

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROEL MAJADAS, ACCUSED-APPELLANT.

Ponente: INGLES, G. T., J.

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INGLES, G. T., J.:

The Case

This is an appeal filed by accused-appellant of the Judgment[1] dated June 28, 2013, of the Regional Trial Court, Eighth Judicial Region, Branch 35, Ormoc City, in Crim Case No. 7308-0 which found accused-appellant guilty beyond reasonable doubt of the crime of rape.

The Facts

Version of the Prosecution

Sometime in November, 2004, Mary Jane Fajardo went to the house of her godmother Crispina Estera who requested her to feed her dog. Her godmother's house is located about one hundred and fifty meters away from Mary Jane's house at Barangay Guintigui-an, Ormoc City. On the other hand, accused-appellant's house is located across the house of Mary Jane's godmother.

While Mary Jane was feeding the dog inside the rice granary of her godmother, accused-appellant suddenly poked a knife at her. Accused-appellant immediately removed his clothes including his shorts and proceeded to undress Mary Jane, exposing her private parts. He then molested Mary Jane and touched her private parts. Accused-appellant, while holding a knife, inserted his penis into Mary Jane's vagina and made a push and pull movement. Mary Jane felt pain while accused-appellant ravished her. Since accused-appellant held Mary Jane, she could not do anything to defend herself.

On January 5, 2005, Concepcion Fajardo, Mary Jane's mother, brought her daughter to the local healer since Mary Jane missed her monthly period. Upon examination by Dr. Marilyn Pascual, a government physician, Mary Jane was found to be five months pregnant. Dr. Pascual executed a Medical Certificate² dated May 24, 2005, with the following findings:

1. wondering (sic) around attended Grade 1 but did not complete it
2. psychosis blank stare, no presence of mind, murmuring to self, talking to herself
3. cervicitis
4. laceration, 11 o'clock, 3 o'clock, 4 o'clock, 8 o'clock and 9 o'clock, pregnancy uterine, 5 months.

Previously, on separate occasions, Mary Jane revealed the incident of rape to her father and her Aunt Virgie, her mother's sister in Sto. Nino, Kananga.

The Charge

In the Information[3] dated August 30, 2005, accused-appellant was charged with rape, as follows:

“That sometime in November 2004, inside a rice granary at Brgy. Guintigui-an, Ormoc City and within the

jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation and with the use of a knife, did then and there willfully, unlawfully and feloniously had carnal knowledge of the victim, MARY JANE y RIOS, 22 years old and mentally retardate without her consent and against her will, which resulted to said victim's untimely pregnancy.

In violation of Article 335, RPC, as amended by RA 8353, Ormoc City, August 30, 2005.”

Subsequently, accused-appellant was arraigned and pleaded “not guilty” to the crime charged.

Trial ensued. The prosecution presented the following witnesses: Mary Jane Fajardo, Dr. Marilyn Pascual, and Concepcion Fajardo. On the other hand, the defense presented accused-appellant and Leopoldo Sasing.

Version of the Defense

Accused-appellant testified that in November, 2004, he was working in Manila for a construction canteen. He started working for said employer sometime in 2004 and went home to Guintigui-an, Ormoc City in 2005. According to accused-appellant, his sexual preference is male and not female so that he could not have touched Mary Jane Fajardo. Also, he vehemently denied having raped the victim since at the time in question he was in Manila.

Leopoldo Sasing, a widower, faith healer and resident of Brgy. Leondani, Ormoc City, testified that he is not related to accused-appellant and that he knows him for forty years. Leopoldo Sasing likewise attested that he knew accused-appellant to be gay and that he was working in Manila in 2004. Leopoldo narrated that he would often go to Guintigui-an during one of his faith healing activities and on one occasion when he was going to Pagsanga-an, he saw Mary Jane and her father embracing each other lewdly. When they saw him, they were frightened and stunned. Leopoldo also heard that Mary Jane gave birth to another child.

The RTC Ruling

On June 28, 2013, the Regional Trial Court, Eighth Judicial Region, Branch 35, Ormoc City, rendered Judgment[4] against accused-appellant, the pertinent portion of which is as follows:

“WHEREFORE, premises considered, judgment is hereby rendered finding the accused ROEL MAJADAS guilty beyond reasonable doubt of the crime of Rape as charged. He is sentenced to suffer the penalty of Reclusion Perpetua. The accused is likewise ordered to pay the victim the following: civil indemnity in the amount of P50,000.00 without need of pleading or proof, moral damages of P50,000.00 which are automatically granted in rape cases without need of proof other than the commission of the crime and P30,000.00 as exemplary damages.

If the accused is a prisoner, the period of his detention shall be credited if he abides with the rules and regulations covering detained prisoners if not for only four-fifths (4/5) thereof.

SO ORDERED.”

Aggrieved, accused-appellant now comes to this Court seeking a reversal of his conviction and assigning as errors, thus:

I.

“THE LOWER COURT GRAVELY ERRED IN GIVING FULL FAITH AND CREDENCE TO THE TESTIMONIES OF PROSECUTION WITNESSES DESPITE ITS MATERIAL INCONSISTENCIES AND CONTRADICTIONS; and

II.

THE LOWER COURT GRAVELY ERRED IN HOLDING THAT THE GUILT OF THE

ACCUSED-APPELLANT HAS BEEN PROVEN BEYOND REASONABLE DOUBT.”

THIS COURT'S RULING:

Accused-appellant asserts that there are critical facts of substance which the trial court disregarded, overlooked and misappreciated leading to his eventual conviction.

Accused-appellant concedes that while it is true that the credibility of a mental retardate may be difficult to determine, it can still be ascertained by deducing from the manner she testifies in court as to the surrounding facts of the crime committed. Accused-appellant points out that if a mentally retarded rape victim such as Mary Jane had to be coached by any person or a parent, considering her intellect, into accusing someone for the commission of a crime, then her testimony on the witness stand where she is alone, would crumble into pieces. Accused-appellant contends that during Mary Jane's cross-examination, she herself admitted that it was her father who told her that accused-appellant was the father of her child, to wit:

“Q:

Who is the father of your child?

A:

Roel, Sir.

Q:

Roel who?

A:

Majadas, Sir.

Q:

Who told you that Roel Majadas is the father of your child?

A:

My papa taught me. Gitudlu-an man ko sa papa nako.

Q:

Did your father tell you that the father of your son is Roel Majada?

A:

Yes.”

TSN, August 3, 2011, p. 5

Accused-appellant concedes that for as long as the testimony is straightforward, candid and unflawed by inconsistencies or contradictions in material points and the demeanor is consistent with one who has been a victim of rape, her credibility is bolstered with the verity borne out of human experience and thus must be given full faith and credit. In the case at bar, accused-appellant argues that Mary Jane seriously contradicted herself on such material and critical matters when she admitted that she was just coached by her own father to tell the court that it was accused-appellant who was the father of her baby. Accused-appellant posits that Mary Jane's father's motive in coaching his daughter to pinpoint appellant as her rapist was established by defense witness Leopoldo Sasing's

attestation, thus:

“Atty Sia continuing to the witness

Q: You said a while ago that you would go around to that area because you would do some healing, what has this to do or what is the relationship of your going around and your healing activities that could do with the case against the accused.

Court to the witness:

Q: Who was embracing whom?

A: Actually, I saw them embracing each other your Honor, that was at that particular time when I was going toward the Pagsanga-an. In fact, they were frightened and they were stunned when they saw me coming into. Im referring to the father, Your Honor.

To Atty. Sia: Proceed

Atty Sia to the witness:

Q: When you said Mr. witness they, are you referring to Mary Jane Fajardo and the father?

A: (the witness nodded) What I'm trying to mean is that was a lewd act.”

TSN, October 12, 2012

Accused-appellant asseverates that Leopoldo's testimony was corroborated by Mary Jane when she admitted that she worked at the hill with her father, thus:

“Q: What is your work, what do you do, Madam witness?

A: To gather firewood.

Q: Where do you gathered (sic) firewood?

A: At the hill, sir.

Q: Who works with you in gathering firewood?

A: Papa, sir.”

TSN, August 3, 2011, p. 4

Moreover, accused-appellant contends that there is a material discrepancy between Mary Jane's testimony and that of her mother, Concepcion pertaining to the date when the rape occurred. In her sworn affidavit, Mary Jane alleged that it was on November, 2004, when she was feeding her godmother's dog that she was raped by accused-appellant. Her mother, however, categorically testified that it was on January 25, 2005, that Mary Jane left their house to feed her godmother's dog. Concepcion testified that:

Q: And this Mary Jane is always in the house?

A: She just left at that particular noon as she was requested by her godmother to feed the dog.

Q: What particular noon are you talking about, Ms. Witness?

A: February.

The witness is changing her answer.

I mean January.

Q: What year Ms witness?

A: 2005.

Q: So, there's only one instance in the whole 23 years of Mary Jane that she left your watch just to feed the dog of Estrera?

A: Yes mam.

Q: So you mean to say, Ms. Witness you can really remember that in that particular instance of January 2005 because that's the only time that Mary Jane left your watch, correct?

A: That's right mam.

Q: And can you remember what particular date in January was this, Ms. Witness?

A: Yes ma'am.

Q: And what date was that?

A: 25.”

TSN, April 21, 2006, pp. 13-15

Accused-appellant claims that all these inconsistencies in the testimonies refer not only to trivial and inconsequential matters but pertain to essential facts of the commission of rape itself warranting accused-appellant's acquittal.

In another vein, accused-appellant maintains that the court a quo erred in holding that his defense of homosexuality was unsubstantiated because defense witness Leopoldo Sasing unequivocally testified that he knew accused-appellant for forty years and that he was also gay, preferring males over females. Leopoldo claimed that he had no reason to lie in court and that he is in no way related to accused-appellant. Further, accused-appellant stresses that Leopoldo also corroborated accused-appellant's alibi that he was in Manila in the year 2005. Hence, accused-appellant avers that the court a quo should not have rejected his defense of denial and alibi. It is precisely when the prosecution's case is weak as in this case, that the defense of alibi assumes importance and becomes crucial in negating criminal liability.

The appeal is bereft of merit.

The prosecution has established that the victim of rape, Mary Jane Fajardo is a mental retardate.

Article 266 of the Revised Penal Code provides thus:

“Article 266-A. Rape When and How Committed. – Rape is committed: –

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

- a) Through force, threat or intimidation;
- b) When the offended party is deprived of reason or is otherwise unconscious,
- c) By means of fraudulent machination or grave abuse of authority;
- d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.”

Xxx xxx xxx

The prosecution must prove that: (1) the offender is a man; (2) the offender had carnal knowledge of a woman and (3) such act is accomplished through any of the four enumerated circumstances. Under said provision, the phrase “deprive of reason” includes those suffering from mental abnormality, deficiency or retardation. Thus, carnal knowledge of a woman who is a mental retardate is rape under the above provision. Proof of force or intimidation is not necessary, as a mental retardate is not capable of giving consent to a sexual act.[5]

From the foregoing, all that needs to be proven are the facts of sexual congress between the rapist and the victim, and the latter's mental retardation. The Supreme Court has repeatedly held that mental retardation can be proven by evidence other than medical/clinical evidence such as the testimony of witnesses and even the observation of the trial court.[6]

Too, in reviewing rape cases, We are guided by the following principles: (1) to accuse someone of rape is easy, but to disprove it is difficult though the accused may be innocent; (2) considering that in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence for the prosecution must stand or fall on its own merit and not be allowed to draw strength from the weakness of the evidence for the defense.[7] Corollary to these is the dictum that where a victim of rape says that she has been defiled, she says in effect all that is necessary to show that rape has been

inflicted on her, and so long as her testimony meets the test of credibility, the accused may be convicted on the basis thereof.⁸ In the light of these principles, we examined the testimony of the victim and found no reason to overturn the trial court's assessment of her credibility.

In rape cases, the issue more often than not, is the credibility of the victim. Rape is generally unwitnessed and very often, the victim is left to testify for herself. In the instant case, Mary Jane gave a detailed and candid narration of the circumstances leading to her rape, thus:

“Pros Terre

Q: Why did you say that Roel is the father of your child?

A: Because that child is his.

Q: Why did you say that?

A: Because that child is his.

Q: What did he do to you?

A: He violated.

Q: Why do you say that he violated, kindly demonstrate to us?

Pros Terre to the court

May I request your Honor that the public be excluded?

Exclude the public.

Q: May I ask again the witness. What the accused in this case did to her?

A: He raped me.

Q: When you said he raped you, what did he do, did he remove his dress?

A: He remove his clothes including his shorts.

Q: How about your clothes?

A: Yes, he also remove it.

Q: Thereafter, what did he do?

A: He consummated, he violated.

Q: When he remove your clothes as you mentioned a while ago, were your private parts exposed?

A: Yes sir.

Q: Then, what did he do with your private parts?

A: He touched them.

Q: What else did he do to your private parts?

A: He got a knife.

Q: After that, what did he do to your private parts?

A: He touched it.

Q: After touching it, what did he do?

A: Yes, he kept on touching my private parts.

Q: Were you able to see his penis?

A: Yes sir.

Q: What did he do to his penis?

A: He inserted his penis to my vagina.

Q: How long?

A: It was a long time.

Q: What did you feel?

A: It was painful.

Q: What did you do?

A: I did not do anything.

Q: Why?

A: Because he held me.

Q: When he, when you mentioned that he inserted his penis to your vagina, what else did you observe about his movement?

A: He was moving.

Q: How did he move, kindly demonstrate to us?

Witness standing up and demonstrated a push and pull movement”[9]

As earlier mentioned, the prosecution was able to establish that Mary Jane is indeed, a mental retardate, through the testimony of her mother and the medico-legal officer as well as the trial court's observation. Worthy to note also, is that the defense did not dispute but also admitted that Mary Jane is suffering from mental retardation. No convincing reason can be appreciated to warrant a departure from the findings of the trial court with respect to the assessment of her testimony, the same being straightforward, candid and worthy of belief. Also, We are convinced Mary Jane has no ill-motive to manufacture such a tale against accused-appellant if it were true.

Denial and alibi

In impugning Mary Jane's accusation of rape against him, accused-appellant interposed the defense of denial and alibi. The records show that accused-appellant's defense centered on the argument that he was in Manila working at the time of the incident and that he came back to his hometown in 2005 already. Even assuming that he worked in Manila, it was not impossible for him to have gone back to his province at the time of the incident in question. Aside from Leopoldo Sasing's testimony, accused-appellant failed to present sufficient proof that he was in Manila on the date in question. He could have presented his employer's affidavit attesting that he was in Manila on said times or pertinent daily time records proving that he was in Manila on the date in question. But this, he failed to do.

Inconsistencies in the testimonies of prosecution witnesses

Moreover, the alleged inconsistencies in Mary Jane's testimony pinpointed by accused-appellant do not weaken her credibility. The inconsistency with regards to the date of rape alleged in her affidavit – sometime in November, 2004, as opposed to the testimony of her mother who attested that her daughter was raped on January 25, 2005 does not militate against her credibility. Rape victims are not expected to cherish in their memories an accurate account of the dates, number of times and manner they were violated. [10] More so, in the case of Mary Jane who obviously cannot be expected to act like an adult who would have the courage and intelligence to disregard the threat to her life and complain immediately that she had been sexually abused. So too, an impeccable recollection cannot reasonably be expected from the victim of a horrendous crime, such that minor contradictions in her testimony are perceived to enhance, rather than detract from, her credibility.[11] Mary Jane's testimony was clear that accused-appellant pushed his penis inside her vagina and she felt pain during the push and pull movement of the accused-appellant. Given Mary Jane's mental condition, it can well substitute for violence and intimidation enough to cower her to into submission.

In *People vs Ventura*, GR No. 205230, March 12, 2014, the Supreme Court held that:

xxx “the exact date when the victim was sexually abused is not an essential element of the crime of rape for the gravamen of the offense is carnal knowledge of a woman. Indeed, the precise time of the crime has no substantial bearing on its commission. As such, the time or place of commission in rape cases need not be accurately stated. Inconsistencies and discrepancies as to minor matters which are irrelevant to the elements of the crime cannot be considered grounds for acquittal.”

So too, we are not persuaded by accused-appellant's contention that Mary Jane's credibility was destroyed in light of her admission that she was coached by her own father in telling the court that the father of her child is

accused-appellant. The issue of pregnancy is not material in rape cases. Pregnancy is not an element of the crime of rape. Whether the child which the rape victim bore was fathered by the accused, or by some unknown individual is of no moment. What is important and decisive is that the accused had carnal knowledge of the victim against the latter's will or without her consent, and such fact was testified to by the victim in a truthful manner.[12]

In relation thereto, We cannot lend credence to the testimony of defense witness Leopoldo Sasing imputing lewd and inappropriate behavior on Mary Jane's father towards her during one of his faith healing activities when he allegedly chanced upon them. There is nothing in the records showing any hint that the father of Mary Jane had any sexual propensity to abuse his daughter. At this juncture, it should be stressed that a mental retardate is not, by reason of such handicap alone, disqualified from testifying in court. Mental retardation, per se does not affect credibility. A mentally retarded may be a credible witness. The acceptance of her testimony depends on the quality of her perceptions and the manner she can make them known to court. If the testimony of a mental retardate is coherent, the same is admissible in court. [13] Here, Mary Jane spoke explicitly and categorically on the details of rape as if she had not in fact suffered such crime in the hands of accused-appellant. She was candid in answering the questions during her testimony. In fact, Mary Jane even demonstrated in court how accused-appellant made the push and pull movement when she was raped. Nowhere in the the records did she testify that her father demonstrated any inappropriate behavior towards her.

To reiterate, a woman who says she has been raped, as a rule, says almost all that is necessary to signify that a crime has been committed. The accused may thus be convicted solely on her testimony -- provided it is credible, natural, convincing and consistent with human nature and the normal course of things[14] as in the case at bar. Positive identification where categorical and consistent and without any showing of ill motive on the part of the eyewitness testifying on the matter prevails over a denial which, if not substantiated by clear and convincing evidence is negative and self-serving evidence undeserving of weight in law. They cannot be given greater evidentiary value over the testimony of credible witnesses who testify on affirmative matters.[15]

Homosexuality

And, assuming arguendo, that accused-appellant is a homosexual, this alone will not render him incapable of having sexual intercourse with a woman. Aside from accused-appellant's self-serving testimony and that of Leopoldo Sasing, accused-appellant submitted no other competent evidence that he is a homosexual who is not aroused by females. In *Te vs Te*, GR No. 161793, February 13, 2009, the Supreme Court opined that a homosexual is not impotent and thus, there is a possibility of penile erection. It was held that the homosexual is not necessarily impotent because, except in very few exceptional cases, such a person is usually capable of full sexual relations with the spouse. Neither is it a mental infirmity, and a person so afflicted does not necessarily suffer from a grave lack of due discretion because this sexual anomaly does not by itself affect the critical, volitive, and intellectual faculties.[16] What is decisive in rape cases, is that the offender had carnal knowledge with the woman. In this case, Mary Jane explicitly testified that accused-appellant inserted his penis inside her vagina and made a push and pull movement. Hence, all the elements of rape were proven by the prosecution warranting accused-appellant's conviction of the crime charged against him.

One final word. Well-settled is the doctrine that the lower court's assessment of the credibility of a witness is accorded great respect owing to its direct opportunity to observe the latter's demeanor during trial. It is doctrinally settled that the factual findings of the trial court, especially on the credibility of the rape victim, are accorded great weight and respect and will not be disturbed on appeal. This is so because the trial court has the advantage of observing the victim through the different indicators of truthfulness or falsehood, such as the angry flush of an insisted assertion, the sudden pallor of a discovered lie, the tremulous mutter of a reluctant answer, the forthright

tone of a ready reply, the furtive glance, the blush of conscious shame, the hesitation, the yawn, the sigh, the candor or lack of it, the scant or full realization of the solemnity of an oath, or the carriage and mien.[17]

Penalties

In line with prevailing jurisprudence, We affirm the trial court's award of civil indemnity in the amount of P 50,000.00 as well as moral damages in the amount of P 50,000.00. The award of moral damages is automatically granted in rape cases without use of further proof other than the commission of the crime because it is assumed that a rape victim has actually suffered moral injuries entitling her to such award.[18] Further, the trial court correctly awarded exemplary damages in the amount of P 30,000.00 to deter others with perverse tendencies from sexually abusing young and innocent girls. The law permits such damages to be awarded by way of example or correction for the public good, in addition to the moral, temperate, and compensatory damages.[19]

WHEREFORE, the appeal is DENIED. The Judgment dated June 28, 2013, of the Regional Trial Court, Eighth Judicial Region, Branch 35, Ormoc City, in Crim Case No. 7308-0 is AFFIRMED. Accused-appellant is sentenced to suffer the penalty of reclusion perpetua and to pay Mary Jane Fajardo the amounts of P 50,000.00 as civil indemnity, P 50,000.00 as moral damages and P30,000.00 as exemplary damages plus costs. Mary Jane Fajardo is entitled to an interest on all damages awarded at the legal rate of 6% per annum from the date of finality of this judgment until fully paid.[20]

SO ORDERED.

Lagura-Yap, M.B., and Lopez, J.Y., JJ., concur.

[1] Rollo, p. 45

[2] Records, p. 10

[3] Records, p. 2

[4] Rollo, p. 45

[5] People vs Monticalvo, GR No. 205230, March 12, 2014

[6] People vs Dalandas, 442 Phil 688 (2002)

[7] People vs Santos, GR No. 137828-33, March 23, 2004

[8] People vs. Garces, Jr., G.R. No. 132368, January 20, 2000, 322 SCRA 834, citing People vs. Tabion, G.R. No. 132715, October 20, 1999, 317 SCRA 126;

[9] TSN, September 23, 2009, pp. 8-9

[10] People vs Lor, GR No. 133190, July 19, 2001, 413 Phil 725

[11] People vs. Colisao, GR No. 134526, December 11, 2001, 372 SCRA 20

[12] People vs Gahi, GR No. 202976, February 19, 2014

[13] People vs Monticalvo, GR No. 193507, January 30, 2013, 689 SCRA 715

[14] People vs Salazar, GR No. 181900, October 20, 2010

[15] People vs Caisip, GR No. 119757, May 21, 1998

[16] Te vs Te, GR No. 161793, February 13, 2009

[17] People vs. Ayuda, G.R. No. 128882, October 2, 2003 at 10, citing People vs. Invencion, G.R. No. 131636, March 5, 2003.

[18] People vs Arcillas, GR No. 181491, July 30, 2012

[19] Art. 2229, New Civil Code

[20] People vs Soria, GR No. 179031, November 14, 2012, People v. Flores, G.R. No. 177355, December 15, 2010.

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