

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. SALVADOR GOLIMLIM @ “BADONG”, APPELLANTS.

G.R. No. 145225. April 02, 2004

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

On appeal is the Decision[1] of June 9, 2000 of the Regional Trial Court of Sorsogon, Sorsogon, Branch 65 in Criminal Case No. 241, finding appellant Salvador Golimlim alias “Badong” guilty beyond reasonable doubt of rape, imposing on him the penalty of reclusion perpetua, and holding him civilly liable in the amount of P50,000.00 as indemnity, and P50,000.00 as moral damages.

The Information dated April 16, 1997 filed against appellant reads as follows:

That sometime in the month of August, 1996, at Barangay Bical, Municipality of Bulan, Province of Sorsogon, Philippines and within the jurisdiction of this Honorable Court the above-named accused, armed with a bladed weapon, by means of violence and intimidation, did then and there, wilfully, unlawfully and feloniously, have carnal knowledge of one Evelyn Canchela against her will and without her consent, to her damage and prejudice.

Contrary to law.[2]

Upon arraignment on December 15, 1997,[3] appellant, duly assisted by counsel, pleaded not guilty to the offense charged.

The facts established by the prosecution are as follows:

Private complainant Evelyn G. Canchela (Evelyn), is a mental retardate. When her mother, Amparo Hachero, left for Singapore on May 2, 1996 to work as a domestic helper, she entrusted Evelyn to the care and custody of her (Amparo’s) sister Jovita Guban and her husband Salvador Golimlim, herein appellant, at Barangay Bical, Bulan, Sorsogon.[4]

Sometime in August 1996, Jovita left the conjugal residence to meet a certain Rosing,[5] leaving Evelyn with appellant. Taking advantage of the situation, appellant instructed private complainant to sleep,[6] and soon after she had laid down, he kissed her and took off her clothes.[7] As he poked at her an object which to Evelyn felt like a knife,[8] he proceeded to insert his penis into her vagina.[9] His lust satisfied, appellant fell asleep.

When Jovita arrived, Evelyn told her about what appellant did to her. Jovita, however, did not believe her and in fact she scolded her.[10]

Sometime in December of the same year, Lorna Hachero, Evelyn’s half-sister, received a letter from their mother Amparo instructing her to fetch Evelyn from Sorsogon and allow her to stay in Novaliches, Quezon City where she (Lorna) resided. Dutifully, Lorna immediately repaired to appellant’s home in Bical, and brought Evelyn with her to Manila.

A week after she brought Evelyn to stay with her, Lorna suspected that her sister was pregnant as she noticed her growing belly. She thereupon brought her to a doctor at the Pascual General Hospital at Baeza, Novaliches, Quezon City for check-up and ultrasound examination.

Lorna's suspicions were confirmed as the examinations revealed that Evelyn was indeed pregnant.[11] She thus asked her sister how she became pregnant, to which Evelyn replied that appellant had sexual intercourse with her while holding a knife.[12]

In February of 1997, the sisters left for Bulan, Sorsogon for the purpose of filing a criminal complaint against appellant. The police in Bulan, however, advised them to first have Evelyn examined. Obliging, the two repaired on February 24, 1997 to the Municipal Health Office of Bulan, Sorsogon where Evelyn was examined by Dr. Estrella Payoyo.[13] The Medico-legal Report revealed the following findings, quoted verbatim:

FINDINGS: LMP [last menstrual period]: Aug. 96 ? Abd [abdomen]: 7 months AOG [age of gestation] FHT [fetal heart tone]: 148/min Presentation: Cephalic Hymen: old laceration at 3, 5, 7, & 11 o'clock position[14]

On the same day, the sisters went back to the Investigation Section of the Bulan Municipal Police Station before which they executed their sworn statements.[15]

On February 27, 1997, Evelyn, assisted by Lorna, filed a criminal complaint for rape[16] against appellant before the Municipal Trial Court of Bulan, Sorsogon, docketed as Criminal Case No. 6272.

In the meantime or on May 7, 1997, Evelyn gave birth to a girl, Joana Canchela, at Guruyan, Juban, Sorsogon.[17]

Appellant, on being confronted with the accusation, simply said that it is not true "[b]ecause her mind is not normal,"[18] she having "mentioned many other names of men who ha[d] sexual intercourse with her." [19]

Finding for the prosecution, the trial court, by the present appealed Decision, convicted appellant as charged. The dispositive portion of the decision reads:

WHEREFORE, premises considered, accused Salvador Golimlim having been found guilty of the crime of RAPE (Art. 335 R.P.C. as amended by RA 7659) beyond reasonable doubt is hereby sentenced to suffer the penalty of RECLUSION PERPETUA, and to indemnify the offended party Evelyn Canchela in the amount of P50,000.00 as indemnity and another P50,000.00 as moral damage[s], and to pay the costs.

SO ORDERED.[20]

Hence, the present appeal, appellant assigning to the trial court the following errors:

- THE COURT A QUO GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE CONTRADICTORY AND IMPLAUSIBLE TESTIMONY OF EVELYN CANCHELA, A MENTAL RETARDATE, [AND]
- THE COURT A QUO GRAVELY ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT FOR THE CRIME CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT.[21]

Appellant argues that Evelyn's testimony is not categorical and is replete with contradictions, thus engendering grave doubts as to his criminal culpability.

In giving credence to Evelyn's testimony and finding against appellant, the trial court made the following observations, quoted verbatim:

- 1) Despite her weak and dull mental state the victim was consistent in her claim that her Papay Badong (accused Salvador Golimlim) had carnal knowledge of her and was the author of her pregnancy, and nobody else (See: For comparison her Sworn Statement on p. 3/Record; her narration in the Psychiatric Report on pp. 47 & 48/Record; the TSNs of her testimony in open court);
- 2) She remains consistent that her Papay Badong raped her only once;
- 3) That the contradictory statements she made in open court relative to the details of how she was raped, although would seem derogatory to her credibility and reliability as a witness under normal conditions, were amply explained by the psychiatrist who examined her and supported by her findings (See: Exhibits F to F-2);
- 4) Despite her claim that several persons laid on top of her (which is still subject to question considering that the victim could not elaborate on its meaning), the lucid fact remains that she never pointed to anybody else as the author of her pregnancy, but her Papay Badong. Which only shows that the trauma that was created in her mind by the incident has remained printed in her memory despite her weak mental state. Furthermore, granting for the sake of argument that other men also laid on top of her, this does not deviate from the fact that her Papay Badong (the accused) had sexual intercourse with her.[22]

The trial judge's assessment of the credibility of witnesses' testimonies is, as has repeatedly been held by this Court, accorded great respect on appeal in the absence of grave abuse of discretion on its part, it having had the advantage of actually examining both real and testimonial evidence including the demeanor of the witnesses.[23]

In the present case, no cogent reason can be appreciated to warrant a departure from the findings of the trial court with respect to the assessment of Evelyn's testimony.

That Evelyn is a mental retardate does not disqualify her as a witness nor render her testimony bereft of truth.

Sections 20 and 21 of Rule 130 of the Revised Rules of Court provide:

SEC. 20. Witnesses; their qualifications. – Except as provided in the next succeeding section, all persons who can perceive, and perceiving, can make known their perception to others, may be witnesses.

x x x

SEC. 21. Disqualification by reason of mental incapacity or immaturity. – The following persons cannot be witnesses:

(a) Those whose mental condition, at the time of their production for examination, is such that they are incapable of intelligently making known their perception to others;

(b) Children whose mental maturity is such as to render them incapable of perceiving the facts respecting which they are examined and of relating them truthfully.

In *People v. Trelles*,^[24] where the trial court relied heavily on the therein mentally retarded private complainant's testimony regardless of her "monosyllabic responses and vacillations between lucidity and ambiguity," this Court held:

A mental retardate or a feeble-minded person is not, per se, disqualified from being a witness, her mental condition not being a vitiation of her credibility. It is now universally accepted that intellectual weakness, no matter what form it assumes, is not a valid objection to the competency of a witness so long as the latter can still give a fairly intelligent and reasonable narrative of the matter testified to.^[25]

It can not then be gainsaid that a mental retardate can be a witness, depending on his or her ability to relate what he or she knows.^[26] If his or her testimony is coherent, the same is admissible in court.^[27]

To be sure, modern rules on evidence have downgraded mental incapacity as a ground to disqualify a witness.

As observed by McCormick, the remedy of excluding such a witness who may be the only person available who knows the facts, seems inept and primitive. Our rules follow the modern trend of evidence.[28]

Thus, in a long line of cases,[29] this Court has upheld the conviction of the accused based mainly on statements given in court by the victim who was a mental retardate.

From a meticulous scrutiny of the records of this case, there is no reason to doubt Evelyn's credibility. To be sure, her testimony is not without discrepancies, given of course her feeble-mindedness.

By the account of Dr. Chona Cuyos-Belmonte, Medical Specialist II at the Psychiatric Department of the Bicol Medical Center, who examined Evelyn, although Evelyn was suffering from moderate mental retardation with an IQ of 46,[30] she is capable of perceiving and relating events which happened to her. Thus the doctor testified:

Q:

So do you try to impress that although she answers in general terms it does not necessarily mean that she might be inventing answers – only that she could not go to the specific details because of dullness?

A:

I don't think she was inventing her answer because I conducted mental status examination for three (3) times and I tried to see the consistency in the narration but very poor (sic) in giving details.

x x x

Q:

May we know what she related to you?

A:

She related to me that she was raped by her uncle 'Tatay Badong'. What she mentioned was that, and I quote: 'hinila ang panty ko, pinasok ang pisot at bayag niya sa pipi ko'. She would laugh inappropriately after telling me that particular incident. I also tried to ask her regarding the dates, the time of the incident, but she could not really.... I tried to elicit those important things, but the patient had a hard time remembering those dates.

Q:

But considering that you have evaluated her mentally, gave her I.Q. test, in your honest opinion, do you believe that this narration by the patient to you about the rape is reliable?

A:

Yes, sir.

Q:

Why do you consider that reliable?

A:

Being a (sic) moderately retarded, I have noticed the spontaneity of her answers during the time of the testing. She was not even hesitating when she told me she was raped once at home by her Tatay Badong; and she was laughing when she told me about how it was done on (sic) her. So, although she may be inappropriate but (sic) she was spontaneous, she was consistent.

Q:

Now, I would like to relate to you an incident that happened in this Court for you to give us your expert opinion. I tried to present the victim in this case to testify. While she testified that she was raped by her uncle Badong, when asked about the details, thereof, she would not make (sic) the detail. She only answered 'wala' (no). I ask this question because somehow this seems related to your previous evaluation that while she gave an answer, she gave no detail. Now, I was thinking because I am a man and I was the one asking and the Judge is a man also. And while the mother would say that she would relate to her and she related to you, can you explain to us why when she was presented in court that occurrence, that event happened?

A:

There are a lot of possible answers to that question; one, is the court's atmosphere itself. This may have brought a little anxiety on the part of the patient and this inhibits her from relating some of the details relative to the incident-in-question. When I conducted my interview with the patient, there were only two (2) of us in the room. I normally do not ask this question during the first session with the patient because these are emotionally leading questions, and I do not expect the patient to be very trusting. So, I usually ask this type of questions during the later part of my examination to make her relax during my evaluation. So in this way, she will be more cooperative with me. I don't think that this kind of atmosphere within the courtroom with some people around, this could have inhibited the patient from answering questions.

x x x

Q:

What if the victim is being coached or led by someone else, will she be able to answer the questions?

A:

Yes, she may be able to answer the questions, but you would notice the inconsistency of the answers because what we normally do is that we present the questions in different ways, and we expect the same answer. This is how we try to evaluate the patient. If the person, especially a retarded, is being coached by somebody, the answers will no longer be consistent.

Q:

You also mentioned a while ago that the answers given by the patient, taken all in all, were consistent?

A:

Yes, sir.[31] (Underscoring supplied)

As noted in the above-quoted testimony of Dr. Belmonte, Evelyn could give spontaneous and consistent answers to the same but differently framed questions under conditions which do not inhibit her from answering. It could have been in this light that Evelyn was able to relate in court, upon examination by a female government prosecutor and the exclusion of the public from the proceedings, on Dr. Belmonte's suggestion,[32] how, as quoted below, she was raped and that it was appellant who did it:

Q:

Lorna Hachero testified before this Court that you gave birth to a baby girl named Johanna, is this true?

A:

(The witness nods, yes.)

x x x

Q:

Who is the father of Johanna?

A:

Papay Badong

Q:

Who is this Papay Badong that you are referring to?

A:

The husband of Mamay Bitá.

Q:

Is he here in court?

A:

He is here.

Q:

Please look around and point him to us.

A:

(The witness pointing to the lone man sitting in the first row of the gallery wearing a regular prison orange t-shirt who gave his name as Salvador Golimlim when asked.)

Q:

Why were you able to say that it is Papay Badong who is the father of your child Johanna?

A:

Because then I was left at Mamay Bitá's house, although I am not there now.

Q:

And that house where you were left is also the house of your Papay Badong?

A:

Yes ma'am.

Q:

What did Salvador Golimlim or your Papay Badong do to you that's why you were able to say that he is the father of your child?

A:

I was undressed by him.

x x x

Q:

What did you do after you were undressed?

A:

I was scolded by the wife, Mamay Bitá.

Q:

I am referring to that very moment when you were undressed. Immediately after your Papay Badong undressed you, what did you do?

x x x

A:

He laid on top of me.

Q:

What was your position when he laid on top of you?

A:

I was lying down.

Q:

Then after he went on top of you, what did he do there?

A:

He made (sic) sexual intercourse with me.

Q:

When you said he had a (sic) sexual intercourse with you, what did he do exactly?

A:

He kissed me.

Q:

Where?

A:

On the cheeks (witness motioning indicating her cheeks).

Q:

What else did he do? Please describe before this Honorable Court the sexual intercourse which you are referring to which the accused did to you.

A:

'Initoy' and he slept after that. (to Court) Nevertheless, may we request that the local term for sexual intercourse, the word 'Initoy' which was used by the witness be put on the record, and we request judicial notice of the fact that 'initoy' is the local term for sexual intercourse.

x x x

Q:

What did you feel when your Papay Badong had sexual intercourse with you?

A:

I felt a knife; it was like a knife.

Q:

Where did you feel that knife?

A:

I forgot.

Q:

Why did you allow your Papay Badong to have sexual intercourse with you?

A:

I will not consent to it.

x x x

Q:

Did you like what he did to you?

A:

I do not want it.

Q:

But why did it happen?

A:

I was forced to.

x x x

Q:

Did you feel anything when he inserted into your vagina when your Papay Badong laid on top of you?

A:

His sexual organ/penis.

Q:

How did you know that it was the penis of your Papay Badong that was entered into your vagina?

A:

It was put on top of me.

Q:

Did it enter your vagina?

A:

Yes, Your Honor.

x x x

Q:

Madam Witness, is it true that your Papay Badong inserted his penis into your vagina or sexual organ during that time that he was on top of you?

A:

(The witness nods, yes.)[33] (Underscoring supplied)

Appellant's bare denial is not only an inherently weak defense. It is not supported by clear and convincing evidence. It cannot thus prevail over the positive declaration of Evelyn who convincingly identified him as her rapist.[34]

In convicting appellant under Article 335 of the Revised Penal Code, as amended by Republic Act 7659 (the law in force when the crime was committed in 1996), the trial court did not specify under which mode the crime was committed. Under the said article, rape is committed thus:

ART. 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.

The crime of rape shall be punished by reclusion perpetua.

Whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be reclusion perpetua or death.

x x x

It is settled that sexual intercourse with a woman who is a mental retardate constitutes statutory rape which does not require proof that the accused used force or intimidation in having carnal knowledge of the victim for conviction.[35] The fact of Evelyn's mental retardation was not, however, alleged in the Information and, therefore, cannot be the basis for conviction. Such notwithstanding, that force and intimidation attended the commission of the crime, the mode of commission alleged in the Information, was adequately proven. It bears stating herein that the mental faculties of a retardate being different from those of a normal person, the degree of force needed to overwhelm him or her is less. Hence, a quantum of force which may not suffice when the victim is a normal person, may be more than enough when employed against an imbecile.[36]

Still under the above-quoted provision of Art. 335 of the Revised Penal Code, when the crime of rape is committed with the use of a deadly weapon, the penalty shall be reclusion perpetua to death. In the case at bar, however, although there is adequate evidence showing that appellant indeed used force and intimidation, that is not the case with respect to the use of a deadly weapon.

WHEREFORE, the assailed Decision of the Regional Trial Court of Sorsogon, Sorsogon, Branch 65 in Criminal

Case No. 241 finding appellant, Salvador Golimlim alias “Badong,” GUILTY beyond reasonable doubt of rape, which this Court finds to have been committed under paragraph 1, Article 335 of the Revised Penal Code, and holding him civilly liable therefor, is hereby AFFIRMED.

Costs against appellant.

SO ORDERED.

Sandoval-Gutierrez, (Acting Chairman), and Corona, JJ., concur.
Vitug, J., (Chairman), on official leave.

[1] Rollo at 31-45.

[2] Id. at 10.

[3] Records at 29.

[4] TSN, August 12, 1998 at 12.

[5] TSN, October 14, 1998 at 6.

[6] TSN, January 27, 1999 at 9.

[7] Id. at 6.

[8] Id. at 8.

[9] Id. at 10 and 13.

[10] Id. at 10.

[11] TSN, June 2, 1998 at 7.

[12] Id. at 8.

[13] TSN, August 12, 1998 at 3.

[14] Exhibit “E”, Records at 16.

[15] Exhibit “B”, Records at 12.

[16] Records at 7.

[17] Exhibit “D”, Records at 127.

[18] TSN, September 20, 1999 at 4.

[19] Ibid.

[20] Rollo at 45.

[21] Id. at 80.

[22] Id. at 38-39.

[23] *People v. De Guzman*, 372 SCRA 95, 101 (2001), *People v. Balisnomo*, 265 SCRA 98, 104 (1996) (citations omitted).

[24] 340 SCRA 652 (2000).

[25] Id. at 658 (citations omitted).

[26] People v. Delos Santos, 364 SCRA 142, 156 (2001).

[27] People v. Lubong, 332 SCRA 672, 690 (2000) (citation omitted).

[28] People v. Espanola, 271 SCRA 689, 709 (1997) (citations omitted).

[29] People v. Agravante, 338 SCRA 13 (2000), People v. Padilla, 301 SCRA 265 (1999), People v. Malapo, 294 SCRA 579 (1998), People v. Balisnomo, 265 SCRA 98 (1996), People v. Gerones, 193 SCRA 263 (1991).

[30] TSN, December 21, 1998 at 10.

[31] Id. at 9-21.

[32] Id. at 13-14.

[33] TSN, January 27, 1999 at 4-13.

[34] People v. De Guzman, 372 SCRA 95, 111 (2001) (citations omitted), People v. Glabo, 371 SCRA 567, 573 (2001) (citations omitted), People v. Lalingjaman, 364 SCRA 535, 546 (2001) (citations omitted), People v. Agravante, 338 SCRA 13, 20 (2000).

[35] People v. Lubong, 332 SCRA 672, 692 (2000) (citations omitted), People v. Padilla, 301 SCRA 265, 273 (1999) (citation omitted).

[36] People v. Moreno, 294 SCRA 728, 739 (1998).

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