

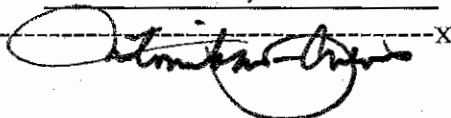
EN BANC

**G.R. No. 267163 – PEOPLE OF THE PHILIPPINES, Plaintiff-appellee,
v. EDUARDO DELA CRUZ Y TOLENTINO, Accused-appellant.**

Promulgated:

October 29, 2024

X



X

SEPARATE CONCURRING OPINION

SINGH, J.:

I concur that the accused Eduardo Dela Cruz y Tolentino (**Dela Cruz**) is guilty of Rape under Article 266-A paragraph 1(b) of the Revised Penal Code.¹

Nevertheless, the peculiar circumstances present in this case invite some discussion on how the law should be interpreted in relation to the intellectual disability of rape victims.

As the facts bear, the victim AAA is a 16-year-old female child, who has also been shown to have an intellectual disability where her mental capacity is less than her physical age.² The facts also show that Dela Cruz admitted that he had known of this intellectual disability of AAA when he committed the Rape.³

The qualifying circumstance of the offender's knowledge of the mental disability, emotional disorder, and/or physical handicap of the offended party at the time of the commission of the crime, however, could not be appreciated. As pointed out, the Information where Dela Cruz was charged for Rape did not allege that the offender knew of the disability.

As quoted below, the Information referred to AAA as a special child, but did not mention the qualifying circumstance of Dela Cruz's knowledge of such intellectual disability:

That on or about February 25, 2015 at around 6:30 in the evening,
in the [REDACTED], Province of Tarlac, Philippines and within the

¹ Ponencia, p. 10.

² Id. at 2.

³ Id. at 3.



jurisdiction of this Honorable Court, the accused, did then and there willfully, unlawfully[,] and feloniously by means of force and intimidation had carnal knowledge with [AAA], a Special Child, minor, 16 years old, against her will and which acts is greatly prejudicial to her normal growth and development as a minor.

Contrary to law.⁴

The constitutional requirement of informing the accused of the nature of the charge against them is deeply rooted in the due process requirement and the presumption of one's innocence.⁵ Its purpose is to ensure that the accused can prepare the best defense to buttress the position of maintaining that innocence.⁶

However, what happens when an accused freely admits, in the course of a trial, to any of the qualifying circumstances of a crime they are being tried for? When all the hallmarks of due process have been preserved and accorded to the accused, such as their right to competent counsel, right against self-incrimination, the ability to cross-examine witnesses, and freedom from coercion or torture, can an admission by the accused of the presence of a qualifying circumstance be fully appreciated by the Court in determining their guilt? At this time, case law proscribes this but it is my measured view that there are grounds to reconsider the rule in the future. This is particularly relevant in cases involving rape victims who suffer from mental disability, as in this case. When a mental disability is so apparent and readily observable then it is not only highly improbable, but it goes against human experience, that an offender sexually abuses the victim oblivious of such apparent mental disability. In effect, the requirement of the law that "the offender knew of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime"⁷ and took advantage of it must be implied from the commission of the rape itself.

Otherwise, to continue to adopt an overly literal interpretation is to do injustice to the most vulnerable of victims: minors who are mentally challenged. It bears stressing that intellectual disability requires a more nuanced consideration by the Court. The difference between visible or apparent versus invisible or latent mental disabilities is important, such that in certain instances, it is impossible to have not known of a disability when the disability is unmistakable or clearly apparent.

In many cases now of rape where qualifying circumstances have nevertheless been proven during trial, lacking Information has consistently

⁴ *Rollo*, p. 22.

⁵ *Villarba v. Court of Appeals*, 874 Phil. 84, 101 (2020) [Per J. Leonen, Third Division].

⁶ *Ismael v. People*, G.R. Nos. 234435-36, February 6, 2023 [Per J.M.V. Lopez, Second Division] at 15. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

⁷ REVISED PENAL CODE (1930), art. 266-B, para. 10.

failed to specifically allege the necessary circumstance to qualify the crime charged, whether that be of relationship between the offender and the victim, or of knowledge of the offender of the victim's intellectual disability. This is precisely what was pointed out by our colleagues in the Court when they outlined how jurisprudence has rejected a qualifying circumstance, even when conclusively proven, if not alleged in the relevant Information. These instances, I respectfully submit, should give the Court reason for pause.

Undoubtedly, the prosecution of a crime and the determination of what charges can be successfully litigated are executive functions within the exclusive competence of the State's prosecutorial agencies.⁸ The prosecution of crimes entails, among other things, case buildup, evaluation of the reasonable chances of success based on evidence, possibility of plea bargaining, and policy considerations by the Executive Department. Thus, the courts cannot supplant their own wisdom for the prosecution's as to the nature and extent of the charge against an accused. In *People v. Montierro*,⁹ the Court explained that:

[I]t must be noted with import that the exclusive prerogative of the Executive begins and ends with matters involving purely prosecutorial discretion. Prosecutorial discretion pertains to who to prosecute, what case to prosecute, and how the case would be pursued based on the evidence available to the prosecution. The prosecution has the freedom and authority to determine whether to charge a person, what Information to file against them and how to prosecute the case filed before the courts. There is, however, an obvious limit to prosecutorial prerogatives as the prosecutor obviously has no control over how the court would decide the case. While a prosecutor may look at the evidence and determine the charge and that a person is probably guilty of the same, a judge may look at the same set of evidence and arrive at a different conclusion.¹⁰ (Emphasis supplied)

Nevertheless, the use of such prosecutorial discretion is not immune to judicial scrutiny. Thus, as in this case, it cannot escape the Court's observation that such failure to allege the qualifying circumstance of knowledge of disability may also be due to oversight. But this oversight should not necessarily be fatal. The facts are illustrative. Here, the RTC made the following observation:

When the victim testified in Court, as her appearance alone indicated that her actual age is different to [sic] her mental age, she was treated as a child-witness and the defense did not object to the same.¹¹ (Emphasis supplied)

⁸ *People v. Montierro*, G.R. No. 254564; G.R. No. 254974; A.M. No. 21-07-16-SC; and A.M. No. 18-03-16-SC, July 26, 2022 [Per J. Caguioa, *En Banc*].

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Rollo*, p. 26.



Moreover, in the direct examination and cross examination of Dela Cruz, the apparent intellectual disability of AAA was also admitted by the accused. Quoting from the RTC Decision:

ATTY. CUISON:

Q: *So, you do not know whether that child is considered a special child, Mr. Witness?*

A: *The child is mentally disabled sir.*

Q: *How can you tell that she is mentally disabled, Mr. Witness?*

A: *Because, she is roaming around and she is doing like this (the witness is shaking his body).*

[...]

PROS. LENON:

Q: *And therefore, you know that she is mentally incapacitated?*

A: *It's like she doesn't have mind. She is mentally disordered, that is why I pulled up her shorts.*

Further, this Court observed that the victim, while on the witness-stand, started to murmur. . . *action that is attributed only to a child of tender age.*¹² (Emphasis supplied)

Based on the foregoing observations by the RTC, it is obvious that the intellectual disability of the victim was readily apparent. The offender also readily admitted such fact without much prodding. It would not have been difficult therefore to infer, in the course of the investigation of the case, that it was highly improbable that the offender did not know of the victim's intellectual disability. Yet, such an important allegation is missing in the Information that charged the accused in this case, and in many other cases¹³ before this.

In as much as the Constitution no less guarantees the rights of an accused in a criminal prosecution, victims have largely been rendered invisible, or, at most, relegated to secondary consideration. It should behoove all actors within the criminal justice system to look out for the welfare of victims of violent crimes, such as rape of minors, especially those who suffer from mental disability. The criminal justice system cannot fail the victims, especially when these survivors choose to put their trust into our institutions and pursue justice. Needless to say, in a foundational public office such as ours, trust is at the heart of its effectiveness – and this trust must be fostered.

Whether the fact that an Information lacks allegations is due to oversight, error or some judicious reason, it is the duty of the investigatory and prosecutorial actors to act with sensitivity towards victims, especially to

¹² *Id.*

¹³ See *People v. Magabo*, 402 Phil. 977 (2001) [Per J. Gonzaga-Reyes, Third Division]; *People v. Maceda*, 405 Phil. 698 (2001) [Per J. Mendoza, En Banc]; *People v. Montcalvo*, 702 Phil. 643 (2013) [Per J. Perez, Second Division]; also *People v. Nicolas*, 436 Phil. 462 (2002) [Per J. Quisimbing, En Banc].



those of violent crimes, in looking out for their welfare, evaluating their cases, and guiding them through the process. This sensitivity does not negate the principle that criminal cases, which are fundamentally offenses against the State, is prosecuted in the name of the People of the Philippines.¹⁴ On the contrary, the mandate of justice is given life when law enforcement agents and justice actors remain supportive of the plight of victims providing them necessary support or referring them to agencies that would provide this support. The sensitivity to victims would also improve the willingness of victims to participate in different criminal proceedings, and hopefully allow our law enforcement agencies to prosecute cases to their full extent. Ultimately, the filing of more accurate Informations would be reflective of a more conducive environment for victims of rape and other violent crimes.

Sadly, rape continues to be an abhorrent phenomenon, and the cases involving minors constitute majority of incidents in the Philippines.¹⁵ It cannot be overemphasized that this unacceptable condition must elicit a more emphatic response.

In the converse, it cannot also be claimed that this sensitivity to victims' perspectives will compromise the fairness due to the accused, who is presumed innocent until proven guilty. It only means a marked awareness of the special needs of a victim of a violent crime, and an astuteness to determine how best to elicit their full participation. The courts therefore need to re-study the current position in cases involving victims of rape who have an intellectual disability where their mental age is different from their physical age, such as this case, but where knowledge of such factor is lacking in the information.

As jurisprudence teaches, the determination of a victim's intellectual disability may be based on the totality of evidence and a variety of factors such as by medical or clinical evidence, testimony of witnesses, and even observation by the trial court.¹⁶ This lessens the need for intrusive and retraumatizing examination of victims. As outlined in *People v. Butiong*:¹⁷

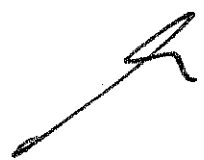
Moreover, as clarified in *People v. Dalandas*, *People v. Cartuano* does not preclude the presentation by the State of proof other than clinical evidence to establish the mental retardation of the victim. For sure, *the courts are not entirely dependent on the results of clinical examinations in establishing mental retardation*. In *People v. Almacin*, for instance, *the*

¹⁴ *Merciales v. Court of Appeals*, 429 Phil. 70, 78–79 (2002) [Per J. Ynares-Santiago, *En Banc*].

¹⁵ See Tina Santos, *Unicef lauds PH for raising age of sexual consent to 16*, PHIL. DAILY INQUIRER, March 8, 2022, available at <https://newsinfo.inquirer.net/1564777/unicef-lauds-ph-for-raising-age-of-sexual-consent-to-16> (last accessed on June 17, 2024); Christopher Lloyd Caliwang, *New statutory rape law boosts fight vs. sexual abuse of minors*, PHIL. NEWS AGENCY, March 8, 2022, available at <https://www.pna.gov.ph/articles/1169253> (last accessed on June 17, 2024); Council for the Welfare of Children and UNICEF Philippines, 2016, “National Baseline Study on Violence against Children: Philippines,” last accessed on June 17, 2024 at <https://www.unicef.org/philippines/media/491/file>.

¹⁶ *People v. Ventura, Sr.*, 729 Phil. 566, 572–573 (2014) [Per J. Reyes, First Division].

¹⁷ *People v. Butiong*, 675 Phil. 621 (2011) [Per J. Bersamin, First Division].



*Court took into consideration the fact that the victim was illiterate and unschooled in concluding that she was mentally incapable of assenting to or dissenting from the sexual intercourse. Also, in People v. Dumanon, the Court concurred in the trial court's observation and conclusion that the victim was a mental retardate based on her physical appearance and on her difficulty to understand and answer the questions during her testimony.*¹⁸ (Emphasis supplied, citations omitted)

This is an example of victim-sensitive approach that the Court has taken in the series of rape cases involving an offended party who has an intellectual disability. The Court recognizes that the judicial process must be equally fair to the victim seeking justice as it is to the accused who enjoys the presumption of innocence.

Considering the foregoing, it is important, therefore, to remind law enforcement agencies to exhibit sensitivity to victims as part of our collective desire to ensure that the full force of the law is employed to eradicate the crime of rape.

Finally, and in the same vein, I concur that the victim in this case should be referred to the Department of Social Welfare and Development for the necessary and appropriate support services so that they may find as much healing as they may find given their experience. Republic Act No. 8505,¹⁹ or the Rape Victim Assistance and Protection Act of 1998, outlines some of these services that may be provided to victims of rape and sexual abuse.²⁰ A disposition similar to the following should be a standard directive in all cases heard by our courts involving victims of rape:

The Department of Social Welfare and Development is DIRECTED to refer the victim to the appropriate rape crisis center for the necessary

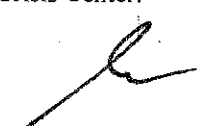
¹⁸ *Id.* at 639-640.

¹⁹ Approved on February 13, 1998.

²⁰ SEC. 3. *Rape Crisis Center.* - The Department of Social Welfare and Development (DSWD), the Department of Health (DOH), the Department of the Interior and Local Government (DILG), the Department of Justice (DOJ), and a lead nongovernment organization (NGO) with proven track record or experience in handling sexual abuse cases, shall establish in every province and city a rape crisis center located in a government hospital or health clinic or in any other suitable place for the purpose of:

- (a) Providing rape victims with psychological counselling, medical and health services, including their medico-legal examination;
- (b) Securing free legal assistance or service, when necessary, for rape victims;
- (c) Assisting rape victims in the investigation to hasten the arrest of offenders and the filing of cases in court;
- (d) Ensuring the privacy and safety of rape victims;
- (e) Providing psychological counselling and medical services whenever necessary for the family of rape victims;
- (f) Developing and undertaking a training program for law enforcement officers, public prosecutors, lawyers, medico-legal officers, social workers, and barangay officials on human rights and responsibilities; gender sensitivity and legal management of rape cases; and
- (g) Adopting and implementing programs for the recovery of rape victims.

The DSWD shall be the lead agency in the establishment and operation of the Rape Crisis Center.



assistance to be rendered to the victim and her family, in line with Republic Act No. 8505, or the Rape Victim Assistance and Protection Act of 1998.

All told, I am constrained to vote to DENY the Petition for Review on *Certiorari* with the hope that soon, the view I espouse above will become the norm.



MARIA FILOMENA D. SINGH