

## EN BANC

[ G.R. Nos. 119964-69, September 20, 1996 ]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
VICTORINO DEL MUNDO, ACCUSED-APPELLANT.**

### R E S O L U T I O N

**ROMERO, J.:**

Accused-appellant Victorino del Mundo was charged with six counts of rape filed by his ten-year old daughter, Marivic del Mundo, before Branch 27, RTC-Cabanatuan City.<sup>[1]</sup> The records of the case show that the incidents of rape in Criminal Cases Nos. 5977, 5978, 5980, 5981 and 5982 were committed on different days in October 1993 while that in Criminal Case No. 5983 took place on July 22, 1994. Hence, the court a quo took cognizance of the fact that only Criminal Case No. 5983 is covered by Republic Act No. 7659<sup>[2]</sup> which took effect December 31, 1993.

The criminal complaints, all six of them similarly worded except the time of commission, state:

"The undersigned accuses VICTORINO DEL MUNDO of the crime of rape, committed as follows:

That sometime in October, 1993, at 8:00 a.m. or thereabout, in the City of Cabanatuan, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, motivated by lewd design and by means of force and intimidation, did then and there, wilfully, unlawfully and feloniously have carnal knowledge of MARIVIC DEL MUNDO, a ten (10) year old child who is her (sic) natural child, against the latter's will and consent and to her damage and prejudice.

CONTRARY TO LAW.

Cabanatuan City, this 23rd day of August, 1994."

Finding that the complainant, the accused, the witnesses and the evidence in these six (6) cases are common to all the cases, the court *a quo* tried them jointly.

Among those who testified for the prosecution was Dr. Jun Concepcion, City Health Officer of Cabanatuan City who conducted Marivic's medico-legal examination. The medico-legal report dated August 23, 1994<sup>[3]</sup> reads:

"xxx

xxx

xxx

OCCULAR (sic) INSPECTION of the body plus the external reproduction organ

- Negative for any evidence of external physical injuries like hematoma nor abrasions.

### **INTERNALLY**

**VAGINAL CANAL** - with the use of gloves, nasal speculum with special lightened instrument.

(+) Abrasion, old, 3:00 o'clock and 9:00 o'clock.

(+) Whitish vaginal discharges with in the canal blocking the opening of the cervix

(+) Ruptured with remnants of the hymen within the vaginal opening.

**IMPRESSION** = Positive for history of vaginal penetration.

(Sgd.) JUN B. CONCEPCION  
JUN B. CONCEPCION, M.D.  
Medical Officer V  
Medico-Legal Officer"

Dr. Concepcion testified that the contents of and entries in the medico-legal report he prepared are true and correct, that is, there were abrasions, injury and lacerations at 3 and 9 o'clock positions and that the hymen was ruptured indicating a penetration of the vagina. The salient portions of Dr. Concepcion's testimony were quoted in the court a quo's joint decision, thus:

**"Q** And with respect to the examination of her external part of her sex organ, what are your findings?

**A** There was evidence of external injury, sir.

**Q** How about in the internal examination of the sex organ of the victim?

**A** Internal examination shows that there was (sic) six penetration, sir.

**Q** In this medico-legal report there is an entry here which says 'abrasion old 3 and 9 o'clock xxx' Will you please tell us what does this entry mean?

**A** 3 and 9 o'clock indicates the position of the injury sustained by the victim in her private internal organ, sir." (p. 6, tsn, hearing of Oct. 27, 1994)

xxx xxx xxx

**"Q** How about this last entry which I again quote: 'Rupture with remnants of the hymen within the vaginal opening.' Tell us as to what this entry mean (sic)?

**A** It simply means that if the hymen is ruptured there is penetration, sir.

**Q** As a result of this medical examination conducted by you, what was your impression?

**A** After that my overall impression, sir, that there is really a penetration, sir, of the vagina.

**Q** That is your medical impression?

**A** It is medical impression, sir, there is vaginal penetration."

(p. 7, tsn, hearing of Oct. 27, 1994).<sup>[4]</sup>

Thereafter, all documentary and testimonial evidence were offered by the prosecution and admitted by the Court. When the time came for the defense to present its evidence, complainant Marivic del Mundo was called as witness. She identified an affidavit of desistance executed by her dated November 17, 1994, the salient portions of which are hereunder quoted:

"1. Na, ako ang siyang naghahabla sa isang asunto Kriminal na lalong kilala bilang Criminal Case No. 5981, 5983, 5977, sa salang Rape, People of the Philippines vs. Victorino del Mundo na nabibinbin dito sa Municipal Trial Court in Cities, Cabanatuan City, Branch III;

2. Na wala na akong interest pang ipagpatuloy ang aking nasabing habla sapagkat matapos ang isang masusing palinawagan ay napagalaman namin na ang lahat ay bunga lamang ng hindi pagkakaunawaan at kami ay nagkasundo na;

3. Na, dahil dito ay magalang kong hinihingi sa Kgg. Na Taga-usig ng Lungsod ng Kabanatuan na pawalang bisa na ang aking nasabing habla o asunto."<sup>[5]</sup>

Notwithstanding complainant's affidavit of desistance, the court *a quo* sentenced accused-appellant to suffer the penalty of *reclusion perpetua* in Criminal Cases Nos. 5977, 5978, 5980, 5981 and 5982, and death in Criminal Case No. 5983. Hence, these cases were elevated to this Court on automatic review.

On August 11, 1995, the Judicial Records Office of this Court sent notices to Attys. Napoleon Reyes and Adriano Magbitang of the Provincial Legal Assistance Office, Nueva Ecija, directing them to file appellant's brief and another letter addressed to the Director of the Bureau of Corrections, Muntinlupa, to confirm the confinement of accused-appellant within five days from receipt hereof.

In a letter dated August 17, 1995, Assistant Director Jesus Villanueva of the Bureau of Corrections informed this Court that accused-appellant was received therein on February 11, 1995.

On October 6, 1995, Atty. Procopio Beltran of the IBP Free Legal Aid Program filed a Formal Entry of Appearance for accused-appellant, which we resolved to note in our resolution of November 14, 1995.

Under date of January 24, 1996, accused-appellant, thru his counsel, filed a verified motion for new trial on the following grounds:

1. New and material evidence has been discovered which the defendant could not with reasonable diligence have discovered and produced in the trial which, when introduced and admitted, would probably change the judgment.

2. Irregularities have been committed during the trial pre-judicial to the substantial rights of the defendant.