

## EN BANC

[ G.R. NO. 168168, September 14, 2005 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. EDGARDO DIMAANO, APPELLANT.**

### D E C I S I O N

#### PER CURIAM:

On January 26, 1996, Maricar Dimaano charged her father, Edgardo Dimaano with two (2) counts of rape and one (1) count of attempted rape in the complaints which read as follows:

#### **Criminal Case No. 96-125**

That sometime in the year 1993 in the Municipality of Parañaque, 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 willfully, unlawfully and feloniously have carnal knowledge of the undersigned complainant Maricar Dimaano y Victoria, who is his own daughter, a minor 10 years of age, against her will and consent.

CONTRARY TO LAW.<sup>[1]</sup>

#### **Criminal Case No. 96-150**

That on or about the 29<sup>th</sup> day of December 1995, in the Municipality of Parañaque, 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 willfully, unlawfully and feloniously have carnal knowledge of the undersigned complainant Maricar Dimaano y Victoria, who is his own daughter, a minor 12 years of age, against her will and consent.

CONTRARY TO LAW.<sup>[2]</sup>

#### **Criminal Case No. 96-151**

That on or about the 1<sup>st</sup> day of January 1996, in the Municipality of Parañaque, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, try and attempt to rape one Maricar Dimaano y Victoria, thus commencing the commission of the crime of Rape, directly by overt acts, but nevertheless did not perform all the acts of execution which would produce it, as a consequence by reason of cause other than his spontaneous desistance that is due to the timely arrival of the complainant's mother.

CONTRARY TO LAW.<sup>[3]</sup>

Appellant pleaded not guilty to the charges.<sup>[4]</sup> Thereafter, trial on the merits ensued.

Complainant was born on August 26, 1983, and was 10 years old when she was first sexually abused in the morning of September 1993. While inside their house in Sucat, Parañaque, appellant entered her room and laid down beside her. He removed her clothes and asked her to lie face down then inserted his penis into her anus. Complainant cried and felt so much pain, but she kept the incident to herself as her father might hurt her.<sup>[5]</sup>

A few days later, appellant again ravished her. After removing his clothes, he asked her to lie on her side facing him and to place her thigh over his. While in that position, appellant inserted his penis into her vagina which caused tremendous pain.<sup>[6]</sup> As in the first incident, complainant kept the ordeal to herself. It was only in November 1995 that she confided the sexual abuses to her mother.

On December 29, 1995, appellant again assaulted her daughter. While leaning on the kitchen sink, he raised her t-shirt, fondled and kissed her breasts. He then removed their shorts, fondled her vagina and inserted his penis, but when her brother Edwin went out of his room, appellant immediately asked her to dress up.<sup>[7]</sup>

The last sexual assault happened in the afternoon of January 1, 1996. Appellant laid complainant down on the sofa then placed himself on top of her and made pumping motion even with their shorts on. Appellant stopped only when he heard the arrival of his wife.<sup>[8]</sup>

On January 3, 1996, complainant and her mother visited a relative in Cainta, Rizal, who upon learning of the abuses done by the appellant, advised them to go to Camp Crame where they filed a complaint.<sup>[9]</sup> The Medico-Legal Officer at the PNP Crime Laboratory examined complainant and found her to have suffered deep healed hymenal lacerations and was in a non-virgin state.<sup>[10]</sup>

Appellant denied the accusations against him. He testified that he married Maria Loreto V. Dimaano on December 25, 1976 and begot three children with her, namely, Edwin, Eric, and Maricar. He alleged that he worked in several companies abroad<sup>[11]</sup> but admitted that he was in the Philippines in September 1993. He contended though that he could not have raped complainant because he was always in the office from 7:00 a.m. until 9:00 p.m. waiting to be dispatched to another assignment overseas.<sup>[12]</sup>

He claimed it was impossible for him to rape his daughter on December 29, 1995 or January 1, 1996 because there were other people in the house. He argued that had he raped complainant, then she would not have accompanied him to the Parañaque Police Station and Barangay Hall of San Antonio to apply for police clearance and barangay I.D., and to Uniwide Shopping Center at Sucat, Parañaque, where they applied for membership at the Video City Club.<sup>[13]</sup> He also maintained that the fact that his daughter was in a non-virgin state did not conclusively prove that he was

responsible for it because it is also possible that his daughter had sexual intercourse with another man her age.<sup>[14]</sup>

The trial court found the testimony of complainant to be spontaneous and credible. She narrated the obscene details of her harrowing experience which no girl of tender age would have known unless she herself had experienced it. It found the delay in reporting the rape understandable due to the fear complainant had of her father who had moral ascendancy over her. Also, the quarrel between complainant's parents was not sufficient motive for the wife to lodge a serious charge of rape against appellant. It disregarded the Compromise Agreement and the *Salaysay sa Pag-uurong ng Sumbong* since complainant was not assisted by a lawyer when she signed the same. Besides, she testified in open court that she was pursuing the case against her father. The dispositive portion of the decision reads:

WHEREFORE, the accused Edgardo Dimaano is found guilty beyond reasonable doubt of the crimes of rape (2 counts) and the crime of attempted rape. For the rape committed in September 1993, he is sentenced to a penalty of *reclusion perpetua*. For the rape on December 29, 1995, he is imposed the supreme penalty of death. And for the crime of attempted rape, applying the Indeterminate Sentence Law (Act No. 4103 as amended), he is sentenced to a penalty of 4 years and 2 months of *prision correccional* medium to 10 years and 1 day to 12 years of *prision mayor* maximum. He is ordered to indemnify the victim the amount of P50,000.00 and to pay exemplary damages in the amount of P50,000.00.

SO ORDERED.<sup>[15]</sup>

The Court of Appeals affirmed with modifications the decision of the trial court, thus:

WHEREFORE, premises considered, the Decision dated 31 May 2000 of the Regional Trial Court of Parañaque City, Branch 257 convicting accused-appellant Edgardo Dimaano of the crime of rape is AFFIRMED with the following MODIFICATIONS:

In Criminal Case No. 96-125, the accused-appellant EDGARDO DIMAANO as found guilty of rape under Article 335 of the Revised Penal Code and sentenced to a penalty of *reclusion perpetua* is also ordered to pay the victim MARICAR DIMAANO Php50,000.00 as civil indemnity; Php50,000.00 as moral damages and Php25,000.00 as exemplary damages.

In Criminal Case No. 96-150, the accused-appellant EDGARDO DIMAANO, as found guilty of qualified rape under Article 335 of the Revised Penal Code, as amended by Section 11 of Republic Act 7659, and sentenced to death penalty, is also ordered to pay the victim MARICAR DIMAANO Php75,000.00 as civil indemnity; Php75,000.00 as moral damages and Php25,000.00 as exemplary damages.

In Criminal Case No. 96-151, the accused-appellant EDGARDO DIMAANO as found guilty of attempted rape under Article 335 of the Revised Penal Code, as amended by Section 11 of Republic Act 7659, is hereby

sentenced to an indeterminate penalty of 4 years, 2 months and 1 day to 6 years of *prision correccional* as minimum to 8 years and 1 day to 10 years of *prision mayor* as maximum. Accused-appellant is also ordered to pay the victim MARICAR DIMAANO Php30,000.00 as civil indemnity, Php25,000.00 as moral damages, and Php10,000.00 as exemplary damages.

In accordance with Sec. 13, Rule 124 of the Amended Rules to Govern Review of Death Penalty Cases (A.M. No. 00-5-03-SC, effective 15 October 2004), this case is CERTIFIED to the Supreme Court for review.

Let the entire record of this case be elevated to the Supreme Court.

SO ORDERED.<sup>[16]</sup>

In his Brief, appellant raises the following issues:

I. WHETHER OR NOT THE EVIDENCE ADDUCED BY THE PROSECUTION HAS OVERCOME THE PRESUMPTION OF INNOCENCE OF THE ACCUSED.

II. WHETHER OR NOT THE VOLUNTARY AND DUE EXECUTION OF THE AFFIDAVIT OF DESISTANCE BY THE PRIVATE COMPLAINANT SHOULD HAVE BEEN DULY CONSIDERED AS A FACTOR WHICH PUT TO DOUBT THE REASONS BEHIND THE FILING OF THE CRIMINAL CHARGES OF RAPE AGAINST HEREIN ACCUSED.<sup>[17]</sup>

Appellant contends that if complainant's accusations were true, then she could have reported them to the authorities when she accompanied him to Parañaque Police Station and the Barangay Hall of San Antonio or to their relatives when she had the opportunity to do so. He also argues that had the trial court considered the Compromise Agreement and *Sinumpaang Salaysay ng Pag-uurong ng Sumbong*, it would have known that complainant was only pressured by her mother into filing the complaint.

We are not persuaded.

This credibility given by the trial court to the rape victim is an important aspect of evidence which appellate courts can rely on because of its unique opportunity to observe the witnesses, particularly their demeanor, conduct and attitude during direct and cross-examination by counsel.<sup>[18]</sup> Absent any showing that the trial judge overlooked, misunderstood, or misapplied some facts or circumstances of weight which would affect the result of the case, his assessment of credibility deserves the appellate court's highest respect.<sup>[19]</sup>

It is likewise well established that the testimony of a rape victim is generally given full weight and credit, more so if she is a minor. The revelation of an innocent child whose chastity has been abused deserves full credit, as her willingness to undergo the trouble and the humiliation of a public trial is an eloquent testament to the truth of her complaint. In so testifying, she could only have been impelled to tell the truth, especially in the absence of proof of ill motive.<sup>[20]</sup>

In the case at bar, the trial court and the Court of Appeals gave credence to the testimony of the complainant who was only 12 years old when she narrated to the court the violations of her person as follows:

*For rape committed in September 1993:*

ATTY. AMBROSIO:

When was the first time that he committed sexual assault upon you?

A: September 1993.

COURT:

No specific date?

A: I cannot remember, Ma'am.

ATTY. AMBROSIO:

Can you remember how old were you at that time?

A: 10 years old, Ma'am.

...

Q: So, after he removed your T-shirt, bra and pan(t)y and shorts, what happened next, if anything happened?

A: He asked me to lie face down. Pinadapa po niya ako.

Q: After he asked you to lie face down, what happened next?

...

RECORD: The witness is crying.

A: He inserted in my anus – ipinasok niya ang titi niya sa puwet ko.

...

Q: Did you tell anybody about what happened to you?

A: No, Ma'am.

Q: Why not?

A: Because I was afraid of my father.

Q: Why are you afraid of your father?

A: Because he might hurt me.

Q: After that incident in September 1993, do you recall any other incident that occurred?

A: There is, Ma'am.

Q: When was it?

A: After a few days after the first incident.

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