

THE PEOPLE OF THE PHILIPPINES, VS. DOMINGO BURGOS ALIAS “TOTOY”, ACCUSED-APPELLANT.

G.R. No. L-40494. July 30, 1982

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

This is an appeal from the decision of the Court of First Instance of Occidental Mindoro, Branch II, dated January 14, 1975, in Criminal Case No. R-572, convicting Domingo Burgos of the crime of rape, sentencing him to reclusion perpetua, and ordering him to indemnify the victim, Dolores Tapang, in the sum of P12,000.00, without subsidiary imprisonment in case of insolvency, and to pay the costs.

The following facts are borne out by the evidence on record:

Dolores Tapang, the eighth of fourteen children of Juanito Tapang and Lourdes Garcia of San Roque, San Jose, Occidental Mindoro, was born a deaf-mute on October 10, 1960. She communicated only by means of signs. She was feeble-minded (*kulang-kulang*) and possessed a low mentality. While she was over 13 years old at the time of the incident (June 17, 1974) her mental capacity was then equivalent only to that of a 7-year old child. She usually played with small children and took a bath naked. Sometimes, she would jump over the bridge to take a bath. She slept on the floor and moved her bowel in any place while eating. She had no schooling because when her parents enrolled her in school, she created trouble and quarrelled with her classmates so she had to be stopped from going to school.

Because of her physical and mental deficiency, Dolores was not allowed by her parents to leave their house unescorted. But in the afternoon of June 17, 1974, she was able to leave their house unnoticed. She went to the Golden Gate Theater in San Jose, Occidental Mindoro, to see a movie. On that same afternoon, appellant Domingo Burgos and witness Eleuterio Arante were among the people watching the movie in that theater.

At about 5:00 o'clock, Eleuterio went to the men's comfort room to urinate and while inside the place, he heard a moaning sound (*daing*) of a woman coming from the adjacent women's toilet. Eleuterio stood on the toilet bowl and looked at the adjacent ladies' room and saw Dolores standing with her back against the wall while appellant Domingo was holding her two hands and having sexual intercourse with her. Eleuterio immediately left the place and reported the matter to the theater owner, Mrs. Castillo, but the latter told him not to mind what he saw.

Eleuterio then waited for Dolores to step out of the theater and followed her to their house to report the incident to her parents. He then accompanied Juanito Tapang, the father of Dolores, to the public market of the town to look for Domingo who was a vendor. Upon seeing Domingo, Juanito Tapang requested Patrolman Guevarra of the San Jose Police Department to apprehend him. Patrolman Guevarra then took Domingo to the San Jose Police Headquarters.

The mother of Dolores, Lourdes Garcia, brought the girl to Dr. Marcelina Santos who, upon examination, found sperm cells in the vaginal canal as well as in the cervix of Dolores, thereby confirming that Dolores had sexual

intercourse prior to the examination.

The parents of Dolores filed the complaint for rape against Domingo. On the basis of such complaint and after Domingo had waived his right to the second stage of the preliminary investigation, the Provincial Fiscal filed with the Court of First Instance of Occidental Mindoro an information for rape against Domingo which reads as follows:

"That on or about the 17th day of June, 1974, at around 5:30 o'clock in the afternoon, inside the lady's comfort room of the Golden Gate Theater, situated at Poblacion, San Jose, Occidental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the above-named defendant by means of force, violence and intimidation, did then and there wilfully, unlawfully and feloniously had carnal knowledge of one DOLORES TAPANG Y GARCIA, a woman of 14 years old, against her will, and without her consent, and while the latter was deprived of reason, being a feeble minded/deaf-mute."

Upon arraignment, the accused pleaded not guilty. And after trial, the Court of First Instance of Occidental Mindoro rendered a decision the resolatory portion of which reads as follows:

"There is no question that the accused had sexual intercourse with the offended girl. This is admitted by the accused himself, but putting as his defense that the fornication was with the consent of the girl, who was paid a total of P8.00 for the said sexual intercourse.

"The only issue then in the case at bar is to determine whether under the facts and circumstances adduced and established by the prosecution and the defense, the offended girl could be considered as having consented to the sexual intercourse with the accused and that no force or intimidation might be deemed employed by the said accused in consummating his sexual intercourse with the girl.

"It is true that the prosecution did not prove the use of force by the accused in having carnal knowledge with the offended girl, but that does not mean that no rape was committed. In the case at bar, it is established positively and clearly, that the offended girl is a deaf-mute and demented girl (kulang-kulang). That she is barely 14 years old when the alleged rape was committed. With such physical and mental defects under which the girl was suffering, there could not have been voluntary consent to the carnal intercourse, because under such physical and mental condition as she was in, she is incapable to reasonably and normally give the consent contemplated in the commission of rape under Art. 335 of the Revised Penal Code. In the case at bar, the very victim herself could not be availed of as a witness because she is totally disqualified by reason of her physical and mental deficiency.

"As aptly stated by our Supreme Court in a very recent case, thus:

'Appellants' contention that the prosecution did not prove the use of force in having carnal knowledge of Rosalia does not mean that no rape was committed. The crime can be committed by employing intimidation. Rosalia was thirteen years, four months and twenty days old at the time she was raped. She was an immature teenager. She could easily be coerced or cowered by a big old farmer and former security guard like Garcines. Her case is not far removed from that of an eleven year old with whom voluntary carnal intercourse is considered rape." (Art. 335 (3) Revised Penal Code; People vs. Garcines alias Nene No. L-32321, June 28, 1974, 70 O.G. No. 43, 9103) (Underscoring supplied.)

"It is quite evident that in the Garcines case, the girl was a normal girl, without any defect, physically and mentally, unlike in the case at bar where the girl is abnormal, suffering from a congenital deafmutism and possessed of a very low mentality (kulang-kulang). It is, therefore, with more reason, following the reasoning of the Supreme Court in the Garcines case, that the girl, in the case at bar, could not have consented to the sexual intercourse, because she is a deaf-mute and mentally deficient, who can neither hear, speak nor think normally or reasonably. She cannot utter any word from her mouth as no sound could come therefrom, except

a moaning sound to show her pains and disapproval.

"To believe that the accused did not force or intimidate the girl could and would be giving credit to something unnatural because it must be admitted that even what force and intimidation the accused may use on the hapless victim, no retaliation thereto could be made by the offended girl except to moan, as she is deaf-mute and mentally deficient.

"The evidence in the case at bar shows that the deaf-mute victim has a mentality equivalent to a seven-year old child. She has not been in a position to distinguish between what is moral or immoral, between what is bad and what is good. Her mentality being that of a child lower than 12 years old, her consent to the sexual intercourse with the accused could not be deemed voluntary, assuming that the accused gave her some money.

'A child under 12 years even if she consents to the act, the law considers such consent to be involuntary; she is not deemed to have a free will, and if she was not intimidated, she must have been either subjugated or fascinated by the wiles of the seducer.' (Albert Law on Crime, 1932 Ed. 787--788)

"The Court agrees with the contention of the prosecution that the girl in the case at bar may be considered as being deprived of reason, because of her physical and mental abnormality and deficiency and on this angle, the Court reiterates the citation of the prosecution, thus:

'For carnal knowledge of a woman deprived of reason to constitute rape, the deprivation of reason contemplated by law does not need to be complete. Mental abnormality or deficiency is enough. So it was held by the Supreme Court of Spain that a man having carnal knowledge of a woman whose mental faculties are not normally developed or who is suffering from hemiplegia and mentally backward or who is an idiot commits the crime of rape.

'Cohabitation, said the Court, with a 14-year old feeble-minded girl under the circumstances herein recited, is rape. Being feeble-minded, she is incapable of thinking and reasoning like any normal human being; and, not being able to think and reason from birth as aforesaid and undoubtedly devoid and deficient in those instincts and other mental faculties that characterize the average and normal mortal, she really has no will that is free and voluntary of her own. In short, here is a defective will, which is incapable of freely and voluntarily giving such consent so essential and necessary in lifting coitus from the place of criminality.' (People vs. Daing, C.A. 49 O.G. 2331, cited in Revised Penal Code by V. Francisco, Third Edition, pp. 1324 to 1325.)

"The Court believes that the attempt of the accused in trying to impress upon the Court that he had fornication with the affended girl for monetary consideration is not worth a grain of salt, because the girl does not appear to be a harlot or a prostitute, ready to sell her flesh to the highest bidder and at a public place for that matter.

"To the Court, it is the accused who appears to be a satyr, with sadistic propensities, as shown by the very fact that although he is a married man, he would be willing to pay a deaf-mute P8.00 for a sexual intercourse and at a public place for that matter. Overcome by this beastly passion, the accused, in the case at bar, did not choose the place or the occasion, where and when to have sexual intercourse with a woman.

'When a man is overcome by his beastly passion, he chooses not the place, nor the occasion, nor his victim.' (People vs. Octubre, C.A. G.R. Aug. 1, 1948; People vs. Bagus C.A. G.R. No. 26050-R, July 9, 1962)

"Instead of satisfying his beastly passion with his wife, the accused herein has chosen a deaf-mute, who cannot defend herself because of her physical and mental deficiency. The accused did not care about the place (the comfort room of a public theater, where people come and go) and the time when he committed the rape (5:00 P.M.) in a well-lighted place. Only a man of abnormal sexual appetite, a sadistic maniac, could have the nerve to do this and the Court believes that the accused herein falls within that category.

"It may be stated parenthetically that although there may be no positive proof of actual force or intimidation,

nevertheless, since it is admitted that the victim is a deaf-mute and mentally deficient girl, the Court has jurisdiction over the instant case of rape.

"Thus the Supreme Court has so ruled:

'The power of the jurisdiction of the Court is not over the crime of rape when committed on a minor and demented girl, but over rape irrespective of the manner in which the same may be committed.' (People vs. Bengalao, et al. 94 Phil. 306; People vs. Pastores, 40 SCRA 508.)

"In view of the foregoing considerations, the Court has reached the conclusion and so holds that the guilt of the accused has been established beyond reasonable doubt. The penalty for the rape committed in the case at bar is Reclusion Perpetua, under Art. 335 of the Revised Penal Code as amended by Rep. Act 2632 and Rep. Act 4111, specifically under par. 1 of Sec. 3 thereof.

"WHEREFORE, there being neither aggravating nor mitigating circumstances, the accused, Domingo Burgos alias "TOTOY", is hereby sentenced to the penalty of Reclusion Perpetua, to indemnify the offended party in the sum of P12,000.00 by way of indemnity, in view of the diminishing purchasing power of the peso, without subsidiary imprisonment in case of insolvency (People vs. Amiscua, 37 SCRA 813, syllabus), and to pay the costs.

"The period of gestation having elapsed without any evidence of the fertilization of the ovum, no pronouncement as to support or recognition of the offspring is hereby made."

Hence, this appeal.

Appellant's counsel makes the following assignment of errors, to wit:

"I

"THE TRIAL COURT ERRED IN FINDING DOLORES TAPANG A 'DEMENTED GIRL' BECAUSE OF HER BEING A DEAF-MUTE.

"II

"THE TRIAL COURT ERRED IN HOLDING THAT 'THERE COULD NOT HAVE BEEN VOLUNTARY CONSENT TO THE CARNAL INTERCOURSE BECAUSE OF THE PHYSICAL AND MENTAL CONDITION OF DOLORES TAPANG.'

"III

"THE TRIAL COURT ERRED IN FINDING DOMINGO BURGOS GUILTY OF THE CRIME CHARGED IN THE INFORMATION."

The premise of the first assigned error is fallacious. The trial court did not find Dolores a demented girl "BECAUSE" of her being a deaf-mute. Rather, the trial court found that Dolores is a deaf-mute "AND" a demented girl. Thus the lower court said, "In the case at bar, it is established positively and clearly, that the offended girl is a deaf-mute and demented girl (kulang-kulang)."

The term "demented" is perhaps not correctly descriptive of the mental condition of Dolores. "Demented" means having dementia which Webster defines as mental deterioration; also madness, insanity. Dolores had no mental deterioration and she is neither mad nor insane. She is instead feeble-minded.

That Dolores is not only a deaf-mute but also mentally deficient is attested by her parents whose un rebutted testimony is to the effect that her mentality at the time of the incident was like that of their youngest daughter, Edenly Tapang, who was then seven years old. Dolores' actuations of taking a bath naked, jumping over the

bridge to take a bath, sleeping on the floor and moving her bowel at any place while eating certainly indicate a mentality equivalent to that of a seven year old child or even younger. The trial court did not therefore err in holding that Dolores is mentally deficient.

Because of the physical and mental condition of Dolores, she could not have given rational consent to the carnal intercourse - as correctly ruled by the trial court. It would have required a great deal of effort for a 13-year old deaf-mute to resist the sexual assault of the 5'8" market vendor especially so since the same was unexpected considering the place and time of its perpetration. And only a mind fully aware of the moral and social consequences of the consummation of such sexual assault could have given intelligent consent or to gather the courage to put up the resistance necessary to repel such aggression. But how could the victim in the case at bar have full awareness of the moral and social consequences of the consummation of the sexual aggression when she could not even understand the implication of taking a bath naked in a public place, jumping over the bridge to take a bath, and moving her bowel at any place while eating. A rational consent to an act could only be given by one who has the ability to discern the consequences of said act. And Dolores certainly did not have such mental ability not only because of lack of formal education but also because of her physical and mental deficiencies.

Domingo's contention that Dolores consented to, and in fact initiated, the carnal intercourse cannot exculpate him from criminal liability not only because of the foregoing, but also because of its inherent incredibility. For, Domingo's claim that he had sexual intercourse with Dolores because she followed him to the men's comfort room and while he was urinating she removed her panties and showed her private parts to him is belied by the undisputed fact that the criminal act was perpetrated in the ladies' comfort room and not in the men's comfort room. Besides, there is no evidence, other than the accused's self-serving testimony, that Dolores is capable of the perversions imputed to her by the desperate accused.

In view of the foregoing, the trial court did not err in finding the accused Domingo Burgos guilty beyond reasonable doubt of the crime of rape.

WHEREFORE, the decision appealed from is hereby **AFFIRMED** in toto with costs against the appellant.

SO ORDERED.

Barredo, (Chairman), Concepcion, Jr., Guerrero, De Castro, and Escolin, JJ., concur.
Aquino, J., see concurrence below.

CONCURRING OPINION

AQUINO, J.:

I concur. This case falls within the category of rape of a woman "deprived of reason" (*privada de razon*). "*Comete violacion el que yace con mujer que no tiene normalmente desarrolladas sus facultades mentales*". Copulation with a woman known to be mentally incapable of giving even an imperfect consent is rape. (See *People vs. Manlapaz*, L-41819, February 28, 1979, 88 SCRA 704.)

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