

## EN BANC

[ G.R. Nos. 140642-46, August 07, 2002 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMEO**

### **D E C I S I O N**

#### **PER CURIAM:**

This is an automatic review of the Decision<sup>[1]</sup> of the Regional Trial Court of the City of Marikina, Branch 272 in Criminal Case No. 97-1871-MK finding accused-appellant Eloy Miclat, Jr. guilty beyond reasonable doubt of the crime of rape and imposing upon him the supreme penalty of death.

The Information filed against accused-appellant reads:

That on or about the 07th day of July, 1997 in the City of Marikina, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of threats, force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with Mary Rose Bondoc y Sanchez, a girl of 11 years old, against her will and consent.

Contrary to law.”<sup>[2]</sup>

When arraigned, accused-appellant pleaded not guilty. Thereafter, trial ensued.

The facts are as follows:

Mary Rose Bondoc was born on December 20, 1985 to Corazon S. Bondoc,<sup>[3]</sup> the sister of appellant Eloy Miclat.<sup>[4]</sup> Mary Rose had not seen her father since birth and, with her mother living in Pampanga, she was shuttled from one relative to another.<sup>[5]</sup>

On July 7, 1997, when Mary Rose was eleven (11) years old, she was living with her maternal grandmother Vivencia Pascual at No. 16, Bantayog St., Concepcion, Marikina City. On that day, while she was playing outside their house, her uncle, appellant Eloy Miclat, called her. At first, she was hesitant to go near him for fear of being sexually molested again,<sup>[6]</sup> and so she continued playing. Moments later, appellant shouted at her. Afraid of him, Mary Rose approached appellant who lost no time in closing the door and window of the house and in telling her to lie down. He removed her panty. Mary Rose tried to put it on again but, with appellant preventing her from doing so, failed. Appellant put down his pants and masturbated in front of her. Right after a white substance came out of appellant’s penis,<sup>[7]</sup> he pressed his sex organ against hers (“*idinikit niya sa ari ko*”). She felt his penis being inserted into her vagina after which he did the push and pull motion of a “struggling horse” (“*nangangabayo*”).<sup>[8]</sup> Mary Rose did not shout for help for fear of being hurt by appellant the way he did in Tabon and Mabalacat, Pampanga where, as he was doing

that “thing” to her then and she was noisy, he punched her stomach.<sup>[9]</sup> She told appellant to stop what he was doing; he did so only after she said that her grandmother might arrive.<sup>[10]</sup>

Mary Rose told her grandmother, Vivencia Pascual, that appellant raped her. Unfortunately, Vivencia did not believe her. Instead, Vivencia asked Mary Rose to buy cigarettes for appellant. When Mary Rose returned, Vivencia told her not to be too close to appellant; otherwise, she would send her away. When Mary Rose heard this, she cried.<sup>[11]</sup>

After July 7, 1997, appellant once again “invited” Mary Rose. As she was near the door then, she ran towards the place where a bingo session was being held.<sup>[12]</sup>

On or about July 17, 1997, Mary Rose revealed the incident to her schoolmate who accompanied her to the house of her (schoolmate’s) aunt somewhere in La Colina, Parang, Marikina City. Her revelation of the sexual abuse she experienced in the hands of her uncle disturbed her friend’s aunt. Afraid of getting involved, her friend’s aunt called up Bantay Bata of ABS CBN Foundation Inc.<sup>[13]</sup> where her report was received by a social worker, Evelyn Valencia. At 8:30 in the evening, Sylvia Tolentino, another Bantay Bata social worker, went to the residence of the caller in La Colina. The caller introduced Sylvia to Mary Rose who agreed to go with Sylvia. From there, they went to the Marikina Police Substation II to register in the police blotter the fact that Mary Rose ran away from home and that Bantay Bata took her from the telephone caller. At around 10:25 in the evening, Marikina City policemen referred Mary Rose to the PNP Crime Laboratory Group in Camp Crame, Quezon City for a medical examination.<sup>[14]</sup> However, it was only on July 19, 1997 when Medico-Legal Officer Dennis D. Bellin examined Mary Rose. The Medico-Legal Report revealed the following findings:

#### GENERAL AND EXTRAGENITAL:

Fairly developed, fairly nourished and coherent female child. Breasts are conical with pinkish brown areola and nipples from which no secretions could be pressed out. Abdomen is flat and soft.

#### GENITAL:

There is absence of pubic hair. Labia majora are full, convex and coaptated with the pinkish brown labia minora presenting in between. On separating the same disclosed an elastic, fleshy-type hymen with deep healed laceration at 3 o’clock and shallow healed lacerations at 6, 7 and 11 o’clock positions. External vaginal orifice offers moderate resistance to the introduction of the examining index finger and the virgin-sized vaginal speculum. Vaginal canal is narrow with prominent rugosities. Cervix is normal in size, color and consistency.

#### CONCLUSION:

Subject is in non-virgin state physically. There are no external signs of application of any form of violence.

#### REMARKS:

Vaginal and peri-urethral smears are negative for gram-negative diplococci and for spermatozoa.<sup>[15]</sup>

On July 21, 1997, the Bantay Bata Rescue Team went back to the Marikina City police station where Mary Rose executed a *Sinumpaang Salaysay*<sup>[16]</sup> before P/INSP Ricardo N. Sto. Domingo, Jr. The team also requested police assistance in the verification of the reported rape incident. With Mary Rose in tow, the police and the Bantay Bata Rescue Team went to No. 16 Bantayog St., Concepcion, Marikina City at around 6:30 in the evening. They found appellant and his mother at home. Informed of the reported rape incident, appellant voluntarily went with the police. Along with his mother, appellant was brought to the barangay hall of Concepcion I where Enrique Cruz, the barangay tanod executive officer, gathered information about the complaint from appellant. Thereafter, they proceeded to the Criminal Investigation Division (CID) of Marikina City to which the police turned over the person of appellant.<sup>[17]</sup> Notably, during the inquest, social worker Evelyn Valencia heard appellant pleading with Mary Rose, "*Patawarin mo na ako sa lahat ng nagawa ko.*"<sup>[18]</sup>

The following day, July 22, 1997, the Bantay Bata Rescue Team turned over the custody of Mary Rose to the Department of Social Welfare and Development (DSWD) Crisis Center in Marillac Hills, Alabang, Muntinlupa City. Cindy Mativo,<sup>[19]</sup> a social worker at the DSWD Crisis Center who was assigned to study the case of Mary Rose, referred her to their physician to monitor her activities and assess her physical condition. Mary Rose complained of vaginal itchiness that she surmised was due to appellant's insertion of his fingers into her vagina. Mary Rose narrated all the sexual abuses she suffered from appellant from the time she was still living in Pampanga until the day she was raped in Marikina City on 7 July 1997. Mary Rose was crying as she narrated her sexual ordeal. On 14 November 1997, Cindy Mativo prepared a Social Case Study Report<sup>[20]</sup> which is part of the records of this case. The report states:

#### V. Observations on Minor while at Marillac Hills:

Upon admission, minor used to cry. She is unresponsive who only nod when ask of queries (sic). She had the difficulty for (sic) dealing with her co-wards and has no initiative to do her assignment. As days go by, minor has changed. She has new found friends in the cottage. She can now do her assignment with less supervision of the houseparent.

x x x She has complain (sic) of vaginal itchiness since admission. Medication is being administered up to the present.<sup>[21]</sup>

According to Mary Rose, even before 7 July 1997, while she was still living with her maternal aunt, Erlinda Miclat, in Mabalacat, Pampanga, she already experienced the sexual abuses of her uncle, appellant Miclat.<sup>[22]</sup> There were times when her uncle would touch her genitalia, mash her breast or even insert his finger inside her vagina.<sup>[23]</sup> Mary Rose left the house of her maternal aunt and went to her mother who was then living with her second family somewhere in Pampanga, intending to live with her. However, her mother did not allow Mary Rose to do so.<sup>[24]</sup> Mary Rose thus took a ride to Dau where she roamed around. There was a time when she lived with a relative, Ermi da Ramirez, and another time, with her Tita Rouella and Tito

Ogie in Montalban. One night, when she was asleep in her Tita Rouella's house, she was awakened by the embrace and touch of appellant. She stood up and left the room and when her Tita Rouella asked her why, she confessed everything to her, but not to her Tito Ogie, as she was ashamed to relate to him what had happened to her.<sup>[25]</sup> Sometime in 1996, Mary Rose started living with her maternal grandmother, Vivencia Pascual, at No. 16 Bantayog St., Concepcion, Marikina.<sup>[26]</sup> Thereafter, appellant joined his mother, Vivencia, his stepfather, and Mary Rose in that house. Their cohabitation in one tiny house culminated in the rape incident on 7 July 1997.

The defense interposed denial and alibi. Appellant asserted that Mary Rose concocted the charge of rape against him because he got mad at her on 15 July 1997 after his stepfather asked her to buy sardines and she sent somebody else to do the errand. Because not only he but also his mother and stepfather got mad at Mary Rose, the latter left his mother's house in Bantayog St., Concepcion, Marikina City.<sup>[27]</sup>

Appellant emphasized the improbability of his raping Mary Rose because their house was only a small room; when its door was opened, everything inside could be seen. In support of his claim, appellant presented four (4) photographs<sup>[28]</sup> of the house's interior.

According to appellant, Mary Rose just wanted to be independent. This was shown by her living with whoever would take care of her but not with her mother.<sup>[29]</sup> Mary Rose was a liar; there was a time when she made up stories that caused a rift between himself and his sister-in-law, Erlinda Miclat.<sup>[30]</sup> Notwithstanding that Mary Rose concocted the charge of rape against him, appellant was confident that the truth would come out in the end. Hence, there was no need for him to file a counter charge against Mary Rose.<sup>[31]</sup>

Raising the defense of alibi, appellant claimed that on July 7, 1997, he reported for work at the Governor's Place in Shaw Boulevard as a stay-in painter. He was then painting a basement traffic sign.<sup>[32]</sup> In support of his claim, he presented a copy of his pay slip for the period 5-11 July 1997 with the following notations: (1) number of working days - six (6), and (2) net pay - seven hundred fifty six pesos and twenty five centavos (P756.25) with a handwritten notation of "plus pondo July 12-150."<sup>[33]</sup> Appellant further claimed that he stayed in said workplace even during weekends; that he went to his mother's house in Bantayog St., Concepcion, Marikina City on July 15, 1997 to give his mother money to redeem their Karaoke unit; that he reported for work at Coring Supermarket on July 16 to 17, 1997; and that he went to his mother's house on July 21, 1997 to get some news from her.<sup>[34]</sup> His alibi was supported by the testimonies of Jimmy Navarro, the project-in-charge of the painting works at Bill Sanchez and Associates, Inc., and Henry Padilla, a foreman of the same company.

In substance, Navarro testified that appellant worked as a stay-in painter of Bill Sanchez and Associates, Inc. at the Governor's Place in Shaw Boulevard from January 13, 1997 until July 12, 1997;<sup>[35]</sup> that Miclat reported for work on July 7, 1997 as substantiated by Miclat's signature<sup>[36]</sup> on the photocopy of the company's daily time record<sup>[37]</sup> that its timekeeper, Ryan Cecil, prepared;<sup>[38]</sup> and that it was impossible for him to leave his workplace because three foremen, namely, Henry

Padilla, Greg Tan and Eddie Danganan, were supervising him, and he risked dismissal from employment should the paint dry up.

One of the three foremen, Henry Padilla, testified that he saw appellant six (6) times on that fateful day, particularly at 8:00 o'clock in the morning when he told him to make the sample traffic sign; at 10:00 o'clock in the morning during break time; at noon; at 1:00 o'clock in the afternoon; at 3:00 o'clock in the afternoon when appellant took his snack, and at 6:00 o'clock in the afternoon when appellant was about to log out. Moreover, it would take approximately three hours to travel from Marikina to Shaw Boulevard.<sup>[39]</sup>

Appellant's stepfather, Mariano Pascual,<sup>[40]</sup> and his mother, Vivencia Pascual,<sup>[41]</sup> were united in testifying that they did not see appellant in their house at No. 16 Bantayog St., Concepcion, Marikina City on 7 July 1997, the alleged date when Mary Rose was raped, and that it was impossible for appellant to rape Mary Rose in their house on account of its small area.

On November 24, 1998, the trial court rendered a Decision against the appellant, the dispositive portion of which reads:

WHEREFORE, in the light of the foregoing, accused ELOY MICLAT, JR. y SANCHEZ is found GUILTY beyond reasonable doubt of the crime of Statutory Rape penalized under Paragraph 3, Article 335 of the Revised penal Code, as amended by RA 7659 and is sentenced to suffer the extreme penalty of DEATH.

The accused is further ordered to pay the private complainant the amount of PhP 50,000.00 as civil indemnity in consonance with prevailing jurisprudence (PP Vs. Obejas, 229 SCRA 549; PP vs. Ibay, 233 SCRA 15, PP V. Malunes, GR #114692, 14 Aug. 95) and to indemnify the private complainant the amount of PhP 20,000.00 as exemplary damages so as to serve as deterrent to this disturbing trend, and the costs of the suit.

SO ORDERED.<sup>[42]</sup>

Appellant ascribes to the trial court the following errors:

#### I

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT FOR THE CRIME OF RAPE, THE EVIDENCE OF THE PROSECUTION SHOWS THAT ACCUSED-APPELLANT COMMITTED ATTEMPTED RAPE ONLY;

#### II

THE TRIAL COURT ERRED IN PENALIZING THE ACCUSED-APPELLANT WITH THE EXTREME PENALTY OF DEATH, RA 7659 IS NOT APPLICABLE TO HIM INASMUCH AS HIS RELATIONSHIP WITH THE COMPLAINANT HAS NOT BEEN ALLEGED IN THE INFORMATION.<sup>[43]</sup>

Appellant insists that there are inconsistencies in the testimony of Mary Rose during the direct and cross-examinations. Mary Rose testified that after he allegedly removed her panty, he waited for a white substance to come out before he pressed his organ against hers.<sup>[44]</sup> This contravenes her testimony on cross-examination