

## EN BANC

[ G.R. No. 126124, January 20, 1999 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ZALDY P. PADILLA, ACCUSED-APPELLANT.**

### DECISION

**MENDOZA, J.:**

For review in this case is a decision, dated May 8, 1997, of the Regional Trial Court, Branch XLV, at Urdaneta City, Pangasinan, finding accused-appellant Zaldy P. Padilla guilty of rape and imposing on him the penalty of death. The trial court also ordered accused-appellant Padilla to indemnify the offended party, Maria Aurora B. Bautista, in the amount of P50,000.00 and to pay the costs.

The evidence for the prosecution shows that at around 5 o'clock in the afternoon on April 27, 1995, Maria Aurora, a 13-year old retardate, was in the citrus farm owned by a neighbor, Jose Sagun, when accused-appellant accosted her. The latter, who is married with two children, was then 26 years old and employed by Sagun as a farmhand. Armed with a scythe and a knife, accused-appellant forced Maria Aurora to undress and lie down on the grass. As she lay on there, accused-appellant forced himself on her, saying: "*Kantot tayo*" ("Let's have sexual intercourse"). Maria Aurora resisted accused-appellant's advances, but she proved to be no match for him. Accused-appellant succeeded in ravishing her.

Maria Aurora told her father, Engracio L. Bautista, what happened to her in the evening. She was taken to the Governor Teofilo Sison Memorial Hospital, where she was examined by Dr. Luisa F. Cayabyab. Afterwards, the matter was reported to the Pozorrubio Police Station.<sup>[1]</sup>

On May 2, 1995, Engracio filed a complaint<sup>[2]</sup> in the Municipal Circuit Trial Court, Pozorrubio, Pangasinan. After a preliminary investigation, the court found probable cause that the crime had been committed and that accused-appellant was guilty thereof. Accordingly, the case was referred to the Office of the Provincial Prosecutor, Urdaneta City, Pangasinan which on May 26, 1995 filed an information<sup>[3]</sup> for rape in the Regional Trial Court, Branch XLV, at Urdaneta City against accused-appellant, the pertinent portion of which reads:

The undersigned upon previous complaint sworn to by the father of the offended party accuses ZALDY PADILLA Y PILONGO alias "LABO", of the crime of RAPE, committed as follows:

That on or about the 27th day of April, 1995 at Barangay Bobonan East, Municipality of Pozorrubio, Province of Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and

intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge of the complainant, Maria Aurora Bautista, a minor of about 13 years old, against the latter's will.

CONTRARY to Article 335, Revised Penal Code.

Urdaneta, Pangasinan, May 26, 1995.

Upon being arraigned, accused-appellant pleaded not guilty to the charge, whereupon hearings were held on December 6, 1995, January 23, January 31, February 22, and March 27, 1996. On May 8, 1996, judgment was rendered finding accused-appellant Zaldy Padilla guilty of rape and sentencing him to death:

WHEREFORE, the Court finds the accused ZALDY PADILLA Y PILONGO GUILTY beyond reasonable doubt of the crime of RAPE defined and penalized under Republic Act No. 7659, the offense having been committed with the attendant circumstances of use of a deadly weapon, disregard of the respect due to the offended party on account of her age, and abuse of superior strength; and hereby sentences him to suffer the supreme penalty of DEATH, to be executed pursuant to R.A. No. 8177, otherwise known as the Lethal Injection Law, and to pay the complainant MA. AURORA BAUTISTA in the amount of P50,000.00 as damages, and to pay the costs.

Hence, this appeal. Accused-appellant raises this lone assignment of error:

THE TRIAL COURT ERRED IN ADMITTING IN EVIDENCE AGAINST THE ACCUSED-APPELLANT THE TESTIMONY OF THE ALLEGED VICTIM DESPITE THE FACT THAT THE LATTER IS INCOMPETENT TO TESTIFY DUE TO HER MENTAL HANDICAP.

Accused-appellant's contention is without merit.

**First.** The basic test of a witness' qualification is of course whether he can perceive and, perceiving, can make known his perception to others.<sup>[4]</sup> Negatively put, Rule 130, §21 of the Revised Rules of Court provides:

The following persons cannot be witnesses:

- (a) Those whose mental condition, at the time of their production for examination, is such that they are incapable of intelligently making known their perception to others;
- (b) Children whose mental maturity is such as to render them incapable of perceiving the facts respecting which they are examined and relating them truthfully.

Hence, a mental retardate is not, by reason of such handicap alone, disqualified from testifying in court. He or she can be a witness, depending on his or her ability to relate what he or she knows. If the testimony of a mental retardate is coherent, the same is admissible in court.<sup>[5]</sup> Thus, we have in several cases<sup>[6]</sup> upheld the conviction of the accused based mainly on statements given in court by the victim who was a mental retardate.

Trial courts, which have the opportunity to observe the facial expressions, gestures, and tone of voice of a witness while testifying, are competent to determine whether his or her testimony will be given credence.<sup>[7]</sup> In the instant case, the trial court accorded weight to the testimony of Maria Aurora. Indeed, the complainant's truthfulness is evident in her testimony:

Prosecutor Emiliano M. Matro:

Now, on April 27, 1995, between 4 and 5 o'clock in the afternoon, can you recall where you were?

A: I was at the calamansi orchard.

Q: Who owns that calamansi orchard?

A: Tiaging.

Q: What were you doing there at that time?

A: I was looking for my scythe.

Q: What happened, did you find your scythe?

A: I was undressed.

Q: Who undressed you?

A: Labo.

Q: Do you know the real name of Labo?

A: Zaldy Padilla.

Q: If Zaldy Padilla alias Labo is now in the courtroom, can you identify him?

A: That person.

(The witness pointed at a person who, when asked his name, answered "Zaldy Padilla.")

Q: You mentioned something about a scythe. Were you able to find it?

A: It was in the possession of Labo.

Q: You said that Zaldy Padilla alias Labo undressed you. What did you do after that?

A: He pulled me.

Judge Costales:

At this point, the public is hereby directed to go outside. Close the door. Even the father and mother of the complainant should go outside.

Q: After Labo pulled you, what did you do, if anything?

A: He brought out a knife and tried to stab me.

. . . .

Q: You were undressed at that time?

A: Yes.

Q: After that, what did you do?

A: He told me, "*Kantot tayo.*"

Q: Did he have sexual intercourse with you?

A: Yes.

Q: How did he do that with you?

A: He made me lie down.

Judge Costales:

How about the knife?

A: I bled.

Q: Where did you bleed?

A: Here. (The witness pointed at her vagina).

Q: What did you feel while Labo was having sexual intercourse with you?

A: It hurt. It was painful.

Q: How long did Labo had (sic) sexual intercourse with you?

A: For a short time only.

Q: After that, what did he do?

A: Nothing more.

. . . .

Q: Will you describe the organ of Labo?

A: It was big. (The witness demonstrated a length of about 4 to 5 inches)

. . . .

Q: Did you scream when he inserted his penis?

A: Yes.<sup>[8]</sup>

The complainant's testimony is corroborated by the finding of Dr. Luisa F. Cayabyab, who examined Maria Aurora in the evening of April 27, 1995. Dr. Cayabyab found fresh lacerations in her hymen, most probably caused by the entrance of a hardened penis.<sup>[9]</sup> The relevant portions of the medical certificate,<sup>[10]</sup> dated April 28, 1995, which Dr. Cayabyab issued after examining Maria Aurora read:

Perineum : no sign of external injury

Hymen : with fresh lacerations at 3 and 9 o'clock positions

Vagina : admits 1 finger

Cervix : close

Uterus : small

Spermatozoa : negative

**Second.** During the trial, the prosecution presented evidence tending to show that Maria Aurora is a mental retardate.<sup>[11]</sup> Significantly, accused-appellant also admitted this point during his direct examination.<sup>[12]</sup> It is settled that sexual intercourse with a woman who is a mental retardate constitutes statutory rape, which does not require proof that the accused used force or intimidation in having carnal knowledge of the victim for conviction.<sup>[13]</sup> However, this fact was not alleged in the information<sup>[14]</sup> in this case and, therefore, cannot be the basis for conviction. At any rate, there is adequate evidence to show that the accused-appellant used force and intimidation in committing the crime of rape in this case.

The defense makes much of Maria Aurora's admission that she did not put up a