

FIRST DIVISION

[G.R. No. 186533, August 09, 2010]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EFREN CASTILLO, ACCUSED-APPELLANT.

D E C I S I O N

PEREZ, J.:

This is an appeal from the Decision^[1] dated 7 November 2008 of the Court of Appeals in CA-G.R. CR-H.C. No. 00030-MIN which affirmed with modification the Decision^[2] dated 14 April 2004 of the Regional Trial Court (RTC) of Gingoog City, 10th Judicial Region, Branch 43, in Criminal Case No. 2000-211 finding herein appellant Efren Castillo guilty beyond reasonable doubt of the crime of rape under Article 266-A, par. 1(b) of the Revised Penal Code, committed against AAA,^[3] thereby imposing upon him the penalty of *reclusion perpetua*. The appellate court further ordered the appellant to pay AAA P50,000.00 as moral damages, in addition to the P50,000.00 civil indemnity awarded by the trial court.

In a Complaint^[4] dated 10 July 2000, appellant was charged by AAA, assisted by her mother, BBB, with the crime of rape committed as follows:

That sometime in March 2000, in XXX, XXX City, Philippines, and within the jurisdiction of this Honorable Court, the above-named [appellant], did then and there wilfully (sic), unlawfully and feloniously force and intimidate AAA, known by the [appellant] to be mentally retarded, and then forcibly committed sexual intercourse with the said AAA, against her will.

Contrary to and in violation of Article 266-A, paragraph 1, of the Revised Penal Code, as amended by [Republic Act No.] 8353.^[5]

When arraigned^[6] on 23 August 2000, appellant, assisted by counsel *de oficio*, pleaded NOT GUILTY to the crime charged.

At the pre-trial conference, both the prosecution and the defense failed to make any stipulation of facts.^[7] The pre-trial conference was then terminated and trial on the merits ensued.

The prosecution presented the following witnesses: AAA, the private offended party; Dr. Thessa Marie Antillon-Malimas (Dr. Antillon-Malimas),^[8] the doctor in Gingoog District Hospital who examined AAA; BBB, the mother of AAA, who was also presented as rebuttal witness; and Myrna delos Reyes-Villanueva, the Guidance

Psychologist at the Northern Mindanao Medical Center who conducted psychological tests on AAA to determine her mental capacity.

On the basis of the testimonies of the aforesaid witnesses, the prosecution established that AAA was 18 years old^[9] when she was raped by the appellant. She is the eldest of the four children of BBB and CCC, the deceased father of AAA. She began attending school when she was already eight years old. AAA, however, was not able to finish her Grade I level primarily because of her epileptic seizures which started when she was nine years old. Since then she suffered epileptic seizures at least once a month. During attacks, AAA trembles and becomes stiff. AAA also had difficulty understanding her lessons in school, she cannot write well and she had poor memory. Compared to her younger siblings, AAA had difficulty following instructions given to her at home and in school.^[10]

AAA's ordeal began sometime in March 2000 when she approached the appellant in order to collect his debt for the rice cake he bought from her mother. Instead of settling his account, the appellant cuddled AAA until they reached the house of a certain Atok located in *Barangay* Agay-ayan, Gingoog City. Once inside, the appellant made her lie down on the bed and removed her short pants and panty. The appellant subsequently removed his pants and underwear. When both of them were already naked, the appellant mounted AAA and successfully inserted his penis into AAA's vagina. AAA felt pain. After satisfying his bestial desire, the appellant instructed AAA to go home.^[11]

Days thereafter, such awful experience of AAA was repeated when she was on her way to visit her aunt's house. The appellant, who was then standing by the mango grove, approached AAA, walked along with her and led her to a nearby chapel also in Agay-ayan, Gingoog City. While outside the chapel, the appellant undressed AAA by removing her short pants and panty. The appellant likewise removed his pants and underwear. In a standing position, the appellant, once again, inserted his penis into AAA's vagina and successfully had sexual intercourse with her.^[12] Thereafter, AAA told her mother, BBB, what the appellant did to her.

On 11 May 2000, BBB accompanied AAA at Gingoog District Hospital where she was examined by Dr. Antillon-Malimas. Upon examination, Dr. Antillon-Malimas found that AAA had a 7x6 cm. contusion hematoma lateral aspect of the right buttocks which could have been caused by a blunt force or violence applied on the area. Based on the appearance of the contusion, it could have been sustained two days prior to AAA's examination and it would exist for a period of four to five days. Dr. Antillon-Malimas' findings on AAA's genitalia, particularly the *vulva*, revealed no swelling, no tenderness and no contusion. Her findings on AAA's hymen showed healed lacerations at 3 o'clock and 9 o'clock positions which could have been caused by a blunt object or by violence or by reason of sexual intercourse. An examination of AAA's vaginal canal yielded negative result for *spermatozoa* but another contusion was found therein.^[13] The result of AAA's physical examination was reduced into writing as evidenced by Medico-Legal Certificate^[14] dated 11 May 2000.

Subsequently, AAA executed her sworn statement^[15] before Senior Police Officer 4 Myrna Z. Palad (SPO4 Palad), the investigator at Gingoog City Police Station.

AAA was also subjected to psychological tests to determine her mental capacity. The psychological tests administered by Myrna Delos Reyes-Villanueva on AAA consist of the *Draw-A-Person Test* and the *Bender Visual Motor Test*. The aforesaid psychological tests showed that AAA has poor visual motor coordination and low level mental functioning not within her chronological age, *i.e.*, 21 years old at the time of her examination. In view of that result, Myrna Delos Reyes-Villanueva concluded that AAA is suffering from mild to moderate mental retardation with a mental age of 8 to 12 years old and can be educated up to Grade VI level. She also noted that AAA lacked personal hygiene and has a vague concept of big numbers and time, like days of the week. She further declared that AAA's instinct to resist any sexual assault is always there; however, with her low level mental functioning she could easily be deceived or persuaded by a man to engage into sexual intercourse.^[16] The result of AAA's psychological tests was also reduced into writing as evidenced by a Psychological Report^[17] dated 2 September 2003.

For its part, the defense presented Rolando Castillo (Rolando), appellant's father, and the appellant himself whose testimony consists mainly of bare denial and *alibi*.

The appellant denied having raped AAA. He stated that it was impossible for him to rape AAA in March 2000 because for the entire period of the said month he was harvesting coconuts from the land of a certain Elizabeth Camus from 7:00 a.m. until 5:00 p.m. or 6:00 p.m. every day. Similarly, the house of Atok, where the first rape incident allegedly happened, was already demolished as early as 1998 and he was one of those who dismantled the said house.^[18]

On 9 May 2000, the appellant admits that he went to the house of his uncle in Buenavista, Agusan del Norte. He stayed there until he received a letter from his father sometime in June 2000 informing him that a rape case was filed against him by AAA and advising him to go home. The appellant then decided to go home in Agay-ayan, Gingoog City. Upon arrival, his father immediately inquired if the rape charged against him was true to which he replied in the negative.^[19]

On 15 August 2000, two months after his arrival in Agay-ayan, Gingoog City, the appellant, his father, and a certain Eddie Camus went to AAA's place to ask her mother to have the case settled. The appellant asked AAA's mother, BBB, why her family filed a case against him when he did not do anything to her daughter, AAA, to which BBB allegedly responded, "Just forgive me because the case was already filed in court." They went home thereafter.^[20]

The appellant also insisted that he was not arrested; instead, he surrendered voluntarily to the *Barangay* Captain of Agay-ayan, Gingoog City, upon the advice of his father. It was the *Barangay* Captain of Agay-ayan, Gingoog City, who accompanied him to the police station.^[21]

Likewise, the appellant claimed that he does not know of any reason why AAA would impute such a grave offense against him. The only thing he could remember was AAA's mother, BBB, who got angry at him when he told her to get married since she is now a widow. Since then BBB did not talk to him anymore. The appellant believed this could be the reason why AAA's family charged him with rape.^[22]

The defense likewise presented appellant's father, Rolando, who categorically admitted that AAA is mentally retarded.^[23] Rolando also disclosed that he accompanied the appellant to AAA's place to talk to her mother and ask forgiveness in case the charge against him was true so that the matter will no longer reach the court. The appellant then asked forgiveness from AAA's mother by saying, "Ya, forgive me because the charge against me is not true." Then BBB allegedly replied, "We cannot withdraw the case `Fren because it was already filed in court." Rolando also divulged that immediately after they went to AAA's house, there were already police officers who were about to arrest the appellant but the latter ran away. When the appellant went home, he told him to surrender, which the appellant obeyed.^[24]

On rebuttal, BBB disclosed that even prior to the filing of the instant case the appellant already admitted that he truly molested AAA. The appellant, indeed, went to their house in August 2000 asking forgiveness from her but she told him that the case was already in court. BBB also clarified that the house of Atok where the first rape incident happened was not yet demolished in 1998. The house demolition happened only in 2000. She was certain about this because during the demolition she was there gathering firewood.^[25]

The trial court, convinced on the merits of the prosecution's case, rendered a Decision on 14 April 2004, finding the appellant guilty beyond reasonable doubt of the crime of rape and sentenced him to an imprisonment term of *reclusion perpetua* and ordered him to indemnify AAA in the amount of P50,000.00 as civil indemnity.

The records were originally transmitted to this Court on appeal. In view, however, of this Court's ruling in *People v. Mateo*,^[26] the case was transferred to the Court of Appeals for intermediate review.

In his brief, the appellant assigned the following errors:

THE COURT A *QUO* GRAVELY ERRED IN FINDING THAT [AAA] IS A MENTAL RETARDATE DESPITE THE FAILURE OF THE PROSECUTION TO PROVE SUCH MENTAL RETARDATION.

THE COURT A *QUO* GRAVELY ERRED IN CONVICTING THE [APPELLANT] OF THE CRIME OF RAPE UNDER ARTICLE 266-A, par. 1(B), AS AMENDED BY R.A. 8353, DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.^[27]

The Court of Appeals, taking into consideration the aforesaid assignment of errors and after a thorough study of the records of the case, rendered the assailed Decision dated 7 November 2008, affirming appellant's conviction for rape with the modification for an additional award of P50,000.00 as moral damages. The records were then forwarded to this Court for further review.

This Court affirms appellant's conviction.

Appellant contends that the records are bereft of any evidence that would

conclusively show that AAA was suffering from mental retardation. BBB's declaration that AAA is a slow thinker does not sufficiently establish AAA's mental retardation. Further, the "expert witness qualification" of the prosecution's supposed expert witness is highly questionable because she had not acquired any doctorate degree in the field of psychology or psychiatry. More so, the psychological tests administered by her on AAA were inadequate to establish AAA's mental capacity.

Appellant anchors his argument for acquittal on the alleged failure of the prosecution to establish AAA's mental retardation to make him guilty of rape under Article 266-A, par. 1(b), of the Revised Penal Code. Appellant concludes that his guilt has not been proven beyond reasonable doubt.

We reject appellant's position.

In rape cases, the gravamen of the offense is sexual intercourse with a woman against her will or without her consent.^[28] Article 266-A, paragraph 1 of the Revised Penal Code, as amended by Republic Act No. 8353, states:

ART. 266-A. *Rape; When and How Committed.* - Rape is committed.

1) By a man who have **carnal knowledge of a woman** under any of the following circumstances:

a) Through force, threat or intimidation;

b) When the **offended party is deprived of reason or otherwise unconscious**;

c) By means of fraudulent machination or grave abuse of authority;
and

d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present. [Emphasis supplied].

It can be deduced from the aforequoted provision that for the charge of rape to prosper, the prosecution must prove that; (1) **the offender had carnal knowledge of a woman, and** (2) he accomplished such act through force or intimidation, or **when she is deprived of reason** or otherwise unconscious, or when she is under 12 years of age or is demented.^[29] The term "woman deprived of reason" includes one suffering from mental retardation.^[30] Clearly, carnal knowledge of a woman who is a mental retardate is rape under the aforesaid provisions of law. Proof of force or intimidation is not necessary as a mental retardate is not capable of giving consent to a sexual act. **What needs to be proven are the facts of sexual congress between the accused and the victim, and the mental retardation of the latter.**^[31]

In *People v. Dalandas*,^[32] citing *People v. Dumanon*,^[33] this Court held that mental