

THIRD DIVISION

[G.R. No. 200940, July 22, 2015]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MARTIN NERIO, JR., ACCUSED-APPELLANT.**

D E C I S I O N

PERALTA, J.:

Brought before the Court is a Petition for Review on *Certiorari* assailing the Decision^[1] of the Court of Appeals (CA) dated September 30, 2011 in CA-G.R. CR-HC No. 00853-MIN. The CA affirmed *in toto* the Decision^[2] of the Regional Trial Court (RTC) of Bansalan, Davao del Sur, Branch 21, dated July 22, 2010 in Criminal Case No. XXI-1016(03), finding accused-appellant Martin Nerio, Jr. guilty beyond reasonable doubt of the crime of rape.

In an Information dated September 22, 2003, the Provincial Prosecutor of Davao del Sur charged Nerio with the crime of Rape, allegedly committed against AAA^[3] as follows:

That on or about the 26th of February 2003 at about 4:00 o'clock in the afternoon thereof and/or subsequent thereto, at Barangay Blocon, Municipality of Magsaysay, Province of Davao del Sur and within the jurisdiction of this Honorable Court, the abovenamed accused after bringing the offended party thirteen (13) year old and mentally retarded AAA from Chapter 5, Barangay Aplaya, Digos City to his residence at Barangay Blocon, Magsaysay, Davao del Sur, by force or intimidation did then and there willfully, unlawfully and feloniously have carnal knowledge with aforesaid offended party against her will and without her consent.

CONTRARY TO LAW.^[4]

Nerio, upon arraignment, entered a plea of not guilty to the crime charged.^[5]

During trial, the prosecution presented the following version of the facts:

AAA, a child with special needs, was born on April 15, 1990 and was adopted by Kathlene^[6] and Rick. In the afternoon of February 26, 2003, Kathlene was working in the school canteen of the Aplaya Elementary School when she noticed that AAA, who was also enrolled at the same school, was missing. Thinking that AAA just went to her cousin's house near the school, Kathlene did not worry until after school hours when AAA was still nowhere to be found. She then went to look for her child, and when she was unsuccessful, she went to the police to have the incident placed in the blotter.

Rick likewise looked for AAA, and he was told that his daughter was seen boarding a minibus with a group of people who just had picnic at the beach. Together with their neighbor, Rosaliah,^[7] Rick and Kathlene proceeded to Matanao, Davao del Sur, after learning that the minibus was Matanao-bound. With the assistance of the police, they were able to find the owner of the minibus who told them that he indeed saw AAA inside his bus. The charterer of the minibus, Arthur Lucero, informed them that AAA went to the house of the Nerios in Blocon, Magsaysay, Davao del Sur. It was already 1:00 a.m. of February 27, 2003 when they arrived at said house. When Lucero knocked, it was the mother of the accused-appellant, Violeta, who opened the door. When Kathlene asked about her daughter, Violeta told her that AAA was sleeping upstairs. But when Kathlene started climbing the stairs, Violeta immediately corrected herself and said that AAA was, in fact, sleeping on the ground floor. Still, Kathlene proceeded and upon seeing a room with the door left ajar, she went inside. To her dismay, she saw her daughter scantily clad sleeping beside a half-naked Nerio, with her head resting on the latter's shoulder.

When Rosaliah asked Violeta why she allowed her son to sleep with AAA, she received no answer. So they took AAA and proceeded to the Matanao Police Station to report the incident before finally returning home to Digos.

On February 28, 2003, Dr. Arthur Navidad examined AAA. He found a hymenal laceration at eleven (11) o'clock position, which appeared fresh and could not have occurred more than three (3) days from the date he examined AAA. Dr. Navidad also testified that AAA acted like a small child so they even had to bribe her in order to examine her genital area.

The prosecution likewise presented a Psychological Assessment Report^[8] on AAA by the psychologist at the Psychiatry Department of Davao Medical Center, which reads:

MENTAL ABILITY:

Subject gained a raw score of 11 and its equivalent percentile rating is 55%. Results suggest Mild [to] Moderate Mental Retardation. Subject attains intellectual levels similar to those of average four – seven year-old children. She can hardly understand simple instructions.

x x x x

In defense of her son, Violeta testified that AAA, who was a complete stranger to them, joined them during their picnic on February 26, 2003 at the Aplaya Beach in Digos. When they were about to go home, AAA also boarded the minibus. When asked to leave, AAA simply held on to her seat. Since they could not seem to do anything that would make AAA leave, they decided to take her home with them and just bring her to the *barangay* officials the following day. At home, Nerio would ask his mother to take AAA downstairs because she kept following him to his room. Later, when it was time to sleep, Violeta asked Nerio and AAA to come down and they all slept on the ground floor, with Violeta in between the two (2). Nerio, for his part, testified that all along, he and his family knew that AAA is a special child. He was also surprised that the police came to their house late at night but he did not mind because he thought they only came to take AAA home. Thus, he was shocked when he learned that he was being accused of raping AAA. He asserted that he

could not have abused AAA because he slept downstairs while AAA slept upstairs with his mother and sisters.

On July 22, 2010, the RTC of Bansalan, Davao del Sur found Nerio guilty beyond reasonable doubt of the crime of rape. The decretal portion of the Decision declares:

WHEREFORE, in view of all the foregoing, this Court finds accused Martin Nerio, Jr. guilty of rape beyond reasonable doubt and is hereby meted the penalty of Reclusion Perpetua and ordered to pay private complainant P50,000.00 as civil indemnity and P50,000.00 as moral damages.

SO ORDERED.^[9]

Nerio thus sought relief from the CA. On September 30, 2011, the appellate court rendered a Decision affirming the trial court's ruling in its entirety. The dispositive portion of said decision reads:

WHEREFORE, the appeal is **DISMISSED**. The court *a quo's Decision* dated July 22, 2010 in Criminal Case No. XXI-1016 (03) is **AFFIRMED in toto**.

SO ORDERED.^[10]

Nerio now comes before the Court seeking the reversal of the CA Decision. He raises the lone issue of whether there can be a finding of guilt beyond reasonable doubt in the crime of rape where the victim, who is mentally disabled, was not presented in court during trial to substantiate the accusation in the criminal information.^[11]

The Court finds the petition to be devoid of merit.

Mental retardation has been defined as a chronic condition that exists at birth or early childhood and characterized by impaired intellectual functioning measured by standardized tests. Intellectual or mental disability is a term synonymous with and is now preferred over the older term, mental retardation.^[12]

Under Article 266-A of the Revised Penal Code (*RPC*), rape can be committed in the following manner:

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;

x x x x^[13]

It is settled that carnal knowledge of a woman who is a mental retardate is rape as she is in the same class as a woman deprived of reason or otherwise unconscious. The term "deprived of reason" has been construed to encompass those who are suffering from mental abnormality, deficiency or retardation.^[14] Carnal knowledge of a woman above twelve (12) years of age but with the mental age of a child below twelve (12) years, even if she agrees to the same, is rape because a mental retardate cannot give a valid and intelligent consent to such act.^[15] If sexual intercourse with a child below twelve (12) years of age is rape, then it must follow that sexual intercourse with a thirteen-year-old girl whose mental capacity is that of a four or seven-year-old child will likewise constitute rape.^[16] The essence of the offense is whether the alleged victim has the ability to render an intelligent consent, and therefore, could not have been deprived of the required reason at the time of the sexual congress. Contrary to the assertion of the defense, the prosecution was able to establish that AAA is indeed a special child. In fact, Nerio himself said in his direct testimony that he and his family had known from the start that AAA is a special child.^[17] At the time of the incident, AAA was already in her sixth year as a Grade 1 pupil. According to Kathlene, she first noticed that her adopted child is mentally challenged when the latter was merely six (6) years old. Dr. Navidad observed that when he was about to conduct the physical examination, AAA, a thirteen-year-old, acted more like a small child. She started crying and refused to be examined. The prosecution also submitted the Psychological Assessment Report showing that AAA has Mild to Moderate Mental Retardation. Lastly, the lower court observed that while in court and seated next to Kathlene, AAA would bury her head on the lap of her mother and would make unnecessary and imperceptible sounds. This would prompt Kathlene to bring her out of the court from time to time.^[18]

Nerio doubts the trial court's conclusion that AAA is mentally retarded based merely on its observation of her demeanor in court. He strongly presses that AAA was never presented in court as a witness. AAA even refused to give her name when asked to be identified. The lower court, therefore, could not have possibly been sure that the child seated beside Kathlene was indeed AAA.

This argument is ludicrously misplaced.

It is true that in rape cases, the testimony of the victim is essential. However, when the victim is a small child or, as in this case, someone who acts like one, and thus cannot effectively testify as to the details of the offense, and there are no other eyewitnesses, resort to circumstantial evidence becomes inevitable. Circumstantial evidence, sometimes referred to as indirect or presumptive evidence, indirectly proves a fact in issue through an inference which the fact-finder draws from the evidence established.^[19] It is not a weaker form of evidence *vis-à-vis* direct evidence.^[20] Resort to it is imperative when the lack of direct testimony would result in setting an outlaw free. The Court reiterates that direct evidence of the commission of a crime is not the only basis on which a court may draw its finding of guilt.^[21] In fact, circumstantial evidence, when demonstrated with clarity and forcefulness, may even be the sole basis of a criminal conviction. It cannot be