

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JOSE TORELLOS Y AVENDAÑO, APPELLANT.

G.R. No. 143084. April 01, 2003

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This is an appeal from the decision[1] of the Regional Trial Court of Manila, Branch 18, in Criminal Case No. 98-167678, convicting appellant Jose Torellos y Avendaño of the crime of rape, sentencing him to suffer the penalty of reclusion perpetua with all the accessory penalties, and ordering him to pay the victim the amounts of P300,000.00 as moral damages, P200,000.00 as nominal damages, P100,000.00 as exemplary damages, and costs.

The Information against appellant reads:

That on or about September 9, 1998, in the City of Manila, Philippines, the said accused with lewd design did then and there willfully, unlawfully and knowingly commit sexual abuse and lascivious conduct upon the person of AAA, a minor, 16 years of age, by then and there undressing her, kissing her breast and her vagina, caressing her body and thereafter placing himself on top of her and inserting his penis into her vagina, thus succeeding in having carnal knowledge with the said complainant, thereby endangering her youth and normal growth and development, to the damage and prejudice of said AAA.

Contrary to law.[2]

When arraigned, appellant pleaded not guilty. Trial thereafter ensued.

The evidence for the prosecution established the following facts:

On September 9, 1998, at around 2:30 a.m., complainant, 16 year-old AAA, left her house to visit her friend who lives on Paghanapin Street, Tondo, Manila. However, her friend was not home, so she decided to buy a sandwich at the Burger Machine on Sandico Street. Thereafter, she took a pedicab and proceeded to her house. Along the way, the pedicab she was riding in was blocked by another pedicab with five men on board. One of them, appellant Jose Torellos, whom complainant had previously met, boarded her pedicab and pointed a knife at her. He ordered the driver to bring them to KP Tower in Tondo, Manila. His companions followed them in the other pedicab. When they reached the place, they entered a small shanty. Inside, appellant lit a candle and they inhaled shabu. They told complainant to join them but she refused, prompting appellant to hit her on the stomach. Thus, she was forced to inhale the substance, which made her weak that she had to sit down in a corner of the shanty. Appellant then asked his companions to leave, then locked the door and forcibly undressed complainant and kissed her on the neck, breast and private parts. Then, he lay on top of her and inserted his penis into her vagina. She protested and struggled against the advances but her efforts were in vain. After satisfying his lust, appellant left and locked complainant inside the house, while a certain Kua stood guard outside.

In the afternoon of September 10, 1999, appellant returned to the shanty and raped complainant again. After he left, she peeked through the door to make sure that no one was guarding her, then she forced open the door and

boarded a pedicab and proceeded to her brother's house on Asuncion Street. However, she lost consciousness along the way before she could reach her brother's house. When she regained consciousness, she found herself at the Philippine General Hospital with her mother. She underwent a forensic interview and physical examination. Thereafter, accompanied by her mother, she went to Precinct 5 of the Western Police District and filed a complaint against appellant.[3]

Dr. Mariella Castillo of the Philippine General Hospital who conducted the physical examination made the following findings:

GENERAL PHYSICAL EXAMINATION

Fairly developed, fairly nourished, dirty, unkempt, looked sleepy, oriented and answered questions slowly, [+] depressed affect, walked with support, [+] blank stares and unresponsiveness during physical examination, not in respiratory distress

Head and Neck: normal

Chest, Abdomen, Back: normal

Extremities: normal

GENITAL EXAMINATION

Hymen: crescentic, estrogenized hymen, [+] profuse non-foul smelling white vaginal discharge, [+] abrasion and contusion at 6 o'clock position of hymen, [+] abrasion and contusion at fossa navicularis

Anus: normal findings

IMPRESSION

Disclosure of sexual abuse

Genital finding of fresh abrasion and contusion in posterior hymenal structure indicate a recent penetration injury.

Acute Stress Disorder

Probable Methamphetamine Toxicity[4]

In his defense, appellant alleged that the sexual congress between him and complainant was voluntary and consensual. He testified that he met her sometime in August 1998 when they were introduced by his friend, Niño, who told him that she was a call girl and a shabu user. He told Niño to buy shabu, then they proceeded to an abandoned house on Recto Avenue. They were joined by their friends, Roger, Ray and Tupeng. All of them, including complainant, inhaled shabu. It was complainant who rolled up a sheet of tissue paper which they used as burner. After a while, Niño and the others left, leaving him and complainant. She undressed herself and they had sexual intercourse for about one hour.[5]

On September 9, 1998, at 3:00 a.m., appellant was with Niño, Roger and Tupeng on the corner of Wagas Street when they saw complainant approaching on board a tricycle. She asked them to get in the tricycle and, together, all of them proceeded to KP Tower. They entered a shanty and inhaled shabu. When Niño and the others left, appellant and complainant had sexual intercourse. Later, appellant went back to Wagas Street where he found Niño waiting for him.[6]

After trial, the court a quo rendered judgment, the dispositive portion of which reads:

WHEREFORE, the Accused Jose Torillos y Avendaño, is convicted of the crime of rape under Article 266-A of the Revised Penal Code, attended by the aggravating circumstance of minority of the victim, and sentenced to suffer the penalty of reclusion perpetua with all the accessory penalties provided by law and to pay the costs. The accused is further sentenced to pay the victim, AAA, moral nominal and exemplary damages in the respective sums of P300,000.00, P200,000.00 and P100,000.00 with interest thereon at the legal rate of 6% per annum from this date until fully paid.

SO ORDERED.[7]

Hence, this appeal where appellant raises the following errors:

I

THE TRIAL COURT COMMITTED A REVERSIBLE ERROR IN CONVICTING THE ACCUSED-APPELLANT ON THE BASIS OF THE IMPLAUSIBLE AND IMPROBABLE TESTIMONY OF THE COMPLAINING WITNESS.

II

THE TRIAL COURT ERRED IN CONVICTING ACCUSED JOSE TORELLOS WHEN HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

III

THE COURT A QUO ERRED IN CONVICTING HIM OF THE CRIME OF RAPE DESPITE THE FAILURE TO ALLEGE IN THE INFORMATION THAT HE SUCCEEDED IN HAVING CARNAL KNOWLEDGE WITH (sic) THE PRIVATE COMPLAINANT UNDER ANY OF THE CIRCUMSTANCES ENUMERATED IN ARTICLE 266-A (1) OF THE REVISED PENAL CODE.

IV

THE COURT A QUO ERRED IN APPRECIATING THE CIRCUMSTANCE OF MINORITY.

V

THE COURT A QUO ERRED IN AWARDING MORAL, NOMINAL AND EXEMPLARY DAMAGES IN THE RESPECTIVE SUMS OF P300,000.00, P200,000.00 AND P100,000.00 WITH 6% INTEREST PER ANNUM.

Appellant argues that the information under which he was charged was defective because it failed to allege that he had carnal knowledge of complainant against her will. Moreover, the information failed to specify the acts or omissions complained of as constituting the offense, in contravention of the requirements of Rule 110, Section 6 of the Rules of Court.

The prosecution was able to establish by overwhelming evidence that appellant had carnal knowledge of complainant by means of force and intimidation. We find no reason to depart from this finding. It has been a time-honored doctrine that the trial court's factual findings are conclusive and binding upon appellate courts unless some facts or circumstances of weight and substance have been overlooked, misapprehended or misinterpreted.[8] After a careful scrutiny of the evidence on record and the stenographic notes of the witnesses' testimonies, we find sufficient basis for the trial court's conclusion that, indeed, appellant employed force and intimidation in sexually molesting complainant.

Complainant narrated in detail her harrowing experience in the hands of appellant in this wise:

ATTY. VELASCO

x x x x x x x x

Q. What happened next if any?

A. On my way back after I bought the sandwich, my pedicab was blocked by the pedicab being ridden by the accused and his 4 companions.

Q. What happened next if any?

A. The accused boarded my pedicab and he poked a knife at me then he forcibly took me to his house.

COURT

Q. How about the one boarding your pedicab?

A. He complied because the companions of the accused were following us.

Continue.

ATTY. VELASCO

Q. What happened next if any?

A. On reaching the house of the accused he was forcing me to get off from the pedicab because he said he would like to talk to me but I refused because there was nothing for us to talk about but he insisted in having me get off from the cab. The pedicab driver told the accused that if I did not want to go with him he should not force me but the accused told him that they could afford to pay his pedicab.

Q. After you refused to go with the accused inside the house, what happened next if any?

A. One of the companions of the accused a certain Niño also admonished the accused that if I did not want to go with him he should let me go but the accused ignored him, finally, I agreed to go with him inside the house if he would just talk with me provided that his companion would accompany me inside the house.

Q. What happened inside the house if any?

A. On entering the house it was dark so he lighted a candle then the accused and his companions sniffed shabu and the accused was also forcing me to sniff shabu but I refused, and when I refused, the accused suddenly pulled and boxed me in the stomach.

Q. After you were boxed in the stomach by the accused what happened to you?

A. I felt weak and I could not move.

Q. What happened next if any?

A. I went to a corner and I sat there.

Q. What happened next?

A. The accused told his companion to leave the house and then he put off the candle light.

Q. After that what happened inside the house?

A. He locked the door of the house leaving the two of us inside and then he forcibly undressed me.

COURT

Q. Then what happened?

A. He kissed different parts of my body and placed himself on top of me. I was begging him not to rape me.

Okay. Continue.

ATTY. VELASCO

Q. You said that the accused kissed the different parts of your body, what part of your body was being kissed?

A. My neck, my breast and my private parts.

Q. You said that the accused placed himself on top of you, what did he do?

A. He inserted his penis in my private parts and he succeeded in raping me.

Q. How long did it last?

A. I do not know anymore.[9]

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*,^[10] 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.^[11]

Appellant also argues that complainant's testimony is both implausible and improbable. According to him, complainant's claim that she did not inhale shabu was belied by the testimony of Dr. Castillo that private complainant manifested methamphetamine toxicity. We are not persuaded. While complainant may have testified on cross-examination that she did not inhale shabu, she later explained on re-direct examination that she was confused by the question that the defense counsel propounded; and confirmed the fact that appellant forced her to inhale shabu by hitting her on the stomach.

Appellant likewise finds improbable the following: (1) complainant was able to recall the events in detail from the time her pedicab was blocked to the time she was able to escape from the shanty; but could not remember the length of time of her ordeal, (2) complainant stayed in the shanty for two days and did not try to escape by kicking the door or shouting for help; and (3) complainant did not feel weak or pain from the alleged sexual abuse committed after she was hit on the stomach and forced to inhale shabu.

Clearly, the above cited improbabilities hinge on the credibility of the complaining witness, whom the trial court found to have no improper motive to falsely testify against appellant.[12] The trial court's evaluation of the credibility of the victim's statements is accorded great weight because it had the unique opportunity of hearing her testify and observing her deportment and manner of testifying. The trial judge is indisputably in the best position to determine the truthfulness of the complainant's testimony.[13] There is no reason to depart from this rule in the case at bar.

Furthermore, the seeming inconsistencies cited by appellant refer to minor details that do not directly pertain to the elements of the crime of rape or to the identification of appellant as the rapist. Simply stated, the supposed improbabilities do not detract from the proven fact that appellant had sexual intercourse with complainant through force and intimidation.

It bears emphasis that when the offended parties are young and immature girls from the ages of twelve to sixteen, courts are inclined to lend credence to their version of what transpired, considering not only their relative vulnerability but also the shame and embarrassment to which they would be exposed by the trial if the matter about which they testified is not true.[14]

The trial court found that the commission of the rape in this case was attended by the aggravating circumstance of minority of the victim, which was duly proved at the trial.[15] However, under Article 266-B of the Revised Penal Code, the fact that the rape victim was under eighteen (18) years of age may be appreciated as a qualifying aggravating circumstance only when the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common law spouse of the parent of the victim.[16] In the case at bar, none of these relationships obtains between appellant and the victim. Neither can the minority of the victim be considered a generic aggravating circumstance under Article 14 (3) of the Revised Penal Code.[17] In order that this circumstance shall aggravate the offense, there must be a showing that the appellant deliberately intended to offend or insult the age of the victim.[18] There was no such showing in this case. Hence, the trial court erred in applying the aggravating circumstance of minority.

Accordingly, there being no aggravating circumstance, appellant can only be convicted of simple rape defined under Article 266-A of the Revised Penal Code, which is punishable by a single indivisible penalty of reclusion perpetua. Article 63 of the Revised Penal Code provides that in "all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed." [19] Therefore, the trial court correctly imposed on appellant the penalty of reclusion perpetua.

Finally, the amount of moral damages awarded by the trial court should be reduced from P300,000.00 to P50,000.00, pursuant to controlling case law.[20] We note that the trial court did not award civil indemnity in favor of the victim. Civil indemnity is mandatory upon the finding of the fact of rape; it is automatically imposed upon the accused without need of proof other than the fact of the commission of rape.[21] Hence, the amount of P50,000.00 as civil indemnity must be awarded to complainant. The award of P200,000.00 as nominal damages and P100,000.00 as exemplary damages are without basis, and must be deleted. Under Article 2230 of the Civil Code, exemplary damages as part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Considering that no aggravating circumstance attended the commission of the crime in this case, appellant cannot be ordered to pay exemplary damages.[22]

The award of interest on damages is proper and allowed under Article 2211 of the Civil Code, which states that in crimes and quasi-delicts, interest as a part of the damages may, in proper case, be adjudicated in the discretion of the court.[23]

WHEREFORE, in view of the foregoing, the decision of the Regional Trial Court of Manila, Branch 18, in Criminal Case No. 98-167678, finding appellant Jose A. Torellos guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer the penalty of reclusion perpetua, is **AFFIRMED** with the following **MODIFICATIONS**: Appellant is ordered to pay complainant AAA the sums of P50,000.00 as moral damages and P50,000.00 as civil indemnity, both with legal interest thereon at the rate of six percent (6%) per annum computed from March 10, 2000, the date of the judgment of the trial court. The awards of nominal and exemplary damages are **DELETED** for lack of basis.

Costs de officio.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Vitug, Carpio, and Azcuna, JJ., concur.

[1] Penned by Judge Perfecto A.S. Laguio, Jr.

[2] Rollo, p. 5.

[3] TSN, June 22, 1999, pp. 3-10

[4] Records, p. 59.

[5] TSN, September 8, 1999, pp. 3-17.

[6] Id., pp. 17-30.

[7] Rollo, p. 16.

[8] People v. Daramay, G.R. Nos. 140235 & 142748, 9 May 2002.

[9] TSN, June 22, 1999, pp. 6-7.

[10] G.R. No. 146020, 29 May 2002.

[11] Citing People v. Lopez, G.R. Nos. 135671-72, 29 November 2000, 346 SCRA 469.

[12] Rollo, p. 16.

[13] People v. Dela Cruz, G.R. Nos. 135554-56, 21 June 2002.

[14] People v. Ponsica, G.R. Nos. 137661-63, 4 July 2002.

[15] Exh. "A".

[16] Revised Penal Code, Article 266-B, fifth paragraph, subparagraph (1).

[17] Art. 14. Aggravating circumstances. – The following are aggravating circumstances:

x x x x x x x x.

(3) That the act be committed with insult or in disregard of the respect due the offended party on account of his rank, age, or sex, or that it be committed in the dwelling of the offended party, if the latter had not given provocation. xxx. (emphasis ours)

[18] People v. Taboga, G.R. Nos. 144086-87, 6 February 2002.

[19] People v. Mangompit, G.R. Nos. 139962-66, 7 March 2001.

[20] People v. Gallate, G.R. Nos. 144395-98, 26 June 2002.

[21] People v. Solomon, G.R. Nos. 130517-21, 16 July 2002.

[22] People v. Plurad, G.R. Nos. 138361-63, 3 December 2002.

[23] People v. Pastrana, G.R. No. 143644, 14 August 2002.

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