

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JAIME CALIMQUIM, ACCUSED-APPELLANT.

G.R. No. 61255. October 28, 1983

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

JAIME CALIMQUIM was accused of rape in the defunct Municipal Court of Sta. Barbara, Pangasinan. The verified complaint was filed by Angel F. de los Reyes, father of the girl said to have been raped, and it reads as follows:

"That at about 8:00 P.M. of April 8, 1978, inside the public market, in Poblacion Sur, Municipality of Santa Barbara, Province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously with lewd designs and by means of intimidation, committed the crime of RAPE on the person of CORAZON DE LOS REYES Y ANGUD, 14 years old and a physically retarded girl, in the mezzanine of the accused, situated also at the public market, Sta. Barbara, Pangasinan, until the latter had successful intercourse with the victim, to the damage and prejudice of the undersigned, in such amount as may be awarded under the provisions of the Civil Code of the Philippines. Medical Certificate is hereto attached." (Expediente, p. 1.)

The accused waived preliminary investigation for which reason the case was elevated to the defunct Court of First Instance at Dagupan city where it was docketed as Criminal Case No. D-1964. A plea of not guilty was entered by the accused on September 12, 1978, and after a protracted trial a decision dated June 24, 1982, was finally rendered with the following dispositive portion:

"WHEREFORE, the Court finds the accused JAIME CALIMQUIM, alias 'Enong' guilty beyond reasonable doubt of the crime of Rape, and pursuant to law, hereby sentences him to suffer the medium penalty of reclusion perpetua (life imprisonment), to indemnify the victim and aggrieved party, Corazon de los Reyes, in the amount of P12,000.00 as moral damages, and to pay the costs." (Rollo, p. 39.)

The case is now before this Court on appeal.

The People's version of the facts is as follows:

"This is a case of rape against a 14-year old girl who is mute, and is, as found by the lower court, 'a physically, if not mentally-retarded child.'

"The hapless victim, Corazon, is the youngest of five children of the spouses Angel and Luz de los Reyes. The couple has a market stall inside the public market of Sta. Barbara, Pangasinan which the couple and their children use as living quarters (TSN, July 6, 1979, pp. 33-36).

"The appellant, Jaime Calimquim, 30, single at the time of the incident, operates a light and sound system for hire. He also occasionally helps his mother, Maria Calimquim, to tend to their stall which is also inside the public market of Sta. Barbara. The stall of the Calimquims and that of the parents of Corazon are about 8 meters apart. The Calimquims also use their stall as living quarters (Tsn, Jan. 7, 1982, pp. 5-8).

"Corazon was born mute. She can hear however. According to her mother, Corazon communicates thru her actions (Tsn, July 6, 1979, p. 35).

"Jaime has known Corazon since she was five year old. He used to see her almost everyday from 1973 to 1978 in the market (Tsn, March 31, 1982, p. 20). He describes her 'as somewhat crazy, she cannot speak, and she uses her fingers when she talked and she always bends her head, (and) is physically unbalanced' (Tsn, March 31, 1982, p. 21).

"Corazon has a playmate, Levy Calimquim, an 8-year old niece of Jaime. They used to play in the latter's stall (Tsn, March 31, 1982, p. 21).

"On April 8, 1978, at about 8:00 o'clock in the evening, Corazon arrived home at the stall of her parents. She came from the stall of Jaime Calimquim (Tsn, July 6, 1979, p. 44). She looked pale, sweating and frightened (Tsn, July 6, 1979). She was trembling (Tsn, Oct. 10, 1979, p. 4). There were blood spots on her panty (Tsn, July 6, 1979, p. 38; Oct. 10, 1979, p. 4). Asked by her mother what happened, Corazon lay down and made a demonstration with a forward and backward movement of her hips. She pointed to her vagina with a push and pull motion (Tsn, July 6, 1979, pp. 40-41).

"While making a demonstration of what happened, Corazon was pointing to the stall of Jaime. She cupped her breast with her hand and at the same time made a push and pull move-ment of her hips (Tsn, Oct. 10, 1979, p. 6).

"Thinking at first that Corazon had menstrua-tion, her mother, Luz de los Reyes washed Corazon's private parts. Corazon felt some pain. Asked again by her mother what really happened, Corazon repeated with gyrations of her hips, at the same time pointing to the stall of Jaime Calimquim (Tsn, Oct. 10, 1979, p. 5).

"During all the time that Corazon was demonstrating what happened to her, Jaime was standing near their stall observing (Tsn, July 6, 1979, p. 38; Aug. 7, 1979, pp. 11-14).

"Luz then called for her husband to inform him about the incident (Tsn, Oct. 10, 1979, p. 6). Together with Corazon, they proceeded immediately to the house of barrio councilman Rodrigo Bautista. The latter advised them to see a doctor to have Corazon examined (Tsn, Nov. 14, 1979, pp. 11-12). They then proceeded to the Pangasinan Provincial Hospital in Dagupan City. Corazon was examined at 10:25 o'clock that same evening, April 8, 1978, by Dr. Fatima De Leon. After examining Corazon, Dr. De Leon remarked: 'Brother, this is rape and this is still fresh, so you try to file a case in court' (Tsn, Nov. 14, 1979, p. 13).

"Dr. De Leon issued a medico-legal cer-tificate, Exhibit A, as follows:

April 11, 1978

TO WHOM IT MAY CONCERN:

This is to certify that Corazon de los Reyes, 15 years of age, female, single, Filipino, and a resident of Sta. Barbara, Pangasinan, has been attended in this hospital on April 8, 1978, at 10:25 P.M. for:

- conscious - ambulatory.
- Menarche - none
- Physical Examination - no sign of external physical injury, except a laceration at fourchet, measuring .5 cm. long
- Internal examination
- Vagina - admits two fingers easily

- Hymen - fresh laceration at 3-7-9 o'clock position.
- Cervix - close, firm
- Uterus - small
- Anexae - free
- Vaginal smear for spermatozoa - negative.

Patient was not admitted in this hospital.

REMARKS: _____

In the opinion of the undersigned, the injuries will require medical attendance for a period of from _____ () to _____ () _____ unless complications set in or manifestation due to internal injuries which were apparent at the time of examination that may later appear.

(SGD.) FATIMA O. DE LEON, M.D.

Resident Physician /vms

Copy furnished:

Station Commander, Sta. Barbara, Pang.

BY

(Illegible)

"On April 11, 1978, the incident was reported to the Sta. Barbara Police Department. Luz de los Reyes gave a statement narrating the incident (Exh. B, Exh. 1). She also gave a statement before the Municipal Judge of Sta. Barbara, Pangasinan (Exh. C, Exh. 2).

"The criminal complaint was filed on April 11, 1978 (Exh. D)." (Brief, pp. 1-6.)

The only issue in this appeal is the credibility of witnesses as shown by the assignment of errors, to wit:

"I. That the guilt of the accused has not been proved beyond reasonable doubt.

"II. That the Trial Court erred in convicting the accused." (Brief, p. 3.)

On the credibility of witnesses, well-settled is the rule that the findings and conclusions of the trial court command great respect and weight because it was in a better position to examine real evidence as well as to observe the demeanor of witnesses while testifying in the case. Alas, the rule can only be partially applied in this case because Judge Willelmo C. Fortun who penned the decision did not preside over the trial from the beginning to the end. Judge Justo Orros, Jr. tried the case when the prosecution presented its evidence and then Judge Fortun took over. For this reason, the record has been examined with more than the usual care in order to avoid a miscarriage of justice.

The appeal must fail.

The appellant claims that no rape was committed because of the circumstances of many persons present at 8:00 P.M. in a public market. This claim is best refuted by Judge Fortun who had personal knowledge of the circumstances. He said:

"The defense tried to show the improbability of the accused's having committed the crime charged,

considering that the other stalls near the accused's stall were still open at the time of its alleged commission, and there were still many buyers or shoppers thereat and the stalls were even lighted with electric bulbs. It is highly and inherently improbable that at 8:00 P.M. when accused raped Corazon, there were still many buyers in the market. The Court can take judicial notice of the fact that at 8:00 P.M., provincial markets are already deserted. Market vendors usually close their stalls as early as 6:30 or 7:00 P.M. Besides, the evidence disclosed that the rape victim, Corazon de los Reyes, is mute being a physically, if not mentally-retarded child. She cannot speak or shout while being sexually attacked and abused by accused. Accused very well know that condition of Corazon de los Reyes, having, admittedly, known her since the time she was only 5 years old. He, therefore, took advantage, knowing she will not and can not raise an outcry, thereby precluding risk of detection or discovery by the people in the market." (Rollo, pp. 37-38.)

The appellant claims that he did not rape Corazon; that she sustained injuries in her genitalia because of her fall to the cement floor as she slid down the bamboo balustrade of the stairs going to the mezzanine of his mother's stall when she played with Levy Calimquim; and she was negative for spermatozoa.

Corazon admittedly is not only a mute but also a retardate. But when she was placed on the witness stand she was able to convey, albeit vaguely, what happened to her.

Corazon testified through interpreters. Mrs. Dominga Quejado was supplied by the prosecution. To check on Mrs. Quejado, the defense had Mr. Leonardo Tagapia. The qualifications of both interpreters were scrutinized and found satisfactory.

In fairness to the appellant, the testimony of Corazon on December 6, 1979, is hereby reproduced:

"COURT

Are the interpreters here?

ATTY AREOLA

Yes Your Honor, we have the interpreter coming from Manila Mr. Leonardo Tagapia.

FISCAL DANCEL

Mrs. Dominga Quejado is here, Your Honor

COURT

Mrs. Quejado, will you please apprise the witness the obligation of our 'oath' which she will take before giving her testimony.

ATTY AREOLA

May we make it of record that when the witness has been advised at the injunction of the court, to testify the truth and nothing but the truth, the witness answered in the affirmative, Your Honor.

"COURT

May I remind both interpreters that they are both under oath.

DIRECT EXAMINATION BY

FISCAL DANCEL

Q Will you please state your name, age, and other personal circumstances?

A CORAZON DE LOS REYES, after having been duly sworn to in accordance with law, stated that she is

sixteen years old. She further testified as follows:

MRS. QUEJADO

Your Honor, she could not mention her name, I think she does not understand, Your Honor.

MR. TAGAPIA

The way I observe she can talk, she can hear, if only my co-interpreter will come closer and by lip reading perhaps, she can interpret what the witness wants to imply.

FISCAL DANCEL

Q You are Corazon de os Reyes?

A Yes sir.

Q How old are you?

A Sixteen (16) years old.

ATTY AREOLA

May we make it of record that when witness was asked of her age, she made a sign of her age, with all her fingers indicating sixteen (16).

FISCAL DANCEL

Q Who is your mother?

A (Witness pointing a person seated in the court-room, who, when asked her name, she identified herself as Luz de los Reyes).

Q Now do you know the accused in this case by the name of Jaime Calimquim, alias 'Inong'?

A Yes sir.

Q Will you please point to him if he is in court?

A (Witness pointing to someone who is seated in the courtroom, who, when asked his name, identified himself as Jaime Calimquim).

Q What did Jaime Calimquim do to you?

ATTY AREOLA

Vague, Your Honor.

COURT

Sustained.

FISCAL DANCEL

Q On April 8, 1978 at around 8:00 o'clock in the evening at Sta. Barbara, Pangasinan, did you see the accused Jaime Calimquim alias 'Inong'?

A Yes sir.

Q Where did you see the accused, Jaime Calimquim alias 'Inong'?

A She pointed at a certain place saying 'diman'.

ATTY AREOLA

I would like to make this observation that when the question 'where' has been asked several times (3 times) by the interpreter and the witness has been turning her head left to right and then after the question has been repeated for the third time, the interpreter is pointing to a direction towards Sta. Barbara, Pangasinan.

MRS. QUEJADO

It was the witness, Your Honor, who pointed to Sta. Barbara, Your Honor.

ATTY AREOLA

I am trying to be honest and I saw it with my two eyes that the interpreter pointed to Sta. Barbara, Pangasinan, touching the shoulder of the witness.

COURT

The Court did not observe that the interpreter made any gesture or pointing. Next question.

FISCAL DANCEL

Q Now what did Jaime Calimquim alias 'Inong' do to you when you saw him on April 8, 1978 at around 8:00 o'clock in the evening at Sta. Barbara, Pangasinan?

INTERPRETER

Your Honor, she understand but she can not answer.

ATTY AREOLA

I would like to make it of record this observation, that despite the lapse of sometime on two repeated questions on the same impulse, witness did not make any answer.

FISCAL DANCEL

I observe Your Honor that witness made some movements, in fact she is now moving.

COURT

The court observed that witness made a little jerk. Ask another question.

FISCAL DANCEL

Q What happened to you when you saw Jaime Calimquim the accused, alias 'Inong' at Sta. Barbara, Pangasinan on April 8, 1978 at around 8:00 o'clock in the evening? Will you please demonstrate to this Court if something happened to you?

COURT

Make it of record that witness just smiled then remained quiet.

ATTY AREOLA

I want to further show that as the interpreter was asking the question, witness was looking directly to the face of the interpreter.

WITNESS

A (At this juncture the witness is putting both her hands on her breasts make a one forward movement of her hip).

FISCAL DANCEL

Q Will you please get down from your chair and stand and demonstrate on the floor what happened to you when you saw Jaime Calimquim, alias 'Inong'?

A (Witness lied, with face downward to the floor).

COURT

Wait a minute. To avoid any question later on, I think we are communicating well with the witness. The way the questions have been interpreted to her, she seem to understand for which reason we will now require the official interpreter of the Court to do the interpretation. We will ask the assistance from both interpreters if necessary. To avoid suspicions, it is now the official court interpreter who will interpret from now on. Now proceed.

(After the question has been repeated)

WITNESS

A (Witness again makes a forward movement of her hip two times).

FISCAL DANCEL

Q What else did Inong do to you?

ATTY AREOLA

We will object to that question, because it has been asked several times.

COURT

Because of the apparent difficulty in getting responsive answer from the witness, the Court will be considerate and allow the question to be asked again.

FISCAL DANCEL

Q Did you understand my question, which is 'what did Jaime Calimquim do to your panty'?

A Yes sir.

Q My question to you is, what did Jaime Calimquim do to your panty, will you please demonstrate it to the court?

A (Witness again demonstrated to the court, forward movements of her hip, two (2) times).

Q Do you know what a panty is?

A No sir.

FISCAL DANCEL

May I ask the interpreter to interpret panty as 'carson'.

ATTY AREOLA

I will object, witness says she does not know a panty, Your Honor, then how could she - - -

COURT

Q Do you have a 'carson' now with you?

WITNESS

A Yes sir.

FISCAL DANCEL

Q Will you please show it to the Court the 'carson' you are wearing now?

ATTY AREOLA

I want to make it of record that after the question has been asked from witness, the witness was laughing and looking at the interpreter.

WITNESS

A (The witness is pointing to her long pants, colored, 'maroon'.)

FISCAL DANCEL

Q Now what did Jaime Calimquim do to your 'carson' if any. Please demonstrate to the court if there is any. Did you understand the question?

WITNESS

A No sir.

ATTY AREOLA

May I make it of record that after two minutes elapsed, the witness did not give any answer.

COURT

Yes because she said she did not understand the question.

FISCAL DANCEL

Q My question is what did Jaime Calimquim do to your 'carson'?

WITNESS

A (Again the witness is demonstrating to the Court a forward movement of her hip, two (2) times).

FISCAL DANCEL

Q Were you lying down when Jaime Calimquim alias 'Inong' had sexual intercourse with you?

ATTY AREOLA

Leading, Your Honor.

COURT

Sustained, question has no basis.

FISCAL DANCEL

Q Do you know the person who had sexual intercourse with you?

ATTY AREOLA

Your Honor, there is no evidence to show that there was sexual intercourse.

COURT

Sustained.

FISCAL DANCEL

Q Do you know the person . . Your Honor I cannot ask any other question - - -

Q Do you know the person who did that movement that you demonstrated before the court?

ATTY AREOLA

We will object to that, it is not imputed that anybody did any movement to her.

FISCAL DANCEL

There must be somebody because how could there be - - -

Q You demonstrated before this Court a movement which is a forward movement with your hip, was that done by any person?

A Yes sir.

Q Do you know who was that person who did that to you?

A Yes sir.

Q Will you please tell his name if you know?

A 'Jaime'.

Q Will you please point to this Court that 'Jaime' you mentioned if he is here now?

A That one sir. (Witness pointing to the accused, seated in the courtroom, who when asked his name identified himself as 'Jaime Calimquim').

FISCAL DANCEL

That will be all for the witness, Your Honor.

COURT

Cross.

CROSS EXAMINATION BY

ATTY AREOLA

Q You are a good girl Corazon?

A Yes sir.

Q You love your mother and father?

A Yes sir.

Q You are bright?

A Yes sir.

COURT

The word 'maong' maybe good.

ATTY AREOLA

Q You are good?

A Yes sir.

Q You can identify a person whom you have been before?

A No sir.

Q You remember things that happened before you sat down in this chair?

A Yes sir.

Q You know what is daytime and what is night time?

A Yes sir.

Q Now is a daytime, is it not?

A Yes sir.

Q Because there is sun there up, is it not?

A Yes sir.

Q When you can not see that sun there already, what is it?

FISCAL DANCEL

May I make it of record that witness slightly smiled, apparently she failed to comprehend the meaning of the question, Your Honor.

COURT

Ask another question.

ATTY AREOLA

Q Do you know the name of the days, like days of the week?

A Yes sir.

Q Will you please name them?

A (Witness is making a 'nod' gesture).

ATTY AREOLA

Evoking that she does not like to answer the question.

FISCAL DANCEL

She can not mention the days probably, that is why - - -

ATTY AREOLA

Q Do you know how to count?

A No sir.

Q Do you know the name of the month?

A Yes sir.

Q Will you name some of them?

ATTY AREOLA

May I make it of record that the witness is nodding her head.

COURT

Ask her if she can say it or not?

WITNESS

A No sir.

ATTY AREOLA

Q Why not? You do not know?

A Yes sir.

ATTY AREOLA

Then how could we appreciate this testimony.

COURT

You can ask that later if you want. Ask another question.

ATTY AREOLA

Q Do you know what is an hour?

A No sir.

COURT

Q What is an hour?

WITNESS

(Witness is nodding her head when that question was asked).

ATTY AREOLA

Q Do you know what is a minute?

A Yes sir.

Q How many minutes is one hour?

A Witness demonstrated in sign language 'one'.

FISCAL DANCEL

Apparently by indicating one she is referring to the hour which was mentioned.

COURT

She made a gesture of 'one' (1).

FISCAL DANCEL

I observed that witness is uneasy, may I request for a five (5) minutes recess.

ATTY AREOLA

May I make it of record that from the beginning witness kept on turning all around.

COURT

Make it of record that witness has not respond orally except 'yes' and 'no' answers, and by 'gestures'. And counsel is apparently asking days and months which witness may not be able to utter.

FISCAL DANCEL

I made a manifestation that we should have a recess, because I observed that witness is making a gesture to her mother.

ATTY AREOLA

Alright we have a recess.

COURT

Recess for ten (10) minutes. (Hearing was temporarily suspended and resumed at 10:30 o'clock in the morning).

ATTY AREOLA

Q Now Corazon, are you hungry?

A No sir.

Q I have a candy here, do you like this candy?

A No sir.

Q On question of the Fiscal you said that on April 8, 1978 at about 8:00 o'clock in the evening you saw Jaime Calimquim. Do you remember what day was April 8th?

A Yes sir.

Q Will you tell the court what day was that April 8th?

A (Witness is nodding her head when the question was asked).

Q Before coming to Court, have you seen this woman before?

A Yes sir.

ATTY AREOLA

We want to show that she was pointing to Mrs. Domingo Quejado.

Q Where did you see this woman Mrs. Quejado before coming to court?

COURT

How can we get her to answer if she knows only 'yes' or 'no' and by nodding her head.

ATTY AREOLA

We are testing the credibility of the witness insofar as the right of discernment is concerned. May I ask again my question, Your Honor. (After question has been repeated) May I make it of record that in answer to the last question, witness made a movement of her head which is an upward movement.

Q Did you see this woman in your house in Sta. Barbara, Pangasinan before coming to court?

A Yes sir.

Q Could you tell the court what did this woman do in your house in Sta. Barbara?

A Yes sir.

COURT

The interpretation is quite - - -

Q Could you tell the Court what this woman did in your house?

A Yes sir.

ATTY AREOLA

Q She talked to you?

A Yes sir.

Q She talked to you about Inong or about Jaime Calimquim?

A Yes sir.

Q She told you to talk about Inong in court here?

A Yes sir.

Q That is why you are now talking about Inong before this court?

A Yes sir.

Q Could you tell exactly what day of the month when this woman went to your house?

A Yes sir.

ATTY AREOLA

May I make it of record that witness is smiling looking at the interpreter, Mrs. Dominga Quejado and was smiling.

COURT

You ask her could you tell the day, but before that, you ask her first if she could understand the question and if she can tell the day.

ATTY AREOLA

Yes, Your Honor.

Q The question I ask here is whether she understand the question.

COURT

You ask that.

(After asking the question again)

WITNESS

A Yes sir.

ATTY AREOLA

Q Having understand the question are you in a position or could you be able to tell or say or speak out the date when this woman went to your house in Sta. Barbara, Pangasinan?

COURT

Q Could you speak out the date when this woman went to your house?

WITNESS

A Yes sir.

COURT

Q Could you please tell it?

ATTY AREOLA

May I make it of record that witness did not answer the question and witness is just smiling.

COURT

Next question.

ATTY AREOLA

Q Are you tired now?

A Yes sir.

Q You like that we stopped talking now?

A Yes sir.

ATTY AREOLA

That will be all for the witness, Your Honor.

COURT

Any redirect?

FISCAL DANCEL

In the interest of justice may I ask additional direct question for some important points, Your Honor.

COURT

In the interest of justice, in view of the apparent difficulty in questioning the witness, Fiscal is allowed to ask

additional direct examination questions.

ADDITIONAL DIRECT EXAMINATION BY

FISCAL DANCEL

Q Corazon, will you please point to your father?

A That one sir, (Witness pointing to his father who is seated in the courtroom, who when asked his name identified himself as Angel de los Reyes).

ATTY AREOLA

I would like to make it of record that when the question was asked by the Fiscal and was automatically translated by the interpreter, it was automatically answered by the witness, by pointing to her father.

FISCAL DANCEL

Q Corazon, do you know a 'penis'?

ATTY AREOLA.

This is out of the blue. It could not be the subject of additional direct because it was not covered by her testimony.

FISCAL DANCEL

In the interest of justice, because we forgot this point, Your Honor.

ATTY AREOLA

It is not our fault, Your Honor.

FISCAL DANCEL

May we ask additional question.

COURT

Considering the physical handicap of the witness and with the candid admission of the prosecution that they have forgotten some important points, and subject to the evaluation of the court later on, the question is allowed.

FISCAL DANCEL

Q Did you understand my question Corazon?

A Yes sir.

Q Do you know what a 'penis' is?

A No sir.

Q If you understand it, please answer my question?

ATTY AREOLA

Already answered, Your Honor.

COURT

Already answered. Ask another question.

FISCAL DANCEL

That will be all for the witness, Your Honor.

COURT

Any recross? No further question? You are excused. Any other witness?

FISCAL DANCEL

She is our last witness, Your Honor." (TSN, Dec. 6, 1979, pp. 2-30.)

Aside from Corazon's testimony, there is other evidence to prove the rape.

Luz de los Reyes, mother of Corazon, testified that at about 8:00 p.m. on April 8, 1978, Corazon looked pale, was sweating and frightened. She had blood on her panty. She asked Corazon what her problem was and "My daughter stood up and made a motion of push and pull of her abdomen." Corazon also pointed to her vagina. Present at that time were Jaime Calimquim and her other daughter Divina. She was told by Calimquim, "I did not do anything to your daughter, and God knows." Luz brought Corazon to the hospital and reported the matter to the police authorities. At the hospital Corazon was examined by Dr. Fatima de Leon. (TSN, May 25, 1979.)

Romeo Dacasin testified that on April 8, 1978, at about 7:00 p.m. he was in the public market of Sta. Barbara, Pangasinan. There he saw in the Calimquim stall, Jaime, Corazon and another little girl. He left the market at about 7:50 p.m. and at that time Corazon was still in the Calimquim stall. (TSN, August 8, 1979.)

Divina de los Reyes, older sister of Corazon, testified that after she had finished eating at the public market of Sta. Barbara, Pangasinan, on April 8, 1978, Corazon arrived. "She was frightened and she was trembling." She had blood on her pants. Their mother thought that Corazon had menstruation so she washed the private part of Corazon. "When my mother was washing the private part of Corazon, Corazon said she felt pain and my mother asked her why she is feeling that pain. After that Corazon demonstrated what happened to her and at the same time pointing to the stall of the accused." Corazon was brought to the hospital. On April 10, 1978, Maria Calimquim and her son Peling went to the stall of the De los Reyes family; they asked forgiveness for what Jaime had done. Angel de los Reyes, father of Corazon, just kept silent. (TSN, October 10, 1979.)

Angel delos Reyes, father of Corazon, testified that he was watching television in the evening of April 8, 1978, when he was told that his daughter had a problem. He went to the house of Councilor Rodrigo Bautista where he saw his wife and Corazon. Bautista told him to take Corazon to a doctor. Corazon was taken to Dagupan City where she was examined by Dr. de Leon. "After examining, she told me Brother, this is rape and this is still fresh, so you try to file a case in court." (TSN, November 14, 1979.)

Angel delos Reyes in fact filed a criminal complaint for rape against Jaime Calimquim on April 11, 1978, in the Municipal Court of Sta. Barbara, Pangasinan.

Dr. Fatima de Leon identified Exhibit A, the medical certificate which she issued after conducting an examination on Corazon de los Reyes. She said that the laceration on Corazon's labia majora measuring 5 cm. could have been caused by forcible contact with a blunt instrument and a male organ is a blunt instrument. She also testified that Corazon's vagina which admitted two fingers easily and the fresh laceration on her hymen could have been caused by the penetration of the male genital organ. (TSN, May 25, 1979.)

The fact that the appellant's mother sought forgiveness for her son from Corazon's father is an indication of guilt. (See *People vs. Olmedollo*, L-42660, August 30, 1982, 116 SCRA 193.)

The appellant's claim that Corazon's lacerations on her genitalia were sustained when she fell on the cement floor is too crude to be convincing. A fall would at best produce abrasions and contusions but not hymenal laceration and bleeding. As to the bleeding, it could not have been due to menstruation. According to Dr. de Leon, the word "menarche" in Exhibit A means "that the patient has not menstruated yet."

The absence of spermatozoa in the vagina of Corazon when she was examined by Dr. de Leon avails him not. For according to the same doctor, spermatozoa cannot be detected after a few hours because they will have dried up. Our jurisprudence tells us that the absence of spermatozoa in the vaginal canal does not disprove the commission of the crime of rape where the essential element is penetration, not emission. (People vs. Salazar, L-37791, October 30, 1979, 93 SCRA 796.)

The instant case is very similar to that of People vs. Manlapaz, L-41819, February 28, 1979, 88 SCRA 704. In that case, Therese Endencia was the victim and she was the only witness to the act of rape. She could not give a coherent, clear and consistent narrative as to how she was ravished because she was mentally retarded and speech-defective. The fact of rape was established mainly on the testimony of Therese's mother and the physician who examined Therese. In the words of the decision:

"Mrs. Endencia recounted in court how she came to know that Therese had sexual intercourse with Winston [Manlapaz]. On New Year's Day, January 1, 1973, while Mrs. Endencia was cleaning her house, she found two white pills in the locker of Therese. When she queried her daughter as to the function of the pills, Therese answered that the pills 'were for not having a baby' or were contraceptive pills. Mrs. Endencia found out that her daughter got the pills from Winston and that Therese had sexual intercourse with him two times." (At p. 709.)

We are morally satisfied that the appellant committed the crime of rape on Corazon, a mute and a mental retardate. The fact that Corazon could not give a coherent narration of the rape does not detract from Our conclusion considering that the record is replete with other evidence to support it.

WHEREFORE, finding no error to have been committed by the court a quo, its judgment is affirmed in toto. Costs against the appellant.

SO ORDERED.

Makasiar, (Chairman), Aquino, Concepcion, Jr., Guerrero, and Escolin, JJ., concur.
De Castro, J., on sick leave.

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