

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ABUNDIO T. MENDI @ JUN, ACCUSED-APPELLANT.***G.R. Nos. 112978-81. February 19, 2001*

Ponente: QUISUMBING, J.

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On appeal is the consolidated decision dated September 16, 1993 of the Regional Trial Court of Lingayen, Pangasinan, Branch 38, in Criminal Case No. U-6940 convicting appellant, Abundio T. Mendi alias Jun, of violation of Presidential Decree No. 1866, sentencing him to imprisonment of twelve (12) years and one (1) day as minimum to eighteen (18) years and ten (10) months as maximum, and to pay the costs; and in Criminal Case Nos. U-7010, U-7011, and U-7012, convicting him of three (3) counts of rape of his daughter and imposing upon him the penalty of reclusion perpetua for each count of rape and ordering him to pay the victim P150,000.00 as moral damages.

Appellant is 42 years old, married, a driver and farmer, resident of Barangay Cili, Binalonan, Pangasinan. He stands accused of repeatedly raping Pheby[1] C. Mendi, his 15 year-old daughter.

The facts, as summarized by the Office of the Solicitor General, and which we find to be duly supported by the records, are as follows:[2]

On September 6, 1991, Phebi Mendi was living at the family home in Cili, Binalonan, Pangasinan with her father (appellant Abundio Mendi) a younger sister (Analene Mendi) and a younger brother. Her mother (Placida Mendi) was abroad at that time, working as a domestic helper in Malaysia. (TSN, June 28, 1993, pp. 4-5.) At around 10:00 P.M. that evening, appellant entered the room containing the bed where Phebi Mendi was sleeping with her sister Analene. Phebi saw appellant at the foot of their bed, pointed a gun at her, told her softly "not to shout," and threatened to kill her if otherwise, several times. Appellant undressed her, mounted her and copulated with her. The victim cried and tried to push him away; but appellant held her hands after placing the gun on the pillow above the victim's head. Analene slept through the entire incident. Thereafter, appellant left the room leaving the victim, who just cried. (Id., pp. 18-27.)

Appellant again violated his daughter in the same manner the following night, her fifteenth birthday, and for several times thereafter that the victim lost count of the same. (Id., pp. 7-8 and 29; TSN, August 2, 1993, pp. 19-23.)

On February 13, 1992, appellant's wife, Placida Mendi, returned home after working abroad. (TSN, June 30, 1993, p. 16.) In the evening of May 29, 1992, Placida Mendi was temporarily away from home, attending to a brother confined at the Baguio City General Hospital. (TSN, June 28, 1992, p. 8.) Appellant used this occasion to forcibly copulate with Phebi Mendi anew; this time using a bolo, in addition to the gun, to intimidate her into submission. (Id., pp. 8-9 and 30-33.)

In June 1992, Placida Mendi noticed that appellant exhibited unusual closeness and admiration for their eldest daughter Phebi Mendi, who was in turn perennially silent and anxious and always avoiding contact with her father. (Id., pp. 9-10 and 33; TSN, June 30, 1993, pp. 16-17 and 22). Suspicious, Placida confronted appellant

whether he had incestuous desires for their eldest daughter, but the latter denied this. (TSN, June 30, 1993, p. 16.) In July 1993, Placida confronted the victim regarding her suspicions. The latter cried and embraced her mother. The victim told her mother that appellant had been raping her for a long time and had threatened to kill them all if she publicly revealed the sexual abuse. (TSN, June 30, 1993, p. 17; TSN, June 28, 1993, pp. 9-10.)

Upon being advised by appellant's own filial family, he told his wife and daughter that he was repenting and promised not to sexually abuse the victim again. (TSN, June 30, 1993, p. 34.)

Between July and December 1992, Placida Mendi realized that appellant's repentance was insincere, as appellant started quarelling with her (Placida) and eventually drove her away from their home. He continued to lust for Phebi. (TSN, June 30, 1993, pp. 18 and 25.)

On December 24, 1992, Phebi Mendi subjected herself to medical examination in the company of her mother and in connection with the sexual abuse inflicted on her by appellant. The examination results were consistent with copulation. (TSN, August 2, 1993, pp. 9-10.) On December 25, 1992, Placida Mendi reported to the Binalonan Police the fact that appellant kept an unlicensed firearm in their home. (TSN, June 30, 1993, pp. 19-21.) The Binalonan Police then obtained the appropriate search warrant, which they served on appellant's home on December 29, 1992. (TSN, June 30, 1993, pp. 2-4.) Appellant himself, after initially denying possession of a gun, eventually delivered to the policemen headed by SPO4 Honesto Pagaduan the parts of a dismantled .38 cal. "paltik" revolver hidden in various places and alcoves of the house. (Id., pp. 5-6.) It was the same firearm used to intimidate Phebi Mendi during the rapes. (TSN, June 28, 1993, pp. 12-13.) Appellant was arrested by the policemen and charged with illegal possession of firearms. Placida Mendi and her daughter thereafter commenced a criminal action against appellant for the rapes committed upon Phebi Mendi. (TSN, June 30, 1994, pp. 7-8 and 23; TSN, June 28, 1993, pp. 13-14.) Placida Mendi did not immediately commence the criminal actions for rape because she had wanted to give appellant an opportunity to reform. Phebi Mendi delayed in commencing the criminal actions as she was afraid for the well-being of her mother, considering that appellant threatened to kill them all if he were ever exposed for sexually abusing a daughter. (Id; TSN, August 2, 1993, p. 23.)

Thereafter, appellant was charged in Criminal Case No. U-6940 with the crime of Illegal Possession of Firearm under the following Information:[3]

That on or about the 29[th] day of December 1992, in the morning, at Barangay Cili, municipality of Binalonan, province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of the law, did then and there wilfully, unlawfully and feloniously have in his possession, custody and control complete parts of a dismantled cal. 38 Smith and Wesson Revolver (Paltik), which were recovered hidden in different parts of and places in his (accused) house; which handgun, he used to threaten to kill his teenage daughter and raped her on several occasions, which offenses are now the subject of three (3) separate informations for the crime of Rape against said accused upon previous sworn complaint of his daughter, Pheby Mendi, and his wife Placida Mendi, now filed with this court.

CONTRARY TO LAW.

In Criminal Case Nos. U-7010, U-7011, U-7012, appellant was similarly charged with three (3) counts of rape under the following Informations:[4]

Criminal Case No. U-7010:

That on or about the 29[th] day of May 1992, in the evening, at Barangay Cili, municipality of Binalonan, province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then armed with a gun, with which he used to threaten to kill complainant, Pheby Mendi y Casero, and by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge of said complainant against her will and consent, and to her damage and prejudice.

With the aggravating circumstance of relationship, accused being the father of complainant and the offense being committed in the family dwelling while the mother Placida Mendi was abroad.

Contrary to Article 335 of the Revised Penal Code.

Criminal Case No. U-7011

That on or about the 7[th] day of September, 1991, in the evening, at Barangay Cili, municipality of Binalonan, province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then armed with a gun, with which he used to threaten to kill complainant, Pheby Mendi y Casero, did then and there wilfully, unlawfully and feloniously have carnal knowledge of said complainant against her will and consent, and to her damage and prejudice.

With the aggravating circumstance of relationship, accused being the father of complainant and the offense being committed in the family dwelling while the mother Placida Mendi was abroad.

Contrary to Article 335 of the Revised Penal Code.

Criminal Case No. U-7012

That on or about the 6[th] day of September, 1991, in the evening, at Barangay Cili, municipality of Binalonan, province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then armed with a bolo and a gun, with which he used to threaten to kill complainant, Pheby Mendi y Casero, did then and there wilfully, unlawfully and feloniously have carnal knowledge of said complainant against her will and consent, and to her damage and prejudice.

With aggravating circumstance of relationship, accused being the father of complainant and the offense being committed in the family dwelling while the mother Placida Mendi was abroad.

Contrary to Article 335 of the Revised Penal Code.

Upon arraignment, appellant entered a plea of not guilty to all the crimes charged.[5] Joint trial ensued.[6]

For the prosecution, the following witnesses testified: (1) Pheby C. Mendi, private complainant, who testified as to the rapes committed from September 6, 1991 to May 29, 1992, and who presented her birth certificate in court to prove that she was born on September 7, 1976;[7] (2) SPO4 Honesto Pagaduan, a member of the Philippine National Police (PNP) of Binalonan, who served the search warrant on appellant, and confiscated the firearm from him;[8] (3) Placida Mendi, wife of appellant, and mother of the victim, who testified that she noticed her husband being "unusually close" to her daughter. When confronted, her daughter broke down and admitted that her father repeatedly raped her;[9] (4) Dr. Marcelo Patawaran, Jr., who conducted the medical examination on the victim on December 24, 1992. He found that the victim's vagina had "healed laceration at 3 o'clock and 6 o'clock, and admits 2 fingers with ease." He opined that this was consistent with the claim of the victim that she was repeatedly raped;[10] (5) Cristeta Magat, Clerk of Court of the Municipal Circuit Trial Court of Binalonan-Laoac, who merely testified that appellant's firearm was confiscated pursuant to a search warrant duly issued by the court.[11]

For the defense, the following witnesses testified: (1) Analie Mendi, the 14 year-old sister of the victim, also a daughter of appellant; and (2) appellant himself. The version of the defense as summarized by the trial court, is as follows:[12]

Ranged against the version of the prosecution, the accused vehemently denies the accusations imputed against him, asserting and claiming that he could not have possibly abused sexually his daughter Pheby on the occasions stated by the prosecution, firstly, his daughter Pheby sleeps with her younger sister Analie on a bed inside their room and if he had raped his daughter in the manner stated by the complainant, the bed will move and create sounds and Analie will surely be awakened; that the accused had not threatened the complainant nor

pointed a gun and bolo at her; that the reason why Pheby filed the cases against him is because he had scolded her for going with boys and there were instances when the accused slapped her when Pheby answered him back in a rude manner; that the wife of the accused had testified against him because they used to quarrel with each other so she entertains ill feelings against him; that it was the wife of the accused who gave the gun (exhibit F) to the police in the morning of December 29, 1992, and when Placida handed the firearm to the police, her husband was downstairs; that the accused was forced and threatened to sign the inventory receipt marked as exhibit 'G.'

On rebuttal, Monico Romero, brother-in-law of appellant, testified that he was present during the search and that it was appellant himself who handed the dismantled firearm to SPO4 Pagaduan.[13]

On September 16, 1993, the trial court rendered the assailed decision,[14] the dispositive portion of which states:

Wherefore, in the light of the considerations discussed above, the court renders judgment against the accused in the above-entitled cases as follows:

In Criminal Case No. U-6940, the court finds and holds the accused, Abundio Mendi, guilty beyond reasonable doubt of the crime of Illegal Possession of Firearm, defined and penalized under the provisions of PD 1866, pursuant to law, hereby sentences said accused to suffer the penalty of twelve (12) years and one (1) day as minimum to eighteen (18) years and ten (10) months as maximum and to pay the cost of the proceedings.

The firearm confiscated from the possession of the accused is ordered forfeited in favor of the government, to be disposed of in accordance with law.

In Criminal Case No. U-7010, the court also finds and holds the accused, Abundio Mendi, guilty beyond reasonable doubt of the crime of Rape, charged in the information filed against him, defined and penalized under the provisions of Article 335 of the Revised Penal Code as amended, and conformable thereto, hereby sentences said accused to suffer the penalty of Reclusion Perpetua and its accessory penalties provided by law and to pay the cost of the proceedings.

In Criminal Case No. U-7011, the court likewise finds and holds the accused, Abundio Mendi, guilty beyond reasonable doubt of the crime of Rape, charged in the information filed against him, defined and penalized under Article 335 of the Revised Penal Code as amended, and conformable thereto, hereby sentences said accused to suffer the penalty of Reclusion Perpetua and its accessory penalties provided by law and to pay the cost of the proceedings.

In Criminal Case No. U-7012, the court likewise finds and holds the accused, Abundio Mendi, guilty beyond reasonable doubt of the crime of Rape, charged in the information filed against him, defined and penalized under Article 335 of the Revised Penal Code as amended, and conformable thereto, hereby sentences said accused to suffer the penalty of Reclusion Perpetua and its accessory penalties provided by law and to pay the cost of the proceedings.

And applying the three-fold rule in favor of the accused, the duration of the penalty to be served by him in all the cases shall not exceed forty (40) years.

The court further orders the accused to indemnify the victim Pheby Mendi the sum of One Hundred Fifty Thousand (P150,000.00) Pesos as moral damages without subsidiary imprisonment in case of insolvency.

SO ORDERED.

Hence, the present appeal. Appellant assigns the sole error that -[15]

THE TRIAL COURT ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIMES OF ILLEGAL POSSESSION OF FIREARM AND 3 COUNTS OF RAPE.

As to the illegal possession case, appellant claims that he was merely framed-up by his wife. He contends that he cannot be found guilty of illegal possession of firearm because of lack of animus possidendi and the failure of the prosecution to prove that he did not have the requisite license.

The Office of the Solicitor General maintains, however, that the non-possession of license can be proven by the best evidence obtainable, which is the admission of the appellant during cross-examination that he was not licensed to possess a firearm.

As to the rape cases, appellant contends that the charges of rape are untrue and fabricated because (1) it was highly unusual for a rape victim not to leave the house despite the alleged repeated rapes by her father, and (2) it was not possible to commit the rapes inside the bedroom where the victim's sister also sleeps.

For the State, the OSG maintains that the victim's failure to leave the family home was justified by the same reasons that impelled her to delay disclosure of her sexual abuse to the authorities, that is, appellant's threat to her life, and his moral ascendancy over her. Further, the presence of other persons in a small room does not necessarily deter the commission of rape.

On the charge of the illegal possession, we find that appellant must be acquitted for failure of the prosecution to prove the second element of the offense, which is, non-possession of a license. The citation of *People v. Mesal*, 244 SCRA 166 (1995), by the OSG is misplaced. In the *Mesal* case, we held that presentation of the testimony of a representative of, or a certification from, the PNP Firearms and Explosives Unit, may be dispensed with where other evidence firmly and undisputably establish that appellant did not have, and could not possibly have, the requisite license or authority to possess a rifle which only military men are authorized to possess. Clearly, the firearm involved in this case, a .38 cal. Smith and Wesson "paltik" revolver, is not one exclusively issued to the military. Further, the loose invocation by the OSG of the best evidence rule is not appropriate since the "best evidence rule" under Section 3 of Rule 130 of the Rules of Court only applies when the subject of the inquiry is the contents of a document, such that where the original is available, secondary evidence cannot be presented as evidence. This finds no application in the instant case.

On the charge of rape on the counts, however, we find that the conviction of appellant should be affirmed. We note that for scrutinizing the credibility of witnesses, the following have been set forth as guiding principles:[16]

First, the appellate court will not disturb the factual findings of the lower court unless there is a showing that it had overlooked, misunderstood, or misapplied some fact or circumstance of weight and substance that would have affected the result of the case;

Second, the findings of the trial court pertaining to the credibility of witnesses are entitled to great respect since it had the opportunity to examine their demeanor as they testified on the witness stand; and

Third, a witness who testified in a categorical, straightforward, spontaneous and frank manner and remained consistent on cross-examination is a credible witness.

Tested by the above guidelines, the testimonies of private complainant and her mother are credible. As to the testimonies of the defense witnesses, the trial court noted that[17] -

... Furthermore, the court had occasions to observe the accused and his witness when they testified in the witness stand. There was no sincerity in their voice and could not immediately answer the questions propounded to them and instead of looking straightforward they usually stoop as if they wanted to hide the shame and guilt of what the accused had done to a member of their family.

It is an accepted rule in criminal law that rape may be committed even when the rapist and the victim are not alone. Rape was held to have been committed in the same room while the rapist's spouse was asleep, or in a small

room where other family members also slept.[18] It is common judicial experience that rapists are not deterred from committing their odious act by the presence of people nearby.[19]

Appellant callously scoffs at the conduct of private complainant after the rapes since she did not even attempt to run away from their house after her father repeatedly raped her. Thus, he coldly asks "... Why did she not leave the home of the pater familias immediately and report to the police so that her torture would end immediately instead of her having a cyclical fate? She was 15 years old - she had the choice of leaving or staying at home. Yet she chose to stay and be a sex slave to her father allegedly." [20]

Contrary to appellant's pathetic reasoning, we have repeatedly ruled that "a victim's failure to resist the accused's assault successfully and to escape when the opportunity presented itself should not be construed as a manifestation of consent." [21] It is not uncommon for young girls to conceal for some time the assaults on their virtue (or person, since rape has already been reclassified from a crime against chastity to a crime against persons) because of the rapist's threats on their lives.[22] The delay and initial reluctance of a rape victim to make public the assault on her virtue (or person) is neither unknown nor uncommon.[23]

The alternative circumstance of relationship which was alleged in the Information and duly proven by the prosecution should be appreciated as an aggravating circumstance.

At the time of the commission of the crimes, the penalty for rape with the use of a deadly weapon, the gun and bolo, was reclusion perpetua to death. The imposition of the death penalty having been suspended at that time, the trial court correctly imposed the penalty of reclusion perpetua, which is an indivisible penalty.

It has been the policy of the Supreme Court to award outright an amount not exceeding P50,000.00 to a rape victim which relates to and should be categorized as actual or compensatory damages.[24] In addition, moral damages in the amount of P50,000.00 should be granted without need of proof.[25] Further, in view of the presence of an aggravating circumstance, exemplary damages in the amount of P20,000.00 should also be awarded.

WHEREFORE, the appealed decision is **AFFIRMED WITH MODIFICATION**. Appellant is **ACQUITTED** of the crime of illegal possession of firearms for insufficiency of evidence. But he is found **GUILTY** of three (3) counts of rape, and sentenced to three (3) counts of reclusion perpetua, and ordered to pay the offended party the amount of P50,000.00 as civil indemnity, P50,000.00 as moral damages, and P20,000.00 as exemplary damages for each count of rape. Costs against appellant.

### **SO ORDERED.**

Bellosillo, (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

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[1] Also spelled as "Phebi."

[2] Rollo, pp. 193-197.

[3] Records, Criminal Case No. U-6940, p. 2.

[4] Records, Criminal Case No. U-7010, p. 2; Records, Criminal Case No. U-7011, p. 1; Records, Criminal Case No. U-7012, p. 1.

[5] Records, Criminal Case No. U-7010, p. 25; TSN, August 2, 1993, p. 3.

[6] Records, Criminal Case No. U-7012, p. 30.

- [7] TSN, June 28, 1993, pp. 2-3.
- [8] TSN, June 30, 1993, pp. 2-13.
- [9] Id. at 16-17.
- [10] TSN, August 2, 1993, p. 9.
- [11] Id. at 16-19.
- [12] Rollo, p. 30.
- [13] TSN, August 16, 1993, pp. 5-7.
- [14] Records, Crim. Case No. U-6940, pp. 50-51.
- [15] Rollo, p. 130.
- [16] *People v. Bañago*, 309 SCRA 417, 421-422 (1999).
- [17] Rollo, p. 32.
- [18] *People v. Perez*, 296 SCRA 17, 30 (1998).
- [19] *People v. Ramos*, 296 SCRA 559, 571 (1998).
- [20] Rollo, p. 138.
- [21] *People v. Tayaban*, 296 SCRA 497, 506 (1998).
- [22] Id. at 509.
- [23] *People v. Bartolome*, 296 SCRA 615, 625 (1998).
- [24] *Supra*, note 18 at 37.
- [25] *People v. Acala*, 307 SCRA 330, 360 (1999).

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