

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ALEJANDRO OCOMEN @ ANDOY, ACCUSED-APPELLANT.**

Ponente: PERALTA, JR., E. B., J.

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PERALTA, JR., E. B., J.:

Elevated to Us on appeal[2] is accused-appellant Alejandro Ocomen's (Andoy) formal plea to extricate from the remaining adverse verdict in Criminal Case No. 2011-0474-D[3] for rape of a fifteen year old mental retardate at Dagupan City, Pangasinan.[4]

Arraigned therefor, Andoy reiterated his innocence to the separate indictment,[5] and the criminal cases underwent joint trial.

In the course of trial, the prosecution presented AAA and BBB (private complainant's mother),[6] Dr. Teofilo Del Prado (Dr. Del Prado), Chief of the Dental Department of Region I Medical Center in Dagupan City, and Priscilla Mejia (SWA Mejia), a Social Welfare Assistant of the Municipal Social Welfare and Development Office (MSWDO) in Mangaldan, Pangasinan.

Mindful of the defendant's exoneration in three other charges of what appeared to be of the same tenor as the current accusation against the accused,[7] and borne of sheer historicity, We revert to the mass of evidence below.

AAA relayed that she was ravished by appellant ten (10) times in different places such as in the field, at the patalan near the river, and at the school. In those occasions, AAA claimed that the appellant bended in front of her, brought out his penis and inserted it inside her vagina, which caused her some pain. She told her mother what happened and they reported the incident to the police where AAA conveyed that she had sexual intercourse with appellant several times. AAA was then brought to the hospital for examination.[8]

BBB, the mother of AAA, recounted that on February 9, 2010, AAA told her that AAA had sexual intercourse with appellant. They immediately reported it to the barangay and police authorities, as evidenced by Police Blotter Entry No. 246 dated February 9, 2010.[9] The police advised them to subject AAA to a medical checkup, which she heeded. After AAA was issued a Medico-Legal Certificate,[10] they filed a rape case against appellant.[11]

BBB further narrated that on April 14, 2011, Thursday, AAA went to the patalan riverside. BBB went looking for her and AAA was reported to the police as per Police Blotter Entry No. 786.[12] AAA returned home on Saturday afternoon. AAA then told BBB that appellant had sexual intercourse with her several times at the patalan where he threatened to kill her. They again reported the incident to the police as evidenced by Police Blotter Entry No. 803.13 Thereafter, AAA and BBB went to the DSWD in Mangaldan, Pangasinan to report the incident.[14] AAA also submitted herself to a medical check-up for the second time.[15]

Prosecution witness SWA Mejia testified that she knew AAA and BBB since 2005 because the victim and her mother were perennial clients of DSWD for financial and moral assistance. According to SWA Mejia, in 2010, AAA and BBB informed her that appellant raped her. This incident was followed in 2011, and she was informed that AAA was raped again by appellant on April 14, 15 and 16, 2011.[16]

With reference to the absence of the birth certificate and other documents to prove that AAA was still a minor, Dr. Del Prado sat on the witness stand to testify thereon. He declared that a dental examination of AAA was conducted to verify the age of AAA and a medical certificate was issued on the matter.[17] Upon examination of AAA's oral cavity and teeth, together with the performance of a panoramic X-ray, it was ascertained that her third molar was unerupted[18] which served as basis for an evaluation[19] that AAA's age was under eighteen (18) years old. Dr. Del Prado declared AAA to be around sixteen (16) years old with a percentage error of 20%.[20]

For his defense, the appellant denied any wrongdoing. He claimed that his house is near the elementary school in Macayug. Although the house of AAA is only about 150 meters from his house, appellant ventured to add that he did not go to AAA's house, and neither did he acknowledge or speak to her whenever she passed appellant's house.[21]

Appellant asserted that on February 6, 2010, he was at the farm of his employer, plowing the fields from 6:00 a.m. to around 10:00 in the morning. After finishing his work, he went home to his wife, children and grandchildren.[22]

For the incidents on April 14, 15 and 16, 2011, appellant admitted that he could not remember where he was for he was in transit to purchase corn. What he was certain of was that he did not see the victim on those dates since appellant was at home, sweeping the floor, when the police authorities came and placed him under arrest.[23]

Appellant also added that the February 6, 2010 episode of an alleged lechery was dismissed in view of private complainants' Affidavit of Desistance.[24]

After trial, amidst positive identification by AAA of the appellant, the court a quo rejected the defense of alibi and denial. Hence, the court of origin sentenced the appellant to suffer the penalty of reclusion perpetua for the incident on April 14, 2011[25] and to pay the victim P50,000 as civil indemnity, P50,000 as moral damages, and exemplary damages in the amount of P20,000.

Lodged before this Court is appellant's appeal based solely on the perceived insufficiency of evidence from the People.[26]

It is a well-entrenched rule that in appreciation of evidence, the trial court's evaluation of the credibility of the witness is entitled to the highest respect absent a showing that it overlooked, misunderstood or misapplied some facts or circumstances of weight and substance that would affect the result of the case. This is because the trial court is deemed to be in a better position to decide the question of credibility, since it had the opportunity to observe the witnesses' manner of testifying, their furtive glances, calmness, sighs and the scant or full realization of their oath.[27] In almost all rape cases, the credibility of the victim's testimony is crucial in view of the intrinsic nature of the crime where only the participants therein can testify to its occurrence. "[The victim's] testimony is most vital and must be received with the utmost caution." Once found credible, the victim's lone testimony is sufficient to sustain a conviction.[28]

With respect to the felony of violacion de una mujer,[29] Article 266-A of the Revised Penal Code serves as the matrix therefor, as amended by RA 8353:

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

- By a man who shall have carnal knowledge of a woman under any of the following circumstances:
- Through force, threat or intimidation;
- When the offended party is deprived of reason or is otherwise unconscious;

- By means of fraudulent machination or grave abuse of authority;
- When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above is present;

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Art. 266-B. Penalties. —

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The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/ qualifying circumstances:

1. When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.

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In relation thereto, sexual intercourse of a mental retardate is likewise rape because a mental retardate is not capable of giving her consent to the sexual act. Proof of force and intimidation is not necessary. It is sufficient that the State establish sexual congress between the accused and the victim.[30]

Thus, in the instant appeal, the People must show to the satisfaction of the court and beyond an iota of reasonable doubt that the appellant had carnal knowledge with AAA. Along this line, it is fitting to echo how AAA described, with some difficulty, the harrowing experience she had with the appellant:[31]

Direct Examination By Pros. Marcelo Espinoza:

Q: Madam Witness, do you know the accused Alejandro Ocomen?

A: Yes, Sir.

Q: Why do you know him?

A: (witness has no answer.)

Q: Do you remember what Alejandro Ocomen do to you, if any?

A: He had sex with me, sir. (“iniyot to ak”) Court:

Q: How many times?

A: For ten (10) times, ma'am.

COURT INTERPRETER

Witness open her hands, left and right.

Pros. Espinoza:

Q: Do you remember where the incident happened?

A: Yes, Sir.

Q: Where?

A: In the fields, sir.

Q: And when you said that Alejandro had sexual intercourse with you, what did he do specifically?

A: Like this, sir.

COURT INTERPRETER

Witness is demonstrating by bending/bowing her body.

Pros. Espinoza:

Q: Where is Alejandro Ocomen then when as you demonstrated you bend your body?

A: At the patalan near the river, sir.

Q: When you bend your body, upper body as you said you are having sex, where was Alejandro then?

A: In school, sir.

Q: So, that incident happened in school?

A: Yes, sir.

Q:

Where was Alejandro in relation to you when you bended with your upper body? Was he in front of you, left side, right side or at the back?

A: Infront, sir.

Q: If he is infront and you bended infront of him, how was he able to have sex with you?

A: (no answer from the witness)

Q: When you said Alejandro had sex with you, are you telling us that he brought out his penis from his pants and lowered his pants?

A: yes, sir.

Q: And what did he do with his penis?

A: He inserted his penis inside my vagina, sir.

Q: What did you feel when he inserted his penis inside your vagina?

A: It was painful, sir.

Q: Were you brought to the hospital for examination?

A: Yes, sir.

Q: Did you report the incident to anybody?

A: Yes, sir.

Q: Who?

A: To the police, sir.

Q: And did you tell your mother about it?

A: Yes, sir.

Q: And you and your mother reported to the police?

A: Yes, sir.

Q: And in these 6 incidents of rape, you cannot recall when was this?

A: I could recall, sir.

Q: Can you tell us when?

A: (No answer from the witness)

Q: But you can recall that these incidents happened in the fields, riverbank, and near the school?

A: Yes, sir.

COURT:

By the way, you mentioned that Alejandro Ocomen raped you, will you look around the courtroom and point to us who was that person who raped you?

COURT INTERPRETER:

Witness is pointing to a person inside the courtroom wearing a yellow BJMP T-shirt and when asked his name, he identified himself as Alejandro Ocomen.

COURT:

Q: Was there other persons who raped you other than Alejandro Ocomen?

A: None, ma'am.

Q: He raped you several times?

A: Yes, ma'am.

COURT INTERPRETER

Witness is opening her two hands and she said "yes".

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From the foregoing declarations, AAA clearly described that the rape incidents happened at the field, the patalan which is near the river, and at the school. She even demonstrated how the appellant bent over, lowered his pants, and brought out his penis and inserted the sexual organ inside her vagina.

Moreover, testimonial declarations were supplemented by the real evidence on record which indicated that AAA sustained hymen lacerations at 9 o'clock position and old healed hymen lacerations at 3 o'clock, 6 o'clock and 9 o'clock positions. Such physical evidence certainly established penetration of AAA's sexual organ. Indeed, it has been consistently held that lacerations, whether fresh or healed, are the best physical evidence of forcible defloration.[32]

At the opposite end of the legal fulcrum, the court below disbelieved the appellant's alibi, for he failed to support, by clear and convincing evidence, his defense that he was elsewhere during the incidents referred to on the separate indictment. Without any doubt, the narration of AAA prevails over the bare denial and alibi of the appellant more so when the exculpation was hardly substantiated by independent evidence that it was physically impossible for him to be at the scene of the crime when it was committed.

To reiterate a plethora of case law indoctrination, physical impossibility refers to distance and the facility of access between the situs criminis and the location of the accused when the crime was committed. He must

demonstrate that he was so far away and could not have been physically present at the scene of the crime and its immediate vicinity when the crime transpired.[33]

While the disposition below referred to four (4) counts of rape against appellant, the trial court eventually concluded that the accused was only culpable for what transpired at the patalan on April 14, 2011 as contemplated by Criminal Case No. 2011-0474-D.

Although it is settled that each and every charge of rape is a separate and distinct crime that the law requires to be proven beyond reasonable doubt,[34] the prosecution's evidence must pass the exacting test of moral certainty to overcome the appellant's presumption of innocence.[35] At this juncture, given the acquittal of the accused in three other analogous charges, further exegesis thereon is now futile.

Insofar as appellant's assertion that the prosecution failed to prove that AAA was a minor and a mental retardate, We are of the opinion, and thus hereby hold, that these two matters were demonstrated by the People.

In particular, Dr. Del Prado, an expert witness, established the minority of AAA through the medical findings of her oral cavity. In addition, the non-registration of AAA's birth was satisfactorily explained during trial since it appeared that the victim's parents were unschooled and illiterate who depended on social welfare and rummaging through garbage as their only source of income.

As to AAA's state of mind, We are in accord with the trial court's perception that AAA is a mental retardate. Even as there was no medical certificate relative to AAA's mental condition, the State was not precluded from considering other evidence to establish the mental retardation of the victim.[36] Verily, the trial court can determine the mental state of the rape victim based on her physical appearance and her inability to absorb thoughts expressed to AAA, inclusive of her reactions thereto.[37] By local dogma, it was imparted that illiteracy was equated with mental incapacity to assent to, or dissent from, sexual intercourse.[38]

From the first-hand cognition of the trial court:

"...In the instant case, the Court observed that complainant AAA while testifying, could not immediately grasp certain questions propounded to her by the prosecutor. In fact, she could not recall the time and date of the incident. Though she was able to identify and pin point to the accused as the person who abused her. She demonstrated in her own simple way how she was abused. AAA's mother also testified that AAA is unschooled and finished only grade 1.[39]

...

For emphasis, based on the Court's personal observation of AAA as a witness in court, she is a retardate who could however narrate what had transpired albeit with some difficulty about how she had been sexually abused. She clearly declared that the rape incidents happened at the patalan near the river and in the school and she demonstrated that the accused bend/bowed his body. The accused brought out his penis and lowered his pants then inserted his penis inside her vagina and she felt pain."[40]

Relative to the civil liability, to be at par with current juridical thought, We have to modify the award therefor in this wise: P75,000 as civil indemnity, P75,000 as moral damages and P50,000 as exemplary damages.[41] We also sustain the imposition of six (6) percent interest per annum on all damages awarded, to be computed from the date of finality of this judgment until fully payment.[42]

Finally, We affirm the guilt of appellant for rape in Criminal Case No. 2011-0474-D and the principal penalty of reclusion perpetua, in lieu of the death penalty per RA 9346 without eligibility for parole.[43]

WHEREFORE, in view of the foregoing disquisition, the appeal is hereby DENIED. Hence, the Decision dated

August 30, 2012 for one count of rape in Criminal Case No. 2011-0474-D is hereby AFFIRMED with MODIFICATION insofar as the amount of civil indemnity which is hereby increased to P75,000, P75,000 as moral damages and P50,000 as exemplary damages, plus 6% interest per annum from finality of this judgment until fully paid.

SO ORDERED.

Reyes, Jr. J.C., Chairperson, and Acosta, F. P., JJ., concur.

[*] Per Office Order No. 15-15-ABR dated January 20, 2015 effective February 2, 2015.

[1] Based on the Order dated January 24, 2012, Resolution dated February 1, 2012, Amended Information dated February 2, 2012 in Criminal Case No. 2011-0548-D, Record, pp. 42,51-53,54.

[2] Notice of Appeal dated August 31, 2012, Record, pp. 116-117.

[3] Dated August 30, 2012, Record, pp. 98-115.

[4] See Decision , Record, Vol. I, pages 98-115.

[5] Order dated March 13, 2012, Record, Vol. 1, page 60.

[6] “the identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. 7610, An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purpose; Republic Act No. 9262, an Act Defining Violence Against Women and their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes; and Section 40 A.M. No. 04-1011-SC, known as the Rule on Violence Against Women and Children, effective November 5, 2004.”

[7] Joint Decision dated August 30, 2012, page 18, Rollo, page 107.

[8] TSN dated May 25, 2012, pp. 4-8.

[9] Record, Vol. 1, page 9.

[10] Exh. “A”, Record, Vol. 1, page 8.

[11] TSN dated May 8, 2012, pp. 5-8.

[12] Exh. “B-1”, Record, Vol. II, page 9.

[13] Exh. “B”, Record, Vol. II, page 10.

[14] TSN dated May 8, 2012, pages 9-13.

[15] Record, Vol. II, page 14.

[16] TSN dated April 20, 2012, pages 5-8.

[17] Record, Vol. I, page 64.

[18] www.merriam-webster.com – not yet having emerged through the gum

[19] Solis, Legal Medicine, 1987, page 94 on Age Determination in Childhood and Adulthood, page 94.

[20] TSN April 10, 2012, pages 9-12, 18-19.

[21] TSN dated July 4, 2012, page 6.

[22] TSN dated July 4, 2012, pages 7-9.

[23] TSN dated July 4, 2012, pages 10-11.

[24] TSN dated July 4, 2012, pages 11-13; see Record Vol. I, page 29, May 4, 2010 Resolution of the office of the Provincial Prosecutor, Dagupan City. The case was then revived as per Order dated January 4, 2012, see Record Vol. I, page 40.

[25] Criminal Case No. 2011-0474-D, the Information reads in part: "... on April 14, 2011 in Brgy. Macayug, Pangasinan, ... the above –named accused ... have sexual intercourse with ..., a no formal education, scavenger, beggar and mental retardate fifteen (15) years old minor and deemed exploited in prostitution and other sexual abuse, which mental disability is known to the accused, to her damage and prejudice. CONTRARY to Art. 266-A of the Revised Penal Code, in relation to Art. 266-B (10) thereof, as amended by R.A. 8353.

[26] Brief for the Accused-Appellant dated June 3, 2013, Rollo, page 74.

[27] People v. Ocob, G.R. no. 182690, May 30, 2011.

[28] People v. Antonino Ventura, G.R. No. 183097, September 12, 2012.

[29] 2 Aquino, The Revised Penal Code, 2008 edition, page 665.

[30] People v. Jose Dalan y Paldingan, G.R. No. 203086, June 11, 2014, citing People v. Charlie Butiong, G.R. No. 168932, October 19, 2011.

[31] TSN dated May 25, 2012, pages 3-8.

[32] People v. Batula, G.R. No. 181699, November 28, 2012.

[33] People v. Benjamin Bravo y Estabillo, G.R. No. 185282, September 24, 2012.

[34] People v. Bruce, G.R. No. 201732, March 26, 2014.

[35] People v. Delabajan, G.R. No. 192180, March 21, 2012.

[36] See People v. Del Castillo, G.R. No. 186533, August 9, 2010.

[37] See People v. Bayrante, G.R. No. 188978, June 13, 2012.

[38] See People v. Tabocan, G.R. No. 182412, November 28, 2011.

[39] Decision page 14, Record, Vol. I, page 111.

[40] Decision page 15, Record, Vol. I, page 112.

[41] People v. Cabungan, G.R. No. 196789, August 20, 2014.

[42] People v. Cruz, G.R. No. 201728, July 17, 2013.

[43] People v. Cadano, Jr. G.R. No. 207819, March 12, 2014.

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