

FIFTH DIVISION

[CA-G.R. CR-H.C. NO. 01703, June 30, 2006]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ARNOLFO SINGH Y ISAP, ACCUSED-APPELLANT.**

DECISION

BARRIOS, J.:

The appellant Arnolfo Singh y Isap (or hereafter Singh) in August 1994 was living in 106 San Pedro St. in Tondo, Manila, with his live-in partner Teresita Lumangaya (or Teresita) and her daughters, the complainants Sydney Lumangaya Cortez (or Sydney) and Emily Lumangaya Cortez (or Emily). Sydney and Emily, who were then respectively 17 and 16 years old and high school students, with their mother Teresita left their abode on September 12, 1994 and ended up in Anabu, Imus, Cavite as the housemaids of the spouses Rogelio and Jovita Libed. Within days Singh was able to trace them and wanted them back. But Sydney and Emily refused, and with the sympathizing Libed spouses and their father Enrique Cortez who was located in Laguna, they complained of rape against Singh before the PNP in Imus, Cavite.

This eventually resulted in Singh being arrested at home and without warrant by seven (7) Imus policemen on September 15, 1994, and charged with Rape before the Regional Trial Court of Manila on the following specifications:

That on or about the 12th day of August, 1994, in the City of Manila, Philippines, the said accused did then and there willfully, unlawfully and feloniously, by means of force, violence and intimidation, to wit: by then and there pulling said Sidney Cortez, y Lumangaya by the arms into the room of the house, boxing her on by the arms into the room of the house, boxing her on the stomach and laying her on the floor covered with linolium, at the same time threatening to kill her should she resist or cry for help, have sexual intercourse with said complainant, a girl 17 years of age, against her will.

CONTRARY TO LAW. (Information, p. 3)

and

That on or about the month of August, 1994, in the City of Manila, Philippines, the said accused did then and there willfully, unlawfully and feloniously, by means of force, violence and intimidation, to wit: by then and there punching her on the stomach and on the shoulder and laying her down, at the same time threatening to kill her should she resist, have sexual intercourse with Emily Cortez y Lumangaya, his step-daughter, a girl 16 years of age, against her will.

After Singh pleaded Not Guilty to both charges, the prosecution presented as witnesses the complainants Sydney Lumangaya Cortez and Emily Lumangaya Cortez, WPD Investigating Officer SPO2 Laura Cipres, NBI Medico-Legal Officer Dr. Aurea Villena, Jovita Libed, and Analina Lopez of the Human Rights Commission, and the documents Living Case No. MG-94-1043 as Exh. "B" and Living Case No. MG-94-1044 as Exh. "C". The defense presented the accused Arnolfo Isap Singh, the mother of the complainants Teresita Lumangaya, Norma Isap and Ruben Yabut.

The trial court synthesized the testimonies of the complainants Sydney and Emily as follows:

On August 1994, Sydney Cortez y Lumangaya was 17 years old and a High School student of Timoteo Paez High School, Tondo, Manila, while Emily Cortez y Lumangaya was 16 years old and also a High School student of the same school.

Sydney testified that in the year 1990, when she was barely thirteen (13) years old, she was sexually abused by accused, her step-father at their home in Pandi, Bulacan. Her mother went to the market and while she was watching television, accused suddenly grabbed her and poked a knife at her neck and threatened to kill her. With the knife at his right hand pointed at her, accused undressed her with his left hand and place his body on top of her. Accused forcibly spread her two legs and inserted his penis into her organ and made a push and pull movement. During the sexual encounter, she experienced pain in her vagina and noticed blood oozed from it. After the sexual intercourse, accused warned Sydney not to tell anyone about what happened and threatened to kill them. She further narrated that her defilement did not end there. On August 12, 1994, while her mother and cousin went to Secretary Drilon's office, she was left with accused at their house in 106 San Pedro Street, Tondo, Manila. When she about to go out of their house, she was suddenly grabbed by the accused and forcibly laid down on the floor. Despite her resistance, accused did not stop but instead boxed her stomach. Accused removed her short and underwear. Likewise, accused removed his short and underwear, lay on top of her and inserted his organ into her private part and made a push and pull movement. Accused even threatened her not to tell her mother otherwise, he will kill her mother and made her his wife. Sydney further testified that she was able to tell her ordeal to her sister, Emily (the other complainant) and mother and they agreed to escape from the accused. Eventually, in the afternoon of September 12, 1994, Sydney, Emily and their mother were able to escape from the accused and went to Bulacan. After a week, accused was able to locate them so that they were forced to transfer to Imus, Cavite. They lived in Anabu, Imus, Cavite, at the house of Mrs. Jovita Libed, where they were employed as housemaids. After three (3) days, accused was able to locate them and forced them to go with him in Tondo, Manila, but they refused. Sydney was able to tell her ordeal with the accused to Mrs. Libed. With the help of Mrs. Libed, they were able to

locate the whereabouts of their natural father, Enrique Cortez, in Laguna. Together with Mrs. Libed, Mr. Libed and their father, they went to Imus Police Station, they were advised to file their complaint in Manila. On September 17, 1994, she executed a Sworn Statement at WPD, Manila (Exhibit "A"). Afterwhich, she was advised to proceed to the National Bureau of Investigation for physical examination. Meanwhile, the accused was turned over to Western Police District, Manila from Imus Police Station.

On cross-examination, she averred that she left their house at 9:20 in the morning of August 12, 1994 to attend her class which started from 9:40 in the morning to 5:00 in the afternoon. She further averred that she could not tell her ordeal to her mother or the school authorities or to anybody because she knew accused will make good his threat to kill them. She admitted that since 1990 up to August 1994, accused had continuously raped her.

Emily Cortez testified that she had been sexually molested by accused since 1990 up to 1994. The first time that she was sexually molested by accused was in 1990 in Pandi, Bulacan. She testified that accused poked a knife at her and gradually undressed her. Her pleas and struggles proved futile as accused was determined to pursue his evil desire. Accused forcibly laid her on the floor and placed himself on top of her.

She further testified that it was the 1st week August 1994 when she was left alone with accused at their house in Tondo, Manila, considering that her sister's (Sydney) schedule of exam was 7:00 a.m. – 12:00 n.n., while her schedule of exam is from 12:00 n.n. – 4:00 p.m. It was then that accused closed the door and windows of their house and suddenly embraced her and forced to remove her short pants and panty. Despite her struggle and resistance, accused succeeded in undressing her. Afterwhich, accused forced her to lie on the floor and placed himself on top of her and forced to insert his penis into her private part. Further, she testified that she saw a mucus-like came out from the private part of accused.

Despite the fact that she disliked the things that accused had done to her, she could not report the matter to her mother or her sister because of the threat of accused.

However, on September 2, 1994 at break time, she was able to confide to her sister (Sydney) of the sexual abuses she experienced with accused, not knowing that the latter shared a similar experience. It was then that together with their mother, they decided to escape from accused.

On cross-examination, she admitted that despite the fact that for almost 4 years that accused sexually molested her, she did not report her ordeal to anybody because she believed that accused will make good his threat of killing them. She recalled accused telling her "*Huwag magsusumbong kahit kanino at papatayin ko kayong mag-iina. Pati pulis, hindi kayo paniniwalaan*". (Don't tell anybody and I will kill all of you. Even the police will not believe you.) Further, she could not talk to her classmate

or teacher or even went to the clinic of the T. Paez High School because the accused has been watching her all the time.” (Decision, pp. 671-672, record)

SPO2 Laura Cipres was assigned as Police Investigator for the Women’s Desk, General Assignment Division, WPD. On September 16, 1994 Sydney and Emily filed a complaint for *Rape* against Singh. She referred them for genital examination with the National Bureau of Investigation. The next day, she conducted her investigation with Sydney and Emily resulting in the latter executing a Sworn Statement (Exh. “A”), after which she prepared the Crime Report (Exh. “C”) and Booking and Information Sheet (Exh. “D”). During the investigation, she noticed that both complainants were crying and positively identified Singh as the culprit.

Dr. Aurea Villena of the NBI conducted the pertinent examinations on the complainants Sydney and Emily, the findings and conclusions of which are as stated respectively in Living Case No. MG-94-1043 (Exh. “B”) and Living Case No. MG-94-1044 (Exh. “D”). With her conclusion therein, she opined that despite the fact that complete penetration is not possible without producing any genital injury, partial penetration is possible.

Jovita Libed told how the mother Teresita and her daughters Sidney and Emily were brought to her household to serve as helps. They had to pay a fee or commission to the person who brought them. But a few days later Singh arrived and wanted to bring them home, but she required that they first reimburse her of her expenses in hiring them. Singh and Teresita left saying they will come back with the money but never did. Teresita was insisting on her daughters to come with her but they had refused. They confided to the Libeds what Singh has been doing to them, and they sympathized with Sidney and Emily and decided to help them. Teresita had complained against them with the Human Rights Commission, so the Libeds helped find their father and were able to arrange that he indorse their custody to the Libeds. The Libeds actively assisted in the complaint and prosecution of Singh.

Analina Lopez of the Human Rights Commission said that Teresita went to their office complaining that her minor daughters Sydney and Emily were being kept from her by the spouses Rogelio and Jovita Libed. But because of the stand of these minors and the Libed spouses, their office found the Solomonic solution by getting the minors’ father Enrique Cortez to assert his custody over them and then forthwith turn them over to the Libed spouses.

The accused set up the tandem defenses of denial and alibi. Singh denied having raped either Sydney or Emily, and testified that he treated and loved them as if they were his own daughters. He worked as a plumber to sustain their schooling and needs. As he was wont to do, on August 12, 1994 he went out to look for jobs to do at around 8:00 in the morning and was out working up to 3:00 to 4:00 in the afternoon. On September 2, 1994, he scolded Sydney for being hard-headed and always sassy to him and her mother. He even told Sydney, “*Lumayas ka rito, palamunin ka lang dito.*” In the afternoon of that day he no longer found his common-law wife Teresita and her daughters. He started to look for them and was finally able to locate them at Anabu I, Imus, Cavite, in the house of Jovita Libed. However, on September 15, 1994, he was caught by surprise when seven (7) policemen from Imus, Cavite, arrested him for rape and jailed him without any investigation conducted.

Further, he testified he was not investigated nor assisted by counsel during the inquest. He further claimed that while detained at the Imus Municipal Jail, he was beaten and mauled by policemen to force him to admit the charges against him. However, he could not identify them as he was blindfolded. After he was brought to the General Assignment Division, WPD, Manila and while inside a cell, he was pointed to by the private complainants.

He claimed that the only reason that Sydney filed the charge against him was because he was always scolding her for being hard headed. However on the part of Emily, she just went along with her sister Sydney in filing the instant cases.

Teresita Lumangaya, mother of the complainants, testified that she did not believe her daughters' claims of rape. She had a quarrel with Singh and so she left bringing her said daughters and they found work as maids of the Libeds. Singh later found them and wanted to bring them home but the Libeds would not let them go without first getting reimbursed for the sums they have spent for them. But they did not have the money, so she resorted for help with the Human Rights Commission. She was just surprised that her daughters filed the charges against Singh with the backing of the Libeds.

Ruben Yabut corroborated the alibi given by Singh, saying that on the relevant time Singh was doing some plumbing job for him at his home. Norma Isap is the aunt of Singh, and she testified that he was a fine person and could not have done the things he was accused of.

The trial ran for years and before different Presiding Judges. When it did end, judgment was rendered Singh was found guilty on both charges in the Decision which disposed:

PREMISES CONSIDERED, this Court finds accused **ARNOLFO SINGH y ISAP, GUILTY** beyond reasonable doubt of the crime of **Rape** (2 courts) under Article 335 of the Revised Penal Code of the Philippines, as charged in both Information.

In Criminal Case No. 94-139021, he is hereby sentenced to suffer the penalty of **Reclusion Perpetua** with **all the accessory penalties provided by law**; and, to indemnify private complainant **SYDNEY CORTEZ y LUMANGAYA the sum of Fifty Thousand** (P50,000.00) Pesos by way of moral damages.

In Criminal Case No. 94-139022, he is hereby sentenced to suffer the penalty of **Reclusion Perpetua** with **all the accessory penalties provided by law**; and, to indemnify private complainant **EMILY CORTEZ y LUMANGAYA the sum of Fifty Thousand** (P50,000.00) Pesos by way of moral damages.

Considering that the accused is a detention prisoner, he is hereby credited with the full length of time that he has been under detention.

SO ORDERED. (pp. 679-680, record)