

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARNEL FERDINAND OMAR Y ABAD, ACCUSED-APPELLANT.

G.R. No. 120656. March 03, 2000

Ponente: PARDO, J.

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PARDO, J.:

What is before this Court is an appeal from the decision of the Regional Trial Court, Branch 155, Pasig City,[1] convicting accused Arnel Ferdinand Omar y Abad of rape committed against Marilou Moraleda y Valerio, and sentencing him to reclusion perpetua and to pay complainant P30,000.00 as civil indemnity, plus costs.

On December 11, 1991, complainant Marilou Moraleda y Valerio filed with the Regional Trial Court, Pasig a criminal complaint for rape against Arnel Ferdinand Omar y Abad, alleging:

"That on or about the 5th day of December 1991 in the municipality of Taguig, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above named accused with lewd designs and by means of force and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with a fourteen (14) year old girl, Marilou Moraleda y Valerio, without her consent and against her will.

"CONTRARY TO LAW."[2]

Upon arraignment on January 15, 1992, accused Arnel Ferdinand Omar y Abad pleaded not guilty.[3] Trial ensued.

The facts are as follows:

On December 5, 1991, at about 6:00 in the evening, Marilou V. Moraleda (hereinafter referred to as Marilou),[4] was walking home from school when accused Arnel Ferdinand Omar y Abad approached her and held her hand. At that moment, Hamsa Pangandaman came and held her other hand. Unmindful of her protests, the two men dragged her to a volleyball court and subsequently brought her to a nearby store. Accused Arnel Omar and Hamsa Pangandaman bought three bottles of beer, forcibly opened her mouth and poured beer into it. Marilou tried to scream but the two men threatened her that they would kill her family.[5]

Accused Arnel Omar and Hamsa Pangandaman brought her to a room in Taguig Elementary school. Arnel Omar held both her hands while Hamsa Pangandaman fondled her and inserted his penis in her vagina. Then Hamsa Pangandaman left the premises. Arnel Omar also ravished Marilou. Arnel Omar fondled her, kissed her breast and inserted his penis in her vagina.[6]

After the incident, Marilou proceeded to the house of her friend, Almina,[7] asking if she could stay during the night since she was afraid that her brother might scold her. Almina refused to accommodate Marilou because there were several guests in the former's house. As Marilou was leaving Almina's premises, she met two men, Zacaria Barauco and Michael Omar Alawi. However, instead of helping Marilou, Zacaria and Michael forced her to drink beer and subsequently raped her.[8]

After her ordeal, Marilou went home, arriving thereat on December 6, 1991, at around 3:00 a.m. Marilou told her brother what had happened to her. Thereafter, her brother and aunt accompanied Marilou to the Capitol Command Field Force, PNP CAPCOM, Camp Bagong Diwa, Bicutan, Taguig to report the incident.[9]

On December 6, 1991, Dr. Louella I. Nario, medico-legal officer of the National Bureau of Investigation (NBI), examined Marilou. Dr. Nario found that Marilou's hymen was "moderately thick, moderately wide, with fresh, complete laceration at 6:00 o'clock position corresponding to the face of a watch, edges still bleeding slightly." [10] The doctor concluded that while there was no evident sign of extra-genital physical injuries noted on the victim's body, the genital examination was compatible with sexual intercourse with men on or about the alleged date of the rape. [11] The semenology conducted on Marilou to determine the presence of spermatozoa yielded negative results. [12]

On January 28, 1992, Estrelita M. Bangalan, a psychologist at the Department of Social Welfare and Development (DSWD), conducted intelligent quotient (I.Q.) and projective tests on the victim. The tests revealed that Marilou had an I.Q. of 61, with an estimated mental age of 7 years and 9 months old, and an intellect classified as "mild mentally retardate level." [13]

On February 11, 1992, Dr. Sonia Castro-Rodriguez, a psychiatrist, conducted a neuro-psychiatric examination on the victim. Dr. Rodriguez concluded that Marilou was suffering from post-traumatic stress disorder as a result of the rape. [14]

Accused Arnel Ferdinand Omar y Abad interposed the defense of alibi.

Accused claimed that he knew the victim Marilou, alias Jamela. He considered her as a beautiful girl, and courted her despite having a live-in partner. [15] Accused said that he last saw Marilou on December 3, 1991, when he, together with his friends, Hamsa Pangandaman, Zacaria Barauco and Micahel Omar Alawi, played volleyball with Marilou and her best friend, Bazir. [16] After the game, Marilou invited them to drink beer, but accused Arnel Omar declined the offer and opted to go home to his live-in partner, Jerrylyn. [17] On December 4, 1991, he went to Novaliches to attend to an errand for his father. Due to the heavy traffic during his trip, on December 5, 1991, accused had a headache and flu, and stayed in bed the whole day. On December 6, 1991, accused heard that policemen were looking for him and a neighbor told him to hide. He ignored the advice, and on December 7, 1991, Capcom officers came and arrested him. [18]

Ruth Molavizar, neighbor of accused Arnel Omar, testified that on December 5, 1991, around 8:00 p.m., she was watching television in the house of the accused, together with the accused and his family. About that time, Marilou, appearing drunk, arrived at accused's house looking for him. Jerrylyn, accused's live-in partner, replied that accused was lying on a mat since he was sick. Ruth saw Marilou leave, accompanied by three (3) men, Hamsa Pangandaman, Zacaria Barauco and Michael Omar Alawi. Ruth said that Marilou was known as the "wife of the town." [19]

Irene Solaiman, sister of the accused, corroborated the testimonies of Ruth Molavizar and the accused. On December 5, 1991, Irene was tending to their store, beside the house where the family lived, including accused Arnel Omar. Around 8:00 p.m. that day, Marilou went to the store inquiring about Arnel Omar. Irene informed Marilou that Arnel Omar was lying down inside the house because he was sick. She observed that Marilou was accompanied by three men, Hamsa Pangandaman, Zacaria Barauco and Michael Omar Alawi. [20]

While the facts, as narrated by Marilou, showed that she was raped by four (4) men on the night of December 5, 1991, the complaint filed charged only accused Arnel Omar for the acts he committed. Subsequent complaints were filed against three (3) men, namely Hamsa Pangandaman, Zacaria Barauco and Michael Omar Alawi.

On February 21, 1995, the trial court rendered decision finding accused Arnel Ferdinand Omar y Abad guilty beyond reasonable doubt of the crime charged, the dispositive portion of which reads:

"WHEREFORE, premises considered, the Court believes, and so holds that evidence of the prosecution has established the guilt of the accused Arnel Ferdinand Omar, beyond reasonable doubt, and therefore finds him guilty of the crime of rape and sentences him to suffer the penalty of Reclusion Perpetua and to pay the private complainant civil indemnity in the amount of P30,000.00 as and to pay the costs." [21]

Hence, this appeal.

Accused submits that the psychological tests conducted on Marilou showed that she was emotionally imbalanced and had an abnormal state of mind which cast doubt on her credibility. Accused contends that although his defense was alibi, two witnesses corroborated his statements and his non-flight signified his innocence of the crime charged.

The contention is untenable.

We affirm the conviction of the accused. However, we modify the amount of damages awarded to the victim.

The issue in this case is the credibility of the sole witness, Marilou V. Moraleda. The trial court ruled that Marilou testified in a straightforward manner and categorically stated that accused had sexual intercourse with her through intimidation. Accused Arnel Omar and Hamsa Pangandaman forced her to drink beer and threatened her not to shout. Considering her age, coupled with her mental abnormality, Marilou can be easily intimidated by two (2) young men. Contrary to accused's contention, Marilou's mental imbalance and abnormal state of mind do not automatically affect her credibility. In fact, despite her mental condition, the trial court found Marilou's testimony as credible as she related her traumatic experience without hesitation. Time and again, we have held that the trial court's assessment as to the credibility of witnesses is to be accorded great weight. This is so because it had the better opportunity to observe the witnesses firsthand and note their demeanor, conduct and attitude under grueling examination. [22]

Even without proof that there was intimidation employed upon the victim, we hold that Marilou was indeed raped by accused Arnel Omar. A woman need not be proven as completely insane or deprived of reason for sexual intercourse to constitute the crime of rape. The term "deprived of reason" has been construed to include those suffering from mental abnormality or deficiency; or some form of mental retardation; the feeble-minded but coherent; or even those suffering from mental abnormality or deficiency of reason. [23] It cannot be denied that Marilou suffered from a mental abnormality, as revealed by the psychological tests conducted on her. Even accused Arnel Omar acknowledged this fact. Any sexual intercourse with a mentally deficient woman who is incapable of giving rational consent constitutes rape.

Accused's defense of alibi, although corroborated by two witnesses, deserves little merit. The defense of alibi cannot overcome the positive identification of the accused as the perpetrator of the crime by his victim. [24] Furthermore, for the defense of alibi to prosper, the accused must establish that he was so far away that he could not have been physically present at the place of the crime, or its immediate vicinity, at the time of its commission. [25] Accused Arnel Omar failed to show that it was physically impossible for him to be at the crime scene.

There is likewise no merit to accused's contention that his non-flight constitutes innocence. Unlike flight of an accused, which is competent evidence against him as having a tendency to establish his guilt, non-flight is simply inaction, which may be due to several factors. It may not be construed as an indication of innocence. [26]

With respect to his civil liability, the trial court awarded P30,000.00 as civil indemnity. We modify this award

since under present jurisprudence, an award of P50,000.00 as civil indemnity is mandatory upon finding of the fact of rape.[27] In addition, we grant moral damages amounting to P50,000.00 even without need of further proof, considering that the victim Marilou V. Moraleda, in fact, suffered mental and psychological trauma.[28]

WHEREFORE, the Court AFFIRMS the appealed decision with MODIFICATION. The Court finds accused ARNEL FERDINAND OMAR y ABAD guilty beyond reasonable doubt of rape, defined and penalized under Article 335 of the Revised Penal Code,[29] committed against Marilou V. Moraleda, and in the absence of any modifying circumstance, sentences him to reclusion perpetua, with all the accessory penalties of the law, and to indemnify the victim Marilou V. Moraleda in the amount of P50,000.00 as civil indemnity, plus P50,000.00 as moral damages.

With costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Ynares-Santiago, JJ., concur.

[1] In Criminal Case No. 90254, rendered on February 21, 1995 by Judge Fernando L. Gerona, Jr.

[2] Rollo, pp. 4-5.

[3] Original Record, p. 20.

[4] Fourteen (14)-year old, a Grade IV pupil of an elementary school in Taguig, Metro Manila.

[5] TSN, April 28, 1993, pp. 7-14.

[6] TSN, April 28, 1993, pp. 16-22.

[7] Family name not given.

[8] TSN, April 28, 1993, pp. 22-31.

[9] Ibid., pp. 32-33.

[10] Original Records, p. 16.

[11] Ibid.

[12] TSN, May 12, 1993, p. 17.

[13] Original Record, pp. 117-118.

[14] TSN, June 2, 1993, pp. 11-15.

[15] TSN, April 20, 1994, pp. 22-23.

[16] Family name not given.

[17] Family name not given.

[18] TSN, April 20, 1994, pp. 3-15.

[19] TSN, September 22, 1993, pp. 1-13.

[20] TSN, January 26, 1994, pp. 3-7.

[21] Original Record, pp. 231-239.

[22] People v. Suba, G.R. Nos. 119350-351, November 29, 1999.

[23] People v. Almacin, G.R. No. 113253, February 19, 1999; People v. Guerrero, 242 SCRA 606 [1995].

[24] People v. Paranzo, G.R. No. 107800, October 26, 1999.

[25] People v. Santiago, G.R. No. 129339, December 2, 1999.

[26] People v. Comia, 236 SCRA 185 (1994).

[27] People v. Caratay, G.R. Nos. 119418, 119436-37, October 5, 1999.

[28] People v. Suba, supra.

[29] In force at the time of the commission of the offense.

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