

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ARSENIO DE JESUS (ACQUITTED) AND RUBEN “AGO” LUMIBAO, ACCUSED,

G.R. Nos. 144080-81. January 26, 2004

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

In its joint decision[1] promulgated on May 26, 2000, the Regional Trial Court of Camiling, Tarlac, Branch 68, found appellant Ruben Lumibao guilty of rape beyond reasonable doubt in Criminal Case No. 97-37. After carefully considering the records and the evidence, however, we find merit in his appeal.

The Information filed against Lumibao reads:

That in between the period September 1996 until March 1997 in Cacamilangan Sur, Camiling, Tarlac and within the jurisdiction of this Honorable Court, the above-named accused, being the uncle of the offended party, Agnes C. Lumibao, with lewd designs, did then and there willfully, unlawfully and feloniously lie and had carnal knowledge with private complainant Agnes C. Lumibao, a mental retardate.

CONTRARY TO LAW.[2]

The Information against de Jesus reads:

That in between the period September 1996 until March 1997 in Cacamilangan Sur, Camiling, Tarlac and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, did then and there willfully, unlawfully and feloniously lie and had carnal knowledge with private complainant Agnes C. Lumibao, a mental retardate.

CONTRARY TO LAW.[3]

Upon arraignment, the accused Arsenio de Jesus and herein appellant Ruben Lumibao pleaded not guilty. Thereafter, joint trial on the merits ensued. De Jesus was acquitted. Only herein appellant was found guilty as charged. He was sentenced to suffer the penalty of reclusion perpetua. Hence, he seasonably appealed to this Court.

The facts of the cases as culled from the records are as follows:

Appellant Ruben “Ago” Lumibao is the paternal uncle of the alleged victim, Agnes Lumibao.

At the time of the alleged offenses, which occurred sometime between September 1996 and March 1997, Agnes Lumibao was 27 years old, but with a mental age of 3 years and 3 months and an intelligence quotient (IQ) of 29.[4] Her mother, Nenita Lumibao, left Agnes in the care of her grandparents from the time she was 7 years old.[5] When Nenita’s husband died, she left Agnes with her sister-in-law, Evelyn Lumibao Tagaro, while Nenita worked in Manila.[6]

Appellant’s house as well as that of Agnes was located in the same compound owned by appellant’s parents.[7] The accused Arsenio de Jesus was their neighbor.[8]

Sometime in March 1997, Melba Lumibao Vicente, a paternal aunt of Agnes, observed that Agnes was pregnant.[9] Melba informed Evelyn about her observation. They asked Agnes who was the author of her pregnancy by enumerating the names of the men they knew, including “Ago,” the nickname of appellant Ruben Lumibao. Agnes only smiled in response to all the names given to her.[10]

When Nenita was notified of her daughter’s pregnancy, she directed her son to bring Agnes to Manila where she was examined by a doctor.[11] Agnes’ pregnancy was confirmed. Subsequently her mother filed her complaint before the National Bureau of Investigation (NBI) against herein appellant. In the line-up conducted by the NBI, Agnes pointed to him when asked who raped her from among a line-up of seven (7) men, six (6) of whom she had never seen before.[12]

The case was then referred to the Department of Justice (DOJ) for preliminary investigation. It was then and there that Arsenio de Jesus became also an accused because he was mentioned by Agnes as one of those who allegedly raped her.[13]

On September 12, 1997, Agnes gave birth to a baby girl.[14]

At the trial, the first witness for the prosecution was LORENDIA GOZAR, an NBI psychologist. She testified that Agnes could hardly relate to her environment, was very dependent on the people around her, and could hardly do a thing without supervision.[15] She also testified that when she asked Agnes who was the father of her child, the latter answered “Papa”. Because Agnes could not state names properly, Gozar enumerated the names of persons Agnes could presumably be calling “Papa” with the help of Agnes’ mother who was with her during the interview. When the name of appellant Ruben Lumibao was mentioned, Agnes nodded her head and raised her two hands.[16]

Another witness, ANNABELLE SOLIMAN, a psychiatrist at the NBI, testified that in interviewing Agnes, she had to ask the assistance of the mother because Agnes was answering in Ilocano. Agnes had a very limited vocabulary and even her mother had difficulty in understanding her.[17] She asked Agnes who caused her pregnancy by enumerating random names because she did not know the names of the men in Agnes’ neighborhood,[18] except for Ruben and Arsenio, which were supplied by the mother.[19] Agnes nodded her head when she heard the names Ruben and Arsenio.[20]

The next witness, SIXTO COMIA, an NBI agent, testified that the police line-up he conducted at the NBI consisted of four (4) construction workers from the construction work going on in the NBI building and two (2) visitors who were in the NBI at the time. The other person completing the police line-up was appellant Ruben Lumibao.[21] He testified that when he asked Agnes who had sexual intercourse with her, she pointed to appellant.[22]

RIZALINO LEANO, an NBI special investigator who could speak Ilocano, testified that he took the sworn statement of Agnes.[23] She had great difficulty trying to narrate how the alleged rape happened. According to him, Agnes had to be assisted by her mother because he could not understand her even in Ilocano.[24]

NENITA LUMIBAO, the complainant and mother of Agnes, testified that on March 18, 1997, the son of Evelyn Tagaro, Gilbert, called her and told her that they suspected Agnes of being pregnant. The following day, she called Evelyn to ask if it was true. According to Nenita, Evelyn (who died after the trial started) told her that when asked who caused her pregnancy, Agnes answered, “Ago.”[25]

AGNES LUMIBAO, the victim, testified on direct examination that the father of her child was “Papa” and pointed to appellant Ruben Lumibao.[26] On cross-examination, she testified that her other neighbors, namely Abet, Ronnie[27] and Gaudencio, also removed her blouse and pants and had sexual intercourse with her.[28]

In his defense, appellant Ruben Lumibao denied having sexual intercourse with Agnes.[29] He also testified that the mother of Agnes, Nenita, asked him to sign a document[30] to the effect that she would acquire the property of his parents. When he refused to do so, she told him that, “You will have your day”.[31] On cross-examination, he testified that his brother, who was Nenita’s late husband, predeceased his parents.[32] He said that in March 1997, shortly after his parents’ death, Nenita wanted to get the house and lot of his parents.[33]

MELBA LUMIBAO VICENTE, aunt of Agnes and sister of appellant, testified that when she and her sister Evelyn first confronted Agnes about her pregnancy, the latter could not tell who the father was. They enumerated the names of men they knew from their neighborhood, including the names “Ago”[34] and “Papa of Ronald,”[35] referring to appellant Ruben Lumibao. But Agnes only smiled in response to all the names given to her, including that of appellant. She also testified that it took them one week after this confrontation to inform Nenita because they kept asking her who caused her pregnancy and she could not tell them.[36]

The trial court rendered a decision on May 26, 2000, convicting Ruben Lumibao of rape and sentencing him to suffer reclusion perpetua, while acquitting Arsenio de Jesus. The dispositive part of the decision read:

WHEREFORE, premises considered, accused Arsenio de Jesus is hereby ACQUITTED of the crime of Rape under former Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659, and the Information filed against him is correspondingly QUASHED, whereas accused Ruben “Ago” Lumibao is hereby found GUILTY beyond reasonable doubt of the same crime of Rape and is sentenced to suffer the penalty of reclusion perpetua, to pay the victim the sum of Seventy Five Thousand Pesos (P75,000.00) as moral damages, the sum of Fifty Thousand Pesos (P50,000.00) as exemplary damages and the sum of Twenty Five Thousand Pesos (P25,000.00) as compensatory damages, and further, to acknowledge and support the offspring begotten from said rape.

SO ORDERED.[37]

Appellant now questions said conviction and anchors his appeal on the following assignment of errors:

I

THE TRIAL COURT ERRED IN GIVING FULL FAITH AND CREDENCE TO THE TESTIMONY OF AGNES LUMIBAO DESPITE ITS MATERIAL INCONSISTENCIES AND CONTRADICTIONS.

II

THE TRIAL COURT ERRED IN FINDING THE ACCUSED-APPELLANT RUBEN LUMIBAO GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE.

The main issue before us is whether or not appellant’s guilt has been proven beyond reasonable doubt.

Appellant insists that the testimony of Agnes was replete with material inconsistencies and contradictions. Appellant submits that the trial court misapprehended or overlooked the following facts which, if considered, would result in his acquittal:

First, when Agnes was asked by NBI Senior Agent Sixto Comia[38] who raped her, she answered “Papa Onald.”[39] The real name of the appellant is Ruben, which is quite different from “Onald.” Second, the NBI special investigator could hardly get any answer from the victim without the intervention of her mother who would interpret Agnes’ sign language. It took the NBI special investigator more than one day to prepare Agnes’ sworn statement because of the difficulty in getting answers from her. Third, during the line-up conducted at the NBI, Agnes had a hard time identifying appellant Lumibao. Fourth, even the prosecution lawyer manifested during her cross-examination that Agnes had the habit of nodding her head to every question and name

propounded to her. She was easily swayed by anything she heard or told to her. Finally, her silence for a long period of time rendered her credibility doubtful.

For the appellee, the Office of the Solicitor General stresses that though mentally retarded, Agnes could perceive things and convey her perceptions, using limited verbal communication and sign language. The OSG argues that assuming there were some inconsistencies or contradictory declarations in her testimony, or delay in getting her sworn statement, such were to be expected from a mental retardate. According to the OSG, the records showed that “Papa Onald” meant Papa of Ronald, referring to appellant Ruben Lumibao whose son was named Ronald.

Further, the OSG contends that a mentally retarded person is not necessarily prone to suggestions made by adults but can only relay whatever she perceives by her senses. According to the OSG, it was the victim who supplied the answers using words, sign language, and re-enactment of the incidents while her mother merely interpreted for her. Moreover, the OSG submits that Agnes’ testimony that she was raped by appellant was materially and substantially corroborated by other witnesses. Agnes waited some months before she told anyone about what happened to her because appellant threatened to kill her mother, the OSG added.

In reviewing rape cases, this Court observes the following guiding principles: (1) an accusation for rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (2) in view of the intrinsic nature of the crime where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; (3) the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense.[40] These guidelines understandably assume that the victim of the rape is herself the complaining witness and that she could testify intelligently such that her testimony could normally be understood by the trial court.

The guilt of an accused must be proved beyond reasonable doubt. Before he is convicted, there should be moral certainty - a certainty that convinces and satisfies the reason and conscience of those who are to act upon it.[41] Absolute guarantee of guilt is not demanded by the law to convict a person of a criminal charge but there must, at least, be moral certainty on each element essential to constitute the offense and on the responsibility of the offender. Proof beyond reasonable doubt is meant to be that, all things given, the mind of the judge can rest at ease concerning its verdict.[42] Again, these basic postulates assume, in our view, that the court and others at the trial are able to comprehend the testimony of witnesses, particularly of the victim herself if she is presented and testified under oath.

In this case, the records show that when Agnes was asked by her paternal aunts Melba and Evelyn (with whom she then was living) on the matter of who the father of her child was, she could not give any answer and merely smiled by way of response to all the names given to her, including that of appellant. This confrontation happened just after the aunts first noticed that Agnes was pregnant and before she was sent to her mother in Manila.

Witness Melba Lumibao Vicente testified on direct examination for the defense which we excerpt for its candor and pertinence:

A:

I and my sister (sic) asked her who caused her pregnancy but because she could not understand the word “yot”, my sister demonstrated by pointing to her vagina and asked her who did it and she could not tell, Sir.

...

Q:

And when you said she could not tell who caused her pregnancy, what did you do with Evelyn?

A:

Because she could not say who caused her pregnancy, we were the ones who supplied the names and she answered “yi-yi-yi”, Sir.

Q:

How many names of person you mentioned to Agnes?

A:

Several names, Sir

Q:

Could you recall some of those names which you mentioned to Agnes?

A:

Yes, Sir.

Q:

Enumerate some of those names?

A:

We said Ronnie because he was her crush, Abbet, Berto, Lakay Kulas, Isko, no more names, Sir.

Q:

And what did Agnes tell you or answer you when you mentioned those names?

A:

She was smiling, Sir.

Q:

Did she make any answer?

A:

She did not answer she was just smiling, Sir.

Q:

How about the names of Ago and Arsing, did you mention that?

A:

Yes, Sir.

Q:

And what did Agnes tell you, what was her reaction?

A:

She did the same reaction when asked the first names, she was just smiling, Sir.[43]

It was only after she met her mother in Manila that the author of her pregnancy became identified. When the NBI psychologist asked her who caused her to be pregnant, she answered “Papa” with the assistance of her mother. When asked the same question by the NBI psychiatrist who enumerated random names of men, Agnes nodded upon the mention of the names Arsenio and Ruben because these were the only names she knew from those given to her. When asked by the NBI special investigator the identity of her rapist, she answered “Papa Onald”, again with the assistance of her mother.

It appears clear to us that Agnes could hardly communicate without her mother assisting her and interpreting what she said. However, the trial court had to order her mother to step out of the courtroom because she kept coaching her on what to say during the direct examination.[44]

Given the circumstances of Agnes’ testimony in court, in the light of the entire evidence on record, the identity of the author of Agnes’ pregnancy does not appear to us clearly established. Note that the alleged offenses in Cases Nos. 97-36 and 97-37 took place over an extended period of time and long before the actual investigation conducted by the NBI. During the investigation, the active influence played by her mother during the interviews conducted by the NBI psychologist, psychiatrist, and special investigator is undenied. The trial judge observed her mother’s constant presence and assistance given to Agnes during her direct examination in court. All these leave us unconvinced that Agnes’ testimony on this point could be relied upon to pin down who was her ravisher and the purported father of her child, with moral certainty.

The rule that this Court should refrain from disturbing the conclusions of the trial court on the credibility of witnesses and their testimony does not apply where the trial court might have overlooked certain facts of substance or value which, if considered, would affect the outcome of the case.[45] Further, this Court will not hesitate to reverse a judgment of conviction and acquit the accused where there are strong indications pointing to the possibility that the rape charge was motivated by some factors other than the truth as to its commission.[46] While the allegation of ill motive on the part of the mother stemming from a dispute over the house and lot owned by the Lumibaos has not been sufficiently proven by the documentary evidence, we cannot discount the fact that a family squabble existed among the parties, which could have prompted the mother to file a rape charge against appellant.

With seeds of doubt planted in our minds by the conduct of proceedings on record, we are unable to accept the lower court’s conclusion to convict appellant. His conviction is founded on the sole testimony of Agnes, but though a credible witness despite her mental retardation, she showed unnecessary dependence on her mother when identifying the father of her child. Maternal coaching taints her testimony. That her mother had to be ordered by the judge to go outside the courtroom impresses us as significant. We are unable to accept as sufficient the quantum of proof required to convict appellant of rape based on the alleged victim’s sole testimony. Hence,

here we must fall back on a truism of the law, in *dubilis reus est absolvendus*. All doubts must be resolved in favor of the accused.

WHEREFORE, the assailed decision dated May 26, 2000, of the Regional Trial Court of Camiling, Tarlac, Branch 68, is REVERSED and SET ASIDE. Appellant RUBEN LUMIBAO is ACQUITTED of the charge of rape on reasonable doubt.

The Director of Prisons is hereby DIRECTED to release the appellant immediately, unless he is being lawfully held for another cause, and to inform the Court accordingly within ten (10) days from notice of this decision.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Callejo, Sr., and Tinga, JJ., concur.

[1] Rollo, pp. 23-32. Accused Arsenio de Jesus was acquitted in Criminal Case No. 97-36.

[2] *Id.* at 9.

[3] *Id.* at 7.

[4] TSN, 7 November 1997, p. 14.

[5] TSN, 25 January 2000, p. 4. (But Nenita Lumibao testified that Agnes was left in the care of her grandparents when she was 14 years old. TSN, 12 February 1998, p. 6).

[6] TSN, 21 February 2001, pp. 7-8.

[7] *Id.* at 9.

[8] TSN, 12 February 1998, p. 12.

[9] TSN, 25 January 2000, p. 6.

[10] TSN, 10 January 2000, pp. 6-9.

[11] TSN, 12 February 1998, pp. 11.

[12] TSN, 8 January 1998, p. 8.

[13] *Id.* at 95.

[14] TSN, 12 February 1998, p. 21.

[15] TSN, 7 November 1997, p. 17.

[16] *Id.* at 20-21.

[17] TSN, 1 December 1997, p. 31.

[18] *Id.* at 43-44.

[19] *Id.* at 44.

[20] *Id.* at 41.

[21] TSN, 8 January 1998, pp. 6-7.

[22] Id. at 8.

[23] Id. at 34.

[24] Id. at 51.

[25] TSN, 12 February 1998, pp. 10-11.

[26] TSN, 12 April 1999, pp. 12-14.

[27] TSN, 10 January 2000, p. 9.

[28] TSN, 12 April 1999, pp. 23-24, 35, 37.

[29] TSN, 1 December 1999, p. 8.

[30] It appears that accused Arsenio de Jesus prepared the mortgage of real property in favor of Evelyn Lumibao Tagaro. See TSN, 13 September 1999, pp. 19-31.

[31] TSN, 1 December 1999, p. 12.

[32] Id. at 17-18.

[33] Id. at 18-19.

[34] TSN, 10 January 2000, p. 9.

[35] TSN, 25 January 2000, p. 10.

[36] Id. at 9.

[37] Rollo, pp. 31-32.

[38] TSN, 8 January 1998, p. 46.

[39] Sometimes “Papa Onad” in the records.

[40] *People v. Gopio*, G.R. No. 133925, 29 November 2000, 346 SCRA 408, 418; *People v. Malacura*, G.R. No. 129365, 4 December 2000, 346 SCRA 781, 788; *People v. Sale*, G.R. Nos. 137978-79, 22 November 2000, 345 SCRA 490, 497; *People v. Restoles*, G.R. No. 112692, 25 August 2000, 339 SCRA 40, 48-49; *People v. Watimar*, G.R. Nos. 121651-52, 16 August 2000, 338 SCRA 173, 180; *People v. Sapinoso*, G.R. No. 122540, 22 March 2000, 328 SCRA 649, 656; *People v. Barcelona*, G.R. No. 125341, 9 February 2000, 325 SCRA 168, 175.

[41] *People v. Cañedo*, G.R. No. 128382, 5 July 2000, 335 SCRA 81, 99, citing *U.S. v. Reyes*, 3 Phil. 3, 6 (1903).

[42] *People v. dela Cruz*, G.R. No. 133921, 1 June 2000, 333 SCRA 27, 37.

[43] TSN, 10 January 2000 pp. 8-9.

[44] TSN, 12 April 1999, p. 25.

[45] *People v. Ladrillo*, G.R. No. 124342, 8 December 1999, 320 SCRA 61, 74.

[46] *People v. Domogoy*, G.R. No. 116738, 22 March 1999, 305 SCRA 75, 89 citing *People v. Subido*, G.R. No. 115004, 253 SCRA 196, 206.

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