

EN BANC

[G.R. No. 134768, October 25, 2000]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MARIANO SARMIENTO, ACCUSED-APPELLANT.**

D E C I S I O N

QUISUMBING, J.:

For review is the decision^[1] dated April 29, 1998 of the Regional Trial Court of Mandaue City, Branch 28, convicting appellant Mariano Sarmiento, and sentencing him to suffer the penalty of death, for the rape of a nine-year-old girl, Jocelyn Soquiño, allegedly committed as follows:

That on September, 1996, and or prior thereto, at Milagrosa Village, Sitio Sambag, Barangay San Vicente, Municipality of Liloan, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and by means of force and intimidation, did then and there willfully, unlawfully and feloniously lie and succeed in having carnal knowledge with Jocelyn Soquiño, nine (9) years of age, against her will and consent.^[2]

Jocelyn Soquiño was only two (2) years old when her father, Roberto and mother, Teofila separated. Roberto thereafter entrusted Jocelyn to the care of his sister Alicia Sarmiento, wife of appellant.^[3] According to the prosecution, sometime in September 1996, when Jocelyn was already nine years old, while Alicia and her children were out at work, appellant tied Jocelyn's legs separately to the wall while her hands were tied to a piece of wood and gagged her with a handkerchief to prevent her from shouting.^[4] While she was tied and lying on the floor, appellant removed her dress and panty. Then he took off his underwear. Jocelyn clearly saw his whole body, his testicles and his erect penis. When he mounted her, she felt severe pain as his penis penetrated her vagina several times. Later, she saw blood on her vagina.^[5] Jocelyn told her aunt, Alicia, about the incident but fearing that appellant might hurt Jocelyn, Alicia did not confront her husband.^[6]

After this incident, appellant and his family would regularly leave for work. Jocelyn would be left at home, locked up alone inside the house. Their neighbors, who pitied her, later helped her escape. They brought her to the nearest Department of Social Welfare and Development (DSWD) office.^[7]

A few days afterwards, a DSWD employee informed Jocelyn's father about her ordeal.^[8] On October 2, 1996, Dr. Susan Lai-Casiño of VSMC Obstetric-Gynecological Department conducted a medical examination on Jocelyn and found that her genitalia bore an old healed hymenal laceration at 6:00 o'clock position.^[9]

On February 25, 1997, appellant was charged of rape in a complaint filed by Jocelyn, assisted by her father. On May 27, 1997 appellant, assisted by his counsel, was arraigned and pleaded not guilty. Trial ensued.

Appellant denied that he sexually molested Jocelyn and said that the charge was just manufactured by her father. Appellant claimed that in September 1996, he was working at Cebu Country Club as caddie and he left their house at around 4:30 or 5:00 o'clock A.M. as he usually does.^[10] His wife, Alicia, corroborated this and added that her husband was never absent from work during the whole month of September. Further, she claimed that Jocelyn had been in their custody from the time she was four months old. Her father had tried to get her back but they refused, that was why they falsely charged her husband with rape.^[11] They refused to give Jocelyn to her father because she was studying and they could still support her education.^[12]

Betty Sarmiento, appellant's daughter-in-law, also testified in appellant's behalf. She said that she and her husband were staying with her in-laws and in the whole month of September, she was always in the house and never went out, even to the market. She only went out to hear mass on Sundays and everytime she did so, Jocelyn was with her. Further she said that when all the people in the house went out for work, she and Jocelyn were left behind.^[13]

On April 29, 1998, the trial court rendered its decision, thus:

WHEREFORE, foregoing premises considered, judgment is hereby rendered finding the herein accused guilty beyond reasonable doubt for the crime of rape, said accused is hereby sentenced to the penalty of death, with accessories of the law and to indemnify the offended party, Jocelyn Soquiño, the amount of P50,000.00 by reason of the commission of the offense of rape upon her and to pay the costs.

SO ORDERED.^[14]

Hence this appeal. Appellant avers that the trial court erred:

I. ... IN NOT GIVING WEIGHT AND CREDENCE TO THE TESTIMONY OF THE DEFENSE NOTWITHSTANDING THE FACT THAT SUCH IS THE BARE TRUTH.

II. ... FOR PENALIZING HIM WITH DEATH. THE INFORMATION CHARGED HIM OF SIMPLE RAPE ONLY AS DEFINED AND PENALIZED UNDER ARTICLE 335 OF THE REVISED PENAL CODE.^[15]

The first issue concerns primarily the credibility of witnesses. Appellant argues that the testimony of private complainant that he raped her in their house had no basis. At the time of the incident he was busy working as a caddie at Cebu Country Club. He claims he always leaves the house early in the morning and returns home late in the evening. There was no testimony that he returned home between morning and evening. Further, he insists that the rape story was a mere concoction. Such a concoction was highly probable, he said. For at the time of the alleged incident Jocelyn, who was nine (9) years old, could already be useful to her father. It would have been difficult for her father to get her from the Sarmientos since they took care of her from infancy, without the concocted charge.

Appellee discounts appellant's attack on Jocelyn's credibility as weak. For the trial court's evaluation of the credibility of a witness and her testimony is entitled to great respect, since it is the trial judge who observed the demeanor of the witnesses and is in a better position to assess the truthfulness of the testimonies.^[16] In the absence of any clear showing that the trial judge has overlooked, misunderstood or misapplied some facts or circumstances of weight and substance, this Court should not disturb the trial court's evaluation of witnesses' credibility. In this case, private complainant with simplicity, spontaneity and candidness vividly recounted in detail her ordeal at the hands of the appellant. Her testimony was clear, unequivocal and straightforward. She positively identified appellant as her rapist.

In reviewing the records, we find that appellant for his part merely denied he raped the victim. Denials, if unsubstantiated by clear and convincing evidence, are negative and self-serving and deserve no weight in law. They cannot be given greater evidentiary weight over the testimony of a credible witness who testified on affirmative matters. Between the positive declaration of the prosecution witness and the negative statements of the accused, it is the former that deserves more credence.^[17]

As found by the trial court, in which we concur, private complainant Jocelyn was a credible witness. She was very direct, clear and spontaneous in relating how her uncle-in-law, Mariano, raped her. Her testimony reads:

Fiscal to witness:

Q : Why did you say that Mariano Sarmiento did not treat you well?

x x x

A : Because he raped me.

Q : Now, can you tell this Honorable Court when did Mariano Sarmiento rape you? Was it last September, 1996 or prior to this date?

x x x

A : Before September.

Q : On September, can you remember whether you were raped by Mariano Sarmiento?

A : Yes.

Q : Can you tell the Honorable Court as to how did Mariano Sarmiento rape you?

A : He tied my hands and my feet with a piece of rope, and gagged me with a piece of handkerchief.

Q : When Mariano Sarmento did this to you, covering your mouth and tying you with a rope-both hands and feet-what did he do to you?

A : He immediately rode astride me.
Q : Before he mounted on top of you did Mariano Sarmiento take off your clothes as well as your panties, if you were wearing panties during that time?
A : Yes.
Q : And when Mariano Sarmiento mounted on top of you, did Mariano Sarmiento take off his clothes, his jockey, if he was wearing any jockey?

x x x

A : Yes.
Q : And then were you lying on the floor when he mounted on top of you?
A : Yes.

x x x

Q : And was his penis erect or just dangling?
A : It was erect.
Q : And when he mounted on top of you did his penis penetrate your vagina?
A : Yes.
Q : And what did you feel when his penis penetrated your vagina?
A : Pain.
Q : How many times did his penis penetrate your vagina?
A : Several times.
Q : And did you find any blood in your vagina after the penis of Mariano Sarmiento penetrated your vagina?
A : Yes."^[18]

Jocelyn was able to sustain this clarity and spontaneity and remained consistent in answering the clarificatory questions posed by the judge. Thus:

Court to Jocelyn Sarmiento:
Q : You said that you were raped by your uncle, the accused Mariano Sarmiento. Where was your aunt when this happened?
A : She left (nilakaw).
Q : You also stated a while ago that when the accused raped you he tied your