

SECOND DIVISION

[G.R. No. 118823, November 19, 1996]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
CARLITO ROSARE, ACCUSED-APPELLANT.**

DECISION

REGALADO, J.:

In an information filed on June 22, 1992, with the Regional Trial Court, Branch 5, Legazpi City, herein accused-appellant Carlito Rosare, alias "Lit", was charged with having raped Rosalina Orubia, a 30 year old mental retardate with the mental capacity of an eight or nine-year old child, allegedly committed as follows:

"That on or about the 11th day of May, 1992, in the City of Legazpi, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, did then and there wilfully, unlawfully and feloniously and by means of force, have carnal knowledge of one ROSALINA ORUBIA against her will and without her consent, to her damage and prejudice.

CONTRARY TO LAW."^[1]

The facts are succinctly and correctly summarized in the Brief for Appellee filed by the Solicitor General, thus:

"The victim Rosalina Orubia is a person with mild mental retardation. Even at the age of thirty (30) when the rape incident transpired, her mental capacity is similar to that of an eight (8) or nine (9) year old child. She has such a poor learning capacity with an I.Q. ranging from fifty (50) to seventy (70). She was only able to pass and finish Grades I to VI because her teachers took pity on her. Although she can perform some minor household chores and run simple errands, she cannot be trusted to perform more complicated tasks or to ride alone in a public transportation. However, despite her mild retardation, the victim is capable of telling the truth and narrating in detail, incidents as they transpired (tsn., Dr. C. Belmonte, Mar. 2, 1994, pp. 6-13; Exhs. 'D' to 'D-1').

On May 11, 1992, at about 6:00 p.m., the victim was in her house, located at Barangay San Francisco, Legazpi City. Suddenly, appellant, who also happens to be her cousin (as appellant's mother is the sister of the victim's father), pulled (ginuyod) and dragged her towards the cogonal area where she was stripped naked (tsn., R. Orubia, April 6, 1994, pp. 5-6).

After stripping the victim naked, appellant removed his pants and

underwear and placed himself on top of her. He inserted his penis in her vagina, causing the victim to feel pain and discomfort. After doing the pumping motion, he terminated the sexual intercourse and stood up. The victim likewise stood up, put on her clothes and went home. She did not shout, cry out, or run away during the ordeal, as she was afraid of appellant who threatened to kill her if she did so (tsn., R. Orubia, April 6, 1994, pp. 6-9).

When the victim went home, she told her parents about the rape incident. Her parents took her to the office of the Barangay Captain. In turn, the latter told them to go to the Police Headquarters to file the necessary complaint (tsn., R. Orubia, April 6, 1994, pp. 9-10; tsn., A. Orubia, Feb. 23, 1994, pp. 5-9; Exhs. 'A' to 'A-3'; tsn., SPO4 Morano, April 18, 1994, pp. 3-4; Exhs. 'E' to 'E-1').

Thereafter, the police advised them to go to the City Health Office to have the victim examine. Dr. Sarah Vasquez issued a medico-legal certificate dated May 14, 1992 after conducting a gynecologic examination on the victim. Her findings are the following: 'Hymenal laceration at 6 o'clock and 7 o'clock'. In layman's terms, there was hymenal laceration due to the penetration of the penis in the vagina (tsn., Dr. S. Vasquez, Mar. 4, 1994, pp. 19-22; Exh. 'B')."^[2]

On December 29, 1994, the trial court rendered judgment^[3] finding herein appellant guilty of the crime of statutory rape as defined under Article 335(3) of the Revised Penal Code and sentencing him to suffer the penalty of *reclusion perpetua* with the accessory penalties thereof and to pay the complainant, Rosalina Orubia, P50,000.00 as moral damages, as well as the costs.

Hence, this appeal, on the lone assignment of error that the court *a quo* erred in convicting appellant of the crime charged despite the fact that the prosecution failed to prove his guilt beyond reasonable doubt. He also contends that the information filed against him alleges carnal knowledge through force, whereas his conviction was based on the finding that the victim is a mental retardate which fact is not alleged in the information nor sufficiently established by substantial evidence. Furthermore, he insists that the victim's testimony is replete with inconsistencies and facts which are not in accord with human nature and experience.

Appellant contends that he cannot be convicted of statutory rape because the fact that the victim was a mental retardate was never alleged in the information and, absent this element, the acts charged negate the commission of the offense for which he was convicted by the lower court.

Pursuant to Section 8, Rule 112 of the Rules of Court, we have decided to *motu proprio* take cognizance of the resolution issued by the investigating prosecutor in I.S. No. 92-0197 dated June 2, 1992, which formed the basis of and a copy of which was attached to the information for rape filed against herein appellant. Therein, it is clearly stated that the offended party is suffering from mental retardation. We hold, therefore, that this should be deemed a substantial compliance with the constitutional mandate that an accused be informed of the nature of the charge against him. More importantly, appellant cannot feign ignorance of the victim's

mental condition considering that they are first cousins and very close.^[4] In their association, aside from the fact that appellant lives only around half a kilometer away from the house of the victim.^[5] The element of surprise on the part of the defense can definitely not be invoked in this case, hence it cannot be said that appellant was in any way deprived of the opportunity to adequately prepare for his defense.

In the case of *Commonwealth vs. Stephens*,^[6] the issue involved was whether the carnal knowledge of a woman who was insane at the time of the commission of the act constitutes rape where there is no proof that the act was accomplished with physical force and such insanity was not alleged in the information. The court held that:

"Appellant also contends that there cannot be a conviction because the indictment charged the commission of the act forcibly and against the will of the alleged victim, while the evidence at most proved carnal knowledge of a woman who was insane. There is no merit in this objection. x x x

Common-law rape may be committed in one of several ways, and *it is not necessary to set out in the indictment the means or the method employed. It was not required that the indictment allege that the victim was insane and incapable of giving her conscious consent. A forcible ravishment is one done against a woman's will; if it is done against her will, it is of necessity without her consent; if she is insane or too weak of mind to give a rational consent, then it follows that she has been forcibly ravished.* x x x

x x x (C)arnal knowledge of an insane woman, knowing her to be insane, is rape. There is a lack of capacity to consent, and it is presumed that the act was done without her consent, hence it is against the female's will; the force required may be in the wrongful act itself. It follows that such act is done 'forcibly and against her will.' In an indictment the office of the words 'against her will' is merely to negative consent." (Italics supplied)

Moreover, there exists ample and convincing proof to show that the victim is a mental retardate, as may be gleaned from the following facts:

1. The victim was basically asked purely leading questions on direct examination by the fiscal, without any objection from the defense counsel, and also when further questioned by the court. Apparently, she could answer only leading questions.
2. There was no question raised about complainant's mental retardation. Her deficient mentality stuck out like a sore thumb at the center. Her behavior as a mental retardate was so obvious that even the investigating fiscal, who is not a man of science,^[7] was able to observe it during the preliminary investigation and which thereby prompted him to recommend the victim for psychiatric examination.
3. In the victim's own testimony, she was spanked by her mother when she returned home on the night of the incident. Bearing in mind that the victim was already 30 years of age at that time, such form of punishment normally inflicted on

small children is a mute but eloquent witness to the blatant reality that she is not in a normal mental state or level.

4. Appellant was definitely no stranger to complaint Rosalina Orubia. She is his first cousin and his house is only a few meters away from where she lives. It would have been quite impossible for him not to have known or at least heard about the victim's mental condition. It is not far-fetched to conclude that it was precisely his knowledge that the victim is a mental retardate which emboldened him to commit the offense.

5. An expert witness, Dr. Chona Belmonte, testified and confirmed that the victim is a mental retardate based on the psychiatric examination she conducted on her.

It is argued by appellant that since the victim was not subjected to a series of psychological and other related tests, and the doctor who conducted a preliminary examination on the victim failed to make an official report but merely issued an initial certification about her condition, there is nothing to support the findings of the trial court that the victim is a mental retardate. We disagree.

Prosecution witness Dr. Chona Belmonte, who was admitted by appellant to be an expert witness, testified that the initial examination she conducted on the victim constituted sufficient basis to conclude that the latter is a mental retardate with a mental capacity of a child between eight and nine years of age. She explained that during the examination, she observed that the victim's performance was really compatible with that of a person with mild mental retardation. This, together with the other circumstances obtaining in this case, is considerably adequate to prove the mental condition of complainant.

The victim's straightforward, consistent and unwavering testimony is equally revealing. Witness these exchanges:

"ASST. CITY PROS. RUBIO:

Q: Do you know Carlos Rosare?

A: Yes, sir.

Q: Why do you know him?

A: His mother is the sister of my father.

Q: Now, if this Carlos Rosare is around, will you please point to him?

A: Yes, sir.

Q: Will you point to him?

A: That man, sir. (witness pointed to a man seated inside the courtroom, who when asked of his name answered, Carlito Rosare). On May 11, 1992, more or less 6:00 p.m. where were you?

A: In my house.

Q: Where is your house located?

A: At Barangay San Francisco, Legazpi City.

Q: While there at your house on said time, do you recall of (sic) any unusual incident?

A: Yes, sir.

Q: What was that?
A: I was pulled (ginuyod) by Carlito.
Q: To where? To what place were you dragged?
A: Towards the cogonal area.
Q: Were you able to reach that cogonal area?
A: Yes, sir.
Q: Upon reaching that place, what did the accused or Carlito Rosare do?
A: Carlito stripped me naked.
Q: After you were stripped naked, what did he do next?
A: He removed his pants.
Q: What about his brief? Did he remove the same?
A: Yes, sir.
Q: Now after he removed his pants together with his brief, what did he do next?
A: He placed himself on top of me.
x x x
Q: After he placed himself on top of you, what did he do next?
A: He inserted his penis inside my vagina.
Q: What did you feel when he inserted his private organ into yours?
A: Painful.
Q: For how long did he stay on top of you?
A: In a short time.
Q: Now, after he was through with having - ah or after the sexual intercourse, what did he do next?
A: He made in and out of his organ (sic)
Q: Now, after that, what did he do next?
A: He stood up.
Q: And after he stood up, what did he do next?
A: He put on his pants.

COURT:

Q: What about you? What did you do when he stood up?
A: I dressed up also.
Q: After both of you were dressed up, where did you and Carlito go?
A: I went home and Carlito went home also.

ASST. CITY PROS. RUBIO: (continuing)

Q: Now, you said you were dragged.

ATTY. GOMEZ:

Misleading, Your Honor. The witness testified that the she was pulled, not dragged.

COURT:

Sustained.