

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. HENRY TOMENTOS Y RUBIO, ACCUSED-APPELLANT.

G.R. No. 101208. July 03, 1992

Ponente: PARAS, J.

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PARAS, J.:

This is an appeal from the decision of the Regional Trial Court of Dumaguete City, Branch 43, Hon. Daniel B. Bernaldez, presiding, in Criminal Case No. 8908 convicting the accused of the crime of Rape, sentencing him to suffer the penalty of Reclusion Perpetua "with the accessory penalties provided for by law and to recognize and support the child Mary Joy until she reaches the age of majority. Accused is further sentenced to pay Salvation Cabahug P10,000.00 as moral damages and the cost of the proceedings."

A complaint dated September 11, 1989 was filed thru Assistant Provincial Prosecutor, Rodrigo V. Icao, charging accused-appellant with raping the aforementioned victim Salvation Cabahug, as follows:

"That the undersigned accuses Henry Tomentos y Rubio of the crime of Rape committed as follows:

"That on the month of March, 1989 in Tampocon I, Ayungon, Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused by means of force and intimidation, did, then and there willfully, unlawfully and feloniously have sexual intercourse with the undersigned (SALVACION CABAUG) against her will and without her consent."

"Contrary to paragraph 1 of Article 335 of the Revised Penal Code.

"Dumaguete City, Philippines, September 11, 1989.

"(SGD) SALVACION CABAUG

(Complainant)"

Upon arraignment on October 27, 1989, the accused pleaded NOT GUILTY, and trial commenced in the Regional Trial Court of Dumaguete, Branch 30. Later, thru motion of the counsel for the accused, the presiding judge inhibited himself voluntarily from further proceeding with the case and the case was reraffled to Branch 43.

During the trial, the prosecution adduced the testimonies of ten (10) witnesses: (1) Dr. Angel V. Somera, an expert who specialized in UP-PGH re-psychiatry and nervous disorders; (2) Dr. Julio L. Abella, the Municipal Health Officer; (3) Victoria Olaera, the auntie of the victim; (4) Dominador Cabahug, the father of the victim; (5) Felicisima Jabellana, the owner of the house operation Betamax (films); (6) Salvacion Cabahug, the victim; (7) Romulo Faburada, a cousin of the victim (8) Dalger Germodo, the police investigator; (9) Otilio Gimang, the Court Interpreter of Branch 30 and relative of the accused; and (10) Patrolman Mariano Vergara III, the serving officer of the Ayungon Police.

The prosecution has established that the accused is in his early fifties, married, with eight (8) children; the town

bully and a notorious police character with documented nine (9) settled and pending cases filed aside from those cognizable by the Municipal Trial Court, ranging from Frustrated Homicides, Physical Injuries, Thefts, Trespass to Dwelling and Rape; that the accused and the victim are neighbors; that the victim is a 21-year-old girl with the mind of an 8-10 years old girl, and an IQ of 55-69%; that the victim spent three (3) years in grade I being really a mental retardee and able to pass Grade V with 75% average which was only made possible because she was always present in school and with the teachers as her relatives; that she is not inclined to verbal communication and if sent to buy something from the store, a list of things to buy is written in a piece of paper clipped together with the money; that she does not comb her hair nor take a bath not even cleaning herself even during menstruation periods unless told to do so; that these and more proofs of her being mentally-retarded were confirmed by a series of psycho-neuroses examinations conducted by a medical expert (Dr. Somera); that one evening, around March of 1989, the victim was viewing a Betamax film in the house of one Eniod; that she felt the call of nature and she went outside the house to urinate, at the banana groves; that she was followed by the accused who threatened her with a long stainless kitchen knife about 9 1/2 inches in length with which she was threatened with the knife; that she was forced to lie down and her panty removed; that with the knife placed at her breast, she could not do anything but submit to the forced sexual intercourse which the accused successfully carried on; that thereafter, she was told firmly never to tell anybody about the matter otherwise, she will be killed by the accused; that the rape was repeated later on; that one day, a local "hilot" (midwife) called the auntie of the victim and informed her that the victim is from five to six months pregnant; that the auntie immediately summoned the victim and elicited the name of the person responsible for the pregnancy; that perhaps due to fear of the accused and the state of mind of the mentally retarded victim, the auntie had a hard time persuading the former to confess as to what really transpired; that when it was found out from the victim that it was the town bully who raped her, the auntie sent for the father of the victim and advised him not to resort to any kind of violence due to the family shame brought about by the pregnancy of the victim who was mercilessly raped despite her being deprived of a normal mind/reason; that the family lost no time in seeking help from the authorities and a complaint was filed signed by the victim herself; that a subpoena was sent to the accused who just laughed it off and did not sign the paper he was supposed to sign altho requested by the police serving officer to do so; that one of the children of the accused, the midwife named Irma Tomentos set a conference between the relatives of the accused - the father, (mother was long ago dead), the relative (uncle-court interpreter), and others, with the victim herself, for the purpose of settling the case amicably; that the meeting/conference failed because the accused vehemently denied raping the victim and did not apologize to the family; that the accused suggested a confrontation with the three (3) other "boars"/barako or boys who were also neighbors of the victim but also her relatives; that the accused told the investigating police officer that a paper with his name and the three (3) summoned boys be written and the list be given to the victim who will check the name of the one who raped her since she would not utter verbally the name of the rapist during the investigation but would merely look and gaze and stare at the accused-Henry Tomentos; that the name of the accused was the one checked by the victim; that still the accused denied; that on October 30 or 31, 1989, a baby girl was delivered by the victim; after the baby was born, the victim was able to answer categorically and in a clear manner the circumstances of the rape committed on her person and pointed at the accused inside the court session hall.

The defense merely denied participation and kept on insisting that perhaps one of the boys he requested to be summoned did it; that when the victim kept merely looking, staring and gazing at him when they were investigated at the police headquarters, he requested that a piece of paper be given to the victim with all their four (4) names in it; that his name was the one checked and pointed to as the rapist by the victim when the list aforementioned was given to the accused; that he tried to make it appear that the meeting was organized by his daughter Irma was set up by the father and relatives of the accused to extort money from him for the amicable settlement of the case.

The counsel of the accused-appellant, in his futile attempt to exonerate the accused assigned the following errors in his brief, that the lower erred in: - (1) granting the prosecution the right to ask leading questions; (2) not giving significance to the testimony of the prosecution witness Dr. Angel Somera that complainant's retardation is of the mild degree only; (3) appreciating that the revelation of the identity of accused by complainant was voluntary, spontaneous, candid and innocent; (4) not acquitting accused despite failure of the prosecution to prove beyond reasonable doubt its unfounded claim of paternity; (5) pronouncing that the discrepancy between the affidavit and testimony of complainant is insubstantial and immaterial; and (6) giving substantial credence to the highly improbable, inconsistent and orchestrated testimony of complaint.

These will all be discussed all together being inevitably interlinked with one another.

There was no denial whatsoever on the part of the defense of all the other allegations established by the prosecution like the string of cases the accused has with the regional trial court in their place which is aside from numerous other cases filed at the municipal trial court, ranging from rape, physical injuries, frustrated homicides, robberies, and many others. With the kind of character the accused has, even a maiden of normal mind and average intelligence quotient will definitely be intimidated. There should therefore be no more questions as to why the poor and miserable mentally retarded victim Salvacion Cabahug failed to report at once the violation of her womanhood.

At this juncture, it is imperative that a reminder be made that this Court is not a trier of facts and that as to the credibility of the witnesses, much respect and weight, are given the trial courts, the presiding judges there, having been given the opportunity and the chances of having observed the witnesses' deportment and manner of testifying and therefore are the ones with the best positions to decide as to the truthfulness or falsity of any testimony in cases like this one (*Peo v. Ancheta*, 60 SCRA 333)

Anent some leading questions having been allowed by the court during the direct-examination of the victim, the same is allowed in cases of "witness who is ignorant, or a child of tender years, or is of feeble mind, or a deaf-mute" (Section 5, Rule 132, Rules of Court). The victim has been convincingly, categorically and scientifically proven to be a mentally retarded woman, who is likened to that of a mind of 8 to 10 years old, and a very dull girl ("kulang-kulang"), thus entitled to some leading questions.

Immaterial and insubstantial lapses as to the exact date or dates and minor details in the victim's testimonies should not be exaggerated and taken against the victim. These things are expected from a mental retardate (*People v. Palma*, 144 SCRA 236).

The medical expert on mental health, Dr. Angel Somera, has proven that the victim does not have hallucinations, is in touch with reality, no fantasies but only has the tendency to convey thoughts through some body language like checking the name of the accused and looking/gazing only at the accused for quite a time when he was seated side by side with the three (3) other suspected boys in the locality. This makes her a competent witness as she can convey her ideas in many forms like signs, writings and body gestures, aside from words (*People v. Reglos*, 118 SCRA 344).

The denial of the accused cannot be given credence. His house is very near the place where the rape was perpetrated. It would be preposterous to assume that a guileless barrio woman and whose intelligence is admittedly low, could have fabricated this grave charge or that her father and relatives would go into the trouble of having her medically examined, physically and even mentally, for several sessions and all the way - going to court, spending much time, effort and money, as they are very poor; and advertising to the whole world that the victim Salvacion "Vacion" Cabahug had been raped, if the charge was merely invented and if the supposed-father (the accused) which is considered a shame to any family is not really the rapist (*People v. Olmedillo*, 11 SCRA

193).

It is not illogical to think that only a man of abnormal sexual appetite or a sadistic maniac like the accused, could have the nerve to rape a mental--retardee. The pitiful victim, easily coerced and cowed into submission thru intimidation by the accused here is not far removed from that of an eleven-year-old with whom voluntary carnal intercourse is considered rape (*People v. Garcines alias Nene*, No. L-32321, June 28, 1974, 70 O.G. 43 9103).

A meticulous study of the whole record of this case including the transcripts of stenographic notes inevitably leads to the conclusion that the guilt of the accused has been proven to be beyond reasonable doubt.

WHEREFORE, the decision appealed from is AFFIRMED with modification of an award of civil indemnity which is hereby increased in the amount of P50,000.00 in line with existing precedents.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, Regalado, and Nocon, JJ., concur.

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