

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARMANDO ROMUA ACCUSED-APPELLANT.

G.R. No. 126175. May 29, 1997

Ponente: PUNO, J.

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PUNO, J.:

Rape is an odious crime. It becomes more despicable when committed against a person deprived of reason. Such was the case of Lolita Jaban, a 24-year old mental retardate.

A complaint was initiated by Jovita Jaban against Armando Romua for raping her retarded daughter, Lolita. The Information[1] against him, dated April 10, 1990, was subsequently filed before the Regional Trial Court of Kabacan, Cotabato.[2] It reads:

"That on or about 9:30 o'clock in the evening of January 31, 1990, at Barangay Katidtuan, Municipality of Kabacan, Province of Cotabato, Philippines, and within the jurisdiction of this Honorable Court, the said accused, taking advantage of a feeble-minded, idiotic woman, Lolita Jaban, did then and there, willfully, unlawfully and feloniously have carnal knowledge with said Lolita Jaban, who by reason of her said mental abnormality or deficiency, has no will or otherwise deprived of reason.

"CONTRARY TO LAW."

Romua pleaded 'not guilty' upon arraignment.[3] Trial ensued.

The prosecution evidence rests chiefly on the testimonies of Jovita Jaban, Dr. Crisostomo Necesario, Jr., P/Sgt. Jesus Ragonton and P/Sgt. Polcronio Dulay.

The records reveal that Jovita Jaban, a widow, lives in Katidtuan, Kabacan, Cotabato, with her daughter Lolita Jaban and the latter's two-year old child. The man who sired Lolita's child is unknown since her mental condition has rendered her incapable of talking or communicating with anyone.

Armando Romua, husband of Jovita's niece, resides in the same neighborhood, about ten (10) meters away from Jovita's house. He and his wife used to look after Lolita whenever Jovita had to leave the house to work as a laundry woman. At times, Romua would go to Jovita's house and give food to Lolita when her mother was not around.[4]

In the evening of January 31, 1990, Jovita went to the house of Leodegario Pablo, father-in-law of Romua, to watch a video. Romua and his wife were also at Pablo's house watching the video. Romua did not finish the video as he told his wife that he would go home to sleep. He left at about 9:00 p.m.[5]

After Romua left, Jovita felt nervous for no apparent reason. Nevertheless, she continued watching the video and went home at about 9:30 p.m. When she reached her house and opened its door, she encountered Romua who was inside and about to leave. Jovita asked him what he did inside her house. He replied that he was just checking because the baby was crying. Romua was clad in brief and T-shirt. Suspecting that Romua molested Lolita, she

held on to his arms and shouted for help. Their neighbors arrived, including Romua's wife and another relative, Lito Amosin. Amosin led them inside the house to avoid scandal. Inside the house, Jovita found Lolita completely naked.[6] She immediately reported the incident to the authorities.

The following morning, at about 10:00 a.m., Jovita brought Lolita to Dr. Crisostomo Necesario, Jr., for a medical examination. Dr. Necesario found sperm in the vaginal canal of Lolita and opined that she had sexual contact one (1) or two (2) days before the examination.[7] Jovita and Lolita proceeded to Kabacan Police Station where Jovita executed her sworn statement before P/Sgt. Jesus T. Ragonton.[8]

We now consider the defense's version of the incident.

On January 31, 1990, at about 9:00 p.m., Armando Romua watched a video tape at his father-in-law's house. His aunt Jovita came and joined them. After a while, he felt sleepy and he told his wife he would go home. He went straight to his house, some twenty (20) meters away from his father-in-law's house.[9]

Allegedly, he heard something fall inside Jovita's house. He went to Jovita's house to verify if anything untoward has happened. He peeped inside and saw the baby jumping on Lolita's abdomen. He started to leave after finding nothing wrong. He then met his aunt Jovita who suddenly shouted and accused him of raping Lolita. His wife and Lito Amosin came and pacified them. Romua denied he was clad in brief. He claimed he was wearing a T-shirt and maong pants. He said that Lolita was not naked but wore a dress. Her dress, however, was raised.

Lito Amosin, brother in-law of Romua, testified for the defense. He narrated that on the material date and time, he saw his aunt Jovita and Romua standing by the road, in front of Jovita's house. Jovita was holding on to Romua's hands. He approached the two and led them inside the house to avoid scandal. Amosin affirmed that Romua was wearing a T-shirt and long pants that evening.

On April 29, 1993, the trial court rendered its Decision[10] finding appellant guilty as charged. Its dispositive portion reads:

"WHEREFORE, premises considered, accused Armando Romua is found guilty by proof beyond reasonable doubt of Rape and applying the Indeterminate Sentence Law, is sentenced to suffer (the) penalty of imprisonment of 12 years and one day to 14 years and 8 months.

"SO ORDERED."

Accused appealed to the Court of Appeals. He contended that:

"I

"THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT MAINLY ON THE BASIS OF THE TESTIMONY OF THE MOTHER OF THE VICTIM AND THE EXAMINING PHYSICIAN WITHOUT THE VICTIM IDENTIFYING THE ACCUSED-APPELLANT.

"II

"THE TRIAL COURT GRAVELY ERRED IN APPLYING THE RULING IN PEOPLE VS. TOMETOS IN THE INSTANT CASE WITHOUT EVEN DISCUSSING ITS FINDINGS OF FACTS IN THE ASSAILED DECISION.

"III

"THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED."

After review, the appellate court affirmed the judgment of the trial court but modified the penalty to reclusion perpetua[11] The records of the case were then forwarded to this Court for further review.

We affirm appellant's conviction.

Appellant maintains that the victim's mental depravity was not established by the prosecution. He also insists that no concrete evidence linked him to the crime charged because he was not identified by the victim.

We reject these contentions.

The mental depravity of the victim was established through the testimonies of the prosecution witnesses.[12] Dr. Necasario testified[13] as follows:

"FISCAL BAYOG:

"Q: Now, were you able to ask the victim on (sic) what happened to her a day before you previously examined her?

"(DR. NECASARIO):

"A: The victim is mentally retarded.

"Q: When you say mentally retarded, can she speak?

"A: She uttered words that cannot be understood.

"Q: What is the age of the victim?

"A: According to the data, 24."

Significantly, during cross-examination, the defense did not make any attempt to impugn the opinion of the doctor that the victim is a mental retardate.

Likewise, Jovita Jaban testified on the mental condition of her daughter without any challenge from the appellant. Her testimony [14] is as follows:

"(FISCAL BAYOG):

"Q: When you noticed this accused Armando Romua wearing his brief and T-shirt, what did you do if any?

"(JOVITA JABAN)

"A: I held his hand because I suspected he molested my child.

"Q: You are referring to your daughter Lolita Jaban who is an abnormal daughter?

"A: Yes, sir.

xxx xxx xxx

"Q: You refer to Lolita Jaban, where is this Lolita Jaban now?

"A: (The witness is pointing at a woman sitting at the bench who is always shouting during the hearing).

"Q: By the way, could this Lolita Jaban could [sic] utter any words to express what she desires?

"A: She cannot talk but she could only shout.

"Q: Could she express her thoughts or idea by expression or by communicating signs?

"A: No, sir."

Another witness for the prosecution, Sgt. Ragonton, similarly testified:[15]

"(FISCAL BAYOG):

"Q: Being the investigator at that time, do you remember if a person reported to you about an alleged rape?

"(SGT. RAGONTON):

"A: Yes, sir.

"Q: Do you recall who was that person who came to your office and reported the incident (which) occurred previously?

"A: The complainant is retarded and her mother is Mrs. Jaban."

Throughout the trial of the case, appellant did not challenge the mental abnormality of the victim. It is too late for him to raise this factual issue before this tribunal. Besides, defense witness Lito Amosin also confirmed the mental retardation of the victim in open court.[16] Indeed, appellant himself was aware of the mental state of the victim. They are relatives and neighbors. He used to take care of the victim when her mother was away.

It is not an easy task to ascertain the identity of the rapist when the victim is deprived of reason as in the case at bar. Nonetheless, said identity can be established with certainty from the events preceding or following the bestial act.[17] In *People vs. Danao*,[18] we held:

"Direct evidence of the commission of a crime is not the only matrix wherefrom a trial court may draw its conclusion and finding of guilt. Indeed, there are crimes when there are no eyewitnesses at all. Under such situations, the courts are allowed to rule on the bases of circumstantial evidence. Such species of evidence is sufficient for conviction if (1) there is more than one circumstance, (2) the facts from which the inferences are derived are proven, and (3) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt."

In the case at bar, several circumstances indicate appellant as the perpetrator of the crime, viz:

- (1) Appellant knew that the victim was alone in her house because her mother was also watching the video tape at Pablo's house.
- (2) Appellant went to the house of the victim ostensibly to check if anything utoward happened to her. There is no evidence that anybody else visited the victim before the incident.
- (3) When appellant emerged from her house, Jovita saw him clad in brief while the victim was stripped of her clothes. Appellant's wife who arrived at the scene later was not presented in court to disprove Jovita's allegation.
- (4) The doctor found sperm cells in the vaginal canal of the victim when he examined her less than 24 hours after the incident.

These circumstances lead us to the inescapable conclusion that it was appellant who took advantage of the mental frailty of the victim and raped her. Appellant is guilty of rape under Article 335 of the Revised Penal Code, viz:

"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 or is demented.

"The crime of rape shall be punished by reclusion perpetua.

"xxx xxx xxx."

Appellant's bare denial cannot exculpate him. He was not even consistent in his story. For one, he claimed he heard something fall inside the house of the victim. He went there and peeped inside as he thought something untoward had happened. He saw Lolita's child jumping on her abdomen. Since everything looked all right inside the house, he left and returned to his house. It was along the way that he met his aunt Jovita. Later, however, appellant modified his story. He testified that when he peeped inside and saw Lolita's baby crying, he left immediately to call his aunt Jovita. Appellant met her on the way but his aunt was already shouting for help as she suspected that something had happened to Lolita.[19]

For another, appellant initially testified that his aunt did not accuse him of raping her daughter.[20] On cross-examination, however, he again changed his answer and admitted that his aunt immediately accused him of raping Lolita.[21]

The records also show that appellant could not give straightforward answers to the simple questions propounded by his counsel. For instance, appellant pretended he did not know the victim's name. On further questioning, he identified the victim as "Omel"; that Lolita Jaban and "Omel" refer to the same person.[22] When asked whether the victim was wearing a blouse or was naked, appellant was evasive and gave the lame excuse that he could not remember. On follow-up questioning, however, he said that the victim was wearing "something like (a) dress." [23] On cross-examination, he conceded that she was wearing a dress but "it was raised up and (she) was naked." [24] When asked if he saw Lolita when he peeped inside the house, he said he did not. A few questions later, he flipped-flopped and admitted she was inside the house.[25]

In stark contrast, Jovita gave a credible account of the events that evening. She was steadfast in her testimony that she saw the appellant without his pants on, inside her house. She also found her daughter naked. There were traces of sperm in her daughter's vaginal canal. Her story deserves full faith and credit. A mother would not expose her daughter's misfortune to the public if she was not motivated by an honest desire to have the culprit punished.[26]

We note too that there was no grudge between Jovita and appellant prior to the incident. There is thus no motive for Jovita to distort the truth.[27] It is a settled rule that in the absence of evidence of improper motive on the part of a prosecution witness to falsely testify against an accused or falsely implicate him in the commission of a crime, the testimony deserves credence.[28]

Appellant also contends that the trial court misapplied *People vs. Tomentos*[29] to the case at bar. He points out that in *Tomentos*, the mental retardation of the victim was proven by medical evidence and the victim herself testified and identified the accused.

We are not impressed. Mental retardation can be proved by other evidence.[30] As afore-discussed, the mental retardation of Lolita was established by several witnesses and was not contested by appellant. While no witness directly saw appellant rape the victim, nonetheless, various circumstantial evidence leave no doubt that he committed the dastardly offense.

We now come to the penalty. We agree with the Court of Appeals that the proper penalty in this case is reclusion perpetua.[31] We have held in *People vs. Fabro*[32] that for offenses in which the law prescribes the single, indivisible penalty of reclusion perpetua, it is the first paragraph of Article 63 of the Revised Penal Code and not the Indeterminate Sentence Law which applies. Said article provides that "in all cases in which the law prescribes a single and indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed."

IN VIEW WHEREOF, we find appellant ARMANDO ROMUA guilty as charged and accordingly modify his sentence to reclusion perpetua. In line with the previous decisions[33] of this Court, appellant is ordered to indemnify the offended party in the amount of fifty thousand pesos (P50,000.00). Costs against appellant.

SO ORDERED.

Regalado, (Chairman), Romero, Mendoza, and Torres, Jr., concur.

[1] Original Records, p. 19.

[2] The case was docketed as Criminal Case No. 627.

[3] Original Records, p. 24.

[4] TSN, September 18, 1990, p. 3; TSN, November 20, 1990, pp. 6-7.

[5] TSN, September 18, 1990, pp. 3-7; TSN, September 2, 1992, p. 5.

[6] Exhibits "A" and "B", Original Records, pp. 5-7.

[7] See Exhibit "C", Original Records, p. 4.

[8] Exhibit "A", Original Records, p. 5.

[9] TSN, September 2, 1992, pp. 15-16.

[10] Penned by Judge Fabiana Inserto Tejada, CA Rollo, pp. 30-33

[11] Decision, dated July 31, 1996, penned by Associate Justice Buenaventura J. Guerrero and concurred in by Associate Justice Alfredo A. Benipayo and Associate Justice Romeo A. Brawner.

[12] Cf. *People vs. Nguyen Dinh Nhan*, G.R. No. 93433, August 5, 1991, 200 SCRA 292.

[13] TSN, July 19, 1990, pp. 13-14.

[14] TSN, September 18, 1990, pp. 9-10.

[15] TSN, March 14, 1991, p. 6.

[16] TSN, October 28, 1992, p. 12.

[17] *People vs. Fabro*, G.R. No. 104954, December 13, 1994, 239 SCRA 146. *People vs. San Pedro*, G.R. No. 94128, February 3, 1993, 218 SCRA 384.

[18] G.R. No. 116058, February 1, 1996, 253 SCRA 146.

[19] TSN, September 2, 1992, pp. 7-10.

[20] *Ibid.*

[21] *Ibid.*, p. 14.

[22] TSN, September 2, 1992, pp. 8-9.

[23] *Ibid.*, p. 11.

[24] *Ibid.*, p. 20

[25] *Ibid.*, p. 11.

[26] People vs. Tabao, G.R. No. 111290, January 30, 1995, 240 SCRA 758

[27] TSN, September 2, 1992, p. 14

[28] People vs. Cristobal, G.R. No. 116279, January 29, 1996, 252 SCRA 507.

[29] G.R. No. 101208, July 3, 1992, 211 SCRA 212.

[30] People vs. Nguyen Dinh Nhan, *supra*.

[31] See Article 335 of the Revised Penal Code.

[32] G.R. No. 104954, December 14, 1994, 239 SCRA 146.

[33] People vs. Conde, G.R. No. 112034, January 31, 1996, 252 SCRA 681; People vs. Cañada, G.R. No. 112176, February 6, 1996, 253 SCRA 277

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