

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GIL MUNAR, DEFENDANT-APPELLANT.*G.R. No. L-40462. July 31, 1984*

Ponente: MELENCIO-HERRERA, J.

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The accused, Gil Munar, appeals his conviction for the crime of Rape by the Court of First Instance of Pangasinan, Branch IX, on August 20, 1971, which sentenced him to an indeterminate penalty of ten (10) years and one (1) day of prison mayor as minimum to seventeen (17) years, four (4) months and one (1) day of reclusion temporal as maximum, to indemnify the offended party, a mentally retarded girl of 19 years of age, in the sum of P5,000.00, and to pay the costs of suit.[1]

In a Resolution, dated December 23, 1974, the Court of Appeals (now Intermediate Appellate Court) where the appeal was initially brought, certified the case to this Tribunal on the ground that since the lowest penalty prescribed for rape is reclusion perpetua, the same is within our exclusive appellate jurisdiction.[2] However, on January 30, 1984, in conformity with our ruling in *People vs. Daniel*,[3] we returned the records of the case to the Intermediate Appellate Court for the determination of the proper penalty as the circumstances warrant, with a comprehensive written analysis of the evidence and discussion of the law involved, but the Intermediate Appellate Court shall refrain from entering judgment, and shall thereafter certify the case and elevate the entire records thereof to this Court for review.

Conformably to that directive, on March 21, 1984, the Appellate Court, in a Decision penned by Justice Lorna S. Lombos-de la Fuente and concurred in by Justices Emilio A. Gancayco and Isidro C. Borromeo, found that the appealed judgment should be modified such that the imposable penalty shall be reclusion perpetua inasmuch as the rape was committed with the use of a deadly weapon, and its commission was not attended by any modifying circumstances.[4] The case is with us now for review, without any judgment having been entered in the Appellate Court.

Upon a careful review of the evidence, we sustain the factual findings and conclusions of law embodied in the Appellate Court's judgment, and, therefore, adopt the same and append it as an integral part of this Decision (Annex "A").

The fact that complainant was feeble-minded, whose actual age at the time of the incident was 19 years but whose mental age was that of a 5-year-old child, does not affect her credibility. As stated by the Trial Court, her answers were intelligible enough to be understood.[5] She could convey her thoughts by words and signs. And as the examining physician of the National Mental Hospital testified, the mental deficiency does not prevent her from recalling painful experiences.[6] She is a competent witness.[7] There may have been inconsistencies in her testimony, but the same are minor and do not detract from the vital fact that she had, in fact, been abused by the accused in the manner that she had narrated. Neither the Trial Court nor the Appellate Court, therefore, erred in giving weight and credence to her testimony, there being no improper motive shown.[8]

The denials by the accused, specifically, that the complainant did not go to his store on the day the incident allegedly took place, and that he never had sexual intercourse with the complainant[9] do not deserve credence in the face of the positive and unwavering identification of the accused by the complainant. She testified that on March 2, 1967 when she went to buy starch from the accused in his store, the latter asked her to go inside and then with a knife in hand, forced her to lie down, then raised her dress, threw her panty away and had sexual intercourse with her.[10] That the carnal assault did take place is corroborated by the genital examination made by the Municipal Health Officer on the complainant.[11]

The accused's testimony that the motive of the complainant's family in filing the trumped-up case against him was that the mother owes him P133.00 while the brother owes him P250.00 for goods taken on credit, for which he demanded payment,[12] was belied by complainant's mother, who declared that they do not owe money to the accused.[13] In fact, the accused himself testified that he stopped extending credit to complainant's family since 1964 and did not collect the debt anymore.[14]

Considering that the rape was committed with the use of a knife, a deadly weapon, and in the absence of any modifying circumstances attending its commission, the penalty of reclusion perpetua conforms to Article 335 in relation to Article 63(2) of the Revised Penal Code.

WHEREFORE, we affirm the judgment of conviction imposed upon the accused, Gil Munar, and sentence him to suffer the penalty of reclusion perpetua, with the modification that the indemnification to the offended party is hereby increased to P15,000.00. Costs against the accused-appellant. SO ORDERED.

Plana, Relova, and Gutierrez, Jr., JJ., concur.

Teehankee, J., (Chairman), in the result.

De la Fuente, J., no part.

[1] Original Record, pp. 260 & 261.

[2] Rollo, p. 55.

[3] 86 SCRA 511 (1978).

[4] Rollo, p. 66.

[5] Decision, p. 10; Original Record, p. 259.

[6] T.s.n., September 10, 1969, pp. 42, 44 & 47.

[7] vide *People vs. De Jesus*, G.R. No. L-39087, April 27, 1984.

[8] *People vs. Coderes*, 104 SCRA 255 (1981); *People vs. Blas*, 106 SCRA 305 (1981).

[9] T.s.n., September 24, 1970, pp. 21 & 22.

[10] T.s.n., March 18, 1969, continuation of Hearing pp. 1-4 & 15-17.

[11] Exhibit "A", Original Record, p. 3.

[12] T.s.n., September 24, 1970, p. 19.

[13] T.s.n., September 10, 1969, p. 56.

[14] T.s.n., September 24, 1970, pp. 26 & 27.

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