

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSE MORENO Y CASTOR, ACCUSED-APPELLANT.

G.R. No. 126921. August 28, 1998

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Evidence of overwhelming physical force is not necessary to sustain a conviction for the rape of an imbecile. When the victim is a retardate with the mental age of a six-year-old child, the force required to overcome her is of a lesser degree than that used against a normal adult.

The Case

Jose Moreno y Castor seeks the reversal of the June 17, 1996 Judgment[1] of the Regional Trial Court of Pasig City, Branch 165, in Criminal Case No. 101919, convicting him of rape and sentencing him to reclusion perpetua.

In a Complaint dated October 4, 1993, Jocelyn Bansagales and her mother, Dolores Bansagales, charged appellant with rape by means of force and intimidation. This was treated as the Information upon certification that a preliminary investigation had been conducted by Fourth Assistant Provincial Prosecutor Amerhassan C. Paudac. Below is the accusatory portion of the Complaint:

“That on or about the 29th day of September, 1993, in the Municipality of Pasig, Metro-Manila, Philippines and within the jurisdiction of the Honorable Court, the above-named accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the undersigned against her will and consent.

“CONTRARY TO LAW.”[2]

Assisted by his counsel, Atty. Gabriel C. Alberto of the Public Attorney’s Office, the accused pleaded not guilty during his arraignment.[3] Trial proceeded in due course. Thereafter, the court a quo rendered the assailed Decision, the dispositive portion of which reads:

“WHEREFORE, finding the accused Jose Moreno y Castor guilty beyond reasonable doubt of the crime of rape punishable under Art. 335 of the Revised Penal Code, the Court hereby sentences him to suffer imprisonment of reclusion perpetua.

“The preventive imprisonment undergone by the accused shall be credited in his favor pursuant to Art. 29 of the Revised Penal Code as amended by Republic Act No. 6127.”

The Facts

Evidence for the Prosecution

In the Appellee’s Brief,[4] the solicitor general[5] presents the following narration of the facts:

“Accused-appellant Jose Moreno, a carpenter, and complainant Jocelyn Bansagales, a mental retardate, were

neighbors in Villa Tech, Palatiw, Pasig City. At the time of the incident, Jocelyn was twenty-six (26) years old. She fondly calls appellant “Kuya Joe.” In the afternoon of September 29, 1993, while Jocelyn was laundering clothes, appellant approached and held her hand. He led her to a tricycle and drove off to a rented house somewhere in Rotonda, Pasig. No one was in the house. Once inside, appellant began to undress Jocelyn. Afterwards, he [lay] on top of her. He inserted his penis into her vagina and while in this position, moved in an upward and downward motion. Jocelyn did not like what appellant was doing to her. Terrified, she was forced to submission after appellant threatened that he [would] hurt her some more. (pp. 7-8, tsn, May 16, 1994) After satisfying his lust, appellant gave her twenty pesos (P20.00) and sent her home.

“When Jocelyn’s mother, Dolores, learned what had happened to her daughter, she immediately brought her to the police station in Pasig City. She booked her complaint with PO2 Aida Verzosa, the policewoman on duty at the station. PO2 Verzosa, together with police officers Nida Balagot and Mario Garcia, then went to Villa Tech, Palatiw, Pasig. Upon seeing appellant, they confronted him with Jocelyn’s accusation and invited him to the police station. Jocelyn positively identified appellant as the one who raped her. PO2 Verzosa then took down the sworn statement of Jocelyn, on the basis of which, the instant complaint for rape was filed against appellant.

“Dra. Rosaline O. Cosidon, a medico-legal officer, examined Jocelyn sometime in October 1993. She found deep healed lacerations and shallow healed lacerations in Jocelyn’s hymen. These lacerations, according to her, could have been caused only by sexual intercourse. (Exhibits “C” - “C-1”)

“Dra. Ester Regina Servando, a resident on training in Psychiatry at the National Center for Mental Health (NCMH) also examined Jocelyn and submitted a medical certificate of her findings wherein she concluded that:

REMARKS AND RECOMMENDATIONS

Based on history [and] mental status examinations, patient was diagnosed to have moderate mental retardation. This condition is permanent and I.Q. range is between 35-50. Patient[’s] mental age is equivalent to 6 years old.

(Exhibit “D”)

“These findings were concurred in by Dra. Cecilia Albaran, a psychiatrist holding the position of Medical Officer III at NCMH. She had seen and talked to Jocelyn only once. She observed that Jocelyn had low intelligence. Although Jocelyn was twenty-six years old, she had the mental age of a six-year-old child. Maria Suerte G. Caguingin, a psychologist at NCMH, administered psychological tests on Jocelyn. Test results showed that Jocelyn [was] a mental retardate. (Psychological Report, Exhibit “E”)

Evidence for the Defense

On the other hand, the defense alleges denial as follows:

“[T]he defense presented the accused himself who denied that he ever had any sexual intercourse with the complainant. According to the accused’s version, it was Jocelyn Bansagales who came to his house while he was sleeping and who woke him up by mashing his penis. Furthermore, it was stated by Jose Moreno that he only went as far as kissing, hugging and “fingering” the complainant. He denied inserting his penis nor [sic] that he ever attempted to insert his penis inside the vagina of the victim.

“The defense likewise presented the testimony of Elena Angustia who alleged that the accused and the complainant were neighbors and that she often saw them together, making her believe that they ha[d] an amorous relationship. (TSN, January 15, 1996, pp. 11-12)”[6]

The Ruling of the Trial Court

Finding for the prosecution, the trial court ruled: “The denial of the accused that he had sexual intercourse with Jocelyn Bansagales and his claim that he inserted his forefinger and middle finger only inside her private part is unworthy of belief and cannot prevail over the statement of Jocelyn that he inserted his penis in her vagina and had sexual intercourse with her. With the low I.Q. of Jocelyn, it is highly improbable that she could have concocted or fabricated her charge against the accused.”[7] Jocelyn’s Complaint was corroborated by the findings of the medico-legal officer.

Based on the aforementioned grounds, the trial court concluded that the accused “is guilty of rape under paragraph 2 of Article 335 of the Revised Penal Code because the offended party, having a mental age of six years old, was deprived of reason. Alternatively, the accused is liable under paragraph 3 of the same article because at the time she was raped, Jocelyn Bansagales [was] in the same category as a child below twelve years of age for lacking the necessary will to object to the accused’s lewd design.”[8]

Hence, this appeal.[9]

Assignment of Errors

In assailing the trial court’s Decision, appellant alleges the following errors:[10]

“I

The court a quo erred in convicting the accused on a ground other than that which has been alleged in the complaint.

“II

The court a quo erred in convicting the accused under the second and third paragraphs of Art. 335 of the Revised Penal Code despite the failure of the prosecution to establish his guilt beyond reasonable doubt.

“III

The court a quo erred in failing to apply the mens rea doctrine.”

The Court’s Ruling

The appeal is devoid of merit.

First Issue:

Ground for Conviction

Under Article 335 of the Revised Penal Code, rape is committed thus:

“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.”

Appellant argues that the trial court erred in convicting him under the second, and alternatively the third paragraph, of the foregoing provision, because the Complaint (which was later converted into the Information) charged him with rape under the first paragraph thereof. Appellant argues that the three methods of committing

rape enumerated in Article 335 are separate and distinct from each other, and that one particular method does not necessarily include the others. In support of his contention, appellant cites *People v. Pailano*,^[11] in which the Court ruled that the “[c]onviction of the accused-appellant on the finding that he had raped Anita while she was unconscious or otherwise deprived of reason -- and not through force and intimidation, which was the method alleged [in the Information] -- would have violated his right to be informed of the nature and the cause of the accusation against him.”^[12]

We concede that appellant cannot be convicted under paragraphs 2 or 3 of Article 335 of the Revised Penal Code, because none of the modes of committing rape specified therein were alleged in the Information. To convict him under either of these statutory provisions is to deprive him of the constitutional right to be informed of the accusation against him. The heart of this constitutional guarantee was explained in *US v. Karelsen*:^[13]

“The object of this written accusation was - First. To furnish the accused with such a description of the charge against him as will enable him to make his defense; and second, to avail himself of his conviction or acquittal, for protection against a further prosecution for the same cause; and third, to inform the court of the facts alleged, so that it may decide whether they are sufficient in law to support a conviction, if one should be had.”

Thus, this Court has ruled that “an accused cannot be convicted of an offense, unless it is clearly charged in the complaint or information. Constitutionally, he has a right to be informed of the nature and cause of the accusation against him. To convict him of an offense other than that charged in the complaint or information would be a violation of this constitutional right.”^[14] Relying on this Constitutional guarantee, the Court held that “appellant x x x cannot be convicted of homicide through drowning in an information that charges murder by means of stabbing.”^[15] Closer to the milieu of this case is *People vs. Pailano*,^[16] cited by appellant himself, in which the Court ruled that a person cannot be convicted of rape under paragraph 2, of Article 335 of the Revised Penal Code because the Information alleged rape by force and intimidation.

Appellant, however, is here being convicted under paragraph 1, not paragraphs 2 or 3, of Article 335.

Jocelyn’s testimony clearly proved that appellant, by means of force and intimidation, had carnal knowledge of her against her will. She testified:

“Fiscal: So you saw the penis of Kuya Joe out because he was nude[:]; what did he do with his penis when you said that he was lying on top of you?

Witness: It was on top.

Fiscal: It was on top of what?

Witness: “Dito po sa puki ko.”

Fiscal: When his penis was placed on top of your vagina, what else did he do?

Witness: “Nakapasok po.”

Fiscal: Which one penetrated, his penis? Where did it penetrate?

Witness: Inside my vagina.

Fiscal: Did you like it that he inserted his penis [in]to your vagina?

Witness: No, ma’am.

Court: Why did you not do anything if you did not like what he did?

Witness: I was afraid of him.” ^[17]

The force necessary in rape is relative, depending on the age, the size and the strength of the parties.[18] Hence, it has been held that “for rape to exist, it is not necessary that the force and intimidation employed in accomplishing it be so great or of such character as could not be resisted, it is only necessary that the force or intimidation be sufficient to consummate the purpose which the accused had in mind. Intimidation must be viewed in the light of the victim’s perception and judgment at the time of the commission of the crime and not by any hard and fast rule.”[19]

It is well to stress that the victim in this case was not “normal”; she was a retardate with the mental age of a six-year-old. Because her mental faculties are different from those of a fully functioning adult, the degree of force needed to overwhelm her is less. Hence, a quantum of force, which may not suffice when the victim is a normal person, may be more than enough when employed against an imbecile. Appellant’s acts may not have intimidated a normal person. But Jocelyn was not normal; she was a retardate with the mind of a six-year-old child. From her perspective, appellant’s acts were sufficient to engender fear in her mind. Jocelyn’s testimony sufficiently demonstrated that the sexual act was forced on her. Moreover, a normal person could have offered a more vigorous resistance to the assault of appellant. But Jocelyn was different; being a retardate, she could not muster the mind or the will to resist, for she was already afraid. It is clear that appellant committed the outrage against her will -- with minimal force, but force nonetheless.[20]

That the complainant is mentally retarded is beyond question. The results of the mental and psychological tests administered to her showed that she had a mental age equivalent to that of a six-year-old. During the trial, these results were verified by the two doctors who examined her, namely, Dr. Cecilia Albaran, a psychiatrist; and Dr. Ester Regina Servando, a resident on training in psychiatry.

Second Issue:

Strength of the Prosecution Evidence

Appellant argues that his guilt has not been proven beyond reasonable doubt, because “his conviction was based solely on the testimony of the victim who has been shown to be an imbecile. x x x As such, her testimony should have been considered by the trial court with great caution.” The prosecution allegedly failed to establish that complainant fully understood the nature of an oath and that she was capable of giving a correct account of the matters which she had seen or heard with respect to the questions at issue. Accordingly, appellant contends that said complainant might not have been able to distinguish right from wrong or to give a fairly intelligent and reasonable narrative of the matters to which she testified; that is, she “might be stating things which never really happened but were only impressed upon her fragile mind.”[21]

Section 18, Rule 130 of the Rules of Court, specifies the qualifications of a witness in this wise:

“Sec. 18 Witnesses; their qualifications. — Except as provided in the next succeeding section, all persons who, having organs of sense, can perceive, and perceiving, can make known their perceptions to others, may be witnesses. x x x.”

To repeat, the evidence showed that Jocelyn Bansagales had the mental age of a six-year-old. Other than a bare statement of that fact, appellant has presented no proof whatsoever that she was incapable of perceiving events and communicating such perceptions, or that she did not possess the qualifications of a competent witness.

Mental retardates have, in the past, been allowed to testify. In *People v. Salomon*, this Court held that “[a] mental retardate is not for this reason alone disqualified from being a witness. As in the case of other witnesses, acceptance of one’s testimony depends on its nature and credibility.”[22] In *People v. Gerones*,[23] the Court allowed the victim to testify, even if she had the mental age of a 9 or 10-year-old. Likewise, in *People v.*

Antonio,[24] the Court allowed the testimony of a 24-year-old woman who had the mental age of a seven-year-old child, because the Court was convinced that “she was capable of perceiving and making her perception known.”[25]

On the ability of Jocelyn to understand the nature of an oath, the trial court was satisfied with her affirmation, while under direct examination, that she understood the need to tell the truth during her testimony. The lower court aptly stated that “with the low I.Q. of Jocelyn, it is highly improbable that she could have concocted or fabricated her charge against the accused. This conclusion is strengthened by the appellant’s admission that he knew no reason or motive why she would want to file a case or falsely testify against him.

Moreover, Dr. Ester Regina Servando, one of the doctors who examined the complainant, testified that the latter was capable of narrating the events that transpired despite her mental state, as shown by her testimony:

“Fiscal: Mrs. Witness, earlier you stated that Jocelyn Bansagales through your queries [was] able to say what Jose Moreno did to her. Mrs. Witness, considering her IQ range is that of a moderate retardate, is it possible that such kind of information can really be elicited from a person like her?

Witness: After several questioning, she was able to give that information although it was not continuous questioning[;] the questions were made in a simple manner so that she could understand it.

Fiscal: With her mental range, is it possible for her to give that information?

Witness: Yes.

Fiscal: Even in her aspect she can also give [the] narrative or information?

Witness: Yes.”[26]

In fact, Jocelyn graphically described the manner by which appellant raped her. Even though she was mentally deficient, Jocelyn clearly testified that appellant had carnal knowledge of her against her will.

The trial court, which had the opportunity to observe her demeanor on the witness stand, was convinced of her credibility. We find no reason to reverse or alter its holding, considering that “[i]t is a time-tested doctrine that a trial court’s assessment of the credibility of a witness is entitled [to] great weight -- even [considered] conclusive and binding if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence.”[27]

Appellant additionally argues that complainant’s low intelligence quotient “does not necessarily mean that she is incapable of any sexual judgment”[28] or of consenting to any sexual congress with the accused. He cites Dr. Futnam Kivowitz, purportedly an expert in the field of mental retardation, who opines that “given proper instruction, the retarded person may well have sexual judgment.”[29]

Again, this argument is extraneous. Dr. Kivowitz’s position is premised on the fact that the retarded person is given proper instruction. In the present case, there is absolutely no evidence or indication that Jocelyn Bansagales was given proper instruction, or that she possessed such knowledge as to enable her to have sexual judgment. In fact, in our jurisdiction, having carnal knowledge with a woman under twelve years of age is rape without need of proof of force or deprivation of reason. Our law presumes that a woman under twelve years of age does not have the mental capacity for the requisite sexual judgment to consent to the sexual act.

Third Issue:

Mens Rea

Actus non facit reum, nisi mens sit rea. Jurisprudence instructs us that a crime cannot be committed if the mind of the one performing the act is innocent and without any criminal intent;^[30] that is, bereft of mens rea, which is defined as “a guilty mind, a guilty or wrongful purpose or criminal intent.”^[31]

Pursuant to the above, appellant claims that he was not aware of the mental deficiency of the victim; or if he was aware, he did not know that the deficiency was of such degree as to render her incapable of loving or of giving consent to the sexual act. Thus, he maintains that the prosecution failed to prove criminal intent on his part, because he could not have known that the victim was incapable of giving consent to the sexual act.

This contention has no factual foundation. It is undisputed that complainant and appellant had been neighbors for several years. In fact, appellant was well-known to complainant, such that the latter called him “Kuya Joe.” Appellant even testified that complainant sometimes washed his clothes and picked lice from his hair without receiving payment therefor.^[32] That complainant was a mental retardate was quite apparent and easily discernible. Under these circumstances, appellant could not have been unaware of the complainant’s deficient mental condition.

Defense Witness Elena Angustia, who was a neighbor of both appellant and complainant, stated during her cross-examination that complainant’s mental retardation was obvious even from plain observation of her conduct. Her testimony proceeded as follows:

“Prosecutor Cecilio: Is it not a fact Madam Witness that the complaining witness has some kind of mental deficiency?

Witness: Yes sir.

Prosecutor Cecilio: In fact Madam Witness, the complaining witness does not go to school anymore is it not?

Witness: Yes, sir.

Prosecutor Cecilio: And do you know Madam Witness what is meant by retardate?

Witness: Yes, sir.

Prosecutor Cecilio: Is the complaining witness a retardate? As far as your observation is concerned, is she a retardate?

Witness: A little.”^[33]

Dr. Cecilia Albaran herself stated that she could conclude, simply on the basis of her observation of the victim, that the latter had low intelligence.^[34] In *People v. Rosare*,^[35] the Court also noted that complainant’s mental deficiency was so obvious that it was easily observable during preliminary investigation, viz.:

“Her deficient mentality stuck out like a sore thumb at the center. Her behavior as a mental retardate was so obvious that even the investigating fiscal, who is not a man of science was able to observe it during preliminary investigation.”^[36]

In the present case, we find it highly improbable that appellant, who had known complainant as a neighbor for a long time, was unaware of her mental deficiency. Therefore, he cannot claim that his act of having carnal knowledge of complainant was without any guilty purpose or criminal intent.

Civil Indemnity

We note that the trial court did not award any civil indemnity. Pursuant to current jurisprudence and without need of further proof, we award the offended party civil indemnity^[37] and moral damages, each in the sum of P50,000,

or a total of P100,000. In *People v. Prades*,^[38] the Court resolved that “moral damages may additionally be awarded to the victim in the criminal proceeding, in such amount as the Court deems just, without the need for pleading or proof of the basis thereof as has heretofore been the practice.”

WHEREFORE, the assailed Decision is hereby **AFFIRMED** with the **EXPLANATION** that appellant is found **GUILTY** beyond reasonable doubt of rape under paragraph 1, Article 335 of the Revised Penal Code; and with the **MODIFICATION** that the appellant is **ORDERED** to pay the victim civil indemnity and moral damages, in the sum of P50,000 each, or a total of P100,000. Costs against appellant.

SO ORDERED.

Bellosillo, Vitug and Quisumbing, JJ., concur. Davide, Jr. (Chairman), has a separate opinion.

SEPARATE OPINION

DAVIDE, JR., J.:

I respectfully submit that accused-appellant may be validly convicted of rape under either the second or third circumstance provided for in Article 335 of the Revised Penal Code, even if the information has charged him only with rape under the first circumstance.

Article 335 of the Revised Penal Code, as amended by R.A. No. 7659, pertinently provides 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:

- By using force or intimidation;
- When the woman is deprived of reason or otherwise unconscious; and
- When the woman is under twelve years of age or is demented.

Before the amendment introduced by R.A. No. 7659, the third circumstance read as follows:

3. When the woman is under twelve years of age, even though neither of the circumstances mentioned in the two next preceding paragraph shall be present.

Since the rape subject of this case was committed on 29 September 1993, the governing law then was Article 335 before it was amended by R.A. No. 7659.

The complaint here contained sufficient allegations showing that rape was committed under the first circumstance of Article 335.

The evidence, however, established that the victim was an imbecile with the mental age of six-year old child. The record does not disclose that appellant objected to the presentation and offer by the prosecution of evidence of such fact. Appellant's failure to object was thus a waiver of the constitutional right to be informed of the nature and cause of the accusation. It is competent for a person to waive a right guaranteed by the Constitution, and to consent to action which would be invalid if taken against her will. (1 ARTURO M. TOLENTINO, CIVIL CODE OF THE PHILIPPINES 31-32 [1983 ed.]). This Court has, on more than one occasion, recognized waivers of constitutional rights, e.g., the right against unreasonable searches and seizures (*People vs. Malasugui*, 63 Phil. 221 [1936] ; *Viuda de Gracia v. Locsin*, 65 Phil 689 [1938]); the right to counsel and to remain silent (*People v. Royo*, 114 SCRA 304 [1982]); the right to be heard (*Abriol v. Homeres*, 84 Phil. 525 [1949] ; *People v. Dichoso*,

96 SCRA 957 [1980]) and the right to bail (*People v. Donato*, 198 SCRA 130 [1991]). Reliance on *U.S. v. Karelsen* (3 Phil. 223 [1904]) and *People v. Mabag y Labado* (98 SCRA 730 [1980]) is inapposite for the former did not involve a conviction for an offense other than that charged, accused was in fact charged with and convicted of embezzlement; while in the latter, this Court sustained the conviction of the accused under Article 335 although he was charged with having violated Article 293 in relation to Paragraph 2 of Article 296 of the Revised Penal Code. Neither is *People v. Pailano* (169 SCRA 649 [1989]) of any persuasive import, for in fact, it did not totally discount a valid conviction for rape under the second circumstance of Article 335 although the complaint charged a violation of the first paragraph, in light of the failure on the part of the accused to object to the evidence to support the second circumstance. This Court noted there, thus:

It may be argued that although initially deficient, the criminal complaint was deemed corrected when the prosecution introduced evidence of the complainant's mental condition and the defense did not object, thereby waiving the procedural defect. Even so, the charge has not been adequately established.

In the first place, the doctor who examined Anita reported that he saw no evidence of insanity in her family history nor was there any indication of such condition in the complainant herself. He did observe that she had the mentality of a thirteen-year old, which was not that serious an impediment as her age at the time was only fifteen.

Secondly, and more importantly, the prosecution has not proved that during the encounter in the bushes, Anita's mental condition was so weakened that she could not resist Pailano's supposed advances.

Accordingly, appellant here can be convicted of the crime charged through either the second or third circumstance of committing such crime.

It is settled that an imbecile or a retarded woman with a mental age below that of a woman less than twelve (12) years of age is deprived of reason and carnal knowledge of her is considered rape under the second circumstance of Article 335 (*People v. Gallano*, 108 SCRA 405 [1981] ; *People v. Sunga*, 137 SCRA 130 [1985]) or is of the same category as a woman under 12 years of age and carnal knowledge of her is deemed rape under the third circumstance (*People v. Manlapaz*, 88 SCRA 704 [1979] ; *People v. Asturias*, 134 SCRA 405 [1985] ; *People v. Race*, 212 SCRA 90 [1992]).

In *People v. Rosare* (264 SCRA 398 [1996]), the conviction was, principally, for rape under the second circumstance, and not under the first, as footnote numbered 20 on page 12 of the ponencia here states. The opinion that the accused there could be convicted under the first paragraph was merely an additional ground to sustain the rape conviction. What *Rosare* held as to why no conviction under the third circumstance was possible was that the accused was not charged with statutory rape, thus:

Nonetheless, we find and so hold that appellant cannot be held liable for statutory rape. The age of the victim is an essential element in the crime of statutory rape, but the information filed in the case at bar does not contain any averment thereof, even at least with regard to the mental age of the victim. This notwithstanding, appellant may still be convicted of rape under paragraph 2 of Article 335 of the Code on the basis of the facts and evidence hereinbefore discussed.

In addition, while there may have been no physical force employed on the victim, considering however that she is feeble-minded, there is authority to the effect that the force required by the statute is the sexual act itself, to wit:

"Appellant contends in the instant case that it was not shown that the carnal knowledge was by force. It is plain, however, 'forcibly' does not mean violently, but with that description of force which must be exercised in order to accomplish the act of there is no doubt that unlawful connection with a woman in a state of

unconsciousness, produced by profound sleep, stupor or otherwise, xxx amounts to rape. x x x (T)his force may be constructive xxx where the female was an idiot, or had been rendered insensible by the use of drugs or intoxicating drinks, x x x she was incapable of consenting, and the law implied force. xxx In wrongful act. xxx A man who, knowing of a woman's insanity, takes advantage of her helpless condition to gratify his own lustful desires, is guilty of felonious rape, though he uses no more force than that involved in the carnal act, and though the woman offers no resistance to the consummation of his purpose." (Italics supplied).

Accordingly, appellant can also be held liable even under the first paragraph of Article 335 of the Revised Penal Code. Women, like the ill-fated girl in this case, must be protected, not only against the lachorous (sic) members of the opposite sex, but against themselves as well; and men who, knowing of their imbecility, take advantage of their helpless condition to gratify their own satyric desires, are guilty of rape, though they use no more force than that involved in the carnal act, and though the woman offers no resistance to the consummation of their purpose. (Underscoring supplies).

The underscored statement in Rosare is plainly too sweeping and must be taken only as an obiter. It cannot be absolutely decreed that the sexual act itself constitutes force to make the carnal knowledge criminal. In the case of an imbecile or a retardate with a mental age below that of a woman less than 12 years old, the more acceptable pronouncement to bring carnal knowledge of her within the first circumstance of Article 335 was that forwarded in *People v. Gallano* (supra, at 413), to wit:

Her mental condition was such that she would not resist sexual advances because she was so deprived of reason to make any effective resistance. Hence, by her being so deprived, the act is made possible in the same way when there is active resistance but [the] same is overcome by force or threat, which is the essence of the crime of rape.

[1] Penned by Judge Marietta A. Legaspi; Rollo, pp. 18-36.

[2] Complaint, p. 1; Rollo, p.

[3] Assailed Decision, p. 1; Rollo, p. 18.

[4] Appellee's Brief, pp. 2-4; Rollo, pp. 111-113.

[5] The Appellee's Brief was signed by Solicitor General Romeo C. Dela Cruz, Assistant Solicitor General Pio C. Guerrero, Assistant Solicitor General Antonio L. Villamor and Associate Solicitor Asuncion A. de Leon-Omila.

[6] Appellant's Brief, pp. 3-4; Rollo, pp. 52-53. This was signed by Public Attorney IV Araceli Adan Rubin, Public Attorney III Amelia C. Garchitorena and Public Attorney II Ferdinand C. Baylon.

[7] Assailed Decision, pp. 14-15; Rollo, pp. 31-32.

[8] Ibid., p. 16; Rollo, p. 33.

[9] The case was deemed submitted for resolution on May 26, 1998, when the Court received appellant's Manifestation dated May 25, 1998, stating that "he opts not to file" a reply brief.

[10] Appellant's Brief, p. 1; Rollo, p. 50.

[11] *People v. Pailano*, 169 SCRA 649, January 31, 1989, per Cruz, J.

[12] Ibid., p. 653.

[13] 3 Phil 223, per Johnson, J. See also *People v. Labado*, 98 SCRA 730, July 24, 1980.

[14] *People vs. Ortega*, GR No. 116736, July 25, 1997, p. 22, per Panganiban, J.

[15] *Ibid.*, p. 223.

[16] *Supra*.

[17] TSN, May 16, 1994, pp. 9-13.

[18] *People vs. Errojo*, 229 SCRA 49, January 4, 1994.

[19] *People vs. Antonio*, 233 SCRA 283, 299, June 17, 1994, per Davide, Jr., J. *Italics supplied*.

[20] In *People v. Rosare* (264 SCRA 398, November 19, 1996, per Regalado, J.), the Court held: “while there may have been no physical force employed on the victim, considering however that she is feeble-minded, there is authority to the effect that the force required by the statute is the sexual act itself.” In that case, the Information alleged rape under the first paragraph of Article 335, but the trial court convicted appellant under the third paragraph of Article 335 because the prosecution proved that the victim was an imbecile. The Supreme Court, however, held that appellant should be convicted under the first paragraph of Article 335.

[21] Appellant’s Brief, pp. 12-15; Rollo, pp. 61-63.

[22] 229 SCRA 403, 409, January 21, 1994, per Cruz, J.

[23] 193 SCRA 263, January 24, 1991.

[24] 233 SCRA 283, June 17, 1994, per Davide, Jr., J.

[25] *Ibid.*, p. 297.

[26] TSN, January 23, 1995, pp. 25-26.

[27] *People v. Angeles*, 275 SCRA 19, July 1, 1997, p. 10, per Panganiban, J.

[28] Appellant’s Brief, p. 14; Rollo, p. 63.

[29] *Ibid.*

[30] See *Manahan, Jr. v. Court of Appeals*, 255 SCRA 202, March 20, 1996; *Manzanaris v. People*, 127 SCRA 201, January 30, 1984.

[31] *Black’s Law Dictionary*, 5th ed., p. 889

[32] TSN, August 28, 1995, pp. 22-24.

[33] TSN, January 15, 1996, pp. 17-18.

[34] Assailed Decision, p. 5; Rollo, p. 22.

[35] *Supra*.

[36] *Ibid.*, p. 406.

[37] *People v. Conte*, 247 SCRA 583, 598, August 23, 1995; *People v. Joya*, 227 SCRA 9, October 1, 1993. In *People v. Victor* (G.R. No. 127903, July 9, 1998, pp. 15-16, per curiam), the Court held that the amount of civil indemnity shall be in the increased amount of not less than P75,000, “if the crime of rape is committed or effectively qualified by any of the circumstances under which the death penalty is authorized by the present amended law.” For obvious reasons, this increased amount cannot be applied to the present case.

[38] GR No. 127569, July 30, 1998, p. 19, per curiam.

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