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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.

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complainant was a mental retardate. He likewise raised the defense that the sexual intercourse was consensual.

The Supreme Court was convinced that the testimonial evidence adduced by the prosecution and even the observations of the trial court were not sufficient proof that private complainant was a mental retardate and incapable of validly giving consent or opposing the carnal act. The prosecution did not present any clinical evidence to prove that private complainant was a mental retardate. The lack of knowledge about money or private complainant's refusal to eat even when fed are not necessarily manifestations of a mental defect or the effects of mental retardation. Neither does the bare fact that private complainant finished only Grades I and II in the elementary although she had reached adulthood constitute proof that she was a mental retardate.

The Court likewise found private complainant's account on how she was deflowered by appellant highly unlikely. Private complainant also failed to explain to the trial court why she maintained her silence for quite a considerable time. Thus, the Court acquitted appellant for failure of the prosecution to prove his guilt beyond reasonable doubt of the crime charged.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CONVICTION OF AN ACCUSED OF RAPE BASED ON PRIVATE COMPLAINANT'S MENTAL RETARDATION MUST BE ANCHORED ON PROOF BEYOND REASONABLE DOUBT OF SUCH MENTAL RETARDATION.**— Our pronouncement in *People vs. Cartuano, Jr.* that a finding of the victim being a mental retardate must be based on laboratory and psychometric support does not preclude the presentation by the prosecution of evidence other than clinical evidence to prove the mental retardation of the victim. We held in said case that clinical evidence is necessary in borderline cases when it is difficult to ascertain whether the victim is of a normal mind or is suffering from a mild mental retardation. Medical evidence is not a condition *sine qua non* in all cases of rape or sexual crimes for that matter to prove that the victim is a mental retardate or is suffering from mental deficiency or some form of mental disorder. However, the conviction of an accused of rape based

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on the mental retardation of private complainant must be anchored on proof beyond reasonable doubt of her mental retardation.

2. **ID.; ID.; TESTIMONIAL EVIDENCE ADDUCED BY PROSECUTION IN CASE AT BAR, NOT SUFFICIENT PROOF THAT VICTIM IS A MENTAL RETARDATE AND INCAPABLE OF VALIDLY GIVING CONSENT OR OPPOSING THE CARNAL ACT.**— [B]ased on its analysis of the testimonial evidence adduced by the prosecution and even of the observations of the trial court on private complainant when she testified, the Court is convinced that said testimonies and observations are not sufficient proof that private complainant was a mental retardate and incapable of validly giving consent or opposing the carnal act. Budsal Dalanda's claim that his daughter was suffering from a mental defect since childhood was a mere conclusion. Even if private complainant did not know anything about money or that she would not eat if she was fed with food, it cannot thereby be conclusively concluded that she was suffering from a mild mental retardation at the very least. The lack of knowledge about money or her refusal to eat even when fed are not necessarily manifestations of a mental defect or the effects of mental retardation. It behooved the prosecution to prove that private complainant's lack of knowledge about money and her refusal to eat even when fed were caused by, or are manifestations of, mental retardation or mental deficiency or disorder. Neither does the bare fact that private complainant finished only Grades I and II in the elementary although she had reached adulthood constitute proof that private complainant was a mental retardate. ... In an avuncular case, *People vs. Antonio*, we held that scholastic performance is not necessarily indicative of the mental age of an individual.

3. **ID.; ID.; CREDIBILITY OF WITNESSES; FINDINGS THEREON BY TRIAL COURT, GENERALLY ACCORDED GREAT RESPECT ON APPEAL; EXCEPTION.**— [F]indings of facts of the trial court, its calibration and assessment of the probative weight of the testimony of the witnesses and its conclusions anchored on its findings are accorded by the Court great respect, if not conclusiveness, because of the unique advantage of the trial court of monitoring and observing at close range, the conduct, demeanor, deportment as well as the physical appearance of

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witnesses. However, the rule is not without exception. The Court is not bound by said findings and conclusions of the trial court if it ignored, misunderstood or misinterpreted cogent fact and circumstance which if considered will alter the outcome of the case.

4. **ID.; CRIMINAL PROCEDURE; GUIDING PRINCIPLES IN REVIEWING RAPE CASES.**— In the review of rape cases, the Court is guided by the following principles: (a) an accusation of rape can be made with facility and while the accusation is difficult to prove, it is even more difficult for the person accused, though innocent, to disprove the charge; (b) considering that, in the nature of things, only two (2) persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; and (c) the evidence for the prosecution must stand or fall on its own merit, and cannot be allowed to draw strength from the weakness of the evidence for the defense.

5. **CRIMINAL LAW; PENALTIES; DEATH PENALTY AND *RECLUSION PERPETUA*; TO JUSTIFY THE IMPOSITION THEREOF, THE COURT MUST INSURE THAT ONLY THE STRICTEST STANDARD OF EVIDENCE HAS BEEN MET.**— We held in *People vs. Roberto Mariano* that the Court must insure that only the strictest standard of evidence has been met in order to justify the imposition of the death penalty or even *reclusion perpetua.*

6. **REMEDIAL LAW; EVIDENCE; QUANTUM OF EVIDENCE; THE EXACTING STANDARD OF PROOF BEYOND REASONABLE DOUBT ACQUIRES MORE IMPORTANCE IN RAPE CHARGES.**— The exacting standard of proof beyond reasonable doubt acquires more importance in rape charges since the latter are easy to concoct but hard for the accused to disprove and defend.

7. **ID.; ID.; THERE IS A NEED IN CRIMINAL CASES FOR THE MOST CAREFUL SCRUTINY OF THE EVIDENCE OF PROSECUTION, BOTH ORAL AND DOCUMENTARY, INDEPENDENTLY OF WHATEVER DEFENSES ARE OFFERED BY ACCUSED.**— We ruled in *People vs. Pablo Dramayo, et al.,* that there is a need in criminal cases for the most careful scrutiny of the evidence of the prosecution, both oral and documentary, independently of whatever defenses are

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offered by the accused. The proof against the accused must survive the test of reason; the strongest suspicion must not be permitted to sway judgment.

APPEARANCES OF COUNSEL

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

DECISION

CALLEJO, SR., *J.*:

Before the Court on automatic review is the decision rendered by the Regional Trial Court of Midsayap, Cotabato, Branch 18, in Criminal Case No. 1816, finding accused-appellant Zainudin Dalandas guilty beyond reasonable doubt of the crime of rape, imposing on him the supreme penalty of death, and ordering him to indemnify the victim, Junaida Dalanda, the amount of ₱75,000.00 and ₱50,000.00 as moral damages.[1]

On October 9, 1995, an Information charging accused-appellant with the crime of rape was filed which reads:

The undersigned accuses ZAINUDIN DALANDAS of the crime of RAPE, committed as follows:

That sometime on August 1994 and subsequent thereto, in the Municipality of Pikit, Province of Cotabato, Philippines, the said accused, with lewd design, did then and there, willfully, unlawfully and feloniously have a carnal knowledge with JUNAIDA DALANDA, mentally retarded against her will.

CONTRARY TO LAW.[2]

During the arraignment, accused-appellant, assisted by counsel, pleaded not guilty. At the trial, the prosecution presented only two witnesses, namely, private complainant Junaida Dalanda

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[1] Records of Crim. Case No. 1816, p. 190.

[2] *Id.*, at 1.

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and her father, Budsal Dalanda, a farmer and a resident of Manaulan, Pikit, Cotabato.

The prosecution adduced evidence that: Private complainant testified that she was 20 years old. However, she finished only Grades I and II in the Ginalitan Elementary School. Nevertheless, she knew how to read and to write her name. Accused-appellant was her brother-in-law, being the husband of her sister Maisalam Dalanda. In August, 1995, accused-appellant convinced private complainant to have sexual intercourse with her. He held her hands with one hand and covered her mouth with the palm of his other hand. He undressed her and after removing his clothes, he had sexual intercourse with her. She could not scream because her mouth was covered. She held on to the grass and piece of wood near where she was lying down at the time of sexual intercourse which lasted for about three minutes. She was in normal condition at the time. She did not report the incident to the police authorities nor to any member of her family.

Budsal Dalanda, a farmer, testified that he had two daughters, Junaida Dalanda and Maisalam Dalanda. The latter was married to accused-appellant. The couple lived in a house near the house where Budsal Dalanda and Junaida resided. Junaida was 13 years old, having a mental defect since childhood. She knew nothing about money. She would not eat even if she was fed. He learned from his daughter Maisalam that her sister Junaida was pregnant. He confronted Junaida and the latter told her father that she was raped by accused-appellant. Junaida was examined by Dr. Nelson B. Villagonzalo on February 6, 1995 and was found to be five to six months pregnant.[3] She later gave birth to a baby boy, named Mailam.

Accused-appellant admitted having sexual intercourse with private complainant but alleged that it was consensual. He testified that he had been married to his wife for twenty years. They had a two-year old child. He claimed that Junaida was not a mental retardate. On August 24, 1995, at about 10:00 a.m. he was in their house lying down on the floor. His wife

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[3] Records of Crim. Case No. 1816, p. 8.

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was in the market while his child was sleeping in the other room. Momentarily, Junaida entered the room and without ado embraced and hugged him. She was so sexually aroused that she wanted to have sex with him. Accused-appellant agreed with alacrity. She inquired from accused-appellant where his wife was. He told her that his wife was in the market. Junaida, without much ado, removed her green polo shirt, *malong* and underwear. Accused-appellant likewise undressed. The two then had sexual intercourse which lasted for one hour. Satiated, Junaida left the house and returned to their house. She and accused-appellant did not have any sexual intercourse anymore after that incident. Accused-appellant was charged with rape because he failed to pay the "*sala*" or fine to the family of Junaida for impregnating her. Accused-appellant further averred that he was a practicing Muslim and prayed to Allah five times a day even while in jail. He was willing to swear before the Koran that he was telling the whole truth in court.

On July 30, 1999, the trial court rendered judgment finding accused-appellant guilty beyond reasonable doubt of qualified rape and meted on him the supreme penalty of death on its finding that private complainant, a mental retardate was forced by accused-appellant to have sexual intercourse with him, and that accused-appellant was aware that private complainant was a mental retardate.

Accused-appellant avers in his Brief that:

I

THE COURT *A QUO* ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE UNDER ARTICLE 266-B PAR. 6, NOS. 1 AND 10 OF THE REVISED PENAL CODE AS AMENDED BY R.A. 8353.

II

ON THE ASSUMPTION THAT THE ACCUSED-APPELLANT COMMITTED THE ACTS COMPLAINED OF THE COURT *A QUO* GRAVELY ERRED IN IMPOSING THE DEATH PENALTY IN THE CASE AT BAR.

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Accused-appellant asserts that the prosecution failed to adduce incontrovertible proof that private complainant was a mental retardate. In fact, accused-appellant insists private complainant testified that she was in normal condition at the time she was convinced by accused-appellant to have sexual intercourse with him. The self-serving testimony of Budsal Dalanda, the father of private complainant that private complainant was a mental retardate since childhood is insufficient proof that private complainant was a retardate. It behooved the prosecution to have adduced clinical evidence to prove that private complainant was a mental retardate conformably with the decision of the Court in *People vs. Romeo Cartuano, Jr.*[4]

The basic postulate in criminal prosecution anchored on the constitution is that the prosecution is burdened to prove the guilt of the accused the crime charged beyond cavil of doubt. In this case, the prosecution was burdened to prove conclusively and indubitably not only that accused-appellant had carnal knowledge of private complainant but also that private complainant was a mental retardate.

Mental retardation is a chronic condition present from birth or early childhood and characterized by impaired intellectual functioning measured by standardized tests. It manifests itself in impaired adaptation to the daily demands of the individual's own social environment. Commonly, a mental retardate exhibits a slow rate of maturation, physical and/or psychological, as well as impaired learning capacity.[5]

Although "mental retardation" is often used interchangeably with "mental deficiency," the latter term is usually reserved for those without recognizable brain pathology. The degrees of mental retardation according to their level of intellectual function are illustrated, thus:

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[4] 255 SCRA 403 (1996).

[5] Gregory, *Fundamentals of Psychiatry*, 2nd ed., (1968).

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Mental Retardation

LEVEL	DESCRIPTION TERM	INTELLIGENCE QUOTIENT (IQ RANGE)
I	Profound	Below 20
II	Severe	20-35
III	Moderate	36-52
IV	Mild	53-68

A normal mind is one which in strength and capacity ranks reasonably well with the average of the great body of men and women who make up organized human society in general, and are by common consent recognized as sane and competent to perform the ordinary duties and assume the ordinary responsibilities of life.[6]

The traditional but now obsolescent terms applied to those degrees of mental retardation were (a) *idiot*, having an IQ of 0 to 19, and a maximum intellectual factor in adult life equivalent to that of the average two-year old child; (b) *imbecile* by an IQ of 20 to 49 and a maximum intellectual function in adult life equivalent to that of the average seven-year old child; *moron* or *feebleminded*, having an IQ of 50 to 69 and a maximum intellectual function in adult life equivalent to that of the average twelve-year old child. Psychiatrists and psychologists apply the term "borderline" intelligence to those with IQ between 70 to 89.[7] In *People vs. Palma*,[8] we ruled that a person is guilty of rape when he had sexual intercourse with a female who was suffering from a "borderline mental deficiency."

The mental retardation of persons and the degrees thereof may be manifested by their overt acts, appearance, attitude and behavior. The dentition, manner of walking, ability to feed

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[6] *State vs. Haner*, 173 NORTHWESTERN REPORTER 225 (1919).

[7] Note 5.

[8] 144 SCRA 236 (1986).

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oneself or attend to personal hygiene, capacity to develop resistance or immunity to infection, dependency on others for protection and care and inability to achieve intelligible speech may be indicative of the degree of mental retardation of a person. Those suffering from severe mental retardation are usually undersized and exhibit some form of facial or body deformity such as mongolism, or gargolism. The size and shape of the head is indicative of microphaly. The profoundly retarded may be unable to dress himself, or wash or attend to bowel and bladder functions so that his appearance may be very unclean and untidy unless they receive a great deal of nursing care. There may be marked disturbance of gait and involuntary movements. Attempts to converse with a mental retardate may be limited to a few unintelligible sounds, either spontaneous or in response to attempts that are made by the examiner to converse, or may be limited to a few simple words or phrases.[9] All the foregoing may be testified on by ordinary witnesses who come in contact with an alleged mental retardate.

In *People v. Arnel Almacin*,[10] we held that evidence other than a psychometric evaluation can prove mental retardation or abnormality. In *People vs. Mario Dumanon, et al.*,[11] a case of recent vintage, we held that mental retardation can be proved by evidence other than medical/clinical evidence, such as the testimony of witnesses and even the observation by the trial court. And the observation of the trial court, its impression of the demeanor and deportment of the victim and its conclusions anchored thereon are accorded high respect if not conclusive effect on the appellate court. In *State vs. Haner*,[12] the Supreme Court of Iowa declared:

> Her answers to questions show that she is almost an imbecile, *unless she* was feigning imbecility. The *judge* and jury saw and heard her on the witness stand, and we cannot put ourselves in the place of the

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[9] Note 6.

[10] 303 SCRA 399 (1998).

[11] 348 SCRA 461 (2000).

[12] *Supra*, see note 6.

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judge and jury. Her appearance and demeanor while testifying were most important considerations in determining her mental capacity, and, under the circumstance, we think it is not proper to interfere with the verdict. Another consideration, which, no doubt, had its influence with the court and jury, was that the complainant was a mere child when this calamity came upon her. She was but little past the age of consent. If she had been under the age of 13 years, mere carnal knowledge would have constituted the crime of rape without any evidence of mental weakness or imbecility.

And in *People vs. Moreno*,[13] we likewise held that:

> Dr. Cecilia Albaran herself stated that she could conclude, simply on the basis of her observation of the victim, that the latter had low intelligence. In *People v. Rosare*, the Court also noted that complainant's mental deficiency was so obvious that it was easily observable during preliminary investigation, *viz*:
>
> > 'Her deficient mentality stuck out like a sore thumb at the center. Her behavior as a mental retardate was so obvious that even the investigating fiscal, who is not a man of science was able to observe it during preliminary investigation.'

It goes without saying that there must be some evidence in the record which, if true, will afford substantive support for such findings and its absence cannot be cured by assuming that the trial court saw something in the conduct or demeanor of the victim which must have led to the decision appealed from.[14]

Our pronouncement in *People vs. Cartuano, Jr.*[15] that a finding of the victim being a mental retardate must be based on laboratory and psychometric support does not preclude the presentation by the prosecution of evidence other than clinical evidence to prove the mental retardation of the victim. We held in said case that clinical evidence is necessary in borderline cases when it is difficult to ascertain whether the victim is of a normal

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[13] 294 SCRA 738 (1998).

[14] *Supra*, at 229.

[15] 255 SCRA 403 (1996).

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mind or is suffering from a mild mental retardation. Medical evidence is not a condition *sine qua non* in all cases of rape or sexual crimes for that matter to prove that the victim is a mental retardate or is suffering from mental deficiency or some form of mental disorder. However, the conviction of an accused of rape based on the mental retardation of private complainant must be anchored on proof beyond reasonable doubt of her mental retardation.

In the appeal at bench, the prosecution did not present any clinical evidence to prove that private complainant was a mental retardate. It relied merely on the testimony of Budsal Dalanda, the father of private complainant who testified that the latter had a mental defect since childhood;[16] she did not know anything about money; and she would not eat if she was fed with food.[17] The prosecution also relied on the testimony of private complainant that she finished only Grades I and II in the Gintilan Elementary School.[18] The trial court concluded that private complainant had suffered some mental retardation on the basis of the corroborative testimonies of private complainant and her father, as well as on its observation that when she testified, private complainant had difficulty expressing herself and even failed to recall things spontaneously although she had the ability, though slowly, to make her perceptions known to others. Her mental condition necessitated that leading questions to be propounded to her to elicit the truth.

However, based on its analysis of the testimonial evidence adduced by the prosecution and even of the observations of the trial court on private complainant when she testified, the Court is convinced that said testimonies and observations are not sufficient proof that private complainant was a mental retardate and incapable of validly giving consent or opposing the carnal act. Budsal Dalanda's claim that his daughter was suffering from a mental defect since childhood was a mere

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[16] TSN, May 20, 1997, p. 7.

[17] *Ibid.*

[18] *Id.*, at 12.

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conclusion. Even if private complainant did not know anything about money or that she would not eat if she was fed with food, it cannot thereby be conclusively concluded that she was suffering from a mild mental retardation at the very least. The lack of knowledge about money or her refusal to eat even when fed are not necessarily manifestations of a mental defect or the effects of mental retardation. It behooved the prosecution to prove that private complainant's lack of knowledge about money and her refusal to eat even when fed were caused by, or are manifestations of, mental retardation or mental deficiency or disorder. Neither does the bare fact that private complainant finished only Grades I and II in the elementary although she had reached adulthood constitute proof that private complainant was a mental retardate. In *People vs. Libo-on*,[19] we ruled:

> x x x However, aside from the testimony that the complainant stopped schooling at the first-grade level and the report of the social worker that complainant was mentally slow, there is no showing that complainant suffered from any mental infirmity or weakness which rendered her incapable of giving consent to the carnal act. In fact, complainant's testimony that she struggled and cried while accused-appellant was raping her shows that she was aware of what was being done to her and that she was not giving her consent thereof. x x x.

In an avuncular case, *People vs. Antonio*,[20] we held that scholastic performance is not necessarily indicative of the mental age of an individual. More telling was the testimony of private complainant that she herself was *convinced* by accused-appellant to have sexual intercourse with him and that she was at that time in normal condition. Even the trial court was taken aback at the testimony of private complainant and found it imperative to pose questions on her but the latter stood firm on her claim that she was in a normal condition when she was convinced by accused-appellant, thus:

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[19] 358 SCRA 152 (2001).

[20] 233 SCRA 285 (1994).

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ATTY. ERAMIS:

Q You said you have sexual intercourse with the accused only once, is that correct?
A Yes, sir.

Q That that sexual intercourse was the result you were seduced by the accused and convinced you to have that sexual intercourse with him?
A *He convinced me sir.*

Q And you only decided to report the incident to your parents only when you became pregnant?
A I told that to my father, sir.

ATTY. ERAMIS: I have no more questions, your Honor.

COURT: Any re-direct?

FISCAL LINTONGAN: Yes, your Honor.

COURT: Proceed.

FISCAL LINTONGAN:

Q You said that you were investigated in the police station of Pikit Cotabato and you said that you signed the document, now who told you to sign?
A My father, sir.

Q Do you remember if there was an Interpreter then?
A Yes, sir.

Q Do you know Mando Nandalait?
A I know him, sir.

Q What did Mando Mandalit do to (sic) the police station?
A He told something, sir.

Q What did he tell you?
A I also (sic) able to sign, sir.

FISCAL LINTONGAN: That will be all for the witness, your Honor.

COURT:

Q You told the court that the accused convinced you to have sexual intercourse with him, what were those convincing words the accused told you?

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A He sexually abused me, your Honor.

Q Now during that attempt to convince you what was your mental condition?

A *I was in normal condition, your Honor.*

Q You were very much normal when the accused Dalandas approached you telling you to have sexual intercourse with him?

A *Yes, your Honor, I was in my normal condition when he convinced me.*

x x x x x x x x x[21]

When counsel of accused-appellant sought to impeach the testimony of private complainant and confronted her with her sworn statement bearing a right thumb mark purportedly to be hers, private complainant spontaneously and intractably denied that the thumb mark appearing on the said sworn statement were hers even after the trial court warned her of the seriousness of the charge against accused-appellant and the possibility of him being meted the death penalty. The trial court was so convinced of the truth of the testimony of private complainant that it ordered counsel of accused-appellant not to use her sworn statement to impeach her testimony.

ATTY. ERAMIS:

x x x x x x x x x

Q Part of the record here is a Sworn Statement executed by one Junaida Dalanda which is already part of the record of this case and below therein is the name Junaida Dalanda and a thumb mark. Before I will go to that, have you remembered having executed a Sworn Statement in connection with this case?

A Yes, sir.

Q As I have said earlier, part of the record of this case is the Sworn Statement on page 11 which is purportedly executed by one Junaida Dalanda, please tell us if this has a relation with the one you executed?

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[21] *Id.*, at 19-21. (Italics supplied)

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A This is the one, sir.

Q How about this thumb mark above the typewritten name Junaida Dalanda whose thumb mark is this?
A It seems to be this is not mine, sir.

COURT: You said that you finished Grade II, do you know how to read and write?

A Because I studied in Ginatilan, your Honor.

Q Do you know how to write your name?
A I know how to write my name, your Honor.

Q Will you write your name on a piece of paper?
(Witness wrote her name on the piece of paper given by the Presiding Judge.)

Q Were you invited at the police station at Pikit, Cotabato?
A There was, your Honor.

Q At the police station of Pikit were you investigated by the police investigator?
A I was investigated, your Honor.

Q After the investigation, were you required to affix your signature in the certain document?
A There was, your Honor.

Q Did you affix your signature or you merely affixed your thumb mark?
A I wrote my name, your Honor. It appears that the witness could write her name.

Q Let us be clear about this Junaida, this is a very serious case. If the accused is convicted the maximum penalty is death. Let us go back to the investigation at Pikit PNP Station, did you affix your thumb mark on a certain document?
A I have not affixed my thumb mark your Honor.

Q How about the signature?
A I wrote my name, your Honor.

COURT: You cannot use that document.

ATTY. ERAMIS: Yes, your Honor.

COURT: Proceed.

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x x x x x x x x x[22]

The spontaneous and firm answers of private complainant to the questions propounded by the court belie the prosecution's claim that private complainant was a mental retardate or was suffering from a mental deficiency or disorder.

The aphorism is that findings of facts of the trial court, its calibration and assessment of the probative weight of the testimony of the witnesses and its conclusions anchored on its findings are accorded by the Court great respect, if not conclusiveness, because of the unique advantage of the trial court of monitoring and observing at close range, the conduct, demeanor, deportment as well as the physical appearance of witnesses. However, the rule is not without exception. The Court is not bound by said findings and conclusions of the trial court if it ignored, misunderstood or misinterpreted cogent fact and circumstance which if considered will alter the outcome of the case.[23]

In the case at bench, the conclusion of the trial court that private complainant had a mental capacity equivalent to the age of a 12-year old child on its observation that private complainant had difficulty in expressing herself and in spontaneously remembering things and that leading questions had to be used to elicit the truth from her, is tenuous and specious. Admittedly, an adult female who has a mental age of a 12-year old child is feeble minded. However, a female or a male for that matter who has a mental age of a 14 or 15 years old child may likewise find difficulty recollecting things and answering questions spontaneously. The mental age of a 12-year old child or even a 13 or 14-year old child is hardly discernible unless there is clinical evidence of his or her mental condition.

Admittedly, accused-appellant did not file any motion in the trial court for a clinical examination of private complainant. However, it cannot thereby be concluded that he admitted the

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[22] *Id.*, at 16-19.

[23] *People vs. Vicente Valla*, 323 SCRA 74 (2000).

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mental retardation of private complainant. Indeed, he testified that private complainant freely and voluntarily consented to having sexual intercourse with him.

The issue that now comes to fore is whether or not the private complainant consented to having sexual intercourse with accused-appellant. 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 probably or natural consequence which may attend it.[24] "Against her will," presupposes and assumes the existence of a will in relation to the act in question.

In the review of rape cases, the Court is guided by the following principles:

(a) an accusation of rape can be made with facility and while the accusation is difficult to prove, it is even difficult for the person accused, though innocent, to disprove the charge;

(b) considering that, in the nature of things, only two (2) persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; and

(c) the evidence for the prosecution must stand or fall on its own merit, and cannot be allowed to draw strength from the weakness of the evidence for the defense.[25]

We held in *People vs. Roberto Mariano*[26] that the Court must insure that only the strictest standard of evidence has been met in order to justify the imposition of the death penalty or even *reclusion perpetua*. The exacting standard of proof beyond reasonable doubt acquires more importance in rape charges since the latter which are easy to concoct but hard for the accused to disprove and defend. We ruled in *People vs. Pablo Dramayo, et al.*,[27] that there is a need in criminal cases

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[24] *Stephenson vs. State*, 48 SOUTHERN REPORTER, 2nd ed., 255 (1950).

[25] *People vs. Pacina*, 338 SCRA 195, 213 (2002).

[26] 345 SCRA 1 (2000).

[27] 42 SCRA 59 (1972).

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for the most careful scrutiny of the evidence of the prosecution, both oral and documentary, independently of whatever defenses are offered by the accused. The proof against the accused must survive the test of reason; the strongest suspicion must not be permitted to sway judgment.

In the case at bar, the private complainant, on questions by the trial court testified that she was forced by accused-appellant to have sexual intercourse with him, thus:

COURT: x x x x x x x x x

Q Let us be clarified about the inconsistency in your statement, you . . . testified a while ago that the accused convinced you and you were convinced to have sexual intercourse and you told also that you were sexually abused by the accused, which is which now?

A I was forced, your Honor.

Q Will you demonstrate to the court now how the accused Dalandas forced you to have sexual intercourse with him?

A He held my right hand, your Honor.

Q And after holding your right hand, what happened next?

A That was the time that he had sexual intercourse with me, your Honor.

Q While first, he held your right hand and after holding your right hand what did he do next?

A He closed my mouth with his hand, your Honor.

Q After placing his hand on your mouth what did he do next?

A There is no other thing done by him after he placed his hand on my mouth, your Honor.

Q How about removing your clothes and underwear, did he do that?

A Yes, your honor, he removed my panty.

Q After removing your panty, what did he do?

A He had sexual intercourse with me, your Honor.

Q Did you not scream so that the people in the house if there were any come to your aid and support?

A None, (sic) your honor.

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Q Why did you not scream, did you like the sexual intercourse made by the accused to you?
A No, your Honor.

Q Why did you not scream?
A I was not able to because he covered my mouth, your honor.

Q Was the covering with his palm so strong that you cannot open your mouth?
A Yes, your honor.

Q Then did you struggle when the accused was trying to have sexual intercourse with you?
A Yes, your Honor.

Q What was the form of struggle you made?
A I was able to struggle by holding from the grasses and wood, your Honor.

Q What did you do with the wood you took hold?
A I have to put those woods to our house, your Honor.

Q You did nothing to the wood, you did not use it to bit the assailant?
A I was not able to make use of that wood, your Honor.

Q How about your hands and feet and your mouth, did you use them to extricate from the assault of the accused?
A I did not make use of my feet and hands, your Honor.

Q How many minutes did the sexual intercourse lasted (sic)?
A I (sic) took sometime, your Honor, three (3) minutes. I was not able to use my feet. (witness demonstrated by holding her right foot.)

x x x x x x x x x[28]

The Court finds private complainant's account on how she was deflowered by accused-appellant highly unlikely if not incredible. The Court cannot divine how accused-appellant could have forced private complainant into having sexual intercourse with her under the circumstances she narrated:

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[28] TSN, May 20, 1957, pp. 21-25.

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(a) Accused-appellant held with one hand, the hand of private complainant and covered her mouth with his other hand to prevent her from shouting for help. Accused-appellant managed to have carnal knowledge of her. However, private complainant has not explained how accused-appellant was able to remove her clothes and panties with one hand on her hand and his other hand over her mouth;

(b) With one hand of accused-appellant holding one of the hands of private complainant and his other hand pressed over her mouth, we find it incredible that accused-appellant managed to penetrate her with his penis. There is no evidence that private complainant even tried to move her hips from side to side to avert coitus with him. In *People vs. Ladrillo*,[29] we held:

> x x x [F]rom her testimony, complainant would have this Court believe that while she was being raped accused-appellant was holding her hand, covering her mouth and gripping his penis *all at the same time*. Complainant's narration is obviously untruthful. If defies the ordinary experience of man. The rule is elementary that evidence to be believed must not only proceed from the mouth of a credible witness but must be credible in itself.

(c) One of the hands of private complainant was free. Indeed, she testified that she managed to hold on to a piece of wood. However, private complainant did not even bother hitting accused-appellant with the piece of wood to disable him;

(d) Private complainant even managed to estimate the duration of the sexual intercourse declaring that the coitus lasted three (3) minutes. It is incredible that private complainant, if she was forced by accused-appellant as she claimed, had the presence of mind to time the entire debilitating and dastardly episode;

(e) If it were true that accused-appellant had ravished her against her will, it behooved private complainant to have lost no time in reporting the incident to her father and to the police authorities so that accused-appellant will immediately be apprehended and made to answer for his dastardly acts. It bears

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[29] 320 SCRA 61 (1996).

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stressing that accused-appellant never threatened before, during and after the intercourse to kill private complainant or inflict harm on her or her family if she reported the incident. However, private complainant kept supinely silent about the incident for four or five months. It was only when her sister, the wife of accused-appellant, noticed that she was pregnant and informed their father that private complainant was on the family way that private complainant admitted to her father that accused-appellant was the father of her child. Private complainant failed to explain to the trial court why she maintained her silence for quite a considerable time. In *People vs. Salazar*,[30] we held that:

> x x x Similarly disturbing is her silence for almost four (4) long months about her unfortunate ravishment and only to be broken when she could no longer hide her pregnant state notwithstanding the alleged threat of the appellant that she and her family will be killed. Her failure to notify the authorities, or at the very least her parents immediately after her harrowing experience seriously affects the truthfulness of her narration. It appears to us that the conduct of private complainant is contrary to the natural reaction of an outraged woman robbed of her honor. x x x.

In sum, then, the prosecution failed to prove the guilt of accused-appellant beyond reasonable doubt for the crime charged. Hence, he should be acquitted of the said charge.

IN THE LIGHT OF ALL THE FOREGOING, the Decision of the court *a quo* is hereby *REVERSED* and *SET ASIDE*. Accused-appellant is hereby *ACQUITTED* of the crime charged. The Director of the Bureau of Corrections is hereby *ordered* to release accused-appellant immediately from detention unless he is being detained for another cause or charge.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Mendoza, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, and *Azcuna, JJ.*, concur.

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[30] 272 SCRA 481 (1997).