

## EN BANC

[ G.R. No. 139351, February 23, 2004 ]

### PEOPLE OF THE PHILIPPINES, APPELLEE, VS. WARLITO TOLENTINO Y LAQUIN, APPELLANT.

#### DECISION

##### QUISUMBING, J.:

For automatic review is the decision,<sup>[1]</sup> dated June 3, 1999, of the Regional Trial Court of Santiago City, Isabela, Branch 35, in Criminal Case No. 35-2076. Its dispositive portion reads:

WHEREFORE, finding the accused WARLITO TOLENTINO GUILTY beyond reasonable doubt of the crime of RAPE with the use of deadly weapon punishable under Article 335 of the Revised Penal Code as amended by Republic Act No. 7659, the Court sentences him [to suffer] the penalty of DEATH and ordering [sic] him to pay the victim the amount of P200,000.00 as exemplary damages.

SO ORDERED.<sup>[2]</sup>

In the Information filed by the Provincial Prosecutor of Isabela, appellant Warlito Tolentino y Laquin was charged of rape, allegedly committed as follows:

That on or about 6:00 o'clock in the evening of February 06, 1996, at Barangay Namnama, Batal, City of Santiago, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused by means of violence and intimidation and with lewd design, did then and there willfully, unlawfully and feloniously have carnal knowledge of the complainant MYLENE R. MENDOZA, a 7 year old girl against her will.

CONTRARY TO LAW.<sup>[3]</sup>

On May 29, 1996, Tolentino was arraigned. With assistance of counsel, he pleaded not guilty to the charge. The parties opted to forego the pre-trial conference, and the case was then set for continuous trial.

The prosecution presented four (4) witnesses: the victim, Mylene<sup>[4]</sup> Mendoza; her mother, Carmelita Mendoza; Joseph Colbongan, the barangay captain of Batal, Santiago City, Isabela; and Dr. Ramon Hilomen of the Southern Isabela District Hospital.

Mylene Mendoza testified that at around six o'clock in the evening of February 6, 1996, her father, Carlos Mendoza,<sup>[5]</sup> sent her to the house of her *Lola* Asiang to tell the latter that he could not report for work the following day as he needed to repair

their kitchen.<sup>[6]</sup> Mylene declared that her *Lola* Asiang was not around when she arrived at the latter's house.<sup>[7]</sup> Mylene then noticed that there was a man standing at the terrace of the adjacent house looking at her. Mylene later identified this man in open court as herein appellant Warlito Tolentino.<sup>[8]</sup> Mylene further testified that the appellant then approached her and took her to his house.<sup>[9]</sup> Once they were inside the house, appellant brought her to the living room where he violently struck her on the head, rendering her unconscious.<sup>[10]</sup>

Mylene's mother, Carmelita Mendoza, declared on the stand that she was cooking supper that afternoon of February 6, 1996, when her husband, Carlos, arrived.<sup>[11]</sup> As their kitchen was in a state of disrepair, Carmelita asked Carlos not to report for work on the following day so he could do the necessary repairs. Carmelita further declared that after Carlos acceded to her request, Carlos sent their daughter, Mylene, to inform her *Lola* Asiang that he could not come to pasture the ducks the next day.<sup>[12]</sup> Mylene left but did not return that evening.

Carmelita went on to testify that when it was already dark, she went out with her sister, Virgie de la Cruz, to look for Mylene.<sup>[13]</sup> They found Mylene lying unconscious on the street some 50 meters away from the barrio store, or some 10 meters away from the appellant's dwelling.<sup>[14]</sup> Carmelita declared that she and Virgie brought Mylene to a midwife, but when the midwife failed to revive Mylene, they took her to a hospital.<sup>[15]</sup> Carmelita further stated that when Mylene regained consciousness the following day, Mylene disclosed that she was brought inside a house where she was clobbered. She also said she could easily identify that house.<sup>[16]</sup>

For his part, Barangay Captain Joseph Colbongan testified that he was at home at around 6:00 p.m. on February 6, 1996, when Mario Espiritu, the Chief *Tanod* of Batal, Santiago City, reported that an unconscious child had been found near the residence of the appellant.<sup>[17]</sup> Colbongan declared that when he heard the report, he then gave instructions to the barangay officials to bring the victim to the hospital. Colbongan further stated that in the morning of the following day, February 7, 1996, he and the barangay officers of Batal went to the hospital to elicit information from the victim. After the victim regained consciousness, she informed him that she could not name her assailant because she did not know his name, but she stated that she could recall the face and appearance of her assailant as well as the house where she was brought to.<sup>[18]</sup> The barangay officers then brought Mylene to *Sitio* Namnama, Batal, where the incident allegedly happened. Upon reaching the vicinity of the Day Care Center in Namnama, and at a distance of 50 meters, Mylene pointed to appellant's house.<sup>[19]</sup> Mylene was then brought to another place in Namnama, some 20 meters away from the appellant's residence, and again asked to point to the house where the incident took place. Again, Mylene pointed to appellant's house.<sup>[20]</sup> Colbongan then requested for police assistance. Colbongan likewise declared that after Tolentino was taken into custody by the police and made to take part in a police line-up, Mylene unerringly pointed to him as her molester.<sup>[21]</sup>

The last witness for the prosecution was Dr. Ramon Hilomen, resident physician of the Southern Isabela District Hospital. Dr. Hilomen testified that he conducted an examination of the victim's private parts on February 6, 1996, and found that she

had sustained vaginal lacerations at the 5, 7, and 9 o'clock positions, most likely caused by forcible phallic penetration.<sup>[22]</sup> Dr. Hilomen also found one (1) strand of pubic hair in the area between Mylene's vagina and her anus.<sup>[23]</sup>

When it was his turn to take the stand, the appellant interposed the defense of denial and alibi. The appellant claimed that on the night in question, he was in the house of his brother, George Tolentino, who also lived in Barangay Batal, near the Reolita Resort, or some distance away from his residence in *Sitio* Namnama.<sup>[24]</sup> The appellant averred that he went to his brother's house to watch a video show but because there was no video tape available, he just conversed with his brothers, George and Rogelio.<sup>[25]</sup> At around eight o'clock that evening, he decided to go home. The appellant declared that he ran across one Eddie Garcia and a certain Joel Solis on his way home, and they decided to walk together.<sup>[26]</sup> About 40 meters away from his house, near the store owned by a certain Mendoza, the appellant saw a group of people looking at something.<sup>[27]</sup> He decided to ignore the scene and went straight home where he lived alone, his family being in Baguio. The following day, he was invited by a police sergeant to the police station. The appellant claimed that at the police station an aunt of Mylene took hold of Mylene's hand and made Mylene point to him as her assailant.<sup>[28]</sup> The appellant insisted that he was falsely accused of rape by Mylene's family after he failed to lend money to Mylene's mother.<sup>[29]</sup>

The appellant presented his brother, George Tolentino, as his corroborating witness. George Tolentino testified that the appellant arrived at his house in Batal at around 5:00 p.m. of February 6, 1996, and left at 7:35 p.m. that evening.<sup>[30]</sup> George claimed that the appellant went to his house to watch a video show, but since they failed to borrow a video tape, they just conversed with their father.<sup>[31]</sup> George further declared that he did not immediately go to the authorities to disclose the whereabouts of the appellant on the night in question since he had been told that a brother could not testify in favor of his brother.<sup>[32]</sup>

The trial court found the prosecution's evidence weighty and worthy of belief, and accordingly convicted appellant of the offense charged. In view of the imposition of the death penalty, the case is now before us on automatic review.

Before us, the appellant assigns the following errors:

A. THAT THE TRIAL COURT GRIEVOUSLY ERRED IN FINDING THE ACCUSE[D] GUILTY BEYOND REASONABLE DOUBT BASED ON ITS CONCLUSION THAT THE TESTIMONY OF THE VICTIM IS CREDIBLE, WHEN IN TRUTH AND IN FACT SUCH TESTIMONY CLEARLY APPEARS TO HAVE BEEN ORCHESTRATED, COACHED, AND PREVARICATED.

B. THAT THE PERPETRATOR OF THE CRIME HAS NOT BEEN IDENTIFIED, VIS-Ö-VIS THAT T[H]E HEREIN ACCUSED WAS SLOPPILY AND PRECIPITATELY PINPOINTED AS THE SUSPECT ONLY AFTER HE WAS UNLAWFULLY ARRESTED AND/OR DETAINED FOR INVESTIGATION.

C. THAT THE TRIAL COURT ERRED IN HOLDING THAT THE ACCUSED BROUGHT THE VICTIM BY FORCE INSIDE HIS HOUSE, CLOBBERED THEN

RAPE[D] HER; AND IN ORDER THAT HE WILL NOT BE RECOGNIZED, THREW HER OUTSIDE HIS HOUSE; THIS IS NOT SUPPORTED BY EVIDENCE.

D. THAT THE TRIAL COURT ERRED IN NOT ACQUITTING THE ACCUSED FOR FAILURE OF THE PROSECUTION TO PROVE THE GUILT OF THE ACCUSE[D] BEYOND REASONABLE DOUBT.<sup>[33]</sup>

In sum, we find the issues pertinent for our resolution to be: (1) the credibility of the prosecution's chief witness; (2) the correctness of the identification of the accused at the police line-up; (3) the sufficiency of the prosecution evidence to prove appellant's guilt with moral certainty; and (4) the correctness of the penalty imposed.

On the *first issue*, the appellant insists that a careful scrutiny of the testimony of Mylene Mendoza would show that it is so riddled with inconsistencies, improbabilities, and discrepancies of such nature as to render her testimony unworthy of belief and credence.<sup>[34]</sup> For one, her story as to what transpired when she reached the house of her *Lola* Asiang is conflicting. On direct examination, she testified that nobody was home when she reached her *Lola* Asiang's house, but there was a man standing near the terrace who approached her, took her to his house, and once inside the living room, "clobbered" her on the head. On cross-examination, she testified that on reaching the house of her *Lola* Asiang, she watched TV with her Uncle Ricky, and that it was when she was about to go home that the man approached her, and took her to his house, where he knocked her unconscious.<sup>[35]</sup>

For the appellee, the Office of the Solicitor General (OSG) counters that the inconsistencies the appellant stresses refer to minor matters, which are trivial and have nothing to do with the elements of the crime. The Solicitor General asks us to note that the principal witness is a child of tender years, who, for that reason, could not be expected to give a perfectly tailored testimony. He adds that a look at the transcripts of stenographic notes would clearly show that the prosecutor asked Mylene leading questions on direct examination, giving her no chance to give further details as to what transpired when she reached her *Lola* Asiang's residence. Hence, there is really no inconsistency in her account as appellant insists. She merely elaborated on cross-examination the details which were not asked of her during the direct examination. The OSG stresses that Mylene is an immature girl who could not be expected to give a completely detailed account in one instance as the appellant would have it.<sup>[36]</sup>

On this point, we agree that the inconsistency appellant points to in Mylene's testimony is too trivial to impair the integrity of her testimony taken as a whole. It does not affect significantly the veracity or the weight of her testimony. Whether appellant approached her after she had knocked at the door of her *Lola* Asiang's house and found the house empty, or he approached her after she had watched TV with her Uncle Ricky and was already then on her way home, has nothing to do with the essential elements of the offense of rape with which he stands charged. So, too, are the alleged inconsistencies bearing on the time Mylene regained consciousness.

We reiterate that the findings of fact and the assessment of the credibility of

witnesses is a matter best left to the trial court because of its unique opportunity to observe the witness's deportment on the stand while testifying, an opportunity denied the appellate court.<sup>[37]</sup> In the instant case, no compelling reason exists to disturb the trial court's conclusion upholding the credibility of Mylene's testimony.

Appellant's claim that Mylene's family falsely charged him with rape because of his failure to lend money to Mylene's mother is unconvincing. Time and again, this Court has stated that it would take a certain perversity on the part of a parent, especially a mother, to concoct a false charge of rape and then use her daughter as an instrument to settle a grudge.<sup>[38]</sup> We note that the appellant failed to present credible evidence to indicate that Mylene and her family harbored any ill-motive that prompted her to falsely testify against him. It is farfetched for a young woman to charge a man she barely knew with so grave a crime as rape and then unnecessarily open herself to public scrutiny if she was not really subjected to the sexual indignity complained of.<sup>[39]</sup> Otherwise stated, the absence of any improper motive on Mylene's part to testify for the prosecution strongly tends to sustain the conclusion that no such improper motive existed at the time she testified and her testimony is worthy of full faith and credit.<sup>[40]</sup>

We note that the victim in this case was only 7 years old at the time of the incident,<sup>[41]</sup> and was only 8 years old when she testified in court. She was unused to judicial proceedings. The trial court in fact took note of the fact that she was very shy when she testified.<sup>[42]</sup> Ample margin of error and understanding should be accorded to her who would naturally be gripped with tension due to the novelty of the experience of testifying in court.<sup>[43]</sup> Of course, this condition arising from her youth and immaturity should not be taken against her. As a rule, testimonies of child victims of rape are given full weight and credit,<sup>[44]</sup> for youth and immaturity are badges of truth.<sup>[45]</sup> A young girl's revelation that she had been raped, coupled with her voluntary submission to medical examination and her willingness to undergo public trial where she could be compelled to narrate the details of the assault upon her dignity, cannot be dismissed as a mere concoction.

Rape is a traumatic experience, and the shock concomitant with it may linger.<sup>[46]</sup> It is an understandable human frailty not to be able to recount with facility all the details of a dreadful and harrowing experience, and minor lapses in the testimony of a rape victim can be expected.<sup>[47]</sup> After all, rape is a painful experience which is sometimes not remembered in detail,<sup>[48]</sup> and the victim cannot be expected to immediately remember with accuracy every ugly detail of her harrowing experience, especially so when she might, in fact, have been trying not to remember the event.<sup>[49]</sup> Thus, inaccuracies and inconsistencies are to be expected in the rape victim's testimony.

Lastly, appellant cannot make hay from minor inconsistencies to be found in the private complainant's testimony. Such inconsistencies tend to bolster, rather than demolish, her credibility, for they show that her testimony was neither contrived nor rehearsed.<sup>[50]</sup>

Appellant also contends that a comparison of the victim's declarations in her testimony in open court and her sworn statement<sup>[51]</sup> clearly show that the