

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FERNANDO JOJO; TUMALA, JR., ACCUSED-APPELLANT.*G.R. No. 122100. January 20, 1998*

Ponente: BELLOSILLO, J.

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The victim was only six when defiled; plainly, another case of statutory rape.

On 29 February 1992, at around 1:00 o'clock in the afternoon, 6-year old Mariefe Manzano together with her younger siblings Ana and Albert went to gather camachile fruits some 100 meters away from their house in Purok Magsaysay, Barangay Dajay, Surallah, South Cotabato. There they saw accused Fernando "Jojo" Tumala Jr. who invited Mariefe to go to the nearby river for a swim. Upon reaching the river bank however "Jojo" undressed Mariefe and ordered her to lie down on the grass. He took off his clothes, touched his penis and then inserted it into her vagina. When 4-year old Ana saw what "Jojo" was doing to her sister, she immediately ran home to tell her mother Magdalena Manzano about it. As soon as Mariefe returned from the river, Magdalena spanked her prompting her to run to her Aunt Diday residing nearby to relate her experience in the hands of "Jojo." After physically examining Mariefe and not noticing anything unusual with her, Diday sent her home. Nonetheless, Magdalena brought Mariefe to the local police station where they executed sworn statements regarding the incident. On 9 March 1992 Fernando "Jojo" Tumala Jr. was formally charged with statutory rape.[1]

The accused vehemently denied having committed the foul deed attributed to him. He contended that at about 1:00 o'clock in the afternoon of 29 February 1992 he was bathing in the river when Mariefe, her brother Albert and sister Ana arrived. Of the three, only Mariefe took a dip in the river. He warned the girl of the danger of swimming in the spot where she was but his forebodings remained unheeded. Shortly after, he noticed Mariefe almost drowning so he rescued her and carried her to the river bank. Mario Garcia, uncle of "Jojo," corroborated the latter's story.

On 5 October 1994 the trial court, giving full credence to the testimony of Mariefe, found the accused guilty of rape and sentenced him to reclusion perpetua. It also ordered him to indemnify his victim P30,000.00.[2]

Accused-appellant now assails his conviction on the ground that the evidence presented by the prosecution failed to establish his guilt beyond reasonable doubt considering that the testimonies of the witnesses lined up against him were contradictory and implausible.[3]

Appellant maintains that the complaining witness herself was inconsistent in her narration of what happened to her. First, Mariefe testified that after showing her a knife he held his penis and inserted it into her vagina. However, when asked what appellant thereafter did with his penis, she would not answer. When asked the second time just what appellant did with his penis in her vagina she answered that he touched her vagina. Second, Mariefe likewise testified that appellant also raped her in the cornfield prior to the 29 February 1992 incident which she reported to her mother, but when asked on cross-examination when it was that she reported the incident to her mother she again would not answer.

The Court is not at all swayed by the remonstrations of accused-appellant as we do not see any inconsistencies in the testimony of Mariefe. When a victim says she was raped,[4] she says in effect all that is necessary to show that rape was committed on her. So long as the testimony of the offended party meets the test of credibility the accused may be convicted on the basis thereof. It will not matter very much if there are certain perceived contradictions in her testimony if these appear, as they do in this case, to be inconsequential, referring only to minor details surrounding the commission of the crime. It could be that these "contradictions," as appellant calls them, were the result of lapses in the memory of the 6-year old child, confused and traumatized by the bestial act visited upon her by the appellant. Lapses are sometimes employed by the human mind as a necessary defense mechanism in dealing with the shock of a terrifying experience and surmounting it. Thus, the seeming contradictions in Mariefe's testimony were nothing more than mere manifestations of a child's own sense of the time-space continuum so that some parts of her narration would not seem in order if considered from an adult person's viewpoint. Thus -

Q:

What happened while you were gathering camachile fruits?

A:

I went up a camachile tree.

Q:

After you went up the camachile tree was there a person who approached you?

A:

Yes, sir.

Q:

Who was that person who approached you?

A:

Jojo Tumala.

Q:

Did he tell you anything when he approached you?

A:

Yes, sir.

Q:

What did he tell you.

A:

He invited us to go to the river because according to him we will (sic) take a bath.

Q:

When you were in the river what happened?

A:

He undressed me and invited me to the river (underscoring supplied).[5]

There is no question however that the child's testimony on the manner the execrable deed perpetrated on her by the appellant was consistently categorical and positive -

Q:

And after he has undressed you and invited you to go to the river, what happened?

A:

He asked me to lie down on the grass.

Q:

Did you follow his request to lie down on the grass?

A:

Yes, sir.

Q:

After you lied (sic) down on the grass, what happened?

A:

He raped me.

Court:

Q:

What do you mean he raped you? What did he do to you?

A:

(No answer).

Q:

How did he rape you?

A:

He asked me to lie down.

Q:

Yes, and then what did he do when you were already lying down?

A:

He showed the knife to me.

Q:

After he showed the knife to you what did he do to you?

A:

He talked to me.

Fiscal Nalangan:

Q:

What did he tell you?

A:

If I will report the incident to my mother he will (sic) rape me.

Court:

Q:

Will you tell the Court what do you understand by rape?

A:

To have sexual intercourse (witness stating in the vernacular "gen-etot").

x x x x

Court:

Q:

Did I hear you say gen-etot ka sang acusado?

A:

Yes, sir.

Q:

You tell the Court how did Jojo have sexual intercourse with you?

A:

(No answer; witness moved [sic] down her head).

Q:

Were you taught by your mother to testify that way?

A:

No.

x x x x

Fiscal Nalangan:

Q:

You said the accused had carnal knowledge with you. Say, what did he do?

A:

(No answer. The witness wiped her tears).

x x x x

Q:

You said that you were raped by "Jojo" Tumala, how did you feel when you were raped by him?

A:

My vagina was painful (underscoring supplied).[6]

Verily, there was nothing ambiguous in the testimony of Mariefe. In fact, each answer was reinforced by her

succeeding answers. She affirmed in the vernacular that she was raped. When asked to describe how "Jojo" did sexual intercourse on her, a brutal question to ask a child, to say the least, she did not answer; instead, she only bowed her head. Asked again what appellant did to her, tears fell on her cheeks. There can never be a more eloquent answer than this public baring of unspoken grief. Finally, and significantly, when she was asked what she felt after she was violated she guilelessly replied that her vagina was hurting.

Error-free testimonies cannot be expected most especially when a witness is recounting details of a harrowing experience, one which even an adult would like to bury in oblivion. The court cannot expect a rape victim to remember all the ugly details of the appalling outrage, particularly so since she might in fact be wishing to forget them.[7] This may similarly explain why Mariefe did not remember the exact date she was previously assaulted by the appellant. Children hardly keep track of dates.

Accused-appellant next contends that Mariefe was tutored and rehearsed before she testified. The trial court did not believe so; neither do we. Definitely she did not appear to have been tutored; her testimony did not seem to have been contrived to indicate previous coaching. She might have been rehearsed though in the sense that she was asked to recount what happened to her, perhaps not only once but even a number of times. But there was nothing irregular with it. A party calling a witness may well know beforehand what his witness can prove or, at least, what he would be expected to prove. It is usual and ordinary to interview the witness, maybe once, twice, thrice, or even more, before he is placed on the witness stand. Considering the tender years of Mariefe, she needed to be assured before testifying that there was nothing to fear or to be ashamed of by telling the truth. Thus she was unflinching in her testimony, even on cross-examination, until the end.

Appellant also assails the physical evidence of the vaginal lacerations as inconclusive of rape, suggesting that these could have possibly been caused by the physical examination on Mariefe's vagina by her Aunt Diday. We dismiss this as a gratuitous assertion unworthy of belief. We also note that the accused disappeared immediately after the incident - and flight indeed has always been regarded as indicative of guilt.

In a desperate if not futile attempt to provide basis for his appeal, appellant questions the observation of the court below that complaining witness and her mother had no motive to testify against him. Absurdly, he insists that he saved Mariefe from drowning. If this be really true, then it would be the height of ungratefulness for complainant and her mother to repay their "benefactor" by charging him with rape. This is just not done. Besides, no mother would sacrifice her own daughter, a child of tender years at that, and subject her to the rigors and humiliation of a public trial for rape if she were not motivated by an honest desire to have her daughter's transgressor punished accordingly.

Finally, accused-appellant questions the non-presentation of Mariefe's younger siblings as witnesses although they were present during the incident. Was that really necessary? No, there was no need even if they did witness the rape since the positive identification by the complainant of accused-appellant as her rapist was already sufficient. To bring them to court would only severely traumatize them as they would be asked to re-live an utterly devilish and disgusting occurrence.[8]

We accord the highest respect, even finality, to the evaluation by the lower court of the testimonies of the witnesses because it is the trial court, interfacing with the witnesses brought before it, that directly observes their demeanor on the stand and determines their credibility. In this case, we find no sufficient and valid reason to override the conclusion of the trial court that accused-appellant raped 6-year old Mariefe Manzano.

WHEREFORE, the judgment appealed from finding accused-appellant Fernando "Jojo" Tumala Jr. guilty of statutory rape and imposing upon him a prison term of reclusion perpetua is **AFFIRMED**. The indemnity awarded by the court a quo to the victim Mariefe Manzano in the amount of P30,000.00 is increased to P50,000.00

conformably with prevailing jurisprudence. Costs against accused-appellant.

SO ORDERED.

Davide, Jr., (Chairman), Vitug, and Kapunan, JJ., concur.

[1] Although the crime charged in the Information did not expressly state that the act committed was statutory rape, it nevertheless described the offended party as a 6-year old girl at the time she was sexually abused.

[2] Decision penned by Judge Cristeto D. Dinopol, RTC-Br. 26, Surallah, South Cotabato, Crim. Case No. 1434-S, 5 October 1994.

[3] Rollo, p. 56; Appellant's Brief, p. 1.

[4] Complainant used the vernacular term "gen-etot" which means "did sexual intercourse (with her)." TSN, 19 July 1994, p. 10.

[5] Id., pp. 8-9.

[6] Id., pp. 9-11.

[7] People v. Jimenez, G.R. No. 97222, 28 November 1995, 250 SCRA 349.

[8] People v. Espinoza, G. R. Nos. 113521-31, 3 August 1995, 247 SCRA 66.

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