

THIRD DIVISION

[G.R. No. 134773, June 29, 2004]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. AVELINO
MABONGA Y BABON, APPELLANT.**

D E C I S I O N

SANDOVAL-GUTIERREZ, J.:

Appeal from the Decision^[1] dated March 17, 1998 of the Regional Trial Court, Branch 76, San Mateo, Rizal, in Criminal Case No. 3223 convicting Avelino Mabonga, appellant, of rape and sentencing him to *reclusion perpetua*. He was ordered to pay the victim, Janice Malacaman, P50,000.00 as moral damages, and costs.

The Information^[2] charges appellant as follows:

“That on or about the 20th day of April, 1997, in the Municipality of Rodriguez, Province of Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of threats, force and intimidation and with lewd design or intent to cause or gratify his sexual desire or abuse, humiliate or degrade complainant, did then and there willfully, unlawfully and feloniously have sexual intercourse with JANICE MALACAMAN Y BRANDIS, mentally incapacitated, 13 years old, without her consent and against her will.

Contrary to law.”

Upon arraignment on June 6, 1997, appellant, assisted by counsel, pleaded not guilty to the crime charged. Trial ensued thereafter.

The evidence for the prosecution, as borne by the records, shows that complainant Janice “Bobot” Malacaman was born on September 29, 1983 to spouses Narciso and Evelyn Brandis Malacaman.^[3] But the couple separated, prompting Janice to live with her mother and stepfather Efren Pascual at G. Ramos Street, Barangay Geronimo, Rodriguez, Rizal. When Janice was 8 years old, she suffered from epilepsy.^[4] During the period from 1993 to 1996, she was examined and treated by Dr. Ricardo Atengco at the Amang Rodriguez Medical Center. He diagnosed her illness as a neurological disorder that causes delay in her neuro-developmental status.^[5] He explained that although Janice is already 13 years old, however, her mentality is that of a 6 or 7 year old.^[6]

On April 20, 1997, Evelyn, Janice’s mother, went to Marikina. Before leaving, she requested her neighbor Jennifer Ayad to watch her daughter Janice.^[7] At around 7:00 o’clock in the evening that same day, Janice went home to eat.^[8] As she was approaching the house, she saw Rolando Ayad and appellant Avelino Mabonga lying

on a bench.^[9] She noticed that both men were drunk.^[10] Suddenly, appellant dragged her to a toilet situated outside an abandoned house^[11] and commanded her to undress and lie down. Then he removed his pants and placed himself on top of her.^[12] Against her will and consent, he inserted his penis inside her vagina and sexually ravished her.^[13] Soon, appellant's wife Rita and other neighbors arrived.^[14] At that instance, Janice heard Rita ordering appellant to stop.^[15]

At about the same time, Rolando, who was seated beside appellant, was awakened. Although he was dizzy and suffering from a headache,^[16] he saw appellant dragging Janice, while she struggled and resisted.^[17] Appellant subdued her as they proceeded to a toilet located outside an abandoned house about 60 feet away.^[18] Unknown to them, he trailed behind. He saw appellant naked on top of Janice.^[19] Frightened that appellant was armed with a weapon, he immediately left and sought help from his neighbors and appellant's wife Rita.^[20]

Rafael Ayad, upon being informed of the incident by his niece Jennifer, ran towards the toilet^[21] and saw appellant naked on top of Janice.^[22] He then instructed Jennifer to report the incident to the police.^[23] Before leaving, he heard appellant's wife shouting, "*anong ginagawa mo diyan?*" (what are you doing there?).^[24]

Meanwhile, SP01 Ronaldo San Diego arrived.^[25] He found appellant lying on the street. Rolando, who was beside appellant, informed SP01 San Diego that appellant sexually molested Janice.^[26] Then SP01 San Diego and Rolando brought appellant to the police station at Rodriguez, Rizal.^[27]

At the police station, P01 Lope Macauba, Jr. conducted an investigation. Janice identified appellant as the one who sexually abused her. This was confirmed by Rolando. Thereupon, both executed their sworn statements.^[28]

The next day, Janice and her mother went to the Crime Laboratory of the Philippine National Police (PNP) at Camp Crame, Quezon City.^[29] There, Janice was examined by Dr. Tomas D. Suguitan who issued Medico-Legal Report No. M-1454-97^[30] with the following findings:

"GENITAL:

There is absence of pubic hair. Labia majora are full, convex, coaptated and congested with the congested labia minora presenting in between. On separating the same disclosed an elastic, **fleshy-type hymen with deep healing laceration at 3 o'clock and shallow healing laceration at 6 o'clock position.** External vaginal orifice offers strong resistance to the introduction of the examining index finger and the virgin-sized vaginal speculum. Vaginal canal is narrow with prominent rugosities. Cervix is normal in size, color and consistency.

CONCLUSION:

Findings are compatible with recent loss of virginity. There are no external signs of application of any form of violence.

x x x."

Dr. Suguitan confirmed on the witness stand that the ruptures or lacerations at Janice's hymen were "recently inflicted"^[31] and could have been caused by the insertion of an erected male organ.^[32]

Appellant Avelino Mabonga vehemently denied the charge. He testified that at around 1:00 o'clock in the afternoon of April 20, 1997, the day of the incident, he was in Barangay Isidro drinking gin with his friends. After drinking 5 bottles of gin, he decided to go home. On his way, he met Rolando who was seated in front of Janice's house. Rolando invited him to drink, at the same time asking money from him. When he acceded, Rolando instructed his nephew to buy 4 bottles of gin. But before they could consume the 4 bottles, he fell to the pavement and slept. When he woke up, he was surprised to find himself detained at the Rodriguez Police Station. He further claimed that in testifying against him, Rolando and Rafael were motivated by hatred that stemmed from a land dispute. In fact, Rolando even threatened him saying, "*may araw ka rin.*"

Rita Mabonga, appellant's wife, corroborated his testimony.

Cresencio Cabiao, a resident of Libis Riverside, same municipality, testified that on April 20, 1997, at around 7:00 o'clock in the evening, while on his way to a store, he saw appellant lying on a concrete pavement. He noticed that appellant was drunk. On his way home after 30 minutes, he saw appellant still lying on the same pavement.

On March 17, 1998, the trial court rendered a Decision, the dispositive portion of which reads:

"WHEREFORE, premises considered, judgment is hereby rendered finding herein accused Avelino Mabonga **guilty beyond reasonable doubt** of the crime of Rape as defined and penalized under Art. 335 of the Revised Penal Code, and sentencing him to suffer **reclusion perpetua**, and to indemnify herein private complainant Janice Malacaman in the amount of P50,000.00 as moral damages and to pay the costs.

SO ORDERED."

Appellant, in his brief, raised this lone assignment of error:

"THE COURT A QUO ERRED IN CONVICTING THE ACCUSED-APPELLANT NOTWITHSTANDING THE FAILURE OF THE PROSECUTION TO ESTABLISH HIS GUILT BEYOND REASONABLE DOUBT."

The basic issue for our resolution is whether the prosecution has established appellant's guilt by evidence beyond reasonable doubt.

The crime, as alleged in the Information, was committed on **April 20, 1997**. Hence, the law applicable to the case at bar is Article 335 of the Revised Penal Code, as amended by R.A. 7659,^[33] which provides:

"Art. 335. When and how rape is committed. – Rape is committed by having carnal knowledge of a woman under any of the following circumstances.

1. **By using force or intimidation;**
2. When the **woman is deprived of reason** or otherwise unconscious; and
3. When the **woman** is under twelve years of age or **is demented**.

The **crime of rape shall be punished by *reclusion perpetua***.

x x x."

The above provision refers to the crime of **simple rape** committed under any of the following circumstances: (1) by **using force or intimidation**; (2) when the **woman is deprived of reason** or otherwise unconscious; and (3) when the **woman** is under 12 years of age (statutory rape) or is **demented**.^[34]

As shown by the evidence for the prosecution, Janice does not possess the intelligence of a normal girl. At 13, when the crime was committed, she had a mental capacity of a 6 or 7 year old child. Dr. Ricardo Atengco, her physician for three years, testified that her mental faculties are different from those of a fully-functioning 13 year old, thus:

"FISCAL FLORANTE RAMOLETE:

x x x

Q Doctor, do you know a person by the name of Janice Malacaman?

A Yes, sir.

Q Why do you know her?

A She was my former patient at Amang Rodriguez Medical Center, sir.

Q Since when have you been the doctor of Janice Malacaman?

A I have seen her first in the year 1993 at the outpatient department, sir.

Q And up to the present she is your patient, doctor?

A Not anymore, sir, because I am already in private practice.

Q Up to what year has she been your patient?

A Up to the year of 1996, sir.

Q And **as your patient from 1993 up to 1996, what is her illness?**

A **She was diagnosed to have epilepsy, sir.**

x x x

Q Kindly enlighten us doctor about this epilepsy. Please give us a short background or description about this disease, epilepsy?

A **Epilepsy is a neurological disorder** wherein there is a sort of a short circuit in the brain. So when the patient goes into attack, the patient goes into convulsion and this seizure is usually precipitated by an illness or stress or anything that could precipitate an attack, sir.

Q **So, it affects the brain?**

A **Yes, sir.**

Q But although it affects the brain, in your opinion doctor, can a victim suffering from epilepsy still understand a little bit of what she is doing?

A When we say epilepsy, **this condition is usually related to a delay in the neuro-developmental status of the patient. Since this patient has epilepsy, her mentality does not correlate with her actual age. If this patient is 13 years old, her mental age could be that of a 6 or 7 year old,** sir.

x x x."^[35]

But despite Janice's mental condition, she was able to testify clearly that appellant had carnal knowledge of her by using force and intimidation. He pulled her and inserted his penis into her vagina, thus:

"FISCAL FLORANTE RAMOLETE:

x x x

Q Miss witness, are you the same Janice Malacaman, the complainant against Avelino Mabonga?

A Yes, sir.

Q What did Avelino Mabonga do to you?

A He pulled me, sir.

Q What else did Avelino Mabonga do to you aside from pulling you?

A He brought me to a destroyed comfort room (*dinala ako sa sirang kubeta*), sir.

Q What did Avelino Mabonga do to you in that 'sirang kubeta'?

A He asked me to remove my panty and shorts and also his pants and shorts, sir. Then he asked me to lie down as he laid on top of me.

Q What else did he do to you?

A He inserted his penis into my vagina (*pinasok po niya and titi niya sa buray ko*) sir.