

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V. XXX,
ALFREDO GILLES, NIÑO G. MONTER AND CONSTANCE M. CASTIL
ALIAS JUNJUN, ALIAS TANSYONG, ACCUSED-APPELLANTS.**

G.R. No. 229860. March 21, 2018

Ponente: GESMUNDO, J.

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GESMUNDO, J.:

This is an appeal of herein accused-appellants XXX,[1] Alfredo Gilles (Gilles), Niño G. Monter (Monter), and Constance M. Castil (Castil), from the September 27, 2016 Decision[2] of the Court of Appeals-Cebu City (CA) in CA-G.R. CR-HC No. 01906. The CA affirmed with modification the April 30, 2014 Decision[3] of the Regional Trial Court of Maasin City, Southern Leyte, Branch 25 (RTC), in Crim. Case No. 11-03-3508 finding appellants guilty beyond reasonable doubt of the crime of rape.

The Antecedents

The accusatory portion of the Information[4] against appellants states:

That on October 2, 2010, at about 2:00 o'clock dawn, in [deleted], province of Southern Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping each other, with lustful intent and lewd designs, did then and there willfully, unlawfully and feloniously, by means of force, threats and intimidation, successfully have sexual intercourse with the victim [AAA], without her consent and against her will, to the damage and prejudice of the said victim and of social order.

CONTRARY TO LAW.[5]

After the arraignment where the appellants pleaded not guilty,[6] trial commenced. The prosecution presented four (4) witnesses: the offended party AAA, Maria Aina Daclan, records officer of the town's Rural Health Office, FFF, AAA's sister-in-law,[7] and Liberty Pinamungahan (Liberty), a female companion who lived in the same household. On the other hand, the defense presented appellant minor XXX as its sole witness.

Version of the Prosecution

AAA lives with the family of her brother BBB[8] and known to be suffering from mental deficiency and exhibits childish behaviour.[9]

Offended party AAA testified that on October 1, 2010, her brother BBB, whom she was living with, hosted a party for his grandchild, with appellants among the visitors. During the party, appellants invited her to go to the seashore and to the karaoke bar owned by a certain Amarin. AAA agreed and left the house with the appellants at around 2 o'clock in the morning when all the other occupants of the house were already asleep. They brought with them a watering can full of tuba from BBB, with AAA bringing the glasses they can use for drinking.

Because the karaoke bar was already closed, appellants and AAA went to the seashore, sat in the sand and drank

the tuba. After drinking two (2) glasses of tuba, AAA felt shortness of breath. AAA also noticed that the appellants huddled together "as if they were agreeing to do something." Sometime during the night, AAA felt like urinating, and she did so in front of the appellants after asking them to turn their backs. After urinating, Castil took off her pants and underwear, which she asked to be placed beside her. She asked him what he was doing but the latter told her to keep silent. She did not complain as she felt very sleepy. Castil placed himself on top of her and the next thing she knew, Castil's penis was already in her vagina. After Castil raped her, she remembered XXX followed next, followed by Monter, and then Gilles. When Monter did the same act, she was already awake, but did not resist and told them she wanted to go home. Castil and XXX apparently raped her again, and while this was happening, she heard some people looking for her. Gilles and Monter ran away while Castil and XXX continued raping her even when the people looking for her — who turned out to be Jovita Escobal, Liberty, and a certain Antonio - were approximately 50 meters away. Castil and XXX ran away when they saw Escobal, Liberty, and Antonio near. AAA then stood up and put on her clothes. AAA and Liberty waited by the seashore for Escobal's husband who then fetched their motorcycle.

When they arrived home, AAA did not talk to anybody at their house and instead immediately went inside and slept. She slept the whole day and did not go outside her room until two (2) days later on October 3, 2010. She did not tell anybody about the incident. Her sister-in-law FFF learned of the rape incident when Elizabeth Gilles told FFF that Gilles was one of those who raped AAA. AAA was first brought to Medicare Hospital and then at the Rural Health unit where she was examined by Dr. Teodorico Esclamado, Jr. (Dr. Esclamado).

While appellants were in jail, AAA spoke with Castil, who asked for forgiveness and offered to marry her, which she rejected. She also spoke with Gilles' mother, Monter's sister, and Castil's mother, who all asked for forgiveness and offered to pay her.

On cross-examination, AAA admitted she voluntarily went with appellants when they invited her to go to the karaoke bar and eventually to the seashore. She admitted to providing them with the tuba. She explained the inconsistencies between her sworn statement, where she claimed being dragged to the seashore, as against her testimony, by stating that she told appellants she did not want to go with them to a further distance.

Prosecution's second witness, Maria Aina Daclan, presented the certified true copy of the Medical Report for the Alleged Sexual Abuse issued by Dr. Esclamado. The latter already retired sometime in 2011.

FFF, meanwhile, testified that from the time she married AAA's brother, she already noticed AAA's mental deficiency and childish behavior. She came to know about the incident when Gilles' mother told her that the former's son was the one who raped AAA. Thereafter, FFF and her husband went to the police station to have the incident entered in the police blotter. They then brought AAA to the Rural Health Unit.

The prosecution's last witness, Liberty, testified that she lived with FFF and her husband as the spouses sent her to school as she helped in their vegetable sales business. On October 1, 2010, AAA was drunk during the birthday party. On October 2, 2010, the witness was awoken at around 3 o'clock in the morning to go to the market. Tonio, one of the workers, reported that he saw AAA with some men. FFF asked her and Tonio to look for AAA. They were sent to the seashore upon information from Jovita Escobal. All three went to the seashore where they saw a man who told them AAA was along the seashore. The man and Tonio went to the seashore while Liberty stayed with the bicycle. When Liberty followed, she saw Monter, who walked past her towards his house, and XXX walking in the opposite direction. She saw AAA, sitting on the sand with Tonio and another man and that AAA had no short pants and her underwear was down to her legs. Liberty asked AAA to go home with them, but AAA insisted she would go home on her own, so they forced AAA to come with them.

Version of the Defense

XXX presented his birth certificate showing that he was born on December 3, 1994. He testified that on October 1, 2010, he went to the billiard hall where he met Castil, Montes, and Gilles. There, they were invited by BBB to his house to attend his grandson's party. The appellants stayed at the party and drank tuba until 11:30 in the evening. They eventually transferred to a bench outside the billiard hall. He laid down the bench and AAA appeared in front of him and squeezed his thigh and touched his penis. He rolled over towards his friends to avoid her but she called them gay. They saw Tonio riding a bicycle and they called for him to take AAA away as she was being bothersome. AAA refused but was eventually prevailed upon them. Appellants continued drinking until Castil suggested they transfer to the seashore, where they continued their drinking spree. AAA rejoined them and later removed her pajamas and urinated in front of them. Castil ignored her because she was already drunk as he saw her drinking at the birthday party.

Sometime later, XXX left the group and went 20 meters away to urinate. While he was urinating, AAA embraced and squeezed him from behind. He pleaded for AAA to stop, but the latter called him gay, forced him to lie down on the sand, and placed herself on top of him. XXX tried to free himself but AAA instead held his penis and inserted it into her vagina, and made pressing motions of her body against his. When AAA stood up, XXX was able to get away and he went back to his friends. He did not tell his friends about what happened but told them to go as AAA was being bothersome. He and his friends went home and did not know what happened to AAA after they parted ways.

The RTC Ruling

In its decision, the RTC ruled in favor of the prosecution. The RTC noted that AAA's unrefuted testimony that all the appellants raped her, started by Castil who removed her pants and panty, placed himself on top of her and placed his penis inside her vagina, followed by XXX, Monter, and Gilles who did the same, already established the essential element of sexual congress. To the RTC, XXX's testimony corroborated the fact that there was sexual congress between him and AAA. In contrast to AAA's testimony, described as candid and unwavering, XXX's version appeared contrived and ineffectual.

The RTC further emphasized that Castil's act of asking for forgiveness and even offering marriage, and the relatives of the other appellants asking for forgiveness and wanting an out of court settlement, indicated that AAA's statements regarding the incident were truthful.

The RTC likewise observed that AAA, at 48 years old, appeared to be a mental retardate. AAA's "appearance, focus and demeanor while on the witness stand, and especially her responses to the questions propounded her by the prosecution and the defense counsel, showed that she is a mental retardate." [10] Reinforcing its finding that AAA was deprived of her will to resist the sexual advances of appellants, the RTC pointed to the fact that AAA was inebriated at the time of the incident.

The RTC found that the prosecution established beyond reasonable doubt the guilt of the appellants for simple rape but appreciated the privileged mitigating circumstance of minority in favor of XXX. The dispositive portion of the decision reads:

WHEREFORE, all the foregoing considered, the court finds each of the four accused GUILTY beyond reasonable doubt of one act of Rape by direct participation.

Accused Alfredo Gilles, Niño G. Monter and Constante M. Castil are hereby sentenced to reclusion perpetua.

Accused [XXX] is hereby sentenced to an Indeterminate penalty of 10 years of prision mayor, as minimum, to 17 years and 4 months of reclusion temporal, as maximum, appreciating in his favor the privileged mitigating circumstance of minority. Pursuant to Section 38 of R.A. No. 9344 and Section 48 of Supreme Court Rule on

Juveniles in Conflict with the Law, [XXX] is hereby placed under suspended sentence. Set the disposition conference regarding said accused on May 20, 2014 at 2:00 o'clock in the afternoon.

All named accused are further ordered to jointly and solidarily pay [AAA] the sum of P200,000.00 as civil indemnity, the further sum of P200,000.00 as moral damages and the sum of P90,000.00 as exemplary damages plus costs, without subsidiary imprisonment in case of insolvency.

SO ORDERED.[11]

The CA Ruling

In sustaining the conviction of appellants, the CA noted that the victim was a retardate, and therefore the force or intimidation required to overcome her is of a lesser degree than that used against a normal adult. In this case, considering AAA is feeble-minded, the force required by law is the sexual act itself. The CA highlighted that appellants were convicted of the crime of simple rape through force and intimidation under paragraph 1(a) of Article 266-A of the Revised Penal Code. However, it was established by testimonial evidence of FFF and the medical report of Dr. Esclamado that AAA is known to have mental deficiency. From these pieces of evidence, the CA determined AAA to be mentally deficient.

The CA ruled that the appellants argument that AAA is a woman of loose morals is bereft of merit as the moral character of the victim is immaterial. It held that the sexual act could not have been consensual as AAA was mentally deficient and thus did not have the capacity to give her consent. The CA further stated that resistance is not an element of the crime of rape, AAA's silence cannot be taken against her, and that a delay in reporting the crime of rape does not necessarily cast doubt on AAA's credibility. Finally, as to the credibility of the witnesses, the CA noted that the RTC considered AAA as a credible witness. The CA was fully convinced of her sincerity, candor and truthfulness.

On the subject of the penalty, however, the CA specified that the appellants were not eligible for parole pursuant to Section 3, Republic Act No. 9346.[12] The dispositive portion of the decision reads:

WHEREFORE, the appeal is hereby DENIED. The April 30, 2014 Decision of the RTC, Branch 25, Maasin City, Southern Leyte, in Criminal Case No. 11-03-3508 finding accused-appellants guilty beyond reasonable doubt of simple rape is AFFIRMED with MODIFICATION that all monetary awards shall be subject to interest at the rate of 6% per annum from the date of finality of this judgment until fully paid.

SO ORDERED.[13]

Hence, this appeal.

Issues

Appellants submit to this Court the following issues for resolution:

- Whether the courts a quo erred in convicting the appellants of the crime charged in giving full weight and credence to the materially unreliable and uncorroborated testimonies of the prosecution witnesses;
- Whether the courts a quo erred in convicting the appellants of the crime charged despite the failure of the prosecution to prove their guilt beyond reasonable doubt.

Arguments for the appellants

Appellants stress that AAA is not mentally deficient. The medical certificate purportedly signed by Dr. Escalamado was never testified to by the physician. Moreover, the examination conducted by the physician was on AAA's vagina, and not on her mental condition. AAA's actuations were also incompatible with human

experience and inconsistent with the acts of a person who allegedly went through a traumatic experience of being raped by four (4) men. Appellants insist that AAA was not deprived of reason at the time of the incident. She fully knew what was going to happen to her. She was not forced to go with the appellants, on the contrary, she consented and freely went with them. Her testimony is likewise inconsistent with the testimony of prosecution witness Liberty. Appellants also point out that FFF and her husband took it upon themselves to report the allegation to the police.

While it is true that the sole testimony of a victim is sufficient to sustain a conviction, appellants argue that the presumption of innocence is not overcome by mere suspicion, conjecture, or a probability that the defendant committed the crime. Even assuming that there was carnal knowledge between AAA and appellants, such was done in accord with their own volition.

Arguments for the appellee

Appellee, through the Office of the Solicitor General, asserts that the testimonies of the prosecution witnesses show that indeed there was sexual congress between appellants and AAA. It insists that the prosecution was able to prove that appellants committed rape through force and intimidation, which was sufficient in consummating the purpose which the appellants had in mind. The conviction is not based on the fact that AAA is a mental retardate, but on the use of force and intimidation. The mental retardation was a circumstance the trial court used to evaluate the degree of the force and intimidation needed. In this case, the force required is only the sexual act itself. Further, the fact that AAA was apparently drunk at that time further demonstrates AAA's inability to give consent to having carnal knowledge.

Appellee likewise emphasizes the existence of the mental abnormality or deficiency on the part of AAA. Other evidence may prove mental retardation, which includes testimony of witnesses and even the observation by the trial court.

The Court's Ruling

From a review of the records, the Court finds the appeal impressed with merit.

Under the information, appellants are accused of committing rape under Sec. 266-A(1), which states:

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

1) By a man who shall 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.

xxxx

The information against appellants alleged that they committed the heinous act through force, threat, or intimidation. There was no mention in the information that AAA was deprived of reason or was unconscious.

Specifically, for the review of rape cases, the Court has consistently adhered to the following established principles: a) an accusation of rape can be made with facility; it is difficult to prove, but more difficult for the person accused, though innocent, to disprove; b) in view of the intrinsic nature of the crime where only two

persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and c) the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense.[14]

Following these principles, the Court has also refined how rape is proved. The credibility of the complainant is the single most important issue in the prosecution of rape cases. The categorical and candid testimony of the complainant suffices, and a culprit may be convicted solely on the basis of her testimony, provided that it hurdles the test of credibility.[15] It should not just come from the mouth of a credible witness, it should likewise be credible and reasonable in itself, candid, straightforward and in accord with human experience. Where the discrepancies and contradictory statements on important details in the testimony seriously impair its probative value, cast serious doubt on its credibility, and erode the integrity of the testimony,[16] the Court should acquit the accused.

It is true that the Court accords great respect to the trial court's findings on witnesses' credibility. This is because trial provides judges with the opportunity to detect cues and expressions that could suggest sincerity or betray lies and ill will, not reflected in the documentary or object evidence. The exception, of course, is when the trial court and/or the CA overlooked or misconstrued substantial facts that could have affected the outcome of the case.[17]

Ultimately, the prosecution has the primordial duty to present its case with clarity and persuasion that conviction becomes the only logical and inevitable conclusion. The prosecution is required to justify the conviction of the accused with moral certainty. Failing this test, the Court has the constitutional duty to acquit the accused lest its mind be tortured with the thought that it has imprisoned an innocent man for the rest of his life.[18] The presumption of innocence is a primordial concern for the Court; thus, resort to inference, or the truth or proposition drawn from another which is supposed or admitted to be true, is not correct. The fact sought to be established is deduced as a logical consequence from other facts, or a state of facts, already proved or admitted.[19]

A review of the records and the transcripts, however, shows that there are numerous inconsistencies in the accounts of the prosecution witnesses that would lead any person with a reasonable mind to doubt the story offered against the appellants, which should lead to their acquittal.

This case falls within the exception of giving great respect to the RTC and CA's assessment of the evidence. The transcripts show that there was not enough evidence to say, and not out of mere inference, that appellants had carnal knowledge of AAA and that force, threat, and intimidation were employed upon her person to achieve appellants' supposed lecherous desires. Below are the relevant portions of AAA's testimony:

Q:

You said that at about 2:00 o'clock in the morning you and the four accused went to the vicinity of the karaoke bar owned by a certain Amorin. Were you in fact able to have a sing along party in the karaoke bar?

A:

We just passed by at the videoke bar of Amorin because it was already closed.

Q:

When you passed by where were you going?

A:

Towards the seashore.

Q:

Whose idea was it for you to go to the seashore at that time?

A:

They. (Witness is referring to the accused).

Q:

Who among them if you can remember, all of them or just some of them?

A:

Four of them.

Q:

Did they tell you what the five of you were going to do at the seashore?

xxx

A:

To have a drinking spree.

Q:

What will you be drinking?

A:

Tuba.

Q:

Where did the tuba come from?

A:

From [BBB].

Q:

Whose idea was it to bring the tuba from the house of [BBB]?

A:

They asked again tuba (sic).

Q:

Who particularly among the accused?

A:

Junjun.

Q:

And did you give them the tuba?

A:

Yes.

Q:

How much if you can estimate the quantity?

A:

Half of the watercan.

Q:

And who was carrying this watercan where the tuba was placed in going to the seashore?

A:

Niño and Bugoy.

Q:

Did you bring anything to use for drinking the tuba?

A:

Pitcher and one glass.

Q:

And who was carrying the pitcher and one glass?

A:

I.

Q:

When you got to the seashore of Barangay Sta. Sofia what did you do upon arriving there at the seashore?

A:

We were just sitting.

Q:

Then what happened next, if any?

A:

They held me.

Q:

Who held you?

A:

Junjun.

Q:

In which part of your body was Junjun holding you?

A:

My arm. (Witness is raising her left arm).

Q:

Did Junjun say anything when he held your left arm?

A:

I asked him why are you holding me.

Q:

And what was his reply, if any?

A:

He said I'm just holding you.

Q:

Since you were at that time according to you the five of you were bringing half a watercan of tuba, a pitcher and a glass, the five of you not drink of the tuba?

A:

We drank a little.

Q:

You how many glasses of tuba were you had a drank? (sic)

A:

I did not drink anymore.

Q:

You did not drink anymore at that time on October 2, 2010?

A:

Maybe two glasses.

Q:

Where was it when you drank the two glasses?

A:

There at the seashore.

Q:

Was it of your own volition that you drank two glasses of tuba?

A:

Yes, I drank two glasses.

Q:

And with the two glasses of tuba what did you fell (sic) after having drunk the two glasses of tuba?

A:

A shortness of breath.

Q:

What did you do since you said you suffered from shortness of breath?

A:

I was just sitting on the seashore.

Q:

Then because you said that you have shortness of breath what happened next, if any?

A:

They were having an agreement but I did not know what they were agreeing.

Q:

So, what happened next after they had the "sabot-sabot"?

A:

That they are going to do something on me.

Q:

You said earlier that Junjun who held your left arm?

A:

Yes.

Q:

After he held your left arm what happened next?

A:

He took off my pants.

Q:

What kind of pants was it, was it a denim pants or not?

A:

Not a denim pants.

Q: Who took off your pants?

A: It was already torn.

Q: In which part of your pants was torn?

A: At the buttocks.

Q: Can you indicate precisely please stand up and demonstrate and point out to your back where was there of your pants?

A: From the back down to the crotch up to the front.

Q: Could you tell the Honorable Court why was it torn?

A: Because when we pass in going to the seashore there was a pumpboat.

Q: So, what cause the tearing of your pants?

A: When I step over at the pumpboat.

Q: Who was it particularly who took off your pants?

A: I was the one who took off my pants up to here only. (Witness is referring to her knees).

Q: Why did you take off your pants?

A: Because it was already torn.

Q: What was your intention when you brought down your pants up to your knees?

A: Because I wanted to urinate.

Q: When you brought down your pants up to your knees where were the four accused at that time?

A: They were just near me, in front of me.

Q: And you did not mind that they were there when you urinate?

A: I let them turned their back.

Q: And did they in fact turned their back?

A: Yes.

Q: Did you in fact urinate?

A: Yes.

Q: Before urinating did you also bring down your panty?

A: Yes.

Q: After urinating did you bring up back your panty and pants?

xxx

A: Yes, including the pants.

Q: You said that you drank two glasses of tuba. What about the accused did they also partake the drinking of tuba?

A: They drank plenty.

Q: Now, after urinating and brought up your panty and your pants what happened next?

A: They already started to do something on me.

Q: What was the particular act that they started something?

A: They raped me.

Q: Who was the one who raped you first?

A: Junjun.

Q: What did Junjun do?

A: He took off my pants and my panty.

xxx

Q:

When you said that Junjun took off your pants and your panty what did he do with them the pants and the panty?

A:

I told him you just placed it there. (Witness is indicating by pointing the left side of her body).

Q:

When he was taking off your pants and your panty what was your reaction to that act?

A:

I asked him what is this Jun.

Q:

What was his reply, if any?

A:

You just keep silent.

Q:

Did you say anything after he said "saba na"?

A:

Not anymore because I was sleeping.

Q:

And then what happened next?

A:

I cannot recall anymore when they took turns in raping me.

Q:

You said it was Junjun who first raped you. Do you remember that?

A:

Yes.

Q:

When you said he raped you what exactly did he do?

A:

As I have already said they took turns in raping me.

Q:

And after Junjun took off your pants and your panty what was his position when he raped you?

A:

He placed himself on top of me.

Q:

What did you feel when he placed himself on top of you?

A:

I did not do anything anymore.

xxx

Q:

Why was it that you said you did not do anything anymore?

A:

As I have already said I felt very sleepy.

Q:

After he inserted his penis into your vagina what did Junjun do with his penis?

A:

(Witness is demonstrating by using her left forefinger in pumping manner towards her vagina).

Q:

How long if you can estimate was Junjun doing that?

A:

I cannot recall anymore.

Q:

Then you said that the four accused took turns in raping you. After Junjun who followed next?

A:

[XXX].

Q:

What did [XXX] do to you, if any?

A:

The same.

Q:

The same as what?

A:

He inserted his penis.

Q:

To where?

A:

He inserted his penis into my vagina.

xxxx

Q:

What was your reaction, if any?

A:

I have already said I did not move.

Q:

Now this time when [XXX] was raping you why was it that you do not anymore react or move?

A:

I did not move anymore because I slept for a while.

Q:

And then who followed next after [XXX]?

A:

Niño.

Q:

When Niño was raping you after [XXX] what did Niño do?

A:

The same.

Q:

And after Niño who followed next, if any?

A:

The last was Bugoy.

Q:

After Bugoy what if anything happened next?

A:

They rested.

Q:

What about you what were you doing after?

A:

I slept because I have already slept.

Q:

When you said that Niño raped you were you also asleep at that time when he was raping you?

A:

I was already awakened.

Q:

What about when Bugoy was raping you were you still sleeping also?

A:

Not anymore.

Q:

After Bugoy who was the last one who raped you what did you do again please?

A:

Not anymore I was just sitting.

Q:

Why were you sitting?

A:

I told them I am already sleepy we will go now.

Q:

And then what did they say to your suggestion?

A:

I heard that somebody was looking.

Q:

Looking for whom?

A:

It was looking for me.

Q:

What did you hear that made you think that somebody was looking for you?

A:

Jovita, Lalang and Tonio and Tonio said as they were bringing with them the flashlight he said there she is.

Q:

When you heard Tonio said "naa ra" to what direction was the flashlight pointed?

A:

To the place where we were staying.

Q:

And what was the reaction of the four accused at that time that the flashlight that Tonio was shown [sic] towards them?

A:

Bugoy and Niño ran away.

Q:

What about Junjun and [XXX]?

A:

Bugoy and Niño were seen that they brought with them tuba.

Q:

No. What I am asking is what about Junjun and [XXX]. You said that only Bugoy and Niño ran away. What about Junjun and [XXX] what were they doing when the flashlight was shown [sic] towards all of you?

A:

They again raped me.

Q:

Who was the first one who raped you again between Junjun and [XXX]?

A:

Junjun.

Q:

And then after him?

A:

[XXX].

Q:

You said that Junjun and [XXX] raped you again because Tonio, Lalang and Jovita were still far away?

A:

Yes.

Q:

How far, if this is the place where you were being raped by Junjun and [XXX]. If you can remember which place were indicate the distance of Tonio, Lalang and Jovita at that time (sic)?

A:

There in the house of Jovita.

Q:

Can you indicate the distance of the house of Jovita from the place where you were being raped for the second

time. For example, that where you are sitting is the place where you were being raped for the second time, where is the house of Jovita can you point to anything inside the courtroom or outside the courtroom to indicate the distance?

A:

Maybe 50 meters.

xxxx

Q:

When Junjun raped you for the second time what was your reaction?

A:

I told them to stop now you go away, go away.

Q:

And did Junjun say anything in reply?

A:

They already ran away because they were already approaching near.

Q:

You said that [XXX] raped you also for the second time. Do you remember that?

A:

Yes.

Q:

When did Junjun and [XXX] ran away before or after [XXX] raped you for the second time?

A:

After.

Q:

When [XXX] was raping you for the second time what was your reaction, if any, to [XXX]?

A:

When [XXX] saw that they were already approaching the two of them ran away?

Q:

Who were already approaching?

A:

Jovita, Lalang and Tonio.

xxx

Q:

Now, after you said that Junjun and [XXX] raped you for the second time and then they ran away what did you do after the four of them ran away?

A:

I just stood up and I was just standing.

Q:

What about your pants and your panty where were they?

A:

I put them back on.

Q:

After you had put back your panty and your pants on what happened next, if any?

A:

No more I just waited for them when they were fetching the motorcycle.[20]

On cross-examination, AAA stated:

Q:

You voluntarily accompanied the accused in going to Karaoke Bar of certain Amarin, am I correct on that?

A:

Yes, sir.

Q:

And when you found out that the Karaoke Bar was already closed, you decided to go with the accused to the sea shore, am I correct on that?

A:

Yes, sir.

Q:

And you went there you also provided 'tuba' for the accused you took that 'tuba' from the house of [BBB]. Am I correct on that?

A:

Yes, sir.

Q:

You were the only woman in the group why you did not going there? (sic)

A:

I just respected them.

Q:

Why did you respect them?

A:

Because we are friends.

xxx

Q:

Why you did not go home after your pants were torn off when you pass the pump boat? (sic)

A:

Because the four of us were together.

Q:

Why you did not return home? (sic)

A:

Only four o'clock dawn.

Q:

You did not go home, because you wanted to be in company (sic) of the accused?

A:

Because we respected them and we were drinking.

Q:

I see. You want to be in company of the accused and in fact you were the one who provided them 'tuba' (sic)?

A:

Yes, sir.

Q:

So, whatever may have happened to you you allow it to happen because you wanted to be with them, am I correct on that? (sic)

A:

Yes.

xxx

Q:

Paragraph 4 of your affidavit, you testified to that effect that you were cleaning the house of Castil alias JunJun and approached you "Day adto sa" and you were asked "what happened next if any?" you declared to the effect that together with [XXX], was holding my hand firmly and simultaneously dragged me to the sea shore. You remember having made that declaration in your sworn statement?

A:

Yes, sir.

Q:

The declaration in your sworn statement particularly in paragraph 4 to 6 gives the impression that when you cleaning (sic) the house you were dragged by the accused towards the sea shore, now that is different from your testimony last May 17, 2012 to the effect that you accompany them to the Karaoke Bar later to the sea shore, you even provided them with a 'tuba' now, which statement is correct, once (sic) your statement marked as Exhibit "A" or your previous testimony on May 7, 2012 to the effect that you voluntarily accompany to the Karaoke Bar and later on the sea shore?

A:

I asked them 'what will we do there at a farther distance, I do not want to go with them.[21]

The other prosecution witness, Liberty, offered a different version of the events of the following morning, to wit:

Q:

So, when you followed them towards the sea shore, were you able to in fact find or see Tonio and that other man there at the sea shore?

A:

When I arrived, I only saw Antonio and the man who told us the whereabouts of [AAA]. I did not catch anymore the others who were with [AAA] because they were already leaving at that time.

Q:

When you said that the others were with [AAA] were already leaving, what do you mean by that?

A:

I only saw Ate [AAA] there, she was sitting.

Q:

Can you describe her condition, her appearance?

A:

She was just sitting on the sand.

Q:

And what was her physical appearance when (sic) you described it?

A:

She was no longer wearing short pants.

Q:

And did she have anything, what about an underwear for example?

A:

There is. The underwear was already on the lower portion of the leg (witness is pointing to her lower leg).

Q:

Can you again point where was the underwear of [AAA]?

A:

In the middle of her leg.

Q:

Now, you said that the others were already leaving, who were these others that were already leaving if you can tell?

A:

Niño and [XXX].

Q:

And what was Niño doing when you said that he was leaving?

A:

He was hiking towards home.

Q:

And when you said he was hiking or walking towards home, was he going to the direction where you were or farther from you?

A:

Farther, ma'am.

Q:

What about [XXX]?

A:

Towards there, they separated ways.

Q:

Now, for example, you are where you were there, that I am [AAA], okay, now, where was Niño going in relation to me as [AAA], if you can tell the Honorable Court? (sic)

A:

Actually I did not see Niño together with [AAA].

xxx

Q:

They were the only two people that you saw?

A:

Yes, ma'am.

Q:

They were the only two other people aside from Tonio and that other man whom you said that you do not know, and yourself as well as [AAA], they were the only two persons at the seashore at that time, [XXX] and Niño?

A:

Yes, ma'am.

Q:

So, what happened when you arrived there at the sea shore because you were told to look for [AAA]?

A:

We called [AAA] to stand up from where she was seated for her to go home.

Q:

What did you do considering her reply that she will just go home by herself?

A:

We forced her to go home because [BBB] will scold her because he was previously drunk.

Q:

Why do you say that he was previously drunk?

A:

On October 1, that was the first birthday of the grand child of [BBB].

Q:

So, why do you say that [AAA] was previously drunk?

A:

During that time, I slept very late because I was the one who cleaned and washed the dishes and [AAA] was still drinking outside and so I told her to come in as she was already drunk.

Q:

And who was she drinking with?

A:

I did not know ma'am because I did not go outside I was just up to the gate.

Q:

And you did not at any time that evening of October 1, see who [AAA] was drinking with?

A:

No, ma'am.

Q:

When you asked her to come in and she was already drunk, did she comply?

A:

She just said, just let me be.

Q:

And then what did you do?

A:

I did not call her anymore, I went inside the house because I was already tired.[22]

A careful dissection of the above testimonies reveals inconsistencies, not merely on the inconsequential details but to the very existence of the crime itself, that are far too big to simply ignore.

It was never fully established whether sexual congress took place, especially as to some of the appellants. AAA asserted that Castil placed his penis inside her vagina, followed by XXX. But then as to Gilles and Monter, the story is confusing and unclear. The chronology of events is also hazily narrated. AAA claimed she fell asleep, but in the same testimony, said she was aware of Gilles and Monter raping her. The Court cannot take this as a positive allegation of Gilles and Monter's participation in the defilement. The participation of these appellants is tenuous at best, and based only on conjecture.

More importantly, there was also no clear showing of force, threat, or intimidation from AAA's story. She narrated that only Castil held her arm, without even saying how he held it or describing the force, if any, that was inflicted upon her. This hardly comprises the force, threat, or intimidation contemplated by law.

The allegation of conspiracy to consummate the illegal act was likewise insufficiently proven. The elements of conspiracy must be proven beyond reasonable doubt, similar to the physical act constituting the crime itself. Evidence of actual cooperation, not only mere cognizance, approval, or mere presence, must be shown.[23] In this case, the mere statement that appellants appeared to talk about "doing something to her" should not suffice.

Further, prosecution witness Liberty cannot even say that she saw the appellants with AAA, to which AAA positively testified. The four (4) appellants were never seen together with AAA at any point of the night. Instead of corroborating AAA's account that she was with the appellants throughout the night until the following morning, Liberty offered a contrary story. Also, Liberty even had a conflicting version as to who was seen last in the beach - was it Castil with XXX or Monter and XXX?

AAA's claim of being raped even when Liberty and her companions were already present at the place where the crime allegedly took place not only goes against human experience but likewise not consistent with Liberty's

testimony. Another questionable factor in the whole story is the fact that given the family's assertion and recognition of her feeble-mindedness, BBB and FFF would still apparently allow AAA to get drunk and go out even at odd hours of the night. This does not reflect the normal concern and protection towards family members with mental deficiency. On the other hand, it shows that even AAA's family knows that she is a functioning member of their family, who makes and is allowed to make her own autonomous choices based on her own rational decision-making.

As noted earlier, the testimony of the victim should be scrutinized with extreme caution. With AAA's statements taken with Liberty's and the overall evidence presented by the prosecution, the Court is convinced that the burden of proving the occurrence of the crime of rape made in conspiracy among all the appellants, through force, threat, and intimidation, was not met. Serious doubts exist as to the credibility of the statements of the prosecution witnesses. Unlike the candid and straightforward characterization of the RTC of AAA's testimony, the Court finds that the occurrence of rape was not the only conclusion to be had here. All of these factors create a reasonable doubt in the mind of the Court, for which reason the appellants' acquittal is in order.

It appears from the RTC and CA decisions that appellants were convicted of rape because AAA was feeble-minded, and not because of the existence of force, threat, or intimidation. As emphasized in the CA decision:

Just like in this case, while there may have been no physical force employed on the victim but considering that she is feeble-minded, there is authority to the effect that the force required by law is the sexual act itself.[24]

This is not alleged in the information. The Court had previously ruled that an accused cannot be convicted of rape if the information charged him with rape through force, threat, or intimidation when what was proven was sexual congress with a woman deprived of reason, unconscious, or under twelve years of age. The conviction would be a deprivation of the constitutional right to be informed of the accusation against him.[25] Nonetheless, in a more recent case, the Court held that even if the information lacked the allegation of any mental disability on the part of the victim, such allegation was unnecessary to convict the accused provided that sexual congress and mental incapacity, i.e. the incapacity to give consent, are proven by clear and convincing evidence.[26]

The state of being feeble-minded has been explained as the incapacity of thinking and reasoning like any normal human being, not being able to think and reason from birth, and devoid or deficient in those instincts and other mental faculties that characterize the average and normal mortal. When a woman is feeble-minded, she has no free and voluntary will. She is incapable of freely and voluntarily giving consent which is necessary and essential from lifting coitus from the place of criminality.[27] In *People of the Philippines v. Dalandas*,[28] the Court had the opportunity to distinguish between the various degrees of mental retardation, and where "feeble-mindedness" fell within the spectrum. The Court held:

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. xxx

xxxx

A normal mind is one which in strength and capacity ranks reasonably well with the average of the great body of men and women who make up organized human society in general, and are by common consent recognized as sane and competent to perform the ordinary duties and assume the ordinary responsibilities of life.

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. xxx.[29] (emphasis supplied)

All elements of the crime of rape must be proven beyond reasonable doubt, including the victim's mental condition. Although it is true that mental abnormality or deficiency is enough for a woman to be considered "deprived of reason," thus dispensing with the proof of force, threat, or intimidation, abnormality or deficiency of whatever state or degree should be sufficiently and adequately established by orthodox and reasonably available methods and procedures. It is possible that complainant could well have been merely on the lower end of the acceptable mean for her age group, a condition which would have been aggravated by her lack of education, but this, by any medical or psychological yardstick, does not itself negate autonomous choice or decision-making based on reasoning.[30]

Indeed, the Court has previously decided that other evidence aside from psychiatric evaluation can prove mental retardation or abnormality. The personal observation of the judge would suffice as a measure of determining the impact on her of the force, threat, and intimidation foisted upon the victim.[31] This is the rule relied upon by the RTC. However, the cases cited anent this issue, *People of the Philippines v. Almacin* (Almacin)[32] and *People of the Philippines v. Dumanon* (Dumanon),[33] have different factual settings from the instant case. In Almacin, the victim could only read and write her own name, and did not even finish Grade 1 in school. Being illiterate and unschooled, she was considered mentally incapable of intelligently assenting or dissenting to sexual intercourse. In Dumanon, the trial court noted numerous pieces of evidence showing the victim's condition, including the mere appearance of the victim and the victim's difficulty in answering the questions while on trial. The trial court, upheld by the Court, remarked on her appearance as mongoloid and that she was suffering from Down's Syndrome.

Here, however, the Court only has the RTC's assessment of AAA to go by and determine that AAA was feeble-minded and therefore sexual congress with her equates to rape. The medical certificate stated that "patient is known to have mental deficiency." [34] However, this was not even testified to by the doctor who signed the same. FFF, AAA's sister-in-law, also testified that AAA appeared "childish." Thus, the conclusion by the RTC was made absent Dr. Esclamado's testimony as well as medical proof of AAA's mental state, instead only made upon FFF's statement. It should also be emphasized that FFF's testimony was initially objected to by the counsel for the appellants as she was not included in the initial list of witnesses, and was even presented without the presence of the appellants' counsel. With only testimonial evidence from a partial witness, there is not enough proof of AAA's mental state that would justify the finding of appellants' guilt.

In *People of the Philippines v. Cartuano, Jr.* (Cartuano),[35] where it was held that the deficiency of whatever state or degree should be sufficiently and adequately established by orthodox and reasonably available methods and procedures, there was a dearth of medical records to sustain a finding of mental retardation. In the recent case of *People of the Philippines v. Rodriguez* (Rodriguez),[36] where Cartuano was invoked, the prosecution presented a neuro-psychiatric examination and evaluation conducted by a psychologist, which included the administration of the Stanford Binnet Intelligence Test. The latter case shows that the doctrine in Cartuano, that there should be clear and convincing proof as to the mental state of the victim, is still good law.

Unlike the cases of Almacin, Dumanon, and Rodriguez, the instant case shows an obvious lack of clear and convincing evidence of the victim's mental deficiency upon which the conviction of the appellants is based.

Without any showing of force, threat, or intimidation as alleged in the information, it is necessary to show that AAA was deprived of reason for the successful prosecution of the appellants for the crime of rape. The prosecution was unable to show this deprivation of reason.

To reiterate, the force, threat, and intimidation, and conspiracy among the appellants as alleged in the information, as well as AAA's mental deficiency, were not proven with moral certainty. The case presented by the prosecution was insufficient to overcome the presumption of innocence accorded by the law to appellants.

WHEREFORE, the appeal is GRANTED. The Decision dated September 27, 2016 of the Court of Appeals in CA-G.R. CR-HC No. 01906 is hereby REVERSED and SET ASIDE. XXX, ALFREDO GILLES, NIÑO G. MONTER and CONSTANTE M. CASTIL alias JUNJUN, alias TANSYONG are ACQUITTED based on reasonable doubt. The director of the Bureau of Corrections is ordered to cause the immediate release of appellants, unless they are being lawfully held for another cause; and to inform the Court of the date of appellants' release, or the reasons for their continued confinement, within ten days from notice.

XXX is hereby ordered released from the Department of Social Welfare and Development Regional Rehabilitation Center for Youth at Tanauan, Leyte.

SO ORDERED.

Velasco, Jr. (Chairperson), Bersamin, and Martires, JJ., concur.

Leonen, J., on official leave.

[1] Pursuant to Amended Administrative Circular No. 83-15 on the use of fictitious initials and A.M. No. 02-1-18-SC, Rule on Juveniles in Conflict with the Law. The court shall employ measures to protect the confidentiality of proceedings against the minor accused and requiring the adoption of a system of coding to conceal material information leading to the child's identity.

[2] CA rollo, pp. 100-114; penned by Associate Justice Edward B. Contreras with Associate Justices Edgardo L. Delos Santos and Geraldine C. Fiel-Macaraig, concurring.

[3] Id. at 36-54; penned by Judge Ma. Daisy Paler Gonzalez.

[4] The Court notes that there is only one information for a sole count of rape in the instant case. The victim alleged, in her narration, that several sexual acts were committed by all of the appellants.

[5] Records, p. 1.

[6] Id. at 29.

[7] Pursuant to *People of the Philippines v. Cabalquinto*, 533 Phil. 703 (2006), and Resolution dated September 19, 2006 in A.M. No. 04-11-09-SC, mandating that the Court use fictitious initials in lieu of the real names of the victim/s and immediate family members other than the accused, and delete the exact address of the victim.

[8] RTC decision, p. 2; TSN, May 7, 2012, p. 16.

[9] Id. at 6; TSN, October 8, 2012, pp. 6-7, 9; Medical Report for Alleged Sexual Abuse, October 5, 2010 (prosecution's Exhibit "C").

[10] Rollo, p. 46.

[11] Id. at 53-54.

- [12] An Act Prohibiting the Imposition of Death Penalty in the Philippines.
- [13] Rollo, pp. 17 and 113.
- [14] *People of the Philippines v. Saldivia*, 280 Phil. 501, 511 (1991).
- [15] See *People of the Philippines v. Cabingas, et al.*, 385 Phil. 653, 662 (2000).
- [16] See *People of the Philippines v. Torion*, 366 Phil. 624, 632 (1999).
- [17] See *People of the Philippines v. Quintos*, 746 Phil. 809, 820 (2014).
- [18] *People of the Philippines v. Aballe*, 410 Phil. 131, 141-142 (2001).
- [19] *People of the Philippines v. Masalihit*, 360 Phil. 332, 344 (1998).
- [20] TSN, May 7, 2012, pp. 17-32.
- [21] *Id.* at 99-101.
- [22] TSN, December 3, 2012, pp. 112-116.
- [23] *People of the Philippines v. Comadre, et al.*, 475 Phil. 293, 306 (2004).
- [24] Rollo, pp. 13 and 109.
- [25] *People of the Philippines v. Capinpin*, 398 Phil. 333, 344 (2000).
- [26] *People of the Philippines v. Quintos*, 746 Phil. 809, 834 (2014).
- [27] *People of the Philippines v. De Jesus*, 214 Phil. 4, 8-9 (1984).
- [28] 442 Phil. 688, 695 (2002).
- [29] *Id.* at 695-696.
- [30] *People of the Philippines v. Cartuano, Jr.*, 325 Phil. 718, 751 (1996).
- [31] *People of the Philippines v. Dumanon*, 401 Phil. 658, 669-670 (2000).
- [32] 363 Phil. 18 (1999).
- [33] *Supra* note 31.
- [34] Exh. "C."
- [35] *Supra* note 30.
- [36] 781 Phil. 826, 837 (2016).

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