

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NIXON MALAPO, ACCUSED-APPELLANT.

G.R. No. 123115. August 25, 1998

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the decision rendered on June 23, 1995 by the Regional Trial Court of Iriga City, Branch 36, convicting accused-appellant Nixon Malapo of rape and sentencing him to suffer the penalty of reclusion perpetua and to pay the victim Amalia Trinidad the sum of P50,000.00 in moral damages.

The information[1] against accused-appellant alleged:

The undersigned Assistant City Prosecutor of Iriga City, upon sworn complaint originally filed by the offended party hereto attached, hereby accuses one NIXON MALAPO of Salvacion, Iriga City of the crime of RAPE, committed as follows:

That sometime on the month of September, 1991 at Salvacion, Iriga City, Philippines, and within the jurisdiction of this Honorable Court, the said accused, entered the house of one Nenita I. No, aunt of Complainant AMALIA TRINIDAD who was then and there alone, and by means of force and intimidation, did, then and there willfully, unlawfully and feloniously succeeded in having carnal knowledge of said Amalia Trinidad against her will and consent and as a result she has become pregnant and delivered a baby at the Iriga City Puericulture Center.

CONTRARY TO LAW.

Three witnesses testified against him: complainant Amalia Trinidad; Amalia's guardian, Nenita No; and a guidance counselor and first cousin of Nenita No, Bernardita Marquez.

Nenita No identified accused-appellant as her long-time neighbor. She testified that Amalia Trinidad had been under her care and custody since 1978 when Amalia was just seven years old. She said Amalia was able to finish the sixth grade of her primary education.[2] It appears that Amalia is a retardate who was a former ward of the Elsie Gaches Village institution. Mrs. Nenita No and her husband were given custody of Amalia on November 19, 1978 on the basis of the following psychological evaluation:

Amalia is seemingly an example of a pseudoretardate. She might have been deprived of intellectual stimulations which explains her lag in cognitive development. She is still categorized within the normal classification of children. She must continue attending the center's special school to catch-up for whatever educational deficiency she may have.[3]

Mrs. No told the court that, sometime during the first week of September 1991, Amalia was left alone in their house at Salvacion, Iriga City, as she and her husband taught in school, while their four natural children attended classes.[4]

At around 10:30 in the morning of that day, when Mrs. No came home from her class, she found

accused-appellant Malapo in the yard of her house. Accused-appellant was in haste. She stopped him and asked why he was in a hurry, to which accused-appellant replied he had gathered firewood. This puzzled Mrs. No as they had no firewood at the back of their house. Mrs. No said she found Amalia inside their house crying. Mrs. No tried to find out why Amalia was crying, but she would not say anything. On May 18, 1992, Amalia finally told Mrs. No's cousin, Bernardita Marquinez, that she had been raped by accused-appellant.[5]

Taking the witness stand, Amalia Trinidad recounted how at around 9:30 in the morning in September 1991, while she was alone at home, accused-appellant Nixon Malapo entered their house. Amalia was then cooking. Upon seeing accused-appellant, she tried to run away, but Malapo caught her hand and brought her to the dining room. The accused-appellant then caused her to fall on the floor, covered her mouth, and forcibly removed her short pants and undergarment. Next, he removed his pants, lay on top of her, and forced his sexual organ into her private part, causing lacerations and bleeding in her vagina. Amalia said she tried to punch the accused-appellant and to remove his hand from her mouth, but he was too strong for her. After he had succeeded in having sexual intercourse with her, accused-appellant left after warning her that he would kill her if she reported the incident to Mrs. No or to anyone else.[6]

For this reason, Amalia said, when Mrs. No asked why she was crying, she did not tell her what had happened to her. She confirmed that it was only when she was about to give birth to her baby on May 18, 1992 that she told Bernardita Marquinez that she had been raped by accused-appellant. Amalia pointed to accused-appellant in court as the person who had raped her. She testified that, prior to the date of the alleged crime, she did not harbor any ill will or grudge against him,[7] but, as a result of her abuse, she said she suffered from wounded feelings which made her cry very often.[8]

The last witness for the prosecution was Bernardita Marquinez, a resident of Iriga City and guidance counselor of the University of Saint Anthony. She was presented to corroborate the testimonies of Mrs. No and the victim regarding the events on May 18, 1992 and afterward.[9]

Accused-appellant Nixon Malapo testified on his behalf, basically claiming alibi as his defense. He presented as witnesses Felipe Edroso and Santos Ramos to corroborate his claim that he and Ramos worked together as duck watchers hired by Edroso in San Jose, Buhi, Camarines Sur, about fifteen kilometers away from Salvacion, Iriga City, from July 1991 until January 1992.[10]

Accused-appellant alleged that Amalia three times failed to identify him: When Amalia was brought before the barangay captain's office to confront accused-appellant, Amalia failed to identify him despite Mrs. No's effort to make her point to him. Amalia again failed to identify him as her alleged assailant when they were taken to the police headquarters and, still later, before Prosecutor Jose Tagum of the Iriga City Prosecutor's office.[11]

Accused-appellant submitted as documentary evidence a medical certificate[12] showing that the alleged victim gave birth to a full-term male baby on May 18, 1992. He argues that if Amalia had been raped in September of 1991, she could not have been delivered of her baby on May 18, 1992.

On June 23, 1995, the trial court rendered its decision finding accused-appellant guilty. The dispositive portion of its decision reads:

WHEREFORE, premises considered, the Court finds the accused, NIXON MALAPO, guilty beyond reasonable doubt of the crime of rape defined and penalized under Article 335 of the Revised Penal Code before its amendment by Rep. Act No. 7659, as charged in the information, and hereby sentences the said accused to suffer the penalty of reclusion perpetua; that said accused is further ordered to indemnify the private offended party, AMALIA TRINIDAD, of the sum of P50,000.00 as moral damages, and to pay the costs.

SO ORDERED.

Hence, this appeal. Accused-appellant's sole contention is this:

As, according to Exhibit 1-A, the baby was a full term baby, it is unlikely, nay unbelievable, that same baby was the fruit of the alleged rape perpetrated sometime in September 1991, because from September 15, 1991 (assuming that the rape took place on September 15, 1991, there being no evidence as to when in September 1991 the rape took place) to May 18, 1992 when the baby was born, is a period of only eight (8) months and three (3) days, contrary to the Certificate (Exh. 1 and 1-A) that the baby was full term when delivered.

Consequently, that the appellant had raped the complaining witness in September 1991 and, as a result, she became pregnant and gave birth to her baby on May 18, 1992 is simply improbable; hence, obviously a lie.

It could therefore be that the baby of the complaining witness was fathered by another man; hence, there is serious doubt that the appellant had raped same complaining witness in September 1991 causing her to become pregnant and to deliver a baby on May 18, 1992.

It cannot be argued that the victim must have been already pregnant when she was allegedly raped because there is no evidence to this effect. The information and the prosecution evidence are to the effect that the baby was the fruit of the alleged rape.[13]

The contention has no merit.

A textbook on pediatrics states that "Infants delivered before the thirty-seventh week of gestation with a birth weight of less than 2,500 grams (American) or 2,275 grams (Filipino) are considered premature." [14] An infant can therefore be considered a full-term baby if it weighs more than 2,275 grams even if it is born before the thirty-seventh week which is less than 9.3 months. Since according to the medical certificate (Exh. 1) Amalia's baby weighed 2.4 kilograms or 2,400 grams, it was a full-term baby even if it was born before the normal gestation period.

Article 166 of the Family Code provides:

Legitimacy of a child may be impugned only on the following grounds:

(1) That it was physically impossible for the husband to have sexual intercourse with his wife within the first 120 days of the 300 days which immediately preceded the birth of the child because of:

- (a) the physical incapacity of the husband to have sexual intercourse with his wife;
 - (b) the fact that the husband and wife were living separately in such a way that sexual intercourse was not possible; or
 - (c) serious illness of the husband, which absolutely prevented sexual intercourse;
- (2) That it is proved that for biological or other scientific reasons, the child could not have been that of the husband, except in the instance provided in the second paragraph of Article 164; . . .

In the case at bar, it can be inferred that conception occurred at or about the time that accused-appellant is alleged to have committed the crime, i.e., within 120 days from the commission of the offense in September 1991.[15] Pursuant to Art. 166 of the Family Code, accused-appellant can overcome the presumption that Amalia's child was begotten as a result of her having been raped in September 1991 only if he can show either that it was physically impossible for him to have sexual intercourse because of impotence or serious illness which absolutely prevents him from having sexual intercourse or that Amalia had sexual intercourse with another man. However, accused-appellant has not shown either of these.

The testimony of Amalia, as corroborated by Nenita No and Bernardita Marquinez, leaves no doubt in our mind that accused-appellant is the father of the child. Therefore, in accordance with Art. 345 of the Revised Penal Code, accused-appellant should be ordered to pay support.

In any event, the impregnation of a woman is not an element of rape. Proof that the child was fathered by another man does not show that accused-appellant is not guilty, considering the positive testimony of Amalia that accused-appellant had abused her. As held in *People v. Alib*:^[16]

... Under Article 335 of the Revised Penal Code, 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.

It is therefore quite clear that the pregnancy of the victim is not required. For the conviction of an accused, it is sufficient that the prosecution establish beyond reasonable doubt that he had carnal knowledge of the offended party and that he had committed such act under any of the circumstances enumerated above. Carnal knowledge is defined as the act of a man having sexual bodily connections with a woman;

Indeed, the findings of the trial court deserve the great respect usually accorded the findings of triers of facts who had the opportunity of observing the demeanor of the witnesses while testifying. Amalia's inability to recall the exact date she was raped cannot affect her credibility, especially considering her condition of feeble-mindedness. In *People v. Quinones*,^[17] which involved the rape of a 25-year old retardate who also could not recount when she was raped by the accused in that case, this Court held:

[T]he date of the occurrence of the rape is not an essential element in the commission of the rape. That is why the Amended Information reads: "[t]hat on or about the 5th of June 1989 . . ." Suffice it to say that it was shown that rape under Art. 335, par. (2), of the Revised Penal Code was committed, and that the evidence presented established beyond a ray of doubt that accused-appellant was responsible therefor.^[18]

It is noteworthy that in this appeal accused-appellant does not reiterate his original defense that in September 1991 he was not in Salvacion, Iriga because he was then tending a duck farm in San Jose, Buhi, Camarines, Sur, fifteen kilometers away. For alibi is inherently a weak defense which cannot prevail over the positive identification of the accused.^[19] Furthermore, his claim that he was elsewhere at the time of the crime is belied by his own witness, Santos Ramos, who admitted that he and accused-appellant took turns going home to their families in Salvacion. By testifying that he did not go home in September 1991, Santos, by implication, admitted that it was accused-appellant's turn to go home in that month. Santos Ramos testified:

Q But the fact is, you and Nixon Malapo did never leave the ducks you were tending to from the time that they were brought at Salay in July up to the time you left in January, 1992?

A Sometimes, one of us also leave.

Q And when one of you leave, where do you go?

A We go home to our house, sir.

Q And will you tell the Court how many times you went home between July, 1991 to January, 1992?

A About five (5) times, sir?

Q When were these five (5) times?

A I went home in October and December.

Q You said five (5) times - you said you went home five (5) times, in October and December only?

A Yes, sir.

Q You did not go home in August?

A No, sir.

Q You did not also go home in September?

A No, sir.[20]

Answering questions from the trial judge, he said:

Q During that period between July, 1991 to January, 1992, do you remember if Nixon Malapo also visited?

A Yes, Your Honor.

Q Do you remember how many times did he visit his family during that period?

A Yes, Your Honor, the same number of times that I went home.

Q He went home on those days when you were on duty?

A Yes, Your Honor.[21]

In addition to the foregoing, Felipe Edroso, the other defense witness, testified:

PROS. CANUTO:

Q In September 1991 he [accused-appellant] also used to leave San Jose, Salay, and visited his family in Salvacion, stayed there for about a day and then returned to his work in San Jose, Salay?

A Yes, Sir.

Q And in October 1991, he also would leave San Jose Salay, to visit his family in Salvacion and stayed with his family for about a day and then returned [to] his work in San Jose, Salay?

A Yes, Sir.

Q Now, in 1991 do you know whether Nixon Malapo was married or not?

A Yes, Sir.

Q Did they have children at that time?

A Yes, Sir.

Q And you will agree with me that this could be the reason of [sic] the fact that he already had his wife, had his family that he did not continuously stay in Buhi, for three (3) months, but that he would leave San Jose, Salay and visited his family once in a while in Salvacion during that time/period?

A Very seldom, Sir.[22]

In conclusion, we hold that the trial court correctly found accused-appellant guilty of rape. However, it failed to order accused-appellant to pay indemnity. After reciting that, in all criminal cases, unless the offended party reserves the right to institute a separate civil action, she has a right to recover civil indemnity, the trial court awarded the complainant in this case moral damages only. As we have explained in a number of cases,[23] the indemnity provided in criminal law as civil liability is the equivalent of actual or compensatory damages in civil law. It is, therefore, separate and distinct from any award of moral damages. As currently fixed, the indemnity for rape is P50,000.00. However, as we have recently held in *People v. Victor*,[24] if rape is committed or is qualified by any of the circumstances which under the law (R.A. No. 4111 and R.A. No. 7659) would justify the imposition of the death penalty, the indemnity shall be in an amount not less than P75,000.00.

Since in this case the rape is not qualified, the indemnity should be P50,000.00. This is in addition to the amount of P50,000.00 awarded by the trial court as moral damages. It should be added that the latter amount is automatically granted in rape cases without need of any proof. It is assumed that the offended party has suffered moral injuries entitling her to the award of such damages. As we explained in the recent case of *People v. Prades*:^[25]

The conventional requirement of *allegata et probata* in civil procedure and for essentially civil cases should be dispensed with in criminal prosecutions for rape with the civil aspect included therein, since no appropriate pleadings are filed wherein such allegations can be made.

Corollarily, the fact that complainant has suffered the trauma of mental, physical and psychological sufferings which constitute the bases for moral damages are too obvious to still require the recital thereof at the trial by the victim, since the Court itself even assumes and acknowledges such agony on her part as a gauge of her credibility. What exists by necessary implication as being ineludibly present in the case need not go through the superfluity of still being proved through a testimonial charade.

Mention was earlier made that since Amalia's baby was begotten as a result of the rape, accused-appellant is liable for support. Under Art. 345 of the Revised Penal Code, in addition to the indemnification of the offended party, persons guilty of rape must in every case support the offspring. Although said article also provides for the acknowledgment of the child unless the offender is married, this Court has already ruled that:

Article 176 of the Family Code confers parental authority over illegitimate children on the mother, and likewise provides for their entitlement to support in conformity with the Family Code. As such, there is no further need for the prohibition against acknowledgment of the offspring by an offender who is married which would vest parental authority in him. Therefore, under Article 345 of the Revised Penal Code, the offender in a rape case who is married can only be sentenced to indemnify the victim and support the offspring, if there be any. In the instant case then, the accused should also be ordered to support his illegitimate offspring, Tracy Jhuen Nieto, with Marie Elena Nieto, but in light of Article 201 of the Family Code, the amount and terms thereof are to be determined by the trial court only after due notice and hearing.^[26]

Therefore, given the fact that Amalia's child is conclusively the illegitimate child of the accused-appellant,^[27] the acknowledgment in this instance should be understood to refer only to the affiliation of the child.^[28]

WHEREFORE, the decision of the Regional Trial Court is **AFFIRMED**, with the **MODIFICATION** that the accused-appellant is ordered to pay complainant Amalia Trinidad the sum of P50,000.00 as indemnity, in addition to the amount of P50,000.00 granted by the trial court as moral damages, as well as to acknowledge the filiation of complainant's offspring and to give support, the amount of which shall be determined by the trial court. Accordingly, the records of this case are hereby **REMANDED** to the Regional Trial Court for the fixing of the amount of support.

SO ORDERED.

Melo (Acting Chairman), Puno and Martinez, JJ., concur.
Regalado, J. (Chairman), on official leave.

[1] Rollo, p. 25.

[2] TSN, pp. 2-3, 13, July 8, 1998.

[3] Exh. A-1, Records, p. 92.

- [4] TSN, p. 11, July 8, 1998.
- [5] Id., pp. 3-8.
- [6] TSN, pp. 2-6, Aug. 16, 1993.
- [7] Id., pp. 6-9.
- [8] TSN, p. 2, Sept. 29, 1993.
- [9] TSN, pp. 1-4, May 18, 1993.
- [10] TSN, pp. 3-7, 14, Feb. 10, 1994; TSN, pp. 3-6, June 23, 1994; TSN, pp. 2-5, Sept. 28, 1994.
- [11] TSN, pp. 6-9, Sept. 28, 1994.
- [12] Exh. 1, Records, p. 7.
- [13] Appellant's Brief, pp. 2-3, Rollo, pp. 57-58.
- [14] DEL MUNDO, ESTRADA & SANTOS OCAMPO, TEXTBOOK OF PEDIATRICS AND CHILD HEALTH 165-166 (2nd ed., 1982).
- [15] See *People v. Rafanan*, 182 SCRA 811, 824 (1990).
- [16] 222 SCRA 517, 525 (1993)**
- [17] 222 SCRA 249 (1993).**
- [18] Id., at p. 254.
- [19] *People v. Gaban*, 262 SCRA 593 (1996).
- [20] TSN, pp. 11-12, June 23, 1994 (emphasis added)
- [21] Id., p. 18 (emphasis added).
- [22] TSN, p. 12, Feb. 10, 1994 (emphasis added).
- [23] E.g., *People v. Gementiza*, G.R. No. 123151, Jan. 29, 1998; *People v. Victor*, G.R. No. 127903, July 9, 1998.
- [24] *Supra* note 23.
- [25] G.R. No. 127569, July 30, 1998.
- [26] *People v. Bayani*, 262 SCRA 660, 688-689 (1996).
- [27] Family Code, Art. 165.
- [28] *People v. Errojo*, 229 SCRA 49 (1994); *People v. Rafanan*, 182 SCRA 811 (1990).

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