

FIRST DIVISION

[G.R. No. 101832, August 18, 1997]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
JOSE TABALESMA Y OLEVETE, ACCUSED-APPELLANT.**

D E C I S I O N

HERMOSISIMA, JR., J.:

Accused-appellant Jose Tabalesma comes before us by way of appeal, seeking the reversal of his conviction for the rape of a mental retardate.

On June 26, 1990, a criminal complaint^[1] was filed by Rosemarie Eco before the Municipal Circuit Trial Court of Teresa-Baras, Rizal, against the accused-appellant, which stated:

"That on or about 8:00 o'clock in the evening, on the 26th day of June, 1990 in the Municipality of Baras, Province of Rizal, Philippines, and a place 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 had carnal knowledge with the person of ROSEMARIE ECO y CALMA, against her will and consent, in violation of Article 335 of the R.P.C."

On June 27, 1990, Rosemarie was brought to Camp Crame to be examined. The medico-legal findings^[2] were as follows:

GENERAL AND EXTRAGENITAL:

Fairly developed, fairly nourished and coherent female subject. Breast are hemispherical with dark brown areola and nipples from which no secretion could be pressed out. Abdomen is flat and soft.

GENITAL:

There is moderate growth of pubic hair. Labia majora are full, convex and gaping with the pinkish brown, hypertrophied labia minora presenting in between. On separating the same is disclosed an elastic, fleshy-type hymen with shallow, healed lacerations at 3, 8 and 9 o'clock and a deep, healed laceration at 11 o'clock. External vaginal orifice offers moderate resistance to the introduction of the examining index finger and the virgin-sized vaginal speculum. Vaginal canal is narrow with prominent rugosities. Cervix is congested with moderate amount of whitish secretions.

CONCLUSION:

Subject is non-virgin state physically.

There are no external signs of recent application of any form of trauma.

REMARKS:

Vaginal and pari-urethral smears are negative for gram-negative diplococci and for spermatozoa."

On August 30, 1990, Jose Tabalesma was charged with rape before the Regional Trial Court of Rizal. During his arraignment on December 5, 1990, the accused-appellant pleaded not guilty to the crime charged. Trial proceeded thereafter.

Here following, based on the prosecution's evidence, were the events which transpired that fateful night.

It appears that on June 26, 1990, at about 8:30 in the evening, Rosemarie was sent on an errand by her mother to buy candy from a nearby store. After buying the candy, Rosemarie decided to visit her sister Sally Eco. On the way to Sally Eco's house, Rosemarie was accosted by the accused-appellant, who pulled her and brought her to his sister's two-storey house, where he was residing at that time, located a few meters away. She began to shout, but the accused-appellant threatened to kill her if she would not stop. When they reached the house, he dragged her onto a folding bed located at the ground floor, pushed her down, than began to undress her. While he was removing her clothes, she began to cry. She shouted for help twice but the accused threatened to kill her, and kept covering her mouth. He succeeded in having sexual intercourse with her.

Manuel Perez, a resident of the same neighborhood, happened to pass by the accused's house. He heard a woman crying "ilabas mo ako rito," and recognized the voice as that of Rosemarie Eco's. He went to Enrique Eco, Rosemarie's brother, and told him that Rosemarie was in the house of the accused's sister. Enrique immediately went to the said house, banged on the door and demanded that Rosemarie be set free. The accused denied that Rosemarie was inside and refused to open the door. Rosemarie, upon hearing her brother's voice, shouted: "Ricky, ilabas mo ako rito!" Because of the commotion, the people in the neighborhood began to arrive, including the Barangay Tanod. It was only at that point when the accused's sister Veronica Hermono, known as "Ading", came down from the second floor and opened the door. Enrique rushed in and saw his sister crying. When he asked her what happened, she told him that the accused forced her to have sexual intercourse with him. Angered, Enrique tried to maul the accused, but was restrained by his mother and the people around them.

After deliberating on the evidence, the trial court rendered a Decision^[3], of which the dispositive portion states as follows:

"WHEREFORE, the court finds the accused JOSE TABALESMA y OLEVETE GUILTY of RAPE under Article 335 of the Revised Penal Code, as amended, and hereby sentences him to suffer the penalty of reclusion perpetua plus costs. Further, to indemnify the offended party, Rosemarie Eco, with the amount of P20,000.00 as damages.

SO ORDERED.”

The accused-appellant now comes before this Court with a lone assignment of error, viz:

“THE LOWER COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF RAPE NOTWITHSTANDING THE PROSECUTION’S UTTER FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.”

The accused-appellant’s defense is denial. He contends that Rosemarie Eco went to his sister’s house out of her own free will^[4] In his testimony, the accused-appellant claimed that Rosemarie knocked on his door, and that when he opened it, she was crying and told him that she no longer wanted to go home because her mother was punishing her.^[5] He asserts that when Rosemarie’s relatives came to the house looking for her, he vehemently denied raping her.^[6]

We are not persuaded by accused-appellant’s arguments.

Rosemarie Eco, who was twenty years old at the time of the incident, is a mental retardate with the mental faculties of a ten year old Grade IV student. The accused-appellant himself admitted that he knew Rosemarie to be a mental retardate.^[7] This fact was further observed by the trial court during her testimony, wherein she narrated her sordid experience in a halting manner:

“PROSECUTOR SALANGA:

Q When you went to the house of your sister Sally Eco, what happened, if any?

A No, Sir. I did not reach the house of my sister because on the way accosted (inabangan) by him. (The witness is pointing to a person inside the courtroom who when asked gave his name as Jose Tabalesma.)

Q What happened if any?

A He pulled me from the store and brought me to his house.

Q Where is the house of the accused located?

A Near the store at Pinugay, Baras, Rizal.

Q What happened next?

A He undress me.

Q After that what happened?

A He kissed me. He inserted his organ into my organ.
(Ipinasok niya ang ari niya sa ari ko.)

Q After that what happened?

A I was going to shout but I could not shout because he threatened me that something will happen to me if I will shout he will kill me.

Q When you said that you were walking and he pulled you when walking on the street what did you do if any when he

pulled you?

A When he was pulling me forcefully I shouted.

Q What did he do when you shouted?

A He said something bad will happen to me if I will continue shouting.

Q When you were brought inside the house what did you do if any before he undressed you?

A I was crying when he brought me to his house.

Q Why were you crying?

A I wanted to go out but he prevented me.

Q What else?

A Because I would like to go home but he does not like to let me go.

Q While he was undressing you what did you do if any?

A When he was undressing me I was crying.

Q Why were you crying as he was undressing you?

A I was crying because I do not like what was happening.

Q What do you mean by that you do not like what was happening?

A I don't like him to have sexual intercourse with me.
(Ayokong magalaw niya.)

Q You said he put his organ into your organ. What did he do first? What were you undressed off?

A He took off my t-shirt, bra skirt and panty.

Q During all this time that he was taking off your t-shirt, bra, skirt and panty, what were you doing if any?

A I was crying and shouting.

Q What were you shouting?

A I was shouting help me, get me out from here.

Q How many times did you shout?

A I shouted twice, Sir.

Q What did he do if you shouted for help?

A He just covered my mouth.

Q To what he covered your mouth.

A With his hands.

Q In what particular place of his house did he do the act of putting his organ into your organ?

A Inside the house, Sir.

PROSECUTOR SALANGA:

I would like to make it of record, Your Honor, please, that although it seems she is 20 years old she is only Grade IV and this is on account of the fact that according to her mother and he will prove the fact on that effect that she suffered meningitis when she was a small child and that is why she appears to be hard in understanding and more peering to abnormality. I would just want to make of record

and call the attention of the court that this representation is trying to narrate the incident as the complainant find difficulty in expressing this incident as she appear to have a mentality of 10 years old or less.

Q What did you do when he inserted his organ into your organ?

A I was trying to get out when he put his organ into my organ but he would not allow me to get out.

Q While you were there inside his house after he put his organ into your organ and you like to get out what happened after that, if any?

A He lay on top of me and pressed my stomach.

Q What else?

A He was touching my breast. (Hinihipo po niya ang dede ko.)

Q What else did he do, if any?

A He was kissing me.

Q How long did he do that he insert his organ into your organ?

A He inserted his organ into my organ for a long time.

Q During all this time that he is on top of you inserted his organ into your organ what were you doing?

A I was trying to get up because I do not like what was happening to me.

Q What else?

A He took hold of my shoulder and pushed me back to the folding bed.

Q Now while you were there already on the folding bed him on top of you what happened if any?

A He raped me. (Ginahasa po ako.)

Q Why do you say he raped you?

A Because I don't like what happened to me.

Q You said that you like to get out of the house but he don't like you to. Were you able to finally

went out of the house?

A I was able to get out of the house only when my companion arrived.

PROSECUTOR SALANGA:

Q Who is this companion of yours who arrived?

A My brother, Enrique Eco.

Q What happened next when your brother arrived?

A My brother kicked the accused.

Q What else?

A And mauled him.

Q What did Jose do when your brother was mauling him?

A He did nothing but covered up sitting on the chair.