

FIRST DIVISION

[G.R. No. 126921, August 28, 1998]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSE MORENO Y CASTOR, ACCUSED-APPELLANT.

D E C I S I O N

PANGANIBAN, J.:

Evidence of overwhelming physical force is not necessary to sustain a conviction for the rape of an imbecile. When the victim is a retardate with the mental age of a six-year-old child, the force required to overcome her is of a lesser degree than that used against a normal adult.

The Case

Jose Moreno y Castor seeks the reversal of the June 17, 1996 Judgment^[1] of the Regional Trial Court of Pasig City, Branch 165, in Criminal Case No. 101919, convicting him of rape and sentencing him to reclusion perpetua.

In a Complaint dated October 4, 1993, Jocelyn Bansagales and her mother, Dolores Bansagales, charged appellant with rape by means of force and intimidation. This was treated as the Information upon certification that a preliminary investigation had been conducted by Fourth Assistant Provincial Prosecutor Amerhassan C. Paudac. Below is the accusatory portion of the Complaint:

"That on or about the 29th day of September, 1993, in the Municipality of Pasig, Metro-Manila, Philippines and within the jurisdiction of the Honorable Court, the above-named accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the undersigned against her will and consent.

"CONTRARY TO LAW."^[2]

Assisted by his counsel, Atty. Gabriel C. Alberto of the Public Attorney's Office, the accused pleaded not guilty during his arraignment.^[3] Trial proceeded in due course. Thereafter, the court a quo rendered the assailed Decision, the dispositive portion of which reads:

"WHEREFORE, finding the accused Jose Moreno y Castor guilty beyond reasonable doubt of the crime of rape punishable under Art. 335 of the Revised Penal Code, the Court hereby sentences him to suffer imprisonment of reclusion perpetua.

"The preventive imprisonment undergone by the accused shall be credited in his favor pursuant to Art. 29 of the Revised Penal Code as amended by Republic Act No. 6127."

The Facts

Evidence for the Prosecution

In the Appellee's Brief,^[4] the solicitor general^[5] presents the following narration of the facts:

"Accused-appellant Jose Moreno, a carpenter, and complainant Jocelyn Bansagales, a mental retardate, were neighbors in Villa Tech, Palatiw, Pasig City. At the time of the incident, Jocelyn was twenty-six (26) years old. She fondly calls appellant "Kuya Joe." In the afternoon of September 29, 1993, while Jocelyn was laundering clothes, appellant approached and held her hand. He led her to a tricycle and drove off to a rented house somewhere in Rotonda, Pasig. No one was in the house. Once inside, appellant began to undress Jocelyn. Afterwards, he [lay] on top of her. He inserted his penis into her vagina and while in this position, moved in an upward and downward motion. Jocelyn did not like what appellant was doing to her. Terrified, she was forced to submission after appellant threatened that he [would] hurt her some more. (pp. 7-8, tsn, May 16, 1994) After satisfying his lust, appellant gave her twenty pesos (P20.00) and sent her home.

"When Jocelyn's mother, Dolores, learned what had happened to her daughter, she immediately brought her to the police station in Pasig City. She booked her complaint with PO2 Aida Verzosa, the policewoman on duty at the station. PO2 Verzosa, together with police officers Nida Balagot and Mario Garcia, then went to Villa Tech, Palatiw, Pasig. Upon seeing appellant, they confronted him with Jocelyn's accusation and invited him to the police station. Jocelyn positively identified appellant as the one who raped her. PO2 Verzosa then took down the sworn statement of Jocelyn, on the basis of which, the instant complaint for rape was filed against appellant.

"Dra. Rosaline O. Cosidon, a medico-legal officer, examined Jocelyn sometime in October 1993. She found deep healed lacerations and shallow healed lacerations in Jocelyn's hymen. These lacerations, according to her, could have been caused only by sexual intercourse. (Exhibits "C" - "C-1")

"Dra. Ester Regina Servando, a resident on training in Psychiatry at the National Center for Mental Health (NCMH) also examined Jocelyn and submitted a medical certificate of her findings wherein she concluded that:

REMARKS AND RECOMMENDATIONS

Based on history [and] mental status examinations, patient was diagnosed to have moderate mental retardation. This condition is permanent and I.Q. range is between 35-50. Patient['s] mental age is equivalent to 6 years old.

(Exhibit "D")

"These findings were concurred in by Dra. Cecilia Albaran, a psychiatrist holding the position of Medical Officer III at NCMH. She had seen and

talked to Jocelyn only once. She observed that Jocelyn had low intelligence. Although Jocelyn was twenty-six years old, she had the mental age of a six-year-old child. Maria Suerte G. Caguingin, a psychologist at NCMH, administered psychological tests on Jocelyn. Test results showed that Jocelyn [was] a mental retardate. (Psychological Report, Exhibit "E")"

Evidence for the Defense

On the other hand, the defense alleges denial as follows:

"[T]he defense presented the accused himself who denied that he ever had any sexual intercourse with the complainant. According to the accused's version, it was Jocelyn Bansagales who came to his house while he was sleeping and who woke him up by mashing his penis. Furthermore, it was stated by Jose Moreno that he only went as far as kissing, hugging and "fingering" the complainant. He denied inserting his penis nor [sic] that he ever attempted to insert his penis inside the vagina of the victim.

"The defense likewise presented the testimony of Elena Angustia who alleged that the accused and the complainant were neighbors and that she often saw them together, making her believe that they ha[d] an amorous relationship. (TSN, January 15, 1996, pp. 11-12)"^[6]

The Ruling of the Trial Court

Finding for the prosecution, the trial court ruled: "The denial of the accused that he had sexual intercourse with Jocelyn Bansagales and his claim that he inserted his forefinger and middle finger only inside her private part is unworthy of belief and cannot prevail over the statement of Jocelyn that he inserted his penis in her vagina and had sexual intercourse with her. With the low I.Q. of Jocelyn, it is highly improbable that she could have concocted or fabricated her charge against the accused."^[7] Jocelyn's Complaint was corroborated by the findings of the medico-legal officer.

Based on the aforementioned grounds, the trial court concluded that the accused "is guilty of rape under paragraph 2 of Article 335 of the Revised Penal Code because the offended party, having a mental age of six years old, was deprived of reason. Alternatively, the accused is liable under paragraph 3 of the same article because at the time she was raped, Jocelyn Bansagales [was] in the same category as a child below twelve years of age for lacking the necessary will to object to the accused's lewd design."^[8]

Hence, this appeal.^[9]

Assignment of Errors

In assailing the trial court's Decision, appellant alleges the following errors:^[10]

"I

The court a quo erred in convicting the accused on a ground other than that which has been alleged in the complaint.

"II

The court a quo erred in convicting the accused under the second and third paragraphs of Art. 335 of the Revised Penal Code despite the failure of the prosecution to establish his guilt beyond reasonable doubt.

"III

The court a quo erred in failing to apply the mens rea doctrine."

The Court's Ruling

The appeal is devoid of merit.

First Issue:

Ground for Conviction

Under Article 335 of the Revised Penal Code, rape is committed thus:

"Art. 335. *When and how rape is committed.*— Rape is committed by having carnal knowledge of a woman under any of the following circumstances.

"1. By using force or intimidation;

"2. When the woman is deprived of reason or otherwise unconscious; and

"3. When the woman is under twelve years of age, even though neither of the circumstances mentioned in the two next preceding paragraphs shall be present."

Appellant argues that the trial court erred in convicting him under the second, and alternatively the third paragraph, of the foregoing provision, because the Complaint (which was later converted into the Information) charged him with rape under the first paragraph thereof. Appellant argues that the three methods of committing rape enumerated in Article 335 are separate and distinct from each other, and that one particular method does not necessarily include the others. In support of his contention, appellant cites *People v. Pailano*,^[11] in which the Court ruled that the "[c]onviction of the accused-appellant on the finding that he had raped Anita while she was unconscious or otherwise deprived of reason -- and not through force and intimidation, which was the method alleged [in the Information] -- would have violated his right to be informed of the nature and the cause of the accusation against him."^[12]

We concede that appellant cannot be convicted under paragraphs 2 or 3 of Article 335 of the Revised Penal Code, because none of the modes of committing rape specified therein were alleged in the Information. To convict him under either of these statutory provisions is to deprive him of the constitutional right to be informed of the accusation against him. The heart of this constitutional guarantee was explained in *US v. Karelsen*:^[13]

"The object of this written accusation was - First. To furnish the accused with such a description of the charge against him as will enable him to make his defense; and second, to avail himself of his conviction or

acquittal, for protection against a further prosecution for the same cause; and third, to inform the court of the facts alleged, so that it may decide whether they are sufficient in law to support a conviction, if one should be had."

Thus, this Court has ruled that "an accused cannot be convicted of an offense, unless it is clearly charged in the complaint or information. Constitutionally, he has a right to be informed of the nature and cause of the accusation against him. To convict him of an offense other than that charged in the complaint or information would be a violation of this constitutional right."^[14] Relying on this Constitutional guarantee, the Court held that "appellant x x x cannot be convicted of homicide through drowning in an information that charges murder by means of stabbing."^[15] Closer to the milieu of this case is *People vs. Pailano*,^[16] cited by appellant himself, in which the Court ruled that a person cannot be convicted of rape under paragraph 2, of Article 335 of the Revised Penal Code because the Information alleged rape by force and intimidation.

Appellant, however, is here being convicted under paragraph 1, not paragraphs 2 or 3, of Article 335.

Jocelyn's testimony clearly proved that appellant, by means of force and intimidation, had carnal knowledge of her against her will. She testified:

"Fiscal: So you saw the penis of Kuya Joe out because he was nude[;]
what did he do with his penis when you said that he was lying on top of you?

Witness: It was on top.

Fiscal: It was on top of what?

Witness: "Dito po sa puki ko."

Fiscal: When his penis was placed on top of your vagina, what else did he do?

Witness: "Nakapasok po."

Fiscal: Which one penetrated, his penis? Where did it penetrate?

Witness: Inside my vagina.

Fiscal: Did you like it that he inserted his penis [in]to your vagina?

Witness: No, ma'am.

Court: Why did you not do anything if you did not like what he did?

Witness: I was afraid of him."^[17]

The force necessary in rape is relative, depending on the age, the size and the strength of the parties.^[18] Hence, it has been held that "for rape to exist, it is not necessary that the force and intimidation employed in accomplishing it be so great or of such character as could not be resisted, it is only necessary that the force or intimidation be sufficient to consummate the purpose which the accused had in