

[**CA-G.R. CR-H.C. NO. 00871, October 26, 2006**]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ALEJANDRO LORENZO, ACCUSED-APPELLANT.**

D E C I S I O N

MENDOZA, J.:

This is an appeal from the February 28, 2005 Joint Decision of the Regional Trial Court, Branch 19, Bangui, Ilocos Norte, in Criminal Cases Nos. 1405-19 and 1406-19, finding accused **Alejandro Lorenzo, then 12 years of age**, guilty beyond reasonable doubt of having committed two acts of Rape against then 8-year-old Glory Lorenzo and then 10-year-old Nelia Lorenzo. The Informations indicting the accused reads:

INFORMATIONS

(Criminal Case No. 1405-19)

"The undersigned Assistant Provincial Prosecutor of Ilocos Norte accuses ALEJANDRO LORENZO Y BULUSAN, who is a resident of Brgy. Balaoi, Pagudpud, Ilocos Norte, of the crime of VIOLATION OF R.A. NO. 8353, otherwise known as an Act Expanding the Crime of Rape, Reclassifying the Same as a Crime Against Persons Amending for the Purpose Act No. 3815, As Amended as follows:

That on or about 1:00 o'clock in the afternoon of October 31, 1999 at Brgy. Balaoi, municipality of Pagudpud, province of Ilocos Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused who is a twelve (12) year old minor male child but acted with discernment, motivated by lust and employing force and intimidation, did then and there willfully, unlawfully and feloniously had carnal knowledge of an eight (8) year old minor female child GLORY LORENZO Y PEDRONAN against the said female child's will and consent.

CONTRARY TO LAW." ¹

(Criminal Case No. 1406-19)

"The undersigned Assistant Provincial Prosecutor of Ilocos Norte accuses ALEJANDRO LORENZO Y BULUSAN, who is a resident of Brgy. Balaoi, Pagudpud, Ilocos Norte, of the crime of VIOLATION OF R.A. NO. 8353, otherwise known as an Act Expanding the Crime of Rape, Reclassifying the Same as a Crime Against Persons Amending for the Purpose Act No. 3815, As Amended as follows:

That on or about 1:00 o'clock in the afternoon of October 31, 1999 at Brgy. Balaoi, municipality of Pagudpud, province of Ilocos Norte, Philippines, and within the jurisdiction of this Honorable Court, the

above-named accused who is a twelve (12) year old minor male child but acted with discernment, motivated by lust and employing force and intimidation, did then and there willfully, unlawfully and feloniously had carnal knowledge of a ten (10) year old minor female child NELIA LORENZO Y PEDRONAN against the said female child's will and consent.

CONTRARY TO LAW."²

During the trial, the prosecution presented, as witnesses, the victims themselves, Glory Lorenzo and Nelia Lorenzo; and the examining physician, Dr. Anna Marie Garvida. As stated in the "Counter-Statement of Facts" in the Appellee's Brief, the thrust of its evidence is as follows:

"In the afternoon of October 31, 1999 around 1 o'clock, Glory Lorenzo was in the river taking a bath with her sister, Nelia Lorenzo. Appellant later arrived and poised to strike the two with a knife. He then tied their respective hands together at their back with hard vine. (TSN, August 30, 2004, p. 5-6)

It was Nelia Lorenzo, who was tied first. Thereafter, appellant tore off their clothes and pushed them to lie with their hands back on the ground. (TSN, August 30, 2004, pp. 7-8).

While already on the ground, appellant went on top of Nelia, placed his penis inside her vagina and made the push and pull movement for three (3) times with her legs apart from each other. Nelia became weak and felt pain. After raping Nelia, appellant did the same thing to her sister Glory. After he was finished, appellant released the two and told them that if they report what happened, he would kill them. (TSN, August 30, 2004, pp. 9-11; October 4, 2004, pp. 4-11)

Upon reaching home, the two victims reported the matter to their father and mother. (TSN, August 30, 2004, pp. 4-11)

At the time of the incident, Glory Lorenzo was eight (8) years old while Nelia Lorenzo who was born on August 4, 1989 was ten (10) years old."³

Those who testified for the defense were the accused himself Alejandro Lorenzo and Elena Lorenzo. The defense of the accused is succinctly stated in the Appellant's Brief as follows:

"ALEJANDRO LORENZO testified on the contents of his sworn statement. On 31 October 1999, he went swimming in a nearby stream located within their barangay. He was alone. Thereafter, Nelia and Glory arrived to take a bath. He was wearing a shirt and short pants. Glory was naked while Nelia was wearing a shirt and skirt. After swimming, they went to gather guava fruits and went to dig yam beans at the western side of the stream. Then, they went home going their separate ways. He denied the accusations that he raped Nelia and Glory. Such accusations are mere concoctions or falsehood. Their respective parents have a misunderstanding arising from an incident involving his uncle, Rudy Lorenzo, which led to the conviction of Nicolas Lorenzo for illegal fishing with the use of dynamite.

The testimony of defense witness, Elena Lorenzo, was dispensed with upon admission by the prosecution that accused Alejandro Lorenzo was 12 years old on October 31, 1999.”⁴

After analyzing the case, the trial court gave credence to the evidence of the prosecution as it rejected the defense of simple denial put up by the accused. Thus, on February 28, 2005, the trial court handed down the subject decision, the dispositive portion of which reads:

“WHEREFORE, finding the accused, ALEJANDRO LORENZO, GUILTY beyond reasonable doubt of the crimes of RAPE in both cases, as defined and penalized by Article 266-A (d), in relation to Article 266-B of Republic Act 8353, amending Republic Act No. 3815, as amended, otherwise known as the Revised Penal Code, the Court sentences him to suffer the penalty of reclusion perpetua or life imprisonment in each of the cases; and, to pay the private complainants the amount of Php50,000.00 each as moral and exemplary damages.”⁵

SO ORDERED ”⁶

In the subject decision, the trial court wrote:

“There is no doubt that in the commission of the crimes, the accused acted with discernment as shown by the following facts:

1. Immediately upon reaching the complainants in the river, accused poised to hit them with a knife;
2. That he told them to have sexual intercourse with him;
3. That he pulled them to a hut;
4. That he tied each of them with both hands together at their back;
5. That he pulled and forced them to lie down and after finishing them, he untied, released **and told them not to tell it to anybody or else he will kill them.”**⁷

Dissatisfied, accused Alejandro Lorenzo interposed this appeal praying for the reversal of the subject decision anchored on this

LONE ASSIGNMENT OF ERROR

**THE TRIAL COURT GRAVELY ERRED
IN FINDING THE APPELLANT GUILTY OF TWO (2)
COUNTS OF RAPE DESPITE THE INSUFFICIENCY
OF EVIDENCE FOR THE PROSECUTION.**⁸

In advocacy for his exoneration, accused Alejandro Lorenzo contends that in convicting him, the trial court overlooked the fact that there was no sexual intercourse as contemplated in law. He asked the Court to focus Its attention to the fact that Nelia specifically said, "Alejandro's penis was at the surface of the whole of her vagina." She did not say that his penis slid into the outer lips of her vagina. She was not clear if it was the labia majora or labia minora. She did, however, mentioned "surface." Surface means the exterior part of anything; any of the faces of a solid or the external layer of the vagina which is the rounded eminence that becomes hairy after puberty and is instantly visible within the surface or the mons pubis of the pudendum. It is for said reason that Dr. Garvida failed to discover any genital injuries when she examined the private parts of the complainants. The penis stroking the cheeks of the vagina or the penis stroking the thighs of the private complainants does not qualify as carnal knowledge or sexual intercourse as defined in Article 335 of the Revised Penal Code, as amended by RA No. 7659.

He goes on to say that although Dr. Garvida testified that there were erythematous areas or reddish areas at the vaginal openings, she could not say that they were due to sexual intercourse. The reddening could be attributed to poor hygienic practice, scratching of the surface while washing, using a rough panty, or riding on a bicycle. If blunt instruments were introduced inside the vaginas, she would have discovered or noticed the genital injuries therein. The fact is that she failed to discover any when she physically examined the genital organs of the complainants.

In support of his defense, he cited the case of *People v. Contreras*⁹ where the Supreme Court acquitted the accused despite the medical findings of laceration in the complainant's hymen. Referring to another case, *People v. Campuhan*,¹⁰ he further argued that there must be sufficient and convincing proof that the penis indeed touched the labias or slid into the female organ, and not merely stroked the external surface thereof, for an accused to be convicted of rape. x x x. A grazing of the surface of the female organ or touching the mons pubis (the rounded eminence that becomes hairy after puberty and is instantly visible within the surface) of the pudendum is not sufficient to constitute rape.

The accused also wants the Court to take note that both private complainants allegedly saw what Alejandro Lorenzo did to them. Nelia claimed that she saw what Alejandro did to her sister. Glory said the same thing. She allegedly saw what Alejandro did to Nelia. However, Glory and Nelia never testified having seen Alejandro's penis penetrate the other's vagina despite the fact that both had an unobstructed view of what was taking place. As there was no definite and clear testimony, it cannot be concluded that inter-genital contact was achieved.

THE COURT'S RULING

In the review of rape cases, courts are guided by the following principles: (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 it; (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; (3) The evidence for 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.¹¹ Time and again it has been stressed that in rape, the lone testimony of the complainant is enough to

sustain conviction, provided that such testimony meets the test of credibility. Thus, the testimony should not only come from the mouth of a credible witness, it should likewise be credible and reasonable in itself, candid, straightforward, and in accord with human experience.¹²

After an assiduous assessment of the evidentiary records, We find no cogent reason to disturb the subject decision. The principal argument of the accused is that he should not have been convicted of the crime of rape as there was no clear and convincing evidence that there was an insertion of the penis into the vagina of the private complainants.

We, however, hold otherwise. The testimonies of the private complainants, Glory Lorenzo and Nelia Lorenzo, were clear that the accused forced himself upon them with threats, force and intimidation. As can be gleaned from the transcripts, one victim saw what Alejandro Lorenzo did to the other. With respect to Glory Lorenzo, she testified:

"Q: So what is your position when he made that movement?

A: I was lying down, sir.

x x x

Q: For how many times did he push to follow the suggestion of the counsel for the accused?

A: Maybe three (3) times, your Honor.

Q: When he did that three (3) times, where was his private part?

A: In my vagina, your Honor.

Q: Were your legs opened when he pushed for three (3) times?

A: Yes, your Honor.

Q: While he was doing the act, what was he wearing, if any?

A: None, sir.

x x x

Q: What did you feel when the accused was making the push and pull movement?

A: I became weak, sir.

Q: You did not feel pain?

A: I was, your Honor."

(TSN, August 30, 2004, pp. 9-14)

On the other hand, Nelia Lorenzo narrated what she experienced and observed:

"Q: So after removing the clothes of your sister, what happened?

A: He pulled us, sir.