

EN BANC

[G.R. No. 146111, February 23, 2004]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ROLENDO GAUDIA
@ "LENDYO" OR "DODO", APPELLANT.**

D E C I S I O N

PUNO, J.:

There can be no greater violation of a person's right to feel safe and secure than the crime of rape. When one commits such a horrible act on another, he degrades not only that person's body; more importantly, he defiles that person's mind. When the victim is a little child, the act and the perpetrator himself assume a bestiality beyond the comprehension of normal human beings. Yet, the law must apply equally upon saints and sinners alike, even to the most salacious ruffian.

Before us is the Decision^[1] dated 10 July 2000 of Branch 19 of the Regional Trial Court of Digos, Davao del Sur, finding appellant Rolendo Gaudia^[2] guilty of the crime of rape, meting upon him the penalty of death, and ordering him to pay to private complainant Remelyn Loyola the amounts of fifty thousand pesos (P50,000.00) as moral damages, thirty thousand pesos (P30,000.00) as exemplary damages, and costs of suit.

The Information filed against the accused-appellant reads as follows:

That on or about March 24, 1997 at about 6:30 o'clock in the evening, in the Municipality of Hagonoy, Province of Davao del Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did, then and there willfully, unlawfully and feloniously have carnal knowledge with Remelyn Loyola, a minor, against her will to her damage and prejudice.

The prosecution presented Remelyn's mother, Amalia Loyola, as its primary witness. Amalia testified that on 24 March 1997, she left her two children Remelyn (3 1/2 years old)^[3] and Kimberly (1 year old)^[4] at their house in Clib, Hagonoy, Davao del Sur to gather pigs' food at Bulatukan. At the time, her husband was working in Tulunan, South Cotabato. At about 4:00 in the afternoon, Amalia returned home and could not find Remelyn. She went to fetch water and proceeded to a neighbor to ask about the whereabouts of Remelyn. Nobody could provide her any information. On her way home, she shouted and called out Remelyn's name. At about 6:00 p.m., Amalia heard Remelyn calling out to her, "**Ma, I am here,**" from a grove of *ipil-ipil* trees.^[5] Amalia rushed toward the place, but was met by Remelyn at the mango trees, some thirty (30) meters from their house.^[6] She found Remelyn crying, naked, *nagbakaang* (walking with her legs spread apart) and with fresh and dried blood on her body. *Ipil-ipil* leaves clung to her forehead. Blood was oozing from her private organ. Amalia brought Remelyn home and washed her. Upon closer

inspection, she found a whitish mucus-like substance coming from Remelyn's private organ.^[7]

The following day, 2 March 1997, Amalia brought Remelyn to the house of a certain *Tiya* Coring, a quack doctor, for treatment. Among the people present in the premises were the relatives and parents of the appellant.^[8] The quack doctor found both dried blood and fresh blood oozing in Remelyn's vagina, and told Amalia, "*Hoy! Amalia, your daughter was being (sic) raped.*"^[9] At about 10:00 a.m., Tulong Mik, a neighbor, came and informed Amalia that he had seen the appellant pass by her house and take Remelyn.^[10] At this point, the parents of appellant told Amalia, "Mal, let us talk about this matter, we will just settle this, we are willing to pay the amount of P15,000.00, for the crime that my son committed."^[11] Police officers came and brought Amalia, Remelyn and two barangay officials (*kagawads*) to the police precinct of Hagonoy for investigation. Amalia's statement was taken.^[12]

On 25 March 1997, Amalia brought Remelyn to the Hagonoy Health Center in Davao del Sur. Dr. Patricio Hernane, the municipal health officer,^[13] conducted a genital examination of Remelyn, and made the following findings:

GENITAL EXAMINATION:

Absence of Pubic Hair (Tanner Stage I). No contusions are noted on the external genitalia. Dried blood are (*sic*) noted on the labia minora. Fresh hymenal lacerations are noted at 12, 3, 6, 10 o'clock (*sic*) are noted with fresh vaginal laceration noted at the posterior commissure but not extending to the perineum. No lacerations were noted at the anal opening.

Speculum examination is not done because even exposure of the labia minora make the child cry. (*sic*)

CONCLUSION: Physical virginity lost.^[14]

The doctor opined that the lacerations could have been caused by the insertion of a foreign object, such as the penis of a man.^[15]

On 26 March 1997, Amalia executed her affidavit complaint.^[16] Amalia stated therein that Remelyn had told her "*Buang Lendoy iya kong lugos.*"^[17] (Meaning "crazy lendoy he forced me" in the Visayan dialect.) Amalia confirmed in her testimony that two weeks after the incident, Remelyn told her, "Ma, Lendoy is crazy, she (*sic*) brought me to the *ipil-ipil* trees."^[18]

The prosecution also presented Tulong Mik, Remelyn's neighbor and a barangay *kagawad* in their area. Mik testified that on 24 March 1997, at about 4:00 p.m., he and his wife were on their way home after registering at the COMELEC office. They were in a hurry as their child was running a fever. Mik saw appellant carrying a small girl in his arms.^[19] He identified the little girl as Remelyn Loyola, daughter of Amalia Loyola. Appellant and Remelyn were on their way toward the *ipil-ipil* trees.^[20]

The next morning, 25 March 1997, at about 7:00 a.m., a neighbor informed Mik that Remelyn had been raped. He proceeded to the house of the quack doctor where Amalia brought Remelyn for examination. Amalia confirmed to Mik that Remelyn had been raped. Mik told Amalia that appellant committed the crime. Mik then informed Barangay Official Rodrigo Malud^[21] and the other tanods of the incident. They were instructed to locate the appellant. They passed to the police the information that appellant was in Barangay Mahayahay. The policemen came and took appellant for investigation. ^[22]

The appellant, ROLEND GAUDIA, interposed the defense of alibi. He averred that on 24 March 1997, at about 4:00 p.m., he went to the Barangay Center to register at the COMELEC for the National Elections. With him was Totong Loyola, the brother-in-law of Amalia Loyola. They finished at 5:00 p.m., left and repaired to the house of Catalina Cabano, appellant's aunt, to ask for vinegar for their *kinilaw* (a dish composed of raw fish steeped in vinegar). They found Daylen Cabano, the small grandchild of Catalina, alone at her house. Daylen was crying, hence, they brought her with them as they proceeded to the place where Catalina was collecting *tuba* (fermented coconut wine). It was appellant who carried Daylen.^[23] They reached Catalina's place after 5:00 p.m. Thereafter, they went to the house of appellant. Dodo Malon and appellant's parents were in the house. At around 9:00 p.m., Totong and Dodo Malon left, after partaking of the *kinilaw*. Appellant stayed home. The following morning (25 March 1997), appellant and Dodo Malon went to the river to fish. At about 12:00 noon, appellant repaired to the house of his aunt, Victoria Gayod, in Mahayahay to drink *tuba*. He was located by the police and investigated.^[24] He claimed that it was Daylen and not the victim Remelyn whom he was carrying.

As corroborative witness, appellant presented Alex "Totong" Loyola. Totong testified that on 24 March 1997, at about 4:00 p.m., they registered as voters in the barangay. After registering, they went home to appellant's house, but again left to get vinegar from his aunt Catalina Cabano, for their *kinilaw*. In Catalina's house, they found her drunk husband, her 10-year old daughter, and her 3-year old grandchild Daylen.^[25] Catalina's daughter directed them to the place where she was gathering *tuba*. As Daylen was crying, appellant carried her on their way to Catalina. It was then about 4:00 p.m. After Catalina finished gathering *tuba*, the four of them – appellant, Totong, Catalina and Daylen, left together and repaired to Catalina's house for the vinegar. Appellant and Totong returned to appellant's house where they spent the night.^[26] Totong woke up at 6:00 a.m. the following day, and left appellant's house. Totong came to know of appellant's arrest the following day. ^[27]

Catalina Cabano also corroborated appellant's story. She relates that on 24 March 1997, she was gathering *tuba*, at a place around 2 kilometers from her house. She left Maritess, her youngest child and Daylen, her grandchild, at her house.^[28] At about 5:30 p.m., appellant and Totong arrived. Appellant was carrying Daylen. They waited for Catalina to finish gathering *tuba* until 6:00 p.m. Appellant and Totong went to the former's house, had a drinking spree, and then parted ways at about 6:30 p.m. That night, according to Catalina, she talked to Tulong Mik at the premises near the house. Mik was looking for Remelyn. At that time, appellant was already at the house of Catalina's younger sister, which is located across the river,

about 4 kilometers away.^[29]

After trial, the trial court found that there was sufficient circumstantial evidence to convict appellant for the crime of rape with the qualifying circumstance that the victim was below seven years of age. Appellant was sentenced to death and ordered to indemnify the victim the sums of fifty thousand pesos (P50,000.00) as moral damages, thirty thousand pesos (P30,000.00) as exemplary damages, and to pay the costs of suit.

In his Brief^[30] to the Court, appellant assigned the following errors in the judgment of the trial court:

I.

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT, ROLANDO (sic) GAUDIA DESPITE THE FACT THAT HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

II.

EVEN GRANTING WITHOUT ADMITTING THAT ACCUSED-APPELLANT IS GUILTY OF THE CRIME CHARGED, THE TRIAL COURT STILL ERRED IN IMPOSING THE SUPREME PENALTY OF DEATH DESPITE THE FAILURE OF THE PROSECUTION TO STATE WITH CERTAINTY THE QUALIFYING CIRCUMSTANCE OF AGE IN THE INFORMATION.

We convict appellant for simple rape, and not for qualified rape.

Under Rule 133, Section 4 of the Revised Rules of Court, conviction may be based on circumstantial evidence provided three requisites concur: (a) there is more than one circumstance; (b) the facts from which the inferences are derived are proven; and (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt. The ruling case law is that for circumstantial evidence to be sufficient to support a conviction, all circumstances must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with the hypothesis that he is innocent and with every other rational hypothesis except that of guilt.^[31]

The first circumstantial evidence against the appellant is the testimony of prosecution witness Tulon Mik that at 4:00 p.m. on 24 March 1997, he saw him carrying Remelyn toward the direction of the *ipil-ipil* grove, some 130 meters from her house.^[32] As a neighbor and relative of Remelyn's stepfather, Mik had sufficient familiarity with the child Remelyn. The possibility that he could have been mistaken in identifying the victim is nil.

The second circumstantial evidence against the appellant is Amalia's testimony that Remelyn emerged naked from the same *ipil-ipil* grove, with *ipil-ipil* leaves clinging to her forehead. Remelyn was crying and walking with her legs spread far apart. Remelyn's private organ was bleeding and excreting a white mucus-like substance.^[33]

The third circumstantial evidence against appellant is Remelyn's statement to her

mother that it was appellant who had brought her to the *ipil-ipil* grove^[34] and forced her to do something against her will.^[35]

There is no question that Remelyn was violated. After examining Remelyn, Dr. Patricio Hernane, the Municipal Health Officer of Hagonoy, found her to have a broken hymen, as well as fresh vaginal lacerations.

From these, the culpability of the appellant can be inferred with moral certainty. All the aforementioned circumstances have been indubitably proven, both by the testimonial and documentary evidence presented by the prosecution, and by the inability of the appellant to discredit their veracity.

The attempt of appellant to discredit the circumstantial evidence against him is futile. Appellant contends, first, that Tulong Mik's testimony is weak, on the ground that Mik is a relative of the husband of Amalia.^[36] He also questions the credibility of Mik because of his failure to confront appellant when he saw him carrying Remelyn. Neither did Mik inform Amalia about what he saw when Amalia was looking for Remelyn. Appellant insists that it was Daylen whom he carried and not Remelyn. Second, he stresses the fact that Remelyn did not make any categorical statement that he sexually molested her. Third, he maintains that the accusation of flight against him is false. Fourth, he avers that the offer of compromise by his parents as tendered to Amalia Loyola should not be taken against him,^[37] while the offer of compromise he allegedly made to Amalia's husband, as relayed by Amalia in her testimony, should be excluded as evidence for being hearsay.^[38] Finally, he submits that inconsistencies in the testimony of Alex Loyola and Cabano should not be counted against him on the ground that any finding of guilt must rest on the strength of the prosecution's evidence.

We reject appellant's arguments.

First, appellant's attempt to discredit the testimony of Mik cannot succeed. It is true that Mik is a relative by affinity of Amalia Loyola. It is hoary jurisprudence, however, that mere relationship to one of the parties, without a showing of any other improper motive, is not sufficient basis to impair the credibility of the witness.^[39] In the case at bar, appellant cannot impute any ill motive for Mik to testify adversely against him.

Appellant questions the failure of Mik to challenge him why he was carrying Remelyn. Also, he assails Mik for failing to inform Amalia Loyola of such a sight. Mik had an explanation for the inadvertence. He said his own child was down with a fever, and he and his wife were hurrying home.^[40] For this same reason, he revealed the fact that he saw appellant carrying Remelyn toward the *ipil-ipil* grove only when he learned of Remelyn's fate. But thereafter, he lost no time in reporting the matter to the barangay chairman.^[41] As a barangay *kagawad*, he also assisted in the pursuit and arrest of appellant at Barangay Mahayahay.^[42] These subsequent actions strengthen Mik's credibility.

The trial court accorded more credence to Mik's narration of the events over the testimonies of Cabano and Loyola. It is a cornerstone of our jurisprudence that the trial judge's evaluation of the testimony of a witness and its factual findings are