

## PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, TORTILLANO NAMAYAN, ACCUSED-APPELLANT.

*G.R. No. 106539. July 18, 1995*

Ponente: FRANCISCO, J.

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### FRANCISCO, J.:

Convicted of rape for having carnal knowledge with complainant Margie Pagaygay, a woman deprived of reason and mentally retarded, against her will, by means of violence and intimidation, sometime in March, 1991, in Barangay Giliga-on, Siaton, Negros Oriental, appellant Tortillano Namayan, alias Dodo was sentenced "to suffer the penalty of imprisonment (sic) of reclusion perpetua; to compulsorily acknowledge the child when born as a result of his act; to render support to the same child until he or she attains the age of 21 years; to indemnify the offended party the sum of P30,000.00 and to pay the cost".

Appellant now seeks the reversal of the decision in this appeal assigning as errors the following:

#### I

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED OF THE CRIME OF RAPE EVEN THOUGH THERE WAS PHYSICAL IMPOSSIBILITY OF COMMITTING THE SAME, THE ACCUSED BEING DETAINED IN JAIL AT THE TIME OF THE INCIDENT.

#### II

THE TRIAL COURT ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE AS DEFINED AND PENALIZED UNDER ART. 335 OF THE REVISED PENAL CODE DESPITE INSUFFICIENCY OF EVIDENCE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[1]

This much has been established by the evidence for the prosecution: The complainant, who was twenty years old at the time of the alleged offense, is moderately retarded with a mental age comparable to that of a three to seven year old child. Her mental defect was found to be congenital in nature. She had an impaired judgment and insight and an I.Q. of 25 to 50. She could neither do simple arithmetical solutions nor answer hypothetical questions. She had difficulty remembering dates, times and places. Although she went to school for four years, she was unable to pass Grade 1.[2]

Sometime in July, 1991, complainant's mother, Estelita Pagaygay, noticed the bulging stomach and enlarging breasts of complainant. The mother surmised that she was pregnant. On July 30, 1991, she was brought to the Negros Oriental Provincial Hospital. There, Dr. Teresito Orbito examined her and subjected her to an ultra sound examination. She was found to be four to five months pregnant.

Complainant blamed appellant, their long-time neighbor in Barangay Giliga-on, Municipality of Siaton, Negros Oriental, for her condition. She disclosed that appellant raped her on several occasions. In the month of March, 1991, as she was fetching water from an artesian well, appellant suddenly approached her, pulled out a hunting

knife and poked it at her neck. At knife's point, she was brought to a banana hill where, sheltered by the clump, appellant undressed her, removed her panty and had intercourse with her. Appellant offered her five pesos but she refused.[3]

The incident was subsequently repeated but this time it took place in a bathroom near the artesian well. Appellant who was then taking a bath and in his underwear suddenly pushed complainant who had come to fetch water from the well, to the ground. He removed her underwear and inserted his penis into her vagina while telling her that they were to make a child. This sexual assault was repeated a third time when she was sent by her mother to buy a bottle of beer. Appellant approached complainant with a hunting knife in hand and brought her to a bridge where he again had carnal knowledge with her.[4]

The appellant simply made a bland denial of his presence at the place, time and date, charged in the information. According to him he could not have committed the alleged crime because he was under detention at the Siaton Municipal Jail, Negros Oriental from February 5, 1991 to April 12, 1991 due to a pending case of illegal discharge of firearms filed against him. On this score, he lays stress on the testimony and certification of Ruben Gadayan in that as the jailer of Siaton, he checks the inmates twice a day, once in the morning and in the afternoon and that the appellant was released only on April 12, 1991 upon an order of Judge Fe Bustamante due to the withdrawal of the case against him. Appellant further harps on the presumption that Gadayan, being a law enforcer, is presumed to have regularly performed his duty.[5] It appears, in this connection, that appellant was also charged of frustrated murder on November 28, 1990 and the case was provisionally dismissed on January 24, 1991.[6]

The court cannot repose much reliance on the testimony of Gadayan. No less than Gadayan himself confirmed the fact that his duty is limited to entering into the record the detention prisoners as well as those facing criminal charges. It does not include "guarding of the detainees". Furthermore, some detainees are even allowed to live outside the Municipal Jail upon the discretion of the guard in-charge. Thus:

"Q.

Mr. Gadayan, you said you are the jailer of Siaton, Negros Oriental. What do you mean by that?

A.

The jailer is the one in charge (sic) of the records of the inmates or prisoners.

Q.

In short, your duty as a jailer does not include guarding of detainees?

A.

Yes, sir.

x x x

Court:

Q.

Your duty being a jailer is only to take the records of those prisoners and to enter into the police blotter those persons who are to be detained and who are facing criminal charges?

A.

Yes, sir."[7]

x x x

"Q.

So you do not know if some detainees are placed by the guard at living out after you check up at 8:00 o'clock in the morning?

A.

I do not know— its up to the outgoing guard to allow him. It depends upon the discretion of the guard."[8]

Clearly, from the foregoing, Gadayan is not in a position to categorically state that appellant never left his detention cell during the period when the alleged acts of rape were committed. Similarly, his certification (Exhibit "1") merely contains a statement that appellant was a detainee at the municipal jail from February 5, 1991 to April 12, 1991. It does not recite any other details which would duly prove that appellant never left the place during the period of his detention.

At any rate, the presence of the appellant at the time and place essential to the commission of the offense charged has been sufficiently established by the prosecution witnesses Lilian Gomez and Gaudencio Pagaygay who testified as follows:

LILIAN Gomez:

"Q-

On March 6, 1991, did you see the accused, your neighbor in Giligaon, Siaton, Negros Oriental?

A-

Yes.

Q-

Where did you see him?

A-

I saw him in sitio Looc, that was fiesta, March 6, 1991, playing "hantak".

Q-

Where is this Looc situated?

A-

Half (½) kilometer from our barangay.

Q-

Looc is part of Giligaon?

A-

Yes.

Q-

Was there any unusal (sic) incident that happened on March 6, 1991?

A-

Yes.

Q-

What was that?

A-

There was a fistfight between him, Tortillano Namayan, and a person by the name of "Bongoy".

Q-

The following day after that fistfight, was there any complaint before the office of your mother the barangay captain of barangay Giligaon?

A-

The father-in-law of "Bongoy" reported the matter to my mother.

Q-

What was the report about?

A-

About the fighting of "Bongoy" his son-in-law with Tortillano Namayan.

Q-

What is the full name of "Bongoy"?

A-

I do not know. They just call him "Bongoy" but the surname is Sarita.

Q-

Aside from that incident of March 6, 1991, wherein you saw the accused Tortillano Namayan playing "hantak" and had a fistfight with a certain "Bongoy" Sarita, have you ever seen this Tortillano Namayan in some other dates in the month of March, 1991?

A-

Yes.

Q-

In what occasion was that?

A-

Fiesta of barangay Giligaon, March 19, 1991.

Q-

Who was with Tortillano Namayan when you saw him during the fiesta of Giligaon on March 19, 1991?

A-

He was alone eating at my Lolo's house in the kitchen.

Q-

What time was that?

A-

11:30 o'clock in the morning.

Q-

Did you ever know that this Tortillano Namayan was a detention prisoner in the month of March, 1991?

A- I heard that he is in prison because he has a case by Mr. Rolando Namayan, but I don't know why he was in Giligaon."[9]

Gaudencio Pagaygay:

"Q-

Do you know the accused in this case, Tortillano Namayan?

A-

I know.

Q-

Why do you know him?

A-

Because we are neighbors.

Q-

Where?

A-

At Giligaon, Siaton.

Q-

How long have you known him before this incident subject matter of this case on March 6, 1991?

A-

I lived there for about twenty (20) years already.

Q-

You mean, you have known Tortillano Namayan for twenty (20) years before the time of the incident subject matter of this case?

A-

Yes.

Q-

If he is in the courtroom, please point to him?

A-

He is there.

(Witness, Gaudencio Pagaygay pointing to a person sitting on the bench intended for the accused)

CLERK OF COURT: (Addressing to the person being pointed to by the witness)

Q-

What is your name?

A-

Tortillano Namayan.

FISCAL VERGARA: (Continuation of her direct examination of witness, Gaudencio Pagaygay)

Q-

According to him in his defense, he was detained on March, 1991, at the Siaton municipal jail. Did you see him in Giligaon Siaton, Negros Oriental, on March, 1991?

A-

I saw him because there was a time while I was sitting in my store, he approached me and asked me to play with him "Mahjong".

Q-

What date was that if you can remember?

A-

That was March, 1991.

Q-

And what time was that when he approached you while you were sitting at your store?

A-

Around 5:00 o'clock in the afternoon.

Q-

You testified that he asked you to play "Mahjong" with him. Did you eventually play "Mahjong" with him?

A-

We played "Mahjong" at that time.

Q-

Until what time was that?

A-

We played only one (1) game because he had no more money to pay. He did not pay me anymore the bet.

Q-

How much did he owe you?

A-

P6.00.

Q-

After March 9, 1991, did you see again Torillano Namayan the accused in this case?

A-

I saw him dancing.

Q-

Where?

A-

Dance hall.

Q-

Dancing hall of where?

A-

Giligaon.

Q-

When?

A-

Fiesta.

Q-

When was as that fiesta of Giligaon?

A-

March 19.

Q-

What time did you see him at the dancing hall of Giligaon, Siaton, on March 19, 1991?

A-

About 10:00 o'clock past."[10]

This was un rebutted.

It is worth stressing, in this connection, that alibi is one of the weakest defenses that can be resorted to by an accused, especially if there is direct testimony of an eyewitness duly corroborated by that of another, not only because it is inherently weak and unreliable but also because of the ease of fabricating evidence of alibi and the

difficulty of checking or rebutting it. *People vs. Estrada*, L-261003, January 17, 1968, 22 SCRA 111 was cited in support of such a view. Thus: "No jurisprudence in criminal cases is more settled than the rule that alibi is the weakest of all defenses and that the same should be rejected when the identity of the accused has been sufficiently and positively established by eye witnesses to the crime." Such should be the rule, for as a defense, alibi is easy to concoct. It is not enough to prove that defendant was somewhere else, when the crime was committed, but he must, likewise, demonstrate that it was physically impossible for him to have been at the scene of the crime at the time of its commission.[11]

But appellant cautions that the testimony of complainant betrays the normal behavior of a girl whose virtue was threatened. Having allegedly been raped several times, she did not shout or did nothing to prevent the sexual assaults; nor did she complain or tell anyone about her plight.

To emphasize again, the complainant is a mental retardate.

In *People v. Sunga*, [12] where the offended party was 23 years old with the mentality of a child about 8 to 9 years of age, we held:

"Because of her mental condition, complainant is incapable of giving consent to the sexual intercourse. She is in the same class as woman deprived of reason or otherwise unconscious. Appellant therefore committed rape in having sexual intercourse with her."

Former Chief Justice Aquino in his authoritative work in Criminal Law, explains:

"x x x in the rape of a woman deprived of reason or unconscious, the victim has no will. The absence of will determines the existence of the rape. Such lack of will may exist not only when the victim is unconscious or totally deprived of reason, but also when she is suffering some mental deficiency impairing her reason or free will. In that case, it is not necessary that she should offer real opposition or constant resistance to the sexual intercourse. Carnal knowledge of a woman so weak in intellect as to be incapable of legal consent constitutes rape. Where the offended woman was feeble-minded, sickly and almost an idiot, sexual intercourse with her is rape. Her failure to offer resistance to the act did not mean consent for she was incapable of giving any rational consent.

The deprivation of reason need not be complete. Mental abnormality or deficiency is enough. Cohabitation with a feeble-minded, idiotic woman is rape." (Underlining supplied)

Considering complainant's low I.Q. and her mental condition, it is safe to conclude that when she submitted herself to the accused for subsequent intercourses, she was dominated more by fear and ignorance, rather than by reason. In the same manner, it is incredible to believe that she could have fabricated the charges against the accused. The filing of the complaint was impelled by no other reason than to vindicate an offense committed against the victim and her family. It is hard to believe that a rape victim and her family would publicly disclose the incident and thus sully their honor and reputation in the community unless it is true.[13]

While the evidence shows three acts of rape, there can be prosecution for only one, because the information charges only one offense.[14]

In any event, whether under paragraph 1 or under paragraph 2 of Article 335[15] of the Revised Penal Code, appellant's guilt is demonstrated beyond reasonable doubt.

There is no question that the child then being conceived by the complainant resulted from the act of sexual intercourse complained of. As correctly observed by the trial court:

"According to the Medical witness, Margie Pagaygay, at the time of examination on July 30, 1991, was found to be pregnant with fetus aging 4 to 5 months old. Based on this (sic) findings, the act or acts of sexual

intercourse might have happened during approximately the period of between March 15, 1991 to April 15, 1991, a period of one month before the start of the conception. Even assuming that the accused was released from confinement in jail on April 12, 1991 as contented (sic) by him, yet from April 15, 1991, to July 30, 1991, would be approximately four (4) months after April 12, 1991. Time computation here is not so exact as like any other mathematical computation because coetus (sic) and pregnancy are mysterious acts of nature which only the Great Creator knows with exactitude. Added is the fact that on March 19, 1991, during the fiesta of Barangay Giligaon, Municipality of Siaton, Province of Negros Oriental, Lilian Gomez, a prosecution rebuttal witness saw the accused Tortillano Namayan in the said place playing "jantac" a game of chance played by means of tossing up coins. Besides, the alleged charge for which the accused Tortillano Namayan claims he had been detained is not serious and only requires minimum security risks if ever he was detained from, February, 1991 to April 12, 1991. Therefore, the oral rebuttal testimony furnished by Lilian Gomez for the prosecution is credit worthy."[16]

Compulsory acknowledgment, as well as the support of the child is indeed proper there being no legal impediment in doing so, as it appears that complainant and appellant are both single. The crime of rape committed by the accused carries with it, among others, the obligations to acknowledge the offspring if the character of its origin does not prevent it and to support the same.[17]

WHEREFORE, the judgment appealed from is hereby AFFIRMED, modified only as far as the award of damages is concerned, which is increased to FORTY THOUSAND PESOS (P40,000) in line with current jurisprudence.[18]

### **SO ORDERED.**

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

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[1] Brief for the Appellant, p. 1; Rollo, p. 23.

[2] Decision, p. 2; Psychiatric Evaluation, Exhibit "A"; TSN, pp. 3-7.

[3] TSN, pp. 5-6, Hearing of November 19, 1991.

[4] TSN, pp. 6-8, Hearing of November 19, 1991.

[5] TSN, p. 8, Hearing of November 28, 1991.

[6] TSN, p. 4, Hearing of December 10, 1991.

[7] Appellee's Brief, pp. 9-10, citing TSN, R. Gadayan, December 10, 1991, pp. 11, 13.

[8] Id., p. 10, citing TSN, R. Gadayan, December 10, 1991, p. 16.

[9] TSN, pp. 4-6, Hearing of January 8, 1992.

[10] TSN, pp. 14-16, Id.

[11] People vs. Brioso, G.R. No. L-28482, January 30, 1971; 37 SCRA 336. See also "People vs. Umali", G.R. No. 76530, March 1, 1995; "People vs. Morin", G.R. No. 101794, February 24, 1995.

### **[12] 137 SCRA 130.**

[13] People vs. Robles, 170 SCRA 557.

[14] People vs. Coral, Matilde, Jr. vs. Jabson, 68 SCRA 456; People vs. Robles, 170 SCRA 557; People vs. Joya,

227 SCRA 9.

[15] "x x x

1. By using force or intimidation;
2. When the woman is deprived of reason or otherwise unconscious; and

x x x.

[16] RTC Decision, pp. 2-3; Rollo, pp. 13-14.

[17] People vs. Luchico, 49 Phil. 689, 698.

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

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