

EN BANC

[G. R. No. 140209, December 27, 2002]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ZAINUDIN DALANDAS, ACCUSED-APPELLANT.**

DECISION

CALLEJO, J.:

Before the Court on automatic review is the decision rendered by the Regional Trial Court of Midsayap, Cotabato, Branch 18, in Criminal Case No. 1816, finding accused-appellant Zainudin Dalandas guilty beyond reasonable doubt of the crime of rape, imposing on him the supreme penalty of death, and ordering him to indemnify the victim, Junaida Dalanda, the amount of P75,000.00 and P50,000.00 as moral damages.^[1]

On October 9, 1995, an Information charging accused-appellant with the crime of rape was filed which reads:

The undersigned accuses ZAINUDIN DALANDAS of the crime of RAPE, committed as follows:

That sometime on August 1994 and subsequent thereto, in the Municipality of Pikit, Province of Cotabato, Philippines, the said accused, with lewd design, did then and there, willfully, unlawfully and feloniously have a carnal knowledge with JUNAIDA DALANDA, mentally retarded against her will.

CONTRARY TO LAW.^[2]

During the arraignment, accused-appellant, assisted by counsel, pleaded not guilty. At the trial, the prosecution presented only two witnesses, namely, private complainant Junaida Dalanda and her father, Budsal Dalanda, a farmer and a resident of Manaulan, Pikit, Cotabato.

The prosecution adduced evidence that: Private complainant testified that she was 20 years old. However, she finished only Grades I and II in the Ginalitan Elementary School. Nevertheless, she knew how to read and to write her name. Accused-appellant was her brother-in-law, being the husband of her sister Maisalam Dalanda. In August, 1995, accused-appellant convinced private complainant to have sexual intercourse with her. He held her hands with one hand and covered her mouth with the palm of his other hand. He undressed her and after removing his clothes, he had sexual intercourse with her. She could not scream because her mouth was covered. She held on to the grass and piece of wood near where she was lying down at the time of sexual intercourse which lasted for about three minutes. She was in normal condition at the time. She did not report the incident to the police authorities nor to any member of her family.

Budsal Dalanda, a farmer, testified that he had two daughters, Junaida Dalanda and Maisalam Dalanda. The latter was married to accused-appellant. The couple lived in a house near the house where Budsal Dalanda and Junaida resided. Junaida was 13 years old, having a mental defect since childhood. She knew nothing about money. She would not eat even if she was fed. He learned from his daughter Maisalam that her sister Junaida was pregnant. He confronted Junaida and the latter told her father that she was raped by accused-appellant. Junaida was examined by Dr. Nelson B. Villagonzalo on February 6, 1995 and was found to be five to six months pregnant.^[3] She later gave birth to a baby boy, named Mailam.

Accused-appellant admitted having sexual intercourse with private complainant but alleged that it was consensual. He testified that he had been married to his wife for twenty years. They had a two-year old child. He claimed that Junaida was not a mental retardate. On August 24, 1995, at about 10:00 a.m. he was in their house lying down on the floor. His wife was in the market while his child was sleeping in the other room. Momentarily, Junaida entered the room and without ado embraced and hugged him. She was so sexually aroused that she wanted to have sex with him. Accused-appellant agreed with alacrity. She inquired from accused-appellant where his wife was. He told her that his wife was in the market. Junaida, without much ado, removed her green polo shirt, malong and underwear. Accused-appellant likewise undressed. The two then had sexual intercourse which lasted for one hour. Satiated, Junaida left the house and returned to their house. She and accused-appellant did not have any sexual intercourse anymore after that incident. Accused-appellant was charged with rape because he failed to pay the "sala" or fine to the family of Junaida for impregnating her. Accused-appellant further averred that he was a practicing Muslim and prayed to Allah five times a day even while in jail. He was willing to swear before the Koran that he was telling the whole truth in court.

On July 30, 1999, the trial court rendered judgment finding accused-appellant guilty beyond reasonable doubt of qualified rape and meted on him the supreme penalty of death on its finding that private complainant, a mental retardate was forced by accused-appellant to have sexual intercourse with him, and that accused-appellant was aware that private complainant was a mental retardate.

Accused-appellant avers in his Brief that:

I

THE COURT A *QUO* ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE UNDER ARTICLE 266-B PAR. 6, NOS. 1 AND 10 OF THE REVISED PENAL CODE AS AMENDED BY R.A. 8353.

II

ON THE ASSUMPTION THAT THE ACCUSED-APPELLANT COMMITTED THE ACTS COMPLAINED OF THE COURT A *QUO* GRAVELY ERRED IN IMPOSING THE DEATH PENALTY IN THE CASE AT BAR.

Accused-appellant asserts that the prosecution failed to adduce incontrovertible proof that private complainant was a mental retardate. In fact, accused-appellant insists private complainant testified that she was in normal condition at the time she was convinced by accused-appellant to have sexual intercourse with him. The self-serving testimony of Budsal Dalanda, the father of private complainant that private

complainant was a mental retardate since childhood is insufficient proof that private complainant was a retardate. It behooved the prosecution to have adduced clinical evidence to prove that private complainant was a mental retardate conformably with the decision of the Court in *People vs. Romeo Cartuano, Jr.*^[4]

The basic postulate in criminal prosecution anchored on the constitution is that the prosecution is burdened to prove the guilt of the accused the crime charged beyond cavil of doubt. In this case, the prosecution was burdened to prove conclusively and indubitably not only that accused-appellant had carnal knowledge of private complainant but also that private complainant was a mental retardate.

Mental retardation is a chronic condition present from birth or early childhood and characterized by impaired intellectual functioning measured by standardized tests. It manifests itself in impaired adaptation to the daily demands of the individual's own social environment. Commonly, a mental retardate exhibits a slow rate of maturation, physical and/or psychological, as well as impaired learning capacity.^[5]

Although "mental retardation" is often used interchangeably with "mental deficiency," the latter term is usually reserved for those without recognizable brain pathology. The degrees of mental retardation according to their level of intellectual function are illustrated, thus:

Mental Retardation		
LEVEL	DESCRIPTION TERM	INTELLIGENCE QUOTIENT (IQ RANGE)
I	Profound	Below 20
II	Severe	20-35
III	Moderate	36-52
IV	Mild	53-68

A normal mind is one which in strength and capacity ranks reasonably well with the average of the great body of men and women who make up organized human society in general, and are by common consent recognized as sane and competent to perform the ordinary duties and assume the ordinary responsibilities of life.^[6]

The traditional but now obsolescent terms applied to those degrees of mental retardation were (a) *idiot*, having an IQ of 0 to 19, and a maximum intellectual factor in adult life equivalent to that of the average two-year old child; (b) *imbecile* by an IQ of 20 to 49 and a maximum intellectual function in adult life equivalent to that of the average seven-year old child; *moron or feeble-minded*, having an IQ of 50 to 69 and a maximum intellectual function in adult life equivalent to that of the average twelve-year old child. Psychiatrists and psychologists apply the term "borderline" intelligence to those with IQ between 70 to 89.^[7] In *People vs. Palma*,^[8] we ruled that a person is guilty of rape when he had sexual intercourse with a female who was suffering from a "borderline mental deficiency."

The mental retardation of persons and the degrees thereof may be manifested by their overt acts, appearance, attitude and behavior. The dentition, manner of

walking, ability to feed oneself or attend to personal hygiene, capacity to develop resistance or immunity to infection, dependency on others for protection and care and inability to achieve intelligible speech maybe indicative of the degree of mental retardation of a person. Those suffering from severe mental retardation are usually undersized and exhibit some form of facial or body deformity such as mongolism, or gargolism. The size and shape of the head is indicative of microphaly. The profoundly retarded may be unable to dress himself, or wash or attend to bowel and bladder functions so that his appearance may be very unclean and untidy unless they receive a great deal of nursing care. There may be marked disturbance of gait and involuntary movements. Attempts to converse with a mental retardate may be limited to a few unintelligible sounds, either spontaneous or in response to attempts that are made by the examiner to converse, or may be limited to a few simple words or phrases.^[9] All the foregoing may be testified on by ordinary witnesses who come in contact with an alleged mental retardate.

In *People vs. Arnel Almacin*,^[10] we held that evidence other than a psychometric evaluation can prove mental retardation or abnormality. In *People vs. Mario Dumanon, et al*,^[11] a case of recent vintage, we held that mental retardation can be proved by evidence other than medical/clinical evidence, such as the testimony of witnesses and even the observation by the trial court. 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*,^[12] the Supreme Court of Iowa declared:

Her answers to questions show that she is almost an imbecile, *unless she* was feigning imbecility. The *judge* and jury saw and heard her on the witness stand, and we cannot put ourselves in the place of the judge and jury. Her appearance and demeanor while testifying were most important considerations in determining her mental capacity, and, under the circumstance, we think it is not proper to interfere with the verdict. Another consideration, which, no doubt, had its influence with the court and jury, was that the complainant was a mere child when this calamity came upon her. She was but little past the age of consent. If she had been under the age of 13 years, mere carnal knowledge would have constituted the crime of rape without any evidence of mental weakness or imbecility.

And in *People vs. Moreno*,^[13] we likewise held that:

Dr. Cecilia Albaran herself stated that she could conclude, simply on the basis of her observation of the victim, that the latter had low intelligence. In *People v. Rosare*, the Court also noted that complainant's mental deficiency was so obvious that it was easily observable during preliminary investigation, *viz*:

'Her deficient mentality stuck out like a sore thumb at the center. Her behavior as a mental retardate was so obvious that even the investigating fiscal, who is not a man of science was able to observe it during preliminary investigation.'

It goes without saying that there must be some evidence in the record which, if true, will afford substantive support for such findings and its absence cannot be

cured by assuming that the trial court saw something in the conduct or demeanor of the victim which must have led to the decision appealed from.^[14]

Our pronouncement in *People vs. Cartuano, Jr.*^[15] that a finding of the victim being a mental retardate must be based on laboratory and psychometric support does not preclude the presentation by the prosecution of evidence other than clinical evidence to prove the mental retardation of the victim. We held in said case that clinical evidence is necessary in borderline cases when it is difficult to ascertain whether the victim is of a normal mind or is suffering from a mild mental retardation. Medical evidence is not a condition *sine qua non* in all cases of rape or sexual crimes for that matter to prove that the victim is a mental retardate or is suffering from mental deficiency or some form of mental disorder. However, the conviction of an accused of rape based on the mental retardation of private complainant must be anchored on proof beyond reasonable doubt of her mental retardation.

In the appeal at bench, the prosecution did not present any clinical evidence to prove that private complainant was a mental retardate. It relied merely on the testimony of Budsal Dalanda, the father of private complainant who testified that the latter had a mental defect since childhood;^[16] she did not know anything about money; and she would not eat if she was fed with food.^[17] The prosecution also relied on the testimony of private complainant that she finished only Grades I and II in the Gintilan Elementary School.^[18] The trial court concluded that private complainant had suffered some mental retardation on the basis of the corroborative testimonies of private complainant and her father, as well as on its observation that when she testified, private complainant had difficulty expressing herself and even failed to recall things spontaneously although she had the ability, though slowly, to make her perceptions known to others. Her mental condition necessitated that leading questions to be propounded to her to elicit the truth.

However, based on its analysis of the testimonial evidence adduced by the prosecution and even of the observations of the trial court on private complainant when she testified, the Court is convinced that said testimonies and observations are not sufficient proof that private complainant was a mental retardate and incapable of validly giving consent or opposing the carnal act. Budsal Dalanda's claim that his daughter was suffering from a mental defect since childhood was a mere conclusion. Even if private complainant did not know anything about money or that she would not eat if she was fed with food, it cannot thereby be conclusively concluded that she was suffering from a mild mental retardation at the very least. The lack of knowledge about money or her refusal eat even when fed are not necessarily manifestations of a mental defect or the effects of mental retardation. It behooved the prosecution to prove that private complainant's lack of knowledge about money and her refusal to eat even when fed were caused by, or are manifestations of, mental retardation or mental deficiency or disorder. Neither does the bare fact that private complainant finished only Grades I and II in the elementary although she had reached adulthood constitute proof that private complainant was a mental retardate. In *People vs. Libo-on*,^[19] we ruled:

xxx However, aside from the testimony that the complainant stopped schooling at the first-grade level and the report of the social worker that complainant was mentally slow, there is no showing that complainant suffered from any mental infirmity or weakness which rendered her