

THIRD DIVISION

[G.R. No. 132295, May 31, 2000]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ANDRES LUBONG Y PAJE, ACCUSED-APPELLANT.**

D E C I S I O N

GONZAGA-REYES, J.:

Accused-appellant Andres Lubong y Paje was charged with Rape under Article 335, paragraph 3 of the Revised Penal Code and Sexual Abuse under Article III, Section 5(b) of Republic Act 7610,^[1] before the Regional Trial Court, Third Judicial Region, Olongapo City, Branch 72^[2] in the following two (2) separate Informations:

In Crim. Case No. 349-95, for Rape:

"The undersigned Provincial Prosecutor and Special Prosecutor of Violation of Republic Act 7610 and other related laws on Child Abuse, upon sworn complaint filed by the offended party, accuses Andres Lubong y Paje of the crime of Rape, defined and penalized under Article 335, Par. 3 of the Revised Penal Code, committed as follows:

"That on or about the 23rd day of May, 1995 at around 7:00 o'clock in the evening, at Brgy. La Paz, in the (M)unicipality of San Marcelino, Province of Zambales, Philippines, and within the jurisdiction of this Honorable Court, the said accused, by means of force, intimidation and threats, did then and there willfully, unlawfully and feloniously have carnal knowledge of said Jennifer Mangcol, a girl of 17 years old, against her will and consent, to the damage and prejudice of the latter.

"CONTRARY TO LAW."^[3]

In Crim. Case No. 350-95, for Sexual Abuse:

"The undersigned Provincial Prosecutor and Special Prosecutor of Violation of Republic Act 7610 and other related laws on Child Abuse, upon sworn complaint filed by the offended party, accuses Andres Lubong y Paje of Sexual Abuse, defined and penalized under Section 5(b), Article III of Republic Act 7610 (Special Protection of Children against Child Abuse, Exploitation and Discrimination Act), committed as follows:

"That on or about the 23rd day of May, 1995 at around 7:00 o'clock in the evening at Brgy. La Paz, in the Municipality of San Marcelino, Province of Zambales, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with lewd design, and by means or employment of persuasion,

inducement, enticement, coercion, intimidation and other consideration, did then and there willfully, unlawfully and feloniously commit the act of sexual intercourse with Jennifer Mangcol, a minor of 17 years old, against her will and consent, to the damage and prejudice of the latter.

"CONTRARY TO LAW."^[4]

When arraigned, the accused pleaded not guilty to the commission of the crimes charged. Joint trial of the two cases ensued.

The prosecution presented the complainant Jennifer Mangcol and three other witnesses, namely: Elizabeth "Auntie Beth" Ortiz, a missionary who runs the Southern Baptist Parish Family Center based in Zambales which, among other things, shelters and takes care of abandoned children, one of whom is herein complainant; Dr. Laila Patricio, who examined complainant on September 25, 1995 and found the "hymen with multiple healed lacerations";^[5] and Dra. Aida Muncada, Physician-Psychiatrist of the National Center for Mental Health who also examined complainant and concluded that "she was seventeen (17) but her level of mental capacity is like that of a six (6) year old."^[6]

The Office of the Solicitor General summarized the evidence for the prosecution as follows:

"The offended party, Jennifer Mangcol, a mental retardate, testified that she was then 18 years old per information from her Auntie Beth. She went to school and after Grade 1 stopped schooling a long time ago. She knew how to write her name only and did not know how to read. She did not know how to count and did not know how much is one plus one (1 + 1). It being obvious from the answers she gave to a lot of questions propounded to her that she was suffering from mental retardation, the prosecution was allowed by the court to conduct the examination of complaining witness by leading questions (t.s.n., February 5, 1996, pp. 3-12).

Complaining witness declared that she was a resident of Calbayog City in the Visayas before May 23, 1995. She was taken by her Auntie Beth to Manila where the latter was then staying and later brought to Barangay La Paz, San Marcelino, Zambales. At the latter place, complaining witness and her Auntie Beth lived in a house together with somebody whom complaining witness called "Kuya John" and regarded as a brother although not really such (t.s.n., February 5, 1996, pp. 12-15).

While staying at the house in La Paz, San Marcelino, Zambales, an unusual incident happened to complaining witness on May 23, 1995 when appellant entered the house to fetch water therefrom. Appellant introduced himself to complaining witness saying "I am Lubong" and told her not to be afraid of him. After fetching water, appellant told complaining witness that he will come back and did so. Appellant waited at the door for complaining witness who was then out to fetch water and entered the house when she was already inside the same. Appellant asked complaining witness where her room was located but she did not

answer said query. Appellant went upstairs after complaining witness had gone thereat ahead of the former. Appellant took off his clothes consisting of a T-shirt and shorts. Appellant himself then removed the clothes of complaining witness who resisted, telling appellant not to touch her because her brother may arrive. Appellant just told complaining witness not to mind, continued undressing her and thereafter made her lay down then placed himself on the stomach or on top of complaining witness and inserted his penis into her sex organ for a long time, as a consequence of which she felt pain. Appellant also did the same thing to complaining witness while they were already in the latter's room. Appellant also inserted his penis into the mouth of complaining witness which made the latter feel awful and "was about to vomit" (t.s.n., February 5, 1996, pp. 15-26).

Physician-Psychiatrist Dr. Aida L. Muncada, a resident physician of the National Center for Mental Health, declared that she is involved in the evaluation and management of psychiatric patients, had pursued a fellowship in child and adolescent psychiatry for two (2) years at the UP-PGH and trained with the mental disorders of both children and adolescents, including retarded adolescents. She had written papers about "Drugs and Acute Psychotic Reaction" and specifically with regard to sexually abused children, she had co-authored "Perception of Sexually abused Among Seven to Fourteen Years Old Street Children." She had also written "Psycho Social Profile of Fourty Four Five to Sixteen Years Old As Sexually Abused Children in Metro Manila" and had presented said papers in major psychiatric conventions (t.s.n., March 25, 1996, pp. 2-8).

Dr. Muncada, who is also a consultant of the DSWD Lingap Center, examined the offended party. Jennifer Mangcol, who was brought thereat by the latter's guardian Elizabeth Ortiz who told her that Mangcol was raped by appellant sometime in May, 1995. Dr. Muncada prepared a report of her examination (Exh. "C") wherein she concluded thus:

Based on above history and mental status examination, patient Jennifer has been abused sexually. A diagnosis of V Code V 61.21 by Diagnostic and Statistical Manual for Mental Disorder is being given which is Sexual Abuse of Child.

A concomitant diagnosis of Mental Retardation is also being made. The IQ of 35 falls under Moderate level. Patient would need supervision guide under mild social stress.

Dr. Muncada further stressed upon query of the court or presiding judge thereof that Mangcol "was seventeen (17) but her level of mental capacity is like that of six (6) years old" (t.s.n., March 25, 1996, pp. 2-13).

Dr. Laila Patricio, a resident physician of the James L. Gordon Medical Center at Olongapo City, examined the offended party, Jennifer Mangcol, who was accompanied by Rosario Sibricos of the Lingap Center, on September 25, 1995. Because she had difficulty communicating with Jennifer who is a retardate, Dr. Patricio just talked with Rosario Sinbricos

concerning Jennifer. Upon examination of Jennifer at the hospital's delivery room, Dr. Patricio found out that her hymen has multiple healed lacerations which could have been caused by a foreign object inserted into her vagina, such as a penis, a finger, a vibrator or other object. She was able to insert her two fingers easily into the vagina of Jennifer. If Jennifer had a sexual intercourse with a man, the same could have resulted to said multiple healed lacerations. Dr. Patricio prepared the corresponding medico legal certificate (Exh. "D") regarding her examination of Jennifer Mangcol (t.s.n., September 2, 1996, pp. 2-11).^[7]

On the other hand, the defense presented only appellant himself as witness who relied on denial and alibi. He testified that on May 23, 1995, he was working as a mason in the construction site of Mrs. Magalino where he started working at 7 o'clock in the morning up to 5 o'clock in the afternoon. After working he went home to his house at San Isidro, San Marcelino, Zambales and arrived thereat at 5:15 p.m. He cooked his food because he was living alone in the house. The following day, he reported for work at 7 o'clock in the morning. That afternoon, he was arrested and brought to the police station where the complainant accompanied by her guardian Elizabeth Ortiz and Kuya John was waiting for him.^[8] In the appellant's brief, accused-appellant summed up his defense that "on the alleged date in question, appellant was hard at work as a mason in the Mangalino (sic) residence."^[9] No one was presented to corroborate his story.

The court a quo found the accused guilty of Rape under the Revised Penal Code and acquitted him of "Sexual Abuse" under Article III, Section 5(b) of Republic Act 7610, viz :

"WHEREFORE, (THE) Court finds the accused Andres Lubong y Paje guilty beyond reasonable doubt of the crime of rape in Crim. Case No. 349-85 and is hereby sentenced to RECLUSION PERPETUA and to pay moral damages in the amount of One Hundred Thousand (P100,000.00) Pesos, and to pay the costs.

In Crim. Case No. 350-95, the accused is hereby ACQUITTED of the crime charged.

SO ORDERED."^[10]

The appellant submits the following assigned errors in his brief:

I

THE LOWER COURT ERRED IN CONVICTING APPELLANT ON DOUBTFUL AND HEARSAY EVIDENCE

II

THE COURT A QUO DISREGARDED APPELLANT'S DEFENSE OF ALIBI WHEN THE IDENTITY OF SUSPECT IS DOUBTFUL

III

THE TRIAL COURT MISUNDERSTOOD, MISAPPLIED, OVERLOOKED MATERIAL FACTS OF SUBSTANCE WHICH IF CONSIDERED WILL EXONERATE APPELLANT^[11]

which he jointly discussed, raising the following points:

1. The first time complainants saw appellant was in the police station when he was brought in for questioning; that there was never a police line-up to ascertain the identity of the culprit; and that he is merely a look-alike;
2. Considering the mental age of the complainant to be that of a six year old, she could be easily swayed by suggestion of the police officers who wanted a "fall guy" or "scapegoat" to solve the case to ensure reward or promotion;
3. The manner by which appellant escaped from the locus criminis is highly improbable considering that the house where the alleged rape occurred is an old pre-war edifice where the ceiling in the second floor is inaccessible and cannot be scaled for egress purposes; that it is a rarity that this house is empty; that the branches of the tree closest to the ceiling are not big enough to hold the weight of a well-built man such as appellant; and that the size and built of appellant would not allow him to crawl out of the hole in the fence as his means of escape.
4. The thrust of the court a quo's conviction is based on circumstantial evidence, the requisites of which have not been met.^[12]

In sum, appellant questions (1) his improper identification as the culprit; (2) the sufficiency of the prosecution's evidence; and challenges the court a quo's Decision which he claims was based entirely on circumstantial evidence.

The appeal is without merit. A close and detailed examination of the entire record of the case at bar impels us to affirm. We shall no longer delve into the charge of Sexual Abuse under Republic Act 7610 on account of appellant's acquittal thereof.

We do not agree that there was improper identification of appellant as the culprit. Appellant's claim that Jennifer was merely swayed by the police or his identification was through improper suggestion by the police is without basis. True, appellant was never identified in a police line-up, however, in *People vs. Salguero*^[13], the Court held that "(T)here is no law requiring a police line-up as essential to proper identification. Thus, even if there was no police line-up, there could still be proper identification as long as such identification was not suggested to the witnesses by the police." The records are bereft of any indication that the identification of appellant by Jennifer was suggested by the police. Of paramount importance in dispelling any doubts as to the proper identification of appellant is his positive identification in open court by the complainant. Jennifer identified and pointed to appellant as her rapist in court. We are satisfied that her testimony was by itself alone, sufficient identification of her rapist, quoted as follows:

Q: Now, while you were staying in that house of your auntie