

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. HECTOR ESTARES ACCUSED- APPELLANT.

G.R. No. 121878. December 05, 1997

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

In a criminal complaint[1] filed on 20 July 1993 with the Municipal Circuit Trial Court (MCTC) of Buenavista, Nueva Valencia, and Jordan in the Province of Guimaras, appellant Hector Estares was charged with the crime of rape allegedly committed on 3 June 1993 on his 39-year old mentally retarded aunt Tessie Gange.

After preliminary investigation, the MCTC found sufficient evidence to hold the appellant for trial and forwarded the records of the case to the Office of the Provincial Prosecutor of Guimaras for the filing of the corresponding information with the proper court.[2]

On 11 November 1993, the Provincial Prosecutor of Guimaras filed the corresponding information[3] against the appellant with the Regional Trial Court (RTC) of Iloilo City, which was docketed as Criminal Case No. 41984 and assigned to Branch 26. The accusatory portion of the information reads as follows:

That on or about the 3rd day of June 1993, in the municipality of Jordan, Province of Guimaras, Philippines and within the jurisdiction of this Honorable Court, the said accused by use of force, threats and intimidation did then and there willfully, unlawfully and feloniously have sexual intercourse with one Tessie Gange a mentally retarded person.

Contrary to law.

Upon his arraignment on 17 December 1993, the appellant entered a plea of not guilty.[4] Thereafter, trial on the merits ensued. On 15 August 1994, the trial court promulgated its decision,[5] the dispositive portion of which reads:

WHEREFORE, the court hereby finds the accused HECTOR ESTARES guilty beyond reasonable doubt of the crime of RAPE defined and penalized under paragraph 2, Article 335 of the Revised Penal Code, and hereby sentences the said accused to suffer the penalty of RECLUSION PERPETUA and to indemnify the offended party , Tessie Gange, the sum of P30,000.00 as moral and exemplary damages, without subsidiary imprisonment in case of insolvency, together with the accessory penalties provided for by law and to pay the costs.

SO ORDERED.

The evidence for the prosecution[6] established the following facts:

Tessie Gange and Rogelio Gange, Jr., live with their parents in a house situated near the seashore in Sitio Capituguan of Barangay Balcon Maravilla in Jordan, Guimaras.

On 3 June 1993, at about 8: 00 a.m., Rogelio went to the house of another sister to ask for viand. Earlier, at about

6:00 a.m., his parents left for Arevalo, Iloilo City, to buy bamboo slats. On his way home, Rogelio saw a fishing boat docked along the seashore. Upon reaching home, he heard sounds from upstairs. Slowly, he went up the house, peeped through the door, and saw his nephew, appellant Hector Estares, naked on top of Tessie and having sexual intercourse with her. Rogelio rushed toward the room and then struck with a piece of wood the back of the appellant. The latter was rendered unconscious. Rogelio brought the appellant out of the house and left him on the sand. Then, Rogelio went to his compadre's house and asked for help. Since his compadre was not around, Rogelio left and returned to his house only to find out that the appellant was no longer there.[7]

At about 11:00 a.m. of the same day, Rogelio reported the incident to his sister Chita G. Simpelo, a public school teacher of Barangay Balcon Maravilla.[8] Both went to the barangay captain and to the police authorities to report the rape and to file a complaint. The complaint was received by a police officer, who advised Chita to secure a medical certificate.[9] The complaint was entered in the police blotter.[10] Later, Chita and a police officer went to the house of the appellant, but they did not find him there. The father and a brother of the appellant informed them that the latter had run away.[11]

On 5 June 1993, Chita and her mother brought Tessie to the District Hospital of Guimaras. A certain doctor conducted an examination on Tessie and found on the latter a hymenal tear that could have been due to many causes.[12]

On 11 June 1993, per request of the Station Commander of Jordan, Tessie was examined by Dr. Ricardo H. Jaboneta, Medico-Legal Officer of the National Bureau of Investigation of Iloilo City.[13] Dr. Jaboneta found healed laceration on Tessie's hymen. He opined that the laceration could have been caused by having sexual intercourse with a man on or about the date of the commission of the alleged rape and must have occurred not later than 5 June 1993; otherwise, the edges of the laceration would have been different. [14]

According to Dr. Japhet P. Gensaya, a psychiatrist specializing in adult and child and adolescent psychiatry, to whom Dr. Jaboneta referred Tessie for psychiatric evaluation, Tessie had the mentality of a 6-year-old child although her actual age was 39; had a poor abstraction ability and social judgment; and had a clinical I.Q. compatible with a moderately retarded person. However, Tessie could recount the happening of events and answer questions pertaining to the incident. [15]

Upon Dr. Gensaya's suggestion, Tessie was likewise examined by Dr. Ma. Corazon Berjes, Guidance Psychologist of the Western Visayas Medical Center. Dr. Berjes testified on her psychological examination of Tessie and on her report [16] wherein she concluded that Tessie was indeed mentally retarded.

For his defense, the appellant, then 22 years of age, fisherman, and a resident of Sitio Singcalang, Balcon Melliza, Jordan, Guimaras, denied having carnal knowledge of his aunt Tessie and ascribed ill-motive in the filing of the complaint. He alleged having filed a complaint for illegal detention and attempted murder against his uncle Rogelio Gange, Jr., and claimed that and there existed enmity between Tessie's family and his mother Nery.

According to the appellant, at about 4:00 a.m. of 3 June 1993, he was fishing in the sea, along with some companions who were in their respective boats. Having run out of drinking water, he berthed his boat ashore in Barangay Balcon in Maravilla at around 8:00 a.m. and went to his grandfather's house to get drinking water. Upon arrival thereat, he saw his uncle Rogelio sitting on the bench. While he was taking water from the jar, Rogelio, without warning, struck him with a bamboo pole on his head, rendering him unconscious. When he regained consciousness, he found himself hog-tied. His aunt Tessie untied him.[17] Then, at about 11:30 a.m. of the same day, he went to the Guimaras Provincial Hospital for treatment of his injuries.[18] Finally, on 9 June 1993, he filed with the Office of the Provincial Prosecutor of Guimaras a complaint[19] for illegal detention and attempted murder against his uncle Rogelio. Approximately two weeks after 3 June 1993, he learned that he was

prosecuted for the alleged rape of his aunt Tessie.[20]

Nery Gange Estares, mother of the appellant and sister of Chita and Rogelio, corroborated appellant's claim of ill-motive. Nery declared that their father, Rogelio Gange, Sr., denied her her share in the property she inherited from the estate of her grandfather, the late Daniel Gange; and that her family resented her marriage to Ernesto Estares, a poor man and an ordinary fisherman.[21]

The trial court gave full faith and credit to the version of the prosecution and rejected that of the appellant. It held that his denial could not prevail over Rogelio's clear and positive identification of him as the rapist. Rogelio's testimony as to the fact of rape was corroborated by the testimony of Dr. Jaboneta that the laceration in Tessie's hymen could have been caused by sexual intercourse on or about the alleged date of the commission of the rape. Likewise, the court was not convinced of appellant's claim of ill-motive. It found that the complaint for illegal detention and attempted murder against Rogelio was filed only after Rogelio and Chita had taken steps to charge the appellant with rape. Rogelio reported that incident to the police immediately after its occurrence, and on 11 June 1993, Tessie was brought to the NBI medico-legal expert for examination. Upon the other hand, appellant's complaint for illegal detention and attempted murder was filed with the Provincial Prosecutor of Guimaras only on 15 June 1993.

The trial court also found the alleged enmity between the offended party's family and appellant's mother "simply unconvincing." Even assuming that there was such resentment, the same could not have sufficiently impelled appellant's uncle, aunt, and grandparents to concoct the complaint for rape against him; for it was not he, but his mother, who wanted to get a share in the property left by his great-grandfather, Daniel Gange. Moreover, his mother could not as yet claim any share in the property of Daniel because her father, Rogelio Gange, Sr., who was the direct descendant and rightful heir of Daniel Gange, was very much alive.

Finally, the trial court did not believe appellant's claim that his uncle Rogelio struck him with a bamboo pole hitting him on the head and back, for if this were so, he should have sustained an injury on the head. But, it observed that the medical certificate indicated that he did not suffer any injury on his head and back. The four injuries listed therein were found on the chest and epigastric area, on the wrist, on the scapular area, and right arm and right back. In any event, it concluded that if indeed the appellant sustained injuries in the hands of his uncle said injuries made all the more credible the testimony of Rogelio Gange that he caught the appellant in the act of having sexual intercourse with his mentally retarded sister. Angered by what he saw, Rogelio immediately laid hands on the appellant. Such was but a natural reaction on Rogelio's part.

The appellant seasonably appealed to us from the decision of the trial court. In his Brief, he imputed upon the said court the commission of the following errors:

1. THAT THE HONORABLE TRIAL COURT COMMITTED GRAVE AND SERIOUS MISAPPREHENSION OF THE FACTS PROVEN BY THE PROSECUTION AND THE DEFENSE;
2. THAT THE HONORABLE TRIAL COURT SERIOUSLY ERRED WHEN IT CONVICTED THE ACCUSED ON A SLENDER AND SHAKY EVIDENCE OF THE PROSECUTION.

In support of the assigned errors, the appellant asserts that the evidence for the People has not established his guilt beyond reasonable doubt. Also, the trial court failed to consider vital facts such as the testimony of Dr. Ricardo Jaboneta that the victim's lacerations could have been caused not less than five days before 11 June 1993 (the date of examination), and the testimony of Chita Simpelo that the results of the examination of Tessie by the doctors of the Guimaras Emergency Hospital were negative. Hence, there was no basis of the charge that Tessie was raped on 3 June 1993. The appellant also reiterated his claim that the filing of the complaint for rape was

impelled by ulterior motives.

In the Brief for the Appellee, the Office of the Solicitor General (OSG) contends that Dr. Jaboneta fully corroborated the testimony of Rogelio Gange, Jr., that the rape took place on 3 June 1993. It was Dr. Jaboneta's expert opinion that considering the state of healing of the lacerated hymen, the rape could have taken place not later than 5 June 1993; otherwise, the appearance of the laceration would have been different. The results of the Medico-Genital Examination revealed the presence of healed laceration which could have been caused by sexual intercourse on or about the alleged date of commission of rape. Furthermore, there was no evidence on record that the doctors of the Guimaras Emergency Hospital issued a medical opinion that the Tessie was not raped. Finally, the OSG asserts that the defense of denial and alibi cannot prevail over the positive identification of the appellant as the rapist.

We find no merit in this appeal.

After a thorough review of the records of this case and evaluation of the testimonial and documentary evidence submitted by the parties, we find the assessment of the trial court on the credibility of the witnesses to be accurate. The appellant fails to convince us that the trial court overlooked, misunderstood, or misapplied some facts of substance which, if considered, could have affected the result of the case, or that it acted arbitrarily in its assessment. The rule is well settled that if the trial court committed none of these its determination on the credibility of witness is entitled to great respect.[22]

The prosecution's evidence established beyond doubt that Tessie was mentally retarded, with the mental age of a six-year-old child. No less than the appellant admitted it on direct examination; thus:

Q Do you know your first cousin in the name of Tessie Gange, a mentally retarded woman?

A Yes sir.

Q A brother of your first cousin also your first cousin Rogelio Gange testified in court that sometime on June 3, 1993 at about 7: 30 o'clock in the morning, he caught you on top of your first cousin, Tessie Gange the mentally retarded woman in So. Singcalang. What do you say to that testimony? Is that true or not?

A That is not true, sir.

Q This Tessie Gange is your aunt, who is mentally retarded?

A Yes sir.

Q When your aunt, the mentally retarded Tessie Gange untied you, where was Rogelio Gange?

A My uncle Rogelio Gange went to the house of his friend to ask for help in order to drop me to the seashore.
[23]

Although the information alleged "force, threats and intimidation," it nevertheless also explicitly stated that Tessie is "a mentally retarded person." We have held in a long line of cases that if the mental age of a woman above twelve years is that of a child below twelve years, even if she voluntarily submitted to the bestial desires of the accused, or even if the circumstances of force or intimidation or of the victim being deprived of reason or otherwise unconscious are absent, the accused would still be liable for rape under the third circumstance of Article 335. [24] The rationale therefor is that if sexual intercourse with a victim under twelve years of age is rape, then it should follow that carnal knowledge of a woman whose mental age is that of child below twelve years would also constitute rape.[25]

Undeniably, the crime was committed in the domicile of the victim, who had not given provocation. Hence, the generic aggravating circumstance of dwelling [26] may be appreciated against the appellant even if it was not alleged, since it was proved without any objection on his part.

Appellant's defense of denial merits scant consideration in light of the positive testimony of Rogelio, whom we find, as the trial court did, to be a credible witness. It is a settled rule that an affirmative testimony is far stronger than a negative testimony, especially so when it proceeds from the mouth of a credible witness. [27]

Neither do we find persuasive appellant's insinuation of ulterior motive and resentment to explain why he was falsely charged with a serious offense. We agree with the trial court on this matter.

As to the civil liability, the decision of the trial court left much to be desired. For one, it did not award civil indemnity which we have granted in a catena of rape cases. The indemnity to the offended party is automatically imposed upon the accused without need of proof other than the fact of the commission of the rape. [28] In line with recent jurisprudence [29] an indemnity of P50,000 is granted to the offended party Tessie Gange.

For another, the trial court incorrectly awarded moral damages to the victim. While in rape cases moral damages are allowed under number (3) of Article 2219 of the Civil Code, Tessie was not presented as witness; hence, there was nothing on record to establish her sufferings which would entitle Tessie to an award of moral damages. However, the award of exemplary damages was justified considering that the prosecution had proved one aggravating circumstance -- dwelling -- and in accordance with Article 2230 of the Civil Code, exemplary damages may be awarded in criminal cases as part of the civil liability if the crime was committed with one or more aggravating circumstances.

WHEREFORE, the instant appeal is DISMISSED, and the challenged decision of Branch 26 of the Regional Trial Court (RTC) of Iloilo City in Criminal Case No. 41984 is hereby AFFIRMED, subject to the modifications consisting in the (1) grant of P50,000 to the offended party, TESSIE GANGE, as civil indemnity and P10,000 as exemplary damages; and (2) deletion of moral damages.

SO ORDERED.

Bellosillo, Vitug, and Kapunan, JJ., concur.

[1] Original Record (OR), 6.

[2] OR, 50.

[3] OR, 1; Rollo 7.

[4] OR, 57.

[5] Id., 127-136; Rollo, 14-23. Per Judge Ricardo M. Ilarde.

[6] The prosecution presented as its witnesses Dr. Ricardo Jaboneta; Rogelio Gange, Jr.; Dr. Japhet Gensaya; Chita G. Simpelo; and Ma. Corazon T. Berjes.

[7] TSN, 22 February 1994, 24-29.

[8] Id., 29.

[9] TSN, 4 March 1994, 9-12.

[10] Exhibit "1", OR, 100.

[11] TSN, 4 March 1994, 12-13.

[12] Id., 13-14.

[13] TSN, 22 February 1994, 17.

[14] Id., 5; Exhibit “A-3”; OR, 8.

[15] TSN, 23 February 1994, 5-9; Exhibit “B”, OR, 9-10.

[16] TSN, 4 March 1994, 17-22.; Exhibit “B,” OR, 11.

[17] TSN, 27 April 1994, 5-11.

[18] Exhibit “4,” OR, 105.

[19] Exhibit “2,” OR, 101.

[20] TSN, 27 April 1994, 13-14.

[21] Id., 25-29.

[22] *People v. Quijada*, 223 SCRA 77 [1993].

[23] TSN, 27 April 1994, 5, 11. Underscoring supplied for emphasis.

[24] The Article pertinently provides:

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

1. By using force or intimidation;

2. When the woman is deprived of reason or otherwise unconscious; and

3. When the woman is under twelve years of age, even though neither of the circumstances mentioned in the two next preceding paragraphs shall be present.

[25] *People v. Manlapaz*, 88 SCRA 704 [1979]; *People v. Galano*, 108 SCRA 405 [1981]; *People v. Asturias*, 134 SCRA 405 [1985]; *People v. Sunga*, 137 SCRA 130 [1985]; *People v. Palma*, 144 SCRA 236 [1986]; *People v. Race*, 212 SCRA 90 [1992]; *People v. Antonio*, 233 SCRA 283 [1994]; *People v. Pamor*, 237 SCRA 462 [1994]; *People v. Abendaño*, 242 SCRA 531 [1995].

[26] Article 14(3), Revised Penal Code.

[27] *People v. Digno*, 250 SCRA 237, 244 [1995]; *People v. Ramirez*, G.R. No. 97920, 20 January 1997.

[28] *People v. Caballes*, G.R. No. 102723-24, 19 June 1997.

[29] *People v. Bondoy*, 222 SCRA 216, 231 [1993]; *People v. Quiamco*, G.R. No. 96249, 19 February 1997; *People v. Caballes*, *supra* note 28.

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