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[G.R. Nos. 140736-39. February 4, 2003]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **CARLOS LILO,** *accused-appellant.*

SYNOPSIS

Appellant was found by the trial court guilty of four counts of incestuous rape committed against his daughter, Carol, and the penalty of death for one count of rape and *reclusion perpetua* on three.

On appeal, the Supreme Court found that despite the undoubted credibility of Carol, the prosecution was able to prove only one (1) count of rape. With respect to the other charges of rape, Carol did not give any detail on how the act was committed. Appellant's undressing and touching the delicate parts of Carol's body makes him liable merely for acts of lasciviousness.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; MOTIVE; PARENTAL PUNISHMENT, NOT SUFFICIENT REASON TO FALSELY ACCUSE.** — Further, this Court has consistently echoed its ruling that parental punishment would not suffice to egg one to falsely charge one's father with rape.

2. **ID.; ID.; ID.; FAILURE TO RECALL EXACT DATE OF CRIME, NOT AN INDICATION OF FALSE TESTIMONY.** — Failure to recall the exact date of the crime, however, is not an indication of false testimony, for even discrepancies regarding exact dates of rapes are inconsequential and immaterial and cannot discredit the credibility of the victim as a witness.

3. **ID.; ID.; ID.; DIFFERENT REACTIONS TO EVENTS.** — The behavior or reaction of every person to a certain event cannot, however, be predicted with accuracy, and may be dealt with in any way by the victim whose testimony may be given full credence so long as her credibility is not tainted by any modicum of doubt.

Supreme Court E-Library

4. CRIMINAL LAW; RAPE; BARE ALLEGATION THAT THE VICTIM WAS RAPED IN SAME MANNER AS IN PREVIOUS INCIDENTS, WITHOUT DETAILS, INADEQUATE. — The undoubted credibility of the witness in Carol and of her testimony notwithstanding, this Court finds that the prosecution has proven only one (1) count of rape, that committed in *October 1995*. . . The bare allegation of Carol that she was raped in the same manner as in previous incidents *without giving any detail on how the act was committed* is inadequate to establish to a degree of moral certainty the guilt thereof of accused-appellant. It bears emphasis that every charge of rape is a distinct and separate crime and each must be proved beyond reasonable doubt.

5. REMEDIAL LAW; EVIDENCE; JUDICIAL NOTICE; LUST NO RESPECTER OF TIME AND PLACE. — Judicial notice, however, is taken of the fact, and it can be considered of public knowledge, that the scene of rape is not always or necessarily isolated or secluded, as it can be committed even in places where people congregate, in parks along the roadside, in school premises, in a house where there are other occupants, in the same room where other members of the family are also sleeping, and even in places which to many would appear unlikely and high-risk venues for its commission.

6. CRIMINAL LAW; CRIMES AGAINST CHASTITY; ACTS OF LASCIVIOUSNESS; INCLUDES MERE UNDRESSING AND TOUCHING DELICATE PARTS OF VICTIM'S BODY; CASE AT BAR. — With respect then to the incident of *May 19, 1998*, in the absence of any evidence showing that, aside from accused-appellant's undressing and touching the delicate parts of Carol's body, he had carnal knowledge with her, the crime committed is merely acts of lasciviousness under Article 336 of the Revised Penal Code.

7. ID.; CRIMES AGAINST PERSONAL LIBERTY AND SECURITY; GRAVE COERCION; INCLUDES UNDRESSING A VICTIM AGAINST HER WILL. — As reflected in the above-quoted portion of Carol's testimony, aside from undressing private complainant, there is no showing that accused-appellant had sexual intercourse with her. Nor is there any showing of lewd designs for the acts to be considered as lascivious. The

Supreme Court E-Library

testimony, however, shows that accused-appellant, by means of threats, successfully undressed Carol against her will, facts that constitute the elements of grave coercion under Article 286 of the Revised Penal Code.

8. **REMEDIAL LAW; CRIMINAL PROCEDURE; ELEMENTS OF CRIME MUST BE ALLEGED; CASE AT BAR.** — The elements of grave coercion were not, however, sufficiently alleged in the information under Criminal Case No. 49825 and, in view of the right of an accused to be informed of the nature and cause of the accusation against him, accused-appellant may not be convicted of grave coercion.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

***PER CURIAM*:**

For automatic review is the decision rendered by Branch 25 of the Regional Trial Court (RTC) of Iloilo City finding accused-appellant Carlos Lilo guilty of incestuous rape on four counts and sentencing him to suffer the penalty of death on one count and *reclusion perpetua* on three.

By the account of private complainant, Carol Lilo, the only child of accused-appellant, she was raped numerous times by him but could recall only four occasions,[1] those subject of the criminal complaint docketed as Criminal Case No. 49823 and three separate informations docketed as Criminal Cases Nos. 49824, 49825 and 49826 filed on September 3, 1998 at the RTC of Iloilo City, for acts allegedly committed in October 1995, May 24, 1998, July 24, 1998, and May 19, 1998, respectively, as follows:

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[1] Transcript of Stenographic Notes (TSN), February 19, 1999 at 18-20.

Supreme Court E-Library

CRIMINAL CASE NO. 49823

That in October 1995, in the Municipality of Calinog, Province of Iloilo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a *bolo*, with deliberate intent, by means of force and intimidation and with abuse of confidence and trust, did then and there willfully, unlawfully and feloniously have carnal knowledge of the undersigned complainant CAROL LILO, his daughter, who was then seventeen (17) years old, against her will and/or consent.

CRIMINAL CASE NO. 49824

That on or about May 24, 1998, in the Municipality of Calinog, Province of Iloilo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a bladed weapon, with deliberate intent, by means of force and intimidation and with abuse of confidence and trust, did then and there willfully, unlawfully and feloniously have carnal knowledge of his daughter CAROL LILO, against her will and/or consent.

CRIMINAL CASE NO. 49825

That on or about July 24, 1998, in the Municipality of Calinog, Province of Iloilo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a bladed weapon, with deliberate intent, by means of force and intimidation and with abuse of confidence and trust, did then and there willfully, unlawfully and feloniously have carnal knowledge of his daughter CAROL LILO, against her will and/or consent.

CRIMINAL CASE NO. 49826

That on or about May 19, 1998, in the Municipality of Calinog, Province of Iloilo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a bladed weapon, with deliberate intent, by means of force and intimidation and with abuse of confidence and trust, did then and there willfully, unlawfully and feloniously have carnal knowledge of his daughter CAROL LILO, against her will and/or consent.

Recalling the rape which occurred on *a day in October 1995* subject of Criminal Case No. 49823, Carol declared as follows:

Supreme Court E-Library

After accused-appellant left for his farm in Barangay Impalidan, Calinog, Iloilo, a kilometer away from his house,[2] she followed him, bringing him food.[3]

After accused-appellant had eaten at around 10:30 a.m., he summoned her.[4] As she obliged, he held her, pointed a *bolo* at her and told her not to make any noise.[5] She was thus prompted to ask him what he intended to do, he being her father, to which he replied: "You are my daughter and I was the one who caused you to be born. I was the one feeding you, clothing you. Afterwards others will make use of you? I will do it first."[6]

Accused-appellant thereupon dragged her toward the sugarcane field some thirty meters from the farm and upon reaching it, he hugged her thighs and laid her on the ground.[7] She resisted and fought back, but he punched her, and she proved no match for him.[8]

Accused-appellant then removed her panty, raised her shirt, felt her whole body and kissed her lips and breasts. [9] Thereafter, he undressed himself, laid flat on her, and forced his penis into her vagina where it stayed for one (1) minute, he "mov[ing] his buttocks up and down," drawing her to cry.[10] When he was through, accused-appellant cautioned her not to tell anybody what happened, otherwise he would kill her, her mother, and her grandmother.[11]

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[2] *Id.* at 8, 16.

[3] *Id.* at 7-8.

[4] *Id.* at 9.

[5] *Ibid.*

[6] *Ibid.*

[7] *Id.* at 10.

[8] *Id.* at 10-11.

[9] *Id.* at 12.

[10] *Id.* at 12-15.

[11] *Id.* at 15.

Supreme Court E-Library

A certification from the Office of the Local Civil Registrar of Calinog, Iloilo shows that Carol was only 17 years and 4 months old at the time of the incident.[12]

With respect to the *May 19, 1998* incident subject of Criminal Case No. 49826, Carol related that while she was at home sleeping, accused-appellant woke her up, pointed a *bolo* at her and threatened her not to make any noise.[13] While holding the *bolo* in one hand, accused-appellant undressed her, touched her body, kissed her on the lips and breasts,[14] and "did to [her what] he did to [her] in the past."[15]

The sexual act was repeated in the same manner, so Carol claimed, on *May 24, 1998*[16] when at around midnight while she was at home, accused-appellant did to her the "same thing he had done to [her] before."[17]

Finally, on the *July 24, 1998* incident, Carol declared that as she lay asleep at 10:30 p.m., after a long night at a school function, accused-appellant woke her up, pointed a *bolo* at her and threatened her not to make any noise. [18] He then "undressed [her] and d[id] what he [had] done to [her] again."[19]

When asked why she never reported the incidents to her mother, Carol responded that her mother seldom went home on account of her work in "town" and that she was under constant threat from accused-appellant not to disclose the incidents to anyone.[20]

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[12] Records at 59.

[13] TSN, February 19, 1999 at 18, 21-22.

[14] *Id.* at 23.

[15] *Id.* at 22.

[16] *Id.* at 31.

[17] *Ibid.*

[18] *Id.* at 25-27.

[19] *Id.* at 26.

[20] *Id.* at 32-34.

Supreme Court E-Library

In August 1998, following her attendance in a symposium on abuses committed against children and women held at the Calinog Agricultural and Industrial College where she was enrolled, Carol, then already 20, revealed to her friend Joy Lyn Casalan about accused-appellant's molestations on her.[21]

Accompanied by Joy, she, on August 12, 1998, reported to the local police station the multiple rapes committed against her, and on the instruction of the police, she on even date submitted herself to medical examination which showed that she had 3 healed lacerations in the hymen located at 4, 6 and 8 o'clock positions.[22]

Accused-appellant denied the accusations against him.

The trial court, however, discredited accused-appellant's denial and found him guilty of four counts of rape in the decision on review, the dispositive portion of which reads:

> WHEREFORE, premises considered, the court, finding the accused, Carlos Lilo, guilty of four (4) counts of rape beyond reasonable doubt, imposes upon him the following penalties:
>
> In each of the cases docketed as Crim. Cases Nos. 49824, 49825 and 49826, the penalty of *reclusion perpetua* with the accessory penalties as provided in Article 42 of the Revised Penal Code;
>
> In Crim. Case No. 49823 the penalty of death with such accessory penalties as provided in Article 40 of the Revised Penal Code; and
>
> To pay private complainant ₱50,000.00 as moral damages as well as pay the cost.[23]

Before this Court, accused-appellant disputes the finding that he is guilty beyond reasonable doubt,[24] and assails the reliance by the trial court on the testimony of Carol who was merely

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[21] *Id.* at 28, 30; TSN, February 12, 1999 at 10.

[22] TSN, February 19, 1999 at 29-30; TSN, February 12, 1999 at 10; TSN, February 26, 1999 at 3-7; Records at 56.

[23] *Rollo* at 28.

[24] *Id.* at 47.

Supreme Court E-Library

motivated, so he claims, by resentment in filing the complaint due to the fact that he often maltreated her.[25]

Accused-appellant's submission does not persuade. This Court finds his claim to be a mere afterthought for, during the trial, when asked if he knew of any motive why Carol filed the cases against him, he replied in the negative.[26] Further, this Court has consistently echoed its ruling that parental punishment would not suffice to egg one to falsely charge one's father with rape.[27]

Accused-appellant goes on to harp on Carol's inability to recall the exact date when the incident in October 1995 was allegedly committed.[28] Failure to recall the exact date of the crime, however, is not an indication of false testimony,[29] for even discrepancies regarding exact dates of rapes are inconsequential and immaterial and cannot discredit the credibility of the victim as a witness.[30]

Accused-appellant goes further to posit that rape could not have been committed in October 1995 in broad daylight, particularly in a farm where there were other people who were supposed to be at work.[31] Judicial notice, however, is taken of the fact, and it can be considered of public knowledge, that the scene of rape is not always or necessarily isolated or secluded,[32] as it can be committed even in places where people congregate, in parks along the roadside, in school premises, in a house where there are other occupants, in the same room where other members of the family are also sleeping, and even in places

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[25] *Id.* at 49.

[26] TSN, July 1, 1999 at 3.

[27] *People v. Baybado*, 335 SCRA 712, 720 (2000).

[28] *Rollo* at 49.

[29] *People v. Dizon*, 312 SCRA 811, 818 (1999).

[30] *People v. Matugas*, G.R. Nos. 139698-726, 20 February 2002.

[31] *Rollo* at 50.

[32] *People v. Daganio*, G.R. No. 137385, January 23, 2002.

Supreme Court E-Library

which to many would appear unlikely and high-risk venues for its commission.[33]

Finally, accused-appellant focuses on Carol's behavior after the alleged rape incidents as running counter to human nature.[34] He cites Carol's casually leaving the place where she claims to have been molested in October 1995 and continuing to work in the farm with him as if nothing happened.[35] The behavior or reaction of every person to a certain event cannot, however, be predicted with accuracy, and may be dealt with in any way by the victim whose testimony may be given full credence so long as her credibility is not tainted by any modicum of doubt.[36]

The undoubted credibility of the witness in Carol and of her testimony notwithstanding, this Court finds that the prosecution has proven only one (1) count of rape, that committed in *October 1995*. The following testimony of Carol instructs so:

Q - And for how long did your father have sexual intercourse with you?

A - For almost three (3) minutes.

Q - And after that what happened?

A - After putting my clothes again he was frightening me not to tell anybody.

COURT:

Q - *Was your father able to put his sex organ into yours*?

A - Yes, your honor.[37] (Italics supplied).

With respect to the alleged incident of *May 19, 1998*, the following tale of Carol, quoted *verbatim*, does not establish the commission of rape.

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[33] *People v. Castillo*, 335 SCRA 100, 110-111 (2000).

[34] *Rollo* at 50.

[35] *Ibid.*

[36] *People v. Dy*, G.R. Nos. 115236-37, 29 January 2002.

[37] TSN, February 19, 1999 at 14.

Supreme Court E-Library

PROS. GEDUSPAN

Q - Now, you said your father sexually molested you again after October 1995. When was that?

A - On May 19, 1998.

COURT:

x x x x x x x x x

Q - And what made you say that it was your father who *raped* you?

A - Because I know him your honor.

Q - But you said you were asleep already?

A - Yes, your honor.

Q - Were you still sleeping when your father *raped* you?

A - He would wake me up.

Q - Were you already *raped* or your father was in the act of raping you when he awaken you?

A - Before, your honor.

Q - So, before he *raped* you he awaken you?

A - Yes, your honor.

x x x x x x x x x

Q - And what happened when you woke up?

A - He was pointing his *bolo* at me and after he had awakened me he would threaten me not to make any noise and *all what he did to me he did it to me like in the past.*

x x x x x x x x x

Q - *What actually did your father do?*

A - *Pointing a bolo at me, he would undress me, removed my panty and then my blouse and touch my whole body, kiss my lips and then my breast,* your honor.

x x x x x x x x x

Supreme Court E-Library

Q- On May 19, 1998, how long did your father *consummate the act of raping you?*

A- About three (3) minutes your honor.[38] (Italics supplied).

The bare allegation of Carol that she was raped in the same manner as in previous incidents *without giving any detail on how the act was committed* is inadequate to establish to a degree of moral certainty the guilt thereof of accused-appellant. It bears emphasis that every charge of rape is a distinct and separate crime and each must be proved beyond reasonable doubt.[39]

With respect then to the incident of *May 19, 1998*, in the absence of any evidence showing that, aside from accused-appellant's undressing and touching the delicate parts of Carol's body, he had carnal knowledge with her, the crime committed is merely acts of lasciviousness under Article 336 of the Revised Penal Code which reads:

ART. 336. *Acts of lasciviousness* — Any person who shall commit any act of lasciviousness upon other persons of either sex, under any of the circumstances mentioned in the preceding article, shall be punished by *prision correccional.*

As in the May 19, 1998 incident, Carol's following testimony regarding the *July 24, 1998* incident, quoted *verbatim*, does not establish the commission of rape:

Q - After May 19, 1998, were you *raped* again?

A - Yes, your honor.

Q - What date was that?

A - July 1998.

Q - What date in July 1998?

A - July 24, 1998, your honor.

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[38] *Id.* at 18-21.

[39] *People v. Guardian*, G.R. No. 142900, August 7, 2002.

Supreme Court E-Library

Q - Where did it happen?

A - At home.

x x x x x x x x x

Q - So, you were there in your house when you were *raped* by your father on July 24, 1998?

A - Yes, your honor.

x x x x x x x x x

Q - *And what actually happened?*

A - At about 10:30 while I was asleep I was awakened and when I woke up *he was pointing a knife at me and he told me do not make any noise and something bad will happen* to you. And *he again undresses me and do what he done to me again.*

Q - And what happened after that?

A - After he had raped me I went back to sleep again.[40] (*Italics supplied*)

As reflected in the above-quoted portion of Carol's testimony, aside from undressing private complainant, there is no showing that accused-appellant had sexual intercourse with her. Nor is there any showing of lewd designs for the acts to be considered as lascivious. The testimony, however, shows that accused-appellant, by means of threats, successfully undressed Carol against her will, facts that constitute the elements of grave coercion as defined in Article 286 of the Revised Penal Code.[41] The elements of grave coercion were not, however, sufficiently alleged in the information under Criminal Case No. 49825 and,

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[40] TSN, February 19, 1999 at 25–26.

[41] Art. 286. *Grave coercions.* — The penalty x x x shall be imposed upon any person who, without authority of law, shall, by means of violence, threats or intimidation, prevent another from doing something not prohibited by law or compel him to do something against his will, whether it be right or wrong.

x x x x x x x x x

Supreme Court E-Library

in view of the right of an accused to be informed of the nature and cause of the accusation against him,[42] accused-appellant may not be convicted of grave coercion.

Lastly, with respect to the rape allegedly committed on *May 24, 1998* subject of Criminal Case No. 49824, Carol had this to say:

PROS. GEDUSPAN

Q- So aside from May 19, 1998 you were also *raped* on May 24, 1998?

A- Yes, your honor.

Q- When was that committed?

A- At home, your honor.

Q- What time?

A- In the midnight, your honor.

Q- *And what did he do to you?*

A- *The same thing he had done to me before*, your honor.[43] (*Italics supplied*)

As earlier mentioned, every charge of rape is a distinct and separate crime and each must be proved beyond reasonable doubt. Since the prosecution has failed to prove that any crime was committed on *May 24, 1998*, accused-appellant's acquittal in Criminal Case No. 49824 is in order.

Having found that accused-appellant committed rape in Criminal Case No. 49823, and acts of lasciviousness in Criminal Case No. 49826, a determination of the penalties therefor is in order.

With respect to Criminal Case No. 49823, the May 27, 1997 Certification of the Calinog, Iloilo Civil Registrar[44] which therein

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[42] Section 1(b), Rule 115, Rules of Court.

[43] TSN, February 19, 1999 at 31.

[44] Exhibit "I"; Records at 59.

Supreme Court E-Library

quotes entries on the "facts of birth appear[ing] in our Registry of Birth" shows that Carol was born on June 1, 1978 to Carlos Lilo (accused-appellant) and Rosa Paloma. Unquestionably then, Carol is the daughter of accused-appellant, and was under eighteen years of age at the time of the commission of the rape in October 1995. Since the crime was committed in October 1995, Article 335 of the Revised Penal Code, as amended by Republic Act 7659 (effective December 31, 1993)[45] thus applies. It provides:

> Article 335. *When and how rape is committed.* — Rape is committed by having carnal knowledge of a woman under any of the following circumstances.
>
> x x x x x x x x x
>
> The *death penalty* shall also be imposed if the crime of rape is committed with any of the following. attendant circumstances:
>
> 1. When the victim is *under eighteen (18) years of age* and the *offender is a parent*, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim;
>
> x x x x x x x x x (*Emphasis supplied.*)

Hence, accused-appellant must be penalized with death.

Three justices of the Court, however, continue to maintain the unconstitutionality of R.A. 7659 insofar as it prescribes the death penalty. Nevertheless, they submit to the ruling of the majority to the effect that the law is constitutional and that the death penalty can be lawfully imposed in the case at bar.

With respect to Criminal Case No. 49826, relationship aggravated the commission of the acts of lasciviousness. As held in *People v. Caiñgat*,[46] under Article 15 of the Revised Penal Code, relationship is one of the alternative circumstances and in the crimes of rape under Article 335 and acts of

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[45] *People v. Simon*, 234 SCRA 555, 569 (1994).

[46] G.R. No. 137963, February 6, 2002.

Supreme Court E-Library

lasciviousness under Article 336 of the same Code, relationship is aggravating, hence, accused-appellant must be penalized with *prision correccional* in its maximum period.

WHEREFORE, the judgment on review is hereby *AFFIRMED with MODIFICATION.*

In Criminal Case No. 49823, accused-appellant, Carlos Lilo, is found GUILTY beyond reasonable doubt of the crime of RAPE and is hereby sentenced to death and to pay private complainant, Carol Lilo, the amount of ₱75,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱25,000.00 as exemplary damages.

In Criminal Case No. 49826, accused-appellant is found GUILTY beyond reasonable doubt of ACTS OF LASCIVIOUSNESS and is hereby sentenced to suffer the indeterminate penalty of Six (6) Months of *Arresto Mayor* as minimum, to Six (6) Years of *Prision Correccional* as maximum, and to pay private complainant the amount of ₱30,000.00 as moral damages, plus costs of suit.

Accused-appellant is ACQUITTED of the charges in Criminal Case Nos. 49824 and 49825.

Costs *de oficio*.

In accordance with Article 83 of the Revised Penal Code, as amended by Section 25 of R.A. 7659, upon finality of this Decision, let the records of these cases be forwarded to the Office of the President for possible exercise of executive clemency.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Mendoza, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Callejo, Sr., and *Azcuna, JJ.*, concur.