



Republic of the Philippines
 Supreme Court
 Manila

SUPREME COURT OF THE PHILIPPINES
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THIRD DIVISION

**THE PEOPLE OF THE
 PHILIPPINES,**

G.R. No. 246948

Plaintiff-Appellee,

Present:

- versus -

LEONEN, *J.*, Chairperson,
 HERNANDO,
 INTING,
 ROSARIO,* and
 LOPEZ, *JJ.*

**REYNALDO GABATBAT y
 BALBOA,**

Promulgated:

Accused-Appellant.

July 5, 2021

Mis-PCBatt

X-----X

DECISION

LOPEZ, J., J.:

Before this Court is an ordinary appeal filed by the accused-appellant Reynaldo Gabatbat¹ y Balboa (Gabatbat) assailing the Decision² dated May 10, 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 09441, which affirmed the Decision³ in Criminal Case No. GL-Q-12-176255, dated September 27, 2016 of the Regional Trial Court (RTC) of Quezon City, finding Gabatbat guilty beyond reasonable doubt of simple rape under Article 266-A, paragraph 1(b) of the Revised Penal Code (RPC), by having carnal knowledge of a woman who is allegedly a person with intellectual disability.

* Designated as additional Member per Special Order No. 2833, dated June 29, 2021.

¹ See Records, p. 68; Resolution dated February 1, 2021.

² Penned by Associate Justice Fernanda Lampas Peralta, with Associate Justices Amy C. Lazaro-Javier (now a Member of the Supreme Court) and Ma. Luisa Quijano-Padilla concurring; *rollo*, pp. 3-23.

³ Rendered by Presiding Judge Roberto P. Buenaventura; *CA rollo*, pp. 51-60.

The Facts

As culled from the CA decision, the facts indicate that:

On January 20, 2011 at around 7:00 p.m., private complainant AAA,⁴ then 14 years old and allegedly a person with intellectual disability, was allegedly with her niece inside a vacant lot located at [REDACTED], Quezon City, which her family was tending. Gabatbat, a friend of AAA's father, who was dwelling inside the vacant lot, was also there. Gabatbat suddenly chased AAA, who ran away. When Gabatbat caught up with AAA, he punched her thighs and dragged her to a hut inside the vacant lot. Upon entering the hut, he laid down AAA on the floor, removed her shorts and panty, and then removed his own pants. AAA resisted the sexual advances of Gabatbat, but he hit her on the stomach. He mounted on top of AAA and inserted his penis into her vagina, while pointing a knife at her neck. AAA cried in pain. Before Gabatbat left, he threatened AAA that he would kill her parents and siblings if she told anyone about the incident.⁵

Afraid of the threats made by Gabatbat, it took AAA two months from the date of the incident before she revealed to her mother BBB what Gabatbat did to her. Thereupon, BBB brought AAA to the police station where AAA was advised to undergo medical examination.⁶

On March 21, 2011, BBB brought AAA to Camp Crame, Quezon City and had her physically examined by a medico-legal officer, Dr. Joseph C. Palmero (Dr. Palmero), who issued a Medico-Legal Report No. R11-480 dated March 22, 2011 showing the following findings: "Hymen: shallow healed laceration at 9 o'clock position" and "clear evidence of previous blunt force or penetrating genital trauma."⁷

AAA executed her sworn statement on March 23, 2011.⁸

Gabatbat denied having committed the rape.⁹ Allegedly, at the time of the incident on January 20, 2011, he sold and delivered vegetables the whole day in [REDACTED], Quezon City.¹⁰ However, AAA's mother, BBB, was mad at him because she believed that he was trying to

⁴ Fictitious initials are used, pursuant to the confidentiality provisions under Republic Act No. 7610 (An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes), Section 29.

⁵ *Rollo*, p. 4.

⁶ *Id.*

⁷ *Id.* at 4-5.

⁸ *Id.* at 5.

⁹ *Id.*

¹⁰ *Id.*

cover-up her husband's philandering, which could be the reason why the case was filed against him.¹¹

On May 28, 2012, an information was filed with the trial court against Gabatbat, charging him with "Statutory Rape under Article 266-B-10" of the RPC, as amended, to wit:

That on or about the 20th day of January 2011, in Quezon City, Philippines, the said accused, while living with the family of AAA, a minor and taking shelter therein, with abuse of authority and taking advantage of her [sic] moral ascendancy, did then and there, willfully, unlawfully and feloniously commit an act of sexual assault upon AAA, 14 years old, a minor, who is a person suffering from mental disability, by then and there inserting his penis into her vagina against her will and without her consent.

CONTRARY TO LAW.¹²

Upon arraignment, Gabatbat pleaded "not guilty" to the charge.¹³ The trial court conducted a pre-trial conference wherein the parties stipulated on the jurisdiction of the trial court and the identity of the accused.¹⁴ The prosecution also marked its exhibits, while the defense reserved its right to do so.¹⁵

During the trial, AAA, BBB and Dr. Palmero were presented as witnesses.¹⁶ The prosecution also presented documentary evidence consisting, among others, of the Medico-Legal Report dated March 22, 2011, issued by Dr. Palmero and AAA's sworn statement and birth certificate.¹⁷ For the defense, Gabatbat was presented as lone witness.¹⁸

On September 27, 2016, the trial court rendered a Decision convicting Gabatbat of simple rape.¹⁹ The trial court did not appreciate the qualifying circumstance under paragraph 10, Article 266-B of the RPC, as amended, for the reason that the qualifying circumstance of knowledge of the offender of the intellectual disability of the victim at the time of the commission of rape, was "not clearly proven nor was it alleged in the information."²⁰

The dispositive portion of which reads:

WHEREFORE, premises considered, the accused REYNALDO GABATBAT y BALBOA is found GUILTY beyond reasonable doubt of the crime of simple rape under subparagraph (b) of Article 266-A of the Revised Penal Code, as amended, and is hereby sentenced to a penalty of reclusion

¹¹ *Id.*
¹² *Id.*
¹³ *Id.* at 6.
¹⁴ *Id.*
¹⁵ *Id.*
¹⁶ *Id.*
¹⁷ *Id.*
¹⁸ *Id.*
¹⁹ *Id.*
²⁰ *Id.*

perpetua. The accused is also adjudged liable of civil indemnity and moral damages, both in the amount of Thirty Thousand Pesos ([P]30,000.00) each subject to interest at the rate of 6% per annum from the date of finality of this judgment. No costs.

SO ORDERED.²¹

Gabatbat filed a notice of appeal of the trial court's decision.

On May 10, 2018, the CA rendered a Decision on the appeal, affirming the trial court's decision, but modified the awards of civil indemnity and moral damages, and further ordered the accused to pay exemplary damages. Thus:

WHEREFORE, the appealed Decision dated September 27, 2016 of the trial court is AFFIRMED, subject to the modification that the awards of civil indemnity and moral damages are increased to P75,000.00 each, and accused-appellant is further ordered to pay exemplary damages of P75,000.00. The monetary awards are subject to interest of six per cent (6%) per annum from date of finality of this Decision until full payment.

SO ORDERED.²²

Gabatbat filed a notice of appeal of the CAs' decision. Thus, this case.

The Issue

Whether accused-appellant is guilty of simple rape under Article 266-A, paragraph 1(b) of the Revised Penal Code, by having carnal knowledge of a woman who is allegedly a person with intellectual disability.

Ruling of this Court

The appeal is bereft of merit.

Article 266-A of the RPC, as amended by Republic Act (R.A.) No. 8353 or The Anti-Rape Law of 1997,²³ provides:

Article 266-A. *Rape; When And How Committed.* — Rape is Committed —

²¹ *Id.* at 7.

²² *Id.* at 22-23.

²³ "AN ACT EXPANDING THE DEFINITION OF THE CRIME OF RAPE, RECLASSIFYING THE SAME AS A CRIME AGAINST PERSONS, AMENDING FOR THE PURPOSE ACT NO. 3815, AS AMENDED, OTHERWISE KNOWN AS THE REVISED PENAL CODE AND FOR OTHER PURPOSES"

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.

2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person. (Emphasis supplied)

Article 266-B of the RPC provides the penalties and qualifying circumstances of rape under Article 266-A, as follows:

Article 266-B. *Penalties.* — Rape under paragraph 1 of the next preceding article shall be punished by reclusion perpetua.

Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death.

When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be reclusion perpetua to death.

When the rape is attempted and a homicide is committed by reason or on the occasion thereof, the penalty shall be reclusion perpetua to death.

When by reason or on the occasion of the rape, homicide is committed, the penalty shall be death.

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

- 1) When the victim is under eighteen (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;
- 2) When the victim is under the custody of the police or military authorities or any law enforcement or penal institution;

- 3) When the rape is committed in full view of the spouse, parent, any of the children or other relatives within the third civil degree of consanguinity;
- 4) When the victim is a religious engaged in legitimate religious vocation or calling and is personally known to be such by the offender before or at the time of the commission of the crime;
- 5) When the victim is a child below seven (7) years old;
- 6) When the offender knows that he is afflicted with Human Immunodeficiency Virus (HIV)/Acquired Immune Deficiency Syndrome (AIDS) or any other sexually transmissible disease and the virus or disease is transmitted to the victim;
- 7) When committed by any member of the Armed Forces of the Philippines or para-military units thereof or the Philippine National Police or any law enforcement agency or penal institution, when the offender took advantage of his position to facilitate the commission of the crime;
- 8) When by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation or disability;
- 9) When the offender knew of the pregnancy of the offended party at the time of the commission of the crime; and
- 10) **When the offender knew of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime.**

Rape under paragraph 2 of the next preceding article shall be punished by prision mayor.

Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be prision mayor to reclusion temporal.

When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be reclusion temporal.

When the rape is attempted and a homicide is committed by reason or on the occasion thereof, the penalty shall be reclusion temporal to reclusion perpetua.

When by reason or on the occasion of the rape, homicide is committed, the penalty shall be reclusion perpetua.

Reclusion temporal shall also be imposed if the rape is committed with any of the ten aggravating/qualifying circumstances mentioned in this article. (Emphasis supplied)

Pursuant to Article 266-A, paragraph 1(a), rape may be committed by a man who shall have carnal knowledge of a woman through force, threat, or intimidation.

Pursuant to Article 266-A, paragraph 1(b), rape may also be committed by a man who shall have carnal knowledge of a woman when the latter is deprived of reason. We have consistently held that a woman need not be proven as completely insane or deprived of reason for sexual intercourse to constitute the crime of rape.²⁴ The term “deprived of reason” has been construed to include those suffering from mental abnormality or deficiency, mental retardation or intellectual disability,²⁵ the feeble-minded but coherent, or even those suffering from mental abnormality or deficiency of reason.²⁶

In *People v. Dalandas*,²⁷ where the accused was convicted with the rape of an intellectually disabled, this Court stated that:

["Intellectual disability"] 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, [an intellectually disabled] exhibits a slow rate of maturation, physical and/or psychological, as well as impaired learning capacity.

Although ["intellectual disability"] is often used interchangeably with “mental deficiency,” the latter term is usually reserved for those without recognizable brain pathology.²⁸ (Citation omitted)

There may be varying degrees of severity of intellectual disability, as illustrated in *Dalandas*:

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 is by common consent recognized as sane and competent to perform the ordinary duties and assume the ordinary responsibilities of life.

x x x x

The [intellectual disability] of persons and the degrees thereof may be manifested by their overt acts, appearance, attitude and behavior. The diction, manner of walking, ability to feed oneself or attend to personal hygiene, capacity to develop resistance or immunity to infection, dependency on others for protection and care and inability to achieve

²⁴ *People v. Almacin*, 363 Phil. 18, 30 (1999).

²⁵ Based on the 2013 Diagnostic and Statistical Manual of Mental Disorders, pp. 33 and 809, the term “intellectual disability” has replaced “mental retardation” among the lay public, and the medical, educational, professional, and advocacy groups, as cited in *People v. Quintos*, 746 Phil. 809 (2014).

²⁶ *Id.*

²⁷ 442 Phil. 688 (2002).

²⁸ *Id.* at 695.

intelligible speech may be indicative of the degree of [intellectual disability] of a person. Those suffering from severe [intellectual disability] are usually undersized and exhibit some form of facial or body deformity such as mongolism, or gargolism. The size and shape of the head is indicative of microphaly. The profoundly [intellectually disabled] may be unable to dress himself, or wash or attend to bowel and bladder functions so that his appearance may be very unclean and untidy unless they receive a great deal of nursing care. There may be marked disturbance of gait and involuntary movements. Attempts to converse with [an intellectually disabled] may be limited to a few unintelligible sounds, either spontaneous or in response to attempts that are made by the examiner to converse, or may be limited to a few simple words or phrases. All the foregoing may be testified on by ordinary witnesses who come in contact with an alleged [intellectually disabled].²⁹ (Citations omitted)

Carnal knowledge of a woman suffering from [intellectual disability] is rape under Article 266-A, paragraph 1(b), since she is incapable of giving consent to a sexual act.³⁰ Under these circumstances, all that needs to be proved for a successful prosecution are the facts of sexual congress between the rapist and the rape survivor, and the latter's intellectual disability.³¹

The intellectual disability of the rape survivor under Article 266-A, paragraph 1(b) must be proven beyond reasonable doubt.³² The evidentiary items that are admissible to prove intellectual disability include both clinical and non-clinical evidence. Clinical evidence may consist of:

1. Psychiatric evaluation diagnosing the rape survivor's intellectual disability, or comprehensive medical evaluation determining the victim's mental status,³³ and
2. Other clinical, laboratory and psychometric support which would sustain that the rape survivor is intellectually disabled, such as the physical examination by a psychologist or psychiatrist, results of psychometric tests, and records of patient history.³⁴

Non-clinical evidence to prove intellectual disability may include:

1. Testimony of the rape survivor;³⁵
2. Testimony of ordinary or non-expert witnesses;³⁶ and

²⁹ *Id.* at 696-697.

³⁰ *People of the Philippines v. Marlon B. Yu*, G.R. No. 240546, July 1, 2020.

³¹ *Id.*

³² *Supra* note 27.

³³ *People v. Rapiñ y Correa*, G.R. No. 240662, September 16, 2020.

³⁴ *People v. Cartuano, Jr.*, 325 Phil. 718, 752 (1996).

³⁵ *Supra* note 24.

³⁶ *Id.* at 29.

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3. Observation of the trial court of the conduct, demeanor and deportment of the rape survivor.³⁷

A common issue often raised in this type of case is whether clinical evidence (*i.e.*, psychiatric evaluation diagnosing the victim's intellectual disability, comprehensive medical evaluation, and other clinical, laboratory and psychometric support) is necessary to prove intellectual disability.

Jurisprudence is replete with rulings stating that non-clinical evidence are admissible to prove intellectual disability. We have ruled that it is not required for a rape survivor to undergo a comprehensive medical examination so as to prove that they are intellectually disabled.³⁸ We have repeatedly pronounced that intellectual disability can be proven by evidence other than medical/clinical evidence, such as the testimony of witnesses and even the observation by the trial court.³⁹ A finding of the rape survivor being an intellectually disabled based on laboratory and psychometric support does not preclude the presentation by the prosecution of evidence other than clinical evidence to prove the intellectual disability of the rape survivor.⁴⁰ Medical evidence is not a condition *sine qua non* in all cases of rape or sexual crimes for that matter to prove that the victim is intellectually disabled or is suffering from mental deficiency or some form of mental disorder.⁴¹

However, admissibility is different from credibility. While it is true that non-clinical evidence are admissible, the same are not necessarily credible or are accorded enough weight to prove intellectual disability beyond reasonable doubt.

In *People v. Cartuano, Jr.*,⁴² We have ruled that intellectual disability is a clinical diagnosis which requires demonstration of significant sub-average 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.⁴³ The degree of intellectual impairment must be shown by reliable standardized tests.⁴⁴ We held:

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. The patient history yields

³⁷ *People v. Dumanon*, 401 Phil. 658, 670 (2000); *People v. Dalandas*, *supra* note 27, at 697.
³⁸ *People of the Philippines v. Valentino Catig y Genteroni*, G.R. No. 225729, March 11, 2020.
³⁹ *Id.*
⁴⁰ *People v. Dalandas*, *supra* note 27, at 698.
⁴¹ *Id.* at 699.
⁴² *Supra* note 34.
⁴³ *Id.* at 747.
⁴⁴ *Id.*

nothing but the fact that complainant left school at third grade, a fact which the school principal blamed on frequent absences and tardiness, and the only appropriate conclusion which could be drawn from her second grade teacher's testimony was that complainant was a poor student. 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 [intellectual disability] 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 are fairly common, and afflicted individuals are generally recognized even by laymen. Individuals afflicted with the less common causes of [intellectual disability] likewise have distinct physical features, recognizable by clinicians. The rare metabolic and genetic causes are usually incompatible with survival beyond childhood and the degree of [intellectual disability] 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. The Sack's Sentence Completion Test, the third leg in the psychologist's evaluation 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, not in the dialect of the complainant.) All the three tests are used in a wide range of psychological disorders other than [intellectual disability], and none of them either alone or taken together — would suffice as a proper test for intelligence.

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 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.

X X X X

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 [intellectual disability] 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*. 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 of our major provincial and city hospitals and centers) is necessary to complete the process.

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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. 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.⁴⁵ (Citations omitted)

In *People v. Lamarroza*,⁴⁶ We reiterated the doctrine in *People v. Cartuano, Jr.* and ruled as follows:

As the boundaries between normality and [intellectual disability] are difficult to delineate, proper identification requires competent clinical evaluation of psychosomatic parameters in conjunction with medical and laboratory tests. In the case at hand, the record is bereft of any evidence that a comprehensive medical evaluation was had to properly determine Elena's alleged [intellectual disability]. Be that as it may, her alleged mental state has no bearing on the rape charge against Joel whose culpability has not been proved by the prosecution beyond the shadow of a doubt.

A rape charge is a serious matter with pernicious consequences both for the accused and the complainant x x x.⁴⁷

In *People v. Rapiz*,⁴⁸ We held that in making a diagnosis of intellectual disability, a thorough evaluation based on history, physical, and laboratory examination made by a clinician is necessary. The reason for this requirement is well-explained in both medical and psychology literature: intellectual disability is a recognized clinical syndrome usually traceable to an organic cause, which determinants are complex and multifactorial.⁴⁹ As the boundaries between normality and intellectual disability are difficult to delineate, proper identification requires competent clinical evaluation of psychosomatic parameters in conjunction with medical and laboratory tests.⁵⁰

To harmonize the various rulings allowing the introduction of non-clinical evidence to prove intellectual disability, and the rulings requiring the necessity of clinical evidence to prove intellectual disability in *People v. Cartuano, Jr.*, *People v. Lamarroza*, and *People v. Rapiz*, We rule that both clinical and non-clinical evidence are admissible to prove intellectual disability. However, for purpose of credibility, weight and meeting the threshold of proof beyond reasonable doubt, clinical evidence is necessary to

⁴⁵ *Id.* at 748-751.

⁴⁶ 359 Phil. 440 (1998).

⁴⁷ *Id.* at 448-449.

⁴⁸ *Supra* note 33.

⁴⁹ *Id.*

⁵⁰ *Id.*

prove intellectual disability if the boundaries between normality and intellectual disability are difficult to delineate by ordinary persons. In these borderline cases where the acts, speech, appearance, conduct, demeanor and deportment of the rape survivor are ambiguous, expert clinical evidence must be introduced to prove intellectual disability. In such cases, ordinary persons are not credible to ascertain the mental status of the rape survivor, and they are not competent to delineate between: on the one hand, abnormal behavior arising from a mental abnormality, and on the other hand, mere idiosyncratic, but perfectly normal, behavior arising from various factors, like culture, age, low intelligence, and upbringing. As defined above, intellectual disability is a chronic condition present from birth or early childhood and characterized by impaired intellectual functioning. It is a pathology of the brain. Thus, if the acts, speech, appearance, conduct, demeanor and deportment of the victim do not clearly and plainly manifest an inherent mental abnormality, then it is not up to ordinary persons to ascertain that fact. Expert evidence, particularly clinical evidence, must be presented and offered.

Pursuant to Article 266-B, paragraph 1, simple rape (*i.e.*, without qualifying circumstances) is punishable by *reclusion perpetua*. A man committing carnal knowledge with a woman who is intellectually disabled, without knowledge of her disability, is guilty of simple rape. If the intellectual disability of the rape survivor has not been proven, but the man used force, threat or intimidation, then he is also guilty of simple rape.

Under Article 266-B, paragraph 6, sub-paragraph 10, when the offender has knowledge of the intellectual disability of the “rape survivor,” the imposable penalty shall be the death penalty. With the enactment of R.A. No. 9346, the death penalty may no longer be imposed.⁵¹ A.M. No. 15-08-02-SC⁵² states that “when circumstances are present warranting the imposition of the death penalty, but this penalty is not imposed because of R.A. No. 9346, the qualification ‘without eligibility for parole’ shall be used to qualify *reclusion perpetua* in order to emphasize that the accused should have been sentenced to suffer the death penalty had it not been for R.A. No. 9346 or an act prohibiting the imposition of death penalty in the Philippines.”⁵³

Applying the above laws and doctrines to the case at bar, We find that accused-appellant Gabatbat had carnal knowledge with the rape survivor using force and threat. However, there is no sufficient evidence providing that the rape survivor is mentally disabled. The use of force and threat was proved by the testimony of the victim herself, AAA, who positively identified Gabatbat as the man who was in a vacant lot in Quezon City, who was a friend of her father, who suddenly chased her, caught her, punched her thighs, dragged her to a hut inside the vacant lot, laid her down on the floor, removed her shorts and panty, removed his own pants, hit her on the stomach, mounted

⁵¹ See *People v. XXX*, G.R. No. 228961, February 3, 2021.

⁵² Guideline for the Proper Use of the Phrase “without eligibility for parole” in Indivisible Penalties, August 4, 2015.

⁵³ *Supra* note 51.

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on top of her, inserted his penis into her vagina while pointing a knife at her neck, and threatened her that he would kill her parents and siblings if she told anyone about the incident.⁵⁴

The fact of carnal knowledge was also proved by the physical examination by Dr. Palmero, a medico-legal officer, and his Medico-Legal Report No. R11-480 dated March 22, 2011.⁵⁵

We cannot lend credence to the defenses of accused-appellant, who interposed denial and alibi. Such defenses are not sufficient to negate the positive identification of the rape survivor, who was merely 14 years old at the time of the commission of the act. It is not within the bounds of ordinary human experience for a woman of tender age to go out of her way and experience the embarrassment and humiliation of testifying as a rape survivor in open court, merely in response to the fact that accused-appellant was trying to cover-up the philandering of the rape survivor's father.

We affirm the finding of the CA and the trial court that the qualifying circumstance under Article 266-B, paragraph 6, sub-paragraph 10, should not be appreciated, since the knowledge of the offender of the intellectual disability of the rape survivor at the time of the commission of rape was not clearly proven nor was it alleged in the information.⁵⁶ We affirm the finding of the trial court, as follows:

Although all these circumstances establish beyond reasonable doubt that the accused committed the crime of rape against AAA, it is not clearly establish [sic] beyond reasonable doubt that he is completely aware of the mental disability of the victim. Moreover, even if the accused categorically admitted knowing the victim to be suffering from mental abnormalities x x x the prosecution failed to alleged the said fact in the information.⁵⁷

We do not agree with the findings of the CA and the trial court that intellectual disability has been sufficiently proved.

First, the prosecutor claims to have submitted before the trial court (i) a Medical Certificate dated October 26, 2010 issued by the National Center for Mental Health, certifying that AAA was suffering from "Undifferentiated Schizophrenia"; and (ii) a Clinical Abstract and Medical Certificate dated April 21, 2015, both issued by the Philippine General Hospital, showing that AAA was diagnosed with "Bipolar I disorder with Psychotic features."⁵⁸ However, these documents were not formally offered in evidence by the prosecution. The rule is that a document, or any article for that matter, is not

⁵⁴ *Rollo*, p. 4.

⁵⁵ *Id.*

⁵⁶ *Id.* at 6.

⁵⁷ *Id.*

⁵⁸ *Id.* at 113-114.

evidence when it is not formally offered and the opposing counsel given an opportunity to object to it or cross-examine the witness called upon to prove or identify it.⁵⁹

In *Heirs of Pedro Pasag v. Spouses Parocha*,⁶⁰ this Court enunciated:

The Rules of Court provides that the court shall consider no evidence which has not been formally offered. A formal offer is necessary because judges are mandated to rest their findings of facts and their judgment only and strictly upon the evidence offered by the parties at the trial. Its function is to enable the trial judge to know the purpose or purposes for which the proponent is presenting the evidence. This allows opposing parties to examine the evidence and object to its admissibility. Moreover, it facilitates review as the appellate court will not be required to review documents not previously scrutinized by the trial court.⁶¹ (Citations omitted)

Second, the acts, speech, conduct, demeanor and deportment of the rape survivor are ambiguous. This is an instance where the boundaries between normality and mental disability are difficult to delineate by ordinary persons. The trial court observed that AAA “would just bolt out of the court during her testimony without prior leave, like a little child would” and would even “hold the hands of the court interpreter, caressing them while she testifies, making the impression that such is an abnormal act for an 18-year old, the age of the rape survivor at the time she was testifying in open court.”⁶² In fact, the trial court had to use dolls (male and female) just to clarify if AAA really knew the male and female organs.⁶³

We are not convinced that these are plain, clear and unambiguous signals of intellectual disability. The testimony of the rape survivor consists of straightforward and simple answers that show a modicum of a normal mind, or a person of below average intelligence at the least. Disregarding the medical findings (which were not offered in evidence), the testimony of the rape survivor demonstrates such modicum of intelligence as to put in doubt the claim that the rape survivor manifests some mental abnormality, chronic condition, or pathology of the brain. As We have ruled above, while both clinical and non-clinical evidence are admissible to prove intellectual disability, for purpose of credibility, weight and meeting the threshold of proof beyond reasonable doubt, clinical evidence is necessary to prove intellectual disability if the boundaries between normality and intellectual disability are difficult to delineate by ordinary persons. In a borderline case such as this, where the acts, speech, appearance, conduct, demeanor and deportment of the rape survivor are ambiguous, expert clinical evidence must be introduced to prove intellectual disability. In this case, ordinary persons are not credible to ascertain the mental status of the rape survivor, and they are not competent to

⁵⁹ *Heirs of Maborang, et al. v. Maborang, et al.*, 759 Phil. 82, 92 (2015).

⁶⁰ 550 Phil. 571 (2007).

⁶¹ *Id.* at 578-579.

⁶² *Rollo*, p. 11.

⁶³ *Id.*

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delineate between: on the one hand, abnormal behavior arising from a mental abnormality, and on the other hand, mere idiosyncratic, but perfectly normal, behavior arising from various factors, like culture, age, low intelligence and upbringing. Ordinary persons would not be in a competent position to ascertain the existence of a pathology of the brain, or a chronic condition present from birth or early childhood and characterized by impaired intellectual functioning.

Accordingly, We find that the intellectual disability of the rape survivor has not been sufficiently proved. However, the use of force and threat has been convincingly proved through the straightforward testimony of the rape survivor, the medico-legal report, and positive identification by the rape survivor of the accused-appellant. Moreover, We find no basis to conclude that Gabatbat has knowledge of the rape survivor's intellectual disability (and in any case, we have found that the rape survivor's intellectual disability has not been sufficiently proved). Accordingly, Gabatbat is guilty of simple rape under Article 266-A, paragraph 1(a), and not under Article 266-A, paragraph 1(b).

WHEREFORE, the appealed Decision dated May 10, 2018 of the Court of Appeals is **AFFIRMED**, subject to the modification that accused-appellant Reynaldo Gabatbat y Balboa is convicted of simple rape under Article 266-A, paragraph 1(a) of the Revised Penal Code. He is sentenced to suffer the penalty of *reclusion perpetua*; and to pay AAA the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages. All the amounts of damages awarded shall earn interest at the rate of six percent (6%) *per annum* from the date of finality of judgment until fully paid.

SO ORDERED.


JHOSEP V. LOPEZ
Associate Justice

WE CONCUR:


MARVIC M.V.F. LEONEN
Associate Justice

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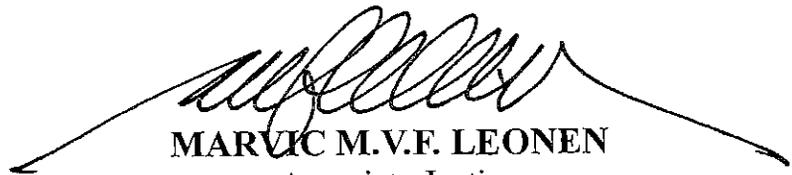

RAMON PAUL L. HERNANDO
 Associate Justice


HENRI JEAN PAUL B. INTING
 Associate Justice


RICARDO R. ROSARIO
 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.


MARVIC M.V.F. LEONEN
 Associate Justice
 Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Third 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.


ALEXANDER G. GESMUNDO
 Chief Justice