

EN BANC

[G.R. No. 130491, March 25, 1999]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROBERTO MENGOTE, ACCUSED-APPELLANT.**

D E C I S I O N

PER CURIAM:

For automatic review by this court is the decision dated May 16, 1997 of the Regional Trial Court of Malolos, Bulacan, Branch 17, convicting Roberto Mengote of rape, as follows:

"WHEREFORE, premises considered, the court finds accused Roberto Mengote guilty beyond reasonable doubt of the crime of Rape, as defined and penalized under Article 335 of the Revised Penal Code, as amended by R.A. 7659, and hereby sentences him to suffer the penalty of Death and to pay the offended party Jenny Mengote the following:

1. P100,000.00 as moral damages and
2. P100,000.00 as exemplary damages."

Roberto Mengote was charged with rape under the following information:

"That on or about the 20th day of March, 1996, in the municipality of Hagonoy, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being then the father of the offended party, did then and there wilfully, unlawfully and feloniously by means of force and intimidation and with lewd designs, have carnal knowledge of the offended party, Jenny Mengote, a twelve (12) year old girl against her will and without her consent.

Contrary to law."

The accused with the assistance of counsel *de officio* pleaded NOT GUILTY upon arraignment.^[1]

The prosecution presented the victim Jenny Mengote, her mother Dolores Mengote who assisted her when she filed a complaint for rape and Dr. Edgardo Gueco, who prepared the medico-legal report dated April 22, 1996 marked as Exh. "D".

Jenny Mengote is the daughter of the accused Roberto Mengote and Dolores Mengote. She turned twelve on January 25, 1996, and was a Grade 6 student at the Sagrada Familia Elementary School in Hagonoy, Bulacan.

She testified on June 27, 1996 on the incident that happened on March 20, 1996

between the hours of 7:00 o'clock and 8:00 o'clock in the evening. She was watching TV in her Tita Meloida's house, which is about 2 or 3 meters from her own home, when her father called her from the door of their house and ordered her to get his lighter upstairs. When she got the lighter, her father followed and embraced her from behind. She was surprised because her father was not in the habit of embracing her except when she was a small child. She evaded him by going to the place where they kept their clothes. Her father followed her again, embraced her and kissed her on the face, at the same time telling her to keep quiet and not to report to anybody ("huwag akong magsusumbong"). She left the place and went down to where their water jar was located in order to evade her father. Her father followed, pinched her ear and pulled her upstairs while still holding her ear. He again embraced and kissed her, touched her private part (referring to her vagina) while she was in a standing position, and proceeded to remove her T-shirt, her shorts and her panty. She protested "huwag, huwag" but her father told her "sandali lang iyon." Thereafter, he laid her down on the floor, removed his pants and briefs and put his body on top of her, face down. She was then lying straight, and her father separated her right thigh from the left and inserted his penis into her vagina, which caused her pain. The penis penetrated about an inch into the vagina, and he was "moving up and down, push and pull"^[2] about five times. She felt something come out from his penis, which was colored white.

Her father noticed that her mother was coming, and he stood up and wiped his penis with a white rag and put on his shorts and briefs. When her mother entered, she asked her father what he had done to her. He said nothing and her mother got mad. Her mother saw the piece of rag that her father used in wiping his penis, smelled it, and asked him what it means; her father did not answer and left the house. She was also asked by her mother about what her father did to her. She did not answer because of her father's threat to kill them ("a papatayin kayo"). She told her mother about the incident two weeks after, when their mother left the house to go to the house of a relative in another barangay.^[3] The reason she did not reveal to her mother earlier what happened was that she was thinking of her brothers and sisters and her father might also do to her sister what she did to her. She was no longer afraid of her father after she reported the same to her mother. Her mother promptly brought her to the police station to file a complaint.^[4]

In court, Jenny attested to the truth of the contents of her sworn statement. Asked about her answer to Question No. 8 wherein she stated that her father committed the act against her three times, she explained that on the two previous occasions that took place in January and February 1996, her father embraced and kissed her, but did not attempt to insert his penis into her private part. She did not tell anybody because she was afraid of her father who told her not to report these to anybody, and who in the past used to beat them when his orders were not followed.^[5]

Upon cross-examination, witness Jenny answered the questions propounded substantially as she testified during the direct examination.^[6]

A medico-legal examination was conducted by Dr. Edgardo Gueco, upon the request of the Chief of Police of Hagonoy, Bulacan. The extra-genital examination of the hymen revealed the "presence of deep healed lacerations at 4 and 12 o'clock and shallow healed laceration at 7 o'clock positions."^[7] The report carried the remarks

"subject is in non-virgin state physically."^[8] Dr. Gueco testified that the presence of the laceration of the hymen means that subject was no longer a virgin at the time of the examination and possible cause of said laceration is sexual intercourse, and that because the healing period is usually ten days, the laceration inflicted by the sexual intercourse on March 22nd could have already been healed.^[9]

Dolores Mengote identified her signature on the sworn complaint of her daughter,^[10] and stated that it took a long time for her to give her consent to Jenny's filing the complaint against her father because she did not want the people around them to know because she was ashamed,^[11] and that when they filed the complaint she did not know that the penalty for rape is death.^[12]

The accused Roberto Mengote testified in his defense. He declared that he was admitting the crime and repents for what he did, but prays that a lower sentence be imposed upon him. He testified that he was only drunk; in the months of January and February when he first attempted to rape Jenny, he could not recall where his other daughters were because he was drunk.^[13]

As aforesated, the court a quo found the accused guilty beyond reasonable doubt of the crime of rape.

The accused-appellant raises the following assignment of errors in his brief:

"I

THE COURT A QUO ERRED IN TOTALLY DISREGARDING THE DEFENSE
PUT UP BY THE ACCUSED-APPELLANT.

II

THE TRIAL COURT GRAVELY ERRED IN NOT APPLYING THE SAFEGUARDS
SET FORTH UNDER RULE 116, 1987 RULES ON CRIMINAL PROCEDURE.

III

THE COURT A QUO GRAVELY ERRED IN FINDING THAT THE GUILT OF THE
ACCUSED-APPELLANT FOR THE CRIME CHARGED HAS BEEN PROVEN
BEYOND REASONABLE DOUBT."

Accused-appellant submits that the degree of his intoxication at the time of the incident affected his mental faculty to a degree that he was no longer conscious and in control of what he was doing; that his mental faculties were so far "overcome by intoxication that it produces a mental condition of insanity." Appellant further claims that the trial court erred in not applying the safeguards imposed by Section 3, Rule 116 of the 1987 Rules on Criminal Procedure after a plea of guilty to a capital offense, in that it did not endeavor to conduct a searching inquiry as to the voluntariness and full comprehension of the consequences of his plea of guilt; thus, the accused admitted his guilt in his testimony in court in the belief that the penalty to be meted by the court is life imprisonment.^[14] Finally, appellant contends that his guilt was not proven beyond reasonable doubt as there were "glaring" inconsistencies between the testimony of Jenny during the direct examination and

that during the cross-examination, as well as between her testimony and the testimony of her mother.

We find no merit in the appeal.

We have scrutinized the evidence and reviewed the testimony of the complainant with great caution and are convinced that the trial court correctly held that the guilt of Roberto Mengote was established beyond reasonable doubt. The narration of Jenny is positive, categorical and full of details, free of any significant inconsistencies and clearly described the sexual assault wherein, as the trial court observed, "her juvenile resistance proved no match to the strength and evil determination of her father". We are not unmindful of the crucial importance in a rape case of determining the credibility of both the victim herself and her version as to how the crime charged was committed but we repose almost total reliance on the findings and conclusions of the trial court which had the clear advantage of a trial judge over an appellate court magistrate in the appreciation of testimonial evidence.

[15] In the absence of any showing that the trial court's assessment of the credibility of the witness was flawed, we are bound by its assessment.[16]

Furthermore, it is doctrinally settled that testimonies of rape victims who are of tender age are credible. The revelation of an innocent child whose chastity was abused deserves full credit, as the willingness of the complainant to face police investigation and to undergo the trouble and humiliation of a public trial is eloquent testimony of the truth of her complaint.[17]

The trial court observed:

"It is an undeniable fact that because of their filial relationship, the accused exercised a great degree of moral ascendancy over his 12 year old daughter Jenny, so much so that even if she found her father's embraces and kisses to be quite peculiar because it was not his wont to kiss and embrace his children even as a show of love (tsn, June 27, 1996, p. 12), she could not adequately repel his advances. Furthermore, her father's practice of beating them up when he was mad (tsn, July 11, 1996, pp. 13-14) which was foremost in her young mind then disabled her to struggle against him. In this respect, the employment of force and intimidation by the accused has been fully established."

The testimony of Dr. Edgardo Gueco who conducted the medical examination corroborated Jenny's claim that she was sexually abused. The presence of deep healed lacerations in the hymen indicated that she was no longer a virgin and the possible cause of said lacerations is sexual intercourse.[18]

Neither are we persuaded by appellant's plea of insanity allegedly caused by intoxication that has affected his mental faculty to a degree that he was no longer conscious of what he was doing. The accused pleaded insanity quite late and obviously as an afterthought. More important, it was not substantiated. The law presumes every man to be sane and if the accused interposes the defense of mental incapacity, the burden of establishing such fact rests upon him.[19] Insanity must be proven by clear and positive evidence.[20] As an exempting circumstance, insanity means that the accused must have been deprived completely of reason and freedom

of the will at the time of the commission of the crime^[21] or be incapable of entertaining criminal intent.^[22]

In this case, the appellant merely stated that he "was not in my right senses at the time", because he was drunk. Thus:

"COURT:

xxx xxx xxx

Q: Can you tell us what compelled you to rape your daughter?

A: I was not in my right senses at the time, your Honor

Q: Why, were you under the influence of any liquor or drugs?

A: I was drunk at that time your Honor.

xxx xxx xxx

COURT:

Q: How many daughters do you have?

A: Five (5), your Honor

Q: Why did you specifically pick on Jenny to be your victim?

A: I did not intend to do it, your Honor.

Q: You will recall that at that time Jenny was out of your house and you just called her?

A: I don't remember that, your Honor

Q: So, at that time you were not also aware where your other daughters were?

A: No, your honor."^[23] (underscoring supplied)

The above testimony of the accused clearly falls short of the degree of proof necessary to prove insanity.

The appellant's second assignment of error is not tenable. The records show that appellant pleaded not guilty upon arraignment.^[24] Before the prosecution started the presentation of its second witness, the defense counsel manifested that the accused would be changing his plea to that of guilty. The court ruled that considering that the offense charged is a grave offense, the presentation of the prosecution's evidence is still required to determine the guilt of the accused.^[25] After the prosecution had rested its case, counsel for the accused manifested that the accused "intended his willingness to plead guilty". The records show: