

## SECOND DIVISION

[ G.R. No. 133790, August 01, 2002 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
FERNANDO CAÑAVERAL, ACCUSED-APPELLANT.**

### D E C I S I O N

**QUISUMBING, J.:**

On appeal is the judgment<sup>[1]</sup> of the Regional Trial Court of Tanjay, Negros Oriental in Dumaguete City, Branch 43, in Criminal Case No. 12134, promulgated on February 2, 1998, finding appellant Fernando Cañaveral y Martinez alias "Ando" guilty of rape and imposing upon him the penalty of *reclusion perpetua*.

In an information dated August 7, 1995, the city prosecutor charged Cañaveral with rape allegedly committed as follows:

That on or about the 4th day of August, 1995, in the City of Dumaguete, Philippines, and within the jurisdiction of th[is] Honorable Court, the accused, with force and intimidation and with abuse of superior strength, did then and there, wilfully, unlawfully and feloniously (sic) have sexual intercourse with one Ellen Ortez Navaja in the following manner, to wit: the accused taking advantage of superior strength and nighttime, pulled her to a nearby house, with threat to (sic) bodily harm, laid her on the floor, removed her worn short pants and underwear, placed himself on top of her, inserted his sexual organ into her vagina, and succeeded in having sexual intercourse with the said Ellen Ortez Navaja, a mental retardate, against her will and without her consent.

Contrary to Art. 335 of the Revised Penal Code.<sup>[2]</sup>

When arraigned, Cañaveral pleaded not guilty. Trial on the merits ensued.

The prosecution's evidence shows that:

The victim, Ellen<sup>[3]</sup> Navaja, suffers from an alleged mild mental retardation. At the time of the incident, she was 15 years old and residing in Looc, Dumaguete City with her mother, Erlinda Navaja. Although already a teenager then, Ellen could neither take a bath nor dress herself. She depended on her mother for her hygiene and cleanliness. In school, she never got past Grade 4.<sup>[4]</sup>

At around 9:00 P.M., August 4, 1995, Erlinda sent her daughter to buy a mosquito repellent coil at a nearby store. Although the store was only five houses away, it took over an hour for Ellen to run her errand. Upon reaching home, Ellen immediately went to sleep and Erlinda, who was already in bed, did not bother to ask her why she took so long. Ellen, after all, had the habit of watching video shows at neighboring houses.

When Erlinda woke up the next morning, she noticed that her daughter had no underwear. After making her drink a glass of milk, Erlinda asked Ellen why she stayed out so long last night and where she went. Ellen told her that a certain man, who frequented the residence of their neighbor, Lucy Kitane, pulled her and touched her vagina. Ellen said he was tall and had a high-bridged nose. Erlinda immediately went to see Lucy. She learned that the person she was looking for was a certain "Joel" who resided in Colon Extension, Dumaguete City. Erlinda and Ellen then went to Colon Extension where they sought the assistance of the Philippine National Police Maritime Unit. Accompanied by two policemen, they proceeded to "Joel's" house and upon seeing "Joel," Ellen told her mother that he was the man who had sex with her the previous night. "Joel" was then arrested and brought to the police station, where he identified himself as Fernando Cañaverl.

Erlinda next brought her daughter to the Negros Oriental Provincial Hospital to have her examined. Dr. Weanchi Baldado Villegas, an obstetrician-gynecologist, found that Ellen's hymen had fresh lacerations at the 1, 5, and 7 o'clock positions. The laceration at the 1 o'clock position was still slightly bleeding. Her vagina was positive for spermatozoa.<sup>[5]</sup> Dr. Villegas declared that Ellen was no longer a virgin at the time she was examined.

On the witness stand, Ellen testified that she knew "Joel" who frequented their neighborhood. She pointed to appellant as "Joel." She said that on the night in question, her mother sent her to buy mosquito repellent. She ran into appellant who covered her mouth with his hand, grabbed her right arm, and forcefully pulled her towards the house of Lucy Kitane. Lucy was not in her house at that time. Appellant then choked her and threatened to kill her. He undressed her and succeeded in having sexual congress with her. She could not shout because appellant covered her mouth. She felt pain when appellant's penis entered her vagina.<sup>[6]</sup>

Dr. Perpetuo S. Lozada, a medical doctor and a consultant psychiatrist of the Philippine Mental Health Association, Inc., Negros Oriental Chapter, conducted a clinical and mental examination of the victim. His evaluation showed that Ellen was malnourished and sickly, with an organic brain problem. She suffered severe pneumonia when she was two months, as a result of which her growth and development were delayed. She only learned to walk at two years and to talk at three years old. She had difficulty in balancing and hearing. She also drooled. In school, she had learning difficulties. She was nervous, with childlike gestures, and her mother had to accompany her at all times. The victim's memory, math skills, abstract reasoning, judgment, and insight were all slightly impaired.<sup>[7]</sup>

Testifying on the psychiatric evaluation, Dr. Lozada averred that the victim could not freely give full consent or full resistance to events happening to her. She was like a five to ten-year-old child who needed the full care and attention of her parents.<sup>[8]</sup> However, her ability to identify a person and relate to a time frame was unimpaired.<sup>[9]</sup>

Appellant Fernando Cañaverl was the sole witness for the defense. He admitted being with Ellen from 8:00 P.M. to 10:00 P.M. on the night in question, but denied raping her.<sup>[10]</sup> He said that they had spent their time together at the side of a house of Ellen's neighbor talking about their courtship and romance. He claimed that he first met Ellen at the dance hall in Looc sometime in 1994. He courted her and they became sweethearts in August 1994.<sup>[11]</sup> He did not know that Ellen had a mental

problem since her manner of talking was straightforward. He did not notice any unusual behavior on Ellen's part that night. He caressed her but his caresses never went beyond her head and shoulders.<sup>[12]</sup>

The trial court found appellant's defense neither credible nor convincing. He was adjudged guilty of the offense charged. The court's fallo reads:

WHEREFORE, after considering the foregoing premises, the Court finds accused Fernando Cañaverál alias "Ando" guilty beyond reasonable doubt of the crime of rape defined in and punished under Article 335, No. 3 of the Revised Penal Code as amended by R.A. 7659 and hereby imposes upon said accused the penalty of reclusion perpetua. The accused is ordered to indemnify the victim Ellen Navaja in the amount of P50,000.00.<sup>[13]</sup>

On appeal before this Court, appellant assigns the following errors:

#### I

THE TRIAL COURT ERRED IN FINDING THE FIFTEEN (15) YEAR OLD ELLEN NAVAJA TO BE A RETARDATE OR A DEMENTED PERSON DESPITE HER SHOWING IN COURT THAT SHE IS A COMPETENT WITNESS.

#### II

THE TRIAL COURT ERRED IN CONSIDERING THE SEXUAL TRYST OF ELLEN NAVAJA AND ACCUSED-APPELLANT FERNANDO CAÑAVERAL AS RAPE DESPITE THEIR MUTUAL CONSENT TO DO SAID INTIMATE ACT.

The issue before us is whether the trial court erred in holding that appellant is guilty of rape beyond reasonable doubt and sentencing him to reclusion perpetua with the accessory penalties provided by law.

Appellant's *first assigned error* dwells on the mental competence of the rape victim. He argues that when Ellen was called to testify, she gave competent and responsive answers. Appellant submits that a review of her testimony clearly negates the claim that she is a mild mental retardate. Appellant further points to what he perceives as inconsistencies in the victim's testimony. On direct examination, she claimed appellant raped her,<sup>[14]</sup> but she nonetheless admitted on cross-examination that she voluntarily went with appellant to the house of Lucy Kitane.<sup>[15]</sup>

In dealing with the question of the rape victim's mental retardation, the trial court observed that "[a]s boundaries between normality and retardation are difficult to delineate, proper identification requires competent clinical evaluation of psychometric parameters in conjunction with medical and laboratory tests."<sup>[16]</sup> It then pointed out that Dr. Perpetuo S. Lozada, a medical doctor and psychiatrist, subjected private complainant to a clinical evaluation and mental status examination to determine if her mental faculties were impaired. The qualifications and expertise of Dr. Lozada were admitted by the defense.<sup>[17]</sup> Relying upon his diagnosis, the trial court concluded that private complainant was suffering from organic mental retardation caused by a history of illness and malnutrition. She was "just like a 5 to 10 years old child" who "could not freely give full consent or full resistance as to what is happening to her."<sup>[18]</sup>

Examining the evidence on record, we are convinced that private complainant in this case is a mental retardate. First, there is nothing on record that would cast doubt on the knowledge and integrity of the examining psychiatrist as an expert witness. Second, we fail to discern anything from the psychiatric evaluation report that would show that the trial court erred in its appreciation that the victim is suffering from mild mental retardation. Third, our careful scrutiny of Ellen's testimony shows that her answers were neither as responsive nor as competent as appellant insists them to be. There were several instances when she had a difficult time answering or comprehending simple questions. A closer reading of the stenographic notes of her testimony during direct examination on how she was raped is most revealing, thus:

(PROSECUTOR) TROPEZADO:

Q: Why do you know Joel?

A: He frequently went to Looc.

Q: Aside from that, is there any other reason why you know Joel?

A: Yes.

Q: What is this reason why you know Joel?

NOTE:

Witness cannot answer the question.

Q: What did this Joel do to you?

(ATTY.) MASAGCA:

Leading, your Honor.

COURT:

Witness may answer.

A: He raped me.

Q: What do you mean he raped you?

A: He threatened to kill me.

Q: You said that Joel raped you. How did he raped you?

A: I was choked by Joel.

Q: When you said rape, do you know the meaning of rape?

A: I was fucked.

x x x

Q: How did Joel rape you? What did he do to you?

A: I was choked.

Q: What else did he do aside from choking you?

A: None.

Q: What about your dress, what did Joel do to your dress?

A: I was undressed.