

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PEDRO BACALING, ACCUSED-APPELLANT.

G.R. Nos. 133994-95. March 14, 2003

Ponente: AZCUNA, J.

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AZCUNA, J.:

Pedro Bacaling appeals to us from a decision of the Regional Trial Court of Ozamiz City, Branch 15, in Criminal Cases RTC-1622 and RTC-1623, finding him guilty beyond reasonable doubt, under paragraph 2 of Article 335 of the Revised Penal Code, as amended by R.A. 7659, of raping a mentally retarded woman.[1]

On March 1, 1995, two (2) separate criminal complaints for rape were filed by private complainant AAA[2] against appellant.[3] The complaints were later amended, with the accusatory portions thereof reading as follows:[4]

Criminal Case No. RTC-1622

That on or about the 13[th] day of July, 1994, at about 9:00 to 10:00 o'clock in the morning, more or less, in the City of Ozamiz, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, and by force and intimidation, did then and there willfully, feloniously and unlawfully lie and have carnal knowledge against the will of the undersigned complainant who is a demented/retarded 18 year old, virgin woman.

Criminal Case No. RTC-1623

That on or about the 9[th] day of January, 1995, at about 9:00 to 10:00 o'clock in the morning, more or less, after recess time, in the City of Ozamiz, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, and by force and intimidation, did then and there willfully, feloniously and unlawfully lie and have carnal knowledge against the will of the undersigned complainant who is a demented/retarded 18 year old, virgin woman.

Appellant pleaded not guilty to both criminal complaints.[5] Trial proceeded and, thereafter, on April 13, 1998, the court a quo rendered the aforementioned decision, the dispositive portion of which reads:[6]

WHEREFORE, judgment is hereby rendered [c]onvicting the accused Pedro Bacaling of the crime of rape for having carnal knowledge with AAA, a retardate, on July 13, 1994 and on January 9, 1995. He is hereby sentenced to suffer the penalty of RECLUSION PERPETUA with all the accessory penalties in each of the offense[s] charged.

The accused is further ordered to pay complainant AAA actual and [m]oral damages in the amount of P40,000.00; and to pay the [c]osts.

This is what is now before us for review.

The prosecution's version of the facts, as stated in the decision of the trial court, is as follows:[7]

When the offended party, a retarded, was about 10 years old, her mother entrusted her to the custody and care of Sabino Acut, Sr. of Carmen Annex, Ozamiz City for she went to Manila to work as [a] helper in the household of Atty. Sabino Acut, Jr. as evidenced by Exhibit “E” which is couched in the dialect:

xxx xxx xxx

In keeping with the agreement, AAA was enrolled at Misamis Annex Elementary School in Carmen Annex, Ozamiz City. AAA is a poor and slow learner with childish behavior and could hardly comprehend, hence, she always [flunks] in her class and has been a repeater in her studies several times. Nonetheless, in [the] 1994-1995 school year, she [wa]s already a grade 5 pupil under Mrs. Eudes Kong. She was 18 years old then.

On January 9, 1995 at about 9:00 o’clock in the morning [school principal] Virgilio Resma conducted [an] oral test on the grade-5 class of Mrs. Eudes Kong. He noticed that AAA [wa]s absent [though] he saw her earl[ier] in the morning during the flag ceremony. He called the attention of Mrs. Kong about it and instructed her to see Sabino Acut, Sr. [to ask] if he knew that AAA [wa]s cutting classes. Sabino told her that he has no knowledge about it. Resma instructed Mrs. Kong to bring AAA to his office in the afternoon. In his office, Resma confronted AAA [on] why she was cutting her classes. AAA answered that Pedro Bacaling brought her to a hotel in Ozamiz City and they entered in[to] a beautiful room [where] Pedro Bacaling raped her; that Pedro Bacaling has a gun. He is a security guard of the security agency managed by Sabino Acut, Sr. Resma [then] called for the PTA president kagawad Edith Revilla for assistance. Upon further co[n]frontation, AAA revealed that she ha[d] been raped several times by Pedro Bacaling inside the abandoned bathroom located at the side of the house of Sabino Acut, Sr. in Carmen Annex, Ozamiz City. She revealed that Pedro Bacaling used to fetch her in school during recess and brought her to Cebuana Lodge and had sexual intercourse with her.

The trial court likewise presented appellant’s version of the facts, as follows:[8]

On his part, the accused claims that he met AAA sometime in 1992 in the house of Sabino Acut, Sr. in Annex, Ozamiz City. Sabino introduced her to him as his helper. He frequents the house of Sabino because Sabino is the manager of the security agency where he is working as a security guard. He noticed that AAA seem[ed] to like him. One time, AAA said to him, “Nong, you are ‘Guapo’.” He courted AAA and they became sweethearts. One day, when he and AAA were having a conversation inside the abandoned bathroom located at the side of the house of Sabino, they were able to consummate sexual intercourse in a standing position. Surprisingly, his penis easily penetrate[d] into the vagina of AAA. He asked AAA why her [v]agina is loose and AAA [c]onfessed that her landlord, Sabino Acut, Sr. was the first man to have sexual intercourse with her. With that information he entertain[ed] no fear anymore of his affair with AAA. Thereafter, their love tryst in the bathroom were repeated not only on[ce] but many times. AAA told him that their affairs [were] already known by Sabino and Sabino became more strict in her movement. AAA suggested to him to fetch her in school and that they will go to Cebuana Lodge. On January 9, 1995, he went to Misamis Annex Elementary School where AAA [wa]s studying to fetch her. AAA told him that at recess time she will first go home to change her uniform. She instructed him to wait for her at Medina College. After a while AAA arrived at Medina College. He let AAA ride a tricycle and he r[ode] his bicycle following AAA to Cebuana Lodge. They [c]hecked-in at the counter. After which, the room boy ushered them to a vacant room. They went inside and l[aid] on the bed and had sexual intercourse. He fingered and did oral sex. Both of them enjoy[ed]. He asserted that AAA freely consented and voluntarily submitted her body to him. He did not employ force nor intimidate AAA to submit to the sexual act. They are lovers, he claims. He denied the July 13, 1994 charges.

As aforesated, the trial court convicted appellant of rape under paragraph 2 of Article 335 of the Revised Penal Code, i.e., having carnal knowledge of a woman who is deprived of reason. Under this type of rape, the elements necessary for conviction are: (1) that the offender had carnal knowledge of a woman; and (2) that the woman is deprived of reason.[9] In accordance with the foregoing, we proceed to ascertain whether the prosecution was able to establish the presence of these two elements for each charge of rape.

The term “woman deprived of reason” includes one suffering from mental retardation.[10]

To prove the victim’s mental retardation, the prosecution presented Dr. Mario Rafael Estrella, resident physician and in-charge of the Psychiatric Department of Mayor Hilarion A. Ramiro General Hospital of Ozamiz City.[11] In his testimony, Dr. Estrella described the mental condition of the victim:[12]

x x x x x x x x

Q:

After you have conducted all these examination[s], what have you or what is your finding [of] her?

A:

I found out that the intellect of the patient is somewhat low, as far as my observation of the result of the examination. I considered [her] as a mentally retarded patient.

x x x x x x x x

The victim’s case was also referred to the National Center for Mental Health (NCMH) in Mandaluyong City to determine the severity of her mental retardation. After conducting a thorough examination, the NCMH submitted two reports on her mental condition.[13] Both these reports concluded that the victim is suffering from “Mental Retardation, Moderate,” and characterized her as having poor social awareness but with fair motor development.[14]

The findings of Dr. Estrella and the conclusions stated in the two reports were neither disputed nor challenged by appellant. Neither did appellant adduce any evidence on his behalf regarding the mental condition of the victim.

In addition, the trial court judge also observed the mental retardation of the victim, which he noted down in his decision:[15]

The Court has observed the complainant in the witness stand and the manner she answers the question propounded by the prosecutor and the counsel for the defense shows that she is suffering from mental weakness. Her behavior as a mental retardate is so obvious that it does not need a man of science to detect that she is mentally handicapped.

x x x x x x x x

Under paragraph 2 of Article 335 of the Revised Penal Code, the Supreme Court held that a woman need not be proven as completely insane or deprived of reason for sexual intercourse to constitute the crime of rape. The term “deprived of reason” has been construed to include those suffering from mental abnormality or deficiency; or some form of mental retardation; the feeble minded but coherent; and even those suffering from mental abnormality or deficiency of reason. (People v. Guerrero, 242 SCRA 606).

For purposes of determining the mental capacity of a person, we held that the personal observation of the trial judge suffices even in the absence of an expert opinion.[16] In the case at bar, the observation of the trial court judge becomes more persuasive given the supporting expert opinions. This observation, taken together with the evidence presented by the prosecution, indubitably confirms the mental retardation of the victim.

The next issue that needs to be resolved is whether the element of carnal knowledge of the victim, alleged to have occurred on July 13, 1994 and on January 6, 1995, has been established by the prosecution.

With regard to the July 13, 1994 rape charge, the victim testified that, on that day, appellant fetched her in school during recess time, brought her to La Cebuana Lodge and then raped her.[17] Her testimony was corroborated by

her teacher, Eudes Kong, who said that she saw appellant in school on July 13, 1994.[18]

Appellant, for his part, denied having sexual intercourse with the victim in La Cebuana Lodge on July 13, 1994.[19] However, the trial court found his denial unsubstantiated and upheld the testimony of the victim.[20] On this point, we must agree with the trial court. The bare denial of appellant cannot overcome the categorical testimony of the victim. A denial, when unsubstantiated by clear and convincing evidence, is a negative and self-serving testimony, which deserves no greater evidentiary value than the testimony of a credible witness on affirmative matters.[21] On the other hand, a mental retardate may qualify as a competent witness and the testimony of the victim alone, if credible, is sufficient to support a conviction.[22] Thus, under the circumstances, we sustain the trial court's finding that appellant had carnal knowledge of the victim on July 13, 1994.

As to the January 9, 1995 rape charge, the victim also testified that on January 9, 1995, she was again fetched by appellant in school and was brought to La Cebuana Lodge where she was raped.[23] This time, appellant admitted that he had sexual intercourse with the victim on that day and at that place.[24]

Appellant, however, claims that their sexual intercourse was consensual because he and the victim were lovers.[25] In fact, appellant asserts that they have had sexual intercourse several times in an abandoned bathroom just beside the house where the victim was staying.[26]

The allegation that appellant and the victim were sweethearts is not a plausible defense. In previously decided rape cases involving mental retardates, other accused have tried to use this defense, but to no avail.[27] We ruled therein that the fact that the victim is a mental retardate makes this defense untenable. In the victim's deficient state of mind, she could not have induced her assailant to nurse a desire to have her for a sweetheart, nor could she have possessed the capacity to understand the meaning of such a relationship. Consequently, being without any exculpatory defense, appellant's admission of having sexual intercourse with the victim proves, without question, his guilt under the January 9, 1995 charge.

We now go into the correctness of the damages awarded. We agree with the observation of the Solicitor General that, based on current jurisprudence, the award of damages should be increased. It has been our practice outrightly to award P50,000.00 as civil indemnity for victims of rape.[28] Aside from this, we also ruled on the automatic award of P50,000.00 as moral damages without specific proof of mental, physical and psychological trauma, which are already presumed from the fact of rape.[29] Considering that appellant is found guilty on two counts of rape, we should award to the victim P100,000.00 as civil indemnity and P100,000.00 as moral damages.

WHEREFORE, the appealed decision of Regional Trial Court of Ozamiz City in Criminal Cases RTC-1622 and RTC-1623 is **AFFIRMED** with the **MODIFICATION** that appellant is ordered to pay the victim P100,000.00 as civil indemnity and P100,000.00 as moral damages. Costs de oficio.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Vitug, and Carpio, JJ., concur.
Ynares-Santiago, J., on leave.

[1] Rollo, pp. 29-40.

[2] AAA was assisted by her guardian, Sabino Acut, Sr.

[3] Id., pp. 11-12 & 15-16.

[4] Id., pp. 13-14 & 17-18.

- [5] Records, p. 33.
- [6] Rollo, p. 40.
- [7] Id., pp. 30-31.
- [8] Id., p. 38.
- [9] *People v. Tan*, 187 SCRA 385 (1990).
- [10] *People v. Almacin*, 303 SCRA 399 (1999).
- [11] Rollo, p. 30.
- [12] TSN, February 23, 1996, pp. 10-11.
- [13] Exhibits “N” and “O,” Records, pp. 156-159.
- [14] Ibid.
- [15] Rollo, p. 39.
- [16] *People v. Dumanon*, 348 SCRA 461 (2000).
- [17] TSN, March 22, 1996, pp. 6-12.
- [18] Id., p. 5.
- [19] TSN, November 11, 1996, p. 28.
- [20] Rollo, p. 39.
- [21] *People v. Cajara*, 341 SCRA 192 (2000).
- [22] *People v. Lagarto*, 326 SCRA 693 (2000); *People v. Lubong*, 332 SCRA 672 (2000).
- [23] TSN, March 22, 1996, pp. 13-17.
- [24] TSN, November 18, 1996, pp. 22-28.
- [25] TSN, December 16, 1996, p. 8.
- [26] TSN, December 16, 1996, p. 9.
- [27] *People v. delos Santos*, G.R. No. 141128, August 30, 2001; *People v. Goles*, 192 SCRA 663 (1990); *People v. Asturias*, 134 SCRA 405 (1985); *People v. Gallano*, 108 SCRA 405 (1981).
- [28] *People v. Esperida*, G.R. Nos. 139637-38, January 22, 2003.
- [29] *People v. Ochea*, G.R. Nos. 146452-53, December 10, 2002.

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