PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ELMERATO DELA CRUZ Y FLORES, APPELLANT.

G.R. NO. 166723 [FORMERLY G.R. NOS. 147653-54]. August 02, 2007

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

For review is the Decision[1] dated January 26, 2005 of the Court of Appeals in CA-G.R. CR.-HC No. 00007. The decision affirmed with modification the judgment[2] dated November 29, 2000 of the Regional Trial Court (RTC) of Bulacan, Branch 21. The RTC found accused Elmerato dela Cruz, guilty of two counts of rape and imposed the penalty of reclusion perpetua for each count. The Court of Appeals increased the penalty to death in each case.

The informations that led to dela Cruz's conviction are as follows:

CRIMINAL CASE NO. 2779-M-99

> That on or about the 10th day of April, 1999, in the municipality of xxx, province of Bulacan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused brother-in-law of the victim did then and there wilfully, unlawfully and feloniously, by means of force, intimidation and with lewd design have carnal knowledge of the said AAA, 16 years of age, against her will and without her consent.
>
> Contrary to law.[3]
>
> CRIMINAL CASE NO. 2780-M-99
>
> That on or about the 19[th]day of April, 1999, in the municipality of xxx, province of Bulacan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused brother-in-law of the victim did then and there wilfully, unlawfully and feloniously, by means of force, intimidation and with lewd design have carnal knowledge of the said AAA, 16 years of age, against her will and without her consent.
>
> Contrary to law.[4]

When arraigned, dela Cruz entered pleas of not guilty. At the pre-trial conference, the parties entered into the following stipulation of facts:

- That the offended party/complainant is the sister-in-law of the accused in this case;

- That they lived together at x x x, Bulacan for a period of two months;

- That the accused and his wife have a neighbor by the name of Susan;

- That the offended party was born on April 12, 1983;

- That the offended party was examined by Dr. Manuel Aves and that the findings of said Doctor was that the victim was found suffering from "multiple healed laceration" and to be in a non-virgin state.[5]

During trial, the prosecution established that AAA and her mother XYZ were living with AAA's half-sister, BBB, and the latter's husband, dela Cruz. On April 10, 1999, between 5 o'clock and 6 o'clock in the morning, when XYZ and BBB had already left the house, AAA was awakened by the weight of a shirtless dela Cruz on top of her. He held on to both her hands and threatened to kill her and her mother. He then successively held her breasts, removed her shorts and underwear as well as his own shorts and forced her legs apart. AAA resisted and begged dela Cruz not to take advantage of her, to no avail. Dela Cruz succeeded in having carnal knowledge of her. AAA was in pain and crying when dela Cruz left the room.[6]

On April 19, 1999, between 5 o'clock and 6 o'clock in the morning dela Cruz again entered AAA's room, placed himself on top of her, held both her hands thereby thwarting her attempts to push him away,[7] threatened to kill her, removed her shorts and underwear, forcibly spread her legs, and then had carnal knowledge of her.

On May 17, 1999, dela Cruz tried to rape AAA again, but she succeeded in resisting him. She related the incidents to their neighbor, a certain Ate Susan, who in turn told XYZ.

The incidents were reported to the police, and AAA was examined by Dr. Manuel Aves of the Philippine National Police (PNP) Crime Laboratory in Malolos, Bulacan. He issued the Biological Science Report stating that AAA had multiple deep healed lacerations at the 3, 4, 6, 8, 10 and 12 o'clock positions.

XYZ corroborated AAA's testimony on the circumstances surrounding the report to the police authorities and the filing of the complaints. She added that she noticed that dela Cruz had been acting queerly and could not look her straight in the eye.

On the other hand, dela Cruz denied having raped AAA. He admitted having sexual intercourse with AAA, but he claims that she consented to said acts. He testified that on June 10, 1999, he was then only wearing briefs when AAA entered his room at about 9 a.m. When asked why she entered his room, AAA answered, "Ano din ba talaga ang gusto mo." Thereupon, he kissed and embraced AAA who did not resist. Carried away by their lust, he and AAA eventually had sex twice on that day.

Ronald dela Cruz, the nephew of accused, also testified for the defense. He stated that AAA was his girlfriend and that he had sex with her on March 10 and 19. She was not a virgin when they first had sex. He learned that AAA had a relationship with his uncle and thus broke up with her.

The RTC found appellant guilty beyond reasonable doubt of the crime of Rape in Criminal Cases Nos. 2779-M-99 and 2780-M-99. The dispositive portion of the November 29, 2000 Decision reads:

> WHEREFORE, all premises considered, this Court resolves and so holds that the accused is GUILTY beyond reasonable doubt, of the crime of Simple Rape on two counts.
>
> Accordingly, Elmerato dela Cruz y Flores is hereby sentenced in both Criminal Cases Nos. 2779-M-99 and 2780-M-99, to suffer the penalty of Reclusion Perpetua. Further, he is hereby ordered to indemnify AAA in the sum of P75,000.00; to pay her the sum of P100,000.00 for moral damages; and another sum of P50,000.00 for compensatory damages.
>
> With costs against the accused.
>
> SO ORDERED.[8]
>
> Seasonably, the accused appealed.

Following People v. Mateo,[9] the case was transferred and referred to the Court of Appeals. Upon review, the Court of Appeals rendered its decision affirming with modification the decision of the lower court. The fallo of

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the Court of Appeals decision reads:

> WHEREFORE, the judgment appealed from is AFFIRMED and with the MODIFICATION that the penalty imposed should be DEATH in EACH of the two (2) cases of rape and the retained civil liabilities awarded should also be for EACH case. Costs against the accused-appellant.
>
> Pursuant to Section 13 (a), Rule 124 of the Amended Rules to Govern Review of Death Penalties, the case, together with the entire record, is hereby forthwith certified, and ordered elevated, to the Supreme Court for review.
>
> SO ORDERED.[10]

Appellant opted not to file a supplemental brief and instead relied on his appellant's brief which raises the following issues for our resolution:

I.

> THE TRIAL COURT ERRED IN NOT FINDING THAT THE SEXUAL ENCOUNTERS BETWEEN PRIVATE COMPLAINANT AND THE ACCUSED-APPELLANT WERE CONSENSUAL[; AND]
>
> II.
>
> THE TRIAL COURT ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF TWO (2) COUNTS OF RAPE[.][11]

In other words, was the element of force or intimidation, and thereby absence of consent on the part of the victim, proven?

Appellant contends that the absence of an outcry, a determined resistance or a firm struggle by AAA against her unarmed half-brother-in-law is strange and unnatural for a teenage maiden who is about to be despoiled of her virtue.

For the state, the Office of the Solicitor General (OSG) points out that the victim although plump, was barely sixteen (16) years old when the incident happened. She was no match against the older appellant, who is more muscular and stronger than her. The victim was intimidated physically and mentally by appellant who, as her older brother-in-law, exercises moral ascendancy over her. Appellant, likewise, has physical superiority over said victim.

We note that in the first incident, AAA had just awakened and found dela Cruz already on top of her. It can be expected that her faculties were still sluggish from sleep. Furthermore, having been caught by surprise while at the same time threatened with being killed, it is understandable that she was able to muster only feeble attempts of resistance against a deed that was almost fait accompli when she came to her senses.

More significantly, we are not wont to accept, as insinuated by appellant's counsel, that in the clear light of day while working in an office, it is easy to reflect and reach the conclusion that the threat made on AAA, in the absence of a weapon, would not intimidate anyone into submission to the will of a rapist. In People v. Oarga[12] we held that intimidation was addressed to the mind of the victim and therefore subjective, and its presence could not be tested by any hard-and-fast rule but must be viewed in the light of the victim's perception and judgment at the time of the crime.[13] Furthermore, it is not necessary that the force or intimidation employed to commit rape be so great or of such character as could not be resisted because all that is required is that it be sufficient to consummate the purpose which the accused had in mind.[14] The ambient circumstances must, therefore, be viewed from the victim's perception and judgment at the time of the rape.[15] Under the circumstances of the two

cases, we find that the element of force or intimidation was sufficiently proven so as to negate the alleged consent on the part of AAA to the sexual intercourse that transpired on both April 10 and 19, 1999.

As we have time and again observed, it is instinctive for a young, unmarried woman like AAA to protect her honor and it is thus difficult to believe that she would fabricate a tale of defloration, allow the examination of her private parts, reveal her shame and permit herself to be the subject of a public trial if she had not really been ravished. Besides, the records are devoid of any improper motive which would have moved complainant to charge appellant with rape. Therefore, the logical conclusion is that no such unseemly motive exists and her testimony is worthy of credit.[16] In one case, we held that in a prosecution for rape the complainant's credibility becomes the single most important issue. If her testimony meets the test of credibility, the accused may be convicted on the basis thereof.[17]

The trial court, after having observed AAA's categorical, frank and spontaneous testimony, found her to be a credible witness. We find no reason to overturn such a finding. The findings of the trial court pertaining to the credibility of witnesses are entitled to great weight and respect since it had the opportunity to examine their demeanor as they testified on the witness stand.[18]

However, we agree with the finding of the Court of Appeals that the RTC erred in the imposition of the appropriate penalty. The relationship of brother and sister, by affinity, between dela Cruz and AAA has been duly proven. Since it was also duly proven that AAA was below 18 years of age at the time the two rape incidents took place, the imposable penalty should have been death in each case. But, in view of the enactment of Republic Act No. 9346[19] on June 24, 2006, prohibiting the imposition of the death penalty, the penalty that now could be meted out on appellant is reclusion perpetua, in accordance with Section 2 thereof which reads:

> Sec. 2. In lieu of the death penalty, the following shall be imposed:
>
> (a) the penalty of reclusion perpetua, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code; or
>
> (b) the penalty of life imprisonment, when the law violated does not make use of the nomenclature of the penalties of the Revised Penal Code. (Emphasis supplied.)

This Court also sustains the Court of Appeals' ruling that the award of damages by the RTC should be modified. Pursuant to prevailing jurisprudence,[20] the civil indemnity and moral damages to be awarded are P75,000 and P75,000, respectively, for each conviction of rape which is qualified by circumstances warranting the imposition of the death penalty; and P25,000 as exemplary damages for each conviction of rape[21] in light of the presence of the qualifying circumstances of minority and relationship. Hence, appellant should pay AAA P150,000 as civil indemnity, P150,000 as moral damages and P50,000 as exemplary damages.

WHEREFORE, the Decision dated January 26, 2005 of the Court of Appeals in CA-G.R. CR.-HC No. 00007, finding appellant Elmerato dela Cruz y Flores guilty beyond reasonable doubt of the crime of qualified rape, is AFFIRMED with the following MODIFICATIONS:

> (1) the penalty of death meted out on the appellant is reduced to RECLUSION PERPETUA, for each count of rape, without eligibility for parole as provided under Rep. Act No. 9346; and
>
> (2) appellant is ORDERED to pay AAA the amount of P50,000 as exemplary damages, in addition to P150,000 as civil indemnity and another P150,000 as moral damages, for the two (2) counts of rape consistent with prevailing jurisprudence.

No pronouncement as to costs.

SO ORDERED.

Puno, C.J., Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Azcuna, Tinga, Chico-Nazario, Garcia, Velasco, Jr., and Nachura, JJ., concur.

[1] Rollo, pp. 3-30. Penned by Associate Justice Salvador J. Valdez, Jr., with Associate Justices Juan Q. Enriquez, Jr. and Vicente Q. Roxas concurring.

[2] Records, pp. 98-105. Penned by Judge Cesar M. Solis.

[3] Id. at 2.

[4] Id. at 8.

[5] Id. at 24.

[6] TSN, March 6, 2000, pp. 2-5.

[7] TSN, March 8, 2000, p. 5.

[8] Records, p. 105.

[9] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[10] Rollo, p. 29.

[11] CA rollo, p. 60.

[12] G.R. Nos. 109396-97, July 17, 1996, 259 SCRA 90.

[13] People v. Luzorata, G.R. No. 122478, February 24, 1998, 286 SCRA 487, 491.

[14] People v. Cañada, G.R. No. 112176, February 6, 1996, 253 SCRA 277, 285.

[15] People v. Ranido, G.R. Nos. 116450-51, March 31, 1998, 288 SCRA 369, 379.

[16] Id. at 380.

[17] People v. Luzorata, supra at 491-492, citing People v. Gecomo, G.R. Nos. 115035-36, February 23, 1996, 254 SCRA 82, 96.

[18] People v. Reyes, G.R. No. 168174 (Formerly G.R. Nos. 156174-76), April 13, 2007, p. 7.

[19] AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES. Section 1 thereof reads:

SECTION 1. The imposition of the penalty of death is hereby prohibited. Accordingly, Republic Act No. Eight Thousand One Hundred Seventy-Seven (R. A. No. 8177), otherwise known as the Act Designating Death by Lethal Injection is hereby repealed. Republic Act No. Seven Thousand Six Hundred Fifty-Nine (R. A. No. 7659), otherwise known as the Death Penalty Law, and all other laws, executive orders and decrees, insofar as they impose the death penalty are hereby repealed or amended accordingly.

[20] People v. Quiachon, G.R. No. 170236, August 31, 2006, 500 SCRA 704, 719.

[21] People v. Matrimonio, G.R. Nos. 82223-24, November 13, 1992, 215 SCRA 613, 634; People v. Quiachon, supra.

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