

THIRD DIVISION

[CA-G.R. CR-H.C. NO. 05659, May 29, 2014]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MARCIANO ALMAREZ @ "SANOY", ACCUSED-APPELLANT.**

DECISION

DE GUIA-SALVADOR, R., J.:

This is an appeal from the 11 November 2011 Decision of the Regional Trial Court of Gumaca, Quezon, Branch 61, in Criminal Case No. 5175-G, finding accused-appellant Marciano Almarez ("**appellant**") guilty beyond reasonable doubt of the crime of rape.

THE ANTECEDENTS

In an Information filed on 05 January 1996, appellant was charged with the crime of rape committed against AAA^[1], a mentally retarded minor girl, viz.:

"That on or about the 23rd day of December 1994, at Barangay [YYY], in the Municipality of Mulanay, Province of Quezon, Philippines and within the jurisdiction of this Honorable Court, the above-named [appellant], armed with a bolo, with lewd design, by means of force and intimidation, did then and there willfully, unlawfully, and feloniously have carnal knowledge of said [AAA], a 16-year old mentally retarded girl, against her will.

Contrary to law. "

Arraigned on 31 May 2006 with the assistance of a counsel *de officio*, appellant pleaded "not guilty" to the charge.^[2]

During trial, the prosecution presented the testimonies of the victim AAA and her mother MMM. For the defense, only appellant testified.

The Facts

Version of the Prosecution

The Solicitor General summarized the testimonies of the prosecution witnesses in the Appellee's Brief as follows:

"6. [AAA] is mentally handicapped. Her abnormal behavior has been observed since she was three (3) years old. She suffers convulsions and has difficulties in walking and speaking. On consultation with a doctor from Lucena, it was explained to [AAA's] mother that her daughter has a brain complication. Not surprisingly, [AAA] never attended school.

7. [AAA's] condition is not a secret. Appellant, a neighbor, himself observed that she is 'not normal' '(d)ahil po parang iba ang pag-iisip niya at siya ay hinihimatay.'

8. Testifying with great difficulty, [AAA], testified how she was raped or *iniyot* by appellant when she was sixteen (16) years old.

9. On December 23, 1994, when the sun was still up, at the *kaingin* or *sagingan* more or less [one] half a kilometer away from the house, of [AAA] in Barangay [YYY], Mulanay, Quezon, appellant ordered [AAA] to lie down and placed his bolo knife or *itak* in front of her. He then removed her underwear and inserted his penis or '*buto*' in her vagina or '*puki*.'

10. Appellant's penis was inside the [AAA's] vagina for quite sometime. The latter's vagina hurt when appellant inserted his penis and she bled.

11. After she was raped, [AAA] went home asking for help from [MMM]. [MMM] saw her bleeding and immediately asked what happened.

12 .[AAA] ... told [MMM that] she was raped by appellant. [MMM] then brought her to the Municipal Building of Mulanay, where she was attended to by one Dr. Morales. Dr. Morales told [MMM] that [AAA] was '*talagang nakuhaan*.'

13. Subsequently, the [MMM] decided to verify where the rape took place. She went to the *sagingan* where she saw [AAA's] *sapin*. On December 31, 2009, [AAA] executed a *Sinumpaang Salaysay*, thumbmarked by her and signed by [MMM]."^[3]

Version of the Defense

Appellant sought to establish his defenses of denial and *alibi*, as well as ill-motive on the part of MMM to falsely accuse him of raping her daughter AAA. The Public Attorney's Office (PAO) summed up appellant's version of the incident, thus:

[Appellant] denied he raped [AAA]. He was in his father's place, when the alleged rape incident happened on December 23, 1994. He knows [AAA] and her family, being the neighbors of his common-law-wife.... He [resides at] his father's house which is about one (1) kilometer away [from AAA's house].... The father of [AAA] was already dead when he got acquainted with her and she lives only with her mother. The case was maliciously filed against him because [AAA's] mother... has a grudge against him as his common-law wife is the concubine or *kabit* of [MMM's nephew] ("*kabit ng kabit ko*"), and [MMM] did not like it that her nephew was fuming mad.

The distance between the house of his father and that of [AAA] could be traversed by walking for less than an hour. [The entire day] of December 23, 1994 [appellant] never left his parent's house...

X X X X X X X X X"

THE TRIAL COURT'S DECISION

On 23 May 2012, the trial court promulgated the Decision dated 11 November 2011, finding appellant guilty of raping AAA. The decretal portion of the decision reads:

"WHEREFORE AND IN VIEW OF ALL THE FOREGOING, the court finds [appellant] GUILTY beyond reasonable doubt of rape and he is hereby sentenced to suffer the penalty of RECLUSION PERPETUA, instead of Death, in view of the enactment of Republic Act No. 9346, prohibiting the imposition of the death penalty and to pay the victim the amount of Fifty Thousand Pesos (P50,000.00), as civil indemnity, Fifty Thousand Pesos (P50,000.00), as moral damages, and Thirty Thousand Pesos (P30,000.00), as exemplary damages.

SO ORDERED."

The Issue

Unable to accept the verdict of guilt, appellant is now before this Court, via the present appeal, faulting the trial court as follows:

"THE COURT A *QUO* GRAVELY ERRIED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE PROSECUTIONS' FAILURE TO OVERTHROW THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE IN HIS FAVOR.^[4]"

The Court's Ruling

The appeal is bereft of merit.

The crime of rape is defined under Article 266-A, paragraph 1 of the Revised Penal Code, as amended by Republic Act No. 8353, as follows:

ART. 266-A. *Rape; When and How Committed.* - Rape is committed.

1) By a man who have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat or intimidation;

b) **When the offended party is deprived of reason** or otherwise unconscious;

c) By means of fraudulent machination or grave abuse of authority; and

d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.^[5]

The gravamen of the offense of rape is sexual intercourse with a woman against her will or without her consent.^[6] The phrase "*deprived of reason*" in the aforequoted provision refers to mental abnormality, deficiency, or retardation.^[7] A mental retardate is not capable of giving her consent to a sexual act. In order to successfully prosecute a crime of rape of a mental retardate, two elements must be established: (1) the mental retardation of the victim, and (2) the sexual congress between the accused and the victim.^[8] In this case, the prosecution was able to

prove both elements with moral certainty through the credible testimony of the victim.

First element: AAA suffers from mental retardation

Mental retardation^[9] is a disorder in which a person's overall intellectual functioning is well below average, with an intelligence quotient (IQ) of around 70 or less. Individuals suffering from mental retardation also have a significantly impaired ability to cope with common life demands and lack some daily living skills expected of people in their age group and culture. The impairment may interfere with learning, communication, self-care, independent living, social interaction, play, work, and safety.

Mental health clinicians have defined four degrees of severity of mental retardation based on IQ score. These are (1) mild retardation (IQ range 53-68), (2) moderate (IQ range 36-52), (3) severe (IQ range 20-35), and (4) profound (IQ range below 20).^[10]

In ***People v. Dalandas***,^[11] Supreme Court clarified that "clinical evidence is necessary in borderline cases when it is difficult to ascertain whether the victim is of a normal mind or is suffering from a mild mental retardation." Medical evidence is not a condition *sine qua non* in all cases of rape or sexual crimes to prove that the victim is a mental retardate or is suffering from mental deficiency or some form of mental disorder.^[12] In fact, mental retardation may be established by proof other than clinical evidence, such as by the testimonies of witnesses,^[13] and the observation by the trial court.^[14]

In ***People v. Almacin***,^[15] and ***People v. Dumanon***,^[16] no clinical evidence was presented by the prosecution but the mental retardation of the victims were ruled to have been duly established. In ***Almacin***, the Supreme Court concluded that the victim was mentally incapable of agreeing or refusing to engage in the sexual intercourse because she was illiterate and unschooled; while in ***Dumanon***, the High Court sustained the trial court's observation and conclusion that the victim was a mental retardate based on her physical appearance and on her difficulty to understand and answer the questions during her testimony. Guided by these rulings, We hold that the trial court correctly ruled that AAA is a mental retardate, despite the absence of a clinical evaluation of her mental capacity.

First, the mental retardation of AAA manifested in her outward physical appearance and demeanor, such that the defense counsel made no objection, and the Presiding Judge instantly granted the prosecution's request to be allowed to ask leading questions during AAA's direct examination, thus:

"PROSECUTOR BIGORNIA:

We have another witness, Your Honor, [AAA].

We would like to manifest for the record that the victim in this case [AAA] is a mentally handicapped person. May we ask that the Honorable Court take judicial notice of her demeanor the way she speak [and] her manner..... **Considering the condition of this witness may we be allowed to ask leading questions.**

ATTY. CABAGUE:

We are amenable, Your Honor.

COURT:

Counsel is allowed to ask leading questions considering the mental defect of the witness.”^[17]

Second, at the time AAA testified on 10 October 2007, she was already 29 years old,^[18] yet she cannot speak clearly (“*utal*”). Thus, on motion of the prosecution and without any objection from the defense counsel, the trial court allowed her sister to translate her answers during her testimony.^[19]

Third, appellant admitted that AAA is not a normal person. During his cross-examination, appellant made his assessment of AAA's mental condition in this wise:

“Q Did you notice Mr. witness, if there was anything unusual about the condition of [AAA]?

A Yes, maám.

Q What is that observation?

A Hinihimatay po siya. She would faint.

x x x

x x x

x x x

Q Other than that fainting spell, **would you say that [AAA] based on your observation is a normal child?**

A **No, she is not normal, maám.**

Q **Based on your observations you are saying that [AAA] is not normal?**

A **Yes, maám.**

Q **What is your basis for saying that?**

A **Dahil po parang iba and pag-iisip niya** at siya ay hinihimatay, maám.

Q **In your opinion, [AAA] is not normal because of that condition that she did not seem to be in the right mind** and also she would faint, is that what you are saying?

A **Yes, maám.**^[20]

Fourth, the credible testimony of MMM on her daughter's mental capacity bolstered the conclusion of the latter's mental retardation.^[21] MMM testified as follows:

“Q Mrs Witness, as the mother of [AAA], what can you say about her condition?

A [AAA] is abnormal since she was three (3) years old because she suffered convulsion that is why **she was not able to go to the school maám.**