

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROLANDO ARAGON, DEFENDANT-APPELLANT.

G.R. No. 51736. August 04, 1988

Ponente: PADILLA, J.

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PADILLA, J.:

In Criminal Case No. 1522 of the Court of First Instance of South Cotabato, Rolando Aragon was charged by Elsa Balena with the crime of Forcible Abduction with Rape committed, as follows:

"That on or about 7:30 in the evening of August 7, 1978, at the Freedom Park, General Santos City, Philippines and within the jurisdiction of this Honorable Court, the above named accused, did then and there wilfully, unlawfully and feloniously abduct by force and intimidation the undersigned to the place where the latter was not bound for, against her will and consent and with lewd design and in furtherance of accused criminal design did then and there wilfully, unlawfully and feloniously have carnal knowledge with the undersigned, against her will." [1]

After trial, he was found guilty of the charge and sentenced to suffer the penalty of reclusion perpetua, to indemnify the offended party in the amount of P15,000.00 as actual, moral and exemplary damages, and to pay the costs.

From this sentence, he appealed to this Court.

The facts established by the prosecution which are the basis of the judgment of conviction are, as follows:

"At or about 7:30 o'clock in the evening of August 7, 1978, Elsa Balena, a 24-year old freshman at the Southern Island Colleges, was walking along Osmeña Street, General Santos City, on her way home from school. It was dark and raining heavily (p. 160, tsn). A man approached her and asked her in Tagalog, 'Day saan ka magpunta' ('Day, where are you going?'). Balena answered in Ilongo, 'didto' (there). The man then told her. 'We will go together going home.' Balena replied, 'Ah.' Immediately, the man held her and said, 'Do not shout or else I will kill you.' The man held Balena by her shoulders, facing her, and then he placed his right arm at her back embracing her tightly. Then the man moved beside her, held her shoulder with his right hand, and her neck with his left hand, choking her. In that position he dragged Balena by force to the middle of the plaza between a tree and a mound. Balena tried to shout for help but the man tightened his hold on her neck so she could hardly breathe, warning her at the same time not to shout, otherwise he would kill her. She tried to resist but to no avail as he kept on choking her. As Balena weakened, the man pushed her to the ground, face upward. He then placed himself on top of her (p. 203), tsn). He kissed her on the lips but Balena bit the man's lips. Thereafter, he pulled down her skirt, removed her half-slip, short pants (panty) and panty. Her panty was torn in the process. He next forcibly opened her white blouse with his two hands and removed her bra, thus exposing her breasts and her stomach. The man then unzipped his pants, exposed his organ, forced open Balena's legs and inserted his organ into her private part. All along, Balena resisted and boxed the man, but

her efforts were futile.

“After the man had satisfied his sexual desire, he left Balena and ran away. Balena struggled to run until she reached Roxas street where she saw Florencia Barriento who helped her put on the skirt she was holding to cover her naked body. Her blouse was open and wet. Balena told Barrientos that she was raped. They proceeded to the police department. At the police station, Balena described her attacker as being a muscular build, about 5 feet 4 inches in height, wearing a brown t-shirt, black pants and slippers. Balena told the police she would recognize the man if she saw him. She saw his face because of the light coming from the vehicles passing the street near the place where she was attacked (pp. 69-72, 93, 89-104, tsn).

“After she was investigated at the police station, Balena was escorted by the policeman to the scene of the crime where her pants, panty and pair of shoes were recovered. Thereafter she was brought home where she revealed to her sister what happened to her.

“Balena was brought to the General Santos Emergency Hospital and TB Pavilion where she was examined by Dr. Gervacio Posadas (pp. 139-148, tsn).

“Vaginal examination showed ‘fresh hymen laceration at 12:00 and 3:00 o’clock and laboratory findings were ‘positive for sperm cells.’ Among the external injuries found by the examining physician were: ‘multiple abrasion and contusion around the neck, anterior,’ possibly caused by a hand choking the neck; ‘ecchymoses linear on her chest sternal area,’ possibly caused by scratching by the finger; ‘multiple rounded hematomas located on the right lateral, upper 3rd about 3 cm. in diameter, medial lower 3rd about 2 cm. medial upper 3rd about 1 cm., and at posterior lower 3rd all in the right thigh’ which could have been caused by fist blows or by hard grip, or by the knee being pressed heavily on the thigh; and ‘oval hematoma about 4 cm. in widest diameter on the right lateral aspect of the right leg’ which was possibly caused also by fist blows, by a hard grip or by hard pressing of the thighs or knees of another person; ‘rounded hematoma 1 cm. on the upper 3rd aspect of the right arm’ and ‘rounded hematoma about 4 cm. on the lateral aspect upper 3rd of the lower arm, left’ both of which may have been caused by a fist blow or a hard grip.

“At the time Balena was brought to the hospital for examination, some grass and dirt were still clinging to her chest. Her hair was disheveled and she was obviously ashamed and nervous when answering questions (pp. 119-126, tsn; Exh. F. p. 1, Index of Exhibits).

“From the hospital, Balena and her sister returned home. The following morning she was fetched by policemen and brought to the police station. When they arrived at the police station, Balena immediately saw and recognized a man at the police station as the same person who raped her the night before. The injury on the lips of the man which Balena bit while he was kissing her was still fresh and visible. In a loud voice, Balena identified the man, who turned out to be accused Rolando Aragon, as her rapist. The man did not say anything (pp. 149-152, 154, tsn).

“The accused happened to be at the police station because in the morning of August 8, 1979. Danilo

Magpantay, a brother-in-law of Balena, went to the police station and reported that while he was jogging earlier that morning, he saw a man acting suspiciously at the place where Balena was raped the previous night. He saw the man pick up a wallet at the said place. With three policemen, Magpantay returned to the place where he saw the man still there.

“The policemen confronted the man and asked him, ‘Saan ka galling.’ (Where did you come from?). The man answered. Wala akong alam sa nangyari kagabi’ (I have nothing to do with what happened last night). The policemen asked for the man’s residence certificate and he presented a wet residence certificate which he brought out from the wallet which was also wet. When asked why these were wet, the man told the policemen ‘It was wet when I sat down on the bench.’ The policemen then invited the man to the police station for questioning, it was at this juncture that Baleno was fetched from her house. Upon seeing the man on her arrival at the police station, she immediately pointed to him as the man who raped her (pp. 22-25, 29-30, 41-45, tsn). “ [2]

The accused, however, did not take the stand to deny or confirm the accusations against him. Instead, his brother-in-law, Jose Arriate, an employee of the Bureau of Customs, Pat. Borromeo Tating and Pat. Dionisio Purificacion of the Integrated National Police took the stand in his defense. The trial court summarized the evidence of the defendant, as follows:

“The defense was alibi coupled with an attack on the credibility of the complainant.

“Jose Arriate, an employee of the Bureau of Customs and brother-in-law of the defendant (half brother of his wife), declared that on August 7, 1978, at about 7:30 in the evening, he arrived at his house had already cooked their supper. After eating, he scolded him because he did not clean well the toilet bowl. Thereafter, he instructed Rolando to go to sleep and his children to study their lessons. He put off the light and locked the door. In the early morning of August 8, he discovered that Rolando was not in his house so he went as far as the beach at Compania Martiima to look for him for he might be harmed by the stevedores. Not finding him there, he proceeded to the public market but failed to find him so he went home. His son informed him that Rolando was in the plaza looking for coins. He proceeded to their office at the DBP building when later, he received a phone call, asking him if his wife had a brother by the name of Rolando Aragon who was in the police station, charged with rape. Going there, he did not find Rolando because he was sent to the hospital for physical examination by the police. He was told to come back about 1:00 to 2:00 o’clock in the afternoon. He did so and met Rolando escorted by a policeman sustaining injuries, particularly a wound at the right of his mouth. On August 9, 1978, he approached Atty. Alfredo Odi, City Attorney, asking his advice and he was told to hire a counsel. On August 10, the office of the City Attorney wrote a letter to the City Health Officer for medical examination of the accused. Dr. Jose Alvarado, City Health Officer, examined the accused on August 10 and was found to sustain the following injuries:

- “1. Multiple contusions and ecchymosis all over the face, nose and forehead.
2. Multiple contusions all over the back.
3. Elongated ecchymosis across the back.
4. Contusions and abrasions over the left scapular region.” (Exh. “2”, “2-A”).

“Asked about his injuries, he was told by defendant that he was manhandled by the apprehending officer. He was also told that he went to the plaza to refresh himself. He went to the police station and he discovered that accused admitted the commission of the rape in question. Asked why he admitted the crime, his answer was, he was afraid (Tsn., pp. 299-316).

“He noticed when he escorted his wife sometime in 1963 that Rolando had a childish actuation and since then, he has not made any improvement. In the course of his stay in their house for one week, Rolando had never gone out of the house because he was afraid of darkness (Tsn., pp. 317-320). In the cross-examination, he revealed that the first day that he told the authorities of his testimony was on the day he testified on December 4, 1978. He had occasions to approach Patrolman Jugarap but he never bothered to ask them about the manhandling of his brother-in-law. He had no quarrel with any of the policemen and in fact, he had no intention of prosecuting those responsible for the manhandling of his brother-in-law. The distance from his house to the Freedom Park was only three hundred (300) meters and it could be commuted within five (5) minutes (Tsn., pp. 320-327).

“Pat. Borromeo Tating of the Integrated National Police identified the affidavit executed by Miss Balena in the morning of August 8, 1978 which was finished at about 12:00 o’clock noon. He propounded the questions in English, translated it to Hilonggo while the Hilonggo answer of the victim were translated by him in the English Language (Exhs. “I”, “1-A:).

“Pat. Dionisio Purificacion of the same Integrated National Police testified on the entry of the police blotter on August 7, 1978 as he was the Desk Officer from 3:00 o’clock in the afternoon to 11:00 o’clock in the evening. Such entry reads:

T E X T : R A P E

Miss Florencia Barrientos, student of MMC, GSC a resident of 20 M Recto St this city reported that a certain Elsa Balena 24 years old single, Student of SIC a resident of Waling-Waling St GSC was raped by unidentified person in front the City Hall Public Plaza at more or less 7:00 PM 8-7-78. The victim was not able to recognize the perpetrator because it was dark, raining and was strangled by the perpetrator. Case responded by Patm. Fundar.” (Exh. “3”).

“It was Miss Florencia Barrientos who reported to him directly with Elsa Balena who was the victim, trembling and very weak with her. He asked the victim though if she was able to recognize her assailant but the latter replied that she was not able to identify her aggressor because it was dark, raining, and she was also strangled. Asked why he used the word “recognize” in his entry and not the word “identify used by the victim, he said he changed it because they have the same meaning. He did enter the place of the commission of the crime which was the public plaza in the police blotter because he shortened his recording as there were many waiting for their turn. He

insisted that Pfc. Eddie Siasico was not around so it was Pat. Jose Jugarap and some other policemen whom he could not remember whom he directed to follow up the case (Tsn., pp. 330-359).”[3]

From the foregoing facts, it is clear, beyond any reasonable doubt, that the complainant Elsa Balena was raped in the evening of 7 August 1978 and that the accused committed the crime in the manner testified to by her. Her identification of the appellant as the one who abducted and later raped her, is positive and unequivocal and she had no reason whatsoever to falsely impute the crime to the appellant whom she met only on the night in question. Elsa Balena would not expose herself to public shame and humiliation by having to undergo a physical examination and testify in open court if her rape charge were not true. In *People vs. Daing, Jr.*,[4] the Court said:

“x x x Rape is the most difficult crime to report and to prosecute. Humiliation and shame accompany the rape victim from the moment of the attack. A woman who is raped is seen as defiled and often as having brought the rape on herself. These attitudes carry over into the treatment of the victim from the police station to the court, where the rape victim’s complaint is often callously disbelieved. It is not seldom that the woman’s experience in the police station and in court are as humiliating as the rape itself. So much so that a rape victim would not expose herself publicly in court by airing acts repugnant to her modesty unless impelled by the outrage perpetrated upon her person and inspired by a sincere desire to seek redress.”

In this appeal, counsel for the defendant-appellant assails the trial court for giving full faith and credit to the testimony of the complainant, which is allegedly improbable, contradictory, and full of inconsistencies.

We have examined the records of the case with extreme care and find that the flaws or discrepancies in the testimony of the complainant, pointed out by counsel for the defendant-appellant, are on minor details which do not destroy the substance of her testimony or other circumstances that point unerringly to the guilt of the defendant-appellant. Quite the contrary, these discrepancies and contradictions show that she was not rehearsed.

Counsel for the defendant-appellant claims that the crime could not have been committed in the public plaza of General Santos City which is 150 meters away from the City and Provincial Jails, with guards; 100 meters away from the Puericulture Center, 100 meters away from the City Hall, the Public Land Transportation Commission, the Philippine National Bank, the Bureau of Telecommunications and the Post Office, with their necessary guards, unless it was with the consent of the complainant.

Police blotters are replete with cases of rape committed in vicinities or places where people congregate, or by the roadside, or even within school premises where people abound.[5]

Besides, it should be recalled that the complainant was dragged to the middle of the plaza, between a tree and a mound, where she was assaulted. It was then raining and the accused had his hands around the neck of the complainant, choking her, so that whatever sound the complainant may have made was muted or not loud enough to call the attention of the guards or other persons in the places mentioned. It is said that mad, once overcome by bestial desires, chooses not the time, the place, the occasion, nor even the person. Jurisprudence abundantly attests to fathers raping their own daughters of tender age.

At any rate, the issue propounded is one of credibility of witnesses and the trial court, after having heard the complainant and observed her deportment, behaviour, and manner of testifying during the trial, was morally convinced that the guilt of the defendant-appellant was established beyond reasonable doubt and the Court finds no cogent reason to set it aside.

Counsel for the defendant-appellant also contends that the trial court erred in not considering the fact that the accused, being a moron, is exempted from criminal liability under Art. 12 of the Revised Penal Code.

There is no merit in the contention. The Court has ruled that insanity, under Art. 12 of the Revised Penal Code, exists when the accused is completely deprived of reason or discernment and freedom of will at the time of committing the crime, and mere abnormality of the mental faculties will not exclude imputability. Said the Court:

“As to what constitutes insanity in law, this Court has consistently hewed to the old, but still valid, parameters established in rulings of the Supreme Court of Spain interpreting paragraph 1, Article 8, of the old Penal Code of Spain from which Article 12 of our Revised Penal Code on this exempting circumstance is copied. In *People vs. Formigones*, (87 Phil. 658, 661) the following passage from Guevarra’s Commentaries on the Revised Penal Code, 4th ed., pp. 42-43, was quoted with approval:

‘The Supreme Court of Spain held that in order that this exempting circumstance may be taken into account, it is necessary that there be a complete deprivation of intelligence in committing the act, that is, the accused be deprived of reason; that there be no responsibility for his own acts; that he acts without the least discernment; that there is complete absence of the power to discern, or that there be a total deprivation of freedom of the will. For this reason, it was held that the imbecility or insanity at the time of the commission of the act should absolutely deprive a person of intelligence or freedom of will, because mere abnormality of his mental faculties does not exclude imputability.

* * *

‘The allegation of insanity or imbecility must be clearly proved. Without positive evidence that the defendant had previously lost his reason or was demented, a few moments prior to or during the perpetration of the crime, it will be presumed that he was in a normal condition. Acts penalized by law are always reputed to be voluntary, and it is improper to conclude that a person acted unconsciously, in order to relieve him from liability, on the basis of his mental condition, unless his insanity and absence of will are proved.’

“A line of later cases, notable among them, *People vs. Cruz*, *supra*, *People vs. Renagado*, *supra*, *People vs. Ambal*, and *People vs. Magallano*, reaffirmed adherence to the ruling in *Formigones*. Typical of these is *Renagado*, where it was held:

‘In the eyes of the law, insanity exists when there is a complete deprivation of intelligence in committing act (sic), that is, the accused is deprived of reason, he acts without the least discernment because there is a complete absence of the power to discern, or that there is a total deprivation of freedom of the will, mere abnormality of the mental faculties will not exclude imputability. The onus probandi rests upon who invokes insanity as an exempting circumstances and he must prove it by clear and positive evidence.’”[6]

In the instant case, the facts and findings of the psychiatrist who examined the defendant-appellant do not prove

criminal insanity. On the contrary, they reveal that the accused was not completely deprived of reason and freedom of will when he committed the crime charged. Dr. Sofilina F. Sison of the National Mental Hospital in Davao City, in her Report to the trial court, described the mental condition of the accused as follows:

“MENTAL STATUS:

“On Admission patient was observed to be an adult male, fairly-developed, fairly-nourished, ambulatory.

“He was observed to be cooperative during the interview and spoken in Tagalog, in all questions directed to him.

“He gave a fair account on the incident leading to the case charged against him. He denied knowing the girl who accused him, and the nature of the charge. He was emotionally stable but slightly apprehensive and suspicious. He denied hallucinatory experiences in all aspect. He was fairly oriented to place but not to the exact date. He admitted being childish and has poor judgment.

“On the succeeding examinations conducted, patient when interviewed appears slightly apprehensive but pauses for a while before answering questions.

“He could give a fair account of his life in Manila and also about his family.

“He vehemently denied when confronted on the case and insisted of not even knowing the girl who accused him.

“He has no visual and auditory hallucinations and denies delusional trends.

“He denies being mentally sick.

x x x

“IMPRESSIONS:

1. Mental Deficiency
2. Personality Disorder
3. Borderline Psychosis.”[7]

The defendant-appellant, Rolando Aragon, may be mentally deficient, but his feeble-mindedness does not exempt him from criminal liability.

WHEREFORE, the judgment appealed from is AFFIRMED with the modification that the indemnity to be paid to the offended party is increased to P20,000.00. With costs against the appellant.

SO ORDERED.

Melencio-Herrera (Chairman), Paras and Sarmiento, JJ., concur.

[1] Exhibit "K", Original Record, p. 2.

[2] Brief for the Appellee, pp. 2-7, Rollo, p. 57.

[3] Decision, pp. 4-7, Original Record, pp. 72-75.

[4] G.R. No. L-40574, Nov. 29, 1984, 133 SCRA 448, 459.

[5] People vs. Aragon, G.R. No. L-43752, Sept. 19, 1985, 138 SCRA 569.

[6] People vs. Aldemita, G.R. Nos. 55033-34, Nov. 13, 1986, 145 SCRA 451, 460.

[7] Exhibit 5.

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