

EN BANC

[G.R. Nos. 132548-49, August 31, 2001]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALEJO MIASCO, ACCUSED-APPELLANT.

D E C I S I O N

PER CURIAM:

This is an automatic review of the death penalty imposed by the Regional Trial Court of Davao City on ALEJO MIASCO y MARSON, for the rape of his 13-year old daughter, Juvy Miasco, allegedly committed as follows:

I. Criminal Case No. 38,465-97:

"The undersigned accuses the above-named accused of the crime of RAPE, under Article 335 of the Revised Penal Code in relation to R.A. No. 7659, otherwise known as the law on Heinous Crimes, upon the instance of JUVY MIASCO Y (B)ARIQUIT, a **13-year old minor** whose affidavit is hereto attached and forms part of this information, committed as follows:

That during the period **October 1996 and December 1996**, in the City of Davao, 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 had sexual intercourse with the offended party, **his daughter**, against her will.

CONTRARY TO LAW."^[1] (emphases ours)

II. Criminal Case No. 38,465-A-97:

"The undersigned accuses the above-named accused of the crime of RAPE, under Art. 335 of the Revised Penal Code in relation to R.A. No. 7659, otherwise known as the law on Heinous Crimes, upon the instance of complainant Juvy Miasco y Bariquit, a **13-year old minor**, whose affidavit is hereto attached and form[s] part of this information, committed as follows:

That sometime in **February 1997**, in the City of Davao, Philippines and within the jurisdiction of this Honorable Court, the above-mentioned accused by means of force and intimidation did then and there wilfully, unlawfully and feloniously had sexual intercourse with the offended party, **his daughter**, against her will.

CONTRARY TO LAW."^[2] (emphases ours)

Accused with the assistance of counsel *de officio*, pled "not guilty."

The prosecution evidence came chiefly from the testimonies of the complainant, Juvy Miasco, her mother, Juliana Miasco, Dr. Prescilo Engcong,

Social Worker Milagros Basmayor and SPO1 Antonio Balolong.

The Certificate of Live Birth of Juvy Bariquit Miasco (complainant) shows that she was born on December 14, 1983. She is the eighth child of spouses Juliana Bariquit and Alejo Miasco (accused).^[3]

The complainant testified that in the first week of October 1996, she and the accused harvested vegetables in their farm in Bugac, Ma-a, Davao City. After they harvested the vegetables, they went to their makeshift hut near their vegetable garden which is approximately twenty (20) meters from their house.

Once inside the hut, the accused pointed a knife at the complainant and warned her not to tell anything to her mother and siblings. He pulled down her shorts and panty. Next, he took off his shorts and forced her to lie on the floor. He placed himself on top of her and inserted his penis into her vagina. She tried to push him but to no avail. She felt pain in her stomach and cried. After the rape, she headed for home still crying. Nonetheless, she opted to languish in silence due to her father's threat that "something will happen to their family."^[4] She was 12 years and 10 months old.

The complainant's tribulation went on. She testified that in the first week of November 1996, the accused ordered her to harvest vegetables. After she had done so, the accused, armed with a knife, forcibly took her again to their makeshift hut. There, the accused undressed her, laid on top of her, and did the pumping motion. She tried to fight back but he embraced her tightly. He finally let go of her when she told him that it was enough because she was in pain.^[5] She was 12 years and 11 months old.

A week or so after the complainant had turned thirteen (13), particularly in the morning of December 23, 1996, the accused molested her again. The complainant's mother, Juliana, was then at the public market selling vegetables. The complainant declared that the accused once more ordered her to go to the vegetable garden with him. Thereafter, they went to the hut to seek refuge from the scourging sun. Inside the hut, the accused forcibly removed her underwear. She kept pushing him away but he held her hands. He sexually molested her and after satisfying his lust, he told her to go home.^[6] The complainant kept silent on the sexual abuses of the accused for her sisters' sake.^[7]

The complainant was again raped on February 5, 1997. The accused took her to their vegetable garden on the pretext that they would gather *camote* tops. He brought her to their hut and undressed her. He then sat on the floor and ordered her to sit on his lap. While in said position, he had carnal knowledge of the complainant.^[8]

On that occasion, Julianan happened to be in their house washing clothes. She saw the accused and her daughter going towards their hut. The hut was twenty (20) meters away from where she was. She felt something strange and followed them. What she witnessed rendered her weak and speechless. The complainant, without any panty on, was sitting on the lap of the accused. The accused, clad only in T-shirt and brief, was kissing her. Juliana slumped in front of the two and cried. Startled, the accused pushed

the complainant away.^[9] The complainant hurriedly put on her shorts and ran away crying.^[10] Juliana followed her.

The accused put on his shorts and talked with Juliana. He pleaded with her not to reveal the incident to anyone. Juliana was unmoved. That same day, she reported the incident to the *barangay captain*.^[11]

The complainant underwent a medical examination at 6:00 p.m. of February 5, 1997 at Davao Medical Center. Dr. Prescilo Engcong found lacerations on complainant's hymen. Her orifice admitted 2 fingers.^[12]

SPO1 Antonio Balolong, the designated child and youth relation officer of Precinct No. 3, GSIS, Matina, Davao City, testified that Chief Investigator SPO4 Cloribel referred to him the complainant and her mother. He learned that the accused was at the hospital for treatment. Allegedly, he tried to kill himself by slashing his neck and stabbing his stomach.^[13] He verified the report and found the accused at Davao Medical Center. The attempt of the accused to commit suicide was recorded in the police blotter.^[14]

In the meantime, Juliana endorsed the complainant to the Davao City Social Services Development to shield her from the prying eyes of their neighbors. Complainant was temporarily placed under the care and supervision of social worker Milagros Basmayor of *Balay Dangupan*.

The accused denied the charges against him. He claimed that he managed to send his children to school, including the complainant, by growing and selling vegetables. He denounced the complainant as a problem child. Occasionally, he would lose his temper and beat her to discipline her. Allegedly, she did not attend her classes. After she stopped schooling, he required her to help him in harvesting their vegetables.

He declared that his marital relationship with Juliana suffered because she disliked the way he disciplined their children, particularly the complainant. Juliana would often defend their children.

He denied raping the complainant. He said that the complainant was always with her siblings whenever they would go to the hut to rest after they had harvested their vegetables.

He accused his wife of fabricating the February 5, 1997 incident. Allegedly, she did not approve of the manner he disciplined the complainant. He further accused the City Social Welfare Service Office of promising the complainant that the social welfare office would send her to school and buy her new clothes and other things if she would testify against him.

After the trial, the court *a quo* found the accused guilty as charged. The accused was sentenced to suffer the death penalty and ordered to indemnify the victim. The dispositive portion of the Joint Judgment^[15] of the trial court, dated November 17, 1997, reads:

"WHEREFORE, finding the evidence of prosecution more than sufficient to prove the guilt of accused, Alejo Miasco y Marson, in both above informations of the offense charged, pursuant to Sec. 11 of Republic Act

7659, amending Art. 335 of the Revised Penal Code in relation to par. 7 of said Republic Act, as well as subparagraph (1), to wit:

'When the victim is [under] 18 years of age, where the offender is [a] parent-ascendant (*sic*), step-parent, guardian, relative by consanguinity or affinity within third civil degree or the common law spouse or parents (*sic*) of the victim.'

Accordingly, in Crim. Case No. 38,465-97, accused Alejo Miasco y Marson, pursuant to Sec. 24 of Republic Act 7659, is sentenced to suffer a supreme penalty of death through lethal injection, in accordance with Republic Act No. 8176 (*sic*) and in the manner and procedure for its execution, in accordance to (*sic*) law.

In Crim. Case No. 38,465-97, accused Alejo Miasco y Marson, is sentenced to suffer the same above-penalty in Crim. Case No. 38,465-97, or death by lethal injection, in the manner and procedure for its execution pursuant to Republic Act No. 8176 (*sic*).

Moreover, pursuant to Art. 100 of the Revised Penal Code and in relation to Art. 104 of the same Code, covering civil indemnity, accused is furthermore ordered to pay complainant, Juvy Miasco an amount of P50,000.00, in each of the above criminal cases by way of civil indemnity and reparation of damages and/or wrong done to her, resulting in the filing of these cases which brought about her untold sufferings as well as her dishonor.

Pursuant finally to Sec. 22 of Republic Act No. 7659, par. 2 thereof, the Branch Clerk of Court of this court is ordered to immediately elevate the entire records of these cases with the Clerk of Court of the Supreme Court, Manila, for the automatic review by the Supreme Court and issuance of its own decision en banc, as the case may be.

SO ORDERED."

The case is now before us on automatic review.

It is the appellant's contention that:

"THE COURT A QUO ERRED IN CONVICTING THE ACCUSED ALEJO MIASCO OF RAPE NOTWITHSTANDING THE PROSECUTION'S FAILURE TO ESTABLISH HIS GUILT BEYOND REASONABLE DOUBT."

We affirm the judgment of conviction with modification.

The records support the findings of the trial court that the appellant raped the complainant more than once. The first rape was committed in **October 1996**.

She testified as follows:^[16]

"(FISCAL EVANGELIO):

Q - Do you know the accused in this case, Juvy?

A - Yes, sir.

Q - Why do you know him?

A - Because he is my father.

x x x

x x x

x x x

Q - How old are you now, Juvy?

A - 13 years old.

x x x

x x x

x x x

Q - Specifically during the first week of **October 1996**, where were you?

A - In our farm, harvesting vegetable.

Q - Are you referring to your farm at Bugac, Ma-a?

A - Yes, sir.

x x x

x x x

x x x

Q - While you and your father, Alejo Miasco were harvesting vegetable, what happened if any?

A - After being through with harvesting our vegetable, he told me that I should go with him to our hut because we had to harvest also bananas.

Q - Where is that hut located?

A - A little bit farther from our house.

Q - Who is staying in that hut if any?

A - None.

Q - Now, did you go with your father, as what was told?

A - Yes, sir.

Q - Were you able to reach the hut?

A - Yes, sir.

Q - When you reach in (*sic*) the hut with your father, what happened?

A - He asked me to up the hut.

Q - Did you go up the hut as instructed by your father?

A - Yes, sir.

Q - And what happened next?

A - He also went up the hut.

Q - And what happened next?

A - He point(ed) at me a knife.