

EN BANC

[G.R. No. 126545, April 21, 1999]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
LORENZO ANDAYA Y FLORES, ACCUSED-APPELLANT.**

D E C I S I O N

GONZAGA-REYES, J.:

Before us for automatic review is the Decision of the Regional Trial Court, Branch 56, Libmanan, Camarines Sur, in Criminal Case No. L-1722, convicting Lorenzo Andaya of the crime of Rape and imposing the death penalty.

The information against accused Lorenzo Andaya reads:

"The undersigned upon a sworn complaint originally filed by the private offended parties, accuses LORENZO ANDAYA Y DOE of the crime of RAPE defined and penalized under Art. 335 of the Revised Penal Code, committed as follows:

"That on or about the 25th day of July 1994 at around 10:00 o'clock in the morning and several days thereafter, in Barangay Bagumbayan, Municipality of Libmanan, Province of Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, with grave abuse of confidence, and taking advantage of the mental disorder of herein victim NELLY SOLANO, did then there willfully, unlawfully and feloniously have carnal knowledge to said victim, a 17 years of age, against her will and consent, and to her damage and prejudice.

ACTS CONTRARY TO LAW."^[1]

Nelly Solano is a seventeen-year old barrio lass who lives with her father, Domingo Solano, her mother and her brother Mario in a 6 x 7 meter house with one bedroom in barangay Libmanan, Camarines Sur. Sometime in 1994, Lorenzo Andaya requested Domingo Solano to be allowed to stay with the family; Domingo Solano consented although Lorenzo was a total stranger. Lorenzo stayed with the Solanos as a "transient resident" for almost one (1) year.^[2]

On July 25, 1994, accused Lorenzo ("Inso") came to the Solano residence when Nelly's parents were in the market, and her brother Mario was at work in the store, pulled Nelly inside the house, threatened to kill her if she will not give in and succeeded in having carnal knowledge with her in the bedroom; "kinastahan po niya ako, kinikito niya ako", a Bicol slang connoting having sexual intercourse with force.

^[3] Inso removed her panty; she did not do anything and did not resist for fear that he will kill her. As she was lying down on the floor, Inso was fucking her; she was

hurt, and she did not enjoy what was happening. When her parents arrived, she did not tell them what happened until later.^[4] Lorenzo succeeded in having sex with her many times (maybe five) whenever her parents were in the market.^[5]

Domingo Solano learned that his daughter was sexually abused because "she was so sleepy". He brought her to the Libmanan District Hospital where she was found to be pregnant.^[6]

Dr. Wyda D. Berina conducted a medical examination and issued a Medico Legal Certificate dated September 9, 1994 with the following findings:

"Patient claims to have been raped 3 x with 2nd incident occurring next day in the next afternoon with 3rd incident occurring several days (?) later at an unrecalled time.

1) Old hymenal tear at 3:00 o'clock

2) Old hymenal tear at 9:00 o'clock

3) On speculum examination, admits speculum (small) with ease

Cx: Positive Hegar's sign, nulliparous

4) On I. E., admits tactating fingers (#2) with ease

Cx: soft, non-tender

Uterus enlarged to about 2-3 months size

Barring complications and under normal conditions the above lesions may require medical attendance from 6 months to 7 months."^[7]

Dr. Liza Salvador, an obstetrician-gynecologist, testified to explain the above findings of Dr. Berina who was no longer connected with the hospital. Dr. Salvador stated that there were old hymenal tears, 3 o'clock and 9 o'clock positions and the cervix had no lesion and there was no old scar. "Positive Hagar's sign" as stated in the medical certificate means that there were changes in the shape and size of the uterus; cervix was virginal and soft and the uterus enlarged, indicating that the patient was pregnant two or three months.^[8] Nelly gave birth to a baby girl who was named Nerissa while the trial was going on and before she testified on October 5, 1995. Asked who the father of the child was, she answered "Inso is the father"^[9] and pointed to him in court.^[10]

The Court ordered a psychiatric examination of Nelly Solano. Dr. Chona C. Cuyos-Belmonte, psychiatrist of Bicol Medical Center, Naga City, submitted the following report:

"BACKGROUND HISTORY:

This client was brought by her brother-in-law Mr. Jesus Opinion in compliance with the court order by Judge Bagalasca.

According to him, he has known the client for almost 15 years now. Since that time Nelly has been noted to be dull mentally. She was able to reach grade I only due to this problem. She is describe further to be always withdrawn seclusive, although generally behave and compliant. She is obedient but at times also throws temper tantrums despite her present age. At home, she could only be made to do very simple household chores. She needs lots of supervision in any given task. She could not be send to errands especially when money matters are concerned. She could not ride in public transport vehicle without companion.

MENTAL STATUS EXAMINATION:

She was seen and evaluated on August 10, 17, 31 and September 7, 1995. She looks small for her chronological age of 18 but her physical features are that of an adult. She has sogged engrossed breast and pole dry skin. She is generally behave and manageable. She speaks in a soft but audible voice. She has a very limited production but she is coherent and relevant. She refused to elaborate even when prodded.

She made mention about the rape incident. She said it was done to her by "Inso" for about 4 times. She can't give specific dates and details. She is intellectually dull as evidence by her poor fund of general knowledge, poor comprehensive capability and concrete thinking. Her orientation to time, place and person is also impaired. She has very limited insight about her condition and her judgment is also impaired.

PSYCHOLOGICAL TESTING RESULT:

Tests Administered:

Revised Beta Examination
Bender Visual Motor Gestalt Test
Draw-A-Person Test
House-Tree-Person Test

Tests Results and Evaluation:

Subject obtained an I. Q. of 31, classified as moderate mental retardation. All sub-test scores indicate a very low level of mental capacities. Projective tests project psychotic features.

REMARKS AND RECOMMENDATION

On the basis of the foregoing findings, the alleged victim NELLY SOLANO was found to be suffering from MODERATE MENTAL RETARDATION. Her mental age is estimated to be 5 to 9 years old of age. She has some depressive features.

In terms of her competency to stand witness in her behalf, it is the opinion of the undersigned that since she has the capacity to delineate truth from fantasy and she has the capacity to relate her story despite

the level of her intellectual I. Q., then she can be considered competent to stand witness in her behalf. It is also suggested to the honorable court that questions be done in simple, direct and concrete manner for her to be able to comprehend easily the court proceedings."^[11]

On direct examination, Dr. Belmonte admitted that no psychiatric treatment is necessary for Nelly Solano; what she needs is a special type of education. Nelly is a "mental retardate", with a level of moderate mental retardation, i.e., this person can study until grade 3, but will never progress after that; she needs a lot of supervision with simple tasks, has difficulty in holding a job, or even riding public transport or relating to people.^[12]

Accused Lorenzo Andaya testified in his defense. He declared that he has been a resident of Bulan, Sipocot, Camarines Sur since 1981, where he lived with his parents, brothers and sisters. He denied that he was in Bagumbayan, Libmanan, Camarines Sur on July 25, 1994, as he was in Sipocot constructing their family house. The first time he came to the house of the Solanos was one day in November 1993 when he came to said house for shelter during a heavy rain, and he stayed in Bagumbayan only for a week, the first three days at Domingo Solano's house and the rest of the week, he stayed with Erning Paliza. He came back on June 19, 1994 to take back his rooster which he was planning to enter in a cockfight during the fiesta. He denied that he raped the complainant but admitted that he offered her marriage after she delivered a baby girl and he had seen the child, but the marriage did not materialize although she had signed the application for marriage license. He claims that when the Solanos discovered that Nelly was pregnant they suspected him as the one who raped their daughter; he first came to know about the case when he was apprehended by the policeman on September 26, 1994.^[13]

The prosecution presented Ernesto Paliza as rebuttal witness. He lives half a kilometer away from the house of Domingo Solano and stated that the accused Lorenzo Andaya stayed in his place during the month of July and the month of September 1994, and it was at his place where Lorenzo was picked up by the policeman. He did not know the activities of the accused because "sometimes he leaves, sometimes he comes back."^[14]

Bienvenido Cundangan also testified as a rebuttal witness. He stated that his house was less than 400 meters away from the Solanos and that the accused stayed with the Solanos for at least a year since they met on July 1994 in the house of the Solanos. He did not know when he left.^[15]

The trial court found the accused guilty of statutory rape; although the victim was already seventeen years old, she had the mental age of a seven year old. It held:

"The Court is morally convinced that the accused **LORENZO ANDAYA Y FLORES**, is **GUILTY** beyond reasonable doubt of the crime of **RAPE**, as defined and penalized under Article 335(3) of the Revised Penal Code, and he is hereby sentenced to suffer the maximum penalty of **DEATH**. He is directed to indemnify the offended party in the amount of Fifty Thousand Pesos (P50,000.00) as moral damages, and Fifty Thousand Pesos (P50,000.00) as exemplary damages and to acknowledge his offspring, **NERISSA SOLANO**, with the offended party."^[16]

Accused Lorenzo Andaya raises a lone assignment of error in his Appellant's Brief:

"ASSIGNMENT OF ERROR

THE COURT A QUO ERRED IN NOT CONSIDERING THE FACT THAT THE ALLEGED VICTIM VOLUNTARILY SUBMITTED TO THE SEXUAL ACTS AND THAT HER MENTAL AGE OF "MODERATE RETARDATION" CANNOT BE LOWER THAN THAT OF A TWELVE-YEAR OLD CHILD BASED ON THE FINDINGS OF THE PSYCHIATRIST, THUS NEGATING THE COMMISSION OF RAPE."

After a careful examination of the evidence on record, we affirm the judgment finding accused-appellant guilty of rape.

The complainant is a mental retardate; it was established by the prosecution that her mental age is estimated to be 5 to 9 years old. No evidence was presented by the defense to rebut the result of the psychological test administered to the victim either on the ground of inaccuracy or falsity. The psychiatric report stated that the victim has the capacity to delineate truth from fantasy and despite the low level of her intellectual IQ, she has the capacity to relate her story and can be considered competent to stand witness in her behalf:^[17]

The trial court found Nelly's answers to be "spontaneous and clear" despite her retardation. She was consistent in telling the court that it was "Inso" who raped her in her house while her parents were away. She testified on direct examination as follows:

"Q: Tell us how did it happen that Lorenzo Andaya, whom you called Inso, is the father of your daughter Nerissa Solano?"

ATTY. BORJA:

May we request that the interpreter should ask the witness if she understand the question.
(The interpreter asked the witness and again translated the question.)

A: "Kinastahan po niya ako, kinikito niya ako."

ATTY. BORJA:

The last portion means that he has having sex with me.

COURT:

We place on record that "Kinastahan po niya ako", is a bicol slang word of having sexual intercourse.

PROSECUTOR SOLANO:

But the connotation here is with force.

COURT: