

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. SONNY CANON ALIAS “POGI,” APPELLANT.

G.R. No. 141519. January 22, 2004

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Under an Information[1] dated August 12, 1998, Sonny Canon alias “Pogi” (appellant) was indicted for rape as follows:

That on or about or sometime in the month of December, 1997, in Barangay San Vicente, Buhi, Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, violence and intimidation and with the use of a knife, did then and there willfully, unlawfully and feloniously succeed in having carnal knowledge with one Maryjane C. Borsong, 16 years old, minor and a mental retardate, against her will and without her consent, to her damage and prejudice in such amount as shall be proven in court.

After trial, the Regional Trial Court of Iriga City, Branch 37 convicted appellant by Decision[2] dated August 20, 1999, the dispositive part of which reads:

WHEREFORE, in view of the foregoing, the Court finds accused Sonny Canon alias “Pogi” guilty beyond reasonable doubt of the crime of rape punishable under Article 335 of the Revised Penal Code, as amended, as principal thereof, with the aggravating circumstance of dwelling and no mitigating circumstance to offset it. It may be mentioned here, however, that the attending circumstance can no longer be properly considered in view of the penalty imposable. Accordingly, the accused is sentenced to suffer the penalty of reclusion perpetua, with the accessory penalties provided by law, to indemnify Maryjane, the sum of P50,000.00 and to acknowledge and give support to Maria Roxanne Borsong as his child, and to pay the costs.

In the service of his sentence, he shall be credited with the full period of his preventive imprisonment had there been compliance with Article 29 of the Revised Penal Code.

SO ORDERED.

Based primarily on the testimonies of the alleged victim Maryjane C. Borsong (Maryjane) and her mother Eufrecina C. Borsong (Eufrecina), the prosecution presented the following version of the rape incident:

One evening in December 1997, as the then fifteen-year-old Maryjane was left home alone in Barangay San Vicente, Buhi, Camarines Sur, her parents having gone to their farm about two kilometers away therefrom,[3] appellant, a neighbor, knocked at the door of the Borsongs’ house and Maryjane opened it. Appellant soon trained his flashlight on her and suddenly pulled her inside.[4]

As appellant poked a fan knife at the neck, and covered the mouth, of Maryjane who was made to lie down, he removed her shorts and inserted his penis into her vagina.[5]

As she tried to push appellant, Maryjane felt pain and blood came out of her private part.[6] When appellant had

satisfied his lust, he told her not to tell anybody about what had happened.[7]

Maryjane's mother Eufrecina and her husband found nothing unusual about Maryjane in the days following the incident until, in the second week of February 1998, Eufrecina noticed that Maryjane's abdomen was getting bigger. She was thus prompted to bring Maryjane to a midwife and later to a doctor who found her pregnant.

When Maryjane's parents asked her who impregnated her, she was initially hesitant and afraid to utter anything,[8] drawing them to beat her. She thereupon revealed that she was raped by appellant. Appellant later went into hiding.

Eufrecina described the hapless Maryjane, who delivered a child (a girl) on April 20, 1998,[9] to be mentally deficient, she having difficulty speaking and reading, and whose highest educational attainment was Grade III. Having the mentality inferior to that of her age, Maryjane could not look after her needs much less those of her baby such that Eufrecina bore the responsibility of taking care of them.

Appellant came out of hiding when Maryjane gave birth and sought settlement from the Borsongs, he proposing to marry her but Eufrecina rejected it.[10]

Testifying on the Medical Report[11] he issued, Doctor Breandovin S. Saez (Dr. Saez), Rural Health Physician of Buhi in Camarines Sur, affirmed that when he physically examined Maryjane on April 24, 1998, he found her to be of inferior mental capacity compared to a normal individual of her age, and to have a speech problem which in local parlance is termed "bulol." Dr. Saez could not, however, determine the victim's mental age. Reiterating his finding that Maryjane was about nineteen to twenty weeks pregnant at the time of examination, he related that when he asked Maryjane who got her pregnant, she answered that it was one with the alias "Pogi." [12]

Appellant denied raping Maryjane. He admitted though that he had carnal knowledge of Maryjane whom he claimed to be his sweetheart and that he sired her child.

Originally a resident of Barangay Igbac also in Buhi, Camarines Sur, appellant narrated that when he started to work in January 1997 as caretaker of the house of one Emelin Belleza, a neighbor of the Borsongs, he got to know Maryjane as she frequented Belleza's house to watch movies shown by him for a fee through his operation of a betamax machine; that he courted Maryjane who responded positively to his romantic overtures; that they subsequently engaged in sexual intercourse on about ten occasions from February to December 1997 at Belleza's residence; and that his offer to marry Maryjane was rebuffed by her parents, and his criminal prosecution was actuated with malice as Maryjane was merely acting under duress from her parents.[13]

Defense witness Marcelino L. Apante corroborated appellant's claim that he and Maryjane were sweethearts. He gave the following tale: Hired at one time to harvest the palay of the Bellezas and to clean their banana plantation, he spent the night of October 2, 1997 at the Bellezas' residence as his work was then still unfinished. At around eleven o'clock in the evening of said date, while he was sleeping at a corner of the house and appellant and Maryjane were at the living room, he heard Maryjane moaning. Apante turned on the light and saw both appellant and Maryjane naked and lying down with appellant on top of Maryjane. Apante then remarked that it was too much for the two lovers to let him see what they were doing but Maryjane replied in the local dialect that it was not a problem because appellant and she loved each other anyway.

Continuing, Apante related that Maryjane and appellant had been sweethearts since October 1996 and that in the four days that he stayed at Belleza's home, Maryjane was always there to cook for them.[14]

With leave of court, the prosecution recalled Maryjane on rebuttal. She denied having ever been appellant's sweetheart or having had any intimate relationship or engaging in sex with him. Declaring that appellant and she

did not personally know each other, she insisted that he never courted her. She admitted, however, that she once watched appellant's showing of a video film.[15]

Now before this Court, appellant assails his conviction, contending that:

THE COURT A QUO ERRED IN CONVICTING [HIM] WHEN HIS GUILT HAS NOT BEEN PROVEN BEYOND REASONABLE DOUBT.

Appellant assails Maryjane's claim that he covered her mouth, poked a knife at her and removed her shorts all at the same time as not being possible of simultaneous execution, hence, highly improbable and unbelievable.

And he underscores what he claims to be inconsistencies, and lack of clarity and straightforwardness in Maryjane's testimonies which indicate that she might have been coached, which probability gains light from her very admission that her parents harmed her in order to falsely impute the crime to him.

Finally, appellant questions the prosecution's characterization of Maryjane as a mental retardate as bereft of supporting evidence.[16]

The People seeks affirmance of appellant's conviction with a prayer for the award of moral damages to Maryjane in the amount of P50,000.00.[17]

The appeal fails.

The prosecution has met the quantum of proof to establish the commission of the crime of rape. Appellant's defense of having consensual sex with Maryjane is unavailing, given her candid and vivid description of the incident as the following transcript of her testimony reflects:

PROSECUTOR RAMOS -

Q:

And how did the accused Sonny Canon alias "pogi" sexually abuse you?

A:

In the house, our house. He knocked at the door of our house, pulled me, flashed me with a flashlight, poked his knife on me and he removed my shorts.

Q:

After the accused Sonny Canon alias "pogi" removed your short (sic), what did the accused do next?

A:

He covered my mouth while he was poking his knife on my neck and he was removing my short (sic) at the same time.

Q:

What did the accused do to your vagina, if any?

A:

His penis was very big and my vagina bled.

INTERPRETER: Witness demonstrating the size of the penis as big as the size of her wrist.

PROSECUTOR RAMOS -

Q:

What did the accused do with his penis to your vagina?

A:

After he removed my short (sic) “pogi” put his penis on my vagina and it was painful, there was blood.

Q:

You said he has a knife. What kind of knife was that, if you can still recall?

A:

It was a fan knife.

Q:

What did the accused Sonny Canon alias “pogi” do to you, if any, when he raped you?

A:

According to “pogi” I should not tell to anybody.

Q:

After Sonny Canon alias “pogi” raped you, what happened next?

A:

He said I should not tell anybody and I was afraid.

Q:

There is a proposal by the accused Sonny Canon alias “pogi” to marry you, would you accede to his proposal in order to settle the case?

A:

I do not like to marry him.

INTERPRETER: Witness crying showing his anger.

PROSECUTOR RAMOS: Can we just make of record that the witness has difficulty talking?

COURT: The witness is crying and pointing to the accused.

PROSECUTOR RAMOS: That is all, your Honor.[18]

x x x (Emphasis and underscoring supplied)

The candor, as well as spontaneity with which Maryjane related her ordeal, was brought to the fore by her feeble-mindedness or mental retardation. Though no expert witness was presented to attest to her mental retardation and the level thereof, the testimonies of both Eufrecina and Dr. Saez have sufficiently established that indeed Maryjane is suffering from a certain degree of mental deficiency.

In *People v. Duranan*,^[19] this Court, citing Senator Vicente J. Francisco's treatise on evidence, laid down the following judicial dictum:

The mother of an offended party in a case of rape, though not a psychiatrist, if she knows the physical and mental condition of the party, how she was born, what she is suffering from, and what her attainments are, is competent to testify on the matter.

x x x

Eufrecina, being Maryjane's mother, has had all the opportunity to bear witness to the manifestations of the mental abnormality afflicting Maryjane since birth, hence, her statements thereon can be believed. And Dr. Saez corroborated the actuality of her mental retardation. Her feeble-mindedness did not, however, hamper her ability to communicate her experiences but even provided a spontaneous, unrehearsed element to her manner of recalling the incident.

Of immense significance is, as indicated in the above-quoted portion of her testimony, Maryjane's "crying and pointing to the accused" as noted by the trial court, and "showing her anger" as observed by the interpreter. For the crying of a victim during her testimony is evidence of the credibility of the rape accusation with the verity born out of human nature and experience.^[20]

As for Maryjane's statement that appellant simultaneously covered her mouth as he poked a knife at her and removed her shorts, this does not necessarily weaken the force of her asseverations. As pointed out by the Office of the Solicitor General, such acts are not inherently impossible of simultaneous performance, especially when something else was used to cover her mouth. At any rate, Maryjane's said statement should not, in light of her limited facility for self-expression, be interpreted literally, for the poking of a knife, covering of the mouth and removing of the shorts may have been done in a very quick fashion.

With respect to Maryjane's account of how appellant raped her, save for minor inconsistencies that do not touch upon the essential aspects of the crime, it was unwavering. Thus, on pressing cross-examination, she declared that appellant raped her in the manner she had described on direct examination. And she belied appellant's claim that he had had several occasions of sexual intercourse with her:

x x x

ATTY. SE -

Q

Did not Pogi come to your house for several times to have conversation with you?

A:

No.

Q:

You mean to say you have not talked to Pogi yet?

A:

No.

Q:

And you said that Pogi When was that when Pogi inserted his penis into your vagina?

A:

Yes, sir.

Q:

When was that?

A:

In our house.

Q:

This Pogi had sex with you for several times?

A:

No.[21]

x x x

Q:

When Pogi inserted his penis to your vagina, how many minutes was that?

A:

His penis was very big.

Q:

When Pogi inserted his big penis you felt pain?

A:

Yes, sir, very painful.

Q:

So you pushed him, you kicked him because it was very painful?

A:

Yes, sir.

Q:

So what was your position when Pogi inserted his penis into your vagina?

A:

I was lying down and he inserted his penis on my vagina.

Q:

And you said you felt pain and you pushed him, is that right?

A:

Yes, sir.

Q:

Before he could completely penetrate your vagina you were able to push the accused because you already felt pain, is that correct?

A:

He inserted.

INTERPRETER: Witness demonstrating with her hand how the accused inserted his penis on her vagina.[22]

x x x (Underscoring supplied)

That Maryjane reiterated on cross-examination her account of appellant's act of forcibly inserting his penis into her vagina shows that her testimony was not coached or the product of suggestion or coercion by her parents but rather a personal account of what she actually went through. Thus, even if she was beaten up by her parents to goad her into revealing who impregnated her, such did not impair her testimony to which she stuck throughout at the witness stand.

Appellant's insinuation that it was really the victim's parents who instituted this rape case deserves scant attention. As was pronounced in *People v. Rosare*,^[23] this Court finds it inconceivable for a mother, like that of Maryjane's, to drag a daughter, a mental retardate at that, into a rape scam with all its attendant scandal and humiliation for the flimsiest of reasons that she merely did not want her child to be married to appellant.

In the face of the positive testimony of Maryjane, appellant's sweetheart theory, proffered as an affirmative defense, must be established by convincing proof.^[24]

To corroborate appellant's insistence, the defense summoned Apante who claimed knowledge of a sexual relationship between appellant and Maryjane.

Apante's testimony, however, is incredible. It defies comprehension how Maryjane, a minor, would allow Apante to witness her and appellant having or in a position of sexual intercourse without feeling any shame or moral compunction. Moreover, Apante's declaration that Maryjane talked normally^[25] readily indicates that he does not really know Maryjane or has not heard her talk.

Appellant's reliance on the much abused "sweetheart story" in rape cases rashly derides then the intelligence of this Court and sorely tests its patience.^[26]

At all events, appellant being Maryjane's sweetheart does not preclude his commission of rape.

It having been shown beyond reasonable doubt that appellant committed rape through force or intimidation under Article 266-A, paragraph 1 of the Revised Penal Code, as amended by Republic Act No. 8353 (the Anti-Rape Law of 1997), and with the use of a fan knife, a deadly weapon,^[27] the penalty must be reclusion perpetua to death.^[28] As no aggravating or mitigating circumstances had been shown, however, in the commission of the crime, the lesser penalty of reclusion perpetua was correctly imposed by the trial court.

Respecting the People's prayer for the award to Maryjane of P50,000.00 as moral damages, the same is granted, consistent with existing jurisprudence.

WHEREFORE, the impugned decision of the Regional Trial Court of Iriga City, Branch 37 finding appellant guilty beyond reasonable doubt of rape under Art. 266-A of the Revised Penal Code, as amended, is hereby **AFFIRMED**, with the modification that in addition to paying civil indemnity of P50,000.00, appellant is ordered to pay private complainant, Maryjane C. Borsong, P50,000.00 as moral damages.

SO ORDERED.

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

[1] Records, p. 1.

[2] Rollo, pp. 17-21.

[3] TSN, February 25, 1999, pp. 15-21.

- [4] TSN, March 1, 1999, p. 6.
- [5] TSN, March 1, 1999, p. 7, 16.
- [6] Ibid.
- [7] Id., pp. 7-8.
- [8] TSN, February 25, 1999, pp. 2-21.
- [9] Records, Exhibit “C,” p. 52.
- [10] TSN, February 25, 1999, pp. 2-21.
- [11] Records, Exhibit “A,” p. 5.
- [12] TSN, March 9, 1999, pp. 2-13.
- [13] TSN, March 15, 1999, pp. 1-7.
- [14] TSN, March 24, 1999, pp. 2-19.
- [15] TSN, June 28, 1999, pp. 2-7.
- [16] Rollo, pp. 32-44.
- [17] Id. at 59-73.
- [18] TSN, March 1, 1999, pp. 5-8.

[19] 349 SCRA 180, 187 (2001).

- [20] *People v. Alquizalas*, 305 SCRA 367 (1999).
- [21] TSN, March 1, 1999, p. 10.
- [22] Id. at 15-16.

[23] 264 SCRA 398 (1996).

- [24] *People v. Barcelona*, 325 SCRA 168 (2000).
- [25] TSN, March 24, 1999, pp. 9, 13.
- [26] *People v. Accion*, 312 SCRA 250 (1999).
- [27] *People v. Alquizalas*, 305 SCRA 367 (1999).
- [28] Revised Penal Code, Article 266-B, paragraph 1.

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