

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EMILIANO DURANAN, A.K.A. “KALBO,”ACCUSED-APPELLANT.

G.R. Nos. 134074-75. January 16, 2001

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the decision [1] of the Regional Trial Court, xxx, finding accused-appellant Emiliano Duranan, a.k.a. “Kalbo,” guilty beyond reasonable doubt of two counts of rape and sentencing him to suffer the penalty of reclusion perpetua for each count of rape and to indemnify private complainant AAA in the amount of P50,000.00.

The information in Criminal Case No. Q-94-55711 alleged ¾

That on or about the 8th of March 1994, in xxx, Philippines, said accused with lewd designs and by means of force and intimidation, to wit, by then and there, willfully, unlawfully and feloniously taking advantage of undersigned complainant, AAA’s feeble-mindedness and thereafter have carnal knowledge with (sic) the undersigned complainant against her will and without her consent.

Contrary to law. [2]

The information in Criminal Case No. Q-94-55712 averred ¾

That on or about the 7th of March 1994, in xxx, Philippines, the said accused with lewd designs and by means of force and intimidation, to wit, did then and there, willfully, unlawfully and feloniously taking (sic) advantage of the undersigned (sic) feeble-mindedness, and thereafter have carnal knowledge with (sic) the undersigned complainant against her will and without her consent.

Contrary to law. [3]

Upon arraignment, accused-appellant pleaded not guilty to each charge of rape against him, whereupon he was tried.

The prosecution presented three witnesses, namely, complainant AAA, complainant’s mother BBB, and the attending medico-legal officer at Camp Crame, Dr. Rosalina O. Cosidon.

Complainant AAA, who was 25 years old at the time of the incidents in question, is considered to be retarded and finished up to the sixth grade only. She is unemployed and simply does household chores for her family. Accused-appellant lived with the complainant’s family in the same apartment in xxx where he rented a room that he shared with several other people.

The first rape took place in the afternoon of March 7, 1994. [4] AAA was standing by the door of her grandfather’s house when accused-appellant suddenly placed his arm on her neck and dragged her inside the common bathroom. [5] Complainant said that accused-appellant kissed her and then removed her shorts and underwear as he held her hands with his other hand. She did not cry for help because accused-appellant threatened

her that he would get angry if she did. [6] She claimed that accused-appellant was able to rape her while standing up despite her resistance. [7] After the incident, complainant was sent out of the bathroom and went directly home. [8]

The second incident occurred in the early morning of March 8, 1994, [9] according to complainant. She said she was cleaning the premises of her family residence when accused-appellant pulled her from her house and took her to his room. According to complainant, accused-appellant asked his brother, who was then cooking, to leave the room. As soon as his brother had left, accused-appellant laid her on the floor and raped her. [10] Complainant said she was forced to submit to accused-appellant's lust because of his threats. [11] After the incident, accused-appellant sent her letters professing love for her and telling her how beautiful she was. Complainant said she tore up the letters after reading them. [12]

In another incident, on March 12, 1994, accused-appellant asked complainant to let him use their bathroom. However, after being given permission, he grabbed complainant by the hand, pulled her inside the bathroom, and started kissing her on the lips and neck after closing the door behind them. He only stopped molesting her when he heard somebody coming. [13]

BBB testified that she saw her daughter leave the bathroom, quickly followed by accused-appellant. BBB noticed that her daughter's lower lip was bruised. When she confronted her daughter about it, the latter revealed for the first time what had happened to her. BBB went to Camp Karingal, together with complainant and her other children, CCC and DDD, where they filed affidavits and two informations. They then took complainant to Camp Crame for examination. [14] Dr. Rosalina O. Cosidon, who examined complainant, submitted a report which contained the following findings:

GENERAL AND EXTRAGENITAL:

Fairly developed, fairly nourished and coherent female subject. Breasts are hemispherical with pale brown areola and nipples from which no secretions could be pressed out. Abdomen is flat and soft. There is injury noted at the head;

Contusion, mucosa of the lower lip, measuring 1.2 x 0.3 cm, and 1 cm left of the anterior midline.

GENITAL

There is an abundant growth of pubic hair. Labia minora are full, convex and gaping with the pinkish brown and congested labia minor presenting in between. On separating, the same is disclosed an abraded posterior fourchette and an elastic, fleshy type hymen with shallow healing laceration at 5 o'clock position. External vaginal orifice offers strong resistance to the introduction of the examining index finger and the virgin-sized vaginal speculum. Vaginal canal is narrow with prominent rugosities.

CONCLUSION

Cervix is normal in size, color and consistency.

Findings are compatible with recent loss of virginity.

Barring unforeseen complications, it is estimated that the above injury will resolve in 7 to 9 days

REMARKS

Vaginal and peri-urethral smears are negative for gram-negative diplococci and for spermatozoa. [15]

Dr. Cosidon explained that the term "congested" used in reference to the labia minora meant that there was some inflammation that could have been caused by friction due to intercourse. [16] Taken together with the presence of

a shallow hymenal laceration, this finding indicates the possibility of intercourse that caused complainant's loss of virginity within the last five days. [17]

Accused-appellant filed a demurrer to the evidence, but the trial court denied it in its November 17, 1995 order. [18] The defense thereafter presented its witnesses, namely, accused-appellant Emiliano Duranan, accused-appellant's alleged roommates, Rico Bariquit and Carlito Catubig, and his wife Carlita Duranan.

With respect to the first incident of rape, which allegedly took place in the afternoon of March 7, 1994, it is contended that accused-appellant could not have committed such, because his daily schedule was such that he was not at home at that time. He said that because of his work, he used to leave the house at 3 a.m., arrive home at 1 p.m., and leave for work again at 3 p.m. and arrive home at 6:30 p.m. [19] He also alleged that on March 7, 1994 he left and was with Rico Bariquit throughout the day. [20] As to the second incident of rape, accused-appellant contends that it was impossible for him to commit rape in his room because there were at least six other people there at the time (i.e., morning of March 8, 1994) of the alleged rape. [21] He charged that the complaints were filed against him because complainant's family wanted to evict him and his housemates from their house. [22]

Rico Bariquit and Carlito Catubig confirmed accused-appellant's schedule. [23] Bariquit claimed that he was always with accused-appellant and knew where he was all the time. Both witnesses said rape could not have been committed in a room where at least five other people were sleeping. [24]

BBB and complainant denied seeing Rico Bariquit and Carlito Catubig before the two testified in court. [25]

Based on the evidence of the parties, the trial court rendered a decision on April 22, 1998, finding the accused-appellant guilty of two counts of rape. The dispositive portion of its decision reads: [26]

WHEREFORE, in view of all the foregoing, the Court finds the accused guilty beyond reasonable doubt as principal for two (2) counts of rape punishable under Article 335 of the Revised Penal Code, as amended by Section 11 of R. A. 7659, and sentences him to suffer the penalty of imprisonment of two (2) counts of reclusion perpetua with all its accessory penalties and to indemnify the private complainant the amount of FIFTY THOUSAND PESOS (P50, 000.00).

SO ORDERED.

Hence this appeal.

Accused-appellant assigns two errors as having been allegedly committed by the trial court:

- THE TRIAL COURT GRAVELY ERRED IN HOLDING THAT THE PRIVATE OFFENDED PARTY IS "DEPRIVED OF REASON" DESPITE THE ABSENCE OF TESTIMONY BY A COMPETENT MEDICAL EXPERT TO THAT EFFECT AND DESPITE STRONG EVIDENCE ON THE RECORD TO THE CONTRARY.
- THE TRIAL COURT GRAVELY ERRED IN ALTERNATIVELY HOLDING THAT THE ACCUSED IS GUILTY OF RAPING THE PRIVATE OFFENDED WOMAN THROUGH "FORCE AND INTIMIDATION".

First. Accused-appellant contends that he cannot be convicted of rape since the victim's mental age was not proven. He argues that under Art. 335(2) of the Revised Penal Code, an essential element for the prosecution for rape of a mental retardate is a psychiatric evaluation of the complainant's mental age to determine if her mental age is under twelve. [27] He further claims that only in cases where the retardation is apparent due to the presence of physical deformities symptomatic of mental retardation can the mental evaluation be waived.

The contention has no merit.

Rule 130, §50 of the Revised Rules on Evidence provides:

Opinion of Ordinary witnesses. -- The opinion of a witness for which proper basis is given may be received in evidence regarding ---

- (a) the identity of a person about whom he has adequate knowledge;
- (b) a handwriting with which he has sufficient familiarity; and
- (c) the mental sanity of a person with whom he is sufficiently acquainted.

Discussing this provision of the Rules on Evidence, Sen. Vicente J. Francisco writes in his treatise:

The mother of an offended party in a case of rape, though not a psychiatrist, if she knows the physical and mental condition of the party, how she was born, what she is suffering from, and what her attainments are, is competent to testify on the matter.

. . . .

It is competent for the ordinary witness to give his opinion as to the sanity or mental condition of a person, provided the witness has had sufficient opportunity to observe the speech, manner, habits, and conduct of the person in question. Generally, it is required that the witness details the factors and reasons upon which he bases his opinion before he can testify as to what it is. As the Supreme Court of Vermont said: "A non-expert witness may give his opinion as to the sanity or insanity of another, when based upon conversations or dealings which he has had with such person, or upon his appearance, or upon any fact bearing upon his mental condition, with the witness' own knowledge and observation, he having first testified to such conversations, dealings, appearance or other observed facts, as the basis for his opinion. [28]

In the case at bar, BBB testified on the mental condition of her daughter, thus:

Q:

How would you described your daughter? (sic)

A:

When she was still a child while walking she accidentally bumped her head and then on she acted quite not normal from then on we noticed changes because she acted like a child.

Q:

How old is (sic) AAA when this happened?

A:

3 to 4 years old.

Q:

At the age of 25, how would you described? (sic)

A:

She still thinks like a child but from her narration or statement we can see that her declaration are (sic) true or believable.

Q:

You mean to say that she could be intelligent.

A:

Yes, ma'am. She finished her elementary and I can say she is quite intelligent.

Q:

So she can somewhat understand what is happening around us?

A:

Yes, she can understand things around as long as she would be provided some basis and some reference in order (sic) to establish time, places and incident (sic).

Q:

At your house do you still assigned (sic) household chores(?)

A:

Yes, ma'am.

Q:

Could she relied (sic) upon madam witness?

A:

Yes ma'am. [29]

To rebut this, accused-appellant points to the mother's statement that complainant is "quite intelligent." The statement that complainant is "quite intelligent" must be read in the context of BBB's previous statement that complainant "thinks like a child but from her narration or statement we can see that her declaration are (sic) true or believable." Thus, what complainant's mother meant was that complainant, although she thought like a child, nevertheless could tell others what happened to her. Indeed, even the trial court admonished the defense counsel not to use inculpatory questions because complainant might give inculpatory answers. [30] At another stage of the trial, the trial court reminded counsel, "The witness [complainant] is not very intelligent. I think the witness cannot even distinguish dates." [31]

Thus, the trial court itself found in dealing with complainant that she was mentally deficient. The rule that findings of fact of the trial court should not be disturbed since the trial court is in the best position to determine the findings of fact [32] cannot be more apt than in this case.

Accused-appellant cites the medico-legal report which describes complainant as "coherent" and contends that this is an evaluation of the mental state of complainant. This contention is totally without basis. The medico-legal report categorically states that the purpose of the medical examination is limited to determining whether the complainant had been sexually abused. [33] In other words, the purpose of the examination was to determine her physical, not her mental, state.

Second. On the alternative, accused-appellant argues that indeed, complainant could not be a competent witness if she is a retardate. Under Rule 130, §20, any person who can perceive and make known his/her perception is qualified to be a witness. In this case, although complainant is a retardate, she was nevertheless able to tell the court what accused-appellant had done to her and to answer the questions of both the prosecutor and the defense counsel. This is clear from her testimony, thus:

Q:

Now, you said that you were raped by Emiliano Duranan. Where did this happen?

A:

In the bathroom of my Tiya Ineng.

Q:

Where is this bathroom of your Tiya Ineng?

A:

This bathroom is located at an alley, a “pasillo” towards our house.

Q:

Where is your house, Miss Witness?

A:

Our house is located at xxx.

Q:

You said that you were raped inside the bathroom of your Tiya Ineng. How were you able to get inside that bathroom of your Tiya Ineng?

A:

I was able to get inside the bathroom of Tiya Ineng because Emiliano Duranan pulled me inside.

Q:

How did Emiliano Duranan pulled you? (sic)

A:

He pulled me inside the bathroom by holding his arm against my neck, pulling me towards the bathroom.

. . . .

Q:

When Emiliano Duranan pulled you inside the bathroom, what happened after that?

A:

He kissed me.

(Witness is gesturing his (sic) hands towards her neck)

And he had my panty removed.

Q:

Now, you said that when you were inside the bathroom of your Tiya Ineng, Emiliano Duranan kissed you in (sic) your lips?

A:

Yes, ma'am.

Q:

Aside from kissing you, what did Emiliano do, if any?

A:

Aside from kissing me on my lips and my neck, he removed my underwear, my panty and he inserted his sex organ into my sex organ.

Q:

When "Kalbo" inserted his sex organ in your sex organ, what position were you then?

A:

We were standing.

Q:

Inside the bathroom?

A:

Yes, ma'am.

Q:

AAA, do you know how to tell the days of the week?

A:

No, ma'am.

Q:

How about the dates?

A:

No, ma'am.

Q:

Do you know what day is today?

A:

Wednesday.

Q:

How about yesterday, what date was that?

A:

Tuesday.

Q:

Do you know what date is today?

COURT:

She knows that today is Wednesday but she doesn't know the exact date. [34]

....

Q:

You also testified before that you were rape (sic) by Kalbo twice, is that correct?

A:

Yes, Ma'am.

Q:

When was the second time?

A:

The second time at their house that was Tuesday.

Q:

Is that the next day? After the incident in the bathroom?

A:

Yes, Ma'am.

....

Q:

So you said that you were laid down by Kalbo on the floor and then Kalbo kissed you, where did Kalbo kiss you?

A:

From (sic) my lips.

Q:

After that what did Kalbo do if any?

A:

Proceeded to removed (sic) my panty and inserted his organ to mine. [35]

At all events, any objection to the competency of complainant to testify should have been raised by the defense at the outset. It cannot be raised for the first time in this appeal. It has been held:

A party may waive his objections to the competency of a witness and permit him to testify.... [I]f, after such incompetency appears, there is failure to make timely objection, by a party having knowledge of the incompetency, the objection will be deemed waived, whether it is on the ground of want of mental capacity or for some other reason. If the objection could have been taken during the trial, a new trial will be refused and

the objection will not be available on writ of error. [36]

Third. Accused-appellant contends that the absence of injury sustained by complainant negates the presence of any force and intimidation. This contention is likewise without merit. The presence or absence of injuries is not essential in proving rape. What is essential is proof that sexual intercourse with a woman was accomplished without her consent. In this case, the absence of consent is shown by the fact that complainant is a mental retardate vulnerable to intimidation by accused-appellant.

Indeed, the degree of force or intimidation required for the act to constitute rape is relative, and must be viewed in the light of the complainant's perception and judgment at the time of the commission of the offense. [37] What is vital is that such force or intimidation be sufficient to consummate the purpose that accused-appellant had in mind. [38] In this case, due to the complainant's mental retardation, the force or intimidation required is not very great since it does not take much to force a child into submission. Indeed, complainant said she submitted to accused-appellant's demands because she was afraid he would get angry at her if she refused them. In *People v. Rosare*, [39] it was held that, in the instances where the victim is so weak in intellect that she is incapable of rational consent, the force applied may be constructive.

In sum, the mental retardation of the complainant is proven by the testimony of her mother, [40] the trial court's observations during the trial of her demeanor, behavior, and her intelligence, [41] while the fact of sexual intercourse is proven by the medico-legal certificate. [42] In addition, the prosecution proved the presence of force and intimidation, and the court appreciated such. [43] The intimidation, in this case, is constituted by the threats that accused-appellant made to the complainant, [44] not to mention the force employed by accused-appellant in placing his arm on the complainant's neck [45] and holding her hands while undressing her. [46]

However, the award of P50,000.00 as civil indemnity should be doubled because there are two counts of rape. In addition, complainant should also be awarded P50,000.00 as moral damages for each count of rape, or a total of P100,000.00 in accordance with our rulings. [47]

WHEREFORE, the decision of the Regional Trial Court, xxx, finding accused-appellant guilty beyond reasonable doubt of the crime of rape is **AFFIRMED**, with the modification that the award of P50,000.00 as civil indemnity is increased to P100,000.00 and, in addition, accused-appellant is ordered to pay complainant AAA the further sum of P100,000.00 as moral damages.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, Buena, and De Leon, Jr., JJ., concur.

[1] Per Judge EEE.

[2] Rollo, pp. 2-3.

[3] *Id.*, pp. 4-5.

[4] TSN, p. 8, Jan. 30, 1995.

[5] *Id.*, p. 14.

[6] TSN, pp. 11-12, Jan. 30, 1995.

[7] TSN, pp. 9-10, Sept. 21, 1994.

- [8] Id., p. 12.
- [9] TSN, p. 3, Oct. 5, 1994.
- [10] Id., pp. 6-7.
- [11] TSN, p. 18, Feb. 22, 1995.
- [12] TSN, p. 9-10, Oct. 5, 1994
- [13] Id., pp. 10-13.
- [14] TSN, pp. 22-25, Aug. 3, 1994.
- [15] Exhibit A; Records, p. 66.
- [16] TSN, p. 9. Aug. 3, 1994.
- [17] Id., pp. 14-15.
- [18] Records, p. 80.
- [19] TSN, pp. 9-13, Feb. 28, 1996.
- [20] Id., p. 10.
- [21] Id., pp. 13-15.
- [22] Id., p. 18.
- [23] TSN (Rico Bariquit), pp. 13-14, March 11, 1996; TSN (Carlito Catubig), p. 6, June 5, 1996.
- [24] Id., p. 16; id., p. 8.
- [25] TSN (BBB), p. 5, Jan. 29, 1997; TSN (AAA), p. 22, Jan. 29, 1997.
- [26] RTC Decision, p. 10; Records, p. 183.
- [27] Appellant's Brief, pp. 4-7.
- [28] 7 V. J. FRANCISCO, THE REVISED RULES OF COURT OF THE PHILIPPINES 735-736 (1997).
- [29] TSN, pp. 18-19. Aug. 3, 1995.
- [30] TSN, p. 8. Feb. 22, 1995.
- [31] Id., p. 10.
- [32] People v. Atop, 286 SCRA 157 (1998).
- [33] Exhibit A; Records, p. 66.
- [34] TSN, pp. 6-11, Sept. 21, 1994.
- [35] TSN, pp. 2-7, Oct. 5, 1994.
- [36] Wharton's Criminal Evidence §1149, p. 1988, cited in People v. Francisco, 78 Phil. 694, 706 (1947). See also People v. Cruz, 208 SCRA 326 (1992).
- [37] People v. Corea, 336 Phil 72 (1997); People v. Edualino, 337 Phil. 639 (1997).

[38] *People vs. Antonio*, 233 SCRA 283 (1994)

[39] 332 Phil 435 (1996).

[40] TSN, p. 19, Aug. 3, 1994.

[41] TSN, p. 8, Feb. 22, 1995.

[42] Exhibit A; Records. p. 66.

[43] RTC Decision p. 10, Records, p. 183.

[44] TSN, p. 11, Sept. 21, 1994; TSN, p. 15, Feb. 22, 1995.

[45] TSN, p. 14, Jan. 30, 1995.

[46] TSN, p. 6, Oct. 5, 1994.

[47] E.g., *People v. Ramos*, G. R. No. 136398, November 23, 2000; *People v. Napiot* 311 SCRA 772 (1999); *People v. Gementiza*, 285 SCRA 478 (1998).

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