

## THIRD DIVISION

[ G.R. No. 118990, November 28, 1996 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
FERDINAND BALISNOMO, ACCUSED-APPELLANT.**

### D E C I S I O N

**FRANCISCO, J.:**

On June 16, 1986, appellant FERDINAND BALISNOMO was charged with raping Ardel Banay, an eleven year old mental retardate, in an information which reads:

"At the instance of the offended party thru her father Arturo Banay who has subscribed and sworn to a complaint attached to the records of this case, the undersigned Assistant Provincial Fiscal accuses Ferdinand Balisnomo of the crime of rape committed as follows:

"That in or about the 17th day of May, 1983, in the Municipality of Patnoñgon, Province of Antique, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused by means of force and intimidation and with lewd designs, did, then and there wilfully, unlawfully and feloniously have carnal knowledge of the said Ardel Banay against the latter's will.

"Contrary to the provisions of Article 335 of the Revised Penal Code."<sup>[1]</sup>

Upon arraignment, appellant pleaded not guilty and trial on the merits ensued. During trial, the prosecution presented Ardel Banay, her father, Arturo Banay and the medico-legal expert, Dr. Deogracias Solis, as witnesses. On direct examination, Ardel narrated the perpetration of the crime against her as follows:

**"FISCAL ORCAJADA:**

**Q** Last May 17, 1983, at 8:00 (sic) o'clock in the afternoon, could you remember where you were?

**A** I was in the house of Lolo Viong.

**Q** Where is that house located?

**A** Larioja.

**Q** Patnoñgon, Antique?

**A** Yes, Sir.

**Q** Now, on that date, place and time, could you tell this Honorable Court if anything (sic) happened to you?

**A** Yes, Sir.

**Q** What happened to you?

**A** I was brought by Ferdinand Balisnomo?

**Q** Where did he bring you?

**A** In the house of Lolo Viong

**Q** Is that Lolo Viong the owner of the house you said a while ago?

**A** Yes, Sir.

**Q** In the house of your Lolo Viong, what did Ferdinand Balisnomo do to you?

**A** He let me lie down.

**Q** If this Ferdinand Balisnomo is here in Court, could you kindly point at him?

**A** That one (witness pointed to the accused Ferdinand Balisnomo).

**Q** After Ferdinand Balisnomo let you lie down, what did he do further, if any?

**A** He undressed me.

**Q** What did Ferdinand Balisnomo do if he did anything?

**A** He undressed himself also.

**Q** After Ferdinand Balisnomo had undressed, what did he do to you?

**A** He lay on top of me.

**Q** When he layed (sic) on top of you, what did Ferdinand Balisnomo do to you?

**A** He inserted his penis into my vagina.

**Q** And what did you feel?

**A** Pain."<sup>[2]</sup>

Arturo Banay testified that: On May 17, 1983 at around three o'clock in the afternoon, he was at their house in La Rioja when he saw his daughter, Ardel, at the faucet with blood oozing down her thighs. He asked her what happened but the latter refused to answer. Arturo summoned his wife who asked Ardel the same question, and after several proddings, Ardel told them that she was raped by the appellant. The couple then brought Ardel to the Helath Center for examination. At the Health Center, Ardel was examined by a nurse who confirmed that she had indeed been sexually abused. Because of the continuous flow of blood from Ardel's private parts, the couple was advised to bring her to the hospital for treatment. They immediately proceeded to the Antique Provincial Hospital where Ardel was attended to by Dr. Deogracias Solis.<sup>[3]</sup> The latter's medical findings show that Ardel suffered the following injuries:

"1. Wound, lacerated, superficial, 2mm x 3mm  
hymen, 4:00 o'clock

"2. Wound, lacerated, superficial, 1mm x 2mm,  
fourchet.

xxx                      xxx                      xxx

REMARKS: Laceration, fresh; bleeding and blood clots

In vaginal canal, slight."<sup>[4]</sup>

And her testimony in open court is to the effect that these lacerations could have been caused by the penetration of a male organ into the vagina.<sup>[5]</sup>

For its part, the defense presented the testimonies of appellant and Silverio Roselio or "Lolo Viong". The latter, in whose house the rape had allegedly taken place, claimed that he remained in the confines of his home the entire day of May 17, 1983 because he was then suffering from a swollen knee due to rheumatism, and on no occasion was Ardel present thereat.<sup>[6]</sup>

The appellant denied the charges against him and alleged that on the said date and time, he was sleeping in his house in La Rioja.<sup>[7]</sup> Appellant also testified that previous to the alleged incident, he and Arturo Banay had an altercation over a sum of money which the latter owed for some fish that Arturo had bought on credit from the appellant.<sup>[8]</sup> According to the appellant, the accusation against him was a mere fabrication motivated by Arturo's desire to get even with him.<sup>[9]</sup>

Giving full faith and credence to the testimonies of the prosecution witnesses, and finding that appellant's alibi was not established by clear and convincing evidence, the Regional Trial Court (RTC) of San Jose, Antique rendered a decision convicting appellant of the crime charged and sentencing him to suffer the penalty of *reclusion perpetua* and to pay the amount of P30,000.00 as indemnity.<sup>[10]</sup> Aggrieved, appellant comes to this Court seeking the reversal of his conviction on the ground that the trial court erred in finding him guilty despite the insufficiency of evidence to warrant conviction beyond reasonable doubt.<sup>[11]</sup>

Specifically, appellant contends that the testimony of Ardel whose mental capacity is akin to that of a three-year old is unworthy of credence.<sup>[12]</sup> Anent this contention, suffice it to state that the fact that the rape victim is a mental retardate does not *per se* preclude the trial court from admitting her testimony in evidence nor from according it full faith and respect.<sup>[13]</sup> This Court has held that:

"A mental retardate is not for this reason alone disqualified from being a witness. As in the case of other witnesses, acceptance of his testimony depends on its nature and credibility or, otherwise put, the quality of his perceptions and the manner he can make them known to the court. Thus, in *People v. Gerones*, the Court accepted the testimony of a rape victim notwithstanding that she had the mentality of a nine or ten-year old 'because she was able to communicate her ordeal' clearly and consistently."<sup>[14]</sup> [Underscoring supplied]

The determination of the competency of witnesses to testify rests largely with the trial court.<sup>[15]</sup> As reiterated by this Court, the trial judge's assessment of the credibility of the witnesses' testimonies are accorded great respect on appeal in the absence of grave abuse of discretion on the part of the trial judge who has the advantage of actually examining both real and testimonial evidence including the demeanor of the witnesses as they present the same.<sup>[16]</sup> A careful review of the records of the case before us reveals no cogent reason to warrant a departure from the findings of the trial court with respect to Ardel's credibility. It is the trial court that had the unequalled opportunity to observe the "quality of Ardel's perceptions and the manner she can make them known to the court." And as found by the trial