

EN BANC

[G.R. No. 128907, December 22, 1998]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ALBERTO "TOTOY" TIRONA, ACCUSED-APPELLANT.**

DECISION

VITUG, J.:

Found guilty of rape and sentenced to suffer the extreme penalty of death, accused-appellant ALBERTO "TOTOY" TIRONA is now before this Court pleading for a reversal of his conviction by the trial court which has concluded thus:

"WHEREFORE, in view of the foregoing, accused Alberto 'Totoy' Tirona y Moroña is found guilty beyond reasonable doubt of having committed the crime of rape provided in Article 335 of the Revised Penal Code as amended by Republic Act 7659, Section 11, 4. against one Vanessa Julia D. Gil and is sentenced to suffer the penalty of death. Accused is likewise ordered to indemnify the private complainant in the sum of P50,000.00 as moral damages and to pay the costs."^[1]

The information filed against accused-appellant, dated 11 July 1994, to which he entered a plea of "not guilty" upon arraignment read:

"That sometime (sic) between June 1993 to May 1994, in the Municipality of San Juan , Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge with VANESSA JULIA D. GIL, who is six (6) years of age, against her will and consent."^[2]

During the twelve-month period stated in the information, i.e., between June of 1993 up until May of 1994, accused-appellant Alberto Tirona was the family driver of the Gil family. His daily work routine would find him driving to and from St. John Academy in San Juan, Metro Manila, six-year old Vanessa Gil where she was a Kinder III pupil. A long-time friend and "kumpadre" of Alejandro Gil, Vanessa's father, accused-appellant enjoyed the full trust and confidence of the Gil family.

Sometime in November 1993, the nursemaid of the Gils told Vanessa's mother, Sylvia, that Vanessa's underwear appeared to be unexplainably "dirty and yellowish" in color. Sylvia did not pay much attention to it. Two months later, or around January of 1994, Sylvia recalled that Vanessa had begun to show reluctance in being with appellant and expressed preference in having her father bring her to and fetch her from school. When Sylvia asked Vanessa why the sudden change in her attitude towards accused-appellant, the latter just shook her head. Sylvia first heard Vanessa complain about vaginal pains in March 1994. Sylvia examined Vanessa and suspecting that the pain was only caused by rashes, she applied simple medication

to her genitalia. During the second week of May 1994, Vanessa again complained of similar pains. It convinced Sylvia this time to have Vanessa undergo a medical check up.

Dr. Victoria Lim examined Vanessa and found a reddening of the perineal area and some rashes around the perineum.^[3] She would in time testify that the reddening of the perineal area was likely due to lack of proper hygiene,^[4] but, to be certain, she recommended another examination by Dr. Restituto Buenviaje. The latter conducted his own examination. He found Vanessa to have suffered a laceration of the hymen. He advised Sylvia to bring Vanessa to the National Bureau of Investigation ("NBI").^[5] Dr. Aurea Villena, a medico-legal officer at the NBI, after examining Vanessa, concluded that the child's vestibular mucosa, an area surrounding the hymen, was congested. Later, in her testimony, she would state, thus:

"Q. Then vestibular mucosa, congested?

"A. In my report, this is the most significant finding.

"Q. Will you explain to the court?

"A. Normally, the vestibular muscosa is that area which surrounds the hymen and normally, this is pinkish. But in this case, there was congestion, meaning there was redness on the vestibular mucosa.

"Q. So, of what medical importance or significance is that finding that there is redness?

"A. Firstly, we can consider hygiene. Being a child, maybe the child keeps on scratching her private part. And secondly, may be someone inserted something elongated and hard which touches the mucosa that makes it red.

"Q. This thing that you said which could be inserted by someone, could it be a human finger?

"A. Possible, Sir.

"Q. Could it be a male penis?

"A. Possible, sir."^[6]

While Dr. Villena clarified that she had found the hymen of Vanessa intact, she stressed, nevertheless, that the preservation of physical virginity would not necessarily mean that there had been no penetration into the genital organ of the victim.^[7]

The young Vanessa Gil herself testified in court; the salient portions of her testimony taken down during the trial would sum up her narration of the events that took place.

"Q. Now, you said that you were being brought from your house to the school by means of a car. My question is, who was then driving that car bringing you from your house to the school?

"A. Totoy.

"Q. How about coming from the school going back to your house, how do you go back to your house?

"A. 'Hinahatid ako.'

"Q. Also by car?

"A. Yes, sir.

"Q. And who drives you from the school going back home?

"A. 'Totoy'

"Q. Now, this Totoy that you have been mentioning, if you see him, would you be able to identify him?

"A. Yes, sir.

"Q. Will you please look around this court and see if that Totoy that you have been referring to is present in court?

"A. Yes, sir.

"Q. Will you point to him?

(Witness pointing to the man in yellow t-shirt who identified himself as Alberto 'Totoy' Tirona, the accused.)

"A. Are you a friend of Totoy?

"Q. No. sir.

"A. You said that you are not a friend of Totoy. Did you have any fight with Totoy?

"Q. Yes, sir.

"A. "x x x x x x x x x

"Q. You said that you had fight with Totoy. Could you tell the court where this fight or those fights took place?

"A. In a car.

"Q. You mean the car that was being used and driven by Totoy to bring you to school from home and from school back to home?

"A. Yes, sir.

"Q. When you said the fight took place in the car, was the car moving?

"A. No, sir.

"Q. Could you tell the court in what part or portion of the car where the fight or fights took place?

"A. In a parking lot in Jollibee.

"Q. Now, this fight, did it take place inside the car?

"A. Yes, sir.

"Q. Which part of the car?

"A. In front.

"A. "x x x x x x x x x

"Q. In the fight that you had with Totoy, do you remember if that fight has something to do with the human finger?

"A. Yes, sir.

"Q. Now, the fight that you are telling the court with Totoy, does that fight also have something to do with fingers?

"A. Yes, sir.

"Q. Now, when you said the human fingers have something to do with your fight, is it your fingers or is it the fingers of Totoy?

"A. Fingers of Totoy.

"Q. What did Totoy do with his fingers? Are you ashamed to say that?

"A. Yes, sir.

"Court:

"You can ask the child if she want to continue the hearing in chamber.

**"Atty.
Subido:**

You said that you are ashamed to say what Totoy did with his fingers. Would you like that we go inside the room of the judge and it is there where you will tell what Totoy did with his fingers?

"Q.

"A. I want to tell it in chamber.

"Court:

"What if you would agree so that she would not be ashamed with only the counsels, she, I, the stenographer and the interpreter. Atty. Mallares, are you amenable to that arrangement?

**"Atty.
Mallares:**

Yes, your Honor.

(At this point, the hearing continued inside the chamber.)

"x x x x x x x x x

"Q. Now, you were mentioning about the fingers of Totoy a while ago. Would you tell the court what did Totoy do with his fingers?

"A. Pinapasok po niya sa pekpek ko.'

"Q. When you say 'pekpek', where is that 'pekpek'?

"A. (Witness pointing to her private part).

"x x x x x x x x x

"Q. Now, when you were there at the NBI, do you remember that there was a woman who asked you some questions?

"A. Yes, sir.

"Q. And after the questions, you remember that you signed your name in a paper there at the NBI?

"A. Yes, sir.

Now, I would like you to go over this signature appearing on page 2 of a document already marked as Exhibit E. My only question is this, would you be able to identify or to tell the court whose writings of a name appearing in the typewritten name which I will not even mention?

"A. My signature.

"x x x x x x x x

- "Q.** Now, in this Exhibit E, you remember that you mentioned the words 'buntot ni Totoy'?
- "A.** Yes, sir.
- "Q.** And where is that 'buntot ni Totoy' located or found?
- "A.** 'Dito' (witness pointing to her front portion, private part).
- "Q.** This 'buntot ni Totoy', does it have something to do with your fight with him?
- "A.** Yes, sir.
- "Q.** Could you tell the court what did Totoy do with his 'buntot'?
- "A.** 'Pinasok rin po niya dito.'
- "Court:**
- "Q.** What do you mean by 'dito'?
- "A.** 'Pinasok niya sa pekpek ko'.
- "Atty. Subido:**
- "Q.** Now, could you tell the court how many times did this fight of yours with Totoy take place?
- "A.** Yes, sir.
- "Q.** How many times?
- "A.** (Witness raising her right hand and spreading her five fingers).
- "Court:**
- "Before you continue.
- "Q.** When you said five times, did Totoy use his 'buntot' or his fingers?
- "A.** His fingers.
- "Atty. Subido:**
- "Q.** How about the 'buntot', how many times?
- "Atty. Mallares:**
- "Already answered, Your Honor. She said five times.
- "Atty. Subido:**
- "That's why it is now a follow-up question in consequence to the question of the Honorable Court.
- "Court"**
- "I will allow it.
- "Atty. Mallares:**
- "She answered only five times fight. The ones used in all this occasion is the 'daliri'
- "Atty. Subido:**
- "May we be allowed, you Honor, to clarify this because