

EN BANC

[G.R. No. 139416, March 12, 2002]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ERNESTO HERMANES, ACCUSED-APPELLANT.**

D E C I S I O N

MELO, J.:

Before us on automatic review is the decision rendered by the Regional Trial Court of the 8th Judicial Region (Branch XXX, Basey, Samar) finding appellant Ernesto Hermanes guilty of the crime of rape and imposing upon him the supreme penalty of death.

The conviction of appellant stemmed from an Information dated September 25, 1996 which reads:

That on or about the 2nd day of November, 1995 at about 10:00 o'clock in the evening, at Brgy. Maligaya, Municipality of Sta. Rita, Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of violence and intimidation, did, then and there, willfully, unlawfully and feloniously succeed in having carnal knowledge without the consent and against the will of the complainant MARINA HERMANES, inside her house, the accused being her step-father, with threats of killing her and all members of her family.

CONTRARY TO LAW.

(p. 7, Rollo.)

At his arraignment, appellant pleaded not guilty. Thereupon, trial ensued.

The relevant facts as presented by the prosecution are faithfully summarized in the brief submitted by the Solicitor General, to wit:

On or about November 2, 1995 at around ten o'clock in the evening, private complainant Marina Hermanes, who at that time was ten (10) years old, was in the house shared by appellant Ernesto Hermanes, her stepfather, and his wife Milagros (p. 6, TSN, July 22, 1997). Marina's natural mother already died (p. 135, Records). Marina further declared that she has been living with her stepfather, the appellant, and his wife Milagros since she was two (2) years old (p. 6, TSN, July 22, 1997).

Marina was lying in her bedroom when appellant entered and undressed her. Appellant opened his trousers, placed himself on top of private complainant, and successfully inserted his organ ("sili") into her vagina ("pipi"), Marina felt pain (p. 8, *ibid.*). Thereafter, appellant made a push

and pull motion for quite some time (p. 9, *ibid.*). Having satisfied himself, appellant stood up, closed his trousers and left Marina alone to attend to his carabao (pp. 110-11, *ibid.*).

The following day at eight (8) o'clock in the morning, Marina proceeded to the house of Soltero Salubre, a Kagawad of their barangay at that time, and told him that her father, Ernesto Hermanes, raped her, and has raped her twice before the incident of November 2, 1995 (pp. 6, 12, TSN, January 14, 1998). Because of said complaint, Salubre brought Marina to the Department of Social Welfare and Development (DSWD) Office in Sta. Rita, Samar (p. 9, *ibid.*). Marina has since been in the custody of the DSWD Home for Girls (Abused) Children, Lingap Center, Palo, Leyte (p. 5, TSN, July 22, 1997).

(pp. 4-5, Appellee's Brief.)

On November 4, 1995, or 2 days after the rape, Marina was physically examined by the Municipal Health Officer of Sta. Rita, Dra. Rusela Grapa. Marina was found to have hymenal lacerations at the 3 and 7 o'clock positions, which, according to Dra. Grapa could have been caused by the insertion of male organ (tsn, November 11, 1996, p. 5). Moreover, on direct examination, Dra. Grapa testified that these lacerations were "fresh."

Q: When you examined the patient, what was then the nature of the lacerations? New or healing?

A: It was a fresh healing laceration. It was fresh but starting to heal.

Q: If these lacerations were fresh but healing, can you estimate the time of the incident?

A: Yes.

Q: And from your day of examination, when could have the incident happened?

A: Between 24 to 48 hours.

Q: This laceration, was this caused by sexual intercourse?

A: Yes.

(tsn, August 14, 1997, p. 10-11.)

As the prosecution was about to call its last witness on January 14, 1998, appellant, through counsel, manifested his desire to withdraw his previous plea of not guilty and to change the same to a plea of guilty. The trial court allowed him to do so. Thus, appellant was re-arraigned and, with the aid of his counsel, he subsequently pleaded guilty to the crime charged (Record, p. 86).

The change in plea notwithstanding, the prosecution continued with the presentation of its last witness in order to establish appellant's guilt and precise degree of culpability (*ibid.*).

Thereafter, on July 14, 1998, appellant, through new counsel Atty. Mario Nicolasora, filed a manifestation in court denying that he wanted to change his original plea of not guilty to guilty. Consequently, the trial court ordered the withdrawal of appellant's earlier plea of guilty and the reversion of his plea to not guilty (*ibid.*, p. 104).

At the subsequent hearing set on August 12, 1998, the defense was to present appellant as its witness. Instead of so doing, Atty. Nicolasora asked that the presentation of evidence for the defense be deferred and that appellant be allowed to prove intoxication, degree of instruction and education, and the lack of intent to do so grave a wrong as that committed, in order to mitigate his liability, all for the purpose of convincing the trial court to recommend to the Office of the President the grant of executive clemency (*ibid.*, p. 107).

On August 14, 1998, appellant, through counsel, filed a manifestation admitting responsibility for the November 2, 1995 rape, and asked for forgiveness from complainant and the public in general. Likewise, appellant manifested that he would present evidence to prove certain mitigating circumstances in his favor and reiterated his request for the trial court to recommend executive clemency (*ibid.*, p. 108).

However, despite having been given ample opportunity to prove supposed mitigating circumstances, appellant inexplicably defaulted thereat, and given the long delay that had attended the hearing of the case for the defense, the trial court was constrained, on December 21, 1998, to consider the defense as having waived its right to present evidence. The case was thus considered submitted for final resolution.

On March 19, 1999, the trial court rendered its decision convicting appellant. The dispositive part of the decision states:

IN VIEW OF THE FOREGOING, finding the accused Guilty beyond reasonable doubt of the heinous crime of raping his own 10-year-old stepdaughter Marina Hermanes through the conclusive evidences presented by the prosecution as well as his admission of the same through his counsel, he is hereby sentenced to suffer the extreme penalty of DEATH. However, taking into consideration the underlying circumstances herein as above pointed out, the Court hereby recommends the granting of Executive Clemency to the said accused.

Upon promulgation of the above, let the record herein be forwarded to the Honorable Supreme Court for automatic review.

SO ORDERED.

(pp. 23-24, Rollo.)

Appellant assails the trial court on the sole issue of the imposition of the penalty of death.

The case being one on automatic review, the Court undertook an examination and scrutiny of the evidentiary record, and on the basis thereof, it now affirms the trial

court's finding of guilt.

The prevailing rule is that the testimony of rape victims who are young and immature deserves full credence (*People vs. Bernaldez*, 294 SCRA 317 [1998]). The Court's attention has not been called to any dubious reason or improper motive on the part of Marina that would have impelled her to charge and testify falsely against appellant in regard to so heinous a crime as rape. Where no compelling and cogent reason is established that would explain why the complainant was so driven as to blindly implicate an accused, the testimony of a young girl of having been the victim of a sexual assault cannot be discarded (*People vs. Abella*, 315 SCRA 36 [1999]).

The evidence establishes beyond reasonable doubt the guilt of appellant. The testimony of complainant is plain, straightforward, and positive. With clarity and candor, complainant recounted the manner in which she was raped by appellant, viz:

Q: Okey, do you recall where were you on November 2, 1995 at about 10:00 o'clock in the evening?

A: Yes, sir.

Q: Where were you then, if you can recall?

A: I was in the house.

Q: And where is this house of yours located that you are referring to?

A: Brgy. Maligaya, Sta. Rita, Samar.

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Q: While you were there in your house that evening do you recall of any incident that occurred to you?

A: Yes, sir.

Q: And what is this incident that occurred to you?

A: That night I was undressed.

Q: By whom were you undressed?

A: Ernesto Hermanes.

Q: Where were you then particularly inside the house when you were undressed?

A: I was in the bedroom.

Q: How did Ernesto Hermanes undress you?

A: He placed himself on top of me.

Q: What were you wearing then if you can recall?

A: I was wearing a dress.