

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANTONIO DELA PAZ, JR., ACCUSED-APPELLANT.

G.R. No. 118316. November 24, 1998

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

Rape is a despicable crime. It becomes more contemptible and revolting when committed against a fragile girl of twelve who is a mental retardate.

In a criminal complaint[1] filed on June 26, 1991 with the Municipal Trial Court of Sorsogon, Sorsogon by Manuel Desacula, father of the victim, accused-appellant Antonio dela Paz, Jr. was charged with the crime of rape allegedly committed on June 25, 1991 on Merlinda Desacula, a mental retardate. The information[2] against him was subsequently filed on August 29, 1991 before the Regional Trial Court of Sorsogon, Sorsogon, Branch 51. It reads:

That on or about the 25th day of June, 1991, in the municipality of Sorsogon, province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused by means of force and intimidation, did then and there wilfully, unlawfully, and feloniously have carnal knowledge with one Merlinda Desacula, a 12 year old, virgin, mentally retarded girl, without the latter's consent and against her will, to the damage and prejudice of the latter.

CONTRARY TO LAW.

Upon his arraignment on October 9, 1991, Antonio dela Paz, Jr. entered a plea of "not guilty." [3]

Thereafter, trial ensued.

The evidence for the prosecution[4] established the following facts:

At the time of the incident, rape victim Merlinda Desacula was a twelve-year old girl suffering from severe mental retardation with the mental intelligence of a three to four-year old child.[5] Given her delicate condition, she was usually left to the care and custody of an elder sister when her parents were at work.[6]

On the fateful day of June 25, 1991, Merlinda Desacula was left to her sister's care. At about eight in the evening, her sister's husband Anecito Tabor, a barangay tanod, came home. He looked for Merlinda so that the latter could feed his fighting cocks. Unable to find her, Anecito decided to feed the cocks himself. On his way to the back of their house where the cocks were kept, Anecito noticed the cage rocking. To his surprise he saw the accused-appellant in the act of sexual intercourse with Merlinda. He was on top of the victim who was lying flat on the ground face up, with her panties pulled down and her skirt raised. Accused-appellant's pants were down to his knees.[7] Anecito immediately grabbed the accused-appellant by the collar and pulled him up. Accused-appellant then punched Anecito and managed to extricate himself from his hold. Accused-appellant tried to run away but could not run fast enough as his pants were down on his knees. Anecito gave chase and caught up with him a few meters away from the scene of the crime. The barangay captain arrived and Anecito turned over

the accused-appellant to him for custody. The accused-appellant was subsequently brought to the police station.[8]

That same night, Merlinda was brought to the nearby provincial hospital for a medical examination which revealed the following findings:

Internal Examination:

- Hymen Old/healed lacerations at 3 o'clock, 6 o'clock, and 9 o'clock positions;
- Admits one finger with ease;
- Vaginal sperm for spermatozoa - negative.[9]

Merlinda's severe form of mental retardation was confirmed by Dr. Chona Belmonte, a trained psychiatrist formerly a resident of the National Center for Mental Health and currently the district counselor of the Department of Social Welfare and Development's Lingap Center for physically and sexually abused children and a consultant at the Don Susano V. Rodriguez Memorial Mental Hospital at Sorsogon. The doctor declared before the court that while Merlinda was suffering from a severe form of mental retardation, the same was without psychosis. Merlinda had the mental intelligence of a three to four-year old child. She explained further that Merlinda's mental intelligence and judgment is so poor that she could be easily manipulated by adults and that no amount of education could improve her mental retardation.[10]

For his defense, accused-appellant denied having carnal knowledge of Merlinda and ascribed ill-will on the part of the aggrieved parties in the filing of the complaint. According to him, he was at the billiard hall of one Narding Solomon at about five in the afternoon of June 25, 1991. He stayed there for about thirty (30) minutes after which he went to the store of one Corazon Delgado. He found some friends thereat drinking but did not join them and instead listened to some music. At around seven that same night, he left for home accompanied by his friend, Cerilito Labrador. On their way home, they were blocked by three (3) persons including Anecito Tabor who allegedly confronted accused-appellant for having stolen his fighting cock. Accused-appellant denied the charge but just the same Anecito and his companions beat him up. He lost consciousness on account of the mauling. When he regained consciousness, he was already on board a tricycle en route him to the police station.[11] Cerilito Labrador corroborated his testimony.[12]

On June 3, 1994, the trial court rendered its decision[13] finding accused-appellant guilty as charged. The dispositive portion of the decision reads:

ACCORDINGLY, accused Antonio de la Paz, Jr. is hereby convicted of rape and is sentenced to suffer imprisonment of reclusion perpetua and to indemnify the offended party and her parents P50,000.00 for moral damages and pay the costs of suit.

SO ORDERED.[14]

Accused-appellant thereafter interposed the present appeal to this Court predicated on the following errors:

I

THE TRIAL COURT ERRED IN BELIEVING THE TESTIMONY OF THE PROSECUTION WITNESSES AND DISREGARDING THE EVIDENCE FOR THE DEFENSE.

II

THE TRIAL COURT ERRED IN MAKING AN INDIRECT AND IMPLIED FINDING THAT IT WAS ACCUSED-APPELLANT ANTONIO DELA PAZ, JR. WHO ALSO HAD PREVIOUS SEXUAL INTERCOURSE WITH THE VICTIM SINCE SAID PREVIOUS INTERCOURSE PRIOR TO JUNE 25, 1991, WAS NOT BEING PROSECUTED IN THIS CRIMINAL CASE.[15]

We affirm accused-appellant's conviction.

The first assigned error clearly raises the issue of credibility of witnesses.

This Court has time and again held that the trial court's evaluation of the testimony of a witness is accorded with the highest respect because it has the direct opportunity and the peculiar province to observe the witness on the stand and determine if he or she is telling the truth or not, except when such evaluation is tainted with arbitrariness such that the trial court overlooks, misappreciates or misunderstands some facts or circumstances of weight and substance which could affect the outcome of the case.[16] After a thorough and painstaking review of the records of this case, we find that none of such exceptions are present herein, consequently, we find the assessment of the trial court on the credibility of the witnesses accurate and proper.

In his brief, accused-appellant contends that witness Anecito Tabor's testimony is perjured because no witness was presented to corroborate his testimony despite his alleged admission that (a) he and accused-appellant caused quite a stir during the confrontation that must have provoked attention and that in fact there were people on the other side of the road when the alleged rape took place; and (b) he watched his sister-in-law being sexually abused by the accused-appellant for 15 minutes before he reacted.

These contentions are not tenable.

The alleged failure of the prosecution to present another witness to corroborate the testimony of eyewitness Anecito Tabor does not affect the latter's credibility, neither does it affect the prosecution's cause. Anecito Tabor's testimony was found by the trial court to be direct, categorical and candid, and, therefore enough to warrant the conviction of the accused-appellant. It is a well-settled rule that witnesses are weighed, not numbered, such that the testimony of a single trustworthy and credible witness may suffice to convict an accused especially so when the sole eyewitness remained steadfast despite vigorous cross-examination by accused-appellant's counsel.[17] Consequently, the trial court was correct in appreciating the testimony of witness Anecito Tabor, thus:

The testimony of eyewitness Anecito Tabor is firm, straightforward, so categorical which does not give rise to any doubt. Anecito Tabor saw the accused having sexual intercourse with Merlinda Desacula on the evening of June 25, 1991 at their backyard at Macabog, Sorsogon, Sorsogon, when he was about to feed his fighting cock. Accused and Merlinda were having sex on the ground beside the cages of his fighting cocks. Accused was immediately arrested and detained at the police precinct of Balogo, Sorsogon. The positive identification by the eyewitness who had no motive at all to testify falsely must be given full faith and credit. It is hard to believe that the witness would subject his family to shame and embarrassment of a public trial, as well as allow an examination of the victim's private part if his motive is not to bring to justice the person who abused the victim. Even the accused does not know any motive for the eyewitness to testify falsely against him of committing a very serious crime. It, therefore, follows that the Court cannot give credence to the defense of mere denial. The defense' version must not only be clearly established but must not leave room for doubt as to its plausibility and verity (PEOPLE VS. MARTINADA, 194 SCRA 36, 44 (1991)). According to the accused he was suspected of stealing fighting cocks for which he was mauled to unconsciousness but he failed to present any medical certificate of his injuries. Mere allegation of mauling cannot be given credence. He has not filed a case against his assailants which shows that it is only a pigment (sic) of his imagination.[18]

Moreover, accused-appellant has not shown any ill-motive on the part of Anecito Tabor to falsely accuse him of a crime so grave as rape. Thus, Anecito Tabor testified as follows:

Q

Mr. Witness tell us, where were you on June 25, 1991 at more or less 8:00 o'clock in the evening?

A

I was about to feed my fighting cock.

Q

And were you able to feed your fighting cock?

A

I saw the cage moving.

Q

And did you try to verify why your cage of your fighting cock was moving?

A

Yes, sir.

Q

And what did you find out, if any?

A

I saw my sister-in-law being abused sexually by Antonio dela Paz, Jr.

Q

And tell us, what was the actual position of Antonio and your sister-in-law, the victim in this case, when you first saw them?

A

I saw my sister-in-law lying flat on the ground face up and Antonio dela Paz, Jr. was on top.

Q

During that time that Antonio was on top of your sister-in-law, was he with pants?

A

Yes sir, his pants was down.

Q

Up to what level?

A

Up to his knees.

Q

How about your sister-in-law, what was his (sic) condition during that time that the accused in this case was on top of her?

A

I saw my sister-in-law, her pants was down and her skirt was up.

Q

And after seeing that (sic) on that position, what did you do?

A

I grabbed the back of his collared (sic) and pulled him up.

Q

And what happened after you pulled him up?

A

I grabbed him and when I turned around, he boxed me and I was able to hold his both hands.

Q

After he gave you a blow, what happened, Mr. Witness?

A

He was able to release from me.

Q

When he released himself from you, what happened next?

A

I chased him and I was able to catch him.

Q

During that time that he was running, he was running fast?

A

No sir, because he was holding his pants.

Q

How about your sister-in-law, what happened to her after you pulled the accused?

A

I did not mind her any more, I concentrated to (sic) the one who raped her.

Q

And for how long did you chase the accused, Antonio dela Paz?

A

Two seconds.

Q

And were you able to touch him?

A

Yes, sir.

Q

And after you caught him, what did you do?

A

I was able to grab his pants.

Q

And after you got hold of him, what happened?

A

I did not know any more.

Q

What happened next?

A

I asked for an assistance and bring the information to the barangay captain, but it happened that the Barangay Captain arrived and surrendered Antonio dela Paz to him.[19]

Accused-appellant's claim that Anecito Tabor just watched his sister-in-law being sexually abused by accused-appellant for fifteen (15) minutes before doing something about it does not have any basis on record. Accused-appellant clearly misread and misinterpreted the transcript of stenographic notes relative to Anecito Tabor's testimony, thus:

RE DIRECT BY PROS. ADOLFO FAJARDO

Q

Mr. Witness, how long have you been looking your sister-in-law upon seeing her sexually molested by the accused, Antonio dela Paz?

A

About 15 minutes.[20]

Obviously, the import of the answer was that witness had been looking for his sister-in-law for about fifteen (15) minutes before he found her being sexually abused by herein accused-appellant and not that he was looking at her sister-in-law being molested by accused-appellant for fifteen (15) minutes.

In a further attempt to evade liability, accused-appellant capitalizes on (a) the non-presentation of Merlinda Desacula as a witness; and (b) the results of Merlinda's examination showing that there are old lacerations in Merlinda's vagina and that no spermatozoa were found therein.

It is extant from the records that when victim Merlinda Desacula was presented in court in order to afford the trial court the opportunity to observe her deportment and analyze her condition, the victim just nodded her head and could not answer the questions propounded to her. It was plainly obvious that she was suffering from a severe form of mental retardation. She was pale, sleepy and her facial expression was dreamy.[21] Consequently, the trial court did not proceed with her testimony. Merlinda's somnolent and dazed appearance was sufficiently explained by Dr. Chona Belmonte, M.D., who testified that:

Fiscal Fajardo:

Madam Witness, kindly go over this medical examination again and please explain before this court your findings as stated therein?

xxx

Witness:

xxx she is suffering from severe form of mental retardation but without any psychosis.

Fiscal Fajardo:

Q

Will you kindly explain what you mean by severe form of mental retardation but without any psychosis?

A

The meaning of severe form of mental retardation is that the mental capacity of the patient falls under the intelligence quotient of 20-35% and in the severe form of mental retardation - it determines or explains the capacity of the patient that she needs a lot of supervision. This type of individuals are not even trainable or educable. And aside from intelligence quotient which is between 20-35% I also observed that the patient has some problem with her speech. She could not talk.

Q

How about her mental age, Madam Witness, were you able to ascertain the patient on her examination?

A

As far as the examination done by psychiatry my mental evaluation of the mental age of patient is 3-4 years old while the clinical age is 15.

Q

Will you tell us some more characteristics of a person suffering from severe form of mental retardation?

A

A person with severe form of mental retardation has very, very poor intelligence. This type of person has very poor judgment as well and the basic characteristic is that they are suggestible. They may go into temper tantrums and they are in fact very childlike in their every day actuations.

Q

This type of person can be easily manipulated?

A

Yes, they can be manipulated by adults.

Q

Please continue.

A

As to her capacity or capability to stand judicial trial, the undersigned believes that she is not competent to

stand as witness. She will benefit from special schooling for the mentally retarded but no amount of education will improve her mental retardation.[22]

It is clear from the foregoing therefore that the victim could not have been utilized as a witness, given her physical condition.

Contrary to accused-appellant's contention, the absence of spermatozoa in the vagina or thereabouts does not negate the commission of rape.[23] or, the presence or absence of spermatozoa is immaterial in the prosecution of a rape case as it is well-settled that penetration, however slight, and not ejaculation, that constitutes rape. The only essential point to prove is the entrance or at least the introduction of the male organ into the labia of the pudendum. Neither would the absence of freshly broken hymen or fresh laceration disprove rape[24] especially so where the fact of rape was testified to in vivid detail by an eyewitness. Even a medical examination of the victim, for that matter, is not an indispensable element for the successful prosecution of the crime as the testimony of an eyewitness or that of the victim, if credible, is sufficient to convict the accused.[25]

As to the second assigned error, accused-appellant asserts that "the trial court was influenced into convicting the herein accused because of the old/healed lacerations found in the vagina of the victim, alleged proof of sexual intercourse(s) which are not being prosecuted in the herein complaint for rape." [26]

Accused-appellant's attribution is totally unfounded.

First, there is nothing in the trial court's decision which would suggest that accused-appellant was the one responsible for the old/healed lacerations found on the victim's vagina.

Second, the unfounded attribution tends to imply the old lacerations in the victim's hymen were caused by her previous sexual intercourse which is not correct. The old lacerations could have been caused by causes other than sexual acts. Thus, in *People v. Ngo*, [27] this Court ruled:

The defense would harp on the fact that the medical examination of the complainant did not show fresh lacerations and bleeding in her vagina. The fact, however, that the lacerations on the complainant's vagina were no longer bleeding when she was examined the day after the commission of the crime charged does not preclude a finding that she was raped in the manner testified to by her. As thoroughly explained by the Solicitor General, citing both legal and medical authorities, the absence of fresh lacerations in complainant's hymen, hence of vaginal bleeding, does not prove that she was not raped.

First, complainant's hymen may be 'distensible' or 'congenitally imperforate' in which case the insertion of the male organ, even a big one, would not produce any laceration (SOLIS), *Legal Medicine*, 1964 ed., pp. 341-342. So the fact that the hymen is intact does not prove the absence of sexual intercourse (*Id.*, pp. 344; *People vs. Abonada*, G.R. No. 50041, January 27, 1989, 169 SCRA 530).

Secondly, the hymen is lacerated only once and, as a rule, this happens during the first sexual act, however, this is not always the case (Solis, *supra*, pp. 341-343-344). The laceration of the hymen can be caused by any of the following:

- a. Passage of clotted blood during menstruation
- b. Ulceration due to diseases, like diphtheria.
- c. Jumping or running.
- d. Falling on hard or sharp objects.
- e. Medical instrumentation.
- f. Local application or irritation.
- g. Self-scratching due to irritation.
- h. Masturbation.

- i. Insertion of foreign bodies.
 - j. Previous operation.
- (Solis, Legal Medicine, *supra*, p. 344).

Hence, complainant's hymen could have been previously lacerated due to any of the foregoing causes. If so, the absence of any fresh laceration due to the alleged rape is not surprising and does not indicate that she was not raped.[28]

All told, accused-appellant's attempt to exculpate himself of any liability must fail. His bare denial of the commission of the dastardly act cannot prevail over the positive testimony of an eyewitness who caught accused-appellant sexually abusing Merlinda Desacula in *flagrante delicto*.

WHEREFORE, the assailed decision is hereby AFFIRMED in toto. Costs against accused-appellant.

SO ORDERED.

Narvasa, C.J., (Chairman), Romero, Purisima, and Pardo JJ., concur

[1] Records, p. 1.

[2] *Id.*, at 31.

[3] *Id.*, at 40-41.

[4] The prosecution presented as its witnesses Anecito Tabor, Dr. Chona Belmonte, M.D., Dr. Isidro Dino, M.D., Erlinda Desacula and Manuel Desacula.

[5] TSN, March 31, 1992, p. 10.

[6] TSN, February 25, 1992, p. 8.

[7] TSN, February 25, 1992, pp. 4-5.

[8] TSN, February 25, 1992, pp. 12-14.

[9] Records, p. 4.

[10] TSN, March 31, 1992, pp. 4-11.

[11] TSN, May 5, 1993, pp. 3-12.

[12] TSN, September 6, 1993, pp. 3-9.

[13] Penned by RTC Judge Simon D. Encinas.

[14] Records, pp. 174-175.

[15] Rollo, p. 37.

[16] *People v. Dones*, 254 SCRA 696 (1996); *People v. Sabellina*, 238 SCRA 492 (1994).

[17] *People v. Robert Daraman*, G.R. No. 126046, August 7, 1998; *People v. Fulinara*, 247 SCRA 28 (1995); *People v. Nulla*, 153 SCRA 471 (1987).

[18] Records, pp. 173-174.

[19] TSN, February 25, 1992, pp. 4-6.

[20] TSN, February 25, 1992, p. 16.

[21] TSN, February 25, 1992, p. 18.

[22] TSN, March 31, 1992, pp. 8-11.

[23] *People v. Magana*, 259 SCRA 380 (1996); *People v. Gabris*, 258 SCRA 663 (1996); *People v. Cañada*, 253 SCRA 277 (1996).

[24] *People v. Erardo*, 277 SCRA 643 (1997).

[25] *People v. San Juan*, 270 SCRA 693 (1997); *People v. Cura*, 240 SCRA 234 (1995); *People v. Abordo*, 224 SCRA 725 (1993).

[26] *Rollo*, p. 53.

[27] 202 SCRA 549 (1991).

[28] *Id.*, at 555-556.

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