

EN BANC

[G.R. No. 134846, August 08, 2000]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
DELANO MENDIOLA, ACCUSED-APPELLANT.**

DECISION

PER CURIAM:

For automatic review by this Court is the decision of the Regional Trial Court, Branch 166, Pasig City, finding the accused-appellant guilty beyond reasonable doubt of raping his five-year old daughter and sentencing him the supreme penalty of death.

Upon a complaint filed by Consuelo Pedrosa in behalf of her granddaughter, Daryll Mendiola, the information for rape was filed which reads:

That sometime in the year 1994, in the City of Pasig, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs and by means of force and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with a five (5) year old girl. Daryll Mendiola, his daughter, without her consent and against her will.^[1]

After trial, judgment was rendered on March 11, 1998 disposing, to wit:

WHEREFORE, the Court finds accused, Delano Mendiola, guilty beyond reasonable doubt of the crime charged in the Information, and considering that the victim, Daryll Mendiola, was then only five (5) years old and the daughter of the accused, he is hereby sentenced to suffer the supreme penalty of DEATH, and indemnify the victim the sum of P50,000.00, plus the costs of suit.

SO ORDERED.^[2]

As found by the trial court, the evidence for the prosecution is as follows:

Consuelo Pedrosa testified, in the main, that she is 63 years old; that the accused is the husband of her daughter Marlene; that the victim Daryll Mendiola, is the daughter of accused and Marlene; that Daryll was then only about a month old when she was brought by Marlene to Naga City and was entrusted to her care; that in 1994, Marlene went to Naga City and brought back Daryll in Pasig City; that in January 1995, Daryll was bitten by a dog, so that she brought her to Naga City for treatment; that in the same month when examined by Dr. Josephine Decena of the Bicol National Hospital, Daryll's hymen bore old lacerations at 2, 6 and 8:00 o'clock positions; that Daryll was brought to the NBI Office in Naga City where her statement was taken; that when she told Marlene about the findings made by Dr. Decena and the taking of Daryll's statement by the

NBI, Marlene got mad at her; that she is the one actively pursuing the instant case because Marlene refused to help Daryll.

Daryll Mendiola, private complainant, testified, inter alia, that she is six (6) years old; that her father is Delano Mendiola and her mother is Marlene; that in 1994 and 1995, inside their house in Pasig City, her father inserted his penis inside her vagina many times.

The documentary exhibits are:

1. "A....." - The Sworn Statement of Daryll Mendiola given to the NBI Investigator.
2. "B" - Certification issued by Dr. Josephine Decena who examined Daryll Mendiola.
3. "C" - Certificate of Live-Birth of Daryll Mendiola.^[3]

On the other hand, the evidence for the defense constitutes the following:

Delmar Mendiola testified, inter alia, that she is five (5) years old; that her parents are Delano and Marlene Mendiola; that Daryll Mendiola is her elder sister; that when she was four (4) years old she lived in their house in Pasig City, together with her parents, her sister Daryll and her brother JR; that while she, Daryll and Jr were the only ones in their house their cousin Gene, who is older than all of them, arrived; that after giving JR money for video game, Gene covered himself and Daryll with a blanket; that after removing Daryll's panty, Gene went on top of her; that after a while Gene left; that later on Daryll was brought by their grandmother to Bicol.

Accused Delano Mendiola, testified, among other things, that he is 35 years old; that he was a fruit vendor at the Pasig Market; that he has 6 children; that in 1994, five (5) of his children, including Daryll were living with him in Pasig City; that prior to 1994, Daryll lived with her grandmother Consuelo Pedrosa, in Bicol; that in December, 1993, Daryll was brought by Consuelo to Pasig City and stayed in the house of his brother-in-law, Eugenio Babon; that when he went to the house of Eugenio to deliver some food stuff he saw Daryll and her cousin, Gene inside a room playing horsy-horsy; that because of what he saw he and his wife decided to get Daryll to stay with them; that while Daryll was living with them, he saw her playing with the penis of the dog; that he caught Daryll peeping while he and his wife were having sex; that his other children saw Daryll stick a "Walis Tingting" inside her vagina; that while Daryll was living with them, Gene was a frequent visitor; that in January 1995, Daryll was brought back to Bicol by her grandmother; that on January 3, 1996, he was arrested by the police in connection with the instant case; that his mother-in-law is mad at him and even advised his wife to split up with him because of marital problems.

Marlene Mendiola testified, in the main, that she is 34 years old; that she is a fruit vendor at the Pasig City Market; that Daryll Mendiola is her fourth child and was born on July 25, 1989; that Delano Mendiola is her husband; that after her birth, Daryll was brought to Naga City by her grandmother, Consuelo, who took care of her; that in December, 1993, Daryll and Consuelo arrived in Pasig and stayed in the house of Eugenio

Babon; that when she visited Daryll at Eugenio's residence, Consuelo told her that one time Daryll and Gene left the house and stayed out late and brought home plenty of candies and food bought by Gene, that she became suspicious of her nephew, Gene, so that she took Daryll home; that Gene was already about fourteen (14) years old at that time; that one noontime when she went home from the market she saw Gene, wearing shorts, on top of Daryll; that she tried to confront Gene but he scampered away; that she learned from her other children that Gene frequented their house; that in 1995, Daryll was bitten by a dog, so that she was brought to Bicol by her grandmother who again took care of her; that she was told by her sister, Teresita, to go to Bicol because a doctor found out that Daryll was a rape victim; that when the doctor inquired about their companions and neighbors, especially those who are about fourteen (14) years old, who could have sexually abused Daryll, she suspected Gene but her mother insisted that the culprit is her husband, Delano Mendiola; that her mother hated Delano because he is lazy and irresponsible; that her husband denied having raped their daughter.^[4]

The accused raises the following assignment of errors:

I

THE TRIAL COURT GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT OF THE CRIME OF RAPE BY RELYING HEAVILY ON THE TESTIMONY OF THE COMPLAINING VICTIM, DARYLL MENDOZA AND DISCREDITING TOTALLY THE VERSION OF THE DEFENSE.

II

THE TRIAL COURT GRAVELY ERRED IN DISREGARDING THE REVELATION OF DELMAR MENDIOLA THAT SHE ACTUALLY SAW HER COUSIN, JEN, WENT ON TOP OF HER SISTER, DARYLL, AFTER REMOVING THE LATTER'S PANTY.^[5]

As can be gleaned, the assigned errors hinge on the important issue of credibility of the witness. The defense asserts that the victim's testimony contains many loose ends considering that she could not even answer several questions propounded to her. On the other hand, the defense witness, Delmar Mendiola (whose nickname is "Macdo") although younger than Daryll was more proficient in court. Thus, her testimony should have been given more weight by the trial court.

It is settled that when the issue of credibility is concerned, the appellate court will generally not disturb the findings of the trial court, the latter being in a better position to describe the question, having heard the witnesses and observed the deportment and manner of testifying during the trial, unless certain facts of substance and value had been placidly overlooked which, if considered, might affect the result of the case.^[6]

Daryll lived with her grandmother in Naga City one month after she was born in 1989. She was already five years old when she was taken back by her mother in order to live with them in Pasig City in 1994. In January, 1995, she was brought back again to Naga City for treatment because she was bitten by a dog. While in her grandmother's custody, the child complained of pain in the genitalia during urination

and bathing. OB-GYNE examinations yielded old hymenal lacerations and vaginal infection. It was also during this time that her grandmother observed the child to be acting strangely and violently which included: hyperirritability, aggressiveness, biting, masturbatory acts and violent tendencies. She was referred for psychological management and these were the observations:

Course of OPD Consultations:

From the time the patient was initially seen on Jan.24, 1995, she was asked to come for regular weekly follow-ups. She was initially observed to be very aggressive and irritable. She kept on throwing things and boxing her grandmother while the session was going on. She was very hostile to anybody and was uncooperative. She was started on Tofranil 25 mg HS and was scheduled for a series of psychological testing. Despite some difficulties encountered during the testing proper, she was able to finish the examinations conducted.

During the succeeding follow-ups, her medications were further increased and an additional mood stabilizer was given. Her behavior somehow improved. In one of the sessions conducted with her, she made mention that it was her father who allegedly sexually abused her. She said it was done on several occasions while she was still living in Pasig. The same information was revealed to the psychologist.

The mother paid her a short visit sometime in the 3rd week of February and after she left a week after, the child was again noted to show (sic) aggressive and hostile tendencies. With the aid of psychotherapeutic intervention the child is at present manageable.

Psychiatric Evaluation Results:

In view of the foregoing examination and findings, the patient was found to be suffering from ADJUSTMENT DISORDER, WITH DISRUPTIVE BEHAVIORAL SYMPTOMS AND DEPRESSIVE FEATURES. She is negative for any psychotic conditions.^[7]

The defense claims that Daryll, when put to the witness stand, was unable to answer some questions. It also asserts that the testimony of a child of tender years (referring to Daryll) must be admitted with great caution and where there is doubt, should be excluded.^[8]

The victim's failure to answer some questions is understandable. She was only five (5) years old when the rape took place and six (6) years old when she was put on the witness stand. Apart from this, she is a disturbed child who had disruptive behavioral symptoms. However, such conditions did not materially affect her credibility. When Daryll was, however, asked the material question of what her father did to her, she answered clearly, candidly and categorically that the accused-appellant inserted his penis inside her vagina several times.^[9] It is an accepted precept that testimonies of child victims who are young and immature are given full weight and credit.^[10] When a woman or a girl-child says that she has been raped, she says in effect all that is necessary to show that rape was indeed committed.^[11] We quote her testimony:

COURT:

Before the Private Prosecutor will proceed, the court would like to know if the witness is competent to testify considering that she is only six years old.

QUESTIONS FROM THE COURT:

Q Do you know the name of your father?

A (The witness can not answer)

Q Do you know the name of your mother?

A Marlene po.

Q Do you know her family name?

A I do not know sir.

Q By the way, do you know that if you tell a lie, that is not good and if you tell the truth, God will bless you?

A (The witness can not answer)

Q Do you know that to tell a lie is not good?

A Opo.

Q Do you know that telling the truth is good?

A Opo.

Q Do you know that what you will answer here to all the questions of your counsel are the truth?

A Opo.

Q When you are going to answer the questions of Atty. Lanot, do you know that you must tell the truth?

A Opo.

Q And do you know that if you tell a lie, and the court will find out that you did so, you can be placed in prison as punishment?

A Opo.

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ATTY. LANOT:

Q Who is your father?

A Delano Mendiola sir.

Q If your father Delano Mendiola is around, can you point to him, you go down and tap his shoulder.

*Witness pointing to a person who when asked gave his name as Delano Mendiola.

Q And who is your mother?

A Marlene sir.

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