

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ROLENDO GAUDIA @
“LENDYO” OR “DODO”, APPELLANT.***G.R. No. 146111. February 23, 2004*

Ponente: PUNO, J.

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There can be no greater violation of a person's right to feel safe and secure than the crime of rape. When one commits such a horrible act on another, he degrades not only that person's body; more importantly, he defiles that person's mind. When the victim is a little child, the act and the perpetrator himself assume a bestiality beyond the comprehension of normal human beings. Yet, the law must apply equally upon saints and sinners alike, even to the most salacious ruffian.

Before us is the Decision[1] dated 10 July 2000 of Branch 19 of the Regional Trial Court of Digos, Davao del Sur, finding appellant Rolendo Gaudia[2] guilty of the crime of rape, meting upon him the penalty of death, and ordering him to pay to private complainant Remelyn Loyola the amounts of fifty thousand pesos (P50,000.00) as moral damages, thirty thousand pesos (P30,000.00) as exemplary damages, and costs of suit.

The Information filed against the accused-appellant reads as follows:

That on or about March 24, 1997 at about 6:30 o'clock in the evening, in the Municipality of Hagonoy, Province of Davao del Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did, then and there willfully, unlawfully and feloniously have carnal knowledge with Remelyn Loyola, a minor, against her will to her damage and prejudice.

The prosecution presented Remelyn's mother, Amalia Loyola, as its primary witness. Amalia testified that on 24 March 1997, she left her two children Remelyn (3 1/2 years old)[3] and Kimberly (1 year old)[4] at their house in Clib, Hagonoy, Davao del Sur to gather pigs' food at Bulatukan. At the time, her husband was working in Tulunan, South Cotabato. At about 4:00 in the afternoon, Amalia returned home and could not find Remelyn. She went to fetch water and proceeded to a neighbor to ask about the whereabouts of Remelyn. Nobody could provide her any information. On her way home, she shouted and called out Remelyn's name. At about 6:00 p.m., Amalia heard Remelyn calling out to her, "Ma, I am here," from a grove of ipil-ipil trees.[5] Amalia rushed toward the place, but was met by Remelyn at the mango trees, some thirty (30) meters from their house.[6] She found Remelyn crying, naked, nagbakaang (walking with her legs spread apart) and with fresh and dried blood on her body. Ipil-ipil leaves clung to her forehead. Blood was oozing from her private organ. Amalia brought Remelyn home and washed her. Upon closer inspection, she found a whitish mucus-like substance coming from Remelyn's private organ.[7]

The following day, 2 March 1997, Amalia brought Remelyn to the house of a certain Tiya Coring, a quack doctor, for treatment. Among the people present in the premises were the relatives and parents of the appellant.[8] The quack doctor found both dried blood and fresh blood oozing in Remelyn's vagina, and told Amalia, "Hoy! Amalia, your daughter was being (sic) raped." [9] At about 10:00 a.m., Tulon Mik, a neighbor, came and informed

Amalia that he had seen the appellant pass by her house and take Remelyn.[10] At this point, the parents of appellant told Amalia, “Mal, let us talk about this matter, we will just settle this, we are willing to pay the amount of P15,000.00, for the crime that my son committed.”[11] Police officers came and brought Amalia, Remelyn and two barangay officials (kagawads) to the police precinct of Hagonoy for investigation. Amalia’s statement was taken.[12]

On 25 March 1997, Amalia brought Remelyn to the Hagonoy Health Center in Davao del Sur. Dr. Patricio Hernane, the municipal health officer,[13] conducted a genital examination of Remelyn, and made the following findings:

GENITAL EXAMINATION:

Absence of Pubic Hair (Tanner Stage I). No contusions are noted on the external genitalia. Dried blood are (sic) noted on the labia minora. Fresh hymenal lacerations are noted at 12, 3, 6, 10 o’clock (sic) are noted with fresh vaginal laceration noted at the posterior commissure but not extending to the perineum. No lacerations were noted at the anal opening.

Speculum examination is not done because even exposure of the labia minora make the child cry. (sic)

CONCLUSION: Physical virginity lost.[14]

The doctor opined that the lacerations could have been caused by the insertion of a foreign object, such as the penis of a man.[15]

On 26 March 1997, Amalia executed her affidavit complaint.[16] Amalia stated therein that Remelyn had told her “Buang Lendoy iya kong lugos.”[17] (Meaning “crazy lendoy he forced me” in the Visayan dialect.) Amalia confirmed in her testimony that two weeks after the incident, Remelyn told her, “Ma, Lendoy is crazy, she (sic) brought me to the ipil-ipil trees.”[18]

The prosecution also presented Tulon Mik, Remelyn’s neighbor and a barangay kagawad in their area. Mik testified that on 24 March 1997, at about 4:00 p.m., he and his wife were on their way home after registering at the COMELEC office. They were in a hurry as their child was running a fever. Mik saw appellant carrying a small girl in his arms.[19] He identified the little girl as Remelyn Loyola, daughter of Amalia Loyola. Appellant and Remelyn were on their way toward the ipil-ipil trees.[20]

The next morning, 25 March 1997, at about 7:00 a.m., a neighbor informed Mik that Remelyn had been raped. He proceeded to the house of the quack doctor where Amalia brought Remelyn for examination. Amalia confirmed to Mik that Remelyn had been raped. Mik told Amalia that appellant committed the crime. Mik then informed Barangay Official Rodrigo Malud[21] and the other tanods of the incident. They were instructed to locate the appellant. They passed to the police the information that appellant was in Barangay Mahayahay. The policemen came and took appellant for investigation. [22]

The appellant, ROLENDO GAUDIA, interposed the defense of alibi. He averred that on 24 March 1997, at about 4:00 p.m., he went to the Barangay Center to register at the COMELEC for the National Elections. With him was Totong Loyola, the brother-in-law of Amalia Loyola. They finished at 5:00 p.m., left and repaired to the house of Catalina Cabano, appellant’s aunt, to ask for vinegar for their kinilaw (a dish composed of raw fish steeped in vinegar). They found Daylen Cabano, the small grandchild of Catalina, alone at her house. Daylen was crying, hence, they brought her with them as they proceeded to the place where Catalina was collecting tuba (fermented coconut wine). It was appellant who carried Daylen.[23] They reached Catalina’s place after 5:00 p.m. Thereafter, they went to the house of appellant. Dodo Malon and appellant’s parents were in the house. At around 9:00 p.m., Totong and Dodo Malon left, after partaking of the kinilaw. Appellant stayed home. The following

morning (25 March 1997), appellant and Dodo Malon went to the river to fish. At about 12:00 noon, appellant repaired to the house of his aunt, Victoria Gayod, in Mahayahay to drink tuba. He was located by the police and investigated.[24] He claimed that it was Daylen and not the victim Remelyn whom he was carrying.

As corroborative witness, appellant presented Alex “Totong” Loyola. Totong testified that on 24 March 1997, at about 4:00 p.m., they registered as voters in the barangay. After registering, they went home to appellant’s house, but again left to get vinegar from his aunt Catalina Cabano, for their kinilaw. In Catalina’s house, they found her drunk husband, her 10-year old daughter, and her 3-year old grandchild Daylen.[25] Catalina’s daughter directed them to the place where she was gathering tuba. As Daylen was crying, appellant carried her on their way to Catalina. It was then about 4:00 p.m. After Catalina finished gathering tuba, the four of them – appellant, Totong, Catalina and Daylen, left together and repaired to Catalina’s house for the vinegar. Appellant and Totong returned to appellant’s house where they spent the night.[26] Totong woke up at 6:00 a.m. the following day, and left appellant’s house. Totong came to know of appellant’s arrest the following day.[27]

Catalina Cabano also corroborated appellant’s story. She relates that on 24 March 1997, she was gathering tuba, at a place around 2 kilometers from her house. She left Maritess, her youngest child and Daylen, her grandchild, at her house.[28] At about 5:30 p.m., appellant and Totong arrived. Appellant was carrying Daylen. They waited for Catalina to finish gathering tuba until 6:00 p.m. Appellant and Totong went to the former’s house, had a drinking spree, and then parted ways at about 6:30 p.m. That night, according to Catalina, she talked to Tulon Mik at the premises near the house. Mik was looking for Remelyn. At that time, appellant was already at the house of Catalina’s younger sister, which is located across the river, about 4 kilometers away.[29]

After trial, the trial court found that there was sufficient circumstantial evidence to convict appellant for the crime of rape with the qualifying circumstance that the victim was below seven years of age. Appellant was sentenced to death and ordered to indemnify the victim the sums of fifty thousand pesos (P50,000.00) as moral damages, thirty thousand pesos (P30,000.00) as exemplary damages, and to pay the costs of suit.

In his Brief[30] to the Court, appellant assigned the following errors in the judgment of the trial court:

I.

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT, ROLANDO (sic) GAUDIA DESPITE THE FACT THAT HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

II.

EVEN GRANTING WITHOUT ADMITTING THAT ACCUSED-APPELLANT IS GUILTY OF THE CRIME CHARGED, THE TRIAL COURT STILL ERRED IN IMPOSING THE SUPREME PENALTY OF DEATH DESPITE THE FAILURE OF THE PROSECUTION TO STATE WITH CERTAINTY THE QUALIFYING CIRCUMSTANCE OF AGE IN THE INFORMATION.

We convict appellant for simple rape, and not for qualified rape.

Under Rule 133, Section 4 of the Revised Rules of Court, conviction may be based on circumstantial evidence provided three requisites concur: (a) there is more than one circumstance; (b) the facts from which the inferences are derived are proven; and (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt. The ruling case law is that for circumstantial evidence to be sufficient to support a conviction, all circumstances must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with the hypothesis that he is innocent and with every other rational hypothesis except that of guilt.[31]

The first circumstantial evidence against the appellant is the testimony of prosecution witness Tulon Mik that at 4:00 p.m. on 24 March 1997, he saw him carrying Remelyn toward the direction of the ipil-ipil grove, some 130 meters from her house.[32] As a neighbor and relative of Remelyn's stepfather, Mik had sufficient familiarity with the child Remelyn. The possibility that he could have been mistaken in identifying the victim is nil.

The second circumstantial evidence against the appellant is Amalia's testimony that Remelyn emerged naked from the same ipil-ipil grove, with ipil-ipil leaves clinging to her forehead. Remelyn was crying and walking with her legs spread far apart. Remelyn's private organ was bleeding and excreting a white mucus-like substance.[33]

The third circumstantial evidence against appellant is Remelyn's statement to her mother that it was appellant who had brought her to the ipil-ipil grove[34] and forced her to do something against her will.[35]

There is no question that Remelyn was violated. After examining Remelyn, Dr. Patricio Hernane, the Municipal Health Officer of Hagonoy, found her to have a broken hymen, as well as fresh vaginal lacerations.

From these, the culpability of the appellant can be inferred with moral certainty. All the aforementioned circumstances have been indubitably proven, both by the testimonial and documentary evidence presented by the prosecution, and by the inability of the appellant to discredit their veracity.

The attempt of appellant to discredit the circumstantial evidence against him is futile. Appellant contends, first, that Tulon Mik's testimony is weak, on the ground that Mik is a relative of the husband of Amalia.[36] He also questions the credibility of Mik because of his failure to confront appellant when he saw him carrying Remelyn. Neither did Mik inform Amalia about what he saw when Amalia was looking for Remelyn. Appellant insists that it was Daylen whom he carried and not Remelyn. Second, he stresses the fact that Remelyn did not make any categorical statement that he sexually molested her. Third, he maintains that the accusation of flight against him is false. Fourth, he avers that the offer of compromise by his parents as tendered to Amalia Loyola should not be taken against him,[37] while the offer of compromise he allegedly made to Amalia's husband, as relayed by Amalia in her testimony, should be excluded as evidence for being hearsay.[38] Finally, he submits that inconsistencies in the testimony of Alex Loyola and Cabano should not be counted against him on the ground that any finding of guilt must rest on the strength of the prosecution's evidence.

We reject appellant's arguments.

First, appellant's attempt to discredit the testimony of Mik cannot succeed. It is true that Mik is a relative by affinity of Amalia Loyola. It is hoary jurisprudence, however, that mere relationship to one of the parties, without a showing of any other improper motive, is not sufficient basis to impair the credibility of the witness.[39] In the case at bar, appellant cannot impute any ill motive for Mik to testify adversely against him.

Appellant questions the failure of Mik to challenge him why he was carrying Remelyn. Also, he assails Mik for failing to inform Amalia Loyola of such a sight. Mik had an explanation for the inadvertence. He said his own child was down with a fever, and he and his wife were hurrying home.[40] For this same reason, he revealed the fact that he saw appellant carrying Remelyn toward the ipil-ipil grove only when he learned of Remelyn's fate. But thereafter, he lost no time in reporting the matter to the barangay chairman.[41] As a barangay kagawad, he also assisted in the pursuit and arrest of appellant at Barangay Mahayahay.[42] These subsequent actions strengthen Mik's credibility.

The trial court accorded more credence to Mik's narration of the events over the testimonies of Cabano and Loyola. It is a cornerstone of our jurisprudence that the trial judge's evaluation of the testimony of a witness and its factual findings are accorded not only the highest respect, but also finality, unless some weighty circumstance has been ignored or misunderstood which could alter the result of the judgment rendered. In the case at bar, there

is no irregularity in the assessment of evidence by the lower court. It granted utmost credibility to Mik's testimony. Given the direct opportunity to observe the witness on the stand, the trial judge was in a vantage position to assess his demeanor and determine if he was telling the truth or not.[43] The trial court found Mik's testimony more worthy of credence over those of Catalina and Loyola. We have no reason to reverse its findings.

Next, appellant tried to capitalize on the fact that Remelyn never made any statement that he sexually molested her. This is a specious argument. Remelyn had told her mother, "Crazy Lendoy forced me." [44] Remelyn was 3 1/2 years old at the time. At such an infantile age, she could not be expected to have a comprehension of the concept of rape. Studies show that children, particularly very young children, make the "perfect victims". They naturally follow the authority of adults as the socialization process teaches children that adults are to be respected. The child's age and developmental level will govern how much she comprehends about the abuse and therefore how much it affects her. If the child is too young to understand what has happened to her, the effects will be minimized because she has no comprehension of the consequences. Certainly, children have more problems in providing accounts of events because they do not understand everything they experience. They do not have enough life experiences from which to draw upon in making sense of what they see, hear, taste, smell and feel. Moreover, they have a limited vocabulary.[45] The fact that Remelyn called appellant "Buang" or crazy shows that he did something which she knew was not right or proper. By saying "iya kong lugos," Remelyn clearly conveyed that he forced her to do something bad. With her limited comprehension, the child could not have a perfect way of relating that she had been sexually abused. Finally, it must also be considered that there is no actual counterpart for the word "rape" in Visayan parlance.

Appellant's charge that the trial court erred when it ruled that he fled arrest, even if correct, is not pivotal to his guilt. There are enough pieces of circumstantial evidence to convict him. Neither will it affect the penalty or the award of damages rendered against him.

Similarly, appellant's charge that the offers of compromise allegedly made by the parents of the appellant to Amalia, and by the appellant himself to Amalia's husband should not have been taken against him by the trial court, even if sustained, will not exculpate him. To be sure, the offer of compromise allegedly made by appellant to Amalia Loyola's husband is hearsay evidence, and of no probative value. It was only Amalia who testified as to the alleged offer,[46] and she was not a party to the conversation which allegedly transpired at the Hagonoy Municipal Jail. A witness can only testify on facts which are based on his personal knowledge or perception.[47] The offer of compromise allegedly made by the appellant's parents to Amalia may have been the subject of testimony[48] of Amalia. However, following the principle of *res inter alios acta alteri nocere non debet*, [49] the actions of his parents cannot prejudice the appellant, since he was not a party to the said conversation, nor was it shown that he was privy to the offer of compromise made by them to the mother of the victim. They cannot be considered as evidence against appellant but we reiterate that these errors are not enough to reverse the conviction of the appellant.

Appellant's defense hardly impresses. It is interesting to note that appellant and his witnesses claim that it was at around 5:00 p.m. when appellant carried the child Daylen toward her grandmother Catalina at the place where she was gathering tuba. Mik testified that it was around 4:00 p.m. when he saw appellant carrying Remelyn toward the ipil-ipil grove. Given the 130-meter distance between the ipil-ipil grove and the houses of appellant and of Amalia Loyola, appellant could have easily taken Remelyn from her house, raped her at the ipil-ipil grove, and left her there, all in a matter of a few minutes. Sometime past 4:00 p.m., he could then have returned to his house, and together with Alex Loyola, proceeded to the COMELEC office to register, and did all the subsequent acts he claims to have done.

The Court also notes the inconsistencies in the testimonies of Catalina and Loyola. The discrepancies in the

witnesses' narration as to the time of arrival of appellant at the place where Catalina was gathering tuba, his time of arrival at his own house, and the time when Loyola and appellant actually parted ways, are not mere trivial details which could be forgotten by witnesses because of the passage of time. To make matters worse, the appellant's testimony was, at times, contradicted by his own witnesses. Particularly telling was the conflict between appellant's statement that Totong had already left his house on the night of 24 March 1997 and Totong and Catalina's own averments that Totong had stayed the night at appellant's house. These contradictory testimonies only made more incredulous appellant's tale.

We now review the penalty of death imposed upon appellant. In the case at bar, the Information states that appellant, "by means of force and intimidation...willfully, unlawfully and feloniously (had) carnal knowledge with Remelyn Loyola, a minor, against her will to her damage and prejudice." [50] (emphasis ours) The Information did not allege that Remelyn was below seven years old when she was violated. Appellant was therefore charged with simple rape, under Section 335 of the Revised Penal Code, as amended by Republic Act No. 7659 (the Death Penalty Law). Upon its passage, R.A. No. 7659 introduced seven new attendant circumstances, which when present, will transform the crime to qualified rape, punishable by death. We again stress that these new attendant circumstances must be properly pleaded in the information to justify the imposition of the death penalty. The facts stated in the body of the information determine the crime for which the accused stands charged and for which he must be tried. [51] The main purpose of requiring all the elements of a crime to be set out in the information is to enable the accused to suitably prepare his defense. It would be a denial of the right of the accused to be informed of the charges against him and, consequently, a denial of due process, if he is charged with simple rape and be convicted of its qualified form punishable with death, although the attendant circumstance qualifying the offense and resulting in capital punishment was not alleged in the indictment on which he was arraigned. [52]

We now review the damages awarded by the trial court. Time and again, we have ruled that when there is a finding that rape had been committed, the award of civil indemnity *ex delicto* is mandatory. [53] If the death penalty has been imposed, the indemnity should be P75,000.00; otherwise the victim is entitled to P50,000.00 for each count of rape. [54] Thus, the appellant is ordered to pay the amount of P50,000.00 as civil indemnity to Remelyn Loyola. [55]

We affirm the award of moral damages. This is automatically awarded in rape cases without need of further proof other than the commission of the crime, as it is assumed that a rape victim has suffered moral injuries entitling her to such an award. [56]

We also find the award of exemplary damages made by the lower court in favor of complainant as proper because complainant has been correctly granted moral damages and the offense against her was committed with the aggravating circumstance [57] of age. However, the amount awarded must be reduced to P25,000.00 in line with prevailing jurisprudence. [58]

WHEREFORE, the judgment of conviction of the Regional Trial Court, Branch 19, of Digos, Davao del Sur in Criminal Case No. 213(97) is hereby MODIFIED. Appellant is found guilty of the crime of simple rape, and is sentenced to suffer the penalty of reclusion perpetua. He is ordered to pay to complainant Remelyn Loyola the amounts of P50,000.00 as civil indemnity *ex delicto*, P50,000.00 as moral damages, and P25,000.00 as exemplary damages. Costs against the appellant.

SO ORDERED.

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

[1] Written by RTC Judge Hilario I. Mapayo.

[2] Also known by the name “Lendoy” or “Dodo”.

[3] TSN, 5 January 1998, p. 4. According to Amalia Loyola, Remelyn was born on 9 August 1993.

[4] Id. at 5.

[5] Id. at 8.

[6] Id. at 7.

[7] Id. at 5-7.

[8] TSN, 5 January 1998, p. 19.

[9] Id. at 8.

[10] TSN, 5 January 1998, pp. 14-15, and TSN, 26 February 1998, pp. 4-5.

[11] Id. at 19.

[12] TSN, 5 January 1998, p. 8.

[13] TSN, 8 December 1997, p. 4.

[14] Exhibits “A-2” and “A-3” for the prosecution, also Exhibit “1-C” for the defense, p. 46 of the Original Records.

[15] TSN, 8 December 1997, pp. 7-8.

[16] Exhibit “B” for the prosecution, p. 5 of the Original Records.

[17] Id.

[18] TSN, 5 January 1998, p. 9.

[19] Exhibit “D” for the prosecution, p. 6 of the Original Records.

[20] TSN, 26 February 1998, pp. 4-5.

[21] Id. at 9.

[22] Id. at 7.

[23] Id. at 6-10.

[24] Id. at 10.

[25] TSN, 16 July 1999, p. 7.

[26] Id. at 4-7.

[27] Id. at 9-10.

[28] TSN, 16 July 1999, pp. 11-13.

[29] Id. at 15.

[30] Rollo, pp. 37-45.

[31] *People v. Gallarde*, 325 SCRA 835 (2000).

[32] TSN, 26 February 1998, p. 11.

[33] TSN, 5 January 1998.

[34] Exhibit “B” for the prosecution, p. 5 of the Original Records.

[35] TSN, 5 January 1998, p. 9.

[36] TSN, 5 January 1998, p. 6, as quoted in p. 7 of Appellant’s Brief, p. 38, Rollo.

[37] Sec. 28, Rule 130 of the Revised Rules of Court.

[38] Sec. 36, Rule 130 of the Revised Rules of Court.

[39] *People vs. Antonio*, 303 SCRA 414 (1999).

[40] TSN, 26 February 1998, p. 11.

[41] Id. at 6.

[42] Id. at 7.

[43] *People vs. Manalo*, G.R. Nos. 144989-90, 31 January 2003; *People vs. Glabo*, 371 SCRA 567 (2001); *People vs. Navida*, 346 SCRA 821(2000); *People vs. Valla*, 323 SCRA 74 (2000); *People vs. Lopez*, 302 SCRA 669 (1999).

[44] Exhibit “B” for the prosecution, p. 5 of the Original Records.

[45] Goldstein, Seth L., “The Sexual Exploitation of Children, A Practical Guide to Assessment, Investigation and Intervention, 2nd Edition,” CRC Press LLC: 1999.

[46] Id. at 20.

[47] Section 36, Rule 130, Revised Rules of Court.

[48] TSN, 25 January 1998, p. 19.

[49] As codified in Section 28, Rule 130, Revised Rules of Court.

[50] Original Records, p. 2. Emphasis ours.

[51] *People vs. Lim San*, 17 Phil. 273 (1910).

[52] *People vs. David Garcia*, 281 SCRA 463 (1997).

[53] *People vs. Biong*, G.R. Nos. 144445-47, 30 April 2003; *People vs. Tagud, Sr.*, 375 SCRA 291 (2002).

[54] Id.

[55] *People vs. Biong*, G.R. Nos. 144445-47, 30 April 2003; *People vs. Invencion*, G.R. No. 131636, 5 March 2003.

[56] People vs. Prades, 355 Phil. 150 (1998).

[57] People vs. Tabugoca, G.R. No. 125334, January 28, 1998.

[58] People vs. Umbana, G.R. Nos. 146862-64, 30 April 2003; People vs. Villanueva, G.R. Nos. 146464-67, 15 November 2002; People vs. Barcelon, Jr., 389 SCRA 556 (2002); People vs. Lilo, G.R. Nos. 140736-39, 4 February 2003; People vs. Francisco, G.R. No. 135200, 351 SCRA 351 (2001).

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