

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ZALDY P. PADILLA, ACCUSED-APPELLANT.*G.R. No. 126124. January 20, 1999*

Ponente: MENDOZA, J.

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For review in this case is a decision, dated May 8, 1997, of the Regional Trial Court, Branch XLV, at Urdaneta City, Pangasinan, finding accused-appellant Zaldy P. Padilla guilty of rape and imposing on him the penalty of death. The trial court also ordered accused-appellant Padilla to indemnify the offended party, Maria Aurora B. Bautista, in the amount of P50,000.00 and to pay the costs.

The evidence for the prosecution shows that at around 5 o'clock in the afternoon on April 27, 1995, Maria Aurora, a 13-year old retardate, was in the citrus farm owned by a neighbor, Jose Sagun, when accused-appellant accosted her. The latter, who is married with two children, was then 26 years old and employed by Sagun as a farmhand. Armed with a scythe and a knife, accused-appellant forced Maria Aurora to undress and lie down on the grass. As she lay on there, accused-appellant forced himself on her, saying: "Kantot tayo" ("Let's have sexual intercourse"). Maria Aurora resisted accused-appellant's advances, but she proved to be no match for him. Accused-appellant succeeded in ravishing her.

Maria Aurora told her father, Engracio L. Bautista, what happened to her in the evening. She was taken to the Governor Teofilo Sison Memorial Hospital, where she was examined by Dr. Luisa F. Cayabyab. Afterwards, the matter was reported to the Pozorrubio Police Station.[1]

On May 2, 1995, Engracio filed a complaint[2] in the Municipal Circuit Trial Court, Pozorrubio, Pangasinan. After a preliminary investigation, the court found probable cause that the crime had been committed and that accused-appellant was guilty thereof. Accordingly, the case was referred to the Office of the Provincial Prosecutor, Urdaneta City, Pangasinan which on May 26, 1995 filed an information[3] for rape in the Regional Trial Court, Branch XLV, at Urdaneta City against accused-appellant, the pertinent portion of which reads:

The undersigned upon previous complaint sworn to by the father of the offended party accuses ZALDY PADILLA Y PILONGO alias "LABO", of the crime of RAPE, committed as follows:

That on or about the 27th day of April, 1995 at Barangay Bobonan East, Municipality of Pozorrubio, Province of Pangasinan 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 of the complainant, Maria Aurora Bautista, a minor of about 13 years old, against the latter's will.

CONTRARY to Article 335, Revised Penal Code.

Urdaneta, Pangasinan, May 26, 1995.

Upon being arraigned, accused-appellant pleaded not guilty to the charge, whereupon hearings were held on December 6, 1995, January 23, January 31, February 22, and March 27, 1996. On May 8, 1996, judgment was

rendered finding accused-appellant Zaldy Padilla guilty of rape and sentencing him to death:

WHEREFORE, the Court finds the accused ZALDY PADILLA Y PILONGO GUILTY beyond reasonable doubt of the crime of RAPE defined and penalized under Republic Act No. 7659, the offense having been committed with the attendant circumstances of use of a deadly weapon, disregard of the respect due to the offended party on account of her age, and abuse of superior strength; and hereby sentences him to suffer the supreme penalty of DEATH, to be executed pursuant to R.A. No. 8177, otherwise known as the Lethal Injection Law, and to pay the complainant MA. AURORA BAUTISTA in the amount of P50,000.00 as damages, and to pay the costs.

Hence, this appeal. Accused-appellant raises this lone assignment of error:

THE TRIAL COURT ERRED IN ADMITTING IN EVIDENCE AGAINST THE ACCUSED-APPELLANT THE TESTIMONY OF THE ALLEGED VICTIM DESPITE THE FACT THAT THE LATTER IS INCOMPETENT TO TESTIFY DUE TO HER MENTAL HANDICAP.

Accused-appellant's contention is without merit.

First. The basic test of a witness' qualification is of course whether he can perceive and, perceiving, can make known his perception to others.[4] Negatively put, Rule 130, §21 of the Revised Rules of Court provides:

The following persons cannot be witnesses:

- (a) Those whose mental condition, at the time of their production for examination, is such that they are incapable of intelligently making known their perception to others;
- (b) Children whose mental maturity is such as to render them incapable of perceiving the facts respecting which they are examined and relating them truthfully.

Hence, a mental retardate is not, by reason of such handicap alone, disqualified from testifying in court. He or she can be a witness, depending on his or her ability to relate what he or she knows. If the testimony of a mental retardate is coherent, the same is admissible in court.[5] Thus, we have in several cases[6] upheld the conviction of the accused based mainly on statements given in court by the victim who was a mental retardate.

Trial courts, which have the opportunity to observe the facial expressions, gestures, and tone of voice of a witness while testifying, are competent to determine whether his or her testimony will be given credence.[7] In the instant case, the trial court accorded weight to the testimony of Maria Aurora. Indeed, the complainant's truthfulness is evident in her testimony:

Prosecutor Emiliano M. Matro:

Now, on April 27, 1995, between 4 and 5 o'clock in the afternoon, can you recall where you were?

A:

I was at the calamansi orchard.

Q: Who owns that calamansi orchard?

A: Tiaging.

Q: What were you doing there at that time?

A: I was looking for my scythe.

Q: What happened, did you find your scythe?

A: I was undressed.

Q: Who undressed you?

A: Labo.

Q: Do you know the real name of Labo?

A: Zaldy Padilla.

Q: If Zaldy Padilla alias Labo is now in the courtroom, can you identify him?

A: That person.

(The witness pointed at a person who, when asked his name, answered “Zaldy Padilla.”)

Q: You mentioned something about a scythe. Were you able to find it?

A: It was in the possession of Labo.

Q: You said that Zaldy Padilla alias Labo undressed you. What did you do after that?

A: He pulled me.

Judge Costales:

At this point, the public is hereby directed to go outside. Close the door. Even the father and mother of the complainant should go outside.

Q: After Labo pulled you, what did you do, if anything?

A: He brought out a knife and tried to stab me.

....

Q: You were undressed at that time?

A: Yes.

Q:

After that, what did you do?

A: He told me, “Kantot tayo.”

Q: Did he have sexual intercourse with you?

A: Yes.

Q: How did he do that with you?

A: He made me lie down.

Judge Costales:

How about the knife?

A: I bled.

Q: Where did you bleed?

A: Here. (The witness pointed at her vagina).

Q: What did you feel while Labo was having sexual intercourse with you?

A: It hurt. It was painful.

Q: How long did Labo had (sic) sexual intercourse with you?

A: For a short time only.

Q: After that, what did he do?

A: Nothing more.

....

Q: Will you describe the organ of Labo?

A: It was big. (The witness demonstrated a length of about 4 to 5 inches)

....

Q: Did you scream when he inserted his penis?

A: Yes.[8]

The complainant's testimony is corroborated by the finding of Dr. Luisa F. Cayabyab, who examined Maria Aurora in the evening of April 27, 1995. Dr. Cayabyab found fresh lacerations in her hymen, most probably caused by the entrance of a hardened penis.[9] The relevant portions of the medical certificate,[10] dated April 28, 1995, which Dr. Cayabyab issued after examining Maria Aurora read:

Perineum :

no sign of external injury

Hymen : with fresh lacerations at 3 and 9 o'clock positions

Vagina : admits 1 finger

Cervix : close

Uterus : small

Spermatozoa : negative

Second. During the trial, the prosecution presented evidence tending to show that Maria Aurora is a mental retardate.[11] Significantly, accused-appellant also admitted this point during his direct examination.[12] It is settled that sexual intercourse with a woman who is a mental retardate constitutes statutory rape, which does not require proof that the accused used force or intimidation in having carnal knowledge of the victim for conviction.[13] However, this fact was not alleged in the information[14] in this case and, therefore, cannot be the basis for conviction. At any rate, there is adequate evidence to show that the accused-appellant used force and intimidation in committing the crime of rape in this case.

The defense makes much of Maria Aurora's admission that she did not put up a determined resistance against

accused-appellant. For instance, she answered at one point that she did not fight back when accused-appellant laid her down on the grass.[15] However, the law does not impose a burden on the rape victim to prove resistance.[16] The fact that the victim did not resist the accused by struggling or shouting for help does not negate the use of force and intimidation.[17] The use of a knife and the threat of harm may be sufficient to intimidate the victim to obedience.[18]

Maria Aurora, a minor, cannot be expected to react under such circumstances like a mature woman. Because of her immaturity, she can be easily intimidated, subdued, and terrified by a strong man like accused-appellant Padilla.[19] There can be no doubt that Maria Aurora was forced by accused-appellant to have sexual intercourse with him, and that she eventually submitted to him out of fear from the following answers she gave to the trial court:

Q:

Why did you not fight Labo?

A: I was afraid, he might maul me.

....

Q: Where was the knife or the scythe you were mentioning at that time?

A: It was in his possession, sir.

Q: He was holding it?

A: Yes.

Q: What hand?

A: Right hand.

Q: Was it a knife or a scythe?

A: Scythe. No, he had no scythe in his possession.

Q: When he was having sexual intercourse with you?

A: Yes.

Q: However, he had a knife at that time, only he laid it on the ground when he had sexual intercourse with you.

A: Yes.

Q: And because he had a scythe, you were afraid that he might kill you if you resist?

A: Yes.[20]

There are minor inconsistencies in the testimony of Maria Aurora, such as her confusion whether it was a knife or a scythe which accused-appellant placed on the grass above her head after he had forced her to lie down. However, as we have held in a number of cases, such inconsequential lapses can be expected of a young girl who was raped, in view of the harrowing experience she is called upon to recall.[21] Such minor inconsistencies, far from detracting from the veracity of her testimony, in fact tend to bolster it.[22]

Third. To rebut the evidence presented against him, accused-appellant claimed that, at the time of the rape, he was in their hut preparing supper with two other farmhands.[23] One of the farmhands, Santiago Sagun, corroborated accused-appellant's claim.[24] This claim cannot prevail over the positive identification of accused-appellant.[25]

In the instant case, Maria Aurora pointed out accused-appellant in open court as the person who had molested her.[26] Furthermore, for the defense of alibi to be given weight, it must be shown that it was impossible for the accused to have been present at the place where the crime was perpetrated at the time of its commission.[27] But in this case, the hut where accused-appellant claimed he was in with the two other farmhands is only a short distance from the scene of the rape.[28] Hence, the trial court correctly rejected his alibi.

The trial court also correctly found that the rape was committed with the use of a deadly weapon and, therefore, the imposable penalty is reclusion perpetua to death.[29] However, it erred in appreciating the aggravating circumstances of disregard of the respect due to the victim by reason of his or her age and abuse of superior strength. Although disregard of the respect due to the victim by reason of his or her age can be taken into account where the victim is of old age as well as of tender age,[30] the same can be considered only in cases of crimes against persons and honor.[31] At the time of the rape on April 27, 1995, rape was classified as a crime against chastity. R.A. No. 8353 classifying it as a crime against persons took effect only on October 22, 1997 and cannot therefore be given retroactive effect so as to justify the consideration of disregard of the respect due to the victim by reason of his or her age. Even if such aggravating circumstance could be considered in this case, it nonetheless cannot be appreciated because nothing appears in the record from which it may be presumed that in the commission of the crime, accused-appellant deliberately intended to offend or insult the age of the offended party.[32] Nor can the aggravating circumstance of abuse of superior strength be appreciated as the trial court did, since the consideration of the same requires evidence of the relative physical conditions of the assailant and the victim, which the prosecution failed to present.[33] As the penalty for rape when committed with the use of a deadly weapon is reclusion perpetua to death, the penalty of reclusion perpetua should be imposed in the absence of any aggravating circumstances.[34]

It is also to be noted that the trial court ordered accused-appellant to pay the complainant only the civil liability arising from the offense in the amount of P50,000.00. This is equivalent to actual or compensatory damages in civil law. However, in addition to such amount the offended party is entitled to moral damages, which is automatically granted in rape cases without need of any proof. Currently, moral damages for rape is fixed at P50,000.00.[35] Hence, the additional sum of P50,000.00 should be awarded to Maria Aurora B. Bautista.

WHEREFORE, the decision dated May 8, 1996 of the Regional Trial Court, Branch XLV, Urdaneta City, Pangasinan is hereby AFFIRMED, with the modification that accused-appellant is sentenced to reclusion perpetua and is ordered to pay P50,000.00 to Maria Aurora B. Bautista by way of moral damages in addition to the amount of P50,000.00 which the trial court ordered accused-appellant to pay as indemnity.

SO ORDERED.

Davide, Jr., C.J., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Panganiban, Martinez, Quisumbing, Purisima, Pardo, Buena, and Gonzaga-Reyes, JJ., concur.

[1] Exh. "C", Records, p. 7.

[2] Id., p. 3.

[3] Rollo, p. 10.

[4] Rule 130, §20.

[5] *People v. Salomon*, 229 SCRA 403 (1994); *People v. Balisnomo*, 265 SCRA 98 (1996).

[6] E.g., *People v. Manlapaz*, 88 SCRA 704 (1979); *People v. Malapo*, G.R. No. 123115, Aug. 25, 1998.

- [7] *People v. Raptus*, 198 SCRA 425, 433 (1991).
- [8] TSN, Jan. 23, 1996, pp. 2-5.
- [9] TSN, Jan. 31, 1996, pp. 13-14..
- [10] Exh. "B," Records, p. 4.
- [11] TSN, Jan. 31, 1996.
- [12] TSN, Feb. 22, 1996.
- [13] *People v. Gallano*, 108 SCRA 405 (1981).
- [14] *People v. Pailano*, 169 SCRA 649 (1989).
- [15] TSN, Jan. 23, 1996, p. 9.
- [16] *People v. Talaboc*, 256 SCRA 441 (1996).
- [17] *People v. Pada*, 261 SCRA 773 (1996).
- [18] *People v. Adlawan, Jr.*, 217 SCRA 489 (1993).
- [19] *People v. Gumahob*, 265 SCRA 84 (1996).
- [20] TSN, Jan. 23, 1996, pp. 9-10.
- [21] E.g., *People v. Esquilla*, 254 SCRA 140 (1996); *People v. Atuel*, 261 SCRA 339 (1996).
- [22] *People v. Atuel*, 261 SCRA 339 (1996).
- [23] TSN, Feb. 22, 1996, pp. 5-7.
- [24] TSN, March 27, 1996, pp. 6-8.
- [25] *People v. Malapo*, G.R. No. 123115, Aug. 25, 1998.
- [26] TSN, Jan. 23, 1996, p. 3.
- [27] *People v. Quidilla*, 166 SCRA 778, 788 (1988).
- [28] TSN, March 27, 1996, p. 11.
- [29] Revised Penal Code, Art. 335.
- [30] *U.S. v. Butag*, 38 Phil. 748 (1918) and *People v. Lora*, 113 SCRA 366 (1982).
- [31] *People v. Pagal*, 79 SCRA 570, 576-77 (1977).
- [32] *People v. Mangsant*, 65 Phil. 548 (1938).
- [33] *People v. Bustos*, 51 Phil. 385 (1928).
- [34] Revised Penal Code, Art. 63(2); *People v. Santos*, 94 SCRA 277, 291 (1979).
- [35] *People v. Malapo*, G.R. No. 123115, Aug. 28, 1998.

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