

## THIRD DIVISION

[ G.R. No. 207666, November 22, 2017 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V.  
FLORIANO TAYABAN, ACCUSED-APPELLANT.**

### RESOLUTION

**LEONEN, J.:**

This resolves the appeal<sup>[1]</sup> from the Court of Appeals June 28, 2012 Decision<sup>[2]</sup> in CA-GR. CR-HC No, 04580, affirming with modification the July 12, 2010 Decision<sup>[3]</sup> of Branch 14, Regional Trial Court, Ifugao. The Regional Trial Court found the accused therein, Floriano Tayaban (Tayaban), guilty beyond reasonable doubt of the crime of rape. It imposed the penalty of *reclusion perpetua* and ordered Tayaban to pay the victim P50,000.00 as civil indemnity and P50,000;00 as moral damages. On appeal, the Court of Appeals affirmed the Regional Trial Court Decision, but imposed the penalty of *reclusion perpetua* without eligibility for parole.

In the Information dated August 20, 2008, accused-appellant Tayaban was charged with the crime of rape.<sup>[4]</sup> It read, in part:

That sometime in May, 2008, at Ifugao, hence, within the jurisdiction of this Honorable Court, the above-named accused DID then and there willfully, unlawfully and feloniously have carnal knowledge of one AAA, a sixteen (16)[-]year[-]old mentally retardate.<sup>[5]</sup>

Upon arraignment on October 8, 2008, accused-appellant entered a plea of not guilty. Trial on the merits then ensued after the requisite pre-trial.<sup>[6]</sup>

The version of the prosecution was as follows:

AAA had been previously assessed to have moderate mental retardation, an intellectual disability.<sup>[7]</sup> Sometime in May 2008, AAA went to the house of her uncle, accused-appellant Tayaban, at Ifugao.<sup>[8]</sup> While she was there, accused-appellant undressed her and removed his pants. He then inserted his penis in her vagina many times and bit her breast.<sup>[9]</sup> Around three (3) months later<sup>[10]</sup>, Dr. Mae Codamon-Diaz (Dr. Diaz) physically examined AAA and found a healed laceration on her hymen, which she said could have occurred more than two (2) weeks earlier.<sup>[11]</sup>

The version of the defense was as follows:

Accused-appellant was a farmer. In the first week of May 2008, he brought a carabao to Baguio for the last novena of his brother-in-law's father. He returned to Ifugao after six (6) to seven (7) days. He went to to get his tools then proceeded to which was about an hour away,<sup>[12]</sup> to fix a house where he could stay and work. He

returned to sometime around the end of May 2008 or the beginning of June 2008.  
[13]

In its July 12, 2010 Decision,<sup>[14]</sup> the Regional Trial Court found accused-appellant guilty beyond reasonable doubt of the crime of rape. It noted that although it was proven that accused-appellant was AAA's uncle, this aggravating circumstance was not alleged in the Information and could not be considered. Similarly, it could not consider the minority of the victim, as her age was not properly established during trial.<sup>[15]</sup> The Regional Trial Court found AAA's testimony credible.<sup>[16]</sup> It rejected accused-appellant's defense as a self-serving fabrication<sup>[17]</sup> and noted that his defense was corroborated only by his wife.<sup>[18]</sup> The dispositive portion of this Decision read:

WHEREFORE, premises considered, the Court finds accused guilty beyond reasonable doubt of the crime of raps and hereby sentences accused to suffer imprisonment of reclusion perpetua. The Court further orders accused to pay the complainant [AAA] in the amount of Fifty Thousand (Php50,000.00) Pesos as indemnity and another Fifty Thousand (Php50,000.00) as moral damages.

SO ORDERED.<sup>[19]</sup>

In its June 28, 2012 Decision,<sup>[20]</sup> the Court of Appeals affirmed the findings of the Regional Trial Court but modified the penalty. The dispositive portion of this Decision read:

WHEREFORE, premises considered, the assailed decision dated 12 July 2010 of the Regional Trial Court (RTC), Branch 14, Ifugao, in Crim. Case No. 1783 is AFFIRMED with modification in that accused-appellant is meted out an imprisonment of reclusion perpetua without eligibility for parole.

SO ORDERED.<sup>[21]</sup>

Thus, accused-appellant filed a Notice of Appeal with the Court of Appeals.<sup>[22]</sup>

In compliance with its January 11, 2013 Resolution,<sup>[23]</sup> which gave due course to accused-appellant's notice of appeal, the Court of Appeals elevated the records of the case to this Court.<sup>[24]</sup> In its September 2, 2013 Resolution, the Court of Appeals notified the parties that they may file their respective supplemental briefs.<sup>[25]</sup> Both parties filed their respective manifestations in lieu of supplemental briefs on November 6, 2013.<sup>[26]</sup>

After carefully considering the parties' arguments and the records of this case, this Court resolves to dismiss accused-appellant's appeal for failing to show reversible error in the assailed decision warranting this Court's appellate jurisdiction.

Article 266-A of the Revised Penal Code provides, in part:

Article 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 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.

To sustain a conviction under Article 266-A(1) of the Revised Penal Code, it must be shown that a man had carnal knowledge of a woman, and that said carnal knowledge was under any of the following circumstances:

- a) Through force, threat or intimidation;
- b) The victim is deprived of reason;
- c) The victim is unconscious;
- d) By means of fraudulent machination;
- e) By means of grave abuse of authority;
- f) When the victim is under 12 years of age; or
- g) When the victim is demented.<sup>[27]</sup>

In relation to the requirement that the victim should be under 12 years of age, it is the victim's mental age that is determinative of her capacity to give consent. In *People v. Corpuz y Flores*:<sup>[28]</sup>

In *People v. Quintos y Badilla*, this Court emphasized that the conditions under Article 266-A should be construed in the light of one's capacity to give consent. Similarly, this Court clarified that an intellectually disabled person is not automatically deprived of reason. Thus,

We are aware that the terms, "mental retardation" or "intellectual disability," had been classified under "deprived of reason." The terms, "deprived of reason" and "demented", however, should be differentiated from the term, "mentally retarded" or "intellectually disabled." ***An intellectually disabled person is not necessarily deprived of reason or demented. This court had even ruled that they may be credible witnesses. However, his or her maturity is not there despite the physical age. He or she is deficient in general mental abilities and has an impaired conceptual, social, and practical functioning relative to his or her age, gender, and peers. Because of such impairment, he or she does, not meet the "social-cultural standards of personal independence and social responsibility."*** (Emphasis provided, citations omitted)

In *Quintos*, this Court also clarified that one's capacity to give consent depends upon his or her mental age and not on his or her chronological age.

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, a 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. (Emphasis provided)

If a woman above 12 years old has a mental age of a child below 12, the accused remains liable for rape even if the victim acceded to the sordid acts. The reason behind the rule "is simply that if sexual intercourse with a victim under twelve years of age is rape, it must thereby follow that carnal knowledge of a woman whose mental age is that of a child below twelve years should likewise be constitutive of rape."<sup>[29]</sup> (Emphasis in the original, citations omitted)

The prosecution was able to prove carnal knowledge, AAA testified that accused-appellant inserted his penis into her vagina repeatedly.<sup>[30]</sup> Dr. Diaz's testimony corroborated that there had been carnal knowledge of AAA.<sup>[31]</sup> The prosecution also proved that due to her intellectual disability, AAA's mental age was equivalent to someone under 12 years old. AAA's intellectual disability was established by the testimony of her teacher<sup>[32]</sup> and was found by the Regional Trial Court, which itself was able to examine her demeanor:

The Court observed the victim even before she testified, that her demeanor is that of a two to three year old child. She looked at someone, then turn[ed] her head left and right and face[d] other people while shaking her head with a smile but without a word. Her actuations clearly and . . . obviously indicate that she is mentally retardate (sic). As a retardate, she falls under Paragraph 1 (B) of Article 266-A of the Revised Penal Code. In PP vs. Rolando Magabo, 350 SCRA 126, a mental retardate is classified as a person deprived of reason, not one who is demented. Carnal knowledge of a retardate person is considered rape under subparagraph B not D of 266-A(1) of the Revised Penal Code.<sup>[33]</sup>

This claim has no merit.

The presentation of a psychologist is not essential in determining the intellectual condition of AAA. In this case, AAA's intellectual disability was established by the testimony of her teacher and the Regional Trial Court's observation of her conduct in court. Even accused-appellant himself admitted that he was aware of AAA's intellectual disability.<sup>[34]</sup> Moreover, a Psychological Report was issued by the

Philippine Mental Health Association, showing that AAA's overall level of intellectual functioning is comparable to a three (3)-year-old child. Accused-appellant has failed to show any reason to reverse the finding of the lower courts. Thus, this Court quotes the Court of Appeals with approval:

Mental abnormality may be established by evidence other than medical evidence or psychiatric evaluation; it may be established by the testimonies of witnesses.

While the prosecution did not present a psychologist to prove that AAA was a mental retardate, the prosecution had established the mental retardation of AAA through the testimony of Gladys Marie Tobiagon (teacher of AAA at thus:

.....

PROS TUMAPANG ON DIRECT EXAMINATION:

Q Madam witness, do you know the private complainant, alleged victim in this case, AAA?

A Yes.

Q Why do you know her?

A She was my pupil in 2003.

.....

Q What is that school?

A

Q What is SPED all about?

A SPED Diagnose disability of children with malfunction mentally.

Q Are you saying these pupils are children whose mental development does not corresponds (sic) their biological age?

A Yes.

Q You mean children about 16 to 17, some of them have mental age of 4, 5[,] 6?

A Yes.

.....

Q You are focused in their mental disability?

A My class is a multi class for mental disability.

Q You said you know AAA who is one of your pupils. Do you remember how old she is?

A That time in 2003, her birth date is June 20, 1991 so I think 14 years old.

Q Although 14 years old, how do you assess?

A She has poor assessment. She could not cope in her academic subjects.