

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MENANDRO TRIMOR, ACCUSED-APPELLANT.

G.R. Nos. 106541-42. March 31, 1995

Ponente: ROMERO, J.

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ROMERO, J.:

What fate may await the weak of mind while performing a simple household chore? For Benedicta Decena, a 27-year old retardate, it was a violation of her virtue.

In the early morning of October 7, 1987, Decena went to Dagat-Dagatan (a lagoon in Tadalac, Los Banos, Laguna) to wash some clothes. She was standing alone in waist-deep waters when two men, whom she later identified as Menandro Trimor and Antonio Magsipoc, approached her. Trimor dove into the water, removed her panty and threatened to kill her if she resisted. Magsipoc held her shoulder while pointing a knife at her. The intimidation was enough to snuff out any fight in the girl.

Decena was then made to lie on top of a rock on the shore where Trimor succeeded in satisfying his carnal desires despite her resistance which she exhibited by pushing him away when she felt pain. Thereafter, Magsipoc took his turn in raping her.

Two days later, as was her wont, Decena returned to the same place to wash clothes. Her two ravishers struck anew and repeated their dastardly deed.

At first, Decena kept the incident a secret, but she broke her silence when her sister Florita noticed her bulging stomach. On July 8, 1988, she gave birth to a baby boy.

Trimor and Magsipoc were charged with two counts of rape but only the case against Trimor prospered; the accusation against Magsipoc was dismissed for insufficiency of evidence upon the prosecutor's recommendation.

The prosecution presented, among other witnesses, Dr. Erlinda Marfil, head of the National Bureau of Investigation Neuro-Psychiatric Service, to prove that Decena was a woman with a child's intelligence. Marfil testified that Decena was, based on her psychiatric evaluation of the victim, indeed a retardate with the comprehension of a seven-year old child.

Trimor's defense consisted mainly of denial and alibi.

After trial on the merits, the court a quo reached a verdict, the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered convicting the accused MENANDRO TRIMOR of having committed the crime of rape twice on October 7 and 9, 1987. He is hereby sentenced to serve separate penalty (sic) of reclusion perpetua for each of the offense(s) charged.

The accused is further ordered to pay complainant Benedicta Decena actual and moral damages in the amount of Thirty Thousand Pesos (P30,000.00).

SO ORDERED."

In the instant appeal, Trimor abandoned his initial defense of denial and alibi and claimed that Decena consented to the sexual act.

We find for the People.

In the first place, Trimor's change of theory from alibi to voluntary sexual congress on the part of Decena militates against his credibility. Changing the defense on appeal is an indication of desperation on the part of the accused-appellant, due to the seeming inadequacy of his defense adopted in the first instance.

In the second place, it may be stressed, to the point of being repetitious, that this Court defers to the factual findings of the trial court. The court a quo was convinced, as we are, that Decena was a retardate with the mental age of a seven-year old child at the time of the commission of the crime. This is amply demonstrated by her testimony to the effect that she continued washing the clothes while Trimor was removing her panty.[1] Such testimony showed either an unintelligent answer which a retardate would naturally give in open court or a failure to grasp the implications of what was happening to her due to her immaturity and inexperience.

Noticeable, too, is the way Decena was treated on the witness stand by the court and by the prosecutor. A scrutiny of the records would reveal that the questions propounded to Decena were very simple and elementary, even patronizing, phrased as they were to be understood by an average child rather than by a discerning adult. To illustrate this point, we are quoting hereunder portions of her testimony:

"COURT

:

What is your name?

A

:

Benedicta Decena.

COURT

:

How old are you?

A

:

Thirty years old.

COURT

:

Did you study?

A

:

Yes, your honor.

COURT

:

Where did you study?

A

:

In Pansol, Calamba, Laguna.

COURT

:

Who was your teacher in Grade I?

A

:

Mrs. Salom.

COURT

:

From where is Mrs. Salom, if you know?

A

:

Calamba, Laguna.

COURT

:

Up to what grade did you finish in elementary?

A

:

Grade V.

COURT

:

Who was your teacher in Grade V?

A

:

Mr. Fule.

COURT

:

In what school did you finish Grade V?

A

:

Pansol."[2]

"x x x x x x x x

Q:

What do you understand about your oath?

A:

I am fighting, your honor.

COURT

:

Do you understand that when you take an oath you are suppose(d) to tell the truth and nothing but the truth?

A

:

Yes, your honor.

COURT

:

And are you going to tell the truth in this trial?

A

:

Yes, your honor.

FISCAL

:

Miss Decena, do you know the difference between bad and good?

A

:

Yes.

Q

:

Praying to God, how do you consider it, bad or wrong?

A

:

Good.

Q:

How about to steal, how do you classify that?

A

:

Bad.

Q

:

How about raping a woman, how do you classify that?

A

:

It's bad."^[3]

The trial court's conclusion that Decena was indeed a retardate relied heavily on the expert opinion of Dr. Marfil. Was the doctor's testimony credible? At the time she testified, Dr. Marfil was the head of the Neuro-Psychiatric Services Division of the NBI. As a licensed doctor of psychiatric medicine, she was authorized to conduct a psychiatric evaluation of the victim, which is much more than what a psychologist — a non-doctor — can offer. It must also be noted that in ascertaining if one is insane only a psychiatric examination is required; no psychological examination is necessary. Surely, the standard for determining if one is a retardate cannot be more stringent than the test for insanity. When Dr. Marfil completed her examination of Decena, nothing else was needed to buttress her finding of retardation.

Considering the mental state of the victim, proof of force, violence, or intimidation is superfluous, as the crime is deemed to be akin to statutory rape.^[4] Precisely because the victim in this case is not possessed of the intelligence of a woman her age, we cannot apply to the peculiar circumstances of this case the principles previously adopted by this Court in ordinary rape cases, such as (a) that inconsistencies between the sworn statement of an alleged rape victim before a municipal judge and her testimony in court impair her credibility; (b) that delay in reporting a rape case may be justified where such is due to strong reasons; and (c) that her conduct during and after the incident renders her testimony worthless and unbelievable.

Decena's behavior after the incident, such as, for instance, continuing to wash clothes even as she was already being molested, failure to resist as the act was being consummated (although she did try to push Tramor away when she felt some pain), resuming her chore even after the coitus, and later returning to the same place thereby giving her ravishers another opportunity to repeat their deed — would seem unnatural for a woman her age, but in this case only reinforces the trial court's finding that, indeed, the victim has the mind of a seven-year old child. Decena cannot possibly be expected to comprehend what was happening to her, much less, the implications on her womanhood. Neither can she be faulted for not reporting the incident either to her parents or to the police until her sister started probing her on her condition: her mental state is a cogent reason for her silence.

Assuming arguendo that the victim was not confirmed to be a retardate, the Court agrees with the trial court that intimidation was present. The crime scene was deserted. Two men accosted the victim while she was in the water with nowhere to run. One of the men was holding a knife while holding her shoulder, while the other was threatening to kill her even as he was removing her panty.

Decena also showed resistance to the attack when, even as she was being threatened by two men one of whom was armed with a knife, she attempted to push Tramor away upon feeling pain, although the defense belittled such opposition and tried to portray it as voluntary submission.

The defense would also like to make an issue out of a small detail in Decena's narration of facts. Tramor argues that her testimony on how she reached the rock by the shore where she was raped is inconsistent. At one point she said she was carried there;^[5] at another, she went ahead of Tramor.^[6] This is a very minuscule fact which does not in any way affect the truth of her other statements nor her credibility.

WHEREFORE, the instant appeal is hereby DENIED and the decision appealed from is AFFIRMED, modified only as far as the award of damages is concerned, which should be increased to P40,000.00 in view of the doctrine laid down in Antonio.^[7]

Feliciano, (Chairman), Vitug, and Francisco, JJ., concur.
Melo, J., see dissenting opinion.

[1] T.S.N., February 6, 1990, pp. 16, 22-23.

[2] *ibid.*, pp. 3-4.

[3] *Id.*, pp. 7-8.

[4] *People v. Antonio*, G.R. No. 107950, June 17, 1994, 233 SCRA 283.

[5] T.S.N., February 6, 1990, p. 27.

[6] *ibid.*, p. 25.

[7] *Supra*.

DISSENTING OPINION

MELO, J.:

I cannot in conscience vote for conviction of accused-appellant for rape.

Under Article 335 of the Revised Penal Code, there are three modes of committing rape:

First, by use of force or intimidation;

Second, when the woman is deprived of reason or otherwise unconscious and

Third, when the woman is under twelve years of age, even though neither of the circumstances mentioned under the first two modes are present.

We can immediately eliminate the third mode for the complainant is more than twelve years of age.

Neither can accused-appellant be convicted of rape by the use of force or intimidation. For conviction in rape

cases, it is necessary that the element of voluntariness must be absolutely lacking (People vs. Castillan, 217 SCRA 76 [1993]). Spread over the record is the absence of resistance of the complainant to the alleged sexual assault.

By her own testimony, Benedicta was washing clothes while she was chest deep (pp. 17-18, tsn, February 6, 1990) in water at a place called Dagat-Dagatan, a lake in the middle of a forest (p. 49, tsn, February 6, 1990), when accused-appellant and his companion approached her. Accused-appellant removed Benedicta's panties by submerging under water ("sinisid ho ako pailalim", p. 17, tsn, February 6, 1990). Again by her own testimony, Benedicta continued washing clothes while accused-appellant was removing her panties.

"COURT

:

While Menandro was removing your panty, did you do anything?

A

:

I was washing clothes then.

(p. 16, tsn, February 6, 1990.)

x x x x x x x x

COURT

:

What did you do while Trimor was removing your panty?

A

:

I was washing the clothes.

COURT

:

While Trimor started removing your panty, what did you do?

A

:

I stopped washing the clothes.

COURT

:

And what did you do?

A

:

I was still washing the clothes, your honor.

(pp. 22-23, tsn, February 6, 1990.)

Complainant's behavior while accused-appellant was removing her panties is strange and unnatural for a woman of virtue who was about to be sexually molested. She did not voice alarm, express objection, or offer any resistance. She unconcernedly continued washing clothes as if nothing untoward was happening to her.

Her testimony on how she was brought to the rock where the sexual act was consummated is inconsistent. She was either carried to the rock by accused-appellant:

FISCAL:

And how did you make to lie down?

A:

He carried me.

(p. 27, tsn, February 6, 1990)

for she went ashore ahead of accused-appellant:

COURT:

In other words, you went ahead in the shore?

A.

Yes.

(p. 25, tsn, February 6, 1990.)

In either case, she did not put up any resistance (p. 28, tsn, February 6, 1990) or attempt to flee. Before and during the act of copulation, she exerted no effort to resist accused-appellant in consummating the act. The only thing she did was to push accused-appellant when he had succeeded in inserting his penis into her sexual organ (p. 29, tsn, id.) because, according to her, it was painful (p. 29, id.); she, however, admitted that accused-appellant stayed on top of her for a long time.

Q:

Now, for how long did the private organ of Menandro Trimor stay inside your sexual organ?

A:

For a long time, sir.

(pp. 35-36, tsn, February 6, 1990.)

Her testimony, therefore, shows that there was not the least physical struggle on her part to frustrate accused-appellant in satisfying his sexual desires.

Benedicta's behavior manifested consent, not resistance. Her reason for not resisting was that accused-appellant threatened her and that his companion, Antonio Magsipoc, was holding a bladed weapon (pp. 18-19, tsn, February 6, 1990). I do not find her testimony credible for accused-appellant was totally unarmed and her testimony on the presence of Magsipoc is negated by her own statement (Exhibit 3; p. 21, Record, Vol. 2) given on March 20, 1988 before Sgt. Potenciano Escobel at the Police Station of Los Banos, and sworn to before Municipal Trial Court Judge Romulo Cartesiano of Los Banos, Laguna where she failed to mention Antonio Magsipoc. It is significant to note at this juncture that the accusation against Antonio Magsipoc was dismissed for insufficiency of evidence

(pp. 71-72, Record, Volume 2) pursuant to the Prosecutor's recommendation (p. 69, Record, Volume 2). It is highly incredible and contrary to ordinary human conduct and experience for a woman who has been raped to utterly forget or fail to mention the man who had raped her. Inconsistencies between the sworn statement of an alleged rape victim before a municipal judge and her testimony in court impair her credibility (*People vs. Lactao*, 227 SCRA 463 [1993]). She testified that after the coitus she resumed washing clothes (p. 30, *id.*), which demeanor is inconsistent with the behaviour of a woman who had just been ravished. Worst, according to her sworn statement (Exh. 3) she did not leave the place where she was allegedly sexually assaulted until noon, and during that period (6 a.m. to 12 noon) she and accused-appellant had sexual intercourse three times:

T

:

Ano ang nangyari sa iyo?

S

:

Hinindot ho.

T

:

Kailan at saan ka hinindot?

S

:

Una ho araw ay Oktubre 7, 1987, alas 6:00 ng umaga, doon ho sa Tadalac, Los Banos, Laguna, ang pangalawa ay ika-9 ng Oktubre, 1987, ang oras ay alas 7:00 ng umaga, doon din sa Tadalac, Los Banos, Laguna.

T

:

Sino ang humindot sa iyo?

S

:

Si Menandro Trimor ho.

T

:

Papaano ka hinindot ni Menandro noong ika-7 ng Oktubre, 1987?

S

:

Naglalaba ho ako sa dagatan at siya ay sumisid tapos ay hinubo niya ang aking panty at tapos ay dinala niya ako sa puno tapos ay isinandal ako at tapos ay ibinuka niya ang hita ko at tapos ay ipinasok niya ang kaniyang titi sa kiki ko at tapos ay nasaktan ako kaya siya ay itinulak ko.

T

:

Saan naroroon ang puno na sinasabi mo?

S

:

Ang puno ay nakalaylay sa tubig doon sa dagatan.

T

:

Gaano kalayo ang puno sa kinaroroonan mo nang ikaw ay hubuan?

S

:

Isang dipa.

T

:

Pagkatapos na si Menandro ay iyong itulak, ano ang nangyari?

S

:

Ako ay naglaba ulit at si Menandro naman ay nagpahinga at noon ay naisuot ko na ang aking panty at pagkatapos ay lumapit ulit siya sa aking, hinubo ulit ang aking panty, isinandal ulit sa puno at pagkatapos ay hinindot ulit ako.

T

:

Pagkatapos kang mahindot ulit, ano ang nangyari?

S

:

Ipinagpatuloy ko ulit ang paglalaba at siya naman ay umalis na at noong mga alas 12:00 ng tanghali ay bumalik ulit siya at inalisan ulit niya ako ng panty at dinala niya ako sa pampang sa tabi rin ng puno at inihiga niya ako at tapos ay hinindot ulit niya ako.

T

:

Ano ang pagkakaintindi mo sa "hinindot"?

S

:

Ang titi niya ay naipasok sa kiki ko.

(Exh. 3.)

And nowhere in complainant's sworn statement is there mention whatsoever of any force, violence or intimidation employed by accused-appellant in having sexual intercourse with her. This goes to show that there was consent on the part of Benedicta to the sexual congress, or, at least, that there was no resistance exerted by her.

Benedicta did not tell her parents about the rape nor did she report the matter to the police authorities. Only after her sister noticed her enlarging abdomen and brought her to a hospital for a pregnancy test and only after the medical examination confirmed her pregnancy did she disclose to her sister the incidents at Dagat-Dagatan and the name of her alleged assailants. Delay in reporting a rape case may be justified where such is due to strong reasons like death threats against the victim or her family (*People vs. Lim*, 206 SCRA 176 [1992]). The offended party claims that the delay in reporting the sexual assault upon her was due to the threats of accused-appellant to kill her. We cannot accept her explanation for the simple reason that she was staying with her parents and eight brothers (p. 45, *id.*) who could have given her ample protection. To our mind, she would not have revealed the rape had she not become pregnant (*People vs. Flores*, 125 SCRA 244 [1983]).

To cap it all, on October 9, 1987, or two days after the first alleged rape, complainant went back to Dagat-Dagatan, the place of the alleged first rape, to wash clothes. And she testified that she was again allegedly raped at said place. Her conduct in going back to the place where she was allegedly raped is contrary to rational human behavior. She should have taken necessary precaution in order that accused-appellant would not be accorded an opportunity to repeat the sexual assault on her. Her conduct renders her testimony worthless and unbelievable (*People vs. Castilian*, 217 SCRA 76 [1993]).

Nor can accused-appellant be convicted for rape under the second mode of committing rape.

A review of the record shows that there is absence of clear and convincing evidence to establish that the complainant is a retardate. True, Dr. Erlinda Marfil, head of the National Bureau of Investigation Neuro Psychiatric Service, testified that complainant is a retardate with a comprehension equal to that of a 7-year old child. However, under examination of the trial judge, the witness admitted that to determine definitely whether a person is a retardate, both psychiatric and psychological tests are necessary (pp. 30-31, *tsn*, January 15, 1990). Dr. Marfil being only a psychiatrist and not a psychologist, as she herself testified (p. 28, *tsn*, January 15, 1990), her finding, based upon a psychiatric test alone that the offended party is a retardate is incompetent and inconclusive and cannot bind this Court (pp. 8; 40, *tsn*, January 15, 1990).

In view of Dr. Marfil's incomplete examination in the determination of the mental capacity of complainant, the latter's testimony assumes greater weight and becomes more significant, and is a conclusive determinant of her mental state.

A reading of complainant's testimony will show that her answers during the direct and cross-examination are responsive and intelligent, clearly demonstrating that she is not a dim-witted retardate but rather a normal person. The following excerpts of her testimony readily reveal that she is not a retardate but a person of normal intelligence:

COURT

:

Before you begin Fiscal, considering that Dr. Erlinda Marfil certified that this witness is a retarded person with the mental age of seven years old, before you proceed, the Court would like to find out what is her name.

A

:

Benedicta Decena.

COURT

:

How old are you?

A

:

Thirty years old.

COURT

:

Did you study?

A

:

Yes, your honor.

COURT

:

Where did you study?

A

:

In Pansol, Calamba, Laguna.

COURT

:

Who was your teacher in Grade I?

A

:

Mrs. Salom.

COURT

:

From where is Mrs. Salom, if you know?

A

:

Calamba, Laguna.

COURT

:

Up to what grade did you finish in elementary?

A

:

Grade V.

COURT

:

Who was your teacher in Grade V?

A

:

Mr. Fule.

COURT

:

In what school did you finish Grade V?

A

:

Pansol.

(pp. 3-4, tsn, February 6, 1990.)

x x x x x x x x

FISCAL

:

Miss Decena, you take your oath a while ago, do you know the meaning of an oath?

A

:

Yes, sir.

Q

:

What do you understand about your oath?

A

:

I am fighting, your honor.

COURT

:

Do you understand that when you take an oath you are suppose to tell the truth and nothing but the truth?

A

:

Yes, your honor.

COURT

:

And are you going to tell the truth in this trial?

A

:

Yes, your honor.

FISCAL

:

Miss Decena, do you know the difference between bad and good?

A

:

Yes.

Q

:

Praying to God, how do you consider it, bad or wrong?

A

:

Good.

Q

:

How about to steal, how do you classify that?

A

:

Bad.

Q

:

How about raping a woman, how do you classify that?

A

:

It's bad.

(pp. 7-8, tsn, February 6, 1990.)

x x x x x x x x

COURT

:

Do you understand what is meant by telling the truth?

A

:

Yes, your honor.

COURT

:

What does it mean?

Q

:

Will you tell the truth?

COURT

:

What does telling the truth means?

A

:

Will take an oath your honor.

COURT

:

But do you know that is the truth?

A

:

Yes, your honor.

COURT

:

Do you understand that, telling a lie? What do you understand by telling a lie, is it good or bad?

A

:

It is bad, your honor.

COURT

:

So you promise the Court that you will tell the Court the truth?

A

:

Yes, your honor.

(pp. 10-11, tsn, February 6, 1990.)

Moreover, the psychiatrist herself confirmed her previous statement as to the victim's mental status, thus:

Q

:

Do you confirm your statement under mental status which runs this way:

"She was carelessly dressed in clean clothes and she seemed clean in person. Quietly sat during the interview, no addities of behavior noted, responses were courteous and coherent, revelant, immediate. She spoke only when queried. Orientation to three spheres was intact. No morbid trend were elicited."

Do you confirm this?

A

:

Yes, sir.

(p. 42, tsn, January 15, 1990),

which general impression can hardly be equated with mental retardation (pp. 8--8A, Record, Vol. 2).

Consequently, accused-appellant cannot be convicted under Paragraph 2 of Article 335 of the Revised Penal Code for under said legal provision, rape is committed when the victim is unconscious or totally deprived of reason or when she is suffering some mental deficiency impairing her reason or free will (The Revised Penal Code by Ramon C. Aquino, 1976 edition, Volume 3, p. 16920. None of the aforementioned circumstances obtains in this

case.

I, therefore, hold that the prosecution evidence failed to overcome the constitutional presumption of innocence in favor of accused-appellant. The synergistic thrust of the circumstances above discussed inexorably impels me toward the unavoidable conclusion that accused-appellant cannot legally be found guilty of the charge against him, or at best creates in my mind that measure of doubt which perforce calls for acquittal.

IN VIEW OF THE FOREGOING, I dissent from the majority opinion and vote for the acquittal of accused-appellant.

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