

EN BANC

[G.R. No. 132065, April 03, 2001]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
NORBERTO DEL MUNDO, SR. Y ONGOCO, ACCUSED-APPELLANT.**

D E C I S I O N

YNARES-SANTIAGO, J.:

This case is before this Court on automatic review in view of the imposition of the death penalty on accused-appellant for the rape of his fifteen-year old daughter.

Private complainant Michelle del Mundo was born on September 16, 1981. She is the youngest of four children. They resided in Sto. Niño, San Pedro, Laguna, but intended to transfer to Sta. Rosa, Laguna. On May 27, 1996, at around 6:00 o'clock in the evening, Michelle was fetched by her father, accused-appellant, at her cousin's house in Malitlit, Sta. Rosa, Laguna. Her two older brothers were left behind in Sta. Rosa. Michelle and her father proceeded to their house in San Pedro. They arrived there at around 8:00 o'clock in the evening. They were alone in the house because Michelle's mother was working as a domestic helper in Hong Kong. After having dinner, Michelle watched television in the living room. Accused-appellant told her to sleep in the bedroom. Later, while Michelle was sleeping, she suddenly woke up and found her father on top of her. She pleaded with him, but accused-appellant ignored her and forcibly spread her legs. Michelle cried but he warned her not to shout. Thereafter, accused-appellant removed the victim's shorts and panties. He removed his briefs, and then, while holding both her arms, forcibly inserted his penis into her vagina. After sexually abusing his daughter, accused-appellant wiped her vagina with the blanket, then put back her shorts and panties.

According to Michelle, she had been repeatedly raped by accused-appellant since she was eight years old, when her mother first left for Hong Kong. Her mother was not aware of this although she came home every two years, because Michelle was threatened by her father not to tell anyone, or else he will kill her and her brothers.

The following morning, accused-appellant and Michelle went to their other house in Sta. Rosa, Laguna. For fear that accused-appellant will make good his threats to kill them, Michelle kept silent. However, the last act of rape committed on her caused her to conceive a child. Eventually, she had to quit school to hide her pregnancy. Her friends visited her at home. When they asked about her condition, she was forced to tell them that her father raped her. Her friends advised her to tell her older brother, Gilbert, which she did. Gilbert, together with their aunt, Leonora del Mundo, who was accused-appellant's sister, advised her to file a complaint against Norberto del Mundo, Sr.

Following her aunt's advice, Michelle filed a complaint for rape against accused-appellant. Dr. Rosanna Soledad Cunanan, the municipal health officer, examined

Michelle and found multiple healed lacerations in her vagina with minimal whitish discharge and vulvar varicosities. She also found Michelle to be eight months pregnant, and placed the first month of gestation between April and May 1996. In March 1997, Michelle gave birth in Urdaneta, Pangasinan.

An information for rape was filed against accused-appellant before the Regional Trial Court of San Pedro, Laguna, Branch 31, which alleges:

That on or about May 27, 1996 in the Municipality of San Pedro, Province of Laguna and within the jurisdiction of this Honorable Court accused Norberto del Mundo, Sr. y Ongoco, with lewd design and by means of force, threats, violence and intimidation did then and there wilfully, unlawfully and feloniously have carnal knowledge with Michelle del Mundo y Tomines, 15 years old, against her will and consent.

When arraigned, accused-appellant pleaded not guilty. After trial, the lower court rendered its Decision dated November 7, 1997, the dispositive portion of which reads:

WHEREFORE, the Court hereby sentences accused Norberto del Mundo y Ongoco to suffer the death penalty, to pay the private complainant the sums of P50,000.00 as civil indemnity, P50,000.00 as moral damages and P50,000.00 as exemplary damages, and to pay the costs.^[1]

Accused-appellant contends that the accusations were made by her daughter upon the instigation of his own sister, since they had a quarrel over a piece of land. Accused-appellant also invoked alibi, arguing that he reported for work on the alleged day of rape but was told by his foreman to go home since he arrived late.

After a careful evaluation of the evidence on record, we find no convincing reason that would justify the reversal of accused-appellant's conviction by the trial court. In rape cases, the three guiding principles are: (1) an accusation for rape can be made with facility and while the accusation is difficult to prove, it is even more difficult for the person accused, though innocent, to disprove the charge; (2) considering that in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; and (c) the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense.^[2]

At the time of the commission of the crime herein, the gravamen of the offense of rape was sexual congress of a woman by use of force or intimidation or when the woman is under twelve years of age.^[3] In the case at bar, the elements of sexual intercourse and the employment of force or intimidation upon the young victim concur. These were duly established by the prosecution through Michelle's testimony:

Q Did you wake after that?

A Yes, because I felt something heavy on my body and when I opened my eyes, I saw my father, sir.

Q Where was your father when you opened your eyes?

A He was on top of me, sir.

- Q How did you know that it was your father on top of you considering that it was night time?
A The television was turned on and I saw him, sir.
- Q When you noticed that your father was on top of you, what did you do?
A I pleaded to him to pity me but he told me not to make any noise, sir.
- Q What else happened after that?
A I cried and he tried to separate my legs but I resisted, sir.
- Q And after your father removed your shorts and panty, what did he do with himself?
A He removed his brief, sir.
- Q After he removed his brief, what did he do?
A He then placed himself on top of me and inserted his private organ into my private organ, sir.
- Q Was he able to insert his private organ to yours?
A Yes, sir.
- Q Did he make any movement while his private part is inside your private part?
A He held my both arms, sir.
- Q How about his body? Was it making any movement while on top of you?
A No, sir.
- Q How long did your father remain on top of you?
A For a while, sir.
- Q Did you feel anything while his private part was inside your private part?
A I felt pain, sir.
- Court:
A Was that the first time your father abused you?
A No, ma'am.
- Q How many times did he abuse you prior to that date?
A I cannot count anymore, ma'am.
- Q Why? How old are you when you when you were first abused by your father?
A Eight (8) years old ma'am?^[4]

The foregoing open court declarations of Michelle sufficiently prove the consummation of the sexual act. It has been ruled that when a victim, more so if she is minor, says that she was raped, she in effect says all that is necessary to prove the rape.^[5] An intimidated young barrio girl is almost always afraid to resist the evil done to her. The employment of force and intimidation in rape need not be