

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMEO CARTUANO, JR., ACCUSED-APPELLANT.

G.R. Nos. 112457-58. March 29, 1996

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

Accused-appellant Romeo Cartuano, Jr. was charged by the provincial prosecutor of Camarines Sur with two (2) counts of rape in two separate Informations filed with the Regional Trial Court of Pili, Camarines Sur. Said informations read as follows:

CRIM. CASE NO. P-2104

That on or about the 4th day of May, 1991 in the barangay of San Agustin, Municipality of Pili, Province of Camarines Sur, Philippines and within the jurisdiction of this Honorable Court, the abovenamed accused, with lewd designs and by means of force, and with abuse of confidence, did then and there wilfully, unlawfully and feloniously have carnal knowledge with one Adela Villa, a mentally retarded person, while in her house, against her will and consent, to the damage and prejudice of the offended party.

ACTS CONTRARY TO LAW.[1]

CRIM. CASE NO. P-2107

That on or about the 20th day of August, 1991 in the barangay of San Agustin, Municipality of Pili, Province of Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, the abovenamed accused, with lewd designs, by means of force and with abuse of confidence, did then and there wilfully, unlawfully and feloniously have carnal knowledge with one Adela Villa, a mentally retarded person, while in her house, against her will and consent, to the damage and prejudice of the offended party.

ACTS CONTRARY TO LAW.[2]

Complaints leading to the two quoted informations were initiated by Antonio Villa, father of the victim Adela Villa, supposedly after he discovered the alleged rape of his daughter in the morning of August 20, 1991.[3] Joint trial of the two cases proceeded upon agreement of the parties, with the accused entering a plea of not guilty on arraignment. The prosecution's evidence, based on sworn affidavits of the private complainants and their separate testimonies were summarized by the court below as follows:

x x x That on August 20, 1991, while Adela Villa was washing clothes at the suction well located at the back of their house in Barrio San Agustin, Pili, Camarines Sur, the accused, Romeo Cartuano, Jr. suddenly grabbed the hands of Adela Villa and dragged her inside their house and once inside, the herein accused has forcibly laid down Adela and removed the latter's panty. The accused also removed his clothes and placed himself on top of Adela and had sexual intercourse with her.

The incident happened while Geric Villa, the 5-year old grandson of Antonio Villa and nephew of Adela, was allegedly present inside the room and witnessed what was done to Adela by the accused.

Antonio Villa testified that, after coming home from the Poblacion of Pili, Camarines Sur in the morning of August 20, 1991, he found his grandson Geric crying. That when he investigated why he was crying, Geric revealed to him that he got scared when the accused threatened with a sharp instrument and pulled his auntie, Adela Villa, towards their house. That in his presence, the accused stripped her of her clothes and forcibly caused her to lie down and thereafter went on top of her. That he then saw the accused moved his buttocks up and down.

After learning from Geric what the accused did to his daughter Adela, Antonio Villa and his wife Elena investigated their daughter, whom they claim to be a retardate, and not only did their daughter confirm the report of Geric but she further told them that she had been previously raped by the accused on May 4, 1991 during the feast day of their barrio.

Adela Villa claims that the accused, who is her first cousin and was then living in the ricefield, frequently went to their house. That on May 4, 1991 the accused entered her room and forcibly made her lie down. Then, against her will, the accused removed her panty and likewise his own clothes then raped her by placing himself on top of her and inserted his male organ into her genitalia which caused it to bleed and caused her to feel pain. Thereafter, the accused threatened her that she would be stabbed if ever she would tell anyone about the incident.[4]

In his defense, accused-appellant presented evidence that he was not at the scene of the crime at the time the alleged incidents of rape were supposed to have occurred. These were capsulized by the trial court thus:

For his exculpation, the accused denied the accusations against him and claims that during the period between January to August, 1991, he was employed by one Herminio Tuyay at La Purisima, Nabua, Camarines Sur as farm helper. And during his employment he stayed and lived at the house of Herminio Tuyay together with the latter's family x x x.

x x x When he met Herminio Tuyay, the latter offered him a job as a farm helper which he accepted. He started in his job sometime in January, 1991 and from then on he stayed at his employer's house and never left his place of work except when ordered by Tuyay to attend to the other properties of the latter. That on August 1, 1991, he was told by his father to visit his uncle Gelacio Hade, who was then sick and so together with Gelacio's daughter, they proceeded to the Bicol Regional Training Hospital to watch over his uncle who was confined thereat. On August 3, 1991, his uncle died and it was only during that time that he went to Pili to attend the wake of his uncle which lasted up to August 15, 1991. x x x He stayed with his aunt at Pili until August 19, 1991 when he went to La Purisima, Nabua to ask permission from his employer, Tuyay, that he will have to leave the latter since his Aunt Bating will buy a 'pajak' or pedicab for him to operate in Pili, Camarines Sur. However, when he arrived at Nabua, he did not find his employer there who was allegedly in Ombao, Bula, at that time. And so he just waited until Tuyay arrived on August 21, 1991. But his employer did not allow him to leave. He was nevertheless permitted to go to Pili and to inform his aunt about the same. He arrived at the house of his aunt in Pili at around noontime of August 21, 1991 but while he was resting Barangay Captain Latumbo came and invited him to go to the Pili Municipal Building at the Pili Police station.[5]

On July 28, 1993, the Regional Trial Court rendered its decision finding the accused guilty as charged of rape in both criminal cases, the dispositive portion of which reads as follows:

WHEREFORE, judgment is hereby rendered:

In Criminal Case No. P-2104

Finding the accused Romeo Cartuano, Jr. y Villa Guilty of the crime of rape under paragraphs 2 and 3 of Article 335 of the Revised Penal Code committed with the attendance of the aggravating circumstance of dwelling which is not offset by any mitigating circumstances and hereby sentences him to suffer the penalty of

reclusion perpetua together with its accessory penalties and to indemnify Adela Villa the amount of P30,000.00.

In Criminal Case No. P - 2107

Finding the accused Romeo Cartuano, Jr. y Villa Guilty of the crime of rape under paragraphs 2 and 3 of Article 335 of the Revised Penal Code committed with the attendance of the aggravating circumstance of dwelling which is not offset by any mitigating circumstance and hereby sentences him to suffer the penalty of reclusion perpetua together with its accessory penalties and to indemnify Adela Villa the amount of P30,000.00.

The accused is further sentenced to support Thomas Virgilio Villa, his incestuous child, and to pay the costs of suit in both cases.

The accused is credited in full for the period of his preventive imprisonment if he agreed voluntarily in writing to abide by the disciplinary rules imposed upon convicted prisoners, otherwise with four-fifths thereof.

Hence, the instant appeal, in which accused-appellant interposes the following assignments of errors:

I

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE ITS FINDINGS THAT THE TESTIMONIES OF ANTONIO VILLA IS PURE HEARSAY AND THAT OF THE VICTIM ADELA VILLA UNCONVINCING.

II

THE TRIAL COURT ERRED IN HOLDING THAT THE ACCUSED-APPELLANT IS THE FATHER OF THE SON OF THE VICTIM DESPITE ITS EARLIER CONCLUSION THAT THE TESTIMONY OF ADELA VILLA IS NOT CONVINCING.

III

THE TRIAL COURT ERRED IN NOT GIVING CREDENCE TO THE DEFENSE OF ALIBI PUT UP BY THE ACCUSED-APPELLANT.

IV

THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT DESPITE FAILURE OF THE PROSECUTION TO PROVE ITS GUILT BEYOND REASONABLE DOUBT.

In its assailed decision, the court below ruled that a substantial part of the evidence presented by the prosecution, specifically, the affidavits executed by appellant and his father and the testimony of Antonio Villa, either violated the appellant's constitutional right to counsel during custodial investigation or constituted incompetent evidence. The court stated:

The affidavit signed by the accused (Exhibit D) prepared by Police Officer Beatriz Jordan contains admissions by the accused of the incidents imputed to him under Police Blotter Entry No. 6297 dated August 21, 1991. But the accused was made to sign it while in detention effected at the instance of Barangay Captain Lumbao of San Isidro, Pili and of Chief Inspector Rosero of the Pili Police Station. That in fact the accused was only released from detention after he and his father signed their respective affidavits (TSN, p. 34, Antonio Villa, Dec. 23, 1992). That when the accused was investigated by Police Officer Jordan and made to sign the affidavit, the accused was never assisted by counsel (TSN. p. 31, Dec. 23, 1992) and this fact was even admitted by prosecution witness Antonio Villa himself. And it is never shown by the prosecution that the accused waived in writing his right to remain silent and that he was assisted by counsel in making such waiver.

It is, therefore, clearly obvious that the taking of the affidavit of the accused while in police custody by Police Officer Jordan violated the rights of the accused guaranteed to him under the Constitution on Custodial investigation among which are his rights to be informed of his right to remain silent and to have competent and independent counsel. And that if the accused wanted to waive said rights, the same must be in writing and in the presence of Counsel (Sec. 12 (1) Art. III, Constitution). Hence, said admissions made by the accused as contained in his affidavit are inadmissible against him. (Sec. 12(3), Constitution; and *Peo. vs. Jimenez*, 204 SCRA 727).

The affidavit signed by the father of the accused (Exh. C), also prepared by Policewoman Jordan, is likewise not admissible and binding upon the accused because

it is covered by Sec. 28 of Rule 130 of the Rules of Court which enunciates the rule of "res inter alias acta alteri nocere non debet." Said rule declares that the rights of a party cannot be prejudiced by an act, declaration, or omission of another.

The Court can not accept the testimony of Antonio Villa, that in the morning of August 20, 1991 he was able to learn from his grandson Geric Villa, a 5-year old boy, about the rape, including the details of its commission, that the accused committed against Adela Villa on that day, for the reason that said testimony is purely hearsay. Besides said testimony is not easy to accept in view of the fact that Geric Villa, the informant of Antonio Villa, as observed by the Court could hardly communicate. In fact the public prosecutor who had opportunity to confer with and interview Geric Villa admitted in open court that it was very difficult to present him as a witness. And that must be the reason why Geric Villa was not presented to testify in this case.

However, the court gave full credence to the "positive testimony" of Adela Villa, ruling that the accused "had sexual intercourse" with the former, the "circumstances notwithstanding," referring to the bulk of the oral testimony and documentary evidence which it had thrown out.[6]

A thorough review of the record compels us to find for the appellant.

It is a well-settled principle in this jurisdiction that in crimes against chastity, the testimony of the offended party should not be received with precipitate credulity.[7] The exacting standard of proof beyond reasonable doubt acquires more relevance in rape, because such charges are fairly easy to make but difficult to establish, and harder still to defend by the accused party, who may be innocent.[8]

We agree with the court below that the principal evidence for the defense merely consisted of claims, corroborated by some of his witnesses, that he was not in the scene of the crime at the time the incidents were said to have occurred. In our jurisprudence, alibi has consistently been held to be a weak defense. However, a judgment of conviction must stand on foundations more steadfast than on a shaky defense. And as equally fundamental as the premise that an alibi is an inherently weak defense is the axiom that the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw its strength from the weakness of the evidence for the defense.[9]

First and foremost, the prosecution, in cases of rape should satisfy the elements of the crime demanded by our penal laws. Unless these elements are met, our courts should not sustain a criminal charge for rape.

Art. 335 of the Revised Penal Code 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:

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

3. When the woman is under twelve years of age, even though neither of the circumstances mentioned in the next preceding paragraph shall be present.

The trial court, in its decision debunked the prosecution's posture that the rape in the case at bench was attended by force or intimidation. The court emphatically stated:

The Court entertains doubt that it was due to force and threats by the accused that he was able to have carnal knowledge with Adela Villa. The evidence on this matter which consists in the sole testimony of Adela Villa herself is not convincing. At one point of her testimony she claimed that she was threatened with a knife before the sexual intercourse. That her panty was forcibly removed. But at another point, she declared that she did not prevent her panty from being removed. That she did not even attempt to bite, box, kick or even scratch with her nails the accused when both her hands were free. She also admitted that she was only threatened after the sexual intercourse that she should not tell anybody about it.[10]

Recognizing that there is an indication of an existing family rift between the complainant's father and the father of the accused, the trial court, however, found no improper motive for the complainants to falsely file the accusation against the defendant "for so grave a crime." [11] The trial court insisted that it was difficult to believe that Adela could "insist that it is the accused who is the father of her son... If there is no truth to the same." [12] After coming to this conclusion, the court found that the essential elements of rape were satisfied thus wise:

These two sexual intercourses which the accused had with Adela Villa who was born on December 8, 1971 constitute two separate crimes of rape in view of the uncontroverted evidence presented by the prosecution that Adela Villa's intellectual functioning as found by Mrs. Corazon Alipante, a psychologist at the Don Suzano Memorial Mental Hospital at Cadlan, Pili, Camarines Sur where the victim was examined, falls within the moderate mental retardation level with Intelligence Quotient (IQ) from 36 to 51 which is equivalent to the mental development of a child 7 to 8 years old. And that under the old classification she belongs to the classification of imbecile. That Adela Villa is a retardate was, likewise, corroborated by her teacher in Grade II Ma. Olivia Bahilio.

It had been held that sexual intercourse with a woman who might be advance in age but whose mental or intellectual capacity is under 12 years of age is rape either under paragraph 2 or paragraph 3 of Article 335 of the Revised Penal Code. (citations omitted)[13]

We generally accord the utmost respect for the factual findings of the trial court. However, we have not hesitated to set aside such findings where the records show that the trial court failed to take into account significant circumstances in arriving at its findings and conclusions. The instant case vividly illustrates this situation.

In the first place, the trial court, after determining that the complainant was a mental retardate relied heavily and almost exclusively on Adela Villa's uncorroborated testimony that she was raped by the accused appellant. This, after the court itself rejected her claim that force and intimidation was applied, and threw away her testimony to the effect that she was raped at knifepoint.

A meticulous examination of the testimony of Adela Villa would lead any neutral observer to the inescapable conclusion that the same is replete with evidence demonstrating that her testimony was far from being clear and straightforward, with indications that she may have been coached during the process of direct and cross examination.

For instance, on direct examination by the prosecution, the private complainant informed the court that during the first episode of rape, the accused was supposed to have entered her room with a bladed weapon. This claim was however immediately recanted after the court took over the questioning and reformulated some of the questions:[14]

PROSECUTOR RAMOS, JR.:

Q.

You said that Junior told you that if you will tell somebody he will stab you, why, is he in possession of a bladed instrument during that time?

A.

Yes, sir, he has.

Q.

Can you describe to the Honorable Court, that bladed instrument?

A.

No, sir, I cannot.

COURT TO WITNESS:

Q.

Why, did you not see it?

A.

I saw it, Your Honor.

COURT TO WITNESS:

Q.

Where was that bladed instrument when you sat (sic) it?

A.

In the house, Your Honor.

Q.

Was it on the table or on the wall?

A.

On the table, Your Honor.

Q.

Where was that table?

A.

It was placed in the 'banguerahan.'

Q.

The 'banguerahan' is outside of the house or was outside of the room?

A.

Outside the house.

Q.

How far was it from the room?

A.

That was far.

Q.

So, the accused was not carrying that knife when you saw it because it was on top of the table?

A.

I saw it.

Q.

Yes, but you saw it on top of the table but not being carried by the accused?

A.

No, your honor.

The matter of carrying a knife or being threatened at knifepoint, it bears emphasis, was not a minor non-material detail which would have been easily overlooked by any victim even at a time of stress and confusion. This fact must certainly have been taken into consideration by the trial court when it found reason to doubt the possibility that force and intimidation were used in the rape itself.[15]

Additionally, the trial court itself noted the possibility that the private complainant may have been cowed. The court observed that while she was reticent, uncooperative and confused in one instance, she appeared suddenly spontaneous and able to answer the same line of questions immediately after a recess was called:[16]

COURT:

Q.

Can you still recall the actual date the second week of May?

A.

Yes, sir.

Q.

What?

WITNESS:

A.

(NO ANSWER)

COURT:

Q.

Why don't you answer?

A.

(NO ANSWER)

ATTY. M. SAEZ:

Q.

When was the second time that you were allegedly raped by Romeo Cartuano?

A.

(NO ANSWER)

COURT:

Q.

Did you understand the question?

A.

Yes, Your Honor.

Q.

If you understand the question, why did you not answer?

A.

(NO ANSWER).

ATTY. M. SAEZ:

Q.

You said you delivered a child by the name of Tomas Virgilio, do you remember the day, month and year when you delivered Tomas Virgilio Villa?

A.

No, sir, I cannot remember.

Q.

Do you know your birthday?

A.

(NO ANSWER).

COURT:

Q.

Do you know your birthday?

A.

Yes, Your Honor?

Q.

What is your birthdate?

A.

September 8, sir.

Q.

When was your son born?

A.

(NO ANSWER)

Q.

Did you understand the question?

A.

Yes, sir.

Q.

Why don't you answer?

A.

(NO ANSWER)

COURT:

Q.

The Court observed that your actuations today is in contrast from your actuations when you testified on direct examination. You were frank and categorical in your answers, but now, you are not answering the questions although you admitted you understood the questions. Will you tell the Court why?

A.

(NO ANSWER).

Q.

Why did you not answer. Are you afraid of anybody inside the courtroom? Do you want the people inside the courtroom to be excluded so that you will not be afraid of anybody of them?

WITNESS:

A.

None, sir, I am not afraid of anybody.

COURT:

Q.

Why don't you answer the questions?

A.

(NO ANSWER).

FISCAL S. RAMOS, JR.:

May we request that the relatives of the complainant help in the interpretation of the question, Your Honor. As I have observed with my interview with the complainant, this is the same thing that happened. She could not answer at once but when the relatives of the complainant helped in the interpretation of the questions, she can easily answer the questions.

COURT:

According to the witness, she understood the questions. Maybe there is a reason behind.

ATTY. M. SAEZ:

Did the last time the relatives of complainant interpret for her? It was only you and Mrs. Andalis who interpreted the questions.

FISCAL S. RAMOS, JR.:

I just want to help the Court.

COURT:

Q.

The Court is desirous to know from you why did you not give your answers to the questions?

A.

(NO ANSWER).

Q.

Do you want to further testify in this case or you do not want to testify anymore?

A.

Yes, sir, I will testify.

Q.

So better answer the questions? (sic)

A.

Yes, sir.

Q.

Why is it that you do not want to give your answers?

A.

(NO ANSWER).

COURT:

The Court will suspend the session

(AT 10:55 A.M.)

COURT:

The session is ressume. (sic)

WITNESS:

I will answer now, Your Honor.

ATTY. M. SAEZ:

Q.

You said, you were raped. What do you mean by the word you were raped? How did you understand it?

A.

I was raped, sir.

Q.

What do you mean by you were raped?

A.

Sexually (sic) intercourse.

Q.

So when somebody had been sexually intercoursed, in your understanding it is rape?

A.

Yes, sir.

Q.

Even if those two (2) persons had sexual intercourse are husband and wife when they mate you understood it as rape?

COURT:

The word used by the witness was 'Lupigan' in the dialogue (sic) has a different quonotation (sic).

ATTY. M. SAEZ:

My question is even if there was no force, Your Honor.

COURT:

You reform the question.

ATTY. M. SAEZ:

Q.

You said a while ago that rape to you is sexual intercourse?

A.

Yes, sir.

COURT:

Q.

Who was this man who had sexual intercourse with you?

A.

Romeo Cartuano, sir.

Q.

We go back to the question earlier asked. When was the first time that Romeo Cartuano had sexual intercourse with you?

A.

In May, sir.

Q.

What year?

A.

I do not know, sir.

Q.

When was the second time when you said that he raped you two (2) times?

A.

In August, sir.

Q.

What year?

A.

I do not know, sir.

Q.

At the time when the accused had sexual intercourse with you, where was he residing at that time?

A.

There in the ricefield, sir.

Q.

Why, was there a house there?

A.

Yes, sir, there is.

Q.

So during that time, he was not residing in your own house?

WITNESS:

A.

No, Your Honor.

COURT:

Q.

What was your age at that time?

A.

Twenty (20), Your Honor.

Q.

Why, when were you born?

A.

I do not know, Your Honor.

ATTY. M. SAEZ:

Q.

Were there other persons aside from Romeo Cartuano ever raped you?

A.

None, sir.

Q.

Did you like what Romeo Cartuano did to you?

A.

No, sir.

Q.

You did not enjoy the raping incident?

A.

No, sir.

Q.

How about the second time?

A.

No, sir.

Q.

I am showing to you an affidavit found on page 22 of the records purportedly executed by Adela Villa. Now go over the same and tell the Court whether this affidavit has been signed by you?

A.

Yes, sir.

ATTY. M. SAEZ:

Q.

Did you understand the contents of this affidavit before you signed this affidavit?

A.

No, sir.

Q.

Do you recall who made this affidavit for you?

A.

No, sir.

Q.

Was there anybody who coached you to what you were going to testify?

A.

None, sir.

Q.

About the May 4, 1991 the alleged raping incident, who gave you this date as the first rape incident that occurred between you and Romeo Cartuano?

A.

None, sir.

COURT:

Make it of record that after the recess, the witness is already spontaneous in her answers.

Given the foregoing, and a record on oral testimony that is full of inconsistencies, We find it incredible that the trial court refused to entertain serious misgivings about the testimony and accusations of the complainant, after she had fubbed material dates, confused important sequences of events and had wide gaps in her memory. The trial court itself noted that the private complainant appeared clear and straightforward on direct examination, where questions and answers could be prepared and rehearsed beforehand, but was a different witness when the court or the defense counsel took over questioning. On record, the court likewise noted the fact that she was a suddenly spontaneous witness after the recess was called, in contrast to her confused and reticent demeanor prior to the recess.

The testimony of the complainant was obviously not as clear and straightforward as the trial court would want us

to believe. In the first place, her overall demeanor, the serious gaps in testimony, the mixing-up of dates, places and events, and the changes in mood during testimony hardly gives the kind of credence to Adela Villa's supposed "positive-testimony" which would warrant a conviction based on the quantum of evidence required by our penal laws.

Trial courts should put prosecution evidence under severe testing. Every circumstance or doubt favoring the innocence of the accused should be taken into consideration. The proof adduced against an accused individual must survive not only the test of reason and logic, but, above all that of experience.[17]

Without, at this point, granting the trial court's conclusion that the complainant was indeed mentally deficient, it is important to lay stress to the fact -given its assessment - that mentally deficient persons generally share certain social behavior characteristics that undermine their ability to give statements voluntarily, knowingly and intelligently.[18] "[T]hey are more susceptible to coercion." [19] They are likely easily influenced and subject to suggestion from others,[20] and - the bible of psychiatrists and clinical psychologists here or abroad, the Diagnostic and Statistical Manual - IV in its latest edition would point out - they "may be vulnerable to exploitation by others." [21]

Significantly, the mentally deficient are particularly susceptible "to an atmosphere of friendliness designed to induce confidence and cooperation." [22] Considering that the trial court had relied heavily upon its determination that the complainant was mentally deficient, the aforequoted exchange between the court and the private complainant should have raised doubts about the quality of the complainant's testimony. Consistent with its conclusion therefore, the inconsistencies and the memory "flip-flops," the presence of indicia that the private complainant may have been coached - should have raised alarm signals in a case in which mistake could lead to grave consequences for the accused.

We go now into the matter of the trial court's process of determining the private complainant's mental state. Examining the procedure utilized by the trial court in making its assessment and conclusions, we find the same extremely wanting.

Mental retardation is a clinical diagnosis which requires demonstration of significant subaverage intellectual performance (verified by standardized psychometric measurements); evidence of an organic or clinical condition which affects an individual's intelligence; and proof of maladaptive behavior.[23] The degree of intellectual impairment must be shown to be at least two (2) standard deviations ($SD < 2$) below the mean for age as confirmed by reliable [24] standardized tests such as the Stanford Binet Test and The Weschler Intelligence Tests.[25] Non-standardized, non-parametric tests, such as the Denver Development Screening Tests or nonstandardized, non-specific "quick" tests such as sentence completion tests and the Goodenough Drawing Test are unreliable.[26]

In making a diagnosis of mental retardation, a thorough evaluation based on history, physical and laboratory examination made by a clinician is necessary.[27] The reason for this universal requirement is well-explained in both in the medical and clinical psychology literature: mental retardation is a recognized clinical syndrome usually traceable to an organic cause, which determinants are complex and multifactorial.[28] As the boundaries between normality and retardation are difficult to delineate, proper identification requires competent clinical evaluation of psychometric parameters in conjunction with medical and laboratory tests.

In the case at bench, the record is almost bare of clinical, laboratory and psychometric support which would sustain a proper conclusion that complainant was indeed mentally deficient.[29] The patient history yields nothing but the fact that complainant left school at third grade, a fact which the school principal blamed on frequent absences and tardiness,[30] and the only appropriate conclusion which could be drawn from her second grade teacher's testimony was that complainant was a poor student.[31] Neither were the findings on physical

examination noted on record, either by the psychiatrist or the psychologist. Physical examination would have confirmatory value because most cases of congenital mental retardation in this country are due to Down's and other related translocation variants. These conditions, outwardly characterized by hypertelorism, low set ears, a micrognathic jaw, and a simian crease[32] are fairly common, and afflicted individuals are generally recognized even by laymen. Individuals afflicted with the less common causes of mental retardation likewise have distinct physical features, recognizable by clinicians.[33] The rare metabolic and genetic causes are usually incompatible with survival beyond childhood and the degree of retardation is usually severe. Appallingly, no physical evaluation (essential in the diagnosis of any disorder, mental or somatic) appears on record.

On top of these, the psychometric tests which were utilized in evaluating the complainant, the Goodenough Drawing Test and the Bender Visual Motor Test, are non-parametric tests of generally low reliability, adopted by psychologists as quick screening tests, not so much for intelligence but for visual-motor function and coordination.[34] The Sack's Sentence Completion Test, the third leg in the psychologist's evaluation[35] is likewise considered of low reliability and specificity in intelligence assessment and is culture and language specific and biased. (In the case at bench, the Sack's Sentence Completion Test was conducted in Tagalog,[36] not in the dialect of the complainant.) All the three tests are used in a wide range of psychological disorders other than mental retardation, and none of them either alone or taken together - would suffice as a proper test for intelligence.[37]

Apart from the fact that the above noted evaluation suffers from being grossly incomplete and inadequate, the prosecution in the course of trial, moved to strike out the testimony of Dr. Imelda Escudra, who gave the final evaluation, subject to another re-examination by her of the complainant. After the Court granted the prosecution's motion[38] by striking Dr. Escudra's testimony from record, nothing was ever again heard from her, in spite of the fact that the psychologist, Mrs. Alipante, in her testimony revealed that the final assessment was a clinician's function, referring to Dr. Escudra.[39]

In *People vs. Nguyen Dinh Nhan*, the Court held that:

[W]ithout presenting Sonia Margallo, the psychologist who prepared the questioned report as a witness, the said report is hearsay evidence. The accused-appellant is entitled to cross-examine the psychologist who made the report. Without such examination, the accused would be deprived of the right to confront and examine the witnesses against him.[40]

In *Nguyen*, complainant was however found to be retarded because the clinician, Dr. Socorro Gonzaga was actually present to testify as to her diagnosis, and the same was supported by ample proof in the history that the complainant regularly visited the Vietnamese community services center because of her condition, and was in fact for some time actually under the guidance and supervision of the C.F.S.I. social worker.[41] Such was not the case here. As Dr. Escudra's testimony was stricken from the record there was no diagnosis to speak of.

In any event, assuming, arguendo that Dr. Escudra's evaluation could be used as evidence in the case at bar, the basis for her evaluation leaves much to be desired, as we explained earlier. It is held in the most recent of the Medical, Psychiatric, and General and Clinical Psychology literature on mental retardation and deficiency here and abroad, that identification of mental deficient subjects cannot be left to ambiguous social notions and assumptions alone, such markers being unfortunately vague, sometimes discriminatory and widely open to chance.[42] The proper clinical determination of mental deficiency requires several legs. Needless to say, after psychometric diagnosis utilizing the proper test has been confirmed, a comprehensive medical evaluation, (all reasonably within the capacity our major provincial and city hospitals and centers) is necessary to complete the process.

It is necessary to stress here, conformably with what the Court has been saying in jurisprudence on the matter, that deprivation of reason need not be complete. Mental abnormality or deficiency is enough.[43] However, 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.

There is more. Complainant in the case at bar gave birth during the course of the trial. A blood test - given such a development - would have eliminated all possibility that the accused was the father of the child, if none of the putative father's phenotype(s) were present in the child's blood type. While the converse does not hold true (i.e., that the presence of identical phenotypes in both individuals establishes paternity), the absence of the former's phenotype in the child's would have made his paternity biologically untenable. Unfortunately, the record is bereft of any evidence that this was attempted or even suggested.

We raise this last point to illustrate the truism, sometimes overlooked, that the quantum of evidence required by our criminal law from our prosecutors is proof beyond reasonable doubt. In cases such as the one before us, where virtually the only evidence which exists is the complainant's testimony, a little extra effort on the part of the prosecution to acquire appropriate corroborating expert testimony or evidence would go far towards achieving the proper ends of justice. Appropriate psychometric tests conducted by a competent clinical psychologist are available in all provincial and city centers and universities. Blood typing is a test available even in small clinics. All these tests are not expensive. The psychometric tests, for example, merely require photo or mimeographed copies of reliable and standard tests, some home-made tools, a competent clinical psychologist and a board-certified psychiatrist. Except for far-flung areas, it should not be very difficult to meet the minimum standards.

In fine, the constitution's presumption of innocence of the accused definitely requires from our courts a more than casual consideration of whether or not the elements of a crime have been satisfied. Our jurisprudence discloses too many instances of false charges of rape and kindred offenses to permit trial courts to enter a judgment of conviction when sufficient doubt exists as to a material element of the crime. Elements and matters which could be readily verified cannot be cavalierly dismissed and supplanted by assumptions or mere conjectures.

WHEREFORE, finding that the evidence on record does not establish accused-appellant's guilt beyond reasonable doubt, the judgment appealed from is REVERSED and SET ASIDE and the accused-appellant Romeo Cartuano, Jr. hereby ACQUITTED in both criminal cases (Crim. Case Nos. P-2104 and P-2107). The Court orders his immediate release unless he is otherwise detained for any other valid cause.

SO ORDERED.

Padilla, Bellossillo, Vitug, and Hermosisima, Jr., JJ., concur.

[1] Rollo, p.6.

[2] Id., at 5.

[3] Records, pp. 6-7.

[4] Rollo, at 21-22.

[5] Id., at 23-24.

[6] Id., at 29. The court stated: "The above circumstances notwithstanding, the Court finds that the accused had sexual intercourse with Adela Villa on May 4, 1991 and on August 20, 1991." Id.

[7] People v. Graza, 196 SCRA 512, 517 (1991).

[8] People v. Bacdad, 196 SCRA 786(1991).

[9] Id.

[10] Rollo, p. 29.

[11] Rollo, p. 30.

[12] Id.

[13] Id., at p. 86.

[14] TSN, January 7, 1993, pp. 8-9.

[15] Rollo, p. 164.

[16] TSN, January 19, 1993, pp. 3-11.

[17] People vs. Pascua, 180 SCRA 472,486(1989).

[18] Hourihan, Earl Washington's Confession: Mental Retardation and the Law of Confessions, 81 Virginia L R, 1471, at 1492 (1995).

[19] Id.

[20] Id.

[21] AMERICAN PSYCHIATRIC ASSOCIATION, DIAGNOSTIC AND STATISTICAL MANUAL FOR MENTAL DISORDERS (DSM)-IV, 42 (Fourth ed., 1994). "The retarded are particularly vulnerable to an atmosphere of threats and coercion, as well as to one of friendliness designed to induce cooperation. A retarded person may be hard put to distinguish between the fact and the appearance of friendliness. If his life has been molded into a pattern of submissiveness, he will be less able than the average person to withstand normal police pressures. Indeed they may impinge on him with greater force because of their lack of clarity to him, like all unknowns, renders them more frightening. From the President's Panel on Mental Retardation, REPORT ON THE TASK FORCE ON LAW, 33(1963).

[22] Id.

[23] KAPLAN AND SADDOCK, SYNOPSIS OF PSYCHIATRY, 1031 (1994); WILSON, HARRISON'S PRINCIPLES OF INTERNAL MEDICINE, 2056-2057(1991); BEHRMAN, NELSON'S TEXTBOOK OF PEDIATRICS, 94 (1992); AMERICAN PSYCHIATRIC ASSOCIATION, supra, note 21; WEINER, THE BEHAVIORAL SCIENCES IN PSYCHIATRY, 259(1995).

[24] As used in psychometrics,"reliability" means stability or consistency. The word "valid" means that a test is capable of measuring what it intends to measure. See ANASTASI PSYCHOLOGICAL TESTING, 28 (1966).

[25] For a listing of tests used in intelligence evaluation see STOUDEMIRE, CLINICAL PSYCHIATRY, at 429(1995). See also, ATKINSON, INTRODUCTION TO PSYCHOLOGY (10th ED. 1990) and NELSON, supra note 1, at 94. The Stanford Binet and Wechler tests are tests considered to be of high validity and reliability, with a retest reliability coefficient of 0.91 and 0.90, respectively. Id., at

429.

[26] NELSON, *supra*, note 1.

[27] *Id.*

[28] Prior to modern medicine and clinical psychology, social criteria were the principal boundary markers for mental retardation. Unfortunately, they are also the most vague and open to choice.

[29] The words deficient and retardation are interchangeably used in the medical and psychological literature. See *supra*, note 1.

[30] Record, p. 84.

[31] TSN, January 19, 1993, pp. 3-8.

[32] DEL MUNDO AND SANTOS-OCAMPO, ET AL. TEXTBOOK OF PEDIATRICS AND CHILD HEALTH 908 (1990). See also, BEHRMAN, *supra*, note 1 ,and WILSON, *id.*

[33] *Id.*

[34] NELSON, *supra*, at 94-96. For the record, the tests used were the Sacks Sentence Completion Test, the Goodenough Drawing Test and the Bender Visual Motor Test. The Bender test is a tool of Gestalt psychology in testing a variety of psychological disorders.

[35] Record, p.94.

[36] *Id.*, at 104.

[37] See *supra*, note 5.

[38] Record, p. 57.

[39] TSN, November 17, 1992.

[40] 200 SCRA 292, 297(1991).

[41] *Id.*

[42] See WECHSLER, THE RANGE OF HUMAN CAPACITIES (William and Witkins, 1952).

[43] *People v. De Jesus*, 129 SCRA 4 (1989); *People v. Atento*, 196 SCRA 357(1991).

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