

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. WILFREDO ABENDAÑO Y TOPAZ, ACCUSED-APPELLANT.

G.R. Nos. 105536-37. March 21, 1995

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

On appeal is the conviction of WILFREDO ABENDAÑO Y TOPAZ for rape for having carnal knowledge of 15-year--old Rosal Madriaga, a retardate said to be incapable of giving rational consent to sex.

On 26 October 1989, at around six o'clock in the morning, Rosal Madriaga was alone in her room at 464 Bayanihan Street, Pasay City. Appellant Wilfredo Abendaño, common-law husband of her sister Nilda, suddenly appeared. He grabbed her hand and warned her not to shout nor make any noise. He then slowly undressed her. Innocently unknowing of what was coming to her, Rosal allowed Wilfredo to remove her clothes and obeyed his order to lie down. He laid on top of her and inserted his organ into hers. It was painful. She resisted by shoving him away. He threatened to kill her if she did not submit, as she did, to his bestial advances. His lust sated he stood up and walked away.[1]

This was repeated in the same venue on 15 November 1989 at around four o'clock in the morning after intimidating her again.[2]

But Rosal never revealed her experience with her "Kuya Willy" to anyone until her family noticed her bulging stomach. In June 1990 she was taken to Dr. Amurao's clinic in Malibay, Pasay City, where a medical examination showed she was 7-1/2-month pregnant.[3] When confronted by her family she confessed she was defiled twice by the appellant.

On 19 June 1990, in the presence of her mother, Rosal executed a sworn statement before Pat. Wilfredo G. Lim of the Southern Police District, Fort Bonifacio, Makati, Metro Manila, asserting that she was raped by the accused on two (2) occasions.[4] On 27 June 1990, accompanied by her sister Nilda, Rosal went to the Pasay City Prosecutor's Office to file two (2) complaints for rape against appellant.[5] She was later advised to undergo further medical examination with the National Bureau of Investigation Medico-Legal Division which confirmed that she was 29 to 30 weeks pregnant.[6]

On 14 September 1990 two (2) Informations for rape were filed with the Regional Trial Court of Pasay City charging the accused with rape through force and intimidation. However, upon motion of the accused, the trial court ordered a reinvestigation of the case in order to determine whether the alleged acts of coitus were indeed accompanied by force and intimidation. In the course thereof, a request was made by the Assistant City Prosecutor with the Neuro-Psychiatric Service of the NBI to determine the mental age of Rosal in view of the suspicion that she did not possess the mental faculties of a normal girl her age. The NBI psychological examination confirmed that she had the mental capacity of a 7-year-old child.[7] On the basis thereof the original Informations were accordingly amended.

The prosecution adduced the Psychological Evaluation on Rosal by NBI Senior Psychiatrist Ma. Cynthia Alcuaz to prove that the victim was a mental retardate. Thus -

TESTS ADMINISTERED:

Stanford Binet Intelligence Scale
Draw a Person Test
House Tree Person Test
Sacks Sentence Completion Test
Bender Gestalt Visual Motor Test
Interview

x x x x x x x x

TEST RESULT:

Intellectual Functioning:

The Stanford Binet Intelligence Scale classifies subject's MENTAL AGE as (7) SEVEN YEARS which means that she belongs to the MENTALLY DEFECTIVE group. Performance wise, she finds difficulty in oral communication as well as in written forms. Likewise, poor visual-motor skills are noted.[8]

A Neuro-Psychiatric Evaluation administered by NBI Chief Psychiatrist Erlinda R. Marfil, M.D., also disclosed that "the grasp of general information and judgment of the complainant is poor" and classified her within the mentally defective level.[9]

The testimony of complainant's sister, Nilda Madriaga, further demonstrated that Rosal was of subnormal intelligence -

Q:

As an older sister to Rosal, what can you say about her person?

A:

She has low memory, easily frightened, she does not know how to fight.

Q:

What else?

A:

She hardly understands what she is being told.

x x x x x x x x

Q:

Were you not alarmed by the low grades of your sister when you found out that she normally gets passing grades of 75, 76 or 77?

A:

Yes, we were alarmed.

Q:

So, what did you do when you were alarmed, did you do anything?

A:

We talked to them (teachers) and we requested them to pass my sister (pasang awa).[10]

The accused denies having had sexual intercourse with complainant. His theory is that Rosal was just persuaded by Virginia Madriaga, mother of his common-law wife, to implicate him as the person responsible for Rosal's pregnancy. According to him, Virginia harbored ill-feelings towards him because of his illicit relationship with her daughter Nilda.[11]

On 27 February 1992 the Regional Trial Court of Pasay City, Br. 114, found the accused guilty of raping Rosal Madriaga, a mental retardate, one incapable of giving legal consent to a carnal act. In both Crim. Cases Nos. 905432 and 905433 the court a quo sentenced the accused to two (2) prison terms of reclusion perpetua and ordered him to indemnify his victim P50,000.00 in each case.[12]

The accused is now before us on appeal. He asserts that the evidence submitted by the prosecution is insufficient to warrant his conviction. He contends that the trial court erred in finding that the complainant was a mental retardate with whom sexual intercourse would necessarily amount to rape. He also cites the unreasonable delay in the filing of the complaint as a factor that entitles him to acquittal on reasonable doubt.[13]

We affirm the judgment of the court a quo. Art. 335 of the Revised Penal Code provides that 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.[14]

Under par. (2) of Art. 335 it is not necessary that the victim be totally deprived of reason or unconscious because it would be sufficient if the victim was suffering some mental deficiency impairing her reason or free will.[15] Jurisprudence has established that sexual intercourse with one who is intellectually weak to the extent that she is incapable of giving consent to the carnal act constitutes rape.[16] Proving the presence of force or intimidation would be of no legal consequence because a person of weak intellect is not expected to give effective resistance to an act the implications of which she does not fully comprehend.[17] In these cases the mental retardate lacked the necessary discernment to enable her to knowingly give her consent to or oppose the sexual act. In a host of cases we have ruled that a victim with a mental age below twelve years is incapable of giving legal consent to the carnal act.[18] Therefore, sexual intercourse with a retardate whose mentality is of a girl below twelve years of age is rape.

In the case at bench, the mental age of the complaining witness was only that of a 7-year-old when appellant had sexual intercourse with her. This was how she narrated the incidents -

Q:

Kindly tell the Court, Ms. Rosal Madriaga, how your Kuya Wilfredo Abendaño made carnal knowledge with (sic) you on October 26, 1989 at 6:00 in the morning inside your room?

x x x x x x x x

A:

He took off my clothes.

x x x x x x x x

Q:

Now, you said that your "Kuya" Wilfredo Abendaño also took off his clothes after he took off your clothes, what happened next, if any, or what did your "Kuya" do to you?

A:

He inserted his private part into my private part.

x x x x x x x x

Q:

Kindly tell the Court what he did when your "Kuya" made another carnal knowledge with (sic) you on November 14, 1989?

x x x x x x x x

A:

He again threatened me.

x x x x x x x x

Q:

After he threatened you, what did he do next?

A:

He inserted his private part into my private part.

x x x x x x x x

Q:

How do you know that his organ penetrated your private part?

A:

He inserted his whole private part (itinodo niya).[19]

The clear and convincing testimony of Rosal Madriaga points to accused-appellant - and to no other - as the one who raped her on two (2) separate occasions. His allegation that no such incident occurred is unpersuasive because the positive testimony of a victim in a rape case is given more credence than the bare denial of the accused.[20] This is because by the nature of the offense the only evidence that can oftentimes be offered to establish the guilt of the accused is the complainant's testimony. Courts usually give credence to the testimony of a girl who is a victim of sexual assault because no person would Ordinarily be willing to undergo the humiliation of a public trial and testify on the details of her ordeal if it be not to condemn an injustice.[21] The assertion of accused-appellant that Rosal was pressed by her mother to accuse him of rape is inconceivable. A mother will

never compromise the reputation of her daughter in order to implicate a person with a crime he did not commit.[22]

The contention of appellant that Rosal is not a mental retardate is also unavailing. He anchors his argument primarily on the fact that Rosal was in Second Year High School when the alleged crime was committed and, according to him, a 15-year-old girl who was able to hurdle the school requirements of intermediate studies should be presumed to possess the normal mental faculties of a person her age.[23]

The evidence submitted by the prosecution totally refutes such a proposition. The Neuro-Psychiatric and Psychological Evaluation on complainant is more credible than the mere assertion of one's scholastic performance, which is not necessarily indicative of the mental age of an individual considering that schools have different academic requirements and standards. In *People v. Antonio*[24] we had the occasion to rule that a 24-year-old retardate who was also able to finish First Year High School was incapable of comprehending the full ramifications of the carnal act. A person suffering from mild mental retardation at the school age of 6 to 21 years will have difficulty learning general high school subjects but is still considered educable for as long as there is close supervision.[25] In *People v. Sunga*[26] a woman who was qualified to enroll in high school after passing Grade VI was also declared to have suffered from mental abnormalities impairing her discretion and judgment. This Court held that sexual intercourse with the victim who was deprived of reason constituted rape.

Finally, the pronouncement of appellant that the unreasonable delay in the filing of the complaint entitles him to an acquittal must also fail. We have already ruled that "the silence of the offended party in a case of rape, or her failure to disclose her defilement without loss of time to persons close to her and to report the matter to the authorities, does not perforce warrant the conclusion that she was not sexually molested and that her charges against the accused are all baseless, untrue, and fabricated. Other relevant facts and circumstances must be considered to determine the veracity of the accusation." [27] We must bear in mind that the complainant in this case was a 15-year-old with the mentality of a 7-year-old child. Thus being utterly innocent in the ways of the world she was expected to be easily intimidated. The threats made on her life by appellant, a person who exercised moral ascendancy over her person, was enough to instill fear that would necessarily constrain her to remain silent about her ordeal. The intimidation in this respect must be viewed in the light of the victim's perception and judgment at the time of the sexual abuse.[28]

WHEREFORE, the guilt of accused-appellant WILFREDO ABENDAÑO Y TOPAZ having been proved beyond reasonable doubt, the judgment appealed from finding him guilty of rape in both Crim. Cases Nos. 905432 and 905433 and imposing upon him a prison term of reclusion perpetua and to indemnify the victim Rosal Madriaga P50,000.00 in each of the two (2) cases is AFFIRMED, with costs against accused-appellant.

SO ORDERED.

Padilla, (Chairman), Davide, Jr., Quiason, and Kapunan, JJ., concur.

[1] TSN, 24 July 1991, pp. 8-14.

[2] *Id.*, pp. 15-17.

[3] *Id.*, p. 19.

[4] Exh. "I", Folder of Exhibits, p. 14.

[5] TSN, 10 October 1991, p. 134.

[6] Exh. "F", Folder of Exhibits, p. 11.

[7] Id., pp. 4-5; 8-9.

[8] Id., pp. 4-5.

[9] Id., pp. 8-9.

[10] TSN, 18 September 1991, p. 126; Id., 10 October 1991, pp. 132-133.

[11] TSN, 24 October 1991, p. 179.

[12] Rollo, p. 34.

[13] Id., p. 42.

[14] Art. 335, The Revised Penal Code.

[15] People v. Quinones, G.R. No. 92504, 18 May 1993, 222 SCRA 249; People v. Gerones, G.R. No. 91116, 24 January 1991, 193 SCRA 263; People v. Atutubo, G.R. No. 57145, 24 May 1988, 161 SCRA 463.

[16] People v. Antonio, G.R. No. 107950, 17 June 1994, 233 SCRA 283; People v. Atento, G.R. No. 84728, 26 April 1991, 196 SCRA 357; People v. Gerones, see Note 15; People v. Goles, G.R. No. 91513, 21 December 1990, 192 SCRA 663; People v. Atutubo, see Note 15; People v. Estrella, G.R. No. 71464, 4 August 1988, 164 SCRA 114; People v. Palma, G.R. No. 69152, 23 September 1986, 144 SCRA 236; People v. Sunga, G.R. No. 45083, 24 June 1985, 137 SCRA 130; People v. Asturias, G.R. No. 61126, 31 January 1985, 134 SCRA 405.

[17] People v. Gerones, see Note 16; People v. Goles, see Note 16.

[18] People v. Antonio, see Note 16; People v. Gerones, see Note 15; People v. Atento, see Note 16; People v. Estrella, see Note 16; People vs. Atutubo, see Note 15; People v. Sunga, see Note 16.

[19] TSN, 24 July 1991, pp. 8-17.

[20] People v. Antonio, see Note 16; People v. Tismo, G.R. No. 44773, 4 December 1991, 204 SCRA 535.

[21] People v. Junio, G.R. No. 110990, 28 October 1994; People v. Grefiel, G.R. No. 77228, 13 November 1992, 215 SCRA 596; People v. Villaflores, G.R. No. 66039, 8 June 1989, 174 SCRA 70.

[22] People v. Sabellina, G.R. Nos. 93514-15, 1 December 1994.

[23] Rollo, pp. 47-48.

[24] See Note 16.

[25] Ibid, citing Lawrence C. Kolb, Noye's Modern Clinical Psychiatry, p. 308.

[26] See Note 16.

[27] People v. Junio, see Note 21, p. 9, citing People v. Yambao, G.R. No. 77778, 6 February 1991, 193 SCRA 571, 579.

[28] People v. Grefiel, see Note 21.

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