

SECOND DIVISION

[G.R. NO. 176069, October 05, 2007]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. MARIO
CONSTANTINO, APPELLANT.**

RESOLUTION

CARPIO, J.:

This is an appeal from the 31 July 2006 Decision^[1] of the Court of Appeals affirming the 7 August 2002 Decision^[2] of the Regional Trial Court, Alaminos City, Pangasinan, Branch 54, finding appellant Mario Constantino guilty beyond reasonable doubt of two counts of rape and sentencing him to *reclusion perpetua* for each count.

Appellant was charged in three Informations^[3] with the crime of rape under Article 335 of the Revised Penal Code. The victim in this case, AAA, is a mentally-retarded 15-year old girl at the time of the commission of the crimes.

On 22 February 1995, BBB, grandmother of AAA, noticed that AAA was pregnant. After she scolded AAA about her condition, BBB reported the matter to Barangay Kagawad Edwin Niño of Centro Toma, Bani, Pangasinan.

Barangay Kagawad Edwin Niño testified that he asked AAA whether Boying Constantino was the one who raped her. AAA answered that Boying was not the rapist. Boying's brother, Ambong, was also presented to AAA who said that Ambong was not the rapist. Thereafter, appellant was brought before AAA for identification. When AAA saw appellant, she pointed to him as the rapist.

AAA testified that appellant is the father of her child. She stated that at the time of the first and second rape, appellant pointed a *bolo* on her side. She claimed that she was raped three times which all occurred under a *duhat* tree. However, on the third occasion she was raped, appellant no longer pointed a *bolo* at her. AAA testified that she even enjoyed the sexual intercourse and asked for more.

Appellant denied the charges against him. He testified that he came to know AAA only on 22 March 1995 when he was invited by the barangay captain of Barangay Centro Toma, Bani, Pangasinan to appear for a confrontation with AAA. Appellant claimed that from 29 December 1992 until 22 March 1995, he never came to Bani, Pangasinan since he tilled the land of Barangay Captain Mario Eclevia in Barangay Inhubol, Masinloc, Zambales and after farming, he worked as a fisherman.

In rejecting appellant's alibi, the trial court noted that it would take appellant only about two hours to travel from Masinloc, Zambales to Centro Toma, Bani, Pangasinan via the Cabanaitan-Bani road, which is a short-cut road. The trial court gave credence to AAA's positive identification of appellant as her rapist. The trial

court also found no motive for AAA to accuse appellant of raping her, if it were not true.

The trial court convicted appellant of two counts of rape under Article 335 of the Revised Penal Code and sentenced him to *reclusion perpetua*. The trial court acquitted appellant in the third rape case for insufficiency of evidence. It also awarded AAA P50,000 as civil indemnity and P100,000 as moral damages.

The Court of Appeals affirmed the decision of the trial court. The Court of Appeals ruled that the inconsistencies in AAA's testimony were expected because of her mental condition. The Court of Appeals also noted that though AAA's narration was crude, AAA was able to communicate and demonstrate her traumatic ordeal. Despite her mental deficiency, AAA was able to positively identify appellant as the one who raped her. The Court of Appeals did not give weight to appellant's allegation that AAA's grandmother coached her to identify appellant as the culprit.

Hence, this appeal.

We sustain appellant's conviction for two counts of rape with the modification that the civil indemnity should be P100,000^[4] and that appellant should give support to AAA's offspring.

The prosecution established all the elements of rape under Article 335 of the Revised Penal Code. It must be pointed out that having sexual intercourse with a female whose mental age is below 12 years old, even if she voluntarily submitted herself to the sexual desires of the accused without force or intimidation, is rape within the context of Article 335 of the Revised Penal Code.^[5] The trial court erred in acquitting appellant of the third charge of rape on the ground that AAA enjoyed the sexual intercourse. However, reversing the acquittal will amount to a patent violation of appellant's right against double jeopardy. Thus, we uphold appellant's conviction for only two counts of rape.

At any rate, based on the records, appellant had carnal knowledge of AAA through force and intimidation. There is no dispute that the sexual intercourse between appellant and AAA resulted to AAA's pregnancy and her subsequent childbirth on 13 July 1995.^[6] On the other hand, threatening AAA with bodily injury while holding a *bolo* constitutes intimidation sufficient to have her submit to the lustful desires of appellant.^[7] Appellant threatened to kill AAA if she disclosed what happened to her.^[8]

Moreover, AAA positively identified appellant as her rapist. The Court has consistently held that the victim's positive identification of the accused prevails over the inherently weak defenses of denial and alibi.^[9] As the trial court found, there was no physical impossibility for appellant to be at the scene of the crimes.^[10]

We also reject appellant's contention that AAA's grandmother coached AAA to identify appellant as the rapist. It should be borne in mind that AAA is a 15-year old lass whose mental age is that of a 7-year old child. It would have been difficult for AAA to concoct a grave charge of rape against appellant, more so narrate the details of how appellant ravished her, if such were not the truth. Also, it is highly unnatural for a grandmother to expose her granddaughter to the shame and scandal attached