

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. GODOFREDO ACERO Y MAGALLANES, APPELLANT.

G.R. Nos. 146690-91. March 17, 2004

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is an appeal from the Decision[1] of the Regional Trial Court of Davao City, Branch 33, convicting the appellant Godofredo Acero of rape and sentencing him to suffer reclusion perpetua.

The Charges

On April 7, 2000, two Informations were filed in the Regional Trial Court of Davao City, Branch 33, charging the appellant of two counts of rape. The docket numbers and the accusatory portions of the Informations read:

Criminal Case No. 45,183-2000

That sometime on March 31, 2000, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the accused, with force and intimidation and with sexual desires towards one Cherry Rose G. Luga who is mentally retarded, wilfully, unlawfully and feloniously had carnal knowledge with the latter, against her will.

CONTRARY TO LAW.[2]

Criminal Case No. 45,184-2000

That sometime on April 3, 2000, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the accused, with force and intimidation and with sexual desires towards one Cherry Rose G. Luga who is mentally retarded, wilfully, unlawfully and feloniously had carnal knowledge with the latter, against her will.

CONTRARY TO LAW.[3]

The appellant was arraigned on May 8, 2000, assisted by counsel, and entered a plea of not guilty.

Cherry Rose Luga, a retardate, was born on October 11, 1971. She never went to school. She resided with her mother Rose Luga and her siblings Bernardo (“Jun-Jun”) and Ryan. Her father, Bernardo Luga, Sr., was employed in Manila.

The appellant was a mere stowaway. Rose’s brother Jose allowed the appellant to sleep in their car garage. The appellant washed the jeepney in the garage every morning, and drove a tri-sikad for a living. There were times that Bernardo ordered Cherry to bring food to the appellant in the garage.

At 6:00 a.m. on April 3, 2000, Cherry was boiling water in their kitchen. Her uncle Jose was in the garage while her mother was inside the house. The appellant was in the vicinity of the kitchen, three meters away from the comfort room. He then called Cherry but the latter refused to go out of the kitchen. The appellant went to the

comfort room and Cherry followed him inside because she wanted to urinate. He then locked the bathroom. The appellant covered her mouth with one hand and said, "Don't make any noise." Cherry did not shout anymore because she was afraid. He removed his pants and her shorts and panties. He then inserted his penis into her vagina in a standing position. Momentarily, Rose knocked on the door of the comfort room and called Cherry. Rose also wanted to urinate. Cherry told her mother to wait for a while because she was putting her panties and shorts on. Cherry then opened the door and went out of the comfort room. Rose was shocked when she looked inside the bathroom and saw the appellant. Rose slapped her daughter and asked her what she was doing inside the comfort room. Cherry told her mother that she was just urinating. Rose then confronted the appellant and demanded to know what he had done to her daughter. The appellant replied that he did not touch Cherry. Unconvinced, Rose berated the appellant and the latter left the house.

Rose then locked the garage and went to the house of her nephew, PO2 Vincent Luga of the Davao Police Station, and reported that Cherry was raped by the appellant. She and Cherry proceeded to the police station where Cherry affixed her thumbmark in an affidavit-complaint.[4] She was examined by Dr. Samuel G. Cruz who signed Living Case Report No. MG-52-00 containing the following findings:

GENITAL EXAMINATION:

Pubic hair, fully grown, moderate. Labia majora and minora, gaping. Fourchette, lax. Vestibule, pinkish, smooth, with abrasions 3 o'clock measuring 0.7 x 0.5 cm. and at 4 to 6 o'clock positions measuring 1.0 x 0.8 cm. positions corresponding to the face of a watch. Hymen, thick, tall, with an old healed laceration at 9 o'clock position corresponding to the face of a watch. Hymenal orifice, originally annular, admits a tube 2.5 cms. in diameter. Vaginal walls, tight. Vaginal rugosities, prominent.

CONCLUSIONS:

- 1) Recent genital trauma, present.[5]

The Case for the Appellant

The appellant testified that sometime in January 2000, Rose Luga, the mother of Cherry, hired him to watch her garage across the house at the corner of Gomez and Roxas Streets, Davao City. He was also asked to water their plants. Before then, he already knew Cherry's uncle, Jose Luga. Rose allowed him to reside in the extension of the house which was then under construction. The appellant assisted the carpenter in the work. He was given P100 to P200 for his services.

In the meantime, the appellant courted Cherry for four days, and in February 2000, they became sweethearts. He was aware that she was illiterate, but did not know that she was mentally retarded.

At 6:00 a.m. on April 3, 2000, he watered the plants and waited for the carpenter in the sala of the house. Cherry was already in the kitchen, while her mother and her siblings were still asleep. Cherry served him coffee and they talked for a while. They then agreed to go to the comfort room to make love. They closed the door, but did not lock it. However, before they could begin their lovemaking, Rose knocked on the door and called Cherry. He ordered Cherry not to go out of the room, but the latter was afraid of her mother. After a while, she told her mother that she was coming out. Rose was aghast when she saw the appellant inside as Cherry stepped out of the comfort room. Rose demanded to know what he and Cherry were doing, and the appellant replied that he was just connecting the water hose to the faucet to water the plants. Rose did not believe his explanation and berated them both. Cherry left the house and went to the store nearby.

The appellant went to the garage and slept until 5:00 a.m. Rose's nephew, who happened to be a policeman, then,

told him that Rose wanted him to go to the Sta. Ana Police Station. He agreed and went to the police station with him. He was told that he would be detained because he had raped Cherry.

After trial, the trial court rendered judgment convicting the appellant of the crime of consummated rape in Criminal Case No. 45,184-2000 and sentencing him to reclusion perpetua. The court acquitted him of the same crime in Criminal Case No. 45,183-2000. The decretal portion of the decision reads:

WHEREFORE, the Court renders judgment:

- IN CRIM. CASE NO. 45,183-2000:

DISMISSING the Information in this case against the accused for lack of evidence, the prosecution not having presented any evidence in support of the complaint; and

- IN CRIM. CASE NO. 45,184-2000:

Finding the accused GUILTY beyond reasonable doubt of the crime of Rape as charged and proved in Crim. Case No. 45,184-2000, and accordingly sentenced him to suffer the indivisible penalty of RECLUSION PERPETUA with all the attendant accessory penalties. He is further ordered to indemnify the offended party CHERRY ROSE LUGA in the sum of P50,000.00 plus the further sum of P50,000.00 as moral damages.

His immediate confinement in the National Penitentiary is hereby ordered.

Costs de officio.

SO ORDERED.[6]

On appeal, the appellant assails the decision of the trial court contending that:

I

THE COURT A QUO GRAVELY ERRED IN FINDING THAT PRIVATE COMPLAINANT CHERRY ROSE G. LUGA IS A MENTAL RETARDATE.

II

ASSUMING WITHOUT ADMITTING THAT PRIVATE COMPLAINANT CHERRY ROSE G. LUGA WAS A MENTAL RETARDATE, THE COURT A QUO GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO HER TESTIMONY.

III

THE COURT A QUO GRAVELY ERRED IN DISREGARDING THE EVIDENCE PRESENTED BY THE ACCUSED-APPELLANT.

IV

THE COURT A QUO GRAVELY ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT FOR THE CRIME CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT.[7]

On the first assignment of error, the appellant asserts that the trial court erred in giving full probative weight to the

psychiatric report of Dr. Maria Nena Radaza-Peñaranda and her conclusion that since Cherry had an I.Q. of 45, she is mentally retarded to a moderate degree.[8] The appellant argues that conformably to the ruling of this Court in *People v. Cartuano, Jr.*,[9] Dr. Peñaranda should have conducted medical and laboratory tests.

The contention of the appellant is barren of merit.

In *People v. Dalandas*,[10] we held, thus:

Our pronouncement in *People vs. Cartuano, Jr.* that a finding of the victim being a mental retardate must be based on laboratory and psychometric support does not preclude the presentation by the prosecution of evidence other than clinical evidence to prove the mental retardation of the victim. We held in said case that clinical evidence is necessary in borderline cases when it is difficult to ascertain whether the victim is of a normal mind or is suffering from a mild mental retardation. Medical evidence is not a condition sine qua non in all cases of rape or sexual crimes for that matter to prove that the victim is a mental retardate or is suffering from mental deficiency or some form of mental disorder. However, the conviction of an accused of rape based on the mental retardation of private complainant must be anchored on proof beyond reasonable doubt of her mental retardation.[11]

In the same case, we ruled that evidence other than a psychometric evaluation may be adduced to prove mental retardation:

In *People vs. Arnel Almacin*, we held that evidence other than a psychometric evaluation can prove mental retardation or abnormality. In *People vs. Mario Dumanon, et al.*, a case of recent vintage, we held that mental retardation can be proved by evidence other than medical/clinical evidence, such as the testimony of witnesses and even the observation by the trial court. And the observation of the trial court, its impression of the demeanor and deportment of the victim and its conclusions anchored thereon are accorded high respect if not conclusive effect on the appellate court. In *State vs. Haner*, the Supreme Court of Iowa declared:

Her answers to questions show that she is almost an imbecile, unless she was feigning imbecility. The judge and jury saw and heard her on the witness stand, and we cannot put ourselves in the place of the judge and jury. Her appearance and demeanor while testifying were most important considerations in determining her mental capacity, and, under the circumstance, we think it is not proper to interfere with the verdict. Another consideration, which, no doubt, had its influence with the court and jury, was that the complainant was a mere child when this calamity came upon her. She was but little past the age of consent. If she had been under the age of 13 years, mere carnal knowledge would have constituted the crime of rape without any evidence of mental weakness or imbecility.

And in *People vs. Moreno*, we likewise held that:

Dr. Cecilia Albaran herself stated that she could conclude, simply on the basis of her observation of the victim, that the latter had low intelligence. In *People v. Rosare*, the Court also noted that complainant's mental deficiency was so obvious that it was easily observable during preliminary investigation, viz.:

Her deficient mentality stuck out like a sore thumb at the center. Her behavior as a mental retardate was so obvious that even the investigating fiscal, who is not a man of science was able to observe it during preliminary investigation.

It goes without saying that there must be some evidence in the record which, if true, will afford substantive support for such findings and its absence cannot be cured by assuming that the trial court saw something in the conduct or demeanor of the victim which must have led to the decision appealed from.[12]

Based on Dr. Peñaranda's report, Cherry had an I.Q. of 43 and is a mental retardate to a moderate degree. In fine, she is an imbecile. Her case is worse than one who is suffering from a borderline mental deficiency, whose I.Q. is

between 70 to 89.[13] In *People v. Palma*,[14] we ruled that a person is guilty of rape when he has sexual intercourse with a female who is suffering from a borderline mental deficiency.

Anent the other assignments of errors, the appellant contends that because he and Cherry were sweethearts, he should not be held liable for rape.

The appellant's contention does not hold water. A defense based on the "sweetheart theory" in rape cases is no defense at all in rape where the victim is a mental retardate. It is settled that sexual intercourse with a mental retardate constitutes rape.[15] An imbecile has an intellectual function equivalent to that of an average seven-year-old child. Cherry, an imbecile, cannot give legal consent to sexual intercourse.[16] In this case, Cherry testified that the appellant ravished her inside the comfort room:

Q And, what did he do to you inside the bathroom?

A He removed my panty and shorts.

Q What about your blouse?

A No, only the shorts and my panty.

Q Now, after he put down your panty and your shorts, what else did he do to you?

A He did like this to me. (Witness is pounding her finger on the desk).

Q Cherry, do you understand what do you mean by this, we have observed you that you pounded your finger, what do you mean by this?

A He had sex with me inside the bathroom.

COURT (TO WITNESS):

Q How was the sex performed?

A Standing position.

PROS. GARCIA, JR. (TO WITNESS):

Q Was Godofredo totally naked?

A He removed his pants.

COURT (TO WITNESS):

Q He was in short pants or long pants?

A Long pants.

PROS. GARCIA, JR. (TO WITNESS):

Q And why did you not shout?

A He covered my mouth, sir. He told me: “Don’t make any noise.”

Q What did you feel when he had sex with you?

A Nothing.

COURT (TO WITNESS):

Q Did you agree to the sexual act?

A No, Your Honor.

PROS. GARCIA, JR. (TO WITNESS):

Q Why did you not kick him?

A He might punch me.

Q Did he punch you?

A No, sir.

Q Why did you not scratch him with your claws?

A I am afraid, sir.

Q Who is bigger, you or Fredo?

A Fredo.

COURT (TO WITNESS):

Q But he is taller than you are, is it not?

A Yes, Your Honor.

Q So, how can he insert his penis if he is taller than you are?

PROS. GARCIA, JR.:

We would like to manifest that the witness is crying.

WITNESS:

A He just insert it, Your Honor.

PROS. GARCIA, JR. (TO WITNESS):

Q Did Godofredo carry you when he was inserting his penis?

A No, sir.

Q Did you and Godofredo stay long inside the bathroom?

A Yes, sir.[17]

Cherry reiterated her testimony on direct examination when she was cross-examined by the appellant's counsel:

Q When you get entry to that bathroom, you locked the bathroom door?

A He locked it.

Q After the door of the bathroom was locked, Godofredo removed his pants and brief?

A Yes, sir.

Q While he was removing his pants and brief, you were just there standing by inside that bathroom?

A Yes, sir.

Q After Godofredo removed his pants and brief, he turned to you and then he removed your short pants and panty?

A Yes, sir.

Q And after that, you had sex with Godofredo in standing position?

A Yes, sir.

COURT (TO WITNESS):

Q Your mouth was not covered all the time?

A Yes, Your Honor.

Q When he was removing his pants and brief, he was not covering your mouth?

A No more, Your Honor.

Q When he was removing your panty and short pants, he was not covering your mouth?

A No, Your Honor.

Q Then, why did you not shout?

A I was afraid.

ATTY. CALIO (TO WITNESS):

Q So, in standing position, inside that bathroom Godofredo had sex with you?

A Yes, sir.

Q How big is that bathroom?

A It is a big bathroom.

Q The sexual act was done in a very cautious manner in such a way that you do not want others to detect you while you were inside the bathroom?

A Yes, sir.

Q Then, while you were in the act of doing sexual intercourse, you heard a knock at the door of that bathroom?

A Yes, sir.

Q You immediately put on your panty and your short pants?

A Yes, sir.[18]

Cherry's testimony was buttressed by the Living Case Report of Dr. Cruz in which he concluded that she experienced a "recent genital trauma," thus:

... Labia majora and minora, gaping. Fourchette, lax. Vestibule, pinkish, smooth, with abrasions 3 o'clock measuring 0.7 x 0.5 cm. and at 4 to 6 o'clock positions measuring 1.0 x 0.8 cm. positions corresponding to the face of a watch. ...[19]

IN LIGHT OF ALL THE FOREGOING, the appeal is DISMISSED. The Decision of the trial court is AFFIRMED. Costs against the appellant.

SO ORDERED.

Quisumbing, (Acting Chairman), Austria-Martinez, and Tinga, JJ., concur.

Puno, (Chairman), J., on leave.

[1] Penned by Judge Wenceslao E. Ibabao.

[2] Records, p. 91.

[3] Id. at 92.

[4] Exhibit "F."

[5] Exhibit "E."

[6] Records, pp. 105-106.

[7] Rollo, pp. 52-53.

[8] Exhibits "B" and "C."

[9] 255 SCRA 403 (1996).

[10] 394 SCRA 433 (2002).

[11] Id. at 441.

[12] Id. at 440.

[13] People v. Dalandas, supra.

[14] 144 SCRA 236 (1986).

[15] People v. Padilla, 301 SCRA 265 (1996).

[16] People v. Dalandas, supra.

[17] TSN, 17 August 2000, pp. 10-11.

[18] Id. at 25-26.

[19] Exhibit "E."

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