

FIRST DIVISION

[G.R. Nos. 133994-95, March 14, 2003]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PEDRO BACALING, ACCUSED-APPELLANT.

DECISION

AZCUNA, J.:

Pedro Bacaling appeals to us from a decision of the Regional Trial Court of Ozamiz City, Branch 15, in Criminal Cases RTC-1622 and RTC-1623, finding him guilty beyond reasonable doubt, under paragraph 2 of Article 335 of the Revised Penal Code, as amended by R.A. 7659, of raping a mentally retarded woman.^[1]

On March 1, 1995, two (2) separate criminal complaints for rape were filed by private complainant AAA^[2] against appellant.^[3] The complaints were later amended, with the accusatory portions thereof reading as follows:^[4]

Criminal Case No. RTC-1622

That on or about the 13th day of July, 1994, at about 9:00 to 10:00 o'clock in the morning, more or less, in the City of Ozamiz, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, and by force and intimidation, did then and there willfully, feloniously and unlawfully lie and have carnal knowledge against the will of the undersigned complainant who is a demented/retarded 18 year old, virgin woman.

Criminal Case No. RTC-1623

That on or about the 9th day of January, 1995, at about 9:00 to 10:00 o'clock in the morning, more or less, after recess time, in the City of Ozamiz, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, and by force and intimidation, did then and there willfully, feloniously and unlawfully lie and have carnal knowledge against the will of the undersigned complainant who is a demented/retarded 18 year old, virgin woman.

Appellant pleaded not guilty to both criminal complaints.^[5] Trial proceeded and, thereafter, on April 13, 1998, the court *a quo* rendered the aforementioned decision, the dispositive portion of which reads:^[6]

WHEREFORE, judgment is hereby rendered [c]onvicting the accused **Pedro Bacaling** of the crime of rape for having carnal knowledge with AAA, a retardate, on July 13, 1994 and on January 9, 1995. He is hereby sentenced to suffer the penalty of **RECLUSION PERPETUA** with all the

accessory penalties in each of the offense[s] charged.

The accused is further ordered to pay complainant AAA actual and [m]oral damages in the amount of ₱40,000.00; and to pay the [c]osts.

This is what is now before us for review.

The prosecution's version of the facts, as stated in the decision of the trial court, is as follows:^[7]

When the offended party, a retarded, was about 10 years old, her mother entrusted her to the custody and care of Sabino Acut, Sr. of Carmen Annex, Ozamiz City for she went to Manila to work as [a] helper in the household of Atty. Sabino Acut, Jr. as evidenced by **Exhibit "E"** which is couched in the dialect:

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In keeping with the agreement, AAA was enrolled at Misamis Annex Elementary School in Carmen Annex, Ozamiz City. AAA is a poor and slow learner with childish behavior and could hardly comprehend, hence, she always [flunks] in her class and has been a repeater in her studies several times. Nonetheless, in [the] 1994-1995 school year, she [wa]s already a grade 5 pupil under Mrs. Eudes Kong. She was 18 years old then.

On January 9, 1995 at about 9:00 o'clock in the morning [school principal] Virgilio Resma conducted [an] oral test on the grade-5 class of Mrs. Eudes Kong. He noticed that AAA [wa]s absent [though] he saw her earl[ier] in the morning during the flag ceremony. He called the attention of Mrs. Kong about it and instructed her to see Sabino Acut, Sr. [to ask] if he knew that AAA [wa]s cutting classes. Sabino told her that he has no knowledge about it. Resma instructed Mrs. Kong to bring AAA to his office in the afternoon. In his office, Resma confronted AAA [on] why she was cutting her classes. AAA answered that Pedro Bacaling brought her to a hotel in Ozamiz City and they entered in[to] a beautiful room [where] Pedro Bacaling raped her; that Pedro Bacaling has a gun. He is a security guard of the security agency managed by Sabino Acut, Sr. Resma [then] called for the PTA president kagawad Edith Revilla for assistance. Upon further co[n]frontation, AAA revealed that she ha[d] been raped several times by Pedro Bacaling inside the abandoned bathroom located at the side of the house of Sabino Acut, Sr. in Carmen Annex, Ozamiz City. She revealed that Pedro Bacaling used to fetch her in school during recess and brought her to Cebuana Lodge and had sexual intercourse with her.

The trial court likewise presented appellant's version of the facts, as follows:^[8]

On his part, the accused claims that he met AAA sometime in 1992 in the house of Sabino Acut, Sr. in Annex, Ozamiz City. Sabino introduced her to him as his helper. He frequents the house of Sabino because Sabino is the manager of the security agency where he is working as a security guard. He noticed that AAA seem[ed] to like him. One time, AAA said to him, "Nong, you are 'Guapo'." He courted AAA and they became

sweethearts. One day, when he and AAA were having a conversation inside the abandoned bathroom located at the side of the house of Sabino, they were able to consummate sexual intercourse in a standing position. Surprisingly, his penis easily penetrate[d] into the vagina of AAA. He asked AAA why her [v]agina is loose and AAA [c]onfessed that her landlord, Sabino Acut, Sr. was the first man to have sexual intercourse with her. With that information he entertain[ed] no fear anymore of his affair with AAA. Thereafter, their love tryst in the bathroom were repeated not only on[ce] but many times. AAA told him that their affairs [were] already known by Sabino and Sabino became more strict in her movement. AAA suggested to him to fetch her in school and that they will go to Cebuana Lodge. On January 9, 1995, he went to Misamis Annex Elementary School where AAA [wa]s studying to fetch her. AAA told him that at recess time she will first go home to change her uniform. She instructed him to wait for her at Medina College. After a while AAA arrived at Medina College. He let AAA ride a tricycle and he r[ode] his bicycle following AAA to Cebuana Lodge. They [c]hecked-in at the counter. After which, the room boy ushered them to a vacant room. They went inside and l[aid] on the bed and had sexual intercourse. He fingered and did oral sex. Both of them enjoy[ed]. He asserted that AAA freely consented and voluntarily submitted her body to him. He did not employ force nor intimidate AAA to submit to the sexual act. They are lovers, he claims. He denied the July 13, 1994 charges.

As aforesaid, the trial court convicted appellant of rape under paragraph 2 of Article 335 of the Revised Penal Code, *i.e.*, having carnal knowledge of a woman who is deprived of reason. Under this type of rape, the elements necessary for conviction are: (1) that the offender had carnal knowledge of a woman; and (2) that the woman is deprived of reason.^[9] In accordance with the foregoing, we proceed to ascertain whether the prosecution was able to establish the presence of these two elements for each charge of rape.

The term "woman deprived of reason" includes one suffering from mental retardation.^[10]

To prove the victim's mental retardation, the prosecution presented Dr. Mario Rafael Estrella, resident physician and in-charge of the Psychiatric Department of Mayor Hilarion A. Ramiro General Hospital of Ozamiz City.^[11] In his testimony, Dr. Estrella described the mental condition of the victim:^[12]

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Q: After you have conducted all these examination[s], what have you or what is your finding [of] her?

A: I found out that the intellect of the patient is somewhat low, as far as my observation of the result of the examination. I considered [her] as a mentally retarded patient.

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