

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. VALENTIN ATUTUBO, DEFENDANT APPELLANT.

G.R. No. 57145. May 24, 1988

Ponente: CRUZ, J.

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CRUZ, J.:

Marilyn Talavera had the ripe body of an eighteen-year old woman but her mind was that of an ignorant child. Assuming she did not resist when Valentin Atutubo had sexual intercourse with her, was there rape nevertheless under the law?

Atutubo says there was none as their union was a consensual act. The prosecution says there was because the girl, being a mental retardate, was not in a position to give her consent.

In its decision of October 2, 1978, the trial court found for the prosecution and sentenced Atutubo, to reclusion perpetua. He was also required to indemnify Marilyn in the sum of P12,000.00 and to recognize her child, which had already been born at the time.[1]

Suspicious of her daughter's frequent vomiting and missed periods, Patrocinia Talavera had taken Marilyn to the Jose Fabella Hospital in Manila for a medical examination. The girl was found to be pregnant. Upon questioning by her mother, Marilyn pointed to "Tio Boy," the accused-appellant, as the person who had caused her condition. Her pregnancy was confirmed in another examination at the Albay Provincial Hospital after their return to their province. Later, she was placed under observation in the Rodriguez National Hospital and found to be mentally deficient, with an I.Q. of 35.[2]

On the basis of these antecedent facts, Valentin Atutubo was formally charged with rape in an information signed by the fiscal and thumbprinted by Marilyn Talavera.[3] She was described therein as "a mentally retarded woman, 18 years of age," upon whom the accused had forced his attentions "with lewd design by the use of force and intimidation" and while she was "deprived of reason" and "against her will and consent."

It was established at the trial that on January 28, 1975, the 45-year old Atutubo invited Marilyn to his house and had sexual intercourse with her.[4] The accused-appellant admitted as such in a sworn statement[5] made during his custodial investigation and later during his testimony in open court.[6] He averred, however, that Marilyn had voluntarily submitted to him, as she had done on a previous occasion with another man.[7] He also said he had had several similar experiences with the girl as early as November 1974.[8]

Corazon Alipante, a psychologist, testified that she and Dr. Aguirre, a psychiatrist, subjected Marilyn to a series of tests beginning July 9, 1975, at the Rodriguez National Hospital.[9] She classified the girl, whom she considered "nice-looking," as a middle grade imbecile or a severely mentally retarded person, with the mentality of a child of 4 to 6 years old.[10]

We note that while in his brief the accused-appellant challenges the qualifications of Mrs. Alipante, he did not do so during the trial. The record also show that, after judgment had been rendered against him, he filed a motion for

the examination of Marilyn by what he called as independent psychiatrist.[11] This motion was granted on November 29, 1979, but he failed to present such psychiatrist during a period of all of two years, finally losing this opportunity because of the objection of the prosecution to the unwarranted delay.[12] As he first impliedly accepted the psychologist's competence to assess Marilyn's mental condition, and then forfeited his second chance to prove otherwise, it is too late for him now to raise this issue.

The theory of the defense is that no rape was committed because Marilyn's consent had been freely given. As she was more than 12 years old on June 28, 1975, and the accused had not deprived her of reason before the incident in question, he had committed no crime at all under Article 335 of the Revised Penal Code. Moreover, even assuming that Marilyn was really mentally retarded, he was not aware of this condition at the time of their sexual encounter. Hence, he cannot be held responsible for innocently supposing that she was fully agreeing to the act of intercourse with him.

This contention is untenable. The psychologist's finding that Marilyn had the mentality only of a 4 to 6-year old child has not been refuted and brings this case squarely under Article 335. Surely, if this provision punishes sexual intercourse with a girl less than 12 years old notwithstanding the lack of force or intimidation, it should apply as well to the herein victim. Even if already 18 years old at the time, she was certainly not possessed of the necessary discernment to enable her to resist the accused-appellant.

It is not necessary under Article 335 for the culprit to actually deprive the victim of reason prior to the rape, as by the administration of drugs or by some other illicit method. This provision also applies to cases where the woman has been earlier deprived of reason by other causes, as when she is congenitally retarded or has previously suffered some traumatic experience that has lowered her mental capacity. In such situations, the victim is in the same category as a child below 12 years of age for lacking the necessary will to object to the attacker's lewd intentions.[13]

In any event, Atutubo's claim that he was not aware of Marilyn's mental deficiency is difficult to accept. He was definitely no stranger to the girl, given his testimony that he had intimate relations with her not only on January 28, 1975, but several times before that date.[14] Even a stranger could in fact have easily concluded, by merely observing her, that Marilyn was abnormal not only in speech but mentally as well. Parenthetically, the accused-appellant testified first that he had sexual intercourse only once with her[15] and then contradicted himself later to say he had known her carnally four or five times earlier.[16]

The allegation in the information that the offense was committed with force and intimidation has not been satisfactorily shown, but that is immaterial in view of the above findings. The sworn statement taken from the accused-appellant without the assistance of counsel is, of course, inadmissible under the Bill of Rights.[17] However, that too is inconsequential because of Atutubo's testimony affirming his admissions in the said statement.

One consoling fact about this case is that Marilyn does not seem to realize the wickedness of the cynical outrage inflicted on her body and so is not distressed by it. Her condition, ironically enough, has spared her from the anguish a normal woman would have suffered from a similar affront to her honor and chastity. Childlike still, Marilyn has probably dismissed that harrowing incident from her simple mind even as she also has blithely ignored the infant born of her womb.

But this should not excuse the accused-appellant one whit from the penalties the law imposes upon lechers like him. Indeed, he is even worse than the ordinary rapist, if any comparison may be made of such perverts, for he has inflicted his lust upon a victim who did not even have the sense to resist his lascivious advances. The girl was completely defenseless when he took advantage of her. Mentally and physically, she was a helpless prey. That is

what makes this man's act doubly shameful - not to his victim but to him, if he has any shame at all.

WHEREFORE, the appealed decision is AFFIRMED except for the civil indemnity, which is increased to P30,000.00.

Narvasa (Chairman), Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] Rollo, pp. 12-13.

[2] Ibid., p. 78.

[3] Id., p. 6.

[4] Id., p. 10.

[5] Original Records, pp. 67-69.

[6] TSN, January 14, 1977, p. 89.

[7] Ibid., p. 90.

[8] TSN, May 10, 1977, p. 105.

[9] TSN, September 15, 1976, p. 72.

[10] Ibid., p. 76.

[11] Original Records, p. 140.

[12] Ibid., pp. 175-176.

[13] *People v. Asturias*, 134 SCRA 405, citing *People v. Daing*, 133 SCRA 448; *People v. Gallano*, 108 SCRA 405.

[14] TSN, May 10, 1977, p. 106.

[15] TSN, January 14, 1977, p. 96.

[16] TSN, May 10, 1977, p. 105.

[17] Section 12(1), Article III.

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