

## SEVENTH DIVISION

[ CA-G.R. CR-H.C. NO. 00754, October 05, 2006 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RECTO SUBION, ACCUSED-APPELLANT.**

### D E C I S I O N

**DE GUIA-SALVADOR, R., J.:**

Accused-appellant Recto Subion y Magno (or "**appellant**") appeals<sup>[1]</sup> from the decision<sup>[2]</sup> dated January 30, 2002 of the Regional Trial Court of Virac, Catanduanes, Branch 42, in Criminal Case No. 2190, convicting him of the crime of rape and sentencing him to suffer the supreme penalty of death.

The Information<sup>[3]</sup> charging appellant with rape contains the following accusatory portion:

"That on or about the 30th day of September 1994 at around 2;00 o'clock in the morning in Brgy. Codon, Municipality of San Andres, province of Catanduanes, Philippines and within the Jurisdiction of the Honorable Court, the above-named accused, through force and intimidation, did then and there willfully and feloniously made sexual intercourse with Lorena Subion, her niece, 14 years old, against her will and consent to her damage and prejudice.

With the aggravating circumstance of relationship." Contrary to Law"

When arraigned on September 4, 1996, appellant pleaded not guilty to the crime charged.<sup>[4]</sup> Forthwith, trial on the merits ensued.

#### ***The Facts Version of the Prosecution***

The prosecution's version of the facts is summarized by the OSG in its appellee's brief as follows:

"On September 30, 1994, around 7:00 o'clock in the evening, Lorena Subion was alone at their house in barangay Codon, San Andres, Catanduanes. Since it was a barangay fiesta and they had no guests at their house, Lorena slept early in the evening.<sup>[5]</sup>

About 2:00 o'clock in the early morning of the following day, or on September 30, 1994, Lorena was awakened when she heard footsteps. She thus rose and saw appellant, her uncle, wearing only a T-shirt and brief, approaching. She then cried because she remembered what he told her in the morning of

September 26, 1994 when he told her that he wanted to look at her pubic hair and like to touch her nipples.<sup>[6]</sup>

Appellant immediately told Lorena not to make any noise and covered her mouth. He then ordered her to lie face down. Thereafter, he removed her jeans and panty. After taking off his clothes, he separated Lorena's legs and then placed himself on top of her. She felt pain on her sexual organ as if his penis were inside her vagina.<sup>[7]</sup> She begged him to stop and tried to repel his sexual aggression but to no avail. Thereafter, she rose and sat on the bed. At this juncture, appellant tried to convince her that he would do it slowly and told her to instead suck his penis while positioning it near her mouth. When she refused, appellant told her that he would like to touch her nipples. Unable to persuade Lorena, appellant stood up and told her not to tell anybody what he did to her, otherwise, he would kill her and then left.<sup>[8]</sup>

Afraid and feeling helpless, Lorena kept crying until she was able to sleep again. She did not immediately report the horrifying ordeal she had in the hands of appellant because she felt embarrassed and ashamed to go out of their house. Finally, On October 2, 1994, after mustering enough courage, she told her classmate Eleanor Palmes and the latter's parents about the incident.

On October 4, 1994, Lorena was brought by her Aunt Medy Vargas to San Andres Hospital for medical examination.<sup>[9]</sup>

Dr. Rudy Tresvalles who conducted the physical examination on Lorena testified that she is negative for hymenal laceration, old or recent, and her vaginal introitus admits one (1) finger easily. He further testified that he did not conduct sperm cell determination because of the interval between the questioned incident and the date of examination."<sup>[10]</sup>

### ***Version of the Defense***

Appellant Recto Subion denied the charge against him. Contending that the evidence failed to show any sexual congress between him and private complainant, he maintains that he is innocent of the charge and should be acquitted.

Appellant recounted that in the evening of September 29, 1994, he was at home drinking with his two brothers when Pepito Castillo arrived and joined them. Shortly thereafter, appellant and Castillo proceeded to the house of Castillo's father-in-law where they continued drinking until 11:00 o'clock in the evening. As appellant was already drunk and dizzy, he fell asleep. When he woke up at around 7:00 o'clock the next day, he was already inside the room of Castillo. Appellant then left and went home. He denied having entered the room of Lorena and raped her. He claimed that Lorena's family had an axe to grind against him because their father wanted their house to be given to him (appellant) after their father's death.<sup>[11]</sup>

The Trial Court's Ruling

On January 30, 2002, the trial court rendered a decision convicting appellant as charged, the dispositive portion of which reads:

"WHEREFORE, in view of all the foregoing, the prosecution having proved the guilt of the accused Recto Subion beyond reasonable doubt of the crime of Rape penalized under Article 335 of the Revised Penal Code in relation to R.A 7659, he is hereby sentenced to suffer the penalty of DEATH and to indemnify Lorena Subion the amount of P100,000.00.

SO ORDERED."<sup>[12]</sup>

Hence, the instant appeal.

### ***The Issues***

In urging a reversal of the judgment of conviction, appellant contends that the trial court erred:

I

XXX IN NOT FINDING THAT THERE WAS APPARENT ABSENCE OF CARNAL KNOWLEDGE;

II

XXX IN NOT FINDING THAT THE PRIVATE COMPLAINANT HERSELF WAS NOT SURE THAT IT WAS THE PENIS OF THE ACCUSED OR HIS FINGER THAT WAS INSERTED INTO HER VAGINA;

III

XXX IN NOT FINDING THAT THERE WAS ABSENCE OF THE USE OF FORCE, OR INTIMIDATION AGAINST THE PRIVATE COMPLAINANT OR WAS SHE DEPRIVED OF REASON NOR WAS SHE UNDER 12 YEARS OF AGE AT THAT TIME;

IV

XXX IN NOT FINDING THAT THE PROSECUTION HAS PROVED (SIC) THE GUILT OF THE ACCUSED RECTO SUBION BEYOND REASONABLE DOUBT;

V

FINALLY XXX IN NOT FINDING THAT ALIBI AS A DEFENSE IN THIS CASE ASSUMES IMPORTANCE.

Insisting on his innocence, appellant posits that the prosecution failed to prove that he had carnal knowledge of the victim, Lorena Subion. He claims that the trial court erred in not taking into consideration Lorena's open court testimony that she was not certain whether appellant inserted his penis or only his finger into her private part, as well as Dr. Rudy Tresvalles' findings that she was "**negative of hymenal laceration, old or recent**". To further discredit the victim's credibility, appellant calls our attention to her failure to shout for help or run away and her initial silence about the incident.

### ***The Court's Ruling***

The appeal is not impressed with sufficient merit to warrant a total reversal of the appealed decision.

The gravamen of the offense of rape is carnal knowledge of a woman against her

will or without her consent. To convict an accused of rape, the prosecution must prove that (1) the offender had carnal knowledge of a woman and that (2) he accomplished such act through force or intimidation, or when she is deprived of reason or otherwise unconscious, or when she is under 12 years of age or is demented. In this case, the prosecution was able to establish that appellant had carnal knowledge of the victim Lorena Subion through intimidation. Lorena categorically and positively testified that in the early morning of September 30, 1994, appellant, his paternal uncle, clad only in t-shirt and brief, entered her room and warned her not to make any noise. He then covered her mouth and made her lie face down, removed her pants and panty, then went on top of her back. The victim felt the private part of appellant inside her vagina and felt pain in the area.

Admittedly, Lorena did not offer tenacious resistance against the attack on her womanhood. Albeit, the settled rule is that even the lack of struggle by the victim does not necessarily negate the commission of rape, especially when the victim is intimidated by the offender into submission.<sup>[13]</sup> Being the brother of Lorena's father, appellant undoubtedly exercised moral ascendancy and influence over his niece-victim. Indeed, in rape committed by a close kin, moral ascendancy takes the place of violence and intimidation.<sup>[14]</sup>

In a prosecution for rape, the complainant's credibility becomes the most important issue for it is doctrinal that the lone testimony of the rape victim, if credible, is sufficient to support a conviction.<sup>[15]</sup> Thus, in reviewing rape cases, three settled principles have traditionally guided the courts in determining the guilt or innocence of the accused, viz: 1) an accusation of 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 only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and 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 of the defense.<sup>[16]</sup>

Guided by the foregoing precepts, the trial court accorded full weight and credence to the victim's clear and positive account of her sexual defilement and her identification of appellant, her own uncle, as the person who ravished her in the early morning of September 30, 1994. The lechery appellant committed is detailed in the following narration of the victim on the witness stand.

Direct examination:

"PROSECUTOR AYO:

xxx xxx xxx

"Now, did you sleep well on the night of September 29, 1994?.

WITNESS LORENA SUBION:

A. Yes, sir.

Q. What time did you wake up?

A. I was awoken about 2:00 o'clock early in the morning, sir.

Q. So, it was September 30 already?

A. Yes, sir.

Q. When you woke up, what did you do?

A. I was awoken because I heard some foot falls, sir.

Q. When you heard somebody walking, what did you do?

A. I saw my uncle, sir.

Q. So it was your uncle who was walking?

A. Yes, sir.

Q. When you say uncle, to whom do you refer?

A. (Witness pointing to the accused Recto Subion)

Q. Now, what did you do when you saw him walking?

A. I cried, sir.

Q. Why did you cry?

A. I cried because I remember what he told me in the morning of September 26, when he came to our house telling me that he would look at my pubic hair and he would like to touch my nipples, sir.

Q. When you cried because you remember what he said on Sept. 26, what happened next, if any?

A. He approached me and told me not to make any noise, sir.

xxx      xxx      xxx

Q. When your uncle, the accused, told you not to make any noise, what next did he do to you?

A. xxx He covered my mouth, sir.

Q. When he covered your mouth, what did you do next?

A. I kept on crying, sir.

Q. By the way, why did he cover your mouth?

A. I do not know, probably he do not want me to make any noise, sir.

Q. When he was covering your mouth and you were crying, what happened next?

A. He made me lie face down.

Q. When you were face down, what did he do next?

A. He removed my pants and panty, sir.

Q. Meaning you were in jeans?

A. Yes, sir.