

FIRST DIVISION

[G.R. No. 119368, August 18, 1997]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MARCELINO "SENOY" ERARDO, ACCUSED-APPELLANT.**

D E C I S I O N

PADILLA, J.:

In an information, dated 21 June 1993, herein accused-appellant Marcelino "Senoy" Erardo was charged with the crime of rape committed as follows:

"That on or about the 1st day of June 1993, around 2:30 o'clock in the afternoon, in Barrio Site, Barangay Labangan, Municipality of San Jose, Province of Occidental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the accused, did then and there wilfully, unlawfully, and feloniously have carnal knowledge of Julie Ann Kiam, a woman who was deprived of reason, against her will and consent.

Contrary to law."^[1]

When arraigned on 3 May 1994, accused-appellant Erardo, with the assistance of counsel, Atty. Francis Villamar, entered a plea of "not guilty" to the crime charged.^[2]

After trial, on 26 January 1995, the Regional Trial Court of San Jose, Occidental Mindoro, Branch 46, through the Honorable Judge Emilio L. Leachon, rendered judgement, the dispositive part of which reads:

"Accordingly, therefore, the Court finds the accused, Marcelino "Senoy" Erardo, guilty beyond reasonable doubt of the crime of rape and sentenced him to suffer the penalty of Reclusion Perpetua and to indemnify the victim-complainant Julie Ann Kiam in the amount of P40,000.00.

The Court likewise orders the immediate commitment of the accused Marcelino "Senoy" Erardo to the National Penitentiary at Muntinlupa, Metro Manila after the promulgation of this judgment/decision of the Court.

It is so ordered."^[3]

Hence, this appeal, where accused-appellant Erardo assigns the following errors to the trial court:

I

"THE LOWER COURT ERRED IN NOT TAKING INTO CONSIDERATION THE TESTIMONY OF DR. HURLEY DE LOS REYES, THE PHYSICIAN WHO EXAMINED THE ALLEGED VICTIM, THAT THE LATTER'S VAGINA CONTAINED OLD HYMENAL LACERATIONS AND COULD NOT HAVE POSSIBLY INFLICTED [SIC] ON THE LAST THREE DAYS (DATE OF THE ALLEGED COMMISSION OF THE CRIME).

II

THE LOWER COURT ERRED IN CONVICTING THE ACCUSED OF RAPE COMMITTED IN THE AFTERNOON OF 1 JUNE 1993." [4]

The events (as related by prosecution witness Jennylyn Cordero) which led to the filing of the complaint and information, are as follows:

At around 2:30 o'clock in the afternoon of 1 June 1993, Jennylyn Cordero (the victim's aunt), while sitting in the balcony of her house attending to her child, saw her niece, the victim Julie Ann Kiam, a 12-year-old mental retardate, waving at the accused-appellant Marcelino "Senoy" Erardo, a neighbor. Julie Ann was walking towards a thicket, and accused-appellant followed her there. Concerned for her niece's safety, Jennylyn, after leaving her child in the care of a neighbor, followed Julie Ann and the accused-appellant Erardo to the bushes. Thereupon, she saw accused-appellant in the act of pulling his pants over his exposed sexual organ, and the victim Julie Ann, sitting close to him on the grass, naked, from the waist-down.

At that point, Jennylyn Cordero confronted accused-appellant with the question, "Bakit mo pinagsamantalahan ang pamangkin kong retardate?"[5] Accused-appellant ignored the question and hurriedly left. Thereafter, Jennylyn Cordero ushered the victim Julie Ann to her house where they waited for the latter's mother, Delia Cordero-Kiam (who is Jennylyn's sister-in-law).

Mrs. Kiam was shocked and angry upon hearing Jennylyn's account of what had transpired. Not knowing who, or what government office could help her, Mrs. Kiam sent for her father (her husband, Julie Ann's father, was in Manila at that time), who promptly arrived the next day. He advised Mrs. Kiam to have Julie Ann examined by the doctor; and then to file a criminal case for rape in court.

Julie Ann was examined by one Dr. Hurley de los Reyes on 3 June 1993, and the corresponding medical certificate was issued. The victim's family then proceeded to the police station where they filed a complaint for rape against accused-appellant Marcelino "Senoy"Erardo.

To corroborate Jennylyn Cordero's testimony, the prosecution presented the victim's mother, Mrs. Delia Cordero-Kiam who testified that accused-appellant Marcelino Erardo went to her house on 2 June 1993 to ask for her (Mrs. Kiam's) forgiveness for what he had done to her daughter Julie Ann. According to Mrs. Kiam, accused-appellant admitted that he indeed engaged in sexual intercourse with the victim Julie Ann, but claimed that he took care not to hurt her.[6] Mrs. Kiam further testified that after consulting with other members of her family, she had her daughter Julie Ann examined by a doctor, and thereafter, they filed a complaint for

rape against accused-appellant Marcelino Erardo.

The prosecution also presented Dr. Hurley de los Reyes who testified that he was the doctor who examined the victim Julie Ann Kiam three days after the date of the alleged rape, and that he found no injuries on the external parts of her body. He declared that he found hymenal lacerations on the victim's vagina which he estimated to be around one (1) to two (2) weeks old, and which could have been caused by a round blunt object such as a male penis.^[7]

The testimony of one Dr. Ray Sague, a resident physician of the National Center for Mental Health in Mandaluyong City, was also presented. Said witness testified that the victim, Julie Ann Kiam, suffers from mental retardation, and has, in fact, the mentality of a three-year-old child.^[8]

Finally, the prosecution presented the victim, Julie Ann Kiam, herself who, on direct examination, testified thus:

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- Q** (Atty. Eufrocino Ramos, private prosecutor): Do you know the accused Senoy Erardo in this case?
- A** (Julie Ann Kiam): Yes, Sir.
- Q** If he is in the courtroom, will you be able to point him out?
- A** Yes, Sir.
- Q** Point him out now?
- (Interpreter: At this juncture, witness is pointing to the lone accused sitting on the bench, and who, when asked his name, responded that he is Senoy Erardo).
- Q** Now, this Senoy Erardo whom you pointed, what did he do to you?
- A** He "iyot" me, Sir.
- Q** What do you mean by "iyot"?
- A** "Tusok", Sir.
- Q** What was "tusok" to you?
- A** His "titi" penis, Sir.
- Q** Where were you hit by this "titi" he "tusok" you?
- (Interpreter: The witness, your Honor, is pointing to her private organ).
- Q** When the accused made "tusok or penetrated you, how did you feel?
- A** I cried, Sir.
- Q** Why did you cry, according to you?
- A** Because it is painful, Sir."
- ">[9]
- On cross-examination, the victim, Julie Ann Kiam, testified thus:

(Atty Francis Villamar, counsel for the accused): Ms. Witness, you said that Senoy Erardo made some penetration to you which you called "tusok", is it not a fact that what is inserted to you is a finger?

A (Julie Ann Kiam): Yes, Sir, finger.

Q (by the Court): Aside from finger, is there anything that was inserted to your vagina?

A Wood, your Honor.

Q Have you seen a human penis?

A Yes, your Honor.

Q Do you have [sic] sexual intercourse before, Miss Witness?

A Yes, your Honor.

Q Who?

A Senoy Erardo, your Honor.

Q (Atty. Villamar): Aside from the penis of Senoy Erardo, you also saw other penis of some other men?

A None, Sir."^[10]

Q (Atty. Ramos): When your auntie saw you that afternoon, prior to that, what did Senoy use in penetrating you?

A Wood, Sir.

Q What else?

A "Titi", Sir.

Q How long is the "titi" or penis?

(Interpreter: The witness is demonstrating how big is the penis by using her hands which estimated by counsels to be four and one-half (4 & 1/2) inches, your Honor)."^[11]

Accused-appellant, on the other hand, interposed the defense of alibi. He testified that he never even saw the victim Julie Ann Kiam in the afternoon of 1 June 1993. According to accused-appellant, he reported for work in the saltfarm of a certain Mr. Jack Chua on that day, and was in said saltfarm from 7:00 a.m. to 12:00 noon, and from 1:15 to 6:00 p.m. Accused-appellant further testified that on 2 June 1993, a day after the alleged rape, he was called to the house of Delia Cordero-Kiam, the victim's mother, where he was confronted with the accusation of allegedly raping Julie Ann Kiam, and asked to give the amount of P100,000.00 to settle the case. Finally, accused-appellant testified that there was no quarrel or misunderstanding between him and any member of the victim's family; and, that they in fact had a "good relationship" prior to 1 June 1993.^[12]

To corroborate accused-appellant's testimony, the defense presented his brother Zosimo Erardo who testified that on 2 June 1993, one Kagawad Santiago Bicol went

to his house to verify the complaint for rape of Delia Cordero-Kiam against his brother Marcelino "Senoy" Erardo; that later that day, he accompanied his brother, the accused-appellant, to the Kiam residence where they were confronted by Delia Cordero-Kaim, Jennylyn Cordero, and one Rebecca Cordero; and, that on that same occasion, accused-appellant denied that he raped Delia Kiam's daughter Julie Ann. Zosimo Erardo further testified that the Kiam family asked for the amount of P100,000.00 to settle the case, but that accused-appellant refused to pay.^[13] It is noteworthy that, on cross-examination, the same witness testified that thereafter, his brother, the accused-appellant, left Barangay Labangan and was gone for several months.^[14]

The defense was supposed to present one Mr. Andres Andrade, accused-appellant's co-worker, to testify that accused-appellant was at the aforementioned saltfarm between 1:15 to 6:00 o'clock in the afternoon of 1 June 1993. However, the prosecution and the defense entered into a stipulation that said witness if presented would testify as above-stated, and so the defense dispensed with the presentation of Andres Andrade.

In convicting accused-appellant of the crime of rape, the trial court gave credence to the testimonies of the prosecution witnesses, especially that of the victim, Julie Ann Kiam herself. Said the court:

"As borne out by the transcript of stenographic notes, the victim Julie Ann Kiam, was able to answer clearly the questions propounded to her by counsels of both parties and the court. The Court is convinced by the manner of the testimony of the victim that she was in fact raped by the accused Marcelino "Senoy" Erardo thru the latter's insidious approaches and employment of trickery and intimidation on a hapless retardate minor child of twelve summers x x x.

In this case, the prosecution has clearly proven the guilt of the accused beyond reasonable doubt thru the testimonies of all its witnesses named above and the documentary exhibits. Upon the other hand, the defense was able to present the accused and his brother Zosimo Erardo only, and their testimonies were permeated with strong denials of the commission of the crime. x x x."^[15]

We are inclined to agree with the findings of the trial court.

Under the Revised Penal Code, 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 (12) years of age or is demented.^[16]

In this case, the victim Julie Ann Kiam, at the time of the incident, was a twelve-year-old woman with the mentality of a three-year-old child.^[17] This Court has held that carnal knowledge of a woman above twelve (12) years of age but with the mental age of a child below twelve (12) years, even if done with her consent, is rape^[18] because a mental retardate can not validly give her consent to or oppose