

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NOLITO BORAS Y DOE, ACCUSED-APPELLANT.*G.R. No. 127495. December 22, 2000*

Ponente: BUENA, J.

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For allegedly raping a six year-old girl, Nolito Boras was convicted of statutory rape by the Regional Trial Court of Libmanan, Camarines Sur and was sentenced to suffer the penalty of reclusion perpetua, and to pay P50,000.00 as civil indemnity. Hence, this appeal questioning his conviction.

On December 13, 1991, while Melanie Medalla's parents were sleeping in their house at Barangay Bahay, Libmanan, Camarines Sur, she remained downstairs playing alone. At around 9 o'clock in the morning of that day, Nolito Boras, herein accused-appellant, went to her and invited her to go with him. Since she is familiar with the accused-appellant as neighbor, she was cajoled to go with him. When they arrived at a guava tree near the coconut plantation, which is about 15 meters from her house, accused-appellant told her "magkitoan"[1] which means "we will have sex." Obeying the instruction of accused-appellant, she removed her panty. Thereafter, she was placed "on top and in-between accused-appellant's legs"[2] who then inserted his penis into her vagina. While accused-appellant was satisfying his salacious desire, Cirilo Guirela, the victim's uncle arrived. When she saw her uncle Cirilo, she ran away. Thereafter, Cirilo told Jesus Amenias, brother-in-law of accused-appellant, that the latter raped his niece. Jesus Amenias got angry with the accused-appellant then proceeded home with the latter.

On December 14, 1991, Cirilo reported the matter to the Barangay Captain[3] and was advised to report the incident to the police authority of Libmanan, Camarines Sur.[4] The police advised the examination of the victim at the Libmanan District Hospital.

On December 15, 1991, Dr. Cynthia S. Algery of Libmanan District Hospital examined the six-year-old victim. The examination revealed hymenal laceration at 3 o'clock caused by any organ which is inserted into the vagina, like a penis, and hypremia of the introitus (redness found at the entrance of the vagina).[5] While being examined, the doctor asked the victim what happened and the victim described the person who raped her.[6]

On February 12, 1992, an information for the crime of rape was filed against Nolito Boras y Doe alleging-

"That on or about the 13th day of December 1991, at about 9:00 o'clock in the morning, at Brgy. Bahay, Municipality of Libmanan, Province of Camarines Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, with violence and force, intimidation and with grave abuse of confidence, did then and there willfully, unlawfully and feloniously have carnal knowledge with Melanie Medalla, a six (6) years old (sic), against her will and the offended party suffered damages.

"ACTS CONTRARY TO LAW."[7]

Upon arraignment on May 18, 1992, the accused, assisted by counsel, pleaded not guilty.

At the trial, on December 22, 1992, counsel for the accused-appellant manifested in court that he noticed

something strange with the accused-appellant and asked that the latter be examined by a psychiatrist to determine his mental fitness. The trial court advised the counsel to file a formal motion for the examination of the accused. Thereafter trial ensued.

On June 16, 1993, the defense presented accused-appellant. When asked about his personal circumstances, he answered that his name is Diosdado Macapagal;^[8] that he does not know the name of his father and his mother; that he does not know whether he has a brother and sister; that he does not know Tinagis Penal Farm where he is presently confined; that he does not know how he was able to come to court and who escorted him. On such note, the trial court issued an Order setting forth the foregoing declarations, with further pronouncement that accused-appellant in all appearances seems to be normal but is feigning insanity. Thus, the Provincial Warden of Tinagis Penal Farm was directed to bring accused-appellant to Don Susano Rodriguez Mental Hospital at Cadlan, Pili, Camarines Sur for necessary physical and mental examination and observation in order to determine whether he is insane or not, and whether he has the necessary faculties to undergo trial. The Chief of Susano Rodriguez Mental Hospital was directed to admit and conduct the necessary examination and submit a written report to the trial court on the mental condition of the accused within 15 days after the last examination/treatment. Pending the submission of the report, the hearing was suspended. After the issuance of the aforementioned Order, accused-appellant rendered two songs, one after another, after the trial court requested him.^[9]

On May 2, 1995, the Bicol Regional Hospital - Department of Psychiatry submitted its report on the mental status of Nolito Boras remarking that accused-appellant was "coherent and relevant" and that he was "free of psychotic signs and symptoms." The remarks further stated that accused-appellant knows the case filed against him and that his anxiety or apprehension was due to fears of being incarcerated in jail.^[10]

After trial, judgment was rendered convicting accused-appellant, thus -

"WHEREFORE, premises considered, the court finds and so holds that the accused Nolito Boras is found guilty of the offense of statutory rape of Melanie Medalla, a six (6) year old girl at the time of the rape and, therefore, sentences him to suffer the penalty of reclusion perpetua and is ordered to pay Melanie Medalla the amount of P50,000.00 for indemnity. No pronouncement as to cost.

"SO ORDERED."^[11]

Accused-appellant now appeals questioning his conviction for rape, assigning as error the admission of Exhibit "B", which is a photocopy of the certificate of livebirth of the victim.

Initially, to avoid criminal liability, accused-appellant feigned insanity. To bolster such imagined dementia, accused-appellant offered his father's testimony declaring that accused-appellant was afflicted with a mental defect since childhood. As observed by the trial court, accused-appellant is normal. In this regard, the trial court's observation of the demeanor and deportment of witnesses, as a rule, will not be interfered with, considering that the behavior, gesture, inflection of voice and manner of responding to questions propounded to witnesses are best available to the trial court. It is not appropriate to calibrate anew such observations on the basis alone of the cold transcript of stenographic notes unless such findings are clearly shown to be arbitrary. In fact, the trial court was not remiss in its duty in determining the mental capacity of accused-appellant when it ordered accused-appellant's confinement in a hospital for medical and psychiatric evaluation which examination revealed that accused-appellant is "sane and coherent." The foregoing steps clearly demonstrate that the judge had sufficiently and effectively satisfied the two components of "insanity test" that will effectively guarantee accused-appellant's right to a fair trial, which are: (1) whether the defendant is sufficiently coherent to provide counsel with information necessary or relevant to constructing a defense and (2) whether he is able to comprehend the significance of the trial and his relation to it.^[12]

Accused-appellant was convicted under Article 335 of the Revised Penal Code[13] which provides that rape is committed by having carnal knowledge of a woman under twelve years of age, thus-

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

- By using force or intimidation;
- When the woman is deprived of reason or otherwise unconscious; and
- When the woman is under twelve years of age or is demented.

"x x x x x x x x"

In statutory rape, there are two elements that must be established prior to conviction of this crime, namely: (1) that the accused had carnal knowledge of a woman and (2) that the woman is below twelve years of age.[14]

As to the first element, accused-appellant denied having sexual contact with the victim and challenges the latter's credibility. After a thorough review of the records of this case, we find the victim's testimony credible. From the victim's narration, it was clear that there was sexual intercourse. The victim even demonstrated in court how she was raped by the accused-appellant in squatting position by holding her hips.[15] She narrated that she felt pain and when she was crying, accused-appellant stopped thrusting his organ. She declared that she was not able to shout because during the sexual contact, accused-appellant was covering her mouth.[16] Her credible testimony alone suffices to establish accused-appellant's guilt.[17] In rape, mere touching by the male's organ, or instrument of sex, of the labia of the pudendum of the female's private part is sufficient to consummate rape.[18] But when the victim is below 12 years old, sexual contact of the male's sex organ with the woman's private part consummates rape and it is not required to prove force, intimidation, or consent.[19] The victim's declarations were corroborated by the testimony of her uncle who witnessed the bestial act. Such testimonies were further supported by the medical findings of Dr. Algery who examined the victim two days after the incident. The medical report shows that there was penetration by the male organ into her genitalia.

The victim even testified to other occasions of rape committed against her by accused-appellant prior to December 13, 1991.[20] However, accused-appellant cannot be convicted for the alleged rapes committed other than the one charged in the information. A rule to the contrary will violate accused-appellant's constitutional rights to be informed of the nature and cause of the accusation against him.[21] Such other alleged rapes committed which are not alleged in the information may be taken only as proof of specific intent or knowledge, plan, system or scheme.[22]

Anent the second element as to the age of the victim when the crime was committed, accused-appellant questions the admission of the photocopy of the birth certificate of the child invoking Section 3, Rule 130. Accused-appellant argues that the failure of the prosecution to prove the circumstances that will warrant the admission in evidence of the said photocopy, renders the same inadmissible and he cannot be convicted of statutory rape since the age of the victim was not proven with reasonable certainty. It is clear from the records that complainant Melanie Medalla was born on October 23, 1985.[23] Besides, under Section 36, Rule 132 of the Rules of Court, objection to evidence offered orally must be made immediately after the offer is made. In the case at bar, the photocopy of the birth certificate was formally offered in evidence and marked as Exhibit "B". It was offered to prove (a) the fact of birth of the victim, and (b) the fact that the victim was below twelve years old when she was ravished on December 13, 1991. The defense objected to the purpose for which Exhibit "B" was being offered,[24] but did not object to the presentation of the photocopied birth certificate which is merely treated as a secondary evidence. Having failed to raise a valid and timely objection against the presentation of this secondary evidence the same became a primary evidence,[25] and the same is deemed admitted and the other

party is bound thereby. Even so, if the evidence objected to was not received, it would not have varied the conclusion arrived at by the court as to the correct age of the victim considering that the victim and her mother testified as to her age.[26] The testimony of the mother as to the age of her child is admissible in evidence for who else would be in the best position to know when she delivered the child. Besides, the court could very well assess whether or not the victim is below twelve years old by simply looking at her physique and built.

It must be stressed that in dealing with rape cases of children, especially those below twelve years of age, due care must be observed by the trial court in handling the victim. In fact, more often than not, the grueling experience in the trial court in the course of direct and cross-examination is more traumatic than the fact of rape itself. On such occasions, mishandling of victims lead to psychological imbalances which, if not properly treated by medical experts will lead to an abnormal behavioral response against the idea of sex itself and disturbed interaction with the opposite sex or of the same sex. The frightful experience of rape committed to children who are bereft of "mundane wiles"[27] necessitates the highest degree of tact, patience and diplomacy. No woman, especially a child of tender years would exactly remember step-by-step the sexual intercourse in the hands of the maniacal beast. It is enough that the child was able to explain in her own way that there was sexual intercourse. By subjecting her into explaining whether she was forced or intimidated is excessive. For proof of force and intimidation is unnecessary in statutory rape. Considering that there is a medical report substantiating the allegations made by the victim, the manner of examination of the victim must be tempered. Especially in this case, since the child is only six years old who remains uncorrupted. In rape, mere touching of male's organ to the pudendum of female's organ is enough to consummate the crime. Whether the organ was fully erect or not, to a child of six years of age, slight penetration consummates rape. Thus, asking questions like-

"Q: Did you have any opportunity at that time when you were raped to hold the penis of Nolito Boras?

"A: No, Sir.

"Q: At the time, when you were raped by Nolito Boras, was his penis hard or soft?

"A: Hard, sir"[28]

and

"Q: Did you see your Uncle Cerilo Guirela after the accused Nolito Boras stop pushing and pulling his penis to your vagina or while he was still in the process of pushing and pulling his penis to your vagina?

"A: Nolito Boras was not yet finished pushing and pulling his penis to my vagina."[29]

are unnecessary, uncalled for and excessive queries. Imputation of rape against a neighbor cannot be concocted with ease for malicious reasons by parents of a six-year-old child because it would cause more harm than good. Aside from the traumatic experience of rape, the victim's story of defloration must withstand not only the examination in court but also the medical examination of the victim's private parts by a licensed physician.

Lastly, at the time of the commission of rape on December 13, 1991, the victim was only six (6) years old. Statutory rape committed in 1991 is punishable by reclusion perpetua. The present law provides that when the crime of rape is committed against a child below seven (7) years of age, death penalty shall be imposed. Considering that the retroactive application[30] of the law will be unfavorable to accused-appellant, the latter is fortunate enough to be meted only the penalty of reclusion perpetua. Had it been committed after the enactment of the new law, this Court will not hesitate to impose the penalty of death. The award of P50,000.00 representing civil indemnity is proper. In addition thereto, accused-appellant shall pay P50,000.00[31] representing moral damages without necessity of proof other than the fact of rape plus P20,000.00 as exemplary damages. Exemplary damages may be awarded if the crime was committed with one or more aggravating circumstances. In this case,

abuse of confidence should be appreciated as an aggravating circumstance. The victim trusted accused-appellant in going with him upon the latter's invitation on account of her familiarity with him as their neighbor.

WHEREFORE, the trial court's judgment convicting accused-appellant of statutory rape is hereby AFFIRMED subject to the MODIFICATION that accused-appellant is ordered to pay P50,000.00 as moral damages and P20,000.00 as exemplary damages IN ADDITION to the P50,000.00 civil indemnity awarded by the trial court.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Quisumbing, and De Leon, Jr., JJ., concur.

[1]TSN, p. 15, December 22, 1992.

[2]RTC Decision, p.1; Rollo, p. 125.

[3]TSN, p. 20, June 23, 1992.

[4]Ibid., pp.12-15.

[5]Records, Exhibit "A" p. 4; TSN, p. 4, October 12, 1992

[6]TSN, p. 5, October 12, 1992.

[7]Rollo, p. 8; Records, p. 1.

[8]Namesake of former Philippine President.

[9]TSN, pp. 3-5, June 16, 1993.

[10]Records, pp. 86-87.

[11]Rollo, p. 23.

[12]People vs. Estrada, G.R. No. 130487, en banc, June 19, 2000.

[13] Now Article 266-A of the Revised Penal Code pursuant to Republic Act 8353, otherwise known as the "Anti-Rape Law of 1997."

[14]People vs. Andres, 253 SCRA 751 at p. 755 [1996].

[15]TSN, pp. 5-6, December 22, 1992.

[16]Ibid.

[17]See People vs. Antido 278 SCRA 425, at p. 440 [1997].

[18]People vs. Mahinay 302 SCRA 455, at p. 479 [1999].

[19]People vs. Lagrosa, Jr. 230 SCRA 298, at p. 305 [1994].

[20]TSN, p. 9, December 22, 1992.

[21]Article III Section 1 in relation to Section 14(1) and (2) of the 1987 Constitution.

[22]See People vs. Antido 278 SCRA 425, p. 453 [1997].

[23]Records, Exhibit "B", p. 5.

[24]TSN p. 3, March 19, 1993.

[25]See *Heirs of Teodoro dela Cruz vs. Court of Appeals* 298 SCRA 172 [1998].

[26]TSN, p. 8, December 22, 1992; TSN, p. 10, March 18, 1991.

[27]*People vs. Lagrosa, Jr.* 230 SCRA 298, p. 306 [1994].

[28]TSN, p. 6, December 22, 1992.

[29]TSN, p. 7, December 22, 1992.

[30]Article 22, Revised Penal Code. Retroactive effect of penal laws.- Penal laws shall have a retroactive effect insofar as they favor the person guilty of a felony, who is not a habitual criminal, as this term is defined in Rule 5 of Article 62 of this Code, although at the time of the publication of such laws a final sentence has been pronounced and the convict is serving the same.

[31]See *People vs. Batoon*, 317 SCRA 545 [1999].

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