



**Republic of the Philippines  
Supreme Court  
Manila**

**SECOND DIVISION**

**PEOPLE            OF            THE        G.R. No. 230975  
PHILIPPINES,**

Plaintiff-Appellee,      Present:

- versus -

**RICO            NIEBRES  
REGINALDO,**

Accused-Appellant.

CARPIO, J., Chairperson,  
PERALTA,  
PERLAS-BERNABE,  
CAGUIOA, and  
REYES, JR., JJ.

Promulgated:

04 DEC 2017

A handwritten signature in black ink, appearing to read "Perlas-Bernabe". It is positioned over the date and the word "Promulgated".

X-----X

**D E C I S I O N**

**PERLAS-BERNABE, J.:**

Before the Court is an ordinary appeal<sup>1</sup> filed by accused-appellant Rico Niebres *y* Reginaldo (Niebres) assailing the Decision<sup>2</sup> dated August 17, 2015 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06374, which affirmed with modification the Judgment<sup>3</sup> dated June 28, 2013 of the Regional Trial Court of Cadlan, Pili, Camarines Sur, Branch 31 (RTC) in Crim. Case No. P-4532, and found Niebres guilty beyond reasonable doubt of the crime of Qualified Rape, as defined and penalized under Article 266-A, in relation to Article 266-B, of the Revised Penal Code (RPC).

<sup>1</sup> See Notice of Appeal dated September 23, 2015; *rollo*, pp. 20-22.

<sup>2</sup> Id. at 2-19. Penned by Associate Justice Elihu A. Ybañez with Associate Justices Magdangal M. De Leon and Victoria Isabela A. Paredes, concurring.

<sup>3</sup> CA *rollo*, pp. 59-69. Penned by Presiding Judge Jose C. Sarcilla.

## The Facts

On June 24, 2011, an Information<sup>4</sup> was filed before the RTC charging Niebres of Rape, the accusatory portion of which reads:

That sometime in the month of August 2010 and the days thereafter at Barangay Panoypoyan, Municipality of Bula Province of Camarines Sur, and within the jurisdiction of the Honorable Court, the above-named accused, with lewd design, through force, intimidation and influence, did then and there, willfully, unlawfully and knowingly, undress and succeed in having carnal knowledge with [AAA]<sup>5</sup>, a sixteen (16) year-old lass, who is suffering from mild mental retardation which fact of retardation is known to the accused and with a mental age of nine (9) year-old, without her consent and against her will, an act by deed which debases, degrades or demeans the intrinsic worth and dignity of the said victim as a human being, to her damage and prejudice in such amount as may be proven in court.

### ACTS CONTRARY TO LAW.<sup>6</sup>

The prosecution alleged that sometime in October 2010, Niebres, together with his wife (AAA's sister) and six (6) children, went to the house of his parents-in-law in La Victoria, Bula, Camarines Sur (La Victoria) to participate in a traditional *palay* harvesting called "basok/hasok."<sup>7</sup> When they arrived at the house of his parents-in-law at around eight (8) o'clock in the morning, they momentarily took a rest. Thereafter, Niebres joined the other members of the family on the fields and began the "basok/hasok," which lasted until 4:30 in the afternoon. After dinner, Niebres went out to drink with his father-in-law and brother-in-law and came home at around midnight. He directly went to the room where AAA and his family were sleeping and lied beside her to sleep.<sup>8</sup> At about five (5) o'clock in the morning of the following day, AAA suddenly woke up and noticed Niebres kissing her on the cheeks, neck, and down her body. Niebres then pulled down her shorts, unzipped his pants, and proceeded to have carnal knowledge of her. After repeatedly making a push and pull motion on AAA, Niebres finally pulled out his penis and dismounted from her. AAA claimed that the incident produced so much pain, and it caused her vagina to bleed profusely. This notwithstanding, she could not tell anyone about it, as she

<sup>4</sup> Dated June 24, 2011. Records, pp. 1-3.

<sup>5</sup> The identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to RA 7610, entitled "AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, AND FOR OTHER PURPOSES," approved on June 17, 1992; RA 9262, entitled "AN ACT DEFINING VIOLENCE AGAINST WOMEN AND THEIR CHILDREN, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFORE, AND FOR OTHER PURPOSES," approved on March 8, 2004; and Section 40 of A.M. No. 04-10-11-SC, otherwise known as the "Rule on Violence against Women and Their Children" (November 15, 2004). (See footnote 4 in *People v. Cadano, Jr.*, 729 Phil. 576, 578 [2014], citing *People v. Lomaque*, 710 Phil. 338, 342 [2013]).

<sup>6</sup> Records, p. 1.

<sup>7</sup> See *rollo*, p. 5. See also CA *rollo*, pp. 62-63.

<sup>8</sup> See *rollo*, p. 5. See also CA *rollo*, p. 62.

was afraid of what Niebres and her parents would do to her. According to AAA, this was not the first time Niebres sexually abused her, claiming that Niebres also raped her several weeks before the said incident in his house at Panoypoyan, Bula, Camarines Sur (Panoypoyan).<sup>9</sup>

Subsequently, when AAA complained of abdominal pains, her mother, BBB,<sup>10</sup> brought her to Naga Health Care Diagnostic Center on March 25, 2011. After conducting an ultrasound examination on AAA, the doctors discovered that she was approximately five (5) to six (6) months pregnant. When AAA finally admitted to BBB that Niebres raped her, they reported the matter to the police and filed the instant Complaint. On February 7, 2012, AAA went to a psychiatrist named Dr. Edessa Parde Laguidao (Dr. Laguidao), who revealed that she was suffering from a mild mental retardation with an intelligence quotient (I.Q.) equivalent to a nine (9)-year old child.<sup>11</sup>

For his part, while Niebres admitted that he and his family went to the house of his parents-in-law in La Victoria sometime in October 2010, he verbally denied raping AAA therein. Niebres maintained that at the time of the incident, he went out of the room of his parents-in-law's house, drank coffee, and proceeded to continue harvesting *palay* without waiting for his other companions. When Niebres was done harvesting, he and his family supposedly left La Victoria in the afternoon and never came back. Moreover, Niebres averred that the only time AAA slept in their house in Panoypoyan was when he was in Batangas from March to August 2010. Ultimately, Niebres insisted that the filing of case against him was actuated by ill motive, considering that his parents-in-law were angry at him when he demanded his share in the proceeds of the cow, which was purportedly sold to cover the wedding expenses of his brother-in-law.<sup>12</sup>

### The RTC Ruling

In a Judgment<sup>13</sup> dated June 28, 2013, the RTC found Niebres guilty of the crime of Simple Rape in relation to Section 5 (b) of RA 7610 and, accordingly, sentenced him to suffer the penalty of *reclusion perpetua* and to pay AAA the amounts of ₱50,000.00 as moral damages and ₱50,000.00 as exemplary damages.<sup>14</sup> It held that the prosecution was able to present testimonial and documentary evidence to support AAA's claim of rape against Niebres. Meanwhile, Niebres's unsubstantiated defenses of denial and alibi failed to create reasonable doubt in light of the positive and categorical testimony and identification of AAA.<sup>15</sup>

<sup>9</sup> See *rollo*, p. 6. See also CA *rollo*, p. 62.

<sup>10</sup> See note 5.

<sup>11</sup> See *rollo*, p. 4-7. See also CA *rollo*, pp. 60-61.

<sup>12</sup> See *rollo*, pp. 7-9. See also CA *rollo*, pp. 63-65.

<sup>13</sup> CA *rollo*, pp. 59-69.

<sup>14</sup> Id. at 69.

<sup>15</sup> See id. at 65-69.

Furthermore, the RTC did not appreciate the qualifying circumstance of relationship by affinity between Niebres and AAA even if it was proven in court, given that the same was not alleged in the Information.<sup>16</sup>

Aggrieved, Niebres appealed<sup>17</sup> to the CA.

### **The CA Ruling**

In a the Decision<sup>18</sup> dated August 17, 2015, the CA upgraded Niebres's conviction to that of Qualified Rape, finding Niebres not eligible for parole and ordering him to pay AAA the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages, with interest at the rate of six percent (6%) per annum on all damages awarded from date of finality of judgment until fully paid.<sup>19</sup>

The CA upheld the RTC's finding of rape, further noting that the inconsistencies in the testimonies of AAA were too minor and inconsequential to acquit Niebres of the crime charged. Further, it was highly improbable for AAA to fabricate the charges against Niebres, considering that a traumatizing experience like rape would definitely leave a lasting impression on her given her mental condition.<sup>20</sup> However, the CA ruled that Niebres should be convicted for Qualified Rape, considering that: (a) the state of mental retardation of AAA was competently established on account of the testimony and psychiatric evaluation of Dr. Laguidao on AAA; and (b) Niebres failed to dispute AAA's mental retardation during trial. Accordingly, the CA deemed it proper to hold Niebres guilty of Qualified Rape.<sup>21</sup>

Unyielding, Niebres filed the present appeal.

### **The Issue Before the Court**

The issue for the Court's resolution is whether or not Niebres's conviction for the crime of Rape should be upheld.

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

The appeal is denied.

<sup>16</sup> See id. at 69.

<sup>17</sup> See Notice of Appeal dated September 10, 2013; records, p. 196.

<sup>18</sup> Id. at 2-19.

<sup>19</sup> See id. at 16-18.

<sup>20</sup> See id. at 13-14.

<sup>21</sup> See id. at 15-17.

At the outset, it must be stressed that in criminal cases, an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.<sup>22</sup>

As will be explained hereunder, the Court deems it proper to modify Niebres's conviction for the crime of Qualified Rape to Simple Rape.

Here, a plain reading of the Information reveals that Niebres was charged of the crime of Qualified Rape, as defined and penalized under Article 266-A (1), in relation to Article 266-B, of the RPC, to wit:

ART. 266-A. *Rape, When and How Committed.* – Rape is committed –

1. By a man who shall have carnal knowledge of a woman under any of the following circumstances:
  - a. Through force, threat or intimidation;
  - b. When the offended party is deprived of reason or is otherwise unconscious;
  - c. By means of fraudulent machination or grave abuse of authority;
  - 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. (Emphases and underscoring supplied)

x x x x

ART. 266-B. Penalties. – x x x.

x x x x

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

x x x x

**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.**

x x x x (Emphases and underscoring supplied)

---

<sup>22</sup> See *People v. Comboy*, G.R. No. 218399, March 2, 2016, 785 SCRA 512, 521.

For the successful prosecution of the crime of Rape by sexual intercourse under Article 266-A (1) of the RPC, it is necessary that the elements thereof are proven beyond reasonable doubt, to wit: (a) the offender had carnal knowledge of a woman; and (b) he accomplished this act through force, threat or intimidation, when the victim was deprived of reason or otherwise unconscious, by means of fraudulent machination or grave abuse of authority, or when the victim is under 12 years of age or is demented.<sup>23</sup> Moreover, case law states that sexual intercourse with a woman who is a mental retardate, with a mental age below 12 years old, constitutes statutory rape.<sup>24</sup> In *People v. Deniega*,<sup>25</sup> the Court clarified that if a mentally-retarded or intellectually-disabled person whose mental age is less than 12 years is raped, the rape is considered committed under paragraph 1 (d) and not paragraph 1 (b), Article 266-A of the RPC. Thus, it ruled that:

Thus, a person with a chronological age of 7 years and a normal mental age is as capable of making decisions and giving consent as a person with a chronological age of 35 and a mental age of 7. Both are considered incapable of giving rational consent because both are not yet considered to have reached the level of maturity that gives them the capability to make rational decisions, especially on matters involving sexuality. Decision-making is a function of the mind. **Hence, person's capacity to decide whether to give consent or to express resistance to an adult activity is determined not by his or her chronological age but by his or her mental age.** Therefore, in determining whether a person is "twelve (12) years of age" under Article 266-A(1)(d), the interpretation should be in accordance with either the chronological age of the child if he or she is not suffering from intellectual disability, or the mental age if intellectual disability is established.<sup>26</sup> (Emphasis in the original)

In this instance, the prosecution competently established the elements of the crime of Rape, as it was shown that: (a) AAA was suffering from mild mental retardation, which has an I.Q. equivalent to a nine (9)-year old child; (b) Niebres successfully had carnal knowledge of AAA sometime in October 2010; and (c) Niebres was able to accomplish the said act because AAA, being a mental retardate, was deprived of reason at the time of the incident.

However, the CA erred in appreciating the qualifying circumstance of Niebres's knowledge of AAA's mental disability at the time of the commission of the crime, there being no sufficient and competent evidence to substantiate the same.

Notably, knowledge of the offender of the mental disability of the victim during the commission of the crime of rape is a special qualifying circumstance, which makes it punishable by death.<sup>27</sup> Such qualifying

<sup>23</sup> See *People v. Hilarion*, 722 Phil. 52, 55 (2013).

<sup>24</sup> See *People v. Deniega*, G.R. No. 212201, June 28, 2017.

<sup>25</sup> See *id.*

<sup>26</sup> See *id.*, citing *People v. Quintos*, 746 Phil. 809, 830-831 (2014).

<sup>27</sup> *People v. Suansing*, 717 Phil. 100, 114 (2013).

circumstance, however, must be sufficiently alleged in the indictment and proved during trial to be properly appreciated by the trial court.<sup>28</sup> It must be proved with equal certainty and clearness as the crime itself; otherwise, there can be no conviction of the crime in its qualified form.<sup>29</sup>

In this case, while the qualifying circumstance of knowledge of Niebres of AAA's mental retardation was specifically alleged in the Information, no supporting evidence was adduced by the prosecution. The fact that Niebres did not dispute AAA's mental retardation during trial is insufficient to qualify the crime of rape, since it does not necessarily create moral certainty that he knew of her disability at the time of its commission. It is settled that the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense.<sup>30</sup> On that score, the prosecution cannot simply profit from Niebres's omission, as it must rely on its own evidence to prove his knowledge of AAA's mental disability beyond reasonable doubt.

Additionally, mere relationship by affinity between Niebres and AAA does not sufficiently create moral certainty that the former knew of the latter's disability. In *People v. Ramos*,<sup>31</sup> the Court ruled that "while private complainant was the niece of accused-appellant and they were neighbors before and at the time of the commission of the crime[, the same] do not constitute conclusive proof that accused-appellant had knowledge of the mental retardation of private complainant absent evidence of external manifestations of her mental condition."<sup>32</sup> Here, the prosecution did not present any evidence that AAA exhibited external manifestations of her mental condition. On the contrary, records reveal that the mental retardation of AAA only became noticeable the moment Dr. Laguidao conducted the requisite psychological test on her. When AAA engaged in other activities, she actually performed and functioned like a normal person. Thus, Dr. Laguidao testified that:

[PROS. AGATON FAJARDO]: Also in your assessment, you stated "mental retardation, mild", tell us Doctor what method did you use or take that you were able to say the mental retardation of patient is mild?

DR. LAGUIDAO: The patient has to undergo psychological test to determine the IQ or intelligence quotient of the patient.

Q: From the basis of the IQ you conducted you can now determine the mental retardation of the patient?

A: The level of the retardation.

Q: And the level is mild?

<sup>28</sup> See *People v. Diunsay-Jalandoni*, 544 Phil. 163, 176 (2007).

<sup>29</sup> *People v. Ramos*, 442 Phil. 710, 732 (2002).

<sup>30</sup> See *People v. Ortega*, 680 Phil. 285, 293-294 (2012); citation omitted.

<sup>31</sup> Supra note 29.

<sup>32</sup> Id. at 734.

A: Yes, sir.

x x x x

Q: Is the mental retardation of the patient manifests (sic)?

A: It was seen during the psychological test however during the activities she was able to function appropriately regarding her communication and self-care.

Q: So she performs normally?

A: Yes, your honor.<sup>33</sup> (Underscoring supplied)

x x x x

[ATTY. ART TEOXON]: Based on your examination this patient [AAA] is duly cognizant of whatever is happening around her especially the time?

[DR. LAGUIDAO]: Yes, sir.

Q: She was certain based on your questioning her that is happened sometimes (sic) in September 2010?

A: Yes, sir.

x x x x

Q: When you examined the patient you did not observe any abnormality on her?

A: The way she answered it seems that there is something wrong with the intelligence and the manner she presented.<sup>34</sup> (Underscoring supplied)

By and large, the prosecution failed to prove beyond reasonable doubt that Niebres was aware of AAA's mental disability at the time he committed the crime and, thus, he should be convicted of the crime of Simple Rape only.

The foregoing notwithstanding, the Court finds it necessary to modify the amount of exemplary damages awarded to AAA in order to conform with prevailing jurisprudence.<sup>35</sup> Accordingly, Niebres is ordered to pay AAA the amount of ₱75,000.00 as exemplary damages. Meanwhile, the awards of ₱75,000.00 as civil indemnity and ₱75,000.00 as moral damages are affirmed. In addition, the Court imposes, on all monetary awards, interest at the legal rate of six percent (6%) per annum from the date of finality of this Decision until fully paid.<sup>36</sup>

<sup>33</sup> TSN, April 2, 2012, pp. 19-20.

<sup>34</sup> Id. at 22-23.

<sup>35</sup> See *People v. Jugueta*, G.R. No. 202124, April 5, 2016, 788 SCRA 331, 382-383.

<sup>36</sup> *People v. Inciong*, 761 Phil. 561, 581 (2015).

**WHEREFORE**, the appeal is **DENIED**. The Decision dated August 17, 2015 of the Court of Appeals in CA-G.R. CR-HC No. 06374 is hereby **AFFIRMED** with **MODIFICATION**. Accused-appellant Rico Niebres *y* Reginaldo is found **GUILTY** beyond reasonable doubt of the crime of Simple Rape, as defined and penalized under Article 266-A (1) (d) of the Revised Penal Code and, accordingly, sentenced to suffer the penalty of *reclusion perpetua* and ordered 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, with legal interest at the rate of six percent (6%) per annum on all the monetary awards from the date of finality of this Decision until fully paid.

**SO ORDERED.**

*Mrs. Kevil*  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

**WE CONCUR:**

*Antonio Carpio*  
**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson

*Diódado M. Peralta*  
**DIOSDADO M. PERALTA**  
Associate Justice

*Alfredo Benjamin S. Caguioa*  
**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

*André Reyes*  
**ANDRÉS B. REYES, JR.**  
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 Carpio*  
**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson, Second Division

**C E R T I F I C A T I O N**

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