

ADELMO PEREZ Y AGUSTIN, PETITIONER, VS. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 143838. May 09, 2002

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

This is a petition for review on certiorari seeking to reverse and set aside the Decision, dated December 16, 1999, of the Court of Appeals in CA-G.R. CR No. 19971 affirming the conviction of petitioner Adelmo Perez y Agustin for the crime of Attempted Rape.

The Information filed against petitioner with the Regional Trial Court, Branch 2 of Balanga, Bataan reads:

That on or about April 14, 1988 in Morong, Bataan, Philippines and within the jurisdiction of this Honorable Court, the said accused did then and there willfully, unlawfully and feloniously, by means of force and intimidation, commence the commission of the crime of rape upon Julita Tria y Balagao directly by overt acts, to wit:

That the said accused, without the permission of anyone, entered the room of Julita Tria and once inside, embraced and kissed her on the neck, held and mashed her breast and compelled her to lie down, and thereafter kissed her lips and neck and with the intent of having carnal knowledge with her, touched her sex organ and tried to remove her panties thereby commencing [t]he commission of the crime of Rape directly by overt acts but said accused did not accomplish his purpose, that is, to have a carnal knowledge with her, it was not because of his spontaneous and voluntary desistance but because the said Julita Tria succeeding in resisting his criminal attempt and also due to the timely arrival of her mother to the damage and prejudice of the said Julita Tria y Balagao.

CONTRARY TO LAW.[1]

At his arraignment, with the assistance of counsel, petitioner pleaded not guilty. Trial ensued.

To buttress its case against petitioner, the prosecution presented the testimonies of Eufemia Tria, mother of the complainant, Julita Tria, the complainant, and Dr. Emmanuel Cortez-Asuncion. As culled from the decision of the CA, these witnesses testified as follows:

Eufemia Tria, in her testimony, gave an account of the incident that took place in the morning of April 14, 1988. She was then washing clothes outside their house when she heard someone cry “Inay”. She then peeped into their window which was just a few meters from where she was and there saw her daughter Julita lying flat on a bamboo bed with her skirt raised. She saw accused Adelmo on top of Julita with her hands pinned down. As accused was kissing her daughter in the neck, his buttocks were moving in an up and down motion while her daughter was fighting back and struggling to break free. Eufemia then rushed straight to the room where she found accused hiding under the bamboo bed. She then ordered the accused to come out which he did. She thought of hacking the accused with the bolo which she found hanging on the wall but realized that she could not do it and instead dragged the accused out of the house and brought him to his parents’ house to tell them what happened.

Complainant Julita Tria testified that in the morning of April 14, 1988, after she was through with washing the dishes, she proceeded to the bedroom to store away their beddings. Suddenly, out of nowhere, accused appeared pulled her by the hand, embraced her from behind and held her breasts. At this juncture, he pulled her to the bamboo bed, positioned himself on top of her and placed her hands behind her as he kissed her lips and neck. She tried to avoid his kisses by moving her head from side to side. As she was pinned by accused's vise-like grip, accused then managed to insert his right hand inside her t-shirt and bra and squeezed nipples. Thereafter, he tried to raise her balloon-like skirt with his right hand, inserted it inside her panty and held her private part while making up and down motions. Accused then retorted "Sige na, pagbigyan mo na ako." It was at this point when she cried out "Inay". Shortly thereafter, her mother entered the room and found the accused under the bamboo bed.

Complainant further testified that it was not the first time that accused assaulted her. On March 25, 1988, while she was in the kitchen doing the dishes, accused suddenly appeared at her back with unzipped shorts and bare torso, embraced her and warned her not to make a sound or else he would kill her. He then jumped out of the window and fled. She did not tell anybody about this incident for fear that accused will make good his promise.

Dr. Emmanuel Cortez-Asuncion who conducted the medical examination on the complainant, testified as to the extent of injuries sustained by her and that the slight physical injuries could have been caused by attempted rape (TSN, September 16, 1988).[2]

For its part, the defense presented as its witnesses Junar Perez and petitioner. They testified as follows:

Junar Perez is a ten (10) year old grade IV honor pupil who at the time of the incident was on vacation at his grandmother's place. In the morning of April 14, 1988, he was playing with his cousins near the house of his Auntie Feming (Julita's mother) when he got thirsty and asked for a drink in the latter's house. There he saw Julita and accused conversing while seated on a bench near the door. He also saw Eufemia washing clothes a few meters away from Julita and the accused. He did not hear any noise in the house.

Accused Adelmo Perez declared that he was in Julita's house that morning of April 14, 1988 upon her prodding for him to come over as he would often do. When Junar had left the house, he invited Julita to the room where they could not be seen by her mother, there they embraced and kissed, he then inserted his hand inside her clothes, held her breast and slowly laid her on the bamboo bed. Shortly thereafter, her mother called Julita so she stood up but later returned and they again resumed embracing and kissing after which they laid down on the bamboo bed and he was able to place himself on top of her. He sensed that someone had entered the house and so stood up and hid under the bed upon Julita's advice. He denied that the acts done were against Julita's will. In fact, he claimed that he and Julita were already becoming intimate.[3]

After the prosecution and the defense presented their respective evidence, the trial court rendered judgment finding petitioner guilty of attempted rape. The dispositive portion of the trial court's decision reads:

WHEREFORE, judgment is hereby rendered convicting the accused, Adelmo Perez y Agustin, of the crime of ATTEMPTED RAPE, the prosecution having proved his guilt beyond reasonable doubt. Said accused is hereby sentenced to jail term of two (2) years, four (4) months and one (1) day of prision correccional as minimum to eight (8) years and one (1) day of prision mayor as maximum. He shall be credited with time spent under detention.

SO ORDERED.[4]

Aggrieved, petitioner appealed to the CA. The appellate court, finding the appeal to be unmeritorious, affirmed petitioner's conviction. The dispositive portion of the assailed decision reads:

WHEREFORE, the judgment herein appealed from is hereby AFFIRMED in toto. Costs against appellant.

SO ORDERED.[5]

Petitioner now comes to this Court assailing the decision of the CA. Petitioner raises the following issues:

I

WAS THE CRIME COMMITTED BY THE PETITIONER ATTEMPTED RAPE OR ACTS OF LASCIVIOUSNESS; and

II

DID THE PROSECUTION PRESENT THE QUANTUM OF PROOF NECESSARY TO ESTABLISH THE GUILT OF THE PETITIONER BEYOND REASONABLE DOUBT.

The petition is partly meritorious. The issues shall be discussed jointly as they are interrelated.

To exculpate himself, petitioner impugns the credibility of the complainant. Petitioner contradicts the complainant's allegations as he (petitioner) insists that what transpired between them was a consensual act.

It is well settled in this jurisdiction that the determination of credibility of witnesses is properly within the domain of the trial court as it is in the best position to observe their demeanor and bodily movements.[6] The trial court in this case found the witnesses for the prosecution and their version of the incident more credible as it made these findings:

No woman would ordinarily complain to the police and concoct a story that an uncle attempted to rape her, or subject herself to medical examination of her private parts, unless righteous indignation compelled her. This was particularly reinforced by the fact that she submitted herself thereto that afternoon of the same day, accompanied by her father and mother.

Julita's and her mother's accounts were clear, spontaneous, natural and credible as weighed against the flimsy excuse of the accused.

The physician admitted that the physical injuries suffered by Julita could have been caused by attempted rape.

Julita would not have shouted, "Inay" if she liked and consented to what her uncle was doing to her. The intact hymen of Julita also disproves the accused's declaration that they were "getting intimate." He himself refused to call themselves lovers.

The intention to force Julita to submit to sexual intercourse has been proved by these pieces of evidence which have not been refuted or disproved: he suddenly kissed, embraced and dragged her to the bamboo bed where he continued to kiss her lips and neck; then squeezed her nipples and mashed her breast by inserting his hand in her panty and held her vagina, doing the up and down movement as he held her hands under her with his left hand; he unzipped his short pants; put out his penis while on top of her, as Julita struggled, kicked and pushed (after he [sic] hands were freed) to extricate herself. The medical certificate found physical injuries in the neck and navel which could have been caused by blunt force, FORCE WOULD HAVE BEEN UNNECESSARY IF JULITA CONSENTED TO THESE ACTS.[7]

These findings of the trial court had been affirmed by the CA. The Court is not inclined to deviate from these courts' findings that petitioner, against the will of the complainant, performed sexual acts on the latter. However, 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.[8] 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 even touched complainant's vagina nor any part of her body. The complainant testified as follows:

Q:

After Adelmo Perez embraced you by the way you demonstrated, what else did Adelmo Perez do?

A:

He pulled me towards the bamboo bed (papag).

Q:

How did he pull you towards the bamboo bed?

A:

While he was embracing me.

Q:

He pulled you towards the wooden bed while he was holding you or embracing you in that position you are demonstrating?

A:

Yes, sir.

xxx

Q:

While you were sitting on the lap of the accused Adelmo Perez, what else did Adelmo Perez do to you?

A:

He laid me face up on the "papag" or on the wooden bed, sir.

Q:

Did he manage to lay you down on the wooden papag?

A

Yes, your honor.

xxx

Q:

How were you positioned in (sic) the wooden bed or “papag” after Adelmo Perez succeed in lying you down?

A:

I was lying face up your Honor.

xxx

Q:

And while you were in that position or “nakatihaya po ako,” what else did Adelmo Perez do?

A:

He placed himself on top of me, sir.

Q:

What was his position?

A:

He was lying face down on me.

Q:

When you said Adelmo Perez succeeded in lying down in the wooden papag, what was the position of your feet?

A:

They were hanging from the edge of the “papag” your honor.

xxx

Q:

And while your two hands were at your back, the way you demonstrated where was Adelmo Perez?

A:

He was on top of me, sir.

Q:

And what was he doing?

A:

He was kissing me on my lips and my neck, sir.

Q:

And while Adelmo Perez was kissing you, what did you do, if you did anything?

A:

I was trying to avoid his face sir by moving my face.

xxx

Q:

What exactly did you want to do with that movement?

A:

I was trying to avoid his face by moving my face, so that he could not kiss me and I was trying to extricate myself.

Q:

So what you were trying to avoid is his face?

A:

Yes, your honor.

Q:

You mean his right hand was free but it was not doing anything?

A:

It was moving your Honor.

Q:

But it was not doing anything aside from merely moving?

A:

His right hand was doing something.

Q:

Precisely you were asked.

A:

He inserted his right hand inside my T-shirt and inside my bra.

Q:

And after, when the right hand of Adelmo Perez was inside your bra, what did he do or what was his right hand doing inside your bra?

A:

He was mashing my nipple, sir.

Q:

Which nipples?

A:

Both nipples, Your Honor.

Q:

You mean your brassier was not detached but his hand was inside, between your brassier and the nipple?

A:

Yes, Your Honor.

Q:

While the right hand of Adelmo Perez was inside your bra and squeezing your nipple, what else did he do?

A:

He took his hand off from the inside of my T-shirt and he tried to raise my skirt, sir.

xxx

Q:

And while the accused Adelmo Perez tried to raise your skirt, what else did you do?

A:

He inserted his hand inside my panties and held my vagina, sir.

Q:

What did he use in holding your vagina?

A:

Right hand, sir.

Q:

And when he held your vagina, what did his right hand do with your vagina?

A:

He held it, sir.

xxx

Q:

What happened next?

A:

After he held my vagina he told me “Sige na, pagbigyan mo na ako” and that was the time I shouted.

xxx

Q:

What did you say when you shouted?

A:

I said “Inay” (The witness shouted).[9]

Petitioner’s acts of lying on top of the complainant, embracing and kissing her, mashing her breasts, inserting his hand inside her panty and touching her sexual organ, while admittedly obscene and detestable acts, do not constitute attempted rape absent any showing that petitioner actually commenced to force his penis into the complainant’s sexual organ. Rather, these acts constitute acts of lasciviousness. The elements of said crime are: (1) that the offender commits any act of lasciviousness or lewdness; (2) that it is done (a) by using force and intimidation or (b) when the offended party is deprived of reason or otherwise unconscious, or (c) when the offended party is under 12 years of age; and (3) that the offended party is another person of either sex.[10]

All these elements are present and have been sufficiently established in this case. Petitioner clearly committed lewd acts against the complainant. Moreover, petitioner employed force when he committed these acts on the complainant. In fact, as found by the trial court, there were bruises on complainant’s neck and navel which belie petitioner’s claim that the complainant consented to these acts.

Although the information filed against petitioner was for attempted rape, he can be convicted of acts of lasciviousness because the crime of acts of lasciviousness is included in rape.[11]

The penalty for acts of lasciviousness is prision correccional.[12] There being no aggravating or mitigating circumstance alleged and proven in this case, the penalty prescribed by law shall be imposed in its medium period,[13] i.e., from 2 years, 4 months and 1 day to 4 years and 2 months. Applying the Indeterminate Sentence Law, said penalty shall constitute the maximum term, while the minimum shall be within the range of the penalty next lower to that prescribed by the Revised Penal Code for the offense, i.e., arresto mayor or 1 month and 1 day to 6 months. Petitioner is hereby sentenced to suffer the penalty of 6 months of arresto mayor, as minimum, to 4 years and 2 months of prision correccional, as maximum.

WHEREFORE, the Decision, dated December 16, 1999, of the Court of Appeals in CA-G.R. CR No. 19971 is hereby MODIFIED. Petitioner Adelmo Perez y Agustin is found guilty beyond reasonable doubt of the crime of acts of lasciviousness, as defined and penalized under Article 336 of the Revised Penal Code, and sentenced to suffer the indeterminate penalty of 6 months of arresto mayor, as minimum, to 4 years and 2 months of prision correccional, as maximum.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Ynares-Santiago, and Austria-Martinez, JJ., concur.

[1] Rollo, pp. 20-21.

[2] CA Decision, pp. 3-4; Rollo, pp. 34-35.

[3] Ibid.

[4] Id., p. 31.

[5] Id., p. 39.

[6] People vs. Orio, 330 SCRA 576 (2000); People vs. Rendoque, 322 SCRA 622 (2000).

[7] RTC Decision, pp. 10-11; Rollo, pp. 29-30.

[8] People vs. Tolentino, 308 SCRA 485 (1999).

[9] TSN, October 3, 1988, pp. 3-13 quoted in Appellee's Brief, pp. 6-10; Rollo, pp. 60-64.

[10] People vs. Caingat, G.R. No. 137963, February 6, 2002.

[11] Ibid.

[12] Article 336, REVISED PENAL CODE.

[13] Article 64(1), REVISED PENAL CODE.

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