

SECOND DIVISION

[G.R. No. 126175, May 29, 1997]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ARMANDO ROMUA ACCUSED-APPELLANT.
D E C I S I O N**

PUNO, J.:

Rape is an odious crime. It becomes more despicable when committed against a person deprived of reason. Such was the case of Lolita Jaban, a 24-year old mental retardate.

A complaint was initiated by Jovita Jaban against Armando Romua for raping her retarded daughter, Lolita. The Information^[1] against him, dated April 10, 1990, was subsequently filed before the Regional Trial Court of Kabacan, Cotabato.^[2] It reads:

"That on or about 9:30 o'clock in the evening of January 31, 1990, at Barangay Katidtuan, Municipality of Kabacan, Province of Cotabato, Philippines, and within the jurisdiction of this Honorable Court, the said accused, taking advantage of a feeble-minded, idiotic woman, Lolita Jaban, did then and there, willfully, unlawfully and feloniously have carnal knowledge with said Lolita Jaban, who by reason of her said mental abnormality or deficiency, has no will or otherwise deprived of reason.

"CONTRARY TO LAW."

Romua pleaded 'not guilty' upon arraignment.^[3] Trial ensued.

The prosecution evidence rests chiefly on the testimonies of Jovita Jaban, Dr. Crisostomo Necesario, Jr., P/Sgt. Jesus Ragonton and P/Sgt. Polcronio Dulay.

The records reveal that Jovita Jaban, a widow, lives in Katidtuan, Kabacan, Cotabato, with her daughter Lolita Jaban and the latter's two-year old child. The man who sired Lolita's child is unknown since her mental condition has rendered her incapable of talking or communicating with anyone.

Armando Romua, husband of Jovita's niece, resides in the same neighborhood, about ten (10) meters away from Jovita's house. He and his wife used to look after Lolita whenever Jovita had to leave the house to work as a laundry woman. At times, Romua would go to Jovita's house and give food to Lolita when her mother was not around.^[4]

In the evening of January 31, 1990, Jovita went to the house of Leodegario Pablo, father-in-law of Romua, to watch a video. Romua and his wife were also at Pablo's house watching the video. Romua did not finish the video as he told his wife that he

would go home to sleep. He left at about 9:00 p.m.^[5]

After Romua left, Jovita felt nervous for no apparent reason. Nevertheless, she continued watching the video and went home at about 9:30 p.m. When she reached her house and opened its door, she encountered Romua who was inside and about to leave. Jovita asked him what he did inside her house. He replied that he was just checking because the baby was crying. Romua was clad in brief and T-shirt. Suspecting that Romua molested Lolita, she held on to his arms and shouted for help. Their neighbors arrived, including Romua's wife and another relative, Lito Amosin. Amosin led them inside the house to avoid scandal. Inside the house, Jovita found Lolita completely naked.^[6] She immediately reported the incident to the authorities.

The following morning, at about 10:00 a.m., Jovita brought Lolita to Dr. Crisostomo Necesario, Jr., for a medical examination. Dr. Necesario found sperm in the vaginal canal of Lolita and opined that she had sexual contact one (1) or two (2) days before the examination.^[7] Jovita and Lolita proceeded to Kabacan Police Station where Jovita executed her sworn statement before P/Sgt. Jesus T. Ragonton.^[8]

We now consider the defense's version of the incident.

On January 31, 1990, at about 9:00 p.m., Armando Romua watched a video tape at his father-in-law's house. His aunt Jovita came and joined them. After a while, he felt sleepy and he told his wife he would go home. He went straight to his house, some twenty (20) meters away from his father-in-law's house.^[9]

Allegedly, he heard something fall inside Jovita's house. He went to Jovita's house to verify if anything untoward has happened. He peeped inside and saw the baby jumping on Lolita's abdomen. He started to leave after finding nothing wrong. He then met his aunt Jovita who suddenly shouted and accused him of raping Lolita. His wife and Lito Amosin came and pacified them. Romua denied he was clad in brief. He claimed he was wearing a T-shirt and maong pants. He said that Lolita was not naked but wore a dress. Her dress, however, was raised.

Lito Amosin, brother in-law of Romua, testified for the defense. He narrated that on the material date and time, he saw his aunt Jovita and Romua standing by the road, in front of Jovita's house. Jovita was holding on to Romua's hands. He approached the two and led them inside the house to avoid scandal. Amosin affirmed that Romua was wearing a T-shirt and long pants that evening.

On April 29, 1993, the trial court rendered its Decision^[10] finding appellant guilty as charged. Its dispositive portion reads:

"WHEREFORE, premises considered, accused Armando Romua is found guilty by proof beyond reasonable doubt of Rape and applying the Indeterminate Sentence Law, is sentenced to suffer (the) penalty of imprisonment of 12 years and one day to 14 years and 8 months.

"SO ORDERED."

Accused appealed to the Court of Appeals. He contended that:

"I

"THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT MAINLY ON THE BASIS OF THE TESTIMONY OF THE MOTHER OF THE VICTIM AND THE EXAMINING PHYSICIAN WITHOUT THE VICTIM IDENTIFYING THE ACCUSED-APPELLANT.

"II

"THE TRIAL COURT GRAVELY ERRED IN APPLYING THE RULING IN PEOPLE VS. TOMETOS IN THE INSTANT CASE WITHOUT EVEN DISCUSSING ITS FINDINGS OF FACTS IN THE ASSAILED DECISION.

"III

"THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED."

After review, the appellate court affirmed the judgment of the trial court but modified the penalty to reclusion perpetua^[11] The records of the case were then forwarded to this Court for further review.

We affirm appellant's conviction.

Appellant maintains that the victim's mental depravity was not established by the prosecution. He also insists that no concrete evidence linked him to the crime charged because he was not identified by the victim.

We reject these contentions.

The mental depravity of the victim was established through the testimonies of the prosecution witnesses.^[12] Dr. Necesario testified^[13] as follows:

"FISCAL BAYOG:

"Q: Now, were you able to ask the victim on (sic) what happened to her a day before you previously examined her?

"(DR. NECESARIO):

"A: The victim is mentally retarded.

"Q: When you say mentally retarded, can she speak?

"A: She uttered words that cannot be understood.

"Q: What is the age of the victim?

"A: According to the data, 24."

Significantly, during cross-examination, the defense did not make any attempt to impugn the opinion of the doctor that the victim is a mental retardate.

Likewise, Jovita Jaban testified on the mental condition of her daughter without any challenge from the appellant. Her testimony ^[14] is as follows:

"(FISCAL BAYOG):

"Q: When you noticed this accused Armando Romua wearing his brief and T-shirt, what did you do if any?

"(JOVITA JABAN)

"A: I held his hand because I suspected he molested my child.

"Q: You are referring to your daughter Lolita Jaban who is an abnormal daughter?

"A: Yes, sir.

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"Q: You refer to Lolita Jaban, where is this Lolita Jaban now?

"A: (The witness is pointing at a woman sitting at the bench who is always shouting during the hearing).

"Q: By the way, could this Lolita Jaban could [sic] utter any words to express what she desires?

"A: She cannot talk but she could only shout.

"Q: Could she express her thoughts or idea by expression or by communicating signs?

"A: No, sir."

Another witness for the prosecution, Sgt. Ragonton, similarly testified:
^[15]

"(FISCAL BAYOG):

"Q: Being the investigator at that time, do you remember if a person reported to you about an alleged rape?

"(SGT. RAGONTON):

"A: Yes, sir.

"Q: Do you recall who was that person who came to your office and reported the incident (which) occurred previously?

"A: The complainant is retarded and her mother is Mrs. Jaban."

Throughout the trial of the case, appellant did not challenge the mental abnormality of the victim. It is too late for him to raise this factual issue before this tribunal. Besides, defense witness Lito Amosin also confirmed the mental retardation of the