

## SECOND DIVISION

[ G.R. No. 199740, March 24, 2014 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JERRY OBOGNE, ACCUSED-APPELLANT.**

### R E S O L U T I O N

**DEL CASTILLO, J.:**

Appellant Jerry Obogne was charged with the crime of rape in an Information that reads as follows:

That on or about the 29th day of July 2002, in the afternoon, in *barangay* Ogbong, municipality of Viga, province of Catanduanes, Philippines, within the jurisdiction of the Honorable Court, the said accused by means of force and intimidation, willfully, unlawfully and feloniously x x x succeeded in having carnal knowledge of "AAA",<sup>[1]</sup> a 12-year old mentally retarded person, to the damage and prejudice of the said "AAA".<sup>[2]</sup>

When arraigned on December 17, 2004, appellant entered a plea of not guilty.<sup>[3]</sup> On March 13, 2008, the Regional Trial Court of Virac, Catanduanes, Branch 43, rendered a Judgment,<sup>[4]</sup> viz:

WHEREFORE, judgment is, hereby, rendered finding Jerry Obogne guilty beyond reasonable doubt of the crime of simple rape committed against "AAA" and, hereby, sentences him to suffer a penalty of reclusion perpetua and to indemnify "AAA" the amount of P50,000.00 as civil indemnity, P50,000.00 as moral damages, and P25,000.00 as exemplary damages; and to pay the costs.

SO ORDERED.<sup>[5]</sup>

The trial court did not consider "AAA's" mental retardation as a qualifying circumstance considering that the Information failed to allege that appellant knew of "AAA's" mental disability.

Aggrieved, appellant appealed to the Court of Appeals.<sup>[6]</sup> In its Decision<sup>[7]</sup> of March 28, 2011, the appellate court affirmed the trial court's ruling with modifications, viz:

WHEREFORE, the appeal is DISMISSED. The Judgment, dated March 13, 2008, of the Regional Trial Court of Virac, Catanduanes, Branch 34,<sup>[8]</sup> in

Criminal Case No. 3303, is AFFIRMED with MODIFICATION that accused-appellant is further ordered to pay "AAA" the additional amount of P50,000.00 as civil indemnity apart from the award of P50,000.00 as moral damages and of P25,000.00 as exemplary damages.

SO ORDERED.<sup>[9]</sup>

Hence, this appeal.

In a Resolution<sup>[10]</sup> dated February 15, 2012, we required both parties to file their Supplemental Briefs. However, they opted to adopt the briefs they filed before the Court of Appeals as their Supplemental Briefs.<sup>[11]</sup>

Appellant argues that the testimony of "AAA" deserves no credence because she was incapable of intelligently making known her perception to others by reason of her mental disability.

We are not persuaded.

Sections 20 and 21, Rule 130 of the Rules of Court provide:

Sec. 20. *Witnesses; their qualifications.* - Except as provided in the next succeeding section, all persons who can perceive, and perceiving, can make known their perception to others, may be witnesses.

x x x x

Sec. 21. *Disqualification by reason of mental incapacity or immaturity.* - The following persons cannot be witnesses:

(a) Those whose mental condition, at the time of their production for examination, is such that they are incapable of intelligently making known their perception to others;

(b) Children whose mental maturity is such as to render them incapable of perceiving the facts respecting which they are examined and of relating them truthfully.

In this case, "AAA" is totally qualified to take the witness stand notwithstanding her mental condition. As correctly observed by the trial court:

When "AAA" was presented on November 14, 2006, defense counsel manifested his objection and called the Court's attention to Rule 130, Section 21 of the Rules of Court, which lists down persons who cannot be witnesses; i.e. those whose mental condition, at the time of their production for examination, is such that they are incapable of intelligently making known their perception to others x x x.

During the continuation of AAA's testimony x x x she was able to recall what [appellant] did to her x x x.

"AAA" recalled that while she was playing, [appellant] saw her and asked her to go with him because he would give her a sugar cane. [Appellant] brought "AAA" to his house and while inside, 'he removed her panty, and then inserted his penis into her vagina and he got the knife and then he took a sugar cane and then he gave it to her and then she went home.'

x x x x

This Court finds "AAA" a very credible witness, even in her mental condition. Contrary to defense counsel's objection that "AAA" was not capable of intelligently making known her perception to others, "AAA" managed to recount the ordeal she had gone through in the hands of the accused, though in a soft voice and halting manner x x x.

"AAA's" simple account of her ordeal clearly reflects sincerity and truthfulness.

While it is true that, on cross-examination, "AAA" faltered in the sequence of events x x x this is understandable because even one with normal mental condition would not be able to recall, with a hundred percent accuracy, events that transpired in the past. But "AAA" was certain that 'it was a long time x x x after the incident' when it was reported to the police. Likewise, she was very certain that the accused inserted his penis into her vagina x x x.<sup>[12]</sup>

In the same vein, the appellate court found "AAA" qualified to take the witness stand, viz:

Our own evaluation of the records reveals that "AAA" was shown to be able to perceive, to make known her perception to others and to remember traumatic incidents. Her narration of the incident of rape given in the following manner is worthy of note:

x x x x

Private complainant "AAA" provided a clear, convincing and competent testimonial evidence to prove the guilt of the accused-appellant of the crime of rape beyond reasonable doubt. As found by the trial court, the testimony of "AAA" was replete with consistent details, negating the probability of fabrication.

We stress that, contrary to accused-appellant's assertions, mental retardation *per se* does not affect a witness' credibility. A mental retardate may be a credible witness.<sup>[13]</sup>

Appellant's assertion that the trial court and the appellate court should have