

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDGARDO MACEDA, ACCUSED-APPELLANT.

G.R. No. 138805. February 28, 2001

Ponente: MENDOZA, J.

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MENDOZA, J.:

For review is the decision[1] of the Regional Trial Court, Branch 76, Quezon City, finding accused-appellant Edgardo Maceda guilty beyond reasonable doubt of the rape of Maribeth Quinto, a mental retardate, and sentencing him to death and to pay the victim the amount of P50,000.00 as moral damages plus the costs of the suit.

The information against accused-appellant alleged —

That on or about the 19th day of February, 1998, in Quezon City, Philippines, the said accused, by means of force and intimidation, did, then and there, willfully, unlawfully and feloniously drag one MARIBETH QUINTO y ARMAZA, into the room of the latter's house at Group 5, Area B, Barangay Payatas, this City, and once inside, undressed her and thereafter have carnal knowledge with the said MARIBETH QUINTO y ARMAZA, a retarded, against her will and without her consent.

CONTRARY TO LAW.[2]

Upon being arraigned, accused-appellant pleaded not guilty to the charge, whereupon he was tried. The prosecution presented complainant Maribeth Quinto, her mother Editha Quinto, and Medico-Legal Officer Emmanuel Reyes, as its witnesses, while the defense presented accused-appellant, his sister Rosa Dantes, and his cousin Owen Santos.

The prosecution evidence established the following facts:

Complainant Maribeth Quinto is a 32-year old mental retardate. She lived with her mother Editha at Group 5, Area B, Payatas, Quezon City, while her siblings lived elsewhere in the neighborhood.

In the morning of February 18, 1998, complainant's mother went to wash clothes for her employer in Camarin, Caloocan City. Complainant was left in the care of her sister, Veronica. When night came, Veronica left the victim alone in the house as she expected her mother to arrive soon. Editha, however, was unable to go home that night because her employer had some problems.[3]

Alone in the house, complainant fell asleep while waiting for her mother to arrive. She was awakened by the barking of the dog at around 1:30 a.m. of February 19, 1998. She heard someone knocking at the door. When she went to open the door, she found it was her neighbor, accused-appellant Edgardo "Boboy" Maceda, asking where complainant's youngest brother Nonoy was. When complainant answered that her brother was not there, accused-appellant got inside the house, closed the door behind him, and told complainant not to make any noise. Accused-appellant then forced her to lie down and started kissing her on the lips and neck. Complainant got scared and began to cry. Accused-appellant then pulled down her panty, spread her legs, and had sexual

intercourse with her. Afraid, complainant covered herself with a blanket as soon as accused-appellant left.[4]

Complainant's mother arrived home at around 11 o'clock in the morning on February 19, 1998. She noticed that the victim was quiet, but, thinking that the latter was just being moody, did not pay attention to her. After a while, complainant, who was crying, approached her mother and told her what had happened. Describing what she felt while being raped, complainant told her mother, "tulo ng luha ko. Hirap hirap ako." (My tears just ran down. It was very difficult for me.)[5]

On the same day, Editha took her daughter to the barangay captain and reported the incident. Following the advice of the barangay captain, they went to Camp Crame and had complainant physically examined by a medico-legal officer. The following day, February 20, 1998, Editha and complainant went to the police station and gave their sworn statements on the basis of which accused-appellant was arrested and detained at the Quezon City Jail.[6]

Dr. Emmanuel Reyes, the medico-legal officer at Camp Crame, examined complainant and found the following:

GENITAL:

On separating the same disclosed an abraded posterior fourchette and congested vestibule and an elastic, fleshy type, and congested hymen, with deep-healed lacerations at 3, 6 and 9 o'clock positions. External vaginal orifice offers moderate resistance to the introduction of the examining index finger. Vaginal canal is narrow with prominent rugosities. Cervix is firm and closed.[7]

Dr. Reyes explained that the abraded posterior fourchette and congested vestibule were probably caused either by a rough or dry surface, such as an erect penis, or, if the sexual intercourse was forcibly made, the absence of lubrication. He added that the findings of an abraded posterior fourchette, congested vestibule, and hymenal lacerations indicate that the victim is no longer a virgin. However, no spermatozoa was found in the victim's vagina. Lastly, Dr. Reyes observed an ecchymosis or a "kiss mark," located at the right lateral part of complainant's neck.[8]

Accused-appellant denied the allegations against him. He testified that he lived with his parents and other relatives for 18 years in Area B, Group 5, Payatas, Quezon City, about 35 meters from complainant's house. Accused-appellant said he drove a passenger jeepney everyday from 4:30 a.m. until 8:00 p.m., plying the Lagro-Queens route. On the night of February 18, 1998, after arriving home from work, he rested for 20 minutes and afterward went to sleep. He woke up the following morning at around 4:30 a.m. and went to work.

Accused-appellant testified that the victim and her family had been his neighbors for 15 years. In fact, the victim's youngest brother, Nonoy, would sometimes accompany him during his trips. He said that he did not have any quarrel with complainant's family, although he had some misunderstandings with Nonoy's wife.[9]

A defense witness, Owen Santos, corroborated the testimony of accused-appellant. Santos testified that he was living with accused-appellant's family at the time of the incident. At around 9:30 p.m. on February 18, 1998, he slept beside accused-appellant, and he was sure that the latter did not leave the house that night. He woke up at around 4:30 a.m., took a bath, and went out with accused-appellant.[10]

Accused-appellant's sister, Rosa Dantes, who also lived with accused-appellant and her parents, likewise testified in his behalf. According to her, they lived in a semi-concrete house surrounded by a 5-foot steel gate, although she slept in a room outside their house within the compound. She testified that she was the gatekeeper in the family. When every member of the household was already inside the house, usually at around 9 p.m., she would close the main door and would not open it until around 4:00 a.m. of the next day. She explained that no one could leave the house without her permission because she alone had the key to the main door and it could only be opened from the outside with this key. She was therefore sure that accused-appellant did not leave the house at the time of the

incident.[11]

After the prosecution and the defense finished presenting their evidence, the trial court rendered its decision, the dispositive portion of which reads:

WHEREFORE, finding the accused Edgardo Maceda guilty beyond reasonable doubt of the crime of rape now penalized under Art. 266-A and 266-B of the Revised Penal Code in accordance with RA 8353, with the aggravating circumstance that the offender knew of the mental disability of the complainant Maribeth Quinto at the time of the commission of the crime, the Court hereby imposes the death penalty on the said accused. He is also ordered to indemnify the offended party in the amount of P50,000.00 as moral damages and to pay the costs.

SO ORDERED.[12]

Assailing the decision of the trial court, accused-appellant contends that —

- THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT OF RAPE ABSENT ANY SHOWING THAT FORCE OR INTIMIDATION WAS EMPLOYED, OR THAT THE MENTAL AGE OF THE COMPLAINING WITNESS WAS EQUIVALENT TO THAT OF A GIRL BELOW TWELVE YEARS OF AGE.
- THE LOWER COURT ERRED IN NOT ACQUITTING THE ACCUSED-APPELLANT AT LEAST ON THE GROUND OF REASONABLE DOUBT.
- THE LOWER COURT ERRED IN ORDERING ACCUSED-APPELLANT TO PAY CIVIL DAMAGES AND COSTS.[13]

These contentions are without merit.

First. Accused-appellant puts up the defense of alibi and alleges that he was at home sleeping at the time of the incident. To corroborate his testimony, accused-appellant's sister and his cousin testified that accused-appellant did not leave the house on the night of February 18, 1998. However, both witnesses failed to show that it was physically impossible for accused-appellant to have been at the place where the incident took place at around 1:30 a.m. of February 19, 1998.

Owen admitted that although he slept in the same room as accused-appellant, he could not say for sure that accused-appellant did not leave the house at the time of the incident since he did not guard the latter's movements that night. Owen testified during cross-examination:

FISCAL SANTOS:

Q: You said that accused slept at about 9:30 in the evening?

A:

Yes, sir.

....

Q:

So, if you slept at 9:30 in the evening and woke up at 4:30 a.m., you will not see if Buboy left the house between those intervening hours because you were then sleeping?

A: He did not leave the house.

Q: How do you know that? Were you guarding him?

A: I was sleeping beside him.

Q: So, what if you were sleeping beside him? You were not guarding him?

A: No, sir.

Q: So, based on your answer that he did not leave the house, it is because you were sleeping beside him?

A: Yes, sir.[14]

Thus, Owen could not account for accused-appellant's whereabouts during the time that he was asleep.

Similarly, accused-appellant's sister, Rosa, did not categorically state that she saw accused-appellant inside the house on the night of February 18, 1998 until early morning of the following day. She testified that she was the gatekeeper and that nobody could leave the house at night without her permission. But she never stated that accused-appellant did not leave the house at the time of the incident because the door and the gate were locked.

Even if accused-appellant was inside the house from 9:00 p.m. on February 18, 1998 to 4:30 a.m. the following day, it is not improbable that he sneaked out of their house that night and proceeded to complainant's house, considering its proximity to his house. As accused-appellant himself admitted, his house was only 35 meters from complainant's house.

This Court has consistently ruled:

Alibi as a means of defense is weak when not substantiated by the testimony of a credible witness. Courts have always looked upon the defense of alibi with suspicion and have always received it with caution not only because it is inherently weak and unreliable but also because it is easily fabricated. Alibi as basis for acquittal must be established with clear and convincing evidence. The accused must convincingly demonstrate that it was physically impossible for him to have been at the scene of the crime at the time of its commission. And, where accused was positively identified by the victim herself who harbored no ill motive against the rapist, as in this case, the defense of alibi must fail.[15]

In the case at hand, accused-appellant failed to substantiate his defense of alibi. The testimonies of his witnesses, Owen and Rosa, are rendered suspect because his relationship to them makes it likely that they would freely perjure themselves for his sake. The defense of alibi may not prosper if it is established mainly by the accused himself and his relatives, and not by credible persons.[16] Correctly then did the trial court state:

Against this overwhelming evidence of the prosecution, the accused and witnesses could only offer denials and the supposed impossibility of his having committed the crime because the keys to the house were kept by the sister and that he could not have gone out without her knowing it.[17]

Second. Contrary to the claim of accused-appellant, the prosecution evidence clearly shows that he had carnal knowledge of complainant Maribeth Quinto.

On direct examination, complainant testified:

FISCAL SANTOS:

Q:

Do you know the accused in this case, [Edgardo][18] Maceda alias Boboy?

A:

Yes, sir. (Witness pointing to the accused)

....

FISCAL SANTOS:

Q: Is the nickname of [Edgardo] Maceda, Boboy?

A: Yes, sir.

....

Q: On February 19, 1998, you were in your house at about 1:30 in the morning?

A: Yes, sir.

Q: Where was your mother then at the time?

A: She was working.

Q: So you were alone in your house on said date and time?

A:

Yes, sir.

....

Q: Why did you open the door?

A: Someone was outside the door.

Q: And who was outside the door?

A: I saw a certain person who was asking me to keep quiet.

COURT:

Witness motioning.

FISCAL SANTOS:

Q:

Who was the person who motioned you to keep quiet?

A: (Witness pointing to the accused)

Q:

So, you are saying the person who was outside the door motioning you to keep quiet was the person you just identified now, [Edgardo] Maceda alias Boboy?

A: Yes, sir.

Q: So what happened after that?

A: I was raped.

Q: How were you raped?

A: He pulled down my panties and then kissed me on the lips and neck and then he inserted his penis into my

vagina.

Q: What did you feel?

A: I was afraid.

Q: What happened after that?

A: He left me and then I covered myself with a blanket.

....

COURT:

Q: When your mother arrived, what did you tell your mother?

A: She arrived at noontime. I reported the incident to my mother.

FISCAL SANTOS:

Q: What did your mother tell you?

A:

I was crying and I was afraid.

COURT:

Witness showing her clenched fist.

FISCAL SANTOS:

Q: What else?

A: (Witness demonstrating her reaction)[19]

And on cross-examination, she testified:

ATTY. CATOLICO:

Q: What did he do to you?

A: He spread . . . I resisted and covered myself with a blanket and I cried.

COURT:

Q: Why were you crying? What did he do to you?

A: He was embracing me and I was afraid. He tried to remove my panties.

ATTY. CATOLICO:

Q: Did your mother teach you about what you will say here?

A: No.

Q: After that, what did Boboy do?

A: He took off my panties.

....

COURT:

Q: Where was Boboy then?

A: He went home.

ATTY. CATOLICO:

Q: Who was with Boboy on that night?

A: He was alone.[20]

Complainant never wavered when examined by the trial court:

COURT:

I want to ask the complainant some questions.

(Maribeth Quinto on clarificatory questions from the court)

Q: You will tell the truth, okay?

A: Yes, ma'am.

Q: Who molested you?

A: I was raped one evening.

Q: Point to the person who raped you.

A:

(Witness pointed to accused Edgardo Maceda)

Q: Are you sure he was the one who raped you?

A: Ni-rape niya ako nung gabi.

Q: Are you not mistaken? Maybe it was another man who came to you that night?

A: It was him. I covered my face with a blanket.

Q: When did you cover your face?

A: I was raped that night.

Q: Do you know the meaning of rape?

A: Yes, ma'am.

Q: What do you do when you are raped?

A: He pulled down my panties.

Q: And then what did he do?

A: He told me to keep quiet (Witness gesturing to keep quiet)

Q: And then?

A: I covered myself with a blanket.

Q: And then?

A: He raped me that night.

Q: What do you mean by rape? What did he do to you?

A: He spread my legs.

Q: And then?

A: (Witness making a push and pull movement)[21]

While the testimony of complainant alone is sufficient to convict accused-appellant of rape, the corroborative testimonies of her mother and the examining physician sealed accused-appellant's fate. The mother, Editha, testified:

Q: What happened when you arrived?

A: When I arrived, I noticed my child was not speaking which was not her usual behavior. "Walang kibo."

Q:

Who is the daughter of yours who you said was "walang kibo?"

A: Maribeth Quinto.

Q: So what did you do?

A:

I noticed she was quiet and I did not mind her anymore thinking she was in one of her moods but when I was resting, she approached me.

Q: What happened when Maribeth approached you?

A:

She was crying when she told me someone knocked at the door and when she opened the door, it was our neighbor Boboy.

Q: What else did she tell you?

A: According to her, Boboy asked her if Nonoy was sleeping and she said, "Wala. Tulog siya kabilang bahay."

....

Q: What else was confided to you by Maribeth?

A: Then Boboy told her to keep quiet and pulled her into the room and closed the door.

Q: What else?

A:

She was forced to lie down and he kissed her on the neck and lips and she called it "kagat" and while holding her both arms, he undressed her and inserted his penis into her vagina. She called his penis as "bayag."

COURT:

Q: What else?

A:

While she was crying, she was saying, "Tulo ng luha ko. Hirap hirap ako" and Boboy was showing her his clenched fist.

FISCAL SANTOS

Q: You were saying while she was narrating that, she was crying, correct?

A: Yes, sir.[22]

On cross-examination, Editha Quinto remained firm as to the identity of her daughter's assailant. Thus, she stated:

ATTY. CATOLICO:

Q:

When the alleged victim confided to you about a certain Buboy who raped her, you already concluded that that Buboy is Edgardo Maceda. Is that correct?

A:

Immediately she pointed to him as the one who raped her. Siya mismo si Buboy kapatid ni Rollie.

....

Q: Aside from Buboy, do you know [any] other Buboy in that area?

A: There is no other Buboy except him.

....

Q: Do you know the nickname of Edgardo Maceda, Madame witness?

A: His name is Buboy.[23]

There is nothing in the record to show that either complainant or her mother had any ulterior motive to falsely testify against accused-appellant. As the trial court observed:

Considering that the complainant who can (sic) hardly make sense of what she says, it is unimaginable that she could invent a story of rape and point to the accused with such certainty as the perpetrator if it did not indeed happen.[24]

Accused-appellant himself told the trial court that he never had serious misunderstandings with the victim or her family. He said:

FISCAL SANTOS:

Q:

Now, Mr. Witness, before February 19, 1998, there was no occasion whatsoever that you did something to Maribeth Quinto that would provoke her ire?

A: No, sir, because I come home late at night.

Q:

What about the immediate members of your family or the family of Maribeth Quinto, you have not done anything untoward to them before February 19, 1998?

A: None, sir.

Q: Are you saying your relationship with the family of Maribeth Quinto was cordial?

A: It is only Abel Quinto who is my friend.

Q: Your relationship with Abel was pleasant?

A: Sometimes no because his wife sometimes get angry whenever he comes with me.

Q: But this sometimes, which you referred to, Mr. Witness, were just minor or petty manners between friends?

A: Yes, sir.

Q:

If as you say there was no untoward incident between you and Maribeth and that of her family before February 19, 1998, and you are now professing innocence, do you know of any reason why Maribeth would point to you as the one who raped her?

A:

I do not know of any reason, sir.[25]

Indeed, it is difficult to believe that complainant, whose intelligence is admittedly low, could have concocted so grave a charge against accused-appellant or that she and her mother would go into the trouble of having her medically examined and undergo trial had she merely invented the charge.[26]

Dr. Emmanuel Reyes' findings further corroborated complainant's testimony. His medical examination showed the presence of an abraded fourchette and congested vestibule on the victim's vagina, indicating forcible entry of a hard object, possibly an erect penis. An ecchymosis or "kiss mark" was also found on the victim's neck. To be sure, the results of complainant's medical examination could only prove that accused-appellant had sexual intercourse with her without her consent.

Third. Accused-appellant says that complainant's mental condition rendered her testimony so vague, uncertain, and incoherent that it cannot be understood. This is not so. Her testimony is understandable. Nor is there any question that she is competent to testify on what she had experienced.

Rule 130 of the Revised Rules on Evidence provide:

Sec. 20. Witnesses; their qualifications. — Except as provided in the next succeeding section, all persons who can perceive, and perceiving, can make known their perception to another, may be witnesses.

....

Sec. 21. Disqualification by reason of mental incapacity or immaturity.— The following persons cannot be witnesses:

(a) Those whose mental conditions, at the time of their production for examination, is such that they are incapable of intelligently making known their perception to others;

....

The defense and the prosecution stipulated during pre-trial that complainant is a mental retardate. But, although the trial court observed that she had some difficulty expressing herself, she was nonetheless able to intelligently and clearly make known to the court, beyond dispute, that she was raped by accused-appellant. It has been held

that the mental unsoundness of the witness at the time the fact to be testified to occurred affects only her credibility. As long as the witness can convey ideas by words or signs and give sufficiently intelligent answers to questions propounded, she is a competent witness even if she is a mental retardate.[27]

Accused-appellant likewise claims that there were several inconsistencies in the testimonies of the victim. He cites the following excerpts of complainant's testimony:

COURT:

Q: What did Boboy do to you before he went home?

A: He entered our room. The door was closed.

Q: Was he able to enter the room?

A: No.[28]

However, accused-appellant failed to mention that after the above statements, the victim further stated as follows:

COURT:

Q: You said he was taking off your panty?

A: Yes, I was sleeping and he tried to remove my panty.

Q: After taking off your panty, what did he do?

A: (No answer)

COURT:

The witness is getting impatient and crying. . . .[29]

Accused-appellant likewise cited the following testimonies of the complainant:

Q: Did you shout for help?

A: No, because I was sleeping.

Q: Did you fight?

A:

No.

Q: Why?

A: Because I was sleeping.[30]

But, immediately preceding this testimony, complainant also said:

Q: What did Boboy do to you?

A: He raped me.

Q: What kind of rape did he do to you? Did he force you?

A:

Yes, sir.[31]

A reading of complainant's testimony in its entirety shows that she repeatedly stated what accused-appellant had done to her. Only if such testimony is read in parts and the portions thereof are isolated or taken out of context and no allowance is made for complainant's mental condition can accused-appellant's reading of it be justified.[32] Inconsistencies or lapses in her testimonies do not affect the substance of her statements. They do not damage the essential integrity of the evidence in its material whole nor reflect adversely on complainant's credibility.[33]

Fourth. Accused-appellant contends that the prosecution failed to prove that force or intimidation was used against complainant.

This contention is unmeritorious. To begin with, under Art. 266-A (1)(a) of the Revised Penal Code, as amended,[34] the crime of rape may be committed by a man who shall have carnal knowledge of a woman through force, threat, or intimidation. The force necessary in rape is relative. It has been held in one case 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. The intimidation must be judged 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. It must be stressed that complainant in this case does not possess the intelligence of an average individual. Indisputably, her mental faculties are different from those of a fully-functioning adult; hence, the degree of force or intimidation needed to overwhelm her is less than what it would take to frighten an ordinary woman. Accused-appellant's acts may not have intimidated a normal person but he succeeded in instilling fear in the mind of the victim in this case.[35]

Based on the evidence on record, force and intimidation was employed to perpetuate the offense charged. As complainant narrated, accused-appellant, upon entering the house, closed the door and told her to keep quiet. Complainant was then made to lie down. Complainant resisted but accused-appellant succeeded in overpowering her and having sexual intercourse with her.

Furthermore, it is erroneous for accused-appellant to contend that no rape was committed because the prosecution failed to prove that the mental age of the victim was equivalent to a girl below 12 years old. It must be emphasized that this requirement is necessary if the charge is statutory rape under Art. 266-A, par. 1(d).

In this case, complainant was deprived of reason, and, under Art. 266-A, par. 1(b) of the Revised Penal Code, having sexual intercourse with her, even if accomplished without the use of force or intimidation, constitutes rape.

Under the law, the crime of rape is committed when a man has carnal knowledge of a woman who is deprived of reason. There is no requirement to prove the mental age of the offended party for this provision to apply. The term "deprived of reason" has been construed to include those suffering from mental abnormality or deficiency; or some form of mental retardation; the feeble-minded but coherent; or even those suffering from mental abnormality or deficiency of reason.[36] As this Court has ruled:

The offense committed by appellant is rape described under par. 2 of Art. 335 [Rape] of the Revised Penal Code, that is, the offender having carnal knowledge of a woman deprived of reason. The deprivation of reason contemplated by law does not need to be complete. Mental abnormality or deficiency is enough. So it was held by the Supreme Court of Spain that a man having carnal knowledge of a woman whose mental faculties are not normally developed or who is suffering from hemiplegia and mentally backward or who is an idiot commits the crime of rape. . . .

Being feeble-minded, complainant is incapable of thinking and reasoning like any normal human being and not being able to think and reason from birth as aforesaid, and undoubtedly devoid or deficient in those instincts and other mental faculties that characterize the average and normal mortal, she really has no will that is free

and voluntary of her own; hers is a defective will, which is incapable of freely and voluntarily giving such consent so necessary and essential in lifting coitus from the place of criminality.[37]

Fifth. Accused-appellant's contention that no rape could have been committed as shown by the deep healed lacerations and the absence of spermatozoa cannot be given serious consideration. The fact that the lacerations found were healed, and not fresh, does not necessarily negate rape. A freshly broken hymen is not an essential element of rape. For that matter, the medical examination of the victim in rape cases is not an indispensable element for the successful prosecution of the crime as her testimony alone, if credible, is sufficient to convict the accused thereof.[38] As regards the absence of spermatozoa, suffice it to say that Dr. Reyes explained that this could be due to the fact the victim may have washed herself several hours after she had been raped.

After a scrutiny of the records of the case at bench, the Court finds that the trial court did not err in giving full faith and credence to the testimonies of complainant and the other prosecution witnesses. For this reason, we find no reason to disturb the factual conclusions of the trial court, consistent with the established rule that —

The assessment of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses firsthand and note their demeanor, conduct and attitude under grilling examination. These are the most significant factors in evaluating the sincerity of witnesses and in unearthing the truth, especially in the face of conflicting testimonies. Through its observations during the entire proceedings, the trial court can be expected to determine, with reasonable discretion, whose testimony to accept and which witness to disbelieve. Verily, findings of the trial court on such matter will not be disturbed on appeal unless some facts or circumstances of weight have been overlooked, misapprehended or misinterpreted so as to materially affect the disposition of the case.[39]

However, the trial court erred when it imposed the penalty of death on accused-appellant under Art. 266-B (10) of the Revised Penal Code, as amended, which provides in pertinent parts:

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

....

(10) When the offender knew of the mental disability, emotional disorder, and/or physical handicap of the offended party at the time of the commission of the crime.

True enough, accused-appellant knew of the mental condition of the victim prior to and at the time of the incident, evidenced by his own admission in open court as follows:

FISCAL SANTOS:

Q:

You are also known as Buboy.

A: Yes, sir.

....

Q: Would you also know the complainant?

A: Yes, sir.

Q: As a matter of fact, she was your neighbor?

A: Yes, sir.

Q: How long have you been residing thereat?

A: About 18 years, sir.

Q:

In the said place where you and Maribeth Quinto reside, you have observed or you personally know that Maribeth Quinto has a low mental capacity or she is retarded?

A: Yes, sir.[40]

Be that as it may, accused-appellant cannot be meted the death penalty. Under Art. 266-B in relation to Art. 266-A, par. (1), of the Revised Penal Code, as amended, simple rape is punishable by reclusion perpetua. When rape is committed by an assailant who has knowledge of the victim's mental retardation, the penalty is increased to death. This circumstance must, however, be alleged in the information because it is a qualifying circumstance which increases the penalty and changes the nature of the offense. In this case, while accused-appellant admitted that he knew complainant to be a mental retardate, this fact was not alleged in the information. Therefore, even if it was proved, it cannot be appreciated as a qualifying, but only as a generic aggravating, circumstance. Accordingly, accused-appellant must be sentenced to suffer the penalty of reclusion perpetua for the crime of simple rape.[41]

The award of damages by the trial court should likewise be modified. Aside from the award of P50,000.00 as moral damages, complainant is entitled to civil indemnity in the amount of P50,000.00, which must be given even if there is neither allegation nor evidence presented as basis therefor.[42]

WHEREFORE, the decision of the Regional Trial Court, Branch 76, Quezon City, finding accused-appellant Edgardo Maceda guilty of rape is **AFFIRMED** with the **MODIFICATION** that the death sentence imposed on him is reduced to reclusion perpetua. Accused-appellant is likewise ordered to pay complainant Maribeth Quinto the amount of P50,000.00 as civil indemnity, in addition to the award of P50,000.00 for moral damages, and to pay the costs.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Panganiban, Quisumbing, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago, De Leon, Jr., and Sandoval-Gutierrez, JJ., concur.

[1] Per Judge Monina A. Zenarosa.

[2] Rollo, pp. 8-9.

[3] TSN (Editha Quinto), pp. 3-5, April 29, 1998; TSN, p. 13-14, May 13, 1998.

[4] TSN (Maribeth Quinto), pp. 3-4, July 8, 1998; TSN, pp. 4-5, Sept. 22, 1998; TSN (Editha Quinto), pp. 5-6, April 29, 1998; TSN, pp. 5-8, May 13, 1998.

[5] TSN (Editha Quinto), pp. 4-6, April 29, 1998; TSN, pp. 7-8, May 13, 1998; TSN (Maribeth Quinto), pp. 4-5, July 8, 1998.

[6] TSN (Editha Quinto), p. 6, July 8, 1998; TSN, pp. 9-10, May 13, 1998; Records, p. 15.

[7] TSN (Dr. Emmanuel Reyes), p. 4, April 13, 1998; Exh. B; Records, p. 312.

[8] TSN (Dr. Emmanuel Reyes), pp. 4-5, 7, April 13, 1998.

- [9] TSN (Edgardo Maceda), pp. 2-5, Feb. 1, 1999; TSN, pp. 2-4, Feb. 15, 1999.
- [10] TSN (Owen Santos), pp. 6-10, Feb. 15, 1999.
- [11] TSN (Rosa Dantes), pp. 3-11, Feb. 22, 1999; TSN, p. 5, March 8, 1999.
- [12] Decision, p. 8; Records, p. 85.
- [13] Accused-appellant's Brief, p. 1; Rollo, p. 40.
- [14] TSN (Owen Santos), pp. 9-10, Feb. 15, 1999.
- [15] *People v. Gopio*, G.R. No. 133925, Nov. 29, 2000 citing *People v. Luzorata*, 286 SCRA 487 (1998).
- [16] See *People v. Pano*, 257 SCRA 274 (1996) citing *People v. Rio*, 201 SCRA 702 (1991); *People v. Flores*, 195 SCRA 295 (1991).
- [17] Rollo, p. 27.
- [18] Accused-appellant was erroneously referred to as "Ernesto" in the transcript of stenographic notes.
- [19] TSN (Maribeth Quinto), pp. 2-5, July 8, 1998.
- [20] TSN (Maribeth Quinto), pp. 4-6, Sept. 22, 1998.
- [21] TSN (Maribeth Quinto), pp. 12-13, Feb. 15, 1999.
- [22] TSN (Editha Quinto), pp. 5-6, April 29, 1998.
- [23] TSN, pp. 17-18, May 13, 1998.
- [24] Rollo, p. 27.
- [25] TSN (Edgardo Maceda), p. 4, Feb. 15, 1999.
- [26] *People v. Goles*, 192 SCRA 663 (1990).
- [27] See *People v. Gerones*, 193 SCRA 263 (1991); *People v. Palma*, 144 SCRA 236 (1986).
- [28] TSN (Maribeth Quinto), p. 5, Sept. 22, 1998.
- [29] *Id.*
- [30] TSN (Maribeth Quinto), p. 4, Sept. 29, 1998.
- [31] *Id.*
- [32] *People v. Cula*, G.R. No. 133146, March 28, 2000.
- [33] Cf. *People v. Mitra*, G.R. No. 130669, March 27, 2000.
- [34] The Revised Penal Code was amended by R.A. 8353, otherwise known as the "Anti-Rape Law of 1997," which became effective on October 22, 1997.
- [35] See *People v. Moreno*, 294 SCRA 728 (1998).
- [36] *People v. Almacin*, 303 SCRA 399 (1999).
- [37] *People v. Cabingas*, G.R. No. 79679, March 28, 2000.

[38] *People v. San Juan*, 270 SCRA 693 (1997).

[39] *Id.*

[40] TSN (Edgardo Maceda), p. 2, Feb. 15, 1999.

[41] See *People v. Fraga*, G.R. No. 134130-33, Apr. 12, 2000; *People v. Bayron*, 313 SCRA 727 (1999).

[42] *People v. Prades*, 293 SCRA 411 (1998).

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