

## FIRST DIVISION

[ G.R. No. 122100, January 20, 1998 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
FERNANDO "JOJO" TUMALA, JR., ACCUSED-APPELLANT.**

### DECISION

**BELLOSILLO, J. :**

The victim was only six when defiled; plainly, another case of statutory rape.

On 29 February 1992, at around 1:00 o'clock in the afternoon, 6-year old Mariefe Manzano together with her younger siblings Ana and Albert went to gather *camachile* fruits some 100 meters away from their house in Purok Magsaysay, Barangay Dajay, Surallah, South Cotabato. There they saw accused Fernando "Jojo" Tumala Jr. who invited Mariefe to go to the nearby river for a swim. Upon reaching the river bank however "Jojo" undressed Mariefe and ordered her to lie down on the grass. He took off his clothes, touched his penis and then inserted it into her vagina. When 4-year old Ana saw what "Jojo" was doing to her sister, she immediately ran home to tell her mother Magdalena Manzano about it. As soon as Mariefe returned from the river, Magdalena spanked her prompting her to run to her Aunt Diday residing nearby to relate her experience in the hands of "Jojo." After physically examining Mariefe and not noticing anything unusual with her, Diday sent her home. Nonetheless, Magdalena brought Mariefe to the local police station where they executed sworn statements regarding the incident. On 9 March 1992 Fernando "Jojo" Tumala Jr. was formally charged with statutory rape.<sup>[1]</sup>

The accused vehemently denied having committed the foul deed attributed to him. He contended that at about 1:00 o'clock in the afternoon of 29 February 1992 he was bathing in the river when Mariefe, her brother Albert and sister Ana arrived. Of the three, only Mariefe took a dip in the river. He warned the girl of the danger of swimming in the spot where she was but his forebodings remained unheeded. Shortly after, he noticed Mariefe almost drowning so he rescued her and carried her to the river bank. Mario Garcia, uncle of "Jojo," corroborated the latter's story.

On 5 October 1994 the trial court, giving full credence to the testimony of Mariefe, found the accused guilty of rape and sentenced him to *reclusion perpetua*. It also ordered him to indemnify his victim P30,000.00.<sup>[2]</sup>

Accused-appellant now assails his conviction on the ground that the evidence presented by the prosecution failed to establish his guilt beyond reasonable doubt considering that the testimonies of the witnesses lined up against him were contradictory and implausible.<sup>[3]</sup>

Appellant maintains that the complaining witness herself was inconsistent in her narration of what happened to her. *First*, Mariefe testified that after showing her a

knife he held his penis and inserted it into her vagina. However, when asked what appellant thereafter did with his penis, she would not answer. When asked the second time just what appellant did with his penis in her vagina she answered that he touched her vagina. *Second*, Mariefe likewise testified that appellant also raped her in the cornfield prior to the 29 February 1992 incident which she reported to her mother, but when asked on cross-examination when it was that she reported the incident to her mother she again would not answer.

The Court is not at all swayed by the remonstrations of accused-appellant as we do not see any inconsistencies in the testimony of Mariefe. When a victim says she was raped,<sup>[4]</sup> she says in effect all that is necessary to show that rape was committed on her. So long as the testimony of the offended party meets the test of credibility the accused may be convicted on the basis thereof. It will not matter very much if there are certain perceived contradictions in her testimony if these appear, as they do in this case, to be inconsequential, referring only to minor details surrounding the commission of the crime. It could be that these "contradictions," as appellant calls them, were the result of lapses in the memory of the 6-year old child, confused and traumatized by the bestial act visited upon her by the appellant. Lapses are sometimes employed by the human mind as a necessary defense mechanism in dealing with the shock of a terrifying experience and surmounting it. Thus, the seeming contradictions in Mariefe's testimony were nothing more than mere manifestations of a child's own sense of the time-space continuum so that some parts of her narration would not seem in order if considered from an adult person's viewpoint. Thus -

Q: What happened while you were gathering *camachile* fruits?

A: I went up a *camachile* tree.

Q: After you went up the *camachile* tree was there a person who approached you?

A: Yes, sir.

Q: Who was that person who approached you?

A: Jojo Tumala.

Q: Did he tell you anything when he approached you?

A: Yes, sir.

Q: What did he tell you.

A: He invited us to go to the river because according to him we will (sic) take a bath.

Q: When you were in the river what happened?

A: He undressed me and invited me to the river (underscoring supplied).<sup>[5]</sup>

There is no question however that the child's testimony on the manner the execrable deed perpetrated on her by the appellant was consistently categorical and positive -

Q: And after he has undressed you and invited you to go to the river, what happened?

A: He asked me to lie down on the grass.

Q: Did you follow his request to lie down on the grass?

A: Yes, sir.

Q: After you lied (sic) down on the grass, what happened?

A: He raped me.

Court:

Q: What do you mean he raped you? What did he do to you?

A: (No answer).

Q: How did he rape you?

A: He asked me to lie down.

Q: Yes, and then what did he do when you were already lying down?

A: He showed the knife to me.

Q: After he showed the knife to you what did he do to you?

A: He talked to me.

Fiscal Nalangan: