

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DANNY BANAYAT Y ZAMORA, ACCUSED-APPELLANT.

Ponente: LANTION, J.A.C., J.

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LANTION, J.A.C., J.:

Before Us is an appeal from the Judgment[1] dated 02 February 2012 of the Regional Trial Court of Urdaneta, Pangasinan, Branch 49 (“court a quo” for brevity) in Criminal Case No. U-15922, the dispositive portion of which is as follows:

“WHEREFORE, this Court finds the accused Danny Banayat y Zamora guilty beyond reasonable doubt of the crime of rape under Article 266-A of Republic Act 8353.

Accordingly, he is sentenced to suffer the penalty of reclusion perpetua without eligibility for parole. Accused is ordered to indemnify the offended party AAA,[2] the amount of Fifty Thousand Pesos (P50,000.00) and to pay her Fifty Thousand Pesos (P50, 0000.00) as moral damages.

Accused is ordered committed to the Bureau of Corrections, Muntinlupa City for the service of his sentence without unnecessary delay.

SO ORDERED.”

THE FACTS

Accused-appellant Danny Banayat y Zamora (“accused-appellant” for brevity) was charged with the crime of Rape in an Information, which states that:

“That on or about 10:00 o' clock in the evening of November 11, 2008 at Brgy. Cabanban, Manaoag, Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, violence and intimidation, while armed with a knife, did then and there willfully, unlawfully and feloniously have sexual intercourse with the said AAA, a minor, sixteen (16) years old, against her will and without her consent to her damage and prejudice.

CONTRARY to Article 266-A, paragraph 1(a) in relation to Article 266-B paragraph 2 of the Revised Penal Code as amended, by R.A. No. 8353 (The Anti-Rape Law of 1997).”[3]

When arraigned on 02 April 2009, accused-appellant pleaded “NOT GUILTY” to the offense charged.[4]

During the pre-trial conference on 12 May 2009, the parties arrived at the following stipulations:

- “1. The identities of the accused and the private complainant;
2. The due execution and veracity of the medico-legal report issued by one Dr. Marlene A. Quimboy of the Region I Medical Center, Dagupan City to AAA;
3. The due execution of the sworn statement of the private complainant which shall serve as her direct testimony if summoned at the trial, without prejudice to supplemental direct and cross examination;

4. The private complainant was then a minor at the time of the incident in question being 16 years old;
5. The amount of P100,000 shall be awarded to the private complainant as civil indemnity in the event of judgment of conviction.”[5]

Trial commenced thereafter.

The Prosecution's version is synthesized by the Office of the Solicitor General in this wise:

“On 11 November 2008 at around 8 o' clock in the evening, AAA asked permission from her father to attend the wake of one Benigna Velora with her friend. At around 10 o' clock in the evening, she went to a store to buy some snacks to fill her hunger.

It was at the store where she saw appellant, a long time neighbor, drinking “Red Horse.” At around 11 o' clock in the evening, AAA went back to the wake. It was at this instance where appellant forcibly dragged her, threatened her with a knife and brought her to an abandoned house owned by one Tessie Estrada.

Appellant undressed himself and took off AAA's pants and panty. Then appellant forcibly inserted his penis into AAA's vagina. Thereafter, AAA was warned and threatened by appellant that he will kill her if she told anyone about the incident, which prevented AAA from informing her parents. Since AAA was not feeling well, she eventually told her grandmother about the incident. Then they reported the matter to Brgy. Captain Benjamin Castillo (AAA's Sworn Affidavit dated 17 November 2008; Records, p. 6, 109; RTC Judgment, p. 2; TSN, 03 August 2009, pp. 4-7; 14 September 2009, pp. 3-6; 05 November, pp. 2-3)

AAA underwent medical examination at the Region I Medical Center in Dagupan City, the findings of which revealed “fresh erythematous abrasion at perihymenal area, ten o' clock position,” and fresh erythematous abrasion at four o' clock position,” and “fresh laceration at six o' clock and ten o' clock position” (Medico-Legal Report dated 17 November 2008; Records, p. 8).”[6]

The Prosecution then submitted its formal offer of evidence consisting of the following: a) Sworn Statement of AAA; b) Certification of the Police Blotter Entry No. 161 issued by the PNP Manaoag Police Station; c) Medico Legal Report prepared by Dr. Marlene A. Quimboy; and d) Social Case Study Report conducted by the Local Municipal Social Welfare & Development Officer of Manaoag, Pangasinan on AAA.[7]

Accused-appellants' version, on the other hand, is as follows:

“On November 11, 2008, DANNY BANAYAT [herein accused-appellant] was at his grandmother's wake. At 8:00 o' clock in the evening, he never saw AAA at the wake.

He vehemently denies the allegations that he dragged AAA to an abandoned house and raped her. He was wondering why he was being charged of rape because he did not have any misunderstanding with AAA prior to November 11, 2008. As far as he knows, it was his Uncle who had a misunderstanding with AAA's father.

Around 10:00 o' clock in the evening of November 11, 2008, MAGDALENA GARCIA was at the store when Danny came and drank two (2) bottles of Red Horse. After a while, a girl arrived with a male companion. The girl is known as Mayang whose real name is AAA. They brought from her {Magdalena Garcia} two (2) bottles of Red Horse. Likewise, she noticed that the two were displaying an amorous relationship. After they finished drinking the beer, the two [AAA and her companion] left. At around 11 o' clock in the evening, Danny left home and nothing else happened after.”[8]

On 10 November 2011, the case was deemed submitted for decision considering that the Defense had no documentary exhibits to formally offer.[9]

On 02 February 2012, the court a quo issued the herein assailed Judgment,[10] convicting accused-appellant of the crime of Rape.

Hence, this appeal.

ASSIGNMENT OF ERRORS

Accused-appellant seeks his acquittal based on the following grounds, viz:

I

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED WHEN HIS GUILT HAS NOT BEEN PROVEN BEYOND REASONABLE DOUBT.

II

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE UNRELIABILITY OF THE PRIVATE COMPLAINANT'S TESTIMONY.[11]

OUR RULING

Accused-appellant alleges that the Prosecution failed to prove his guilt beyond reasonable doubt for which he deserves an acquittal. He avers that the element of force and intimidation is wanting as the victim merely “narrated that the accused was armed with a bladed weapon which was a knife, but as to how the knife was used to threaten her, it was not revealed.” He further alleges that AAA failed to categorically describe how accused-appellant “communicated fear” to her.[12]

Article 266-A of the Revised Penal Code, as amended by R.A. 8353, defines when and how the felony of rape is committed, to wit:

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;

b. When the offended party is deprived of reason or is otherwise unconscious;

2. By means of fraudulent machination or grave abuse of authority;

When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present;

By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

The elements necessary to sustain a conviction for rape are: (1) that the accused had carnal knowledge of the victim; and (2) that said act was accomplished (a) through the use of force or intimidation, or (b) when the victim is deprived of reason or otherwise unconscious, or (c) when the victim is under 12 years of age or is demented.[13]

Here, accused-appellant is being charged of the crime of Rape for having carnal knowledge of AAA through the use of force or intimidation.

In her Sworn Statement,[14] which was adopted as her direct testimony,[15] AAA narrated how accused-appellant had carnal knowledge with her through force or intimidation, to wit:

“Q:

And so, will you narrate, how was (sic) the incident happened?

A:

At around 8:00 o' clock in the evening of November 11, 2008, I asked permission from my father to attend on (sic) the wake of Benigna Veloria, at around 10:00 o' clock in the evening I felt hungry so I decided to go in a store to buy some snacks but I was forcibly dragged by the suspect with bladed weapon (knife) to the abandoned house and then immediately removed my pants and panty and placed his body and (sic) top of me then forcibly inserted his penis repeatedly into my vagina. That after the incident, he told me not to tell anybody what he done (sic) to me or else he will kill me, ma'am.

Q:

Why did you not confide the incident to your parents?

A:

After the incident I was not feeling well and I decided to report to my grandmother what I had suffered from the hands of Danny Banayat and we decided to report to our Brgy. Captain Benjamin Castillo, ma'am.

Q:

How many times did Danny Banayat abused (sic) you?

A:

Only once, ma'am."

The foregoing was bolstered by AAA's testimony during her cross examination. AAA categorically testified that accused-appellant undressed her, viz:

"Q: Who undressed you?

(witness pointing to the accused)

Q: When he undressed you, was he already naked?

A: Yes, sir.

Q: Was he the first one undressed (sic) himself, is that what you are saying?

A: Yes, sir."[16]

To further support AAA's charge of rape, the Prosecution presented the Certification[17] issued by the Manaoag Police Station and Medico-Legal Report,[18] which served as the direct testimony of Dr. Marlene A. Quimboy, the physician who conducted ano-genital examination on AAA[19]

In the Certification, the Manaoag Police Station certified that in their police blotter AAA lodged a complaint for sexual abuse/rape against accused-appellant that happened in an abandoned house on 11 November 2008.

Moreover, Dr. Quimboy found on AAA's hymen "fresh, erythematous abrasion at 4 o' clock position fresh lacerations at 6 o' clock and 10 o' clock positions".[20] It is recognized in this jurisdiction that hymenal lacerations, whether healed or fresh, are the best evidence of forcible defloration.[21]

On the other hand, accused-appellant offered alibi and denial as his defenses. However, alibi and denial are considered as weak defenses especially when measured against the positive identification made by the victim of the appellant as the malefactor.[22]

Aside from claiming that he was at the wake of his grandmother and afterwards went to his house in the evening of 11 November 2008 when the rape incident happened,[23] he failed to submit any proof to show that it was physically impossible for him to be at the abandoned house where and when the rape happened considering that these places are located in Cabanban, Manaoag, Pangasinan. Thus, accused-appellant failed to prove that it was physically impossible for him to be at the crime scene on the evening of 11 November 2008 negating his defenses of alibi and denial.

Since AAA's clear and positive testimony, as supported by the Certification issued by the Manaoag Police Station, is consistent with Dr. Quimboy's medical findings, the Prosecution sufficiently established the element of carnal knowledge.

The use of force and intimidation by accused-appellant on AAA to accomplish the carnal knowledge was also established by the Prosecution through AAA's testimony that she "was forcibly dragged by the suspect [accused-appellant] with bladed weapon (knife) to the abandoned house and then immediately removed [her] pants and panty". This is further corroborated by the Social Case Study Report conducted by the Office of the Municipal Social Welfare,[24] which states that:

"According to AAA, though Danny [herein accused-appellant] was drunk he is strong that she could not fight back and run after him. Inside the said house, when Danny was totally naked, AAA mentioned that it was Danny who removed her short and panty and forcibly inserted his penis and kissed her lips. After which, before AAA was able to run away, Danny Banayat even threatened her not to tell the incident to anybody or else he will kill AAA.

Because of fear, AAA went straight to her Aunt Arlene's house to sleep there but did not say anything. Early morning, she went home quietly and sleeps (sic) again. Late afternoon, she gained the strength and courage AAA revealed the incident to her paternal grandmother staying just beside their house and her grandmother was the one who mentioned it to AAA's father. xxx

Evaluation and Recommendation:

xxx

At this juncture, it is most respectfully prayed that Minor AAA be accorded justice and the perpetrator suffer and be penalized accordingly for the unforgivable and unlawful acts over AAA as minor, worthy to be shielded and protected in order to restore back her confidence and self-respect as she undergoes and attains her recovery and healing with the strong support of her family and significant others and be ready for reintegration towards a better future."

Contrary to accused-appellant's insistence that the essential element of the use of force or intimidation was not present in this case because AAA merely "narrated that the accused was armed with a bladed weapon which was a knife, but as to how the knife was used to threaten her, it was not revealed,"[25] the above-cited text of AAA's testimony and Social Case Study Report clearly showed otherwise.

In *People vs. Bayani*,[26] the Supreme Court explained force and intimidation as an element of rape, viz:

"As to the finding of the trial court regarding the use of force and intimidation, it must be emphasized that force as an element of rape need not be irresistible; it need but be present, and so long as it brings about the desired result, all considerations of whether it was more or less irresistible is beside the point. So must it likewise be for intimidation which is addressed to the mind of the victim and is therefore subjective. Intimidation must be viewed in light of the victim's perception and judgment at the time of the commission of the crime and not by any hard and fast rule; it is therefore enough that it produces fear — fear that if the victim does not yield to the bestial demands of the accused, something would happen to her at that moment or even

thereafter as when she is threatened with death if she reports the incident. Intimidation includes the moral kind as the fear caused by threatening the girl with a knife or pistol. And where such intimidation exists and the victim is cowed into submission as a result thereof, thereby rendering resistance futile, it would be extremely unreasonable, to say the least, to expect the victim to resist with all her might and strength.” (Emphasis Ours)

Hence, the act of accused-appellant holding a knife clearly produced fear in AAA's mind that the former would kill her if she would not submit to his sexual design. The act of holding a knife by itself is strongly suggestive of force or, at least, intimidation, and threatening the victim with a knife is sufficient to bring a woman into submission.[27]

All the elements of rape having been established beyond reasonable doubt, the court a quo correctly convicted the accused-appellant for the crime of Rape and imposing the penalty of reclusion perpetua.[28]

We likewise agree with the court a quo when it awarded civil indemnity of Fifty Thousand Pesos (Php 50,000.00) and moral damages of Fifty Thousand Pesos (Php 50,000.00). However, in line with the prevailing jurisprudence and to deter similar conduct and to set an example against persons who abuse the youth, We deem it proper to award exemplary damages in the amount of Thirty Thousand Pesos (Php30,000.00) in favor of AAA.[29]

WHEREFORE, premises considered, the instant appeal is DISMISSED. The Judgment dated 02 February 2012 of the Regional Trial Court of Urdaneta, Pangasinan, Branch 49 in Criminal Case No. U-15922, finding accused-appellant Danny Banayat y Zamora guilty beyond reasonable doubt of the crime of Rape is AFFIRMED with MODIFICATION in that accused-appellant is further ordered to pay AAA exemplary damages in the amount of Thirty Thousand Pesos (Php30,000.00) .

SO ORDERED.

Lantion, and Antonio-Valenzuela, JJ., concur.

[1] Penned by Judge Efren B. Tienzo; Record, pp. 108-114.

[2] The identity of the private victim is withheld and instead fictitious initials are used to represent her in order to protect her privacy, in accordance with Republic Act No. 9262 (The Anti-Violence Against Women and their Children Act of 2004) and its implementing rules; and Administrative Matter No, 04-10-11-SC. See also *People vs. Cabalquinto*, G.R. No. 167693, September 19, 2006.

[3] Records, p. 1.

[4] Records, p.30.

[5] Records, p. 35.

[6] Rollo, p. 83.

[7] Records, pp. 64-68.

[8] Rollo, p,. 48.

[9] Records, p. 104.

[10]

[11] Rollo, p. 45

[12] Rollo, pp. 47-51.

- [13] People vs. Bustamante, G.R. No. 189836, June 5, 2013.
- [14] Records, p. 6.
- [15] TSN dated 28 July 2009, p. 5.
- [16] TSN dated 05 November 2009, p. 4.
- [17] Records, p. 7
- [18] Records, p. 8.
- [19] Records, p.60.
- [20] Records, p. 8.
- [21] People vs. Arraz, G.R. No. 183696, October 24, 2008.
- [22] People vs. Guillen,G.R. No. 191756, November 25, 2013.
- [23] TSN dated 03 June 2010, p. 6.
- [24] Records, pp. 11-13.
- [25] Rollo, pp. 47-51.
- [26] G.R. No. 120894. October 3, 1996 as cited in the case of People vs. Frias, G.R. No. 203068, September 18, 2013.
- [27] People vs. Esteves, G.R. No. 140392, September 27, 2002.
- [28] See People vs. Manicat, G.R. No. 205413, December 2, 2013.
- [29] People vs. Manicat, G.R. No. 205413, December 2, 2013; People vs. Guillen, [G.R. No. 191756, November 25, 2013.

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