PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARIO HAMTO Y CODERAS, RONALD CUESTA Y OVERO, FERNAN PERVERA

G.R. No. 128137. August 02, 2001

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

Appellant Mario Hamto y Coderas seeks a reversal of the Decision[2] dated January 29, 1997, in Criminal Case No. Q 94-57991, of the Regional Trial Court of Quezon City, Branch 107. He was found guilty beyond reasonable doubt of the crime of rape and sentenced to suffer imprisonment of twenty (20) years and one (1) day to forty (40) years of reclusion perpetua and to pay private complainant the amount of P50,000.00 as damages.

The Complaint[3] against the accused dated July 14, 1994, reads as follows:

> "That in or about the second week of May 1994, in Quezon City, Philippines, the above-named accused, conspiring, confederating with another person whose true name and present whereabouts has not as yet been ascertained, and mutually helping one another, by means of force, violence and intimidation, did then and there wilfully, unlawfully and feloniously take turns in having sexual intercourse with the undersigned MARY GRACE LABATETE Y JALOS, 24 years of age but mentally retarded, without her consent and against her will, to her damage and prejudice.
>
> CONTRARY TO LAW."

During arraignment the appellant pleaded not guilty. After trial, the court a quo rendered the assailed decision, the dispositive portion of which reads:

> "WHEREFORE, IN VIEW OF THE FOREGOING, this court finds the accused Mario Hamto y Coderas and Ronald Cuesta y Overo guilty beyond reasonable doubt of the crime of rape and are hereby sentenced, to wit:
>
> - For the accused, Mario Hamto y Coderas, to suffer imprisonment of twenty (20) years and one (1) day to forty (40) years of reclusion perpetua with full credit of his preventive imprisonment in the service of his sentence;
>
> - For the accused, Ronald Cuesta y Overo to suffer imprisonment of twelve (12) years and one (1) day to twenty (20) years of reclusion temporal with full credit of his preventive imprisonment in the service of his sentence;
>
> - For each of the accused to pay the private complainant the amount of P50,000.00; and
>
> - To pay the costs of this suit.
>
> SO ORDERED."[4]

Only Mario Hamto appealed the decision of the lower court. Hence, our decision now is with respect to Hamto only.

Appellant's main defense consists of denial and alibi. He denied the allegation of rape contending that he was at another place during the alleged commission of the offense. Before this Court he seeks the reversal of the trial court's decision on the ground that:

> THE COURT A QUO ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT FOR THE CRIME CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT.

Considering the assigned error, the main issue is whether or not the trial court erred in convicting appellant of the crime of rape and imposing on him the aforestated sentence.

In his brief, appellant contends that the testimony of the private complainant, who is medically diagnosed to be suffering from moderate mental retardation, is not worthy of any credence or belief. He also argues that his defense of alibi coupled with the improbabilities of the prosecution's evidence deserves meritorious consideration.

For the State, the Office of the Solicitor General maintains that the trial court did not err in giving credence to the testimonies of the prosecution witnesses, especially that of the victim herself. According to the OSG, the defense of alibi and denial by the appellant cannot prevail over the positive testimonies of the prosecution witnesses who clearly identified him as the perpetrator of the crime. The OSG saw no ill motive on the part of the sister of the private complainant in accusing appellant of rape.

The pertinent facts, presented by the prosecution, are as follows:

On June 12, 1994, Werlinia J. Labatete and her sister Mary Grace, a mental retardate, were at home in Sampaloc, Tanay, Rizal. At around five o'clock in the afternoon, Werlinia's driver, Fernan Pervera, arrived. The latter asked Werlinia for his money in the amount of P700.00 because he will stop working for a while as driver of Werlinia. While they were talking, Werlinia saw her sister Mary Grace peep. When Mary Grace saw Fernan, she suddenly retreated to the kitchen.[5]

After Fernan left, Werlinia called Mary Grace and asked her why she was frightened upon seeing Fernan. Mary Grace just said "No." Werlinia persistently asked Mary Grace the same question until she answered, "Iniyot ako ni Mario, Fernan and Dondon." (Literally translated: "I was fucked by Mario, Fernan and Dondon.") The persons mentioned by Mary Grace were workers in her stall in Nepa Q-Mart in Cubao, Quezon City.[6] Werlinia was in the business of selling vegetables, rice and fruits at the Nepa Q-Mart in Cubao, Quezon City. She owned 2 passenger jeepneys, a nine-seater single-tire jeepney and a fifteen-seater double-tire jeepney, which she used in going to Baguio City or Pangasinan two to three times a week to buy goods for her business. Mario Hamto and Fernan Pervera were employed by Werlinia as drivers while Ronald Cuesta, nicknamed Dondon, was hired as conductor.

Werlinia brought Mary Grace to the police station in Sampaloc, Tanay, Rizal and filed a complaint which was entered in the police blotter. She likewise brought Mary Grace to the National Center for Mental Health for psychiatric examination. At the Criminal Investigation Section in Camp Crame, Mary Grace, with the assistance of her sister, gave a statement on the alleged rape.[7]

Mary Grace testified that Fernan, Mario and Ronald raped her in the fifteen-seater double-tire jeepney. They all smelled of liquor at that time, according to her. It was Mario who raped her first, she said. Mario boxed her on the chest, covered her mouth and held her hands. Mario then removed her panty. Ronald prevented her from going out of the jeepney. Mario removed his pants and raped her. Afterwards, Mary Grace said "Ayaw ko nang magpaiyot".[8] The three refused to let her go and raped her again one after another. She felt pain. She did not tell her Ate Lina (Werlinia) about the incident because she forgot to do so.

Dr. Ma. Cristina Freyra, Medico-legal Officer of the Philippine National Police Crime Laboratory, also testified

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for the prosecution. In her report, she confirmed that Mary Grace had deep-healed lacerations at 3:00 o'clock and 6:00 o'clock positions indicating that she is no longer a virgin and that the deep-healed lacerations were inflicted more than seven (7) days prior to the examination.[9]

Dr. Celeste Peña-Vista, a resident physician at the National Center for Mental Health, conducted a psychiatric examination of Mary Grace and found that Mary Grace was retarded with a mental age of a seven-year-old. It was also established that she had an IQ level of 35-42 and had "diminutive deficit in adoptive functioning." She was perceptive but had difficulty in interpretation. She could tell what happened but found it difficult to know the meaning of things.[10]

The version of the defense, presented to the trial court, is as follows:

Appellant Hamto was a stay-in mechanic at the Dominguez Motors shop located at Purdue Street, corner Ermin Garcia, Cubao, Quezon City. On April 27, 1994, he agreed to work as driver of Werlinia's double-tire jeepney upon their agreement that they would share the profit under a 40-60% sharing arrangement after all the goods have been sold. In the meantime he stopped working at Dominguez Motors though he regularly went there to sleep.[11]

On May 2, 1994, his sister Ligaya Santos came to see him at Dominguez Motors and informed him that their mother died on April 30, 1994 in Atimonan, Quezon. The next day, he went to Atimonan. On May 7, 1994, his mother was buried. He continued to stay there until after the "pasiyam" (nine days' wake), for he had to take care of the expenses of the funeral. He returned to the repair shop in the evening of May 14, 1994. He returned to work for Werlinia on May 15, 1994.[12]

On May 17, 1994, they went to Tanay and proceeded to Baguio to buy vegetables for the market stall. After the vegetables were sold, Werlinia gave him P1,000.00. To prove that he was in Atimonan, Quezon, he presented an affidavit executed by the Barangay Secretary and attested to by the Mayor and the Barangay Captain.[13]

On May 22, 1994, he decided to stop working for Werlinia. He told her that his children were going to enroll in school. He never returned to work after this date. He was told by friends that Werlinia went to the shop angry and said something bad might happen to him. He testified that Werlinia charged him for rape because he failed to work for her starting May 22, 1994, which he purposely did because Werlinia failed to give him his share per their profit agreement.[14]

For his part, co-accused Ronald Cuesta denied the accusation against him. He claimed that on May 7, 1994 he decided to quit working for Werlinia because of his small salary and his difficulty in sleeping at night on the floor of the jeepney as ordered by Werlinia. He denied raping Mary Grace and denied having seen her in the double-tire jeepney. He also testified that he did not know whether someone was sleeping in the double-tire jeepney.[15]

After a meticulous examination of the evidence on record, the trial court rendered its decision, holding that appellant indeed raped Mary Grace. Her narration as to how the rape was committed, in the court's view, was straightforward, despite her mental weakness. The trial court found her testimony worthy of belief.[16] As to the appellant's defense of alibi, the trial court found it lacking merit because he failed to establish that he could not have been physically present at the place of the crime at the time of its commission. Except for the penalty imposed, we are in agreement with the trial court's judgment.

Although Mary Grace was mentally retarded, her testimony cannot be discredited. All persons who can perceive, and perceiving can make known their perception to others, may be witnesses.[17] Mere intellectual weakness of a witness is not a ground to disqualify, or at the very least discredit, a witness. The intellectual weakness of Mary Grace does not make her incompetent as a witness if, at the time she testified, she had the mental capacity to

distinguish between right and wrong, understand the nature and obligation of an oath, and give a fairly intelligent and reasonable narrative of the matters about which she testifies.[18]

On the witness stand, Mary Grace testified as follows:

A. On why she filed the case:

> "ACP GARCIA: (to the witness)
>
> "Q- You are accusing Mario Hamto and Ronald Cuesta of having raped you. Now, why do you say so?
> "A- Yes, sir.
>
> "Q- Why do you say so?
> "A- Because they raped me at the double tire, at the long bench.
>
> "ATTY. RIVERA:
>
> "The answer is not responsive, Your Honor. The question is, `Bakit mo nasabing ni-rape ka?' That is the question. And then the answer is `opo, ni-rape po ako.' That is not responsive to the question. The question actually how did she conclude that she was raped.
>
> "COURT:
>
> "Well, considering her mental ability. Why don't you let her explain why she said that.
>
> "ACP GARCIA: (to the witness)
>
> "Q- What do you mean by you were raped?
> "A- I was raped at the double tire.
>
> "COURT:
>
> "What is that rape?"
>
> "WITNESS:
>
> "Inuyut sa double tire."[19]

B. On the date when the "rape" occurred:

> x x x
>
> "ACP GARCIA: (to the witness)
>
> x x x
>
> "Q- What is this double tire where you said you were raped. Is that a house or a jeep?
> "A- It is a vehicle, sir.
>
> "Q- Do you know, more or less, when did this rape incident occurred? More or less.
> "A- When Dondon Cuesta went to buy a gas at Q-Mart.
>
> "Q- What month?
> "A- May, sir.
>
> "Q- Do you know what year is this?
> "A- Last year."[20]

C. On the place where it happened and how it happened:

x x x

"FISCAL GARCIA: - Where do you sleep during the night while you were at the store of your sister at Q-Mart?

"A- Double-tire jeep, sir."

x x x

"FISCAL GARCIA: Okay, I will reform the question. Sometime in May, 1994, did you sleep at the double tire jeep of your sister at Q-Mart?

"A- Yes, sir."

x x x

"Q- By the way, Ms. Witness, was the other accused Mario Hamto present during that night when you were sleeping at the double tire jeep of your sister?
"A- Yes, he was there.

"Q- What was he doing?
"A- `Inayot ako sa double tire, hinubad ang panty ko bago nasira ang panty ko.'

"Q- Will you again demonstrate what Mario Hamto did to you `na inayot', that you said `inayot'?"
"A- His organ was inserted to my organ.

x x x

"Q- Ms. Witness, after Mario Hamto, you said `inayot ka' who else `nagayot sa iyo?'
"A- Mario Hamto, sir was the first one and he does not want me to pass through the door.

"Q- And what did Dondon did to you?
"A- He also `inayot' me and he does not want me to go out of the double-tire, sir.

"Q- What do you mean by `inayot' by Dondon?
"A- `Hinubad niya ang pantalon niya bago niya ako inayot'.

"Q- How many times `na inayot ka ni Dondon?'
"A- Several times, sir.

"Q- What about Mario Hamto?"
"A- Mario Hamto `inayot' me several times and he even boxed me on my chest.

"Q- Who boxed you?
"A- Mario Hamto (witness pointing to the accused).

"Q- What about Dondon, what did he do to you?
"A- He also `inayot' me, sir at the double-tire.

"Q- Were you boxed by Dondon?
"A- No, sir, he asked `katol' from Mario but there was no more `katol'.

"Q- After he `inayot' you, how did you feel?
"A- It was already painful ("mahapdi")"[21]

x x x

D. On the identification of the accused:

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"COURT: (to the witness)

x x x

"Q- Do you know them?

(Court referring to the accused.)

"A- Yes, Mario, Your Honor.

"Q- Who is Mario?
"A- This is Dondon. This is Mario.

(Witness pointing to the two accused.)

"Q- Why do you know them?
"A- `Kasi po sila nag-iyot sa akin."[22]

x x x

"ATTY. RIVERA: (to the witness)

x x x

"Q- You told us that you were raped by Mario and Dondon.
"A- `Opo, iniyot po ako.'"

x x x

"Q- What do you mean by `iniyot'?
"A- `Pinasok yong titi sa pekpek ko po'.

"Q- Who.
"A- `Sila po.'

"COURT: (to the witness)

"Q- `Silang dalawa.'
"A- And also Fernan. They smell liquor, Your Honor.

"Q- You said `sila'.
"A- `Sila po.'

"Q- `Si Dondon.'
"A- Si Mario at Dondon.

"Q- `Sinong una.'
"A- `Si Mario una tapos Dondon.'

"Q- "Sinong may amoy alak.'
"A- `Si Mario. Saka si Fernan.'

"Q- `Si Mario'.
"A- `Yes.' They smelled liquor."[23]

"ATTY. RIVERA: (to the witness)

x x x

"Q- You said Dondon is also a driver of your ate Lina. Aside from Dondon... you said `iniyot ka'. Sino ang iniyot sa yo?'
"A- Mario, sir. I said `stop' he was holding my hands.

"Q- When you said tama na ayoko ng magpa-iyot, naiyot ka na ba ni Fernan at ni Dondon?'
"A- Yes, sir."

x x x[24]

"ATTY. RIVERA: (to the witness)

x x x

"Q- When you told Mario `ayaw mo na', did he stop?
"A- Yes, sir.

"Q- When you said `ayaw mo na', were you raped by Dondon?
"A- He was on top of my body and he was holding my hands.

"Q- When you said to Mario, `tama na' still he did not stop?
"A- Yes, he did not stop. Dondon raped me after Mario."[25]

E. On whether somebody taught her what to say in Court:

"COURT: (to the witness)

x x x

"Q- Has anybody taught you of what you are going to say?
"A- None, ma'am."[26]

"ATTY. RIVERA: (to the witness)

x x x

"Q- Before you testified in Court did your ate Lina tell you about what you are going to say.
"A- No, sir."[27]

A perusal of said testimony would readily show that Mary Grace despite her mental deficiency was able to testify clearly and persuasively. The psychiatrist who examined her testified that Mary Grace was capable of being receptive and perceptive. She could tell what happened but found difficulty in interpreting things.[28] Hence, we agree with the trial court's finding that Mary Grace's credibility commands great weight and respect.[29]

Worth stressing, if the mental age of 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, intimidation, mental weakness or consciousness of the victim were absent, the offender would still be liable for rape under the third circumstance of Article 335 of the Revised Penal Code.[30]

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.

x x x

Considering the statutory rule that 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 a child below twelve years would also constitute rape.[31]

Appellant's claim of ill motive on the part of the victim's sister in filing the instant case lacks evidentiary weight. No sister would expose her sibling to the ignominy of a rape trial merely to satisfy her alleged motive. Moreover, no family member would expose a fellow family member to the shame and scandal of having to undergo such a debasing ordeal if the charge were not true.[32]

Concerning appellant's defense of alibi, it is also a well-settled rule that for alibi to prevail, it must be established by positive, clear and satisfactory proof that it was physically impossible for the accused to have been at the scene of the crime at the time of its commission, and not merely that the accused was somewhere else.[33] Appellant's claim of being at another place, even if true, did not preclude the possibility of his coming to the scene of the crime. Noteworthy, appellant failed to establish that he did not leave Atimonan, Quezon during the period of May 3, 1994 to May 14, 1994. To prosper, alibi must meet the requirements of time and place strictly.[34]

Appellant's defense of bare denial and alibi could not compel credence in the face of his positive and unwavering identification by the private complainant as one of the rapists. Positive identification, where categorical and consistent and without any showing of ill motive, prevails over alibi and denial which, if not substantiated by clear and convincing evidence, are negative allegations and self-serving evidence undeserving of weight in law.[35]

Nor could his contention, that it was highly improbable for him to commit the crime considering that he drove everyday to Baguio, be given credence. As pointed out by the Solicitor General, even assuming that the trip to Baguio was daily, appellant could not have been dead tired upon reaching Manila that he could not have raped Mary Grace. Appellant's empty reasoning merely betrays his hopeless defensive position.

The penalty imposed by the trial court, however, should be modified. Pursuant to Article 335 of the Revised Penal Code, as amended, the penalty for rape is reclusion perpetua, a single and indivisible penalty, which under the first paragraph of Article 63 of the Revised Penal Code, must be imposed upon a finding of guilt beyond reasonable doubt, regardless of any mitigating or aggravating circumstance.[36] Reclusion perpetua is imposed in its entirety regardless of any mitigating or aggravating circumstances that may have attended the commission of the crime.[37] Hence in this case, the imposable penalty should be modified to reclusion perpetua. Following current jurisprudence, appellant should also be held liable for civil indemnity in the amount of P50,000.00 aside from moral damages and the costs.

WHEREFORE, the decision of the Regional Trial Court of Quezon City, Branch 107 in Criminal Case No. Q94-57991, finding appellant Mario Hamto y Coderas guilty beyond reasonable doubt of the crime of RAPE is AFFIRMED. He is hereby sentenced to suffer the penalty of reclusion perpetua and to pay private complainant P50,000.00 as civil indemnity and another P50,000.00 as moral damages, as well as the costs.

SO ORDERED.
Bellosillo, (Chairman), Mendoza, and De Leon, Jr., JJ., concur.
Buena J., on official leave.

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[1] His separate criminal case is pending trial.

[2] Records, pp. 224-254.

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[3] Rollo, p. 8.

[4] Id. at 54-55.

[5] TSN, April 6, 1995, pp. 5-7.

[6] Records, p. 7.

[7] TSN, April 6, 1995, pp. 12-14.

[8] [TSN, September 26,1995, pp. 4-11. (Literally: "I don't want to be fucked.")]

[9] TSN, October 3, 1995, pp. 4-6.

[10] Rollo, pp. 29-30.

[11] Id. at 89.

[12] Id. at 90.

[13] Ibid.

[14] Ibid.

[15] Id. at 92-93.

[16] Id. at 52.

[17] Rule 130, Section 20 Rules of Court.

[18] Underhill's Criminal Evidence, 5th Ed., Vol. I, p. 641.

[19] TSN, September 26, 1995, pp. 8-9.

[20] Id. at 9.

[21] [TSN, November 14, 1995, pp. 4-7.]

[22] [TSN, December 12, 1995, p. 4. (Literally: "Because they were the ones who fucked me.")]

[23] [Id.][at 11-12.]

[24] Id. at 13-14.

[25] Id. at 19-20.

[26] TSN, December 12, 1995, p. 4.

[27] Id. at 11.

[28] Rollo, p. 29.

[29] People vs. Tañedo, 266 SCRA 34, 39 (1997); People vs. Atad, 266 SCRA 262, 276 (1997).

[30] People vs. Lubong, 332 SCRA 672, 692 (2000); People vs. Arlee, 323 SCRA 201, 215-216 (2000); People vs. Rosare, 264 SCRA 398, 417 (1996).

[31] People vs. Estares, 282 SCRA 524, 534 (1997).

[32] People vs. Zaballero, 274 SCRA 627, 639 (1997).

[33] People vs. Dinglasan, 267 SCRA 26, 43 (1997).

[34] People vs. Piandiong, 268 SCRA 555, 569 (1997).

[35] People vs. Javier, 269 SCRA 181, 195 (1997).

[36] People vs. Magaluna, 205 SCRA 266, 278 (1992).

[37] People vs. Diquit, 205 SCRA 501, 508 (1992).

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