

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RAYMUNDO CRUZ, ACCUSED-APPELLANT.

G.R. No. 83811. May 05, 1992

Ponente: PARAS, J.

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PARAS, J.:

This is an appeal from the decision[1] of the Regional Trial Court, Branch 161, Pasig, Metro Manila dated July 10, 1987 in Criminal Case No. 39903 convicting herein appellant Raymundo Cruz of the crime of rape committed against Carmelita Gantiga; a fourteen (14) year old mental retardate. The dispositive portion of said decision reads, as follows:

"WHEREFORE, premises considered, the Court finds accused RAYMUNDO CRUZ guilty beyond reasonable doubt of the crime of rape and hereby sentences him to suffer the penalty of reclusion perpetua, to indemnify Carmelita Gantiga in the sum of P30,000.00 by way of moral damages, Lourdes Gantiga, the mother of Carmelita Gantiga in the sum of P6,000.00 as actual damages, and to pay the costs.

"SO ORDERED." (RTC Decision, Rollo, p. 34).

Accused-appellant Raymundo Cruz was charged with the abovementioned crime in a criminal complaint signed by Lourdes Gantiga, mother of the victim, which reads:

"That on or about the 19th day of January, 1980, in the Municipality of Pasig, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above named accused did then and there, willfully, unlawfully and feloniously have carnal knowledge of Carmelita Gantiga, a girl who is fourteen (14) years of age and has been mentally retarded or of unsound mind.

"Contrary to law.

"Pasig, Metro Manila, February 6, 1981." (Annex "A", Original Records, p. 1)

An Order of Arrest was issued by Judge Nelly L. Valdellon-Romero on April 1, 1981 (Original Records, p. 3). Appellant posted bail in the amount of P20,000.00 through the Philippine Phoenix Surety and Insurance, Inc. on May 25, 1981 (Ibid., p. 6) hence his release was ordered on the same day by Judge Eriberto H. Espiritu (Ibid., p. 5). Upon his arraignment on October 27, 1981, appellant Cruz entered a plea of not guilty (Ibid., p. 30). Thereafter, trial ensued.

The prosecution presented five (5) witnesses, namely: Lourdes Gantiga, Melanie Garcia, Dr. Manuel Celis, Dr. Rodolfo Lesondra and the victim herself, Carmelita Gantiga. On the other hand, the defense presented Virgilio Bragat, Ester Cruz, the accused Raymundo Cruz and Melanie Garcia, who retracted her testimony for the prosecution and testified for the defense.

Lourdes Gantiga, mother of the victim Carmelita Gantiga, testified that her daughter has been a mental retardate since birth as evidenced by her poor performance in school. She started going to school at the age of seven (7) and

spent two (2) years in every grade, hence, at the time of the incident, Carmelita was in Grade III although she was already fourteen (14) years old. While Carmelita can write her name, she can neither read nor count and gets promoted to the next grade only upon the request of Lourdes Gantiga, her mother (TSN, Hearing of July 9, 1984, pp. 15-16).

On January 19, 1980, the day in question, Lourdes Gantiga was in Daang Paa, Kalawaan, Pasig, attending to the construction of their house in the field. When she came home in the evening of the same day, she noticed that Carmelita seemed to be afraid of something, would not talk and was startled whenever Lourdes would talk to her (Ibid., pp. 1-8; p. 16). Four (4) days later, or on January 23, 1980, Melanie Garcia, a twelve (12) year old playmate of Carmelita, informed her that the latter was raped by herein appellant Raymundo Cruz. She brought her daughter to the NBI. The results of the examination confirmed the information relayed by Melanie Garcia hence, she filed the criminal complaint for rape against herein appellant. She identified the appellant in court and declared that they had been neighbors since he was a small boy (Ibid., pp 9-12).

On cross examination, she testified that according to Carmelita, the incident happened in the house of the accused. The latter undressed her and made her lie down on a bamboo bench. When the accused was on top of her, she felt pain in her private part. According to Melanie, Carmelita was crying while all these were taking place (Ibid., pp. 17-18).

Melanie Garcia, a playmate of Carmelita and who was sixteen (16) years old when she took the witness stand, testified that the accused has been their neighbor since she was a child. At about six o'clock in the evening of January 19, 1980, while she and Carmelita were playing in front of the house of the accused, the latter called them and on the pretext that he would tell them something, asked them to enter his house. Once inside, the accused pulled Carmelita towards the Sala set, undressed her, including her underwear and ravished her. Melanie saw all these as she was also inside the house and was very near them. Due to her fright, she did not do anything she merely stood there and watched her helpless friend. After the accused had satisfied his lust, he told Carmelita to dress up and told them not to report the matter to their Ate Lourdes (Carmelita's mother) otherwise he would kill them and throw them into the river (TSN, Hearing of August 6, 1984, pp. 21-32).

On cross examination, she testified that she was afraid of the accused, hence, she did not do anything despite the fact that she was free to move and nobody was preventing her from going out. She likewise declared that the place was lighted (Ibid., pp. 42-45).

Dr. Manuel Y. Celis, a doctor at the Rizal Provincial Hospital, testified that he made a neuropsychiatric examination of Carmelita Gantiga and prepared a report in connection with his study dated August 3 1980 (Exhibit "B", Original Records, p. 157). He testified that Carmelita Gantiga was referred to him by Mr. Cresencio Reyes of the Social Services. On interview with the patient and her mother, he suspected that the patient was suffering from mental retardation, hence he referred the case to the National Mental Hospital for psychological test. The results of the psychological test confirmed his suspicion and revealed that the patient was suffering from retardation, imbecile level, moderate sub-normal. The degree of mental retardation of the patient is mild moderate, her I.Q. was about 67 to 86, comparable to the mental age of a three (3) to seven (7) year old child. The patient could communicate with other people although not intelligently. She can differentiate right from wrong, give the highlights of a situation but could not recall things Vividly nor understand complicated questions (TSN, Hearing of December 10, 1984, pp. 50-53).

Dr. Rodolfo Lesondra, Supervising Medico-Legal Officer of the National Bureau of Investigation, testified that he examined the person of Carmelita Gantiga and prepared Living Case. No. MGI-80-73 (Exhibit "C-RTC, Branch 161", Original Records, p. 159) in connection with the examination he conducted. In said report, he noted the

presence of a healed laceration at 7:00 o'clock position corresponding to the face of the clock which could have been caused by sexual contact (TSN, Hearing of May 15, 1985, pp. 56-58).

The last prosecution witness to testify was Carmelita Gantiga, the mental retardate victim. Due to her condition, the prosecuting fiscal requested the court that he be allowed to ask leading questions. The lower court granted the request over and above the objection of the defense counsel. After identifying the accused in court, Carmelita Gantiga declared that she was raped by the accused in his house in Pasig. She corroborated the testimony of Melanie Garcia for the prosecution that they were playing when Raymundo Cruz called them as he would tell them something; that upon entering the house, she was pulled away from Melanie, stripped of her clothing and made to lie on a bamboo bench where the accused ravished her. Melanie Garcia was just nearby when all these were taking place (TSN, Hearing of July 16, 1985, pp. 63-66). Despite her mental capacity, her recollection of the incident remained the same during cross examination (Ibid., pp. 67-69).

Melanie Garcia, this time testifying for the defense and aware that she can be prosecuted for perjury for giving false statements, retracted her testimony for the prosecution given on August 6, 1984. According to her, she was given clothes and money by Mrs. Lourdes Gantiga to make her testify for the prosecution and what she narrated in court were all provided to her (TSN, Hearing of April 15, 1986, pp. 82-83). Her parents wanted her to testify against the accused, otherwise she would be beaten up if she did not appear in court. At the time she retracted her testimony, she was living with her grandfather, whose daughter is the wife of the accused. She, however, denied any knowledge that the accused Raymundo Cruz was courting her aunt when she testified on August 6, 1984. The accused and her aunt got married in 1985 (Ibid., pp. 86-89).

She testified that on the day in question, she was in the house of the accused with the latter and his brother Lito conversing about their everyday life. The complainant Carmelita Gantiga came to ask for some soap but hurriedly left before she could be given some as her mother was calling her (TSN, Hearing of January 20, 1986, pp. 72-75).

Virgilio Bragat, a fisherman residing at Hulong Dagat, Malabon, Metro Manila, testified that on January 19, 1980, he and the accused, together with three (3) other men, were on board the F.B. Margarita fishing boat. They left for the sea at 10:00 o'clock in the morning of January 19, 1980 and came back at about 2:00 o'clock in the morning of the following day (TSN, Hearing of June 3, 1986, p. 95).

On cross examination, he said that he remembers the day quite vividly although he does not keep a diary of his activities, because he learned on January 20, 1980 that the accused had a case in court (Ibid., pp. 97-98).

Ester Cruz, sister of the accused, testified that the accused was living with them at the time of the incident. He left at about 6:00 o'clock in the morning of January 19, 1980 for Malabon but she cannot remember if he returned that day as he usually stays in Malabon for four (4) or five (5) days (TSN, Hearing of July 1, 1986, pp. 101-102).

Accused Raymundo Cruz denied the commission of the offense he is charged with as he was then fishing in Malabon on cross examination, he stated that from their place, he took a tricycle to San Joaquin in Pasig, then a bus along EDSA to Gasak, Malabon. His travel time is more or less two (2) hours depending on the traffic conditions (TSN, Hearing of July 29, 1986, pp. 106-107).

As aforementioned, the trial court convicted herein appellant of the crime of rape and sentenced him to suffer the penalty of reclusion perpetua. Hence, this appeal.

The issues in the case at bar are whether or not the guilt of the accused has been proven beyond reasonable doubt and whether or not the trial court erred in imposing the penalty of reclusion perpetua.

Appellant Raymundo Cruz contends that the court a quo erred in giving credence to the testimony of Melanie

Garcia as a prosecution witness. It is incredible for the accused to commit the crime in the presence of Melanie Garcia, a normal twelve (12) year old girl. Equally incredible is the fact that Melanie did not go out to seek help from outside when no one prevented her from doing so. The facts are clear that Lourdes Gantiga, mother of the complainant, was the "kumadre" of Melanie's father; that Melanie was given money and clothes by Lourdes Gantiga to testify against the accused and that she was beaten up by her father whenever she failed to appear in court (Brief for the Accused-Appellant, Rollo, p. 76).

Appellant Cruz further alleged that between 10:00 o'clock in the morning of January 19, 1980 to 2:00 o'clock in the morning of January 20, 1980, he was fishing along Manila Bay as testified to by Virgilio Bragat and his sister, Ester Cruz. Thus, it was impossible for him to be at the scene of the crime by the nature of his occupation. Furthermore, his brother has a pending case for rape wherein the victim is also Carmelita Gantiga and allegedly committed prior to this case. The presence of the healed laceration, as found by the National Bureau of Investigation and Dr. Lesondra, cannot be construed to be the result of the alleged crime committed on January 19, 1980. Lacerations of this nature cannot heal within five (5) days from the time they were inflicted (Ibid., pp. 79-80).

Appellant likewise questions the findings of the court a quo that complainant Carmelita Gantiga is a mental retardate. There is no direct evidence to show that Carmelite is suffering from mental, retardation. While Dr. Celia testified that he referred the complainant to the National Mental Hospital, no doctor from said hospital was Presented by the prosecution (Ibid., p. 77).

Appellant's contentions are without merit. When a witness testifies for the prosecution and retracts his or her testimony and subsequently testifies for the defense, the test in determining which testimony to believe is one of comparison, coupled with the application of the general rules of evidence. A testimony given in court should not be lightly set aside and before this can be done, both the previous testimony and the subsequent one should be carefully compared, the circumstances under each must be carefully scrutinized, and the reasons or motives for the change carefully analyzed. It would be a dangerous rule for courts to reject testimonies solemnly taken before courts of justice simply because the witnesses who had given them later changed their minds. Such, rule would make solemn trials a mockery and place the investigation of truth at the mercy of unscrupulous witnesses (Reano v. CA, G.R. No. L-80992, September 21, 1988 [165 SCRA 525] reiterating *People v. Ubina*, 97 Phil. 515 [1955]).

A perusal of the testimony of Melanie Garcia for the prosecution as against her testimony for the defense shows that her testimony as a witness for the prosecution has all the earmarks of truth. She testified in a straightforward manner on how the crime was committed which remained unchanged despite the extensive cross examination by the defense counsel. Furthermore, when Melanie Garcia retracted her testimony for the prosecution, she was living with her grandfather whose daughter is the wife of the accused. This means that at the time of her recantation, the accused had become her uncle, lending doubt as to the truth of her testimony for the defense. An eyewitness may be prevailed upon to either recant, the first statement or tell a different story once placed on the witness stand. The reason is that retractions can easily be secured from poor and ignorant witnesses, usually for monetary considerations (*People v. Samson*, G.R. No. 55520, August 25, 1989 [176 SCRA 710]). If indeed she was given money and clothes by Lourdes Gantiga to testify for the prosecution, there is no assurance that she was not also bribed to recant her testimony for the prosecution and to testify for the defense.

As to the appellant's allegation that he was out at sea from January 19, 1980 to January 20, 1980, it has been consistently held that to establish alibi, it must be shown that it was physically impossible for the accused to be present at the place where the crime was committed at the time of its commission. It must be supported by clear and convincing evidence (*People v. Godiness*, G.R. No. 93410, May 7, 1991 [196 SCRA 965]). While appellant's alibi was corroborated by Virgilio Bragat and his sister Ester Cruz, the same must fail in view of the testimony of

Melanie Garcia for the defense that at around 6:00 to 7:00 o'clock in the evening of January 19, 1980, she (Melanie) was at the house of the appellant conversing with him and his brother (TSN, Hearing of January 20, 1986, pp. 72-75).

As to appellant's contention that there is no direct evidence to show that Carmelita Gantiga is mental retardate, records show that during the trial, he did not object to the competency of Dr. Celis when the latter testified on December 10, 1984. He did not even bother to cross examine Dr. Celis. His failure to object to the competency of Dr. Celis operates as a waiver on his part. The acceptance of an incompetent witness to testify, as well as the allowance of improper questions that may be put to him while on the witness stand, is a matter resting in the discretion of the litigant. He may assert his right by his timely objection or he may waive it, either expressly or by silence. Once admitted, the testimony is in the case for what it is worth and the judge has no power to disregard it for the sole reason that it could have been excluded if it had been objected to nor to strike it out on his own motion (People v. Rizo, G.R. No. 86743, August 30, 1990 [189 SCRA 265]).

As to the penalty imposed, accused Raymundo Cruz contends that even assuming that the offense was committed, the trial court erred in imposing the penalty of reclusion perpetua on the ground that said penalty may be imposed only if the rape results in the death or mental alienation of the victim, which is not obtaining in the case at bar.

Again, appellant's contention is bereft of merit. The imposable penalty for the offense of rape as provided for in Article 335 of the Revised Penal Code is reclusion perpetua, a single indivisible penalty which, pursuant to Article 63 of the same code, should generally be applied regardless of any mitigating or aggravating circumstance that might have attended the commission of the deed (People v. Galang, G.R. No. 70713, June 29, 1989 [174 SCRA 454]).

PREMISES CONSIDERED, the decision appealed from is AFFIRMED.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, Regalado, and Nocon, JJ., concur.

[1] Rendered by Judge Cicero C. Jurado.

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