

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SALVADOR BULAYBULAY, ACCUSED-APPELLANT.

G.R. No. 104275. September 28, 1995

Ponente: VITUG, J.

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VITUG, J.:

Herein accused-appellant, Salvador Bulaybulay, questions the decision of the Regional Trial Court of Lanao del Norte, Branch II, which has found him guilty of the crime of rape under an information, dated 13 August 1990, that reads:

"That on or about and during the month of December, 1989, at Kolambugan, Lanao del Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with force, violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the undersigned complainant, a woman of 23 years old but has a mental age equivalent to a 7-8 year old girl, against her will and consent.

"CONTRARY to and in VIOLATION of Article 335 of the Revised Penal Code as amended by Republic Act No. 4111." [1]

When arraigned, the accused entered a plea of not guilty.

Marilou Pornilos, the private complainant, biologically is 23 years old but, on the basis of psychiatric examination and analysis made by Dr. Amadeo Garcia, a qualified consultant in psychiatry, her mental age is equivalent to that of only a 7 or 8 year-old child. Marilou is also deaf and suffers from a speech problem. She has never attended school. The girl has been living with her aunt, Ma. Theresa Tuburan, in Kolambugan, Lanao del Norte, since 01 January 1989.

Some time in May 1990, the aunt noticed an abnormal abdominal growth in Marilou's physique. Marilou was brought to a local midwife who found the victim to be five months pregnant. The finding was confirmed following another examination conducted at the Rural Health Center of Kolambugan. When asked who had been responsible for her condition, Marilou pointed to accused Salvador Bulaybulay. Bulaybulay worked at the Kolambugan District Hospital just about five (5) meters away from the residence of the victim and her aunt. At the ground floor of the house was the only restaurant in the vicinity, owned by a certain Mrs. Entrina, which he used to frequent.

Private complainant narrated that before each sexual abuse, the accused would first bring the children of Ma. Theresa Tuburan, ages one and four, out of the room, then close the door and finally perform the carnal act. The accused would, during coitus, make threats on her life. [2]

The defense consisted, in main, on what it expressed to be an "impossibility" of rape being committed in a room just above a busy restaurant near a hospital, a tennis/basketball court, a public faucet and the Department of Social Welfare and Development ("DSWD") Office.

The trial court was not impressed by the defense put up against what it felt was a strong case presented by the prosecution. The court held:

"WHEREFORE, finding accused SALVADOR BULAYBULAY guilty beyond reasonable doubt of the crime of RAPE, he is hereby sentenced to suffer the penalty of reclusion perpetua. He is entitled in full for the period of his detention. Costs against the accused."[3]

From the judgment, accused-appellant filed the instant appeal ascribing to the trial court grave error in concluding that rape was committed.

We are constrained to sustain the conviction.

A person can be guilty of rape by having sexual intercourse with a female who is mentally incapable of validly giving consent to or opposing the carnal act. If the mental age of a woman above twelve years is that of a child below twelve years, even if she voluntarily submits herself to the bestial desires of the accused, or even if the circumstances of force or intimidation, or of the victim being deprived of reason or otherwise rendered unconscious, are absent, the accused would still be liable for rape. The rationale for the rule is simply that if sexual intercourse with a victim under twelve years of age is rape,[4] it must thereby follow that carnal knowledge of a woman whose mental age is that of a child below twelve years should likewise be constitutive of rape.[5] In one or the other, all that is essential would merely be to establish the fact of carnal knowledge; it is obvious that the personal circumstances of the woman would be known to the man with whom he does the act of intimacy.

The sexual act has been sufficiently shown in the case at bench. Here is how the private complainant testified:

"Q Do you know a person by the name of Bador?

"A Yes, sir. (witness is pointing to the person in the courtroom who when asked answered that his name is Salvador Bulaybulay)

"Q How did you come to know Salvador Bulaybulay?

"A He knows me and I also know him.

"PROSECUTOR BADELLES:

"Q Where did you come to know Salvador Bulaybulay?

"A In our house, sir.

"Q Now on the first occasion that you met Salvador Bulaybulay, did he tell you anything?

"A He looked for me in our house, sir?

"Q Did you know why he was looking for you in your house?

"A He was looking for me because (witness is showing by sign language pointing her middle right finger toward her left palm).

"xxx xxx xxx

"PROSECUTOR BADELLES:

"Q When Salvador Bulaybulay came to your house and according to you he wanted to do like that to you, what did Salvador tell you?

"A (Witness answered by pointing her finger toward the middle of her left palm)

"Q After which what did Bador do to you?

"A (Witness pointing her right finger at the middle of her left palm)

"Q Was he able to do that thing to you?

"A Yes, sir.

"Q How?

"A (Witness doing the same by pointing her middle finger to the middle of her left palm)

"Q What did he say when he did that to you?

"A He is going to kill me.

"Q Now what were you feeling at that time when Bador had the first occasion in doing that to you?

"A Blood came out, sir.

"PROSECUTOR BADELLES:

"Q You said that blood came out from where that blood came out?

"A From my vagina, sir.

"Q You said that blood came out from your vagina, what was the caused of that blood that came out from your vagina?

"A Because Bador did this to me. (witness is demonstrating with her middle right finger toward the middle of her left palm several times.)

"Q You said that blood came out of your vagina because Bador did like that to you, what did Bador use in doing that to you?

"A Blood came out.

"Q Now you said that blood came out from your vagina because Bador did something to you, did he do it in your vagina?

"A Yes, sir.

"Q Now, what did he use when he do like that at your vagina?

"A 'Pitoy' penis.

"Q You said that he used his penis or pitoy in doing like that to your vagina, was the pitoy able to penetrate your vagina?

"A Yes, sir, it entered.

"Q How many times did Bador do this thing or inserting his penis into your vagina?

"A Every day, sir.

"Q The first time that he used his pitoy or penis in penetrating into your vagina, what time of the day was that, was it morning or afternoon or evening?

"A It was in the afternoon, sir.

"Q Who was your companion in the house at that time?

"A Honey and Apple, sir.

"Q Now after Bador inserted his penis in penetrating your vagina, what happened to your body?

"A Blood came out, sir.

"PROSECUTOR BADELLES:

"Q And then was there an effect of that constant sexual contact with Bador with you into Physiological condition?

"A (Witness showing in sign language that her stomach became pregnant)

"Q What happened with your fetus that you said you carried with you?

"A I gave birth, sir."[6]

On cross-examination, she elaborated:

"Q When the accused approached you, Honey and Apple were present?

"A Yes, sir.

"ATTY. CABASAN:

"Q Aside from Honey and Apple there were other persons in the house?

"A No more, sir.

"Q And that happened at the second floor?

"A Upstair the bedroom.

"Q And while Bador approached you, Honey and Apple were there?

"A Yes, sir.

"Q This Bador approached you every day, did I get you right?

"A Yes, sir, every day.

"xxx xxx xxx

"Q Now when Bador does the thing which you said he did it to you, did Honey and Apple awake?

"A Yes, sir.

"Q And they saw what you were doing?

"A Yes sir, he removed Honey from the room and brought me from the bedroom and he closed the door."[7]

The narration of the complainant appears to be as natural and straightforward as can be considering her mental state. Well-settled is the rule that the lone testimony of the victim in the crime of rape, if credible, is enough to sustain a conviction. Indeed, by the very nature of the offense the only evidence that oftentimes can be relied upon is the victim's own declaration.[8]

Accused-appellant believes that it would be highly improbable for rape to occur in places where people are expected to congregate. Unfortunately, however, rape has been known to be perpetrated even in the most unlikely

places, like parks, roadsides, school premises and the like.[9] According to private complainant, moreover, the accused-appellant's repeated acts against her chastity were committed inside a bedroom away from the prying eyes of the public.

The complainant has not been shown to have had any improper motive to incriminate accused-appellant.[10] His suspicion that private complainant's guardian, Ma. Theresa Tuburan, and the latter's husband were interested in accused-appellant's position at the Kolambugan District Hospital is an unsubstantiated assertion. His other claim that private complainant's boyfriend, a prisoner, was the real culprit is at best conjectural. Most importantly, the credibility of witnesses is a matter that is best addressed by a trial court and, except in cases where clearly critical evidence on record has been unduly discarded, an appellate court should rightly defer to the findings of the court a quo.

All given, there is no way that we can fault the trial court except only insofar as it has failed to properly award moral damages to the victim.

WHEREFORE, the judgment of the trial court, dated 14 October 1991, finding accused-appellant SALVADOR BULAYBULAY guilty beyond reasonable doubt of the crime of rape is **AFFIRMED**. The victim, furthermore, is hereby awarded moral damages in the amount of P50,000.00 considering her condition of being a mental retardate.[11]

SO ORDERED.

Feliciano, (Chairman), Romero, and Melo, JJ., concur.

[1] Rollo, p. 3.

[2] TSN, 06 December 1990, pp. 3, 6-10.

[3] Rollo, p. 20.

[4] Art. 335. When and how rape is committed. - Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

1. By using force or intimidation;
2. When the woman is deprived of reason or otherwise unconscious; and
3. When the woman is under twelve years of age, even though neither of the circumstances mentioned in the two next preceding paragraphs shall be present.

The crime of rape shall be punished by reclusion perpetua.

Whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death.

When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be death.

When the rape is attempted or frustrated and a homicide is committed by reason or on the occasion thereof, the penalty shall be likewise death.

When by reason or on the occasion of the rape, a homicide is committed, the penalty shall be death. (Revised Penal Code)

[5] *People vs. Antonio*, 233 SCRA 283.

[6] TSN, 06 December 1990, pp. 2-5.

[7] TSN, 06 December 1990, pp. 6-7, 10.

[8] People vs. Antonio, 233 SCRA 283.

[9] People vs. Guibao, 217 SCRA 64.

[10] People vs. Dabon, *ibid.*

[11] People vs. Antonio, *Ibid.*

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