

FIRST DIVISION

[G.R. No. 123096, December 18, 2000]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARIO DUMANON Y DUMANACAL AND RICARDO LABRADOR Y SUACILLO, ALIAS "RIC-RIC," ACCUSED-APPELLANTS.

D E C I S I O N

DAVIDE JR., C.J.:

Accused-appellants Mario Dumanon y Dumanacal (hereafter MARIO) and Ricardo Labrador y Suacillo (hereafter RICARDO) appeal from the decision^[1] of the Regional Trial Court of Surigao City, Branch 30, in Criminal Case No. 4247, finding them guilty beyond reasonable doubt of the crime of rape and sentencing them to suffer the penalty of *reclusion perpetua*, and to pay the complainant Anacurita Anib (hereafter ANACURITA) the amount of P20,000 as moral damages and the costs of the suit.

On 3 December 1993, Dominga Anib filed a complaint for rape^[2] against MARIO and RICARDO on behalf of her mentally retarded daughter ANACURITA before the Municipal Circuit Trial Court (MCTC) of Tagana-an-Sison, Surigao del Norte. The complaint, docketed as Criminal Case No. 993, alleged that ANACURITA is a "retardate" and the crime was committed at midnight of 2 December 1993. Submitted in support of the complaint was a medical certificate^[3] issued by the Surigao Provincial Hospital and the affidavits^[4] of Dominga Anib, Eduardo Diaz and Anita Lisondra.

After conducting a preliminary examination, the MCTC found a *prima facie* case for rape, confirmed the arrest and detention of MARIO and RICARDO without bail, and required them to submit their counter-affidavits. Instead of filing their counter-affidavits, MARIO and RICARDO filed a joint motion to dismiss the case on the grounds that the crime of rape cannot be prosecuted *de officio* and the complaint was not signed by the offended party, there being no proof that the latter was incapacitated.

In its resolution^[5] of 10 January 1994, the MCTC ruled that the complaint was properly filed by the mother of ANACURITA since the latter is a retarded woman and stated that "by merely looking upon the victim, the Court finds that indeed Anacurita Anib is a retarded woman." It also found probable cause that MARIO and RICARDO committed the crime charged and forwarded the case to the Provincial Prosecutor for the filing of the information.

On 24 January 1994, the Provincial Prosecutor's Office of Surigao del Norte filed with the Regional Trial Court of Surigao del Norte a complaint^[6] for rape, bearing the thumb mark of ANACURITA and approved by the Provincial Prosecutor. The

complaint, docketed as Criminal Case No. 4247 and assigned to Branch 30 thereof, alleges as follows:

That on or about the 2nd day of December 1993, at 12:00 o'clock [sic] midnight, more or less, at Barangay Aurora, Tagana-an, Surigao del Norte, Philippines and within the jurisdiction of this Honorable Court, said accused with full freedom and intelligence did then and there willfully, unlawfully and feloniously by means of violence and intimidation, and taking advantage of nighttime drag MISS ANACURITA ANIB y DUMANACAL inside the vacant house of Jaime Batac and have carnal knowledge of herein complainant against her will.

All contrary to law and with the aggravating circumstances of nighttime and in an uninhabited place.

MARIO and RICARDO sought for a reinvestigation of the case. They questioned the unsigned complaint for rape and alleged that ANACURITA's filing of the complaint belied her mental incapacity. Moreover, she never gave a categorical statement that she was raped. The defense further asserted as hearsay the statement of Dominga Anib and Anita Lisondra in their affidavits that ANACURITA confessed to them that she was raped. They also assailed the prosecution for its failure to present any eyewitness. Finally, they maintained that they were deprived of their right to submit their counter-affidavits.

The prosecution opposed the motion for reinvestigation. It claimed that MARIO and RICARDO were actually required but failed to submit their counter-affidavits. Moreover, since it was already resolved that ANACURITA is a retardate, thus mentally incapacitated, the law recognizes the right of her mother to file the complaint on her behalf. However, as stated in the decision of the trial court, MARIO and RICARDO abandoned the motion and instead proceeded with the arraignment wherein they separately entered a plea of not guilty.^[7]

Trial on the merits started only on 2 June 1994 and was completed on 22 November 1994. In its decision the trial court attributed the delay "to postponements at the instance of both the prosecution and the defense, especially that the parties, being related, manifested for a possible settlement of the case." The prosecution presented as witnesses ANACURITA, Dominga Anib, Eduardo Dizon and Dr. Gregoria Beberino-Comelon.

ANACURITA testified in court seven months after she was raped. She was then thirty-eight years old. According to her she knew MARIO and RICARDO as they were her friends and townmates. In the early evening of 2 December 1993, she was in the municipal gymnasium of Tagana-an, Surigao del Norte, watching a parade of gays. At about 11:00 p.m. she left and headed for her home in barangay Aurora, Tagana-an. As she was walking, she passed by RICARDO who was then sitting on a bench, apparently drunk. Suddenly, RICARDO blocked her way. She tried to break free but he continued to obstruct her way. Then he pulled her and brought her to the deserted house of Jaime Batac, which was just about nine meters away from her home. Inside the house, RICARDO stripped off his clothes and immediately removed her underwear. He then placed his penis inside her vagina. After satisfying his lust, RICARDO ran away. Then she put on her underwear. After a few minutes, MARIO, who was likewise drunk, entered Jaime's house, pulled her down and undressed her.

Mario inserted his penis inside her vagina and just like RICARDO ran away after the sexual intercourse. ANACURITA went home and told her mother what had happened.^[8]

Dominga Anib testified that MARIO and RICARDO are her neighbors and that the former is even her relative. In the evening of 2 December 1993, ANACURITA was out watching a show at the municipal gymnasium. At about midnight she was awakened by her husband who told her that ANACURITA had not yet arrived. When she turned on the light, she heard the protesting voice of her daughter coming from the house of Jaime Batac. She went to the house and dragged ANACURITA home. ANACURITA was holding her underwear and her hair and dress were soiled. She asked ANACURITA if any man did anything to her. ANACURITA told her that she had just been raped by RICARDO and MARIO inside Jaime's house. Accompanied by Eduardo Diaz, Dominga immediately reported the incident to the barangay captain and then later, to the police. On 4 December 1993, Dominga brought ANACURITA to the Provincial Hospital of Surigao del Norte for examination. The turn of events caused Dominga to suffer shame and embarrassment.^[9]

According to Eduardo Diaz, he knew MARIO and RICARDO. MARIO is a close friend and relative. He, MARIO and RICARDO and the Anibs reside along the same street. On 2 December 1993, Eduardo was in the municipal gymnasium to watch a show. He left for home at 10:00 p.m. Along the way he saw MARIO and RICARDO. When he arrived home, he learned that there was no more kerosene for the lamps. He went out to buy kerosene and a cigarette at the store next door. He saw MARIO at the store who asked a cigarette from him. He obliged and then went back home. He wanted to eat; but when he found out that there was no more food, he decided to request some viand from MARIO. On the road he saw MARIO going inside the house of Jaime Batac. So, he returned home. Later, he heard the voice of Dominga Anib from her house berating her weeping daughter ANACURITA. He overheard that ANACURITA came from the house of Jaime Batac, which was near the house of the Anibs. Dominga ordered ANACURITA to stay upstairs while she went out of their house. It was about midnight.

Dominga saw Eduardo and sought his help. Eduardo accompanied Dominga to the barangay captain, Mr. Jaime Pelarco.^[10] The latter looked for RICARDO and MARIO, who were eventually arrested and detained.

Dr. Gregoria Beberino-Comelon physically examined ANACURITA on 4 December 1993 and issued the corresponding medical certificate.^[11] She noted a fresh hymenal laceration at 6 o'clock and a hematoma on the thigh. The laceration could have been caused by an erect male penis while the hematoma was probably inflicted by a fist blow. She also found a vaginal discharge of yellowish and whitish substance. She had the specimen brought to the laboratory for examination for the presence of sperms. However, she was not informed of the results of the examination.^[12]

Only MARIO testified for the defense while RICARDO opted not to take the witness stand.

MARIO claimed that he and ANACURITA, his distant cousin, were lovers. On the evening of 2 December 1993 he was also at the municipal gymnasium to watch a

coronation event. At about 10:15 p.m. he decided to go home and along the way, he saw ANACURITA and they talked by the fence of Jaime Batac's house. He confessed his love for her and he suggested if it was possible for them to have sexual intercourse. ANACURITA nodded her head in consent and replied that she had yearned to bear a child at her age. They talked for ten minutes. ANACURITA invited him inside the abandoned house of Jaime so that they would not be seen by her mother. Inside Jaime's house, he asked her again if he could have sexual intercourse with her. She consented. ANACURITA had no reaction at all during their sexual intimacy. After they were done, he escorted her to her house and then he walked toward his house. He immediately heard Dominga Anib scold ANACURITA. Dominga demanded to know where she came from and why she arrived late. In the early morning of the following day the police arrested and detained him. [13]

After the defense rested its case the trial court required both parties to submit their respective memoranda. The parties waived the submission thereof.

The trial court rendered its decision of 21 June 1995. It specifically noted therein the trial judge's personal impression which he entered in his personal notes that ANACURITA is "a mongoloid (physically) and mentally deficient who has difficulty in understanding the questions." While conceding that ANACURITA's narration of how she was sexually abused by the accused-appellants was not "detailed," it nevertheless concluded that it was "candidly told by one who is mentally deficient." She was "able to show and convince the Court that she, in fact, was taken advantage of by the two drunken neighbors." It gave full credence to her testimony, which was supported by the medical findings. It held that MARIO and RICARDO, especially the former, who is her cousin, knew of ANACURITA's mental condition. It ruled that "(e)vidently, ... Anacurita Anib, in her retarded understanding, was overcome with shock, fear and, otherwise, intimidated by her two drunken neighbors, who accosted her."

The trial court characterized MARIO's version as "simply out of this world," and "even assuming that it was what has happened, it only manifests that the victim is, in fact, abnormal, not capacitated to give a valid consent."

The trial court also considered RICARDO's silence as an admission of the charge against him. The trial court then decreed:

WHEREFORE, this Court finds the accused, MARIO DUMANON Y DUMANACAL and RICARDO LABRADOR Y SUACILLO, alias "Ric-Ric", GUILTY beyond reasonable doubt of the crime of Rape, defined and penalized in Article 355, of the Revised Penal Code, and metes out the penalty of Reclusion Perpetua; to indemnify complainant-victim Anacurita Anib the sum of Twenty Thousand (P20,000.00) Pesos moral damages, jointly and severally, without subsidiary imprisonment in case of insolvency; to suffer the accessory penalties, provided for by law; and, to pay the costs.

On 13 July 1995, MARIO and RICARDO seasonably appealed from the decision, which the Court accepted on 23 September 1995. However, there was an undue delay in the filing of the Appellants' Brief, and counsel for accused-appellants had to be fined before he finally filed the Appellant's Brief on 19 July 1999.

In their Appellants' Brief, MARIO and RICARDO allege that:

1. THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANTS OF THE CRIME OF RAPE COMMITTED ON A MENTAL RETARDATE WHEN THE INFORMATION ACCUSES THEM OF RAPE COMMITTED ON A WOMAN WITH THE USE OF FORCE AND INTIMIDATION.
2. THE TRIAL COURT ERRED IN HOLDING THAT THE COMPLAINANT IS A MENTAL RETARDATE IN THE ABSENCE OF CLEAR MEDICAL OR EXPERT EVIDENCE SHOWING SUCH ABNORMAL PHYSICAL AND MENTAL CONDITION.
3. NO FORCE OR INTIMIDATION ATTENDED THE SEX ACT BETWEEN THE ACCUSED-APPELLANTS AND THE COMPLAINANT.

MARIO and RICARDO underscore the fact that the complaint filed with the court below alleges that the rape was committed with the use of force and intimidation and hence they cannot be held guilty of rape committed on a mental retardate since this circumstance was never alleged in the Complaint. Neither can they be liable for rape committed with the use of force and intimidation since the same was not sufficiently proven by the evidence for the prosecution.

MARIO and RICARDO emphasize that their conviction was based on the trial court's conclusion that ANACURITA is a mental retardate. Such a conclusion has no basis since no medical or expert opinion categorically affirming such condition was offered by the prosecution. Accordingly, they pray for their acquittal for failure of the prosecution to prove their guilt beyond reasonable doubt.

In the Appellee's Brief, the Office of the Solicitor General (OSG) refutes the errors raised by MARIO and RICARDO. It counters that the trial court did not convict MARIO and RICARDO of rape of a mental retardate deprived of reason, but of simple rape through force and intimidation, although not necessarily employed with immense measure but one that was sufficient for the victim not to resist. The force contemplated by law in the commission of rape is relative, depending on the age, size and strength of the parties. The only requirement is that force or intimidation be sufficient to consummate the purpose which the accused had in mind. Intimidation must be viewed in light of the victim's perception and judgment at the time of the commission of the crime and not by any hard and fast rule.

The OSG asserts that in this case the trial court found that ANACURITA was mentally deficient, as revealed by its personal notes quoted in its decision, its forbearance in allowing the prosecution to proceed with leading questions during her direct examination due to her difficulty in comprehending and responsively answering the questions, and in acknowledging the observation of the MCTC judge in his Resolution that ANACURITA was different from or less than those of a fully functioning adult. Hence, the degree of force needed to overwhelm her is less. The force which may not be sufficient for the rape of a normal person, may be more than enough when employed in the rape of a mentally deficient person, like ANACURITA.

The OSG further asseverates that rape committed against a feeble-minded victim