

## THIRD DIVISION

[ G.R. No. 177294, February 19, 2008 ]

**PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, vs. JOSEPH DELA PAZ, Accused-Appellant.**

### D E C I S I O N

**CHICO-NAZARIO, J.:**

For review is the Decision<sup>[1]</sup> dated 27 September 2006 of the Court of Appeals in CA-G.R. CR-H.C. No. 02164, which affirmed the Decision<sup>[2]</sup> dated 4 June 2004 of the Regional Trial Court (RTC) of Manila, Branch 18, in Criminal Case No. 99-175577, finding herein appellant guilty beyond reasonable doubt of one count of qualified rape with the modification that the penalty of *reclusion perpetua* was imposed instead of the death penalty in view of the enactment of Republic Act No. 9346<sup>[3]</sup> which prohibits the imposition of the latter. The amount of damages awarded was also modified.

Two separate Informations<sup>[4]</sup> both dated 4 August 1999 were filed against the appellant charging him with the crime of rape, as defined and penalized under Republic Act No. 8353,<sup>[5]</sup> in relation to Republic Act No. 7610,<sup>[6]</sup> committed against AAA,<sup>[7]</sup> on the same date 16 May 1999. The two Informations read as follows:

Criminal Case No. 99175577

This state prosecutor of the Department of Justice, on sworn complaint of AAA, a thirty-one-year-old woman with a mental capacity of a child six years and six months old on account of mental retardation, and of her mother, BBB, accuses [herein appellant] Joseph Dela Paz of RAPE, defined and punished by Republic Act No. 8353, in relation to Republic Act No. 7610, committed as follows:

On 16 May 1999, at [No.] xxx, xxx, xxx, within the jurisdiction of this Honorable Court, [appellant] Joseph Dela Paz did then and there willfully, unlawfully, and feloniously have carnal knowledge of AAA, a thirty-one-year-old woman with a mental capacity of a child six years and six months old on account of mental retardation, knowing at the time that she was mentally disabled and employing force and intimidation upon her, to her damage and prejudice.<sup>[8]</sup>

Criminal Case No. 99175578

This state prosecutor of the Department of Justice, on sworn complaint of AAA, a thirty-one-year-old woman with a mental capacity of a child six years and six months old on account of mental retardation, and of her

mother, BBB, accuses [herein appellant] Joseph Dela Paz of RAPE, defined and punished by Republic Act No. 8353, in relation to Republic Act No. 7610, committed as follows:

On 16 May 1999, at [No.] xxx, xxx, xxx, within the jurisdiction of this Honorable Court, [appellant] Joseph Dela Paz did then and there willfully, unlawfully, and feloniously have carnal knowledge of AAA, a thirty-one-year-old woman with a mental capacity of a child six years and six months old on account of mental retardation, knowing at the time that she was mentally disabled and employing force and intimidation upon her, to her damage and prejudice.<sup>[9]</sup>

Upon arraignment, the appellant, assisted by counsel *de officio*, pleaded NOT GUILTY to both charges.

At the pre-trial conference, the prosecution and the defense failed to make any stipulation of facts. The prosecution, however, requested the marking of the following documents as their Exhibits for purposes of identification, to wit: (1) Complaint Sheet<sup>[10]</sup> as Exhibit "A"; (2) Sworn Statement of the mother of AAA<sup>[11]</sup> as Exhibits "B," "B-1" and "B-2"; (3) Sworn Statement of AAA<sup>[12]</sup> as Exhibits "C," "C-1," "C-2" and "C-3"; (4) Living Case No. MG-99-478<sup>[13]</sup> as Exhibit "D"; and (5) Neuro-psychiatric examination and evaluation report<sup>[14]</sup> issued by Lorenda N. Gozar, Ma. Cynthia A. Alcuaz and Romel Tuazon Papa, Psychologist-in-Charge, Chief Psychologist and Chief of the National Bureau of Investigation (NBI) Neuro-Psychiatric Service, respectively, as Exhibits "E," "E-1," "E-2," and "E-3." Thereafter, the pre-trial conference was terminated and trial on the merits ensued.

The prosecution presented the following witnesses: CCC, the younger brother of the victim; AAA, the victim; Dr. Rio Blanca Dalid, Medico-Legal Officer of the NBI; and Lorenda Nocum Gozar,<sup>[15]</sup> the psychologist at the Neuro-Psychiatric Service of the NBI.

CCC testified that he is the younger brother of the victim, AAA. Having been living in the same house, CCC was able to observe the behavior of AAA. He described her as "*isip bata*" although she was already 31 years old because of her marked difficulty in remembering and comprehending things and events. According to him, AAA had only finished kindergarten as she could not cope with the demands of higher education.<sup>[16]</sup>

On the night of 16 May 1999, while he, together with his wife, brother and sister were watching television in their house located at No. xxx, xxx, xxx, he saw AAA go downstairs to answer the call of nature in a comfort room situated beside their store.<sup>[17]</sup> Thirty minutes had passed, but his sister had not yet returned, so, they decided to follow her. They went down to the comfort room beside their store and began to knock at the door of the comfort room. They knocked incessantly for about 20 minutes and got no response. Consequently, they forcibly opened the door. Much to their surprise, they saw their half-dressed sister, who was crying at that time, and the naked appellant inside the comfort room. In that situation, CCC's elder brother immediately boxed the appellant on the right cheek. The appellant, who was a friend, neighbor and drinking buddy of CCC, apologized at once and

asked for their forgiveness. Thereafter, they talked to their sister, AAA, but she just kept on crying.<sup>[18]</sup>

During AAA's testimony, she disclosed that on the night of 17 May 1999,<sup>[19]</sup> while she was defecating in a comfort room located outside their house, the one beside their store, the appellant entered. AAA shouted as she was afraid that the appellant would kill her. Once inside the comfort room, the appellant started to undress her. As she was then sitting on the toilet bowl, the appellant, who was standing in front of her, lifted her up with both her hands raised upward and then inserted his penis into her vagina. After the appellant had finished the push and pull movements, he withdrew his organ from the vagina of AAA and inserted it again for a second round. Thereafter, the appellant started to dress up AAA. It was at this point that AAA's brothers barged into the comfort room, literally catching the appellant with his pants down. AAA's brother then punched the appellant. In turn, the appellant asked for forgiveness.<sup>[20]</sup>

AAA further testified that she came to know the appellant who was the friend of her brother, CCC. She likewise claimed that she went to the doctor and to the police station together with her mother but she cannot remember the dates anymore.<sup>[21]</sup>

Dr. Rio Blanca Dalid, the Medico-Legal Officer of the NBI who examined AAA declared that on 18 May 1999, she examined AAA as evidenced by Living Case No. MG-99-478.<sup>[22]</sup> She found AAA's hymen to be stretchable meaning that AAA's hymen can accommodate an average-sized Filipino male organ in full erection without breaking the hymen.<sup>[23]</sup>

Lorenda Nocum Gozar, the clinical psychologist at the Neuro-Psychiatric Service of the NBI who conducted a series of psychological tests on the victim to determine her mental condition, revealed in court that on 18 May 1999, the medical officer of the NBI referred to her the case of AAA. She conducted the psychological examination on the victim on the said date and the same was reduced into writing<sup>[24]</sup> on 1 June 1999. Upon examining AAA, she found that AAA belonged to the Mentally Retarded Group with a mental age of six years and six months and an Intelligence Quotient (I.Q.) of 40, although she was already 31 years old. In arriving at such conclusion, she used the Stanford Binet Intelligence Scale, the Projective Test, behavioral examination, psychological test examination, psychological evaluation and psychological interview. All of the said types of psychological tests yielded the same results as regards the mental condition of the victim. She also observed that AAA gave long answers to simple questions. Like, when AAA was asked what her name was, she replied, "*si Joseph ni-rape ako.*" Thus, she concluded that AAA could really be classified as a mental retardate.<sup>[25]</sup>

For its part, the defense presented the appellant who categorically denied having raped AAA. Appellant averred that he does not know any reason why the family of AAA filed such a serious charge against him. No cross-examination was conducted upon the appellant; thus, the defense formally offered appellant's testimony and the medical findings of the NBI which showed that there was no sign of extragenital injuries on the victim at the time of her medical examination.<sup>[26]</sup>

On 4 June 2004, the trial court rendered the assailed Decision convicting the appellant of only one count of rape, the decretal portion of which reads, thus:

**WHEREFORE**, viewed from above observations and findings the [appellant] should be held liable for only one count of rape – Criminal Case No. 99-175577 acquitting him on the second information Criminal Case No. 99-175578 pertaining to the second insertion of the male organ.

**In Criminal Case No. 99-175577:**

Finding the prosecution's evidence sufficient to support the allegation in the information having committed sexual intercourse to a woman with a mental capacity of a 6 years and 6 months although 31 years old with the aggravating qualifying circumstance of the [appellant's] knowledge of the mental disability and or emotional disorder of the victim AAA, without any mitigating circumstance, he is hereby found **guilty** of rape under Republic Act [No.] 8353 Article 266A paragraph d, in relation to paragraph B-5 subparagraph 10, without applying the indeterminate sentence law, the [appellant] is hereby sentenced to suffer the penalty of DEATH.

x x x x

He is hereby ordered to indemnify the victim the sum of P50,000.00 representing civil liability.

**In Criminal Case No. 99-175578:**

**The [appellant] is hereby acquitted** in the above numbered criminal case.<sup>[27]</sup> (Emphases supplied.)

The records of this case were originally transmitted to this Court on automatic review.

Pursuant to *People v. Mateo*,<sup>[28]</sup> the records of the present case were transferred to the Court of Appeals for appropriate action and disposition.

In his brief, appellant assigns the following errors, viz:

- I. THE TRIAL COURT GRAVELY ERRED IN DISREGARDING THE [APPELLANT'S] DEFENSE.
- II. THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE [APPELLANT] FOR THE CRIME CHARGED.<sup>[29]</sup>

Accordingly, the Court of Appeals, taking into consideration the assignment of errors stated by the appellant in his Appellant's Brief and after a thorough study of the records of the case, rendered a Decision on 27 September 2006, affirming the conviction of the appellant for one count of rape aggravated by the appellant's knowledge of the victim's mental disability and/or emotional disorder, with the following modifications: (1) the penalty of *reclusion perpetua* was imposed in lieu of

the death penalty, in view of the enactment of Republic Act No. 9346 which prohibits the imposition thereof; and (2) the amount of civil indemnity awarded by the RTC to the victim was increased from P50,000.00 to P75,000.00 and appellant was ordered to pay the victim moral damages in the amount of P50,000.00. The dispositive portion of the decision reads:

**WHEREFORE**, premises considered, the appeal is **DISMISSED**. The appealed [D]ecision dated [4 June 2004] of the [RTC] of Manila, Branch 18 in Criminal Case No. 99-175577, finding the [appellant] guilty of one (1) count of Qualified Rape is **AFFIRMED**, with the **MODIFICATION** that he is hereby sentenced to suffer the penalty of **reclusion perpetua**, in view of the abolition of the death penalty with the enactment of Republic Act No. 9346. Moreover, the [appellant] is ordered to pay the victim P75,000.00 as civil indemnity and P50,000.00 as moral damages.

Costs *de officio*.<sup>[30]</sup>

Aggrieved by the aforesaid Decision, the appellant filed a Notice of Appeal.<sup>[31]</sup> The Court of Appeals then forwarded to this Court the records of this case.

On 11 July 2007,<sup>[32]</sup> this Court resolved to accept the present case and notify the parties that they may file their respective supplemental briefs, if they so desired. Both the Office of the Solicitor General and the appellant manifested that they were adopting their respective briefs dated 27 June 2005 and 24 February 2005, respectively, as their supplemental briefs.

After a careful review of the records of this case, this Court affirms appellant's conviction.

The gravamen of the offense of rape is sexual intercourse with a woman against her will or without her consent.<sup>[33]</sup> Article 266-A, paragraph 1 of the Revised Penal Code, as amended by Republic Act No. 8353, states that:

ART. 266-A. *Rape; When and How Committed*. - Rape is committed.

1) By a man who 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.

On the basis thereof, for the charge of rape to prosper, the prosecution must prove that (1) **the offender had carnal knowledge of a woman, and** (2) he