 o'clock and 9 o'clock positions; the age of which correlates to the date of commission of rape cases (Exhs. A to A-2). Said lacerations were caused by a male organ and that at the time of the rape, Rosalyn Salvador was still a virgin."^[2]

The accused, in his defense, asserted that the incident complained of had come about because of mutual desire and consent of both parties, he and private complainant still then being "sweethearts."

On 05 September 1994, the trial court found for the prosecution, and it rendered judgment convicting Cervantes of rape. The court held:

"IN VIEW OF THE FOREGOING, the Court finds Nemecio Cervantes guilty beyond reasonable doubt of the charge of Rape against him. Accordingly, he is hereby sentenced to suffer the penalty of reclusion perpetua and to pay Rosalyn Salvador the sum of P500,000.00 as moral damages.

"Costs against Nemecio Cervantes."^[3]

In this appeal, accused-appellant raised a lone assignment of error, i.e., that -

"The Court a quo erred in convicting the accused guilty as charged for the crime of rape the same being contrary to the facts, the evidence and the law/jurisprudence on the matter."^[4]

The Court, almost invariably, is asked in rape cases to choose between the discordant, often essentially irreconcilable, declaration of the victim and that of the accused. In that determination, an appellate court, realizing many times that it cannot hope to be in a position greater than, or even equal to, that of the trial court which can observe up close the demeanor of witnesses in giving their testimony, simply would accord due respect to the findings of the lower court. Here, the records do not give any trace of whim or arbitrariness on the part of the court a quo in its assessment of the facts; quite the contrary, it appears to have been judicious in its findings.

Rosalyn, who was barely 16 years of age when she underwent her harrowing experience, in tears^[5] gave this detailed account of the incident:

- "Q On the second week of June 1991 at around 7:00 in the evening what are you doing at that time?
- "A I was watching T.V.
- "Q While you were watching T.V. at around 7:00 in the evening of the second week of June 1991 do you recall if there was any unusual incident that happened?
- "A Yes sir.
- "Q And what was this unusual incident that happened?
- "A Kuya Dodoy knocked at our door.
- "Q Now you mentioned the name `kuya Dodoy' who was this `kuya Dodoy'?
- "A He is renting in our house.
- "Q And what is his full name if you know?
- "A Nemecio Cervantes.
- "Q Why do you call him Miss Salvador `kuya Dodoy'?
- "A Because I respect him as a renter in our house.
- "Q And how long has he been renting in your house?
- "A For more than 6 years.
- "Q In other words you are around ten years old when `kuya Dodoy' or Nemecio Cervantes started renting in your house?
- "A Yes sir.
- "ATTY. "I would like to make of record that the witness while
CATLY: testifying she is continuously crying your honor.
- "COURT:
"Put it in record.
- "Q What part of your house, `kuya Dodoy' is renting?
- "A He was with the other who rented at our house.
- "Q Also inside your house?
- "A No sir.
- "Q Where in particular?
- "A After at the left side.
- "Q Now in going to his room does he have to pass the same door in going inside your house?
- "A No sir the way to our house is different from the way