

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FERDINAND BALISNOMO, ACCUSED-APPELLANT.

G.R. No. 118990. November 28, 1996

Ponente: FRANCISCO, J.

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FRANCISCO, J.:

On June 16, 1986, appellant FERDINAND BALISNOMO was charged with raping Ardel Banay, an eleven year old mental retardate, in an information which reads:

"At the instance of the offended party thru her father Arturo Banay who has subscribed and sworn to a complaint attached to the records of this case, the undersigned Assistant Provincial Fiscal accuses Ferdinand Balisnomo of the crime of rape committed as follows:

"That in or about the 17th day if May, 1983, in the Municipality of Patnoñgon, Province of Antique, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused by means of force and intimidation and with lewd designs, did, then and there wilfully, unlawfully and feloniously have carnal knowledge of the said Ardel Banay against the latter's will.

"Contrary to the provisions of Article 335 of the Revised Penal Code."[1]

Upon arraignment, appellant pleaded not guilty and trial on the merits ensued. During trial, the prosecution presented Ardel Banay, her father, Arturo Banay and the medico-legal expert, Dr. Deogracias Solis, as witnesses. On direct examination, Ardel narrated the perpetration of the crime against her as follows:

"FISCAL ORCAJADA:

Q

Last May 17, 1983, at 8:00 (sic) o'clock in the afternoon, could you remember where you where?

A

I was in the house of Lolo Viong.

Q

Where is that house located?

A

Larioja.

Q

Patnoñgon, Antique?

A

Yes, Sir.

Q

Now, on that date, place and time, could you tell this Honorable Court if anything (sic) happened to you?

A

Yes, Sir.

Q

What happened to you?

A

I was brought by Ferdinand Balisnomo?

Q

Where did he bring you?

A

In the house of Lolo Viong

Q

Is that Lolo Viong the owner of the house you said a while ago?

A

Yes, Sir.

Q

In the house of your Lolo Viong, what did Ferdinand Balisnomo do to you?

A

He let me lie down.

Q

If this Ferdinand Balisnomo is here in Court, could you kindly point at him?

A

That one (witness pointed to the accused Ferdinand Balisnomo).

Q

After Ferdinand Balisnomo let you lie down, what did he do further, if any?

A

He undressed me.

Q

What did Ferdinand Balisnomo do if he did anything?

A

He undressed himself also.

Q

After Ferdinand Balisnomo had undressed, what did he do to you?

A

He lay on top of me.

Q

When he layed (sic) on top of you, what did Ferdinand Balisnomo do to you?

A

He inserted his penis into my vagina.

Q

And what did you feel?

A

Pain."[2]

Arturo Banay testified that: On May 17, 1983 at around three o'clock in the afternoon, he was at their house in La Rioja when he saw his daughter, Ardel, at the faucet with blood oozing down her thighs. He asked her what happened but the latter refused to answer. Arturo summoned his wife who asked Ardel the same question, and after several proddings, Ardel told them that she was raped by the appellant. The couple then brought Ardel to the Helath Center for examination. At the Health Center, Ardel was examined by a nurse who confirmed that she had indeed been sexually abused. Because of the continuous flow of blood from Ardel's private parts, the couple was advised to bring her to the hospital for treatment. They immediately proceeded to the Antique Provincial Hospital where Ardel was attended to by Dr. Deogracias Solis.[3] The latter's medical findings show that Ardel suffered the following injuries:

"1. Wound, lacerated, superficial, 2mm x 3mm
hymen, 4:00 o'clock

"2. Wound, lacerated, superficial, 1mm x 2mm,
fourchet.

xxx xxx xxx

REMARKS: Laceration, fresh; bleeding and blood clots

In vaginal canal, slight."[4]

And her testimony in open court is to the effect that these lacerations could have been caused by the penetration of a male organ into the vagina.[5]

For its part, the defense presented the testimonies of appellant and Silverio Roselio or "Lolo Viong". The latter, in whose house the rape had allegedly taken place, claimed that he remained in the confines of his home the entire day of May 17, 1983 because he was then suffering from a swollen knee due to rheumatism, an on no occasion was Ardel present thereat.[6]

The appellant denied the charges against him and alleged that on the said date and time, he was sleeping in his house in La Rioja.[7] Appellant also testified that previous to the alleged incident, he and Arturo Banay had an altercation over a sum of money which the latter owed for some fish that Arturo had bought on credit from the appellant.[8] According to the appellant, the accusation against him was a mere fabrication motivated by Arturo's desire to get even with him.[9]

Giving full faith and credence to the testimonies of the prosecution witnesses, and finding that appellant's alibi was not established by clear and convincing evidence, the Regional Trial Court (RTC) of San Jose, Antique rendered a decision convicting appellant of the crime charged and sentencing him to suffer the penalty of reclusion perpetua and to pay the amount of P30,000.00 as indemnity.[10] Aggrieved, appellant comes to this Court seeking the reversal of his conviction on the ground that the trial court erred in finding him guilty despite the insufficiency of evidence to warrant conviction beyond reasonable doubt.[11]

Specifically, appellant contends that the testimony of Ardel whose mental capacity is akin to that of a three-year old is unworthy of credence.[12] Anent this contention, suffice it to state that the fact that the rape victim is a mental retardate does not per se preclude the trial court from admitting her testimony in evidence nor from according it full faith and respect.[13] This Court has held that:

"A mental retardate is not for this reason alone disqualified from being a witness. As in the case of other witnesses, acceptance of his testimony depends on its nature and credibility or, otherwise put, the quality of his perceptions and the manner he can make them known to the court. Thus, in *People v. Gerones*, the Court accepted the testimony of a rape victim notwithstanding that she had the mentality of a nine or ten-year old 'because she was able to communicate her ordeal' clearly and consistently." [14] [Underscoring supplied]

The determination of the competency of witnesses to testify rests largely with the trial court.[15] As reiterated by this Court, the trial judge's assessment of the credibility of the witnesses' testimonies are accorded great respect on appeal in the absence of grave abuse of discretion on the part of the trial judge who has the advantage of actually examining both real and testimonial evidence including the demeanor of the witnesses as they present the same.[16] A careful review of the records of the case before us reveals no cogent reason to warrant a departure from the findings of the trial court with respect to Ardel's credibility. It is the trial court that had the unequalled opportunity to observe the "quality of Ardel's perceptions and the manner she can make them known to the court." And as found by the trial court, "she clearly narrated in detail how she was sexually assaulted by the accused, Ferdinand Balisnomo. Her story is impeccable and rings true throughout and bears the stamp of absolute truth and candor." [17]

Appellant vainly attempts to destroy Ardel's credibility by presenting Silverio Roselio who testified that the rape could not have been committed in his house as recounted by Ardel as he did not see her there on the said date. Silverio's testimony itself offers the explanation for the seeming improbability of Ardel's story. Thus:

"Q

And Arturo Banay in his direct testimony said that you have two houses located at La Rioja, is that not correct?

A

Yes, sir, the house of my child.

Q

Which of these two houses do you stay (sic) permanently?

A

In my own house, sir

Q

And where is that house which you said you very (sic) own?

A

At La Rioja, Patnongon, Antique.

Q

Now, you have already admitted that you have another house. Who is staying in the other house?

A

That house is owned by my child.

Q

And what is the name of that child?

A

Ramon.

Q

And how old is this Ramon?

A

29 years old.

Q

Is he living in that other house with somebody else?

A

Yes, sir, because that house is owned by him.

Q

Now, because your child Ramon was staying there and how far is this house of yours from this house where Ramon and his wife stay?

A

Approximately 3 armlength, sir.

xxx xxx xxx

Q

Now, on direct testimony or examination, you said that you have never seen Ardel Banay in the afternoon of May 17, 1983. How about Ferdinand ? Balisono (sic), the accused in this case, have you also seen him during that time?

A

I have not seen him, sir.

Q

How far is this house of Ferdinand Balisnomo from your own house?

A

Approximately half kilometer.

Q

So, do I understand from you that in the afternoon of May 17, 1983 you did not know of the whereabouts of your son Ramon and his companion in that other house?

A

Because this son of mine, Ramon, I told him to go to the farm to attend to my carabao and he just went to my house during night time.

Q

While your son Ramon attends to your cattle and to your vegetable garden, is there any one left your other house?

A

No, sir.

xxx xxx xxx

Q

Mr. Witness, you said that on May 17, 1983 you were suffering from pain because of your swollen knee due to rheumatism and that you could hardly walk or move around your house, such that you were not able to get out of your house that day, May 17?

A

Yes, sir.

Q

So therefore, you have no way of knowing whether in your other house there were still occupants or not?

A

There's none. There is a dog, sir. My house is secured with fence. How can any person enter the house because (sic) it is surrounded with fence?

Q

And that fence is closed whenever the occupants of that house leaves the house?

A

It is close, sir, and my house has a door.

Q

Is that house being occupied by your son Ramon is (sic) enclosed with a fence?

A

No, sir, only my house is surrounded with fence.

Q

So you will have no way of knowing because of your sickness whether there were occupants in the house occupied by your son Ramon on that afternoon of May 17, 1983?

A

It might be that the house of Ramon has occupants during that time, sir.

Q

Meaning to say, you presumed that there were occupants in that house?

A

Yes, sir."[18] [Underscoring supplied]

There are two houses, three armslength in distance from each other, that are both known to be owned by Silverio. One was occupied by him and the other by his son and the latter's family. Thus, when Ardel testified that she was raped in "Lolo Viong's"[19] house, she could have been referring to either of these two houses. True, Silverio stayed in his house the whole day of May 17, 1983 and did not see Ardel nor the appellant therein. However, the foregoing testimony is also categorical to the effect that he does not actually know if the other house was unoccupied on the said date and time when Ardel was raped. Unable to leave his house and check on the other house, he merely presumed that his son's wife remained therein.[20]

Furthermore, the testimonies of the defense witnesses who did not actually see the commission of the offense cannot prevail over the positive testimony of the complainant that she was raped by the appellant.[21] The lone testimony of the victim in the crime of rape, if credible is sufficient to sustain a conviction. This is because from the nature of the offense, the only evidence that can oftentimes be offered to establish the guilt of the accused is the complainant's testimony.[22]

Appellant would like us to believe that the underlying reason for the false accusation against him is an alleged hostility harbored by Arturo Banay towards him. Appellant's claim is preposterous for there is nothing more unnatural than for a parent to use his offspring as an engine of malice, especially if it will subject a daughter to embarrassment and even stigma, as in this case[23] A man puts much premium on his honor and that of his family's. He has been known to risk all and stake even his life to preserve that honor and keep the family's name untarnished. It is thus, unlikely that he would expose his daughter to public ridicule and shame on account of some minor argument.

Finally, appellant interposes an alibi which, aside from his bare asseverations, remains unsupported and uncorroborated by other evidence. Nothing is more settled in our jurisprudence in criminal cases 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 an eyewitness to the crime.[24]

WHEREFORE, the assailed decision is hereby AFFIRMED subject to the MODIFICATION only as far as the award of damages is concerned, which is increased to FIFTY THOUSAND PESOS (P50,000.00) in line with current jurisprudence.²⁵

SO ORDERED.

Narvasa, C.J. (Chairman), Davide, Jr. Melo and Panganiban, JJ., concur.

[1] Information dated June 16, 1986; rollo, p. 3.

[2] TSN, Ardel Banay, November 24, 1987, pp. 2-3.

[3] TSN, Arturo Banay, June 2, 1988, pp. 2-3.

[4] Record of Confinement dated May 20, 1983; Records, p. 3.

[5] TSN, Dr. Deogracias Solis, September 8, 1988, p. 3.

[6] TSN, Silverio Roselio, November 8, 1991, p. 3.

[7] TSN, Ferdinand Balisnomo, October 22, 1992, p. 2.

[8] Id., at p. 3.

[9] Brief for the Appellant, p. 6; rollo, p. 39.

[10] DECISION in Criminal Case No. 3241 dated January 29, 1993, pp. 7-8; rollo, pp. 48-49.

[11] Supra, note 9 at p. 1; rollo, p. 34

[12] Id., at p. 5; rollo, p. 38.

[13] In the case of *People v. Quinones* (222 SCRA 249 [1993]), the conviction of the accused was based mainly on the testimony of a 25-year old complainant, although she was found to have the mentality of a three (3) or four (4) year old child. Similarly, in *People v. Antonio* (233 SCRA 283[1994]), this Court relied on the testimony of the mentally retarded complainant and held that the positive testimony of the victim being credible is sufficient to sustain the conviction of the accused.

[14] *People v. Salomon*, 229 SCRA 403, 409 (1994); *People v. Gerones*, 193 SCRA 263 (1991).

[15] *People v. Gerones*, id., at p. 267; *People v. Rizo*, 189 SCRA 265, 272 (1990).

[16] *People v. Gerones*, id.,; *People v. Bravo*, 180 SCRA 694 (1989); *People v. Ramos*, 167 SCRA 476 (1988); *People v. Jarzi*, 163 SCRA 307 (1988).

[17] Supra note 10 at pp. 7-8; rollo, pp. 48-49.

[18] Supra, note 6 at pp. 5-7.

[19] Also known as Silverio Roselio.

[20] Supra, note 18.

[21] *People v. De Dios*, 187 SCRA 228, 246 (1990).

[22] *People v. Antonio*, supra, note 13 at p. 299; *People v. Tismo*, 204 SCRA 535 (1991); *People v. Matrimonio*, 215 SCRA 613 (1992).

[23] *People v. Salomon*. Supra, note 14 at 410.

[24] *People v. Namayan*, 246 SCRA 654-655 (1995); *People v. Bongadillo*, 234 SCRA 233 (1994); *People v.*

Retuta, 234 SCRA 645 (1994); People v. Amaro, 235 SCRA 8 (1994).

[25] People v. Papa Talaboc, G.R. No. 103290, April 23, 1996; People v. Abendano, 312 Phil. 625 [1995]; People v. Sartogoda, 221 SCRA 251 (1993).

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