

EIGHTEENTH DIVISION

[CA-G.R. CR. HC. NO. 01590, February 26, 2015]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
JONATHAN BAAY Y FALCO, ACCUSED-APPELLANT.**

D E C I S I O N

INGLES, G. T., J.:

Before us is an appeal^[1] seeking to annul and reverse the Decision^[2] dated January 4, 2013 of the Regional Trial Court, 6th Judicial Region, Branch 21, Mambusao, Capiz in Criminal Case No. 09-0886-05 for Statutory Rape which sentenced the accused-appellant as follows:

"WHEREFORE, the Court finds the accused JONATHAN BAAY Y FALCO alias "Jun-Jun" GUILTY beyond reasonable doubt of the crime of Rape which is defined and punished under Article 266-A, paragraph 1(d) in relation to Article 266-B, paragraph 1 of the Revised Penal Code. He is sentenced to suffer the penalty of *Reclusion Perpetua*. He is ordered to pay private complainant P50,000.00 as civil indemnity plus P50,000.00 as moral damages.

If qualified under Article 29 of the Revised Penal Code as amended by R.A. 6127 and E.O. No. 214, the accused, if he has agreed in writing to abide by the same disciplinary rule imposed upon convicted prisoners, shall be credited with the full duration of his preventive imprisonment, otherwise, he shall only be credited with 4/5 of the same.

SO ORDERED."

An Information^[3] was filed charging appellant with the crime of statutory rape. The Information reads:

"That sometime in the month of July 2005 in Brgy. XXX, Municipality of XXX,^[4] Capiz, Philippines and within the jurisdiction of this Honorable Court, the said accused, with lewd design willfully, unlawfully and feloniously did lie and have carnal knowledge of one AAA,^[5] a mentally retardate, against the will of the latter.

That the commission of the crime is aggravated by the fact that the private offended party is mentally retardate who was then 22 years old at the time of the incident yet, considered and has mental faculties as that of a minor child.

Contrary to law."

Upon arraignment on April 14, 2010, appellant pleaded not guilty to the crime charged.^[6]

Pre-trial was thereafter conducted and a Pre-Trial Order^[7] was issued dated May 5, 2010.

Trial on the merits ensued with the prosecution presenting the following witnesses, namely: AAA,^[8] Dr. Hector Flores,^[9] Dr. Leah Florence Adricula Sicad,^[10] and BBB.^[11]

The evidence of the prosecution, as summarized by the RTC in its assailed Decision, are as follows:

"As per the testimony of Dr. Leah Florence Adricula-Sicad, the mental faculties of the victim is severe in areas where the executive functioning judgment and other areas of intellect are concerned. The victim's age is comparable to a child of around 4-5 years old as a result of mental retardation which is congenital in nature (Exh. F, p. 67). It being congenital in nature, the victim could not have consented or would be in any position to give consent as to the consequences of a certain act. (TSN, July 21, 2010, p. 8).

BBB, mother of the victim, testified only to the fact that she came to know that her daughter was pregnant when she brought her to Dr. Hector Flores for medical check up. Her daughter told her she was brought by the accused in a forested area and was raped. She also brought her to Dra. Leah Florence Ad(r)icula-Sicad to check whether she had mental retardation and later on to the police authorities for the purpose of filing the present case. On April 21, 2006, her daughter delivered her second child whom they named CCC (Exh. G). The first child of her daughter was fathered by a certain DDD.

On direct testimony, complainant AAA testified that on July 2005, she was drying palay when the accused invited her to go to the forest. The accused then undressed her by pulling down her shorts and panty. The accused inserted his penis into her vagina and started a pumping motion. She did not like what the accused did to her and it was painful. After the pumping motion, a white liquid came out from the penis of the accused. It lasted quite long and after which, she went home. After the incident, she got pregnant and delivered a child who was named CCC (Exh. G).

On cross-examination, she testified that she practiced and was coached by her mother of what she has to say in court and to point to the accused as the one who had sex with her but in fact the accused did not really have sex with her.

As the examination of the witness continued on re-direct and re-cross including the questions propounded by the court, the witness/complainant made conflicting answers to the same question which prompted the court to reset the hearing to another date to give the

witness time to rest. Defense objected to the resetting for it would give the prosecution the opportunity to teach the complainant.

The defense, on the other hand, presented the following witnesses, namely: Vicente Monajan, Jr.,¹² Remedios Llorico,^[13] accused Jonathan Baay^[14] and Teresita Baay.^[15]

The evidence of the defense, as summarized by the RTC in its assailed Decision, are as follows:

“On the other hand, defense witness Vicente Monajan and Remedios^[16] Llorico testified on the whereabouts of the accused during the month of July 2005. They know the complainant AAA who is a resident of Brgy. XXX, Municipality of XXX, Capiz while the accused is their nephew. During the month of July 2005, the accused was staying with Vicente Monajan. He works in the farm and operates farm implements together with Vicente Monajan. The farm is about 200 meters away from the house of the complainant. During all these times in July 2005, the accused has never gone home to their own house which is only about 600 meters away.

The accused Jonathan Baay testified that the house of the complainant is about 500 meters away from their house and that the complainant is mentally retarded. It is not true that he invited the complainant to the forested area near their house and raped her in the month of July 2005, because from May 15 to August 30, he was operating farm machineries and working in the farm of Motet Monajan in Sitio XXX, Brgy. XXX, Municipality of XXX, Capiz which is about one (1) kilometer away from the forested area as alleged in the complaint. While he was working in said farm, he stays in a hut beside the farm and buys his needs at a store near the place. He was accused of rape because he planted Gemelina beside the pigpen owned by the family of the complainant. He was not able to file counter affidavit because he has no money at that time. Since the filing of the present case, he never left their place until he was arrested in 2010.

Teresita Baay, mother of the accused, testified that from May 15 to August 30, 2005, she was working in the farm of Motet Monajan Faeldonea together with her son and other farm workers in Sitio XXX, Brgy. XXX. They would start working at 7 o'clock in the morning up to 5 o'clock in the afternoon. Her son was the operator of mechanized farm implements owned by Mrs. Faeldonea. During the month of July 2005, her son was living together with his live-in partner in Sitio XXX in the middle of the farm. The conflict with the family of AAA started in September 2005 when her family discovered she was pregnant and they were ashamed the child to be born has no father. The family of the complainant got angry with the accused because they are being charged of claiming the trees that were planted by the family of the accused.”

Thereafter, the RTC rendered the assailed decision.

Hence, the instant appeal with the following lone assignment of error:

THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT
DESPITE THE FACT THAT HIS GUILT WAS NOT PROVEN BEYOND
REASONABLE DOUBT.

The appeal is bereft of merit.

Appellant contends that the RTC erred in convicting him for statutory rape considering that on cross-examination and in answering clarificatory questions propounded by the court, private complainant has repeatedly said that appellant did not have sex with her. She likewise declared that she said she was raped by appellant because her mother instructed her to say so and in fact, they practiced what she had to say before she testified in court.

We do not agree with appellant.

As correctly pointed out by the RTC, the private complainant was a proven mental retardate. Such fact was even admitted by appellant himself. Private complainant had the tendency to simply agree with the leading questions propounded to her because of her poor orientation regarding time and place. But her orientation with persons is good, this means that she could identify the people that she knows. Hence, she may be inconsistent as to whether or not appellant had sexual intercourse with her but she was always consistent on her identification of appellant as the one who raped or had sex with her. The ratiocination of the RTC is hereunder quoted with approval, to wit:

"In her testimony in open court, Dr. Sicad said that while the complainant may have poor orientation regarding time and place, she was oriented by person, meaning, she could identify the people that she knows. (TSN, July 21, 2010, p. 10)

In the case study^[17] conducted by Mrs. Veronica D. Martinez, Municipal Social Welfare and Development Officer of XXX, Capiz, dated January 4, 2006, complainant was consistent in pointing to Jonathan Baay as the person who abused her.

Meanwhile, during her testimony which was held in chamber, the Court has noted that when the complainant was asked leading questions, she has the tendency to agree with the leading questions asked. What was significant however, notwithstanding some discrepancies in her testimony, was the consistent and positive identification of the accused as the person who raped her or had sex with her."

The Supreme Court, in the case of *People of the Philippines vs. Ninoy Rosales y Esto*,^[18] has affirmed the conviction of an accused who was likewise charged for raping a woman suffering from mental retardation on the strength of the latter's consistent assertion that it was the accused thereat who raped her. Her actuation on other matters may be wanting but she never wavered in her assertion that she was raped by the said person. The Supreme Court further ruled that:

"...(I)t is not fair to judge a mentally-retarded person, one who does not have a good grasp of information and who lacks the capacity to make a

mental calculation of the events unfolding before her eyes, according to what is natural or unnatural for normal persons.^[19]

In this case where the victim was proven to be a mental retardate, it could certainly not be expected that AAA would have behaved or acted in accordance with what appellant perceived to be as normal.

The fact of AAA's mental retardation did not impair the credibility of her testimony. Mental retardation per se does not affect credibility. A one mentally retarded may be a credible witness. The acceptance of her testimony depends on the quality of her perceptions and the manner she can make them known to the court.^[20]"

Moreover, the allegation of the implausibility of the testimony of herein private complainant is tantamount to questioning the credibility of the latter. Well-settled the rule that the assessment of the credibility of witnesses and their testimonies is best undertaken by a trial court, whose findings are binding and conclusive on appellate courts. Matters affecting credibility are best left to the trial court because of its unique opportunity to observe the elusive and incommunicable evidence of that witness' deportment on the stand while testifying, an opportunity denied to the appellate courts which usually rely on the cold pages of the silent records of the case.^[21] More so in the instant case where the witness/private complainant is a mental retardate whose deportment may not be the same as that of an ordinary witness.

Appellant also wants us to believe that the charge of rape against him was merely concocted by the mother of the private complainant who got angry with him because he planted trees near her pigpen. To our mind, this is plain conjecture and a vain attempt to avoid liability. The Supreme Court in the case of PEOPLE OF THE PHILIPPINES VS. CHARLIE GLORIA,^[22] has ruled that:

"The Court does not subscribe to appellant's claim that the filing of the rape charges was part of ABC's effort to gain custody of her children, especially since the accused failed to prove the same. This is mere conjecture and obviously, a vain attempt to escape liability from his dastardly acts. It will take a sick and sinister parent to conjure up such a ploy and use an offspring as an engine of malice. It is also unthinkable for a mother to allow an examination of her daughter's private parts and subject her through the rigors and humiliation of a public trial if the accusations were not true, or if she was not motivated solely by the desire to have the person responsible for the defloration of her daughter apprehended and punished."^[23]

Appellant likewise contends that the RTC erred in not giving credence to his defense of denial and alibi. We do not agree with appellant. It is established jurisprudence that denial and alibi cannot prevail over the witness' positive identification of the accused-appellant.^[24] Instructive is the ruling of the Supreme Court in the case of PEOPLE OF THE PHILIPPINES vs. JOSEPH DELA PAZ,^[25] to wit:

"As it is settled that the victim in the present case is a mental retardate, the only thing that must be established is the fact of sexual congress between the appellant and the victim.