

SECOND DIVISION

[G.R. NO. 172373, September 25, 2007]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JIMMY SORIANO,
APPELLANT.**

R E S O L U T I O N

CARPIO, J.:

This is an appeal from the 28 July 2005 Decision^[1] of the Court of Appeals in CA-G.R. CR No. 00688. The Court of Appeals affirmed the decision of the Regional Trial Court, San Carlos City, Pangasinan, Branch 57 finding appellant Jimmy Soriano guilty beyond reasonable doubt of rape.

On 6 October 1999, appellant, then 51 years old, was charged with raping AAA, a mentally retarded then 20-year old with impaired speech. The Information reads:

That on or about the month of March, 1999, at Salinap, San Carlos City, Pangasinan, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, and intimidation, and with lewd design, did then and there, willfully, unlawfully and feloniously, has sexual intercourse with the offended party [AAA], who is deprived of reason or mentally deranged.^[2]

Upon arraignment, appellant pleaded not guilty. Thereafter, trial ensued.

The prosecution presented BBB, mother of AAA, who testified that on 28 July 1999, she noticed that her daughter's belly was bulging. Her daughter told her that she was raped by appellant. BBB reported the matter to the police and submitted AAA for medical examination.

AAA testified that sometime in February 1999, appellant threatened to kill her, put his hand on her mouth, and placed her left hand at her back. AAA narrated how appellant raped her under a mango tree in Barangay Salinap. She did not report the rape to her parents because appellant threatened to kill her.

Dr. Jocelyn Villanueva issued a medico-legal certificate, which the defense admitted.

Dr. Edwin Guinto, who is a rural health physician, testified that AAA has some degree of mental retardation. However, during the cross-examination, he testified that he is a general medical practitioner and not an expert in psychiatry.

The defense presented appellant as its sole witness. He testified that BBB and AAA had ill-feelings against him. He stated that he did not know the father of the child being carried by AAA because AAA had been in the company of boys even late in the afternoon. On cross-examination, he testified that he had been a neighbor of AAA

for a long time. He also knew that AAA has impaired speech. He also tried to settle the case for P10,000.

As a rebuttal witness, CCC, father of AAA, testified that he and his family had no grudge against appellant and he was wondering why appellant raped his daughter.

In its Decision of 13 January 2000,^[3] the trial court held that all the elements of rape were present in this case. However, the prosecution failed to prove that AAA was indeed mentally deranged. Thus, the trial court found appellant guilty of simple rape and sentenced him to suffer the penalty of *reclusion perpetua*. The dispositive portion of the trial court's decision reads:

WHEREFORE, in the light of the foregoing, the Court hereby finds the accused, Jimmy Soriano, guilty beyond reasonable doubt of the crime of RAPE as defined and penalized under Article 335 of the Revised Penal Code, as amended, and hereby sentences him to suffer the penalty of *reclusion perpetua*, to indemnify the private complainant [AAA] the amount of P50,000.00, the amount of P50,000.00 as moral damages, P25,000 as exemplary damages, to give support to [AAA's] offspring and to pay the costs of suit.

SO ORDERED.^[4]

In his appeal before the Court of Appeals, appellant contended that (1) there was no force or intimidation in this case; (2) the alleged crime happened in a place where people usually pass by; (3) the victim's mother failed to notice any abnormal behavior after the rape except the victim's bulging belly in July 1999; and (4) while the Information alleged that the rape happened in March 1999, AAA testified that the incident occurred in February 1999.

In its 28 July 2005 Decision, the Court of Appeals affirmed the trial court's decision. The Court of Appeals held that there is no law or jurisprudence which requires that a woman must offer tenacious resistance to a sexual assault. In this case, appellant covered AAA's mouth with his hand, which explains why AAA was unable to shout. Besides, AAA has impaired speech. The Court of Appeals also ruled that rape can be committed even in places where people congregate, as lust is no respecter of time or place. On the discrepancy between the Information and the evidence regarding the date of commission of the crime, the Court of Appeals held that such is not an essential element of rape.

Hence, this appeal.

The sole issue in this case is whether appellant is guilty of rape under Article 266-A of the Revised Penal Code.

The appeal lacks merit.

We find that the elements of rape are present in this case. Article 266-A of the Revised Penal Code^[5] provides:

Article 266-A. *Rape; When And How Committed.* – Rape Is Committed -