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SECOND DIVISION

[G.R. No. 139694. December 27, 2002]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **CENON PAGSANJAN *Y* CARLOS,** *accused-appellant.*

SYNOPSIS

Accused-appellant was found guilty by the trial court of the crime of simple rape for sexually abusing an eighteen-year old mentally retarded woman. On appeal, appellant argued that the prosecution failed to prove his guilt beyond reasonable doubt. He argued that the victim freely and voluntarily consented to have sexual intercourse with him.

In affirming the conviction of appellant, the Supreme Court ruled that rape may be committed against the will of the victim or without her consent. Consent which will be held sufficient assumes a mental capacity in the person consenting to the extent that she understands and appreciates the nature of the act of sexual intercourse, its character and the probable or natural consequences which may attend it. A mental retardate is incapable of giving consent to the sexual intercourse. She is in the same class as a woman deprived of reason or otherwise unconscious. Having sexual intercourse with a female with a mental age below twelve years old, even if she voluntarily submitted herself to the bestial desires of a male without force or intimidation, is rape within the context of Article 335 of the Revised Penal Code. The reason for this is that if sexual intercourse with a victim under twelve years of age is rape, then it should follow that carnal knowledge of a woman whose mental age is that of a child below twelve years would also constitute rape.

SYLLABUS

1. **CRIMINAL LAW; RAPE; MAY BE COMMITTED AGAINST THE WILL OF VICTIM OR WITHOUT HER CONSENT.—** Rape may be committed against the will of the victim or without her consent. The terms "against her will" and "without her consent" are, in many respects, synonymous. Consent which will be held sufficient assumes a mental capacity in the person

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consenting to the extent that she understands and appreciates the nature of the act of sexual intercourse, its character and the probable or natural consequences which may attend it.

2. **ID.; ID.; COMMITTED IN CASE OF SEXUAL INTERCOURSE WITH A FEMALE WITH MENTAL AGE BELOW TWELVE YEARS OLD, EVEN IF SHE VOLUNTARILY SUBMITTED HERSELF TO THE BESTIAL DESIRES OF A MALE WITHOUT FORCE OR INTIMIDATION; RATIONALE.—** A mental retardate is incapable of giving consent to the sexual intercourse. She is in the same class as a woman deprived of reason or otherwise unconscious. We have consistently held that having sexual intercourse with a female with a mental age below twelve years old, even if she voluntarily submitted herself to the bestial desires of a male without force or intimidation, is rape within the context of Article *335* of the Revised Penal Code. ... The *raison d'etre* for this is that if sexual intercourse with a victim under twelve years of age is rape, then it should follow that carnal knowledge of a woman whose mental age is that of a child below twelve years would also constitute rape.

3. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF TRIAL COURT, GENERALLY ACCORDED GREAT RESPECT ON APPEAL; EXCEPTION.—** [T]he findings of facts of the trial court, its conclusions anchored on said findings, its calibration of the testimonial evidence of the parties and the probative weight thereof are accorded by this Court high respect if not conclusive effect because of the unique advantage of the trial court of observing at close range, the behavior, demeanor and deportation of the witnesses as they regale the court with their testimonies. However, Appellate Courts are not bound by the findings of the trial court if the latter misunderstood, misapplied or misconstrued or ignored facts and circumstances of substance which if considered will alter the outcome of the case.

4. **ID.; ID.; ID.; TESTIMONY OF WITNESS MUST BE CONSIDERED, WEIGHED AND CALIBRATED IN ITS ENTIRETY AND NOT BY ISOLATED PASSAGES THEREIN.—** It bears stressing that an ample margin of inaccuracy should be accorded to a young witness, including one suffering from a mental disorder who, much more than adults, would be gripped with tension and apprehension due to the novelty

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of the experience of testifying before a court. A young and uninitiated witness may balk at a question of counsel and respond to another question with spontaneity. Also, the testimony of a witness may be believed in part and disbelieved in part depending upon the corroborative evidence and the probabilities or improbabilities of the case. There is no standard form of human behavioral response when confronted with a startling or frightful experience. Moreover, the testimony of a witness must be considered, weighed and calibrated in its entirety and not by truncated portions thereof or isolated passages therein.

5. **ID.; ID.; ALIBI; REQUISITES; NOT ESTABLISHED IN CASE AT BAR.**— Alibi is one of the weakest if not the weakest of defenses in criminal prosecution as it is easy to fabricate and hard to disprove. For alibi to be believed, the following requisites must concur: (a) the presence of accused at another place at the time of the perpetration of the offense; and (b) the physical impossibility for him to be at the scene of the crime. The evidence on record shows that the house of accused-appellant was located in Zulueta Street, Sto. Rosario, Malolos, Bulacan, the same street where private, complainant and her family lived. Patently, there was no physical impossibility for accused-appellant to be at the house of private complainant when the crime was committed.

6. **ID.; ID.; ID.; CANNOT PREVAIL IN CASES WHERE THE OFFENDER IS POSITIVELY IDENTIFIED BY VICTIM WHO HARBORED NO ILL MOTIVE AGAINST HIM.**— [A]libi cannot be given credence in light of the unwavering and positive identification by the private complainant of accused-appellant as her defiler and the father of her child. In cases where the offender is positively identified by the victim herself who harbored no ill motive against him, the defense of alibi is invariably rejected.

7. **CIVIL LAW; DAMAGES; CIVIL INDEMNITY AND MORAL DAMAGES; AWARDED IN CASE AT BAR.**— The civil indemnity awarded to a rape victim in cases where the penalty of *reclusion perpetua* is imposed is presently fixed at ₱50,000.00 and moral damages likewise at ₱50,000.00. Moral damages are automatically awarded to a rape victim without need of proof, for it is assumed that she has suffered moral injuries entitling her to such award. Such award is separate and distinct from civil indemnity, which is likewise automatically awarded upon

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proof of the commission of the crime and the offender's responsibility therefor.

8. **CRIMINAL LAW; RAPE; CIVIL LIABILITY OF A PERSON WHO COMMITS RAPE; CASE AT BAR.**— With respect to the civil liability of a person who commits rape, Article 345 of the Revised Penal Code provides: "ART. 345. Civil liability of persons guilty of crimes against chastity.—Persons guilty of rape, seduction, or abduction, shall also be sentenced: 1.To indemnify the offended woman; 2. To acknowledge the offspring, unless the law should prevent him from doing so; 3. In every case to support the offspring." Accused-appellant is obliged under the aforequoted provision of the Revised Penal Code to give support to his son. However, the amount shall be determined by the trial court after due notice and hearing in accordance with Article 201 of the Family Code.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CALLEJO, SR., *J.*:

This is an appeal from the decision[1] of the Regional Trial Court of Bulacan, Branch 14, in Criminal Case No. 1288-M-95, finding accused-appellant Cenon Pagsanjan *y* Carlos guilty beyond reasonable doubt of simple rape and meting out on him the indivisible penalty of *reclusion perpetua* and ordering him to pay to the victim, Maritess Carreon, indemnity in the amount of ₱40,000.00.

As established by the prosecution, the facts are —

Spouses Alfredo and Felicidad Carreon had three children, namely, Marilyn Carreon, Maritess Carreon, who was born on September 7, 1973, and Michael Carreon. The Carreon couple

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[1] Penned by Judge Petrita Brega-Dime.

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and their children Maritess and Michael resided in Zulueta Street, Sto. Rosario, Malolos, Bulacan, while their daughter Marilyn resided in Makati. Alfredo was employed in La Trinidad, Benguet Province and temporarily resided thereat but went home to Malolos, Bulacan, every 14th and at the end of each month. The couple employed Delia Fernandez as their laundrywoman. The latter and accused-appellant, her common-law husband, who was known to Alfredo Carreon and to other people in the neighborhood as Cenon Galman, resided about 200 meters away from the house of Alfredo Carreon. Accused-appellant worked as a tricycle driver. He used to go to the house of Alfredo to wash and clean his tricycle near said house. At one time, accused-appellant was introduced to Maritess by Felicidad.

Maritess was a mental retardate, with a mental age of a child aged six years and six months old. It took her five years to finish Grades I and II in the elementary grades. Thereafter, her parents gave up and no longer sent her back to school.

Sometime in September 1992, Felicidad fell ill and was confined at the Bulacan Provincial Hospital for medical examination and treatment. Maritess was left alone in their house and was told to just lock the doors of the house.

One night in September 1992, Maritess was sleeping with her shorts on, but was awakened by accused-appellant who told her that he wanted to have a drink of water. Maritess obliged and gave him a glass of water. Thereafter, accused-appellant, who was wearing a pair of short pants, made her lie down, mounted her and forced himself on Maritess. He succeeded in inserting his penis in her vagina. She felt pain in her vagina as she was ravished. Accused-appellant threatened to kill her if she divulged to her mother what he did to her. Afraid that her mother might get angry with her, Maritess kept the incident to herself. In the meantime, Felicidad continued to be confined in the hospital for about a week after the incident.

Sometime in January 1993, Felicidad was perturbed after she noticed that the abdomen of Maritess was bulging. She suspected that her daughter was pregnant. She had Alfredo summoned from Benguet and informed him that their daughter

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was pregnant. The couple were puzzled because Maritess had no male friends or visitors. The only person who frequented their house was accused-appellant. When asked by her parents who was the father of the child, Maritess at first did not respond and appeared nonchalant. However, when she was asked anew by her parents if Cenon Galman was the father of her child, Maritess nodded her head several times and declared that Cenon had sexually abused her.

Alfredo and Felicidad lodged a complaint with the Barangay Captain of Sto. Rosario. Accused-appellant was subsequently brought to the Municipal Building. It was only then that Alfredo Carreon learned that the full name of accused-appellant was Cenon Pagsanjan, and not Cenon Galman.

Upon the suggestion of a niece of Felicidad, Maritess underwent an ultrasound examination by Dr. Ireneo Villano of the Sto. Niño Medical Clinic. Dr. Villano issued a Certification dated February 26, 1993, that Maritess was pregnant with her child, with 24.2 weeks gestation.[2]

On March 1, 1993, Maritess, accompanied by Felicidad, arrived in the Municipal Trial Court of Malolos, Bulacan and filed a criminal complaint for rape against accused-appellant with said court. Maritess affixed the imprint of her right thumb while Felicidad affixed her signature on the criminal complaint for rape. Said complaint was docketed as Criminal Case No. 3908.

Maritess was brought to the National Center for Mental Health, where she underwent a physical examination conducted by Dr. Annabelle Reyes on March 9, 1993. The latter issued a certification on her findings that Maritess was pregnant, probably of six to seven months gestation, and that she was suffering from a moderate mental retardation.[3] The doctor opined that in her mental state, Maritess was capable of freely and voluntarily submitting herself to a sexual act although she may not be capable

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[2] Exhibit "C".

[3] Exhibit "D".

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of comprehending the consequences of her action.[4] However, since psychiatry or psychology was not her specialty, Dr. Reyes referred Maritess to Dr. Susan Sabado, a Clinical Psychologist of the National Center for Mental Health, who interviewed Maritess on March 9 and 17, 1993, and subjected her to a series of tests as well as a psychological examination. Dr. Sabado submitted a report stating that Maritess was imbecile, with a mental numerical intelligence quotient (I.Q.) of 50 and a mental age of that of a child of six years and eight months. According to said physician, this meant that Maritess was incapable of determining whether an act is wrong or not.[5] On June 13, 1993, Maritess gave birth to a baby boy, christened Bryan Dexter Carreon.

On June 23, 1993, an Information was filed against accused-appellant with the Regional Trial Court of Bulacan, docketed as Criminal Case No. 1288-M-93 for rape, which reads:

"The undersigned Asst. Provincial Prosecutor, on complaint of the offended party, Marites (sic) Carreon, assisted by her mother, Felicidad Carreon, accuses Cenon Pagsanjan *y* Carlos of the crime of rape, penalized under the provisions of Article 335, paragraph 3 of the Revised Penal Code, committed as follows:

That on or about the 14th day of September, 1992, in the municipality of Malolos, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the said accused Cenon Pagsanjan *y* Carlos, by means of violence, force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the said Maritess Carreon, 18 years of age and a mentally retarded woman, against her will and by means of force.

Contrary to law."[6]

When arraigned on July 9, 1993, accused-appellant, assisted by counsel *de oficio*, pleaded not guilty to the charge.

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[4] TSN, October 19, 1994, p. 38.

[5] Exhibit "F".

[6] Records, p. 7.

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When he testified in his defense, accused-appellant denied having sexually assaulted Maritess and claimed that he never met her until the latter testified during the trial of the case. He further declared that since 1990, he and his common-law wife Delia Fernandez had been residing at Zulueta Street, Sto. Rosario, Malolos, Bulacan. Delia's daughter by another man, Veronica, lived with them. Alfredo and Felicidad decided to finance the studies of Veronica and thenceforth, the latter stayed in the house of the couple.

Accused-appellant eked out a living by driving a tricycle. Sometime in 1992, Felicidad hired Delia as her laundrywoman. He used to bring Delia on board his tricycle to the house of Felicidad every morning and fetched her there in the afternoon.

On Maritess' birthday on September 7, 1992, Delia, Veronica and accused-appellant had dinner in the house of Alfredo and Felicidad. However, Maritess did not join them for dinner. Accused-appellant did not see Maritess on that occasion.

On September 14, 1992, in the morning, accused-appellant brought Delia on board his tricycle to the house of the Carreons for work. At around 6:00 p.m., he fetched Delia from the Carreon house and brought her home. Later that evening, accused-appellant also fetched Veronica from the residence of the Carreons and brought her home to his and of Delia's house. Accused-appellant slept at 9:00 p.m. and woke up at about 8:00 am. the following day.

Subsequently, Delia resigned from her employment barely two months after she started work for Felicidad because the latter did not pay her for her services.

Although the court, on motion of accused-appellant, issued *subpoenae ad testificandum* for the attendance of Delia Fernandez and her daughter Veronica Fernandez, for them to corroborate accused-appellant's testimony, the latter decided not to present them anymore as his witnesses.

After due proceedings, the trial court rendered its decision finding accused-appellant guilty beyond reasonable doubt of

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the crime of simple rape. The decretal portion of said decision reads as follows:

"WHEREFORE, finding accused Cenon Pagsanjan *y* Carlos, guilty beyond reasonable doubt of the crime of RAPE, he is hereby sentenced to suffer the penalty of *reclusion perpetua*; to compulsory acknowledge the child Bryan Dexter; to render support to the said child until he attains the age of 21 years; to indemnify the offended party the sum of Forty Thousand (₱40,000.00) and to pay the cost.

SO ORDERED."[7]

The trial court declared that the prosecution mustered the requisite quantum of evidence to prove the guilt of accused-appellant of the crime charged and that the latter failed to prove his twin defenses of denial and alibi.

Aggrieved, accused-appellant appealed from the decision of the court, contending that:

I

THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT OF THE CRIME CHARGED BY RELYING ON THE WEAKNESS OF DEFENSE EVIDENCE RATHER THAN ON THE STRENGTH OF THE EVIDENCE OF THE PROSECUTION.

II

THE TRIAL COURT ERRED IN NOT GIVING DUE CREDENCE AND WEIGHT TO THE OPINION OF AN EXPERT WITNESS THAT SAID PRIVATE COMPLAINANT DESPITE HER MODERATE MENTAL RETARDATION IS CAPABLE OF GIVING HER FREE AND VOLUNTARY WILL.[8]

Accused-appellant avers that the prosecution failed to prove his guilt for the crime charged beyond cavil of doubt. He argues that on the basis of the testimony of Dr. Annabelle Reyes, the expert witness of the prosecution, it can be concluded that the private complainant was not a mental retardate. In fact, the

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[7] *Vide* note 8, p. 214.

[8] *Rollo*, p. 246.

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latter freely and voluntarily consented to have sexual intercourse with him.

We are not convinced. Accused-appellant is clutching at straws. Even a cursory reading of Dr. Reyes' testimony will readily show that she merely conducted an initial interview and hence, did not conduct a comprehensive and complete psychological examination of the private complainant. Indeed, she found it imperative to refer the private complainant to Dr. Susan Sabado, a psychologist, to determine the specific classification of the mental aberration of the private complainant:

"A: Initially during the interview, I noted that it is not already within the normal range for a person her age, sir.

Q: Are you saying that this Maritess Carreon is abnormal?
A: Yes, in a layman's term you will call abnormal because Abnormal is a derivative from a normal.

Q: Can you tell us the degree of abnormality of Maritess Carreon?
A: Upon interview, she will not be able to give us specific classification regarding her. What I did is I requested for a psychological test to be done which more or less will give us more exact gauge of her mental capacity, sir.

Q: Did you actually refer her to a Psychologist?
A: Yes, sir.

Q: And that Psychologist is also holding office at the National Center for Mental Health?
A: Yes, sir."[9]

Accused-appellant made capital of the testimony of Dr. Reyes that a person of moderate mental retardation is capable of giving her free and voluntary will:

"Q: But in time you will admit to this Court that the examinations allegedly on two (2) occasions to the patient are not enough for you to establish with medical certainty the medical condition of the patient?
A: Yes, sir.

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[9] TSN, Reyes, October 19, 1994, pp. 13-14.

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Q: You will agree with me that free will is different from intelligent decision, one may give his free will to a certain act but not necessarily an intelligent decision?
A: Yes, sir.

Q: So, a person of moderate mental retardation you said a while ago is capable of giving her free and voluntary will?
A: Yes, sir.

Q: In fact when asked by the prosecutor, you also answered in the affirmative that the same kind of person would freely and voluntarily submit herself to a sexual act?
A: Yes, sir.

Q: Although she may not be capable of apprehending the consequence of that action?
A: Yes, sir."[10]

Accused-appellant thereby erroneously concluded that the private complainant freely and voluntarily consented to his having carnal knowledge of her. Evidently, the conclusion culled by accused-appellant is a *non sequitur*. Even Dr. Reyes unabashedly declared that "one suffering from mental retardation may not be capable of apprehending (*sic*) the consequences of her actuations."

What is decisive is the testimony of Dr. Susan Sabado, the Clinical Psychologist of the National Center for Mental Health who was presented by the prosecution precisely to prove that private complainant was a mental retardate. It was she who conducted a series of tests and subjected private complainant to a psychological examination on the basis of which she prepared and signed her Report.[11] She testified that the private complainant had a mental numerical I.Q. of 50, which meant that for her age, her mental capacity was that of an imbecile or a retardate, and that she had the mental age of a child six years and eight months of age and therefore was incapable of determining whether her actuations are right or wrong:

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[10] TSN, Reyes, October 19, 1994, pp. 37-39, *supra*.

[11] Exhibit "F".

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"Q: And what happened afterwards?
A: Despite encouragement and coddling she refused to initially take the test but after persistent persuasion she obliged, sir.

Q: What happened with that examination of yours, what are your findings?
A: Well, my findings is that the patient is mentally retardate.

Q: How did you approximate her degree of intelligence?
A: Her degree of intelligence, sir, she has a mental numerical I.Q. of 50 which has an equivalent of imbecile.

Q: When you consider Maritess Carreon as an imbecile, how would you describe her state of intelligence?
A: Retardate, sir.

Q. Could she determine what is right and what is wrong?
A: No, sir.

Q. Does she have a mentality of at least 7 years old boy or girl?
A: No, sir.

Q: What age would you approximate her degree of intelligence?
A: Based on her psychological test, the computed mental age is 6 years and 8 months.

Q: How did you characterized the state of disposition of a child about 6 years old?
A: She has faulty judgment, sir.

Q: Are you saying that a child with that age is not capable of determining with judiciousness what is right and what is wrong?
A: Yes, sir."[12]

Article 335 of the Revised Penal Code provides that rape may be committed, thus:

"1. By using force or intimidation;

2. When the woman is deprived of reason or otherwise unconscious; and

3. When the woman is under twelve years of age or is demented.

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[12] TSN, Sabado, January 18, 1995, pp. 10-13, *supra*.

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The crime of rape shall be punished by *reclusion perpetua.*

Whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death."

When the rape is attempted or frustrated and a homicide is committed by reason or on the occasion thereof, the penalty shall be *reclusion perpetua* to death.

When by reason or on the occasion of the rape, a homicide is committed, the penalty shall be death.

Rape may be committed against the will of the victim or without her consent. The terms "against her will" and "without her consent" are, in many respects, synonymous. Consent which will be held sufficient assumes a mental capacity in the person consenting to the extent that she understands and appreciates the nature of the act of sexual intercourse, its character and the probable or natural consequences which may attend it.[13]

Commenting on the *Spanish Penal Code*, Cuello Calon declared that: *LAS MUJERES PRIVADOS DE RAZON, ENAJENADES, IDIOTAS, IMBECILES, SON INCAPACES FOR SU ESTADO MENTAL DE APRECIAR LA OFENSA QUE EL CULPABLE INFIERE A SU HONESTIDAD Y POR TANTO, INCAPACES DE CONSENTIR PERO NO ES CONDITION PRECISA QUE LA CARENCIA DE RASON SEA COMPLETA, BASTA LA ABNORMALIDAD O DEFICINCIA MENTAL QUE SOLO TU DISMINUYE SIM EMBARDO LA JURISPRUDENCE ES DISCORDANTE."*[14] A mental retardate is incapable of giving consent to the sexual intercourse. She is in the same class as a woman deprived of reason or otherwise unconscious.[15]

We have consistently held that having sexual intercourse with a female with a mental age below twelve years old, even

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[13] *Stephen vs. State,* 48 Southern Reporter, 2nd 255 (1950).

[14] 11 *Cuello Calon, Derecho Penal*, 14th ed. 1975, pp. 538-539, cited in *People vs. Manlapaz*, 88 SCRA 704 (1979).

[15] *People vs. Sunga*, 137 SCRA 130 (1985).

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if she voluntarily submitted herself to the bestial desires of a male without force or intimidation, is rape within the context of Article 335 of the Revised Penal Code, as amended:

"It has time and again been held that a person is guilty of rape when he has sexual intercourse with a female who is mentally incapable of validly giving consent to or opposing the carnal act. This rule has been reiterated by this Court in the following cases: *People vs. Race*, which upheld convictions for the crime of rape; *People vs. Gallano*, where the 31-year-old victim had the mental level of a 7-year-old child; *People vs. Asturias*, where the 17-year-old victim had a mental level lower than that of a 7-year-old child; *People vs. Sunga*, where the 23-year-old victim had the mentality of an 8-year-old child; and *People vs. Palma*, where the victim was a 14-year-old retardate with an intellectual capacity described as "borderline mental deficiency."

We have held that if the mental age of a woman above twelve years is that of a child below twelve years, even if she voluntarily submitted to the bestial desires of the accused, or even if the circumstances of force or intimidation, or of the victim being deprived of reason or otherwise unconscious are absent, the accused would still be liable for rape under the third paragraph of Article 335." (*People vs. Jose Siobal*, 233 SCRA 283 [1994])

The *raison d'etre* for this is that if sexual intercourse with a victim under twelve years of age is rape, then it should follow that carnal knowledge of a woman whose mental age is that of a child below twelve years would also constitute rape.

Accused-appellant nitpicked segments of private complainant's testimony to denigrate her credibility and assail the verisimilitude of her testimony. Accused-appellant contends that the trial court sanctimoniously and capriciously gave credence and full probative weight to the testimony of the private complainant despite her incredible account of how she was deflowered. For one thing, accused-appellant argues, private complainant declared that he went on top of her but he did not remove his clothes; neither was she undressed. It was physically impossible for him to have raped private complainant with both of them fully clothed. Accused-appellant further asserts that private complainant even unabashedly admitted that she did not know what a penis looked like, only to declare that the

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penis of accused-appellant was inserted in her sex organ. The testimony of private complainant is not only inconsistent but is also against ordinary human experience. Given the weakness of the evidence of the prosecution, the trial court should have accorded credence and full probative weight to his twin defenses of denial and alibi.

Accused-appellant's contention flies in the face of his earlier claim that the private complainant freely and voluntarily consented to their sexual intercourse. Accused-appellant's intractable denial of having sexually abused private complainant is antithetical to his earlier claim that the private complainant freely consented to have sexual intercourse with him, thereby debilitating his appeal at bench. As the aphorism goes, one cannot approbate and in the same breath disapprobate without running afoul the doctrine of estoppel.

Case law has it that the findings of facts of the trial court, its conclusions anchored on said findings, its calibration of the testimonial evidence of the parties and the probative weight thereof are accorded by this Court high respect if not conclusive effect because of the unique advantage of the trial court of observing at close range, the behavior, demeanor and deportation of the witnesses as they regale the court with their testimonies.

However, Appellate Courts are not bound by the findings of the trial court if the latter misunderstood, misapplied or misconstrued or ignored facts and circumstances of substance which if considered will alter the outcome of the case.

In the appeal at bench, the trial court found the testimony of the private complainant credible, though crude.

"In the present case, Maritess admittedly a mental retardate with the mentality of a six (6) year old child, was able to narrate, although in a crude manner, what happened; why she got pregnant and that it was accused who was responsible. Her testimony was especially telling and credible. Even the records of the preliminary investigation before the MTC will show that she was able to identify the accused. Thus, in the resolution of Judge Caridad Grecia Cuerdo, it was stated:

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'After the preliminary investigation the court's [sic] finds that the accused's denial cannot overturn the positive identification of the accused by the victim, by a gesture of pointing him and looking at him in answer to the court's query (Records, p. 244).'"

Accused-appellant failed to sufficiently show in his appeal at bench that any miscues were committed by the trial court.

Private complainant did testify that she did not know what a penis looked like but in the same breathe spontaneously declared that accused-appellant inserted his penis into her vagina and that her clothes and that of the accused-appellant were not removed prior to penile penetration.[16] However, the credibility of private complainant was not thereby eroded, nor her testimony discredited. The barefaced fact that accused-appellant and private complainant still had their clothes on did not preclude penile penetration.[17]

It bears stressing that an ample margin of inaccuracy should be accorded to a young witness, including one suffering from a mental disorder who, much more than adults, would be gripped with tension and apprehension due to the novelty of the experience of testifying before a court. A young and uninitiated witness may balk at a question of counsel and respond to another question with spontaneity. Also, the testimony of a witness may be believed in part and disbelieved in part depending upon the corroborative evidence and the probabilities or improbabilities of the case.[18] There is no standard form of human behavioral response when confronted with a startling or frightful experience.[19] Moreover, the testimony of a witness must be considered, weighed and calibrated in its entirety and not by truncated portions thereof or isolated passages therein.[20]

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[16] TSN, June 13, 1994, pp. 7-9.

[17] *People vs. Baygar*, 318 SCRA 358 (1999).

[18] *People vs. Cura*, 240 SCRA 274 (1995).

[19] *People vs. Garigadi*, 317 SCRA 416 (1999).

[20] *People vs. Garcia*, 281 SCRA 463, 477 (1997).

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In this case, private complainant's testimony on how she was ravished by accused-appellant interspersed with lurid details. She even identified accused-appellant as the father of her child Accused-appellant even admitted in open court that he was the person identified by private complainant as "Galman," the father of her child:

"FISCAL:

Q: Marites, did you bear a child?
A: In Bulacan sir.

Q: Do you recall the date when you bore a child?
A: No, sir.

(AND SHE IS SHAKING AGAIN HER HEAD)

Q: Where is the child now?
A: In Bulacan, sir.

Q: Do you know how old this child is now?
A: No, sir.

Q: Do you know the father of this child whom you gave birth?
A: Galman, sir.

FISCAL:

May we now, at this juncture, ask the defense if it still Admits that the Galman mentioned by the complainant Is the same Cenon Pagsanjan, accused in this case?

ATTY. LIWANAG:

We will admit, your Honor.

FISCAL:

Q: Do you know the residence of this Galman?
A: No, sir.

Q: Do you have a neighbor by the name of Cenon or Galman?
A: None, sir.

Q: You said a while ago that you were sired by a person by the name of Galman, can you tell us how he sired You with a baby or with a child?
A: When my mother got sick and when my mother was then in the hospital, that's all, sir.

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Q: What happened when you mother was sick and was then hospitalized?
A: It was Ate Tess who went there and attended to her, sir.

Q: How about you, where were you when your mother was in the hospital?
A: I was in the house, sir.

Q: While you were in your house, do you remember having been visited by this Galman whom according to you sired you with a baby?
A: Yes, sir, he just asked for water.

Q: What did he do to you when he asked water?
A: *Ginalaw po ako*, sir.

Q: Can you tell us more particularly how this Galman *ginalaw ka*?
A: He was on top of me, sir.

Q: Did he remove his clothes or his pants?
A: No, sir.

Q: How about you, were your clothes removed?
A: No, sir.

Q: How was Galman able to *galaw* you if he did not remove his clothes or pants neither did he remove your clothes?
A: When was upstairs, sir.

FISCAL:

May I change my question, your Honor.

Q: After Galman placed himself on top of you, what did he do?
A: He told me that he would kill me if I would report the matter to my mother, sir.

Q: Please answer the question. What did Galman did (sic) to you after he placed himself on top of you?
A: *Ginalaw po ako*, sir.

Q: Do you know a penis of a male person?
A: No, sir.

Q: Do you know if something was inserted on your private organs?
A: Yes, sir, there was.

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Q: What was inserted into your private organs?
A: His penis, sir.

Q: What did you feel when Galman or the accused in this case inserted his penis into your private organs?
A: Painful, sir.

Q: After this Galman inserted his penis into your private organs, what did he do?
(to Court)
May we withdraw our question and be allowed to ask another.

Q: You said that Galman told you that if you report the incident to your parents you will be killed, when did Galman tell you this threatening words?
A: For a long time, sir.

Q: And did you report this to your parents what Galman did to you that he was placing on top of you and placing his penis on your private organs?
A: No, sir, because my mother might be angry.

Q: Did you get pregnant as a result of that placing of the penis of Galman into your private organs?
A: Yes, sir.

Q: Did your parents notice your pregnancy?
A: Yes, sir, it was noticed by my parents.

Q: And did they inquire from you why you got pregnant?
A: No, sir.

Q: You said you got pregnant, did you deliver a baby out of your pregnancy?
A: Yes, sir.

Q: What is the name of your baby?
A: Bryan, sir.

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ATTY. LIWANAG (on cross)

Q: Madam witness, do you know very well this Cenon Pagsanjan to be Galman?
A: No, sir.

Q: And how long have you known Cenon Pagsanjan?

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A: My mother introduced him to me, sir.

Q: When did you mother introduce Cenon Pagsanjan to you?
A: When we were still in Malolos, sir.

Q: Where in Malolos?
A: I do not know, sir.

Q: You said that Cenon Pagsanjan *y* Galman took advantage of you, what time was that when he allegedly took advantage of you?
A: Night time, sir.

Q: What time during that night time?
A: While I was sleeping, sir.

Q: And what time did you sleep that night?
A: I do not know, sir.

Q: And who were in your house when the alleged incident happened?
A: None, except me, sir.

Q: What about your other sisters, where were they?
A: They were in Manila, sir.

Q: What about your mother?
A: In the hospital, sir."[21]

Accused-appellant's defense of alibi must fail. Alibi is one of the weakest if not the weakest of defenses in criminal prosecution as it is easy to fabricate and hard to disprove. For alibi to be believed, the following requisites must concur: (a) the presence of accused at another place at the time of the perpetration of the offense; and (b) the physical impossibility for him to be at the scene of the crime.[22] The evidence on record shows that the house of accused-appellant was located in Zulueta Street, Sto. Rosario, Malolos, Bulacan, the same street where private complainant and her family lived. Patently, there was no physical impossibility for accused-appellant to be at the house of private complainant when the crime was committed.

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[21] TSN, Marites Carreon, July 13, 1994, pp. 11-12.

[22] *People vs. Baid*, 336 SCRA 656, 678 (2000).

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More importantly, alibi cannot be given credence in light of the unwavering and positive identification by the private complainant of accused-appellant as her defiler and the father of her child. In cases where the offender is positively identified by the victim herself who harbored no ill motive against him, the defense of alibi is invariably rejected.[23]

In sum then, accused-appellant is guilty beyond reasonable doubt of simple rape defined and penalized in Article 335 of the Revised Penal Code as amended by Republic Act 7651. However, there is a need to modify the award of damages to conform to prevailing jurisprudence. The civil indemnity awarded to a rape victim in cases where the penalty of *reclusion perpetua* is imposed is presently fixed at ₱50,000.00 and moral damages likewise at ₱50,000.00.[24] Moral damages are automatically awarded to a rape victim without need of proof, for it is assumed that she has suffered moral injuries entitling her to such award.[25] Such award is separate and distinct from civil indemnity, which is likewise automatically awarded upon proof of the commission of the crime and the offender's responsibility therefor.[26]

With respect to the civil liability of a person who commits rape, Article 345 of the Revised Penal Code provides:

"ART. 345. Civil liability of persons guilty of crimes against chastity. — Persons guilty of rape, seduction, or abduction, shall also be sentenced:

1. To indemnify the offended woman;
2. To acknowledge the offspring, unless the law should prevent him from doing so;
3. In every case to support the offspring."

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[23] *Ibid.*

[24] *People v. Glabo*, G.R. No. 129248, December 7, 2001, p. 6.

[25] *Ibid.*

[26] *Id.*

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Accused-appellant is obliged under the aforequoted provision of the Revised Penal Code to give support to his son. However, the amount shall be determined by the trial court after due notice and hearing in accordance with Article 201 of the Family Code.[27]

WHEREFORE, the Decision appealed from is *AFFIRMED* with *MODIFICATION*. Accused-appellant is ordered to pay the private complainant the sums of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages. He is further ordered to give support to his son, Bryan Dexter, in such amount and under such terms to be determined by the trial court in a proper proceeding therefor with support arrears to be reckoned from the time the appealed Decision was promulgated by the trial court.

SO ORDERED.

Bellosillo (Chairman), Mendoza, Quisumbing, and *Austria-Martinez, JJ.*, concur.

EN BANC

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

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ZAINUDIN DALANDAS,** *accused-appellant.*

SYNOPSIS

Accused-appellant was found guilty by the trial court of the crime of rape and was sentenced to suffer the penalty of death. In this automatic review of the case, appellant contended that the prosecution failed to adduce incontrovertible proof that private

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[27] *Vide* note 24.