

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CHARLIE BUTIONG, DEFENDANT-APPELLANT.

G.R. No. 168932. October 19, 2011

Ponente: BERSAMIN, J.

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BERSAMIN, J.:

This case involves a man who had sexual intercourse with a woman who, although 29 years of age, was a mental retardate with the mentality of a six- to seven-year old.

The man, Charlie Butiong, seeks the review and reversal of the judgment promulgated on May 18, 2005,[1] whereby the Court of Appeals (CA) affirmed his conviction for rape handed down by the Regional Trial Court (RTC), Branch 258, in Parañaque City, for which he was imposed reclusion perpetua. He insists that the State did not duly establish that the woman had been a mental retardate.

The records show that Butiong had been arraigned and tried under an information that alleged:

xxxx

That on or about the 7[th] day of October 1998, in the City of Parañaque, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have carnal knowledge of the complainant [AAA], a mental retardate, against her will and consent.

CONTRARY TO LAW.[2]

Antecedents

In the evening of October 7, 1998, AAA,[3] then a 29-year-old mental retardate, was invited by Butiong, her long-time neighbor, to go over to his house because he would give her something. AAA obliged. He locked the door as soon as she had stepped inside his house, and then took off his shorts and the shorts of AAA. He led her to the sofa, where he had carnal knowledge of her. AAA remembered that she then felt pain in her abdomen and became angry at him for what he had done.[4]

Upon reaching home, AAA forthwith told her older sister what had happened. Her sister brought AAA to the police station,[5] and later on to the National Bureau of Investigation (NBI), where AAA underwent a medico-legal examination by Dr. Armie M. Soreta-Umil. The medico-legal examination revealed that AAA's hymen was intact but "distensible and its orifice wide (2.5 cms. in diameter) as to allow complete penetration by an average-sized adult Filipino male organ in full erection without producing any genital injury." [6] Noticing AAA's disorientation and incoherence, Dr. Soreta-Umil endorsed her to the NBI Psychiatric Section for evaluation.[7] AAA also underwent a series of psychological tests at the National Mental Hospital. The tests included the Raven's Progressive Matrices Test, Bender Visual Motor Gestalt Test, and Draw a Person Test. A Rorschach Psycho-Diagnostic Test was not used because AAA was not able to answer.[8] Another test, the Sack's Sentence Completion Test, was not used because of AAA's inability to comply with the instructions.[9] The results of the psychological tests showed that she had a mild level of mental retardation, and that her mental age

was that of a child aged from six to seven years; she was unaware of what went on around her and was interested only in gratifying her own needs.[10]

The Defense presented only one witness in the person of Dr. Natividad Dayan, whom it offered as an expert psychologist. She concluded that the Raven's Progressive Matrices Test and the Bender Visual Motor Gestalt Test administered on AAA were unreliable for determining the existence of mental retardation. She based her conclusion on James Morizon's DSM-4 Made Easy: The Clinician's Guide for Diagnosis, and Jay Siskin's Coping With Psychiatric and Psychological Testimony.[11] According to her, an individually administered intelligence test, like the Stamp Intelligence Scale or the Weschler Adult Intelligence Scale, as well as projective techniques, like the Rorschach Psychodiagnostic Test and the Thematic Perception Test, should have been instead administered to appropriately determine AAA's mental age.[12]

Ruling of the RTC

The RTC rendered judgment finding Butiong guilty of rape, viz:

WHEREFORE, the prosecution having been able to prove the guilt of the accused CHARLIE BUTIONG beyond reasonable doubt of the crime of simple RAPE defined and punishable under Art. 266-A par. 1 in relation to Art. 266-B par. 1 of the Revised Penal Code as amended by R.A. 8353, accused CHARLIE BUTIONG is hereby sentenced to suffer the penalty of RECLUSION PERPETUA.

Pursuant to the existing jurisprudence, accused CHARLIE BUTIONG is further ordered to indemnify the private complainant, AAA, the amount of P50,000.00 as civil indemnity, P50,000.00 as moral damages and P25,000.00 as and by way of exemplary damages.

No pronouncement as to costs.

SO ORDERED.[13]

The RTC noted that nothing in Dr. Dayan's testimony on the unreliability of the tests administered on AAA would invalidate the findings of psychologist Nimia de Guzman and Dr. Diana de Castro, both of the National Center for Mental Health, to the effect that AAA had mild level retardation with a mental age of a six- to seven-year old person; and that such findings were admissible and had more than sufficiently complied with the required historical and physical examination for determining AAA's mental condition. The trial judge himself held,[14] based on his personal observation of AAA as a witness in court, that she was a retardate who could narrate what had transpired albeit with some difficulty about how she had been sexually abused. He considered AAA as a competent witness whose behavior and appearance manifested no possibility for her to concoct a story of her defloration at the hands of the accused.

Ruling of the CA

Butiong appealed, but the CA affirmed the conviction on May 18, 2005,[15] to wit:

In sum, the Court sees no cogent reason to depart from the well-entrenched doctrine that the trial court's assessment of the credibility of witnesses is accorded great respect because of its opportunity to hear their testimonies and observe their demeanor and manner of testifying. Absent any showing that the trial court overlooked or misappreciated some facts or circumstances of weight and substance which would affect the result of the case, the Court sees no reason to alter the findings of the trial court.

WHEREFORE, the appealed Decision dated February 24, 2003 is affirmed in toto.

SO ORDERED.

The CA considered the State's evidence sufficient to support the conclusion that AAA was mentally retarded. It

concluded that the State's expert witness psychologist de Guzman had not only interviewed AAA and a relative of AAA but had also administered a series of tests on AAA upon which to base her findings about AAA's mental condition; that the results of the psychiatric examination done by Dr. de Castro, as well as the trial judge's personal observation that AAA was a mental retardate supported the findings of psychologist de Guzman; and that AAA could not legally give her consent to the sexual act, as held in *People v. Asturias*,^[16] because the clinical findings showed her mentality to be at par with that of a six- or seven-year-old.

The CA rejected Butiong's argument that rape was not established because no semen had been taken from AAA, stressing that the fact of rape depended not on the presence of spermatozoa but on the fact of unlawful penetration of the female genitalia by the male organ, which the State amply proved.

Issues

In this appeal, Butiong submits that:

I

THE TRIAL COURT ERRED IN RULING THAT PROOF OF THE DATE OF THE COMMISSION OF THE OFFENSE IS NOT NECESSARY IN ORDER TO CONVICT THE ACCUSED-APPELLANT.

II

THE TRIAL COURT ERRED IN FINDING THAT THE OFFENDED PARTY IS A MENTAL RETARDATE.

III

THE TRIAL COURT ERRED IN RULING THAT A MENTAL RETARDATE IS IN THE SAME CLASS AS A WOMAN DEPRIVED OF REASON OR OTHERWISE UNCONSCIOUS.

Anent the first assigned error, Butiong contends that the State did not establish rape because there was no evidence showing the exact date when the rape occurred. Under the second assigned error, he disputes the RTC's conclusion that AAA was a mental retardate by focusing on the inconclusiveness of the findings of psychologist de Guzman brought about by her failure to ascertain AAA's personal history and by her computing AAA's mental age upon inaccurate and unverified information. He notes that two other physicians who had examined AAA, one from the NBI and the other from the National Center for Mental Health, were not presented as witnesses. He insists on his innocence, and emphasizes the testimony of Dr. Dayan on the unreliability of the tests administered on AAA. He maintains that the unreliability of the tests administered on AAA for determining the presence of mental retardation should be appreciated in his favor in accordance with *People v. Cartuano, Jr.*,^[17] which required that a diagnosis of mental retardation should be made after a thorough evaluation based on history, and physical and laboratory examinations by a clinician. Lastly, he posits that the State did not establish the elements of rape, considering that a mental retardate qualified neither as a "woman deprived of reason" nor as "a woman under twelve years of age" as provided under Article 266-A par. 1(b) nor of par. 1(d) of the Revised Penal Code.

Ruling

We affirm the conviction.

I

Exact date of rape and absence of spermatozoa from victim's genitalia are not elements of rape

Butiong argues that the State did not duly establish the fact of rape because the exact date of the incident was

indeterminate, and because no spermatozoa was found in AAA's genital organ.

The argument deserves no consideration.

The CA fully debunked the argument on the exact date of the rape not being established by simply quoting from AAA's testimony that the rape had occurred on October 7, 1998.[18] We need to emphasize, however, that the date of the rape need not be precisely proved considering that date is not an element of rape.[19]

Nor did the absence of spermatozoa from the genitalia of AAA negate or disprove the rape.[20] The basic element of rape is carnal knowledge or sexual intercourse, not ejaculation.[21] Carnal knowledge is defined as "the act of a man having sexual bodily connections with a woman." [22] This explains why the slightest penetration of the female genitalia consummates the rape. As such, a mere touching of the external genitalia by the penis capable of consummating the sexual act already constitutes consummated rape.[23] *People v. Campuhan*[24] has aimed to remove any confusion as to the extent of "touching" in rape:

[T]ouching when applied to rape cases does not simply mean mere epidermal contact, stroking or grazing of organs, a slight brush or a scrape of the penis on the external layer of the victim's vagina, or the mons pubis, as in this case. There must be sufficient and convincing proof that the penis indeed touched the labias or slid into the female organ, and not merely stroked the external surface thereof, for an accused to be convicted of consummated rape. As the labias, which are required to be "touched" by the penis, are by their natural situs or location beneath the mons pubis or the vaginal surface, to touch them with the penis is to attain some degree of penetration beneath the surface, hence, the conclusion that touching the labia majora or the labia minora of the pudendum constitutes consummated rape.

The pudendum or vulva is the collective term for the female genital organs that are visible in the perineal area, e.g., mons pubis, labia majora, labia minora, the hymen, the clitoris, the vaginal orifice, etc. The mons pubis is the rounded eminence that becomes hairy after puberty, and is instantly visible within the surface. The next layer is the labia majora or the outer lips of the female organ composed of the outer convex surface and the inner surface. The skin of the outer convex surface is covered with hair follicles and is pigmented, while the inner surface is a thin skin which does not have any hair but has many sebaceous glands. Directly beneath the labia majora is the labia minora. Jurisprudence dictates that the labia majora must be entered for rape to be consummated, and not merely for the penis to stroke the surface of the female organ. Thus, a grazing of the surface of the female organ or touching the mons pubis of the pudendum is not sufficient to constitute consummated rape. Absent any showing of the slightest penetration of the female organ, i.e., touching of either labia of the pudendum by the penis, there can be no consummated rape; at most, it can only be attempted rape, if not acts of lasciviousness.[25] [emphasis supplied]

That AAA's recollection on the rape was corroborated by the results of the medico-legal examination was sufficient proof of the consummation of rape. We have ruled that rape can be established by the sole testimony of the victim that is credible and untainted with serious uncertainty.[26] With more reason is this true when the medical findings supported the testimony of the victim,[27] like herein.

II

Rape was committed because AAA
was a mental retardate

One of Butiong's contentions is that having sexual intercourse with AAA, a mental retardate, did not amount to a rape, because it could not be considered as carnal knowledge of a woman deprived of reason or of a female under twelve years of age as provided under Article 266-A of the Revised Penal Code, as amended.

The contention cannot be sustained.

Rape is essentially a crime committed through force or intimidation, that is, against the will of the female. It is also committed without force or intimidation when carnal knowledge of a female is alleged and shown to be without her consent. This understanding of the commission of rape has been prevalent in both the common law and the statutory law systems. As *Corpus Juris Secundum* has summed up:[28]

At common law rape could be committed only where the unlawful carnal knowledge of a female was had without her consent or against her will; lack of consent was an essential element of the offense; and there can be no rape in the common-law sense without the element of lack of consent. Under the statutes punishing the offense, an essential element of the crime of rape is that the act was committed without the consent of the female, or, as it is otherwise expressed, against her will. The act of sexual intercourse is against the female's will or without her consent when, for any cause, she is not in a position to exercise any judgment about the matter.

Carnal knowledge of the female with her consent is not rape, provided she is above the age of consent or is capable in the eyes of the law of giving consent. Thus, mere copulation, with the woman passively acquiescent, does not constitute rape. The female must not at any time consent; her consent, given at any time prior to penetration, however reluctantly given, or if accompanied with mere verbal protests and refusals, prevents the act from being rape, provided the consent is willing and free of initial coercion. Thus, where a man takes hold of a woman against her will and she afterward consents to intercourse before the act is committed, his act is not rape. However, where the female consents, but then withdraws her consent before penetration, and the act is accomplished by force, it is rape; and where a woman offers to allow a man to have intercourse with her on certain conditions and he refuses to comply with the conditions, but accomplishes the act without her consent, he is guilty of rape. [emphasis supplied]

In his commentary on the Revised Penal Code,[29] Justice Aquino discusses the concept of committing rape against the female's will or without her consent, to wit:

In rape committed by means of duress, the victim's will is nullified or destroyed. Hence, the necessity of proving real and constant resistance on the part of the woman to establish that the act was committed against her will. On the other hand, in the rape of a woman deprived of reason or unconscious, the victim has no will. The absence of will determines the existence of the rape. Such lack of will may exist not only when the victim is unconscious or totally deprived of reason, but also when she is suffering some mental deficiency impairing her reason or free will. In that case, it is not necessary that she should offer real opposition or constant resistance to the sexual intercourse. Carnal knowledge of a woman so weak in intellect as to be incapable of legal consent constitutes rape. Where the offended woman was feeble-minded, sickly and almost an idiot, sexual intercourse with her is rape. Her failure to offer resistance to the act did not mean consent for she was incapable of giving any rational consent.

The deprivation of reason need not be complete. Mental abnormality or deficiency is enough. Cohabitation with a feeble-minded, idiotic woman is rape. Sexual intercourse with an insane woman was considered rape. But a deafmute is not necessarily deprived of reason. This circumstances must be proven. Intercourse with a deafmute is not rape of a woman deprived of reason, in the absence of proof that she is an imbecile. Viada says that the rape under par. 2 may be committed when the offended woman is deprived of reason due to any cause such as when she is asleep, or due to lethargy produced by sickness or narcotics administered to her by the accused. xxx [emphasis supplied]

Butiong was arraigned, tried and convicted of the crime of rape as defined and penalized under paragraph 1, Article 266-A, in relation to paragraph 1, Article 266-B of the Revised Penal Code, as amended, under an amended information that plainly averred that AAA was a "mental retardate." The insertion of the phrase in the amended information was significant, because the phrase put him on sufficient notice that the victim "was not in full possession of her normal reasoning faculty." [30] The phrase further specifically indicated which of the four

modes of committing the crime of rape as provided in paragraph 1, Article 266-A of the Revised Penal Code, as amended, applied in his case, namely:

- a. Through force, threat or intimidation;
- b. When the offended party is deprived of reason or is otherwise unconscious;
- c. By means of fraudulent machination or grave abuse of authority;
- d. When the offended party is under 12 years of age, or is demented, even though none of the circumstances first mentioned is present.

Yet, Butiong's contention is that his case did not come under any of the four modes due to carnal knowledge of a mental retardate not being either carnal knowledge of a female deprived of reason or otherwise unconscious, or of a female under 12 years of age or demented.

The contention is unwarranted.

Article 266-A of the Revised Penal Code, as amended by Republic Act No. 8353, provides:

Article 266-A. Rape; When And How Committed. ? Rape is committed -

1) By a man who have carnal knowledge of a woman under any of the following circumstances:

- a) Through force, threat or intimidation;
 - b) When the offended party is deprived of reason or otherwise unconscious;
 - c) By means of fraudulent machination or grave abuse of authority; and
 - d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.
- 2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object into the genital or anal orifice of another person.

Carnal knowledge of a mental retardate is rape under paragraph 1 of Article 266-A of the Revised Penal Code, as amended by Republic Act No. 8353 because a mental retardate is not capable of giving her consent to a sexual act. Proof of force or intimidation is not necessary, it being sufficient for the State to establish, one, the sexual congress between the accused and the victim, and, two, the mental retardation of the victim.[31] It should no longer be debatable that rape of a mental retardate falls under paragraph 1, b), of Article 266-A, supra, because the provision refers to a rape of a female "deprived of reason," a phrase that refers to mental abnormality, deficiency or retardation.[32]

Who, then, is a mental retardate within the context of the phrase "deprived of reason" used in the Revised Penal Code?

In *People v. Dalandas*,[33] the Court renders the following exposition on mental retardation and its various levels, viz:

Mental retardation is a chronic condition present from birth or early childhood and characterized by impaired intellectual functioning measured by standardized tests. It manifests itself in impaired adaptation to the daily demands of the individual's own social environment. Commonly, a mental retardate exhibits a slow rate of maturation, physical and/or psychological, as well as impaired learning capacity.

Although "mental retardation" is often used interchangeably with "mental deficiency," the latter term is usually reserved for those without recognizable brain pathology. The degrees of mental retardation according to their level of intellectual function are illustrated, thus:

Mental Retardation

LEVEL

DESCRIPTION TERM

INTELLIGENCE QUOTIENT (IQ RANGE)

I

Profound

Below 20

II

Severe

20-35

III

Moderate

36-52

IV

Mild

53-68

xxxx

The traditional but now obsolescent terms applied to those degrees of mental retardation were (a) idiot, having an IQ of 0 to 19, and a maximum intellectual factor in adult life equivalent to that of the average two-year old child; (b) imbecile by an IQ of 20 to 49 and a maximum intellectual function in adult life equivalent to that of the average seven-year old child; moron or feeble-minded, having an IQ of 50 to 69 and a maximum intellectual function in adult life equivalent to that of the average twelve-year old child. Psychiatrists and psychologists apply the term "borderline" intelligence to those with IQ between 70 to 89. In *People vs. Palma*, we ruled that a person is guilty of rape when he had sexual intercourse with a female who was suffering from a "borderline mental deficiency." [emphasis supplied]

Considering the findings of psychologist de Guzman to the effect that AAA had the mental age of a six- to seven-year old, an age equated with imbecility under the previous classification, her mental age was even lower than that of a borderline mental deficiency within the context of that term as characterized in *People v. Dalandas*, supra.[34] As such, Butiong's carnal knowledge of AAA amounted to rape of a person deprived of reason.

The ability of the female to give rational consent to carnal intercourse determines if carnal knowledge of a mental retardate like AAA is rape. Indeed, the Court has consistently considered carnal knowledge of a female mental retardate with the mental age below 12 years of age as rape of a woman deprived of reason.[35] As the Court aptly stated in *People v. Manlapaz*,[36] where the victim was a 13-year old girl with the mentality of a

five-year-old, that ability to give rational consent was not present, viz:

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 jurisprudence 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); xxx" (ibid., note 3).

The same rule prevails in American jurisprudence. "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 xxx. 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). [emphasis supplied]

III

People v. Cartuano was not applicable

To boost his challenge to the finding that AAA was a mental retardate, Butiong cites People v. Cartuano,[37] a case where the Court ruled that a diagnosis of mental retardation required a thorough evaluation of the history of the victim, and held that a physical and laboratory examination by a clinician was necessary. He insists that the findings of the psychologist and the physicians who had examined AAA fell short of the requirements set in People v. Cartuano, considering that psychologist de Guzman did not try to locate the biological parents of AAA for the purpose of ascertaining her personal history, and did not base her findings on reliable data.

Butiong's reliance on People v. Cartuano does not advance his cause.

People v. Cartuano applies only to cases where there is a dearth of medical records to sustain a finding of mental retardation. Indeed, the Court has clarified so in People v. Delos Santos,[38] declaring that the records in People v. Cartuano were wanting in clinical, laboratory, and psychometric support to sustain a finding that the victim had been suffering from mental retardation. It is noted that in People v. Delos Santos, the Court upheld the finding that the victim had been mentally retarded by an examining psychiatrist who had been able to identify the tests

administered to the victim and to sufficiently explain the results of the tests to the trial court.[39]

In direct contrast to *People v. Cartuano*, this case did not lack clinical findings on the mentality of the victim.

Moreover, as clarified in *People v. Dalandas*,[40] *People v. Cartuano* does not preclude the presentation by the State of proof other than clinical evidence to establish the mental retardation of the victim. For sure, the courts are not entirely dependent on the results of clinical examinations in establishing mental retardation. In *People v. Almacin*,[41] for instance, the Court took into consideration the fact that the victim was illiterate and unschooled in concluding that she was mentally incapable of assenting to or dissenting from the sexual intercourse.[42] Also, in *People v. Dumanon*,[43] the Court concurred in the trial court's observation and conclusion that the victim was a mental retardate based on her physical appearance and on her difficulty to understand and answer the questions during her testimony.[44]

Here, the State's witnesses sufficiently explained the psychological tests conducted to establish AAA's mental retardation with the mentality of a six- or seven-year-old. The trial judge himself reached a conclusion on AAA's mentality from his close personal observation of her as a witness in court, noting that she manifested a difficulty in responding to the questions, especially those bearing on her being sexually abused.[45] The trial judge's observation to the effect that she had no notion of the wrong that had been done to her was validated by the clinical findings. As such, the totality of the evidence presented by the State established beyond reasonable doubt AAA's deficient mental condition.

IV

Presumption of innocence was overcome
by sufficient evidence of guilt

Notable is that Butiong did not testify. He offered neither alibi nor denial despite the strong charge of rape brought against him. His defense was purposely limited to his submission, through Dr. Dayan, that AAA had not been established to be a mental retardate. Thereby, he did not refute that he had carnal knowledge of AAA. Having earlier demonstrated the futility of Dr. Dayan's discounting of the State's evidence of AAA's mental retardation, we can justifiably consider the presumption of innocence in favor of Butiong as overcome.

Still, even if he had asserted alibi and denial, his guilt for the rape of AAA would not be reversed in the face of AAA's unwavering testimony and of her very positive and firm identification of him as the man who had undressed her and sexually gratified himself off her.[46] He could no longer hide behind the protective shield of his presumed innocence, but should have come forward with credible and strong evidence of his lack of authorship of the crime. Considering that the burden of the evidence had shifted to him but he did not discharge his burden at all, there is no other outcome except to affirm his guilt beyond reasonable doubt.

WHEREFORE, the Court AFFIRMS the decision promulgated on May 18, 2005 in CA-GR CR HC No. 00862.

The accused shall pay the costs of suit.

SO ORDERED.

Corona, C.J., (Chairperson), Leonardo-De Castro, Del Castillo, and Villarama, Jr., JJ., concur.

[1] Rollo, pp. 3-17; penned by Associate Justice Fernanda Lampas-Peralta, with Associate Justice Ruben T. Reyes (later Presiding Justice and Member of the Court, since retired) and Associate Justice Josefina Guevara-Salonga concurring.

- [2] Original records, p. 1.
- [3] Pursuant to Republic Act No. 9262 (The Anti-Violence Against Women and Their Children Act of 2004), and its implementing rules, the real names of the victims, as well the names of their immediate family or household members, are withheld herein and, in lieu thereof, fictitious initials are used to represent them, to protect their privacy. See *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.
- [4] TSN dated August 2, 2001, pp. 7-12.
- [5] *Id.*, pp. 15-16.
- [6] Original records, p. 291.
- [7] TSN dated December 11, 2001, p. 12.
- [8] Exhibits D, E, F, F-1 and G, at original records, pp. 280-284.
- [9] TSN dated May 3, 2001, pp. 13-16.
- [10] Original records, p. 272.
- [11] TSN dated September 24, 2002, pp. 7-8.
- [12] *Id.*, p. 12.
- [13] CA Rollo, p. 99.
- [14] Judge Raul De Leon.
- [15] Rollo, pp. 3-17.
- [16] G.R. No. L-61126, January 31, 1985, 134 SCRA 405.
- [17] G.R. No. 112457-58, March 29, 1996, 255 SCRA 403.
- [18] *Supra*, note 1, p. 7, citing TSN of August 2, 2001, p. 121.
- [19] *People v. Macabata*, G.R. Nos. 150493-95, October 23, 2003, 414 SCRA 260, 268-269; *People v. Taperla*, G.R. No. 142860, January 16, 2003, 395 SCRA 310, 315; *People v. Alicante*, G.R. Nos. 127026-27, May 31, 2000, 332 SCRA 440, 464-465.
- [20] *People v. Abulencia*, G.R. No. 138403, August 22, 2001, 363 SCRA 496, 508; *People v. Lacaba*, G.R. No. 130591, November 17, 1999, 318 SCRA 301, 314; *People v. Magana*, G.R. No. 105673, July 26, 1996, 259 SCRA 380, 401.
- [21] *People v. Freta*, G.R. No. 134451-52, March 14, 2001, 354 SCRA 385, 392; *People v. Masalihit*, G.R. No. 124329, December 14, 1998, 300 SCRA 147, 155; *People v. Flores, Jr.*, G.R. No. 128823-24, December 27, 2002, 394 SCRA 325, 333.
- [22] *Black's Law Dictionary* 193 (5th ed., 1979).
- [23] *People v. Jalosjos*, G.R. Nos. 132875-876, November 16, 2001, 369 SCRA 179, 198.
- [24] G.R. No. 129433, March 30, 2000, 329 SCRA 270.
- [25] *Id.*, pp. 280-282.
- [26] *People v. Gonzales*, G.R. No. 141599, June 29, 2004, 433 SCRA 102, 115.

[27] *People v. Corpuz*, G.R. No. 168101, February 13, 2006, 482 SCRA 435, 448; *People v. Ramirez*, G.R. No. 136848, November 29, 2001, 371 SCRA 143, 149; *People v. Apilo*, G.R. No. 101213-14, October 28, 1996, 263 SCRA 582, 598.

[28] 75 CJS, Rape, § 11, pp. 473-474.

[29] III Aquino, *The Revised Penal Code*, 1988 Edition, Central Lawbook Supply, Inc., Quezon City, pp. 393-394.

[30] *People v. Manlapaz*, G.R. No. L-41819, February 28, 1979, 88 SCRA 704, 713.

[31] *People v. Magabo*, G.R. No. 139471, January 23, 2001, 350 SCRA 126, 131-132.

[32] *Id.*, (footnote 10), citing *People v. Reyes*, 315 SCRA 563, 577; *People v. Andaya*, G.R. No. 126545, April 21, 1999, 306 SCRA 202; *People v. Guerrero*, 242 SCRA 606; and *People v. Nguyen Dinh Nhan*, 200 SCRA 292.

[33] G.R. No. 140209, December 27, 2002, 394 SCRA 433.

[34] See *People v. Miranda*, G.R. No. 176064, August 7, 2007, 529 SCRA 399, where the Court, citing *People v. Dalandas*, affirmed the rape conviction because the victim, 13 years in age, suffered from borderline mental deficiency (i.e., her mentality was that of a four- to six-year old person with an IQ of only 40); her mental retardation, the Court held, was equivalent to imbecility "in traditional parlance."

[35] *People v. Pagsanjan*, G.R. 139694, December 27, 2002, 394 SCRA 414, 424-425; *People v. Ittang*, G.R. No. 136393, October 18, 2000, 343 SCRA 624, 633-634; *People v. Dizon*, G.R. Nos. 126044-45, July 2, 1999, 309 SCRA 669, 677-678; *People v. Andaya*, G.R. No. 126545, April 21, 1999, 306 SCRA 202, 214-215; *People v. Moreno*, G.R. No. 126921, August 28, 1998, 294 SCRA 728, 739-740; *People v. Estares*, G.R. No. 121878, December 5, 1997, 282 SCRA 524, 533-534.

[36] G.R. No. L-41819, February 28, 1979, 88 SCRA 704.

[37] *Supra*, note 17.

[38] G.R. No. 141128, August 30, 2001, 364 SCRA 142. See also *People v. Cabingas*, G.R. No. 79679, March 28, 2000, 329 SCRA 21.

[39] *Id.*

[40] *Supra*, note 33, at p. 441.

[41] G.R. No. 113253, February 19, 1999, 303 SCRA 399.

[42] *Id.*, p. 410.

[43] G.R. No. 123096, December 18, 2000, 348 SCRA 461.

[44] *Id.*, pp. 471-472.

[45] CA Rollo, p. 26.

[46] See *People v. Abella*, G.R. No. 177295, January 6, 2010, 610 SCRA 19, 36-37.

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