

## THIRD DIVISION

[ G.R. No. 155335, July 14, 2005 ]

**PEOPLE OF THE PHILIPPINES, PETITIONER, VS. JESUS  
MACAPAL, JR., RESPONDENT.**

### D E C I S I O N

**CARPIO MORALES, J.:**

On review is the conviction of appellant, Jesus Macapal, Jr., for the rape of 23 year old mentally retarded Ligaya Sarino (the victim).

The Information filed against appellant in the Regional Trial Court (RTC) of Butuan City alleged the rape to have been committed as follows:

That on or about the evening of June, (sic) 1996, in Barangay Manapa, Buenavista, Agusan del Norte, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of one Ligaya R. Sa[r]ino, a 23-year old illiterate who appears to be mentally retarded, against her will.<sup>[1]</sup>

On arraignment, appellant entered a plea of not guilty.<sup>[2]</sup>

From the account of the victim, the following facts transpired one evening in June 1996 at Barangay Manapa, Buenavista, Agusan del Norte. While she was walking on her way home after she bought kerosene from the nearby store of appellant's father, Jesus Macapal, Sr., appellant suddenly appeared and waylaid her. Holding both her arms, appellant dragged her to an isolated grassy area where he ordered her to lie down. Although she wanted to shout, she froze with fear, appellant having poked a knife at her abdomen and threatened to kill her if she would shout or resist. Appellant thereafter succeeded in having sexual intercourse with her.<sup>[3]</sup>

From the rest of the prosecution evidence, the following are gathered: On December 23, 1996, when the victim visited her sister Vilma Sarino Salazar (Vilma), Vilma noticed the victim's stomach bulging, prompting her to inquire what happened. While the victim initially refused to answer, she was later prevailed upon to answer upon her (Vilma's) insistence and assurance that she would not be harmed. The victim then revealed what their neighbor, herein appellant, did to her.<sup>[4]</sup> When Vilma asked her when the incident happened, the victim answered "when you just left for Manila" which was, by Vilma's account, on June 3, 1996.

Vilma thus invited to her house appellant's father, the purok leader of the barangay. In the presence of Vilma's three brothers and her husband, the victim narrated to appellant's father how his son ravaged her in a grassy area in their barangay. On hearing the victim's account, appellant's father requested the Sarinos not to report

the incident to the authorities until he had spoken to appellant. Vilma paid no heed to the request, however, and reported the incident to the barangay captain and then to the town police<sup>[5]</sup> before which the victim's sworn statement was taken on December 30, 1996.<sup>[6]</sup>

A complaint for rape bearing the victim's thumbmark was accordingly filed on January 2, 1997 against appellant before the Municipal Trial Court of Buenavista.<sup>[7]</sup>

Meanwhile, on the request of appellant and his parents, First Assistant Provincial Prosecutor Orlando Doyon summoned the complainant and her relatives for a possible settlement of the case. The parties did appear before the prosecutor on January 30, 1997 during which the victim, her father Jesus B. Sarino, and her sister Vilma on one hand, and appellant and his parents on the other, forged a Sworn Agreement<sup>[8]</sup> whereby the victim and her kins agreed to withdraw the complaint in consideration of appellant's and his parents' commitment "to shoulder one-half (½) of the expenses to be incurred . . . in connection with the delivery . . . of the child of [the victim]."

An Affidavit of Desistance<sup>[9]</sup> was in fact executed by the victim stating that "after mature deliberation and consultation with [her] father and other relatives," she was withdrawing her accusation against appellant.

On March 19, 1997, the victim gave birth to a boy.<sup>[10]</sup>

On March 25, 1997, the victim, assisted by her father, filed before the Provincial Prosecutor's office an "EX-PARTE MOTION TO RESCIND AND NULLIFY AMICABLE SETTLEMENT [AND] TO REVIVE THE CASE AND TO ORDER THE REARREST OF [APPELLANT]"<sup>[11]</sup> alleging:

x x x

2. That the undersigned were forced to enter into such agreement as they were duped and harassed by some policemen in Buenavista, Agusan del Norte;
3. That even if they were not the victims of trickery and harassment, they respectfully believe that they can revive the case as there was nothing in said agreement that would bar them from asking for said revival;

x x x

Appellant having failed to submit his counter-affidavit and controverting evidence, the Prosecutor's Office, finding the complaint uncontroverted, filed the information against appellant on May 2, 1997.

It is further gathered from the evidence for the prosecution that Dr. Cheryl T. Zalsos, a psychiatrist at the Northern Mindanao Medical Center who conducted a psychiatric evaluation of the victim on November 25, 1998, found that "the patient is suffering from **Mental Retardation, mild to moderate** . . . characterized by significantly sub-average intellectual functioning (IQ 70 or below) accompanied by significant

limitations in adaptive functioning, with an onset below the age of 18."<sup>[12]</sup> And the doctor opined that while the mental capacity of the victim is comparable to that of a child between 9 to 12 years old,<sup>[13]</sup> she could testify in court but under closed door and leading questions should be avoided "as retarded people may be suggestible and wish to please others."<sup>[14]</sup>

It is gathered furthermore that when Dr. Benjamin B. Selim, Jr. (Dr. Selim), Medical Officer III of the Butuan Provincial Hospital, examined the victim on January 13, 1997, he found her to be in a pregnant state and that her hymen was not intact. On the basis of the ultrasound examination, he opined that she "had conception probably third to the last week of June 1996."<sup>[15]</sup>

On the other hand, appellant, denying the accusation, claimed as follows: He came to know for the first time of the charge on December 21, 1996 when he appeared before the barangay captain<sup>[16]</sup> during which the victim's sister, Vilma, did most of the talking, she informing that the alleged rape was committed on even date, December 21, 1996. At said meeting, the victim who had a boyfriend named Edsel was asked who raped her, but she was mum.

To lend credence to appellant's innocence and his suggestion that her boyfriend could have impregnated the victim, Mansueto Pande, a neighbor of the victim, related that one afternoon in August 1996, he witnessed the victim and Edsel having sexual intercourse in the house of Nelson Gultiano where Edsel was then visiting.<sup>[17]</sup>

And Sebastian Bermudez (Bermudez), barangay captain of Magsaysay, Jabonga, Agusan del Norte, ventured the opinion that appellant could not have committed the rape in June 1996 as appellant was from May 22 to August 17, 1996<sup>[18]</sup> in barangay Magsaysay, in the farm of his (Bermudez's) uncle, working as a helper in the operation of a *turtle* tractor.

Rebutting the defense evidence, the prosecution presented Nelson Gultiano (Gultiano), the owner of the house where defense witness Mansueto Pande allegedly saw the victim and a certain Edsel having sexual intercourse. Gultiano denied that the victim's alleged boyfriend Edsel was ever in his house in August 1996.<sup>[19]</sup>

As surrebuttal witness, the defense presented Edgar Labata who declared that he was a purok president in barangay Mayapa and he knew that the victim's boyfriend Edsel was living with Gultiano in 1996.<sup>[20]</sup>

Finding for the prosecution, Branch 2 of the RTC of Butuan City convicted appellant by decision of August 30, 2000, the dispositive portion of which reads:

"WHEREFORE, the Court hereby finds accused JESUS MACAPAL, JR. y JACA GUILTY beyond reasonable doubt for the crime of rape as charged, defined and penalized under Article 335 of the Revised Penal Code. In the absence of any aggravating or mitigating circumstance and it appearing that the accused is not disqualified from enjoying the benefits of the Indeterminate Sentence Law, the Court hereby sentences said accused JESUS MACAPAL, JR. y JACA to suffer an indefinite prison term of twelve (12) years and one (1) day of Reclusion Temporal as minimum to

Reclusion Perpetua as maximum. The accused is ordered to pay the victim/private complainant the sum of PhP50,000.00 as actual and compensatory damages and to recognize the child as his illegitimate child whom the accused sired as the natural consequence of his criminal act.

The accused, in the service of his sentence, shall be credited with the period of his preventive imprisonment he has undergone pursuant to RA 6127.

SO ORDERED.<sup>[21]</sup> (Underscoring supplied)

Aggrieved, appellant elevated the case to the Court of Appeals which affirmed his conviction but modified the penalty imposed upon him by the trial court in this wise:

"WHEREFORE, the appealed decision is MODIFIED in that the **straight penalty of reclusion perpetua** is imposed on the accused-appellant who is **further ordered to pay the offended party the sum of P50,000.00 as moral damages. In all other respects, the same decision stands.** Costs against the appellant.

Pursuant, however, to the last paragraph of Section 13, Rule 124 of the 2000 Revised Rules of Criminal Procedure, this Court refrains from entering the judgment and, instead, certifies and orders the immediate elevation of the records to the Supreme Court for review.

SO ORDERED."<sup>[22]</sup> (Emphasis and underscoring supplied)

As the dispositive portion of the appellate decision states, the case was certified to this Court pursuant to Section 13 of Rule 124 of the Revised Rules of Court.<sup>[23]</sup>

Appellant argues that the victim, a mental retardate, is incompetent to establish his identity for, so he contends, it is not easy to ascertain the identity of a rapist when the victim is deprived of reason.<sup>[24]</sup> Besides, appellant continues, there was completely no evidence presented to prove that the incident occurred in June 1996 as the victim could not recall the year, the time and the day<sup>[25]</sup> of the alleged offense.

Appellant further argues that the trial court erred in assuming jurisdiction over the case despite the absence of evidence to prove the place of the incident.<sup>[26]</sup> At all events, he claims that the trial court unduly deprived him of his right to fully defend himself.<sup>[27]</sup>

The appeal is bereft of merit.

In rape cases, the victim's credibility is crucial to the determination of the accused's culpability as the crime generally involves two persons only and usually perpetrated in seclusion. While it may be difficult to determine the credibility of one who is a mental retardate, it can still be attained by deducing from the manner he or she testifies in court as to the surrounding facts of the crime committed.

As long as a witness' testimony is straightforward, candid and unflawed by

inconsistencies or contradictions in its material points, and his or her demeanor is consistent with one who has been victimized to thus bolster credibility with the verity born out of human nature and experience,<sup>[28]</sup> as in the herein victim's case, credibility can be accorded to him or her.

Consider the following testimony of the victim which was punctuated with her crying as she recalled the victim threatening to kill her and the bulging of her stomach.

PROS. GADANI:

Q You said you are Ligaya Sarino, do you know who is this Ligaya Sarino who is the private complainant in this case?

WITNESS:

A I, Ma'am.

**Q Will you tell the Hon. Court why you file[d] this case against Jesus Macapal, Jr. alias "Alot"?**

**A Because he raped me.**

ATTY. CHAVEZ:

May I request that the word "**Tamastamasan**" be quoted, your Honor.

COURT:

Q Will you please clarify the word "Tamastamasan"?

A He raped me.

PROS. DAGANI:

Q Will you tell the Honorable Court, Ligaya, how you were raped by Jesus Macapal, Jr. alias "Alot"?

A I can.

(Witness when answering usually close[s] her eyes.)

Q Please tell the Court?

**A I was made to do an errand by my father to buy a (sic) Kerosene, and after I bought Kerosene, on my way home he waylaid me and brought me to a grassy area; he made me lie down and he pointed a knife at me and threatened me that if I would tell my father and siblings he would kill me.**

Q After he told you that he would kill you, what happened next?

**(Witness is crying.)**

A My stomach bulged and then it was after that I told my Ate Vilma Salazar.

COURT:

Q You said you were raped, will you please tell the court how you were raped?

WITNESS:

**A He took off my short pants and my panty, and he inserted his penis into my vagina.**<sup>[29]</sup> (Emphasis and