

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GUILLERMO U. GALLANO, DEFENDANT-APPELLANT.

G.R. No. L-51565. October 23, 1981

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DE CASTRO, J.:*

Guillermo Gallano appeals from the decision of the Court of First Instance of Rizal, Branch VI, Pasig, sentencing him, for simple rape, to reclusion perpetua and to pay costs.

The facts are simple. As quoted from appellee's brief:

"Early in the evening of November 21, 1976 in Taytay, Rizal, complaining witness Victoria Micaller, a retardate, was going up her house when appellant suddenly pulled her forcibly down to a dark room below (TSN, pp. 3-5, May 11, 1978). He embraced her, and as she was still standing, he took off her panty. He pushed her down to the floor and kissed her. Then, per-vertedly, he had her take his penis in her mouth twice, which made her feel like vomiting (TSN, p. 3, Id.). On the muddy floor, appellant rolled Victoria, removed her clothes and bra, and kissed her profusely (TSN, p. 4, Id.). By this time, appellant was already on top of her and began carnal intercourse with her many times (kinandot ako'), all the while warning her that he would kill her if she reported to the authorities (TSN, pp.4-5, Id.). After satisfying his lust, appellant reluctantly let her off (TSN, pp. 4-5, Id.)."[1]

The vortex of controversy in this appeal is whether the complainant is so mentally retarded that she could not have given valid and legal consent to the sexual act which appellant claims to have been voluntary, although, according to complainant, force and threat were employed to make her submit to his bestial desires.

That complainant, Victoria Micaller is a retardate or one mentally ill, such that she was incapable of offering any effective or real resistance to appellant's sexual assault, was sufficiently established by the prosecution. Dr. Romeo Y. Tating, Chief of the Neuro-Psychiatric Division of the NBI and Dr. Antonio P. Pilyen, Sr. Psychologist, also of the same agency, affirmed that Victoria has the mental level of a seven-year old child. Thus Dr. Tating's report contains the following background history of the victim:

"The subject is the 2nd to the oldest among 6 children, of 4 girls and 2 boys.

"She was delivered without medical attention. After 5 days her umbilical cord got infected and was treated by the Medical team of the American Liberation Army. Four months later she suffered from fever and convulsion, fits, hence she was confined and treated in Manila for eight (8) months. Her condition then was serious and she was baptized while in confinement. After her discharge, frequent check up was done because of a yellowish foul smelling substance coming out from the ears, which lasted for one-and-a half (1-1/2) hours.

"She was observed to be able to stand at 5 years, and was able to talk in some syllables at the age of 8.

"She started schooling at the age of 9 at the Geronimo Elementary School for mentally retarded children in Sampaloc, Manila. She was able to finish Grade III but repeated each grade for three (3) times. Even after undergoing this schooling, she can only write her name and a few words, she do (sic) not know how to read.

"Up to the present, her sense of hearing is very poor and her vision is weak and low. Once excited, she is observed to stammer and could not be understood."[2]

Complainant's mental status as of the date of examination was given as follows in the same report:

"The subject came when called for interview, but hesitated to sit down as her companion left her before the undersigned. She was observed to stare blankly but obeys simple instructions. Her mood is dull and inadequate. Asked of her nickname, she said, 'Sister', but explained she answered 'Vicky'. Asked why she was in this office and what has happened to her, she said 'mayroong nagkagusto sa akin na lalaki', but she said she does not like him.

"She gave her birth data as '1945, January 22,' the 2nd among six (6) siblings of 4 girls and 2 boys. She said that she is 31 years, finished Grade III only as she stopped schooling. She claimed that there are occasions when she hears somebody calling her, saying 'minsan parang may tumatawag, pero wala naman, madalas mangyari yan.' Asked further, she elaborated, saying, 'parang bumubulong lang, hindi naman nagpapakita.' She is oriented to day and month, but not to date, year and place.

"It is our general observation that the questions have to be repeated, rephrased and made simple before she could answer relevantly."[3]

Dr. Tating's finding by way of "remarks" in his re-port, to which was attached psychological examination re-port of Dr. Pilyen is that subject is suffering from Mental Retardation.

Dr. Pilyen's psychological evaluation report is quoted in its pertinent portions as follows:

General Data:

"The subject is 31 years old, single, female, born on January 22, 1945 in Cuyapo, Nueva Ecija. She is the second among six (6) siblings of two (2) boys and four (4) girls. Her father is Jose Micaller, 66 years old, who work as Scriptwriter, while her mother is Castisima Vargas, 54 years old and a plain housewife.

"School history shows that the subject was enrolled in a special course for retar-dates at the Moises Salvador Elementary School in Sampaloc, Manila. She was able to reach up to the second grade where the Subject spent three (3) years for every grade.

"The Subject was confined for a conge-nital heart disease for almost eight (8) months at the North General Hospital, Manila. Traces of ear infection are noted as she is currently suffering from defective hearing. She also had a convulsive attack during her early years of childhood.

Psychological Report:

"Based on the revised Beta Examination the Subject scored a total rating of 58, classify-ing her within the defective level of mental ability. This is being confirmed by the series of tests as she portrayed low visual-motor coordination.

"On the battery of examinations, projections of evasive attitude coupled with poor emotional reactivity towards her environment are seen. Organicity is, likewise, underlined. Moreover, child-like from behavior are noted."[4]

Dr. Pilyen's remarks is: "Based on the aforementioned results, the Subject's mental functioning is within the mentally defective group."

According to the trial court, the evaluation report was confirmed by complainant's manner of testifying both in the direct examination and cross-examination as it so found with the following observation as quoted from People v. Manlapaz, 88 SCRA 704:

"Sexual intercourse with a woman who is de-prived of reason or with a girl who is below twelve years of age is rape because she is incapable of giving rational consent to the carnal intercourse. 'Las Mujeres privada de razon, ena-jenados, idiotas, imbeciles, son incapaces por su estado mental de apreciar la ofensa que el culpable infiere a su honestidad y, por tanto, incapaces de consentir. Pero no es condicion precise que la carencia de razon ESTA COMPLETA, BASTA LA ABNORMALIDAD o deficiencia mental que sole la disminuya, sin embargo, en jurisprudencia es discordante.' (II Cuello Calon, Derecho Penal, 14th Ed. 1975, pp. 538-9).

"Comete violacion el que yace con mujer que no tiene normalmente desarrolladas sus facultades mentales (19 Nov. 1930); aqui esta comprendido el yacimiento con debiles o retrasadas mentales (11 Mayo 1932, 25 Feb. 1948, 27 Sept. 1951); consti-tuye este delito el coito con una niña de 15 años enferma de epilepsia genuina que carece de capa-cidad para conocer el valor de sus actos (2 Marzo 1953); al yacimiento con oligofrenices (mentally deficient persons) (128 Abril, 24 Octubre 1956, 19 Feb. 1958); x x x (Ibid, note 3).

"The same rule prevails in American juris-prudence. There can be no question but that a copulation with a woman known to be mentally incapable of giving even an imperfect consent is rape. (State vs. Jawett, 192, Atl. 7).

"An accused is guilty of the crime of rape when it is established that he had sexual inter-course with a female who was mentally incapable of validly consenting to or opposing the carnal act". (65 Am. Jur., 2nd 766 citing State vs. Pro-kosch, 152 Minn. 86 N W 971; Cookly vs. State 87 Tex. Crim. 256, 220 S W 1099; 31 ALR 3rd 1227, Sec. 3).

"In this species of rape neither force upon the part of the man nor resistance upon the part of the woman forms an element of the crime. If, by reason of any mental weakness, she is inca-pable of legally consenting resistance is not expected any more than it is in the case of one who has been drugged to unconsciousness, or robbed of judgment by intoxicants. Nor will an apparent consent in such a case avail any more than in the case of child who may actually con-sent, but who by law is conclusively held in-capable of legal consent. Whether the woman possesses mental capacity sufficient to give legal consent must, saving in exceptional cases, remain a question of fact x x x. It need but be said that a legal consent pre-supposes an intelligence capable of under-standing the act, its nature, and possible consequences. This degree of intelligence may exist with an impaired and weakened intellect, or it may not". (People vs. Boggs, 290 Pac. 618 citing People vs. Peery 146 Pac. 44). x x x

"Considering the circumstances detailed above and the testimonies of Doctor Hofilena and Mrs. Lizaso as to the mental incapacity of Theresa, appellant's contention that The-resa is not mentally retarded cannot be sus-tained.

"Manlapaz testified that he know Theresa to be a normal person and that she informed him that she was studying at the St. Joseph College. He denied any knowledge that Theresa was mentally retarded (63-65 tsn, Sept. 9, 1979).

"However, considering that Theresa was not his girl friend, that he never courted her, and that after knowing her for two or three weeks he was able to have sexual in-tercourse with her two times, we cannot believe his pretension that he did not know that Theresa was mentally handicapped or was sub-normal. Anyone who conversed with The-resa would not fail to notice that she has some mental deficiency. The Constabulary medico-legal officer, who examined her, concluded that she was 'feeble-minded' although he did not give her a psychiatric test.

"In the Boggs case, supra, where a twenty two year old girl with subnormal mentality was ravished, the court noted that the accused must have known of the subnormal mentality of his victim. Notwith-standing such knowledge, he persisted in his lustful purpose until he overcame her weak resistance and accomplished her ruin.' That observation applied to the instant case.

"Appellant Manlapaz, taking advantage of Theresa's mental deficiency and immaturity (she has barely reached the age of puberty) and subordinating his will to his concupiscence or animal instincts, was able to have carnal intercourse twice with a thirteen-year old girl who was not aware of the disgrace and dishonorable consequences resulting from that immoral act.

"The crime committed by the accused is simple rape. No modifying circumstances can be appreciated in this case. The trial court properly sentenced him to reclusion perpetua. (Arts. 63 and 335, par. 2, Rev. Penal Code".[5]

The testimony of Dr. Tating on cross-examination is likewise quoted hereunder to show that by reason of her unsound mental condition which is one of retardation or imbecility, complainant was deprived of that natural instinct to resist a bestial assault on her chastity and womanhood:

"Q. In other words, the psychiatrist never conducted a personal examination on the person of Victoria?

"A. I was the one who conducted on the subject.

x x x x

"Q. How many times have you made the examination?

"A. I observed her while doing her psychological examination and tested her once.

"Q. She answered you?

"A. Some of the questions only.

"Q. And in some of those questions which you asked, she could answer you intelligently because she gave you instant answers?

"A. I could not say the responses were intelligent answers.

"Q. You mean when you confronted this subject for examination she could not intelligently answer to the questions you gave to the witness?

"A. Yes, sir.

"COURT:

"Q. According to you the subject can perceive to the certain extent?

"A. Yes, sir.

"Q. To what extent?

"A. Just like when I asked her in relation to: I asked her where she is now and she is not aware. And I was asking her where her attorney Cecilia Rivera and she said, Nakita ko siya sa pelikula and did not see her personally.

"Q. To what extent can she perceive?

"A. She can only perceive the day of the week because it was Wednesday but she failed to relate what the specific date and month.

"Q. Without taking the case into consideration, to what extent can the subject perceive? This is in relation to your answer that the subject can perceive to certain extent to what extent?

"A. The perception is very minimal.

"Q. What do you mean by minimal?

"A. Meaning her intellectual functioning is not proportionate to her age.

x x x x

"Q. Will you inform the Court what questions she could not answer intelligently?

"A. Just like in orientation she usually asked or inquired as to the place date or day, when I asked her what place is she now she could not explain and what she will not answer or tell her where she is now meaning in the NBI. I asked the date and when asked that she says that it is only November. She failed to mention the exact year and date and we have not oriented this person because actually she was with Atty. Cecilia Rivera and she says, 'I saw in the film not personal'.

x x x x

"Q. What are those questions she answered you lengthily?

"A. Just like when I was telling her about who is Atty. Cecilia Rivera, her answer, I don't know. 'nakita ko siya sa pelikula hindi sa personal'.

"Q. In what question could she answer three or four or five sentences?

"A. Mostly just one sentence." (TSN, pp. 5-7, March 16, 1978)[6]

In subjecting herself to the bestial attack of appellant, complainant did so not with voluntary consent. Appellant's defense of allegedly not knowing that Victoria was an imbecile or mentally retarded is simply unbelievable. His claim of Victoria and he being sweethearts with previous sexual intercourses having taken place even before the incident of November 21, 1976 is likewise, incredible, specially with his admission that he made no formal courtship nor sent her love letters. His supposed intimacy, with Victoria would certainly have made him realize her unsound and retarded mental condition, that his sexual attack on her would make him criminally liable as if he had copulated with a girl too young to be capable of reason, as one below 12 years, which is one way by which rape may be committed even without violence or intimidation.⁷

Appellant's insistence that there was consent because he and complainant were sweethearts is therefore of no avail. In her defective state of mind, complainant could not have induced appellant to nurse a desire to have her for a sweetheart, nor could she have possessed the capacity to understand the meaning of having such a relationship with appellant. Her mental condition was such that she would not resist sexual advances because she was so deprived of reason to make any effective resistance. Hence, by her being so deprived, the act is made possible in the same way when there is active resistance but same is overcome by force and threat, which is the essence of the crime of rape.

At any rate, from complainant's testimony, appellant had resorted also to force and intimidation. Thus, she stated that appellant "removed my panty forcibly". "embraced and pulled me," and "he scolded me; he said if I will report he would kill me." It must just be the woman intuition in her, and an instinctive sense of personal danger that made her not quite as easy in yielding to his beastly advances that prompted appellant to employing force and threat. Appellant's claim that the sexual act was voluntary, therefore, was properly rejected by the trial court. This could make his claim that a "careful coherent scrutiny of the statement of Victoria shows it (sic) to be clear and intelligently given" of no avail to him, for if it were, his defense of voluntariness would just as effectively fall for then, complainant's testimony would show that he had used force and intimidation in giving vent to his lewd designs upon complainant. Reinforcing this above fact is appellant's own claim that "such charge of rape is a concoction of the mind of the parents and relatives", for, inferentially, this means that Victoria reported the

outrage on her person to her parents, which is not expected of her if she had voluntarily sub-mitted to the sexual act.

Appellant, finally, tried to prove his claim of voluntariness in the sexual act by mentioning that he had had similar acts with Victoria in the room of a friend, one Mauricio Sanchez, whom he saw when he and Victoria went to Sanchez's apartment on the evening of November 21, 1976, where they performed the act on the ground floor, the second floor being the sleeping quarter of his friend. That appellant, however, failed to present his friend as a witness clearly betrays the feableness of his defense that Victoria is his sweetheart, and their sexual indulgence on the night of record was voluntary and fully con-sented to by complainant.

WHEREFORE, the guilt of appellant, having been proved beyond reasonable doubt, the judgment appealed from is hereby affirmed, but with the modification that appel-lant should indemnify the offended party in the sum of P12,000,8 with costs.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Fernandez, Guerrero, and Melencio-Herrera, JJ., concur.

* Mr. Justice de Castro was designated to sit with the First Division under Special Order No. 225.

[1] p. 2, Appellee's Brief's, p. 62, Rollo.

[2] pp. 5-6, Id, p. 62, Id.

[3] pp. 6-7, Appellee's Brief, p. 62, Rollo.

[4] pp. 8-9, Id; p. 62, Id.

[5] pp. 10-13, Id; p. 62, Id.

[6] p. 14, Appellee's Brief, p. 62, Rollo.

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