

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. MARCELO MENDOZA, APPELLANT.

G.R. Nos. 132923-24. June 06, 2002

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

The accused may not be held liable for an offense graver than that for which he or she was indicted. Having been charged with simple rape only, herein appellant cannot be convicted of qualified rape. Hence, the death penalty imposed by the trial court should be reduced to reclusion perpetua.

The Case

For automatic review by this Court is the Decision[1] dated February 10, 1998, issued by the Regional Trial Court (RTC) of Tagaytay City (Branch 18), finding Marcelo Mendoza guilty of two counts of rape, each qualified by the use of a deadly weapon. The decretal portion of the Decision reads as follows:

“WHEREFORE, the Court hereby finds the accused Marcelo Mendoza GUILTY beyond reasonable doubt in both criminal cases and do hereby sentences him –

”In Criminal Case No. TG-2597-96, to suffer the extreme penalty of DEATH and to indemnify the victim Michelle Tolentino the sum of P30,000.00 as actual damages;

“In Criminal Case No. TG-2598-96, to suffer the extreme penalty of DEATH and to indemnify the victim the sum of P30,000.00 as actual damages.

“SO ORDERED.”[2]

Two Informations[3] against appellant, filed on May 31, 1996, charged him as follows:

CRIM. CASE NO. TG-2597-96

“That on or about the 25[th] day of June 1995, at Barangay Tubuan, Municipality of Silang, Province of Cavite, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, by means of force, violence and intimidation, and taking advantage of his superior strength, did, then and there, wilfully, unlawfully and feloniously, have carnal knowledge of one Michelle G. Tolentino against her will and consent, to her damage and prejudice.”[4]

CRIM. CASE NO. TG-2598-96

“That on or about the 11[th] day of August 1995 at Barangay Tubuan, Municipality of Silang, Province of Cavite, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, by means of force, violence and intimidation and taking advantage of his superior strength over the person of Michelle G. Tolentino who is only thirteen (13) years old, did, then and there, wilfully, unlawfully and feloniously, have carnal knowledge of said Michelle G. Tolentino, against her will and consent, to her damage and prejudice.”[5]

When arraigned on June 18, 1996, appellant, assisted by his counsel,[6] pleaded “not guilty.”[7] In due course, the former was tried and convicted of two counts of qualified rape.

The Facts

Version of the Prosecution

The Office of the Solicitor General (OSG) summarizes the evidence for the prosecution in this wise:[8]

“On June 25, 1995, private complainant Michelle Tolentino, then 13 years old, together with her aunt, went to the river to wash clothes at about 7:00 in the morning. They finished doing the laundry at about 2:00 in the afternoon. Michelle proceeded to go ahead with some of the laundry. She left her aunt in the river while Michelle started to cart some of the clothes home.

“Michelle then went on her way, passing through the coffee plantation of Ben Salazar. When she approached a curve on the road, she saw appellant Marcelo Mendoza standing there, watching her. Without much ado, appellant pulled her, going into the thickest part of the plantation. She struggled and pleaded with him, but the more she struggled, the more he persisted, until he finally hurt her by pressing her wrist so hard. The two reached a clearing, several meters away from the road.

“At the time, Michelle was wearing shorts and T-shirt. Appellant forcefully divested her of her shorts and panty so much so that the middle portion of her shorts (pundilyo) got torn and the garter of her panty got damaged. Appellant was able to pin her down as he proceeded to take off his lower garments. All the time, appellant threatened her with a bolo that he was then carrying. The bolo, however, was placed aside when appellant proceeded to rape Michelle by inserting his sex organ into her vagina. And though Michelle hollered for help, nobody came to succor her because the place was far and isolated. After he was through, appellant warned her against telling anyone about her ordeal.

“The incident was repeated x x x on August 11, 1995. Just like before, the rape occurred inside Ben Salazar’s coffee plantation. As before, appellant intimidated and threatened Michelle with the use of his bolo.

“Fearful that appellant might repeat the incident, Michelle told her mother about the rapes, sometime in December 1995. She gave her complaint-statement on the same day and was referred to the doctor for medical examination.

“Dr. Garcia dela Cruz testified that she was the one who examined Michelle Tolentino. Per her examination, she opined that Michelle must have been raped because there was resistance on her vaginal canal, which upon internal examination admits two (2) fingers, an indication that she had sexual intercourse.” (Citations omitted)

Version of the Defense

On the other hand, the Public Attorney’s Office narrates the evidence for the defense as follows:[9]

“Maria Gumban testified that she is a preacher in the Jesus Miracle Crusade (JMC) and accused Marcelo Mendoza is their member.

“She recalls that on June 25, 1995, they had the Last Holy Supper Service held at Rodriguez Sports Complex in Marikina, Metro Manila from 8:00 o’clock in the morning to 9:00 o’clock in the evening. Together with the accused, they were 24 persons who went to the place riding a ten-sitter passenger jeep. She could not miss the accused inasmuch as he played the guitar and sung, too. His name appeared in the list of members who attended the ceremony. After the celebration, they went home. Accused and wife stayed in their home. They practiced singing and playing guitar all through the whole night up to the next morning, without sleeping.

“She also testified that every Friday the Crusade also has a ceremony called ‘overnight’ which starts 5:00 o’clock in the afternoon up to 8:00 o’clock of the following morning. August 11, 1995 was a Friday. They

hold the ‘overnight’ ceremony at the Marikina Sports Complex. Accused attended the ceremony, his name was included in the list of attendance.

“Joel Garcia testified that complainant Michelle Tolentino is his sister-in-law, her sister is his wife Rosalie. August 11, 1995, was the birthday of his wife. Complainant and her parents came to their house at Lalaan St., Silang Cavite in the morning of said date and left at about 6:00 o’clock in the evening.

“He also testified that he came to know of the accusations against the accused in the evening of December 11, 1995. He and his wife transferred to the house of his parents-in-law when his wife was about to deliver their baby.

“In said evening, he heard his parents-in-law, the complainant, Bernardo Garcia, and a certain Chito that Michelle stole P3,000.00 from Emma Mendoza and her father hurt her. Bernardo Garcia prodded his parents-in-law to file a case of rape against the accused so that accused would pay the money allegedly stolen by the complainant inasmuch as accused was giving money to the latter. Complainant did not want to buy the idea but her father got mad at her and threatened her.

“Accused Marcelo Mendoza testified that on June 25, 1995, he was at the Sports Center in Marikina attending mass. He left his house at Tubuan Silang Cavite at 8:00 to 9:00 o’clock in the morning.

“He also testified that on August 11, 1995, he left the house early in the morning to meet a buyer at Adamson University. He was home 5:00 o’clock in the afternoon of the same day. Upon arrival, he saw his colleagues in their religious organization and together they went to Marikina to attend the religious service at the sports center and stayed there overnight.

“He also testified that he knows Michelle Tolentino, her neighbor. He could not understand why he was charged with rape, as her parents are like his brother and sister and they have a good relationship.

“On cross-examination, he testified that the parents of the complainant were extorting money from him because they learned, that as agent, he was able to obtain a commission from selling land. It was his sister who relayed to him that the parents of the complainant was asking him 1.5 million pesos.” (Citations omitted)

Ruling of the Trial Court

The court a quo believed the testimony of complainant, because it was straightforward, convincing and credible. The RTC further found that he “was armed with a bolo x x x which he used to cause private complainant Michelle Tolentino to submit to his carnal desires” on June 25, 1995 and August 11, 1995. Hence, it convicted him of rape qualified by the use of a deadly weapon.

Hence, this automatic review.[10]

Assignment of Errors

In his Brief, appellant faults the court a quo with the following alleged errors:[11]

I

“The trial court erred in imposing the extreme penalty of death [on] the accused-appellant despite the charges of simple rapes against him in the Informations.

II

“The trial court erred in giving weight and credence to the testimony of Complainant Michelle Tolentino that accused-appellant raped her on June 25, 1995, August 11, 1995 and eight times between those dates despite it’s being not [sic] unconvincing, improbable and incredible.”

The Court's Ruling

The appeal is partly meritorious.

First Issue:

Qualifying Circumstance of Deadly Weapon

Both Informations in the present case charged appellant with simple rape which, under Article 335 of the Revised Penal Code, is punishable with reclusion perpetua. Neither one of these alleged that the rapes were committed with the use of a deadly weapon.

In *People v. De la Cuesta*,^[12] we explained thus:

“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, on which he was arraigned, and be convicted of qualified rape punishable by death.”^[13]

Aggravating and qualifying circumstances must be categorically alleged in the Information;^[14] otherwise, they cannot be appreciated.

In this case, as contended by both the defense counsel and the OSG, appellant cannot be convicted of rape qualified by the use of a deadly weapon, since that circumstance was not alleged in the Informations. He cannot be punished for an offense graver than that for which he was charged.^[15]

Moreover, the records and Michelle's own categorical statement under questioning indicate that appellant had merely kept the bolo by his side and held it only when he undressed himself^[16]-- naturally, so that he could remove it from his body.

“The crime of rape is not qualified by the use of a deadly weapon where, even as the accused carried a bolo in his waist, as he usually did, he never used the same to threaten the victim.”^[17]

“What can qualify the offense under Republic Act 7659 so as to warrant the imposition of the death penalty would be when the rape is committed with the use of a deadly weapon and not just the overt act of ‘being armed with a weapon.’”^[18]

We also affirm the positions of both appellant and the OSG that the aggravating circumstance of “uninhabited place” cannot be appreciated to increase to death the penalty of reclusion perpetua which is a single indivisible penalty.^[19]

Second Issue:

Credibility of Prosecution Witnesses

It is well-entrenched in this jurisdiction that the findings of the trial court on the credibility of witnesses and their testimonies are entitled to the highest respect and will not be disturbed on appeal in the absence of any clear showing that it overlooked, misunderstood or misapplied some facts or circumstances of weight and substance that would have affected the result of the case. Having seen and heard the witnesses themselves and observed their behavior and manner of testifying, it was in a better position to decide the question of credibility.^[20]

In this case, we find no reason to disturb the finding of the RTC as to the credibility of private complainant.

Michelle narrated how she was raped on June 25, 1995, as follows:

“Q

And on June 25, 1995, do you recall if there was any unusual incident between you and Marcelo Mendoza?

xxx xxx xxx

WITNESS:

Yes, sir.

FISCAL VELAZCO:

What was that unusual incident that occurred between you and Marcelo Mendoza?

A

He raped me, sir.

Q

Will you tell the Honorable Court how the accused raped you?

A

Yes, sir. He held my hands and then he undressed me, sir.

xxx xxx xxx

FISCAL VELAZCO:

And after you were undressed by the accused, what happened?

WITNESS:

He raped me, sir.

FISCAL VELAZCO:

And what do you mean by he raped you?

A

He forced me, sir. He really raped me. I was already pleading to him.

FISCAL VELAZCO:

And when you said the accused raped you, exactly, what did he do to you?

A

He inserted his penis into my vagina, sir.

Q

And how did you feel?

A

I felt pain, sir?[21]

She further stated:

“COURT:

Question by the Court. According to you, the accused on June 25, 1995 held your hand and undressed you, and despite your pleas, he raped you. Would you describe how you were dressed at that time?

A

I was wearing a t-shirt and shorts, your Honor.

COURT:

You mean to say that you have a shirt over a t-shirt? Were you wearing a bra at that time?

A

Yes, your Honor.

COURT:

What about panty?

A

Yes, your Honor.

COURT:

When you said he undresses you, what clothes did he remove from your body?

A

The short and panty, your Honor.

COURT:

What about your t-shirt?

A

No, your Honor.

COURT:

So, when he removed your shorts, did he use force in doing that?

A

Yes, your Honor.

COURT:

Was the shorts torn?

A

Yes, your Honor.

COURT:

What part of the shorts was torn because of the struggle?

A

The middle portion (pundiyo).

COURT:

What is the relative position of the accused to you when he removed the short? Was he standing up?

A

Yes, your Honor.

COURT:

What about you?

A

He was trying to lay me down, your Honor.

COURT:

Was he able to successfully laid you down, forced you down?

A

Yes, your Honor.

COURT:

When he was able to removed [sic] the shorts, were you still standing up, or were you lying down already?

A

I was lying down, your Honor.

COURT:

Where?

A

On the ground, your Honor.

COURT:

After removing your shorts, what else did he do?

A

He raped me, your Honor.

COURT:

Did he also remove your panty?

A

Yes, your Honor.

COURT:

Did he also use force in removing your panty?

A

Yes, you Honor.

COURT:

Was your panty torn or damaged because of the force that was employed by the accused in removing your panty?

A

Yes, your Honor.

COURT:

What were you doing when the accused was trying to remove your shorts?

A

I was crying, your Honor.

COURT:

Did you not put up a struggle?

A

He has a bolo, your Honor.

COURT:

What was he doing with the bolo?

A

The bolo was on his side while I was being raped, your Honor.

COURT:

Did he attempt to use the bolo against you?

A

No, your Honor.

COURT:

Did he threaten you with the bolo?

A

Yes, your Honor.

COURT:

Was he holding the bolo when he removed your shorts?

A

No, your Honor, only on his side.

COURT:

Did you not shout when the accused was already in the act of removing your shorts?

A

There is no house there, your Honor. I was shouting, screaming, but nobody heard me.

COURT:

What about your aunt who was, according to you, with you when you were washing or laundering in the river?
Where was she?

A

I left her in the river because I was bringing up the laundered clothes, your Honor.

COURT:

You mean to say that despite, what tone of voice did you use in shouting? Was is really in a loud voice?

A

It was really loud.

COURT:

And you said that your aunt was in the river?

A

Yes, your Honor.

COURT:

In shouting, is there no possibility for your aunt to hear you?

A

None, your Honor.

COURT:

Why?

A

Because the river is far, your Honor.

COURT:

What about the panty, was the panty torn also?

A

Yes, your Honor.

COURT:

On what part of the panty was torn?

A

On the garter, your Honor.

COURT:

All right. What about the accused, when you were already undressed, did he undress himself?

A

Yes, your Honor.

COURT:

How did he undress himself?

A

He was standing up, then he kneeled down to remove the shorts, your Honor.

COURT:

You mean to say that you were lying down and the accused was standing up while he was trying to remove your shorts?

A

Yes, your Honor.

COURT:

What about when he removed your panty?

A

He was staring at me, and then he undressed himself.

COURT:

When you said he undressed himself, did he totally remove his clothing?

A

Yes, your Honor.

COURT:

You mean to say that when the accused raped you, the accused was totally naked?

A

Yes, your Honor.

COURT:

When you were raped for the first time, did you resist the advances of the accused in this case?

A

I resisted, your Honor.

COURT:

You said that you struggled and struck the accused?

A

I was hitting him on the arms, your Honor.

COURT:

With what did you hit him?

A

With my hand, your Honor.

COURT:

Did you not try to scratch the accused?

A

I do not have finger nails, your Honor.

COURT;

Was the accused successful in raping you?

A

Yes, your Honor.

COURT:

You mean he was able to insert his penis?

A

Yes, your Honor.

COURT:

You said that you were raped eight (8) times. How many times did the accused try to have sexual intercourse with you on June 25, 1995?

A

Once, your Honor.”[22]

The rape is not negated by the absence of testimony stating that Michelle bled as a result of the carnal knowledge, or that she rewashed the clothes that she dropped in the struggle. Her act of finishing her laundry chores after the incident did not destroy her credibility either.

It is not uncommon for a young girl to conceal for some time an assault on her virtue because of the rapist’s threat to her life.[23] There is no uniform behavior that can be expected from those who have undergone harrowing experiences. Because different people cope differently, it is not unusual for someone abused to act normally in order to hide for the meantime what happened to her, while internally trying to sort out and cope with the

experience.

Rape is committed when a man has carnal knowledge of a victim with the use of force and intimidation.[24] In this case, Michelle identified appellant as the person who had raped her. She also credibly narrated the details of how he had forced her to have 'sex with him. Even the physician's findings corroborated her claim.

"It is an accepted principle that when the victim's testimony is corroborated by the physician's findings of penetration, there is sufficient foundation to conclude the existence of the essential requisite or carnal knowledge." [25]

Her testimony clearly establishes the elements of simple rape committed by appellant on June 25, 1995.

On the other hand, the alleged rape incident on August 11, 1995 was not established by sufficient evidence. Proof of carnal knowledge with the use of force, violence or intimidation was not clear. In her testimony, Michelle merely stated that appellant had "raped" her on August 11, 1995, without going into details or explaining exactly what he had done to her. Whether or not he raped her is the fact in issue which the court must determine [26] based on the evidence offered. Testimony to that effect is not evidence, but simply a conclusion, the proof of which is the very purpose of the trial. "[I]t is not competent for a witness [in this case Michelle] to express an opinion, conclusion or judgement thereon." [27]

The guiding principles in reviewing rape cases are: (1) an accusation for rape can be made with facility -- though it may be difficult for the accuser to prove, it is even more difficult for the person accused, though innocent, to disprove; (2) in view of the intrinsic nature of the crime of rape, in which only two persons are usually involved, the testimony of the complainant is scrutinized with extreme caution; and (3) the evidence for the prosecution stands or falls on its own strength and cannot be allowed to draw strength from the weakness of that for the defense. [28]

For the alleged rape on August 12, 1995, we have scrutinized the evidence presented by the prosecution, but it fails to establish beyond reasonable doubt the elements of carnal knowledge and force or intimidation. Hence, we cannot sustain appellant's rape conviction in this case.

"The unpardonable assault on the child is tragic and the trial court may have been swayed by the tide of human indignation, [but the Supreme Court must] uphold the primacy of the presumption of innocence in favor of the accused when the evidence at hand falls short of the quantum required to support conviction." [29]

Civil Indemnity

The court a quo also erred in its civil award. Consistent with prevailing jurisprudence, we hold that complainant is entitled to P50,000 as indemnity ex delicto and another P50,000 as moral damages. [30] We strike out the award of P30,000 as actual damages because, as correctly pointed out by the Office of the Solicitor General, no proof was adduced by complainant to substantiate it. [31] In *People v. Catubig*, [32] we validated the award of moral damages to rape victims in the amount of P50,000 and explained that it "rests on the jural foundation that the crime of rape necessarily brings with it shame, mental anguish, besmirched reputation, moral shock and social humiliation to the offended party." The victim also "deserves to receive the amount of P50,000 [as] civil indemnity, the equivalent of compensatory damages." [33]

WHEREFORE, the appeal is PARTLY GRANTED and the appealed Decision MODIFIED. Appellant Marcelo Mendoza is CONVICTED of simple rape in Criminal Case No. TG-2597-96 and is sentenced to reclusion perpetua. He is further ordered to pay complainant P50,000 as indemnity ex delicto and another P50,000 as moral damages. In Criminal Case No. 2598-96, Appellant Marcelo Mendoza is ACQUITTED, since the elements of rape were not proven. No pronouncement as to costs.

SO ORDERED.

Bellosillo, Vitug, Kapunan, Mendoza, Quisumbing, de Leon, Jr., Sandoval-Gutierrez, Carpio, Austria-Martinez, and Corona, JJ., concur.

Davide, Jr., C.J., abroad, on official leave.

Puno and Ynares-Santiago, JJ., abroad, on official business.

[1] Penned by Presiding Judge Alfonso S. Garcia.

[2] Assailed Decision, p. 17; rollo, p. 32; records, p. 82.

[3] Signed by Assistant Provincial Prosecutor Tito S. Carpina.

[4] Rollo, p. 4; records, p. 1.

[5] Records, p. 10.

[6] Atty. Crisostomo Dario Jr.

[7] Order dated June 18, 1996; records, p. 29.

[8] Appellee's Brief, pp. 2-4; rollo, pp. 102-104. The Brief was signed by Solicitor General Ricardo P. Galvez, Asst. Solicitor General Roman G. del Rosario and Solicitor Ma. Theresa G. San Juan.

[9] Appellant's Brief, pp. 5-7; rollo, p. 65-67. Appellant's Brief was signed by Atty. Arceli A. Rubin, Atty. Teresita S. de Guzman and Atty. Liwayway J. Nazal, all of the Public Attorney's Office.

[10] This case was deemed submitted for resolution on September 13, 2000, upon receipt by this Court of appellant's Reply Brief.

[11] Page 1, Appellant's Brief; rollo, p. 61.

[12] 304 SCRA 83, 92, March 2, 1999.

[13] Ibid., p. 92, per Pardo, J.

[14] Section 9, Rule 110.

[15] See *People v. Perez*, 296 SCRA 17, September 24, 1998; *People v. Joya*, 227 SCRA 9, October 1, 1993; *People v. Narido*, 316 SCRA 131, October 1, 1999.

[16] TSN, September 9, 1996, p. 11.

[17] *People v. Onabia*, 306 SCRA 23, April 20, 1999, per Buena, J.

[18] *People v. Sagaysay*, 308 SCRA 455, 465, June 17, 1999, per Vitug, J.

[19] Article 63 of The Revised Penal Code provides: "ART 63. Rules for the application of indivisible penalties. - In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.

xxx xxx xxx."

[20] *People v. Plana*, GR No. 128285, November 27, 2001; *People v. De Guzman*, 333 SCRA 269, June 8, 2000.

[21] TSN, August 26, 1996, pp. 5-7.

[22] Ibid., pp. 18-25.

[23] *People v. Manahan*, 315 SCRA 476, September 29, 1999.

[24] *People v. Gastador*, 305 SCRA 659, April 14, 1999.

[25] *People v. Rosales*, 313 SCRA 757, 763, September 8, 1999, per Bellosillo, J., citing *People v. Castillo*, 197 SCRA 657, May 29, 1991.

[26] Francisco, *Evidence*, 1996 ed., p. 348.

[27] Ibid. p. 349, citing *City of Manila v. Rodriguez*, 7 Phil. 292, January 3, 1907; *Ortiz v. Compania Maritima*, 7 Phil. 507, February 21, 1907; *Rocha & Co. v. Steamship Muncaster Castle*, 17 Phil. 543, December 20, 1910.

[28] *People v. Mahinay*, 302 SCRA 455, February 1, 1999; *People v. Manggasin*, 306 SCRA 228, April 21, 1999; *People v. Bea Jr.* 306 SCRA 653, May 5, 1999.

[29] *People v. Bravo*, 318 SCRA 812, 825, November 22, 1999, per Gonzaga-Reyes, J.

[30] *People v. Reyes*, 311 SCRA 408, July 28, 1999.

[31] *People v. De la Tongga*, OR No. 133246, July 31, 2000; *People v. Narido*, 316 SCRA 131, October 1, 1999.

[32] OR No. 137842, August 23, 2001, per Vitug, J, citing *People v. Nuñez*, 310 SCRA 168, July 8, 1999 and *People v. Narido*, *supra*.

[33] Ibid.

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