

## SECOND DIVISION

[ G.R. No. 131820, February 29, 2000 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ROLANDO ATIENZA Y BAUTISTA, ACCUSED-APPELLANT.**

### D E C I S I O N

**BELLOSILLO, J.:**

ROLANDO ATIENZA Y BAUTISTA was charged before the Regional Trial Court of San Jose, Camarines Sur, with having raped through force and intimidation one Maria Theresa Obias y Rañola, a 13-year old minor. He was thereafter sentenced to *reclusion perpetua* and ordered to pay the private offended party P50,000.00 as civil indemnity and to pay the costs.<sup>[1]</sup>

These are the facts on which the Decision was based: Complaining witness Maria Theresa Obias was alone in the room which her family was renting at Rizal Street, Goa, Camarines Sur, in the afternoon of 22 September 1996. At around 3:00 o'clock, 35-year old Rolando Atienza, her mother's godson and a former neighbor, arrived inquiring about his *Ninang Feling*. *Ninang Feling* is Maria Theresa's mother, Felicisima Obias, who stood as principal sponsor in Rolando's wedding. Upon learning that she (Maria Theresa) was alone, Rolando closed the door and windows, dragged her towards her mother's bed and forcibly tried to remove her shorts, but she cried, "*Habo ko!*" (I don't want!). But the accused succeeded despite her resistance. He then laid on top of her and inserted his penis into her vagina. All the while Maria Theresa was pushing him away saying, "*Habo ko, habo ko!*"<sup>[2]</sup> After satisfying his lust, the accused gave Maria Theresa two (2) five-peso bills<sup>[3]</sup> with a threat however before he left that he would harm her family should she reveal the incident to her mother.<sup>[4]</sup> The offended party also testified that Rolando Atienza had previously kissed and embraced her on three (3) occasions when her family was still staying in Panday.<sup>[5]</sup>

Felicisima Obias, mother of Maria Theresa, narrated that at around 5:00 o'clock in the afternoon of 22 September 1996, after arriving home from church, she noticed that her youngest daughter, Maria Theresa, was nervous. While dressing her up to go to church with her father and a sister, Felicisima noticed two (2) five-peso bills tucked in Maria Theresa's short pants. Since she was not in the habit of giving her daughter that much money Felicisima asked where it came from. When Maria Theresa answered tearfully that the money came from Rolando Atienza, Felicisima became apprehensive and questioned her further. It was at that point when Maria Theresa revealed what had happened to her.

After the physical examination conducted by Dr. Diosdado Fuentesbella, the Rural Health Physician of Goa, Camarines Sur, Felicisima learned further that Maria Theresa was no longer a virgin even before the incident as Rolando had sexually

abused her previously.<sup>[6]</sup>

Dr. Fuentebella physically examined private complainant the day after the incident.<sup>[7]</sup> He opined that she lost her physical virginity even before 22 September 1996 but that her recent sexual contact was evidenced by spermatozoa found upon microscopic examination of her vaginal secretion.<sup>[8]</sup> On cross-examination, Dr. Fuentebella conceded that there was no sign of physical injury on the body of private complainant although he clarified on redirect examination that it was not at all unusual in cases where the woman already had healed hymenal lacerations as in the case of Maria Theresa.<sup>[9]</sup>

Dr. Chona Belmonte, a psychiatrist from the Bicol Regional Hospital and admitted by the trial court as a medical expert,<sup>[10]</sup> testified that she conducted a psychiatric examination on private complainant and found her to be suffering from mild mental retardation. Specifically, Dr. Belmonte said that Maria Theresa, in addition to being poor in abstract reasoning and general knowledge, was quite weak in critical judgment; that although private complainant was already thirteen (13) years old at the time her intelligence quotient (IQ) was only sixty-three (63) thus making her mental age equivalent only to that of an eight (8)-year old child.<sup>[11]</sup>

The defense on the other hand presented only the accused Rolando Atienza who admitted that he went to his *Ninang Feling's* house in the early afternoon of 22 September 1996. However he claimed that he did so only to collect on a debt. When he learned that his *Ninang Feling* was in church he waited for her by lying on the sofa and looking over some pictures in an album. He denied raping private complainant and claimed that he left at about 3:00 o'clock in the afternoon after he got tired of waiting for his *Ninang Feling*. To rebut the testimony that private complainant had the mental capacity of an eight (8)-year old child, the defense presented private complainant's Elementary School Permanent Record or DECS Form No. 137-A<sup>[12]</sup> showing that the latter obtained passing grades from Grades I to VI.

On 7 October 1997 judgment was rendered finding the accused guilty of rape. The trial court found the testimony of private complainant more credible than the denial of the accused after noting the simple manner by which private complainant testified, with no sign of shuffling or falsehood. Moreover, in addition to finding that rape was indeed committed through force the trial court concluded that the accused would still be liable for rape, even if no such force was exerted, considering the mental age of private complainant which was that of an eight (8)-year old child. Accordingly, the he was sentenced to suffer the penalty of *reclusion perpetua* and ordered to pay private complainant P50,000.00 as civil indemnity, plus the costs.<sup>[13]</sup>

Accused-appellant contends in this appeal that the trial court erred in finding him guilty of rape as defined in par. (2), Art. 335<sup>[14]</sup> of the Revised Penal Code, providing for a mode of commission different from that charged in the Information, *i.e.*, while the Information charged him with rape committed through force and intimidation as defined in par. (1), Art. 335, he was nevertheless eventually convicted of rape under par. (2) thereof, *i.e.*, rape of a woman who was deprived of reason, including those with the mental capacity of a child below twelve (12) years old.<sup>[15]</sup>

Accused-appellant strongly argues that he was deprived of his constitutional right to be informed of the nature and cause of the accusation against him, hence, he is entitled to acquittal.

We find no merit in accused-appellant's contention. *First*, the trial court did not find him guilty solely of rape committed under par. (2), Art. 335, of the Revised Penal Code.<sup>[16]</sup> On the contrary, a plain reading of the appealed Decision readily shows that the primary basis of his conviction was the finding that he had carnal knowledge of the thirteen (13)-year old private complainant through force and intimidation as properly charged in the Information. Thus the court *a quo* said -

[T]he Court believes that the accused Rolando Atienza sexually assaulted the offended party, Maria Theresa Obias with the use of force. It is true that neither the offended party nor the Municipal Health Officer, Dr. Diosdado Fuentebella, testified that there was physical force sustained by the former. But, force or violence required in rape is relative x x x x Being relative, the force needed to overpower the resistance of the offended party is that which is necessary to consummate the offense. Besides, in the instant case, it is hard to believe that a 13-year old girl, with a mental age of an eight (8) years of age would voluntarily submit sexually to a man more than twice her age if no force was exerted. Moreover, if the mental age of a woman above twelve (12) years of age is that of a child below twelve (12) years of age voluntarily submits herself to the bestial desire of the accused, or even if the circumstances of force or intimidation do not exist, or of the victim being deprived of reason or otherwise rendered unconscious, are absent, the accused would still be liable for rape (*People v. Bulaybulay*, 248 SCRA 601).

*Secondly*, even though private complainant's subnormal mental capacity was not alleged in the Information, hence, conviction under par. (2), Art. 335, of the Revised Penal Code would normally be violative of accused-appellant's constitutional right to be informed of the nature and cause of the accusation against him,<sup>[17]</sup> it cannot be denied however that he did not object to the presentation of Dr. Chona Belmonte who was precisely called by the prosecution as its first witness to testify on private complainant's subnormal mental capacity, that is, although the latter was already thirteen (13) years old at the time of the incident, her mental capacity was equivalent only to that of an eight (8)-year old child. While defense counsel did object to Dr. Belmonte's Psychiatric Evaluation Report<sup>[18]</sup> during the prosecution's formal offer of documentary evidence, he did so only on the ground that private complainant did not appear to him to be feeble-minded during cross-examination.<sup>[19]</sup> Thus, instead of objecting outright to the aforementioned prosecution evidence on the ground that private complainant's alleged subnormal mental capacity was not properly alleged in the Information, the defense in fact waived this procedural infirmity<sup>[20]</sup> by presenting evidence of its own to prove the contrary, that is, that private complainant was normal as shown by her Elementary School Permanent Record or DECS Form No. 137-A formally offered as Exh. "1" for the defense. In *People v. Abiera*<sup>[21]</sup> the Court passing upon the very same contention raised by herein accused-appellant ruled -

The appellant maintains that he cannot be convicted of rape committed under one mode when the information alleged another mode. He cites the case of *People v. Pailano* (169 SCRA 649), where this Court held that to convict the appellant on the