

THIRD DIVISION

[G.R. No. 79679, March 28, 2000]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ENRIQUE CABINGAS AND REYNALDO DANTE ELLEVERA,
ACCUSED-APPELLANTS.**

D E C I S I O N

PURISIMA, J.:

At bar is an appeal from the Decision, dated May 19, 1986, of Branch XVIII of the Regional Trial Court of Misamis Oriental in Criminal Case No. 3253, finding appellant Reynaldo Dante Ellevera guilty, as principal, and appellant Enrique Cabingas, as accomplice, of the crime of Rape.

Filed on February 11, 1981 by Second Assistant Provincial Fiscal Alejo G. Rola, the Information indicting appellants alleges :

"That on or about the month of March, 1980, in the evening, at Barangay Bobontugan, Municipality of Jasaan, Province of Misamis Oriental, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused together with a certain JOHN DOE, who is still at large conspiring together and mutually helping one another, did then and there willfully, unlawfully and feloniously have sexual intercourse with one SUSANNAH JOY S. SALVAÑA against her consent by forcibly holding and forcing the said victim, a mentally deranged woman to submit to sexual intercourse with the said accused to her damage and prejudice.

`That the crime above-charged was committed with an aggravating circumstance of nighttime which circumstance facilitated the accused in the commission of the crime above charged.

`Contrary to and in violation of Article 335 of the Revised Penal Code.
xxx"^[1]

With appellants entering negative pleas upon arraignment, with the assistance of counsel on January 4, 1983, trial ensued.

On May 19, 1986, the lower court rendered its Decision, disposing thus:

"WHEREFORE, the court finds guilty beyond reasonable doubt the accused Reynaldo Dante Ellevera, as principal, and ENRIQUE CABINGAS, as accomplice, of RAPE as charged, and defined and penalized in Article

335 (1) (2), Revised Penal Code; there being neither mitigating nor aggravating circumstance, hereby imposes upon the accused Reynaldo Dante Ellevera the penalty of RECLUSION PERPETUA, and the accessory penalties thereof; and to indemnify Susannah Joy Salvaña the amount of Twenty Thousand (P20,000.00) Pesos for moral damages.

Upon the accused ENRIQUE CABINGAS, there being neither mitigating nor aggravating circumstance, and applying the Indeterminate Sentence Law, and Articles 18 and 52, in relation to Article 335, of the Revised Penal Code, the penalty imposed is an indeterminate penalty of Eight (8) Years and one (1) day, prision mayor, as minimum, to twelve (12) years and one (1) day, Reclusion temporal, as maximum; to indemnify the complainant Susannah Joy Salvaña the amount of Ten Thousand (P10,000.00) Pesos for moral damages.

Both to pay proportionate costs.

The case as against John Doe, at large, is provisionally dismissed.

SO ORDERED."^[2]

In arriving at the aforesaid finding of guilt, the trial court gave credence to the version of the victim, and culled the inculpatory facts and circumstances as follows:

"According to the complainant, one night in March, 1980 she was at home tending their family store where coconut tuba was sold. Enrique Cabingas and another man whom she does not know, arrived at the store. She does not recall the time when the two came. She was dragged by the two persons to a place behind the house of Jerry Odchigue which is about thirty five (35) meters away, where Ellevera had waited.

Reynaldo Dante Ellevera was in front of her. He held her by the hand, covered her mouth with his hand. She was not able to shout.

Reynaldo Dante Ellevera forced her to lie on the ground. Complainant resisted futilely. Her panty was forcibly removed by Reynaldo Dante Ellevera, who loosened his pants and pulled it down to his knees. He placed himself on top of her, and inserted his penis into her vagina as complainant lay on her back.

x x x x x x x x x

While the complainant was being abused by Ellevera, Enrique Cabingas and the other person (whom complainant does not know) walked away.

She said that Reynaldo Dante Ellevera was already in the place to where she was pulled by Enrique Cabingas and the unnamed person - waiting.

After the sexual act, the complainant put on her panty again. The accused Reynaldo Dante Ellevera likewise donned his trousers again.

Ellevera warned her not to tell her parents of the incident or else she will be boxed many times by Dante. She was afraid of the threats, and did not tell her parents about the incident.

On cross examination the complainant candidly admitted that she could not recall the time, but only that the incident complained of had happened, at night when the electric lights in the houses were already on. The electric bulb at the road was busted.

She further stated that at the time of the incident her mother was inside their house. The place was noisy. The jukebox was playing in the other store, about three (3) meters away from the tuba store where complainant was alone.

After the act, the complainant went back to the store-where her mother was, and watched the Anna Liza show on television. That was between six and seven o'clock in the evening.

x x x x x x x x x"[3]

Vicenta Salvaña, mother of the victim, Susannah Joy S. Salvaña, testified that as she was surprised why her daughter, a fourteen-year old mental retardate, had not menstruated, she brought her to Dr. Concha Piit in Cagayan de Oro City, for medical examination. After examination, Dr. Piit concluded that Susannah Joy was pregnant. On their way back home, it took her (Vicenta) time to convince Susannah Joy to reveal what happened, and the latter later confided to the former that one evening in March, 1980, she was dragged against her will by Enrique Cabingas and an unidentified person to a spot at the back of the house of Jerry Odchigue, where Dante Ellevera had been waiting for her and thereat, she was sexually abused by the said Dante Ellevera.[4]

Dr. Germanito Cain, the Rural Health Physician of Jasaan, Misamis Oriental, testified that on August 8, 1980, he examined Susannah Joy and he issued a medical certificate on the same day (Exhibit "B") containing the findings that Susannah Joy S. Salvaña was six (6) months pregnant and was observed to be suffering from slight mental deficiency.[5]

On November 14, 1980, Susannah Joy delivered a full term baby boy.

Appellants Ellevera and Cabingas interposed the defense of denial and alibi. Both of them residing not more than three hundred (300) meters away from the residence of Susannah Joy, they admitted knowing Susannah Joy to be mentally retarded. Ellevera theorized that he stayed in his house the whole month of March, 1980 and therefore, could not have raped Susannah Joy. Cabingas, on the other hand, declared that sometime in 1980, the parents of Susannah Joy asked him to testify against Ellevera and demanded from him Five Thousand (P5,000.00) Pesos for the settlement of the case. When he did not accede to such demand, they implicated him in the commission of the crime.

As rebuttal witness, the prosecution presented Quintin Salvaña, father of Susannah Joy, who testified that he asked Cabingas to be a witness against Ellevera because according to his daughter, Cabingas was a companion of Ellevera when the latter molested her. But he (rebuttal witness) denied asking money for the settlement of the case, stressing that what Cabingas theorized upon was a "lie".^[6]

Convinced that the appellants are guilty beyond reasonable doubt the court *a quo* handed down the decision under review.

Appellants assail the assessment by the lower court of the witnesses' credibility, and the sufficiency of the evidence for the People.

Citing the ruling of this Court in the case of People vs. Cartuano, Jr.,^[7] appellants contend that there is sufficient evidence to show that Susannah Joy is a mental retardate, because Dr. Germanito Cain never subjected her to "a competent clinical evaluation of psychosometric parameters in conjunction with medical and laboratory tests". Theorizing that Susannah Joy was a willing victim when he (Ellevera) had sexual intercourse with her (assuming that he had), she did not manifest tenacious resistance expected of a girl forced to submit to a man against her will.

In the case of People vs. Cartuano, Jr., there was a need to conduct further medical and laboratory tests because the Court found in the records on hand that there was "[A]ppallingly, no physical evaluation (essential in the diagnosis of any disorder, mental or somatic) appears on record"^[8] which could support a conclusion that the complainant was mentally deficient.

In the case under scrutiny, however, the trial court, the prosecution and the defense witnesses, including the appellants themselves, were unanimously agreed that the complainant is mentally retarded. The trial court noted thus: "xxx She can hardly remember dates; has difficulty of speech; x x x She suffers an impairment of speech, but with effort she was understandable."^[9] Her mother declared the complainant is indeed mentally retarded.^[10] Dr. Germanito Cain, the rural health doctor, noticed that "She cannot answer many a simple question."^[11] Ellevera, despite his prevarications, admitted that Susannah Joy was a mental retardate.^[12] According to Cabingas, everybody in Bobontugan knows the complainant to be a mental retardate.^[13]

Sexual intercourse with a feeble-minded woman is rape. The offense charged is within the contemplation of paragraph 2 of Article 335 of the Revised Penal Code, like when the offender had carnal knowledge of a woman deprived of reason.

In the case of People vs. De Jesus,^[14] citing People vs. Daig,^[15] this Court held:

"`The offense committed by appellant is rape described under paragraph 2 of Article 335 of the Revised Penal Code, that is, the offender having carnal knowledge of a woman deprived of reason. The deprivation of reason contemplated by law does not need to be complete. Mental abnormality or deficiency is enough. So it was held by the Supreme Court of Spain that a man having carnal knowledge of a woman whose mental