

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDUARDO PAMOR, ACCUSED-APPELLANT.

G.R. No. 108599. October 07, 1994

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

For the alleged rape of Fanny Dador, a mentally retarded 14--year-old lass with the mental age of a 5-year-old child, a complaint for rape against accused Eduardo Pamor was filed on 21 June 1989 with the Third Municipal Circuit Trial Court (MCTC) of Magsaysay-Rizal, Occidental Mindoro.[1] After preliminary investigation and finding cause to hold the accused for trial, the MCTC forwarded the records of the case to the Office of the Provincial Fiscal.[2]

On 16 August 1989, the Office of the Provincial Fiscal filed with the Regional Trial Court (RTC) of San Jose, Occidental Mindoro, an information charging the accused with the crime of rape committed as follows:

"That on or about the 31st day of December, 1988, in the afternoon, in Barangay Paclolo, Municipality of Magsaysay, Province of Occidental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the accused, being then armed with a knife and by means of force and intimidation committed with the use of such deadly weapon, did then and there willfully, unlawfully and feloniously have carnal knowledge of Fannie Dador, a woman, against her will and consent.

CONTRARY TO LAW."[3]

The case was docketed as Criminal Case No. R-2706 and was assigned to Branch 45 of the said court.

On 28 November 1989, the RTC ordered the withdrawal of the case from the mandatory continuous trial procedure to enable complainant Fanny Dador, who was considered by her family as "kulang sa isip" or suffering from mental deficiency, to be brought to Manila for psychiatric treatment and examination to determine the exact nature of her mental disorder. The case was then transferred to Branch 46 of the same court.

Fanny was examined and observed by Dr. Eduardo T. Maaba, Medical Specialist I In-charge of the Out-Patient Service, National Center For Mental Health (NCMH) in Mandaluyong, Metro Manila, who subsequently submitted to the trial court a Report[4] which states in part that Fanny

"was found suffering from Moderate Mental Retardation, with an IQ equivalent to 40.4 and a computed mental age of 5 years and 3 months. Poor reality testing connotes the concomitant presence of the psychotic illness."

During the trial, which resumed after the examination, the prosecution presented as its witnesses Fanny Dador; Maria Neneng Bagoy, Fanny's sister; Dr. Lope Asilo, the doctor who examined Fanny and confirmed her pregnancy; Aldredo Tevidad, the police investigator; and Nelfe Sanicit, the hilot who examined Fanny and to whom Fanny first confided the details of the rape.

The evidence for the prosecution established the following:

Fanny Dador, who was 14 years old at the time of the incident, having been born on 6 November 1974,[5] testified that in the early afternoon of 31 December 1988, their neighbor, accused Eduardo Pamor, entered their residence at barangay Paclolo, Magsaysay, Occidental Mindoro. At the time, she was alone in the house. Her parents along with her grandmother and younger sister had left for Panay Island to visit relatives, and her brothers and sisters were out of the house. Upon finding her alone, the accused covered her mouth to prevent her from shouting and threatened her with a knife. He then proceeded to undress her and succeeded in raping her. Before leaving, he threatened to kill her should she tell anyone about the incident.[6] When her parents returned home on 2 January 1989, she did not disclose to them the rape.

A few weeks later, Fanny's mother and sister, Neneng Bagoy, brought Fanny to a doctor after they observed that she was often sick. The doctor informed them that Fanny was pregnant, but they ignored the diagnosis because they could not believe that anyone would sexually molest a retarded child. In May of 1989, Fanny was brought to another doctor, Dr. Asilo, who examined her, confirmed her pregnancy,[7] and issued a medical certificate (Exhibit "B"). In the same month, Fanny's family brought her to a hilot, Nelfe Sanicit, who after examining Fanny and determining that she was pregnant, asked Fanny who the father was. Fanny confided to Nelfe that she had been raped by the accused and narrated the circumstances thereof.[8]

For its part, the defense presented the accused; Teodoro Ulzame; Primitivo Haguisan, the conductor of the jeepney hired by the accused; Florentino Cordova; and Dr. Agripino Munsayac.

The accused, a 33-year old farmer and married with four children, put up the defense of alibi. He claimed that he could not have committed the crime imputed against him because at the time it was allegedly committed, he was with his wife in the house of his sister in San Jose proper, which is ten kilometers from his residence in barangay Paclolo. In the early morning of 30 December 1988, his wife complained of chest pains which prompted him to borrow P500.00 from his neighbor, Teodoro Ulzame, to enable him to bring her to a doctor. He hired a jeepney and a driver to bring them to the Munsayac Clinic in San Jose. They left their home at around 2:30 a.m. and arrived at the clinic an hour later. His wife was discharged from the clinic at 7:00 a.m. and they proceeded directly to the house of his sister in barangay Caminawit, San Jose, where they were forced to stay for two and a half days because his wife was still weak and did not wish to travel. He did not return to their house in barangay Paclolo until the afternoon of 1 January 1989. In fact, he had stayed up drinking with his brother-in-law and a friend until midnight of 31 December 1989 in the house of his sister in Caminawit, San Jose.[9]

The accused further testified that the family of the victim held a grudge against him because he had filed a complaint in barangay Paclolo against the brothers of Fanny in 1985 for maliciously stoning his house. The compromise agreement which was later entered into between the parties was embodied in a Kasunduan.[10]

Teodoro Ulzame declared that in the early morning of 30 December 1988 he lent the accused P500.00 to be used for the treatment of the latter's wife; he saw the accused and his wife alighting from a jeep on 1 January 1989 when they arrived from San Jose; contrary to the claim of the prosecution that the victim was alone in her house on 31 December 1989, he saw four men pounding malagkit (rice) in front of the Dador residence, two of whom were Fanny's brothers while the other two were known in the neighborhood only as "Montalban" and "Eduardo" who then lived in the house of the Dadors; and he saw Fanny near the water pump cleaning a pot.[11]

The accused's testimony that he and his wife went to the Munsayac Clinic, their stay at the clinic, and his presence at a drinking spree in the house of his sister in barangay Caminawit, was corroborated by witnesses Primitivo Haguisan,[12] Dr. Agripino Munsayac,[13] and Florentino Cordova.[14]

To rebut the accused's alibi, the prosecution recalled to the witness stand Neneng Bagoy who stated that she saw the accused and his wife when they arrived at barangay Paclolo at around 2:00 p.m. of 31 December 1988.[15]

In a decision dated 11 November 1992[16] and promulgated on 7 December 1992,[17] the trial court found the accused guilty beyond reasonable doubt of the crime of rape and sentenced him to suffer the penalty of reclusion perpetua and to indemnify Fanny Dador in the amount of P50,000.00 without subsidiary imprisonment in case of insolvency.

The accused seasonably appealed the decision to this Court and in his Brief for the Appellant[18] contends that the trial court erred in:

"I. X X X ITS EVALUATION OF THE HONESTY OF PRIVATE COMPLAINANT FANNY DADOR.

II. X X X ITS SWEEPING DENIAL OF THE EVIDENCE FOR THE DEFENSE.

III. X X X FINDING THAT ACCUSED-APPELLANT HAD RAPED THE PRIVATE COMPLAINANT."[19]

Anent the first assigned error, the accused points to what he perceives to be gross inconsistencies in the testimony of Fanny Dador as evidenced by her varying answers when asked about the details of the rape. While on cross-examination she admitted that she did not attempt to shout or to run despite the fact that she had all the opportunity to do so when the accused was undressing himself in a standing position and she was lying on the floor.[20] Yet in the re-direct examination, she declared that she was unable to escape while the accused was undressing because he had covered her mouth with his hands and he was holding a knife.[21]

Besides, he argues, even if the testimony of Fanny Dador is to be believed, no rape was committed because she failed to resist or attempt to kick, push, or bite her assailant when he placed himself on top of her.

To further stress the incredibility of Fanny's story, the accused calls our attention to the gap between the date of the supposed act of rape, 31 December 1988, and the date of delivery of the child, 4 September 1989, which shows a gestation period of only eight months and seven days. According to him, the normal gestation period is nine months.

In his second assignment of error, the accused merely deplores the findings of the trial court "that all witnesses of the defense did not appear truthful in their statements." [22]

In his last assigned error, the accused insists that the testimony of Fanny Dador "defies credibility as there are material gaps and glaring inconsistencies in her testimony" [23] and that in crimes against chastity the testimony of the offended party should not be received with precipitate credulity. [24]

In the Brief for the Appellee, [25] the Office of the Solicitor General prays that the challenged decision be affirmed.

We find the appeal to be without merit.

The core issue in this case is the credibility of witnesses. A rule deeply embedded in our jurisprudence is that when the issue of credibility of witnesses is concerned, appellate courts will generally not disturb the findings of the trial court considering that it is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial, unless certain facts of value have been plainly overlooked which, if considered, might affect the result of the case. [26] In the 1913 case of *People vs. Macuti*, [27] this Court said:

"The emphasis, gesture and inflection of the voice are potent aids in understanding the testimony of witnesses. The trial court has the opportunity and is presumed to take advantage of these aids in weighing the testimony of the witnesses. But as they cannot be incorporated into the record, this Court has no assistance in the examination of the testimony and we must therefore rely upon the good judgment of the lower court."

Using such aids in assessing the credibility of the witnesses in this case or in detecting whether they were telling the truth or lying through their teeth,[28] the trial court came out with the conclusion that "[a]ll the witnesses for the prosecution testified in a straightforward manner and they appeared honest, sincere and convincing in their testimonies." [29] Referring specifically to the testimony of Fanny, it declared:

"The statement alone of complainant, Fanny Dador, would suffice to establish the crime of rape committed on her person by accused Eduardo Pamor. Although she appeared retarded, Fanny Dador convinced the court to be honest and truthful." [30]

As to the witnesses for the defense, it observed that "all witnesses presented [by it] did not impress the Court to be truthful in their statements." [31] There being no sufficient showing that the trial court had plainly overlooked certain facts of substance and value which, if considered, would affect the result of this case, we have to give full weight to the assessment of the trial court on the credibility of the witnesses.

We agree with the trial court that the evidence for the prosecution established beyond reasonable doubt that the accused had carnal knowledge of the offended party through the use of force and intimidation. He had a knife with him and before he left he threatened her with death if she would report the rape. She was not able to shout because he covered her mouth. Under the circumstances and considering her tender age and mental retardation, the reaction of a normal or mature person could hardly be expected from her. Nor is it reasonable to demand that a greater degree of intimidation be present so as to warrant conviction. Intimidation in rape cases is not calibrated or governed by hard and fast rules. Since it is addressed to the mind of the victim and is therefore subjective, it must be viewed in the light of the victim's perception and judgment at the time of the commission of the crime. It is enough that it produces fear -- fear that if the victim does not yield to the bestial demands of the accused, something would happen to her at that moment. It includes the moral kind such as the fear caused by threatening the victim with a knife or pistol. Where such intimidation exists and the victim is cowed into submission as a result thereof, thereby rendering resistance futile, it would be extremely unreasonable, to say the least, to expect the victim to resist with all her might and strength. If resistance would nevertheless be futile because of a continuing intimidation, then offering none at all would not mean consent to the assault as to make the victim's participation in the sexual act voluntary. [32]

In any event, even if no force or intimidation was used by the accused, he would still be liable for rape. There is un rebutted evidence in this case that Fanny Dador is a retarded child. She has "an IQ equivalent to 40.4 and a computed mental age of 5 years and 3 months." [33] Intelligence has been classified as follows:

"CLASSIFICATION I.Q. Range

Very Superior 128 and over

Superior 120 – 127

Bright Normal 111 – 119

Average 91 – 110

Dull Normal 80 – 90

Borderline 66 – 79

Defective 65 and below" [34]

On the basis of such classification, Fanny falls far below the borderline and is deep down the defective category. Having the mentality of a 5-year-old child, she could not have validly given her consent to nor opposed the sexual

act.

It has time and again been held that a person is guilty of rape when he has sexual intercourse with a female who is mentally incapable of validly giving consent to or opposing the carnal act. This rule has been reiterated by this Court in the following cases: *People vs. Manlapaz*[35] where the 13-year-old victim had a mental age of a 5-year-old child; *People vs. Gallano*[36] where the 31-year-old victim had a mental level of a 7-year-old child; *People vs. Asturias*[37] where the 17-year-old victim had a mental level lower than that of a 7-year-old child; *People vs. Sunga*[38] where the 23-year-old victim had the mentality of an 8 to 9-year-old child; *People vs. Palma*[39] where the victim was a 14-year-old retardate with an intellectual capacity described as "borderline mental deficiency"; *People vs. Race*[40] where the victim was an imbecile whose mental age is between 3 to 7 years; and *People vs. Antonio*[41] where the 24-year-old victim had the mental age of a 7-year-old child.

Nor are we persuaded by the novel theory of the accused that he could not have had sexual intercourse with Fanny Dador on 31 December 1988 because from that date up to the birth of the child on 4 September 1989, only 247 days or eight months and seven days had elapsed. He states that the gestation period is nine months and no evidence was shown that the child of Fanny Dador was born premature; hence, the child must have been conceived at an earlier date and not on 31 December 1988. She must have had sexual contact with someone else not later than 7 December 1988.

Gestation has been defined as the period of development of the young in viviparous animals, from the time of fertilization of the ovum until birth.[42] The length of gestation in humans is thought to average 266 days from conception, or 280 days (nine calendar months) from the first day of the last menstrual period.[43]

The flaw in the accused's submission is that he uses the period of 280 days (nine calendar months) and reckons it from the date of sexual intercourse. Where the date of fruitful coition is known, the period of gestation is estimated by counting 266 days (not 280 days) from the time of intercourse.[44] The child in this case had an actual gestation period of 247 days. The variance then of 19 days (266 days minus 247), instead of 33 days (280 days minus 247), is not at all unusual. The 266 and 280-day rules are not hard and fast ones but merely averages. The length of pregnancy varies from 220 days to 330 days, from the date of fruitful coition. Contrary to popular misconception, births at eight months are not unusual, and about 87.5% of such births survive.[45]

As to the alleged inconsistencies in Fanny's testimony, the Court finds them to be minor and trivial. A rape victim is not and cannot be expected to keep an accurate account of the traumatic experience she went through.[46] The most honest witness may make mistakes sometimes but such innocent lapses do not necessarily impair their credibility. The failure of the victim to relate in detail the things done to her does not lessen her credibility. Instead, it indicates her sincerity, candor, and lack of outside suggestion.[47]

The alibi offered by the accused is unavailing. It is well settled that in order for alibi to prosper, the evidence to support it must be clear and convincing so as to preclude the possibility of the accused's presence at the scene of the crime, while the evidence as to his identification must be weak and insufficient.[48] In the instant case, the place where the accused claimed to be is only ten kilometers away from barangay Paclolo, Magsaysay, where the rape occurred. It is a distance that could be traversed in less than one hour by readily available public transport. As testified to by him, a passenger jeepney is available in the said place. Moreover, the accused was positively identified by Fanny as the perpetrator of the offense. His alibi cannot stand against this positive identification.[49]

Finally, the fact that Fanny Dador filed her complaint more than six months after the occurrence of the rape is not a matter that would discredit her charge. Delay in reporting an incident of rape is not an indication of a fabricated charge nor does it cast doubt on the credibility of a complainant as it is not uncommon for young girls to conceal for sometime the assault on their virtue because of the rapist's threat on their lives.[50]

WHEREFORE, the instant appeal is DISMISSED and the decision of the Regional Trial Court of San Jose, Occidental Mindoro, in Criminal Case No. R-2706 is hereby AFFIRMED in toto.

Costs against the accused-appellant.

SO ORDERED.

Cruz, (Chairman), Bellosillo, Quiason, and Kapunan, JJ., concur.

[1] Original Records (OR), 2.

[2] Id., 20.

[3] OR, 22.

[4] Exhibit "E"; Id., 68-70.

[5] Exhibit "F"; OR, 188.

[6] TSN, 18 February 1992, 4-5.

[7] TSN, 25 February 1992, 4-8.

[8] TSN, 3 May 1990, 2-4.

[9] TSN, 13 August 1992, 2-13.

[10] Exhibit "7"; OR, 296-297.

[11] TSN, 24 March 1992, 4-6, 12.

[12] TSN, 3 April 1992, 2-5.

[13] TSN, 19 August 1992, 5-6.

[14] TSN, 7 April 1992, 3-10.

[15] TSN, 16 September 1992, 5-6.

[16] OR, 349-357. Per Judge Emilio L. Leachon, Jr.

[17] Id., 358.

[18] Rollo, 73-92.

[19] Id., 73-74.

[20] TSN, 18 February 1992, 10-11.

[21] Id., 13.

[22] Appellant's Brief, 12.

[23] Id., 15.

[24] People vs. Graza, 196 SCRA 512 [1991].

[25] Rollo, 117-134.

[26] *People vs. Pascual*, 208 SCRA 393 [1992]; *People vs. Simon*, 209 SCRA 148 [1992]; *People vs. Garcia*, 209 SCRA 164 [1992]; *People vs. Florida*, 214 SCRA 227 [1992]; *People vs. Matrimonio*, 215 SCRA 613 [1992]; *People vs. Kyamko*, 222 SCRA 183 [1993].

[27] 26 Phil. 170, 182 [1913].

[28] *People vs. Santito*, 201 SCRA 87 [1991]; *People vs. Garcia*, supra note 26.

[29] OR, 356; Rollo, 32.

[30] Id.; Id.

[31] Id., 356; Id., 32.

[32] *People vs. Grefiel*, 215 SCRA 596 [1992]; *People vs. Matrimonio*, supra note 26, citing cases.

[33] Exhibit "E"; OR, 68-70.

[34] *People vs. Antonio*, G.R. No. 107950, 17 June 1994, citing Wechsler's Classification of Intelligence, found in Walter J. Coville, *Abnormal Psychology*, 209 (1960 ed.).

[35] 88 SCRA 704 [1979].

[36] 108 SCRA 405 [1981].

[37] 134 SCRA 405 [1985].

[38] 137 SCRA 130 [1985].

[39] 144 SCRA 236 [1986].

[40] 212 SCRA 90 [1992].

[41] Supra note 34.

[42] *The Sloane-Dorland Annotated Medical-Legal Dictionary*, 312 (1987 ed.).

[43] *Danforth's Obstetrics and Gynecology*, 161 (6th ed. 1990).

[44] See *Leonard vs. Couse*, 372 N.Y.S.2d 527, 530-31 [1975].

[45] Sidney B. Schatkin, *Disputed Paternity Proceedings*, 350-51 (1947 ed.).

[46] *People vs. Dabon*, 216 SCRA 656 [1992].

[47] *People vs. Rabanes*, 208 SCRA 768 [1992].

[48] *People vs. Simon*, supra note 26.

[49] *People vs. Yadao*, 216 SCRA 1 [1992]; *People vs. Lim*, 206 SCRA 176 [1992].

[50] *People vs. Dabon*, supra note 46. See also *People vs. Lim*, supra note 49; *People vs. Abuyan*, 211 SCRA 662 [1992]; *People vs. Olivar*, 215 SCRA 759 [1992].

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