

EN BANC

[G.R. No. 132546, July 05, 2000]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROSENDO MENDEZ, ACCUSED-APPELLANT .**

D E C I S I O N

GONZAGA-REYES, J.:

ROSENDO MENDEZ (ROSENDO) was found guilty by the Regional Trial Court (Branch 81), Romblon, Romblon, of raping his 16-year-old stepdaughter. The supreme penalty of death was imposed upon him. His case is now before this Court on automatic review.

The Information upon which he was arraigned reads:

"UNDERSIGNED, on the basis of the criminal complaint instituted by the offended party accused ROSENDO MENDEZ of the heinous crime of "Rape" as penalized under Republic Act 7659, committed as follows:

That on or about the 11th day of December, 1996, at around 10:00 o' clock in the evening, in barangay Agbudia, municipality of Romblon, province of Romblon, Philippines, and within the jurisdiction of this Honorable Court, the said accused, did then and there willfully, unlawfully and feloniously had carnal knowledge of his daughter VIRGINITA MENDEZ, a sixteen-year-old girl, against her will.

Contrary to law."^[1]

On July 9, 1997, ROSENDO pleaded not guilty to the charge embodied in the above-quoted Information. Trial then ensued wherein the prosecution presented as its witnesses the victim, VIRGINITA MENDEZ (VIRGINITA), an elementary school teacher, Milagros Thornton, and the municipal health physician of Romblon, Romblon, Dr. Victorio Benedicto, and adduced in evidence Exhibits "A" to "C" and their sub-markings. The defense for its part presented another daughter of the accused, Marian Mendez (Marian) and the accused, ROSENDO, as witnesses and offered no documentary evidence.

ROSENDO denied the charge against him and countered that VIRGINITA was not his true daughter having been conceived and born before he married her mother.^[2] He testified that on December 11, 1996, he slept in one bed together with his daughter named Marian and VIRGINITA;^[3] that their sleeping arrangement is that Marian was in between him and VIRGINITA;^[4] and that he did not rape VIRGINITA on December 11, 1996.^[5] The testimony of Marian, ROSENDO's other daughter and half-sister of VIRGINITA, supported the claim of ROSENDO that no rape occurred on that fateful night of December 11, 1996. Marian testified that on December 11,

1996, she together with VIRGINITA and ROSENDO slept in one bed;^[6] that her sister slept between her and her father;^[7] and that she did not notice nor witness any unusual incident throughout the evening of December 11, 1996.^[8]

On December 9, 1997, the trial court rendered its decision^[9] that disregarded ROSENDO's version and found the facts of this case to be the following:

"On December 11, 1996, in the evening, private complainant Virginita was staying in the house of the elder sibling of her father, the accused herein Rosendo Mendez, in bgy. Agbudia, Romblon, Romblon. Her companion was her younger sister, Marian Mendez. At around 10:00 o'clock that evening, Marian Mendez and she were already asleep. Her father, the accused, awakened her. He instructed her to buy cigarette. She bought five (5) sticks of Fortune cigarette from the store of Melba Montero. She handed the cigarettes to him. He ate. She went back to her place where she sleeps. She fell asleep. After that, she noticed that she had no panty anymore. Her father inserted his penis into her vagina and made pumping motion. His penis entered her vagina. She was crying. She did not shout because she was afraid because according to him if she would reveal he would kill her and chop her to small pieces. In 1993, he raped her four (4) times but she did not report these acts because she was afraid. That evening of December 11, 1996 was the last that he did it to her. The following day, December 12, she went to town with her auntie Norma Tome. In town, she stayed with Mrs. Milagros Thornton as baby sitter. Her father visited her and he was trying to get her. She trembled because he was trying to get her again. Mrs. Thornton did not allow her to go with her father. She did not go along with him.

Mrs. Thornton, who knew later what happened to her, accompanied her to the police and then to Dr. Benedicto who examined her (Exh. C),

Her parents Jocelyn Miñeque and Antonio Montero later separated but they begot three (3) children, namely, Ruel, Lian and private complainant. Her natural father was still alive. The accused nurtured her. He is not her natural father. Her late mother lived with Rosendo Mendez. She was used first by Rosendo Mendez in 1993. She was not schooling then. She was not allowed to go to school. They were still small when their mother left them. She was about two (2) years old then. In 1993, her companions in the house were her younger sister Marian Mendez, a natural child of her father Rosendo Mendez, and the latter. So also in December 11, 1996 when she was raped, they were only three (3) of them in the house.

She was already awake and she knew what her father was doing to her that evening. There was no blood that came out of her vagina; that was at first. There was no pain and injuries. She was afraid to complain because she was afraid to be killed. During the previous sexual intercourse against her by her father she was threatened that if she would reveal, her body would not be enough to be chopped into pieces. This was so because she was not his natural child. He told her not to tell it to anybody because according to him it was only he who had the right

to use her body. There was no threat against her that evening from the accused. He used to tell her every time he used her that if she tells it to anybody her body was not enough to be chopped and he would kill her. After he finished, her father returned to the place where he was sleeping. She cried. She did not fall asleep that night anymore."^[10]

The dispositive portion of the decision reads:

"WHEREFORE, this Court finds the accused ROSENDO MENDEZ GUILTY beyond reasonable doubt of the heinous crime of rape and hereby sentences him to suffer the supreme penalty of DEATH. He is ordered to pay his victim, his step-daughter Virginita Mendez, the sum of P50,000.00 as indemnity, without subsidiary imprisonment in case of insolvency, and to pay the costs."^[11]

To stave off the imposition of the death penalty, ROSENDO maintains his innocence, faults the information upon which he was charged as substantially defective and asserts that the evidence was insufficient to warrant his conviction.^[12] ROSENDO also points out that the information does not charge an offense since it does not aver that the rape was committed by means of force and intimidation. He also draws attention to the fact that the information alleges an erroneous qualifying circumstance, that 16-year-old VIRGINITA is his daughter when in truth she is only his stepdaughter. The lone assignment of error in this case claims that:

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED OF THE CRIME CHARGED AND IN IMPOSING THE DEATH PENALTY DESPITE DEFECTIVE INFORMATION AND INSUFFICIENCY OF EVIDENCE.^[13]

ROSENDO capitalizes on the failure of the information to allege that the rape was committed through "force and intimidation"; he reasons that he "cannot be validly convicted in an indictment which does not charge an offense".^[14] Article 335 of the Revised Penal Code enumerates three ways of committing rape, to wit:

1. By using force or intimidation;
2. When the woman is deprived of reason or otherwise unconscious; and
3. When the woman is under twelve years of age or is demented.

As correctly pointed out by ROSENDO, the information or complaint for rape should expressly allege the commission of the rape in the manner prescribed in Article 335.^[15] Hence, in the case of *People vs. Oso*^[16] the allegation in the complaint that the accused had carnal intercourse with the offended woman "against her will" or "without her consent" is insufficient to warrant a conviction for rape, although the evidence proves the commission of the crime.^[17] However, in this case, the complaint filed by VIRGINITA expressly alleges that the rape was committed "by means of force", viz:

"The undersigned Complainant after being duly sworn in accordance with law accuses ROSENDO MENDEZ, a resident of Bgy. Agbudia, Romblon, Romblon of the crime of RAPE, ARTICLE 335 REVISED PENAL CODE, committed as follows:

That on or about the 11th day of December, 1996, in Bgy. Agbudia, Romblon, Romblon and within the preliminary jurisdiction of this Honorable Court, said accused ROSENDO MENDEZ, **by means of force** did then and there wilfully, unlawfully and feloniously have carnal knowledge of the complainant VIRGINITA MENDEZ, against the latter's (sic) will and without her consent to the damage and prejudice of said victim.

Contrary to law."^[18] (Emphasis ours)

What we have here is a complaint specifically accusing ROSENDO of rape committed "by means of force" and an information that failed to allege this essential element. The case of *People vs. Oso*^[19] also established the principle that in case of variance between the complaint filed by the offended party and the information in crimes against chastity, the complaint controls.^[20] The failure of the information to state that ROSENDO raped VIRGINITA "through force or intimidation" is not a fatal omission in this case because the complaint alleged the ultimate fact that ROSENDO raped VIRGINITA "by means of force". So, at the outset, ROSENDO could have readily ascertained that he was being accused of rape committed through force, a charge that sufficiently complies with Article 335.^[21]

As to the crucial issue of whether ROSENDO raped VIRGINITA, a careful evaluation of the evidence points to the conclusion that ROSENDO raped VIRGINITA. The victim in this case is sixteen (16) years old. We have held that when the offended parties are young and immature girls from the ages of twelve to sixteen, courts are inclined to lend credence to their version of what transpired, considering not only their relative vulnerability but also the shame and embarrassment to which they would be exposed by court trial if the matter about which they testified is not true.^[22] Moreover, VIRGINITA has no evil motive in prosecuting this case, in fact, her regard for ROSENDO as the one who nurtured her, buttresses the belief that she was mainly moved by her quest for justice in charging her stepfather with a crime which he could pay for with his life.

In ruling that ROSENDO is guilty of rape, the trial court relied mainly on the testimony of VIRGINITA. We find no reason to disagree with the finding of the trial court that the version of VIRGINITA is believable and credible. When it comes to the issue of credibility, the trial court is in a better position than the appellate court to properly evaluate testimonial evidence having the full opportunity to observe directly the witnesses' deportment and manner of testifying.^[23] Hence, in the absence of a palpable error or grave abuse of discretion on the part of the trial judge, the trial court's evaluation of the credibility of witnesses will not be disturbed on appeal.^[24]

The testimony of VIRGINITA is far from being perfect in all details; nevertheless, she gave a straightforward and faithful account of the rape that occurred on December 11, 1996, as can be seen from the following:

PROS. MORTEL:

Q: Now Virginita, on the December 11, 1996 in the

evening of that date, where do (sic) you stay?

A: In Bgy. Agbudia, Romblon, Romblon.

Q: In whose house?

A: Our house.

Q: When you say your house, is that the house of your father and mother?

A: .No sir, but we were residing there.

Q: Whose house was that?

A: To the elder sibling of my father.

Q: Now that evening of December 11, 1996, who were your companions in the house?

A: My younger sister Marian Mendez.

Q: How about your Auntie, was she there that night?

A: No, sir.

Q: Now at around 10:00 o'clock that night, what were you doing?

A: We were already asleep.

Q: When you said you were already asleep together, with whom were you asleep (sic)?

A: My younger sister.

Q: What is her name?

A: Marian Mendez.

Q: Now at around that time, do you remember having been awakened?

A: Yes, sir.

Q: Why were you awakened?

A: My father awakened me (sic).

Q: When you said your father, what is the name of your father?

A: Rosendo Mendez.

Q: And look around please and tell us if your father is inside this courtroom?

A: Yes, sir.