

EN BANC

[G.R. No. 130514, June 17, 1999]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ABUNDIO TOLENTINO, ACCUSED-APPELLANT.**

D E C I S I O N

DAVIDE, JR., C.J.:

This case is before us for the automatic review^[1] of the decision^[2] of 19 May 1997 of the Regional Trial Court (RTC) of Macabebe, Pampanga, Branch 55, in Criminal Case No. 96-1763, in view of the death penalty imposed on accused-appellant Abundio Tolentino (hereafter TOLENTINO).

TOLENTINO was charged with the crime of rape in an information^[3] which reads:

That during the period from May 1, 1995 to July 1995, in Masantol, Pampanga, and within the Jurisdiction of this Honorable Court, accused ABUNDIO TOLENTINO, step father of nine (9) year old Rachelle Parco, the former being the common-law spouse of the latter's mother, Teresa David, by taking advantage of his moral ascendancy over Rachel Parco, then eight (8) years old, did then and there, willfully, unlawfully and feloniously thru force and intimidation, had carnal knowledge of the said minor Rachel Parco, against her will and consent.

The facts as synthesized by the Office of the Solicitor General (OSG) in the Appellee's Brief,^[4] which we hereby quote and adopt as our own for being fully in accord with the transcript of stenographic notes of witnesses, are as follows:

On May 1, 1995, at past noon, Rachelle Parco, 8 years old, was inside one of the two bedrooms at the second floor of the house of her grandmother, which was located at San Nicolas, Masantol, Pampanga (TSN, January 22, 1997). Rachelle was arranging the clothes while in the room (Ibid, p. 7).

Suddenly, Abundio Tolentino, the stepfather of Rachelle Parco, entered the same room and closed the door (Ibid). Abundio Tolentino ordered Rachelle Parco to stand up and lie down on the bed (Ibid, pp. 7-8). When Rachelle Parco was already on the bed, Abundio Tolentino removed his short pants and the short pants of Rachelle Parco (Ibid, p. 8).

Abundio Tolentino placed his sex organ on Rachelle Parco's genitals and bumped (*binubundol-bundol*) hers with his (Ibid). At that moment, Rachelle Parco remained silent, because she was afraid and did not know what Abundio Tolentino was doing to her (Ibid, pp. 8-9). Abundio Tolentino's carnal act lasted only for three minutes, because Rachelle Parco's brother knocked at the door and ask money from Abundio (Ibid,

p. 9). Abundio Tolentino told Rachelle's brother to ask money from Lola Iding (ibid). Thereafter, Abundio Tolentino put on his short pants and hers and went down the house (Ibid).

Abundio Tolentino repeatedly did the same thing to Rachelle Parco at least three to four times a week in May, June, and July 1995 (Ibid, pp. 11-12). Rachelle Parco was overc[ome] by fear that she did not tell anyone about what Abundio Tolentino was doing to her.

When the family [of] Rachelle Parco transferred residence to Taguig, because Masantol became flooded, it was then that Rachelle Parco mustered enough courage to tell her mother, Maria Teresa David, about Abundio Tolentino's bestial behavior (Ibid, pp. 12-13). Upon learning her daughter's sad flight, Maria Teresa David accompanied her on May 20, 1996, to the National Bureau of Investigation, Manila, to file a complaint against Abundio Tolentino (TSN, February 10, 1997, p. 14).

The victim, Rachelle Parco (hereafter RACHELLE) was likewise subjected to a physical examination, the result of which revealed that she was still a virgin and that her hymen was still intact and its orifice was 0.5 cm. in diameter "as to preclude complete penetration by an average-sized adult Filipino male organ in full erection without producing any genital injury."^[5]

In his defense, TOLENTINO interposed alibi, claiming that it was impossible for him to be in Masantol on 1 May 1995 because as a taxi driver he would come home to Masantol every Sunday only, which was his rest day. He also claimed that the incident was a concoction of Cecille Yabut, the grandmother of RACHELLE, as she was opposed to his relationship with her daughter Ma. Teresa David.^[6]

On 19 May 1997, the trial court rendered judgment convicting TOLENTINO of the crime of rape and sentencing him to suffer the penalty of death and indemnify RACHELLE in the sum of P100,000.

In his Appellant's Brief, TOLENTINO submits this lone assignment of error:

THE COURT A *QUO* ERRED IN FINDING THE GUILT OF HEREIN ACCUSED APPELLANT OF THE CRIME CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT

First, TOLENTINO raises the issue of Jurisdiction of the trial court. He maintains that the alleged rape was committed in Taguig, Metro Manila, and hence the trial court had no jurisdiction thereon. We are not persuaded. RACHELLE testified that she was sexually abused by TOLENTINO in their residence in Barangay San Nicolas, Masantol, Pampanga.^[7]

TOLENTINO likewise asserts that the prosecution failed to prove with moral certainty that rape had been committed because the physical examination disclosed no genital or extragenital injuries on RACHELLE; her hymen was intact, and the orifice was so small as to "preclude penetration by an average-size adult Filipino male organ in full erection without producing any genital injury." If there had been penetration as claimed by RACHELLE, there would have been injuries to her genitals, considering her age and the number of times the incident allegedly took place.

RACHELLE's testimony in the vernacular that "*binundul-bundol ang kanyang ari*" by TOLENTINO does not conclusively prove that rape was committed, to the exclusion of other offenses, in light of the aforesaid medical findings; besides, that testimony is subject to different interpretations and will not lead to the conclusion that TOLENTINO's intent was to have carnal knowledge of her.

Lastly, TOLENTINO faults the trial court in not considering that the incident was concocted by his mother-in-law, who was against his relationship with her daughter, the victim's mother.

In its Appellee's Brief, the OSG supports the appealed judgment and asks us to affirm the death penalty imposed by the trial court.

Rape is committed even with the slightest penetration of the woman's sex organ. It is enough that there is proof of the entrance of the male organ within the labia of the pudendum of the female organ. Penetration of the penis by entry into the lips of the vagina, even without rupture or laceration of hymen, suffices to warrant a conviction for rape. Thus, a finding that the victim's hymen is intact and has no sign of laceration does not negate a finding that rape was committed.^[8]

Pertinent portions of the findings^[9] of Dr. Armie M. Soreta-Uniel, Medico-Legal Officer of the NBI, are as follows:

GENITAL EXAMINATION:

Pubic hair, no growth. Labia majora and labia minora, coaptated. Fourchette, tense, vestibular mucosa, pinkish. Hymen, short, thin, intact. Hymenal orifice, measures 0.5 cm. in diameter. Vaginal walls and Rugosities cannot be reached by the examining finger.

CONCLUSIONS:

1. No evident sign of extragenital physical injuries noted on the body of the body of the subject at the time of the examination.
2. Hymen, intact and its orifice small (0.5 cm. in diameter) as to preclude complete penetration by an average-sized, Adult, Filipino male organ in full erection without producing any genital injury.

In light of these findings of the medico-legal officer, a rigorous scrutiny of the testimony of RACHELLE must perforce be made to determine whether there was evidence of the entrance of TOLENTINO's male organ within the labia of the pudendum or the lips of the vagina of RACHELLE, without necessarily reaching either the orifice or the hymen. The following is RACHELLE's testimony:

Q You said that on May 1, 1995, you were inside this room.
What were you doing then?

A I was folding clothes, sir.

Q While you were folding clothes, what happened next?

A Abundio Tolentino entered the room, sir.

Q Where did he enter the room?

A in the place where I was situated, sir.

Q Did he pass through a window or through the door of the room?

A He entered through the door, sir.

Q After Tolentino entered the room, what happened next?

A When he entered the room, he closed the door, sir.

Q After he closed the door, what did Abundio Tolentino do, if he did anything?

A He told me to stand up.

Q What did you tell him?

A I did not tell him anything. I just stood up.

Q Did you stand?

A Yes, sir.

Q And then what happened?

A Then he told me to lie down on the bed.

Q What happened next?

A He removed his shorts, sir.

Q And then what happened?

A He removed my shorts also, sir.

Q When Abundio Tolentino removed his shorts as well as yours, what transpired next?

A He placed his sex organ to my sex organ, sir.

Atty. Gutierrez:

May we request that the words used by the witness, "*binubundul-bundol ang kanyang ari*" be placed on the records, your Honor.

Court:

Granted.

Pros. Datu:

Will you please explain what you mean by the word "*binubundul-bundol*"?

A He was trying to force his sex organ into mine, sir.

Q How long did that take?

A Around three (3) minutes, sir.

Q What did you do, if you did anything, when the accused was forcing his sex organ into yours?

A I did not do anything, sir. I remain[ed] silent.

Q Why did you remain silent?

A I was afraid, sir.