

EN BANC

[G.R. Nos. 146693-94, July 31, 2003]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ROLANDO
MENDOZA, JR. Y DELA CRUZ, APPELLANT.**

D E C I S I O N

CARPIO MORALES, J.:

For automatic review is the joint decision rendered by Branch 45 of the Regional Trial Court (RTC) of Bais City finding appellant Rolando Mendoza, Jr. guilty of incestuous rape on two counts and sentencing him in each to suffer the penalty of death and to pay his daughter-victim, Monaliza Mendoza,^[1] P50,000.00 as moral damages and an unspecified amount as exemplary damages.

The complaints dated August 9, 1996 against appellant, which were treated as two separate informations after the conduct of preliminary investigation, read as follows:

Criminal Case No. 96-074-B:

COMPLAINT^[2]

The undersigned private complainant, MONALIZA MENDOZA, Filipino, **thirteen (13) years old**, single and a resident of Barangay Olympia, Bais City, Philippines, hereby accuses ROLANDO MENDOZA Y DELA CRUZ of the crime of rape, committed as follows:

That on or about April 2, 1996 at Bais City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, who is the father of the undersigned, by means of force or intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the undersigned complainant against her will.

x x x (Emphasis supplied)

Criminal Case No. 96-075-B:

COMPLAINT^[3]

The undersigned private complainant, MONALIZA MENDOZA, Filipino, **thirteen (13) years old**, single and a resident of Barangay Olympia, Bais City, Philippines, hereby accuses ROLANDO MENDOZA Y DELA CRUZ of the crime of rape, committed as follows:

That on or about May 16, 1996 at Bais City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, who is the father of the undersigned, by means of force or intimidation, did then

and there willfully, unlawfully and feloniously have carnal knowledge of the undersigned complainant against her will.

x x x (Emphasis supplied)

Arraigned on December 11, 1996, appellant pleaded not guilty to both charges^[4] trial for which was joint.

Before the start of the pre-trial, the prosecution amended the informations by adding the word "Jr." after appellant's surname "Mendoza".^[5]

At the pre-trial, appellant admitted that he is the father of Monaliza.^[6]

Established from the evidence of the prosecution are the following:

At around noon of April 2, 1996, Monaliza, the youngest of three daughters of appellant and his wife Elpedia, was left alone with appellant at their house at Olympia, Bais City, Monaliza's elder sister Marigilda having earlier gone out to fetch water from "a faucet" about 1½ kilometers away from their house, while her mother was in Manila where she was working, as was her sister Brenda, and her brother Reynaldo was in Iloilo. Appellant held Monaliza by the waist and sucked her nipples. While she struggled to extricate herself, she failed. He then inserted his forefinger into her vagina which caused her pain. When she inquired why appellant "did that" to her, he replied that he was just "caressing."

At about midnight also of April 2, 1996, while Monaliza lay asleep on the floor of their house between her elder sister Marigilda who was 3 meters away from her and appellant who was a meter away from her, she woke up and found appellant on top of her and kissing her face. She struggled hard to free herself, but appellant held her tightly and inserted his sex organ into her vagina and made a "push and pull movement." On account of appellant's acts, she was in pain. He warned her, however, not to tell anyone about the incident, otherwise, he would kill them. Out of fear, she did not tell Marigilda about the incident.

A month and a half after the April 2, 1996 incident or on May 16, 1996, at noontime, appellant instructed Marigilda to, and the latter did, gather some firewood, leaving him and just Monaliza inside their house. Appellant soon approached Monaliza, "opened her dress," sucked her nipples, and inserted his penis into her vagina and made a "push and pull movement." As in the previous incident, she struggled to free herself but failed as he held her tightly. She was likewise in pain and was once again warned not to reveal the incident to anyone on pain of death.

Appellant's threats having overpowered her, Monaliza did not inform her mother about the incidents even after the latter came home from Manila on June 25, 1996 to attend the annual barangay fiesta.

As Monaliza later was observed to be always drowsy and weak, and her hips were expanding while her breasts became pronounced, she was prevailed upon by her mother and her aunt Jane "Ya Gen" Patiño to submit to a medical examination by Dr. Beverly R. Renacia, Medical Officer V of the Bais City Health Office. Monaliza

ultimately revealed to Dr. Renacia, her mother and aunt "Ya Gen" that she had been raped by appellant.

The result of the external examination conducted on Monaliza on July 23, 1996 is reflected on the medical certificate issued by Dr. Renacia^[7] who likewise issued another medical certificate reflecting the following results of the internal examination conducted on July 25, 1996.^[8]

I.E. Findings:

- Scarce pubic hair noted on the upper half of the genitalia
- Hymen with healed laceration at 12:00 o'clock and 9 o'clock positions
- Vagina admits 2 fingers
- Cervix - soft, admits 1 finger
- No discharges noted

Pregnancy test - done July 29, 1996 yielded a positive result.

Addendum: No physical injuries like bruises or hematoma were noted.
(Emphasis supplied)

After the filing of the complaints-informations on August 9, 1996 or on October 29, 1996, Monaliza gave birth to a baby girl.^[9]

Denying the accusations, appellant, a carpenter and a fisherman, claimed as follows:

Sometime on February or March 1996, he noticed a contusion on the left arm of Monaliza, drawing him to inquire from her what happened, to which she replied that her brother Reynaldo hit her. Thus informed, appellant got mad at her for not priorly revealing the incident.

A few days later, thinking that Monaliza had influenza, he brought her to the hospital where she was examined and was given prescription for medicine.

After the lapse of two months or on May 1996, appellant observed that Monaliza was pale and vomiting. Suspecting that she was pregnant, he inquired if she was, but she did not answer. He then threatened her that if she was, he would kill her as her pregnancy would bring shame to the family. He did not, however, write his wife about his suspicions regarding Monaliza's condition as he knew that she would be coming home for the annual barangay fiesta of Olympia.

While his wife went home for the barangay fiesta, he failed to inform her of his suspicions about Monaliza's pregnancy as he was occupied with the fiesta. It was his wife, however, who broached to him her own suspicion that Monaliza was pregnant. And his wife brought Monaliza to a *hilot* who opined that she was probably pregnant, hence, the latter was brought to the hospital for medical examination.

On top of appellant's denial, he advanced that he could not have raped Monaliza on April 2, 1996 and May 16, 1996 as he was, on the first date with his brother-in-law, one Danny, constructing a house,^[10] while he was "working" with a certain Kalaw,

Danny, and one Ete on the latter date.^[11]

Finding for the prosecution, the trial court convicted appellant of two counts of qualified rape and sentenced him to death in both cases in its November 17, 2000 Joint Decision, the dispositive portion of which reads, quoted *verbatim*:^[12]

WHEREFORE, premises considered, this Court finds accused, **ROLANDO MENDOZA (sic) Y DE LA CRUZ** guilty for the qualified crime of rape in two (2) counts under Article 335 of the Revised Penal Code as amended by Sec. 11 of Republic Act No. 7659, and thereby **sentences him to two (2) extreme and supreme penalties of DEATH, and to pay moral damages of P50,000.00 and exemplary damages to the victim, Mona Liza Mendoza, and to pay costs.** (Emphasis in the original)

Appellant thus assigns as errors of the trial court the following:^[13]

THE COURT A *QUO* GRAVELY ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT FOR THE CRIMES CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT.

THE COURT A *QUO* GRAVELY ERRED IN IMPOSING UPON THE ACCUSED-APPELLANT THE SUPREME PENALTY OF DEATH DESPITE THE FAILURE OF THE PROSECUTION TO ALLEGE THE MINORITY OF THE PRIVATE COMPLAINANT IN THE ACCUSATORY PORTION OF THE COMPLAINT.

Maintaining his innocence, appellant attributes ill-motive to Monaliza's grandmother^[14] who, by his claim, sometimes got angry at him for going home late, she telling him "that there are some young men or boys who frequented our place."^[15]

Appellant attributes ill-motive too to Monaliza arising from his threats to kill her if it turned out that she was indeed pregnant.^[16]

The defense counsel, during the cross examination of Monaliza, attempted to establish that no rape on April 2, 1996 could have possibly taken place because of Marigilda's presence.^[17]

Parental punishment, however, does not suffice to prod a daughter, who is of tender age, to falsely accuse her father of rape. ^[18] It takes depravity for a young girl to concoct a story of defloration against her putative father, unless she had really been aggrieved.^[19]

And it is hard to believe that a grandmother would expose her granddaughter, a young and innocent girl, to the humiliation and stigma of a rape trial simply to get back at the accused unless the rape charges were true.^[20]

As for the presence of Marigilda during the April 2, 1996 incident, it is not impossible, nor incredible, for her to have been in deep slumber while the sexual assault on Monaliza was taking place.^[21] Lust, after all, does not respect either time or place,^[22] nor the presence of people nearby.^[23]

As for the defense counsel's attempt to establish during the cross-examination of Dr. Renacia that appellant could not have raped Monaliza on April 2, 1996 and May 16, 1996, given Monaliza's giving birth to a baby girl on October 29, 1996,^[24] after the lapse of less than seven (7) months from the first rape incident,^[25] the same fails.

The record does not disclose any claim by Monaliza that it was on account of the rape subject of the first information that she became pregnant. As Dr. Renacia recalled on direct examination, Monaliza had revealed to her that she had been sexually abused by her father several times.

Q Now, when she consulted you on July 23, 1996, will you kindly inform the Honorable Court what was her principal complaint?

A The patient Monaliza Mendoza came with the chest complaint and abdominal distinction and amenorrhea or absence of menstruation.

Q So, since this was her principal complaint, will you kindly inform the Honorable Court what you did to her?

A The most important part of examination of the patient is history. First of all, I asked for the history as to what happened and the patient revealed to me that she has been sexually abuses (sic) by his (sic) own father and I noticed that during [t]his history taking **she had difficulty in recalling days**, and so it took me more than an hour to interview the patient just to get the dates which is important in my examination and estimating the age of the pregnancy.

Q Now, because her principal complaint was - she was no longer menstruating, why did you ask questions on the patient? Did you have any conclusion on the matter because of this complaint?

A What we usually have in mind on the patient to come in with the complaint of amenorrhea specially in the reproduction age group, the first consideration is pregnancy; that's why I have to ask the patient matters or incidents which are related to pregnancy.

Q Because from the appearance of the patient you observed that she could be pregnant?

A Yes.

Q And after she told you that she was sexually abused by her father several times, did you bother to ask the dates when she was abused?

A Yes, I did. However, she gave me several dates and I intentionally did not include it in my medical certificate