

FIRST DIVISION

[G.R. No. 113253, February 19, 1999]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARNEL
ALMACIN Y CERENO, ACCUSED-APPELLANT.**

D E C I S I O N

PARDO, J.:

The case before us is an appeal from the decision^[1] of the Regional Trial Court, Branch 41, Daet, Camarines Norte, in Criminal Case No. 6573, finding the accused Arnel Almacin y Cereno, guilty of rape committed against Marilyn B. Idaloy, and sentencing him to suffer the penalty of *reclusion perpetua*, and to indemnify the offended party in the sum of P50,000.00.

On March 27, 1990, one Marilyn B. Idaloy, assisted by her father Eufronio Idaloy, filed a criminal complaint^[2] for rape against the accused in the Municipal Trial Court, Vinzons, Camarines Norte. The complaint alleged that on March 25, 1990, at about 4:00 p.m., the accused, by means of intimidation, had carnal knowledge of the victim, Marilyn Idaloy, a 19-year old mentally retarded woman. She affixed her thumbmark in the complaint and her father, likewise, signed the same. After preliminary investigation, the judge^[3] found the accused probably guilty of the accusation. On April 16, 1990, the judge issued an order^[4] forwarding the case to the Regional Trial Court, Daet, Camarines Norte, through the Office of the Provincial Fiscal, for its cognizance and transferring the accused to the custody of the Provincial Warden at Daet, Camarines Norte.

On May 23, 1990, the Provincial Prosecutor^[5] of Camarines Norte filed with the Regional Trial Court, Branch 41, Daet, Camarines Norte, an information against the accused, the accusatory portion of which reads:

"That on or about 4:00 o'clock in the afternoon of March 25, 1990 at Sitio Dipdipon, Brgy. Sto. Domingo, municipality of Vinzons, province of Camarines Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with one MARILYN B. IDALOY, who is deprived of reason being a 19-year old mentally retarded woman, and in her own house.

All contrary to law, and with the aggravating circumstance that the said offense was committed in the dwelling of the offended party, the latter not having given provocation for it.

CONTRARY TO LAW."

Upon arraignment on June 22, 1990, accused pleaded not guilty. After due trial, on August 19, 1993, the court *a quo* rendered its decision convicting the accused of rape, and sentencing him to the penalty of *reclusion perpetua*, with all the accessory penalties attached thereto, and to indemnify Marilyn Idaloy in the sum of P 50,000.00.

Hence, this appeal.

At times material hereto, Marilyn Idaloy, a 19-year old retardate, lived with her sister Lilia in Sitio Dipdipon, Vinzons, Camarines Norte. Marilyn was not able to finish Grade I because of her epileptic bouts, which averaged from about 5 to 6 times a day. She was rarely left alone in the house because whenever her sickness attacked, she got stiff and frequently fell down.

On March 25, 1990, Lilia attended the death anniversary of her former boyfriend, and left Marilyn alone in the house at around 1:30 p.m. until Lilia arrived home around 6:00 p.m.^[6] At around 4:00 p.m., March 25, 1990, accused Arnel Almacin went to the house of Marilyn and asked that he be admitted. When Marilyn refused, he forced his way inside the house. Thereafter, he invited Marilyn to the room where he undressed her, removed her panty and his own pants, told her to lie down, sat on her stomach and inserted his organ inside her. While he was on top of her, the accused threatened Marilyn not to tell anyone, otherwise he would return to kill her.^[7]

On March 26, 1990, Lilia Idaloy observed that her sister was uneasy and very bored. While changing Marilyn's clothes, she noticed that the former's breasts were mashed. She also noticed that there was blood on Marilyn's skirt. Upon inquiry, Marilyn confessed that Arnel Almacin had forced himself inside the room, undressed her, told her to lie down, raped her and threatened her not to tell anyone otherwise he would kill her. Upon learning that her sister had been sexually molested, Lilia went to the police to report the incident. Thereafter, two policemen accompanied her to fetch Arnel Almacin. Both Marilyn and Lilia knew Arnel Almacin as the nephew of the second wife of their father.^[8]

Dr. Miguel Ponayo, a general practitioner for three years with experience in dealing with patients suffering from epilepsy and mental retardation, attested that although Marilyn was afflicted with epilepsy and mental retardation, she was, nevertheless, competent to testify as a witness.^[9]

On March 27, 1990, Lilia brought Marilyn to the Camarines Norte Provincial Hospital for medical examination. Dr. Pauline Kollin examined Marilyn and issued a medical certificate with the following findings:

"= Moderate pubic hair, multiparous outlet, old healed laceration (a) 7 o'clock position;

Admits 1 finger with difficulty;

= Contusion, hematoma, 10 x 8 cms. in its width diameter, breast, right;

= Contusion, hematoma, 12 x 9 cms. in its width diameter, breast, left;

= Hematoma, Distal 3rd, arm, right;

xxx

Sperm cells --- none seen."^[10]

Dr. Kollin explained that the laceration could have been caused by a finger, a penis or any hard object inserted inside the victim's organ. She admitted that the laceration and hematomas were about three (3) to four (4) days old.^[11]

Eufronio Idaloy, father of the victim, learned of the incident when Marilyn was brought for medical examination. According to him, Arnel later asked forgiveness from him. He also claimed that Marilyn was with physical defects since she was suffering from polio.^[12]

Accused Arnel Almacin interposed the defense of alibi, claiming that he was in Mangkawayan, Vinzons, Camarines Norte, that fateful day, accompanying his friend, Ronnie Pajarillo, in the latter's marriage proposal. Ronnie Pajarillo and his father, Rufino Pajarillo, corroborated the story of the accused.

On March 25, 1990 at around 9:00 a.m., accused was dressing up in his grandmother's house preparing for his appointment with Ronnie Pajarillo. He reached Ronnie's house in Calangcawan Sur, at around 10:00 a.m., and helped with the household chores. Then, he accompanied Ronnie and his father Rufino Pajarillo, among other persons, to the house in Brgy. Mangkawayan of Ronnie's intended bride, Alicia Asis, where Ronnie asked for the latter's hand in marriage. After discussing the proposed wedding date, they had a drinking spree from 1:00 p.m. until around 5:00 p.m. Thereafter, they went home to Ronnie's house in Calangcawan Sur, arriving therein at around 7:00 p.m., where they continued their drinking session. At about 11:00 p.m., accused retired to bed in Ronnie's house and woke up around 7:00 the following morning, March 26, 1990. Then, he went to Brgy. Dipdipon to help his brother-in-law, Adelardo Amaro, in harvesting palay. While in the ricefield, Policeman Danilo Salvanera arrived and invited him to the police station for investigation. He was informed of the rape charge only on March 28, 1990, at around 4:00 p.m.^[13]

Rufino Pajarillo corroborated Arnel's testimony that on March 25, 1990, from 11:30 a.m. to 7:00 p.m., Arnel was with them in Mangkawayan, about ten (10) kilometers from the house of Lilia Idaloy. Later, Arnel slept in their house and left the following morning, March 26, 1990, at around 9:00 a.m.^[14]

Ronnie Pajarillo likewise validated the story of Arnel Almacin, claiming that as early as March 2, 1990, he had invited Arnel to accompany him in proposing marriage to his intended bride. On March 25, 1990, around 10:00 a.m., Arnel went with him and his family to Mangkawayan for the marriage proposal, and stayed there until 5:00 p.m. They arrived at Ronnie's house at around 7:00 p.m. and continued their drinking session until they retired to bed around 10:30 p.m. According to him, Arnel Almacin did not participate in the drinking session at his house, but slept immediately.^[15]

Arnel Almacin alleged that the victim and Lilia Idaloy initiated the rape charge to create a rift between Nida Cereno, her auntie, and Eufronio Idaloy. He claimed that Nida Cereno earlier warned him that the Idaloy family would do anything to separate the couple.^[16]

On rebuttal, however, Nida Cereno belied that she even talked about such matters to Arnel. In fact, she was living with the victim's father. Furthermore, she testified that Marilyn was not suffering from a mental illness, but was afflicted with polio.^[17]

In convicting the accused, the trial court gave great weight to the testimony of the victim. The defense waived its right to cross-examine the victim, consistently maintaining that since the victim was a retardate, she was incompetent to testify. The court, however, ruled that the victim was competent to testify. Neither did the court believe Arnel's defense of alibi as he was unable to show the physical impossibility of his presence at the crime scene during the commission of the crime. The distance between the house of the intended bride and Lilia's house was only ten (10) kilometers and easily accessible by riding a tricycle and then by walking a few meters.

In his first assigned error, the accused averred that the trial court erred in giving full faith and credit to the testimonies of the prosecution witnesses and totally disregarding his defense of alibi. He claimed that based on the information filed, the victim was a mental retardate. However, Eufronio Idaloy and Nida Cereno testified that Marilyn was suffering from polio and not a retardate. Also, Dr Ponayo testified, to wit:

"Q: - How did you find the capacity of the patient, when you interviewed her, particularly with respect to her capacity to respond, to your questions?

"A: - Well, when I asked her, it took a little time for her to answer, however, the answer was clear. As far as her speech or the way she answered with regard to her age, there was a little problem recalling the age; when I asked about the residence she was only able to say Vinzons. But the response was in the ordinary conversation, a normal individual, an automatic response."^[18]

The defense averred that the accused was denied the right to be informed of the charges against him when the information alleged that Marilyn was a mental retardate and yet the testimonies showed that she was normal. During the trial, the defense vehemently objected to the testimony of Marilyn, contending that since the information alleged that she was mentally retarded, then she was incompetent to testify in court. Furthermore, the defense questioned whether or not the mental retardation of Marilyn was adequately established as Dr. Ponayo, a general practitioner and not a trained psychiatrist, was not competent to diagnose the mental condition of the victim. Thus, while on the one hand, the defense accepted the allegation of the victim's mental retardation and objected to her competency to testify; on the other hand, it claimed that Marilyn was a normal individual as there was no psychiatric examination diagnosing her mental condition.

The contention is devoid of merit. We have ruled that other evidence aside from a psychiatric evaluation can prove mental retardation or abnormality.^[19] Marilyn