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SECOND DIVISION

[G.R. No. 133790. August 1, 2002]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **FERNANDO CAÑAVERAL,** *accused-appellant.*

SYNOPSIS

Appellant was found guilty by the trial court of the crime of rape for sexually abusing a mental retardate, and was sentenced to suffer the penalty of *reclusion perpetua*. Hence, this appeal.

In affirming appellant's conviction, the Supreme Court ruled that the victim had shown mental limitations, but she had also coherently and categorically testified that appellant had carnal relations with her. Her account of forcible intercourse was buttressed by medico-legal findings of fresh lacerations on her hymen and the presence of sperm cells in her vaginal canal. When a rape victim's account is straightforward and candid, and is corroborated by the medical findings of the examining physician, the same is sufficient to sipport a conviction of rape. In rape, the gravamen of the offense is carnal knowledge of a woman against her will, or without her consent. Additionally, Article 335 of the Revised openal Code includes a victim who is suffering from some form of mentăl abnormality or deficiency, including feeble-mindedness and retardation, in the term "deprived of reason" such that the victim is deemed incapable of consenting intelligently to *coitus*. Settled is the rule that sexual intercourse with mentally deficient woman constitutes rape.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF TRIAL COURT, GENERALLY NOT DISTURBED ON APPEAL.— Doctrinally, the findings of fact of a trial court are not disturbed on appeal, except where it overlooked, misunderstood, or misapplied some facts or circumstances of weight and substance that would have

Supreme Court E-Library

materially affected the outcome of the case. In the instant case, we find no such oversight, misunderstanding nor misapplication of facts to compel us to depart from this rule.

2. **ID.; ID.; ID.; VICTIM'S STRAIGHTFORWARD TESTIMONY CORROBORATED BY MEDICAL FINDINGS OF EXAMINING PHYSICIAN, SUFFICIENT TO SUPPORT CONVICTION FOR RAPE.**— When a rape victim's account is straightforward and candid, and is corroborated by the medical findings of the examining physician, the same is sufficient to support a conviction for rape.

3. **CRIMINAL LAW; RAPE; SEXUAL INTERCOURSE WITH MENTALLY DEFICIENT WOMAN CONSTITUTES RAPE.**— In rape, the gravamen of the offense is carnal knowledge of a woman against her will, or *without her consent*. Additionally, Article 335 of the Revised Penal Code includes a victim who is suffering from some form of mental abnormality or deficiency, including feeble-mindedness and retardation, in the term "deprived of reason" such that the victim is deemed incapable of consenting intelligently to *coitus*. Settled is the rule that sexual intercourse with a mentally deficient woman constitutes rape.

APPEARANCES OF COUNSEL

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

D E C I S I O N

QUISUMBING, J.:

On appeal is the judgment[1] of the Regional Trial Court of Tanjay, Negros Oriental in Dumaguete City, Branch 43, in Criminal Case No. 12134, promulgated on February 2, 1998, finding appellant Fernando Cañaveral *y* Martinez *alias* "Ando" guilty of rape and imposing upon him the penalty of *reclusion perpetua*.

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[1] *Rollo*, pp. 20-29.

Supreme Court E-Library

In an information dated August 7, 1995, the city prosecutor charged Cañaveral with rape allegedly committed as follows:

> That on or about the 4th day of August, 1995, in the City of Dumaguete, Philippines, and within the jurisdiction of th[is] Honorable Court, the accused, with force and intimidation and with abuse of superior strength, did then and there, wilfully, unlawfully and feloneously (*sic*) have sexual intercourse with one Ellen Ortez Navaja in the following manner, to wit: the accused taking advantage of superior strength and nighttime, pulled her to a nearby house, with threat to (*sic*) bodily harm, laid her on the floor, removed her worn short pants and underwear, placed himself on top of her, inserted his sexual organ into her vagina, and succeeded in having sexual intercourse with the said Ellen Ortez Navaja, a mental retardate, against her will and without her consent.
>
> Contrary to Art. 335 of the Revised Penal Code.[2]

When arraigned, Cañaveral pleaded not guilty. Trial on the merits ensued.

The prosecution's evidence shows that:

The victim, Ellen[3] Navaja, suffers from an alleged mild mental retardation. At the time of the incident, she was 15 years old and residing in Looc, Dumaguete City with her mother, Erlinda Navaja. Although already a teenager then, Ellen could neither take a bath nor dress herself. She depended on her mother for her hygiene and cleanliness. In school, she never got past Grade 4.[4]

At around 9:00 P.M., August 4, 1995, Erlinda sent her daughter to buy a mosquito repellent coil at a nearby store. Although the store was only five houses away, it took over an hour for Ellen to run her errand. Upon reaching home, Ellen immediately went to sleep and Erlinda, who was already in bed, did not bother to ask her why she took so long. Ellen, after all, had the habit of watching video shows at neighboring houses.

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[2] Records, p. 4.

[3] Sometimes "Elaine." TSN, April 11, 1997, pp. 2-3.

[4] TSN, March 4, 1997, pp. 6-10.

Supreme Court E-Library

When Erlinda woke up the next morning, she noticed that her daughter had no underwear. After making her drink a glass of milk, Erlinda asked Ellen why she stayed out so long last night and where she went. Ellen told her that a certain man, who frequented the residence of their neighbor, Lucy Kitane, pulled her and touched her vagina. Ellen said he was tall and had a high-bridged nose. Erlinda immediately went to see Lucy. She learned that the person she was looking for was a certain "Joel" who resided in Colon Extension, Dumaguete City. Erlinda and Ellen then went to Colon Extension where they sought the assistance of the Philippine National Police Maritime Unit. Accompanied by two policemen, they proceeded to "Joel's" house and upon seeing "Joel," Ellen told her mother that he was the man who had sex with her the previous night. "Joel" was then arrested and brought to the police station, where he identified himself as Fernando Cañaveral.

Erlinda next brought her daughter to the Negros Oriental Provincial Hospital to have her examined. Dr. Weanchi Baldado Villegas, an obstetrician-gynecologist, found that Ellen's hymen had fresh lacerations at the 1, 5, and 7 o'clock positions. The laceration at the 1 o'clock position was still slightly bleeding. Her vagina was positive for spermatozoa.[5] Dr. Villegas declared that Ellen was no longer a virgin at the time she was examined.

On the witness stand, Ellen testified that she knew "Joel" who frequented their neighborhood. She pointed to appellant as "Joel." She said that on the night in question, her mother sent her to buy mosquito repellent. She ran into appellant who covered her mouth with his hand, grabbed her right arm, and forcefully pulled her towards the house of Lucy Kitane. Lucy was not in her house at that time. Appellant then choked her and threatened to kill her. He undressed her and succeeded in having sexual congress with her. She could not shout because appellant covered her mouth. She felt pain when appellant's penis entered her vagina.[6]

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[5] Records, pp. 25, 166; TSN, November 26, 1996, pp. 7-9.

[6] TSN, April 11, 1997, pp. 3-6.

Supreme Court E-Library

Dr. Perpetuo S. Lozada, a medical doctor and a consultant psychiatrist of the Philippine Mental Health Association, Inc., Negros Oriental Chapter, conducted a clinical and mental examination of the victim. His evaluation showed that Ellen was malnourished and sickly, with an organic brain problem. She suffered severe pneumonia when she was two months, as a result of which her growth and development were delayed. She only learned to walk at two years and to talk at three years old. She had difficulty in balancing and hearing. She also drooled. In school, she had learning difficulties. She was nervous, with childlike gestures, and her mother had to accompany her at all times. The victim's memory, math skills, abstract reasoning, judgment, and insight were all slightly impaired.[7]

Testifying on the psychiatric evaluation, Dr. Lozada averred that the victim could not freely give full consent or full resistance to events happening to her. She was like a five to ten-year-old child who needed the full care and attention of her parents.[8] However, her ability to identify a person and relate to a time frame was unimpaired.[9]

Appellant Fernando Cañaveral was the sole witness for the defense. He admitted being with Ellen from 8:00 P.M. to 10:00 P.M. on the night in question, but denied raping her.[10] He said that they had spent their time together at the side of a house of Ellen's neighbor talking about their courtship and romance. He claimed that he first met Ellen at the dance hall in Looc sometime in 1994. He courted her and they became sweethearts in August 1994.[11] He did not know that Ellen had a mental problem since her manner of talking was straightforward. He did not notice any unusual behavior on Ellen's part that night.

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[7] Records, p. 198; TSN, September 24, 1996, pp. 10-13.

[8] TSN, September 24, 1996, pp. 15-18.

[9] *Id.* at 12-13, 19.

[10] TSN, August 5, 1997, pp. 4-6, 8.

[11] *Id.* at 3-5, 9.

Supreme Court E-Library

He caressed her but his caresses never went beyond her head and shoulders.[12]

The trial court found appellant's defense neither credible nor convincing. He was adjudged guilty of the offense charged. The court's *fallo* reads:

> WHEREFORE, after considering the foregoing premises, the Court finds accused Fernando Cañaveral *alias* "Ando" guilty beyond reasonable doubt of the crime of rape defined in and punished under Article 335, No. 3 of the Revised Penal Code as amended by R.A. 7659 and hereby imposes upon said accused the penalty of *reclusion perpetua.* The accused is ordered to indemnify the victim Ellen Navaja in the amount of ₱50,000.00.[13]

On appeal before this Court, appellant assigns the following errors:

I

THE TRIAL COURT ERRED IN FINDING THE FIFTEEN (15) YEAR OLD ELLEN NAVAJA TO BE A RETARDATE OR A DEMENTED PERSON DESPITE HER SHOWING IN COURT THAT SHE IS A COMPETENT WITNESS.

II

THE TRIAL COURT ERRED IN CONSIDERING THE SEXUAL TRYST OF ELLEN NAVAJA AND ACCUSED-APPELLANT FERNANDO CAÑAVERAL AS RAPE DESPITE THEIR MUTUAL CONSENT TO DO SAID INTIMATE ACT.

The issue before us is whether the trial court erred in holding that appellant is guilty of rape beyond reasonable doubt and sentencing him to *reclusion perpetua* with the accessory penalties provided by law.

Appellant's *first assigned error* dwells on the mental competence of the rape victim. He argues that when Ellen was called to testify, she gave competent and responsive answers. Appellant submits

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[12] *Id.* at 8.

[13] *Rollo*, p. 29.

Supreme Court E-Library

that a review of her testimony clearly negates the claim that she is a mild mental retardate. Appellant further points to what he perceives as inconsistencies in the victim's testimony. On direct examination, she claimed appellant raped her,[14] but she nonetheless admitted on cross-examination that she voluntarily went with appellant to the house of Lucy Kitane.[15]

In dealing with the question of the rape victim's mental retardation, the trial court observed that "[a]s boundaries between normality and retardation are difficult to delineate, proper identification requires competent clinical evaluation of psychometric parameters in conjunction with medical and laboratory tests."[16] It then pointed out that Dr. Perpetuo S. Lozada, a medical doctor and psychiatrist, subjected private complainant to a clinical evaluation and mental status examination to determine if her mental faculties were impaired. The qualifications and expertise of Dr. Lozada were admitted by the defense.[17] Relying upon his diagnosis, the trial court concluded that private complainant was suffering from organic mental retardation caused by a history of illness and malnutrition. She was "just like a 5 to 10 years old child" who "could not freely give full consent or full resistance as to what is happening to her."[18]

Examining the evidence on record, we are convinced that private complainant in this case is a mental retardate. First, there is nothing on record that would cast doubt on the knowledge and integrity of the examining psychiatrist as an expert witness. Second, we fail to discern anything from the psychiatric evaluation report that would show that the trial court erred in its appreciation that the victim is suffering from mild mental retardation. Third, our careful scrutiny of Ellen's testimony shows that her answers were neither as responsive nor as competent as appellant insists

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[14] TSN, April 11, 1997, pp. 4-5.

[15] *Id.* at 9.

[16] *Rollo*, pp. 26-27.

[17] TSN, September 24, 1996, p. 5.

[18] *Rollo*, p. 27.

Supreme Court E-Library

them to be. There were several instances when she had a difficult time answering or comprehending simple questions. A closer reading of the stenographic notes of her testimony during direct examination on how she was raped is most revealing, thus:

(PROSECUTOR) TROPEZADO:

Q: Why do you know Joel?
A: He frequently went to Looc.

Q: Aside from that, is there any other reason why you know Joel?
A: Yes.

Q: What is this reason why you know Joel?

NOTE:
Witness cannot answer the question.

Q: What did this Joel do to you?

(ATTY.) MASAGCA:
Leading, your Honor.

COURT:
Witness may answer.
A: He raped me.

Q: What do you mean he raped you?
A: He threatened to kill me.

Q: You said that Joel raped you. How did he raped you?
A: I was choked by Joel.

Q: When you said rape, do you know the meaning of rape?
A: I was fucked.

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Q: How did Joel rape you? What did he do to you?
A: I was choked.

Supreme Court E-Library

Q: What else did he do aside from choking you?
A: None.

Q: What about your dress, what did Joel do to your dress?
A: I was undressed.

Q: What else was undressed by Joel?
A: My dress.

Q: Aside from your dress, what else was removed from your body?
A: My panty.

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Q: After he was able to remove your panty what did he do next?
A: I was fucked.

Q: When you said you were fucked, what did you feel?
A: I felt pain.

Q: When you said you were fucked and you felt pain, why did you feel pain?
A: Because his penis was able to penetrate my vagina.

Q: You said you felt pain because the penis of Joel penetrated. *What part of your body did the penis of Joel enter?*
A: It's very painful.[19] (Italics supplied.)

Neither do Ellen's responses to the queries on cross-examination support appellant's thesis that she is fully a mentally competent young woman, as shown by the following:

Q: When you said you frequently saw him at Lucy Kitane's house, how did you know his name is Joel?
A: Because I was pulled.

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[19] TSN, April 11, 1997, pp. 4-5.

Supreme Court E-Library

Q: Before you came here did you talk to your lawyer?
A: Yes.

Q: What were the things you were talking about with your lawyer?
A: Nothing.

Q: Did the lawyer teach you what to say this morning?
A: Yes.

Q: You were taught what to say in this court today?
A: No.

Q: What were the things you talked with your lawyer before you took the witness stand?
A: Nothing.

Q: How far is your house from the place (where) you were allegedly raped?
A: Far.

Q: How far?
A: It was near.

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Q: What particular place in the house of Lucy Kitane were you raped?
A: Behind Nora.

Q: Where is that Nora's place?
A: Near the road.

Q: What road?
A: There.

Q: In other words you were not raped in the house of Lucy Kitane?
A: I was raped.

Q: You said you were allegedly raped in the house of Lucy Kitane. Were you raped outside or inside the house of Lucy Kitane?
A: Inside.

Supreme Court E-Library

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Q: When you were inside, what happened?
A: Went out.

Q: Both of you?
A: Yes.

Q: Why did you go out of the house?

NOTE:
Witness had a hard time answering.

TROPEZADO:
I would like to manifest that the witness has a hard time answering/understanding the question.

COURT:
Make it of record.

Q: After you went outside inside (sic), both of you went out together?
A: Yes.

Q: So nothing happened while you were inside the house of Lucy Kitane?
A: None.[20]

Doctrinally, the findings of fact of a trial court are not disturbed on appeal, except where it overlooked, misunderstood, or misapplied some facts or circumstances of weight and substance that would have materially affected the outcome of the case.[21] In the instant case, we find no such oversight, misunderstanding nor misapplication of facts to compel us to depart from this rule.

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[20] *Id.* at 7-10.

[21] *People v. Ratunil,* G.R. No. 137270, 334 SCRA 721, 730 (2000), citing *People v. Atuel,* G.R. No. 106962, 261 SCRA 339 (1996), *People v. Malunes,* G.R. No. 114692, 247 SCRA 317 (1995) and *People v. Cura,* G.R. No. 112529, 240 SCRA 234 (1995).

Supreme Court E-Library

Appellant hammers on the victim's statement on cross-examination that she voluntarily went with him to the house of Lucy Kitane. He vehemently insists that it clearly proves that she was not raped.

However, we are unable to find logic behind his insistence. That the victim had entered the house at her own volition did not mean she had consented to sexual intercourse. Note that the victim testified she was ravished inside Lucy Kitane's house. On re-cross examination, she clarified that once inside the house, appellant forcibly pulled her arm and covered her mouth. Appellant's contention that the victim consented to having sex with him is obviously self-serving.

In his *second assigned error*, appellant insists that he could not have raped the victim since they were sweethearts and any sexual act that took place between them was purely consensual. This line of exculpatory reasoning, known as the sweetheart defense, deserves consideration if only to expose its falsity.

We note that during trial, appellant denied having had any carnal knowledge of the victim. Before us now, he claims that their sex act was consensual. But such a change of theory hardly adds credit to appellant's defense. An issue, point of law or theory not presented before the trial court ordinarily will not be considered by the appellate court, as such cannot be raised for the first time on appeal.[22] Nonetheless, when an accused appeals, he re-opens the whole case[23] and if only to serve the interests of substantial justice, we shall pause to consider appellant's "sweetheart defense."

In many a rape case, the defense that the rapist and the victim are lovers is often raised, but is also often struck down for want of sufficient and convincing proof. Having invoked

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[22] *Sanchez v. Court of Appeals*, G.R. No. 108947, 279 SCRA 647, 678-679 (1997).

[23] *People v. Llaguno,* G.R. No. 91262, 285 SCRA 124, 147 (1998).

Supreme Court E-Library

the positive defense of a romantic relationship with the victim, appellant bears the burden of proof to support his defense.[24] He may substantiate his defense by some documentary and/or other evidence like mementos, love letters, notes, pictures, and the like.[25] In one case, we upheld such a defense where testimonial evidence showed that the alleged rapist and his supposed victim were indeed lovers.[26] In this case, however, the records fail to disclose any proof whatsoever to support appellant's claim.

Moreover, assuming *arguendo* that appellant could prove an amorous relationship with the victim, this fact is not tantamount to consent to rape. A sweetheart cannot be carnally embraced against her will, for love is not a license for lust.[27] We are inclined to agree that appellant's shift of theory, from outright denial to "sweetheart defense," is a clear indication that these defenses are nothing but mere concoctions.[28]

While we agree that private complainant had shown mental limitations, we also note that she had coherently and categorically testified that appellant had carnal relations with her. Her account of forcible intercourse is buttressed by medico-legal findings of fresh lacerations on her hymen and the presence of sperm cells in her vaginal canal. When a rape victim's account is straightforward and candid, and is corroborated by the medical findings of the examining physician, the same is sufficient to support a conviction for rape.[29]

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[24] *People v. Dreu,* G.R. No. 126282, 334 SCRA 62, 69 (2000), citing *People v. Barcelona,* G.R. No. 125341, 325 SCRA 168 (2000); *People v. Cepeda,* G.R. No. 124832, 324 SCRA 290, 297 (2000), citing *People v. Monfero,* G.R. No. 126367, 308 SCRA 396 (1999).

[25] *People v. Garces, Jr.,* G.R. No. 132368, 322 SCRA 834, 835 (2000).

[26] *People v. Ratunil, supra* at 736.

[27] *People v. Barcelona, supra* at 180, citing *People v. Manahan,* G.R. No. 128157, 315 SCRA 476 (1999).

[28] *People v. Pambid,* G.R. No. 124453, 328 SCRA 158, 181 (2000), citing *People v. Balgos,* G.R. No. 126115, 323 SCRA 372 (2000); *People v. Amamangpang,* G.R. No. 108491, 291 SCRA 638 (1998).

[29] *People v. Arillas,* G.R. No. 130593, 333 SCRA 765, 772 (2000).

Supreme Court E-Library

In rape, the gravamen of the offense is carnal knowledge of a woman against her will, or *without her consent*.[30] Additionally, Article 335 of the Revised Penal Code includes a victim who is suffering from some form of mental abnormality or deficiency, including feeble-mindedness and retardation, in the term "deprived of reason" such that the victim is deemed incapable of consenting intelligently to *coitus*. Settled is the rule that sexual intercourse with a mentally deficient woman constitutes rape.[31] Although we find that here such mental deficiency is only mild or slight in Ellen Navaja's case, still we see no sufficient merit in appellant's second assigned error.

We note, however, that in ruling upon appellant's civil liability, the trial court only awarded indemnity *ex delicto* of ₱50,000. Pursuant to prevailing jurisprudence, moral damages may be awarded to rape victims, in addition to civil indemnity.[32] Such damages are currently set at ₱50,000.

WHEREFORE, the appealed judgment of the court *a quo* finding appellant FERNANDO CAÑAVERAL guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer the penalty of *reclusion perpetua* is hereby *AFFIRMED*, with the *MODIFICATION* that appellant shall pay to the victim, Ellen Navaja, the amount of ₱50,000 as moral damages, in addition to the amount of ₱50,000 awarded by the trial court as civil indemnity. Costs against appellant.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, and *Corona, JJ.*, concur.

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[30] *People v. Reyes*, G.R. No. 113781, 315 SCRA 563, 577 (1999), citing *People v. Igat*, G.R. No. 122097, 291 SCRA 100 (1998). (Italics supplied).

[31] *People v. Lubong*, G.R. No. 132295, 332 SCRA 672, 692 (2000); *People v. Omar*, G.R. No. 120656, 327 SCRA 221, 229 (2000).

[32] *People v. Penaso*, G.R. No. 121980, 326 SCRA 311, 323 (2000), citing *People v. Batoon*, G.R. No. 134194, 317 SCRA 545 (1999).