

PEOPLE OF THE PHILIPPINES, PLAINTIFF/APPELLEE, VS. NORBERTO MATEO Y DIZON, ACCUSED/APPELLANT.

G.R. No. 170569. September 30, 2008

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before the Court is an appeal from the Decision [1] dated September 30, 2005 of the Court of Appeals (CA) affirming with modification the Decision [2] of the Regional Trial Court (RTC), Pasig City, Branch 160, finding appellant guilty of rape and sentencing him to reclusion perpetua.

In a Complaint dated November 2, 1995, AAA, [3] assisted by her father, BBB, charged Norberto Mateo (appellant) with rape by means of force and intimidation. The Assistant City Prosecutor certified that it was filed with the prior authority of the City Prosecutor. [4]

The accusatory portion of the Complaint reads:

That on or about the 29[th] day of October 1995, in the City of Mandaluyong, Philippines, a place within the Jurisdiction of this Honorable Court, the above-named accused with lewd design and by means of force and intimidation, did, then and there willfully, unlawfully and feloniously have carnal knowledge with the undersigned against her will and consent.

Contrary to law. [5]

Upon arraignment, appellant, duly assisted by his counsel, pleaded not guilty to the offense charged. After trial the RTC rendered its decision dated August 29, 1997, [6] the dispositive portion of which reads as follows:

WHEREFORE, foregoing considered [sic], the court finds accused NORBERTO MATEO Y DIZON GUILTY beyond reasonable doubt of the crime of rape and hereby sentences said accused to a penalty of reclusion perpetua and to indemnify the offended party the amount of P50,000.00 and to pay the costs. [7]

Appellant initially appealed to this Court. Conformably with *People v. Mateo*, [8] the Court transferred the case to the CA.

On September 30, 2005, the CA issued its assailed decision, the dispositive portion of which reads:

WHEREFORE, the assailed decision of the Regional Trial Court of Pasig City, Branch 160 finding accused Norberto Mateo y Dizon GUILTY beyond reasonable doubt of the crime of rape and imposing upon him the penalty of reclusion perpetua is hereby AFFIRMED with the MODIFICATION that accused is further ordered to indemnify the complainant in the amount of P50,000.00 as moral damages. [9]

The records of the case were elevated to this Court in view of the notice of appeal filed by appellant.

By Resolution [10] dated February 1, 2006, this Court required the parties to file their supplemental briefs if they so desired within thirty days from notice. Counsel for appellant filed a Manifestation in lieu of a supplemental brief adopting the appellant's brief filed on January 26, 1999 as his supplemental brief. The Office of the Solicitor

General (OSG) filed its supplemental brief.

Appellant raises the following assignment of errors:

I

THE COURT A QUO GRAVELY ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT FOR THE CRIME CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT.

II

THE COURT A QUO GRAVELY ERRED IN FINDING THAT THE COMPLAINANT IS A MENTAL RETARDATE. [11]

The appeal lacks merit.

The facts of the case:

The evidence for the prosecution established that AAA only finished grade one and does not know how to read and write except her name. On October 29, 1995, at around 1:00 p.m., AAA, then 16 years old, was at the house of her Ate Nimfa, located at Welfareville Compound, Mandaluyong City, when appellant arrived at the said house and drank gin.[12] After a while, appellant approached AAA and pulled her[13] towards a grassy place which was three to four meters away.[14] When they reached the grassy place, appellant removed AAA's shirt, shorts and panties and his own short pants.[15] Appellant laid AAA on the ground, went on top of her and while holding her breast inserted his penis into her vagina.[16] While doing this, appellant told AAA not to report or he would kill her.[17]

Zenaida Torno, a bantay bayan volunteer, who was then cooking at the outpost of Mandaluyong City, saw children at the monument near the Jose Fabella Memorial School looking at the direction of the swimming pool and shouting indecent words.[18] Torno then went to the place and saw appellant pumping on top of AAA. Torno asked him to stop but he still continued with what he was doing to AAA.[19] Torno then asked the help of a man who was gathering grass at that time and the man boxed appellant and held him away from AAA.[20] Torno then reported the incident to the authorities and brought the appellant and AAA to the barangay hall.[21]

Dr. Reyes conducted his examination of AAA on October 29, 1995 and prepared his report[22] as Living Case No. MG-95-1275, thus:

Findings

x x x x

PHYSICAL INJURIES

Abrasions; linear, reddish, smallest is 4.0 cms and biggest is 10.0 cms. covering an area of 27.0 cms x 20.0 cms, back; 3.0 cms., thigh, middle 3[rd] antero-medial aspect left.

GENITAL EXAMINATIONS:

x x x Hymen, moderately tall with deep fresh hymenal laceration at 6:00 o'clock position corresponding to a face of a watch, which bleeds on slight pressure.

CONCLUSIONS:

- The above-described extragenital physical injuries were noted on the body of the subject at the time of

examination.

- Deep, fresh hymenal laceration, present.[23]

Dr. Reyes testified that AAA could have been laid on a rough surface as shown by the multiple linear abrasions found at her back and the anterum medial aspect of her thigh;[24] that she had been sexually penetrated possibly with the use of force and violence;[25] that he noticed that AAA was suffering from some form of mental retardation as she was not responding to his question like a 17-year old[26] girl should, compelling him to refer her to a neuro-psychiatrist for examination;[27] that based on the result forwarded to him, AAA had a mental age of 5 years and 8 months with an IQ of 38.[28]

Appellant denied raping AAA. He testified that on October 29, 1995 at about 10:00 o'clock a.m., he and AAA met at the house of his Aunt Nimfa.[29] They talked to each other regarding their relationship as AAA was his girlfriend. He told AAA that they better move to another place because they might be reprimanded by her mother.[30] They proceeded to Fabella School and talked in front of the school. While they were conversing, a woman shouted at them.[31] They approached the said woman and the latter asked what they were doing, to which appellant replied that they were merely talking with each other.[32] Not contented with his answer, they forcibly brought them to the barangay hall where the two were detained for more than an hour until AAA's parents arrived.[33] AAA was immediately brought out of the detention cell while appellant was investigated further.[34]

Nelia Marquez, co-occupant of the house where appellant temporarily resided, corroborated appellant's testimony regarding his relationship with AAA. She testified that she frequently saw the two talking to each other. She even asked AAA whether they had a relationship to which AAA simply nodded her head.[35]

In convicting appellant, the RTC said that the issue hinged not only on the complainant's version but more importantly on the conduct of the complainant observed by the court in the course of the trial. The RTC observed that AAA appeared to be mentally deficient and behaved like a child when she answered even direct questions; that she did not remember her birthday and the exact place where appellant had sexually abused her except to say on a "grassy land or damuhan" and near a high monument when asked in what municipality; thus, it was not difficult to understand that when appellant pulled her to a grassy place, she did not shout or ask for help. The RTC found AAA's testimony to be credible and sincere. Coupled with the findings of the medico legal expert and the fact that appellant had sexual intercourse with AAA as testified to by Torno who actually saw the incident, the RTC found appellant guilty of the crime of rape beyond reasonable doubt.

On appeal, appellant contends that the testimony of alleged eyewitness Torno appeared to be too weak to overcome the constitutional presumption of innocence in favor of appellant; that Torno's testimony that while AAA was being raped, there were more than 15 children watching her and appellant; that said children were uttering indecent words as if suggesting what sexual position the two should perform, giving the impression that what transpired between the two was a voluntary take sexual intercourse between two consenting adults; that Torno was scandalized by what she saw at that time, as she even testified that she brought the two to the barangay hall, as they were doing a wrong thing. Appellant pointed out that in AAA's testimony she said that there were people around when appellant went on top of her and yet she did not ask help from them; that to inject an element of fear, AAA testified that appellant would kill her, however, no deadly weapon was used by appellant in threatening her; that the records are bereft of any sign of struggle; and that the linear abrasions found on AAA's body could have been caused by sharp grass and the rough surface where the two lay, which was even admitted by the medico legal officer.

Appellant pointed out that the RTC erred in admitting as evidence the psychological examination conducted on

AAA, as it was never testified to by the doctors who examined her, but was only identified by the medico legal officer who had no expertise on the subject matter.

The CA found unpersuasive appellant's assault on Torno's credibility because judicial notice was taken of the fact that the rape scene is not always secluded or isolated, as it can be committed in places where people congregate; that complainant's failure to struggle or to offer adequate resistance against appellant is of no moment, as physical resistance need not be established in rape when intimidation was exercised upon the victim and she submitted herself to the rapist's lust out of fear for her life and personal safety. The CA found satisfactory the explanation advanced by AAA that she was threatened with death which rendered her unable to scream or ask for help; that such threat or intimidation produced a reasonable fear in her mind that it would be carried out if she resisted the desires of appellant; that there was force when appellant pulled her to a grassy place, and there was intimidation when he threatened to kill her if she would report the incident; thus, the fact that no deadly weapon was used by appellant in making the threat had no bearing. The CA further found that the medical findings of Dr. Reyes also corroborated AAA's claim that she had been sexually molested by appellant.

While the CA ruled that the result of AAA's mental examination should not be admitted by the trial court, since the neuro-psychiatrist who examined AAA was never presented in court, notwithstanding that no timely objection was raised during trial, the CA declared that AAA suffered some mental deficiency which was neither disputed nor challenged by appellant as he even admitted that AAA's mental capacity was very low; that the RTC judge had also observed AAA's mental retardation, as he mentioned it in his decision which sufficed even in the absence of an expert opinion on the matter.

The CA did not give credence to appellant's claim that he and AAA were sweethearts and the sexual act was consensual; that except for appellant's own declaration, he did not present anything to prove their alleged love relationship and was unable to prove that carnal knowledge between him and AAA was consensual. Thus, the CA affirmed appellant's conviction and also awarded to the victim the amount of P50,000.00 as moral damages.

It has often been said, to the point of being repetitive, that when the credibility of the witness is in issue, the trial court's assessment is accorded great weight unless it is shown that it has overlooked a certain fact or circumstance of weight which the lower court may have overlooked, misunderstood or misappreciated and which, if properly considered, would alter the results of the case.[36] The RTC has the unique advantage of monitoring and observing at close range the demeanor, deportment and conduct of the witnesses as they regale the trial court with their testimonies.[37] In this case, the RTC found AAA's testimony credible and sincere and gave it full probative weight. We find no cogent reason to overturn the CA's affirmance of such finding.

Article 335[38] of the Revised Penal Code as amended by Section 11 of Republic Act No. 7659[39] was the law applicable at the time of the rape. It provides:

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 12 years of age or is demented.

x x x x

The gravamen of rape is carnal knowledge of a woman against her will or without her consent.[40]

In this case, the prosecution was able to establish the fact that appellant had carnal knowledge of AAA against her

will or without her consent, thus:

Q.

When he was on top of you, what did he do if any with your private parts?

A.

He inserted his private part to my vagina.

Q.

How long was his private part inserted to your private part?

A.

8.30.

Q.

How many minutes that his private party was inserted to your private part?

A.

Alas dose po.

Q.

Was it for a short time or for a long time?

A.

Matagal po.

Q.

When his private part was inside your private part, what was the movement of the body of Norberto.

A.

--

Atty. Pio

Leading your honor.

COURT:

What was he doing after inserting his private part, what did he do?

A.

He held my breast.

Prosecutor Borlas:

Q.

How about the buttocks, what were the movements being made by him?

A.

He was grinding his buttocks.

Q.

And while he was on top of you what if any did he tell you?

A.

Not to report him.

Q.

What was your reaction to what he said?

A.

Papatayin daw ako.

Q.

What did you think he will do if you will report the incident?

A.

He will kill me.

Q.

So, after he got up on top of you what else transpired?

A.

No more.[41]

Torno corroborated AAA's testimony on the carnal knowledge as she actually saw appellant pumping on top of AAA. Also, the medico-legal officer testified and presented his undisputed findings of the presence of a deep, fresh hymenal laceration which further established that AAA had been sexually penetrated. When the victim's testimony of her violation is corroborated by the physical evidence of penetration, there is sufficient foundation for concluding that there was carnal knowledge.[42]

Appellant's attack on Torno's credibility by claiming that Torno's testimony showed that she was only scandalized by what she saw AAA and appellant were doing in the open and which in her opinion was wrong would not detract from the fact that Torno actually saw appellant having carnal knowledge of AAA.

The prosecution was able to establish that force and intimidation were employed by appellant to perpetuate the offense charged.

As the CA correctly found, appellant pulled AAA from the house of her Ate Nimfa and brought her to a grassy place. Notably, AAA was only 16 years old then while appellant was already 21, a construction worker. Moreover, while appellant was on top of AAA, he told the latter not to report his act as she would be killed. AAA's perception that bodily harm might be inflicted on her by appellant while she was being raped made her vulnerable to appellant's intimidation, which was sufficient for AAA to submit to appellant's desires.

Appellant's claim that AAA testified that there were people around when the rape incident took place and yet AAA did not ask help from them is not persuasive. The people seen by AAA during the rape incident were the children who were positioned at the monument which was a few meters away from the grassy land where AAA and appellant were at that time,[43] and who were even shouting indecent words. She was not able to shout

because she was scared.[44] AAA's failure to shout for help does not vitiate the credibility of her account that she was raped. To reiterate, AAA was only 16 years old at the time of the rape and inexperienced in the ways of the world.

Appellant's claim that the records do not show any sign or presence of struggle is irrelevant. Physical resistance is not an essential element of the felony, and need not be established when intimidation is exercised upon the victim and the latter submits herself, against her will, to the rapist's embrace because of fear for her life and personal safety.[45] It is enough that the malefactor intimidated the complainant into submission. Failure to shout or offer tenacious resistance did not make voluntary the complainant's submission to the criminal acts of the accused.[46] Furthermore, not every victim of rape can be expected to act with reason or in conformity with the usual expectations of everyone.[47] The workings of a human mind placed under emotional stress are unpredictable; people react differently. Some may shout, some may faint, while others may be shocked into insensibility.[48] Also, the inequality of their physical strength made any resistance on AAA's part futile.[49]

Moreover, the fact that there was no weapon used by the accused does not rule out force in the rape committed.[50] It is a settled rule that the force contemplated by law in the commission of rape is relative, depending on the age, size and strength of the parties.[51] It is not necessary that the force and intimidation employed in accomplishing it be so great and 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.[52]

Intimidation, more subjective than not, is peculiarly addressed to the mind of the person against whom it may be employed, and its presence is basically incapable of being tested by any hard and fast rule.[53] Intimidation is normally best viewed in the light of the perception and judgment of the victim at the time and occasion of the crime.[54] AAA was threatened that she would be killed, which created a fear in her mind which caused her to submit to appellant's bestial lust.

AAA, a minor, cannot be expected to react under such circumstances like a mature woman. Because of her immaturity, she can be easily intimidated, subdued, and terrified by a strong man like appellant.[55] Minor victims like AAA are easily intimidated and browbeaten into silence even by the mildest threat on their lives.[56]

During the trial, the prosecution presented evidence tending to show that AAA was a mental retardate. It is settled that sexual intercourse with a woman who is a mental retardate constitutes statutory rape, which does not require proof that the accused used force or intimidation in having carnal knowledge of the victim for conviction.[57] However, this fact was not alleged in the complaint filed in this case and therefore cannot be the basis for conviction.[58]

In any event, the prosecution presented adequate evidence which showed that the appellant used force and intimidation in committing the crime of rape, and which the RTC relied upon in convicting appellant. The absence of evidence of any improper motive on the part of AAA to testify as principal witness of the prosecution strongly tends to sustain the conclusion that no such improper motive existed at the time she testified and her testimony is worthy of full faith and credit.[59]

Article 335 of the Revised Penal Code as amended by Section 11 of R.A. No. 7659 provides the penalty of reclusion perpetua for the carnal knowledge of a woman procured through force or intimidation and without any other attendant circumstance. Thus, the RTC correctly imposed the penalty of reclusion perpetua.

With respect to the civil liability of appellant, we find that the CA correctly affirmed the RTC's award to the offended party in the amount of P50,000.00 as civil indemnity, as well as the CA's additional award of P50,000.00 as moral damages even without need of further proof, considering that AAA sustained mental, physical and

psychological suffering.[60]

WHEREFORE, the Decision dated September 30, 2005 of the Court of Appeals is AFFIRMED.

SO ORDERED.

Ynares-Santiago, (Chairperson), Chico-Nazario, Reyes, and Brion, JJ., concur.

[*] In lieu of Justice Antonio Eduardo B. Nachura, per Raffle dated September 22, 2008.

[1] Penned by Justice Mariano C. del Castillo, concurred in by Justices Portia Aliño-Hormachuelos and Magdangal M. de Leon, rollo, pp. 3-13.

[2] Penned by Judge Mariano M. Umali; CA rollo, pp. 15-29.

[3] The real name of the victim is withheld pursuant to Republic Act No. 7610 (An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes) and Republic Act No. 9262 (An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes). See *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[4] CA rollo, p. 5.

[5] *Id.* at 4-5.

[6] Per Judge Mariano M. Umali; Criminal Case No. 109203-H; *id.* at 5-29.

[7] *Id.* at 28-29.

[8] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[9] Rollo, pp. 12-13.

[10] Rollo, p. 14.

[11] *Id.* at 41.

[12] TSN, March 7, 1996, pp. 3-4.

[13] *Id.* at 4.

[14] *Id.* at 5.

[15] TSN, March 7, 1996, p. 6.

[16] *Id.* at 7.

[17] *Id.* at 8.

[18] TSN, July 11, 1996, pp. 2-3.

[19] *Id.* at 4.

[20] *Id.*

[21] *Id.* at 5.

[22] Records, p. 94; Exhibit "F".

[23] Records, p. 94.

[24] TSN, October 15, 1996, p. 4.

[25] Id. at 5.

[26] At the time the examination was conducted on AAA, she was only 16 years old.

[27] TSN, October 15, 1996, p.5.

[28] Id.

[29] TSN, January 9, 1997, p. 3.

[30] Id. at 4.

[31] Id. at 5.

[32] Id. at 6.

[33] Id.

[34] Id. at 7.

[35] TSN, February 20, 1997, pp. 4-5.

[36] *People v. Madronio*, G.R. Nos. 137587 & 138329, July 29, 2003, 407 SCRA 337, 347, citing *People v. Layoso*, 443 Phil. 827 (2003).

[37] Id. citing *People v. Ramos*, 442 Phil. 710 (2002).

[38] Now Article 266-A and 266-B of the Revised Penal Code as amended by Republic Act No. 8353, "The Anti-Rape Law of 1997," which took effect on October 22, 1997.

[39] An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Code, as Amended, Other Special Penal Laws and for Other Purposes. Took effect on 31 December 1993.

[40] *People v. Esperida*, 443 Phil. 818 (2003).

[41] TSN, March 7, 1996, pp. 7-8.

[42] *People v. Segui*, G.R. No. 131532-34, November 28, 2000, 346 SCRA 178, 186.

[43] TSN, July 11, 1996, p. 3.

[44] TSN, March 20, 1996, p. 3.

[45] *People v. Alberio*, G.R. No. 152584, July 6, 2004, 433 SCRA 469, 475 citing *People v. Rebose*, 367 Phil. 768 (1999).

[46] Id. citing *People v. Corea*, 336 Phil. 72 (1997).

[47] Id. citing *People v. Cabel*, G.R. No. 121508, December 14, 1995, 282 SCRA 410.

[48] Id. citing *People v. Malunes*, 317 Phil. 378 (1995).

[49] *People v. Pulanco*, G.R. No. 141186, November 27, 2003, 416 SCRA 532, 540 citing *People v. Ferrer*, G.R.

Nos. 116516-20, September 7, 1998, 295 SCRA 190.

[50] *People v. Marabillas*, G.R. No. 127494, February 18, 1999, 303 SCRA 352, 359 citing *People v. Domingo*, G.R. No. 97921, September 8, 1993, 226 SCRA 156.

[51] *People v. Moreno*, G.R. No. 126921, August 28, 1998, 294 SCRA 728, 739.

[52] *Id.* citing *People v. Antonio*, G.R. No. 107950, June 17, 1994, 233 SCRA 283.

[53] *People v. Rapisora*, G.R. No. 138086, January 25, 2001, 350 SCRA 299, 307.

[54] *Id.* citing *People v. Oarga*, G.R. Nos. 109396-97, July 17, 1996, 259 SCRA 90 .

[55] *People v. Padilla*, G.R. No. 126124, January 20, 1999, 301 SCRA 265, 274 citing *People v. Gumahob*, G.R. No. 116740, November 28, 1996, 265 SCRA 84.

[56] *People v. Ortega*, G.R. No. 137824, September 17, 2002, 389 SCRA 167, 180.

[57] *People v. Jackson*, G.R. No. 131842, June 10, 2003, 403 SCRA 500,516 citing *People v. Lopez*, G.R. No. 135671, November 29, 2000, 346 SCRA 469, 474; *People v. Padilla*, *supra* note 55.

[58] *People v. Capinpin*, G.R. No. 118608, October 30, 2000, 344 SCRA 420, 429.

[59] *People v. Banella*, G.R. No. 124973, January 18, 1999, 301 SCRA 84; *People v. Sotto*, G.R. No. 106099, July 8, 1997, 275 SCRA 191, 201.

[60] *People v. Espino, Jr.*, G.R. No. 176742, June 17, 2008; *People v. Mallari*, G.R. No. 179051, March 28, 2008.

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