

## EN BANC

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

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

#### DECISION

##### **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<sup>[1]</sup> 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."<sup>[2]</sup>

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

#### CRIM. CASE NO. TG-2597-96

"That on or about the 25<sup>th</sup> 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.”<sup>[4]</sup>

CRIM. CASE NO. TG-2598-96

“That on or about the 11<sup>th</sup> 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.”<sup>[5]</sup>

When arraigned on June 18, 1996, appellant, assisted by his counsel,<sup>[6]</sup> pleaded “not guilty.”<sup>[7]</sup> 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:<sup>[8]</sup>

“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:<sup>[9]</sup>

"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.<sup>[10]</sup>

### **Assignment of Errors**

In his Brief, appellant faults the court *a quo* with the following alleged errors:<sup>[11]</sup>

#### **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*,<sup>[12]</sup> 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."<sup>[13]</sup>

Aggravating and qualifying circumstances must be categorically alleged in the Information;<sup>[14]</sup> 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.<sup>[15]</sup>

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<sup>[16]</sup>-- 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."<sup>[17]</sup>

"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.'<sup>[18]</sup>

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.<sup>[19]</sup>

#### **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