



Republic of the Philippines  
Supreme Court  
Manila

CERTIFIED TRUE COPY  
*Wilfredo V. Lapitan*  
WILFREDO V. LAPITAN  
Division Clerk of Court  
Third Division

JUL 31 2017

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,      G.R. No. 220143  
Plaintiff-Appellee,

Present:

-versus-

VELASCO, JR., J.,  
Chairperson,  
BERSAMIN,  
DEL CASTILLO\*,  
REYES, and  
TIJAM, JJ.

JONATHAN BAAY y FALCO,  
Accused-Appellant.

Promulgated:

June 7, 2017

*Wilfredo V. Lapitan*

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DECISION

TIJAM, J.:

This is an appeal from the Decision<sup>1</sup> dated February 26, 2015 of the Court of Appeals (CA), Eighteenth Division, Cebu City, in CA-G.R. CR-H.C. No. 01590, which sustained accused-appellant's conviction for the crime of Statutory Rape in a Decision<sup>2</sup> dated January 4, 2013 by the Regional Trial Court (RTC) of Mambusao, Capiz, Branch 21, in Criminal Case No. 09-0886-05.

**The Factual and Procedural Antecedents**

In an Information filed by the Provincial Prosecutor of Capiz, accused-appellant was charged with rape as follows:

\*Designated as an additional member as per Raffle dated March 15, 2017.

<sup>1</sup>Penned by Court of Appeals Associate Justice Gabriel T. Ingles and concurred in by Associate Justices Marilyn B. Lagura-Yap and Josep Y. Lopez, *Rollo*, pp. 4-14.

<sup>2</sup>Penned by Judge Daniel Antonio Gerardo S. Amular, *CA rollo*, pp. 28-34.

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That sometime in the month of July 2005 in Brgy. Bungsi, Mambusao, Capiz, Philippines and within the jurisdiction of this Honorable Court, the said accused, with lewd design, willfully, unlawfully and feloniously did lie and have carnal knowledge of one (AAA), a mentally (*sic*) retardate, against the will of the latter.

That the commission of the rape is aggravated by the fact that the private offended party is a mentally (*sic*) retardate who though was then 22 years old at the time of the incident, yet, considered and has mental faculties as that of a minor child.

CONTRARY TO LAW.<sup>3</sup>

Upon arraignment on April 14, 2010, accused-appellant pleaded not guilty to the charge.<sup>4</sup> Trial on the merits then ensued.

The following are the events that led to the filing of the complaint and Information, as narrated by the victim, AAA and her mother, BBB.

AAA testified that sometime in July 2005, she was drying *palay* when the accused-appellant invited her to go to the forest. Upon arrival thereat, the accused-appellant pulled down her shorts and underwear, then inserted his penis in her vagina and started a pumping motion. It lasted quite long, after which, a white liquid came out of the penis of the accused-appellant. Thereafter, she went home. After the incident, AAA got pregnant.<sup>5</sup>

On cross-examination, she testified that she practiced and was coached by her mother on what she had to say in court and to point to the accused-appellant as the one who had sex with her but in fact, the accused-appellant did not have sex with her.<sup>6</sup>

The trial court, however, noted that as AAA's examination continued, AAA made conflicting answers to the query as to whether or not accused-appellant had sex with her, which prompted the court to reset the hearing to give the witness time to rest. The defense objected to the resetting, arguing that it would give the prosecution the opportunity to coach AAA.<sup>7</sup>

BBB testified that she came to know that her daughter was pregnant when she brought her to Dr. Hector Flores for a medical check-up and therein, AAA told her about the rape incident in the forest. BBB also brought AAA to Dra. Leah Florence Adicula-Sicad to assess AAA's mental/psychological status and then to the police for the purpose of filing the complaint. On April 21, 2006, AAA delivered a baby. This is AAA's second child, the first was fathered by a certain DDD.<sup>8</sup>

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<sup>3</sup>Id. at 28.

<sup>4</sup>Id.

<sup>5</sup>Id. at 29.

<sup>6</sup>Id.

<sup>7</sup>Id. at 29-30.

<sup>8</sup>Id.



Dra. Adicula-Sicad testified that the mental faculties of AAA are severely deficient in areas where the executive functioning judgment and other areas of intellect are concerned. According to Dra. Adicula-Sicad's assessment, AAA's age is comparable to a child of around 4-5 years old as a result of mental retardation, which is congenital in nature. It being congenital in nature, the victim could not have consented or would not be in any position to give consent as to the consequences of a certain act.<sup>9</sup>

The defense presented the accused-appellant, Vicente Monajan, Remegios Llorico, and accused-appellant's mother, Teresita Baay as witnesses.

Accused-appellant denied the allegations against him. He testified that AAA's house is about 500 meters away from their house and that he knew that AAA is mentally retarded. He averred that he could not have raped AAA in July 2005 because from May 15 to August 30, 2005, he was working on the farm of a certain Motet Monajan which is about one kilometer away from the forested area where the alleged crime took place. He stayed in a hut beside the said farm and bought his needs at a store near the place. He further averred that AAA's family accused him of rape because of the trees he planted beside the pigpen owned by AAA's family.<sup>10</sup>

The other defense witnesses testified on the whereabouts of accused-appellant during the month when the incident allegedly occurred to corroborate accused-appellant's testimony. In addition, Teresita Baay testified that the conflict with AAA's family started in September 2005 when they discovered that AAA was pregnant and the latter's family was ashamed that the child to be born had no father. Also, AAA's family has issues with accused-appellant's family because the former claimed ownership over the trees planted by the latter.<sup>11</sup>

### **The Ruling of the Regional Trial Court**

In its Decision dated January 4, 2013, the RTC found that the prosecution was able to prove that the accused-appellant had carnal knowledge with AAA, a mental retardate, sometime in July 2005. It found AAA's testimony credible despite the apparent inconsistencies, explaining that the same was due to her mental condition. The RTC observed that AAA had the tendency to agree with leading questions asked. However, despite some discrepancies, AAA was consistent and positive in identifying accused-appellant as the person who raped her.<sup>12</sup> The trial court also noted that in the case study dated January 4, 2006 conducted by Veronica Martinez, Municipal Social Welfare and Development Officer of Mambusao, Capiz, AAA was consistent in pointing to the accused-appellant

<sup>9</sup>Id.

<sup>10</sup>Id. at 30.

<sup>11</sup>Id.

<sup>12</sup>Id. at 33.



as the person who abused her. The RTC also rejected accused-appellant's defenses of denial and alibi to be unmeritorious. Accordingly, the RTC ruled:

WHEREFORE, the Court finds the accused-appellant JONATHAN BAAY y FALCO alias "Jun-Jun" GUILTY beyond reasonable doubt of the crime of Rape which is defined and punished under Article 266-A, paragraph 1(d) in relation to Article 266-B, paragraph I of the Revised Penal Code. He is sentenced to suffer the penalty of Reclusion Perpetua. He is ordered to pay private complainant P50,000.00 as civil indemnity plus P50,000.00 as moral damages.

If qualified under Article 29 of the Revised Penal Code as amended by R.A. 6127 and E.O. 214, the accused, if he has agreed in writing to abide by the same disciplinary rule imposed upon convicted prisoners, shall be credited with the full duration of his preventive imprisonment, otherwise, he shall only be credited with 4/5 of the same.

SO ORDERED.<sup>13</sup>

### **The Ruling of the Court of Appeals**

In its assailed Decision, the CA affirmed the conviction but modified the damages awarded, thus:

WHEREFORE, the appeal is **DENIED**. The Decision dated January 4, 2013 of the Regional Trial Court, 6<sup>th</sup> Judicial Region, Branch 21, Mambusao, Capiz in Criminal Case No. 09-0886-05 for Statutory Rape, is hereby **AFFIRMED with MODIFICATION**. Accused Jonathan Baay is found GUILTY of the crime of statutory rape as defined and punished under Article 266-A, paragraph 1(d) in relation to Article 266-B, paragraph 1 of the Revised Penal Code and is sentenced to suffer the penalty of *reclusion perpetua*, without eligibility for parole, and to pay the offended party AAA, the sum of P75,000.00 as civil indemnity, P75,000.00 as moral damages, and P30,000.00 as exemplary damages. The civil indemnity and damages shall earn interest at 6% *per annum* from the finality of this decision until fully paid.

SO ORDERED.<sup>14</sup>

Hence, this appeal.

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<sup>13</sup>Supra note 2.

<sup>14</sup>Supra note 1, at 13.

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Both the Office of the Solicitor General (OSG), for the People, and the accused-appellant manifested that they will no longer file supplemental briefs.<sup>15</sup>

### The Issue

Whether or not the CA, in affirming the decision of the RTC, erred in convicting the accused-appellant of Statutory Rape.

### The Court's Ruling

We find the appeal unmeritorious *albeit* We modify the designation of the crime committed, as well as the indemnities awarded.

For the charge of rape to prosper, the prosecution must prove that (1) the offender had carnal knowledge of a woman, and (2) he accomplished such act through force or intimidation, or when she was deprived of reason or otherwise unconscious, or when she was under 12 years of age or was demented.<sup>16</sup>

Accused-appellant faults the RTC for finding him guilty beyond reasonable doubt of raping AAA. He insisted that he should be acquitted of the charge because doubts linger as to whether or not he had sex with AAA or the rape incident happened, considering AAA's conflicting responses to the queries regarding the same. The accused-appellant capitalizes on the fact that during AAA's cross-examination, the latter candidly stated that accused-appellant did not have sex with her.

We sustain the conviction.

The fact of AAA's mental retardation is undisputed. Even the accused-appellant admitted that he knew of AAA's mental condition. Essentially, thus, the appeal boils down to the credibility of AAA's testimony as to the fact of sexual congress between the accused-appellant and AAA.

We stress, at the outset, that prevailing jurisprudence uniformly holds that findings of fact of the trial court, particularly when affirmed by the CA, are binding upon Us.<sup>17</sup> As a general rule, on the question of whether to believe the version of the prosecution or that of the defense, the trial court's choice is generally viewed as correct and entitled to the highest respect because it is more competent to conclude so, having had the opportunity to observe the witnesses' demeanor and deportment on the witness stand as they gave their testimonies.<sup>18</sup> The trial court is in the best position to discern

<sup>15</sup>Rollo, pp. 22-25 and 26-29.

<sup>16</sup>*People of the Philippines v. Jose Dalan y Paldingan*, G.R. No. 203086, June 11, 2014.

<sup>17</sup>*People of the Philippines v. Jesus Burce*, G.R. No. 201732, March 26, 2014.

<sup>18</sup>Id.

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if the witnesses were telling the truth.<sup>19</sup> Without any clear showing that the trial court and the appellate court overlooked, misunderstood, or misapplied some fact, or circumstances of weight and substance, the rule should not be disturbed.<sup>20</sup>

In the case at bar, even though AAA's testimony was not flawless in all particulars, We do not find any justifiable reason to deviate from the findings and conclusion of the RTC, as affirmed by the CA.

The fact that AAA's testimony was practiced and instructed by her mother to impute such serious charge against the accused-appellant does not sway this Court. Given the victim's mental condition, being a 22-year old woman with a mental age of 4-5 years old, We find it highly improbable that she had simply concocted or fabricated the rape charge against the accused-appellant. We neither find it likely that she was merely coached into testifying against accused-appellant, precisely, considering her limited intellect.<sup>21</sup> In her mental state, only a very startling event would leave a lasting impression on her so that she would be able to recall it later when asked.<sup>22</sup>

Likewise, the conflicting responses of AAA to the questions on whether the accused-appellant had sex with her were succinctly explained by the trial court. According to the trial court's observation, when AAA was asked leading questions, she has the tendency to merely agree with such leading question asked.<sup>23</sup>

The accused-appellant then used the said observation to argue that the reason why AAA pointed to the accused-appellant as the perpetrator was because she was asked leading questions to that effect. Upon the other hand, accused-appellant emphasized that AAA candidly admitted on cross-examination that accused-appellant did not have sex with her.<sup>24</sup>

We do not agree.

Notably, AAA's statements that accused-appellant indeed raped her or had sex with her were not entirely solicited from leading questions in her direct testimony. During AAA's cross, re-direct, and re-cross examinations, the trial court also propounded clarificatory questions in the following manner:

COURT: But truly the accused did not have sex with you, am I correct?

A: I was raped, sir.

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<sup>19</sup>Id.

<sup>20</sup>Id.

<sup>21</sup>*People of the Philippines v. Jofer Tablang*, G.R. No. 174859, October 30, 2009.

<sup>22</sup>Id.

<sup>23</sup>Supra note 2, at 32.

<sup>24</sup>Accused-appellant's Brief, CA rollo, p. 20.

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COURT: If according to you accused Jonathan Baay did not have sex with you, who had sex with you?

A: Jonathan Baay, Your Honor.

xxx

Q: Why he should (*sic*) be imprisoned?

A: Because he has done wrong, Your Honor, he raped me.

Q: It was a different man who had sex with you?

A: Jonathan Baay, sir.<sup>25</sup>

Clearly, the foregoing are not leading questions. It is, thus, not merely leading questions which brought about AAA's statement pointing to him as the person who had sex with her, contrary to the accused-appellant's contention.

At any rate, the trial court correctly pointed out that what is significant, notwithstanding discrepancies in AAA's testimony, was the positive identification of the accused-appellant as the person who raped or had sex with her. We also could not disregard the study dated January 4, 2006 conducted by Veronica D. Martinez, Municipal Social Welfare and Development Officer of Mambusao, Capiz, that AAA was consistent in identifying accused-appellant as the person who abused her.<sup>26</sup>

We also find no reason to discredit AAA's testimony by the defense's imputation of ill-motive against AAA and her family. The defense claims that the case was filed against accused-appellant because AAA's family got angry with the accused-appellant's family because they claimed ownership over the trees planted by the latter. It is also alleged that the conflict between the parties started when the accused-appellant's family discovered that AAA was pregnant and her family was ashamed that the child would be born without a father.

Again, these fail to persuade Us.

We find such conflict as regards the "trees planted" too flimsy and insignificant for AAA or her family to charge accused-appellant of such a serious crime and to make AAA publicly disclose that she had been raped and undergo the concomitant humiliation, anxiety, and exposure to a public trial.<sup>27</sup> Likewise, We find no reason nor wisdom in filing a criminal case against accused-appellant by mere reason that AAA's family was ashamed

<sup>25</sup>Id. at 54-55.

<sup>26</sup>Supra note 2, at 32.

<sup>27</sup>*People of the Philippines v. Joel Abat y Cometa*, G.R. No. 202704, April 2, 2014.

that AAA bore a child without a father. Indeed, AAA's family would be subject to the same, if not worse, situation in filing the case as such would inevitably put AAA in public scrutiny.

Accused-appellant's defenses of denial and alibi deserve scant consideration. As can be gleaned from the records, the testimonies of the defense witnesses which should supposedly support accused-appellant's alibi did not clearly state that it was indeed impossible for the accused-appellant to have raped AAA. At most, their testimonies merely proved that accused-appellant worked on a farm from May to August 2005.

In all, We affirm the RTC and CA's finding that the accused-appellant indeed raped AAA.

We, however, find it erroneous for the RTC and the CA to convict accused-appellant of Statutory Rape under Article 266-A, paragraph 1(d) of the Revised Penal Code, as amended. The gravamen of the offense of statutory rape under the said provision is the carnal knowledge of a woman below 12 years old.<sup>28</sup> To convict an accused of the crime of statutory rape, the prosecution must prove: first, the age of the victim; second, the identity of the accused; and last but not the least, the carnal knowledge between the accused and the victim.<sup>29</sup>

In this case, it is not disputed that AAA was already 22 years old when she was raped *albeit* she has a mental age of 4-5 years old.

It should, however, no longer be debatable that rape of a mental retardate falls under paragraph 1(b), not Section 1(d), of the said provision as the same, precisely, refers to a rape of a female "deprived of reason".<sup>30</sup> This Court, in the case of *People v. Dalan*<sup>31</sup>, explained:

We are not unaware that there have been cases where the Court stated that sexual intercourse with a mental retardate constitutes statutory rape. Nonetheless, the Court in these cases, affirmed the accused's conviction for simple rape despite a finding that the victim as a mental retardate with a mental age of a person less than 12 years old.

Based on these discussions, we hold that **the term statutory rape should only be confined to situations where the victim of rape is a person less than 12 years of age.** If the victim of rape is a person with mental abnormality, deficiency, or retardation, the crime committed is simple rape under Article 266-A, paragraph 1(b) as she is considered "deprived of reason" notwithstanding that her mental age is equivalent to that of

<sup>28</sup>*People of the Philippines v. Jose Dalan y Paldingan*, supra note 16.

<sup>29</sup>*Id.*

<sup>30</sup>*Id.*

<sup>31</sup>*Id.*

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a person under 12. **In short, carnal knowledge with a mental retardate whose mental age is that of a person below 12 years, while akin to statutory rape under Article 266-A, paragraph 1(d), should still be designated as simple rape under paragraph 1(b).**<sup>32</sup> (*emphasis supplied*)

Considering the circumstances of this case, We find that accused-appellant should be held liable for simple rape.

At any rate, We sustain the penalty of *reclusion perpetua* imposed by both the RTC and the CA. Indeed, Article 266-B in relation to Article 266-A(1) of the Revised Penal Code, as amended, provides that simple rape is punishable by *reclusion perpetua*. The penalty is increased to death only when the qualifying circumstance of knowledge by the accused of the mental disability of the victim, among others, is alleged in the information.<sup>33</sup> In this case, while it was proven and admitted during trial that accused-appellant knew of AAA's mental retardation, the same was not alleged in the Information, hence, cannot be appreciated as a qualifying circumstance.<sup>34</sup>

Anent the award of damages, the increase of the award of exemplary damages from PhP30,000 to PhP75,000 is proper, in accordance with the prevailing jurisprudence on the matter.<sup>35</sup> The awards of civil indemnity and moral damages in the amount of PhP75,000 each are maintained.<sup>36</sup>

**WHEREFORE**, premises considered, the instant appeal is **DISMISSED**. Accordingly, the Decision of the Court of Appeals in Cebu City dated February 26, 2015 in CA-G.R CR-H.C. No. 01590 is hereby **AFFIRMED WITH MODIFICATION** as follows:

WHEREFORE, the appeal is DENIED. Accused Jonathan Baay is found GUILTY of the crime of **simple rape** as defined and punished under **Article 266-A, paragraph 1(b)** in relation to Article 266-B, paragraph 1 of the Revised Penal Code and is thus sentenced to suffer the penalty of *reclusion perpetua* and to pay the offended party AAA the sum of PhP75,000.00 as civil indemnity, PhP75,000.00 as moral damages and **PhP75,000.00** as exemplary damages. The civil indemnity and damages shall earn interest at 6% *per annum* from the finality of this decision until fully paid.

<sup>32</sup>Id.

<sup>33</sup>*People of the Philippines v. Rey Monticalvo y Magno*, G.R. No. 193507, January 30, 2013.

<sup>34</sup>Id.

<sup>35</sup>*People of the Philippines v. Ireneo Jugueta*, G.R. No. 202124, April 5, 2016.

<sup>36</sup>Id.

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**SO ORDERED.**

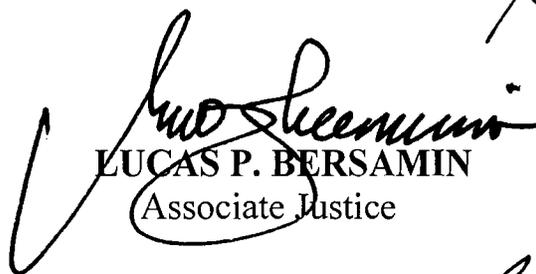


**NOEL GIMENEZ TIJAM**  
Associate Justice

**WE CONCUR:**



**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson



**LUCAS P. BERSAMIN**  
Associate Justice



**MARIANO C. DEL CASTILLO**  
Associate Justice



**BIENVENIDO L. REYES**  
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.



**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson, Third Division

## 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

**CERTIFIED TRUE COPY**



**WILFREDO V. LAPITAN,**  
Division Clerk of Court  
Third Division

**JUL 31 2017**