

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MELCHOR BERMUNDO Y LLANITA AND SIPRIANO BERMUNDO Y LLANITA, ACCUSED-APPELLANTS.

Ponente: LAMPAS PERALTA, J.

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LAMPAS PERALTA, J.:

Assailed in this appeal is the Decision dated March 21, 2012[1] in Criminal Cases Nos. MC-07-10660-H, MC-07-10661-H, MC-07-10662 and MC-07-10663 of Branch 213, Regional Trial Court, Mandaluyong City convicting accused-appellants Melchor Bermundo y Llanita and Sipriano Bermundo y Llanita of two (2) counts of rape and two (2) counts of attempted rape.

The Antecedents

Private complainant A A A was employed as housemaid of X X X, lessee of a room at a house owned by accused-appellants and located at Y Y Y. On February 15, 2006 and February 19, 2006, accused-appellant Melchor Bermundo raped private complainant while she was washing clothes in the restroom. Also, on March 6, 2006, accused-appellant Sipriano Bermundo forcibly dragged and laid her on the bed, but he was not able to have carnal knowledge of her because the mother of X X X called her.

The factual details were summarized in the People's brief as follows:

Private complainant A A A, a housemaid, lived with her employer X X X who rented a room at a house owned by appellants-brothers Melchor Bermundo and Sipriano Bermundo situated at No. 41 Zone 3 Welfareville Compound, Mandaluyong City.

On February 15, 2006, at about three o'clock in the afternoon A A A was washing her employer's clothes at the common restroom at the ground floor of said house when appellant Melchor suddenly entered the restroom and closed the door. Appellant Melchor undressed himself then forcibly took off private complainant's shorts and underwear, held her breast and tried to kiss her. Pinning private complainant against the restroom wall, appellant Melchor forcibly inserted his penis into her private part. AAA pleaded "wag po!" but to no avail. After having his fill, appellant Melchor left her. Later that evening, A A A told her employer X X X of the incident and requested that they move to a different residence.

Four days later or on February 19, 2006, appellant Melchor molested her anew. While A A A was doing the laundry, appellant Melchor entered the restroom again. Private complainant asked him to leave but he did not heed her entreaty. Instead, appellant Melchor undressed her and forcibly inserted his penis into her organ. After satiating his lust, he left private complainant just like the first incident.

On March 6, 2006, appellant Melchor's brother appellant Sipriano this time, dragged private complainant into a room in the same house and forcibly laid her on a bed.

Private complainant subsequently reported the incidents to the police when her father arrived from the province and on April 19, 2006, private complainant subjected herself to physical examination which showed that she suffered a shallow healed laceration at the 3 and 7 o'clock positions, indicating "blood penetrating

trauma” to the hymen, which wound was inflicted more than 72 hours prior to said physical examination.[2]

Accused-appellants, however, claimed that private complainant merely fabricated the charges as a revenge when her siblings were evicted by accused-appellants from the house they were renting. Allegedly, on the dates of the incidents, accused-appellants were somewhere else and hence, it was not possible for them to commit the complained acts.[3]

Accused-appellants were charged with the crime of rape and attempted rape, respectively, in the following four (4) informations which read

Re:

Criminal Case No. MC-07-10660-H against accused-appellant Melchor Bermundo

For:

Rape

The undersigned 3rd Assistant City Prosecutor accuses MELCHOR BERMUNDO y LLANITA of the crime of Rape (under Article 266-A (1) in relation to Article 266-B of the Revised Penal Code), committed in the manner herein narrated as follows:

That on or about the 19th day of February 2006, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with A A A, against her will and consent.

CONTRARY TO LAW.[4]

Re: Criminal Case No. MC07-10661-H against accused-appellant Melchor Bermundo

For: Rape

The undersigned 3rd Assistant City Prosecutor accuses MELCHOR BERMUNDO y LLANITA of the crime of Rape (under Article 266-A (1) in relation to Article 266-B of the Revised Penal Code), committed in the manner herein narrated as follows:

That on or about the 15th day of February 2006, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with A A A, against her will and consent.

CONTRARY TO LAW.[5]

Re:

Criminal Case No. MC07-10662 against accused-appellant Sipriano Bermundo

For:

Attempted Rape

The undersigned 3rd Assistant City Prosecutor accuses SIPRIANO BERMUNDO y LLANITA of the crime of Attempted Rape, committed in the manner herein narrated as follows:

That on or about the 4[th] day of March 2006, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously by means of force and intimidation commences the commission of the crime of Rape upon A A A, directly by overt acts, to wit: while the said complainant was inside a bath room, said accused entered the said bathroom, kissed her lips, touched her breasts, forcibly took off her clothes, with the intention of having carnal knowledge of her, but said accused did not however, perform all the acts of execution which should have produced the crime of rape as a consequence, by reason of some cause or incident other than his own spontaneous desistance, that is, someone knocked at the door of said bath room.

CONTRARY TO LAW.[6]

Re:

Criminal Case No. MC07-10663 against accused-appellant Sipriano Bermundo

For:

Attempted Rape

The undersigned 3[rd] Assistant City Prosecutor accuses SIPRIANO BERMUNDO y LLANITA of the crime of Attempted Rape, committed in the manner herein narrated as follows:

That on or about the 6[th] day of March 2006, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously by means of force and intimidation commence the commission of the crime of Rape upon A A A, directly by overt acts, to wit: the said accused pulled her inside the bedroom, kissed her lips, touched her breast, forced her to lie down, with the intention of having carnal knowledge of her, but did not perform all the acts of execution which should have produced it by reason of some caused or incident other than his own spontaneous desistance, that is, someone knocked at the door of said bedroom.

CONTRARY TO LAW.[7]

Accused-appellants pleaded “not guilty” to the charges.[8] During the pre-trial, the parties stipulated on the following:

- Jurisdiction of the court
- nature of the offense charged
- Existence of the following documents:
 - Exhibit A – Referral Letter
 - Exhibit B – Sworn statement of Rochelle Bersola y Berdin
 - Exhibit C – Request for genital examination on the victim
 - Exhibit D – Initial Medico Legal Report.[9]

Trial ensued wherein the parties presented their respective evidence. Thereafter, the trial court rendered a Joint Judgment dated March 21, 2012 (i) convicting accused-appellant Melchor Bermundo of rape in Criminal Cases Nos. MC-07-10660-H and MC-07-10661-H, and accused-appellant Sipriano Bermundo of attempted rape in Criminal Case No. MC-07-10663, and (ii) acquitting accused-appellant Sipriano Bermundo of attempted rape in Criminal Case No. MC-07-10662. The dispositive portion of the Joint Judgment reads:

WHEREFORE, premises considered, judgment are hereby rendered, as follows:

a.) in Criminal Case No. MC-07-10660-H for rape, accused Melchor Bermundo y Llanita is found guilty hence, he is sentenced to suffer the penalty of imprisonment RECLUSION PERPETUA and to pay the private complainant the amount of P75,000.00 for civil indemnity, another P75,000.00 for moral damages and P25,000.00 as exemplary damages;

b.) in Criminal Case No. MC-07-10661-H for rape, accused Melchor Bermundo y Llanita is found guilty hence, he is sentenced to suffer the penalty of imprisonment RECLUSION PERPETUA and to pay the private complainant the amount of P75,000.00 for civil indemnity, another P75,000.00 for moral damages and P25,000.00 as exemplary damages;

c.) in Criminal Case No. MC-07-10662 for attempted rape, accused Sipriano Bermundo y Llanita is hereby acquitted; and

d.) in Criminal Case No. MC-07-10663 for attempted rape, accused Sipriano Bermundo y Llanita is found guilty hence, he is sentenced to suffer the penalty of imprisonment from six (6) years and one (1) day to twelve (12) years of prision mayor and to pay the private complainant the amount of P75,000.00 for civil indemnity, another P75,000.00 for moral damages and P25,000.00 as exemplary damages.

Finally, the period of detention of both accused inside the Mandaluyong City Jail are credited in their favor.

SO ORDERED.[10]

Hence, accused-appellants filed this joint appeal which is anchored on this lone assignment of error:

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANTS GUILTY BEYOND REASONABLE DOUBT OF THE CRIMES CHARGED.[11]

On July 4, 2013, accused-appellant Sipriano Bermundo filed an “Urgent Motion to Withdraw Appeal.”[12] However, on July 23, 2013, accused-appellant Sipriano Bermundo filed a “Manifestation” alleging that after counsel explained to him the consequences of the withdrawal, the latter “decided to continue his appeal instead.”[13]

In a letter dated July 31, 2013, the Office of the Superintendent, New Bilibid Prison, Muntinlupa City, informed the Court of the death of accused-appellant Melchor Bermundo on January 31, 2013,[14] attached thereto a copy of the latter's death certificate.[15] Accordingly, on August 16, 2013, the Court issued a Resolution dismissing the appeal of accused-appellant Melchor Bermundo and considering the same closed and terminated.[16]

Thus, only the appeal of accused-appellant Sipriano Bermundo in Criminal Case No. MC-07-10663 subsists.

The Issue

Whether the trial court erred in convicting accused-appellant Sipriano Bermundo of the crime of attempted rape in Criminal Case No. MC-07-10663.

The Court's Ruling

Accused-appellant Sipriano Bermundo argues that the trial court erred in convicting him of attempted rape because the prosecution failed to prove the elements of force and intimidation. Allegedly, private complainant was no longer a minor and although she testified that she was forcibly laid in bed, her testimony lacked material details to show that attempted rape was indeed committed.[17] Moreover, accused-appellant Sipriano Bermundo posits that “the delay in the reporting of the alleged rape and attempted rape incidents by A A A, remains dubious when she admitted that she had an older brother who was then living near the area, but instead of reporting the same to the latter, she instead waited for his father from the province.”[18]

For its part, the Office of the Solicitor General submits that the conviction of accused-appellant Sipriano Bermundo should not be for attempted rape, but for acts of lasciviousness. Said the OSG:

In this case, private complainant's testimony reveals that appellant Sipriano dragged private complainant into a room and forcibly laid her on a bed therein. However, appellant subsequently released her and in fact even ordered her to leave that room when he heard the mother of her employer call out for her. With respect to appellant Sipriano, private complainant failed to point to any act involving even the slightest penetration of his penis against her organ. Otherwise stated, unlike the case of his brother appellant Melchor, Sipriano did not at all have intercourse with private complainant, much less engaged in any act involving the touching of her organ with his organ with the intent to penetrate.

While private complainant may claim that appellant Sipriano may have probably intended to similarly rape her as his brother did but failed to do so. Be that as it may, the Supreme Court has stressed that in rape cases, a conviction cannot be made to rest on possibilities and that the prosecution bears the primary duty to present its case with clarity and persuasion, to the end that conviction becomes the only logical and inevitable conclusion.

Appellant Sipriano, however, will still not be entitled to an acquittal for the plain reason that his act of dragging private complainant into a room and forcibly laying her on a bed without her consent cannot but be lewd, obscene, lecherous or indecent conduct constituting an act of lasciviousness.[19]

Notably, it has been held that for there to be an attempted rape, the accused must have commenced the act of penetrating his sexual organ to the vagina of the victim but for some cause or accident other than his own spontaneous desistance, the penetration, however slight, is not completed. Thus:

The Court of Appeals aptly cited *Perez v. Court of Appeals* in which we ruled:

[A] careful review of the records of the case shows that the crime committed by petitioner was acts of lasciviousness not attempted rape.

Under Article 6 of the Revised Penal Code, there is an attempt when the offender commences the commission of a felony directly by overt acts, and does not perform all the acts of execution which should produce the felony by reason of some cause or accident other than his own spontaneous desistance. In the crime of rape, penetration is an essential act of execution to produce the felony. Thus, for there to be an attempted rape, the accused must have commenced the act of penetrating his sexual organ to the vagina of the victim but for some cause or accident other than his own spontaneous desistance, the penetration, however slight, is not completed.

There is no showing in this case that petitioner's sexual organ had ever touched complainant's vagina nor any part of her body. . . . (Emphasis ours.)

We also reiterated in *Perez* our pronouncements in *People v. Caingat*, that the offender's acts of lying on top of the victim, embracing and kissing her, massaging her breasts, inserting his hand inside her panty, and touching her sexual organ, which were interrupted were it not for the timely arrival of the victim's mother, do not constitute the crime of attempted rape, absent any showing that the offender actually commenced to force his penis into the victim's sexual organ, and that said acts rather constitute the crime of acts of lasciviousness punishable under Article 336 of the Revised Penal Code. (Underlining supplied)[20]

It has also been enunciated by the Supreme Court that the attempt that the Revised Penal Code punishes is that which is the beginning of the execution of the offense by overt acts of the perpetrator, leading directly to its realization and consummation. Thus:

The attempt that the RPC punishes is that which has a logical connection to a particular, concrete offense; and that which is the beginning of the execution of the offense by overt acts of the perpetrator, leading directly to its realization and consummation. In the instant case, the primary question that comes to the fore is whether or

not appellant's act of removing AAA's pants constituted an overt act of Rape.

We answer in the negative.

Overt or external act has been defined as some physical activity or deed, indicating the intention to commit a particular crime, more than a mere planning or preparation, which if carried out to its complete termination following its natural course, without being frustrated by external obstacles nor by the voluntary desistance of the perpetrator, will logically and necessarily ripen into a concrete offense.

The evidence on record does not show that the above elements are present. The detailed acts of execution showing an attempt to rape are simply lacking. It would be too strained to construe appellant's act of removing AAA's pants as an overt act that will logically and necessarily ripen into rape. Hence, appellant must be acquitted of Attempted Rape. (Underlining supplied)[21]

In the present case, there is dearth of evidence to show any over act on the part of accused-appellant Sipriano Bermundo that would logically and necessarily ripen into rape. On direct examination, private complainant merely testified that accused-appellant Sipriano Bermundo pulled her inside the bedroom and forcibly laid her to bed, but when somebody called private complainant, accused-appellant Sipriano Bermundo asked private complainant to go out. There is no showing that accused-appellant Sipriano Bermundo had commenced the act of penetrating his sexual organ to the vagina of private complainant. Thus:

Q

Now, in your Affidavit you said that on March 6, 2006 a certain Sipriano Bermundo y Llanita pulled you inside a bedroom, is that correct?

A

Yes, maám.

Q

And then what did he do after he pulled you inside the bedroom? A He forcibly laid me to bed. Q Was he able to successfully lay you in the bed?

A

Yes, maám.

Q

And what did he do thereafter?

A

Somebody called me, maám.

Q

From where was the calling from?

A

The mother of my boss, maám.

Q

When somebody called for you what did Sipriano do, if any?

A

He got afraid maám and then he asked me to get out.

Q

Why is it that you reported this incident only after your father arrived from the province?

A

Because I have nobody to accompany me to the police, maám.

Q

Were you then afraid?

A

Yes, maám.

Q

Did they threaten you if you will report this case to the police?

A

Yes, maám.

Q

What did they tell you in particular to threaten you?

A

He told me I should not report or else he will kill me.

Q

Who between Sipriano and Melchor told you that if you will go to the police he will kill you?

A

Sipriano, maám.

(pp. 4-5 TSN dated February 24, 2009)

The foregoing testimony failed to establish beyond reasonable doubt all the elements of attempted rape. However, accused-appellant Sipriano Bermundo cannot go scot free because his act of dragging private complainant inside the bedroom and forcibly laying her to bed was certainly lustful and lewd. Thus, accused-appellant must be convicted of acts of lasciviousness.[22]

Moreover, accused-appellant Sipriano Bermundo even threatened to kill private complainant if she would report the incident to the police. Hence, the purported delay in the reporting of the incident is of no moment. It is settled that delay per se is not an indication of a fabricated charge, especially when there is a threat to kill private complainant. As held:

As for the delay in the reporting of the sexual assaults, jurisprudence has established that delay in revealing the commission of rape is not an indication of a fabricated charge. It must be remembered that HELEN was continuously threatened by CESAR. In *People v Geromo*, we held that 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 enough that the intimidation produces a fear that if the victim does not yield to the bestial demands of the accused, something would happen to her at the moment, or even thereafter, as when she is threatened with death should she report the incident. Therefore, CESAR should not be made to derive comfort from such delay, in light of the fact that HELEN was actually hampered by the fear successfully implanted on her mind by the appellant himself. xxx[23]

Under Article 336, Revised Penal Code, the crime of acts of lasciviousness is punishable with prison correccional. Applying the the Indeterminate Sentence Law (ISL), there being no aggravating or mitigating circumstance which attended the commission of the offense, the penalty should be imprisonment of six (6) months of arresto mayor maximum, as the minimum period, to four (4) years and two (2) months of prison correccional medium, as the maximum period.[24] Also, private complainant is entitled to P30,000.00 as moral damages and P20,000.00 as civil indemnity. As held:

The award by the Court of Appeals of moral damages to AAA in the amount of Thirty Thousand Pesos (P30,000.00), for each count of acts of lasciviousness, is appropriate, in the same way that moral damages are awarded to victims of rape even without need of proof because of the presumption that the victim has suffered moral injury, rests on settled jurisprudence. We also deem that AAA is further entitled to an award of civil indemnity in the amount of Twenty Thousand Pesos (P20,000.00), for each count of acts of lasciviousness. xxx[25]

WHEREFORE, with respect to accused-appellant Sipriano Bermundo in Criminal Case No. MC-07-10663, the appealed Joint Judgment dated March 21, 2012 of the trial court is modified and accused-appellant Sipriano Bermundo is hereby found guilty of acts of lasciviousness and sentenced to suffer an indeterminate penalty of six (6) months of arresto mayor maximum, as the minimum period, to four (4) years and two (2) months of prison correccional medium, as the maximum period, and to pay private complainant the amounts of Thirty Thousand Pesos (P30,000.00) as moral damages and Twenty Thousand Pesos (P20,000.00) as civil indemnity.

SO ORDERED.

Acosta and Garcia-Fernandez, JJ., concur.

[1] pp. 26-40, Rollo

[2] pp. 116-117, Ibid.

- [3] p. 56, Ibid.
- [4] p. 13, Ibid.
- [5] p. 15, Ibid.
- [6] p. 17, Ibid.
- [7] p. 19, Ibid.
- [8] pp. 10-14, Record
- [9] p. 26, Ibid.
- [10] pp. 82-83, Rollo
- [11] p. 50, Ibid.
- [12] p. 97, Ibid.
- [13] p. pp. 134-135, Ibid.
- [14] p. 140, Ibid.
- [15] p. 141, Ibid.
- [16] p. 144, Ibid.
- [17] pp. 63-64, Ibid.
- [18] p. 65, Ibid.
- [19] p. 125, Ibid.
- [20] People vs. Dominguez, Jr., 636 SCRA 134 (2010)
- [21] People vs. Sumingwa, 603 SCRA 638 (2009)
- [22] People vs. Padigos, 687 SCRA 245 (2012)
- [23] People vs. Melendres, 339 SCRA 465 (2000)
- [24] Sombilon vs. People, 601 SCRA 405 (2009)
- [25] People vs. Dominguez, Jr., supra.

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