

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MELECIO ASTURIAS, DEFENDANT-APPELLANT.

G.R. No. 61126. January 31, 1985

Ponente: RELOVA, J.

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RELOVA, J.:

On May 18, 1982, the then Court of First Instance of Iloilo, Branch III, rendered judgment in Criminal Case No. 2662, for rape, as follows:

"WHEREFORE, the Court finds the accused - Melecio Asturias - guilty beyond reasonable doubt of the crime of rape as defined in the prefatory paragraph of Article 335 of the Revised Penal Code in relation to paragraph No. 2 thereof and penal-ized in the second paragraph of the same article, and hereby sentences him to suffer the penalty of reclusion perpetua, to indemnify Vilma Ortega the sum of P12,000.00, Philippine Currency, by way of damages, and to pay the costs." (page 7, decision)

The case is now before Us on appeal and the facts as disclosed by the evidence for the prosecution, are as follows:

When Vilma Ortega was seven (7) years old she was bumped by a jeep in front of San Jose College in Jaro, Iloilo City where she was studying. She sustained injuries in the head and other parts of her body. She was hospitalized for twenty-three (23) days after which she was able to continue her schooling. Her teacher observed, however, that she would sleep most of the time in class and was not attentive to the lessons. Likewise, her mother noticed that after the accident, Vilma all of a sudden would cry and then laugh. With this condition, Vilma was made to stop schooling at the age of eight after finishing Grade III.

About 9:00 in the evening of November 1, 1972, Vilma, who was then already 17 years old, was asked by accused-appellant, Melecio Asturias, a neighbor, to fetch water. She obeyed but after bringing in the water, Asturias closed the door of the room which was at the second floor of the house. Thereafter, he undressed her and had sexual intercourse with her. Fortunately, Flavio Ortega, the older brother of Vilma, whose house was only about eight meters away, happened to look through the window of his house. He saw his sister, Vilma, naked, her back leaning against the wall, and appellant, Melecio, directly in front, embracing her. Flavio shouted at Vilma who immediately dressed up and ran to her brother.

Flavio asked Vilma why she was in that condition and she replied that Melecio had sexual intercourse with her for a consideration of P1.00, with threat not to tell her kin about what had happened.

The matter was reported to the PC headquarters that same evening by Flavio and his older sister Perla Ortega. Appellant was apprehended and detained at the City Hall.

Vilma was examined by Dr. Mateo Solidarios, Head of the Mental Health Unit, Western Regional Hospital at Pototan, Iloilo, who found that she has a chronic brain disorder which is manifested by mental retardation and deficiency in memory - the cause of which is physical trauma in the head (Exhibit B). He concluded that Vilma is a moderate mental retardate, with a mentality lower than a 7-year old child. Hereunder is the testimony of Dr.

Mateo Solidarios:

Q

Because you have read the contents of this letter, what did you do with the person of Vilma Ortega?

A

I have done the mental examination of Vilma Ortega.

Q

Because of that mental examination of Vilma Ortega by virtue of the letter-request of Dr. Jose Rafio of November 3, 1972, do you remember having issued a medical certificate on the examination which you made?

A

Yes, sir.

Q

Showing to you this mental examination which for purposes of identification, request that it be marked as exhibit "B" for the prosecution, was this the mental examination certificate you issued?

A

Yes, sir.

Q

Is this mental examination certificate doctor showing which falls under diagnosis her mental condition? (Sic) Can you translate it?

A

This contents under chronic brain disorder which is manifested by mental retardation and deficiency in memory - the cause of which is physical trauma on the head. (Sic)

Q

And that physical trauma could have been caused by some hard objects making contact with the head called

traumatic injury?

A

Yes, sir.

Q

Mental retardation doctor is that mental incapacity of a person which could be the same to that of a child who is six years old?

A

After I have examined the patient Vilma Ortega, I have come into conclusion that mentally, she is even lower than a 7-year old."

(TSN, pp. 3-4, July 27, 1973 hearing).

Dr. Jose Rafio, Medico-legal officer of the Iloilo City Police Department, performed an internal examination on Vilma and his findings (Exhibit C) were as follows:

"INTERNAL FINDINGS

1.

PUBIC HAIRS - - - - - SCANTY

2.

LABIA MAJORA - - - - - GAPING

3.

LABIA MINORA - - - - - GAPING AND PROTRUDING FROM THE LABIA MAJORA

4.

HYMEN - PRESENCE OF AN OLD LACERATION AT 1:00, 6:00, 9:00, 10:00, and 11:00 O'CLOCK POSITIONS.

5.

VAGINAL OPENING - (A) ADMITS ONE FINGER (MIDDLE) EASILY. (B) ADMIT TWO FINGERS (MIDDLE & FOREFINGER) EASILY (C) ADMIT THREE FINGERS (MIDDLE, FORE-FINGER AND RINGFINGER) EASILY, AND WITHOUT PAIN.

6.

FOURCHETTE - - - - - ROUNDED SHAPE.

CONCLUSION

THAT MISS VILMA ORTEGA, IS PHYSICALLY UNVIRGIN."

The defense submits that the trial court erred (1) in convicting appellant on the ground that complainant, Vilma Ortega, is a "feeble-minded" woman; (2) in imposing the penalty of reclusion perpetua when the correct penalty should be reclusion temporal only, assuming that the accused is guilty; and, (3) in awarding P12,000.00, for damages.

Appellant Melecio Asturias, a married man with five children, and the complainant, Vilma Ortega, were neighbors in barangay San Vicente, Jaro, Iloilo City. According to Asturias, on November 1, 1972 (All Saints Day) they had a drinking spree in his house from 6:00 to 10:00 in the evening. He had as visitors the following, namely: Jose Gaceres, Ricardo Tortillas, Paquito Delfin and Basilio Espigar. His family was with him and he never left the house; in fact, he did not see complainant that evening.

Defense witness, Nena del Pilar, corroborated the testimony of appellant, saying that complainant was in her house helping her cook suman from 6:30 to 10:00 in the evening. Vilma left her house past 10:00 in the evening already.

The defense argues that "complainant was sane, she knew the sexual act, she knew the effect of her submission to the accused, assuming that the accused had sexual intercourse with her. It is not rape." (page 15, appellant's brief).

The contention is without merit. We take note of and sustain the finding of the trial court that the prosecution has successfully shown that Vilma Ortega was a mental retardate. "x x x the complainant, who was 17 years old at the time of the commission of the rape on November 1, 1972, had the mentality of a child less than seven years of age. Her mental deficiency may be gleaned from the following:

"1. During the first physical examination of the complainant by Dr. Rafio on November 3, 1972, he observed: (a) that the complainant responded to some questions with hesitancy; (b) that at times she was uncooperative in answering some queries and (c) that she was not steady in her answers.

"In this connection, Dr. Rafio noted in his letter of referral that the complainant 'is somewhat incoherent, and uncooperative, when answering questions being asked.' (Exhibit A).

"2. Dr. Solidarios, who conducted the mental examination of the complainant, expressed the opinion that she was a moderate mental retardate (see Exh. B); that he found that the complainant had 'chronic brain disorder which is manifested by mental retardation and deficiency in memory - the cause of which is physical trauma on the head' (tsn., p. 4, Sept. 27, 1973); and that he concluded that mentally the complainant was even lower, than a seven-year old child.

"3. By reason of the complainant's mental handicap, the prosecution, with leave of court, was allowed to ask her leading questions. (tsn., p. 3, June 25, 1974)

"4. The letter of Dr. Rafio (Exh. A) which embodies his observations as well as the certification of Dr. Solidarios (Exh. B) which contains his diagnosis of the complainant were admitted in evidence without objection by the defense. (tsn., pp. 36-38, August 13, 1975)

"5. The testimony of the complainant indicates that before November 1, 1972 the accused had sexual relations with her for more than 10 times. In all these instances, the accused gave her P1.00. Even after the sexual act on November 1, 1972, the accused handed her P1.00." (pp. 5-6, Decision)

The issue in the case of Vilma Ortega that a mentally retarded woman could not have given valid and legal

consent to the sexual act is not new. In the case of *People vs. Manlapaz*, 88 SCRA 704, We held that the victim, 13 years old at the time of the commission of the act but with the mentality of a 5-year old child, "is incapable of giving rational consent to the carnal intercourse." And, in the case of *People vs. Gallano*, 108 SCRA 405, the judgment of conviction by the trial court was affirmed by Us because complainant Victoria Micaller, who was then 31 years old at the commission of the act but had the mentality of a 7-year old child, "is a retardate or one mentally ill, such that she was incapable of offering any effective or real resistance to appellant's sexual assault (p. 407, Id). x x x Appellant's insistence that there was consent because he and complainant were sweethearts is therefore of no avail. In her defective state of mind, complainant could not have induced appellant to nurse a desire to have her for a sweetheart, nor could she have possessed the capacity to understand the meaning of having such a relationship with appellant. Her mental condition was such that she would not resist sexual advances because she was so deprived of reason to make any effective resistance. Hence, by her being so deprived, the act is made possible in the same way when there is active resistance but same is overcome by force and threat, which is the essence of the crime of rape (p. 413, id)."

Assuming that complainant Vilma Ortega voluntarily submitted herself to the bestial desire of appellant still the crime committed is rape under paragraph 3 of Article 335 of the Revised Penal Code. This is so even if the circumstances of force and intimidation, or of the victim being deprived of reason or otherwise unconscious are absent. The victim has the mentality of a child below seven years old. If sexual intercourse with a victim under twelve years of age is rape, then it should follow that carnal knowledge with a seventeen-year old girl whose mental capacity is that of a seven-year old child would constitute rape. "It would be a reproach to the state to hold that it affords no protection to morons of weak mental capacity, like the victim, against the base passions of unprincipled men." (*People vs. Manlapaz*, supra).

Anent the second assigned error, suffice it to say that Republic Act No. 4111 which took effect in June 1964 increased the penalty of rape from reclusion temporal to reclusion perpetua. Indeterminate sentence law does not apply to persons convicted of offenses punishable with reclusion perpetua which is an indivisible penalty. "The appellant is not entitled to any mitigating circumstance. Hence, whether or not he voluntarily surrendered and whether or not his crime was aggravated by dwelling is immaterial. The penalty will still be reclusion perpetua." (*People vs. Arizala*, 112 SCRA 615).

With respect to the award of damages, Article 345 of the Revised Penal Code provides that persons guilty of rape shall also be sentenced to indemnify the offended party. In *People vs. Peña*, 80 SCRA 589, We held that the imposition of an indemnity or civil liability is mandated in Articles 100, 104(3), 107 and 345(1) of the Revised Penal Code.

WHEREFORE, the judgment appealed from is AFFIRMED, with the modification that the indemnity of P12,000.00 is increased to P20,000.00.

SO ORDERED.

Melencio-Herrera, Plana, Gutierrez, Jr., and De La Fuente, JJ., concur.
Teehankee, Acting C.J., (Chairman), and Alampay, J., no part.

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