



Republic of the Philippines
Supreme Court
 Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 199740

Present:

CARPIO, *Chairperson,*
 BRION,
 DEL CASTILLO,
 PEREZ, *and*
 REYES, ** JJ.*

- versus -

JERRY OBOGNE,
Accused-Appellant.

Promulgated:
MAR 24 2014

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RESOLUTION

DEL CASTILLO, J.:

Appellant Jerry Obogne was charged with the crime of rape in an Information that reads as follows:

That on or about the 29th day of July 2002, in the afternoon, in *barangay* Ogbong, municipality of Viga, province of Catanduanes, Philippines, within the jurisdiction of the Honorable Court, the said accused by means of force and intimidation, willfully, unlawfully and feloniously x x x succeeded in having carnal knowledge of "AAA",¹ a 12-year old mentally retarded person, to the damage and prejudice of the said "AAA".²

When arraigned on December 17, 2004, appellant entered a plea of not guilty.³ On March 13, 2008, the Regional Trial Court of Virac, Catanduanes,

* Per Special Order No. 1650 dated March 13, 2014.

¹ "The real names of the victim and of the members of her immediate family are withheld pursuant to Republic Act No. 7610 (Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act) and Republic Act No. 9262 (Anti-Violence Against Women and Their Children Act of 2004)." *People v. Teodoro*, G.R. No. 175876, February 20, 2013, 691 SCRA 324, 326.

² Records, p. 4.

³ Id. at 20.

Branch 43, rendered a Judgment,⁴ viz:

WHEREFORE, judgment is, hereby, rendered finding Jerry Obogne guilty beyond reasonable doubt of the crime of simple rape committed against “AAA” and, hereby, sentences him to suffer a penalty of *reclusion perpetua* and to indemnify “AAA” the amount of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱25,000.00 as exemplary damages; and to pay the costs.

SO ORDERED.⁵

The trial court did not consider “AAA’s” mental retardation as a qualifying circumstance considering that the Information failed to allege that appellant knew of “AAA’s” mental disability.

Aggrieved, appellant appealed to the Court of Appeals.⁶ In its Decision⁷ of March 28, 2011, the appellate court affirmed the trial court’s ruling with modifications, viz:

WHEREFORE, the appeal is DISMISSED. The Judgment, dated March 13, 2008, of the Regional Trial Court of Virac, Catanduanes, Branch 34,⁸ in Criminal Case No. 3303, is AFFIRMED with MODIFICATION that accused-appellant is further ordered to pay “AAA” the additional amount of ₱50,000.00 as civil indemnity apart from the award of ₱50,000.00 as moral damages and of ₱25,000.00 as exemplary damages.

SO ORDERED.⁹

Hence, this appeal.

In a Resolution¹⁰ dated February 15, 2012, we required both parties to file their Supplemental Briefs. However, they opted to adopt the briefs they filed before the Court of Appeals as their Supplemental Briefs.¹¹

Appellant argues that the testimony of “AAA” deserves no credence because she was incapable of intelligently making known her perception to others by reason of her mental disability.

⁴ Id. at 172-179; penned by Judge Lelu P. Contreras.

⁵ Id. at 179.

⁶ CA *rollo*, p. 30.

⁷ Id. at 125-139; penned by Associate Justice Noel G. Tijam and concurred in by Associate Justices Marlene Gonzales-Sison and Leoncia R. Dimagiba.

⁸ Should be 43.

⁹ Id. at 138-139. It would appear that the Court of Appeals mistakenly thought that the trial court did not award civil indemnity in the amount of ₱50,000.00. Perusal of the dispositive portion of the trial court’s Judgment would show that it awarded civil indemnity of ₱50,000.00.

¹⁰ *Rollo*, p. 23.

¹¹ Id. at 25, 29.

We are not persuaded.

Sections 20 and 21, Rule 130 of the Rules of Court provide:

Sec. 20. *Witnesses; their qualifications.* - Except as provided in the next succeeding section, all persons who can perceive, and perceiving, can make known their perception to others, may be witnesses.

x x x x

Sec. 21. *Disqualification by reason of mental incapacity or immaturity.* - The following persons cannot be witnesses:

(a) Those whose mental condition, at the time of their production for examination, is such that they are incapable of intelligently making known their perception to others;

(b) Children whose mental maturity is such as to render them incapable of perceiving the facts respecting which they are examined and of relating them truthfully.

In this case, “AAA” is totally qualified to take the witness stand notwithstanding her mental condition. As correctly observed by the trial court:

When “AAA” was presented on November 14, 2006, defense counsel manifested his objection and called the Court’s attention to Rule 130, Section 21 of the Rules of Court, which lists down persons who cannot be witnesses; *i.e.* those whose mental condition, at the time of their production for examination, is such that they are incapable of intelligently making known their perception to others x x x.

During the continuation of AAA’s testimony x x x she was able to recall what [appellant] did to her x x x.

“AAA” recalled that while she was playing, [appellant] saw her and asked her to go with him because he would give her a sugar cane. [Appellant] brought “AAA” to his house and while inside, ‘he removed her panty, and then inserted his penis into her vagina and he got the knife and then he took a sugar cane and then he gave it to her and then she went home.’

x x x x

This Court finds “AAA” a very credible witness, even in her mental condition. Contrary to defense counsel’s objection that “AAA” was not capable of intelligently making known her perception to others, “AAA” managed to recount the ordeal she had gone through in the hands of the accused, though in a soft voice and halting manner x x x.

“AAA’s” simple account of her ordeal clearly reflects sincerity and truthfulness.

While it is true that, on cross-examination, “AAA” faltered in the sequence of events x x x this is understandable because even one with normal mental condition would not be able to recall, with a hundred percent accuracy, events that transpired in the past. But “AAA” was certain that ‘it was a long time x x x after the incident’ when it was reported to the police. Likewise, she was very certain that the accused inserted his penis into her vagina x x x.¹²

In the same vein, the appellate court found “AAA” qualified to take the witness stand, *viz.*:

Our own evaluation of the records reveals that “AAA” was shown to be able to perceive, to make known her perception to others and to remember traumatic incidents. Her narration of the incident of rape given in the following manner is worthy of note:

x x x x

Private complainant “AAA” provided a clear, convincing and competent testimonial evidence to prove the guilt of the accused-appellant of the crime of rape beyond reasonable doubt. As found by the trial court, the testimony of “AAA” was replete with consistent details, negating the probability of fabrication.

We stress that, contrary to accused-appellant’s assertions, mental retardation *per se* does not affect a witness’ credibility. A mental retardate may be a credible witness.¹³

Appellant’s assertion that the trial court and the appellate court should have considered his alibi must likewise fail. For alibi to prosper, it must not only be shown that appellant was at another place at the time of the commission of the crime but that it was also impossible for him to be present at the crime scene. In this case, appellant attempted to show that he was at *barangay* Ananong at the time of the rape incident. However, as found by the trial court, the distance between *barangay* Ananong and *barangay* Ogbong is only four kilometers and could be traversed in one hour or even less.¹⁴

Finally, the trial court and the Court of Appeals correctly found appellant guilty of simple rape and properly imposed upon him the penalty of *reclusion perpetua* pursuant to Article 266-B, par. 1 of the Revised Penal Code. The trial court correctly ruled that “AAA’s” mental disability could not be considered as a qualifying circumstance because the Information failed to allege that appellant knew of such mental condition at the time of the commission of the crime. As held in *People v. Limio*:¹⁵

¹² Records, pp. 173-177.

¹³ CA *rollo*, pp. 132-134.

¹⁴ Records, p. 177.

¹⁵ 473 Phil. 659 (2004).

By itself, the fact that the offended party in a rape case is a mental retardate does not call for the imposition of the death penalty, unless knowledge by the offender of such mental disability is specifically alleged and adequately proved by the prosecution.

For the Anti-Rape Law of 1997, now embodied in Article 266-B of the Revised Penal Code (RPC) expressly provides that the death penalty shall also be imposed if the crime of rape is committed with the qualifying circumstance of ‘(10) when the offender knew of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime.’ Said knowledge x x x qualifies rape as a heinous offense. Absent said circumstance, which must be proved by the prosecution beyond reasonable doubt, the conviction of appellant for qualified rape under Art. 266-B (10), RPC, could not be sustained, **although the offender may be held liable for simple rape and sentenced to *reclusion perpetua*.**¹⁶

x x x x

[T]he mere fact that the rape victim is a mental retardate does not automatically merit the imposition of the death penalty. Under Article 266-B (10) of the Revised Penal Code, knowledge by the offender of the mental disability, emotional disorder, or physical handicap at the time of the commission of the rape is the qualifying circumstance that sanctions the imposition of the death penalty. As such this circumstance must be formally alleged in the information and duly proved by the prosecution.

Rule 110 of the 2000 Rules of Criminal Procedure requires both qualifying and aggravating circumstances to be alleged with specificity in the information. x x x But in the absence of a specific or particular allegation in the information that the appellant knew of her mental disability or retardation, as well as lack of adequate proof that appellant knew of this fact, Article 266-B (10), RPC, could not be properly applied x x x

Hence, the appellant can only be convicted of simple rape, as defined under Article 266-A of the [Revised] Penal Code, for which the impossible penalty is *reclusion perpetua*.¹⁷

However, it must be mentioned that appellant is not eligible for parole pursuant to Section 3¹⁸ of Republic Act No. 9346.¹⁹

The awards of ₱50,000.00 as moral damages and ₱50,000.00 as civil indemnity are likewise proper. However, the award of exemplary damages must be increased to ₱30,000.00 in line with prevailing jurisprudence.²⁰ Also, interest at the rate of 6% *per annum* shall be imposed from date of finality of this judgment

¹⁶ Id. at 661-662. Emphasis supplied.

¹⁷ Id. at 675-676.

¹⁸ Sec. 3. Person convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, by reason of this Act, shall not be eligible for parole under Act No. 4180, otherwise known as the Indeterminate Sentence Law, as amended.

¹⁹ AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES. Approved June 24, 2006.

²⁰ *People v. Vergara*, G.R. No. 199226, January 25, 2014.


until fully paid.

WHEREFORE, the March 28, 2011 Decision of the Court of Appeals in CA-G.R. CR H.C. No. 03270 finding appellant Jerry Obogne guilty beyond reasonable doubt of the crime of simple rape and sentencing him to suffer the penalty of *reclusion perpetua* and to pay “AAA” civil indemnity of ₱50,000.00 and moral damages of ₱50,000.00 is **AFFIRMED** with **MODIFICATIONS** that appellant is not eligible for parole; the amount of exemplary damages is increased to ₱30,000.00; and all damages awarded shall earn interest at the rate of 6% *per annum* from date of finality of this judgment until fully paid.

SO ORDERED.


MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Associate Justice
Chairperson


ARTURO D. BRION
Associate Justice


JOSE PORTUGAL PEREZ
Associate Justice


BIENVENIDO L. REYES
Associate Justice

ATTESTATION

I attest that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice

