



Republic of the Philippines
Supreme Court
 Manila

SUPREME COURT OF THE PHILIPPINES
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SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
 Plaintiff-Appellee,

G.R. No. 234947

Present:

- versus -

CARPIO, J., *Chairperson,*
 PERLAS-BERNABE,
 CAGUIOA,
 J. REYES, JR., and
 LAZARO-JAVIER, *JJ.*

**GARRY PADILLA y BASE and
 FRANCISCO BERMAS y ASIS,**
 Accused,

Promulgated:

FRANCISCO BERMAS y ASIS,
 Accused-Appellant.

19 JUN 2019

X-----
Alfredo R. ... -X

DECISION

CAGUIOA, J.:

Before the Court is an ordinary appeal¹ filed by accused-appellant Francisco Bermas y Asis (Bermas) assailing the Decision² dated July 6, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06972, which affirmed the Judgment³ dated May 16, 2014 of the Regional Trial Court (RTC) of EEE,⁴ in Criminal Case No. 08-1631, finding Bermas guilty beyond reasonable doubt of Rape.

The Facts

An Information was filed against Bermas for the rape of AAA,⁵ which reads:

That sometime in the evening of January 10, 2008 at [DDD], Philippines and within the jurisdiction of this Honorable Court, the above-

¹ See Notice of Appeal dated July 31, 2017; *rollo*, pp. 12-15.
² *Rollo*, pp. 2-11. Penned by Associate Justice Renato C. Francisco, with Associate Justices Ramon M. Bato, Jr. and Manuel M. Barrios concurring.
³ *CA rollo*, pp. 38-46. Penned by Acting Presiding/Executive Judge Roberto A. Escaro.
⁴ The name of the municipality and province were replaced with fictitious initials pursuant to Amended Circular No. 83-2015 dated September 5, 2017.
⁵ The name of the victim is replaced with fictitious initials pursuant to Amended Circular No. 83-2015 dated September 5, 2017.

named accused, with lewd design, motivated by bestial lust and by means of force and intimidation, did, then and there, willfully, unlawfully and feloniously touch the vagina and had carnal knowledge by inserting his penis to the vagina of the private complainant, one AAA, mentally retarded, against her will, to the damage and prejudice of the offended party.

CONTRARY TO LAW.⁶

When arraigned, Bermas pleaded not guilty to the charge. Thereafter, pre-trial and trial on the merits ensued.

During the trial, the prosecution presented as its witnesses the following: (i) AAA; (ii) BBB, AAA's mother; (iii) Rural Health Physician Dr. Virginia Barasona (Dr. Barasona); and (iv) Barangay Captain CCC. The prosecution's version, as summarized by the CA, was as follows:

BBB testified that her daughter AAA was mentally retarded since birth as manifested by the latter's hardheadedness. AAA would also utter senseless words which were inappropriate for her age. There were also times when AAA would not be responsive to questions. Sometimes AAA would hit her nephews and nieces without any reason at all while other times AAA would be out of dimension and not within herself.

Barangay Captain CCC, on the other hand, has been a neighbor of AAA for ten (10) years and has known AAA to be mentally retarded for she was always smiling and laughing for no reason. He also knew that AAA went to a special education school.

On 10 January 2008, AAA told her mother that she was to attend a birthday party near their house. AAA testified that as she was watching those having videoke, she was told by accused [Bermas] to go to Barangay Captain CCC's house. Upon her arrival, accused [Bermas] and one Garry Padilla were already at the house of the barangay captain. While at the stairs of the said house, accused [Bermas] allegedly told her "*AAA, wag kang magsumbong marami ako ritong pera, sige na hubarin mo na ang party mo.*" Both men then removed private complainants' (*sic*) shorts and underwear. [Bermas] showed her his penis, inserted it into her vagina and moved in a pumping motion. After a while, [Bermas] removed his penis and a liquid substance came out. Thereafter, Garry inserted his penis into her vagina.

After the termination of AAA's testimony, the court a quo ordered the amendment of the Information to include Garry Padilla as co-accused as well as the x x x issuance of the corresponding warrant for his arrest.

Meanwhile, Barangay Captain CCC testified that he was awakened by the sound of his hogs and the barking of dogs. He peeped through his window and saw AAA raising her shorts as she walked from his pig pen. AAA was also with a male companion who he identified as accused Francisco Bermas. Barangay Captain CCC then went next door to inform AAA's parents of what he saw.

When BBB saw her daughter, the latter was crying and trembling with fear. She confronted her daughter and asked who the man she was with.

⁶ *Rollo*, pp. 2-3.



AAA replied that she was with accused Francisco Bermas. They then went to the Women's and Children's Desk ng Himpilan ng Pulisya ng [DDD] Camarines Norte to report the incident.

Dr. Barasona testified that she examined private complainant on 12 January 2008 and found that there was a clear evidence of penetration which happened within 72 hours from examination. She also referred private complainant for psychiatric evaluation as she suspected her of having Down Syndrome for having features such as low-set and malformed ears as well as oblique palpebral fissures. In addition, Dr. Barasona observed that private complainant had difficulty in understanding questions. AAA was not fully responsive to questions and could not fully narrate incidents.⁷

On the other hand, the evidence of the defense is based on the lone testimony of Bermas, who testified as follows:

Accused [Bermas] claimed that at around late afternoon of 10 January 2008, he went to Poblacion at the barangay proper to buy cigarette. He was then invited by his *compare (sic)* Gary to a birthday party near BBB's house where they had a drinking session. Gary, however, went home ahead of him. At around 10:00 o'clock in the evening, he was already on his way home when he passed by the house of Barangay Captain CCC who asked him where he was going. Upon replying that he was already on his way home, accused [Bermas] saw private complainant come out of the barangay captain's house. Barangay Captain CCC then went to private complainant's house and informed the latter's parents that he saw the private complainant with a male companion. Apparently, accused [Bermas] was being pinpointed as the male companion of private complainant. He was thereafter brought to the police station where he was incarcerated with Gary for allegedly raping private complainant. Both the accused were released after a period of thirty six (36) hours.⁸

Ruling of the RTC

After trial on the merits, in its Judgment⁹ dated May 16, 2014, the RTC convicted Bermas of the crime of Rape. The dispositive portion of the said Judgment reads:

WHEREFORE, premises considered, judgment is hereby rendered finding the accused, **FRANCISCO BERMAS, GUILTY** beyond reasonable doubt of the crime of Rape defined and penalized under Art. 266-A of the Revised Penal Code in relation to Republic Act 7610. He is hereby sentenced to suffer the penalty of imprisonment of **RECLUSION PERPETUA**.

x x x x

SO ORDERED.¹⁰

In finding Bermas guilty, the RTC reasoned:

⁷ Id. at 3-5.

⁸ Id. at 5.

⁹ CA *rollo*, pp. 38-46.

¹⁰ Id. at 46.



Based on the evidence adduced by the parties, and after a thorough evaluation, both on the testimonial and documentary evidence, it has been established by the prosecution, most particularly the testimony of the victim, who is mentally retarded, that the herein accused, Francisco Bermas had carnal knowledge with her on January 10, 2008 night time at the stairs of the house of [CCC]. She categorically said that the accused removed her panty, shown to her the penis of the accused and inserted [it] into her vagina, moving his body in a pumping motion and thereafter a liquid substance came out. The victim and the accused were seen by the barangay captain at his pigpen on the same evening. The testimony of the private complainant, as well as by the barangay captain, who positively identified the accused, and the findings of the doctor gave credence to the commission of the crime.¹¹

Aggrieved, Bermas appealed to the CA.

Ruling of the CA

In the appeal, Bermas mainly questioned the RTC's conclusion that AAA was a mental retardate, and as a result of her mental retardation, that he was, thus, guilty of rape.

In the questioned Decision¹² dated July 6, 2017, the CA affirmed the RTC's conviction of Bermas. The CA explained:

The gravamen of the crime of rape under Art. 266-A (1) is sexual intercourse with a woman against her will or without her consent. In this case, appellant was charged and convicted of rape under Article 266-A (1) (b). The term "*deprived of reason*" is associated with insanity or madness. A person deprived of reason has mental abnormalities that affect his or her reasoning, perception of reality as well as his or her capacity to resist, make decisions, and give consent. The deprivation of reason, however, need not be complete for mental abnormality or deficiency is enough.

It has also been held that carnal knowledge of a woman who is a mental retardate is rape under the aforesaid provision of law. This is because a mentally deficient person is automatically considered incapable of giving consent to a sexual act. Thus, proof of force or intimidation is not necessary. What needs to be proven are the facts of sexual congress between the accused and the victim, and the mental retardation of the latter.¹³

The CA also held that BBB's testimony that AAA was mentally retarded since birth was sufficient to establish her retardation, and that medical evidence was not a condition *sine qua non* to prove that AAA indeed was a mental retardate.¹⁴

Hence, the instant appeal.

¹¹ Id. at 44.

¹² *Rollo*, pp. 2-11.

¹³ Id. at 7. Citations omitted.

¹⁴ Id. at 8.

Issue

Proceeding from the foregoing, for resolution of this Court is the issue of whether the RTC and the CA erred in convicting Bermas.

The Court's Ruling

The appeal is meritorious. The Court acquits Bermas for the failure of the prosecution to prove all the elements of the crime charged beyond reasonable doubt.

In rape cases, the prosecution has the burden to conclusively prove the two elements of the crime, *viz.*: (1) that the offender had carnal knowledge of a woman, and (2) he accomplished such act through force or intimidation, or when she was deprived of reason or otherwise unconscious, or when she was under 12 years of age or was demented.¹⁵

The Information in this case accuses Bermas of having carnal knowledge with AAA, a supposed mental retardate, through force or intimidation. The RTC and the CA convicted him of the crime charged holding that: (1) carnal knowledge was sufficiently proved through AAA's testimony; and (2) AAA was mentally retarded — and thus, “deprived of reason” — such that the carnal knowledge with her amounted to rape so that proof of force or intimidation was not necessary.

The Court disagrees.

The lower courts' conclusions are unwarranted, and are unsupported by the prevailing jurisprudence on the matter.

It bears emphasis that in rape cases, the accused may be convicted on the basis of the lone, uncorroborated testimony of the rape victim, provided that her testimony is clear, convincing, and otherwise consistent with human nature.¹⁶ This is a matter best assigned to the trial court which had the first-hand opportunity to hear the testimonies of the witnesses and observe their demeanor, conduct, and attitude during cross-examination. Hence, the trial court's findings carry very great weight and substance.¹⁷

However, it is equally true that in reviewing rape cases, the Court observes the following guiding principles:

- (1) an accusation for rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove;
- (2) in view of the intrinsic nature of the crime where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution;

¹⁵ *People v. Dalan*, 736 Phil. 298, 300 (2014).

¹⁶ *People v. XXX*, G.R. No. 226467, October 17, 2018, p. 5.

¹⁷ *Id.*, citing *People v. Alemania*, 440 Phil. 297, 304-305 (2002).



- (3) **the evidence for the prosecution must stand or fall on its own merits**, and cannot be allowed to draw strength from the weakness of the evidence for the defense.¹⁸

This must be so as the guilt of an accused must be proved beyond reasonable doubt. Before he is convicted, there should be moral certainty — a certainty that convinces and satisfies the reason and conscience of those who are to act upon it.¹⁹ Absolute guarantee of guilt is not demanded by the law to convict a person of a criminal charge but there must, at least, be moral certainty on each element essential to constitute the offense and on the responsibility of the offender.²⁰ Proof beyond reasonable doubt is meant to be that, all things given, the mind of the judge can rest at ease concerning its verdict.²¹ Again, these basic postulates assume that the court and others at the trial are able to comprehend the testimony of witnesses, particularly of the victim herself if she is presented and testified under oath.²²

With the foregoing principles in mind, the Court holds that the evidence presented by the prosecution did not sufficiently establish the second element of the crime charged, namely, that he had carnal knowledge of AAA either (a) through force or intimidation, or (b) when she was deprived of reason. Hence, Bermas' acquittal necessarily follows.

In holding that AAA was a mental retardate, the CA rationalized:

People v. Dalandas has already qualified the application [of] the *Cartuano, Jr.* ruling. In *Dalandas*, the Supreme Court held 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. A person's mental retardation can also be proven by evidence other than medical/clinical evidence, such as the testimony of witnesses and even the observation by the trial court.

Here, private complainant's mother testified that her daughter was mentally retarded since birth as she exhibited hardheadedness and uttered senseless words which were inappropriate for her age. Barangay Captain CCC, a neighbor of private complainant for almost ten (10) years, knew private complainant as mentally retarded for she was always smiling and laughing for no reason. The rural health physician who examined private complainant a few days after the alleged rape incident also observed that private complainant had difficulty in understanding questions as her answers were not fully responsive. She also observed that private complainant had difficulty in narrating incidents. On this basis, the rural health physician recommended that private complainant be referred to psychiatric evaluation.

¹⁸ Id. at 5-6, citing *People v. Lumibao*, 465 Phil. 771, 780 (2004).

¹⁹ Id. at 6, citing *People v. Lumibao*, id. at 781.

²⁰ Id.

²¹ Id., citing *People v. Lumibao*, supra note 18, at 781.

²² Id., citing *People v. Lumibao*, id.

Faced with the foregoing testimonial evidence, the trial court held that private complainant's mother BBB was competent to testify on the physical and mental condition of her daughter. Albeit not a psychologist or psychiatrist, BBB knew how her daughter was born, what she is suffering from and what her attainments are. The court a quo also held that the personal observation of the trial judge suffices even in the absence of an expert opinion.²³

After a careful consideration of the foregoing, the Court holds that the CA erred in the above disquisition. Its reading of *People v. Dalandas*²⁴ (*Dalandas*) is highly misplaced.

In *Dalandas*, the private complainant was a 20-year old mental retardate who only finished the second grade of elementary school. As proof of her mental retardation, the private complainant's father, much like AAA's mother in this case, testified that his daughter has had a mental defect since childhood. The Court eventually acquitted the accused therein and, in the process, held that the "claim that his daughter was suffering from a mental defect since childhood was a mere conclusion."²⁵ In acquitting the accused in *Dalandas*, the Court explained at length:

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.

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:

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

²³ *Rollo*, pp. 8-9. Citations omitted.

²⁴ 442 Phil. 688 (2002).

²⁵ *Id.* at 699-700. Underscoring supplied.

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.

x x x x

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 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 [he] receive[s] 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. All the foregoing may be testified on by ordinary witnesses who come in contact with an alleged mental retardate.

x x x x

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.

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 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; she did not know anything about money; and she would not eat if she was fed with food. The prosecution also relied on the testimony of private complainant that she finished only Grades I and II in the Gintilan Elementary School. 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 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 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. x x x²⁶ (Emphasis and underscoring supplied)

Similar to *Dalandas*, the records of the present case are likewise bereft of any evidence conclusively establishing AAA's mental retardation. If at all, the only evidence offered to prove the said fact were: (1) BBB's testimony that AAA has had mental retardation since birth; (2) Barangay Captain CCC's testimony that he has known AAA to have mental retardation and that she went to a special school; and (3) Dr. Barasona's testimony that AAA "probably" has Down Syndrome.

Following *Dalandas*, however, BBB and CCC's testimonies are but mere conclusions that do not establish the fact of AAA's mental retardation. Likewise, Dr. Barasona's testimony cannot be the basis for such as the said findings were inconclusive, as revealed by the following testimony:

“Q You also said that the patient is suffering from down's syndrome. You will agree with me that there is no particular study on this aspect?

A **We have plans of referring the patient to a psychiatrist for further evaluation.**

Q But your findings is (*sic*) not conclusive?

A That the patient has a down's syndrome.

²⁶ Id. at 695-700.

Q With respect to conclusion, Madam Witness, that indeed the patient is suffering [from] mental retardation, **this findings is (sic) not conclusive?**

A **Yes.**²⁷ (Emphasis and underscoring supplied)

Therefore, the finding that AAA is a mental retardate has no leg to stand on.

The Court, in *People v. Cartuano, Jr.*,²⁸ (*Cartuano*) reminds: “[t]rial courts should put prosecution evidence under severe testing. Every circumstance or doubt favoring the innocence of the accused should be taken into consideration.”²⁹ Thus, the Court therein explained that:

Mental retardation is a clinical diagnosis which requires demonstration of significant subaverage intellectual performance (verified by standardized psychometric measurements); evidence of an organic or clinical condition which affects an individual’s intelligence; and proof of maladaptive behavior. The degree of intellectual impairment must be shown to be at least two (2) standard deviations (SD<2) below the mean for age as confirmed by reliable standardized tests such as the Stanford Binet Test and The Weschler Intelligence Tests. Non-standardized, non-parametric tests, such as the Denver Development Screening Tests or nonstandardized, non-specific “quick” tests such as sentence completion tests and the Goodenough Drawing Test are unreliable.

In making a diagnosis of mental retardation, a thorough evaluation based on history, physical and laboratory examination made by a clinician is necessary. The reason for this universal requirement is well-explained in both x x x the medical and clinical psychology literature: mental retardation is a recognized clinical syndrome usually traceable to an organic cause, which determinants are complex and multifactorial. As the 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.

In the case at bench, the record is almost bare of clinical, laboratory and psychometric support which would sustain a *proper* conclusion that complainant was indeed mentally deficient. The patient history yields nothing but the fact that complainant left school at third grade, a fact which the school principal blamed on frequent absences and tardiness, and the only appropriate conclusion which could be drawn from her second grade teacher’s testimony was that complainant was a poor student. Neither were the findings on physical examination noted on record, either by the psychiatrist or the psychologist. Physical examination would have confirmatory value because most cases of congenital mental retardation in this country are due to Down’s and other related translocation variants. These conditions, outwardly characterized by hypertelorism, low set ears, a micrognathic jaw, and a simian crease are fairly common, and afflicted individuals are generally recognized even by laymen. Individuals afflicted with the less common causes of mental retardation likewise have distinct physical features, recognizable by clinicians. The rare metabolic and genetic causes are usually

²⁷ CA *rollo*, p. 31, citing TSN, August 24, 2011, p. 7.

²⁸ 325 Phil. 718 (1996).

²⁹ Id. at 745.

incompatible with survival beyond childhood and the degree of retardation is usually severe. Appallingly, no physical evaluation (essential in the diagnosis of any disorder, mental or somatic) appears on record.

On top of these, the psychometric tests which were utilized in evaluating the complainant, the Goodenough Drawing Test and the Bender Visual Motor Test, are non-parametric tests of generally low reliability, adopted by psychologists as quick screening tests, not so much for intelligence but for visual-motor function and coordination. The Sack's Sentence Completion Test, the third leg in the psychologist's evaluation is likewise considered of low reliability and specificity in intelligence assessment and is culture and language specific and biased. (In the case at bench, the Sack's Sentence Completion Test was conducted in Tagalog, not in the dialect of the complainant.) All the three tests are used in a wide range of psychological disorders other than mental retardation, and none of them either alone or taken together — would suffice as a proper test for intelligence.

x x x x

x x x It is held in the most recent of the Medical, Psychiatric, and General and Clinical Psychology literature on mental retardation and deficiency here and abroad, that identification of mental deficient subjects cannot be left to ambiguous social notions and assumptions alone, such markers being unfortunately vague, sometimes discriminatory and widely open to chance. The proper clinical determination of mental deficiency requires several legs. Needless to say, after psychometric diagnosis utilizing the proper test has been confirmed, a comprehensive medical evaluation, (all reasonably within the capacity of our major provincial and city hospitals and centers) is necessary to complete the process.

It is necessary to stress here, conformably with what the Court has been saying in jurisprudence on the matter, that deprivation of reason need not be complete. Mental abnormality or deficiency is enough. However, abnormality or deficiency of whatever state or degree should be sufficiently and adequately established by orthodox and reasonably available methods and procedures. It is possible that complainant could well have been merely on the lower end of the acceptable mean for her age group, a condition which would have been aggravated by her lack of education, but this, by any medical or psychological yardstick, does not itself negate autonomous choice or decision-making based on reasoning.³⁰ (Emphasis and underscoring supplied)

The Court, in *Cartuano* and as subsequently clarified in *Dalandas*, does not require a comprehensive medical examination in each and every case where mental retardation needed to be proved. However, it is well to emphasize that the conviction of an accused of rape based on the mental retardation of the private complainant must be anchored on proof beyond reasonable doubt of her mental retardation.³¹

³⁰ Id. at 747-751.

³¹ *People v. Dalandas*, supra note 24, at 699. Emphasis and underscoring supplied.

In the present case, however, there is no such proof as previously discussed.

Even if the Court were to appreciate BBB's testimony, the same conclusion would nevertheless be reached, for claims of "hardheadedness,"³² "utter[ing], senseless words,"³³ and unresponsiveness to questions are all insufficient to conclude that AAA is suffering from retardation such that she was unable to comprehend the consequences of consenting to a sexual act. The Court needed to ascertain her level of understanding, including that of sexual acts, for it is clear in the decision of the RTC,³⁴ and in her testimony, that she "consented" to the sexual act. She testified:

"Q What did you feel when he insert (*sic*) his penis inside your vagina?

A None, sir.

x x x x

Q Why is it that you did not prevent them from doing that thing?

A No answer.

COURT

Did you like what the accused do (*sic*) to you?

A **Yes, Your Honor.**³⁵ (Emphasis and underscoring supplied)

As the victim apparently "consented" to the act, the Court necessarily had to determine whether this consent was vitiated, such that the act would amount to Rape under Article 266-A(1)(b) for having carnal knowledge with a woman "deprived of reason." However, as discussed, the prosecution failed to establish her mental retardation beyond reasonable doubt.

In sum, the second element of the crime charged — that the victim be "deprived of reason" — was not established beyond reasonable doubt. Hence, in consonance with the constitutional right of presumption of innocence, the Court acquits Bermas of the crime charged.

WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated July 6, 2017 of the Court of Appeals in CA-G.R. CR HC No. 06972 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Francisco Bermas y Asis is **ACQUITTED** of the crime charged on the ground of reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention unless he is being lawfully held for another cause. Let an entry of final judgment be issued immediately.

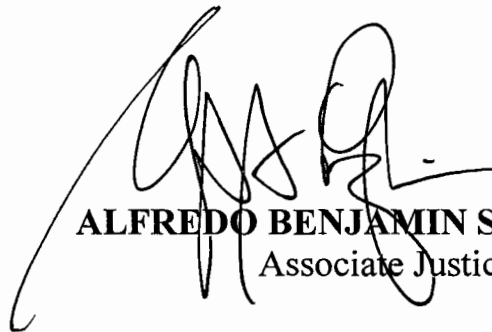
³² *Rollo*, p. 3; *CA rollo*, p. 32, citing TSN, February 10, 2011, p. 3.

³³ *Id.*; *id.*, citing TSN, February 10, 2011, *id.*

³⁴ See *CA rollo*, p. 39.


³⁵ *Id.* at 29, citing TSN, November 23, 2010, pp. 6, 17.

SO ORDERED.

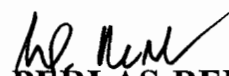


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

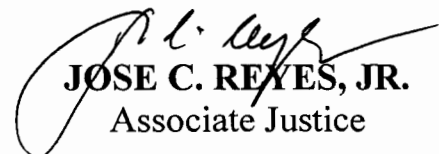
WE CONCUR:



ANTONIO T. CARPIO
Associate Justice
Chairperson



ESTELA M. PERLAS-BERNABE
Associate Justice




JOSE C. REYES, JR.
Associate Justice



AMY C. LAZARO-JAVIER
Associate Justice

ATTESTATION

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



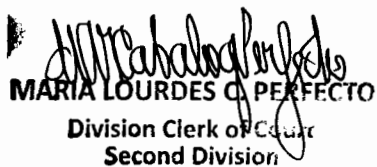
ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

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


LUCAS P. BERSAMIN
Chief Justice

CERTIFIED TRUE COPY


MARIA LOURDES G. PERFECTO
Division Clerk of Court
Second Division

