

SECOND DIVISION

[G.R. No. 118027, January 29, 2004]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. RICARDO
BALATAZO, APPELLANT.**

DECISION

CALLEJO, SR., J.:

Before the Court is an appeal from the Decision^[1] of the Regional Trial Court of Gumaca, Quezon, Branch 61, convicting the appellant, Ricardo "Dado" Balatazo, of rape, under paragraph 2 of Article 335 of the Revised Penal Code and sentencing him to suffer the penalty of *reclusion perpetua*.

The Charge

On July 31, 1991, a criminal complaint for rape under paragraph 1, Article 335 of the Revised Penal Code, as amended, was filed with the Regional Trial Court of Gumaca, Quezon, Branch 61. The accusatory portion of the complaint reads:

That on or about the 16th day of February 1991, at Sitio Mainit na Tubig, Barangay Mainit Norte, Municipality of Perez, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, by means of force, violence, threats and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the undersigned complainant, against her will.

Contrary to law.^[2]

On August 29, 1991, the appellant, assisted by counsel, was duly arraigned and entered a plea of not guilty.

The Case for the Prosecution

The prosecution presented four witnesses, namely, Adelaida Caño Dapo, the victim Marina Caño Dapo, Barangay Captain Felino Temporas, and Barangay Councilor Florentino Calvario.

Adelaida Caño Dapo testified that her daughter, Marina Caño Dapo, was already 24 years old but had the mentality of a child. She played with children and narrated her "problems" to them. The appellant was her first cousin and was one of their neighbors in Barangay Mainit Norte, Perez, Quezon Province. He was also a barangay councilman of Barangay Mainit Norte and frequented their house.

On February 16, 1991, a Saturday, Adelaida noticed that Marina had contusions on

the knees. When she asked her daughter about it, Marina replied that the appellant went up to the house earlier and made her lie down. The appellant kissed and undressed her, and then pulled her yellow-colored pants down to her knees. He then mounted her and inserted his private organ into her vagina. He put his clothes back on and left the house. Adelaida and her husband Pablo reported the matter to Barangay Captain Felino Temporas at the barangay hall. The appellant was summoned, but when confronted with the charges, denied having raped Marina. The couple also reported the matter to Barangay Councilmen Damian Guerrero and Florentino Calvario. Calvario took Marina's statement by propounding questions on her. He wrote down his questions and Marina's answers thereto.^[3] In her statement, Marina declared, *inter alia*, that the appellant threatened her before she was raped, and that when he mounted her, he pinned her knees with his legs; as a result, her knees sustained contusions.

Before presenting Marina as witness, the prosecutor asked the Court that he be allowed to ask leading questions since Marina was mentally-retarded. The appellant's counsel objected, but the court overruled the objection stating that leading questions are allowed if the witness is a child of tender age or a person whose mental capacity is that of a child.^[4]

Marina testified that, except for her name, she did not know how to read nor write. On February 16, 1991, the appellant went up to their house and made her lie down. He then undressed her, pulled her panties down to her knees and mounted her, inserting his penis into her vagina. The appellant later left their house.

The prosecution offered the testimony of Barangay Captain Felino Temporas to prove that Marina was a mental retardate and that it was of common knowledge in the barangay. The appellant's counsel did not object to the testimony of Temporas. The latter testified that the Dapo Spouses and their daughter Marina were among his constituents in the barangay. When Marina was around nine years old, she was afflicted with typhoid fever. She has acted like a child ever since,^[5] and had to stop going to school altogether.

Dr. Cheres Almagro-Daquilanea testified that on March 6, 1991, Adelaida and Marina arrived at the Doña Marta Memorial Hospital in Atimonan, Quezon. She conducted a genital examination of Marina and prepared and signed a Certification which contained the following findings:

INTERNAL EXAMINATION FINDINGS:

- a.) With old hymenal laceration on 6 o'clock, 9 o'clock and 3 o'clock positions;
- b.) Vaginal vaults admits 2 fingers with ease;
- c.) Pregnancy Test – Negative Result (--).^[6]

Florentino Cavalrio testified that he and Barangay Councilman Guerrero took Marina's statement at the Dapo residence. Marina affixed her signature thereto, above her handwritten name. Damian Guerrero signed the statement as a witness. The appellant also gave a statement in which he denied raping Marina.^[7]

After the prosecution rested its case, the appellant filed a Demurrer to Evidence,

claiming that Marina failed to prove by her testimony that he threatened, forced or intimidated her into having sexual intercourse with him. Hence, he could not be convicted of rape under paragraph 1, Article 335 of the Revised Penal Code. In his Comment on the appellant's Demurrer to Evidence, the public prosecutor contended that there was no need to prove that the appellant forced, threatened or intimidated the victim, as the evidence on record showed that she was a mental retardate. Sexual intercourse with a woman who is a mental retardate is rape under paragraph 2, Article 335 of the Revised Penal Code; thus, the appellant could be convicted of rape. In his Reply, however, the appellant insisted that:

It is respectfully submitted that the accused cannot be convicted of the crime not alleged nor included in the complaint, the use of force, violence, threat or intimidation is different and distinct from mental retardation, victim being below 12 years old etc., the accused was charged under Article 335, paragraph 1 and not under Article 335 paragraphs 2 and 3;^[8]

On July 21, 1994, the trial court rendered judgment convicting the appellant of rape under paragraph 2, Article 335 of the Revised Penal Code. The decretal portion of the decision reads:

WHEREFORE, judgment is hereby rendered finding accused, Ricardo Balatazo, guilty beyond reasonable doubt of the crime of rape, committed against Marina Caño, defined and punished under Article 335(2) of the Revised Penal Code, and he is hereby sentenced to suffer the penalty of *reclusion perpetua*, with its accessory penalties, and to pay the offended party, an indemnity in the amount of P30,000.00.

SO ORDERED.^[9]

The trial court declared that Marina was feeble-minded or mentally ill, incapable of giving consent to sexual intercourse. Accordingly, the absence of an allegation in the criminal complaint that the victim was a mental retardate was merely a procedural defect.

The appellant appealed the decision to this Court contending that:

The trial court erred in convicting the accused for a crime to which he was not charged for a crime not included and different from the crime he was charged.^[10]

The appellant asserts that under the criminal complaint, he was charged of rape under paragraph 1, Article 335 of the Revised Penal Code, as amended. However, the prosecution, through the victim herself, failed to prove that the appellant forced, threatened or intimidated her into having sexual intercourse with him. The prosecutor cannot rely on the testimonies of Adelaida Caño Dapo and Florentino Calvario because the said testimonies are mere hearsay. Furthermore, according to the appellant, the prosecutor merely proved that the victim was a mental retardate and that he had sexual intercourse with her. He cannot be convicted of rape under paragraph 2, Article 335 of the Revised Penal Code; otherwise, he would be deprived of his right to be informed of the nature of the crime charged against him. Despite the trial court's findings that the prosecution failed to prove rape as charged in the criminal complaint under paragraph 1, Article 335 of the Revised Penal Code,

the court still convicted him of rape under the second paragraph of the said Article.
[11] Besides, Marina was merely coached by her mother Adelaida.

The Office of the Solicitor General admits that, indeed, the prosecution failed to prove that the appellant raped the victim under paragraph 1, Article 335 of the Revised Penal Code, but contends that the appellant may still be convicted of the said crime under paragraph 2 of the same article. The failure of the complaint to allege that the victim was a mental retardate was, as held by the trial court, merely a procedural defect, which the appellant waived when he failed to object to the evidence of the prosecution proving that the victim was so afflicted, thus:

It is true that appellant was charged with having sexual intercourse with the victim under paragraph one of Article 335, Revised Penal Code which requires the use of force and intimidation. It is also true that the victim did not testify that force and intimidation were used by appellant when he had sexual intercourse with her.

This, however, does not mean that appellant cannot be convicted of the crime of rape under the said provision of the law. The rationale behind the constitutional right of an accused to be informed of the nature and cause of the charges against him is to give him the opportunity to properly refute the charges against him and prepare for his defense. This, he can only do if he knows exactly what he is being accused of.

In the present case, appellant knew that he was being charged with raping a retardate who had the mental faculties of a child. He, however, opted not to rebut the evidence presented by the prosecution in regard to the crime and the victim's mental state, and not to present any evidence on his defense. Since he did not even prepare for his defense, appellant cannot therefore say that his constitutional right to do so has been violated.

The public prosecutor's failure to allege in the Information that the victim was a retardate, is a mere procedural defect. Any attack on the same can be waived by the defense when it fails to object to the introduction of evidence on this matter during the trial. Moreover, even appellant himself in effect admitted the victim's mental condition when he objected to her presentation as a witness claiming that being mentally retarded, she was incompetent to testify.[12]

We do not agree with the appellant.

The appellant does not dispute the trial court's finding that Marina was suffering from a mental deficiency; that she was a mental retardate. In *People v. Dalandas*, [13] we held that:

...And the observation of the trial court, its impression of the demeanor and deportment of the victim and its conclusions anchored thereon are accorded high respect if not conclusive effect on the appellate court. In *State vs. Haner*, the Supreme Court of Iowa declared:

"Her answers to questions show that she is almost an imbecile, *unless*