

SECOND DIVISION

[G.R. No. 179477, February 06, 2008]

**THE PEOPLE OF THE PHILIPPINES, Appellee, vs. JIMMY TABIO,
Appellant.**

DECISION

TINGA, J.:

Appellant Jimmy Tabio was charged with three (3) counts of rape in a single Information,^[1] the accusatory portion of which reads as follows:

That between June 13, 2002 and June 28, 2002 in [Aurora^[2]] the said accused, did then and there, unlawfully, feloniously and willfully, have carnal knowledge of mentally retarded AAA^[3] by means of force and intimidation three times all committed while the victim was alone inside their house and during nighttime which was taken advantage of to facilitate the commission of the crime.

CONTRARY TO LAW.

Appellant pleaded not guilty on arraignment before the Regional Trial Court (RTC) of Baler, Aurora, Branch 96.^[4] Trial on the merits ensued. The victim, AAA testified that one night in June 2002, while she was alone in her home, appellant entered her house. He pressed a knife on AAA's breast, removed her clothing, fondled her breast, undressed himself, and mounted her as she was seated on a bed. He inserted his penis in her vagina and ejaculated. AAA was able to recognize the appellant as her house was lighted with a gas lamp. AAA further testified that the appellant on two succeeding occasions again entered her home and repeated the same acts on her. ^[5]

Other witnesses for the prosecution presented testimony concerning AAA's mental condition. A doctor^[6] who had trained with the National Center for Mental Health testified that he had examined AAA and concluded that while she was 23 years old at the time of the rape, she nonetheless had the mental age of a six-year old child. ^[7] AAA's mother and grand aunt also testified on her mental retardation and the occurrences after she had reported the rape to them. ^[8]

Appellant testified in his own behalf, denying that he had raped AAA and offering as alibi that he was up in the mountain at the time of the rape.^[9] Appellant's wife^[10] and his brother-in-law, Jaime Bautista,^[11] tried to corroborate his alibi through their own testimony.

On 25 November 2003, the RTC handed down a decision finding appellant guilty and imposing the penalty of death on three (3) counts of qualified rape, defined in

Article 266-A, paragraph 1 (d) and penalized under Article 266-B, paragraph 6 (10) of the Revised Penal Code. The RTC also ordered appellant to pay P75,000.00 as civil indemnity and P50,000.00 as moral damages. [12] The records of the case were thereafter forwarded to this Court on automatic review. On 7 June 2005, the Court issued a Resolution[13] transferring the case to the Court of Appeals for appropriate action.[14]

The Court of Appeals[15] affirmed with modification the decision of the trial court. The appellate court found appellant guilty of all three (3) counts for simple rape only and not qualified rape. It also reduced the civil indemnity to P50,000.00 and added an award of P25,000.00 as exemplary damages.[16]

The case is again before us for our final disposition. Appellant had assigned three (3) errors in his appeal initially passed upon by the Court of Appeals, to wit: whether the RTC erred in finding him guilty of qualified rape with the penalty of death in view of the prosecution's failure to allege a qualifying circumstance in the information; whether the RTC erred in finding him guilty of all three (3) counts of rape despite the alleged failure of the prosecution to prove his guilt beyond reasonable doubt; and whether the RTC erred in awarding P75,000.00 as civil indemnity.

The Court of Appeals properly resolved the first error in appellant's favor. The information should have warranted a judgment of guilt only for simple, not qualified rape. We quote with approval the appellate court when it said:

Under Article 266-B(10)[17] of the Revised Penal Code, knowledge by the offender of the mental disability, emotional disorder, or physical handicap at the time of the commission of the rape is the qualifying circumstance that sanctions the imposition of the death penalty. Rule 110[18] of the 2000 Rules of Criminal Procedure requires both qualifying and aggravating circumstances to be alleged with specificity in the information.[19]

In the case at bench, however, the information merely states that the appellant had carnal knowledge with a mentally retarded complainant. It does not state that appellant knew of the mental disability of the complainant at the time of the commission of the crime. It bears stressing that the rules now require that the qualifying circumstance that sanctions the imposition of the death penalty should be specifically stated in the information. Article 266-B (10) of the Revised Penal Code could not, thus, be applied and the supreme penalty of death could not be validly imposed.[20]

Rule 110 of the 2000 Rules of Criminal Procedure is clear and unequivocal that both qualifying and aggravating circumstances must be alleged with specificity in the information.

The Court also observes that there is duplicity[21] of the offenses charged in the information, which is a ground for a motion to quash.[22] Three (3) separate acts of

rape were charged in one information only. But the failure of appellant to interpose an objection on this ground constitutes waiver.^[23]

We turn to the second issue. While the Court affirms that appellant is guilty of simple rape, we nonetheless find that only the first rape was conclusively proven. The second and third rapes of which appellant was charged and found guilty, were not proven beyond reasonable doubt.

Our courts have been traditionally guided by three settled principles in the prosecution of the crime of rape: (1) an accusation for rape is easy to make, difficult to prove and even more difficult to disprove; (2) in view of the intrinsic nature of the crime, the testimony of the complainant must be scrutinized with utmost caution; and (3) the evidence of the prosecution must stand on its own merits and cannot draw strength from the weakness of the evidence of the defense.^[24] In a prosecution for rape, the complainant's candor is the single most important issue. If a complainant's testimony meets the test of credibility, the accused may be convicted on the sole basis thereof. ^[25]

We have thoroughly examined AAA's testimony and found nothing that would cast doubt on the credibility of her account of the first rape. We quote the pertinent portion of her testimony:

PROS. RONQUILLO: to the witness

x x x

Q Did you have any occasion to see Jimmy inside your house in June 2002?

A Yes, Sir.

Q What time was that?

A Night time, Sir.

x x x

Q You said that Jimmy went inside your house. What did he do there?

A He fondled my breast, Sir.

Q Did you have your clothes on when Jimmy Tabio went to your house?

A Yes, sir.

x x x

Q Don't be ashamed. You said that you have your clothes on. When Jimmy saw you what did he do with your clothes, if any?

A He removed my dress, Sir.

x x x

Q So you are now without clothes because

**you said Jimmy removed your clothes.
What did he do after removing your
clothes?**

A He placed himself on top of me.

COURT: to the witness

Q Was he standing when Jimmy mounted on you?

A I was sitting, Sir.

PROS. RONQUILLO: to the witness

Q When Jimmy placed himself on top of you was
he dressed or nude?

A He was naked, Sir.

Q You said that he placed himself on top of you.
What did Jimmy do while he was on top of you?

A He pressed a knife on me.

Q On what part of your body did he press the
knife?

A Here, Sir. (Witness indicated the upper part of
her left breast)

Q What else did Jimmy do aside from pressing the
knife near your breast?

A Jimmy was in our house, Sir.

Q Do you know what penis is?

A Yes, Sir.

Q Do you know what Jimmy did with his penis?

A Yes, Sir.

Q What did he do with his penis?

A He placed his penis to my vagina.

Q What did you feel when Jimmy did that?

A I felt pain, Sir.

Q After Jimmy inserted his penis in your vagina,
what else did he do?

A Nothing more, Sir.

Q Did he move while he was on top of you?

A Yes, Sir.

**Q Can you demonstrate his movement while
he was on top of you?**

**A (Witness indicated the movement by
moving her body.)**

x x x

PROS. RONQUILLO: to the witness

Q What else did you notice while the penis of Jimmy was in your vagina?

A There was some kind of milk, Sir.

COURT: to the witness

Q Where?

A In my vagina, Sir.

PROS. RONQUILLO: to the witness

Q Why did you notice that? What did you do?

A I watched my vagina, Sir.

Q That is why you saw that thing which looks like milk?

A Yes, Sir.

Q Now, it was night time when Jimmy went into your house, is it not?

A Yes, Sir.

Q How were you able to see Jimmy while it was night time?

A I have a light, Sir.

Q What kind of light was that?

A Gas I[a]mp, Sir. [26] (Emphasis supplied.)

AAA never wavered in her assertion that appellant raped her. AAA's testimony is distinctively clear, frank and definite without any pretension or hint of a concocted story despite her low intelligence as can be gleaned from her answers in the direct examination. The fact of her mental retardation does not impair the credibility of her unequivocal testimony. AAA's mental deficiency lends greater credence to her testimony for someone as feeble-minded and guileless as her could not speak so tenaciously and explicitly on the details of the rape if she has not in fact suffered such crime at the hands of the appellant.[27]

Appellant's denials and alibi, which are merely self-serving evidence, cannot prevail over the positive, consistent and straightforward testimony of AAA. Alibi is an inherently weak defense because it is easy to fabricate and highly unreliable. To merit approbation, the accused must adduce clear and convincing evidence that he was in a place other than the *situs criminis* at the time the crime was committed, such that it was physically impossible for him to have been at the scene of the crime when it was committed.[28] We have meticulously reviewed the records and found no justification to deviate from the findings of fact of the trial court that—

Accused's alibi that he was in the mountain gathering woods during the period when [AAA] was raped deserves no consideration. When the accused took the witness stand, he gave an evasive, confused and vague