

THIRD DIVISION

[G.R. No. 139411, August 09, 2001]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
AGAPITO TORALBA, ACCUSED-APPELLANT.**

D E C I S I O N

GONZAGA-REYES, J.:

The basest levels of incestuous rape are reached where a mentally deficient woman, the unfortunate product of the depraved union between a man and his own daughter, is raped and assaulted by this same man --- her father and grandfather.

The information filed before Branch 25 of the Regional Trial Court of Naga City^[1] provides in part:

That on or about August 7, 1998, in the City of Naga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, father/grandfather of herein private complainant, slapped private complainant, grabbed her by the shoulder and forced her to lie down and by means of force, threat and intimidation and grave abuse of authority, did then and there willfully, unlawfully and feloniously have carnal knowledge of said CORNELIA TORALBA, against her will and without her consent, and to her damage and prejudice.

CONTRARY TO LAW.

With the aggravating circumstance of relationship.^[2]

The evidence establishes that the accused sired several offspring with his two daughters, Remedios Toralba-Belista ("Remedios") and Melinda Toralba ("Melinda"). His offspring by his daughter Remedios is herein private complainant, Cornelia Toralba.

Cornelia was diagnosed as having moderate mental retardation; she was aged 23 when she testified in the trial of this case but her mental age was determined to be between 6 to 9 years. Dr. Aimee Marie Nobleza, the psychiatrist who examined Cornelia, testified that she was capable of standing trial and appearing as witness, provided the questions to her are couched in simple and direct language. She could also capably recount the rape incident in question, although she could not recall the exact dates.

Cornelia finished only Grade II and could not read or write. The complaint filed before the prosecutor's office bore her thumbprint, as well as the thumbprint of her

grandmother, Melecia Montañez Toralba (the wife of the accused), and the signature of her mother, Remedios. Before affixing her thumbprint to the document, however, the contents of the complaint were read and translated to Cornelia by a lawyer.

As determined by the trial court, on the evening of August 7, 1998, Cornelia was spreading a mat inside their house when she observed the accused standing four to five meters away, naked from the waist down. The accused then approached her and pushed her until she fell on the bed. When she resisted, he started slapping her; then he lay on top of her, kissed her on the lips, and had carnal knowledge of her. The victim's mother, Remedios, entered the house just in time to see her father, the accused, attack Cornelia and succeed in raping her. Driven to a blind rage, Remedios started shouting and cursing at the accused causing Melecia and Melinda to also be drawn to the scene. Melecia and Melinda took the side of the accused, and Melinda struck Remedios on the head with an iron pipe, causing the latter to lose consciousness.

Almost two weeks later, Cornelia submitted herself to a medical examination which confirmed the presence of "nulligravid external genitalia (+) old hymenal lacerations at 3, 5 and 9 o'clock positions."^[3] The physician who prepared the medical certificate, Dr. Ma. Vienna Llorin, explained that the lacerations could have been caused by the insertion of a hard object, possibly a male organ.^[4] Dr. Llorin also observed that when the examination was conducted on August 20, 1999, Cornelia looked so fearful and refused to reply to the doctor's questions.^[5]

Melecia Toralba, the wife of the accused and grandmother of the victim, was also presented by the prosecution to show that Cornelia was indeed the daughter of the accused and Remedios, although in Cornelia's birth records it was made to appear that she (Melecia) was the mother of Cornelia.^[6] This was because, right after giving birth to Cornelia, Remedios had entrusted the baby to her and her husband's custody.^[7]

Meanwhile, the accused admits that he and the victim were at their house on that fateful evening of August 7, 1998 but denies having made sexual advances at her. As he recounted it, he was in the yard breaking stones with a hammer when he heard his children Remedios and Ramon arguing loudly; Remedios called Ramon a cheater and a thief, and Ramon threatened to hit her. He broke up the quarrel and advised Ramon to leave, but even as Ramon left Remedios kept talking and supposedly vented her anger at Cornelia. The accused said that Remedios pulled Cornelia by the hair, and tried to drag her towards a bench; the accused then tried to stop Remedios from hurting Cornelia, when he suddenly heard a thud and Remedios fell to the ground. When she stood up, there was blood on her head and Melinda was standing behind her. Then Remedios supposedly got a knife from inside the house but the accused took it away from her.

To corroborate the above story, the defense presented Ramon Toralba, a son of the accused, and Rosie Toralba, a daughter of the accused with Melinda. (It was established that the accused also had two children with his other daughter, Melinda, named Rosie and Jenny.)

The trial court found the combined statements of Cornelia and Remedios, corroborated by the findings of Dr. Llorin, more credible than the accused's bare

denial of the charges. It held that a mental retardate is not disqualified to be a witness, and where in the present case the victim was assessed as being capable of recalling and recounting past experiences, her positive identification of the accused as the person who raped her should necessarily prevail over the lame denials of the latter.

Considering the relationship of the accused with the victim and the victim's state of mental retardation, such that, although she was 22 years old at the time of the rape she was assessed as having the intelligence quotient of a child 6 to 9 years old, the trial court declared that the imposition of the death penalty would have been in order if not for the accused being over 70 years old, which under Article 83 of the Revised Penal Code merits the suspension of the death sentence and the commutation of the penalty to *reclusion perpetua*. Thus, the lower court disposed of the case with this pronouncement:

WHEREFORE, premises considered, this court finds the accused Agapito Toralba GUILTY beyond reasonable doubt of the crime of RAPE as defined and penalized under Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659 and considering that the accused is already seventy one (71) years old this court hereby sentences the said accused to suffer the penalty of RECLUSION PERPETUA, instead of DEATH as provided for in Article 83 of the New Revised Penal Code, and further to indemnify the victim Cornelia Toralba the sum of P50,000.00 and to serve as a deterrent to persons who may assert an animal instinct to satisfy their incestuous lust, the accused is also hereby ordered to pay the amount of P25,000.00 by way of exemplary damages and to pay the costs.

SO ORDERED.^[8]

The appeal at bench prays that the Court make a finding of reasonable doubt, arguing that it is incredulous to suppose that the accused despite his advanced age would design to, more so succeed in, raping a full-grown woman. It pointed out supposed inconsistencies in the testimonies of Cornelia and Remedios; it also drew attention to the conduct of the accused at the time of arrest, when he voluntarily and unresistingly went with the police.

Alternatively, or should the Court sustain the guilt of the accused, the appeal seeks a conviction only for simple, not qualified, rape, as the information does not allege the mental disability of the offended party.

The Solicitor General vigorously disputes the first assignment of error, and fully supports the factual findings of the lower court. He concedes, however, that the charge of rape was not adequately qualified in the information, as the latter failed to allege the mental incapacity of the victim. He makes the additional plea that moral damages, apart from civil indemnity and exemplary damages, be awarded to the victim.

From an evaluation of the evidence, the Court has arrived at the conclusion that the culpability of the accused had been proved beyond reasonable doubt.

The competence and credibility of mentally deficient rape victims as witnesses has been upheld by this Court where it is shown that they can communicate their ordeal capably and consistently.^[9] Rather than undermine the gravity of the complainant's accusations, it even lends greater credence to her testimony that someone feeble-minded and guileless could speak so tenaciously and explicitly on the details of the rape if she has not in fact suffered such crime at the hands of the accused.^[10]

Through very simply worded questions, the prosecution was able to elicit the details of the incident from Cornelia Toralba. Thus:

ATTY. BALLEBAR

Q: Now, before that incident, Madam Witness, where were you?

A: I was inside the room, Ma'am.

Q: Inside the room of what house?

A: At the house of Agapito, Ma'am.

Q: Now, what were you doing in that room?

A: I was spreading the mat, Ma'am, on the floor.

Q: Now, when you were spreading the mat on the floor, where was Agapito Toralba then?

A: He was at the kitchen, Ma'am.

Q: And what was he doing at the kitchen?

A: He undressed himself, Ma'am.

Q: Now, this kitchen, how far is this to the place where you were spreading the mat, from where you are seated?

A: (Witness pointed the distance as agreed upon by counsels to be four to five meters.)

Q: Now, you mentioned that at the kitchen, Agapito Toralba undressed himself, what dress did he remove?

A: His short pants, Ma'am.

Q: After he removed his short pants, what did he do next, if any?

A: He entered the room, Ma'am.

Q: And the room which Agapito Toralba entered, is it the same room where you were spreading the mat?

A: Yes, Ma'am.

Q: And when he entered the room, what did he do, if any?

A: He pushed me, Ma'am.

Q: Now, when he pushed you, what part of your body did he push?

A: My chest, Ma'am.

Q: And what happened to you when you were pushed by Agapito Toralba?

A: I fell down, Ma'am.

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Q: Where did you fall down?

A: I fell down on the bed, Your Honor.

ATTY. BALLEBAR

Q: And when you fell down on the bed, what did Agapito Toralba do, if any?

A: He lay on top of me, Ma'am.

Q: And after he lay on top of you, what did he do next, if any?