

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. RICARDO BALATAZO, APPELLANT.

G.R. No. 118027. January 29, 2004

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Before the Court is an appeal from the Decision[1] of the Regional Trial Court of Gumaca, Quezon, Branch 61, convicting the appellant, Ricardo “Dado” Balatazo, of rape, under paragraph 2 of Article 335 of the Revised Penal Code and sentencing him to suffer the penalty of reclusion perpetua.

The Charge

On July 31, 1991, a criminal complaint for rape under paragraph 1, Article 335 of the Revised Penal Code, as amended, was filed with the Regional Trial Court of Gumaca, Quezon, Branch 61. The accusatory portion of the complaint reads:

That on or about the 16[th] day of February 1991, at Sitio Mainit na Tubig, Barangay Mainit Norte, Municipality of Perez, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, by means of force, violence, threats and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the undersigned complainant, against her will.

Contrary to law.[2]

On August 29, 1991, the appellant, assisted by counsel, was duly arraigned and entered a plea of not guilty.

The Case for the Prosecution

The prosecution presented four witnesses, namely, Adelaida Caño Dapo, the victim Marina Caño Dapo, Barangay Captain Felino Temporas, and Barangay Councilor Florentino Calvario.

Adelaida Caño Dapo testified that her daughter, Marina Caño Dapo, was already 24 years old but had the mentality of a child. She played with children and narrated her “problems” to them. The appellant was her first cousin and was one of their neighbors in Barangay Mainit Norte, Perez, Quezon Province. He was also a barangay councilman of Barangay Mainit Norte and frequented their house.

On February 16, 1991, a Saturday, Adelaida noticed that Marina had contusions on the knees. When she asked her daughter about it, Marina replied that the appellant went up to the house earlier and made her lie down. The appellant kissed and undressed her, and then pulled her yellow-colored pants down to her knees. He then mounted her and inserted his private organ into her vagina. He put his clothes back on and left the house. Adelaida and her husband Pablo reported the matter to Barangay Captain Felino Temporas at the barangay hall. The appellant was summoned, but when confronted with the charges, denied having raped Marina. The couple also reported the matter to Barangay Councilmen Damian Guerrero and Florentino Calvario. Calvario took Marina’s statement by

propounding questions on her. He wrote down his questions and Marina's answers thereto.[3] In her statement, Marina declared, inter alia, that the appellant threatened her before she was raped, and that when he mounted her, he pinned her knees with his legs; as a result, her knees sustained contusions.

Before presenting Marina as witness, the prosecutor asked the Court that he be allowed to ask leading questions since Marina was mentally-retarded. The appellant's counsel objected, but the court overruled the objection stating that leading questions are allowed if the witness is a child of tender age or a person whose mental capacity is that of a child.[4]

Marina testified that, except for her name, she did not know how to read nor write. On February 16, 1991, the appellant went up to their house and made her lie down. He then undressed her, pulled her panties down to her knees and mounted her, inserting his penis into her vagina. The appellant later left their house.

The prosecution offered the testimony of Barangay Captain Felino Temporas to prove that Marina was a mental retardate and that it was of common knowledge in the barangay. The appellant's counsel did not object to the testimony of Temporas. The latter testified that the Dapo Spouses and their daughter Marina were among his constituents in the barangay. When Marina was around nine years old, she was afflicted with typhoid fever. She has acted like a child ever since,[5] and had to stop going to school altogether.

Dr. Cheres Almagro-Daquilanea testified that on March 6, 1991, Adelaida and Marina arrived at the Doña Marta Memorial Hospital in Atimonan, Quezon. She conducted a genital examination of Marina and prepared and signed a Certification which contained the following findings:

INTERNAL EXAMINATION FINDINGS:

- a.) With old hymenal laceration on 6 o'clock, 9 o'clock and 3 o'clock positions;
- b.) Vaginal vaults admits 2 fingers with ease;
- c.) Pregnancy Test – Negative Result (--).[6]

Florentino Cavalrio testified that he and Barangay Councilman Guerrero took Marina's statement at the Dapo residence. Marina affixed her signature thereto, above her handwritten name. Damian Guerrero signed the statement as a witness. The appellant also gave a statement in which he denied raping Marina.[7]

After the prosecution rested its case, the appellant filed a Demurrer to Evidence, claiming that Marina failed to prove by her testimony that he threatened, forced or intimidated her into having sexual intercourse with him. Hence, he could not be convicted of rape under paragraph 1, Article 335 of the Revised Penal Code. In his Comment on the appellant's Demurrer to Evidence, the public prosecutor contended that there was no need to prove that the appellant forced, threatened or intimidated the victim, as the evidence on record showed that she was a mental retardate. Sexual intercourse with a woman who is a mental retardate is rape under paragraph 2, Article 335 of the Revised Penal Code; thus, the appellant could be convicted of rape. In his Reply, however, the appellant insisted that:

It is respectfully submitted that the accused cannot be convicted of the crime not alleged nor included in the complaint, the use of force, violence, threat or intimidation is different and distinct from mental retardation, victim being below 12 years old etc., the accused was charged under Article 335, paragraph 1 and not under Article 335 paragraphs 2 and 3;[8]

On July 21, 1994, the trial court rendered judgment convicting the appellant of rape under paragraph 2, Article 335 of the Revised Penal Code. The decretal portion of the decision reads:

WHEREFORE, judgment is hereby rendered finding accused, Ricardo Balatazo, guilty beyond reasonable doubt of the crime of rape, committed against Marina Caño, defined and punished under Article 335(2) of the

Revised Penal Code, and he is hereby sentenced to suffer the penalty of reclusion perpetua, with its accessory penalties, and to pay the offended party, an indemnity in the amount of P30,000.00.

SO ORDERED.[9]

The trial court declared that Marina was feeble-minded or mentally ill, incapable of giving consent to sexual intercourse. Accordingly, the absence of an allegation in the criminal complaint that the victim was a mental retardate was merely a procedural defect.

The appellant appealed the decision to this Court contending that:

The trial court erred in convicting the accused for a crime to which he was not charged for a crime not included and different from the crime he was charged.[10]

The appellant asserts that under the criminal complaint, he was charged of rape under paragraph 1, Article 335 of the Revised Penal Code, as amended. However, the prosecution, through the victim herself, failed to prove that the appellant forced, threatened or intimidated her into having sexual intercourse with him. The prosecutor cannot rely on the testimonies of Adelaida Caño Dapo and Florentino Calvario because the said testimonies are mere hearsay. Furthermore, according to the appellant, the prosecutor merely proved that the victim was a mental retardate and that he had sexual intercourse with her. He cannot be convicted of rape under paragraph 2, Article 335 of the Revised Penal Code; otherwise, he would be deprived of his right to be informed of the nature of the crime charged against him. Despite the trial court's findings that the prosecution failed to prove rape as charged in the criminal complaint under paragraph 1, Article 335 of the Revised Penal Code, the court still convicted him of rape under the second paragraph of the said Article.[11] Besides, Marina was merely coached by her mother Adelaida.

The Office of the Solicitor General admits that, indeed, the prosecution failed to prove that the appellant raped the victim under paragraph 1, Article 335 of the Revised Penal Code, but contends that the appellant may still be convicted of the said crime under paragraph 2 of the same article. The failure of the complaint to allege that the victim was a mental retardate was, as held by the trial court, merely a procedural defect, which the appellant waived when he failed to object to the evidence of the prosecution proving that the victim was so afflicted, thus:

It is true that appellant was charged with having sexual intercourse with the victim under paragraph one of Article 335, Revised Penal Code which requires the use of force and intimidation. It is also true that the victim did not testify that force and intimidation were used by appellant when he had sexual intercourse with her.

This, however, does not mean that appellant cannot be convicted of the crime of rape under the said provision of the law. The rationale behind the constitutional right of an accused to be informed of the nature and cause of the charges against him is to give him the opportunity to properly refute the charges against him and prepare for his defense. This, he can only do if he knows exactly what he is being accused of.

In the present case, appellant knew that he was being charged with raping a retardate who had the mental faculties of a child. He, however, opted not to rebut the evidence presented by the prosecution in regard to the crime and the victim's mental state, and not to present any evidence on his defense. Since he did not even prepare for his defense, appellant cannot therefore say that his constitutional right to do so has been violated.

The public prosecutor's failure to allege in the Information that the victim was a retardate, is a mere procedural defect. Any attack on the same can be waived by the defense when it fails to object to the introduction of evidence on this matter during the trial. Moreover, even appellant himself in effect admitted the victim's mental condition when he objected to her presentation as a witness claiming that being mentally retarded, she was incompetent to testify.[12]

We do not agree with the appellant.

The appellant does not dispute the trial court's finding that Marina was suffering from a mental deficiency; that she was a mental retardate. In *People v. Dalandas*,^[13] we held that:

...And the observation of the trial court, its impression of the demeanor and deportment of the victim and its conclusions anchored thereon are accorded high respect if not conclusive effect on the appellate court. In *State vs. Haner*, the Supreme Court of Iowa declared:

"Her answers to questions show that she is almost an imbecile, unless she was feigning imbecility. The judge and jury saw and heard her on the witness stand, and we cannot put ourselves in the place of the judge and jury. Her appearance and demeanor while testifying were most important considerations in determining her mental capacity, and, under the circumstance, we think it is not proper to interfere with the verdict. Another consideration, which, no doubt, had its influence with the court and jury, was that the complainant was a mere child when this calamity came upon her. She was but little past the age of consent. If she had been under the age of 13 years, mere carnal knowledge would have constituted the crime of rape without any evidence of mental weakness or imbecility."

And in *People vs. Moreno*, we likewise held that:

Dr. Cecilia Albaran herself stated that she could conclude, simply on the basis of her observation of the victim, that the latter had low intelligence. In *People v. Rosare*, the Court also noted that complainant's mental deficiency was so obvious that it was easily observable during preliminary investigation, viz:

"Her deficient mentality stuck out like a sore thumb at the center. Her behavior as a mental retardate was so obvious that even the investigating fiscal, who is not a man of science was able to observe it during preliminary investigation."^[14]

We do not agree with the trial court and the Solicitor General that the prosecution failed to prove that the appellant forced the victim to have sexual intercourse with him. It bears stressing that force or intimidation may be actual or constructive. In this case, the victim is a mental retardate. The appellant took advantage of her condition and succeeded in having sexual intercourse with her. Hence, he is guilty of forcible rape:

In the case of *Commonwealth vs. Stephens*, the issue involved was whether the carnal knowledge of a woman who was insane at the time of the commission of the act constitutes rape where there is no proof that the act was accomplished with physical force and such insanity was not alleged in the information. The court held that:

"Appellant also contends that there cannot be a conviction because the indictment charged the commission of the act forcibly and against the will of the alleged victim, while the evidence at most proved carnal knowledge of a woman who was insane. There is no merit in this objection. x x x

"Common-law rape may be committed in one of several ways, and it is not necessary to set out in the indictment the means or the method employed. It was not required that the indictment allege that the victim was insane and incapable of giving her conscious consent. A forcible ravishment is one done against a woman's will; if it is done against her will, it is of necessity without her consent; if she is insane or too weak of mind to give a rational consent, then it follows that she has been forcibly ravished. x x x

"x x x(C)arnal knowledge of an insane woman, knowing her to be insane, is rape. There is a lack of capacity to consent, and it is presumed that the act was done without her consent, hence it is against the female's will; the force required may be in the wrongful act itself. It follows that such act is done 'forcibly and against her will.' In an indictment the office of the words 'against her will' is merely to negative consent."^(Italics supplied)^[15]

...

The use of force by the appellant in achieving his lust is belied by the testimony of Adelaida that when she hurried

home on the day that the appellant abused Marina, she noticed contusions on her daughter's knees. When Adelaida asked her about it, Marina recounted how the appellant succeeded in raping her.

We are not convinced by the appellant's assertion that Marina was merely coached by her mother into implicating him as the perpetrator of the crime. Marina clearly narrated to the court how the appellant raped her:

Q

When he went to your house, do you remember of anything he did to you?

ATTY. CORTEZ:

At this juncture of the proceeding may we request that...I would like to reiterate my continuing objection to the sort of questioning.

COURT:

Enter that into the record. Let the witness answer.

WITNESS:

A

He went upstairs, Ma'm, in our house.

ATTY. FLORIDO:

Q

When he went upstairs in your house, what did he do if he did anything?

ATTY. CORTEZ:

Q

Objection Your Honor, already answered.

COURT:

The witness may answer the question.

WITNESS:

A

He caused me to lie down, Ma'm.

COURT:

Enter into the record, "Itinihaya po ako."

PROSECUTOR FLORIDO:

Q

When he caused you to lie down, did you lie down?

A

He caused me to lie down, Ma'm.

Q

When he caused you to lie down, what did he do?

A

He removed his brief, Ma'm.

Q

When he removed his underwear, what did you see?

A

He removed his underwear, Ma'm. "Naghubo po si Cado."

Q

When he removed his underwear, what did he do if he did anything?

A

His penis was shown, Ma'm.

Q

After his penis was shown, what did he do if he did anything?

A

“Inikot po ako,” Ma’m.

Q

Now, during that time when he put out his penis and fucked you, do (sic) you have your panty?

A

I was wearing a yellow panty, Ma’m.

Q

Did he remove your panty?

A

Yes, Ma’m, which was pulled down until here.

INTERPETER:

(Witness pointing down to her feet)

Q

When he fucked you, did you feel any pain?

A

No, Ma’m.

Q

Did you know after he fucked you, what else happened, if any?

A

He again showed out his penis, Ma’m.

Q

Do (sic) you have any companion then in your house?

A

None, Ma’m.

Q

Why, where is (sic) your companion in your house?

A

They were loitering around Ma'm. "Naglalayas po."

Q

Did this Cado Balatazo leave you after he fucked you?

INTERPRETER:

The witness nods her head.[16]

There is no evidence on record that Adelaida coached Marina into testifying as she did. It bears stressing that Adelaida and the appellant were cousins. As we ruled in *People v. Rosare*:

It is inconceivable that a mother would draw her daughter, a mental retardate at that, into a rape scam with all its attendant scandal and humiliation just because of a supposed dispute over property. No mother in her right mind could possibly wish to stamp her daughter falsely with the stigma that follows a heinous crime that is rape. And considering that in this case the victim is suffering from a mental abnormality, we cannot fathom how Rosalina's mother could be so heartless as to expose her daughter to public ridicule just to get even with the family of appellant. That would be senseless truculence at its peak. . . .[17]

Marina was subjected to intense cross-examination by the appellant's counsel, but the latter failed to dent the substance thereof.

We do not believe that given her mental deficiency, Marina fabricated the charge against the appellant. As we held in *People v. Rosare*:

As insightfully observed by the Solicitor General:

"Given the low I.Q. of the victim, it is impossible to believe that she could have fabricated her charges against appellant. She definitely lacked the gift of articulation and inventiveness. Even with intense coaching, assuming this happened as appellant insists that the victim's mother merely coached her on what to say in court (pp. 6-7, Appellant's Brief), on the witness stand where she was alone, it would eventually show with her testimony falling into irretrievable pieces. But this did not happen. During her testimony, she proceeded, though with much difficulty, to describe the sexual assault in such a detailed manner (tsn., R. Orubia, Apr. 6, 1994). Certainly, the victim's testimony deserves utmost credit."[18]

The appellant even failed to adduce any controverting evidence. He opted to merely file a Demurrer to Evidence.

In sum then, we find the appellant Ricardo Balatazo guilty beyond reasonable doubt of rape as charged under Article 335, paragraph 1 of the Revised Penal Code, punishable by reclusion perpetua.

The trial court awarded P30,000.00 as indemnity to the victim but failed to award moral damages. The decision of the trial court has to be modified. The appellant is ordered to pay to the victim the amount of P50,000.00 as civil indemnity[19] and P50,000.00 as moral damages,[20] conformably to current jurisprudence.

IN LIGHT OF ALL THE FOREGOING, the Court finds the appellant Ricardo Balatazo GUILTY beyond reasonable doubt of rape under Article 335, paragraph 1 of the Revised Penal Code and is hereby sentenced to suffer the penalty of reclusion perpetua. He is ordered to pay to the victim Marina Caño Dapo P50,000.00 as civil indemnity and P50,000.00 as moral damages.

SO ORDERED.

Puno, (Chairman), Quisumbing, Austria-Martinez, and Tinga, JJ., concur.

[1] Penned by Judge Proceso K. De Gala.

[2] Records, p. 2.

[3] Exhibit "C."

[4] TSN, 12 February 1992, p. 5.

[5] TSN, 27 June 1992, pp. 2-5.

[6] Exhibit "A."

[7] Exhibit "B" to "B-3."

[8] Records, p. 214.

[9] Id. at 231.

[10] Rollo, p. 50.

[11] Article 335, as amended by RA 7659, paragraphs 1, 2 and 3, read as follows:

Article 335. When and how rape is committed. Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

- By using force or intimidation;
- When the woman is deprived of reason or otherwise unconscious; and
- When the woman is under twelve years of age or is demented.

[12] Rollo, pp. 95-96.

[13] G.R. No. 140209, December 27, 2002.

[14] Id. at 9-10.

[15] People v. Rosare, 264 SCRA 398 (1996).

[16] TSN, 12 February 1992, pp. 7-9.

[17] Supra.

[18] Supra.

[19] People v. Invencion, G.R. No. 131636, March 5, 2003.

[20] People v. Pagsanjan, G.R. No. 139694, December 27, 2002.

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