

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JASON S. NAVARRO, SOLOMON S. NAVARRO AND ROBERTO B. OLILA (ACQUITTED), ACCUSED.

G.R. No. 137597. October 24, 2003

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

From the Decision[1] of the Regional Trial Court, Branch 28, Mandaue City finding appellants Jason S. Navarro and Solomon S. Navarro guilty beyond reasonable doubt of rape and sentencing each of them to suffer the penalty of reclusion perpetua and to indemnify jointly and solidarily the victim, AAA, the amount of P50,000.00, they lodged the present appeal.

The information dated July 29, 1998 charging appellants, along with Roberto B. Olila, reads as follows:[2]

The State accuses JASON S. NAVARRO, SOLOMON S. NAVARRO and ROBERTO B. OLILA of RAPE under Republic Act No. 8353, otherwise known as "The Anti-Rape Law of 1997," committed as follows:

That on or about July 27, 1998, in Mandaue City, Philippines, and within the jurisdiction of this Honorable Court, the aforementioned accused, conspiring, confederating and helping one another, with deliberate intent, did then and there willfully, unlawfully and feloniously have sexual intercourse with AAA who is 16 years old, against the latter's will.

CONTRARY TO LAW.

Upon arraignment[3] on August 12, 1998, appellants and Roberto Olila, assisted by their counsel, entered a plea of not guilty.

Established from the evidence for the prosecution are the following:

At around 11:30 p.m. of July 26, 1998, the victim, a freshman in BS Biology at the Cebu Doctor's College, had just finished working on a project with her classmate Philip Jadolfo at his house in Jose Avila Street, Cebu City and was walking along Osmeña Boulevard on her way to a hamburger stand near the school. Before she could reach the hamburger stand, a slow moving Tamaraw FX (the vehicle) driven by appellant Jason Navarro, with Reynante Olila in the front passenger seat and appellant Solomon Navarro and Roberto Olila at the backseat, approached her and asked for directions to any exit in the vicinity. The victim obliged by pointing to the direction of "Baseline". The four, however, claiming to be from Toledo City and appearing to be still lost, continued asking for directions. Taking pity on them, the victim decided to accompany them to "Baseline" and boarded the vehicle, sitting in between Jason and Reynante at the front seat.

When they reached "Baseline", the victim told the group that she had to go down, but Jason accelerated the speed of the vehicle, insisting on going around with her.

The group then repaired to Lahug where Jason, Reynante and the victim alighted and purchased liquor at a

convenience store as Solomon and Roberto remained in the vehicle. The group, along with the victim, continued going around until at 2:00 p.m. of the following day, July 27, 1998, they reached a secluded place called Lovers Lane behind the Cebu Plaza Hotel where Jason, Reynante, Solomon and Roberto drank Tanduay and lime juice outside the vehicle as the victim stayed inside.

At around 4:00 a.m. of still the same day, July 27, 1998, the group together with the victim left Lovers Lane and proceeded to the reclamation area at Subangdaku, Mandaue City where the vehicle suddenly stopped and Jason, who was driving the vehicle, kissed the left cheek of the victim who was already the only one seated in the front seat beside Jason, Solomon and Reynante and the sleeping Roberto having taken the backseat of the vehicle.

Reacting to Jason's brazen forwardness, the victim elbowed him telling him that he had bad manners. Undaunted, Jason again kissed her on the left cheek, drawing her to again elbow and scold him. What transpired thereafter, the victim narrated as follows, quoted verbatim:[4]

COURT to witness:

Q

Having that in mind, what did you do?

A:

He rode astride me. I shouted for help. Then, he covered my mouth.

Q:

How could he possibly do that with the steering wheel in front of him?

A

He was not there at that steering wheel, Your Honor.

Q:

Where was he?

A:

Beside me.

Q:

In other words, in that precise moment you were already seated on the space left vacant by Reynante?

A:

Yes.

Q:

In other words, Jason was already occupying the middle portion of the front seat?

A:

Yes.

Q:

In that position, side by side with each other, how did Jason r[i]de astride you?

A:

While I was here and he was in this side (witness indicating her left side) he did like that with me (witness demonstrating by standing halfway and then moved her body towards her right side facing the seat).

Q:

Is it not that the space between the seat and the dashboard is too narrow?

A

There was something, Your Honor, that was pulled and the seat [would] move back.

Q:

Who moved the seat where you were seated?

A:

He did. (Witness pointing [to] the accused.)

Q:

When did he move the seat backward?

A:

When he rode astride me.

Q:

You mean to say that he rode astride you and at the same time moving the seat backward?

A:

When he rode astride me, he also simultaneously moved backward the seat.

Q:

When he rode astride you, what did you do?

A:

I did like that with my knees (witness indicating her right knee), hit him here (witness indicating her abdomen).
(Underscoring supplied)

Adding more details, the victim narrated that as Jason covered her mouth, he and Solomon closed the windows and locked the doors of the vehicle. Jason thereafter hit the midsection of her stomach with his fist. And as Solomon held the victim, Jason removed her short pants and underwear in the course of which she tried to resist by elbowing and brushing Jason aside but to no avail. Jason then removed his clothes and attempted to insert his penis into her vagina.

Continuing the victim declared:[5]

Q:

By the way, you testified that there was an attempt of Jason Navarro to insert his penis. What was the position of your body at that time?

A:

At that time when my legs were like that. (Witness demonstrating by straightening up her right leg and opening her left leg by extending it to the left side.)

Q:

Would you agree with me that had you sat erect with your back at the backrest it would be very difficult for Jason Navarro to copulate [with] you because of your position?

A:

Yes.

Q:

As a matter of fact, in order to accommodate Jason, you forwarded your buttocks at the edge of the front seat so that it would be convenient for Jason Navarro to put inside his penis?

A:

No. I was only in that position because Solomon was holding me.

Q:

You mean to say there was never a time that you moved forward your buttocks to accommodate Jason Navarro?

A:

No. (Emphasis and underscoring supplied)

As Jason found the victim's vagina to be very tight, he lubricated his penis with his saliva and inserted it into her vagina after which he started pushing and pulling. Jason soon found his position uncomfortable, so he decided to transfer to the back portion of the vehicle by "stepp[ing] over the backrest of the front seat."

Taking advantage of Jason's moving to the backseat, the victim at once put on her panties, stepped out of the vehicle and ran barefoot. On encountering Nestor Igot who was riding his bicycle in the vicinity, she asked help from him, telling him that she had just been raped.

Taken by fear, Nestor brought the victim to someone who was driving a tora-tora tricycle and who took off his sando and told her to wear it to cover her panties.

The driver of the tora-tora tricycle thereupon brought the victim to a construction site where she was provided with slippers. At around 6:00 a.m. of the same day, she was brought to the police station where she narrated her ordeal, prompting the police to search for Jason who was, between 7:00 and 8:00 a.m., arrested at the Islacom building. When the police opened the door of the vehicle which was parked at the garage of the Islacom building, they found the victim's knapsack sans her wallet. Jason eventually showed the police where he hid the wallet.

At around 12:00 noon of still the same day, the victim submitted herself to a medical examination conducted by Dr. Daisy Bismarck Bollozos. The medical certificate issued by Dr. Bollozos showed that the victim had 1) an incomplete healed laceration in her hymen at 4 o' clock position;^[6] 2) a 2 x 3 cm. contusion hematoma on the upper third right arm, lateral aspect;^[7] and 3) a 3 x 3 cm. contusion hematoma on the right lower inner quadrant of the right breast.^[8]

Later that day, Jason led the police to the respective houses of Solomon, Roberto and Reynante where they were arrested.

Over their denial of the accusation, the trial court in the appealed decision of January 20, 1999 found appellants Jason and Solomon guilty beyond reasonable doubt of rape. Their co-accused Roberto Olila was acquitted for insufficiency of evidence. The dispositive portion of the decision reads, quoted verbatim:[9]

WHEREFORE, the foregoing premises considered, [j]udgment is hereby rendered:

1)

Finding the herein accused JASON NAVARRO and SOLOMON NAVARRO GUILTY beyond reasonable doubt for the crime of rape, said accused are hereby sentenced each to undergo the penalty of reclusion perpetua, to indemnify jointly and solidarily the offended party AAA the amount of P50,000.00 without any subsidiary imprisonment in case of insolvency and to pay their proportionate share of the cost; and

2)

Declaring the ACQUITTAL of accused ROBERTO OLILA for the crime of rape for insufficiency of evidence.

Both accused JASON NAVARRO and SOLOMON NAVARRO, being detention prisoners, shall be credited in the service of their sentence, full time during which they have undergone preventive imprisonment.

SO ORDERED. (Emphasis in the original)

Hence, the present appeal anchored on the following assigned errors:[10]

THE TRIAL COURT ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE WHEN THE INFORMATION AND THE AFFIDAVIT OF THE VICTIM OR COMPLAINANT FAILED TO STATE AN OFFENSE FOR FAILURE TO ALLEGE "FORCE OR INTIMIDATION."

THE TRIAL COURT ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE WHEN THE COMPLAINANT COULD HAVE ESCAPED EARLIER THE CLUTCHES OF HER ALLEGED CAPTORS HAD SHE WANTED TO. (Underscoring supplied)

The resolution of the case hinges on (1) whether appellants may be validly convicted under the information charging them of rape; and (2) if in the affirmative, whether the evidence for the prosecution established the guilt of appellants beyond reasonable doubt.

Appellants contend that the information failed to specify the acts which constituted the crime, there being no allegation therein that appellants succeeded in having carnal knowledge with the victim through force or intimidation.

At any rate, appellants contend that Jason failed to have sexual intercourse with the victim because his penis was flaccid the whole time due to fatigue, not to mention the fact that the cramped space in the vehicle made it difficult to accomplish the same.[11]

At all events, appellants, maintaining their innocence, contend that if there was sexual intercourse between Jason and the victim, it was consensual as shown by the victim's voluntary act of going with them whose company she could have easily left had she wanted to.

The gravamen of the offense of rape is sexual intercourse with a woman against her will or without her consent.[12] Thus, the prosecution must prove that (1) the offender had carnal knowledge of a woman; and (2) such act was accomplished through the use of force or intimidation; or when the victim is deprived of reason or otherwise unconscious; or when the victim is twelve (12) years of age, or is demented.[13]

While generally an accused cannot be convicted of an offense that is not clearly charged in the information, this rule is not without exception. The right to assail the sufficiency of the information or the admission of evidence may be waived by the accused.[14] In *People v. Torellos*,^[15] this Court held:

Appellant contends that the information failed to specify the acts which constituted the crime. It is too late in the day for him to assail the insufficiency of the allegations in the information. He should have raised this issue prior to his arraignment by filing a motion to quash. Failing to do so, he is deemed to have waived any objection on this ground pursuant to Rule 117, Section 9 (formerly Section 8) of the Revised Rules of Criminal Procedure, to wit:

Failure to move to quash or to allege any ground therefore. -- The failure of the accused to assert any ground of a motion to quash before he pleads to the complaint or information, either because he did not file a motion to quash or failed to allege the same in said motion, shall be deemed a waiver of any objections based in the grounds provided for in paragraphs (a), (b), (g), and (i) of section 3 of this Rule.

In *People v. Palarca*, the accusatory portion of the information failed to specifically allege that the rape was committed through force or intimidation, although the prosecution was able to establish by evidence that the appellant was guilty of rape as defined under Article 266-A, paragraph (1)(a) of the Revised Penal Code. Similarly, the appellant failed to object to the sufficiency of the information or to the admission of evidence. In affirming his conviction, it was held that an information which lacks certain essential allegations may still sustain a conviction when the accused fails to object to its sufficiency during the trial, and the deficiency was cured by competent evidence presented therein. (Emphasis supplied; citations omitted)

In the case at bar, while the information failed to specifically allege that the sexual intercourse was committed through force or intimidation, the prosecution presented evidence, no objection to which was interposed by appellants, that they committed rape through force. Besides, the information alleged that the sexual intercourse was against the victim's will.

On the merits of the case. That the factual findings of trial courts, especially on the credibility of witnesses, are accorded great weight and respect, they having the unique opportunity to hear the testimony of witnesses and observe their deportment and manner of testifying is settled.[16] Unless it is shown that a trial court has overlooked, misunderstood or misappreciated certain facts and circumstances which if considered would have altered the outcome of the case, appellate courts are bound by its findings.[17]

This Court finds no ground or reason to overturn the trial court's verdict.

The following extract from the victim's testimony seals the case for the prosecution:[18]

Q:

What did Jason do next?

A:

Then Jason rode astride me, inserted his penis into my vagina.

Q:

And was Jason able to insert his penis into your vagina?

x x x

WITNESS:

A:

Yes.

COURT to witness:

Q:

How did you know?

A:

At first he inserted it but it was very tight and so he used his saliva and then did [it] again by inserting it into my vagina, and he started the act of pushing and pulling.

Q:

And was Jason able to insert his penis for the second time?

x x x

A:

Yes, it went inside.

FISCAL to witness:

Q:

Now, how did you know that it was the penis of Jason Navarro that penetrated your vagina?

A:

Because he was already humping over me. (Emphasis and underscoring supplied)

That force attended the coitus is gathered from Jason's covering of AAA's mouth, his punching of the midsection of her stomach, and Solomon's holding her tightly to restrain her from resisting. It is doctrinally settled that the force necessary in rape is relative, depending on the age, size and strength of the parties. When applied, it need not be overpowering or irresistible. What is essential is that it is sufficient to consummate the purpose which the offender had in mind, or to bring about the result.[19]

That the victim could not offer a more tenacious fight could be explained by appellants' concerted effort. Her resistance, however, clearly negates consent.

What could be more corroborative of employment of force than the hematoma noted on the victim's upper third right arm, lateral aspect and on the right lower inner quadrant of the right breast, which must have been brought about by appellant Solomon's holding of the victim as she resisted and while appellant Jason ravished her.

With respect to the absence of any injury to the victim's midsection of her stomach, the same does not detract from her credibility, for there is medical authority to the effect that when force is applied to the stomach, no marks of violence may be detected.[20] The absence of any injury does not thus negate the commission of rape nor does it signify lack of resistance.[21]

The defense's attempt to depict the victim as a woman of loose morals[22] deserves scant consideration. The victim's character or reputation is immaterial in rape, there being absolutely no nexus between it and the odious deed committed.[23] A woman of loose morals could still be the victim of rape, the essence thereof being carnal knowledge of a woman without her consent.[24]

The argument of appellants that the victim must have consented to the sexual act, if indeed there was, because she acquiesced to go with them and had the opportunity to leave their company at any time she wished, is a non sequitur. Freely going with a group for a ride around is one thing; freely having sex with one of the members thereof is another.

Any doubts, however, on whether the victim consented to the intercourse are dissipated on considering her conduct immediately following the intercourse.[25] Thus, she escaped from the vehicle and ran barefoot with only a T-shirt and her panties on. This was corroborated by Nestor Igot:[26]

Q:

While you were riding on your bicycle at the reclamation area in Mandaue City in the morning of July 27, 1998, what did you see, if any?

A:

I saw a woman, sir, running coming from a Tamaraw FX.

Q:

To what direction was the girl running?

A:

To my direction.

Q:

In effect, was the girl able to reach you?

A:

Yes, sir.

Q:

Can you tell us the appearance of the girl as to the dress she was wearing then?

A:

Black t-shirt and wearing only a (sic) pant[ies], without slippers.

Q:

When the girl approached you, what did the girl do or tell you?

A:

She asked for my help.

Q:

And what else did she tell you?

A:

She said, "Noy, help me. I was raped."

Q:

And what was your response?

A:

I told her, "[Y]ou continue running, Day," but she did not. Instead she held my collar. (Witness indicating the right side of the collar of his shirt.) That is why I just stood by and there were other cyclists coming and some joggers and we were there in a group milling around the girl. (Emphasis and underscoring supplied)

Such conduct of the victim, who was, it bears repeating, clad below her waist in only panties and was barefooted, negates consensual sexual intercourse. And so does her act of immediately reporting the commission of the rape.[27]

Assuming arguendo that, as appellant claimed, he was not able to have sexual intercourse with the victim because his penis was flaccid the whole time due to fatigue, not to mention the fact that the cramped space in the vehicle made it difficult to accomplish the same,[28] appellants just the same cannot go scot free, for it is settled that even the slightest contact of the penis with the labia under the circumstances enumerated under Art. 266-A of the Revised Penal Code constitutes rape.[29] A flaccid penis can do as much damage as an erect one - at least insofar as the crime of rape is concerned.[30] And that it may be uncomfortable and difficult to commit rape inside a vehicle does not render the commission thereof improbable.[31]

In a further attempt to exculpate themselves, appellants posit that they were charged with rape by the victim in order to extort P500,000.00 from them.[32] This Court is not persuaded. Not a few persons accused of rape have attributed the charges brought against them to resentment, revenge or other ulterior motives. Such alleged motives, however, have never swayed this Court to credit them, especially in the case at bar where there is no concrete evidence thereof and the testimony of the victim was straightforward and steadfast.[33]

If any nagging doubts as to appellants' guilt still linger, their leaving hastily the scene of the crime as the victim was shouting "Rape!"[34] should dissipate them. Thus, by Nestor Igot's account, after a group of cyclists and joggers had gathered around the victim, appellants, on board the vehicle, immediately headed towards the direction of Cebu City.[35] Innocent persons would normally seize the first available opportunity to defend themselves and assert their innocence.[36] Appellants' flight certainly strongly indicates their guilt.[37]

The trial court correctly found that the prosecution was able to establish that there was conspiracy between appellants Jason and Solomon. From their conduct, before, during and after the commission of the crime, there was indeed an unmistakable joint or common purpose and design, concerted action, and community of interest.

Article 266-B of the Revised Penal Code provides that whenever the rape is committed by two or more persons, the penalty shall be reclusion perpetua to death. In the case at bar, the Information properly alleged, and the prosecution sufficiently established, that appellants conspired and mutually helped one another in the commission of the crime. There being no aggravating circumstance, however, the trial court properly imposed reclusion perpetua.[38]

With respect to the civil aspect of the case, however, the award made by the trial court calls for modification. It awarded the victim the sum of P50,000.00 without, however, providing the legal basis therefor.

Pursuant to prevailing jurisprudence, as the rape was not effectively qualified by any circumstance for which the imposition of the death penalty is authorized, the victim is entitled to civil indemnity of P50,000.00[39] which is automatically imposed upon a finding of the commission of rape.[40] Additionally, she is entitled to moral damages of P50,000.00 without need of proving the basis thereof because it is assumed that the victim suffered moral injuries entitling her to such an award.[41] Appellants, having acted in conspiracy, their civil liability in favor of the victim is accordingly solidary.[42]

WHEREFORE, the judgment on appeal is hereby AFFIRMED with MODIFICATION. As modified, appellants Jason S. Navarro and Solomon S. Navarro are found GUILTY beyond reasonable doubt of the crime of RAPE and are hereby sentenced to each suffer the penalty of reclusion perpetua, and to solidarily pay the victim, AAA, P50,000.00 as civil indemnity and P50,000.00 as moral damages.

SO ORDERED.

Puno, (Chairman), Panganiban, Sandoval-Gutierrez, and Corona, JJ., concur.

[1] Records at 71-117.

[2] Id. at 1.

[3] Id. at 20-21.

[4] TSN, November 4, 1998 at 26-28.

[5] TSN, November 4, 1998 at 37-38.

[6] Exhibit "A-6", Records at 47.

[7] Exhibit "A-2", Records at 46.

[8] Exhibit "A-5", Records at 47.

[9] Records at 117.

[10] Rollo at 148-149.

[11] TSN, November 25, 1998 at 27-28.

[12] People v. Awing, 352 SCRA 188, 199 (2001).

[13] People v. De Leon, 320 SCRA 495, 504 (1999).

[14] People v. Palarca, G.R. No. 146020, May 29, 2002.

[15] G.R. No. 143084, April 1, 2003.

[16] People v. Invencion. G.R. No. 131636, March 5, 2003.

[17] Ibid.

[18] TSN, October 20, 1998 at 18-19.

[19] People v. Marabillas, 303 SCRA 352, 359 (1999).

[20] People v. Vintacur, 345 SCRA 414, 424 (2000).

[21] People v. Bohol, 363 SCRA 510, 519 (2001).

[22] Rollo at 15-16.

[23] People v. Dela Peña, 354 SCRA 186, 193 (2001).

[24] People v. Vidal, 353 SCRA 194, 203 (2001).

[25] People v. Sapinoso, 328 SCRA 649 (2000); People v. Bayona, 327 SCRA 190 (2000).

[26] TSN, October 8, 1998 at 4-5.

[27] *People v. Asuncion*, 358 SCRA 661, 670 (2001); *People v. Velasquez*, 345 SCRA 728, 743 (2000); *People v. Cepeda*, 324 SCRA 290, 302 (2000).

[28] TSN, November 25, 1998 at 27-28.

[29] *People v. Osing*, 349 SCRA 310, 318 (2001).

[30] *People v. Domended*, 355 SCRA 729, 739 (2001).

[31] *People v. Almanzor*, G.R. No. 124916, July 11, 2002.

[32] TSN, November 25, 1998 at 29-30.

[33] *People v. Itdang*, 343 SCRA 624, 631 (2000).

[34] TSN, November 25, 1998 at 29.

[35] TSN, October 8, 1998 at 5.

[36] *Luces v. People*, G.R. No. 149492, January 20, 2003; *People v. Del Mundo*, 366 SCRA 471, 483-484; *People v. Solis*, 291 SCRA 529, 540 (1998).

[37] *People v. Castellano, Sr.*, G.R. No. 139412, April 2, 2003; *People v. Delim*, G.R. No. 142773, January 28, 2003; *People v. Fabon*, 328 SCRA 302, 317 (2000).

[38] Revised Penal Code, art. 63.

[39] *People v. Taperla*, G.R. No. 142860, January 16, 2003.

[40] *People v. Esperida*, G.R. Nos. 139637-38, January 22, 2003.

[41] *People v. Sambrano*, G. R. No. 143708, February 24, 2003.

[42] Revised Penal Code, art. 110; *People v. Patalin, Jr.*, 311 SCRA 186, 213 (1999); *People v. Reyes*, 245 SCRA 785, 795 (1995).

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