

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LEONARDO GERONES, ACCUSED-APPELLANT.

G.R. No. 91116. January 24, 1991

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

For the rape of Lilirosa Gargantilla, a mental retardate, a complaint was filed on September 10, 1986 against Calixto Raga alias "Calix" and Leonardo Gerones alias "Nanding or Narding". The complaint was filed with the Municipal Trial Court of Palo, Leyte. After preliminary investigation, the Municipal Trial Court, finding the existence of probable cause forwarded the records to the Office of the Provincial Prosecutor of Leyte.

An Information was subsequently filed with the Regional Trial Court of Leyte charging Leonardo Gerones and Calixto Raga with the crime of rape. The Information reads:

"That on or about the 30th day of August, 1986, in the Municipality of Palo, Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with deliberate intent and with lewd designs, and by means of threats and intimidation and with use of a deadly weapon which Leonardo Gerones had provided himself for the purpose, did, then and there wilfully, unlawfully and feloniously dragged (sic) and pushed (sic) Lilirosa Gargantilla to Calixtro Raga who had carnal knowledge on said Lilirosa Gargantilla, against her will and consent." (p. 15, Original Records)

Both accused pleaded not guilty to the crime charged. Trial proceeded and a judgment of conviction was rendered by the trial court. The dispositive portion of said decision reads:

"WHEREFORE, the Court finds clear evidence convincing beyond reasonable doubt that the accused LEONARDO GERONES and CALIXTRO RAGA are guilty of the crime of rape and are hereby sentenced to a penalty of reclusion perpetua and both are ordered to indemnify the heirs of the late Lilirosa Gargantilla the sum of P25,000.00 by way of damages." (p. 6, Decision)

From the aforementioned decision, both the accused appealed. However, only accused Gerones filed his brief. He specifically assigns the following as error allegedly committed by the trial court:

THE TRIAL COURT ERRED IN FINDING THE ACCUSED-APPELLANT, LEONARDO GERONES GUILTY OF THE CRIME OF RAPE IN IMPOSING UPON SAID APPELLANT THE PENALTY OF RECLUSION PERPETUA AND ORDERING HIM TO INDEMNIFY THE HEIRS OF THE LATE LILIOSA GARGANTILLA THE SUM OF TWENTY-FIVE THOUSAND PESOS (P25,000.00) BY WAY OF DAMAGES, AND ERRED IN NOT ACQUITTING SAID APPELLANT INSTEAD.

It is a rule in rape cases that sexual intercourse with a woman who is deprived of reason constitutes rape. (*People v. Estrella*, 164 SCRA 114 [1988]; *People v. Asturias*, 134 SCRA 405 [1985]). This is because while, as in this case, the woman may be 22 years old, her mental capacity may be that of a nine or ten year old child. Hence, she is incapable of giving consent to the sexual intercourse (*People v. Sunga*, 137 SCRA 131 [1985]). The necessity

of proof beyond reasonable doubt of force or intimidation having been applied is absent.

The accused-appellant contends that the complaint did not give jurisdiction to the trial court the same having been signed by a mentally incompetent woman. Initially, a complaint was filed with the barangay captain by Francisco Gargantilla, the victim's father. Rule 110, Section 5 also provides that in the case of a deceased or incapacitated person, the State may initiate the criminal action in her behalf. The information filed by the Provincial Prosecutor, the complaint initiated by the father, and the complaint filed by the offended party herself sufficiently confer jurisdiction on the trial court.

The records show that the victim managed to communicate her ordeal to the court clearly and consistently. The trial court found Liliosa to have the mental capacity of a ten year old. We are convinced that a ten year old girl can adequately narrate facts which show that she has been raped. Thus, the trial court observed: "xxx In the overall, she was able to communicate that the man who is not blind and the man without eyes helped each other in deflowering her thru force and intimidation. Her narration was crude but she managed to communicate the traumatic incident" (p. 2, RTC Decision).

Hence, the trial court concluded:

"x x x The court observed Liliosa closely when she took the witness stand and the court found that she comprehend (sic) how the rape was done to her which in the opinion of this court is sufficient in extent." (ibid)

The case of *People v. Rizo*, G.R. No. 86743, August 30, 1990 places the determination of the competency of witnesses to testify in the hands of the trial court. As repeatedly held by this Court, the factual findings of the trial court as to the guilt of the accused, particularly the trial judge's assessment of the credibility of the witnesses' testimonies are accorded great respect on appeal in the absence of grave abuse of discretion on the part of the trial judge who has the advantage of actually examining both real and testimonial evidence including the demeanor of the witnesses as they present the same. (*People v. Bravo*, G.R. No. 68422, December 29, 1989; *People v. Ramos*, 167 SCRA 476 [1988])

Moreover, while the psychiatry report states that the victim cannot be expected to be a capable witness, at the same time it admitted that Liliosa can comprehend the nature of her acts under a limited extent. The same report concludes that she is verbally productive although she talks in incomplete sentences at times. What is required by the rules merely is that the witness is able to make her perception known to others. Thus, Rule 130, Sec. 20 of the Rules of Court states: "Except as provided in the next succeeding section, all persons who can perceive, and perceiving, can make known their perception to others, may be witnesses. xxx"

Considering the foregoing, we agree with the trial court that Liliosa Gargantilla is a competent witness. There is likewise no reason to doubt her credibility as she had no motive to testify against the accused (*People v. Esquillo*, 171 SCRA 571 [1989] citing *People v. Ocampo*, 143 SCRA 428 [1986]). No motive can be ascribed to complainant or to her father and step-mother other than a desire for justice and redress for a terrible wrong. (See *People v. Cayago*, 158 SCRA 586 [1988]). She was a poor barrio girl with the mental capacity of a 10-year old, inexperienced to the ways of the world. It is highly improbable that she would fabricate matters and impute the crime unless it was true (*People v. Baao*, 142 SCRA 476 [1986]).

The accused further claims that the evidence presented is against its commission. The finding was that she was negative for spermatozoa and the laceration was old.

We held in the case of *People v. Paringit*, G.R. No. 83947, September 13, 1990 that "the presence or absence of traces of spermatozoa is too immaterial, since it is penetration, however slight, and not ejaculation, that makes for rape (*People v. Somera*, 170 SCRA 428 [1989]).

As to the laceration, which the defense claims is old and could not have been inflicted on the date of the rape as it appears in the Information, the same has been sufficiently explained by the findings of Dr. Perez that "Liliosa is disoriented as to time and person." There is therefore, a great possibility that the rape was committed earlier than the date which Liliosa has given. The absence of precision in stating the time of the crime is understandable (People v. Fajardo, 151 SCRA 696 [1987]).

What is decisive in the rape charge is the complainant's positive identification of the accused-appellants as the malefactors (People v. Mustacisa, 159 SCRA 227 [1988]). The victim was even able to testify that only one actually had sexual intercourse with her and that was the blind man while the other man who was not blind held her and pointed a knife at her while the former was raping her.

Equally important in the consideration of the case are the subsequent actuations of the appellant and his co-accused which constitute an admission of guilt on their part.

Accused Raga offered marriage to the victim which the latter, however, turned down. There was likewise an attempt to amicably settle the case for the amount of P1,500.00.

Not a few number of cases have established that an offer of marriage is considered an admission of guilt of the accused (People v. Valdez, 150 SCRA 405 [1987]; People v. Aragona, 138 SCRA 569 [1985]).

The defense of alibi of the appellants is not worthy of belief. Gerones claims that he went to see a movie with a friend but neither of them was able to remember the movie nor was able to narrate the same.

Raga, on the other hand, admitted that he worked for Gerones 2 days prior to the rape incident but that he was no longer in the vicinity on August 30. This alibi does not likewise inspire belief. As the Solicitor General pointed out, if there is need for cooking the coconuts to copra the following day, he could have attended and helped in the last phase of the work which was on August 30.

The defense put up by the accused must fail. The Court has consistently held that the alibi of the accused that he was not at the rape scene cannot stand against the positive identifications made by the complainant (People v. Soriano, 122 SCRA 740 [1983]; People v. Deus, 136 SCRA 660 [1985]).

WHEREFORE, the Court hereby affirms the judgment of the court a quo by finding the accused guilty of the crime of rape and, therefore, must suffer the penalty of reclusion perpetua but with the modification that the accused must indemnify the heirs of the late Liliosa Gargantilla, as held in recent cases, the amount of FIFTY THOUSAND PESOS (P50,000.00).

SO ORDERED.

Fernan, C.J., (Chairman), Feliciano, and Bidin, JJ., concur.

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