

EN BANC

[G.R. No. 129112, July 23, 1999]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JIMMY MIJANO Y TAMORA, ACCUSED-APPELLANT.

D E C I S I O N

PER CURIAM:

Because a man is poor, uneducated and jobless, and lacks catechetical instruction, should he be exempted from the imposition of the death penalty after it is proved beyond moral certainty that he indeed had sexually abused a five-year old girl?

The Court is burdened, once again, with the heavy task of passing upon, by way of automatic review, a judgment of conviction imposing the death penalty for statutory rape, in this case, alleged to have been perpetrated by accused-appellant Jimmy T. Mijano.

Accused-appellant's conviction for said crime arose from an Information reading as follows:

That on or about the 10th day of May, 1996, in the Municipality of Las Piñas, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did, then and there wilfully, unlawfully and feloniously have carnal knowledge with one HAZEL RAMIREZ Y ABING, who is a child below seven (7) years old, against her will and consent.

CONTRARY TO LAW.

(p. 7, Rollo.)

Accused-appellant pleaded not guilty to the charge and stood trial, resulting in a judgment of conviction, accordingly disposing:

WHEREFORE, judgment is rendered finding the accused, Jimmy Mijano y Tamora GUILTY beyond reasonable doubt of raping Hazel Ramirez y Abing, a child below 7 years of age, which is punished under Art,. 335 (No. 4) of the Revised penal Code, as amended, with death, and in view of Article 63 of the same Code, accused Jimmy Mijano y Tamora is sentenced to die and such accused be put to death by the method or means prescribed by law; to indemnify the victim, Hazel Ramirez, the sum of P100,000.00, and to pay the costs.

SO ORDERED.

(p. 65, Rollo.)

The prosecution's version of the events is based principally on the testimony of victim Hazel Ramirez, her mother Dina Ramirez, and a neighbor by the name of Arnulfo Valiente. The Office of the Solicitor General adopted the summarization by the trial court of its findings, to wit:

Dina Ramirez is the mother of five-year old Hazel Ramirez who was born on 02 April 1991. In the morning of 10 May 1996, she washed clothes while one of her neighbors, Jimmy Mijano, was having a drinking session with some friends. Hazel was then playing together with other children. The children were later brought by the accused to their house at Helen Catral Street. Dina later in the afternoon became suspicious and started looking for Hazel and asked the playmates of Hazel where she was. She was told that the accused was playing with her. She went out to the street but was not able to find her daughter. Instead, she saw one Arnulfo Valiente who informed her that he saw Hazel together with Jimmy at Helen Catral Street. Arnulfo Valiente and Dina proceeded to the said place which was a grassy area beside a river and near Bacoar, Cavite. They reached the said place at around 5 o'clock in the afternoon. It was Arnulfo who first saw Hazel already pale and her vagina was profusely bleeding. She was wearing a dress but her panty and skirt were gone. Hazel also had an abrasion on her right hip. Dina first brought Hazel to the Las Piñas Police Station to report the incident but the police suggested that Hazel be brought to the NBI. The Medico Legal Officer advised them to bring Hazel to the PGH because they cannot examine her vagina which was bleeding profusely. Accused has a reputation for molesting women and even raping them whenever he is drunk. Dina identified the accused in open court. (TSN, July 22, 1996, pp. 2-5).

Arnulfo Valiente corroborated the testimony of Dina Ramirez.

The third witness for the prosecution was the victim herself. Five-year old Hazel Ramirez herself confirmed that the penis of Jimmy Mijano was inserted into her vagina. Hazel identified the accused in open court. (TSN, July 29, 1996, pp. 2-4).

(p. 64; pp. 79-81, Rollo.)

The defense is based on the testimony of its sole witness, accused-appellant. He denied the charges and testified that on May 10, 1996 at around 2 o'clock in the afternoon, he was at home quaffing alcoholic drinks with his friends. However, he could not recall how many they were and neither could he give their names. According to him, while they were having a drinking spree, he was suddenly arrested, for what reason he was not aware. Likewise, he could not remember who arrested him and what time he was brought to jail because he was too drunk, and he failed to inquire from the arresting officer why he was jailed (tsn, November 4, 1996, pp. 2-3).

The trial court did not accord credence to the testimony of accused-appellant, pointing out in its decision that the defense of denial and accused-appellant's alibi that he was at home having a drinking spree with alleged friends he could not identify, deserve no serious preoccupation of the mind. Nor yet can his claim that he was too drunk to know what transpired at the time when the rape was committed,

be given weight to disprove the charge against him.

Hence, the instant review and appeal, anchored on a single encompassing and catch-all argument that the trial court erred in finding accused-appellant guilty beyond reasonable doubt of the crime charged.

Absolute certainty of guilt is not, however, demanded by law for a conviction. It is sufficient that moral certainty as to the presence of the elements constituting the offense, as well as of the identity of the offender be established (*People vs. Casinillo*, 213 SCRA 777 [1992]).

In the instant case, it does appear that the main issue raised by accused-appellant is the credibility of victim Hazel Ramirez. Accused-appellant claims that the child-witness was too young to know the significance of an oath because she could not answer questions. She should have known that she was supposed to answer all questions and not only those to which answers had been rehearsed, hence, her entire testimony should be stricken off the record for lack of proper answers during cross-examination.

We do not agree.

Many times has this Court said that in reviewing rape cases, it will be guided by the settled realities that an accusation for rape can be made with facility. While the commission of the crime may not be easy to prove, it becomes even more difficult, however, for the person accused, although innocent, to disprove that he did not commit the crime. In view of the intrinsic nature of the crime of rape where only two persons normally are involved, the testimony of the complainant must always be scrutinized with great caution, and the evidence for the prosecution must stand or fall on its own merits and should not be allowed to draw strength from the weakness of the evidence for the defense (*People vs. Gabris*, 258 SCRA 663 [1996]; *People vs. Casinillo*, *supra*).

In the instant appeal, as invariably in almost all rape cases, the issue boils down to the credibility and story of the victim. Just as often, the Court is now constrained to rely on the observations of the trial court in the appreciation of testimony, said court being given the opportunity not equally enjoyed by the appellate courts. It has thus since become doctrinal that the evaluation by the trial court of testimonial evidence is accorded great respect because it has the direct chance to observe first hand the demeanor of the witness on the stand (*People vs. De la Cruz*, 754 SCRA 229 [1994]) and, therefore, is in a better position to form an accurate impression and conclusion (*People vs. Castillo*, 261 SCRA 493 [1996]).

The Court has meticulously gone over the testimony of the victim and ultimately reaches the dispiriting conclusion that the act complained of did occur. Hazel's testimony on the rape perpetrated against her is clear and could have only been narrated by a victim subjected to that sexual assault. Thus:

Q: Do you know this person who is the accused in this case by the name of Jimmy Mijano?

A: (Witness nodding her head.)

Q: What do you mean by nodding your head, Hazel?

A: No answer.

Q: Now, Hazel, if I say that you know Jimmy Mijano and he is inside the courtroom, please stand up and point to him?

A: That person, sir. (Witness crying as she points to a person inside the courtroom who, when asked by the interpreter, answered by the name of Jimmy Mijano)

Q: Why are you crying? Are you angry to Jimmy Mijano?

A: Yes, sir.

Q: You said you saw the titi of Kuya Jimmy Mijano, what did he do with his titi to you?

A: Ipinasok niya sa pekpek ko.

Q: What happened to your pekpek when Kuya Jimmy Mijano inserted his penis to your vagina?

A: It was bleeding.

Q: When Jimmy Mijano inserted his penis into your vagina, what did you feel?

A: I felt very painful, napakasakit po.

Q: Will you please elucidate before this Court, I withdraw. Will you please illustrate how Jimmy Mijano inserted his penis into your vagina?

A: (No answer. Instead, witness cries aloud.)

(tsn, pp. 2-4, July 29, 1996))

Accused-appellant attempts to discredit the victim's testimony by assailing her attitude and behavior during cross-examination. However, it must be borne in mind that the victim is an innocent, wholesome, and naïve 5-year old girl that this Court, or anyone for that matter, can not expect to articulate and verbalize answers to all the questions thrown at her. Being a child and a victim of rape, her testimony should be expected to be accompanied by emotional overtures. Verily, it is not right to judge the actions of a child who has undergone a traumatic experience by the norms of behavior expected under the circumstances from normal and mature people (*People vs. Tadulan*, 271 SCRA 233 [1997]). In fact, when victim Hazel was asked to illustrate how accused-appellant inserted his penis into her vagina, she could no longer give an answer and instead cried aloud. She was then forthwith cross-examined by the defense, and Hazel was just too dazed and shaken up, due probably to having to recall her traumatic experience, to answer the questions. She just continued to cry. Such scenario evidently strengthens the claim of the victim that she was sexually abused by accused-appellant, and not otherwise. Hazel cannot be expected to remember every ugly detail of the appalling outrage, especially so since she might in fact have been trying not to remember them and to erase them from her mind (*People vs. Butron*, 272 SCRA 352 [1997]). She cannot be expected to mechanically keep and narrate an accurate account of the horrifying experience she had undergone (*People vs. Rabosa*, 273 SCRA 142 [1997]). When a woman, more so if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape was committed (*People vs. Cabayron*, 278 SCRA 78 [1997]). Thus, Hazel's testimony is given full weight and credit.