

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARIO GUERRERO Y NARES, ACCUSED-APPELLANT.

G.R. No. 95031. March 23, 1995

Ponente: PADILLA, J.

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PADILLA, J.:

This is an appeal from the decision* of the Regional Trial Court of Manila, Branch XLIX, finding herein accused-appellant Mario Guerrero guilty of the crime of rape alleged to have been committed as follows:

"That in or about and during the month of July, 1987, in the City of Manila, Philippines, the said accused, by using force and intimidation to wit: by forcibly making the undersigned complainant enter his house, covering her mouth once she was inside and locking the door, did then and there wilfully, unlawfully and feloniously have knowledge of the undersigned complainant, a minor, 16 years of age and a mental retardate and, therefor [sic] a woman deprived of reason.

Contrary to law."[1]

Upon arraignment, accused-appellant pleaded not guilty; thereupon trial ensued.

The case for the prosecution, as culled from the testimonies of its four (4) witnesses, may be summarized as follows:

The offended party, Analiza Adana, is one of six (6) surviving children of Hilda Adana and her husband. She stands about four (4) feet tall and was going on sixteen (16) years of age when she testified before the court a quo. She had not attended any formal schooling since birth. She is of average body build, and has had a defective eye since birth. The trial court further observed that aside from being petite and shy, she was disoriented as to periods of time and did not even know when she was born or her specific address.

Analiza had been staying in her parents' house located at no. 374 Parcel II, Sta. Mesa, Manila. The house of accused-appellant, Mario Guerrero, is located five houses away from the Adana house, but he also stays in the nearby house of his daughter named Monique, where he acts as caretaker.

Analiza testified that one particular evening in the month of July 1987, she was in her cousin's store watching a Tagalog program on television. Monique's house was just three (3) arms length from said store. In the balcony of said house stood a sixty-three (63) year old laborer whom she knew and called "Mang Mario".

Accused-appellant beckoned Analiza to approach him by raising his right hand and swinging it downward. Thinking that accused-appellant would just ask her to do an errand, she walked to the house of Monique. Accused-appellant told her to enter the house which she did.

Once Analiza was inside the house, accused-appellant locked the door of the house and with the use of a knife, approached Analiza and poked the knife at her stomach. Although it was dark inside the house, Analiza knew that it was a knife because she felt its sharp point. She also knew that there was nobody else inside the house at that

time because accused-appellant's daughter Monique had earlier left the same, even before she (Analiza) was beckoned by accused-appellant.[2]

At that point, accused-appellant gave her a ten peso (P10.00) bill, at the same time telling her that he would use her ("Gagalawin daw po niya ako."). Analiza refused to accept the money and gave it back to accused-appellant, but she was forced to keep the same as he threatened to kill her and members of her family should she refuse.[3]

Thereupon, she was forcibly brought to the bedroom and ordered to lie down. Accused-appellant put the knife on top of the bed and with both hands removed Analiza's panty and the rest of her clothes. Accused-appellant then covered her mouth with his hands and repeated his earlier threat to kill her if she resisted.

He removed his own clothes and mounted her, inserting his penis inside her vagina and performed pumping movements. Analiza felt pain in her private part as accused-appellant continued to ravish her. After a time, accused-appellant drew out his penis and put on his clothes. He gave his T-shirt to Analiza and told her to wipe off the sticky mucous-like substance inside her vagina. He further instructed Analiza to dress-up and told her to leave the house through the window.

Upon reaching their house, Analiza did not tell her brother and sisters about the incident because she was very much afraid of her mother.[4]

Lightning was to strike her twice several days later. While watching television in her cousin's house, accused-appellant beckoned her anew. This time she refused. But unknown to her, accused-appellant was already waiting at the balcony of the house and he immediately blocked her path on the way home and forced her to enter the house through the window.

Again, he offered Analiza a P10.00 peso bill and reiterated his threat to kill her and her family should she refuse to accept it. She was forced to accept the money. Once inside the house, she underwent the previous ordeal. Accused-appellant covered her mouth with a handkerchief, then removed her panty, mounted her and once more was able to consummate his bestial urge. Thereafter, Analiza was made to leave the house through the window. Again, due to fear, she did not reveal to her parents what happened to her the second time.[5]

Hilda Adana, the mother of Analiza, testified that in August 1987, she noticed that her daughter did not get her monthly menstrual period. She confronted her daughter but the latter could not give her any explanation. Her other daughters likewise did not have any idea at that time why Analiza's period was delayed.

The bombshell came on 10 September 1987 when Hilda Adana's husband informed her that he had confronted Analiza about her menstrual period and after repeated persuasions, she finally divulged the details depicting how accused-appellant abused her twice in July and August of 1987.

Hilda's intense rage at that time almost prompted her to take the law into her own hands, but she was prevailed upon by her family to go to the police that same evening which she did together with Analiza.[6]

Patrolman Perlito Soler of the WPD Investigation Division General Assignment Section, interviewed Analiza and her mother. After taking the statement[7] of Analiza as subscribed to by her mother Hilda, he prepared and signed a letter addressed to the medico-legal officer of the WPD to examine Analiza.[8]

The following day, Analiza was examined by Dr. Marcial Cenido, WPD medico-legal officer. His examination revealed the following findings:

- "1. Breasts are fairly developed, hemispherical in shape and with small brownish nipples and areolae;
2. Abdomen is flat, firm and without striae of pregnancy;

3. Hymen is relatively thin, circular in shape and with deep old healed lacerations at 3 and past 6 o'clock positions;
4. Introitus vagina admits two (2) examining fingers with moderate resistance; and
5. Vaginal wall is firm and with less prominent rugosities.

OPINION:

The above findings is consistent with a girl who is no longer a virgin."[9]

On the other hand, accused-appellant, while admitting that he indeed had carnal knowledge of Analiza, raised the defense that he and Analiza were lovers and that it was Analiza herself who vigorously and aggressively pursued to have sexual relations with him.

He testified that being close neighbors, he had known Analiza for a long time, and that there have been many times in the past that Analiza would casually approach him to ask for money when she would see him in the neighborhood. Their love affair allegedly began sometime during the first week of August 1987. When he asked Analiza the reason why she loved him, Analiza's reply was that she needed some money to buy food for herself and her family and that she would have sex with him so that she would not have to repay the money he would give her.

Accused-appellant maintained that it was Analiza who purposely sought him in the house of Monique to ask for money in exchange for her body. He recalled Analiza's words thus, "Bigyan mo ako ng pera at gamitin mo ako." He gave Analiza ten pesos (P10.00) but did not have sex with her because he did not have an erection and at the same time, he was worried that his two (2) sons might suddenly arrive and catch them in flagrante.

Analiza returned a week later and sought accused-appellant again inside Monique's house, asking him for more money. This time he gave her twenty pesos (P20.00). Analiza began to undress before him, removed her panty and laid in bed. He claimed that at that time Analiza's abdomen was unusually big and when he confronted her, Analiza confessed that she had an affair with another man who had stopped supporting her, for which reason she left the said man and went for accused-appellant. Thereafter, Analiza pulled him to bed to which he initially refused, but Analiza was persistent as she embraced and kissed him, forcing him to go on top of her. Unable to resist his sexual urge, he mounted Analiza and succeeded in having carnal knowledge of her.[10]

Accused-appellant claimed that Analiza was to return to the same house from time to time to see him and ask for money. However, he did not have carnal knowledge of her, as he could no longer maintain an erection.

Unknown to accused-appellant, his wife Virginia Guerrero was already receiving reports about his extra-marital trysts. Virginia Guerrero testified that she confronted her husband about the matter as early as the first week of August 1987 but her husband merely denied the same. However, in the weeks that followed, she personally witnessed her husband in the act of giving money to Analiza near the vicinity of the latter's house. Virginia's suspicions were later confirmed during the first week of September 1987 when her daughter, Angela Guerrero, told her that she (Angela) had seen Analiza Adana and her father inside the room of Monique's house in a very compromising position. Forthwith, she (Virginia) went to the said house and just in time, saw Analiza hurriedly leaving the house through the stairway.

Virginia did not bother to confront Analiza since she was not sure what really happened inside the house. Instead, she vented her ire on her husband (accused-appellant) who eventually admitted to her that Analiza was indeed his paramour.[11]

Rodrigo Cruz, a friend of one of accused-appellant's sons, testified that from August to September 1987, he would

hang around the store just across Monique's house and on numerous occasions, he would chance upon Analiza at the said place waiting for accused-appellant. He averred that he would always see Analiza follow accused-appellant and that on one occasion, he heard Analiza telling accused-appellant to wait for her inside Monique's house.

Thus, on 6 September 1987, he saw Analiza surreptitiously enter the house of Monique. In order to satisfy his curiosity, he approached the said house and through a small opening in the window, saw the silhouette of Analiza who was then half-naked while embracing accused-appellant.

Suddenly, Angela Guerrero, one of accused-appellant's daughters, arrived and asked him (Rodrigo Cruz) what he was doing. Rodrigo told her what her father and Analiza were doing, then he hurriedly left the place.[12]

Angela corroborated Rodrigo's tale except that she stated that she saw two (2) males peeping at the door who, when accosted by her, replied that there was an ongoing show (palabas) inside. She brushed aside the two males and decided to take a peep for herself to verify what she just heard. Inside, she saw her father (accused-appellant) and Analiza in bed, both of them naked.

Aghast, Angela left immediately to look for her mother. Eventually, she located her mother and informed her as to what she had just witnessed.[13]

On 18 March 1988, the trial court rendered judgment rejecting accused-appellant's defense of "an instant love affair" and sentenced him accordingly, the dispositive part of which states:

"WHEREFORE, the Court hereby renders judgment finding the Accused MARIO GUERRERO y NARES guilty beyond reasonable doubt, as principal, for the crime of Rape, defined in and penalized under Article 335 in relation to Article 63 (2) of the Revised Penal Code and hereby sentences him to the penalty of RECLUSION PERPETUA and to pay to Analiza Adana the amount of TWELVE THOUSAND PESOS (P12,000.00), Philippine Currency, as moral damages and to pay the costs of suit.

The accused is also hereby ordered to recognize the child which may be born to Analiza Adana as a result of the crime charged (Eusebio Babanto versus Hon. Mariano Zosa, et al., 120 SCRA 835).

The Accused is hereby credited for the full period of his detention in the City Jail provided that he agreed in writing to abide by and comply strictly with the rules and regulations of the City Jail.

SO ORDERED."[14]

In his brief, accused-appellant assigns the following errors allegedly committed by the trial court:

I

IN DECLARING THAT COMPLAINING WITNESS, ANALIZA ADANA, WAS MENTALLY RETARDED AND THEREFORE A WOMAN DEPRIVED OF REASON;

II

IN DECLARING THAT ACCUSED IS GUILTY OF RAPE.[15]

Accused-appellant argues that since the allegation in the criminal complaint that Analiza Adana is a mentally retarded woman has not been duly established by the prosecution, ergo, all her sexual acts must be presumed to have been voluntary. To prove this point, accused-appellant remonstrates that Analiza's sexual trysts with him in the same house debunks the theory of the prosecution that she was incapable of giving any rational consent to the carnal act. He insists that in going to his (actually, his daughter's) house, Analiza always made sure that nobody would notice her and that she herself would put out the lights and close the door.

Accused-appellant further asserts that it was only when Analiza could no longer hide her growing stomach that she admitted to her parents about her "relationship" with him. Furthermore, accused-appellant claims that Analiza demonstrated a high degree of intelligence during the trial as she answered the court as well as the prosecution in a straightforward manner, without any hesitation on her part.

All these circumstances indicate, according to accused-appellant, that Analiza was not mentally retarded as alleged in the complaint, and that there is no proof adduced to the effect that she had been confined in a mental institution or that her parents had caused her to be treated on account of an alleged mental condition.

These arguments do not persuade, as it conveniently, if not deliberately, evades the issue of whether or not force and intimidation was employed by accused-appellant in the pursuit of his carnal designs. As correctly pointed out by the Solicitor General in the appellee's brief, "it is a basic legal principle in rape cases that failure to prove insanity or mental retardation on the part of the victim does not necessarily mean consent as the same can also be influenced by threats, intimidation, deceit, force and even violence." [16] Thus, under Art. 335 of the Revised Penal Code, rape is committed by having carnal knowledge of a woman under any of the following circumstances:

- By using force and intimidation;
- When the woman is deprived of reason or otherwise unconscious;
- When the woman is under twelve (12) years of age, even though neither of the circumstances mentioned in the two (2) next preceding paragraphs shall be present.

Contrary to accused-appellant's allegations, the trial court did not categorically declare that Analiza Adana was a mental retardate. Rather, it considered her mental deficiency, her being illiterate and unschooled as circumstances that made her succumb to the force and intimidation employed on her by accused-appellant. [17] Excerpts from its decision clearly validate this point, viz:

"x x x She is about four (4) feet tall, and going on sixteen (16) years of age when she testified. She has not gone to school since birth. One of her eyes had been defective since birth. The Court noted that she has an average body build, disoriented as to periods of time, petite and shy. She does not even knew [sic] when she was born or her specific address." [18]

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"It may be true that Analiza did not reveal immediately to her parents and her sisters and brothers about the bestial deeds of the Accused. This is to be expected. She is illiterate and unschooled. She has a defective eye. The Accused threatened to kill her if she revealed the incidents. Considering her mental state and physical disability and the proximity of the house of the Accused and Monique, it is understandable that Analiza entertained an innate fear from revealing the pains and the excruciating ordeal she went through. It was only when faced with the ire of her father, that she succumbed and revealed what happened to her. x x x" [19] (underscoring supplied)

xxx xxx xxx

"The Accused has not ascribed any evil or ulterior motives on Analiza and her mother for the filing of the complaint with this Court. The accused did not, because he could not. x x x Considering the mental state of Analiza and her being an illiterate, she could not have concocted and fabricated the charge against the Accused unless it was true. x x x" [20] (Italics supplied)

Accused-appellant cannot deny the above findings of the trial court, for even he himself characterized Analiza's behavior in this manner:

"FISCAL FORMOSO:

You said that you had a relationship with Analiza since the first week of August 1987, will you kindly tell us the first occasion that you courted her if any, Mr. witness?

WITNESS:

I did not court her, she voluntarily came to me, sir.

FISCAL FORMOSO:

As far as you are concerned with that behavior of the victim here, voluntarily courting you, do you think that's a normal behavior for her, Mr. Witness?

WITNESS:

She is not normal, Sir.”[21]

Besides, under paragraph 2 of Article 335 of the Revised Penal Code, this Court has held in a long line of cases that a woman need not be proven as completely insane or deprived of reason for sexual intercourse to constitute the crime of rape. The term "deprived of reason" has been construed to include those suffering from mental abnormality or deficiency; or some form of mental retardation; the feeble-minded but coherent; and even those suffering from mental abnormality or deficiency of reason.[22]

Analiza's mental condition and/or capacity, as observed and evaluated by the trial court, rendered her mentally incapable of intelligently assenting to or dissenting from acts of intercourse with accused-appellant. Her despoilment was not solely brought about by said condition, but as categorically alleged in the information, mainly through force and intimidation employed by accused-appellant in gagging her mouth while poking a knife and threatening to kill her as well as other members of her family if she did not cooperate. Moreover, accused-appellant's defense that he and Analiza were lovers and that it was the latter who was active in their relationship deserves scant consideration. By the very nature of such relationship, a "sweetheart" cannot be forced to have sex against her will.[23]

It is inconceivable, if not totally preposterous, to imagine how a sixteen-year old girl suffering from mental abnormality "could dominate an experienced man like the accused-appellant on matters of sex and that she would readily agree to be the mistress of a man she very well knew was old enough to be her grandfather,"[24] at the same time offering sexual favors for the measly amount of P10.00 to P20.00. Even the lowest type of prostitute, in all probability, would not go to such depth as to sell herself for such a measly and miserable amount. In a case involving similar facts, we stated thus:

"x x x No sane and sensible man will justify his lust upon a tender child of twelve (12) by paying her the measly sum of P1.00 unless he is himself so corrupt in his life and debase in his moral virtues. There is no showing that the complainant girl belongs to or practice the so-called oldest profession and even so, no prostitute, however young or aged, sells her flesh as cheap as that."[25]

In the final analysis, the issue can be narrowed to one of credibility of witnesses, and we uphold the decision of the trial court which gave full credence to Analiza's testimony, there being no proof of ill-motive on her part to falsely accuse a man of raping her, and unnecessarily subjecting herself to the humiliation of a public trial. Her only motive can well be to bring before the bar of justice the person who had really abused her.

We note, however, that the trial court ordered accused-appellant to recognize the child which may be born to Analiza Adaza 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.[26] Hence, that portion of the judgment appealed from is accordingly deleted.

While the evidence may have shown that accused-appellant committed two (2) acts of forcible sexual intercourse, the court can only sustain his conviction for one crime of rape since the information in this case charged only one (1) offense.

WHEREFORE, the judgment appealed from is hereby AFFIRMED, with the modification as above-stated. In conformity with prevailing jurisprudence, the award by the trial court of twelve thousand pesos (P12,000.00) as moral damages is hereby increased to thirty thousand pesos (P30,000.00). Costs against accused-appellant.

SO ORDERED.

Davide, Jr., Bellosillo, Quason, and Kapunan, JJ., concur.

* Penned by Judge Romeo J. Callejo.

[1] Exhibit "H", "H-1" Complaint thumb marked by private complainant and signed by her mother; Rollo, p. 4-5.

[2] TSN, 23 November 1987, pp. 5-11.

[3] *ibid.*, pp. 50-54.

[4] *Id.*, pp. 12-27.

[5] *Id.*, pp. 46-50.

[6] TSN, 6 January 1988, pp. 2-6.

[7] Exhibit G, G-1 to G-3.

[8] TSN, 20 November 1987, pp. 2-7.

[9] Rollo, p. 144; Exhibit A, A-1.

[10] TSN, 11 January 1987, pp. 5-11.

[11] TSN, 29 February, 1988, pp. 13-19.

[12] TSN, 15 February 1988, pp. 9-27.

[13] TSN, 29 February 1988, pp. 2-13.

[14] Rollo, pp. 33-34.

[15] Rollo, p. 106.

[16] Rollo, p. 145.

[17] Rollo, p. 15.

[18] Rollo, p. 27.

[19] *ibid.*, p. 29.

[20] *ibid.*, p. 16.

[21] TSN, 11 January 1988, pp. 14-15.

[22] People vs. Manlapaz. G.R. No. L-41819. February 28, 1979. (88 SCRA 704); People vs. de Jesus. G.R. No. L--39087. August 27, 1984. (129 SCRA 4); People vs. Atento. G.R. No. 84728. April 26, 1991 (196 SCRA 357); People vs. Nguyen Dinh Nhan, G.R. No. 93433. August 5, 1991. (220 SCRA 292).

[23] People vs. Timbang. G.R. No. 88403. August 30, 1990. (189 SCRA 279) People vs. Danguilan. G.R. No. 88821. January 29, 1993. (218 SCRA 98). People vs. Casao. G.R. No. 100913. March 23, 1993. (220 SCRA 362).

[24] People vs. Bayuhan. G.R. 105824. November 24, 1994.

[25] People vs. Leonardo Alamo, et. al G.R. No. L-38401. June 25, 1984. (130 SCRA 46). p. 94.

[26] People vs. Rizo. G.R No. 86743. August 30, 1990. (189 SCRA 265); People vs. De Guzman, G.R. No. 51385-86. January 22, 1993. (217 SCRA 395)

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