

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RENANTE C. MANDELMA, ACCUSED-APPELLANT.

Ponente: PEREZ, J.

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PEREZ, J.:

This is an Appeal from the Decision[1] of the Regional Trial Court of Malaybalay, Branch 6, dated 1 June 2010, finding all the accused Gabriel Mandelma y Mandin, Renante Mandelma y Casa and Fernando Wado y Lazaga guilty beyond reasonable doubt for the crime of rape defined under Article 266-A of the Revised Penal Code (RPC) as amended by Republic Act No. 8353. Among the three accused, only Renante Mandelma y Mandin (accused-appellant) filed this appeal.

Accused-appellant was originally charged with Rape in two Informations docketed as Criminal Cases No. 12720-02 and 12721-02, to wit:

For Criminal Case No. 12720-02:

That on or about the 30[th] day of September 2002, at dawn, at Barangay Old Kibawe, province of Bukidon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, prompted by lewd design with the use of force and intimidation on the person of SONIA ABEGANDO, a twenty-one (21) year old woman, then and there willfully, unlawfully and criminally brought the latter at Old Kibawe Elementary School Stage and while thereat, accused RENANTE MANDELMA y CASAS took off her panty and henceforth, when SONIA ABEGANDO was naked, accused GABRIEL MANDELMA y MANDIN @ LICLIC forcibly inserted his penis into the vagina of SONIA ABEGANDO and have sexual intercourse with the latter, while the other two (2) accused, RENANTE MANDELMA y CASAS and FERNANDO WADO y LAZAGA helped in one way or another for the satisfaction of the lustful desire of GABRIEL MANDELMA y MANDIN @ LICLIC, against the will of SONIA ABEGANDO, to the damage and prejudice of SONIA ABEGANDO in such amount as may be allowed by law.

Contrary to and in violation of Article 266-A of the Revised Penal Code as amended by R.A. 8353.

For Criminal Case No. 12721-02:

That on or about the 30th day of September 2002, at dawn, at Barangay Old Kibawe, province of Bukidon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, prompted by lewd design with the use of force and intimidation on the person of SONIA ABEGANDO, a twenty-one (21) year old woman, then and there willfully, unlawfully and criminally brought the latter at Old Kibawe Elementary School Stage and while thereat, accused RENANTE MANDELMA y CASAS took off her panty and henceforth, when SONIA ABEGANDO was naked, accused GABRIEL MANDELMA y MANDIN @ LICLIC forcibly inserted his penis into the vagina of SONIA ABEGANDO and have sexual intercourse with the latter, while the other two (2) accused, RENANTE MANDELMA y CASAS and FERNANDO WADO y LAZAGA helped in one way or another for the satisfaction of the lustful desire of GABRIEL MANDELMA y MANDIN @ LICLIC, against the will of SONIA ABEGANDO, to the damage and prejudice of SONIA ABEGANDO in such amount as

may be allowed by law.

Contrary to and in violation of Article 266-A of the Revised Penal Code as amended by R.A. 8353.

During arraignment on 4 May 2010, appellant pleaded “not guilty” to the offenses as charged. The two cases were consolidated, and joint pre-trial and trial ensued thereafter.

The Facts

Private complainant Sonia Abegando (Sonia) testified that on 30 September 2002, at more or less 4:30 o'clock at dawn, while she was on her way home to the house of her employer, the three accused Gabriel Mandelma (Gabriel), Renante Mandelma (Renante) and Fernando Wado (Fernando) followed her, held her hand and pulled her towards the stage of the school at Old Kibawe. At the stage of Kibawe Elementary School, accused Fernando held her arms and accused-appellant Renante held her legs, while co-accused Gabriel was on top of her. Gabriel started raping her by pumping up and down, and inserting his penis to her vagina. She could not shout for help because they were threatening her with a gun. When she was about to get up, she was prevented by Renante and Gabriel boxed her. Gabriel carried her and made her lie down on the floor. Thereafter, her sister Hermigilda and a certain Gaga Labawan (Gaga) caught up with them, and the three accused ran away.[2]

Sonia's testimony was corroborated by four (4) other witnesses which include Hermigilda Abegando, Victor Limit, Rolando Paeg and Dr. Helen Rose P. Tubog.

Hermigilda Abegando (Hermigilda), the sister of Sonia, recalled that at around 4:00 o'clock early dawn on 30 September 2002, she noticed that Sonia was no longer in the disco dance. When she and her companion tried to look for her, she saw the three accused in the school stage and heard the voice of her elder sister Sonia. They sought help from bantay bayan Victor Limit who then accompanied them to the place where the incident took place.[3]

Victor Limit (Victor) testified that at around 4:00 o'clock early dawn, Hermigilda and Gaga asked help from him and they proceeded to the elementary school of Kibawe, particularly at the stage where he saw a man wearing a brief and two men fleeing away from the incident towards the sugarcane plantation. When he got near the stage, he saw Sonia crying and she told him that she was raped by the three accused.[4] Rodolfo Paeg (Rodolfo), the barangay captain of Old Kibawe, testified that together with two police officers and one barangay tanod, they roamed around the sugarcane plantation because of the information they got that the accused ran towards that direction. He was then told that the three accused were apprehended on that same day.[5]

All the accused including appellant herein denied participation in the commission of the two counts of rape.

On 4 June 2010, the lower court rendered a Decision[6] finding all the accused guilty beyond reasonable doubt of rape. The dispositive portion of the Decision reads:

WHEREFORE, Judgment is issued finding accused Gabriel Mandelma y Mandin Alias Liclic, Reynante Mandelma y Casas, Fernando Wado y Lasaga guilty beyond reasonable doubt of the crime of Rape and imposes upon each of them, for Criminal Case No. 12720-02, the penalty of reclusion perpetua and to pay the victim the sum of P75,000.00 for moral damages, P75,000.00 civil damages and P25,000.00 actual damages.

The second information for Criminal Case No. 12721-02 is dismissed for failure to allege the acts and omissions committed after the first rape.

They shall serve the penalty in the national penitentiary of Davao penal colony.

SO ORDERED.

Aggrieved, appellant raises before Us the following assignment of errors:

THE LOWER COURT ERRED IN ITS FAILURE TO APPRECIATE AND CONSIDER THE AFFIDAVIT OF DESISTANCE DULY EXECUTED BY PRIVATE COMPLAINANT; AND

THE LOWER COURT ERRED IN CONVICTING ACCUSED RENANTE MANDELMA, GIVING CREDENCE TO THE INCREDIBLE TESTIMONIES OF PRIVATE COMPLAINANT WHICH IS INCONSISTENT AND IRRECONCILABLE WITH THE PROSECUTION'S WITNESS TESTIMONIES.

The Court's Ruling

The appeal is without merit.

Appellant herein, along with two other accused, were charged and convicted with the crime of rape under paragraph 1(a) of Article 266-A of the Revised Penal Code which states:

ART. 266-A. Rape; When and How Committed. - Rape is committed –

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat or intimidation;

xxx

Accordingly, the elements of rape under par. 1(a) of Art. 266-A of the Code are the following: (1) that the offender is a man; (2) that the offender had carnal knowledge of a woman; and (3) that such act is accomplished by using force or intimidation.

After a careful perusal of the records, this Court is convinced by the evidence forwarded by the prosecution that accused-appellant is guilty of the crime of rape beyond reasonable doubt.

Note worthy it is that in determining the innocence or guilt of the accused in rape cases, the courts are guided by three well-entrenched principles: (1) an accusation of rape can be made with facility and while the accusation is difficult to prove, it is even more difficult for the accused, though innocent, to disprove; (2) considering that in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; and (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.[7] Considering that rape is essentially committed in relative isolation or secrecy, it is most often only the victim who can testify with regard to the fact of forced coitus.[8]

Sonia was able to give a detailed and clear narration on how the accused succeeded in raping her. She firmly testified that accused Gabriel had carnal knowledge of her through force or intimidation with the help of appellant Renante and the other accused Ferdinand. The pertinent portions of her testimony, We quote:

Q: Now Sonia, while on your way home to the house of your employer, what happened, if there was any?

A: I was followed by the three.

Q: Who were those three that were following you?

A: Liclic Mandelma, Renante Mandelma and Fernando Wado.

Q: They were the same accused whom you just pointed awhile ago.

A: Yes.

Q: Now, when you were followed by these three, what happened next, if any?

A: They held my hand and pulled me towards the stage of the school at Old Kibawe.

Q: Now, were you able to arrive at the stage of Kibawe Elementary School?

A: Yes.

Q: Who of the three pulled you?

A: Renante Mandelma.

Q: When you were already at the stage of Kibawe Elementary School, what happened next, if any?

A: Renante then removed my clothing and my pants.

Q: You were wearing then a denim pants during that time?

A: Yes.

Q: After Renante removed your pants, what happened next, if any?

A: He also removed my panty.

Q: After your panty was removed, what happened next, if any?

A: I was then made to lay down on a concrete.

Q: Who made you lay down to the concrete?

A: Liclic Mandelma.

Q: You mean this Gabriel Mandelma alias Liclic?

A: Yes.

Q: After you were already lying down on a cement floor, what happened next, if any?

A: He then did something to me.

Q: Who did something to you?

A: Liclic.

Q: Meaning Gabriel Mandelma?

A: Yes.

Q: Now, when you said that Gabriel did something to you, what do you mean by that one?

A: He inserted his penis inside my vagina.

Q: Did you not shout, Sonia, to ask for help because you had a companions (sic)?

A: I was then afraid to shout because they were threatening me with a gun.

Q: Who among the three has a gun?

A: Renante.

Q: Now, when you were already pulled to the stage of the school of Kibawe, Sonia, where were your companions?

A: They reported to Victor Limit.

Q: Who is this Victor Limit?

A: Barangay Tanod.

Q: Now, after this Gabriel Mandelma inserted his penis to your vagina, what happened next, if any?

A: I then felt that something was discharged.

Q: When this Gabriel Mandelma had sexual intercourse with you, Sonia, where were these Renante and Ferdinand Wado?

A: Renante was the one holding my arms while Fernando was holding my legs.[9]

Sonia's testimony was also corroborated by the testimonies of her sister Hermigilda and Barangay Tanod Victor. They both saw Sonia and the accused at the stage of the elementary school of Old Kibawe fleeing the place, and reached Sonia naked and crying before bringing her to the police station.[10]

Moreover, the Medical Certificate[11] dated 30 September 2002 issued by Dr. Helen P. Tubog (Dr. Tubog) coincides with Sonia's testimony that she was raped on 30 September 2002. It showed that Sonia had: contusion level of 3[rd] rib left chest, anterior contusion, periumbilical region and left hand; Pelvic examination – nulliparous introities, complete hymenal laceration at 11 o'clock, incomplete laceration of the hymen at 9 o'clock, 7 o'clock, 6 o'clock and 3 o'clock with vaginal discharges. Dr. Tubog also testified that there were indications of penetration which could have happened on that very day she was examined.[12] The medico-legal findings as a corroborative piece of evidence, albeit not indispensable in the prosecution of rape, strongly bolster Sonia's clear and categorical testimony of her ordeal.

Appellant's contention that the prosecution failed to show that force and intimidation was employed on Sonia because they were not able to establish and present the gun which was allegedly used to threaten her deserves scant consideration. The non-presentation of the weapon used in the commission of rape is not essential to the conviction of the accused.[13] It suffices that Sonia was able to vividly testify that a gun and a knife was used by the accused to threaten her in order to carry out their bestial desires upon her. Even so, the inevitable fact that there was indeed force and intimidation at the time of the sexual assault is supported by physical evidence, i.e., medical certificate[14] showing the contusions suffered by Sonia. It cannot be gainsaid that Sonia struggled and

resisted the sexual advances made by the accused upon her as the contusions she obtained in her chest and other parts of her body would readily prove the same.

There is hardly any doubt for Sonia to be rendered defenseless in the hands of three male aggressors. Because of the force and intimidation employed by all the accused upon her, Sonia was forced to submit to their will. In *People v. Lucena y Velasquez*,^[15] the Supreme Court stressed that for rape to exist, it is not necessary that the force or intimidation be so great or be of such character as could not be resisted – it is only necessary that the force or intimidation be sufficient to consummate the purpose which the accused had in mind. What is vital is that the force or intimidation be of such degree as to cow the unprotected and vulnerable victim into submission.^[16]

We also cannot give credence on appellant's proposition that certain inconsistencies in Sonia's testimony and the other prosecution witnesses affect Sonia's credibility as a witness. For one, the inconsistencies posited by appellant, e.g., Sonia's testimony that she was unable to shout for help because accused had a gun in contrast to Hermigilda's testimony that she heard her elder sister's voice; Sonia's testimony that Renante had a gun as opposed to Hermigilda's account that she saw the three accused bringing knives; and whether she was with her sister and Gaga in going home or she was alone, refer only to minor details and collateral matters which do not affect the veracity and weight of Sonia's testimony.

In *People v. Tubat*^[17], citing *People v. Laog*^[18], the Supreme Court, assessing the discrepancies in the victim's testimony, ruled, to wit:

“Discrepancies referring only to minor details and collateral matters -- not to the central fact of the crime -- do not affect the veracity or detract from the essential credibility of witnesses' declarations, as long as these are coherent and intrinsically believable on the whole. For a discrepancy or inconsistency in the testimony of a witness to serve as a basis for acquittal, it must establish beyond doubt the innocence of the appellant for the crime charged. It cannot be overemphasized that the credibility of a rape victim is not diminished, let alone impaired, by minor inconsistencies in her testimony.” [Emphasis Supplied]

The Supreme Court has ruled in a plethora of cases that it would be unfair to expect a flawless recollection from one who is forced to relieve the gruesome details of a painful and humiliating experience such as rape.^[19] An errorless testimony cannot be expected especially when a witness is recounting the details of a harrowing experience.^[20] When a woman testifies that she had been raped and if her testimony meets the test of credibility, the accused may be convicted on the basis of the woman's testimony alone for a rape victim is not expected to remember every ugly detail of her ordeal.^[21]

Likewise, it is of no moment that Sonia failed to remember her age and lied about her past sexual experience during her testimony inasmuch as these matters are not essential in determining whether or not she was indeed raped by the accused. The inconsistency in Sonia's testimony as to her age, although it appears that she may just have forgotten it at the first instance she was asked, is not material since she is already of age. The fact that she had filed a rape case before to which the accused in that case pleaded guilty does not also negate the commission of the rape by the accused herein against her. We stress that moral character is immaterial in the prosecution and conviction of the offender in the crime of rape. The Court has ruled time and again that even a prostitute can be a victim of rape as the essence is the victim's lack of consent to the sexual act.^[22]

Nonetheless, the explicable inconsistencies in her statements are inconsequential in view of Sonia's believable account of how she was ravished by the accused, to which some significant parts of the incident were corroborated by two (2) other witnesses, and reinforced by the medico-legal findings revealing clear indications of struggle and resistance on her part so as not to fall prey to the bestial desires of the accused.

Affidavit of Desistance, unavailing for appellant

The Affidavit of Desistance executed by Sonia exonerating appellant and his co-accused from the crime charged is not a reason to acquit appellant in view of the incontrovertible evidence adduced by the prosecution.

After all, it must be reckoned that rape is no longer a crime against chastity for it is now classified as a crime against persons. Consequently, rape is no longer considered a private crime or that which cannot be prosecuted, except upon a complaint filed by the aggrieved party. Hence, pardon by the offended party of the offender in the crime of rape will not extinguish the offender's criminal liability.[23]

Moreover, to justify the dismissal of the complaints, the pardon should have been made prior to the institution of the criminal actions.[24] In the case at bar, the affidavit came only after the case had already been instituted before the court a quo which had duly acquired jurisdiction over the case. Had it come earlier, the accused could have validly used such to exonerate himself from further liability,

In frowning upon affidavits of desistance, the Supreme Court has repeatedly stressed the rationale behind this dictum, to wit:

x x x We have said in so many cases that retractions are generally unreliable and are looked upon with considerable disfavor by the courts. The unreliable character of this document is shown by the fact that it is quite incredible that after going through the process of having the [appellant] arrested by the police, positively identifying him as the person who raped her, enduring the humiliation of a physical examination of her private parts, and then repeating her accusations in open court by recounting her anguish, [the rape victim] would suddenly turn around and declare that [a]fter a careful deliberation over the case, (she) find(s) that the same does not merit or warrant criminal prosecution.

Thus, we have declared that at most the retraction is an afterthought which should not be given probative value. It would be a dangerous rule to reject the testimony taken before the court of justice simply because the witness who gave it later on changed his mind for one reason or another. Such a rule [would] make a solemn trial a mockery and place the investigation at the mercy of unscrupulous witnesses. Because affidavits of retraction can easily be secured from poor and ignorant witnesses, usually for monetary consideration, the Court has invariably regarded such affidavits as exceedingly unreliable.

This Court finds no compelling reason to give probative weight on Sonia's desistance and retraction, especially considering the fact that she had already made a clear and undaunted revelation of her ordeal and a positive identification of her aggressors.

Award of actual damages, unsubstantiated

The trial court's award of actual damages in the amount of P25,000.00 is without basis.

It must be noted that the indemnity authorized by our criminal law as civil liability ex delicto for the offended party, in the amount authorized by the prevailing judicial policy and aside from other proven actual damages, is itself equivalent to actual or compensatory damages in civil law.[25] Actual damages, to be recoverable, must not only be capable of proof, but must actually be proved with a reasonable degree of certainty. Courts cannot simply rely on speculation, conjecture or guesswork in determining the fact and amount of damages. To justify an award of actual damages, there must be competent proof of the actual amount of loss, credence can be given only to claims which are duly supported by receipts.[26]

In the absence of any proof of an actual amount of loss incurred by the private complainant in this criminal action, there is therefore no basis to justify the award of actual damages in the amount of P25,000.00, apart from the P75,000.00 civil indemnity.

WHEREFORE, the appeal is DENIED. The Decision of the Regional Trial Court of Malaybalay, Branch 6, dated

1 June 2010 is AFFIRMED with MODIFICATION. The award of actual damages in the amount of P25,000.00 is DELETED.

SO ORDERED.

Camello, J., Ch., and Inting, JJ., concur.

- [1] Records, pp. 207-214.
- [2] TSN, 29 September 2003, pp. 6-10.
- [3] TSN, 3 December 2003, pp. 7-9.
- [4] TSN, 24 February 2004, pp. 4-6.
- [5] TSN, 21 March 2006, p. 10.
- [6] Supra note 1.
- [7] People v. Bonaagua y Berce, G.R. No. 188897, 6 June 2011.
- [8] People v. Alfredo y Norman, G.R. No. 188560, 15 December 2010.
- [9] TSN, 29 September 2003, pp. 6-9.
- [10] TSN, 3 December 2003, pp. 8-9; TSN, 24 February 2004, p. 5.
- [11] Folder of Exhibits, Exhibit "B", p. 10.
- [12] TSN, 4 April 2006, pp. 7-8.
- [13] People v. Belo y de Leon, G.R. No. 187075, 5 July 2010.
- [14] Supra note 11.
- [15] G.R. No. 190632, 26 February 2014.
- [16] People v. Cañada, G.R. No. 175317, 2 October 2009.
- [17] G.R. No. 183093. February 1, 2012.
- [18] G.R. No. 178321, 5 October 2011.
- [19] People v. Bautista, G.R. No. 140278, 3 June 2004.
- [20] People v. Cabalquinto, G.R. No. 167693, 19 September 2006.
- [21] People v. Camacho Torreja, G.R. No. 1322330, 4 February 2002.
- [22] People v. Aaron, G.R. Nos. 136300-02, 24 September 2002.
- [23] Supra note 7.
- [24] Ibid.
- [25] People v. Combate, G.R. No. 189301, 15 December 2010.
- [26] G.R. No. 138296, 22 November 2000.

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