

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CESAR ATENTO, ACCUSED-APPELLANT.

G.R. No. 84728. April 26, 1991

Ponente: CRUZ, J.

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CRUZ, J.:

Asked how she felt while she was being raped, the complainant replied: "Masarap." The trial judge believed her but just the same convicted the accused-appellant. The case is now before us.

The complainant is Glenda Aringo, who was sixteen years old at the time of the alleged offense. She is the neighbor of Cesar Atento, the herein accused-appellant, a 39-year old store-keeper with a wife and eight children. Her claim is that Atento raped her five separate times, the first sometime in April 1986.

She says that on that first occasion she went to Atento's store in Barangay 18, Minoro, Cabagñan, in Legazpi City to buy bread. Her parents were at work and Atento was alone in his house except for his three-year old daughter. Glenda claims Atento cajoled her into coming inside the house and then took her downstairs, where he succeeded in deflowering her. She says her maidenhead ached and bled. Afterwards, he gave her P5.00.

Glenda speaks of four other times when he raped her. It was later (presumably because her hymen had healed) that she felt tickled by his manhood and described the act of coitus as "masarap."^[1]

The girl says she never told anybody about Atento's attacks on her because he had threatened her life. But she could not conceal her condition for long and after five months had to admit she was pregnant. She revealed the accused-appellant as the father of the foetus in her womb. The child was delivered on December 27, 1987, and christened Hubert Buendia Aringo.

Atento denies the charge against him, saying it was pure harassment concocted by a relative of the girl who wanted to eject him from the land where his house was erected. Insisting that Glenda was a girl of loose morals, he says he had twice seen her in sexual congress with a man and that she had once offered her body to his thirteen-year old son for a fee of P5.00.

Glenda's description of the act of coitus as pleasurable would have destroyed the whole case against Atento but for one singular significant fact. The girl is a mental retardate.

Ascendo Belmonte, a clinical psychologist at Don Susano Rodriguez Memorial Mental Hospital, subjected the girl to a series of intelligence tests, to wit, the Wecslar adult intelligence scale, revised beta exam, standard progressive matrices, and the Bender visual motor gestalt test, with the following findings:

Glenda B. Aringo, who was born on June 18, 1970, is INTER ALIA with an intellectual capacity between the ages of nine (9) and twelve (12) years. As such, her intellectual functioning is within the mentally defective level. Her fund of information is inadequate, her judgment is unsound, her thinking and working capacity is poor. She is unable to distinguish essential from non-essential details. Her vocabulary is limited. Her capacity for higher perceptual processes is unsatisfactory. She lacks the capacity for abstracting and synthesizing

concepts. However, in the midst of all these, Glenda was found capable of telling the truth.[2]

Benita Aringo, Glenda's mother, testified that her daughter reached only third grade and did not like to continue studying, preferring to play with children younger than she, even when she was already pregnant. After delivering her child, she would often leave its care to Benita, and play marbles with the children rather than feed her baby. Another relative, Caridad Aringo, testified that Glenda had the mentality of a 12-year old and was fond of rubber bands and playing cards.

The Court finds this to be the reason why, while a rape victim with normal intelligence, would have said that the attack on her caused her much physical pain and mental agony, Glenda naively declared that Atento's sexual organ in hers gave her much pleasure.

It is worth observing that Glenda's child was born in December, nine months after her rape in April, and that, according to the trial judge, there was a remarkable resemblance between Atento and the boy.

Article 335 of the Revised Penal Code provides:

Art. 335. When and how rape committed. — Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

1. By using force or intimidation;
2. When the woman is deprived of reason or otherwise unconscious; and
3. When the woman is under twelve years of age, even though neither of the circumstances mentioned in the two next preceding paragraphs shall be present.

xxx xxx xxx

It has not been clearly established that Atento employed force or threat against Glenda to make her submit to his lust. Nevertheless, there is no question that Atento is guilty of rape upon Glenda under paragraph 2, because the girl was deprived of reason. Alternatively, he is liable under paragraph 3, because his victim had the mentality of a girl less than twelve years old at the time she was raped.

In *People v. Atutubo*,[3] this Court held:

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.

In *People v. Palma*,[4] where a 14-year old mental retardate was another rape victim, we held that:

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. Physical intimidation need not precede sexual intercourse considering the age, mental abnormality and deficiency of the complainant.

So also in *People v. Sunga*,[5] where the offended party was 23 years old with the mentality of a child about 8 to 9 years of age:

Because of her mental condition, complainant is incapable of giving consent to the sexual intercourse. She is in the same class as a woman deprived of reason or otherwise unconscious. Appellant therefore committed rape

in having sexual intercourse with her.

In his authoritative work on Criminal Law, Chief Justice Aquino explains Paragraph 2 as follows:[6]

x x x in the rape of a woman deprived of reason or unconscious, the victim has no will. The absence of will determines the existence of the rape. Such lack of will may exist not only when the victim is unconscious or totally deprived of reason, but also when she is suffering some mental deficiency impairing her reason or free will. In that case, it is not necessary that she should offer real opposition or constant resistance to the sexual intercourse. Carnal knowledge of a woman so weak in intellect as to be incapable of legal consent constitutes rape. Where the offended woman was feeble-minded, sickly and almost an idiot, sexual intercourse with her is rape. Her failure to offer resistance to the act did not mean consent for she was incapable of giving any rational consent.

The deprivation of reason need not be complete. Mental abnormality or deficiency is enough. Cohabitation with a feeble-minded, idiotic woman is rape.

The trial court, however, held Atento guilty of rape under Paragraph 3, citing *People v. Asturias*,[7] where it was held:

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.

In coming to his conclusion, Judge Gregorio A. Consulta declared:

x x x Given the low I.Q. of Glenda, it is impossible to believe that she could have fabricated her charges against the accused. She lacks the gift of articulation and inventiveness. She could not even explain with ease the meaning of rape, a term which she learned in the community. Even with intensive coaching, assuming that that happened, on the witness stand where she was alone, it would show with her testimony falling into irretrievable pieces. But that did not happen. She proceeded, though with much difficulty, with childlike innocence. A smart and perspicacious person would hesitate to describe to the Court her sexual experiences as "tickling" and "masarap" for that would only elicit disdain and laughter. Only a simple-minded artless child would do it. And Glenda falls within the level of a 9-12 year old child. And Glenda was telling the truth!

There is no doubt that when she submitted herself to the accused later for subsequent intercourses, she was dominated more by fear and ignorance than by reason.

In any event, whether under paragraph 2 or under paragraph 3 of Article 335 of the Revised Penal Code, the accused-appellant deserves to be punished for the rape of Glenda Aringo.

The trial court found the accused-appellant guilty of rape as charged, meaning that he raped the victim five times, but we do not agree that the other four rapes have been conclusively proven. Otherwise, he would have to be punished for five separate rapes. Except for this and the civil indemnity, which is increased from P20,000.00 to P30,000.00, we agree with the sentence imposing on him the penalty of reclusion perpetua, the obligation to acknowledge and support Hubert Buendia Aringo as his own spurious child, and to pay the costs.

WHEREFORE, the appealed judgment is **AFFIRMED** as above modified. It is so ordered.

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

[1] TSN, August 25, 1987, pp. 15, 31-32.

[2] Rollo, pp. 22-23.

[3] 161 SCRA 463.

[4] 144 SCRA 236.

[5] 137 SCRA 130.

[6] Revised Penal Code, Book Two, Vol. 3, p. 1692.

[7] 134 SCRA 405.

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