

## EN BANC

[ G.R. No. 132364, May 23, 2001 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ALFREDO ALVERO Y TARADO, ACCUSED-APPELLANT.**

### D E C I S I O N

#### PER CURIAM:

For automatic review is the September 30, 1997 Decision<sup>[1]</sup> of the Regional Trial Court, Branch 128, of Caloocan City, rendered in Crim. Case No. C-51046, convicting accused-appellant Alfredo Alvero y Tarado of the rape of a four-year old child and imposing upon him the death penalty.

In an Information<sup>[2]</sup> dated October 14, 1996, appellant was charged, as follows:

That on or about the 7th day of October, 1996, in Area D, Camarin, Novaliches, Caloocan City, and within the jurisdiction of this Honorable Court, accused ALFREDO ALVERO y TARADO with lewd designs, and by means of threat or violence, did then and there wilfully, unlawfully and feloniously, lie and succeeded in having sexual intercourse with minor Ameerah Abu-Hanieh, a four-year old child.

On November 6, 1996, accused-appellant was arraigned and, through the assistance of his counsel de oficio, Atty. Ojer Pacis of the Public Attorneys Office, entered a plea of "not guilty." Trial on the merits thereafter ensued.

The prosecution presented three witnesses: the four-year-old victim Ameerah Abu-Hanieh, her mother Josephine and Dr. Aurea Villena, medico-legal officer of the National Bureau of Investigation (NBI). Their testimonies are summarized by the Solicitor General in the Appellee's Brief, as follows:<sup>[3]</sup>

At around 1:00 p.m. of October 7, 1996, 4 year old Ameerah Abu-Hamieh was lying on her bed when appellant, a houseboy in the Abu Hamieh household, barged into her room. Appellant then kissed Ameerah and forced his penis into her vagina (TSN, Jan. 27, 1997, pp. 5 and 9; TSN, Feb. 4, 1997, p. 3).

Ameerah's private parts subsequently bled, which prompted appellant to wash it with water. Moments after the rape, the victim's aunt Evy arrived to replace appellant in taking care of Ameerah and the other children, causing appellant to suddenly leave (TSN, Jan. 27, 1997, pp. 9-10).

After two (2) days, or on October 9, 1996, Ameerah confided to her

mother Josephine Abu-Hamieh about the incident. The latter was naturally shocked by such revelation. She promptly brought Ameerah to the NBI the following morning for medical examination (TSN, Feb. 4, 1997, pp. 5-6).

Dr. Aurea Villena of the NBI Medico Legal Division, after conducting a genital examination on Ameerah, found a hymenal laceration on the victim's genitals, which is normally caused by sexual intercourse (TSN, Jan. 29, 1997, p. 4).

On the other hand, according to the sole defense witness, appellant Alvero himself, the pertinent facts are the following:<sup>[4]</sup>

ALFREDO ALVERO accused in the case at bar testified that on October 7, 1996 while he was at the store of the Abu-Hanieh's, he was fetched by Mrs. Abu-Hanieh and brought to their house. She (Mrs. Abu-Hanieh) requested the accused to take care of the children while she is attending to some important matters. After Mrs. Abu-Hanieh left, he watched television while the three (3) children of Mrs. Abu-Hanieh (Ameerah, Aizor and Amir) were sleeping in their room. After a while, Ameerah came out of her room and told him she wanted to urinate. He led her outside the house and after Ameerah was able to relieve herself, he washed her vagina with water then carried her back to her room and he resumed watching television. He left the house when Ameerah's aunt, Tita Evy, came to take his place.

After both parties rested their case, the court a quo convicted appellant as charged. The dispositive portion of the assailed Decision reads:

WHEREFORE, premises considered, the accused Alfredo Alvero y Tarado is hereby found guilty beyond reasonable doubt of the crime of rape and the penalty of DEATH is hereby imposed upon him and to pay the amount of P50,000.00 to the victim as for moral damages.

Let the entire records of this case be elevated to the Supreme Court for review.

In convicting accused-appellant, the trial judge explained:<sup>[5]</sup>

In statutory rape cases where the victim is below 12 years old, the circumstances of force, intimidation or that the victim was deprived of reason or was rendered unconscious need not be proven. Proof that sexual intercourse had indeed taken place is sufficient to convict. There are three vital witnesses for the prosecution: First, the testimony of the

victim herself Ameera, who unequivocally stated in the witness stand that the accused inserted his penis into her vagina (TSN, Jan. 27, 1997, p. 9); second, the testimony of the Medico-legal Officer that there was hymenal laceration on the vagina of the victim which is normally caused by sexual intercourse (TSN, Jan. 29, 1997, p. 6); and last, the testimony of the mother of Ameerah the victim of what her daughter confided to her of the rape committed by the accused against her (TSN, Feb. 4, 1997, pp. 5 & 6).

Furthermore, the Court noted how the victim demonstrated on the witness stand how she was raped by the accused with the use of two dolls, one representing male and the other female and then putting the male doll on top of the female doll and demonstrating by a pumping motion with the aid of the dolls (TSN, Jan. 27, 1997, p. 11).

To this Court, the foregoing testimonial and illustrative evidence constitute proof that coitus had indeed taken place between the accused and victim Ameerah. The victim who is such a tender age and absent any evidence that she was coached as there was no evidence to show she was taught or induced to say that she was raped when in fact she was not, for her to fabricate the facts of rape thus charging the accused falsely of the crime of rape is to the mind of the Court certainly beyond her mental capacity. To invent the idea of charging the accused for the crime of rape is simply beyond the mental capacity of this child who was only 4-years old if she was not a victim of the lustful act of rape committed against her. At this point, it is stressed, that the narration of how the rape was committed was delivered by the victim in a straight forward manner. She did not hesitate in her answers to preposterous questions propounded by the defense counsel. The Court debunks the insinuation by the defense of the possibility of coaching by the mother of the victim. The Court believes that no mother of sound mind would expose her child to the possibility of public ridicule and trauma of such a demeaning experience that she will live with throughout her life.

In his Brief, accused-appellant assigns a single error in the RTC Decision, thus:<sup>[6]</sup>

THE LOWER COURT GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT OF THE CRIME CHARGED IN THE INFORMATION DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

In reviewing trial court convictions for rape, this Court has generally been guided by the following principles: (1) an accusation for rape can be made with facility and while it is difficult to prove, it is more difficult for the person accused, though innocent, to disprove it; (2) in view of the intrinsic nature of the crime where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense.<sup>[7]</sup>

Guided by these principles, we examined closely the evidence for the prosecution. The principal complainant is an innocent four-year-old child, Ameerah. She described her ordeal in a clear, straightforward and categorical manner, as follows:

Q Ameerah[h], do you know Jonjon Alvero y Tarado?

A Yes, sir.

Q If you will see him again in this Court room, will you be able to identify him?

A Yes, sir.

Q Will you point to this Honorable Court Jonjon Alvero?

Witness

A Yes, sir. (Witness pointing to a male person whom when asked answered by the name of Alfredo Alvero).

State Prosecutor Lao

May we manifest your honor that Alfredo Alvero is also known as Jonjon Alvero by the witness and also by the households for which the accused was formerly employed.

Court

Manifestation noted. Proceed counsel.

State Prosecutor Lao

Q Ameerah, did Jonjon ever do something against you, to your body?

Witness

A Yes, sir.

Q What did the accused Jonjon Alvero do to you?

Witness

A He inserted his penis into my vagina, sir.

State Prosecutor Lao

Q What did you feel when Jonjon inserted his penis into your vagina?

A And he kissed me sir. (Witness pointing to her lips).

Q Were you hurt when Jonjon was able to penetrate his penis into your vagina?

A Yes, sir.

State Prosecutor Lao

Q After that, what did Jonjon do?

Witness

A He washed my vagina, sir.

Q After that what happened next?

A Somebody knocked at the door and it was my Tita Evy. Jonjon opened the door and when Tita Evy came inside, Jonjon left, sir.

Q When Jonjon inserted his penis into your vagina, where were you at that time?

A I was in the room, sir.

Q What were you doing inside the room?

A I was sleeping, sir.

State Prosecutor Lao

Q So, when Jonjon came to your room, you were sleeping and what did Jonjon do when you were sleeping?

Witness

A He raped me, sir.

Q What do you mean rape?

A He inserted his penis into my vagina, sir.

Q I am showing to you a pair of doll[s], a male and a female doll. Now, will you describe to this Honorable Court the act that Jonjon [did] to you when you were in your room?

State Prosecutor Lao

May we manifest you honor that the witness is showing how, by the use of two (2) dolls, male and female, and she demonstrated what was done to her by the accused in this case.

That would be all for the witness, your honor. [8]

On cross-examination by the defense counsel, she did not waver one whit from her story. She maintained that the accused-appellant inserted his penis into her vagina. Thus:

Atty. Pacis:

(to witness )

Did any male person inserts his penis in your pek-pek other than Jhon-Jhon?

A Only Jhon-Jhon, sir.

Q Do you know what do you mean by rape?

Do you know the meaning of rape?

A The penis was inserted to my vagina.

Q How did Jhon-Jhon inserts his penis in your pek-pek?

A (witness demonstrated by push and pull motion)

He kissed me on my lips, sir.

Q What was inserted in your pek-pek, is it his finger?

A His penis, sir.

Q Did you see the penis of Jhon-Jhon?

A No, sir.

Q Awhile ago, you demonstrated that the penis of the accused was inserted in your pek-pek by using your finger. Do you mean to say that the penis or finger of the accused was used?

A Penis, sir.

Q What did Jhon-Jhon do with his fingers?

A He did not inserts his fingers in my vagina but his penis, sir.

Q You said that you did not see the penis of the accused. Is it not?

A No, sir.

Q Why did you say that the penis of the accused was inserted in your pek-pek, if you did not see it?