
People vs. Quintos

SECOND DIVISION

[G.R. No. 199402. November 12, 2014]

PEOPLE OF THE PHILIPPINES, *appellee*, vs. **ENRIQUE QUINTOS y BADILLA**, *accused-appellant*.

SYLLABUS

- 1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF THE TRIAL COURT THEREON IS ACCORDED GREAT RESPECT BY THE APPELLATE COURT EXCEPT WHEN SUBSTANTIAL FACTS ARE OVERLOOKED OR MISCONSTRUED WHICH COULD AFFECT THE OUTCOME OF THE CASE.**— The observance of the witnesses’ demeanor during an oral direct examination, cross-examination, and during the entire period that he or she is present during trial is indispensable especially in rape cases because it helps establish the moral conviction that an accused is guilty beyond reasonable doubt of the crime charged. Trial provides judges with the opportunity to detect, consciously or unconsciously, observable cues and microexpressions that could, more than the words said and taken as a whole, suggest sincerity or betray lies and ill will. These important aspects can never be reflected or reproduced in documents and objects used as evidence. Hence, “[t]he evaluation of the witnesses’ credibility is a matter best left to the trial court because it has the opportunity to observe the witnesses and their demeanor during the trial. Thus, the Court accords great respect to the trial court’s findings,” more so when the Court of Appeals affirmed such findings. The exception is when the trial court and/or the Court of Appeals “overlooked or misconstrued substantial facts that could have affected the outcome of the case.”
- 2. CRIMINAL LAW; REVISED PENAL CODE; RAPE; ELEMENTS.**— When a victim’s testimony is credible and sufficiently establishes the elements of the crime, it may be enough basis to convict an accused of rape. x x x Thus, to be convicted of rape under Article 266-A of the Revised Penal Code, it only needs to be shown that a man had carnal knowledge with a woman, or a person sexually assaulted another, under any of the following circumstances: a) Through force, threat

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or intimidation; b) The victim is deprived of reason; c) The victim is unconscious; d) By means of fraudulent machination; e) By means of grave abuse of authority; f) When the victim is under 12 years of age; or g) When the victim is demented.

- 3. ID.; ID.; ID.; ID.; LACERATION IS NOT AN ELEMENT OF THE CRIME; THE PRESENCE OF LACERATIONS MAY BE USED TO SUSTAIN CONVICTION OF THE ACCUSED BY CORROBORATING TESTIMONIES OF ABUSE AND DOCUMENTS SHOWING TRAUMA UPON THE VICTIM'S GENITALS.**— AAA's mental condition does not make her testimony incredible as long as she can recount her experience in a straightforward, spontaneous, and believable manner. In *People v. Montcalvo*, this court said the following: Competence and credibility of mentally deficient rape victims as witnesses have been upheld by this Court where it is shown that they can communicate their ordeal capable and consistently. x x x AAA's testimony was corroborated by the medical findings, which showed that there were lacerations in her hymen that were produced by a blunt object. The testimonial evidence is bolstered by the presence of these lacerations. Together, they produce a moral conviction that accused committed the crimes charged. The presence of lacerations is not an element of the crime of rape. This court previously characterized the presence or absence of lacerations as a "trivial or inconsequential [matter] that does not alter the essential fact of the commission of rape." The presence of lacerations is, therefore, not necessary to sustain a conviction. An accused may be found guilty of rape regardless of the existence or inexistence of lacerations. The absence of lacerations is not a sufficient defense. However, the presence of lacerations may be used to sustain conviction of an accused by corroborating testimonies of abuse and documents showing trauma upon the victim's genitals.
- 4. ID.; ID.; ID.; ID.; THE EXISTENCE OF A RELATIONSHIP BETWEEN THE ACCUSED AND THE VICTIM DOES NOT NEGATE RAPE.**— Regardless of the relationship between two individuals, forcing carnal knowledge upon another is considered rape, more so when the victim is incapable of giving consent due to her mental capacity. Even married couples, upon whom the law imposes the duty to cohabit, are protected from forced sexual congress. Rape, as now defined in Article 266-A of the

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Revised Penal Code, does not make a distinction with regard to an accused's relationship with the victim. It only requires that sexual congress be forced by a man upon another person. Moreover, Republic Act No. 9262 recognizes that wives, former wives, co-parents, and sweethearts may be raped by their husbands, former husbands, co-parents, or sweethearts by stating that committing acts of rape against these persons are considered violence against women.

- 5. ID.; ID.; ID.; ID.; ABSENCE OF RESISTANCE DOES NOT BY ITSELF ESTABLISH CONSENT.**— Resistance is not an element of the crime of rape. It need not be shown by the prosecution. Neither is it necessary to convict an accused. The main element of rape is “lack of consent.” “Consent,” “resistance,” and “absence of resistance” are different things. Consent implies agreement and voluntariness. It implies willfulness. Similarly, resistance is an act of will. However, it implies the opposite of consent. It implies disagreement. Meanwhile, absence of resistance only implies passivity. It may be a product of one's will. It may imply consent. However, it may also be the product of force, intimidation, manipulation, and other external forces. Thus, when a person resists another's sexual advances, it would not be presumptuous to say that that person does not consent to any sexual activity with the other. That resistance may establish lack of consent. Sexual congress with a person who expressed her resistance by words or deeds constitutes force either physically or psychologically through threat or intimidation. It is rape. Lack of resistance may sometimes imply consent. However, that is not always the case. While it may imply consent, there are circumstances that may render a person unable to express her resistance to another's sexual advances. Thus, when a person has carnal knowledge with another person who does not show any resistance, it does not always mean that that person consented to such act. Lack of resistance does not negate rape. x x x Resistance, therefore, is not necessary to establish rape, especially when the victim is unconscious, deprived of reason, manipulated, demented, or young either in chronological age or mental age.
- 6. ID.; ID.; ID.; CIRCUMSTANCES WHEN RAPE MAY BE COMMITTED; ENUMERATED.**— Article 266-A of the Revised Penal Code does not simply say that rape is committed when

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a man has carnal knowledge with or sexually assaults another by means of force, threat, or intimidation. It enumerates at least four other circumstances under which rape may be committed: (1) by taking advantage of a person's deprived reason or unconscious state; (2) through fraudulent machination; (3) by taking advantage of a person's age (12 years of age) or demented status; and (4) through grave abuse of authority. Article 266-A recognizes that rape can happen even in circumstances when there is no resistance from the victim.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

LEONEN, J.:

A person commits rape when he sexually assaults another who does not consent or is incapable of giving consent to a sexual act. Children, either in chronological or mental age, are incapable of giving consent to a sexual act.

This case involves accused Enrique Quintos y Badilla who was charged with rape allegedly committed against AAA, a mental retardate¹ (intellectually disabled²).

Two informations were filed against accused. Pertinent portions of which read:

A. Crim. Case No. 07-0873 (Rape under Article 266-A, paragraph 2, in relation to Article 266-B, 9th paragraph, RPC)

That on or about the 25th day of October 2007, in the City of Las Pinas, Philippines, and within the jurisdiction of this Honorable Court,

¹ *Rollo*, p. 3.

² Based on the 2013 Diagnostic and Statistical Manual of Mental Disorders, pp. 33 and 809, the term "intellectual disability" has replaced "mental retardation" among the lay public, and the medical, educational, professional, and advocacy groups.

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the above-named accused, with lewd design, did then and there wilfully, unlawfully and feloniously commit an act of sexual assault by inserting his penis into the mouth of one [AAA], through force, threat, or intimidation, and against her will and consent, thereby debasing, demeaning and degrading her intrinsic worth and dignity.³

B. Crim. Case No. 07-0874 (Rape under Article 266-A, paragraph 1, Revised Penal Code)

That on or about the 26th day of October, 2007, in the City of Las Pinas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, did then and there wilfully, unlawfully and feloniously by means of force and intimidation, have carnal knowledge with one [AAA], when she is deprived of reason or otherwise unconscious or asleep, and against her will and consent, thereby debasing, demeaning and degrading her intrinsic worth and dignity.

Accused pleaded not guilty in both cases.⁴

Upon motion, the Regional Trial Court consolidated the two cases on March 6, 2008.⁵

The prosecution established that at the time of the incident, AAA was intellectually disabled.⁶ She was 21 years old with a mental age of 6 years and 2 months.⁷ She had an IQ of 38.⁸ This was based on the testimony of National Bureau of Investigation clinical psychologist Brenda Tablizo.

Brenda Tablizo testified that she had been with the National Bureau of Investigation for 33 years at the time her testimony

³ CA *rollo*, p. 45.

⁴ *Rollo*, p. 4.

⁵ *Id.*

⁶ *Id.* See also original records, p. 158. The neuro-psychiatric examination and evaluation dated December 17, 2007 and signed by Brenda Tablizo stated that AAA is “a Mentally Retarded person[,] has a Sub-Average intellectual functioning, an I.Q. of approximately (70) seventy or below in an individually administered test.”

⁷ *Id.*

⁸ *Id.*

was taken. In handling rape cases, they have a procedure, which involves “interviewing [the victim], giving [the victim a] psychological battery of tests and then . . . [an] in-depth interview. . . .”⁹ With respect to this particular case, Brenda Tablizo “administered the standard intelligence scale, and projective test.”¹⁰ She “conducted the standard intelligence scale to determine the mental and emotional capacity of the individual.”¹¹ She also gave AAA a draw-a-person test.¹²

According to Brenda Tablizo, the purpose of the tests was “to have a general assessment of the mental and emotional capacity of an individual and . . . to determine mental illness. . . .”¹³ These were the standard tests used to evaluate mental competence.¹⁴ She conducted the tests on the day AAA was referred to her by the Philippine National Police on December 5, 2007.¹⁵

AAA testified that in October 2007, accused, who was her neighbor, went to her house to watch television.¹⁶ Accused followed her when she went to the bathroom.¹⁷ In the bathroom, accused removed his shorts and underwear, and inserted his penis into her vagina.¹⁸ AAA did not want to have intercourse with the accused, but she did not tell the accused to stop.¹⁹ During the trial, AAA pointed to a man in yellow shirt as the

⁹ Original TSN records, p. 199, dated July 14, 2008.

¹⁰ *Id.* at 199.

¹¹ *Id.* at 201.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Rollo*, p. 4.

¹⁷ *Id.*

¹⁸ *Id.* at 5.

¹⁹ *CA rollo*, p. 47.

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man who followed her in the bathroom.²⁰ She identified his name as “Enrique Quintos.”²¹

A similar incident happened the next day. While AAA was sleeping, accused removed her undergarments, as well as his own undergarments.²² Accused then laid on top of her and, again, inserted his penis into her vagina.²³ AAA also recalled that on a different day, accused kissed her and held her breasts.²⁴ There was also one Thursday night when accused forced AAA to take his penis inside her mouth despite her protests.²⁵

Based on the medico-legal report dated November 5, 2007, there was evidence of lacerations in AAA’s hymen that were not self-inflicted.²⁶

Accused claimed that he did not rape AAA.²⁷ He was in a romantic and sexual relationship with AAA.²⁸ However, he ended this relationship when he got his now common-law wife pregnant.²⁹ He insisted that AAA’s charges were fabricated because of AAA’s inability to accept that he ended their relationship.³⁰

On September 9, 2009, the trial court issued a judgment finding accused guilty of two counts of rape.³¹ The dispositive portion of the decision reads:

²⁰ *Rollo*, pp. 4-5.

²¹ *Id.* at 5.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* at 8.

²⁷ *Id.* at 5.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

WHEREFORE, premises considered, judgment is hereby rendered as follows:

1. In Criminal Case No. 07-0873, accused Enrique Quintos y Badilla @ Eric is hereby found GUILTY beyond reasonable doubt of Simple Rape under Article 266-A, paragraph 2 in relation to Article 266-B, 9th paragraph and sentenced him to suffer an indeterminate penalty of 6 years of *prision correccional* as the minimum penalty to 10 years and 1 day of *prision mayor* as the maximum penalty.
2. In Criminal Case No. 07-0874, this Court likewise finds the said accused GUILTY of the crime of rape under Article 266-A, paragraph 1 of the Revised Penal Code and sentenced him to suffer the penalty of *reclusion perpetua*.

For each count of rape, accused is ordered to pay complainant [AAA] P50,000 as moral damages, P50,000 as civil indemnity and 25,000 as exemplary damages, or a total of P250,000.00 for two (2) counts of rape. Costs against the accused.

Accused appealed the trial court decision before the Court of Appeals.³²

On March 23, 2011, the Court of Appeals issued a decision affirming with modification the trial court's decision, the dispositive portion of which reads:

WHEREFORE, for the reasons stated, the appealed judgment finding accused appellant guilty of two counts of Rape is hereby AFFIRMED WITH MODIFICATION in that in Criminal Case No. 07-0873, accused-appellant is sentenced to suffer the indeterminate penalty of six (6) years of *prision correccional*, as minimum, to ten (10) years of *prision mayor*, as maximum. The award of exemplary damages is increased from 25,000 to 30,000 for each count of rape

All other aspects of the *fallo* of the assailed Decision rendered by the Regional Trial Court Branch 202 of Las Pinas City on September 9, 2009 in Criminal Case Nos. 07-0873 and 07-0874, stand.³³

³² *Id.* at 6.

³³ *Id.* at 12.

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The Court of Appeals found that AAA's testimony was credible and sufficient to convict accused.³⁴ "Her simple recollection of the acts done to her by accused-appellant evinces sincerity and truthfulness. . . . A woman with a mental age of that of a six year old child [as testified to by a National Bureau of Investigation psychologist] could not possibly concoct an accusation as serious as rape against . . . accused or at any one for that matter."³⁵ The Court of Appeals also considered the medical evaluation finding evidence of five-day-old (or less) lacerations.³⁶

The Court of Appeals ruled that accused's denial and alibi could not prosper because he was not able to demonstrate the impossibility that he was present at the crime scene when the incident happened.³⁷

On the alleged lack of resistance from AAA during the alleged assault, the Court of Appeals ruled that since an intellectually disabled person cannot give consent, carnal knowledge with her is rape under the law.³⁸ Moreover, accused did not show proof that would substantiate his claim that he was in a relationship with AAA.³⁹ In any case, the existence of a romantic relationship does not justify such force upon a party.⁴⁰

The Court of Appeals modified the maximum penalty in Criminal Case No. 07-0873 to 10 years of *prision mayor*. The Court of Appeals removed the additional one day imposed by the trial court.

³⁴ *Id.* at 7.

³⁵ *Id.* at 7-8.

³⁶ *Id.* at 8.

³⁷ *Id.*

³⁸ *Id.* at 9, citing *People v. Dela Paz*, 569 Phil. 684 (2008) [Per J. Chico-Nazario, Third Division].

³⁹ *Id.* at 10.

⁴⁰ *Id.*

On April 11, 2012, accused, through the Public Attorney's Office, filed a notice of appeal of the Court of Appeals' decision dated March 23, 2011.⁴¹

Both the People, through the Office of the Solicitor General, and accused, through the Public Attorney's Office, manifested their intent to dispense with the filing of supplemental briefs.⁴²

The issue in this case is whether accused was guilty beyond reasonable doubt of two counts of rape.

In the accused's brief filed before the Court of Appeals, accused argued that the trial court overlooked "material loopholes"⁴³ in AAA's direct testimony that could discredit her.⁴⁴ These include AAA's failure to disclose that accused employed force or intimidation against her. She never mentioned that accused was in any occasion carrying a deadly weapon, uttering threats, or subjecting AAA to physical violence.⁴⁵ Force and intimidation are elements of the crime of rape under Article 355, paragraph 1 of the Revised Penal Code, in relation to Republic Act No. 7659.⁴⁶

Accused also emphasized that AAA did not offer resistance or attempted to flee despite accused's lack of weapon to intimidate her.⁴⁷ She did not tell accused to stop when accused allegedly removed her undergarments.⁴⁸

Accused pointed out the closeness of the houses in the locality.⁴⁹ The incident also happened in broad daylight inside

⁴¹ *Id.* at 14.

⁴² *Id.* at 41 and 48.

⁴³ *CA rollo*, p. 86.

⁴⁴ *Id.*

⁴⁵ *Id.* at 87.

⁴⁶ *Id.*, quoting *People v. Salem*, 345 Phil. 1088 (1997) [Per *J. Bellosillo*, First Division].

⁴⁷ *Id.* at 87-88.

⁴⁸ *Id.* at 88.

⁴⁹ *Id.*

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AAA's house where she lived with six other family members.⁵⁰ These circumstances made it improbable for AAA not to make an outcry.⁵¹

Moreover, the prosecution's act of having to recall AAA to the witness stand so that she could testify to 1) the alleged threats that accused made to her and 2) the alleged fact that she wept after the incident reflects the weakness of AAA's initial testimony.⁵² It was clearly an "attempt to make out a stronger rape case."⁵³ She could have alleged those if it were true in her *sinumpaang salaysay* and during her direct testimony.⁵⁴

Lastly, accused argued that he and AAA were sweethearts who were engaged in sexual intimacies, and the charges against him were mere responses to their break-up.⁵⁵

We affirm accused's conviction.

I**Trial courts are in the best position to evaluate witnesses' credibility**

Both the trial court and the Court of Appeals found AAA's testimony to be credible and convincing.⁵⁶ There is no reason to disturb this finding.

The observance of the witnesses' demeanor during an oral direct examination, cross-examination, and during the entire period that he or she is present during trial is indispensable especially in rape cases because it helps establish the moral

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.* at 89.

⁵³ *Id.*

⁵⁴ *Id.* at 89-90.

⁵⁵ *Id.* at 90.

⁵⁶ *Rollo*, p. 7.

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conviction that an accused is guilty beyond reasonable doubt of the crime charged. Trial provides judges with the opportunity to detect, consciously or unconsciously, observable cues and microexpressions that could, more than the words said and taken as a whole, suggest sincerity or betray lies and ill will. These important aspects can never be reflected or reproduced in documents and objects used as evidence.

Hence, “[t]he evaluation of the witnesses’ credibility is a matter best left to the trial court because it has the opportunity to observe the witnesses and their demeanor during the trial. Thus, the Court accords great respect to the trial court’s findings,”⁵⁷ more so when the Court of Appeals affirmed such findings.⁵⁸

The exception is when the trial court and/or the Court of Appeals “overlooked or misconstrued substantial facts that could have affected the outcome of the case.”⁵⁹ No such facts were overlooked or misconstrued in this case.

II.

The intellectual disability of the witness does not make her testimony incredible, especially when corroborated by other evidence

⁵⁷ *People v. Montinola*, 567 Phil. 387, 404 (2008) [Per J. Carpio, Second Division], citing *People v. Fernandez*, 561 Phil. 287 (2007) [Per J. Carpio, Second Division]; *People v. Abulon*, 557 Phil. 428 (2007) [Per J. Tinga, *En Banc*]; *People v. Bejic*, 552 Phil. 555 (2007) [Per J. Chico-Nazario, *En Banc*].

⁵⁸ *People v. Baraoil*, G.R. No. 194608, July 9, 2012, 676 SCRA 24, 32 [Per J. Reyes, Second Division].

⁵⁹ *People v. Montinola*, 567 Phil. 387, 404 (2008) [Per J. Carpio, Second Division], citing *People v. Fernandez*, 561 Phil. 287 (2007) [Per J. Carpio, Second Division]; *People v. Abulon*, 557 Phil. 428 (2007) [Per J. Tinga, *En Banc*]; *People v. Bejic*, 552 Phil. 555 (2007) [Per J. Chico-Nazario, *En Banc*].

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When a victim's testimony is credible and sufficiently establishes the elements of the crime, it may be enough basis to convict an accused of rape.⁶⁰

Article 266-A of the Revised Penal Code provides:

Art. 266-A. *Rape, When and How Committed.* – Rape is committed –

- 1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:
 - a. Through force, threat or intimidation;
 - b. When the offended party is deprived of reason or is otherwise unconscious;
 - c. By means of fraudulent machination or grave abuse of authority;
 - d. When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present;
- 2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person (*Republic Act No. 8353 which took effect on October 22, 1997*).

Thus, to be convicted of rape under Article 266-A of the Revised Penal Code, it only needs to be shown that a man had carnal knowledge with a woman, or a person sexually assaulted another, under any of the following circumstances:

- a) Through force, threat or intimidation;
- b) The victim is deprived of reason;
- c) The victim is unconscious;
- d) By means of fraudulent machination;

⁶⁰ *People v. Suyat*, 547 Phil. 476, 487 (2007) [Per *J. Chico-Nazario*, Third Division], citing *People v. Gabelinio*, G.R. Nos. 132127-29, March 31, 2004, 426 SCRA 608, 619 [Per *J. Sandoval-Gutierrez*, Third Division].

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- e) By means of grave abuse of authority;
- f) When the victim is under 12 years of age; or
- g) When the victim is demented.

In this case, AAA made a spontaneous and unadorned testimony in court about the fact, the manner, and the circumstances of the male accused's sexual intercourse with her over a period of days. She was also able to positively identify the accused, when asked. Thus:

Q: When accused followed you to the bathroom what happened?

A: He removed his short and underwear, Ma'am.

Q: And, what did he do after he removed his short and underwear?

A: He inserted, Ma'am.

Q: What did he insert?

A: His penis, Ma'am.

Q: And, where did he insert his penis?

A: In my vagina, Ma'am.

....

Q: And, what happened on that another incident?

A: On a Tuesday he kissed me on the lips and held my breast, Ma'am.

Q: And, after that incident on a Tuesday, what else happened?

A: On a Thursday he waited on me downstairs when it was already dark, Ma'am.

Q: What did you do on that Thursday incident?

A: He let me swallowed, Ma'am.

Q: Who in particular let you swallowed something?

A: Eric, Ma'am.

Q: Are you referring to Eric the same accused who repeatedly inserted his penis into your vagina?

A: It is him, Ma'am.

....

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Q: Who let you swallow that “something”?

A: Eric, Ma’am.

Q: Please point to Eric if he is in this Courtroom.

RECORD: (Witness is pointing to a man wearing a yellow shirt and when asked his name answered, Enrique Quintos.)

Q: And, you said that the accused made you swallowed. What is that thing that he made you swallow?

A: His penis, Ma’am.

Q: What did you do when he made you swallowed his penis?

A: He forced me, Ma’am.

Q: And by forcing you, what action did you make with regard to his act of making you swallow his penis?

A: I told him, “I do not like it, Ma’am.

Q: And, did you in fact, able to swallow his penis?

A: “*Opo, isinubo po sa akin*”, Ma’am.⁶¹ (Emphasis supplied)

It was established by clinical psychologist Brenda Tablizo, however, through examinations and interviews, that AAA was intellectually disabled with a mental age of 6 years and 2 months. Pertinent portions of Brenda Tablizo’s testimony are reproduced as follows:

Q: In handling rape victim cases, what do you usually do with regard to them?

A: We usually do a certain procedure like interviewing them, giving them psychological battery of tests and then we still do the in-depth interview, ma’am.

Q: In this particular case . . . what kind of examination did you conduct upon her?

A: I administered the standard intelligence scale and projective test, ma’am.

. . . .

⁶¹ CA rollo, pp. 53-55; citing TSN, February 11, 2008, pp. 14-27.

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Pros. Sion: Madam Witness, will you please be more precise in informing this Honorable Court on the various tests which you conducted upon the person of the victim. . .?

Witness: I conducted the standard intelligence scale to determine the mental and emotional capacity of the individual, ma'am.

Q: Other than that kind of test, what other tests were conducted upon the victim?

A: I also gave her the draw-a-person test and battery of tests, ma'am.

Q: What were the purposes or the goals of these kinds of tests conducted upon the said victim?

A: The purpose of all these tests is to have a general assessment of the mental and emotional capacity of an individual and also these tests determine mental illness, ma'am.

Q: These kinds of tests that you resulted to which you employed upon the victim, are these tests the standard method being used all over to be able to specifically evaluate the mental competence and incompetence of a certain person?

A: Yes, ma'am.

Q: For how long did you conduct this psychiatric examination upon the said victim?

A: I conducted the tests on the same day when the victim was referred to me, ma'am. I started it in the morning until late in the afternoon. And we also asked for the victim to come back.

Q: So, for how much time was required for you to completely terminate and fully satisfied that you have completed this neuro-psychiatric examination upon the said victim?

A: For exactly one week, ma'am.

Q: As a result of the examination that you conducted upon the victim, what was the findings which yielded from said examination?

A: *In the conclusion which I made, it was found out that the victim is suffering from mental retardation, her IQ is 38 and her mental age is 6 years and two months, ma'am.*

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Q. How old was the victim at that time that you conducted this psychiatric examination?

A: *She was 21 years old, ma'am.*⁶² (Emphasis supplied)

AAA's mental condition does not make her testimony incredible as long as she can recount her experience in a straightforward, spontaneous, and believable manner. In *People v. Monticalvo*, this court said the following:

Competence and credibility of mentally deficient rape victims as witnesses have been upheld by this Court where it is shown that they can communicate their ordeal capable and consistently. Rather than undermine the gravity of the complainant's accusations, it even lends greater credence to her testimony, that, someone as feeble-minded and guileless could speak so tenaciously and explicitly on the details of the rape if she has not in fact suffered such crime at the hands of the accused.⁶³

AAA's testimony was corroborated by the medical findings, which showed that there were lacerations in her hymen that were produced by a blunt object. The testimonial evidence is bolstered by the presence of these lacerations. Together, they produce a moral conviction that accused committed the crimes charged.

The presence of lacerations is not an element of the crime of rape. This court previously characterized the presence or absence of lacerations as a "trivial or inconsequential [matter] that does not alter the essential fact of the commission of rape."⁶⁴ The presence of lacerations is, therefore, not necessary to sustain a conviction. An accused may be found guilty of rape regardless of the existence or inexistence of lacerations. The absence of lacerations is not a sufficient defense.

⁶² TSN, July 14, 2008, p. 202.

⁶³ *People v. Monticalvo*, G.R. No. 193507, January 30, 2013, 689 SCRA 715, 734 [Per J. Perez, Second Division].

⁶⁴ *Id.* at 745-735.

However, the presence of lacerations may be used to sustain conviction of an accused by corroborating testimonies of abuse and documents showing trauma upon the victim's genitals.

In this case, the medical evidence of lacerations supported AAA's testimony that she was sexually abused. It was not necessary to convict accused, but it strengthened AAA's testimony and the moral certainty that accused was guilty of the crimes charged.

III

The existence of a relationship between accused and the victim does not negate rape

Accused's argument that he and AAA were sweethearts is irrelevant in rape cases wherein the main element is "lack of consent." Regardless of the relationship between two individuals, forcing carnal knowledge upon another is considered rape, more so when the victim is incapable of giving consent due to her mental capacity. Even married couples, upon whom the law imposes the duty to cohabit, are protected from forced sexual congress.

Rape, as now defined in Article 266-A of the Revised Penal Code, does not make a distinction with regard to an accused's relationship with the victim. It only requires that sexual congress be forced by a man upon another person. Moreover, Republic Act No. 9262 recognizes that wives, former wives, co-parents, and sweethearts may be raped by their husbands, former husbands, co-parents, or sweethearts by stating that committing acts of rape against these persons are considered violence against women. Republic Act No. 9262 provides:

Section 3. *Definition of Terms.* — As used in this Act,

- (a) "*Violence against women and their children*" refers to any act or a series of acts committed by any person against a woman who is his wife former wife, or against a woman with whom the person has or had a sexual or dating relationship, or with whom he has a common child . . . which result in or

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is likely to result in physical, *sexual, psychological harm or suffering*, or economic abuse. . . .

. . .

. . .

. . .

B. “*Sexual violence*” refers to an act which is sexual in nature, committed against a woman or her child. It includes, but is not limited to:

a) *rape*, sexual harrassment, acts of lasciviousness . . .
(Emphasis supplied)

Further, we discussed marital rape in *People v. Jumawan*.⁶⁵
We said:

Husbands do not have property rights over their wives’ bodies. Sexual intercourse, albeit within the realm of marriage, if not consensual, is rape.

. . .

. . .

. . .

Clearly, it is now acknowledged that rape, as a form of sexual violence, exists within marriage. A man who penetrates her wife without her consent or against her will commits sexual violence upon her, and the Philippines, as a State Party to the CEDAW and its accompanying Declaration, defines and penalizes the act as rape under R.A. No. 8353.

A woman is no longer the chattel-antiquated practices labeled her to be. A husband who has sexual intercourse with his wife is not merely using a property, he is fulfilling a marital consortium with a fellow human being with dignity equal to that he accords himself. He cannot be permitted to violate this dignity by coercing her to engage in a sexual act without her full and free consent.⁶⁶

IV

Absence of resistance does not, by itself, establish consent

⁶⁵ G.R. No. 187495, April 21, 2014 < <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/april2014/187495.pdf>> [Per *J. Reyes*, First Division].

⁶⁶ *Id.*

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Accused's allegation that AAA did not resist his advances was belied by AAA's testimony that accused threatened the lives of her mother and siblings.⁶⁷ This is intimidation that could explain AAA's alleged lack of resistance.

In any case, resistance is not an element of the crime of rape. It need not be shown by the prosecution. Neither is it necessary to convict an accused. The main element of rape is "lack of consent."

"Consent," "resistance," and "absence of resistance" are different things. Consent implies agreement and voluntariness. It implies willfulness. Similarly, resistance is an act of will. However, it implies the opposite of consent. It implies disagreement.

Meanwhile, absence of resistance only implies passivity. It may be a product of one's will. It may imply consent. However, it may also be the product of force, intimidation, manipulation, and other external forces.

Thus, when a person resists another's sexual advances, it would not be presumptuous to say that that person does not consent to any sexual activity with the other. That resistance may establish lack of consent. Sexual congress with a person who expressed her resistance by words or deeds constitutes force either physically or psychologically through threat or intimidation. It is rape.

Lack of resistance may sometimes imply consent. However, that is not always the case. While it may imply consent, there are circumstances that may render a person unable to express her resistance to another's sexual advances. Thus, when a person has carnal knowledge with another person who does not show any resistance, it does not always mean that that person consented to such act. Lack of resistance does not negate rape.

Hence, Article 266-A of the Revised Penal Code does not simply say that rape is committed when a man has carnal

⁶⁷ CA rollo, p. 50.

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knowledge with or sexually assaults another by means of force, threat, or intimidation. It enumerates at least four other circumstances under which rape may be committed: (1) by taking advantage of a person's deprived reason or unconscious state; (2) through fraudulent machination; (3) by taking advantage of a person's age (12 years of age) or demented status; and (4) through grave abuse of authority. Article 266-A recognizes that rape can happen even in circumstances when there is no resistance from the victim.

Resistance, therefore, is not necessary to establish rape, especially when the victim is unconscious, deprived of reason, manipulated, demented, or young either in chronological age or mental age.

The circumstances when rape may be committed under Article 266-A of the Revised Penal Code should be defined in terms of the capacity of an individual to give consent. An unconscious person cannot rationally respond to stimuli or perform acts such as giving consent or offering resistance because he or she is either unaware, asleep, or in a coma.

Meanwhile, when a person is a victim of fraudulent machination or manipulation, such as when she is induced to have carnal knowledge to treat a person's disease that he or she does not really have, she is not in full control of his or her decisions. He or she acts without full or with false knowledge of the circumstances from which he or she bases his or her actions. Therefore, any consent he or she gives is either false or not his or her own. Any lack of resistance may not be interpreted as voluntariness.

The term, "deprived of reason," is associated with insanity or madness. A person deprived of reason has mental abnormalities that affect his or her reasoning and perception of reality and, therefore, his or her capacity to resist, make decisions, and give consent.

The term, "demented," refers to a person who suffers from a mental condition called dementia. Dementia refers to the deterioration or loss of mental functions such as memory, learning,

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speaking, and social condition, which impairs one's independence in everyday activities.⁶⁸

We are aware that the terms, "mental retardation" or "intellectual disability," had been classified under "deprived of reason."⁶⁹ The terms, "deprived of reason" and "demented", however, should be differentiated from the term, "mentally retarded" or "intellectually disabled." An intellectually disabled person is not necessarily deprived of reason or demented. This court had even ruled that they may be credible witnesses.⁷⁰ However, his or her maturity is not there despite the physical age. He or she is deficient in general mental abilities and has an impaired conceptual, social, and practical functioning relative to his or her age, gender, and peers.⁷¹ Because of such impairment, he or she does not meet the "socio-cultural standards of personal independence and social responsibility."⁷²

Thus, a person with a chronological age of 7 years and a normal mental age is as capable of making decisions and giving consent as a person with a chronological age of 35 and a mental age of 7. Both are considered incapable of giving rational consent because both are not yet considered to have reached the level of maturity that gives them the capability to make rational decisions, especially on matters involving sexuality. Decision-making is a function of the mind. Hence, a person's capacity to decide whether to give consent or to express

⁶⁸ American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, 5th ed. 603 (2013).

⁶⁹ See *People v. Butiong*, G.R. No. 168932, October 19, 2011, 659 SCRA 557, 571 [Per *J. Bersamin*, First Division]; *People v. Monticalvo*, G.R. No. 193507, January 30, 2013, 689 SCRA 715, 731-734 [Per *J. Perez*, Second Division].

⁷⁰ See *People v. Pasia*, G.R. No. 188855, December 8, 2010, <<http://sc.judiciary.gov.ph/jurisprudence/2010/december2010/188855.htm>> [Per *J. Perez*, First Division].

⁷¹ American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, 5th ed. 37 (2013).

⁷² *Id.* at 33.

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resistance to an adult activity is determined not by his or her chronological age but by his or her mental age. Therefore, in determining whether a person is “twelve (12) years of age” under Article 266-A(1)(d), the interpretation should be in accordance with either the chronological age of the child if he or she is not suffering from intellectual disability, or the mental age if intellectual disability is established.

In all the above circumstances, rape is ensured because the victim lacks the awareness or presence of mind to resist a sexual abuse. The unconscious, the manipulated, the reason-deprived, the demented, and the young cannot be expected to offer resistance to sexual abuse for the simple reason that their mental statuses render them incapable of doing so. They are incapable of rational consent. Thus, sexual intercourse with them is rape. No evidence of force, intimidation, or resistance is necessary.

In this case, the victim, AAA, is intellectually disabled, with a mental age of 6 years and 2 months at 21 years of chronological age and an IQ of 38 at the time of the incident. Her capacity to give consent is only that of a 6-year-and 2-month-old child. She is incapable of giving rational consent to a sexual act. Any sexual intercourse with her, regardless of her relationship with accused and the presence or absence of resistance, is considered rape. In *People v. Butiong*,⁷³ this court said:

Carnal knowledge of a mental retardate is rape under paragraph 1 of Article 266-A of the Revised Penal Code, as amended by Republic Act No. 8353 because a mental retardate is not capable of giving her consent to a sexual act. Proof of force or intimidation is not necessary, it being sufficient for the State to establish, one, the sexual congress between the accused and the victim, and, two, the mental retardation of the victim.⁷⁴

⁷³ G.R. No. 168932, October 19, 2011, 659 SCRA 557 [Per *J. Bersamin*, First Division].

⁷⁴ *Id.* at 571, citing *People v. Magabo*, 402 Phil. 977 (2001) [Per *J. Gonzaga-Reyes*, Third Division]; See also *People v. Reyes*, 374 Phil. 171 (1999) [Per *J. Quisumbing*, Second Division]; *People v. Andaya*, 365 Phil. 654 (1999) [Per *J. Gonzaga-Reyes, En Banc*]; *People v. Guerrero*, 312

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Similarly, in *People v. Monticalvo*,⁷⁵ this court said:

The gravamen of the crime of rape under Art. 266-A(1) is sexual intercourse with a woman against her will or without her consent.

...

... [F]or the charge of rape to prosper, the prosecution must prove that the offender had carnal knowledge of a woman through any of the four enumerated circumstances. Without doubt, carnal knowledge of a woman who is a mental retardate is rape under the aforesaid provisions of law. Proof of force or intimidation is not necessary as a mental retardate is not capable of giving consent to a sexual act. What needs to be proved are the facts of sexual congress between the accused and the victim, and the mental retardation of the latter.⁷⁶

For the same reason that AAA was incapable of giving her consent, forcing her to take one's genitals inside her mouth is rape under Article 266-A(2) regardless of the existence of or lack of consent.

The classifications of rape in Article 266-A of the Revised Penal Code are relevant only insofar as these define the manners of commission of rape. However, it does not mean that one manner is less heinous or wrong than the other. Whether rape is committed by nonconsensual carnal knowledge of a woman or by insertion of the penis into the mouth of another person, the damage to the victim's dignity is incalculable. Child sexual abuse in general has been associated with negative psychological impacts such as trauma, sustained fearfulness, anxiety, self-destructive behavior, emotional pain, impaired sense of self, and interpersonal difficulties.⁷⁷ Hence, one experience of sexual

Phil. 694 (1995) [Per J. Padilla, First Division]; and *People v. Nguyen Dinh Nhan*, G.R. No. 93433, August 5, 1991, 200 SCRA 292 [Per J. Gutierrez, Jr., Third Division].

⁷⁵ G.R. No. 193507, January 30, 2013, 689 SCRA 715 [Per J. Perez, Second Division].

⁷⁶ *Id.* at 731-734.

⁷⁷ J. N. BRIERE AND D. M. ELLIOT, IMMEDIATE AND LONG-TERM IMPACTS OF CHILD SEXUAL ABUSE, THE FUTURE OF CHILDREN, Sexual Abuse of Children, Princeton University, Vol. 4, No. 2, 54-69 (Summer-Autumn 1994).

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abuse should not be trivialized just because it was committed in a relatively unusual manner.

“The prime purpose of [a] criminal action is to punish the offender in order to deter him and others from committing the same or similar offense, to isolate him from society, reform and rehabilitate him or, in general, to maintain social order.”⁷⁸ Crimes are punished as retribution so that society would understand that the act punished was wrong.

Imposing different penalties for different manners of committing rape creates a message that one experience of rape is relatively trivial or less serious than another. It attaches different levels of wrongfulness to equally degrading acts. Rape, in whatever manner, is a desecration of a person’s will and body. In terms of penalties, treating one manner of committing rape as greater or less in heinousness than another may be of doubtful constitutionality.

However, the discriminatory treatment of these two acts with the same result was not raised in this case. Acknowledging that every presumption must be accorded in favor of accused in criminal cases, we have no choice but to impose a lesser penalty for rape committed by inserting the penis into the mouth of the victim.

V

The victim’s mental incapacity need not be alleged in the information in order to convict an accused of the crime of rape as long as evidence established such incapacity

Article 266-B of the Revised Penal Code provides that rape under paragraph 1 of Article 266-A is punishable by *reclusion perpetua*.

⁷⁸ See *Ramiscal, Jr. v. Hon. Sandiganbayan*, 487 Phil. 384, 405 (2004) [Per *J. Callejo, Sr.*, Second Division].

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The information charging accused of this crime lacked the allegation of any mental disability on the part of AAA. This is not necessary to convict accused of the crime of rape provided that sexual congress and mental incapacity and, therefore, the incapacity to give consent, are proved by clear and convincing evidence.

However, to qualify the crime of rape and increase the penalty of accused from *reclusion perpetua* to death under Article 266-B in relation to Article 266-(A)(1) of the Revised Penal Code, an allegation of the victim's intellectual disability must be alleged in the information. If not alleged in the information, such mental incapacity may prove lack of consent but it cannot increase the penalty to death. Neither can it be the basis of conviction for statutory rape.

In this case, the elements of sexual congress and lack of consent were sufficiently alleged in the information. They were also clearly and conveniently determined during trial. The fact of being mentally incapacitated was only shown to prove AAA's incapacity to give consent, not to qualify the crime of rape.

Thus, the Court of Appeals is correct in affirming the trial court's decision to impose the penalty of *reclusion perpetua* and not death in Criminal Case No. 07-0874.

Article 266-B also provides that rape under paragraph 2 of Article 266-A is punishable by *prision mayor*. Applying Act No. 4103 or the Indeterminate Sentence Law, and considering that there were no attending circumstances that should be considered, accused's penalty in Criminal Case No. 07-0873 should be "within the range of penalty next lower to [*prision mayor*]" or *prision correccional* in its maximum period as minimum, and *prision mayor* in its medium period as maximum. *Prision correccional* in its maximum period has a range of 4 years, 2 months and 1 day to 6 years. *Prision mayor* in its medium period has a range of 8 years and 1 day to 10 years. Since the penalty imposed by the trial court exceeds by one day the allowable penalty for the offenses committed, the Court of Appeals was correct in removing that excess.

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This court had not hesitated to increase the awards of damages in crimes of utter heinousness and depravity.⁷⁹ Thus, we increase the awards for moral damages, civil indemnity, and exemplary damages to ₱100,000.00 each, and for each count of rape.

WHEREFORE, the decision of the Court of Appeals finding accused Enrique Quintos y Badilla guilty of two counts of rape is **AFFIRMED with MODIFICATION**. Accused is sentenced to suffer the penalty of *reclusion perpetua* for Criminal Case No. 07-0874, without possibility for parole in accordance with Republic Act No. 9346.⁸⁰ For Criminal Case No. 07-0873, accused is sentenced to suffer the indeterminate penalty of six (6) years of *prision correccional* as minimum to 10 years of *prision mayor* as maximum. The awards for moral damages, civil indemnity, and exemplary damages are increased to 100,000.00 each for each count of rape or a total of ₱600,000.00, with an interest of 6% per annum from the finality of this decision until satisfaction of the award.

SO ORDERED.

Carpio (Chairperson), Brion, del Castillo, and Mendoza, JJ., concur.

⁷⁹ See *People v. Gutierrez*, G.R. No. 208007, April 2, 2014, < <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/april2014/208007.pdf> > [Per *J. Leonen*, Third Division]; *People v. Degay*, G.R. No. 182526, August 25, 2010, 629 SCRA 409 [Per *J. Perez*, First Division]; *People v. Gamba*, G.R. No. 172707, October 1, 2013 < <http://sc.judiciary.gov.ph/jurisprudence/2013/october2013/172707.pdf> > [Per *J. Perez, En Banc*].

⁸⁰ An Act Prohibiting the Imposition of Death Penalty in the Philippines.