

## EN BANC

[ G.R. No. 136738, March 12, 2001 ]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
EFREN VALEZ, ACCUSED-APPELLANT.**

### DECISION

**KAPUNAN, J.:**

On automatic review is the decision of the Regional Trial Court of Iloilo City, Branch 23, dated August 3, 1998 in Criminal Case No. 47042<sup>[1]</sup> sentencing accused-appellant Efren Valez to the supreme penalty of death after he was found guilty beyond reasonable doubt of the crime of rape under Art. 335 of the Revised Penal Code as amended by Section 11 of R.A. 7659.

On September 30, 1996, Merlinda Tibubos, assisted by her mother Gloria Tibubos, filed a complaint for rape against Efren Valez allegedly committed as follows:

That on or about the 15th day of August 1996, in the Municipality of Guimbal, Province of Iloilo, Philippines, and within the jurisdiction of this Honorable Court, the abovenamed accused, with abuse of confidence and trust, he, being the husband of complainant's half-sister, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with the undersigned, against her will and/or consent, and who was at that time 12 years of age.<sup>[2]</sup>

Upon arraignment on January 10, 1997, accused-appellant pleaded "Not Guilty" to the charge. Thus, trial on the merits ensued.

The case for the prosecution was hinged on the testimonies of Merlinda Tibubos, the victim-complainant, Gloria Tibubos, her mother, Ofelia Overio, complainant's teacher and Dr. Jocelyn Magsico, the examining physician.

Complainant Merlinda Tibubos was a Grade V pupil in the schoolyear 1996 at Bulwangan Elementary School in Barangay Nanga, Guimbal, Iloilo. At about 11:45 in the morning of August 15, 1996, while she was on her way to her house at Buyuan, Tigbauan after attending her morning classes, she passed by a sari-sari store where she saw the accused-appellant, Efren Valez, in a drinking session. Accused-appellant is the husband of complainant's elder half-sister. Upon noticing Merlinda, accused-appellant called her to come to him. He told her that his wife (complainant's sister) had arrived from Antique and wanted complainant to go to Guimbal with him. She was hesitant at first but upon the assurance of the accused-appellant that her sister wanted to see her, complainant agreed to go with him.

They took a jeep going to Guimbal and alighted at the Batchoyan Plaza. From the plaza, they boarded another jeep bound for Barangay Bulao because the accused-

appellant told her that they had to get some of her sister's clothes at the house of his (accused-appellant's) brother. Upon reaching Bulao, they got off the jeep and started walking towards the house of accused-appellant's brother which was some distance away and situated at an elevation. Complainant was walking a few meters ahead of the accused-appellant. As they were passing by a forested area, the accused-appellant pulled her dress from behind. When Merlinda attempted to shout, he hit her at the back of her neck and made her lie down on the ground. When she tried again to shout, the accused-appellant choked her. He then lifted her skirt, pulled down her shorts and panty and started kissing her. Complainant further narrated her ordeal as follows:

Q: So you were now naked down, what happened next?

A: He showed out his penis and inserted inside my vagina (sic).

COURT:

Q: A while ago you said the accused kissed you, what part of your body he kissed?

A: My vagina.

Q: After kissing your vagina what did the accused do again?

A: He inserted his penis.

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Q: And then what happened?

A: Because the penis can not get inside, I shouted and I begged for his mercy.

Q: After you said you begged for his mercy, what did the accused do?

A: He did not continue inserting his penis because he ejaculated.

Q: But his penis touched your vagina?

A: Yes, sir.

Q: Only it was very painful?

A: Yes, sir.

COURT:

Q: So the penis of the accused penetrate (sic) your vagina or not?

A: Very little only.

Q: How little is little?

A: One-half of an inch.

COURT:

Q: A portion of the penis of the accused penetrated your vagina?

A: Yes, sir.

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FISCAL:

Q: It was while the penis is a little bet (sic) inside your vagina when the accused ejaculated?

A: Yes, sir.

Q: After the accused had ejaculated, what happened next?

A: I stood up.

Q: How did you know that the accused ejaculated?

A: Because I saw it.

Q: What did you see?

A: Like a "push" (sic)

Q: Did I get you right that the accused ejaculated while his penis penetrated your vagina one-half of an inch? (sic)

A: He pulled it out and then it ejaculated.

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After succeeding in having carnal knowledge with complainant, accused-appellant warned her not to tell anyone what happened because if she did, he would kill her sister. He also told her that if anyone saw her torn dress and asked her what happened, she should concoct a story that she fell from a cliff. They then went back to the crossing where they first alighted. The accused-appellant stopped by a store to buy cigarettes and borrowed a yellow blouse to replace Merlinda's torn uniform. Thereafter, complainant boarded a tricycle and then a jeepney bound for Guimbal.

It was around two o'clock in the afternoon when Merlinda arrived in Bulwangan Elementary School. She proceeded to her classroom and upon seeing her teacher-adviser, Mrs. Ofelia Overio,<sup>[4]</sup> complainant disclosed what happened to her. Mrs. Overio immediately brought her to the office of the principal, Mrs. Lolita Espina, who instructed some students to fetch Merlinda's mother. When complainant's mother, Gloria Tibubos, arrived, they brought Merlinda to the Rep. Pedro Trono Memorial

Hospital where she was examined by Dr. Jocelyn Magsico.<sup>[5]</sup>

The testimony of Merlinda was corroborated by the testimonies of her mother, Gloria Tibubos, her teacher, Mrs. Ofelia Overio and the examining physician, Dr. Jocelyn Magsico.

Gloria Tibubos testified that in the afternoon of August 15, 1996, while she was working in the ricefield, a classmate of her daughter came and told her that she should go to Bulwangan Elementary School for a very important matter. When she arrived in school, she saw her daughter sitting on a bench with a lump on her neck. When she asked her what happened, Merlinda disclosed that she was raped by "Efren." They immediately brought her daughter to the Pedro Trono Memorial Hospital where she was examined by Dr. Magsico. They next proceeded to the Guimbal Municipal Hall to report the incident but were told to come back the next day. The following day, August 16, 1996, they reported the matter to the police and filed a case against the accused. Gloria Tibubos also testified that she personally knew the accused-appellant because he was the husband of Ofelia Grañosa, her daughter by her first husband.<sup>[6]</sup>

Mrs. Ofelia Overio, a teacher at Bulwangan Elementary School in Guimbal, Iloilo testified that between 1 o'clock to 2 o'clock in the afternoon of August 15, 1996, she was teaching Science and Health to her Grade V pupils when she saw complainant Merlinda Tibubos enter the school gate. At that time, she was not wearing her school blouse but one with a yellow color. Complainant entered the classroom without a word. When the teacher approached her to inquire, Merlinda ran to her crying and embraced her. When Mrs. Overio asked her what happened, complainant replied, "*Ma'am gin-rape ako*" (Ma'am, I was raped).<sup>[7]</sup> She was shocked by such disclosure so she immediately brought Merlinda to the office of the principal, Mrs. Lolita Espina. Along with another teacher, Mrs. Garibay, Mrs. Overio interrogated Merlinda. She told them that she was raped by her brother-in-law, Efren Valez. When they asked complainant to take off her blouse, they found hematoma on her neck and face, a lump in her head and bruises and scratches at her back. Merlinda told them that the accused-appellant had dragged and boxed her. They also noticed that her camisole was torn.<sup>[8]</sup> Immediately, they sent for complainant's mother. When complainant's mother arrived, they brought Merlinda to the Pedro Trono Memorial Hospital for examination. Mrs. Overio also testified that from August 15 to August 29, 1996, Merlinda Tibubos did not go to school.<sup>[9]</sup>

Dr. Jocelyn Magsico, a resident physician at the Pedro Trono Memorial Hospital narrated that at around 3 o'clock in the afternoon of August 15, 1996, she examined a certain Merlinda Tibubos who complained that she was raped earlier that same day. The examination conducted on the complainant revealed the following findings:

1. Contusion, left face and neck;
2. Contusion, parietal scalp;
3. Contusion, right shoulder;
4. Multiple abrasions, left thigh;
5. Multiple abrasions, left knee;
6. Slight fresh hymenal laceration at 5:00 o'clock position;
7. Vaginal smear at external vagina shows sperm cells.<sup>[10]</sup>

Dr. Magsico further testified that the laboratory report submitted to her by the medical technician, Ms. Josefa E. Caro, showed the presence of sperm cells with few red blood cells and squamous epithelial cells.<sup>[11]</sup> Dr. Magsico explained that although the hymenal laceration found in the victim's vagina could have been possibly caused by the insertion of a human finger, the presence of sperm cells would indicate that such laceration was more possibly caused by the insertion of an erect adult penis.<sup>[12]</sup>

On the other hand, the evidence for the defense consisted of the sole testimony of the accused-appellant Efren Valez who denied the accusation of rape but admitted having inserted only his finger into the vagina of the complainant. The accused-appellant testified that at about 11:45 in the morning of August 15, 1996, he was drinking beer at a store in Brgy. Nanga, Guimbal, Iloilo, when he saw his sister-in-law (herein complainant) pass by. He asked her to go with him to the house of his brother in Brgy. Bulao to get some of his children's clothes. While they were on their way, he noticed that Merlinda was going in the wrong direction so he called her. When Merlinda, who was walking ahead of him, stopped, he found himself falling down as he was very drunk so he grabbed the back of Merlinda's dress for support. Both of them fell down. At this juncture, accused-appellant accidentally touched complainant's left breast. It was then that he felt a sudden longing for his wife and became sexually aroused.<sup>[13]</sup> Thus, accused-appellant narrated:

Q: When both of you fell down, what did you do next?  
A: I felt erection of the penis.

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Q: When you were standing according to the victim you fondled your penis, is that correct?  
A: Yes, Ma'am.

Q: When you fondled your penis what happened next?  
A: I had orgasm and ejaculation.

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Q: Since you were holding your penis and you reached that orgasm and you ejaculated, where did that fluid which came from your penis go?  
A: At the skirt because I kneeled down.

xxx xxx xxx

Q: So you were saying then, after reaching the orgasm and ejaculation what happened to your penis?  
A: It soften.

Q: When your penis softened, what happened next?  
A: I fondled it again.

Q: When you fondled it again, did it erect again?  
A: No, Ma'am, I fingered her and fondled again.