

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
JHONNETTEL MAYORGA y LUMAGUE alias
PUROY, ACCUSED-APPELLANT.**

G.R. No. 135405. November 29, 2000

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

Ravishers of the young, chaste and uninitiated are an ignominious breed of evil men. They are filthier than the slime where they belong, so that even their banishment to Hades for all eternity would be too low a price to pay for the innocent young lives they ruin and destroy. The case at bar, involving a sexual assault upon a child of tender years who had been orphaned by her mother and forsaken by her father, apostrophizes the havoc these despicable and evil beasts can forge.

The version of the prosecution,[1] as sustained by the trial court, is that at about five o'clock in the afternoon of 24 June 1995, in Barangay Zone I, Sitio Paraiso, Pinamalayan, Oriental Mindoro, five-year old Leney Linayao was playing by the seashore. Suddenly, she was approached by the accused Jhonnettel Mayorga y Lumague alias Puroy who asked her to buy for him a bottle of gin commonly known as "bagets." He then brought the child to a marshy area ("lalao") nearby where he boxed her on the face and chest and wrung her neck until she fainted. By the time Leney recovered consciousness, Puroy had already raped her and then disappeared. Leney, bleeding and muddled, stood up and walked away to the direction of Matuod-tuod where her family lived.

On her way home she met Macaria M. Gonzales who immediately brought her to a certain Kapitan Lunario.[2] Lunario, in turn, asked Richard Magboo, Nicodenes Magboo and Raquel Laogo to take the child to the barangay hall where she narrated her experience to the barangay tanods gathered in the hall. The tanods brought Leney to the clinic of Dr. Roberto Ngo who examined and attended to her.

At about this time, Leney's grandmother, Alfonsa Magculang, together with some men started looking for her. While searching they met Puroy's cousin, Edwin Lumague, who told them that Leney was raped by Puroy and was "dead" when abandoned. According to Edwin, while he was preparing to join the search, Puroy dissuaded him from going and confided to him that "iyong bata si Leney ay napagtripan niya at nilitik niya." [3] With Edwin leading the way, they immediately repaired to where Leney was supposedly taken by Puroy. But she was not there. The search party proceeded to the military detachment to report the matter. There they were told by Richard Magboo that Leney had been taken by the barangay tanods to Dr. Ngo's clinic.

Alfonsa rushed to Dr. Ngo's clinic and found Leney lying prostrate with her vagina and anus bleeding. Dr. Ngo advised her to take the child to the provincial hospital for further examination.

Finally, at around eight o'clock in the evening, Puroy was picked up by the police and brought to the PC barracks by the barangay tanods who heard Edwin's account. Afterwards, Puroy was transferred to the police station.[4]

On 27 June 1995 Dr. Cristina Gonzales physically examined Leney at the provincial hospital. Dr. Gonzales found

that Leney sustained "hematoma, right eye; contusion hematoma, right temporal area; multiple abrasions: right shoulder, left anterior chest, left thigh and leg, upper back. External genitalia: complete hymenal lacerations at 3, 5, 7 & 10 o'clock positions with erythematous borders, with a 1 cm. perineal laceration with purulent discharge. Internal examination: vagina admits 1 finger with ease. Laboratory examination: cervico-vaginal smear for the presence of spermatozoa revealed NEGATIVE result." [5]

Jhonnettel Mayorga alias Puroy was accordingly charged with statutory rape of a child five (5) years of age. At the trial, the prosecution presented Alfonsa Magculang, Dr. Cristina Gonzales, Leney and Renato Gamilla, one of the barangay tanods who brought Leney to Dr. Ngo's clinic.

After the prosecution had rested, Puroy with leave of court filed a demurrer to evidence, [6] which was denied by the trial court. Thereafter, the defense presented the accused as its lone witness who claimed that the imputation against him was a lie. He claimed that at the time of the supposed rape he was "patay lasing." He narrated that at about three o'clock in the afternoon of the day in question he was with Manuel Erebe and Rico Erebe at the seashore drinking gin in celebration of the feastday of Saint John the Baptist. After consuming a few bottles of gin he blacked out. When he awoke at seven o'clock in the evening, he found that he was alone and so he decided to go home. He was met by Edwin who told him that policemen were looking for him and that he was a suspect in the rape of Leney, his neighbor. But he denied these accusations and went home to sleep. After an hour, he was awakened by the police, arrested and brought to the PC barracks. [7]

The trial court did not sustain Puroy's defense of alibi. Edwin's testimony was also not given credence on the ground that it was hearsay and was violative of the constitutional rights of the accused. Solely on account of Leney's testimony, the court a quo found the accused guilty beyond reasonable doubt as principal in the crime of RAPE as defined and penalized under Art. 335 of the Revised Penal Code, as amended by RA 7659, and sentenced him to suffer the supreme penalty of DEATH plus the accessory penalties provided by law, and to indemnify the victim Leney Linayao the amount of P50,000.00 without subsidiary imprisonment in case of insolvency, and to pay the costs. [8]

Forthwith, the case was elevated to this Court for automatic review.

In his brief, accused concedes that his defense of alibi is inherently weak. Nonetheless, he faults the trial court for convicting him despite the failure of the prosecution to establish his guilt beyond reasonable doubt. He elaborates that, first, Leney's testimony should not be given credence since she had been coached by her grandmother; and second, Edwin's testimony was given under compulsion of threat and does not deserve credit.

On the claim that Leney was a "tutored witness," accused capitalizes on certain portions of the victim's testimony regarding the circumstances surrounding the rape -

Q: You will agree with me that your Lola told you that when asked how you were raped, your Lola told you to make the sign which you have just demonstrated a while ago?

A: Yes, sir.

Q: Your Lola also told you to say before this Honorable Court that Puroy inserted his penis on your vagina?

A: Yes, sir.

Q: So it was your Lola who informed you to testify in the manner you did?

A: Yes, sir.

Q: So, it is now true, that all you have testified before this Court were taught to you by your Lola?

A: Yes, sir.

Q: You could not be mistaken about that and you will not change your answer in any other circumstances?

A: Yes, sir.[9]

Accused further asserts that he was being falsely charged by his cousin Edwin because the latter was threatened by the complainant that he would be implicated in the rape charge unless he testified against the accused.

This appeal primarily hinges on the issue of credibility of witnesses. We have held that except for compelling reasons, we cannot disturb the manner the trial courts have calibrated the credence of witnesses because of their direct opportunity to observe the witnesses on the stand and detect if they were telling the truth.[10] As trial courts, they can best appreciate the verbal and non-verbal communication made by witnesses which cannot, with precise accuracy, be placed on the records.

The argument that Leney has lost her credibility since she admitted that she had been coached by her grandmother has no merit. The victim, an innocent and guileless five-year old when the crime was committed against her, cannot be expected to recall every single detail and aspect of the brutal experience that she went through in the hands of the accused. Besides, at the time of her testimony she had stopped schooling and did not have the gift of articulation. It is but fair that she be guided through by her grandmother in recounting her harrowing experience which happened two (2) years before she testified.

In a similar case, we held, "assuming that she was indeed tutored on what to say on the witness stand, it is worthy to note that when she testified, she was alone; hence, any traces of inconsistency would have easily been detected. More importantly, the complainant took the witness stand x x x to narrate her harrowing experience, and in all of those instances, she underwent intensive cross-examination from the defense but her testimony never wavered nor faltered." [11]

We realize how extremely painful it was for Leney to reveal that she had been raped. Her attempt to demonstrate before the court the accused's success in having carnal knowledge of her spoke of her utter innocence and naiveté. Her painful cries[12] were eloquent testimonies of an anguish too grievous for a young girl to bear. Indeed, it is simply hard to conceive that a girl of her character would be able to weave such a sordid tale.

At this juncture, we take exception to the pronouncement made by the court below that "the testimony of Edwin Lumague that accused Jhonnettel Mayorga conveyed to him that 'May napagtripan akong bata. (Nalitik daw po niya ang bata)' could not be given credence and therefore inadmissible, both as violative of the constitutional rights of the accused and as hearsay evidence." [13]

The lower court's ruling that the admission of the declaration of the accused would constitute a violation of his constitutional right is misplaced. His declaration was not made under custodial investigation; hence, it does not come within the gamut of Sec. 12, Art. III, of the 1987 Constitution.[14]

Nor is there merit to the court's finding that Edwin's testimony was hearsay. This is a misinterpretation of the hearsay rule. It must be pointed out that the statement to him of the accused constitutes an extrajudicial admission.[15] This admission can be received against the accused since it is not within the purview of the hearsay rule. Wigmore explains that the hearsay rule is intended to give the parties a right to object to the introduction of a statement not made under oath and not subject to cross-examination. Its purpose is to afford a party the privilege, if he desires it, of requiring the declarant to be sworn and subjected to questions. Wigmore then adds that where the evidence offered are his statements, the purpose does not apply, and so the hearsay rule does not likewise apply, as "he does not need to cross-examine himself." [16]

In the face of Edwin's testimony that the accused had made the admission, it becomes imperative for the latter to disprove it. His explanation that Edwin was coerced to testify against him is at best a futile attempt to prop a tottering defense. The allegation can be no better than pure speculation as nothing was offered to support it. On the other hand, it is indeed incredible that Edwin could be frightened by the threat of a five-year old child.

The defense of alibi set up by the accused is equally untenable. The rule is that the defense of alibi when not supported by clear and convincing evidence deserves no weight in law as it can be easily fabricated or contrived. It cannot be given evidentiary value than the affirmative testimony of credible witnesses who harbor no ill motives against the accused, for as between a categorical testimony on one hand, and a bare denial on the other, the former is generally held to prevail.[17]

All told, the guilt of the accused for the rape of Leney Linayao has been conclusively established. But, the penalty of death was erroneously imposed. Under Art. 335 of the Revised Penal Code, as amended by RA 7659, death shall be imposed "when the victim is . . . a child below seven (7) years old." In the instant case, the Information charging the accused with rape alleged the circumstance that the victim, Leney Linayao, was five (5) years of age. However, it is significant to note that the prosecution failed to present her birth certificate. Although the victim's age was not contested by the defense, proof of age is critical considering that the victim's age at the time of the rape was just two (2) years less than seven (7) years. Given the similarities in physical features and attributes between a five-year old child and a seven-year old, an independent proof of age is necessary to convince this Court that the victim was indeed below seven (7) years of age when she was raped, in order to justify the imposition of the death penalty.

The evidence on record shows that other than the testimonies of the victim and her grandmother, no independent proof was presented to show that Leney was below seven (7) years of age when raped. As such, the lower court should have imposed the penalty of reclusion perpetua and not death. Further, inasmuch as the rape was not qualified by any of the circumstances under which the death penalty should be imposed, the civil indemnity to be awarded to complaining witness Leney Linayao should remain at P50,000.00. However, considering the trauma she suffered, we deem it proper to award her moral damages of P50,000.00 although no proof of such entitlement was presented, which is not necessary after all. In one case[18] this Court held -

Under the Civil Code, every person who, contrary to law, willfully or negligently causes damage to another, shall indemnify the latter for the same (Art. 20) and (a)ny person who willfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damages (Art. 21). x x x x Courts have hitherto awarded moral damages in rape cases only when it has been proven during the trial that the victim or his heirs suffered physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury. These are sacramental words and phrases which courts routinely look for in awarding moral damages. If none of these is alleged and proven, moral damages would normally be withheld.

One look at the records of a rape case would, however, readily reveal that these factors are evident in each tearful narration of a victim's harrowing tale. Never mind if the exact words do not appear therein. The fact remains that any victim of rape, regardless of age, status, social or professional position, religious orientation, or sexual preference, would suffer physical pain, emotional outrage, mental anxiety and fright. Her feelings, not to speak of her reputation, would definitely be permanently scarred x x x x Although, admittedly, the picayune damages awarded in these instances could not even allay the true misery of a rape victim, the knowledge that the man responsible for it would have to literally pay for his misdeed, on top of having to spend time in prison, could assuage somewhat the pain inflicted.

April Dino was mercilessly plucked from childhood and rudely thrust into a world that, like her, has lost its innocence. She will no longer be thrilled by the ancient rituals of courtship, marriage and procreation. It is very

probable that she will be unable to sustain lasting and meaningful relationships with the opposite sex x x x In time, her physical wounds will heal but the scars left by the accused-appellant on her pubescent mind and heart will forever throb and hurt. For his transgressions, he must be made to pay.

WHEREFORE, the assailed Decision of the trial court finding accused JHONNETTEL MAYORGA Y LUMAGUE guilty of rape is AFFIRMED with the modification that the penalty of death is reduced to reclusion perpetua. In addition to the civil indemnity of P50,000.00, accused is further ordered to pay complaining witness Leney Linayao P50,000.00 for moral damages, plus the costs.

SO ORDERED.

Davide, Jr., C.J., Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago and De Leon, Jr., JJ., concur.

[1] TSN 9 September 1996, pp. 1-11; 30 September, pp. 1-12; 15 November 1996, pp. 1-16, 14 April 1997, pp. 1-10; 26 May 1997, pp. 1-8.

[2] Per the joint affidavit of Richard and Nicodenes Magboo and Raquel Laogo; Original Records, p. 8. Edwin Lumague, on the other hand, was apparently referring to Kapitan Lunario when he referred to Barangay Captain Magbuo as Leney's rescuer. See TSN, 15 November 1996, p. 8.

[3] TSN, 15 November 1996, p. 6.

[4] According to Edwin Lumague, Puroy was brought to the Police Headquarters by a certain Barangay Councilman Crisostomo upon the appeal of Puroy's parents. Puroy, on the other hand, insisted that he was brought to the PC barracks by a policeman and several barangay tanods. The trial court refused to give credence to Edwin's account but failed to make a finding on this matter.

[5] Original Records, p. 10.

[6] Id., p. 73.

[7] TSN, 12 January 1998, pp. 1-13.

[8] Original Records, p. 24.

[9] TSN, May 26, 1997, pp. 5-6.

[10] People v. Albao, G.R. No. 117481, 6 March 1998, 287 SCRA 129; People v. Oliano, G.R. No. 119013, 3 March 1998, 287 SCRA 158; People v. Revillame, G.R. Nos. 100714-15, 3 March 1994, 230 SCRA 650; People v. Dinglasan, G.R. No. 101312, 28 January 1997, 126 SCRA 26.

[11] People v. Molas, G.R. Nos. 88006-08, 2 March 1998, 286 SCRA 684.

[12] TSN, 26 May 1997, p. 8.

[13] Rollo, p. 23.

[14] (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel x x x (3) Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him.

[15] Section 26, Rule 130 states: Admission of a party. - The act, declaration or omission of a party as to a relevant fact may be given in evidence against him.

[16] Wigmore on Evidence, Vol. IV, Sec. 1048.

[17] People v. Manegdeg, G.R. No. 115470, 13 October 1999.

[18] People v. Ignacio, G.R. No. 114849, 24 August 1998.

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