

## PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOFER TABLANG, ACCUSED-APPELLANT.

*G.R. No. 174859. October 30, 2009*

Ponente: BRION, J.

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### BRION, J.:

We review in this appeal the July 19, 2006 decision[1] of the Court of Appeals (CA) in CA G.R. CR-HC No. 00428, affirming in toto the April 21, 2004 decision[2] of the Regional Trial Court (RTC), Branch 33, Guimba, Nueva Ecija. The RTC decision found appellant Jofer Tablang (appellant) guilty beyond reasonable doubt of the crime of rape, and sentenced him to suffer the penalty of reclusion perpetua.

### ANTECEDENT FACTS

The prosecution charged the appellant before the RTC with the crime of rape under an Information that reads:

X X X

That on or about the 21[st] day of March 1997 in the evening, at Barangay Matindeg, Cuyapo, Nueva Ecija and within the jurisdiction of this Honorable Court, the said accused with lewd design armed with a bladed weapon, and with violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with one [AAA][3] against her will who is a mentally retarded girl.

CONTRARY TO LAW.[4]

The appellant pleaded not guilty to the charge.[5] The prosecution presented the following witnesses in the trial on the merits that followed: Dr. Cristina D. Peñanueva (Dr. Peñanueva); Francisco Umipig (Francisco); Dr. Danilo L. Labay (Dr. Labay); and AAA. The appellant himself testified and presented his defense.

Dr. Peñanueva, an OB/GYN physician at the Paulino J. Garcia Memorial Research and Medical Center, testified that she examined AAA on March 22, 1997,[6] and had the following findings:

X X X X

INTERNAL EXAMINATION: hymen had healed laceration at 1, 4, 7, 9 and 11 o'clock position with superimposed abrasions superficial at 3 o'clock positions;

Vagina admits one and two fingers with ease; cervix is firm, uterus is small.

Adnexae, negative.

Preg. Test negative[7]

On cross examination, Dr. Peñanueva stated that she found no abrasions on AAA's body; and maintained that the healed lacerations could have been caused by a penis.[8]

Francisco testified that he has been a resident of Barangay Matindeg, Cuyapo, Nueva Ecija for 10 years. He

recalled that at around 11:00 p.m. of March 21, 1997, he was in bed in his house when his dog started barking. He went out to pacify his dog, as well as to check if someone had entered his hut located 50 meters from his house.[9] He approached his hut and called out if anyone was inside. The appellant came out, holding a knife. Francisco asked the appellant if someone else was in the hut and the latter answered in the negative.[10] Francisco then told the appellant to go home. Suddenly, AAA emerged from the hut, ran to and crawled under the fence.[11]

On cross examination, Francisco maintained that the appellant was armed with a knife when he came out of the hut.[12] AAA ran away while he and appellant were talking.[13] He advised the appellant - after the latter pleaded to him not to report the incident - to go home and to meet him the next day.[14] Francisco also confirmed that he executed a sworn statement before the police on March 27, 1997.[15]

On further cross examination, Francisco admitted that AAA is his relative. He also recalled that AAA was putting on her panty as she came out of the hut.[16]

Dr. Labay, Medical Officer III at the National Center for Mental Health (NCMH), narrated that he conducted a psychological examination on AAA on June 23, 2000 and found that she suffered from moderate level of mental retardation, with a mental age of a person between 9-12 years old.[17] Dr. Labay recalled that AAA could identify her rapist, but could not elaborate on the incident.[18]

On cross examination, Dr. Labay stated that he examined AAA upon the orders of the RTC. He explained that he continued the examination started by the hospital's Chief Forensic Psychiatrist, Dr. Isagani Gonzales (Dr. Gonzales); Dr. Rowena R. Belen (Dr. Belen) likewise conducted a separate psychiatric evaluation on the victim.[19] Dr. Labay also recalled that AAA became teary-eyed while being asked about the rape.[20]

AAA declared on the witness stand that the appellant had raped her. When asked to elaborate, she explained that the appellant removed her clothes and shorts and poked a knife at her. The appellant removed her panty, held her hands, and then inserted his penis into her vagina. She cried but did not shout because she was afraid.[21] She maintained that she did not give her consent to the appellant's act of inserting his penis into her private part.[22]

AAA further stated that she resides in Curpa, Cuyapo, Nueva Ecija together with her mother Juanita and three cousins.[23] She slipped out of their house in the evening of March 21, 1997 to attend a wake in Barangay Matindeg. She was accompanied by Raymundo Fernando and a girl whose name she could not recall. After attending the wake, they met Francisco's daughter, Gene, at a store in Barangay Matindeg. Gene invited them to go to her father's hut.[24] On their way there, they met the appellant whose house was located near the store; the appellant went with them to the hut.[25] When they arrived, AAA and the appellant went inside the hut while their companions left. She did not disclose to Francisco what happened when the latter came because she was afraid; instead, she ran away.[26]

The appellant was the sole defense witness and gave a different version of the events. He narrated that at around 9 p.m. of March 21, 1997, he asked permission from his grandmother to attend the wake of Luis Macabontoc, a barriomate in Barangay Matindeg. He watched a card game while at the wake.[27] Afterwards, Mary Jane Umipig (Mary Jane) invited him to her father's hut to eat arrozcaldo. The appellant, Mary Jane, and three others - Jupit Castillo, Junior Castillo, and a certain Ollie - all went to the hut. AAA and Francisco were already there when they arrived.[28] As he entered the hut, Francisco - who was holding a bolo - shouted at him and accused him of raping AAA. Mary Jane ran away.[29] The appellant maintained that he was just in the hut to eat arrozcaldo, but Francisco cornered him.[30] The appellant pleaded with Francisco to allow him to leave; Francisco acceded but ordered him to go to the barangay the next day. The appellant did not go to the barangay because no invitation had been given for his appearance there. He learned after seven days that he had been charged of rape.[31]

On cross examination, the appellant explained that he was in Barangay Matindeg because he was vacationing in the house of his grandparents. In the evening of March 21, 1997, he was at the wake of Luis Macabontoc when Mary Jane invited him to go to the hut. They went to the hut together with Jupit, Junior, and Ollie. When they entered the hut, Francisco and AAA were already there.[32] Francisco ran amuck ("nagwala") and accused him of raping AAA. Francisco told him that he should answer for what he did to AAA.[33]

The RTC convicted the appellant of the crime of rape in its decision dated April 21, 2004 whose dispositive portion provides:

WHEREFORE, finding the accused guilty beyond reasonable doubt of the offense charged, this Court hereby sentences him to reclusion perpetua and to pay [AAA]:

1. P50,000.00 civil indemnity; and
2. P50,000.00 in moral damages.

SO ORDERED.[34]

The records of the case were originally transmitted to this Court on appeal. Pursuant to our ruling in *People v. Mateo*,[35] we endorsed the case and the records to the CA for appropriate action.

The CA, in its decision of July 19, 2006, affirmed the RTC decision in toto. The CA held that AAA testified in a spontaneous and categorical manner; her testimony likewise survived the defense's grueling cross examination. The appellate court also found no ill-motive on the part of AAA to testify falsely, and held that it was improbable for a young woman (with a mental age of 9-12 years old) to fabricate a story of rape that would subject her and her family to humiliation had she not truly been subjected to sexual abuse.

The CA added that the inconsistencies in AAA's statements were not unusual because of her mild mental retardation. These inconsistencies, too, referred only to minor or trivial matters whose presence gave AAA's statements added credibility, as it showed that she had not been coached nor had her testimony been rehearsed.

The CA further held that the presence of deep healed (instead of fresh) lacerations does not negate the fact of rape as the slightest penetration of the male organ is sufficient to consummate the crime of rape. It added that the absence of signs of struggle does not also negate rape, and explained that physical resistance does not need to be established when force and intimidation were brought to bear on the victim who submitted herself to the rapist's bestial desire out of fear for her life.

In his brief,[36] the appellant argues that the lower courts erred in convicting him despite the prosecution's failure to prove his guilt beyond reasonable doubt. He contends that the trial court erred in giving credence to AAA's incredible testimony.

#### THE COURT'S RULING

We deny the appeal for lack of merit.

#### Sufficiency of the Prosecution Evidence

Rape is defined and penalized under Article 335[37] of the Revised Penal Code, as amended,[38] which provides:

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

- By using force or intimidation;
- When the woman is deprived of reason or otherwise unconscious; and

- When the woman is under twelve years of age or is demented.

x x x x

Thus, for the charge of rape to prosper, the prosecution must prove that (1) the offender had carnal knowledge of a woman, (2) through force or intimidation, or when she was deprived of reason or otherwise unconscious, or when she was under 12 years of age or was demented. Carnal knowledge of a woman who is a mental retardate is rape;<sup>[39]</sup> as she is in the same class as a woman deprived of reason or otherwise unconscious.<sup>[40]</sup> Proof of force or intimidation is not necessary when the victim is a mental retardate, as she is not capable of giving consent to a sexual act. What needs to be proven are the facts of sexual congress between the accused and the victim, and the latter's mental retardation.<sup>[41]</sup>

In the present case, the prosecution established the elements of rape under Article 335 of the Revised Penal Code, as amended. First, AAA positively identified the appellant as her rapist; she was certain and never wavered in her identification. To directly quote from the records:

FISCAL FLORO FLORENDO

Q:

Do you know a person by the name of Jofer Tablang?

[AAA]

A:

Yes, sir.

Q:

Can you identify him?

A:

Yes, sir.

Q:

Would you like to get out [sic] of this room and see if he is present?

(Witness pointed to a man seated on the left side of the Court wearing yellow t-shirt and maong pants when asked his name answered Jofer Tablang).

Q:

Do you still remember what Jofer Tablang did to you?

A:

Yes, sir.

Q:

Will you please tell this Honorable Court what did he do to you?

A:

"Ni-rape nya ako."

x x x

Q:

By the term "ni-rape nya ako" what do you mean?

A:

Ginalaw nya ako. He removed my clothes.

Q:

Who removed your clothes?

A:

He was the one, sir.

Q:

What is the name of the person who removed your clothes?

A:

Jofer Tablang, sir.

Q:

After Jofer Tablang removed your clothes, what did he do next?

A:

He removed my shorts, sir.

x x x

Q:

After Jofer Tablang removed your shorts, what did he do next if there was any?

A:

He poked me a knife, sir. [sic]

x x x

Q:

Now, when he pointed a knife at you, did he do anything else?

A:

I shouted, sir.

Q:

Why did you shout?

A:

I was afraid, sir.

x x x x[42]

Q:

You said that you were raped by Jofer Tablang when I asked you what you mean by being raped and you said ginalaw nya ako, were you raped at that same incident when Jofer removed you shorts?

A:

Yes, sir.

Q:

How did he do that or how were you abused?

A:

He laid me down sir, and he removed my panty.

Q:

After removing your panty, what did he do next?

A:

He held my hands, sir.

Q:

And then?

A:

I cried, sir.

x x x x

Q:

Do you have a private organ?

A:

There is, sir. [sic]

Q:

Do you know where is that? Will you please point to your private organ?

(Witness is glancing and slightly pointing to the place where her private organ is located).

Q:

Will you please tell this Honorable Court what did the accused Jofer Tablang do with your private organ?

x x x

A:

He inserted (ipinasok), sir.

Q:

What did Jofer Tablang insert into your private organ?

A:

His penis, sir.

Q:

What did you do when he inserted his penis into your private organ?

A:

None, sir.

Q:

You did not cry?

A:

I cried, sir.

Q:

You did not shout?

A:

No, sir.

Q:

Why did you not shout?

A:

I was afraid, sir.

Q:

Why were you afraid?

A:

I was afraid because he was holding a knife, sir.

x x x

Q:

When Jofer Tablang inserted his penis into your private organ, did you give your consent?

x x x

A:

No, sir.[43] [Emphasis ours]

In asserting that the appellant raped her by inserting his penis into her private part, we note the trial court's observation that the victim broke down and cried on the witness stand while recalling her ordeal. These, to our mind, are stirring signs of the truth of her allegations. We additionally do not see from the records any indication

that AAA's testimony should be seen in a suspicious light. Given the victim's mental condition, we find it highly improbable that she had simply concocted or fabricated the rape charge against the accused. Nor do we find it likely that she was coached into testifying against appellant considering her limited intellect. In her mental state, only a very startling event would leave a lasting impression on her so that she would be able to recall it later when asked.[44] As we explained in the similar case of *People v. Balatazo*:[45]

Given the low I.Q. of the victim, it is impossible to believe that she could have fabricated her charges against appellant. She definitely lacked the gift of articulation and inventiveness. Even with intense coaching, assuming this happened as appellant insists that the victim's mother merely coached her on what to say in court, on the witness stand where she was alone, it would eventually show with her testimony falling into irretrievable pieces. But this did not happen. During her testimony, she proceeded, though with much difficulty, to describe the sexual assault in such a detailed manner. Certainly, the victim's testimony deserves utmost credit.

Second, a judicious consideration of the evidence will show that the mental condition of the victim was sufficiently established. Dr. Labay testified that he conducted a mental status examination on AAA and found her to be suffering from "mild mental retardation, with mental age between 9-12 years of age." Dr. Labay's diagnosis was corroborated by the Psychological Report of Dr. Belen which showed that AAA's mental age was between 9-12 years old, and that AAA's mental capacity belongs to the Mild Mental Retardation range.

The sum total of these testimonial and documentary pieces of evidence proves beyond doubt that the victim was a mental retardate at the time she was raped by the appellant. We note that even the defense did not dispute her mental retardation. Thus, we agree with the lower court's findings that AAA was suffering from a mild mental retardation. In *People v. Orbita*,[46] we held that carnal knowledge of a woman who is so weak in intellect to the extent that she is incapable of giving consent constitutes rape.

#### The Appellant's Defenses

The appellant denied raping AAA and argues that the courts a quo erred in giving credence to the victim's vague testimony.

We do not find this defense meritorious.

As we have repeatedly ruled, we accord the trial judge's assessment of the credibility of witnesses great respect in the absence of any attendant grave abuse of discretion; the trial court had the advantage of actually examining both real and testimonial pieces of evidence, including the demeanor of the witnesses, and is in the best position to rule on the matter. The rule finds an even greater application when the trial court's findings are sustained by the CA. In the present case, we see no reason to depart from the trial court's assessment of AAA's testimony.[47]

As a mental retardate, the victim's testimony could not be expected to be flawless and precise as her quoted testimony shows. What is important, however, is that she was able to make known her perception and communicate her ordeal, albeit with some difficulty, and positively identify her rapist. We see no basic contradiction in what the victim can and cannot do as a mental retardate. Dr. Labay categorically testified that AAA was capable of identifying her rapist, although she had difficulty elaborating the details of the rape.

Even a mental retardate or feeble-minded person qualifies as a competent witness if she can perceive and, perceiving, can make known her perception to others. In *People v. Maceda*,[48] we held that the mental unsoundness of the witness at the time of the event testified to affects only her credibility. As long as the witness can convey ideas by words or signs and gives sufficiently intelligent answers to the questions propounded, she is a competent witness even if she is a mental retardate. In *People v. Salomon*,[49] this Court held that "[a] mental retardate is not for this reason alone disqualified from being a witness. As in the case of other witnesses,

acceptance of one's testimony depends on its nature and credibility." In *People v. Gerones*,<sup>[50]</sup> the Court allowed the victim to testify, even if she had the mental age of a 9 or 10-year old. Likewise, in *People v. Antonio*,<sup>[51]</sup> the Court allowed the testimony of a 24-year old woman who had the mental age of a seven-year old child, because the Court was convinced that "she was capable of perceiving and making her perception known."

The appellant also contends that Dr. Peñanueva's findings showing that AAA had healed, instead of fresh lacerations belie her claim of rape.

We do not find this argument persuasive.

The absence of fresh lacerations does not negate sexual intercourse. In fact, rupture of the hymen is not essential as the mere introduction of the male organ in the labia majora of the victim's genitalia consummates the crime.<sup>[52]</sup> In the present case, AAA might have had difficulty in describing the particular part of her vagina that was actually touched. What is required for a consummated crime of rape, however, is the mere touching of the labia by the penis; AAA even went beyond this minimum requirement as she testified that the appellant's penis was inserted into her vagina. Our ruling in *People v. Ortoa*<sup>[53]</sup> on this point is particularly instructive:

A freshly broken hymen is not an essential element of rape. Even the fact that the hymen of the victim was still intact does not rule out the possibility of rape. Research in medicine even points out that negative findings are of no significance, since the hymen may not be torn despite repeated coitus. In any case, for rape to be consummated, full penetration is not necessary. Penile invasion necessarily entails contact with the labia. It suffices that there is proof of the entrance of the male organ into the labia of the pudendum of the female organ. Penetration of the penis by entry into the lips of the vagina, even without rupture or laceration of the hymen, is enough to justify a conviction for rape. [Emphasis supplied]

In sum, we find no merit in the appellant's denial. It is settled that denial is an inherently weak defense. It cannot prevail over positive identification, unless supported by evidence of lack of guilt. In this case, the appellant's mere denial cannot overcome the victim's positive declaration that she had been raped and the appellant was her rapist.

#### The Proper Penalty

The applicable provision of the Revised Penal Code covering the crime of Rape is Article 335, as amended, which provides that when the woman is under twelve years of age or is demented, the crime of rape shall be punished by reclusion perpetua. Whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death.

The Information specifically alleged the use of a bladed weapon in the commission of the rape. The prosecution duly proved this allegation from the testimonies of AAA and Francisco. Under Article 335 quoted above, the use of a deadly weapon qualifies the rape so that the imposable penalty is reclusion perpetua to death. Since reclusion perpetua and death are two indivisible penalties, Article 63 of the Revised Penal Code applies; when there are neither mitigating nor aggravating circumstances in the commission of a deed, as in this case, the lesser penalty shall be applied. The lower courts were therefore correct in imposing the penalty of reclusion perpetua on the appellant.

#### Proper Indemnity

The award of civil indemnity to the rape victim is mandatory upon the finding that rape took place. Thus, we affirm the award of P50,000.00 as civil indemnity to the victim.<sup>[54]</sup>

The victim is likewise entitled to moral damages without need of proof; from the nature of the crime we can assume that she has suffered moral injuries entitling her to such award. Pursuant to current jurisprudence, we affirm as correct the award of P50,000.00 as moral damages.<sup>[55]</sup>

WHEREFORE, premises considered, we AFFIRM the July 19, 2006 decision of the Court of Appeals in CA G.R. CR-HC No. 00428 in toto.

Costs against appellant Jofer Tablang.

**SO ORDERED.**

Quisumbing, (Chairperson),[\*]Carpio, [\*\*]Chico-Nazario, Brion, and Abad, JJ., concur.

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[\*] Designated additional Member of the Second Division in lieu of Associate Justice Mariano C. Del Castillo, per Special Order No. 757 dated October 12, 2009.

[\*\*] Designated additional Member of the Second Division in lieu of Associate Justice Conchita Carpio Morales, per Special Order No. 759 dated October 12, 2009.

[1] Penned by Associate Justice Rosmari D. Carandang, and concurred in by Associate Justice Renato C. Dacudao and Associate Justice Monina Arevalo-Zenarosa; rollo, pp. 2-26.

[2] Penned by Judge Ismael P. Casabar.

[3] The Court shall withhold the real name of the victim-survivor and shall use fictitious initials instead to represent her. Likewise, the personal circumstances of the victims-survivors or any other information tending to establish or compromise their identities, as well as those of their immediate family or household members, shall not be disclosed. (People v. Cabalquinto, G.R. No. 167693, September 19, 2006, 502 SCRA 419, 425-426, citing Sec. 40, Rule on Violence Against Women and their Children; Sec. 63, Rule XI, Rules and Regulations Implementing Republic Act No. 9262, Otherwise Known as the "Anti-Violence Against Women and their Children Act of 2004.")

[4] Records, p. 18.

[5] Id., pp. 37-40.

[6] TSN, July 3, 2000, p. 3.

[7] Id., p. 4.

[8] Id., pp. 5-6.

[9] TSN, August 7, 2000, p. 2.

[10] Id., p. 3.

[11] Id., pp. 4-5.

[12] TSN, September 11, 2000, p. 4.

[13] Id., pp. 4-5.

[14] Id., pp. 7-8.

[15] Id., p. 6.

[16] TSN, December 11, 2000, pp. 3-4.

[17] TSN, February 26, 2001, p. 5.

- [18] *Id.*, p. 8.
- [19] *Id.*, pp. 9-10.
- [20] *Id.*, p. 12.
- [21] TSN, April 23, 2001, pp. 3-5; TSN, January 23, 2002, pp. 2-3.
- [22] TSN, January 23, 2002, p. 3.
- [23] *Id.*, p. 4.
- [24] TSN, February 6, 2002, pp. 4-6.
- [25] *Id.*, pp. 6-7.
- [26] *Id.*, p. 8.
- [27] TSN, February 5, 2003, p. 3.
- [28] *Id.*, pp. 3-4.
- [29] *Id.*, p. 6.
- [30] *Id.*, p. 7.
- [31] *Id.*, pp. 8-9.
- [32] TSN, March 3, 2004, pp. 1-2.
- [33] *Id.*, p. 3.
- [34] CA rollo, p. 17.
- [35] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640, 656.
- [36] CA rollo, pp. 22-40; rollo, pp. 22-24.
- [37] The crime subject of Criminal Case No. 1492-G was committed in March 1997, or before Article 335 of the Revised Penal Code, as amended, was repealed by Republic Act No. 8353, or the Anti-Rape Law of 1997, which took effect on October 22, 1997.
- [38] Amended by Republic Act No. 7659, entitled An Act to Impose the Death Penalty on Heinous Crimes Amending for that Purpose the Revised Penal Code, as Amended, Other Special Laws, and for Other Purposes, which took effect on December 31, 1993.
- [39] *People v. Dela Paz*, G.R. No. 177294, February 19, 2008, 546 SCRA 363.
- [40] See *People v. Pagsanjan*, G.R. No. 139694, December 27, 2002, 394 SCRA 414.
- [41] See *People v. Dela Paz*, *supra*.
- [42] TSN, April 23, 2001, pp. 3-5.
- [43] TSN, January 23, 2002, pp. 2-3.
- [44] See *People v. Diunsay-Jalandoni*, G.R. No. 174277, February 8, 2007, 515 SCRA 227.
- [45] G.R. No. 118027, January 29, 2004, 421 SCRA 298, citing *People v. Rosare*, 264 SCRA 398 (1996).

- [46] G.R. No. 136591, July 11, 2002, 384 SCRA 393.
- [47] *People v. Dela Paz*, *supra*.
- [48] G.R. No. 138805, February 28, 2001, 353 SCRA 228.
- [49] G.R. No. 96848, January 21, 1994, 229 SCRA 403.
- [50] G.R. No. 91116, January 24, 1991, 193 SCRA 263.
- [51] G.R. No. 107950, June 17, 1994, 233 SCRA 283.
- [52] See *People v. Almacin*, G.R. No. 113253, February 19, 1999, 303 SCRA 399.
- [53] G.R. No. 174484, February 23, 2009.
- [54] See *People v. Jumawid*, G.R. No. 184756, June 5, 2009.
- [55] See *People v. Baldo*, G.R. No. 175238, February 24, 2009.

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