

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MORENO L. TUMIMPAD, ACCUSED-APPELLANT.

G.R. No. 109144. August 19, 1994

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

Accused-appellant Constable Moreno L. Tumimpad and co-accused Constable Ruel C. Prieto were charged with the crime of rape committed against a 15-year old Mongoloid child in a complaint dated on May 24, 1991, signed by her mother, Mrs. Pastora L. Salcedo, which reads:

That during the period between the last week of March 1989 and the first week of April 1989, in Barangay Lower Lamac, Oroquieta City, Philippines, and within the jurisdiction of this Honorable Court, the said accused did then and there, willfully, unlawfully and feloniously, have (sic) carnal knowledge with Sandra Salcedo, complainant's daughter, a woman who is a mongoloid and so weak of mind and in intellect as to be capable of giving rational and legal consent.[1]

Upon arraignment, accused-appellant pleaded not guilty to the crime charged and due trial ensued.

The facts as established by evidence are as follows:

Sandra Salcedo at the time of the incident was a 15-year old Mongoloid and daughter of Lt. Col. Teofisto Salcedo and Pastora Salcedo. She had a mind of a five-year old child, who still needed to be fed and dressed up. Her vocabulary was limited and most of the time she expressed herself by motions.

Col. Teofisto Salcedo was then Provincial Commander of Misamis Occidental. Four security men were assigned to him, two of whom were accused Constable Ruel Prieto and accused-appellant Moreno Tumimpad.

The Salcedo family, composed of Col. Salcedo, his wife Pastora, his son Alexander and wife and daughter Sandra, lived in a two-storey officers' quarters inside Camp Lucas Naranjo, Provincial Headquarters, in Oroquieta City. The upper storey of the house was occupied by Col. Salcedo, his wife and Sandra while the lower storey had two (2) rooms, one of which was occupied by the four security men and the other by Alexander Salcedo and his wife.

It was on August 7, 1989, when Sandra complained of constipation. Mrs. Salcedo then brought her to a doctor in Oroquieta City for a checkup. Medication was given to Sandra but her condition did not improve. Sandra became irritable and moody. She felt sick and unhappy.

The following day, August 8, 1989, Sandra saw Moreno Tumimpad coming out from the kitchen and told her mother, "Mama, patayin mo 'yan, bastos." [2]

Mrs. Pastora Salcedo, worried of her daughter's condition, brought her to Regina Hospital. Sandra was able to relieve herself the following day but still remained moody and irritable. She refused to take a bath in spite of scoldings from her mother. She did not want to eat and whenever she did, she would vomit.

Sandra was brought to a doctor in Oroquieta City for a second checkup. Dr. Conol, the examining physician, ordered a urinalysis. Jose C. Lim, a Medical Technologist, conducted the urinalysis. The result revealed that Sandra was pregnant.[3] Mrs. Pastora Salcedo could not believe that her daughter was pregnant and so she brought Sandra to Madonna and Child Hospital in Cagayan de Oro City. Dr. Kho, an OB-GYNE Specialist, examined Sandra and subjected her to a pelvic ultra-sound examination. The results were positive. The fetus' gestational age was equivalent to 17.1 weeks.[4] Another ultra-sound examination at the United Doctors Medical Center (UDMC) at Quezon City on September 11, 1989 confirmed that she was indeed pregnant.[5]

On January 11, 1990, Sandra gave birth to a baby boy who was named Jacob Salcedo. Hence, the filing of the complaint[6] by Mrs. Pastora Salcedo.

During the investigation conducted by the CIS, about thirty (30) pictures of different persons were laid on the table and Sandra was asked to pick up the pictures of her assailants. Sandra singled out the pictures of Moreno Tumimpad and Ruel Prieto.[7] Later, Sandra was brought out of the investigation room to a police line-up of ten people, including Moreno Tumimpad and Ruel Prieto. She was again asked to point to her assailants. Without hesitation, Sandra fingered Moreno Tumimpad and Ruel Prieto.[8]

Mrs. Pastora Salcedo testified that she requested her two daughters-in-law, Joy Salcedo and Celsa Salcedo, to ask Sandra the identity of the persons who sexually molested her.[9]

Joy confirmed in her testimony that she asked Sandra who sexually molested her. Sandra revealed that Moreno Tumimpad and Ruel Prieto were the ones who raped her. Sandra demonstrated how she was raped. First, her thighs were touched, then she was hugged and her panty was taken off. A push and pull movement followed.[10] Celsa testified that she was present when the victim demonstrated how she was sexually abused by the two accused, including the way her nipples were touched saying "dito hawak," and holding her breasts to emphasize. She likewise went through the motion of removing her panty, uttering at the same time "hubad panty."

Sandra identified in open court accused Moreno Tumimpad and Ruel Prieto as the persons who raped her and said she wished them dead, as they did something bad to her.[11] She once again demonstrated how she was sexually abused. She held her two thighs with her two hands next to her sexual organ saying, "panty" and then placed her hand on her breast and gestured as if she were sucking. She also touched her private organ and made a push and pull movement.[12]

During the trial, the accused moved that a blood test, both "Major Blood Grouping Test" and "Pheno Blood Typing" be conducted on the offended party, her child Jacob and the two accused. The result of the test conducted by the Makati Medical Center showed that Jacob Salcedo has a type "O" blood, Sandra Salcedo type "B," accused Ruel Prieto type "A" and accused-appellant type "O."

Both accused anchored their defense on mere denial contending that it was impossible for them to have committed the crime of rape.

After trial on the merits, the trial court convicted Moreno Tumimpad of the crime charged but acquitted the other accused, Ruel Prieto, on reasonable doubt, stating that he "has a different type of blood with (sic) the child Jacob Salcedo as his type of blood is "A", while that of child Jacob Salcedo is type "O."

The dispositive portion of the decision reads:

WHEREFORE, premises considered, the Court finds the accused, PO1 Moreno Tumimpad, guilty beyond reasonable doubt of the crime of Rape, as charged in the information, and pursuant to the provisions of Article 335 of the Revised Penal Code, as amended, there being no aggravating nor mitigating circumstance attendant in the commission of the crime, said accused Moreno Tumimpad is hereby sentenced to suffer the penalty of

RECLUSION PERPETUA; to indemnify the offended girl, Sandra Salcedo, in the amount of P20,000.00; and to suffer the other accessory penalties provided for by laws; and to pay the costs of the proceedings.

On reasonable doubt, accused Ruel Prieto is hereby declared ACQUITTED from the charge.

SO ORDERED.[13]

Accused-appellant assigns the following as errors of the lower court:

1. The lower court erred in not appreciating the impossibility of committing the offense charged without detection.
2. The lower court erred in convicting the accused-appellant base on major blood grouping test known as ABO and RHS test, not a paternal test known as chromosomes or HLA test.

The appeal is devoid of merit.

Accused-appellant argues that it was impossible for him to have committed the crime of rape because most of the time he and his co-accused Ruel Prieto were together with Col. Salcedo on inspection tours while the victim was always in the company of her mother. He further contends that it was likewise impossible for Sandra, if she had really been molested, not to have shouted out of pain, she being a virgin. As if adding insult to injury, accused-appellant suggests that it was Sandra's brother, Cristopher Salcedo, allegedly a drug user, who could have raped her.

We are not convinced.

It is true that the accused usually went with Col. Salcedo during inspection tours but sometimes they were left behind and would play pingpong or card games with Sandra at the ground floor of the house. While Sandra was always with her mother, there were times when she was left alone in the house with the accused.[14]

Mrs. Pastora Salcedo testified:

Q. How many security men remain if you can recall when your husband reported for work?

A. Two (2).

Q. Who were these security men who remained?

A. Moreno Tumimpad and Ruel Prieto.

Q. How about the 2 other security men Tanggan and Colaljo?

A. My husband sent (sic) them for an errand and sometime they used to go with my husband to the office.

Q. Every time when your husband is out what they do while they were (sic) at the headquarter?

A. I saw them sleeping and sometime they were playing at the porch with my daughter Sandra playing pingpong and sometime they were listening music.

Q. Where did they play usually take place?

A. Living room.[15]

x x x

Q By the say, (sic) Mrs. Salcedo, you said a while ago when you were at the headquarters you were able to do your choirs, (sic) doing laundry jobs in the second storey of your house. Do you know where is your daughter Sandra at that time?

A. Yes, she spent her time at the second floor.

Q. What part of the ground floor she used (sic) to stay?

A. Because she is found (sic) of music she stay in the living room.

Q. Did she has (sic) any playmates?

A. Moreno and Prieto.

Q. Have you seen actually the 2 accused playing with your daughter?

A. Yes, playing pingpong and playing cards.[16]

The victim more than once positively identified accused-appellant Moreno Tumimpad as one of the perpetrators of the crime. First, during the investigation conducted by the CIS, Sandra singled out accused-appellant and his co-accused from among the thirty (30) pictures of different persons shown to her. Second, at the police lineup of several persons, likewise conducted by the CIS, Sandra once again unerringly pointed accused-appellant and his co-accused as the ones who raped her. Third, in open court, Sandra without hesitation, pointed to accused-appellant as the perpetrator of the crime.

The following is the victim's own testimony:

PROS. RAMOS:

Will you please demonstrate before this Honorable Court what Moreno and Ruel did to you?

RECORD:

The witness when she stood up held both her thigh (sic) with her two hand (sic) down to her sexual organ saying a word 'panty' and she placed her hand on her breast and did something as if sucking and held her private part (sic) and did a push and pull movement and she cried.

Q When you said that there was a push and pull movement of the body and when this was being done did you feel pain?

A Yes pain.

Q What part of your body is painful?

RECORD:

The witness touching her private parts.

Q Did you also see blood on your sexual organ?

A Yes.

Q Where did you see these blood?

RECORD:

The witness touching her private parts.

Q When this push and pull movement was being made, did you see a man's organ?

A Yes sir.

Q Where did you see this male organ?

A Witness touching her private part.

Q Who did this to you, who removed your panty?

A Moreno and Ruel.

Q Did you see Moreno taking off his pants?

A Yes.

Q Did you see his sex organ?

A The witness touching her private parts.

Q How about this Ruel, did you see if he taken (sic) off his pants?

A Yes.

Q Did you see his sex organ?

A Yes, witness again touching her private part.

Q Both of them?

A Yes.

Q Where did Moreno and Ruel removed (sic) your panty?

A Moreno.

Q In your house?

A Yes.

Q What part of your house did Moreno and Ruel remove your panty?

A Downstairs Moreno and Ruel remove panty.

Q What part of the ground floor, was it outside or inside the room?

A In the room.

Q When (sic) Moreno and Ruel are inside the courtroom now, can you point to them?

A Yes.

Q Will you please point to them?

PROS. RAMOS:

May we request the accused to stand up your honor?

RECORD:

Both accused stood up from where they were sitting inside the courtroom.

PROS. RAMOS:

Who is that person (prosecutor Ramos point to accused Moreno Tumimpad?

A Moreno.

RECORD:

The witness pointing to a certain person who is standing and when asked what is his name, he readily answered that he is Moreno Tumimpad.

PROS. RAMOS:

Who is that person standing besides Moreno?

A Joel.

PROS. RAMOS:

If your honor please, she could not pronounced (sic) well the word Ruel but the way she called this name is Joel which refers to the same person who s one of the accused in this case.[17]

Melinda Joy Salcedo, the victim's sister-in-law, testified that Sandra demonstrated to her how she was ravished by the two accused, thus:

Q Now, will you please tell us what did Sandra Salcedo told (sic) you as to how she was abused?

A By what she had stated there were also actions that she made.

Q Will you please demonstrate to this Honorable Court how did Sandra Salcedo was abused as narrated or demonstrated to you by Sandra Salcedo?

A According to her she was held in her thigh and then she was hugged and then the panty was taken off and making a push and pull movement (witness demonstration by holding her thigh?

Q Now, after Sandra Salcedo told you and demonstrated to you how she was abused. What else did Sandra Salcedo tell you if she had told you any more matter?

A She did not say anything more.

Q Now, when Sandra Salcedo refused to talk or say anything else. What happened next?

A Then it was Celsa who asked her.

Q Where were you when Celsa asked Sandra Salcedo?

A I was just beside her.

Q You said that after Sandra Salcedo refused to talk, Celsa did the questioning, did you hear the question being asked by Celsa to Sandra Salcedo?

A Yes.

Q And what was the question being asked by Celsa to Sandra Salcedo?

A Celsa asked Sandra Salcedo as to what other things that these two had done to her?

Q And what if any did Sandra Salcedo tell you as to what was done to her?

A By way of talking and action.

Q And what was the answer of Sandra Salcedo?

A He (sic) answered it by action and talking.

Q And what was the answer of Sandra Salcedo as related by her to Celsa through words and action?

RECORD:

The witness demonstrated by holding his (sic) nipple going down to her thigh.

Q What else had transpired next?

A No more.

Q Now, whenever Sandra Salcedo mentioned the names of accused Moreno Tumimpad and Ruel Prieto, have you observed whose names was usually mentioned first by Sandra Salcedo?

A She mentioned first the name of Moreno Tumimpad and Ruel.

Q And what happened after that?

A I informed my mother-in-law of what Sandra Salcedo had told us.

Q When did you tell your mother-in-law about what Sandra Salcedo told you and Celsa?

A That very evening sir.[18]

Accused-appellant simplistically and quite erroneously argues that his conviction was based on the medical finding that he and the victim have the same blood type "O."

Accused-appellants' culpability was established mainly by testimonial evidence given by the victim herself and her relatives. The blood test was adduced as evidence only to show that the alleged father or any one of many others of the same blood type may have been the father of the child. As held by this Court in *Janice Marie Jao vs. Court of Appeals*[19]:

Paternity - Science has demonstrated that by the analysis of blood samples of the mother, the child, and the alleged father, it can be established conclusively that the man is not the father of a particular child. But group blood testing cannot show only a possibility that he is. Statutes in many states, and courts in others, have recognized the value and the limitations of such tests. Some of the decisions have recognized the conclusive presumption of non-paternity where the results of the test, made in the prescribed manner, show the impossibility of the alleged paternity. This is one of the few cases in which the judgment of the Court may scientifically be completely accurate, and intolerable results avoided, such as have occurred where the finding is allowed to turn on oral testimony conflicting with the results of the test. The findings of such blood tests are not admissible to prove the fact of paternity as they show only a possibility that the alleged father or any one of many others with the same blood type may have been the father of the child.

WHEREFORE, accused-appellant's guilt of the crime of rape having been proven beyond reasonable doubt, the decision appealed from is hereby **AFFIRMED**.

SO ORDERED.

Davide, Jr., Bellosillo, and Quason, JJ., concur.
Cruz, J., (Chairman), on official leave.

[1] Records, p. 2.

[2] T.S.N., August 1, 1991, p. 9.

[3] Exhibit "A", Folder of Exhibits, p. 1.

[4] Exhibit "B", Folder of Exhibits, p. 3.

[5] Exhibit "C", Folder of Exhibits, p. 5.

[6] Supra.

[7] T.S.N., August 7, 1991, p. 11.

[8] Id., p. 12.

[9] T.S.N., August 1, 1991, pp. 15-16.

[10] T.S.N., August 5, 1991, p. 9.

[11] Id., p. 25.

[12] Id., p. 26.

[13] Rollo, p. 23.

[14] TSN, August 1, 1991, pp. 6, 10.

[15] Id., p. 6.

[16] Id., pp. 10-11.

[17] T.S.N., August 5, 1991, pp. 68-72.

[18] Id., pp. 9-11.

[19] 152 SCRA 359 (1987).

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