

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROLANDO MAGABO Y MAGARTE, ACCUSED-APPELLANT.

G.R. No. 139471. January 23, 2001

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

This is an appeal from the Decision[1] dated May 14, 1999 of the Regional Trial Court of Quezon City, Branch 95, in Criminal Case No. Q-98-77588, finding accused Rolando Magabo y Magarte guilty beyond reasonable doubt of the crime of Rape and sentencing him to suffer the penalty of Reclusion Perpetua.

On July 2, 1998, accused Rolando Magabo y Magarte was charged with the crime of Rape in an Information which reads, to wit:

"That on or about the 23[rd] day of June, 1998, in Quezon City, Philippines, the said accused, by means of force and intimidation, to wit: by then and there wilfully (sic), unlawfully and feloniously by undressing the undersigned and put himself on top of her and thereafter have carnal knowledge with the undersigned complainant, a mental retardate, against her will and without her consent.

CONTRARY TO LAW."

Originally, this case was raffled off and assigned to Branch 103 of the Regional Trial Court of Quezon City, presided by Judge Jaime Salazar. But before the accused could be arraigned, Judge Salazar voluntarily inhibited himself from trying the case, and the same was re-raffled to Branch 95. On October 1, 1998, the accused was arraigned and pleaded not guilty to the charges against him.[2] Trial ensued.

The facts according to the prosecution, are as follows:[3]

On June 23, 1998, at about 1:00 in the afternoon, Noemi Dacanay, a mental retardate, was selling fried bananas at the Frisco Market in Quezon City when Rolando Magabo, known to Noemi as "Lanie", approached her and invited her to go with him to his house. Noemi immediately acceded. The two went to Magabo's house which was empty as Magabo's mother who was living with him was not around. Accused-appellant then seized the opportunity and began kissing Noemi on the lips and fondling her breasts. He made Noemi lie down on the floor, and had sexual intercourse with her. Thereafter, accused-appellant rested on the floor and embraced Noemi. Later, Noemi left and went home. She told her mother of what happened, and they went to the police to report the incident. Noemi was examined by Dr. Ma. Christina Freyra, the Medico-Legal Officer of the Philippine National Police (PNP) Crime Laboratory, who found healed lacerations at 3, 6, and 9 o'clock positions on the victim's hymen, and abrasions on her labia minora. This was later confirmed by Dr. Freyra who was presented as a witness for the prosecution.

For his part, accused-appellant Rolando Magabo denied the rape and testified that between 1:00 and 2:00 in the afternoon of June 23, 1998, he was at the corner of Roosevelt Avenue and San Francisco del Monte, Quezon City selling short pants and t-shirts by the sidewalk. He admitted knowing the victim Noemi Dacanay and her

parents,[4] and seeing Noemi and her mother sell fruits at the Munoz market, but said he could not recall seeing Noemi at the market in June 1998.[5] Magabo alleges that a certain Freddie Buenaflor, with whom he had some altercations, informed Noemi's father of the alleged rape to get back at him.[6]

After trial, the court a quo rendered a judgment dated May 14, 1999, the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered finding the accused Rolando Magabo y Magarte GUILTY beyond reasonable doubt of the crime of RAPE defined and penalized by Article 335 of the Revised Penal Code, as amended by Republic Act 7659 and further amended by Article 266-A and Article 266-B, Republic Act No. 8353, and is hereby sentenced to suffer the penalty of Reclusion Perpetua. The accused is further ordered to indemnify the private complainant the amounts of P50,000.00 as compensatory damages; P50,000.00 as moral damages; and P25,000 as exemplary damages.

"The period during which the accused was detained at the City Jail of Quezon City shall be credited to him in full as long as he agrees in writing to abide by and follow strictly the rules and regulations of the said institution.

"The accused is ordered to pay the costs.

"IT IS SO ORDERED." [7]

Hence this appeal where the accused-appellant raises a lone assignment of error:

THE COURT A QUO ERRED IN CONVICTING THE ACCUSED, ROLANDO MAGABO, NOTWITHSTANDING THE FAILURE OF THE PROSECUTION TO PROVE ALL THE ELEMENTS OF THE CRIME OF RAPE, WITH PROOF BEYOND REASONABLE DOUBT.

The accused-appellant contends that the case at bar involves rape under the fourth circumstance of Article 266-A, paragraph 1,[8] and therefore, mental retardation of the alleged rape victim must be proven as an essential element of the offense.[9] As the prosecution failed to prove that rape victim Noemi Dacanay is a mental retardate and that her mental age is no better than a twelve year old child, no rape has been committed, and the accused-appellant should not have been convicted by the trial court.

The contention is unmeritorious.

Carnal knowledge of a woman who is a mental retardate is rape under Article 266-A, paragraph 1 of the Revised Penal Code, as amended by R.A. 8353.[10] Proof of force or intimidation is not necessary as a mental retardate is not capable of giving consent to a sexual act.[11] What needs to be proven are the facts of sexual congress between the accused and the victim, and the mental retardation of the latter.

That the victim, Noemi Dacanay, had sexual intercourse with the accused-appellant Rolando Magabo was sufficiently established by her testimony, corroborated by the testimony of the medico-legal officer, Dr. Ma. Christina Freyra, to the effect that there were lacerations and abrasion on the victim's private parts.[12] As regards the mental retardation of the victim, the trial court likewise found the same to have been sufficiently proven, as set forth in its Decision, to wit:

"The Court is more than convinced that the private complainant is a mental retardate not only based from her physical appearance as shown from the picture (Exh. `B') but also from the behavior and actuations she showed during the trial. The medico-legal officer who conducted the medical examination, in fact, concluded that the private complainant is a mental retardate. Besides, the mental condition of the private complainant was not raised or objected to by the accused. With the earlier findings of the Court that carnal knowledge of the private complainant by the accused was consummated and the fact that the words "mental retardate" are alleged in the complaint thru the timely amendment (before arraignment) by the public prosecutor, it is clear that the crime of

rape was committed although the prosecution offered none to establish that carnal knowledge was without consent of the private complainant."[13]

The physical appearance of the victim Noemi Dacanay, and the manner by which she testified persuaded the trial court that she indeed is a mental retardate. Mental deficiency is apparent from the halting and abbreviated answers given by Dacanay during her testimony, to wit:

"Q: And when you were selling Banana Que at Frisco Market what happened if any?

A:

Sama ako. (the witness when answering the question pointed her finger to the courtroom and then uttered "sama ako".)

PROS: (to the witness)

Q: Ms. witness when you say "sama ako" and your pointing to the courtroom. Whom are you pointing at?

A:

(witness stood up and pointed to a male person and went down from the rostrum and proceeded to the person she was pointing at. Witness pointing to a male person wearing yellow shirt when asked of his name he stated his name as Rolando Magabo.)

Q: You mentioned Ms. witness that person you pointed told you "sama ka" where did you go?

A:

In the house. (the witness answered the question "house""and at the same time pointing her finger to the courtroom.)

Q: Whose house did you go?

A: Nanay. (the witness answered "nanay" and pointing her finger to the person identified a while ago.)

Q: When you went to the house of "Nanay" of the person you pointed to what happened?

A: Halik. (witness answered by uttering the word "halik" and pointing to her lips.)

Q: What else did Lanie do to you if any aside from kissing your lips?

A: Hawak. (witness answered by saying "hawak" and pointing to her breast)

Q: When you say "hawak" and pointing to your breast did he touch your breast?

A: Yes, ma'am.

Q: Aside from holding you breast what did he do if there was any?

A: Patong. (witness she answered the question with the word "Patong".)

COURT:

Put on record that when answering the question, she made a gesture by placing her right hand in front of her private part and making continous [sic] motion as if something is being inserted continously [sic] on her private organ.

COURT: (to the witness)

Q:

When you answered the question of the Fiscal you demonstrated by using your right hand as if something was being put inside your private organ continuously. [sic] What was that placed inside as if something was placed inside?

A: Pasok titi. (the witness answered the question by whispering to the interpreter the word "pasok titi")

PROS. (to the witness)

Q: Whose "titi", was inserted?

A: Lanie. (the witness answered Lanie and pointing to the person identified a while ago.)

Q: After that when the "titi" naka pasok sa iyo" or inserted on you. What happened next?

A: Higa. (the witness answered in the vernacular "higa" and at the same time pointing to the floor.)

Q: When you say "higa" who lied down?

A:

Lanie. (witness answered the question by uttering "Lanie" and at the same time pointing to a person identified a while ago.)

Q: After Lanie lied down as you as you mentioned on the floor. What happened next if any?

A:

Akap. (the witness answered in the vernacular "akap" and at the same time crossing both of her hands on her shoulder)

Q: And how did it happened that you were able to go out of the house of Lanie's mother?

A:

Umalis Nanay. (the witness answered the question by pointing her finger and at the same time uttering the word "umalis nanay".)

COURT: (to the witness)

Q: What do you mean "umalis nanay" when at the same time pointing your finger?

A: She left. (and at the same time she made a gesture as if somebody left.)

PROS: (to the witness)

Q: How did you go home if you were able to go home?

A:

Runong ako uwi. (and at the same time making a gesture as if going home.)"[14]

The mental retardation of Noemi Dacanay was confirmed by medico-legal officer, Dr. Ma. Christina Freyra, in her testimony, thus:

"Q: By the way Dr., you examined the physical appearances of the victim, what can you say about her?

A: She looks like a mongoloid and the mother confirmed that she is a mongoloid.

Q: When you say mongoloid, what do you mean by that?

A: The person is mentally retarded.

Q: Did you happen to know the age of this victim?

A: She is 21 years old.

Q: How does she talk or what is her demeanor when you conducted the examination or interview?

A:

She could not speak straight Tagalog, she is like a child and she answered in phrases when I started questioning her, Ma'am."[15]

During the cross-examination of Noemi Dacanay, the counsel for the prosecution even asked the court to put on record that "the witness is mentally retarded".[16] No objection was interposed by the defense. In fact, as correctly observed by the lower court, the mental condition of the complainant was not at all objected to by the accused-appellant during the trial.[17] Accordingly, it is too late for the accused-appellant to raise such factual issue before this tribunal.[18]

It should likewise be noted that the accused-appellant himself acknowledged such mental retardation during his cross-examination, to wit:

"Q: And you know for a fact that Noemi Dacanay looks like a mongoloid or mentally retarded?

A: Yes, ma'am.

Q: You are aware of that?

A: Yes, ma'am."[19]

Knowledge of the offender of the mental disability of the victim at the time of the commission of the crime of rape qualifies the crime and makes it punishable by death under Article 266-B, paragraph 10 of the Revised Penal Code, as amended by R. A. 8353.[20] An allegation in the information of such knowledge of the offender is necessary as a crime can only be qualified by circumstances pleaded in the indictment.[21] A contrary ruling would result to a denial of the right of the accused to be informed of the charges against him, and hence a denial of due process.[22] In the case before us, there was no allegation in the information that the accused had knowledge of the mental disability of the victim at the time rape was committed. Thus, notwithstanding proof of such knowledge, the accused can only be held liable for simple rape.

Qualifying circumstances not alleged in the Information but duly proven without objection during the trial may be considered as aggravating circumstances. However, in this case, knowledge of the accused of the mental retardation of the victim at the time of the commission of the crime of rape does not fall under any of the aggravating circumstances enumerated in Article 14 of the Revised Penal Code, and hence cannot be appreciated as such. In view of the absence of aggravating circumstances, we find the grant of exemplary or corrective damages by the court a quo unwarranted.[23]

WHEREFORE, the questioned Decision is hereby AFFIRMED with MODIFICATION that the award of Exemplary Damages in the amount of P25,000.00 is deleted.

Melo, (Chairman), Vitug, Panganiban, and Sandoval-Gutierrez, JJ., concur.

[1] Penned by Judge Diosdado Madarang Peralta.

[2] RTC Decision, p. 1; Rollo, p. 11.

[3] Appellee's Brief, pp. 3 to 4; Rollo, pp. 70 to 71.

[4] TSN dated January 15, 1999, pp. 5 and 7.

[5] Ibid., p. 6.

[6] Id., p. 4.

[7] RTC Decision, p. 11; Rollo, p. 21.

[8] Article 266-A of the Revised Penal Code, as amended by Republic Act No. 8353, otherwise known as "The Anti-Rape Law of 1997", provides:

"ART. 266-A. Rape; When and How Committed.--Rape is committed.

"1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

"a) Through force, threat or intimidation;

"b) When the offended party is deprived of reason or otherwise unconscious;

"c) By means of fraudulent machination or grave abuse of authority; and

"d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

xxx xxx xxx"

[9] Appellant's Brief, p. 5; Rollo, p. 45.

[10] Article 266-A, paragraph 1 of the Revised Penal Code, as amended by R.A. 8353, provides for two (2) circumstances wherein carnal knowledge of a woman with mental disability is considered rape. Subparagraph b) thereof refers to rape of a person "deprived of reason", while subparagraph d) refers to rape of a "demented" person. Being "deprived of reason" means to suffer from mental abnormality, deficiency or retardation. [People vs. Reyes, 315 SCRA 563 (1999), at p. 577, citing People vs. Andaya, G.R. 126545, April 21, 1999, at p. 11, 306 SCRA 202, citing People vs. Guerrero, 242 SCRA 606 (1995). See also People vs. Nguyen Dinh Nhan, 200 SCRA 292 (1991)] On the other hand, being "demented" means having "dementia", defined in Black's Law Dictionary as a "form of mental disorder in which cognitive and intellectual functions of the mind are prominently affected; xxx xxx total recovery not possible since cerebral disease is involved." [5th ed., p. 387] "Demented" also refers to madness or insanity. [People vs. Burgos, 115 SCRA 767 (1982), at p. 774.] A mental retardate, therefore, can be classified as a person "deprived of reason", not one who is "demented", and carnal knowledge of a mental retardate is considered rape under subparagraph b), not subparagraph d) of Article 266-A (1). Hence, it is error for the court a quo to categorize the rape in this case under subparagraph d). However, such innocuous mistake will not carry the effect of negating the criminal liability of the accused-appellant, especially in light of the fact that the latter was convicted of rape by the trial court under the general terms "RAPE defined and penalized by Article 335 of the Revised Penal Code, as amended by Republic Act 7659 and further amended by Article 266-A and 266-B, Republic Act No. 8353 xxx"[RTC Decision, supra.], without specific reference to any of the subparagraphs thereof.

[11] People vs. Padilla, 301 SCRA 265 (1999), at p. 273.

[12] TSN dated November 3, 1998, pp. 5 to 6, 10.

[13] RTC Decision, p. 8; Rollo, p. 18.

[14] TSN dated October 1, 1998, pp. 4 to 8.

[15] TSN dated November 3, 1998, pp. 6 to 7.

[16] TSN dated November 10, 1998, p. 2.

[17] RTC Decision, p. 8.

[18] *People vs. Romua*, 272 SCRA 818 (1997), at p. 825; *People vs. Almacin*, 303 SCRA 399 (1999), at p. 408.

[19] TSN dated January 15, 1999, at p. 9.

[20] Article 266-B of the Revised Penal Code, as amended by R. A. No. 8353, provides:

"ART. 266-B. Penalties.-- xxx xxx xxx

"The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

xxx xxx xxx

10) When the offender knew of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime.

xxx xxx xxx."

[21] *People vs. Calayca*, 301 SCRA 192 (1999), at p. 210; *People vs. Garcia*, 281 SCRA 463 (1997), at p. 489; and *People vs. Ramos*, 296 SCRA 559 (1998), at p. 577.

[22] *People vs. Garcia*, *supra*.

[23] Article 2230 of the New Civil Code provides: "In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. xxx" See *People vs. Patrolla, Jr.*, 254 SCRA 467, at p. 477.

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