

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PEDRO PALMA, DEFENDANT-APPELLANT.

G.R. No. 69152. September 23, 1986

Ponente: FERNAN, J.

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FERNAN, J.:

Pedro Palma, a 64-year old carpenter, had a small store on the ground floor of his house in Torres Subdivision, Iyam, Lucena City. About 150 meters away from that store, Imelda Telada, a 14-year-old mental retardate, resided with her family.

Around five o'clock in the afternoon of Saturday, May 16, 1981, Imelda was sent by her mother, Luz, to Palma's store to buy a peso worth of bread. Luz gave her a two-peso bill.

Except for Palma, there was nobody else in the store. After Imelda had told him that she wanted to buy bread, Palma went outside the store, gave the bread and the one peso change to Imelda, and told her to go inside ["pumarito ka sa loob"].

Imelda went inside the store with Palma following her closely behind. He told Imelda that he would give her candy and two pesos. They entered a room with two beds and furniture with a blanket on it.

Once inside that room, Palma undressed Imelda and removed her panty ["Ako po'y hinubaran at inalis ang aking panty"].^[1] She could not object because he threatened to kill her.

While removing his pants, Palma told Imelda to lie down on the bed. As he approached her, Palma warned Imelda not to tell her mother ["huwag kang magsusumbong"]. Then Palma touched and mashed her breast, and placed his organ on hers in a push and pull ["labas-pasok"] movement. Imelda felt pain and told Palma that she did not like what he was doing ["Sinabi ko na ayaw ko ng labas pasok at masakit"]. There was blood in her private part after Palma pulled out his organ.

Thereafter, Palma dressed up and told Imelda to dress up, too. They went out of the room into the store where Palma gave Imelda the candy and two pesos that he had promised. Once more, Palma warned Imelda not to tell her mother or anybody about what had just happened otherwise, he would kill her. Imelda then left the store, forgetting the bread she had bought.

Meanwhile, in the house nearby, Manuel Torres, 24, was visiting his girlfriend. He saw Imelda enter the store of Palma. Suspecting that she might steal something from the store, Torres went to the back of Palma's house.

Through the open back door, Torres witnessed Palma raising Imelda's dress, touching her breast, kissing her, removing her panty, and touching her organ. Embarrassed by what he saw, Torres went back to where he was seated with his girlfriend and waited for Imelda to come out of the house. After about fifteen minutes, Imelda emerged from the house. Torres saw Palma as he kissed her again and gave her two pesos.

Torres confronted Imelda. He told her to report to her mother what Palma had done to her. He warned her that if

she ever returned to Palma's house, he would beat her. Imelda went home running, but did not tell her mother about what Palma did to her. In fact, she even returned to Palma's store to retrieve the bread she had forgotten.

It was only the following afternoon of May 17, 1981 that she confided to her mother that she was abused ["pinagsamantalahan"] by Palma. According to Luz, Imelda said, "Mommy, ako po ay isinuot ni Pedro ang titi sa aking kiki".[2]

Imelda's father, Eutiquio, was not at home then even if it was a Sunday. He was working in Manila and his job could take him anywhere in Luzon. When he finally arrived home, he and Luz agreed to have Imelda examined at the Quezon Memorial Hospital in Lucena City.

On June 2, 1981, Doctor Lourdes T. Taguinod found that Imelda had a complete, old and healed hymenal laceration at the 9 o'clock position; that her vagina admitted two fingers without difficulty; that her cervix was small and closed and her uterus was likewise small; that there was no sign of any physical injury in her body; and that a laboratory examination for the presence of spermatozoa revealed a negative result.[3]

Imelda's parents agreed to file a complaint in the City Fiscal's Office in Lucena City but after investigation, the case was dismissed. However, the Minister of Justice, after reviewing the case, ordered its prosecution.[4]

The complaint dated March 1, 1982 and signed by Luz Telada, was filed with the Regional Trial Court of Lucena City charging Pedro Palma with rape under Article 335 of the Revised Penal Code. On arraignment, Palma pleaded not guilty.

The prosecution presented as witnesses Luz and Imelda Telada, Manuel Torres and Doctors Lourdes Taguinod and Sancho C. Anenias. Doctor Taguinod testified that the laceration in Imelda's hymen could have been caused by the insertion of a blunt instrument or an erect penis.[5] Doctor Anenias, who had specialized in child psychiatry in the United States, testified that his examination and evaluation of Imelda revealed that her growth and development was "below the level of her chronological age"[6] and described her intellectual capacity as "borderline mental deficiency"[7] or "borderline between normal and moron".[8]

After the prosecution had presented its documentary evidence, or on June 17, 1983, the defense filed a motion for the acquittal of Palma on the ground of insufficiency and inconclusiveness of the evidence presented by the prosecution.[9] The prosecution opposed the motion.

On August 15, 1983, the trial court denied the motion to acquit after finding that it had been prematurely filed. The court stated in its order that the issue of the alleged inconsistency in the testimonies of Luz and Imelda and the credibility as a witness of mentally deficient Imelda should be resolved only after the defense had presented evidence.

Pedro Palma testified that during the months of April and May, 1981, except Sundays, he was busy constructing the poultry house of Carmencita Guinto and that it was his wife, with her grandchild's help, who attended to their store. On cross examination, he admitted having seen Imelda play near the store four or five times in the afternoon after his work, about five days before May 16, 1981.[10] He denied having raped Imelda. He said that it was not true that, as claimed by Imelda, his private part measured five inches when it was hard.[11]

Palma's wife, Leoncia Driz, testified that she and Palma have no children. In support of Palma's testimony that he had become incapable of performing the sexual act since he became sixty years old,[12] Leoncia claimed that she had not had sexual intercourse with her husband for more than five years.[13] Leoncia is two years older than Palma.

To reinforce Palma's alibi, the defense presented barangay captain Rafael Bassit who asserted that he saw Palma

build the poultry house of Carmencita Guinto near the barangay center. Carmencita was not presented as witness because she was allegedly working in Saudi Arabia.

On October 10, 1984, the trial court rendered a decision finding Palma guilty beyond reasonable doubt of rape as defined and punished in Article 335 of the Revised Penal Code and sentenced him to reclusion perpetua. The trial court stated that although it was convinced that Palma had sexual intercourse with Imelda, it found that the prosecution evidence to prove intimidation was grossly inadequate. However, it concluded that Imelda Telada is "mentally deficient enough to be unable to give a valid consent to a sexual intercourse with Pedro Palma and that Pedro Palma is aware of this mental deficiency of Imelda and took advantage of it".[14]

In this appeal, Palma contends that the trial court erred in convicting him. He assails the trial court's decision because he believes that it erred in: [1] giving weight and credence to the testimony of the mentally deficient complaining witness; [2] not giving due credence to his testimony inspite of the fact that he is more than sixty-five years old and incapable of sexual intercourse; and [3] not granting the motion to acquit filed after the prosecution had adduced its evidence.

The appellant questions the credibility of prosecution witnesses Luz and Imelda Telada by noting the discrepancy in their testimonies on the date when Imelda told her mother about what Palma did to her. He observes that while Imelda testified that she told her mother about the incident "immediately" thereafter or on May 16, 1981, her mother stated in court that Imelda confided to her in the afternoon of the following day or on May 17, 1981.

That discrepancy is immaterial. On the part of mentally retarded Imelda, lapse of memory is expected. Moreover, discrepancy of one day as to when a relative was told of the rape does not negate the victim's credibility.[15]

As regards Imelda's credibility as a witness, we have held that a feebleminded complainant is a competent witness as long as she can convey her ideas by words or signs and give sufficiently intelligent answers to the questions propounded by the court and the counsels.[16]

Imelda was described by her mother as "huli ang isip" or a mental retardate. Doctor Anenias, who, as stated above, performed a psychiatric evaluation and intellectual assessment of Imelda, stated that she was able to say "da, da" for the first time when she was already three years old.[17] He also noticed that during the examination, Imelda was "functioning not in her normal intellectual endowment".[18] While the defense counsel described Imelda as intelligent, the trial court sized her up as "mentally deficient to a point where she is incapable of realizing the moral implications of her sexual relationship with the accused, in the same manner as a girl below 12 years of age can relate her sexual experience without understanding the moral implications of said act." [19]

The record shows that while at times, she would jump ahead of the questions asked her in court, her answers were coherent enough for the trial court to perceive the ideas she wanted to convey. She was therefore, a competent and credible witness.

The defense considered the filing of the complaint for rape as an "afterthought" because Luz did not immediately report the matter to the police or to the barangay captain nor did she confront Palma about the incident. In her testimony, Luz explained that she had to wait for her husband who was then working in Manila before reporting the incident to the police. According to Luz, she did not report the case to the barangay captain because she considered the offense a serious one. With her husband, she decided to confront Palma in court rather than see him personally. We find such explanation to have satisfactorily made up for the delay in reporting the case to the proper authorities.[20]

Alibi is a useless defense if the accused was positively identified by the victim as the culprit.[21] Furthermore, the distance between Palma's store, where the offense was committed, and the poultry house he was allegedly

constructing at the time of the commission of the crime, was too short to discount the possibility of Palma's being at the scene of the crime. Only the Lucena Elementary School separated the two places.[22]

Impotency as a defense in rape cases must be proven with certainty to overcome the presumption in favor of potency.[23] In one case, we rejected that defense even after a doctor had examined the accused by stimulating his organ with a wisp of cotton for three minutes and there was no erection.[24]

In the instant case, Palma expressed willingness to be examined by a doctor but no such examination was actually conducted to prove his inability to copulate. His wife's testimony that she had not had sexual intercourse with Palma for the past five years, coming as it does from a person closest to the defendant, cannot be given any weight. Said testimony and Palma's age do not prove his inability to perform the sexual act with a budding young woman like Imelda.

The appellant assigned as error the dismissal of his motion to acquit but he did not discuss said issue in his brief. We note that by filing said motion to acquit the defendant in effect relied on what he believed as the weakness of the prosecution rather than on the strength of his defense. We do not deem that issue worthy of further consideration.

The crime committed by Palma is rape under Article 335[2] of the Revised Penal Code. Copulation with a woman known to be mentally incapable of giving even an imperfect consent is rape.[25] Physical intimidation need not precede sexual intercourse considering the age, mental abnormality and deficiency of the complainant.[26]

The trial court correctly imposed the penalty of reclusion perpetua. However, it failed to impose an indemnity or civil liability. Pursuant to Articles 100, 104[3], 107 and 345[1] of the Revised Penal Code, an indemnity of twenty thousand pesos should be imposed on Pedro Palma.[27]

WHEREFORE, the trial court's judgment is hereby affirmed with the modification that appellant Pedro Palma should indemnify Imelda Telada in the amount of twenty thousand pesos. Costs against appellant.

SO ORDERED.

Feria, (Chairman), Alampay, Gutierrez, Jr., and Paras, JJ., concur.

[1] TSN, August 9, 1982, p. 35.

[2] TSN, June 7, 1982, p. 13.

[3] Exhibit C.

[4] TSN, October 4, 1982, pp. 21-22.

[5] TSN, August 23, 1982, pp. 22-23.

[6] TSN, April 4, 1983, p. 21.

[7] TSN, April 4, 1983, p. 22.

[8] TSN, April 4, 1983, p. 37.

[9] Record, pp. 211-213.

[10] TSN, January 16, 1984, p. 20.

[11] TSN, October 3, 1983, p. 19.

- [12] TSN, October 3, 1983, p. 4.
- [13] TSN, February 27, 1984, p. 8.
- [14] Decision, p. 5.
- [15] *People v. Malabad*, G.R. No. 63219, November 28, 1984, 133 SCRA 392.
- [16] Section 18, Rule 130, Rules of Court; *People v. De Jesus*, L-39087, April 27, 1984, 129 SCRA 4.
- [17] TSN, April 4, 1983, pp. 33-34.
- [18] TSN, April 4, 1983, p. 20.
- [19] Decision, p. 5.
- [20] *People v. Cabradilla*, L-33788, November 29, 1984, 133 SCRA 413.
- [21] *People v. Malabad*, *supra*.
- [22] TSN, March 12, 1984, p. 33.
- [23] *Menciano v. Neri San Jose*, 89 Phil. 63, 70.
- [24] *People v. Olmedillo*, L-42660, August 30, 1982, 116 SCRA 193.
- [25] *People v. Manlapaz*, L-41819, February 28, 1979, 88 SCRA 704 citing *State vs. Jewett*, 192 A. 7; *People v. Gallano*, G.R. No. 51565, October 23, 1981, 108 SCRA 405; *People v. Daing*, L-40574, November 29, 1984, 133 SCRA 449; *People v. Asturias*, G.R. No. 61126, January 31, 1985, 134 SCRA 405; *People v. Sunga*, L-45083, June 24, 1985, 137 SCRA 130.
- [26] *Babanto v. Zosa*, L-32895, February 28, 1983, 120 SCRA 834.
- [27] *People v. Peña*, L-36435, December 20, 1977, 80 SCRA 589; *People v. Resano*, G.R. No. 57738, October 23, 1984, 132 SCRA 711.

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