

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. HENRY GUERRERO Y AGRIPA, ACCUSED-APPELLANT.

G.R. No. 170360. March 12, 2009

Ponente: BRION, J.

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BRION, J.:

We review in this appeal the April 27, 2005 decision of the Court of Appeals (CA) in CA-G.R. CR-HC No. 00120,[1] affirming with modification the January 28, 2003 decision of the Regional Trial Court (RTC), Branch 94, Quezon City.[2] The RTC decision found the accused-appellant Henry Guerrero y Agripa (appellant) guilty beyond reasonable doubt of the crime of rape, and sentenced him to suffer the penalty of reclusion perpetua.

ANTECEDENT FACTS

The prosecution charged the appellant before the RTC with the crime of rape under an Information that states:

That on or about the 30[th] day of May, 1998, in Quezon City, Philippines, the said accused by means of force and intimidation, did then and there willfully, unlawfully and feloniously touch [AAA's][3] private part, a minor 13 years of age, removed her panty and inserted his index finger on her vagina and thereafter have carnal knowledge with the undersigned complainant against her will and without her consent.

CONTRARY TO LAW.[4]

The appellant pleaded not guilty to the charge. The prosecution presented the following witnesses in the trial on the merits that followed: AAA; BBB; SPO4 Susano San Diego (SPO4 San Diego); SPO4 Milla Billones (SPO4 Billones); and Dr. Ma. Cristina Freyra (Dr. Freyra). The appellant took the witness stand for the defense.

AAA testified that the appellant was the "kumpadre" of her mother, and was a frequent visitor at her parents' house. She recalled that on May 30, 1998, the appellant - who was standing beside the window of his house - called her. She approached the appellant who then grabbed her arms and dragged her inside his house. The appellant removed her dress and panty, then took off his own clothes. Thereafter, the appellant touched her private parts. She felt pain when the appellant tried to insert his penis into her vagina. She cried when she saw blood on her private part.

She went to school after two (2) days, but slept in the classroom because she had a headache and felt pain all over her body. She only informed her mother of the sexual abuse after her (AAA's) brother informed their mother that she had been sleeping during school hours. Their mother filed a complaint before the police when she learned of the rape.

On cross examination, AAA admitted that the appellant had "touched" her prior to May 30, 1998. She again narrated that she was playing with her cousin at around 5:00 p.m. of May 30, 1998, when the appellant, who was then holding a fighting cock, called her and asked her to place a bet for him in an "ending" game. She approached the appellant who then dragged her inside his house. She did not shout because the appellant was armed with a

knife and was threatening her. The appellant took off his shorts and briefs after he undressed her. She did not run because she was scared that the appellant might kill her. She added that she never again went near the appellant's house after the rape.[5]

BBB, the mother of AAA, declared on the witness stand that she discovered the rape incident only in June 1998. According to her, she noticed that her daughter was always "tulala" and would not respond when talked to. When she forced AAA to disclose what her problem was, she (AAA) replied that "Kuya Henry raped me." AAA's brothers and sisters were present when she made this revelation. She responded to the disclosure by accompanying AAA to the Batasan Police Station 6 where the desk officer, SPO4 Billones, took AAA's statement. They went to the PNP Crime Laboratory for AAA's medical examination upon police instructions.[6]

SPO4 San Diego narrated that on July 13, 1998, AAA and her mother went to the police station to report the rape incident. At the police desk officer's instructions, he and SPO4 Antonio Osorio (SPO4 Osorio) went to the appellant's residence (in Pigeon Street, Batasan Hills) and invited the appellant to the police station for investigation. He and SPO4 Osorio executed an affidavit upon their arrival at the police station.[7]

SPO4 Billones testified that AAA and her mother went to the police station sometime in July 1998 to report that the appellant had "sexually abused" AAA. She took AAA's statement and prepared a referral letter for the victim's medico-legal examination. She recalled that AAA, at that time, looked tired and uneasy.[8]

Dr. Freyra, the medico-legal officer of the PNP Central Crime Laboratory, testified that she conducted a medical examination of AAA on July 14, 1998, and made the following findings:

FINDINGS:

GENERAL AND EXTRAGENITAL:

Fairly developed, fairly nourished and coherent female subject. Breasts are undeveloped. Abdomen is flat and soft.

GENITAL:

There is absence of pubic hair. Labia majora are full, convex and coaptated with pinkish brown labia minora presenting in between. On separating the same disclosed an elastic, fleshy-type hymen with deep, healed lacerations at 4 and 9 o'clock positions. External vaginal orifice offers strong resistance to the introduction of the examining index finger. Vaginal canal is narrow with prominent rugosities.

CONCLUSION:

Subject is in non-virgin state physically.

There are no external signs of recent application of any form of trauma at the time of examination.

REMARKS:

Vaginal and peri-urethral smears are negative for gram-negative diplococcic and for spermatozoa. x x x.[9]

On cross examination, she stated that the hymenal lacerations on AAA's private part could have been caused by the insertion of a blunt object into her vagina.[10]

The appellant was the sole defense witness, and gave a different version of the events. He declared on the witness stand that he had known AAA and her parents for about six (6) years; they both live on the same street. He recalled that before 7:00 a.m. on May 30, 1998, he went to the house of the spouses Felipe where he worked as a carpenter. He did not leave the Felipes' house until he finished his work at 9:00 p.m.

On cross examination, he admitted that the parents of AAA were his "kumpare" and "kumadre," respectively, and stated that his place of work was a 30-minute walk, more or less, from his residence.[11]

The RTC convicted the appellant of the crime of rape in its decision of January 28, 2003 under the following terms:

WHEREFORE, premises considered, judgment is hereby rendered finding the herein accused Henry Guerrero Agripa GUILTY BEYOND REASONABLE DOUBT of Rape and hereby sentences him to suffer the penalty of Reclusion Perpetua and to indemnify the offended party the sum of P50,000.00 and to pay the costs.

SO ORDERED.[12][Emphasis in the original]

The records of this case were originally transmitted to this Court on appeal. Pursuant to our ruling in *People v. Mateo*,[13] we endorsed the case and the records to the CA for appropriate action and disposition.[14]

The CA, in its decision[15] dated April 27, 2005, affirmed the RTC decision, with the modification that the appellant be ordered to pay the victim P50,000.00 as moral damages.

The CA gave credence to AAA's testimony which it found to be corroborated on material points by the testimony and findings of Dr. Freyra. The appellant, on the other hand, merely presented the weak defenses of denial and alibi.

In his brief,[16] the appellant argued that the RTC erred in convicting him of the crime charged despite the prosecution's failure to prove his guilt beyond reasonable doubt.

THE COURT'S RULING

We resolve to deny the appeal for lack of merit.

Sufficiency of Prosecution Evidence

An established rule in appellate review is that the trial court's factual findings, including its assessment of the credibility of the witnesses and the probative weight of their testimonies, as well as the conclusions drawn from the factual findings, are accorded respect, if not conclusive effect. These actual findings and conclusions assume greater weight if they are affirmed by the CA. Despite the enhanced persuasive effect of the initial RTC factual ruling and the results of the CA's appellate factual review, we nevertheless fully scrutinized the records of this case as the penalty of reclusion perpetua imposed on the accused demands no less than this kind of scrutiny.[17]

The Revised Penal Code, as amended by Republic Act No. 8353,[18] defines and penalizes Rape under Article 266-A, paragraph 1, as follows:

ART. 266-A. Rape; When and How Committed. - Rape is committed -

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat or intimidation;

b) When the offended party is deprived of reason or otherwise unconscious;

c) By means of fraudulent machination or grave abuse of authority; and

d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

x x x x

Thus, for the charge of rape to prosper, the prosecution must prove that (1) the offender had carnal knowledge of a woman, and (2) he accomplished the act through force, threat or intimidation, or when she was deprived of reason or was otherwise unconscious, was under 12 years of age, or was demented.[19]

In her testimony, AAA positively identified the appellant as her rapist; she never wavered in this identification. To directly quote from the records:

ASSISTANT PROSECUTOR BEN DELA CRUZ

Q:

On May 30, 1998, do you recall of any unusual incident that happened to you?

[AAA]

A:

Yes, sir.

Q:

What was that unusual incident?

A:

He called me. He was just standing by the window, and then he dragged me inside the house.

Q:

What happened after you were dragged inside the house?

A:

He removed my dress.

Q:

What followed after he undressed you?

A:

He also undressed himself.

ASSISTANT PROSECUTOR DELA CRUZ

At this juncture the witness is crying, Your Honor, may we ask that the continuation of the testimony of witness be reset tomorrow x x x.

CONTINUATION OF DIRECT EXAMINATION BY ASSISTANT PROSECUTOR DELA CRUZ

Q:

Ms. Witness, for clarity, will you please step down from the witness stand and tap the shoulder of the accused in this case, Henry Guerrero Agripa?

[AAA]

A:

Yes, sir. This man, sir.

COURT INTERPRETER

Witness tapping the right shoulder of the man who is wearing a yellow T-shirt and who when asked identified himself as Henry Guerrero Agripa.

ASSISTANT PROSECUTOR DELA CRUZ

Q:

Yesterday, during the direct examination, you were telling us about your ordeal, what you experienced on May 30, 1998 in the hands of this accused, Henry Guerrero Agripa? Do you remember that, Mr. [sic] Witness?

A:

Yes, sir.

Q:

Now, Ms. Witness, again, I will ask you, what happened on May 30, 1998? What happened to you?

x x x

A:

I was then near their window and he grabbed me inside their house.

Q:

When you said "nila," to whom are you referring to?

A:

The house of the suspect.

Q:

You mean Henry Guerrero Agripa, the accused in this case?

A:

Yes, sir.

Q:

What happened after you were dragged inside the house of the accused?

A:

He undressed me.

Q:

What was removed by the accused when you said he undressed you?

A:

My shorts and panty.

Q:

And then what did he do next, if he did anything, after he undressed you?

A:

He also undressed himself.

Q:

Thereafter, what happened next, if any.

ASSISTANT PROSECUTOR DELA CRUZ

At this juncture, your honor, may we put on record that the witness is crying.

x x x

A:

"Ginalaw na niya po ako."

x x x

COURT:

I will ask her a question. When you said "ginalaw," you mean he only held your hands?

[AAA]

A:

No, your honor, he touched my whole body.

Q:

Including what?

A:

My private parts.

x x x

Q:

About how many times did he do to you this touching of your body as well as your private parts?

A:

Many times.

x x x

Q:

When you said he touched your private parts, you mean he touched you with his hands?

A:

He used his private parts.

Q:

You mean his penis?

A:

Yes, sir.

Q:

What did you feel?

A:

I felt pain.

Q:

And what did he do exactly when you said you felt pain, what was he doing at this time when you felt pain?

A:

Because he was trying to force his private part into mine, into my vagina.

Q:

Aside from the pain that you felt, was there anything else that happened to you on account of that act of the accused trying to penetrate you?

A:

No more, sir.

Q:

Okay. What did you observe in you[r] private parts after the accused tried to penetrate you?

A:

There was blood.

Q:

And how did you react when you said there was blood in your private part?

A:

I just cried.

Q:

You said he tried to penetrate you with his penis, how many times did he do this?

A:

Once only. x x x[20] [Emphasis supplied]

AAA's testimony strikes us to be clear, convincing and credible, corroborated as it was in a major way by the medico-legal report and the testimony of Dr. Freyra. It bears emphasis that during the initial phases of AAA's testimony, she broke down on the witness stand when the prosecution asked her questions relating to the rape she

suffered. This, to our mind, is an eloquent and moving indication of the truth of her allegations. In addition, our examination of the records gives us no reason to doubt AAA's testimony or suspect her of any ulterior motive in charging and testifying against the appellant. We have held time and again that testimonies of rape victims who are young and immature, as in this case, deserve full credence considering that no young woman, especially one of tender age, would concoct a story of defloration, allow an examination of her private parts, and thereafter subject herself to a public trial if she had not been motivated solely by the desire to obtain justice for the wrong committed against her.[21]

Clearly, the prosecution positively established the elements of rape required under Article 266-A. First, the appellant succeeded in having carnal knowledge with the victim; AAA was steadfast in her assertion that the appellant tried to force his penis into her vagina. We have said often enough that in concluding that carnal knowledge took place, full penetration of the vaginal orifice is not an essential ingredient, nor is the rupture of the hymen necessary; the mere touching of the external genitalia by a penis capable of consummating the sexual act (as part of the entry of the penis into the labias of the female organ) is sufficient to constitute carnal knowledge.[22]

Our ruling in *People v. Bali-Balita*[23] is particularly instructive:

We have said often enough that in concluding that carnal knowledge took place, full penetration of the vaginal orifice is not an essential ingredient, nor is the rupture of the hymen necessary; the mere touching of the external genitalia by the penis capable of consummating the sexual act is sufficient to constitute carnal knowledge. But the act of touching should be understood here as inherently part of the entry of the penis into the labias of the female organ and not mere touching alone of the mons pubis or the pudendum.

Thus, touching when applied to rape cases does not simply mean mere epidermal contact, stroking or grazing of organs, a slight brush or a scrape of the penis on the external layer of the victim's vagina, or the mons pubis, as in this case. There must be sufficient and convincing proof that the penis indeed touched the labias or slid into the female organ, and not merely stroked the external surface thereof, for an accused to be convicted of consummated rape. As the labias, which are required to be "touched" by the penis, are by their natural situs or location beneath the mons pubis or the vaginal surface, to touch them with the penis is to attain some degree of penetration beneath the surface, hence, the conclusion that touching the labia majora or the labia minora of the pudendum constitutes consummated rape.[24] [Emphasis and italics supplied]

Undoubtedly, there was touching of the labia as AAA testified that the appellant "was trying to force" his private part into her vagina, as a result of which, she felt pain. She also testified that her vagina bled after the incident. More importantly, Dr. Freyra testified that there were deep hymenal lacerations on AAA's private part, thus:

ATTY. RONALD ANCHETA

Q:

Doctor, in your findings, you said that you found out that the hymen was lacerated at 4 and 9 o'clock positions.

DR. FREYRA

A:

Yes, sir.

Q:

Doctor, what could have been the cause of the laceration?

A:

The cause of such laceration is the insertion of any blunt object inside the vagina.

Q:

Now doctor, would you be able to distinguish if only the tip of the penis or full or the whole penis was inserted. Would you determine that considering that the laceration is [at] 4 and 9 o'clock positions?

A:

The laceration is inflicted in the hymen if there was insertion of any hard blunt object and the size of the laceration would depend on the object that penetrated and it does not matter whether the tip of the penis is short or inverted.

Q:

Are you saying that even the tip of the penis could have caused the laceration at 4 and 9 o'clock?

A:

As I have said, it would depend on the diameter of the thing that enters the hymen and it would break that would need to accommodate the diameter of the thing that enters [sic].

Q:

So how about in this case, Doctor, if the male factor is an adult at the time of the sexual abuse and there was full penetration. Is it not a fact that there could have been more laceration than what has been stated there in your report?

A:

No, sir because the hymen is elastic and it would break and produce lacerations that are made in order to accommodate the diameter of the thing that enters and since the thing that penetrated only required two lacerations located at 4 and 9 o'clock, those were the only lacerations inflicted in order to accommodate the thing that entered.

Q:

How about if the finger was inserted in the hymen of the victim, would it produce that type of lacerations?

A:

If it was a finger that penetrated the hymen, perhaps I would see a smaller laceration in the hymen. Then also it would depend on the size of the smaller finger that entered the hymen and did not do any other movements like sideward movement it would be a shallow laceration. But in this case, it is a deep healed laceration of the hymen.

x x x[25] [Emphasis ours]

Second, the appellant employed force and intimidation in satisfying his lustful desires. AAA categorically stated that she was dragged by the appellant - who was wielding a knife - inside his (appellant's) house. AAA likewise testified that the appellant continued to threaten her while they were inside his house; and that she (AAA) did not attempt to run for fear for her life. As an element of rape, force or intimidation need not be irresistible; it may be just enough to bring about the desired result. What is necessary is that the force or intimidation be sufficient to consummate the purpose that the accused had in mind.[26] In *People v. Mateo*,[27] we held:

It is a settled rule that the force contemplated by law in the commission of rape is relative, depending on the age, size strength of the parties. It is not necessary that the force and intimidation employed in accomplishing it be so great and of such character as could not be resisted; it is only necessary that the force or intimidation be sufficient to consummate the purpose which the accused had in mind.

Intimidation, more subjective than not, is peculiarly addressed to the mind of the person against whom it may be employed, and its presence is basically incapable of being tested by any hard and fast rule. Intimidation is normally best viewed in the light of the perception and judgment of the victim at the time and occasion of the crime.[28]

By itself, the act of holding a knife is strongly suggestive of force or at least of intimidation, more so if the knife was directed at a minor, as in this case. Clearly, AAA could not be expected to act with equanimity and with nerves of steel, or to act like an adult or a mature and experienced woman who would know what to do under the circumstances, or to have the courage and intelligence to disregard the threat.[29] Under the circumstances obtaining in this case, the overt acts of the appellant were sufficient to bring AAA into submission.

The Appellant's Defenses

In stark contrast with the prosecution's case is the appellant's alibi of having been in the Felipes' house at the time the rape was committed. He maintained that he never left the Felipes' house from 7:00 a.m. up to 9:00 a.m. of that day. By the appellant's own admission, however, the residence of the Felipe spouses is also located at Batasan Hills, and was a mere 30-minute walk, more or less, from his (appellant's) house where the rape was committed. Considering the proximity of these places, we cannot accord any value to the appellant's alibi. For the defense of alibi to prosper, proof of being at another place when the crime was committed is not enough; the accused must likewise prove that it was physically impossible for him to be present at the crime scene or its immediate vicinity when the crime was committed.[30]

Moreover, we cannot help but note that the alibi of the accused is totally uncorroborated; only the appellant testified about his presence elsewhere. Already a weak defense, alibi becomes even weaker when the defense fails to present corroboration. The alibi totally falls if, aside from the lack of corroboration, the accused fails to show the physical impossibility of his presence at the place and time of the commission of the crime.[31]

The Proper Penalty

The applicable provisions of the Revised Penal Code, as amended by Republic Act No. 8353 (effective October 22, 1997), covering the crime of Rape are Articles 266-A and 266-B, which provide:

Article 266-A. Rape; When and How Committed. - Rape is committed:

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat, or intimidation;

x x x x

Article 266-B. Penalties. - Rape under paragraph 1 of the next preceding article shall be punished by reclusion perpetua.

x x x x

Although the prosecution proved during trial that the rape was committed with the use of a deadly weapon, we cannot appreciate this qualifying circumstance as it was not alleged in the Information. The lower courts therefore are correct in imposing the penalty of reclusion perpetua on the appellant.

The Proper Indemnity

We sustain the awards of civil indemnity and moral damages in accordance with prevailing jurisprudence. Civil indemnity, actually given as actual or compensatory damages, is awarded upon the finding that rape was committed.[32] Similarly, moral damages are awarded to rape victims without need of pleading or evidentiary basis; the law assumes that a rape victim suffered moral injuries entitling her to the award.[33]

WHEREFORE, in light of all the foregoing, we hereby AFFIRM the April 27, 2005 Decision of the CA in CA-G.R. CR-HC No. 00120 in toto. Costs against appellant Henry Guerrero y Agripa.

SO ORDERED.

Quisumbing, (Chairperson), Carpio Morales, Tinga, and Velasco, Jr., JJ., concur.

[*] Acting Chief Justice per Special Order No. 581 dated March 3, 2009.

[1] Penned by Associate Justice Rodrigo V. Cosico, and concurred in by Associate Justice Danilo B. Pine and Associate Justice Arcangelita Romilla Lontok; rollo, pp. 3-10.

[2] Penned by Judge Romeo F. Zamora; CA rollo, pp. 18-21.

[3] This appeal is pursuant to our ruling in *People v. Cabalquinto* (G.R. No. 167693, September 19, 2006, 502 SCRA 419) wherein this Court resolved to withhold the real name of the victim-survivor and to use fictitious initials instead to represent her in its decisions. Likewise, the personal circumstances of the victims-survivors or any other information tending to establish or compromise their identities, as well as those of their immediate family or household members, shall not be disclosed.

[4] Records, p. 1.

[5] TSN, October 20, 1998, pp. 1-2; TSN, October 21, 1998, pp. 2-21; TSN, October 28, 1998, pp. 2-6.

[6] TSN, January 11, 1999, pp. 2-6.

[7] TSN, March 9, 1999, pp. 2-3.

[8] TSN, September 22, 1999, pp. 2-9.

[9] Records, p. 9.

[10] TSN, August 9, 2000, pp. 2-4.

[11] TSN, July 24, 2001, pp. 2-7.

[12] CA rollo, p. 21.

[13] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640, 656.

[14] Per our Resolution dated September 8, 2004; rollo, p. 2.

[15] Rollo, pp. 3-10.

[16] CA rollo, pp. 50-62.

[17] *People v. Ballesteros*, G.R. No. 172696, August 11, 2008 citing *People v. Garalde*, G.R. No. 173055, April 13, 2007, 521 SCRA 327, 340.

- [18] The Anti-Rape Law of 1997.
- [19] *People v. Dela Paz*, G.R. No. 177294, February 19, 2008, 546 SCRA 363.
- [20] TSN, October 20, 1998, p. 2; TSN, October 21, 1998, pp. 2-7.
- [21] See *People v. Villafuerte*, G.R. No. 154917, May 18, 2004, 428 SCRA 427.
- [22] See *People v. Campuhan*, G.R. No. 129433, March 30, 2000, 329 SCRA 271.
- [23] G.R. No. 134266, September 15, 2000, 340 SCRA 450.
- [24] *Id.*, p. 465.
- [25] TSN, August 9, 2000, pp. 2-4.
- [26] *People v. Oliver*, G.R. No. 123099, February 11, 1999, 303 SCRA 72.
- [27] *People v. Mateo*, G.R. No. 170569, September 30, 2008.
- [28] *Id.*
- [29] See *People v. Adora*, G.R. Nos. 116528-31, July 14, 1997, 275 SCRA 441 (citations omitted).
- [30] See *People v. Aure*, G.R. No. 180451, October 17, 2008.
- [31] *People v. Malones*, G.R. Nos. 124388-90, March 11, 2004, pp. 318-319.
- [32] See *People v. Crespo*, G.R. No. 180500, September 11, 2008.
- [33] See *People v. Mingming*, G.R. No. 174195, December 10, 2008.

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