

SECOND DIVISION

[G.R. No. 234947, June 19, 2019]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GARRY PADILLA Y BASE AND FRANCISCO BERMAS Y ASIS, ACCUSED,

FRANCISCO BERMAS Y ASIS, ACCUSED-APPELLANT.

DECISION

CAGUIOA, J:

Before the Court is an ordinary appeal^[1] filed by accused-appellant Francisco Bermas y Asis (Bermas) assailing the Decision^[2] dated July 6, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06972, which affirmed the Judgment^[3] dated May 16, 2014 of the Regional Trial Court (RTC) of EEE,^[4] in Criminal Case No. 08-1631, finding Bermas guilty beyond reasonable doubt of Rape.

The Facts

An Information was filed against Bermas for the rape of AAA,^[5] which reads:

That sometime in the evening of January 10, 2008 at [DDD], Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, motivated by bestial lust and by means of force and intimidation, did, then and there, willfully, unlawfully and feloniously touch the vagina and had carnal knowledge by inserting his penis to the vagina of the private complainant, one AAA, mentally retarded, against her will, to the damage and prejudice of the offended party.

CONTRARY TO LAW.^[6]

When arraigned, Bermas pleaded not guilty to the charge. Thereafter, pre-trial and trial on the merits ensued.

During the trial, the prosecution presented as its witnesses the following: (i) AAA; (ii) BBB, AAA's mother; (iii) Rural Health Physician Dr. Virginia Barasona (Dr. Barasona); and (iv) Barangay Captain CCC. The prosecution's version, as summarized by the CA, was as follows:

BBB testified that her daughter AAA was mentally retarded since birth as manifested by the latter's hardheadedness. AAA would also utter senseless words which were inappropriate for her age. There were also times when AAA would not be responsive to questions. Sometimes AAA would hit her nephews and nieces without any reason at all while other times AAA would be out of dimension and not within herself.

Barangay Captain CCC, on the other hand, has been a neighbor of AAA for ten (10) years and has known AAA to be mentally retarded for she was always smiling and laughing for no reason. He also knew that AAA went to a special education school.

On 10 January 2008, AAA told her mother that she was to attend a birthday party near their house. AAA testified that as she was watching those having videoke, she was told by accused [Bermas] to go to Barangay Captain CCC's house. Upon her arrival, accused [Bermas] and one Garry Padilla were already at the house of the barangay captain. While at the stairs of the said house, accused [Bermas] allegedly told her "AAA, wag kang magsumbong marami ako ritong pera, sige na hubarin mo na ang parity mo." Both men then removed private complainants' (sic) shorts and underwear. [Bermas] showed her his penis, inserted it into her vagina and moved in a pumping motion. After a while, [Bermas] removed his penis and a liquid substance came out. Thereafter, Garry inserted his penis into her vagina.

After the termination of AAA's testimony, the court a quo ordered the amendment of the Information to include Garry Padilla as co-accused as well as the x x x issuance of the corresponding warrant for his arrest.

Meanwhile, Barangay Captain CCC testified that he was awakened by the sound of his hogs and the barking of dogs. He peeped through his window and saw AAA raising her shorts as she walked from his pig pen. AAA was also with a male companion who he identified as accused Francisco Bermas. Barangay Captain CCC then went next door to inform AAA's parents of what he saw.

When BBB saw her daughter, the latter was crying and trembling with fear. She confronted her daughter and asked who the man she was with. AAA replied that she was with accused Francisco Bermas. They then went to the Women's and Children's Desk ng Himpilan ng Pulisya ng [DDD] Camarines Norte to report the incident.

Dr. Barasona testified that she examined private complainant on 12 January 2008 and found that there was a clear evidence of penetration which happened within 72 hours from examination. She also referred private complainant for psychiatric evaluation as she suspected her of having Down Syndrome for having features such as low-set and malformed ears as well as oblique palpebral fissures. In addition, Dr. Barasona observed that private complainant had difficulty in understanding questions. AAA was not fully responsive to questions and could not fully narrate incidents.^[7]

On the other hand, the evidence of the defense is based on the lone testimony of Bermas, who testified as follows:

Accused [Bermas] claimed that at around late afternoon of 10 January 2008, he went to Poblacion at the barangay proper to buy cigarette. He was then invited by his *compare* (sic) Gary to a birthday party near BBB's

house where they had a drinking session. Gary, however, went home ahead of him. At around 10:00 o'clock in the evening, he was already on his way home when he passed by the house of Barangay Captain CCC who asked him where he was going. Upon replying that he was already on his way home, accused [Bermas] saw private complainant come out of the barangay captain's house. Barangay Captain CCC then went to private complainant's house and informed the latter's parents that he saw the private complainant with a male companion. Apparently, accused [Bermas] was being pinpointed as the male companion of private complainant. He was thereafter brought to the police station where he was incarcerated with Gary for allegedly raping private complainant. Both the accused were released after a period of thirty six (36) hours.^[8]

Ruling of the RTC

After trial on the merits, in its Judgment^[9] dated May 16, 2014, the RTC convicted Bermas of the crime of Rape. The dispositive portion of the said Judgment reads:

WHEREFORE, premises considered, judgment is hereby rendered finding the accused, **FRANCISCO BERMAS, GUILTY** beyond reasonable doubt of the crime of Rape defined and penalized under Art. 266-A of the Revised Penal Code in relation to Republic Act 7610. He is hereby sentenced to suffer the penalty of imprisonment of **RECLUSION PERPETUA**.

x x x x

SO ORDERED.^[10]

In finding Bermas guilty, the RTC reasoned:

Based on the evidence adduced by the parties, and after a thorough evaluation, both on the testimonial and documentary evidence, it has been established by the prosecution, most particularly the testimony of the victim, who is mentally retarded, that the herein accused, Francisco Bermas had carnal knowledge with her on January 10, 2008 night time at the stairs of the house of [CCC]. She categorically said that the accused removed her panty, shown to her the penis of the accused and inserted [it] into her vagina, moving his body in a pumping motion and thereafter a liquid substance came out. The victim and the accused were seen by the barangay captain at his pigpen on the same evening. The testimony of the private complainant, as well as by the barangay captain, who positively identified the accused, and the findings of the doctor gave credence to the commission of the crime.^[11]

Aggrieved, Bermas appealed to the CA.

Ruling of the CA

In the appeal, Bermas mainly questioned the RTC's conclusion that AAA was a mental retardate, and as a result of her mental retardation, that he was, thus, guilty of rape.

In the questioned Decision^[12] dated July 6, 2017, the CA affirmed the RTC's conviction of Bermas. The CA explained:

The gravamen of the crime of rape under Art. 266-A (1) is sexual intercourse with a woman against her will or without her consent. In this case, appellant was charged and convicted of rape under Article 266-A (1) (b). The term "*deprived of reason*" is associated with insanity or madness. A person deprived of reason has mental abnormalities that affect his or her reasoning, perception of reality as well as his or her capacity to resist, make decisions, and give consent. The deprivation of reason, however, need not be complete for mental abnormality or deficiency is enough.

It has also been held that carnal knowledge of a woman who is a mental retardate is rape under the aforesaid provision of law. This is because a mentally deficient person is automatically considered incapable of giving consent to a sexual act. Thus, proof of force or intimidation is not necessary. What needs to be proven are the facts of sexual congress between the accused and the victim, and the mental retardation of the latter.^[13]

The CA also held that BBB's testimony that AAA was mentally retarded since birth was sufficient to establish her retardation, and that medical evidence was not a condition *sine qua non* to prove that AAA indeed was a mental retardate.^[14]

Hence, the instant appeal.

Issue

Proceeding from the foregoing, for resolution of this Court is the issue of whether the RTC and the CA erred in convicting Bermas.

The Court's Ruling

The appeal is meritorious. The Court acquits Bermas for the failure of the prosecution to prove all the elements of the crime charged beyond reasonable doubt.

In rape cases, the prosecution has the burden to conclusively prove the two elements of the crime, *viz.*: (1) that the offender had carnal knowledge of a woman, and (2) he accomplished such act through force or intimidation, or when she was deprived of reason or otherwise unconscious, or when she was under 12 years of age or was demented.^[15]

The Information in this case accuses Bermas of having carnal knowledge with AAA, a supposed mental retardate, through force or intimidation. The RTC and the CA convicted him of the crime charged holding that: (1) carnal knowledge was sufficiently proved through AAA's testimony; and (2) AAA was mentally retarded — and thus, "deprived of reason" — such that the carnal knowledge with her amounted to rape so that proof of force or intimidation was not necessary.

The Court disagrees.

The lower courts' conclusions are unwarranted, and are unsupported by the prevailing jurisprudence on the matter.

It bears emphasis that in rape cases, the accused may be convicted on the basis of the lone, uncorroborated testimony of the rape victim, provided that her testimony is clear, convincing, and otherwise consistent with human nature.^[16] This is a matter best assigned to the trial court which had the firsthand opportunity to hear the testimonies of the witnesses and observe their demeanor, conduct, and attitude during cross-examination. Hence, the trial court's findings carry very great weight and substance.^[17]

However, it is equally true that in reviewing rape cases, the Court observes the following guiding principles:

- (1) an accusation for rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove;
- (2) in view of the intrinsic nature of the crime where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution;
- (3) **the evidence for the prosecution must stand or fall on its own merits**, and cannot be allowed to draw strength from the weakness of the evidence for the defense.^[18]

This must be so as the guilt of an accused must be proved beyond reasonable doubt. Before he is convicted, there should be moral certainty — a certainty that convinces and satisfies the reason and conscience of those who are to act upon it.^[19] Absolute guarantee of guilt is not demanded by the law to convict a person of a criminal charge but there must, at least, be moral certainty on each element essential to constitute the offense and on the responsibility of the offender.^[20] Proof beyond reasonable doubt is meant to be that, all things given, the mind of the judge can rest at ease concerning its verdict.^[21] Again, these basic postulates assume that the court and others at the trial are able to comprehend the testimony of witnesses, particularly of the victim herself if she is presented and testified under oath.^[22]

With the foregoing principles in mind, the Court holds that the evidence presented by the prosecution did not sufficiently establish the second element of the crime charged, namely, that he had carnal knowledge of AAA either (a) through force or intimidation, or (b) when she was deprived of reason. Hence, Bermas' acquittal necessarily follows.

In holding that AAA was a mental retardate, the CA rationalized:

People v. Dalandas has already qualified the application [of] the *Cartuano, Jr.* ruling. In *Dalandas*, the Supreme Court held that clinical evidence is necessary in borderline cases when it is difficult to ascertain whether the victim is of a normal mind or is suffering from a mild mental