

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RODOLFO RIZO Y RABINO, DEFENDANT-APPELLANT.

G.R. No. 86743. August 30, 1990

Ponente: PADILLA, J.

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PADILLA, J.:

This is an appeal interposed by the defendant, Rodolfo Rizo y Rabino, from the judgment* rendered in Criminal Case No. 5083 of the Regional Trial Court at Masbate, Masbate, the dispositive part of which reads, as follows:

"WHEREFORE, the Court finds the accused, Rodolfo Rizo, GUILTY beyond reasonable doubt of the crime of Rape and hereby sentences said accused to suffer the penalty of RECLUSION PERPETUA, to pay the victim, Felicidad Valencia, the amount of P20,000.00 without subsidiary imprisonment in case of insolvency, to acknowledge the offspring named John Paul Valencia as his legitimate son and to support the child at P200.00 a month until he reaches the age of majority, and to pay the costs."

The record shows that on 28 May 1986, Concepcion Dimen noticed that the stomach of her 22-year old mentally retarded sister, Felicidad Valencia, was bigger than usual. She was suspicious and obtained a sample of Felicidad's urine which she sent to a hospital for examination. The result showed that Felicidad was pregnant.[1] Upon questioning, Felicidad revealed that the herein defendant-appellant, Rodolfo Rizo, the husband of her "yaya", Ana Rizo, had sexual intercourse with her in the bodega.[2] Concepcion Dimen and her brother, Boy Valencia, confronted the accused and the latter admitted that he had sexual intercourse with Felicidad. Consequently, the appellant was brought to the Masbate police station for investigation. There, with the assistance of CLAO Atty. Osias Tambago, he also admitted having done the act.[3]

In view thereof, Rodolfo Rizo was charged with the crime of Rape before the Regional Trial Court at Masbate, Masbate. The case was docketed therein as Criminal Case No. 5083.

On 22 October 1986, Felicidad Valencia delivered a baby at a Manila Hospital, whom they named John Paul Tiongson Valencia.[4]

At the trial, Dr. Emilio Quemi, a medical specialist at the Masbate Provincial Hospital, declared that he examined Felicidad Valencia on 7 July 1986 and found her to be pregnant. He then issued a medical certificate relative to his findings.[5] He also stated that Felicidad is a mongoloid whose intellectual capacity is below normal and comparably that of a 5-year old child and could not distinguish between what is moral and immoral.[6]

His observation was confirmed by Camila Ponferada, who conducts a school for children of pre-school age, and had Felicidad for a pupil in the summer of 1986.[7]

Felicidad Valencia, the victim, declared that she knows the accused, Rodolfo Rizo, whose nickname is "Ompoy" and pointed to him in court. She related the manner the accused had sexual intercourse with her. She said:

"Q Did Ompoy do anything to you?"

A (Witness nodded her head signifying yes).

Q What did Ompoy do to you?

A In the warehouse.

Q What did Ompoy do to you in the warehouse?

A (Witness touching her breast and demonstrating that she was undressed by Ompoy).

Q Now, did you have a panty with you then?

A I have a panty then.

Q Now, what happened to your panty?

A He removed my panty and my pants.

Q After Ompoy removed your pants and panty, what did Ompoy do to you?

A (Witness demonstrating that she was told to lie down by Ompoy and demonstrating her two hands that Ompoy placed himself on top of her).

Q Did he make you lie down?

A (Witness nodded her head signifying yes).

Q Now, after you lie (sic) down, what did Ompoy do?

A He placed himself on top of me. (Witness demonstrating that while she was lying down Ompoy was on top of her).

Q Now, after that did it last long when Ompoy was on top of you?

A (Witness nodded her head signifying yes).

ATTY. BOSA

continuing)

Q When you lied down did Ompoy also take off his pants?

A (Witness nodded her head signifying yes).

Q After Ompoy took off his pants that was the time he lied on top of you?

A (Witness nodded her head signifying yes).

Q Ompoy touched your private parts?

A (Witness nodded her head signifying yes that he placed his organ on her vagina).

ATTY. ANTONIO

Your Honor, may I make a manifestation that the fiscal and the private prosecutor should refrain from ...

COURT

She could hardly be heard of. I think you could also be given the privilege (sic) because we could hardly get the testimony. I myself who is around a meter from the witness could not hear the testimony. The mumbling and the nodding of the head is the only thing I could see.

ATTY. ANTONIO

But there is a translation of her sister, Your Honor.

COURT

You can stay on your place to give an objection. Proceed.

ATTY. BOSA

continuing)

Q Did Ompoy make a push and pull motion after she has inserted his organ to you?

ATTY. ANTONIO

Misleading, Your Honor, there was no showing that ...

ATTY. BOSA

Leading question, Your Honor ...

COURT

Reform the question.

ATTY. BOSA

continuing)

Q Did the penis of Ompoy push into your vagina?

A (Witness nodded her head signifying yes).

Q After Ompoy was through ... may I withdraw my question ... Do you know how many times did Ompoy did that act to you?

A (Witness no answer).

ATTY. BOSA

It seems, Your Honor, that the witness could not comprehend the question.

COURT

Make the question simpler and short.

ATTY. BOSA

I think that would be all. Your Honor, for the witness.

COURT

to the Witness)

Q How did you know that the penis of Ompoy entered into your vagina?

A While in the bodega he inserted his penis into my vagina.

Q How did you feel when the penis of Ompoy entered into your vagina?

A That we are in the bodega his penis entered into my vagina.

Q When the penis of Ompoy entered into your vagina, was it painful or not?

A (Witness shook her head signifying no)."[8]

x x x x x x x x

"COURT

continuing)

Q Again what did Ompoy do to you?

A He held my right hand and told me 'Fely come with me' and then I said 'I do not like'.

Q What else happened after that?

A Then I seated on a chair to get my paper to go to school then he held my hands.

Q After that what happened?

A He asked me.

Q Asked of what?

A He asked me to go to the bodega and he held my hands.

Q What did Ompoy do to you?

A He told me to go up the bodega and told me to lie down and he placed himself on top of me.

Q When Ompoy was on top of you what happened?

A I was lying when he placed himself on top of me. (Witness demonstrating her two hands).

Q Was Ompoy with or without pants when he lied on top of you?

A No pants.

Q. Did the penis of Ompoy entered (sic) into your vagina when he was on top of you?

WITNESS

testifying)

A (Witness nodded her head signifying yes)."[9]

The defendant Rodolfo Rizo, however, did not confirm nor deny the testimony of Felicidad that he had sexual intercourse with her. After the prosecution rested its case, the said accused, instead of presenting evidence in excul-pation, filed a motion to dismiss (demurrer to evidence) claiming insufficiency of evidence in that there is no evidence to prove his guilt other than the inadmissible testimony of Felicidad Valencia who is mentally defective and, therefore, incompetent to testify, pursuant to the provisions of Rule 130, Sec. 19 of the Rules of Court.[10]

But the trial court found Felicidad Valencia to be a competent witness and rendered judgment against the accused.

Hence, the present recourse.

In this appeal, the accused-appellant insists that Felicidad Valencia is an incompetent witness so that he should be exonerated from the charge of Rape.

The appeal is without merit. To begin, with, the accused-appellant, knowing Felicidad Valencia to be mentally defective or a mental retardate, did not object to her competency as a witness before she was placed on the witness stand. Hereunder is what transpired in the court below immediately preceding her testimony:

"COURT

That's all. Do you have any other witness?

ATTY. BOSA

We have, Your Honor. But before we will present our next witness, Your Honor, this is a crime of justity (sic) and because of which we ask for the exclusion of the persons from the court room not necessary to the attendance of the Court.

COURT

Exclude including these practicum.

ATTY. BOSA

Another thing, Your Honor, that we would like to ask from the Honorable Court that because of the condition of the victim we prayed that we be given the privilege (sic) to ask her leading questions. We have established already ample evidence of her mental capacity by the Doctor, by the sister taking charge of her and by her teacher.

COURT

No objection, companero?

ATTY. ANTONIO

I object to that manifestation of the counsel, Your Honor, that he has submitted ample evidence showing that the offended victim is allegedly retarded. There was no expert witness that he presented before this Honorable Court that said witness is allegedly retarded.

COURT

Objection with the privilege (sic) of asking ...?

ATTY. ANTONIO

Yes, Your Honor, because our position is that because he is asking this Honorable Court that he be allowed to profound (sic) leading question on the ground that a victim is not a normal person. Our position is that the victim is a normal person."^[11]

The appellant's failure to object to the competency of Felicidad as a witness operated as a waiver and the trial court has no power to disregard it. In an early recorded case,^[12] the Court said:

"Had the opposing party interposed an objection to this witness on the ground of incompetency, her testimony could not have been received. His omission to object to her operated as a waiver. The acceptance of an incompetent witness to testify in a civil suit, as well as the allowance of improper questions that may be put to him while on the stand is a matter resting in the discretion of the litigant. He may assert his right by timely objection or he may waive it, either expressly or by silence. In any case the option rests with him. 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. The disqualification of witnesses found in rules of evidence of this character, is one not founded on public policy but for the protection and convenience of litigants, and which consequently lies within their control."

Besides, the decision as to the competency of a person to testify rests largely with the trial court, and in this regard, the trial court said:

"The Court has observed that when Felicidad Valencia was called to the witness stand, she was led by her sister. She is around four (4) feet tall, with slanting eyes, short small flat head, rounded and broad face, very shy and with her tongue oftentimes protruding on her side lips of her mouth. Her hands and feet are short, broad and stubby. She had high cheek bones and small nose with a depressed bridge. When she was sworn to tell the truth and was asked twice by the interpreter she did not answer. However, when the sister asked her to tell the truth, she nodded her head facing the sister. She speaks in stuttering soft monosyllables sometimes accompanied by gestures and signs of her hands as well as the movements of her head to indicate affirmative and negative response to a question. Questions she does not know, she would not answer. She does not know her age, nor where she lives. She has not gone Grade one nor beyond. She does not know the date, the time, and the number of times she was abused. During the trial, her actuations and mannerism were too childish and innocent. She showed constantly opened mouth with her tongue protruding on her side lips. Fely during the trial would untie her shoes on the witness stand and lean on the shoulders of her sister. She would shake her head sidewise left to right or nod her head and point her finger to her vagina (tsn, p. 241, Records). She would even yawn in the witness stand resting her head on her two hands. She would be scratching her head with her tongue protruding on the side lips of her mouth (tsn, p. 245, Records). These actuations in open court indicate mental abnormality and innocent childish deficiency which are common forms of mental retardation considering that Fely is a mongoloid of 22 years old. Yet, she is a credible and competent witness." [13]

As to the reliability of her testimony, we quote hereunder the disquisition of the trial court which we find to be in accord with human conduct and the natural course of events:

"Why should Fely single out and point to the accused to have led her to the warehouse; that the accused touched her breast and undressed her; that the accused removed her pants and panty; that the accused made her lay down and lay on top of her; and that the accused placed his organ inside her vagina? The victim is a mongoloid and mentally retarded who does not even know her age nor where she lives. How could she fabricate and concoct this heinous crime if this incident were not true? It would be incomprehensible to assume that Fely, a mongoloid whose mental age is comparable to a five (5) years old, an innocent and mentally retarded girl, could invent a crime of rape against the accused. Neither could her sister do so knowing that the accused had been their loyal worker for more than six (6) years and the wife being the yaya of the victim and their laundry woman. It is against their own personal interest to concoct a crime against the accused if the crime is not true. Considering the integrity of the brothers and sisters who were mostly topnotcher professionals, they would not so easily advertise to the whole world that their sister Fely had been raped, (sic) it was not true. There is nothing to gain in inventing a rape case if it was not true; but the stigma of a lingering eternal dishonor of being raped.

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As a matter of fact, Fely, the victim was candid and honest enough to say that those in the jeep to deliver, did not touch her. Berto was in the jeep did not touch her. Other persons did not touch her. She does not have male friends and that nobody has violated her except the accused (tsn, pp. 235-236, Records). So by the simple process of elimination, the victim has excluded all others not to have touched her nor abused her except the accused." [14]

It results that the trial court did not commit an error in finding the defendant-appellant guilty of the crime for which he is charged.

We note, however, that the trial court has ordered the defendant-appellant to recognize the offspring John Paul Valencia as his legitimate son despite the fact that said accused is a married man. The rule is that if the rapist is a married man, he cannot be compelled to recognize the offspring of the crime, should there be any, as his child,

whether legitimate or illegitimate.[15] That portion of the judgment appealed from, ordering the accused to recognize the child John Paul Valencia as his legitimate son, should, therefore, be eliminated.

WHEREFORE, the judgment appealed from is hereby AFFIRMED with the only modification above-stated. With costs.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, and Regalado, JJ., concur.
Sarmiento, J., on leave.

* Penned by Judge Ricardo B. Butalid.

[1] tsn of January 21, 1987, pp. 9-10, 16

[2] Id., p. 17, also tsn of February 11, 1987, p. 42

[3] tsn of January 21, 1987, pp. 18-19

[4] Id., p. 19; see also Exhibit E, Original Record, p. 121

[5] Exhibit A, Original Record, p. 120

[6] tsn of January 19, 1987, pp. 10-12

[7] tsn of February 11, 1987, pp. 2-5

[8] tsn of February 11, 1987, pp. 23-26

[9] Id., pp. 42-43

[10] Original Record, p. 276

[11] tsn of February 11, 1987, pp. 17-19

[12] *Marella vs. Reyes and Paterno*, 12 Phil. 1, 3-4

[13] Decision, pp. 5-6

[14] Id., pp. 8-9

[15] *People vs. Luchico*, 49 Phil. 689; *People vs. Bernardo*, 85 Phil. 874

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