

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DANILO CANILLO, ELMER CANILLO, ALEJANDRO LARGO @ “ANDY,” CEFERINO LLAMEDO @ “PRINO,” ROGELIO LARGO, PETER LARGO, GONNIE LARGO,...

G.R. No. 106579. August 30, 1994

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

This is a prosecution for rape allegedly committed by the accused at 2:00 p.m. of 22 January 1989 in Playa del Sol, South Poblacion, Naga, Cebu. The victim is Ruth Abay Ubas, a married woman with two children, who is a schizophrenic. Her husband, Monico Ubas, initiated the prosecution by filing a sworn complaint for rape with the Municipal Trial Court (MTC) of Naga, Cebu, against Elmer Canillo, Danilo Canillo, Alejandro Largo, and fourteen John Does on 24 January 1989.[1] Finding sufficient evidence to support the complaint but ruling that only accused Elmer Canillo, Danilo Canillo, and Alejandro Largo were clearly identified, the MTC issued warrants for their arrest[2] and an order requiring them to submit their counter-affidavits.[3]

On 13 March 1989, after conducting clarificatory examination and finding sufficient evidence that the crime charged was probably committed by accused Elmer Canillo, Danilo Canillo, Alejandro Largo, and thirteen or more others who were not sufficiently identified, the MTC forwarded the records of the case to the Office of the Provincial Prosecutor of Cebu for the filing of the appropriate information.[4]

On 3 May 1989, Assistant Provincial Prosecutor Lourdes Mendoza-Cortes filed with the Regional Trial Court (RTC) of Cebu three informations for rape against Elmer Canillo, Danilo Canillo, Alejandro Largo, and fourteen John Does. These were docketed as Criminal Cases Nos. CBU-15367, CBU-15368, and CBU--15369 and assigned to Branch 9 of the said court. Warrants of arrest were issued. On 21 November 1989, after the denial[5] of Alejandro Largo's motion to quash[6] the informations due to lack of authority of the Assistant Provincial Prosecutor to file them, Ruth Ubas filed in each of the said cases a sworn amended complaint.[7]

In his motion of 27 November 1989, Alejandro Largo sought reconsideration of the denial of his motion to quash[8] which the court granted in its order of 18 January 1990 on the grounds that (1) since under Article 344 of the Revised Penal Code, the husband of Ruth Ubas could not validly file the complaint for rape before the MTC, such complaint could not be made the basis for the filing by the Assistant Provincial Prosecutor of the informations, and (2) the amendments thereof by the complainant did not cure the defect.[9] This order put an end to Criminal Cases Nos. CBU-15367, CBU-15368, and CBU-15369.

On 12 July 1990, Ruth Ubas filed a new sworn complaint for rape "for three counts"[10] against Danilo Canillo, Elmer Canillo, Alejandro Largo, and fourteen John Does with the RTC of Cebu. It was docketed as Criminal Case No. CBU-18911 and raffled to Branch 13 thereof. No bail was recommended and warrants of arrest were again issued.[11] Accused Alejandro Largo and two others, Rogelio Largo and Ceferino Llamedo, were arrested and their arraignment and pre-trial were set for 31 August 1990.[12] In an urgent ex--parte motion,[13] the

prosecution moved for the issuance of alias warrants of arrest against the fourteen John Does except Ceferino Llamedo who had earlier been arrested. This was granted by the court.[14]

On 10 September 1990, Ruth Ubas amended her complaint in Criminal Case No. CBU-18911 to read as follows:

"The undersigned offended party accuses Danilo Canillo, Elmer Canillo, Alejandro Largo alias 'Andy,' Ceferino Llamedo alias 'Prino,' Rogelio Largo, Ploy Entice, Peter Largo, Gonnio Largo, Rey Navales, Mikoy Candol, Edgar Aliganga alias 'Ed,' Warlito Sayson, Wennie Canoy, Jose Herediano, Arnel Aliganga, Gerry Cañalita, and Richard Aliganga, of the crime of Rape on three counts, committed as follows:

That on or about the 22nd day of January, 1989, at about 2:00 o'clock in the afternoon, more or less, at the beach of Sitio Playa del Sol, Barangay South Poblacion, Municipality of Naga, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping with one another, by means of force, violence, intimidation, depriving said woman of reason, and taking advantage of their superior strength, did then and there willfully, unlawfully and feloniously have carnal knowledge with Ruth Abay Ubas, a married woman, against her will and consent, then, a mentally ill person for three (3) counts.

CONTRARY TO LAW."[15]

On 28 September 1990, Alejandro Largo, Rogelio Largo, and Ceferino Llamedo pleaded not guilty.[16]

Pursuant to the order of 12 October 1990 issued by Judge Meinrado P. Paredes, presiding judge of Branch 13, the records of Criminal Cases Nos. CBU-15367, CBU-15368, and CBU-15369 were transmitted to Branch 13.[17]

On 20 November 1990, another alias warrant of arrest was issued against the remaining accused. On the basis thereof, accused Edgar Aliganga and Gerry Cañalita were taken into custody,[18] and on 25 February 1991, they pleaded not guilty.[19]

As the other accused have remained at large, a joint trial on the merits was conducted only as against Alejandro Largo, Rogelio Largo, Ceferino Llamedo, Edgar Aliganga, and Gerry Cañalita. The prosecution presented seven witnesses, namely, Dr. Renato Obra, Dr. Jose Villanueva, Monico Ubas, Dr. Pacita Libi Co, Angelita Alforque, Elizabeth Rivera, and complainant Ruth Abay Ubas.

After the prosecution had rested its case, accused Ceferino Llamedo filed a Motion to Acquit[20] on the ground that the complainant had admitted that he had no sexual intercourse with her. Accused Edgar Aliganga and Gerry Cañalita filed a motion to dismiss and a demurrer to evidence, respectively.[21] In its order of 15 May 1991,[22] the trial court granted Llamedo's Motion to Acquit because there was "gross insufficiency of evidence" against him, but in separate orders issued on 29 July 1991, it denied the motion and the demurrer of Aliganga and Cañalita.[23]

The defense presented accused Rogelio and Alejandro Largo, Edgar Aliganga, Ceferino Llamedo, Gerry Cañalita, and their witnesses, Protacio Sayson, Judith Aliganga (wife of Edgar), and Rosita Llanto.

The version of the prosecution, as developed by its evidence, is as follows:

Complainant Ruth Ubas, who is married to Monico Ubas and with whom she has two children, suffers from chronic schizophrenia. She was first admitted at the Department of Psychiatry of the Southern Islands Medical Center in Cebu City on 2 April 1980. One Dr. Garot, who attended to her, found her to be suffering from post partum psychosis. She had several consultations in the said Center until 1985. The records of the said consultations from 1980 to 1985 revealed that her condition deteriorated from a previous level of functioning

(post partum psychosis) to "schizophrenia, undifferentiated type, chronic." [24] On 13 September 1985, Ruth consulted Dr. Pacita Libi Co, a Doctor of Medicine specializing in Psychiatry who was then connected with the Chong Hua Hospital in Cebu City. Regarding Ruth's condition, Dr. Libi Co testified:

"The diagnosis of this case was schizophrenia, disorder paranoid type. Now, a person who is suffering from schizophrenia is chronically ill and they are psychotic in the sense that they don't have the full exercise of their will and also they have very poor judgment." [25]

Ruth was under her psychiatric care until 28 December 1988, and within that period Ruth underwent a number of consultations with her. [26]

In May 1989, after the commission of the rape against her, Ruth again went to the Southern Islands Medical Center for consultations. This time, Dr. Renato Obra attended to her and she remained his patient until 20 February 1991. On the latter date, she was already manageable, attentive, and cooperative, but not yet completely recovered from her mental illness. He prescribed anti-psychotic drugs for her. [27]

In the morning of 22 January 1989, before Monico Ubas left his residence at Naalad, Naga, Cebu, for his work at the Atlas Consolidated Mining and Development Corporation in Toledo City, he entrusted Ruth Ubas to her cousin and instructed the latter not to leave Ruth alone because of her mental illness. [28] However, after Monico had left, Ruth also left. She took a pedicab and went to the beach at Playa del Sol, South Poblacion, Naga, Cebu. Upon her arrival there at around 11:00 a.m., she changed into her shorts and blouse, left her bag with an old woman, and proceeded to wade into the water. There she met accused Danilo Canillo, Alejandro Largo, Rogelio Largo, Edgar Aliganga, Ceferino Llamedo, and others who were members of the Grayrocks basketball team, and who were celebrating their victory in a tournament. They befriended her. Danilo Canillo remarked, "Who is this beautiful girl with beautiful legs?" She introduced herself to them and they also introduced themselves. Then they told her, "Day, let's have sexual intercourse," to which she replied in the negative because she is "a married woman." While in the water, Danilo Canillo removed her shorts and panty. Then the others spread her legs and said, "You accede to our request, Day, because we are Philippine Constabulary and this fellow Andy is our superior officer, he will be the first to have sexual intercourse with you." She got frightened. They got what they wanted. Accused Alejandro Largo, Danilo Canillo, Rogelio Largo, Edgar Aliganga, and Gerry Cañalita had sexual intercourse with her, one after the other, in that order. Ceferino Llamedo was at the time "beside the sea near the tuba placed inside the gallon." Thereafter, one of the accused suggested that she be given food after which they "will have another intercourse with her at the place where the roma plants grow." Alejandro Largo gave her "puso," "humba," and a softdrink. After she had eaten and drank, Alejandro Largo and Danilo Canillo escorted her to the place where there were roma plants. They were accompanied by Gerry Cañalita, Mikoy Candol, Cris, Jose Herediano, Arnel Aliganga, and others. At that place, Alejandro Largo took off his shirt and used it as a mat on the sand where she was made to lie down. Then he had sexual intercourse with her. Danilo came next and was followed by the others. Mikoy Candol then inserted his penis into Ruth's mouth and asked her, "Are you not a prostitute, Day? Are you not inflicted with a transmissible disease, Day?" Not contented with what they had done, they threw sand on her private parts. She took a bath. Then she was brought to a place near the St. Jude Funeral Homes and told that if she revealed the incident to anybody she would be killed. Afterwards, she was brought to a hut where accused Alejandro Largo and Danilo Canillo once more had sexual intercourse with her. Afterwards, they gave her P1.00 for her fare home. [29]

At about 11:00 a.m. of 23 January 1989, Ruth was admitted at the Minglanilla District Hospital in Minglanilla, Cebu, and treated by Dr. Jose Villanueva for bruises inflicted by her husband. Upon being informed that she had been sexually assaulted, Dr. Villanueva also examined her private parts. He found "whitish material or substance at the entrance of the vaginal canal" and at the pubic hair, [30] which was found positive for spermatozoa. [31] He

stated that the presence of this substance in the vaginal canal meant that there was penetration of a male sexual organ and its quantity, in solidified form, indicated the possibility that it could have come from more than one person.[32]

The presentation of Ruth Ubas as a witness for the prosecution was initially opposed by the defense on the ground that being of unsound mind as testified to by Dr. Obra and Dr. Libi Co, she was not competent to testify.[33] The trial court decided, however, to allow the prosecution to ask her qualifying questions, and upon motion of the defense, to allow the latter to likewise do the same to determine if she was competent to testify,[34] which they did,[35] with the exception of the counsel for the accused-appellants who stated that he was "just waiting if she is qualified or not to testify in court." [36] After the qualifying questions were asked by the defense, the court allowed the prosecution to further ask Ruth about the facts surrounding the commission of the crime charged, which she described in detail.[37] The trial court then ruled that Ruth was qualified to testify.[38] The attorneys for the accused did not challenge the ruling; instead, each of them subjected her to rigorous cross--examination.[39]

On the other hand, the accused, corroborated by their witnesses, presented different versions of the incident of 22 January 1989. Only those of the accused-appellants need be considered in this appeal.

Accused-appellant Rogelio Largo, the younger brother of Alejandro Largo and a member of the Grayrocks basketball team, testified that their team was awarded a cash prize when they won a game on 16 January 1989. On 22 January 1989, he, together with Wennie Canoy, Rey Navales, Gonnie Largo, Ploy Entice, Edgar Aliganga, Gerry Cañalita, Jose Herediano, Cris Obenita, Danilo Canillo, Elmer Canillo, Ceferino Llamedo, and Peter Largo, celebrated in his house located at Poblacion, Naga, Cebu. They ate fish which was bought with part of the cash prize. After eating, his companions left for the beach. He did not go with them but stayed in the house that afternoon. However, at about 5:00 p.m., he went to Playa del Sol to buy fish. Since the price was somewhat high, he did not buy any and just went home. He came to know Ruth Ubas and her husband only when he was detained in jail. He cannot think of any reason why he was charged with rape.[40]

Accused-appellant Alejandro Largo asserted that he is not a member of the Grayrocks basketball team. He cannot play basketball because he has a broken left leg due to a vehicular accident in 1981. While he was at home in the morning of 22 January 1989, Crisanto Obenita, the leader of the basketball team, arrived and asked him to buy tuba and deliver it to Playa del Sol where there would be a celebration of the team's victory in the tournament. He delivered the tuba to Crisanto at the beach and there saw Rey Navales, Jose Herediano, Edgar Aliganga, Wennie Canoy, Ploy Entice, Peter Largo, Arnel Aliganga, Richard Aliganga, Warlito Sayson, Danilo Canillo, Elmer Canillo, Ceferino Llamedo, Mikoy Candol, and a certain Eugenio. He did not see his younger brother Rogelio in the group. He ate fish at the seashore and thereafter went with Protacio Sayson to the cockpit where he gambled. He went home when it was almost dark.

Alejandro Largo further testified that he knew Ruth Ubas because she used to ride in his pedicab, but he did not have sexual intercourse with her on 22 January 1989. On that date, he was nowhere near the St. Jude Funeral Homes and he saw no small hut near it. There is a PC detachment ten fathoms away from the St. Jude Funeral Homes.[41]

On cross-examination, he admitted that he often saw Ruth as she sometimes rode on his pedicab and that he knew her to be "mentally defective (buangon)."[42]

Defense witness Protacio Sayson testified that in the morning of 22 January 1989, while he was tethering his cow near the seashore and hacienda of Flora Dayrit, he saw Ruth Ubas and a man with two children in a nearby cottage. A certain Bernadita told the man and Ruth to get out of the cottage because it was for rent. The man,

Ruth, and the children then went to the sea and took a bath. Many people were then taking a bath because it was a Sunday. After taking his lunch, he decided to go to the cockpit and invited Alejandro Largo to go with him. They went to the cockpit but he left for home at 2:00 p.m. because he had to tether his cow. Later, he again saw Ruth together with the members of a religious group. Ruth Ubas went home at about 4:00 p.m.[43]

In its decision dated 5 June 1992[44] but promulgated on 24 June 1992, the trial court disbelieved the versions of the accused-appellants and ruled that they knew Ruth Ubas was suffering from a mental ailment, that they took advantage of her ailment, and that they did not rebut her testimony that she yielded to their sexual desires because she was threatened with death. It gave full faith and credit to the prosecution's evidence and held that rape was committed because "through force and intimidation the Largo brothers were able to have sexual intercourse with Ruth Ubas. The latter was also deprived of reason as a consequence of the said intimidation." [45] But it convicted only accused-appellants Rogelio Largo and Alejandro Largo. It acquitted accused Edgar Aliganga and Gerry Cañalita on ground of reasonable doubt. The dispositive portion of the decision reads:

"WHEREFORE, premises considered, judgment is hereby rendered finding accused ROGELIO LARGO and ALEJANDRO LARGO GUILTY beyond reasonable doubt of the crime of rape and sentences them to a penalty of Reclusion Perpetua. In addition thereto, each of them should indemnify Ruth Abay Ubas the sum of P40,000.00. With costs.

Accused GERRY CAÑALITA and EDGAR ALIGANGA are hereby ACQUITTED since the prosecution failed to prove their guilt beyond reasonable doubt.

The CPDRC jail warden is directed to release them unless there is any other legal ground for their continued detention.

The case against DANILO CANILLO, ELMER CANILLO, PLOY ENTICE, PETER LARGO, GONNIE LARGO, REY NAVALES, MIKOY CANDOL, WARLITO SAYSON, WENNIE CANOY, JOSE HEREDIANO, ARNEL ALIGANGA and RICHARD ALIGANGA is hereby ordered ARCHIVED subject to the condition that once they will be arrested and detained the case against them will be immediately revived.

SO ORDERED." [46]

The accused-appellants filed their notice of appeal on 8 July 1992.[47]

The accused-appellants assign the following errors:

"I

THE TRIAL COURT ERRED IN HOLDING THAT THE ACCUSED ROGELIO LARGO AND ALEJANDRO LARGO KNEW THAT RUTH UBAS WAS INSANE.

II

THE TRIAL COURT ERRED IN HOLDING THAT THE LARGO BROTHERS TOOK ADVANTAGE OF THE FACT THAT RUTH UBAS WAS SUFFERING FROM MENTAL AILMENT, THUS MAKING HER BELIEVE THAT THEY WERE MEMBERS OF THE PHILIPPINE CONSTABULARY.

III

THE TRIAL COURT ERRED IN HOLDING THAT THE ACCUSED LARGO DID NOT REBUT THE TESTIMONY OF RUTH THAT SHE CONSENTED TO HAVE SEXUAL INTERCOURSE WITH THEM BECAUSE IF SHE WILL NOT ACCEDE THEY WILL KILL HER.

IV

THE TRIAL COURT ERRED IN CONVICTING ACCUSED LARGO BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE."[48]

In support of the first and second assigned errors, the accused-appellants contend that they never knew Ruth Abay Ubas was insane or mentally ill and that it was incumbent upon the prosecution to show by clear and convincing evidence that they knew her to be insane at the time of the incident and for sometime prior thereto. Nor was there evidence showing that she had appeared to the public as a "foolish" woman. Since they did not know her to be insane and she knew them to be tricycle drivers, it was illogical for them to make her believe that they were PC soldiers. There was, as well, no basis to the conclusion that they took advantage of her mental condition.

Anent the third assigned error, the accused-appellants assert that Ruth did not testify that they were the ones who threatened her with death if she did not agree to have sexual intercourse with them. They aver that Ruth testified that the threat was made by others.

Finally, on the fourth assigned error, the accused-appellants maintain that the evidence has not established their guilt beyond reasonable doubt and that the trial court overlooked vital facts which could have altered its decision had they been taken into consideration, viz., (1) the uncorroborated testimony of Ruth Ubas; (2) her smiling several times in the course of her testimony; (3) the delay in the filing of her sworn complaint which indicated her hesitation to file the complaint; (4) the solicitation and offer of false testimony; and (5) the failure to prove all the elements of the crime of rape, specifically force and intimidation.

In the Brief for the Appellee, the Office of the Solicitor General prays for the affirmance of the appealed decision.

The governing law in this case is Article 335 of the Revised Penal Code. Prior to its amendment by R.A. No. 7659 which took effect on 31 December 1993,[49] it read in part as follows:

"ART. 335. When and how rape is committed. -? Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

1. By using force or intimidation;
2. When the woman is deprived of reason or otherwise unconscious; and
3. When the woman is under twelve years of age, even though neither of the circumstances mentioned in the two next preceding paragraphs shall be present."[50]

On the basis of their assignment of errors and the arguments adduced in support thereof, we find the following to be the submissions of the accused-appellants:

- a) The evidence for the prosecution failed to establish that they had carnal knowledge of Ruth Ubas;
- b) Assuming that they had, there is no evidence of force or intimidation; and
- c) Even if there was rape based on carnal knowledge of a woman who was suffering from mental ailment, and therefore deprived of reason, no conviction will lie without proof that they knew of such ailment before and at the time the sexual act was done.

Our review of the evidence convinces us with moral certainty that Ruth Ubas was sexually abused, not while she was in the waters at Playa del Sol and by all the accused, as claimed by her, which we believe to be improbable, but at the place where there were roma plants and then in a hut near the St. Jude Funeral Homes. At the place where there were roma plants, accused-appellant Alejandro Largo used his shirt as a mat on which Ruth was made to lie down and was raped by him and then by Danilo Canillo. At the hut, Ruth was again raped by

accused-appellants Alejandro Largo and Danilo Canillo.

The ravishment of Ruth is confirmed by the detection by Dr. Villanueva of the presence of a whitish substance in Ruth's vaginal canal and pubic hair, which was positive for spermatozoa and which could have come from more than one person.[51]

We agree, however, with the contention of the accused-appellants that the evidence is insufficient to prove force and intimidation. Ruth's answers on cross-examinations by the attorneys for the accused disclose that although she was alone, she swam toward where the accused were, frolicked with them in the water, enjoyed their company in partaking of "puso," "humba," and a softdrink. After she had sexual intercourse with Alejandro Largo and Danilo Canillo at the place where there were roma plants, she took a bath again. Minutes later, she went with Alejandro and Danilo to a hut near St. Jude Funeral Homes where they had, once more, sexual intercourse with her. Then, they gave her P1.00 for her fare home which she accepted. She appeared to have enjoyed these sexual adventures. When she was confronted by her husband, Monico, after he was informed by his neighbors and friends that she left the house, took a bath at the beach, and was ravished by many persons, Ruth denied having been ravished and refused to disclose the names of her defilers. As a consequence, Monico put his "wrath on the body" of Ruth "by hitting her with a chair." [52]

On this matter then, we disagree with the conclusions of the trial court that there was intimidation which deprived Ruth of reason. Obviously, the trial court had mixed up the first and second paragraphs of Article 335 of the Revised Penal Code.

The foregoing notwithstanding, on 22 January 1989, Ruth Ubas was raped for as many times as there were acts of sexual intercourse with her. She was suffering from a chronic mental disorder and, therefore, incapable of giving effective consent to sexual intercourse. In short, for purposes of Article 335 of the Revised Penal Code, she was deprived of reason. The rationale behind paragraph 2 of Article 335 (when the woman is deprived of reason or otherwise unconscious) is that such a woman has no will. Such lack of will may exist not only when the victim is unconscious or totally deprived of reason, but also when she is suffering from some mental deficiency impairing her reason or free will.[53] In *People vs. Manlapaz*, [54] this Court stated:

"Sexual intercourse with a woman who is deprived of reason or with a girl who is below twelve years of age is rape because she is incapable of giving rational consent to the carnal intercourse. 'Las mujeres privadas de razon, enajenadas, idiotas, imbeciles, son incapaces por su estado mental de apreciar la ofensa que el culpable infiere a su honestidad y, por tanto, incapaces de consentir. Pero no es condicion precisa que la carencia de razon sea completa, basta la abnormalidad o deficiencia mental que solo la disminuye, sin embargo, la jurisprudencia es discordante' (II Cuello Calon, Derecho Penal, 14th Ed., 1975, pp. 538-9).

'Comete violacion el que yace mujer que no tiene normalmente desarrolladas sus facultades mentales (19 nov. 1930); aqui esta comprendido el yacimiento con debiles o retrasados mentales (11 mayo 1932, 25 feb. 1948, 27 sept. 1951); constituye este delito el coito con una niña de 15 años enferma de epilepsia genuina que carece de capacidad para conocer el valor de sus actos (2 marzo 1953); el yacimiento con oligofrenicas (mentally deficient persons) 28 abril, 24 octubre, 1956, 19 feb. 1958); x x x' (Ibid, note 3).

The same rule prevails in American juris-prudence. 'There can be no question but that a copulation with a woman known to be mentally incapable of giving even an imperfect consent is rape' (*State vs. Jewett*, 192 At. 7).

'An accused is guilty of the crime of rape when it is established that he had sexual intercourse with a female who was mentally incapable of validly consenting to or opposing the carnal act' (65 Am Jur 2nd 766 citing *State vs. Prokosch*, 152 Minn. 86, 187 NW 971; *Cokeley vs. State*, 87 Tex. Crim. 256, 220 SW 1099; 31 ALR 3rd 1227, sec. 3).

'In this species of rape neither force upon the part of a man nor resistance upon the part of a woman forms an element of the crime. If, by reason of any mental weakness, she is incapable of legally consenting, resistance is not expected any more than it is in the case of one who has been drugged to unconsciousness, or robbed of judgment by intoxicants. Nor will an apparent consent in such a case avail any more than in the case of a child who may actually consent, but who by law is conclusively held incapable of legal consent. Whether the woman possessed mental capacity sufficient to give legal consent must, saving in exceptional cases, remain a question of fact x x x. It need but be said that legal consent presupposes an intelligence capable of understanding the act, its nature, and possible consequences. This degree of intelligence may exist with an impaired and weakened intellect, or it may not' (People vs. Boggs, 290 Pac. 618 citing People vs. Griffin, 49 Pac. 711 and People vs. Peery, 146 Pac. 44)."

In the instant case, it was convincingly established by the prosecution that in 1980 Ruth Ubas was suffering from post partum psychosis which deteriorated to "schizophrenia, undifferentiated type, chronic," until 1985. When she was under treatment by Dr. Pacita Libi Co from September 1985 to 28 December 1989, or three weeks before the incident in question, Ruth was suffering from "schizophrenia disorder, paranoid type." According to Dr. Libi Co, persons suffering from schizophrenia are "chronically ill" and "psychotic" because "they don't have the full exercise of their will and ... have very poor judgment." [55]

Translated literally, schizophrenia means split-mindedness. [56] It is a disorder, or group of disorders, characterized by positive and negative symptoms. Positive symptoms are those that are added to the clinical picture including delusions, hallucinations, and agitation. Negative symptoms are characteristics of the patient that are subtracted from the clinical picture, including effective flattening, social withdrawal, apathy, anhedonia, and poverty of thought and content of speech. [57] Elsewise stated, it is a chronic mental disorder characterized by inability to distinguish between fantasy and reality, and often accompanied by hallucinations and delusions. [58] In Noyes' Modern Clinical Psychiatry, [59] schizophrenia is found under the chapter on Psychotic Disorders and the following discussion thereunder is enlightening:

"Symptomatically, the schizophrenic reactions are recognizable through odd and bizarre behavior apparent in aloofness, suspiciousness, or periods of impulsive destructiveness and immature and exaggerated emotionality, often ambivalently directed and considered inappropriate by the observer. The interpersonal perceptions are distorted in the more serious states by delusional and hallucinatory material. In the most disorganized forms of schizophrenic living, withdrawal into a fantasy life takes place and is associated with serious disorder of thought and profound habit deteriorations in which the usual social customs and personal care are disregarded.

It is generally considered that the schizophrenic is incapable of effectively harmonizing his drives and inhibitions through mature adaptations and defenses. He has failed to develop a satisfying concept of his body and a clear or stable self-concept. He is often unclear in his goals, or his aspirations are so demanding or inflexible that they exceed his talents, persistence, and drive to mastery. Thus he is deficient in his capacity to assess clearly the realities of the world. Interactions with others are characterized by immature processes of communication, thought, and adaptation.

In psychoanalytic terms, the schizophrenics represent those who have failed, due to either somatic or psychogenic forces, to evolve the ego, integrative processes or strengths necessary to resolve flexibly conflicts between their (id) drives and over-demanding super-ego attitudes and aspirations. They are thus defective in the capacity to adapt to the social demands confronting them and to their own drives and they thereby lack a harmonious self-concept and ego ideal with clear goals and motivations."

This work classifies schizophrenia into six types or divisions: (1) simple, (2) hebephrenic, (3) catatonic, (4) paranoid, (5) schizoaffective, and (6) pseudoneurotic. [60]

The Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association (DSM-III)

and the World Health Organization's International Classification of Disorders, Injuries, and Causes of Death (ICD-9) have these nosology of types of schizophrenia:[61]

DSM-III ICD-9

Catatonic Catatonic

Disorganized Hebephrenic

Paranoid Paranoid or Paraphrenic

Undifferentiated (No equivalent term in ICD-9)

Residual Residual

Schizophreniform Acute Schizophrenic

Episode

(Oneirophrenia)

Schizophreniform)

(No equivalent term in DSM-III) Latent (Borderline)

The most evident features of the paranoid type "are delusions, which are often numerous, illogical, and disregarding of reality, hallucinations, and the usual schizophrenic disturbance of associations and of affect, together with negativism." [62]

We have no doubt that because of her chronic mental or psychotic disorder, Ruth Ubas was deprived of reason or intelligence so as to render her legally incapable of consenting to or opposing the carnal acts in question. Since she was deprived of reason, any carnal knowledge of her on 22 January 1989 by any of the accused-appellants would amount to rape under the second paragraph of Article 335 of the Revised Penal Code.

Our analysis and evaluation of the evidence convinces us beyond a doubt that accused-appellant Alejandro Largo consummated two acts of sexual intercourse with Ruth Ubas, first, at the place where there were roma plants, and second, at the hut near the St. Jude Funeral Homes at Playa del Sol, South Poblacion, Naga, Cebu, on 22 January 1989. In both instances, Danilo Canillo also had sexual intercourse with her. We are also convinced that there was conspiracy between accused-appellant Alejandro Largo and Danilo Canillo. They escorted her to the venue of the first encounter and then brought her to the nipa hut for the second. In both instances, they, one after the other and in the presence of each other, sexually assaulted her. Evidently, they had a common bestial and ignoble purpose.

There is conspiracy when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[63] Conspiracy to exist does not require an agreement for an appreciable period prior to the commission of the crime. From a legal standpoint, there is conspiracy if at the time of the commission of the offense the accused had the same purpose and were united in its execution.[64] Direct proof of previous agreement to commit a crime is not necessary. It may be deduced from the mode and manner in which the offense was perpetrated, or inferred from the acts of the accused themselves when such acts point to a joint purpose and design, concerted action, and community of intent.[65] Conspiracy in this case having been established insofar as accused-appellant Alejandro Largo is concerned, the act of one co-conspirator is the act of the other co-conspirator.[66] In short, Alejandro Largo is a principal in the two rapes he directly committed and a co-principal in each of the two rapes directly committed by Danilo Canillo. Fortunately for him, however, the amended complaint charges him and the others with the crime of rape in only "three (3) counts," and per the

prosecution's evidence, Alejandro had carnal knowledge of Ruth, first, at the waters of Playa del Sol; second, at the place with roma plants; and, third, at the hut near the St. Jude Funeral Homes. In short, although the amended complaint speaks of conspiracy among the accused, only three rapes were charged and the evidence in support of these was confined to the three rapes committed in the three places mentioned. As earlier observed, however, the commission of the first rape seems improbable. Accordingly, Alejandro Largo can only be held liable for the two proven acts of sexual intercourse which he had with Ruth Ubas.

We find no sufficient evidence against accused Rogelio Largo. His acquittal is thus in order.

The accused-appellants contend that even if Ruth Ubas were insane and they had sexual intercourse with her, they cannot be held liable for rape without proof that they knew beforehand of her insanity. This contention cannot be upheld. First, it is belied by Alejandro Largo's admission on cross-examination that he knew of Ruth Ubas' mental condition. Thus:

"Q And you will agree with me, Mr. Largo, that at the time when you had no passenger, you would talk about some characters of your passenger such that you knew that Ruth Ubas is mentally ill, is not that correct?

A Yes, I learned that through the neighbors because it was known that Ruth Ubas is mentally defective (buangon)."[67]

Second, we are of the opinion that the accused's knowledge of the victim's mental condition is not an essential element of the crime of rape under Article 335(2). Had the legislature intended that knowledge of the victim's mental condition (or of any other fact) would be an essential element of rape under Article 335(2), it would have expressly provided so, as it has so provided with respect to other felonies in the Revised Penal Code.[68] That the legislature did not do so reveals its intent to dispense with the element of scienter under Article 335(2).

While there are American cases[69] which support the proposition that the accused's knowledge of the victim's mental defect is necessary for conviction, a reading thereof would reveal that these cases often do so by virtue of a statute so providing. On the other hand in *State vs. Meyer*,[70] the court ruled that there are certain types of statutory crimes in the commission of which the perpetrator acts at his peril, and that if knowledge is not made a prerequisite by the statute defining the crime, its absence is not a defense, nor is it an element to be proved by the State.[71]

In the light of the foregoing disquisitions, the trial court's conclusion on Alejandro Largo's guilt must be sustained, but not because, as earlier discussed, of any threat and intimidation which deprived her of reason, but because she was suffering from schizophrenia, paranoid type, which deprived her of reason. Further, he should be held liable not just for one but for two rapes. He succumbed, at least twice, to his bestial instinct and desire to satisfy his animal lust by preying upon a married woman with two children who was suffering from a chronic mental disorder which rendered her incapable of effectively giving consent to or opposing the carnal acts. He became a two-legged beast which civilized society must not allow to roam.

WHEREFORE, judgment is hereby rendered modifying the challenged decision of Branch 13 of the Regional Trial Court of Cebu in Criminal Case No. CBU-18911, and as modified:

1. ACQUITTING, for want of proof beyond reasonable doubt of his guilt, accused-appellant ROGELIO LARGO and ordering his immediate release from confinement, unless his further detention is warranted by any lawful cause; and
2. FINDING accused-appellant ALEJANDRO LARGO guilty beyond reasonable doubt of two (2) crimes of rape under Article 335 of the Revised Penal Code and sentencing him to suffer two penalties of reclusion perpetua with their accessory penalties, and to pay the offended party civil indemnity in the amount of

P40,000.00 for each crime.

No pronouncement as to costs.

SO ORDERED.

Bellosillo, Quiason, and Kapunan, JJ., concur.

Cruz, J., (Chairman), on official leave.

[1] Original Records (OR), MTC of Naga, Cebu, 1 (stitched to the OR [vol. B] of Criminal Case No. CBU-15367, RTC of Cebu).

[2] OR, MTC, 18.

[3] Id., 21.

[4] Id., 155-156.

[5] Id., RTC(B), 35.

[6] Id., 32-34.

[7] Id., 43-b to 44-d.

[8] OR, RTC(B), 45-46.

[9] Id., 59-61.

[10] Id., Criminal Case No. CBU-18911, 1-2.

[11] Id., 3-f.

[12] Id., 7.

[13] Id., 19-20.

[14] Id., 18.

[15] OR, Criminal Case No. CBU-18911, 41-42. This was marked as Exhibit "D."

[16] Id., 44.

[17] Id., 122.

[18] Id., 129, 156, 197.

[19] Id., 213.

[20] OR, RTC, Criminal Case No. CBU-18911, 272-a-281-a.

[21] Id., 283-291; 292-296.

[22] Id., 317-319.

[23] Id., 339-341.

[24] Testimony of Dr. Obra, TSN, 25 February 1991, 6-8; Exhibits "A," "A-1," to "A-17-A," inclusive.

[25] TSN, 28 February 1991, 8.

[26] Three in 1985, five in 1986, four in 1987, and five in 1988 (Exhibits "C," "C-1," to "C-4," inclusive).

[27] TSN, 25 February 1991, 8-9.

[28] TSN, 27 February 1991, 3, 5.

[29] TSN, 15 March 1991, 13-26.

[30] TSN, 26 February 1991, 5-6; Exhibit "B-8-A."

[31] Id., 7; Exhibit "B-3."

[32] Id., 8.

[33] TSN, 5 March 1991, 4-6.

[34] Id., 7.

[35] Id., 5-8.

[36] TSN, 7 March 1991, 8.

[37] TSN, 15 March 1991, 4-27.

[38] TSN, 15 March 1991, 27.

[39] Id., 29-37; TSN, 19 March 1991, 3-37.

[40] TSN, 29 July 1991, 4-9.

[41] TSN, 31 July 1991, 8-17; TSN, 19 August 1991, 3-5.

[42] TSN, 19 August 1991, 6-9.

[43] TSN, 20 August 1991, 5-10.

[44] OR, Criminal Case No. CBU-18911, 436-457; Rollo, 29-50. Per Judge Meinrado P. Paredes.

[45] Id., 455; Id., 48.

[46] OR, Criminal Case No. CBU-18911, 456-457; Rollo, 49-50.

[47] OR, 465.

[48] Rollo, 117.

[49] People vs. Simon, G.R. No. 93028, 29 July 1994.

[50] The third paragraph, as amended by Section 11 of R.A. No. 7659, now reads: "When the woman is under twelve years of age or is demented." (emphasis supplied).

[51] TSN, 26 February 1991, 5-8; Exhibits "B-3" and "B-8-A."

[52] TSN, 28 February 1991, 20-21.

[53] RAMON C. AQUINO, The Revised Penal Code, vol. III, 1988 ed., 393.

[54] 88 SCRA 704 [1979]. See also People vs. Race, 212 SCRA 90 [1992].

[55] TSN, 28 February 1991, 8.

[56] Harold I. Kaplan and Benjamin J. Sadock, *Modern Synopsis of Comprehensive Textbook of Psychiatry*, 4th ed. [1985], 194.

[57] James H. Scully, et al., *Psychiatry*, 2nd ed., [1985], (The National Medical Series for Independent Study), 19.

[58] Miller-Keane, *Encyclopedia and Dictionary of Medicine and Nursing*, 1972 ed., 860.

[59] By Lawrence C. Kolb, *Seventh Edition*, 1968, 355.

[60] Kolb, *op. cit.*, 375-383.

[61] Kaplan and Sadock, *op. cit.*, 205.

[62] Kolb, *op. cit.*, 380.

[63] Article 8, Revised Penal Code.

[64] *People vs. Cadag*, 2 SCRA 388 [1961].

[65] *People vs. Martinado*, 214 SCRA 712 [1992].

[66] *People vs. Pareja*, 30 SCRA 693 [1969].

[67] TSN, 19 August 1991, (a.m.), 9.

[68] e.g., Articles 162, 165, 187, 188(2) and (4), 244, 316(2), 319(1), 333, and 350 wherein scienter is required.

[69] See cases cited in 31 ALR3d 1227, 1249 [1970].

[70] 37 Wash 2d 759, 226 P2d 204 [1951].

[71] See also *State vs. Dombroski*, 145 Minn 278, 176 NW 985 [1920]; *State vs. Prokosh*, 152 Minn 86, 187 NW 971 [1922]; *State vs. Sullivan*, 298 NW2d 267 [1980].

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