

FIRST DIVISION

[G.R. No. 116060, July 31, 1997]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
CLEMENTE DE LA PEÑA ALIAS "AYAG", DEFENDANT-APPELLANT.**

D E C I S I O N

BELLOSILLO, J.:

CLEMENTE DE LA PEÑA alias Ayag, a 56-year old bachelor, was convicted of rape for having carnal knowledge of 10-year old Janet Bajao on 19 April 1991. The trial court sentenced him to reclusion perpetua and ordered him to indemnify his victim P50,000.00 for moral damages and another P50,000.00 for exemplary damages, and to pay the costs.^[1]

By the victim's account, while she was alone gathering firewood at about 1:00 o'clock in the afternoon of 19 April 1991 in the coconut plantation of Catalino Ipanag in Sitio Min-abaca, Barangay South Poblacion, Medina, Misamis Oriental, accused Clemente de la Peña suddenly came from behind and without saying a word forcibly dragged her to a nearby hut. Once inside he undressed her and placed himself on top of her. He masturbated and then pushed his penis into her vagina; there was no penetration. Afterwards he handed her a P2-coin.

Since it was already lunch time Rosalie, older sister of Janet, followed her to the plantation to fetch her. Rosalie heard some conversation coming from the hut. From a distance of about three (3) meters she saw Janet lying down with face up while the accused was on top of her, making push-and-pull^[2] movements of his hips and at the same time masturbating. He inserted his penis into the vagina of Janet. When Ayag noticed the presence of Rosalie he stopped and the latter ran away and reported the matter to her mother.

At 7:00 o'clock that evening the victim was examined by the Municipal Health Officer. The examination revealed that her hymen was intact but there was penetration. The hymenal tags were no longer visible due to constant rubbing of a hard object probably an erectile penis and the edges of the labia minora were already gaping with redness which could have been caused by an erectile penis forced into the vagina.

The accused disavowed any knowledge of the crime but admitted that at the time of the incident he was masturbating inside his hut while the victim was outside about two (2) arms length away. He now prays for exoneration claiming that the crime of rape was not proved. He capitalizes on the testimony of the victim that he did not insert his penis into her vagina hence there was no penetration. Considering this statement of the victim, the question now is whether accused-appellant is still liable for statutory rape.