

EN BANC

[G.R. No. 144036, May 07, 2002]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
VICTOR UGANG, ACCUSED-APPELLANTS.**

DECISION

DAVIDE JR., C.J.:

As if deprivation of her reasoning powers was not enough. Compounding her misery, Lanie Jumud (hereafter LANIE), then an 18-year-old demented girl, was also stripped of her, perhaps, only remaining treasure -- her virginity. Worse, its loss was caused by one who was supposed to help protect it, her uncle Victor Ugang (hereafter VICTOR).

In an information^[1] docketed as Criminal Case No. S-2893 before the Regional Trial Court, Branch 11, Sindangan, Zamboanga del Norte, VICTOR was charged with the crime of rape committed as follows:

That, in the afternoon, on or about the 29th day of December, 1996, in the municipality of Sindangan, Zamboanga del Norte, within the jurisdiction of this Honorable Court, the said accused, moved by lewd and unchaste desire and by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously succeed in having sexual intercourse with one LANIE JUMUAD, his 18 years old mentally ill niece, against her will and without her consent.

CONTRARY TO LAW.

At his arraignment, VICTOR, with the assistance of counsel *de officio*, entered a plea of not guilty. Thereafter trial ensued.

The first witness presented by the prosecution was Julito Amantiad, a neighbor of LANIE and *cumpadre* of VICTOR. According to him, at 1:30 p.m. of 29 December 1996, he, VICTOR and Leonilo Nonong were drinking tuba in his store in Lapero, Sindangan, Zamboanga del Norte. After they had consumed half a gallon of tuba, VICTOR, who was already drunk, left without saying a word and proceeded to the house of LANIE, which was about fifteen fathoms away from Julito's store.^[2]

Curious why VICTOR did not return, Julito went to LANIE's house. He knew that LANIE was alone because he was asked by her mother before leaving to look after LANIE, who was demented. He peeped through a hole on the wall of the house and saw LANIE naked, with one of her legs spread while the other was tied to a post. VICTOR was on top of her, with his shorts down to his knees and his erect penis pumping up and down into her vagina. LANIE's face was expressionless. Julito then went back to his store and told Leonilo that VICTOR was having sexual intercourse

with LANIE.^[3]

Leonilo Nonong, VICTOR's *cumpadre*, corroborated the testimony of Julito. To verify Julito's story that VICTOR was having sexual intercourse with LANIE, Leonilo went to LANIE's house. There, he saw VICTOR already standing and pulling up his underwear, with his pants still on his knees. LANIE was lying down naked on a wooden bench. Suspecting what had happened, Leonilo pulled VICTOR and said: "You are fool! [*sic*]" He forthwith brought VICTOR back to Julito's store and entrusted him to Rodrigo, LANIE's brother, who was then in the store. Upon being informed of what VICTOR happened to his sister, Rodrigo knocked down VICTOR. VICTOR admitted that he committed a sin and asked for forgiveness.^[4]

Dr. Marcelino Lacaya, Chief of the Sindangan District Hospital, testified that it was Dr. Alan Arthur Vercide who examined LANIE on 22 January 1997, but at the time of the request for the issuance of a medical certificate, Dr. Vercide was not around. Hence, on the basis of the handwritten report of Dr. Vercide, which was recorded^[5] and made part of the OPD Records of Sindangan District Hospital, Dr. Lacaya issued a medical certificate^[6] and signed the same in behalf of Dr. Vercide.^[7] The certificate reads:

Genitalia labia minora and majora in close apposition intoritus
- nulliparous, admits 1 finger with ease, hymenal orifice
about 2-3 cm. in diameter with old laceration at 5
o'clock and 7 o'clock

(-) fresh lacerations,
(+) whitish discharges
Pregnancy test - not done (No reagent)
Sperm Analysis - not done

VICTOR was the sole witness for the defense. He admitted that LANIE is his niece but denied having carnal knowledge of her on 29 December 1996. According to him, after leaving his drinking companions at the store of Julito, he proceeded to the house of LANIE to take a rest. LANIE was alone in the house. At the time, she was naked, with one of her feet tied, as she was insane. He just sat and leaned on the wall about three feet away from LANIE. Since he had a hard time sitting with his tight short pants, he pulled up his shorts and fixed his long pants. It was at this juncture that Leonilo saw him. He denied having asked for forgiveness from Rodrigo. Although Rodrigo did not have any quarrel with him, prosecution witnesses Julito and Leonilo had rift with his wife because of money matters in their chapel, of which Julito, Leonilo and his wife were officers. Despite this quarrel, he drank with them.^[8] VICTOR further asserted that Julito testified against him because the latter was after money. During his arraignment, Rodrigo approached him; asked for P10,000 to be given to the witnesses for the prosecution; and warned him that if he would not deliver the money, he would languish in jail. However, VICTOR admitted that Julito and Leonilo did not personally ask him for any consideration, nor did they promise to retract their statements in exchange for something.^[9]

The trial court gave full faith and credit to the version of the prosecution. It disregarded VICTOR's defense of denial. Accordingly, in its Decision^[10] of 2 June 2000, it found him guilty beyond reasonable doubt of the crime of rape and

sentenced him to suffer the penalty of death and to pay the victim in the amounts of P75,000 as indemnity and P50,000 by way of moral damages.

In his Appellant's Brief,^[11] VICTOR submits this sole assignment of error:

THE TRIAL COURT GRAVELY ERRED IN SENTENCING VICTOR UGANG TO SUFFER THE PENALTY OF DEATH.

VICTOR argues that he could not be sentenced to suffer the penalty of death, since LANIE was already demented at the time of the commission of the offense and that she is his relative by consanguinity in the fifth degree only, her father being his first cousin. In order that death penalty may be imposed, the victim must have become insane by reason or on the occasion of the rape or that the accused is a relative by consanguinity or affinity within the third civil degree. VICTOR then prays that the penalty imposed upon him be reduced to *reclusion perpetua*.

In the Appellee's Brief,^[12] the Office of the Solicitor General (OSG) notes that VICTOR simply protests the trial court's imposition on him of the death penalty without challenging his conviction. It agrees with VICTOR that the trial court erred in appreciating against him the qualifying circumstance of relationship and the insanity of the victim because LANIE was already insane at the time of the rape and the relationship between LANIE and VICTOR is beyond the third civil degree.

After the OSG had submitted its Appellee's Brief, VICTOR, through his new counsel, submitted a Supplemental Appellant's Brief.^[13] This time, he assigned the following errors:

- I. THE TRIAL COURT ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE.
- II. THE TRIAL COURT ERRED IN IMPOSING THE PENALTY OF DEATH AGAINST THE ACCUSED- APPELLANT.
- III. THE TRIAL COURT SHOWED MANIFEST BIAS AND IMPARTIALITY IN FAVOR OF THE PROSECUTION; HENCE, RENDERING THE JUDGMENT NULL AND VOID.

In support of the first assigned error, VICTOR points out the failure of the prosecution to (1) present LANIE as a witness; (2) present medical evidence to prove that LANIE is indeed demented; and (3) prove the presence of force, intimidation, and violence in the commission of the alleged rape. He asserts that the medical certificate presented by the prosecution is not conclusive that someone had sexual intercourse with LANIE. He also questions the credibility of the witnesses in view of their alleged conflicting and inconsistent testimonies.

Anent the second assigned error, VICTOR argues that in order that insanity could be appreciated as an aggravating circumstance in rape, it must be so alleged in the information and must be proved as the result of rape. However, in this case, insanity was not alleged in the information; besides, it is undisputed that LANIE was already insane at the time she was allegedly raped. Neither does the qualifying circumstance of relationship by consanguinity or affinity within the third civil degree exist, since he is a relative in the fifth civil degree of consanguinity, he being only a

first cousin of LANIE's father.

As to his third assigned error, VICTOR asseverates that the clarificatory questions asked by the trial judge were more in aid of the prosecution. The judge prompted the prosecution to present the photograph of the victim as evidence in this case and to ask more questions regarding it. Such act is contrary to the principle of cold neutrality of an impartial judge.

It was established by the prosecution that LANIE had been insane since she was 14 years of age. Her brother Rodrigo and neighbors Julito and Leonilo attested to her insanity. She could not give coherent answers to questions. She would dance by herself even without music. She would walk around the community naked; if forced to wear clothes, she would tear them up. Once, she destroyed the building materials of their house. Hence, Rodrigo was constrained to tie her to a post or wooden bench inside their house.^[14]

LANIE's insanity was admitted by VICTOR during his direct examination and cross-examination.^[15] In fact, he invokes it in support of his argument that insanity could not qualify the crime of rape, since it was not the result of the rape, it being in existence already at the time of the commission of the crime.^[16]

With the fact of insanity being undisputed, the prosecution was justified in not presenting LANIE as a witness. Section 21(a), Rule 130 of the Revised Rules on Evidence disqualifies from being witnesses persons whose mental condition is such that they are incapable of intelligently making known their perception to others.

It is true that, as pointed out by the appellant in his Manifestation (in lieu of Reply-Brief), the medical certificate stating that LANIE was suffering from schizophrenia cannot be admitted as evidence of her insanity. The physician who examined LANIE and issued said certificate was not presented as a witness; hence, the accused was deprived of his right to confront or cross-examine her.^[17]

Nevertheless, it was not necessary for the prosecution to submit a medical report and present the examining physician. We have ruled that mental abnormality may be proved by evidence other than medical evidence or psychiatric evaluation; it may be established by testimonies of witnesses.^[18] In this case, as stated earlier, LANIE's mental condition was sufficiently proved by the testimonies of LANIE's brother and neighbors, who both had ample opportunity to observe her demeanor. Besides, VICTOR admitted in open court that LANIE was insane. Under Section 4, Rule 129 of the Revised Rules on Evidence, an admission, oral or written, made by a party in the course of the proceeding in the same case does not require proof.

It is settled that where the victim cannot testify by reason of mental incapacity, conviction for rape may be based on circumstantial evidence.^[19] Here, although LANIE could not testify because of her insanity, the commission of the crime of rape was proved with moral certainty by an eyewitness, Julito Amantiad. From a big hole on the split bamboo walling of LANIE's room, he clearly saw VICTOR on top of the naked LANIE, with his erect penis going up and down her private part. Aside from Julito's testimony, the congruence of the following circumstances point to VICTOR as the perpetrator of the crime: