

THIRD DIVISION

[G.R. No. 139471, January 23, 2001]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROLANDO MAGABO Y MAGARTE, ACCUSED-APPELLANT.**

D E C I S I O N

GONZAGA-REYES, J.:

This is an appeal from the Decision^[1] dated May 14, 1999 of the Regional Trial Court of Quezon City, Branch 95, in Criminal Case No. Q-98-77588, finding accused Rolando Magabo y Magarte guilty beyond reasonable doubt of the crime of Rape and sentencing him to suffer the penalty of Reclusion Perpetua.

On July 2, 1998, accused Rolando Magabo y Magarte was charged with the crime of Rape in an Information which reads, to wit:

"That on or about the 23rd day of June, 1998, in Quezon City, Philippines, the said accused, by means of force and intimidation, to wit: by then and there wilfully (sic), unlawfully and feloniously by undressing the undersigned and put himself on top of her and thereafter have carnal knowledge with the undersigned complainant, a mental retardate, against her will and without her consent.

CONTRARY TO LAW."

Originally, this case was raffled off and assigned to Branch 103 of the Regional Trial Court of Quezon City, presided by Judge Jaime Salazar. But before the accused could be arraigned, Judge Salazar voluntarily inhibited himself from trying the case, and the same was re-raffled to Branch 95. On October 1, 1998, the accused was arraigned and pleaded not guilty to the charges against him.^[2] Trial ensued.

The facts according to the prosecution, are as follows:^[3]

On June 23, 1998, at about 1:00 in the afternoon, Noemi Dacanay, a mental retardate, was selling fried bananas at the Frisco Market in Quezon City when Rolando Magabo, known to Noemi as "Lanie", approached her and invited her to go with him to his house. Noemi immediately acceded. The two went to Magabo's house which was empty as Magabo's mother who was living with him was not around. Accused-appellant then seized the opportunity and began kissing Noemi on the lips and fondling her breasts. He made Noemi lie down on the floor, and had sexual intercourse with her. Thereafter, accused-appellant rested on the floor and embraced Noemi. Later, Noemi left and went home. She told her mother of what happened, and they went to the police to report the incident. Noemi was examined by Dr. Ma. Christina Freyra, the Medico-Legal Officer of the Philippine National Police (PNP) Crime Laboratory, who found healed lacerations at 3, 6, and 9 o'clock

positions on the victim's hymen, and abrasions on her labia minora. This was later confirmed by Dr. Freyra who was presented as a witness for the prosecution.

For his part, accused-appellant Rolando Magabo denied the rape and testified that between 1:00 and 2:00 in the afternoon of June 23, 1998, he was at the corner of Roosevelt Avenue and San Francisco del Monte, Quezon City selling short pants and t-shirts by the sidewalk. He admitted knowing the victim Noemi Dacanay and her parents,^[4] and seeing Noemi and her mother sell fruits at the Munoz market, but said he could not recall seeing Noemi at the market in June 1998.^[5] Magabo alleges that a certain Freddie Buenaflor, with whom he had some altercations, informed Noemi's father of the alleged rape to get back at him.^[6]

After trial, the court a quo rendered a judgment dated May 14, 1999, the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered finding the accused Rolando Magabo y Magarte GUILTY beyond reasonable doubt of the crime of RAPE defined and penalized by Article 335 of the Revised Penal Code, as amended by Republic Act 7659 and further amended by Article 266-A and Article 266-B, Republic Act No. 8353, and is hereby sentenced to suffer the penalty of *Reclusion Perpetua*. The accused is further ordered to indemnify the private complainant the amounts of P50,000.00 as compensatory damages; P50,000.00 as moral damages; and P25,000 as exemplary damages.

"The period during which the accused was detained at the City Jail of Quezon City shall be credited to him in full as long as he agrees in writing to abide by and follow strictly the rules and regulations of the said institution.

"The accused is ordered to pay the costs.

"IT IS SO ORDERED."^[7]

Hence this appeal where the accused-appellant raises a lone assignment of error:

THE COURT A QUO ERRED IN CONVICTING THE ACCUSED, ROLANDO MAGABO, NOTWITHSTANDING THE FAILURE OF THE PROSECUTION TO PROVE ALL THE ELEMENTS OF THE CRIME OF RAPE, WITH PROOF BEYOND REASONABLE DOUBT.

The accused-appellant contends that the case at bar involves rape under the fourth circumstance of Article 266-A, paragraph 1,^[8] and therefore, mental retardation of the alleged rape victim must be proven as an essential element of the offense.^[9] As the prosecution failed to prove that rape victim Noemi Dacanay is a mental retardate and that her mental age is no better than a twelve year old child, no rape has been committed, and the accused-appellant should not have been convicted by the trial court.

The contention is unmeritorious.

Carnal knowledge of a woman who is a mental retardate is rape under Article 266-A,

paragraph 1 of the Revised Penal Code, as amended by R.A. 8353.^[10] Proof of force or intimidation is not necessary as a mental retardate is not capable of giving consent to a sexual act.^[11] What needs to be proven are the facts of sexual congress between the accused and the victim, and the mental retardation of the latter.

That the victim, Noemi Dacanay, had sexual intercourse with the accused-appellant Rolando Magabo was sufficiently established by her testimony, corroborated by the testimony of the medico-legal officer, Dr. Ma. Christina Freyra, to the effect that there were lacerations and abrasion on the victim's private parts.^[12] As regards the mental retardation of the victim, the trial court likewise found the same to have been sufficiently proven, as set forth in its Decision, to wit:

"The Court is more than convinced that the private complainant is a mental retardate not only based from her physical appearance as shown from the picture (Exh. `B') but also from the behavior and actuations she showed during the trial. The medico-legal officer who conducted the medical examination, in fact, concluded that the private complainant is a mental retardate. Besides, the mental condition of the private complainant was not raised or objected to by the accused. With the earlier findings of the Court that carnal knowledge of the private complainant by the accused was consummated and the fact that the words "mental retardate" are alleged in the complaint thru the timely amendment (before arraignment) by the public prosecutor, it is clear that the crime of rape was committed although the prosecution offered none to establish that carnal knowledge was without consent of the private complainant."^[13]

The physical appearance of the victim Noemi Dacanay, and the manner by which she testified persuaded the trial court that she indeed is a mental retardate. Mental deficiency is apparent from the halting and abbreviated answers given by Dacanay during her testimony, to wit:

"Q: And when you were selling Banana Que at Frisco Market what happened if any?

A: Sama ako. (the witness when answering the question pointed her finger to the courtroom and then uttered "sama ako".)

PROS: (to the witness)

Q: Ms. witness when you say "sama ako" and your pointing to the courtroom. Whom are you pointing at?

A: (witness stood up and pointed to a male person and went down from the rostrum and proceeded to the person she was pointing at. Witness pointing to a male person wearing yellow shirt when asked of his name he stated his name as Rolando Magabo.)

Q: You mentioned Ms. witness that person you pointed told you "sama ka" where did you go?

A: In the house. (the witness answered the question "house" and at the same time pointing her finger to the courtroom.)

Q: Whose house did you go?

A: Nanay. (the witness answered "nanay" and pointing her finger to the person identified a while ago.)

Q: When you went to the house of "Nanay" of the person you pointed to what happened?

A: Halik. (witness answered by uttering the word "halik" and pointing to her lips.)

Q: What else did Lanie do to you if any aside from kissing your lips?

A: Hawak. (witness answered by saying "hawak" and pointing to her breast)

Q: When you say "hawak" and pointing to your breast did he touch your breast?

A: Yes, ma'am.

Q: Aside from holding you breast what did he do if there was any?

A: Patong. (witness she answered the question with the word "Patong".)

COURT:

Put on record that when answering the question, she made a gesture by placing her right hand in front of her private part and making continuous [sic] motion as if something is being inserted continuously [sic] on her private organ.

COURT: (to the witness)

Q: When you answered the question of the Fiscal you demonstrated by using your right hand as if something was being put inside your private organ continuously. [sic] What was that placed inside as if something was placed inside?

A: Pasok titi. (the witness answered the question by whispering to the interpreter the word "pasok titi")

PROS. (to the witness)

Q: Whose "titi", was inserted?

A: Lanie. (the witness answered Lanie and pointing to the