

FIRST DIVISION

[G.R. No. 142005, January 23, 2002]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ATILANO GILBERO, ACCUSED- APPELLANT.**

D E C I S I O N

KAPUNAN, J.:

The victim, AAA, twenty-one (21) years old is a mental retardate, with a mentality of a six (6) year and six (6) month old girl. For having carnal knowledge of her, the accused-appellant was charged and found guilty of the crime of rape by the Regional Trial Court, 4th Judicial Region, Branch 37, xxx. The dispositive portion of the judgment reads as follows:

"WHEREFORE, premises considered and finding the accused ATILANO GILBERO, JR. a.k.a."JUNIOR KULANGOT" GUILTY beyond reasonable doubt of the crime of RAPE as defined and penalized under Art. 335, par. 3 of the Revised Penal Code, he is sentenced to suffer the penalty of *Reclusion Perpetua*, to suffer all the accessory penalties provided by law, and to pay the costs of suit. He is likewise ordered to indemnify the victim, Ana Maria Martelino in the amount of Php50,000.00, and to pay Php50,000.00 as moral damages.

The preventive imprisonment undergone by the accused shall be credited in his favor.

SO ORDERED.^[1]

The Information under which the accused-appellant was charged with rape reads as follows:

That in the early morning of April 28, 1995, at around five o'clock in the morning, in xxx, Philippines and within the jurisdiction of this Honorable Court, accused ATILANO GILBERO @ "Junior Kulangot", actuated by lust, by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge of AAA, a retardate with a mental age of six years and six months old, against her will and consent, to her damage and prejudice.

CONTRARY TO LAW.^[2]

Upon arraignment on October 18, 1995, the accused-appellant pleaded "not guilty" to the offense charged. Pre-trial conference was waived by the accused-appellant; thus, trial ensued.^[3]

The facts are as follows:

On April 24, 1995, at around 3:00 o'clock in the afternoon, the private complainant AAA (AAA, for brevity), a mental retardate rode the calesa parked along Rizal Avenue and driven by herein accused-appellant, Atilano Gilbero. She asked the accused-appellant to bring her to the house of Rommel Daes (a classmate in special education) at xxx. AAA showed accused-appellant a piece of paper on which the address of Rommel was written so he would know where to bring her. Upon seeing AAA, Rommel's father who knew AAA to be a retardate asked the accused-appellant to bring her home. Accused-appellant, however, did not take AAA home but instead brought her to the house of his cousin, Romeo Gilbero in Palay St., Balic-Balic, Manila. On April 27, 1995, accused-appellant took AAA to the house of his mother in xxx, introducing her to be his wife. Accused-appellant left AAA for awhile in his mother's house and came back for her again that afternoon. They then proceeded to his cousin's house in xxx. It was here where AAA was sexually molested. Before being raped, the victim was made to drink "gin" with coke which caused her to feel dizzy and vomit. She was again raped by another man whom she did not know but was certain that he was a friend of the accused-appellant.

Meanwhile, AAA's mother, BBB initiated a search for her when the girl failed to come home on April 24, 1995. Mr. Daes, the father of Rommel, called her up to inform her that AAA came to his house in a caretela. They tried to re-trace AAA's steps from Kalignayan St. to their house but the search was futile. AAA's mother announced her disappearance through the television show, 'Hoy Gising.' Responding to the announcement, a certain Minda Gilbero, called up Mr. Daes and informed him that Ana who was reported missing slept in their house that evening. On April 26, 1995, AAA's family immediately rushed to the house of Minda Gilbero at No. 785 Palay St., Balic-Balic, Manila, where it was confirmed that AAA and the accused-appellant ate and slept in this house the previous nights. They all waited and hoped that the accused-appellant and AAA would return that evening in Balic-Balic, Manila but they did not appear.

On April 27, 1995, AAA's family sought assistance from the NBI to locate her whereabouts in xxx. On April 28, 1995, AAA's mother and NBI agents with the help of barangay officials, found AAA in Barrio xxx in the company of accused-appellant. Whereupon, the accused-appellant was brought to the NBI Office in Manila for questioning.^[4]

At the NBI, Ana submitted herself for medical examination. Dr. Aurea Villena, medico- legal officer of the NBI conducted the examination and thereafter prepared a Medico- Legal Certificate,^[5] showing her findings, to wit:

GENERAL PHYSICAL EXAMINATION:

Height: 151.0 cm Weight 124 lbs.
Fairly developed, conscious, ambulatory subject.
Breast, developed, hemispherical, doughy. Areolae, light brown, 6.3 cm
in diameter. Nipples, light brown, protruding, 1.2 cm. in diameter.

PHYSICAL INJURIES: Linear abrasions; reddish brown: 3 in number, 3.0

cm., 10.2 cm., 6.0 cm., posterior aspect, left upper arm. Contusions, purplish: multiple, 5.0 cm. x 5.5 cm. posterior aspect, left upper arm.

GENITAL EXAMINATION: Pubic hair, fully grown, abundant. Labia majora and minora, coaptated. Fourchette, moderately lax. Vestibulae mucosa, pinkish. Hymen, moderately tall, moderately thick, intact, distensible. Hymenal orifice admits a tube 2.5 cm. in diameter. Vaginal walls, tight. Rugosities, prominent.

CONCLUSIONS:

1. No evident sign of extragenital physical injuries noted on body of the subject at the time of examination.^[6]
2. Hymen, intact but distensible and its orifice wide (2.5 cm. in diameter) as to allow complete penetration by an average-sized adult Filipino male organ in full erection without producing any genital injury.
3. Positive semenology is highly indicative of recent sexual intercourse with man.

On the same day, the victim was also referred to the Neuro-Psychiatric Service in the NBI for Neuro-Psychiatric Evaluation. Dr. Erlinda Marfil submitted her findings,^[7] to wit:

Physical and Neurological Examination:

Physical and neurological examination are within normal limit.

Psychological Examination:

Psychological test reveals MENTAL RETARDATION AND PSYCHOSIS. Level of intellectual functioning with a MENTAL AGE of (6) six years and (6) six months and an I.Q. of 40.

DIAGNOSIS: (1) Mental retardation with Psychosis

(2) Epilepsy

On May 3, 1995, AAA executed a sworn statement^[8] before Special Investigators III Syrus Aluzan and Nelson Moreno, narrating in detail what the accused-appellant did to her on April 28, 1995 in the house of the accused-appellant's relative.

The accused-appellant, on the other hand, denied having raped nor having asked anybody to rape AAA.^[9] He claimed that on April 28, 1995, he went to the house of his uncle in xxx and slept there alone as Ana was left behind in his mother's house in xxx.^[10] He claimed that he did not notice AAA to be abnormal.

In this appeal, the accused-appellant raises the lone assignment of error that:

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME OF RAPE DESPITE THE FACT THAT HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.^[11]

We deny the appeal.

Accused-appellant avers that in crimes against chastity where usually only two persons are involved, the testimony of the offended party should not be received with precipitate credulity for the charge can easily be concocted. The testimony of the victim must be scrutinized with extreme caution and must survive the exacting standard of credibility. In the instant case, the private complainant was found to be a mental retardate and worse, insane. Her perception of what is right or wrong may not be that accurate nor can she be expected to tell the whole truth about the incident. This was quite evident in her testimony in court where she was allegedly inconsistent and was narrating irrelevant, immaterial and impertinent matters. Since her credibility as a witness is questionable, her testimony in court must, therefore, not be admitted.^[12]

The contention is untenable.

While it is true that the victim's mental state is not normal, such handicap does not automatically render the victim disqualified from testifying about the facts she knew as long as she was capable of perceiving and making her perception known to others.^[13] A mental retardate is not, by reason of such handicap alone, disqualified from being a witness.^[14]

As a general rule, when a witness takes the stand to testify, the law, on grounds of public policy, presumes that he is competent unless shown to be otherwise.^[15] In the instant case, the defense did not present evidence showing that the victim was incompetent at the time she was presented as a witness. The accused-appellant did not pose any objection when the victim was offered as a witness. In fact, the counsel for the accused-appellant even had the opportunity to cross-examine the victim.

The victim was consistent and firm in her answers on direct and cross-examination. Except for minor details as to the time and place of the commission of rape, the alleged inconsistencies in her testimony are not enough to impair her credibility. To every question asked, the victim gave straightforward and forthright answers which to the mind of the trial court was credible and worthy of belief. Considering that the trial court was in a better position to observe the demeanor of the witness during the trial,^[16] we, therefore, do not find any error on the part of the trial court in admitting the testimony of the victim.

On the witness stand, the victim positively identified the accused-appellant as the man who raped her on April 28, 1995. On direct examination, the victim testified:

State Prosecutor Barrios:

Q. Now do you know the accused Atilano Gilbero?

WITNESS