

TENTH DIVISION

[CA-G.R. CR-H.C. NO. 01269, August 10, 2006]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
RENATO ENDINO Y GAPIDO, ACCUSED-APPELLANT.**

DECISION

REYES, JR., J.:

This is an appeal from the Decision (Records, pp. 136- 142) dated 5 March 2004 of the Regional Trial Court of Gubat, Sorsogon, Branch 54, in Criminal Case No. 2172 finding accused-appellant Renato Gapido guilty of the crime of rape and sentencing him to *Reclusion Perpetua*, the dispositive portion of which reads:

"WHEREFORE, the guilt of the accused having been proven by the prosecution beyond an iota of reasonable doubt, pronounces him GUILTY of the crime of RAPE and sentences him to suffer the penalty of *RECLUSION PERPETUA*.

The period of his detention shall be credited in his favor.

No pronouncement as to costs." (Records, p. 142)

Appellant was charged in an information which reads:

"The undersigned Prosecutor accuses RENATO ENDINO y GAPIDO of Buhang, Bulusan, Sorsogon for VIOLATION OF RA 8353, committed as follows:

That on or about the 19th of February, 2000 at 3:00 o' clock in the afternoon at barangay Buhang, Municipality of Bulusan, Province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the said accused, by means of violence and intimidation, did then and there, willfully, unlawfully and feloniously have carnal knowledge of one Mary Ann Gaurino y Buasan, a mentally retarded woman, against her will and consent, to her damage and prejudice.

CONTRARY TO LAW." (Records, p.28)

Upon arraignment on 10 July 2000 (Records, p. 28), appellant pleaded not guilty, and after pre-trial on 28 August 2000 the case was set for hearing.

It is undisputed that at around 3 o' clock in the afternoon of 19 February 2000, appellant and the alleged victim Mary Ann Gaurino (Mary Ann, for brevity) were inside the house of one Jaime Frontona at Barangay Buhang, Bulusan, Sorsogon. What is in dispute is: What happened while they were at the said place. It was the prosecution's allegation that while the two (2) were in the said place, appellant

ravished complainant. Naturally, appellant denied having sexual intercourse with the complainant.

To prove its assertion, the prosecution presented five (5) witnesses. The prosecution presented Ma. Elena Sharon Sampilo-Young, Rural Health Physician, who conducted the medico-legal examination on complainant. She testified that complainant confided to her that she was sexually abused. The medical report (Exh. "B") indicated that complainant had fresh lacerations in her vagina at 1, 3, and 9 o' clock positions.

The prosecution also presented Norma B. Moll, Guidance Counsellor at the Bicol University, Legaspi City, who stated that she was a psychometrician and consultant of the Department of Social Welfare and Development (DSWD). She testified that she conducted examinations on the complainant and found that she has a mental age between nine to ten years old although she was already twenty years old at the time of her examination.

The prosecution also presented Aida Gaurino (Aida, for brevity) mother of Mary Ann, Mary Ann herself and Andrea Gaurino (Andrea, for brevity), whose testimonies may be summed up as follows: That on the afternoon of 19 February 2000, Andrea and Mary Ann were selling crabs but when they reached the road, appellant held the hands of Mary Ann and sent Andrea home, thus, they were not able to sell crabs. While on her way home, she met Aida who asked her where Mary Ann was. Aida then started to look for her daughter and found her outside the house of Jaime Frontona. Mary Ann then started crying. At home, Mary Ann told her mother that she was raped by appellant. Aida further testified that her daughter was mentally retarded. The testimony of the witnesses for the prosecution were summed up by the trial court as follows:

"(1) Ma. Elena Sharon Sampilo-Young – Rural Health Physician and a resident of Gubat, Sorsogon – she conducted a medico-legal examination on private complainant Maryann Gaurino on February 20, 2000 at the former's home since the latter missed her at the Gubat District Hospital since she was away on training. Maryann, upon interview, confided that she was sexually abused. In her medical report she indicated that she found lacerations fresh with sharp edges in the vagina with inflammation at 1,3, and 9 o' clock positions which could have happened within five days of the examination and the hymen was already damaged which could have been the result of sexual intercourse. The medical report is remarked Exh. 'B', the findings, Exh. 'B-1', the signature of Dr. Young, Exh. 'B-2'. (TSN November 20, 2000, pp. 2-6 and TSN March 28, 2003, p. 7)

(2) Aida Gaurino, resident of Buhang Bulusan, 60 years old, mother of Maryann (sic), the private complainant. She declared that since age 4 Maryann (sic) had been slow learner and she was able to finish Grade VI because she was just given consideration in school. Renato Endino is their neighbor and still a relation of her husband though she did not say what the degree of relation is. She identified the accused in court. She recalled that on February 10, 2000 at around 3:00 p.m. while she and Maryann (sic) were sleeping, Renato Endino went to their house, woke them up and told Mary Ann to bring the baby crabs ('semilya') which she

was selling to his brother, 'Dayi', who just arrived. So she told Maryann (sic) to sell the crabs and asked Andrea, a next door girl, to accompany the former. She saw Renato pulling Maryann (sic) by the hand towards the sea but did not mind it as she was occupied by her 'LBM'. Later Andrea returned and told her that Renato sent her home. She got nervous so she started looking for Maryann (sic) and after a while found her going out of the house of Jaime Frontona. Asked why she was there Maryann (sic) started crying, and said she was brought there by Renato Endino who, when confronted by her, said he did nothing to her daughter. At home, Maryann (sic) told her she was raped by Renato Endino. She and her husband went to the police station and filed a case a case against Renato.

She further testified that Maryann (sic) responds to her commands/requests all the time but sometimes she does something erroneous or defective since she is mentally defective. This fact is particularly known to the teachers. She was examined by a psychometrician. She identified the document relative to such examination, a psychological evaluation, Exh. 'A', the second page thereof, Exhibit 'A-1'. (TSN, May 28, 2001, pgs. 3-9).

On cross, she declared that after the girl Andrea was sent back by Renato she first looked for her daughter at the place of the one buying crabs by the bridge, which was far, but did not find her there. She testified that Jaime Frontona was not in his house but it was Danilo Hagos who stayed there; however, he was not there when Renato brought Maryann (sic) to that house. (TSN August 20, 2001, p. 6)

(3) Andrea Gaurino – 11 years old, Grade V, Buhang Elem. School, Bulusan, resident of Buhang – identified the accused and the private complainant in court. She declared that on February 19, 2000 at about 3:30 p.m. she and Maryann (sic) were about to sell crabs but when they reached the road Renato Endino or 'Inoy Renato' as she calls him, held the hand of Maryann (sic) and she was sent home by the former. So, they were not able to sell small crabs to 'Inoy Daye', Renato's brother. She was told that the two of them (Renato and Maryann (sic)) would be the ones to sell the crabs. When she was standing by their house, 'Manay Susan' as she calls Aida Gaurino, mother of Maryann (sic), passed by and asked her where Maryann (sic) went before she went home, she said they went towards the place of Jaime Frontona. She said Maryann (sic) went freely with Renato. (TSN October 8, 2001, pgs. 2-9)

(4) Norma B. Moll, 57, Guidance Counsellor at the Bicol University, Legaspi City, was presented as an expert in the field of psychology being a psychometrician and a consultant of the DSWD. She testified that she used a combination of the Purdue-Nonlanguage test and 'HTP' or 'House-Tree-Person' test, the Vender Gestelt Visual Motor Test, and the Sentence Completion Test to ascertain the mental and psychological and Behavioral Evaluation' which she prepared with respect to her examination of the private complainant, as well as her signature therein (Exh. 'A-3') and the Test Report and Interpretation (Exh. 'A-4'). She placed Maryann (sic) in the mentality of a 10-to-12-year old even if she was 20 at the time of her

examination.

On cross, she declared that she does not do medical examination since she is not qualified to do that. She can only testify on the area of mental functioning in terms of intelligence. She said that Maryann's (sic) defect is not mental but physical. Also, her poor school orientation may have hindered her mental development. (TSN July 22, 2002, pgs. 2-11)

(5) Maryann (sic) Gaurino, 23, the private complainant, identified the accused. She said the latter would usually accompany her father in fishing. She recalled that on February 19, 2000 at 3:00 p.m. she was at the place of Jaime Frontona. The accused first invited her to sell crabs and volunteered to accompany her. But instead, he brought her to Jaime Frontona's house and in the kitchen had sex with her. He first undressed her but she did not resist not do anything because she was afraid as he told her not to tell her mother or he would do something to her. He performed the sex act on her 4 times but she did nothing as she was afraid. After she got dressed and she was leaving the place Danilo Hagos arrived. Renato was still in the kitchen. Danilo did not say anything. Then she heard her mother calling her and she answered. She cried and when asked what Renato did to her she told her mother that she performed sexual intercourse on her. He mother went to Frontona's house to see Renato Endino while she left for home.

Queried about Andrea Gaurino, she said the latter was with them when they were about to sell crabs but was sent home by the accused who said that he and Maryann (sic) would be the ones to sell the crabs.

She went on to say that she, with her mother, went to the police and reported the incident. The police picked up the accused. She was then brought to Dr. Young by her mother and her sex organ was examined and they then went home. She identified the medical certificate (Exhibit 'B') issued by Dr. Young. (TSN February 21, 2003 pgs. 3 to 15)

On cross, she repeated that Renato brought her to the house of Frontona and she was forced to go in. There were no people around at that time at about 3:00 p.m. and he threatened her. She did not attempt to shout nor run as she was threatened and told not to tell her parents. She just stood there as Renato pulled her shorts and panty down up to her knees. He also removed his pants. (TSN March 21, 2003 pgs. 2 to 9) She did not know how long the sexual intercourse lasted. She described that she was made to sit on his lap with her legs open. The accused was sitting on a chair when he let her sit on him. She did not embrace him and when the accused kissed her she removed her lips. The accused embraced her tightly. After the incident Danilo Hagos arrived. (TSN March 29, 2003 pgs. 2 to 7)." (Records, pp. 136-138)

The defense for its part presented two (2) witnesses, the appellant and Danilo Hagos. While the defense admitted that on 19 February 2000, appellant and Mary Ann were in the house of Jaime Frontona, they claimed that nothing happened between the two. Their testimonies were summed up, thus: