



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,  
Plaintiff-Appellee,

G.R. No. 204047

Present:

CARPIO, *J.*, Chairperson,  
BRION,  
DEL CASTILLO,  
MENDOZA, and  
LEONEN, *JJ.*

- versus -

Promulgated:

ALEXANDER "SANDER" BANGSOY,  
Accused-Appellant.

13 JAN 2016

*Alfonso M. Perpetuo*

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DECISION

BRION, *J.*:

We decide the appeal, filed by accused-appellant Alexander Bangsoy (*appellant*), from the January 17, 2012 decision<sup>1</sup> of the Court of Appeals (*CA*) in CA-G.R. CR.- H.C. No. 04808. The appealed decision affirmed the August 16, 2010 Joint Judgment<sup>2</sup> of the Regional Trial Court (*RTC*), Branch 4, Baguio City, finding the appellant guilty beyond reasonable doubt of two (2) counts of statutory rape,<sup>3</sup> and sentencing him to suffer the penalty of *reclusion perpetua* without eligibility for parole in each count.

<sup>1</sup> *Rollo*, pp. 2-23; penned by Associate Justice Ramon R. Garcia, and concurred in by Associate Justices Amelita G. Tolentino and Samuel H. Gaerlan.

<sup>2</sup> *CA rollo*, pp. 22-31; penned by Presiding Judge Mia Joy Ollares-Cawed.

<sup>3</sup> In Criminal Case Nos. 24761-R and 24762-R.

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### **The RTC Ruling**

In its August 16, 2010 decision, the RTC found the appellant guilty beyond reasonable doubt of two counts of statutory rape. It gave credence to the testimony of AAA<sup>4</sup> that her uncle, herein appellant, inserted his penis inside her vagina on two occasions. The RTC explained that AAA testified clearly despite her mental weakness, and that she never wavered during cross-examination. It further held that the appellant's moral ascendancy over AAA, combined with the former's use of a deadly weapon and threats of bodily harm, was more than enough to cow the victim into submitting to the appellant's desires. Finally, the trial court rejected the appellant's bare denial and uncorroborated alibi.

Accordingly, the RTC sentenced the appellant to suffer the penalty of *reclusion perpetua* without eligibility for parole. It also ordered him to pay the victim the following amounts: ₱75,000.00 as civil indemnity; ₱75,000.00 as moral damages; ₱30,000.00 as exemplary damages, plus six percent (6%) interest on all damages awarded from the date of judgment until fully paid.

### **The CA Decision**

On appellate review, the CA affirmed the RTC's Joint Judgment. The CA held that AAA positively identified the appellant as the person who sexually abused her on two occasions in April 2004, and who threatened to kill her if she would report the incidents to her father. It added that AAA testified in a straightforward and categorical manner despite her mental retardation.

The CA further ruled that the absence of hymenal lacerations did not negate a finding of rape. It added that rape is not always committed in seclusion since lust is no respecter of time and place. The CA also ruled that the inconsistencies in AAA's testimonies refer to only minor details and collateral matters. Finally, the appellate court ruled that AAA's act of returning to the house of her father did not impair her credibility since she should not be "judged by the norms of behavior expected of mature persons."<sup>5</sup>

### **The Court's Ruling**

After due consideration, we resolve to (a) **affirm** the appellant's conviction in Criminal Case No. 24761-R, but **modify** the designation of the crime committed, and (b) **grant** his appeal in Criminal Case No. 24762-R.

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<sup>4</sup> Per *People v. Cabalquinto*, 533 Phil. 703 (2006), the real name of the victim shall be withheld in all cases involving violence against women and their children, and the Court shall use fictitious initials instead to represent her. In addition, the personal circumstances of the victim or any other information tending to establish or compromise her identity, as well those of their immediate family or household members, shall not be disclosed.

<sup>5</sup> *Rollo*, pp. 20-21.

***Elements of Rape in Criminal Case No. 24761-R Established***

For a charge of rape under Article 266-A of the Revised Penal Code, as amended, the prosecution must prove that (1) the offender had carnal knowledge of a woman; and (2) he accomplished such act through force, threat or intimidation, when she was deprived of reason or otherwise unconscious, or when she was under 12 years of age or was demented. Carnal knowledge of a woman who is a mental retardate is rape under the aforesaid provisions of law. Proof of force or intimidation is not necessary, as a mental retardate is not capable of giving consent to a sexual act.<sup>6</sup> What needs to be proven are the facts of sexual congress between the accused and the victim, and the mental retardation of the latter.<sup>7</sup>

In the present case, the prosecution successfully established that the first rape indeed took place and that the appellant was the malefactor. *First*, AAA positively identified the appellant as the person who inserted his penis into her vagina, causing her pain. As found by the courts below, she never wavered in this identification, thus:

PROSECUTOR MARGARITA DE GUZMAN-MANALO:

Q: And can you tell us what happened when there was a time that you slept at Brookside and your uncle Sander came?

AAA:

A: When I was sleeping, my Uncle Sander came and he put a piece of cloth in my mouth.

Q: Why did he put a piece of cloth in your mouth?

A: He **inserted his penis into my vagina.**

Q: When your uncle inserted his penis in your vagina, did he remove your panty?

A: Yes.

Q: And were you alone sleeping in that room at the time your uncle came?

A: No.

Q: Who was your companion?

A: My father.

Q: Your father was with you inside the room?

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<sup>6</sup> *People v. Dalan*, G.R. No. 203086, June 11, 2014, 726 SCRA 335, 338.

<sup>7</sup> See *People v. Dela Paz*, G.R. No. 177294, February 19, 2008, 546 SCRA 363, 376.

A: Yes.

Q: Now, you said that your uncle placed a cloth on top of your mouth?

A: Yes.

Q: And do you know why he placed this cloth on top of your mouth?

A: So that I could not shout.

Q: And what did you feel when you said that your uncle Sander placed his penis in your vagina?

A: **It was painful.**

Q: And after that, what else happened?

A: No more.

Q: Did he [sic] tell your father about what your uncle did to you?

A: No because I was threatened.

Q: How were you threatened?

A: He pointed a knife at me. x x x x<sup>8</sup>

Notably, both the RTC and CA found AAA's testimony credible and convincing. We see no reason to disbelieve the testimony of AAA either with respect to the first rape, which the trial and appellate courts found to be credible and straightforward. Given the victim's mental condition, it is highly improbable that she could have concocted or fabricated a rape charge against the accused. Neither was it possible that she was coached into testifying against appellant considering her limited intellect.

Under these circumstances, only a very startling event would leave a lasting impression on her that she could recall when asked about it.<sup>9</sup> We particularly point out that when AAA pointed to the appellant in the courtroom as her sexual abuser, she even stated that she filed a complaint so that "he will not do it to anybody else anymore [sic]."<sup>10</sup>

In the light of AAA's mental state, her simple narration of what transpired, instead of adversely affecting her credibility, was indicative of her honesty and guilelessness. Thus, her straightforward narration should be believed.

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<sup>8</sup> TSN, July 25, 2006, pp. 4-5. Emphasis ours.

<sup>9</sup> See *People v. Diunsay-Jalandoni*, 544 Phil. 163, 175 (2007).

<sup>10</sup> TSN, July 25, 2006, p. 8.

*Second*, the prosecution successfully established AAA's mental condition. Maribel Tico, a psychologist from the Philippine Mental Health Association, testified that she conducted a mental status examination on AAA, and found her to be suffering from mild mental retardation "with a corresponding [m]ental [a]ge of 7 years and 1 month."<sup>11</sup> The pertinent portions of Tico's *Psychological Report*<sup>12</sup> reads:

**Intellectual Evaluation:**

On the intelligence test administered, [AAA] is classified within the **Mental Retardation** range of intellectual functioning, **Mild** in severity based on an overall estimated IQ score of 65. She has a corresponding Mental Age of **7 years and 1 month**. Compared to her age group, she is performing poorly in terms of mental ability.

X X X X

SUMMARY AND RECOMMENDATION:

[AAA] is estimated within the **Mild Mental Retardation** range of intellectual ability with a corresponding Mental Age of **7 years and 1 month**. X X X<sup>13</sup>

***The Appellant's Defenses***

Like the courts below, we are not convinced by the appellant's claim that he could not have raped AAA because he was in Honeymoon Road in April 2004. We point out that Honeymoon Road and the place where the rape took place – Brookside – are both located in Baguio City. The appellant even admitted that both places are near each other as Honeymoon Road is just a 10-minute walk from Brookside. Under these circumstances, it was not physically impossible for the appellant to be at the *locus criminis* on the date of the first rape.

Contrary to the appellant's claim, the presence of the victim's father<sup>14</sup> in the room does not negate the commission of the crime. Rape can be committed even in places where people congregate, in parks, along the roadside, within school premises, inside a house where there are other occupants, and even in the same room where other members of the family are also sleeping. It is not impossible or incredible for the members of the victim's family to be in deep slumber and not to be awakened while a sexual assault is being committed. It is settled that lust is not a respecter of time or place and rape is known to happen in the most unlikely places.<sup>15</sup>

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<sup>11</sup> TSN, March 13, 2007, p. 21.

<sup>12</sup> Records, pp. 11-15.

<sup>13</sup> *Id.* at 13-14.

<sup>14</sup> During the alleged second rape, AAA claimed that her father and brother were sleeping with her inside the room, TSN, July 25, 2006, p. 11.

<sup>15</sup> See *People v. Cabral*, 609 Phil. 160, 165-166 (2009).

While AAA also stated that the lights of the room had been turned off, it was not improbable for her to see the face of the person who removed her panty and inserted his penis into her private part more so since the room was illuminated by the lights coming from the nearby house. At the distance that would allow the described insertion, the parties would be so near each other that they could see and even smell one another. In addition, AAA categorically declared that she saw the appellant's face and was familiar with his voice.

We likewise do not find any merit in the appellant's argument that the victim's act of returning to the place where she was sexually abused tainted her credibility. The place where the rape took place was not the appellant's house, but the house of AAA's father that the victim and her brother usually visited every week; thus, it was not unusual for the victim to be there to visit her father.

At any rate, it is not proper to judge by adult norms of behavior the actions of children who have undergone traumatic experiences. Certainly, a child – more so in the case of AAA who is suffering from mild mental retardation – cannot be expected to act like an adult or do what may be expected of mature people under similar circumstances.<sup>16</sup>

We disagree with the appellant's insistence that the initial reluctance of AAA to reveal the assault tainted her credibility. Young girls usually conceal their ordeal because of threats made by their assailants.<sup>17</sup> In this case, the records showed that the appellant threatened to kill AAA if she would reveal the incident to others.

We are also not persuaded by the appellant's claim that AAA was not a credible witness due to the alleged inconsistencies between her sworn statement (in Ilocano dialect) and her court testimony. Affidavits may be incomplete and inaccurate based as they are on answers prompted by the investigator's questions. There, too, is the question of proper understanding between the affiant and the investigating officer, as well as problems about the proper transcription of the answers made. At any rate, whether AAA saw the appellant at her father's house before the rape is immaterial. The determining factor is that AAA positively identified him as the person who covered her mouth with a piece of cloth; removed her panty; inserted his penis in her vagina; and threatened her bodily harm if she would reveal the rape to others.

Finally, we find no merit in the appellant's contention that the absence of lacerations in the victim's hymen negated sexual intercourse. The

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<sup>16</sup> *People v. Montes*, 461 Phil. 563, 578 (2003).

<sup>17</sup> *Id.* at 573.

rupture of the hymen is not an essential and material fact in rape cases;<sup>18</sup> it only further confirms that the vagina has been penetrated and damaged in the process. Additionally, in the present case, the genital examination on AAA was conducted on May 17, 2005, or *more than one year after the rape took place*.<sup>19</sup> At any rate, Dr. Marjorie Rebujo, Medical officer III at the Benguet General Hospital, clarified that the lack of hymenal injuries does not mean that no sexual abuse took place. Dr. Rebujo further explained that the hymen could heal fast and that it could go back to its normal structure.

*Second rape not proven beyond reasonable doubt*

We agree with the appellant's claim that his conviction in Criminal Case No. 24762-R was not proven with moral certainty.

The Information in Criminal Case No. 24762-R alleged that the appellant *had carnal knowledge* with AAA "sometime in the month of April 2004, prior to and subsequent thereto." For precision and clarity, we reproduce hereunder AAA's testimony on the incident:

PROSECUTOR MARGARITA DE GUZMAN-MANALO:

Q: And did this happen only once?

AAA:

A: No, ma'am.

Q: Was there a second time?

A: Yes, ma'am.

Q: And where did it happen?

A: At Brookside.

Q: You mean, also in the house of your father?

A: Yes, ma'am.

Q: **And can you tell us what happened during the second time?**

A: **The same as what happened on [at] the first time.**<sup>20</sup>

We find AAA's testimony in this second charge of rape to be overly generalized; it lacks specific details on how the second rape was committed. Her bare statement that the same thing happened as what had transpired during the first time is inadequate to establish beyond reasonable doubt that

<sup>18</sup> See *People v. Ferrer*, G.R. No. 142662, August 14, 2001, 362 SCRA 778, 787.

<sup>19</sup> Dr. Rebujo classified the examination as non-acute since it was made 72 hours after the commission of the rape, TSN, May 10, 2007, p. 33.

<sup>20</sup> TSN, July 25, 2006, p. 5. Emphasis ours.

a succeeding rape took place. The testimony should have mentioned that there was insertion of the penis, or at the very least a touching of the labia of the pudendum. Lacking in these details, we cannot conclude that the victim's testimony constitutes proof beyond reasonable doubt of the appellant's guilt.

As we held in *People v. Jampas*,<sup>21</sup> “[a]bsolute guarantee of guilt is not demanded by the law to convict a person of a criminal charge but there must at least be moral certainty in each element essential to constitute the offense and in the responsibility of the offender.” Such certainty is absent in the generalized statement that the victim made.

#### *The Crime Committed and the Proper Penalty in Criminal Case No. 24761-R*

Sexual intercourse with a woman who is a mental retardate with a mental age of below 12 years old constitutes statutory rape.<sup>22</sup> Notably, AAA was also below 12 years old at the time of the incident, as evidenced by the records showing that she was born on March 1, 1993.<sup>23</sup>

Under Article 266-B of the Revised Penal Code, as amended, the death penalty shall be imposed when the victim is below 18 years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim. In the present case, however, the relationship of the appellant to the victim was not alleged.

Nonetheless, the Information averred that AAA was a mental retardate and that the appellant knew of this mental retardation.<sup>24</sup> These circumstances raised the crime from statutory rape to qualified rape or statutory rape in its qualified form under Article 266-B of the Revised Penal Code. Since the death penalty cannot be imposed in view of Republic Act No. 9346 (An Act Prohibiting the Imposition of the Death Penalty in the Philippines), the CA correctly affirmed the penalty of *reclusion perpetua* without eligibility for parole imposed by the RTC on the appellant.

#### *The Proper Indemnities*

In *People v. Gambao*,<sup>25</sup> the Court set the minimum indemnity and damages where facts warranted the imposition of the death penalty, if not for prohibition thereof by R.A. No. 9346, as follows: (1) ₱100,000.00 as civil indemnity; (2) ₱100,000.00 as moral damages which the victim is assumed

<sup>21</sup> G.R. No. 177766, July 17, 2009, 593 SCRA 241, 256.

<sup>22</sup> See *People v. Abella*, G.R. No. 177295, January 6, 2010, 610 SCRA 19, 28; *People v. Mateo*, G.R. No. 170569, September 30, 2008, 567 SCRA 244, 259; *People v. Arlee*, 380 Phil. 164, 180 (2000).

<sup>23</sup> Records, p. 7; The defense also admitted AAA's minority, *id.* at 119.

<sup>24</sup> The Information also alleged that the rape was committed with the use of a deadly weapon.

<sup>25</sup> G.R. No. 172707, October 1, 2013, 706 SCRA 508, 533. This case was for kidnapping for ransom but the ruling on the increased indemnities has been applied by the Court in cases involving other crimes.

to have suffered and thus needs no proof; and (3) ₱100,000.00 as exemplary damages to set an example for the public good.

We thus increase the awarded civil indemnity from ₱75,000.00 to ₱100,000.00; moral damages from ₱75,000.00 to ₱100,000.00; and the exemplary damages from ₱30,000.00 to ₱100,000.00.

**WHEREFORE**, premises considered, we **AFFIRM** the January 17, 2012 decision of the Court of Appeals in CA-G.R. CR.- H.C. No. 04808 with the following **MODIFICATIONS**:

- (a) the appellant is found guilty of QUALIFIED RAPE in Criminal Case No. 24761-R;
- (b) civil indemnity, moral damages, and exemplary damages are INCREASED to ₱100,000.00, respectively; and
- (c) the appellant is ACQUITTED in Criminal Case No. 24762-R.

**SO ORDERED.**

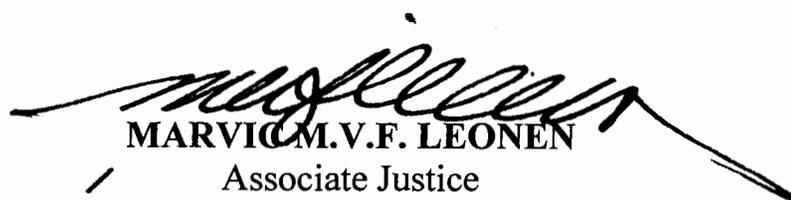
  
ARTURO D. BRION  
Associate Justice

**WE CONCUR:**

  
ANTONIO T. CARPIO  
Associate Justice  
Chairperson

  
MARIANO C. DEL CASTILLO  
Associate Justice

  
JOSE CATRAL MENDOZA  
Associate Justice

  
MARVIC M.V.F. LEONEN  
Associate Justice

**ATTESTATION**

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

**ANTONIO T. CARPIO**

Associate Justice

Chairperson

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

**MARIA LOURDES P. A. SERENO**

Chief Justice