

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. FIDEL SASOTA, DEFENDANT AND APPELLANT.

G.R. No. 29564. October 25, 1928

Ponente: JOHNSON, J.

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JOHNSON, J.:

The defendant was charged with the crime of rape. It is alleged that the crime was committed upon the 9th day of November, 1926. A complaint was presented in the court of the justice of the peace of the municipality of Dasmariñas, Province of Cavite, on the 18th day of November, 1926. The defendant was arrested and given a preliminary hearing before said justice of the peace. At the close of the preliminary hearing the justice of the peace found that there was probable cause for believing that the defendant was guilty of the crime charged, and held him for trial in the Court of First Instance. Later the prosecuting attorney of the Province of Cavite presented a complaint in the Court of First Instance, which alleged:

"Que en o hacia el 9 de noviembre de 1926, en el Municipio de Dasmariñas, Provincia de Cavite, Islas Filipinas, el acusado arriba nombrado, voluntaria, ilegal y criminalmente mediante fuerza, violencia e intimidación yacido con Rufina Barbuco, una sordomuda de 14 años de edad, contra la voluntad de la misma.

"En la comisión del delito ha concurrido la circunstancia agravante de morada.

"Hecho cometido con infracción de la ley."

Upon that complaint the defendant was duly arraigned, pleaded not guilty, was tried, found guilty of the crime charged in the complaint, with the aggravating circumstance of morada, and sentenced by the Honorable Conrado Carballo, judge, to be imprisoned for a period of eighteen years of reclusion temporal, to indemnify the offended party in the amount of P1,000, to acknowledge the offspring, should there be any, and to pay the costs of the action, including those of the preliminary investigation. From that sentence the defendant appealed, and in this court contends that the lower court committed an error in holding that the accused was guilty of the crime charged beyond a reasonable doubt.

The appeal presents a question of fact only.

In support of the said assignment of error the attorney for the appellant in his brief filed in this court, after a preliminary statement of facts, said: "The foregoing is the result of a desperate effort to find something on the record favorable to the accused. Altho personally the writer is more or less satisfied that a wrong has been committed upon the person of the deaf and dumb girl, Rufina Barbuco, still he does not desire to substitute his own opinion to that of this Honorable Court and it is for the purpose of submitting some legal aspects of the case in behalf of the accused-appellant that the foregoing brief has been written."

In the course of the decision of the lower court the judge made the following findings of fact:

"Son pruebas de la acusación en esta causa que alia por el día 9 de noviembre de 1926, Rufina Barbuco, que es una sordomuda, acompañada de su hermana Severa Barbuco, una niña de unos 6 o 7 años de edad, se hallaban

solas en su casa en Dasmariñas, Cavite; que estando alli, a eso del mediodia, subio a ella el aqui acusado Fidel Sasota quien, en primer lugar, dio unas naranjas a Severa y despues a Rufina Barbuco, pero que esta no quiso aceptar al principio, pero despues a insistencias del acusado, recibid por fin y las tiro al suelo; que entonces dicho acusado la cogio, la beso, la toco los pechos y la echo al suelo, y estando asi, el acusado desabrocho su pantalón y se puso encima de Rufina para yacer con ella en esto Rufina lloraba y gritaba. En esta parte de su testimonio de Severa, al decir que su hermana Rufina gritó quiso dar a entender que su hermana produjo un sonido inarticulado en la garganta igual que el que producen los que estan privados de la voz. Sigue declarando Severa diciendo que su hermana, estando debajo del acusado, pataleo y hacia senas a Severa para que le diera un bolo que la testigo no ha podido encontrar; que durante todo este interregno de tiempo, acerto escuchar por alli una tal Tasia, que viene a ser Constancia Ceilon, testigo de la defensa, y que esta dijo al acusado: "No hagas eso a la nina porque su padre se va a enfadar," pero el acusado le dijo que se callara, pues de lo contrario 61 le acusaria a su padre, y entonces ella se marchó; pero que despues de que el acusado hubo terminado de satisfacer sus torpes deseos, se levantó y se marchó, y Rufina, habiendo podido coger un bolo, trato de perseguir a dicho acusado Fidel, pero que no le alcanzo; que despues de Uegar el padre de Rufina, esta y Severa le contaron la que habia pasado. Severa ha demostrado al Juzgado los hechos propios de su edad, que no sabe escribir, pero el mismo candor y la misma inocencia de la nifia han impresionado al Juzgado cuando relato todos los actos ejecutados por el acusado y las senas que su hermana le habia hecho, llegando hasta el extremo de establecer ella, como una cosa muy natural, de que mientras el aqui acusado yacia con su hermana Rufina, ella estaba a un metro y medio de distancia viendoles. Establecio ademas de una manera positiva, a repreguntas del Juzgado, que cuando el acusado se levanto, tenia desabrochado el pantalon y vio el miembro viril del acusado y el vello que cubria las partes pudendas del mismo.

"* * *. El mejor testigo de cargo en este asunto es la propia ofendida, que es una sordomuda como ha quedado demostrado ante el Juzgado. Se intents utilizar el servicio de Lutgardo Mendoza, instructor en la escuela de sordomudos de Manila, pero el hecho es que dicho instructor utilizo, para conversar con Rufina Barbuco, los signos convencionales usados ordinariamente cuando uno quiere hablar con un sordomudo. El Juzgado ha podido apreciar en todo su valor la extension y alcance tanto de las preguntas hechas a Rufina como las contestations dadas por ella a las mismas, habiendo demostrado de una manera indubitable, grafica y palpablemente al Juzgado el atropello de que ella era objeto, dando a entender claramente por medio de senas como Fidel Sasota, utilizando sus fuerzas, la tumbo al suelo, mientras ella pugnaba contra el mismo, y pudo introducir su miembro viril en las partes pudendas de ella, indicando ademas, por medio de sus gestos y la expresion de la cara, el dolor que le causaba el acceso, y demostrando de una u otra manera los hechos ocurridos como corroborando en todo lo possible a su hermana Severa Barbuco. El testimonio del Doctor Anonuevo confirma el Exhibit A que es un certificado medico de las lesiones encontradas por el mismo en la vulva de Rufina Barbuco y el hallazgo en la membrana himen de dicha Rufina, que estaba rota, y ademas establecid que el 16 de noviembre, cuando examind a Rufina, introdujo su especulum en la parte genital de ella y dicha Rufina sintio dolor por la introduccion de dicho instrumento. El Exhibit B es un certificado de bautismo que demuestra, segun la declaracion del propio padre de Rufina, que Rufina Barbuco es soltera de 15 años de edad."

An examination of the evidence adduced during the trial of the cause clearly supports the foregoing findings of fact by the lower court.

It is intimated that the testimony of the offended person. who is deaf and dumb, should not have been accepted at its full value. We have carefully examined the testimony of the offended person during the trial, and find no reason nor justification for discrediting her statement.

In the case of *People vs. De Leon* (50 Phil., 539) this court affirmed the sentence of the lower court, convicting the appellant of the crime of rape committed upon the person of Cecilia Galang, who was also a deaf and dumb person. The sentence of conviction was based entirely on the testimony of said Cecilia Galang.

Formerly deaf and dumb persons were considered incompetent witnesses. That theory, however, has been entirely dispelled. Experience and observation have shown conclusively that the mere fact that a person is deaf and dumb is not sufficient to justify the finding that he is incompetent as a witness.

Mr. Jones, in his valuable work on Evidence, says:

"Although it was formerly presumed that persons deaf and dumb from birth were idiots, and therefore incompetent, within the meaning of this rule, no such presumption now exists. Taylor, in his work on Evidence, gives an instance in which a cause was decided solely on the testimony of witnesses who were deaf and dumb. When such a witness is produced, the court may ascertain whether he has the requisite intelligence; and the judge will allow the witness to adopt such mode of communicating his ideas, whether by signs or writing, as, under the circumstances, may be deemed most satisfactory. The mode of taking the examination is a matter for the exercise of the sound discretion of the court, which must determine, in the first place, the necessity for an interpreter, and in the next place, the best method of arriving at the knowledge of the witness and of (imparting that knowledge to the jury; but this discretion must not be exercised arbitrarily or to the injury of the litigants. Where error is predicated on the action of the trial court in taking the testimony of the deafmutes through an interpreter by signs, instead of through written questions and answers, the appellate court, in the absence of a showing to the contrary, will presume that the trial court adopted the better method of taking the testimony." (Vol. 4, Jones on Evidence, section 719.)

Mr. Wigmore, in his very valuable work on Evidence, speaking of the competency of deaf and dumb persons, says:

"At the time when unscientific ideas prevailed concerning mental derangement and defect, the deaf-and-dumb were so far treated as idiots that they were presumed to be incapable of testifying, until the contrary was shown. Today this presumption has disappeared.

"1845, Jewett, J., in *People vs. McGee*, 1 Den. 21: (The woman) was of sense sufficient to have intelligence conveyed to her and to communicate intelligence to T. by signs and motions. * * *. If she had sufficient reason to have intelligence conveyed to her by T. and to communicate facts to the understanding of T., although she was not able to talk or write, she could have been sworn and testified through him by signs.

"No doubt it may sometimes be wise to examine into the capacity of such persons; but ordinarily the only question will be as to the possibility of communicating with them by some certain system of signs. So far as such persons are shown to be mentally defective, the principles applicable to lunatics will govern." (Vol. 1, Wigmore on Evidence, sec. 498, p. 918.)

Some criticism has been made with reference to the admission of the testimony of Severa Barbuco on account of her tender years. She is a young girl of 7 years of age, and the sister of the offended person. She was the only witness present at the time of the commission of the crime described in the complaint. Her testimony was positive, direct and clear. She seemed to have more than the ordinary intelligence of a child of her age. The trial judge questioned her very carefully concerning her intelligence and her understanding of the nature of an oath. The judge was satisfied that she fully understood the nature of an oath and that her testimony was competent and entitled to credit.

This court, speaking of the competency of children as witnesses, in the case of *United States vs. Buncad* (25 Phil., 530, 531), said:

"That the testimony of an 8-year-old boy was properly admitted, it appearing that the trial judge after a careful examination of his mental capacity was of opinion that this is an unusually intelligent child for his age, who gave his evidence in a straightforward and unembarrassed manner and was on the whole as satisfactory as the average witness who appears in his court.

"The question of the capacity or incapacity of a child to testify in this jurisdiction rests primarily with the trial judge, and his decision in that regard will not be disturbed on review unless it clearly appears from the record that it was erroneous.

"There is no rule in this jurisdiction which disqualifies a child from serving as a witness, nor is there any rule defining any particular age as conclusive of incapacity. In each instance the possession or lack of intelligence of a child offered as a witness is to be determined by such examination as the trial judge deems necessary for that purpose."

This court, in the course of its decision in the case of *United States vs. Tan Teng* (23 Phil., 145, 148), referring particularly to the competency, as a witness, of the offended party, a girl 7 years of age, said:

"During the trial the defendant objected strongly to the admissibility of the testimony of Oliva, on the ground that because of her tender years her testimony should not be given credit. The lower court, after carefully examining her with reference to her ability to understand the nature of an oath, held that she had sufficient intelligence and discernment to justify the court in accepting her testimony with full faith and credit. With the conclusion of the lower court, after reading her declaration, we fully concur."

Believing that we have answered all of the objections to the conclusions of the lower court, and finding as we do that the evidence adduced during the trial of the cause was not only competent but sufficient to show, beyond a reasonable doubt, that the defendant is guilty of the crime charged, we agree with the recommendation of the Attorney-General that the sentence appealed from be affirmed.

A thorough examination of the record fails to disclose any reason or justification for a revocation or modification of the sentence appealed from. The lower court, however, failed to impose the accessory penalties provided for by law. Therefore, the sentence appealed from is hereby affirmed, with the only modification that the accessory penalties provided for by law be imposed upon the defendant,

For all of the foregoing reasons, it is hereby ordered and decreed that the appellant be sentenced, under the provisions of article 438, paragraph 1, of the Penal Code, to be imprisoned for a period of eighteen years of reclusion temporal, to indemnify the offended person in the amount of P1,000, to acknowledge the offspring, should there be any, to suffer the accessory penalties of the law, and to pay the costs, including the costs of the Court of First Instance as well as those incurred in the preliminary examination. It is so ordered.

Avanceña, C. J., Street, Malcolm, Villamor, Ostrand, Romualdez, and Villa-Real, JJ., concur.

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