

SECOND DIVISION

[G.R. No. 203086, June 11, 2014]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JOSE DALAN Y
PALDINGAN, APPELLANT.**

DECISION

BRION, J.:

We review the appeal, filed by appellant Jose Dalan, assailing the decision^[1] of the Court of Appeals (CA) dated January 31, 2012 in CA-G.R. CR-HC No. 04279. The CA affirmed the Judgment^[2] of the Regional Trial Court (RTC), Branch 64, Abatan, Buguias, Benguet, which found the appellant guilty beyond reasonable doubt of two counts of **statutory rape**.

In its Judgment dated December 3, 2009, the RTC convicted the appellant of two counts of statutory rape. It ruled that the prosecution was able to prove that the appellant inserted his penis in AAA's vagina on two occasions, namely, in December 2006 and on March 3, 2007. It added that AAA's testimony was corroborated by the medical findings of Dr. Sabrina Florendo. The RTC further explained that AAA's mental retardation cannot disqualify her as a witness, since she capably narrated the details of the sexual abuses committed against her by the appellant in 2006 and 2007.

Accordingly, the RTC sentenced the appellant to suffer the penalty of *reclusion perpetua*, and to indemnify the victim the amounts of P50,000.00 as civil indemnity and P50,000.00 as moral damages, both for each count of statutory rape.

On appeal, the CA affirmed the RTC decision. The CA ruled that AAA positively identified the appellant as the person who raped her on two occasions. According to the CA, AAA was consistent in her recollection of the details of the crime. It also added that AAA's moderate mental retardation was sufficiently established by the prosecution's evidence. Finally, the RTC found the appellant's uncorroborated denial and alibi to be unmeritorious.

Our Ruling

We **deny** the appeal, but modify the designation of the crime committed and the awarded indemnities.

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.^[3] Carnal knowledge of a woman who is a mental retardate is rape under Article 266-A, paragraph 1(b) of the Revised Penal Code, as amended. Proof of force or intimidation is not necessary, as

a mental retardate is not capable of giving consent to a sexual act. What need to be proven are the facts of sexual congress between the accused and the victim, and the mental retardation of the latter.^[4]

In the present case, the prosecution established the elements of rape under Article 266-A of the Revised Penal Code, as amended. *First*, AAA positively identified the appellant as the person who **inserted his penis in her vagina** in December 2006 and in March 2007; she never wavered in this identification. Significantly, AAA's claim of sexual intercourse had been corroborated by the medical findings and testimony of Dr. Florendo who testified that the marked attenuated hymen at 6 o'clock position was most probably caused by an erect penis, while the absent hymen at the 4, 5 and 7 o'clock positions could be caused by repeated sexual experience.

Second, the prosecution satisfactorily established the mental condition of the victim. Dr. Ekid conducted a battery of tests to determine the mental age, social maturity and emotional condition of AAA. During trial, Dr. Ekid explained each test, and how she arrived at her conclusions. Accordingly, she found AAA to be suffering from moderate retardation, with a mental age of a person four (4) years and seven (7) months old.

As the lower courts did, we are unpersuaded by the appellant's alibi that he was at a farm in Ca-ew, Bulalacao, during the two rapes. Aside from being uncorroborated, we point out that Ca-ew was just five (5) minutes away from the scene of the rape. In short, the appellant miserably failed to show that it was physically impossible for him to be at the places where AAA had been sexually abused.

The Crime Committed

Article 266-A paragraph 1 of the Revised Penal Code, as amended, provides:

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 is 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; x x x

In the present case, the Information alleged that the victim was "xxx a minor, being seventeen (17) years of age, or below eighteen (18) years old at the time of the commission of the crime, but mentally retarded with a mental age that equates to a child of four (4) years and seven (7) months," and this circumstance had been proven during trial. The RTC, however, equated AAA's mental retardation with dementia. It is settled that carnal knowledge of a woman who is a mental retardate