

## FIRST DIVISION

[ G.R. No. 119955, August 15, 2000 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
AGAPITO (PEPITO) AGRAVANTE, ACCUSED-APPELLANT.**

### D E C I S I O N

**PARDO, J.:**

The case before us is an appeal from a decision<sup>[1]</sup> of the Regional Trial Court, Branch 37, Iriga City, convicting accused-appellant of rape and sentencing him to *reclusion perpetua* and to pay Rowena Obiasca the sum of P50,000.00 as moral damages, being a minor and mental retardate.

On complaint of Rowena Obiasco, a 14-year old mental retardate, on February 22, 1994, 4th Assistant Provincial Prosecutor Sergio B. Ramos, Jr. of Camarines Sur, filed with the Regional Trial Court, Iriga City, Branch 37, an amended information charging Agapito (Pepito) Agravante, a former worker at the fishpond of Maria Afante and a resident of San Pedro, Buhi, Camarines Sur, with rape.

Upon arraignment on March 1, 1994, accused entered a plea of not guilty. Trial proceeded.

The facts are as follows:

In the morning of June 11, 1993, accused Pepito Agravante, who was a former helper of Maria Afante, went to the house of Maria Afante, the guardian of Rowena Obiasca, a mentally retarded child, and through deceit told her that her elder brother Alex was waiting for her at the parking area. At first, Rowena refused to go with Alex but through the insistence of accused, as in fact he returned three times to the house telling Rowena that her brother was waiting, she obliged. In the guise of bringing Rowena to Guinobatan where Alex was supposed to be waiting, accused took a jeepney and alighted at Sta. Justina. Then, they walked towards Pabuntugan, San Ramon, Buhi, Camarines Sur where the house of Marcos Morada was located. Marcos Morada is a cousin of the mother of accused Pepito. Upon reaching the house of Marcos Morada, they asked for a drink of water and they asked if they could rest in the house. Marcos gave them water and asked Pepito "if you enter into things like this, could you be able to get out of it". Pepito did not say anything. Marcos got suspicious of the accused so he did not allow them to stay in the house. Accused together with Rowena left.<sup>[2]</sup>

On the way back, upon reaching a grassy place, accused tethered the rooster he was carrying and held both wrist of Rowena and pushed her down. He pulled down her short pants together with her panty up to her knees because Rowena kept on struggling. He also pulled his pants down and placed himself on top of Rowena. When Rowena kept on moving, he unsheathed his bolo and told Rowena not to move or he would kill her. Rowena being a mental retardate, could not put up much

resistance so that accused was able to consummate his bestial desire on her. Thereafter, they got dressed and proceeded on their way until they reached the house of an old woman where the accused wanted her to stay and sleep. Rowena refused so they were forced to return to the poblacion. The accused brought Rowena to the house of Alice, his sister-in-law, where he also lived. Alice instructed Rowena what to say when asked where she had been the whole day of June 11, 1993. Alice asked her husband to go to the house of the Afantes to inform them of the presence of Rowena at their house from where she was fetched by Maria Afante's husband and brought home.<sup>[3]</sup>

When Maria Afante arrived at about 11:00 o'clock in the morning of June 12, 1993, after coming from a beauty contest held in Iriga City, she was told that Rowena was in the house sleeping. The next morning, Maria Afante asked Rowena where she had been and because of the threats of the accused and the instruction of Alice as to what to answer, she told Maria that she followed her brother Alex. Maria knew very well the attitude and temperament of Rowena as a mental retardate. She did not pursue further questioning, satisfied by the reason given by Rowena.<sup>[4]</sup>

On June 29, 1993, Maria Afante learned that on the day Rowena was missing from the house, she was seen in the company of another person. With this information, she confronted Rowena until she finally admitted that she was only instructed to say that she followed Alex that morning although actually she was brought by accused to San Ramon to the house of an old man. On the pretext that she was buying pineapples, Maria went to San Ramon and found Marcos Morada, the old man alluded to by Rowena. Marcos confirmed the fact that Rowena and the accused went to his place on the date she was missing and that he did not allow them to stay because he did not approve of what the accused was doing. With this confirmation from Marcos and further bolstered by the admission of Rowena as to what actually happened on that date, Maria Afante brought Rowena to the police station to lodge a complaint and thereafter referred her to a doctor for examination that led to the filing of this case against accused.<sup>[5]</sup>

On July 10, 1993, Dr. Alicia M. Mercurio, Municipal Health Officer of Buhi, Camarines Sur examined Rowena Obiasca on June 29, 1993, and issued a medical certificate.<sup>[6]</sup> She testified that she found in the hymen an old tear at 8:00 o'clock and 10:00 o'clock positions and her vagina admits one finger which lacerations could be due to pressure caused by slipping on a rock, riding a bicycle, sexual intercourse or fingering.<sup>[7]</sup>

As aforesaid, on February 22, 1994, Assistant Provincial Prosecutor Sergio B. Ramos, Jr. filed with the Regional Trial Court, Iriga City an amended information charging accused-appellant with rape as follows:

"That on or about the 11th day of June, 1993, in Buhi, Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with bolo, and by means of force and intimidation, and with lewd designs, did then and there willfully, unlawfully and feloniously have carnal knowledge with Rowena Obiasca, a 14 year old mental retardate, against her will, to her damage and prejudice in such amount as may be proven in court.

"ACTS CONTRARY TO LAW."<sup>[8]</sup>

At the trial, the prosecution presented the following witnesses: (1) Maria R. Afante, guardian of the victim; (2) Marcos Morada, cousin of the mother of the accused; (3) Dr. Alicia M Mercurio, the physician who examined complainant; (4) Dr. Chona Cuyos-Belmonte, psychiatrist who examined complainant; (5) Anastacia Martinez, housemaid of Maria Afante; and (6) complainant Rowena Obiasca.

The defense, for its part, presented accused himself, who denied the charge of rape. He admitted, however, that he went to the house of Maria Afante at about 7:30 in the morning of June 11, 1993, as he was requested by Alex, brother of Rowena, to get her and told her to go to the parking area at noon because Alex would be waiting for her. After telling Rowena, he left and went home. After taking breakfast, he proceeded to San Ramon arriving thereat at 9:30 a.m. to split coconut trunks in the house of Ernesto Martinez. He denied having talked to Marcos Morada on that day.<sup>[9]</sup> He claimed that when he returned to San Pedro, Buhi, Camarines Sur at 6:30 p.m. after coming from San Ramon, he saw Rowena at the satellite market at the parking area. Rowena asked him where Alex was and he told her that he saw Alex at the parking area going to Iriga that morning. Then he told Rowena to go home because Alex was going to get her on Thursday. After that he went home leaving Rowena at the satellite market.

Appellant's sister-in-law Alicia Ondecimo testified that at about 7:00 in the evening of June 11, 1993, while she was at their house together with the accused, Rowena arrived alone. They let her eat because Rowena said she had not eaten yet and that she came from Buransan satellite market. Alicia asked Rowena why she came from Buransan satellite market and she said that she saw Alex near the movie house. So she followed him but when she reached Buransan, Alex was no longer there. Rowena told her that since she did not see Alex anymore she stayed at the Buransan from 11:30 a.m. near the rice mill of San Joaquin until she went to the house of Alice at 6:00 p.m. of June 11, 1993.<sup>[10]</sup>

On rebuttal, the prosecution presented the victim who testified that she never told Alice that she saw Alex and neither did she stay in the rice mill of San Joaquin up to the late afternoon of June 11, 1993. The implication is that since she did not see Alex she could not have followed him. She was, however, instructed by Alice that if she were asked where she went on June 11, 1993, she should say that she followed Alex.<sup>[11]</sup>

On January 20, 1995, trial court rendered a decision,<sup>[12]</sup> the dispositive portion of which reads:

"WHEREFORE, in view of the foregoing, the Court finds the accused Agapito (Pepito) Agravante guilty beyond reasonable doubt of the crime of Rape as penalized under Art. 355 of the Revised Penal Code, as amended, as principal thereof, without any attendant mitigating or aggravating circumstance, and hereby sentences him to suffer the penalty of *reclusion perpetua*, to indemnify Rowena Obiasca the sum of P50,000.00 as moral damages being a minor and mental retardate (People vs. Romeo Joya, Ibid) and to pay costs.

"SO ORDERED."

Hence, this appeal.