

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARIO LAO Y CLARIN, ACCUSED-APPELLANT.

G.R. No. 117092. October 06, 1995

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

What beastly motive would drive a father to commit so vile and despicable an act as to rape his daughter, his own flesh and blood, whom he is supposed to protect, not to destroy?

Although there is no definite answer to this question, one thing is certain: the father who does it descends to a level lower than the lowly animal for, as this Court stated in *People vs. Ramos*:^[1]

The latter yields only to biological impulses and is unfettered by social inhibitions when it mates with its own kin, but the man who rapes his own daughter violates not only her purity and her trust but also the mores of his society which he has scornfully defied. By inflicting his animal greed on her in a disgusting coercion of incestuous lust, he forfeits all respect as a human being and is justly spurned by all, not least of all by the fruit of his own loins whose progeny he has forever stained with his shameful and shameless lechery.

Such a "father" deserves no place in society, and more specially in a country like the Philippines whose fundamental law considers the family as a basic autonomous social institution and the foundation of the nation, recognizes the sanctity of family life, and mandates the State to defend the right of children to special protection from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development.^[2]

This case involves yet another incestuous rape. Cherry Lao, a fourteen-year old lass of Coral, Paniqui, Tarlac, claimed that she had been raped by her own father, the accused Mario Lao, in their house in the morning of 19 May 1992. How the rape was committed was narrated by her between sobs and with profuse tears. The Office of the Solicitor General aptly summarized her story as follows:

On May 19, 1992, at about 10:00 in the morning, complainant, Cherry Lao, then 14 years old, was with her two (2) sisters, a brother and a cousin inside their house in Coral, Paniqui, Tarlac. Momentarily, she was summoned by her father, appellant Mario Lao, who was also inside the house. Complainant obeyed and went to her father. Appellant ordered the other children out of the house. Thereupon, he closed the door and all its windows (tsn, June 3, 1993, pp. 7-8).

At this point, complainant became terrified. For, she knew what was going to happen next (*Ibid*, p. 8).

On several occasions in the past starting when she was only 10 years old, appellant had been sexually molesting both her and her younger sister Maritess. During those times, her father would passionately kiss her on the lips, undress her, mash her breasts and play with her sexual organ. There was an instance when appellant hurt the complainant when he attempted to insert his forefinger in her vagina. He desisted only when he saw her suffering excruciating pain (*id*, pp. 8-13). Complainant always resisted but she was no match for her burly father who intimidated her. There were times also when appellant would hit her on the face and body. Once, a bottle thrown

at her tore her left leg and left a scar 1 x 1/2 inch in length (id, pp. 9-13).

When she approached her father on the date aforementioned, complainant already knew the unbearable agony and harrowing pain she would again have to experience.

Appellant began by kissing complainant on the lips and handling her sexual organ. He removed her underwear, took off his clothes, and, thereupon, he made her lie on the floor. He lay on top of her and continued mashing her breasts. With tears in her eyes and repeated pleas to her father to stop, complainant tried to resist but to no avail (id., pp 14-17). Appellant inserted his penis into her vagina and as a result, she felt such indescribable pain that she managed to push him away. She got up, picked up her clothes and, while putting them on, saw appellant masturbating. She fled the house (id., pp. 17-18).[3]

The very next day, Cherry reported the incident to the police authorities and executed a sworn statement.[4] Afterwards, she, as well as her mother and grandmother, proceeded to Tarlac Provincial Hospital for a medical examination. Dr. Consolacion Vega Aquino conducted the examination and thereafter prepared a Medico-Legal Certificate[5] showing her findings, to wit:

Menarche age of 11, 5-6 days duration occurring every month (+) dysmenorrhea

LMP : - May 9-14, 1992

O : - FN, FD, conscious coherent BP-100/90, CR- 78/min.

HEENT : - pinkish palpebral conjunctiva, anictetric sclera, PERLA (-) aural or nasal discharge (-) TP congestion (-) thyromegally.

CHEST/Lungs : - symmetrical in expansion clear BS, (-) rales or wheezing.

BREAST : - conical in shape areola and nipple brownish in color.

HEART : - normal rate regular rhythm (-) murmur.

ABDOMEN : - flat soft non tender, (-) kidney punch.

External Genitalia : -

labia majora and minora not well coaptated post fourchette U shape. (+) incomplete healed laceration 3 o'clock, (+) complete healed laceration 9 o'clock

Speculum exam : -

cervix smooth pinkish (-) erosion.

IE : -

nulliparous introitus vagina admits 2 fingers with ease. Cervix close firm non tender, Uterus not enlarged, (-) adnexal mass or tenderness, (-) vaginal bleeding or discharge

Urinalysis : - Red Cells - 0-2 hpf

Pus cells - 4-6 hpf

Pregnancy Test - negative.

T - negative Gram staining - shows gram + bacilli

M - negative

Sperm Analysis - negative for sperm analysis.

The day after her medical examination, or on 21 May 1992, Cherry filed with the Municipal Trial Court (MTC) of Paniqui in Tarlac a sworn criminal complaint against her father for rape.[6]

After appropriate proceedings, Assistant Provincial Prosecutor Oscar V. Bermudez filed with the Regional Trial Court (RTC) of Tarlac, Branch 67, at Paniqui, Tarlac, an information for rape,[7] docketed as Criminal Case No. 508, the accusatory portion of which reads as follows:

That on or about May 19, 1992 at around 10:00 o'clock in the morning, in the Municipality of Paniqui, Province of Tarlac, Philippines and within the jurisdiction of this Honorable Court, the said accused, did then and there willfully, unlawfully and feloniously with the use of superior strength, intimidation, force and violence, succeeded in having sexual intercourse with Cherry Lao y Apolonio, 14 years of age, virgin and [his] daughter against her will.

After the accused entered a plea of not guilty at his arraignment,[8] trial on the merits ensued.

Aside from the complainant, the prosecution presented Maritess Lao and Dr. Consolacion Vega Aquino.

Maritess, the complainant's twelve-year old sister, was presented to prove the accused's specific intent or scheme as shown by previous acts of lasciviousness he had committed against her. She declared that on several occasions since she was ten years old, her father, the accused, had been touching her breasts and vagina. She did not resist him because she was afraid he might hurt her. At times, he would slap her, for he did not want her to go to their neighbors. Nonetheless, she loved him because he was the one who raised her.[9] Her testimony was vigorously objected to by the defense, but the trial court overruled the objection and admitted her testimony under Section 34, Rule 130 of the Rules of Court.

Dr. Aquino testified on her medical examination of Cherry Lao and identified the medico-legal certificate she had issued. According to her, the two wounds or lacerations which she noticed on the external genitalia of Cherry — one of which was completely healed while the other was incompletely healed — were about three days old or more and could have been caused by sexual contact by the use of an instrument in the genitalia, or by scratching.[10]

The defense, through the testimonies of the accused and his wife, Ester Lao, sought to exculpate the accused by hoisting alibi and ascribing improper motives to the complaining witness.

Ester Lao testified that in the morning of 19 May 1992 when the rape supposedly took place, her husband was in Manila with their two daughters, Cherry and Maritess. They arrived in their house in Paniqui, Tarlac, only in the evening of that day when she was already sleeping. At that night she came to know that her husband had hurt his daughter Cherry. She denied having caught Cherry masturbating her husband as Cherry had testified to earlier. She admitted that her daughters would sleep with their father either one at a time or together but only because they have just one electric fan. As to Cherry's and Maritess's claim that their father had molested them, Ester Lao said that she had told them that there was nothing malicious about their father kissing them because even when they were still young, their father used to wash their private parts. When asked what she did upon learning that the results of the examination — the counsel obviously referring to the results of the sperm analysis and the pregnancy test — was negative, Ester replied, "Nothing, sir, I just thought that nothing happened to my daughter." Later, when asked on cross-examination to clarify this answer, she explained: "[W]hat I understand with negative sir is that she is still [a] virgin." She also testified that this case was filed against her husband because he was so strict and merciless to his children and he used to beat them and throw things at them. Upon inquiry on her motive for

testifying for her husband, she said, "I want that my family will be whole again." [11]

The accused denied the charges of rape and of having committed lascivious acts on his daughters, saying that he could never do such things to his children because "they are of his own blood" and that he loves them. He contended that at around 10:00 a.m. of 19 May 1992, the time when he allegedly raped Cherry, he was in Manila with his two daughters, Cherry and Maritess. They were looking for a jeep to hire which would bring their things to Paniqui. By 7:00 p.m. of that same day, they still had not found a jeep to hire, and so they decided to go home by bus. They arrived in Paniqui between 10:30 and 11:00 p.m. that same evening.

To discredit his accuser, Cherry, who testified that his penis is around three inches long the accused showed his genitalia to the court in the presence of both counsels, the Clerk of Court, and the court's legal researcher. Thereafter, the defense counsel manifested that the penis of the accused is "only a little over one inch long," and the trial judge added, "but a little stout."

The accused admitted to having been cruel to his children when he was drunk, or when they were hardheaded, or when he could see Cherry with her boyfriend named Anting. His sister Gloria Clarin, his aunt Lucia Clarin, his uncle Rodelio Clarin, his mother-in-law, brother-in-law, and neighbors were angry at him because of his cruelty to his children, and they had even reported him to the Barangay. And, it was probably because of his cruelty that Cherry filed the sham charge of rape against him. When asked who he thought had instigated Cherry into filing the charge of rape against him, the accused answered by naming his mother-in-law, Feliza Apolonio, his in-law Danilo Garcia, and his brother-in-law Eloy Balgos. He said that these people want him to stay in jail so that they could remain on his land in Coral, Paniqui, where their houses are standing. He added that his own sister and aunt had likewise incited Cherry into filing the present charge against him because they had seen him maltreat his daughter. [12]

In its decision [13] dated 6 October 1993, the trial court found the accused guilty beyond reasonable doubt of the crime of rape and sentenced him to suffer the penalty of reclusion perpetua and to pay the complainant, Cherry Lao, the sums of P50,000.00 as moral damages and P20,000.00 as exemplary damages, with costs.

The trial court gave credence to the testimony of Cherry Lao and disregarded that of the accused. Its evaluation of the said witnesses is as follows:

The testimony of Cherry Lao is convincingly impressed with truth and purity of intentions. She testified with naturalness and spontaneity, interrupted only by bitter sobs specially when called to recall the lusty and lewd advances and acts of her own father on her.

On the other hand, the accused was obviously evasive and observed to be avoiding looking straight at his accuser. His was not the look of a man unjustly and falsely accused of a very grave offense who would naturally, revoltingly, and spontaneously voice out loud protestations. He most of the time had his head bowed down. [14]

It also rejected the testimony of Ester Lao who, it said, did not know the legal implications of the negative findings of spermatozoa in her daughter's private parts, that is why she thought nothing happened to her daughter. That she testified for her husband because she wanted her family to be whole again was noted by the trial court. The court dismissed as "ridiculous and insulting" the claim of the accused that his children, relatives, in-laws, and neighbors who all hated him prompted Cherry to falsely accuse him of rape. Finally, it found that the moral influence of the accused over the victim and the fear the victim had of him took the place of violence and offer of resistance required in rape cases committed by an accused having no blood relationship with the victim.

The accused seasonably appealed to us from the decision of the trial court with this lone assignment of error:

THE TRIAL COURT ERRED IN FINDING ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE.

The determination of the guilt of the accused rests on the credibility of the solitary eyewitness, the victim herself, Cherry Lao. The lone testimony of the victim in the crime of rape if credible is sufficient to sustain a conviction.[15] This is so because from the nature of the offense the only evidence that can oftentimes be offered to establish the guilt of the accused is the complainant's testimony.[16] And it is settled that when a woman says that she has been raped, she says in effect all that is necessary to show that rape has been committed, and that if her testimony meets the test of credibility the accused may be convicted on the basis thereof.[17]

Because all we have before us are the transcripts of the stenographic notes of the testimonies of the witnesses during the trial and the various documentary evidence adduced by both parties, we must, as we have oftentimes done before, rely on the assessment of the trial court regarding the credibility of the witnesses. It is the trial court that is in a better position to decide the question of the credibility of witnesses, having heard the witnesses themselves and observed their deportment and manner of testifying during trial.[18] Accordingly, the trial court's finding on the matter of the credibility of witnesses is entitled to the highest degree of respect and will not be disturbed on appeal.[19] There is nothing in the records of this case that convinces us to take a different course.

Cherry Lao's testimony was consistent even under the rigid and at times embarrassing cross-examination conducted by the defense. That she was motivated by revenge brought about by the accused's cruelty and was prompted by her relatives to falsely accuse him of rape was raised but not proven by the accused. His testimony on this defense is uncorroborated by independent and reliable witnesses. A teenage unmarried lass would not ordinarily file a rape complaint against anybody, much less her own father, if it were not true.[20] A victim's testimony would be entitled to greater weight when the accusing words are said against a close relative, as in this case.[21]

We find untenable the accused's contention that if he had been abusing Cherry since she was ten years old, then he could have committed the rape even before 19 May 1992 but he did not. The fact that he did not take advantage of earlier opportunities to rape his daughter is not a defense to the charge at hand. It is totally irrelevant and highly speculative. This Court is not tasked to delve into the workings of the mind of the accused and to determine why he did not previously rape his daughter even if he could have. We are only concerned with the truth regarding the events that transpired on the particular morning of 19 May 1992.

The accused attempts to take shelter in the findings of the medical examination conducted on Cherry. According to him, he could not have raped her on the day she claimed he did, which was the day before her examination, because the lacerations or wounds in the genitalia were already at least three days old as testified to by the examining physician. The accused seems to forget, however, that the same physician testified that the lacerations could have been caused by factors other than sexual intercourse, such as the scratching of the genital area.[22] The wounds could very well have been present when he raped his daughter, and his act could not have caused any fresh wounds.

Another issue raised by the accused is Cherry's alleged failure to correctly give the size of her father's penis. A rape victim is not expected to give an accurate measurement of her rapist's penis considering the agony and the shock she was undergoing at that moment. Even if Cherry admitted to having seen her father's penis on previous occasions, it is still not unusual for her to make a mistake in assessing its length. The defense counsel himself could only give an approximate size, "a little over one inch long,"[23] which is not an accurate measurement. Without the use of a ruler, the "three inches" testified to by Cherry[24] could actually be more or less than that and could very well be the approximation of "over one inch long" made by the defense counsel. We find this

inconsistency of little significance in the face of the positive and convincing testimony of Cherry.

Finally, the accused relies heavily on the testimony of Ester Lao to exonerate himself. As the trial court pointed out, Ester Lao admitted that the reason why she testified for her husband was that she wanted her family to be whole again. That admission alone would make her testimony suspect and doubtful. The prosecution was also able to create a doubt in her testimony by making her admit that her husband is the sole source of support of her family. It is easy to see that Ester Lao would be willing to lie and could actually be lying in her desperation to save the provider of her family, because if her husband goes to jail there would be no one to support her and her children. For her, lying at the expense of only one child is justified as against telling the truth at the expense of the rest of her family. There is then a clear motive for her to falsely testify in favor of the accused. Her testimony cannot, therefore, be given credence.

The trial court correctly awarded moral and exemplary damages in favor of the victim in the light of the conviction of the accused. Moral damages are awarded pursuant to Article 2219(3), in relation to Article 2217, of the Civil Code, and exemplary damages are imposed to deter other fathers with perverse tendencies or aberrant sexual behavior from sexually abusing their own daughters.[25] We find the amounts awarded by the trial court to be adequate and commensurate with the gravity of the offense committed by the accused.

Sadly, this is not the first time we are confronted with a situation such as this where the perpetrator of the diabolical crime is the victim's own father. It is indeed most unfortunate that a fate so grievous and so tragic could befall a girl who has not even crossed the threshold of womanhood. With this judgment affirming the conviction of the accused, we hope that her suffering will somehow be diminished.

WHEREFORE, the instant appeal is DISMISSED and the judgment of Branch 67 of the Regional Trial Court of Tarlac in Criminal Case No. 508 finding the accused MARIO LAO Y CLARIN guilty as principal of the crime of rape under Article 335 of the Revised Penal Code and sentencing him to suffer the penalty of reclusion perpetua and to pay the complainant Cherry Lao the sums of P50,000.00 and P20,000.00 as moral and exemplary damages, respectively, is hereby AFFIRMED.

Costs against the accused.

SO ORDERED.

Padilla, (Chairman), Bellosillo, Kapunan, and Hermosisima, Jr., JJ., concur.

[1] 165 SCRA 400, 408 [1988]. Per Mr. Justice Isagani A. Cruz.

[2] Section 12, Article II; Sections 1 and 3, Article XV, Constitution.

[3] Rollo, 58-60.

[4] Exhibit "C"; Original Records (OR), 39.

[5] Exhibits "A" and "1"; Id., 37.

[6] Exhibit "B"; OR, 38.

[7] Id., 1-2.

[8] Id., 5.

[9] TSN, 20 May 1993, 3, 6-10.

[10] TSN, 2 June 1993, 7, 9.

[11] TSN, 20 July 1993, 3-7, 9.

[12] TSN, 20 July 1993, 18-25.

[13] OR, 46-53; Rollo, 9-16. Per Judge Dario R. Navarro.

[14] Rollo, 13.

[15] *People vs. Tismo*, 204 SCRA 535 [1991]; *People vs. Lascuna*, 225 SCRA 386 [1993]; *People vs. Antonio*, 233 SCRA 283 [1994].

[16] *Id.*

[17] *People vs. Tismo*, supra note 15; *People vs. Cabilao*, 210 SCRA 326 [1992]; *People vs. Grefiel*, 215 SCRA 596 [1992]; *People vs. Lascuna*, supra note 15.

[18] *People vs. Pascual*, 208 SCRA 393 [1992]; *People vs. de la Cruz*, 217 SCRA 283 [1993]; *People vs. Sibug*, 229 SCRA 489 [1994]; *People vs. Pamor*, 237 SCRA 462 [1994].

[19] *People vs. Florida*, 214 SCRA 227 [1992]. See *People vs. Lase*, 219 SCRA 584 [1993]; *People vs. Evangelista*, 235 SCRA 247 [1994]; *People vs. Alapida*, 236 SCRA 555 [1994], among others.

[20] *People vs. Matrimonio*, 215 SCRA 613 [1992].

[21] *Id.*

[22] See TSN, 2 June 1993, 7.

[23] TSN, 20 July 1993, 23.

[24] TSN, 3 June 1993, 36.

[25] *People vs. Matrimonio*, supra note 20.

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