

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. WELL QUIÑONES, ACCUSED-APPELLANT.

G.R. No. 92504. May 18, 1993

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

After his conviction for rape of a 25-year old retardate, accused-appellant Welli Quiñones appeals to Us insisting on his innocence, and asserting that the complaining witness tacitly consented to the sexual intercourse. Since the coition is admitted, the only issue to be resolved is whether the victim gave, or was capable of giving, her consent thereto.

On 5 June 1989, in Esperanza, Bacolod, Lanao del Norte, Pedrita Diangco, at the instance of her mother, went to fetch water from a well about half a kilometer away from their house. While on her way, she was waylaid by accused-appellant, a neighbor, who grabbed her by the neck and dragged her to the other side of the road. There, he forced her to lie on the ground, removed her panties, bit her breast, positioned himself on top of her, and inserted his penis into her vagina.[1]

Meanwhile, after more than an hour and a half and Pedrita failed to return, her mother became worried and went to look for her. Before reaching the well, she found Pedrita. She was in tears. Pedrita then recounted the outrage on her by accused-appellant.[2]

Upon reaching home, Marcosa, mother of Pedrita, inspected her daughter's vagina and found it bleeding. Marcosa immediately sent her son to the Bacolod Municipal Hall to report the incident. The following morning, Pedrita was brought to the Emergency Hospital in Kolambugan, Lanao del Norte, where she was examined by Dr. Lilia Morales-Cacho, Resident Physician, who found hymenal lacerations at 5 o'clock and 7 o'clock positions with linear abrasions which could have been caused by the insertion into the vagina of a foreign object. Dr. Cacho also observed that Pedrita was abnormal.[3]

On 7 June 1989, Pedrita, in the presence of her family, executed a sworn statement at the Bacolod Police Station pointing to accused-appellant Welli Quiñones as her rapist who "brought me, unclothed me, removed my underwear (panty) laying me down, then embraced and kissed me, fingering my vagina, then put (sic) on top of me and had sexual intercourse." [4]

On 17 July 1989, an Amended Information for rape of a "retardate possessing a mental capacity comparable to a child below 12 years of age" was filed against accused-appellant. On 21 July 1989, accused-appellant pleaded "not guilty," after which trial proceeded. The evidence for the prosecution was adduced through the testimonies of Marcosa Diangco, Dr. Lilian Morales-Cacho and Felix Molo.

Marcosa Diangco testified that Pedrita, the seventh of her eight children, was not normal. When she was born, one of her eyes was big, while the other was closed. She started walking only at the age of five (5). Schools refused to admit her because she was retarded. She has the mentality of a child. She cannot identify the days in the calendar.

Neither does she know the value of money. Already twenty-five (25) years of age, she still has playmates three (3) and four (4) years old.[5]

Dr. Lilian Morales-Cacho confirmed the medical examination and findings she made on Pedrita.[6]

Felix Molo, a 71-year old farmer who resides some ten (10) meters away from the house of Pedrita, likewise narrated that Pedrita can always be seen playing with small children, some of whom are still three years old.[7]

Victim Pedrita Diangco, on her part, testified thus ?

"Q When you saw him on the said date, what did he do to you, if any?

A I was choked.

Q What else?

A He made me lie down.

Q And after you laid down what else did he do to you?

A He removed my panties.

x x x x

Q And after Welli Quiñones removed your panty what else did he do to you?

A He pricked me.

Q What part of your body did he prick?

(INTERPRETER: Witness pointing to her vagina).

Q What did he use in pricking your vagina.

A His penis.

Q Was his penis able to penetrate (with) your vagina?

A It penetrated."[8]

The accused Welli Quiñones, represented by the Citizens Legal Assistance Office, submitted the case without presenting any evidence.

On 10 August 1989, the trial court found accused-appellant guilty of rape.

In this appeal, Welli Quiñones contends that the absence of any physical injury belies that force was used on Pedrita, implying that the coitus was done with her consent. He also cites the variance between the date of the commission of the rape as alleged in the Information and as testified to at one point by Pedrita. While the Information alleges that the rape took place on 5 June 1989, the records show that Pedrita, in one instance, confirmed that the rape occurred on 8 June 1989.

The arguments of appellant are futile.

Rape is committed by having carnal knowledge of a woman under any of the following circumstances: (a) by using force or intimidation; (b) when the woman is deprived of reason or otherwise unconscious; and, (c) 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.[9]

In the instant case, notwithstanding the absence of expert testimony, it is evident that the victim is a mental retardate. For, aside from her obvious physical deformities, Pedrita does not know how to write. She does not know the value of money. She cannot identify the days in the calendar. She has the mentality of a three (3) or four (4)-year old child although her actual age is twenty-five (25). Her playmates are children of tender years - three (3), four (4) and five (5) years old. At times, Pedrita has to be spoonfed.[10] All these, which remain unrefuted, establish that Pedrita is indeed deprived of reason. In fact, this was impliedly admitted by the defense when it objected to the competency of Pedrita as a witness, and even moved for her exclusion, on the ground that "the Rules of Court requires that a witness must be of sound mind. From the appearance of this witness Pedrita, it appears that she has a mentality of a three (3) year old child."[11]

Hence, granting arguendo that accused-appellant did not employ force to make Pedrita submit to him, he is still liable for rape because his victim was mentally handicapped at the time she was sexually abused.[12] Chief Justice Ramon C. Aquino, an acknowledged authority in criminal law, explains that ?

"In rape committed by means of duress, the victim's will is nullified or destroyed. Hence the necessity of proving real and constant resistance on the part of the woman to establish that the act was committed against her will. On the other hand, in the rape of the woman deprived of reason or unconscious, the victim has no will. The absence of will determines the existence of 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."[13]

This Court has, in a host of cases, invariably ruled that sexual intercourse with a woman who is deprived of reason or one who is intellectually weak to the extent that she is incapable of giving consent to the carnal intercourse constitutes rape. Here, the presence or absence of force becomes inconsequential.[14]

As for the alleged variance in the date of the commission of the crime, overwhelming evidence reveals that the incident occurred on 5 June 1989, this date being consistently mentioned throughout the entire testimony of the witness. On the other hand, a cursory reading of the transcript of stenographic notes shows that the date "June 8, 1989" appeared only once. It would seem that "June 8, 1989" was merely a typographical error and should be treated as such. In fact, Pedrita never said that the rape happened on 8 June 1989. It was the prosecuting fiscal who, as the records show, asked what happened on 8 June 1989, to which Pedrita responded that she was raped.[15] On the contrary, it may be noted that Pedrita never answered the question as to when she was raped when asked ?

"Q When were you raped by Welli Quiñones?

(INTERPRETER: The witness cannot understand, she is pointing to her vagina).

COURT: Witness could not answer to the date of raping but merely pointing to her vagina."[16]

Besides, the date of the occurrence of the rape is not an essential element in the commission of the rape. That is why the Amended Information reads: "[t]hat on or about the 5th of June 1989 x x x x" Suffice it to say that it was shown that rape under Art. 335, par. (2), of the Revised Penal Code was committed, and that the evidence presented established beyond a ray of doubt that accused-appellant was responsible therefor.

However, while the trial court correctly imposed the penalty of reclusion perpetua, it failed to award civil indemnity to the complaining witness who is entitled thereto. Consequently, consistent with existing jurisprudence, an indemnity of P30,000.00 should be imposed against accused-appellant.

WHEREFORE, the guilt of the accused having been proved beyond reasonable doubt, the judgment appealed from finding WELLI QUIÑONES guilty of rape and imposing upon him a prison term of reclusion perpetua is **AFFIRMED**, with the modification that he is further directed to indemnify complaining witness Pedrita Diangco in the amount of P30,000.00, with costs against him.

SO ORDERED.

Cruz, (Chairman), Griño-Aquino, and Quiason, JJ., concur.

[1] Tsn, 1 August 1989, pp. 6-9; 27-28.

[2] Ibid., pp. 4-9.

[3] Ibid., pp. 9-10; 18-20; Exh. "B."

[4] Records, p. 5.

[5] Tsn, 1 August 1989, pp. 12-15.

[6] Ibid., pp. 16-21.

[7] Ibid., pp. 22-24.

[8] Ibid., pp. 27-28.

[9] Art. 335, Revised Penal Code.

[10] TSN, 1 August 1989, pp. 13-15.

[11] Ibid., p. 25.

[12] People v. Manlapaz, No. L-41819, 28 February 1979, 88 SCRA 704.

[13] Aquino, Ramon C., Revised Penal Code, 1988 Ed., Vol III, pp. 393-394.

[14] People v. Burgos, No. L-40494, 30 July 1982, 115 SCRA 767; People v. Sunga, No. L-45083, 24 June 1985, 137 SCRA 130; People v. Palma, G.R. No. 69152, 23 September 1986, 144 SCRA 236; People v. Gerones, G.R. No. 91116, 24 January 1991, 193 SCRA 263; People v. Estrella, G.R. No. 71464, 4 August 1988, 164 SCRA 114; People v. Asturias, G.R. No. 61126, 31 January 1985, 134 SCRA 405; People v. Goles, G.R. No. 91538, 21 December 1990, 192 SCRA 663; People v. Atento, G.R. No. 84728, 26 April 1991, 196 SCRA 357; People v. Atutubo, G.R. No. 57145, 24 May 1988, 161 SCRA 463.

[15] Tsn, 1 August 1989, p. 27.

[16] Ibid., p. 29.

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