PEOPLE OF THE PHILIPPINES, APPELLEE, VS. HAROLD WALLY CABIERTE, APPELLANT.

G.R. No. 170477. August 07, 2007

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

On complaint of AAA, accused-appellant Harold Wally Cabierte, together with Jerry Macabio (Macabio) and Norbert Viernes (Viernes), was charged before the Regional Trial Court (RTC) of Baguio with rape in an Information, the accusatory portion of which reads:

> That on or about the 2[nd] day of December 1997, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually aiding one another, dragged the undersigned inside the tent, held my hands, spread my legs after stripping off my clothings with force, and then did then and there willfully, unlawfully and feloniously have carnal knowledge with the undersigned, against my will and consent.[1]

The case was docketed as Criminal Case No. 15542-R.[2]

Upon reinvestigation, the prosecution found that three crimes of rape were committed by appellant and his co-accused,[3] hence, two additional informations, docketed as Criminal Cases No. 15594-R and No. 15595-R, with wordings substantially similar to the first, were filed.[4]

The prosecution's version of events that led to the filing of the cases is as follows:[5]At around 11:00 p.m. of December 2, 1997, AAA sneaked out of her house to meet her boyfriend. As she approached the meeting place, she saw a bonfire, a makeshift tent, and five members of her barkada, namely: Noel Recario (Recario), Christopher Villasanta (Villasanta), and the three accused. As she whistled to indicate her presence, Recario invited her to join them which she did.

AAA then asked where her boyfriend was. Viernes told her to wait. She thus conversed with the group who was engaged in drinking.

As the night wore on, appellant, Viernes, Macabio, and Villasanta entered the makeshift tent and teased each other by removing each other's pants.

In the meantime, while Viernes was inside the tent, he offered AAA a cigarette. Responding, AAA approached the entrance of the tent and when she was about to get the cigarette, Viernes put it at his crotch.

AAA thus indicated that she would no longer get the cigarette, but Viernes waved it at her so she took it, went back to the bonfire, and smoked.

AAA later proceeded to the tent together with Recario. Viernes soon got pushed towards AAA, hitting his nape with her cigarette. Enraged, Viernes grabbed AAA, pulling her inside the tent, making her fall on her knees.

As AAA tried to stand, Viernes pushed her and pinned her down with his body (dinaganan). Appellant thereupon

held AAA's hands as Macabio held her legs. Viernes soon had sexual intercourse with AAA over her protests and despite her physical struggles.

After Viernes, appellant, followed by Macabio, had sexual intercourse with AAA also against her will and despite her physical struggles.

After the boys left the tent, AAA went home, arriving before 3:00 a.m. of December 3, 1997. [6]

The following day, or on December 4, 1997, AAA's boyfriend who had gotten wind that she was "ginalaw ng tatlo,"[7] confronted her and urged her to tell her parents about what happened. She thus told her mother who accompanied her to the Baguio City Police Office where she executed a sworn statement.[8]

On December, 8, 1997, AAA was examined by Dr. Ronald R. Bandonill, a medico-legal officer, who noted the following

> F I N D I N G S:
>
> GENERAL PHYSICAL EXAMINATION:
>
> Height: 157.5 centimeters Weight: 65 kilograms
> Conscious, coherent, cooperative, ambulatory, fairly nourished, fairly developed.
>
> PHYSICAL INJURIES NOTED: (EXTRAGENITAL)
>
> - CONTUSIONS:
>
> 1) 5.0 cms. x 3.0 cms., forearm, right, anterior surface, black-brown, coalescing borders.
>
> 2) 5.0 cms. x 3.5 cms., black-purple, rounded boarders with medial border resolving, knee, left.
>
> - ABRASIONS, MULTIPLE, LINEAR, over an area 5.0 cms. x 3.0 cms., posterior trunk area.
>
> - ABRASION, with scab formation, 4.0 cms. x 2.0 cms., chest, posterior, left.
>
> BREASTS: conical, developed, soft. AREAOLAE: dark brown, 2.0 cms. in diameter.
> NIPPLES: protruding, dark brown, 0.7 cms. in diameter.
>
> GENITAL EXAMINATION:
>
> - PUBIC HAIR: developed, fully grown, sparsely distributed. LABIA MAJORA and MINORA: both slightly gaping. FOURCHETTE: slightly gaping. VESTIBULAR MUCOSA: slightly congested.
>
> - HYMEN: originally annular, tall, thick, fleshy, with old-healed lacerations at 6:00 o'clock [sic] and 9:00 o'clock [sic] corresponding to the face of a watch, edges of which are fully rounded and non coaptable.
>
> - HYMENAL ORIFICE: admits a tube with 2.5 cms. in diameter with slightly difficulty.
>
> - VAGINAL WALLS: slightly lax. RUGOSITIES: prominent.
>
> CONCLUSIONS:
> 1) The above described physical injuries were noted on the body of the subject at the time of examination, age of which is compatible with the alleged date of commission.
> 2) Old-healed complete hymenal lacerations noted.[9] (Emphasis and underscoring supplied)

Appellant and his co-accused admitted having had sexual intercourse with AAA on December 2, 1997, but claimed that she consented to it.

The defense presented two members of the barkada, Wilma Fagyan (Wilma) and Sharon Caballes (Sharon), who

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declared that when they met AAA on December 5, 1997, she bragged about having had sexual intercourse with appellant and his co-accused and of having enjoyed it.[10]

The defense presented too evidence that AAA was known as a "pokpok girl," one who "is willing to have sexual intercourse with anybody."[11]

On AAA's extra-genital injuries, the defense attributed it to her falling down a cement staircase during Viernes' birthday party on November 14, 1997.[12]

By Decision[13] of January 4, 1999, Branch 6 of the Baguio RTC found that appellant and his co-accused conspired in the commission of three separate crimes of rape. [14] The trial court thus disposed:

> WHEREFORE, the court finds the accused Harold Cabierte, Jerry Macabio, and Norbert Viernes guilty beyond reasonable doubt as conspirators and confederates of the offense of rape (3 counts) as charged in the three cases in Criminal Case Nos. 15542-R, 15594-R, and 15595-R, defined and penalized under Article 266-A, paragraph 1(a) in relation to Article 266-B of Republic Act 8353 [sic],[15] with the alternative mitigating circumstance of drunkenness, and hereby sentences each of them in each of the three cases as follows: Accused Harold Cabierte to suffer the penalty of reclusion perpetua; accused Jerry Macabio, a minor under 18 years old, to suffer imprisonment ranging from SIX (6) YEARS and ONE (1) DAY of prision mayor as minimum, to TWELVE (12) YEARS and ONE (1) DAY of reclusion temporal as maximum; accused Norbert Viernes, being a minor under 18 years old, to suffer imprisonment ranging from SIX (6) YEARS and ONE (1) DAY of prision mayor as minimum, to TWELVE (12) YEARS and ONE (1) DAY of reclusion temporal as maximum; to indemnify jointly and severally the offended party, [AAA], the sum of FIFTY THOUSAND (P50,000.00) PESOS as civil indemnity without subsidiary imprisonment in case of insolvency, and to pay the proportionate costs.
>
> The accused Harold Cabierte, being a detention prisoner, is entitled to be credited 4/5 of his preventive imprisonment in the service of his sentence in accordance with Article 29 of the Revised Penal Code.
>
> The youthful offenders, Jerry Macabio and Norbert Viernes, who were released on recognizance to the custody of their parents upon their application and with the recommendation of the Department of Social Welfare and Development pursuant to Article 191 of P.D. 603, are directed to manifest to the Court immediately if they are applying for a suspended sentence or they will interpose appeal so the appropriate action may be taken by the Court under Articles 191 and 192 of P.D. 603.
>
> SO ORDERED.[16]

As reflected in the above-quoted dispositive portion of the trial court's decision, the sentence of the then minors, Viernes and Macabio, was suspended.[17] They were committed to the custody of the Department of Social Welfare through the Regional Rehabilitation Center for Youthful Offenders in Urayong, Bauang, La Union until they reach the age of 21.[18]

Appellant filed a Notice of Appeal.[19] In view of the imposition of the penalty of reclusion perpetua, the records of the case were forwarded to this Court.[20]

By Resolution of August 30, 2004,[21] however, this Court transferred the case to the Court of Appeals following People v. Mateo[22] which provides for intermediate review of cases imposing the penalty of death, life imprisonment, or reclusion perpetua.[23]

By Decision[24] of August 25, 2005, the Court of Appeals affirmed that of the trial court, with the modification that appellant was further ordered to pay P50,000.00 as moral damages. The Court of Appeals also gave him full time credit for preventive suspension.[25]

Hence, the present appeal which raises the sole issue of whether force attended the sexual intercourses.

Article 266-A of the Revised Penal Code provides:

> 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;

x x x x

On the degree of force as an element of rape, this Court finds it "not necessary to show that irresistible force or intimidation accompanied the crime of rape; it suffices to show that force or intimidation was present and did result in the accused copulating with the offended woman against her will."[26]

That force attended each sexual intercourse by the conspirators as claimed by AAA is confirmed by the findings of Dr. Bandonill.

Thus, Dr. Bandonill noted the presence of abrasions on AAA's lower back and at the back of her chest, as well as contusions on her right forearm and left knee. Explaining these injuries, the doctor declared:

> [ATTY. OPIANO]
> Q: What would have caused such a contusion on the forearm of the victim?
> [DR. BANDONILL]
> A: It would have been caused by a hard blunt object hitting that area.
>
> Q: And the contusion on the knee, what could have caused this contusion?
> A: The contusion on the knee would also have been caused by a hard blunt object hitting that organ also.
>
> Q: And with these contusions what could be [these] blunt, hard x x x objects that would have been applied on this part of the body of the victim?
> A: Well, it could be a piece of wood, it could also be a piece of stone, it could also be the fist.
>
> Q: We go to the abrasions that you referred to. Please describe to us what these abrasions are?
> A: The first abrasion which is entered as abrasion multiple linear over an area 5 cms. x 3 cms. posterior trunk area, these are gasgas or lines which are found at the lower back of the subject, ma'am.
>
> Q: And what would be the cause of this multiple linear abrasion on the back of the victim, Mr. Witness?
> A: It might have been caused by a hard rough surface coming to contact with the area.
>
> Q: What about the abrasions which you mentioned on the posterior left chest area of the victim?
> A: Again, ma'am, this abrasion which is found at the back of the left chest would have been caused by x x x coming into contact with a hard rough surface.[27]
>
> x x x x
>
> Court: [Q:] Now, let us go back to these contusions and abrasions you mentioned. You mentioned awhile ago that this contusion could have been caused by a hard blunt instrument like a piece of wood or a stone. Now, supposing no wood or stone was used on her, what could have caused these contusions?
> A: Possibly, Your Honor, it could have been the fist.
>
> x x x x
>
> Q: Because you mentioned these contusions were on the right forearm and left knee. Now is it possible that these contusions can be sustained if somebody puts his hand or even his knees on top of your right forearm so you won't be able to struggle or you would be immobilized?

A: That's possible, Your Honor, if it was done with pressure and it was done with heavy weight.

Q: How about this gasgas, could it be possible that if you lay down on the ground which is a rough surface the friction at the back of the body could cause that gasgas or abrasion while you keep moving and struggling?
A: That is highly possible, Your Honor.

Q: Because of the rough surface on the ground?
A: Yes, your Honor.

x x x x

[ATTY. OPIANA]: I would like to follow up on the question of the contusion on the knee of the patient. Where at the knee of the patient would that contusion be located?
A: It's above the middle border of the knee. That means, right at the center of the knee, ma'am.

Q: What could have caused this aside from xxx a blunt object. How would have been applied [sic] on the knee?
A: Well, as discussed earlier, ma'am, it could have also [been] by a heavy weight, a hard blunt object placed on that area with a heavy weight.

Q: Would it also be possible that a fist was used over said knee?
A: It's possible, ma'am.

COURT [Q]: How about the person trying to immobilize that girl by putting his entire body on the top of her and first his knee or his own legs is pressed on that portion of the body?
A: That's also possible, Your Honor.

Q: It can cause that contusion?
A: It can cause that contusion, Your Honor.[28] (Emphasis supplied)

It cannot be gainsaid that the injuries found by Dr. Bandonill are compatible with the claim of AAA at the witness stand:

x x x x

Q: What did you do when [Viernes] pulled you inside madame witness?
A: I was about to stand but he pushed me.

x x x x

Q: What happened after he pushed you?
A: When I fell down, he pinned me with his body.

PROSECUTOR CENTENO:

May we just quote the Tagalog word, "dinaganan."

ATTY. BERNABE:
Q: After he pinned you down with his body, what did you do next?A: I was pushing him.Q: And were you able to push him, madame witness?A: No, Ma'am.Q: Why were you not able to push him?A: Because he was heavy.

x x x x

Q: What happened next if any, madame witness?
A: Jerry and Wally came near.

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Q: When these Jerry and Wally came near you, what happened next if any?
A: Wally held my hands while Jerry held my feet.[29]

x x x x

Q: How did you feel when Norbert put his penis into your vagina and did the push and pull movement?
A: I felt pain at my back so [sic] with my hands and my feet and I also felt pain on my vagina because he was forcing his penis into my vagina.[30]

x x x x

Q: And what did Jerry do madame witness when he went on top of you?
A: He also inserted his penis into my vagina.

Q: And when he inserted his penis into your vagina, what happened next madame witness?
A: He also made a push and pull movement?

Q: While he was doing the push and pull movement, madame witness, what were you doing?
A: I was struggling, I was crying and I was hurling invectives to him.

Q: How did you feel madame witness when jerry did the push and pull movement?
A: I felt pain on my buttocks and on my back.

x x x x

Q: How long did Jerry do the push and pull movement madame witness?
A: Quite long.[31]

x x x x

Q: When Wally came on top of you, what happened, madame witness?
A: He also pulled down his pants.

Q: And after pulling down his pants, madame witness, what happened next?
A: He also inserted his penis into my vagina.

Q: After he inserted his penis into your vagina madame witness, what happened?
A: He also made a push and pull movement.

Q: And when he made the push and pull movement, madame witness, how did you feel?
A: My back is painful and my hands were hurt because he also pinned it down.[32]

x x x x

[ATTY. ESPIRITU]
Q: x x x [Norbert] also removed his pants and immediately inserted his penis inside your vagina, is that correct?
[AAA]
A: Yes, sir.

Q: He did it with ease without much problem, isn't it?
A: Maybe he had difficulty because I was closing my legs.

Q: Now when your legs were open, did you not avoid the thrust by just shaking your buttocks?
A: I did that, sir.[33]

x x x x

> [ATTY. BERNABE]
> Q: x x x How did you struggle, Madam Witness?
> [AAA]
> A: I wiggled moved my buttocks and I was trying to close my legs.
>
> x x x x
>
> Q: When Jerry was on top of you, Madam witness, and did what you related, what did you do?
> A: I was asking him to stop and I fought him.
> Q: How did you fight him?
> A: I moved my body and I pushed him and I tried to close my legs.[34] (Emphasis supplied)

The defense claim that AAA sustained the extra-genital injuries when she fell down a concrete staircase during Viernes' birthday party on November 14, 1997 is belied by Dr. Bandonill's finding that AAA's injuries were at least six or seven days old.[35] It bears recalling that Dr. Bandonill examined AAA on December 8, 1997, the seventh day following the incidents which occurred on December 2, 1997.

In an attempt to destroy AAA's credibility, the defense draws attention to her supposed reputation as a pokpok girl and her admission that prior to December 2, 1997 she already had sexual intercourse with her boyfriend.[36]

In a further attempt to show that AAA consented to having sexual intercourse with appellant, the defense cites AAA's having lingered with the group despite the following circumstances: her boyfriend was not around, none of the female members of the barkada was present, the male members of her barkada were removing each other's pants, and Viernes put the cigarette offered to her at his crotch.[37]

Assuming that AAA is, indeed, a pokpok girl, it is settled that:

> [T]he victim's character in rape is immaterial. Even the fact that the offended party may have been of unchaste character constitutes no defense to the charge of rape, provided that it is proved that the illicit relations described in the complaint was committed with force and violence.[38]

As for her staying with the male members of her barkada despite the circumstances indicated above, AAA's explanation therefor â”€ that the group told her that her boyfriend would arrive and she trusted them[39] â”€ is plausible. Her naívete of trusting the three accused is understandable, given that she was only 14 years old when the incidents occurred.[40]

The defense goes on to harp on AAA's delay in reporting the incidents.[41] The oft-repeated observation of this Court that it is not unusual for a rape victim to conceal the incident at least momentarily[42] should address this. As AAA declared, she initially lacked the courage[43] and was ashamed to do so, her mother having advised her several times not to go with her barkada,[44] and she having sneaked out of the house on the night of the incident.[45] Additionally, she declared that she was confused because "at that time I don't [sic] know who really are my friends already,"[46] and she was afraid no one would believe her because the malefactors were members of her barkada.[47]

As for the brushing aside by the lower courts of the testimonies of Wilma and Sharon that AAA had bragged to them about having had sexual intercourse with appellant and his co-accused, the same is well-taken.[48] Sharon is a friend and former girlfriend of Viernes, [49] while Wilma was, at the time she took the witness stand, the girlfriend of Macabio.[50] That these witnesses were biased for the defense is not farfetched.

WHEREFORE, the appeal is DENIED. The decision appealed from is AFFIRMED.

Costs against appellant.

SO ORDERED.

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

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[1] Records, Vol. I, p. 1.

[2] Ibid.

[3] Records, Vol. I, pp. 5-7.

[4] Records, Vol. II, p. 1; Records, Vol. III, p. 1.

[5] TSN, May 13, 1998, pp. 2-39; TSN, May 18, 1998, pp. 2-40; TSN, June 5, 1998, pp. 2-34; TSN, June 11, 1998, pp. 2-24; TSN, June 25, 1998, pp. 2-24; TSN, July 16, 1998, pp. 2-27; TSN, November 10, 1998, pp. 2-24; TSN, November 16, 1998, pp. 2-10; Exhibits "A" " "F," Folder of Exhibits, pp. 1-11.

[6] TSN, May 13, 1998, pp. 25-28; TSN, June 25, 1998, pp. 6-7.

[7] TSN, June 25, 1998, p. 8.

[8] Exhibit "A," Folder of Exhibits, pp. 1-3.

[9] Exhibit "D," Folder of Exhibits, p. 6.

[10] TSN, August 14, 1998, pp. 2-22; TSN, November 18, 1998, pp. 2-20.

[11] TSN, October 5, 1998, p. 10. Vide TSN, August 14, 1998, p. 6; TSN, September 8, 1998, pp. 30-31; TSN, September 22, 1998, pp. 38-39; TSN, September 24, 1998, p. 25; TSN, October 26, 1998, pp. 14-16.

[12] TSN, August 27, 1998, pp. 3-17.

[13] Records, Vol. I, pp. 190-206.

[14] Id. at 198.

[15] The cited Articles 266-A and 266-B were incorporated into the Revised Penal Code by Section 2 of the Anti-Rape Law of 1997 (Republic Act No. 8353) which amended the Revised Penal Code.

[16] Records, Vol. I, pp. 204-206.

[17] Id. at 227-230.

[18] Id. at 229.

[19] Id. at 209.

[20] Id. at 210; CA rollo, p. 2.

[21] CA rollo, p. 182.

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

[23] Id. at 656-658.

[24] Penned by Court of Appeals Associate Justice Juan Q. Enriquez, Jr., with the concurrences of Associate Justices Portia Aliño Hormachuelos and Vicente Q. Roxas. CA rollo, pp. 185-199.

[25] Id. at 198.

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[26] People v. Ronquillo, G.R. No. 76213, April 6, 1990, 184 SCRA 236, 243-244 (emphasis in the original).

[27] TSN, June 11, 1998, pp. 8-9.

[28] Id. at 12 (with two pages marked as page 12) -13.

[29] TSN, May 13, 1998, pp. 12-13.

[30] Id. at 16-17.

[31] Id. at 17-18.

[32] Id. at 19.

[33] TSN, May 18, 1998, p. 20.

[34] TSN, June 5, 1998, pp. 10-11.

[35] TSN, June 11, 1998, pp. 11, 16, 19.

[36] TSN, May 18, 1998, p. 4.

[37] CA rollo, pp. 72-79, 106; TSN, May 18, 1998, pp. 12-19.

[38] People v. Bacalzo, G.R. No. 89811, March 22, 1991, 195 SCRA 557, 566.

[39] TSN, May 18, 1998, p. 16; TSN, June 5, 1998, pp. 9-10; TSN, November 10, 1998, pp. 3-5, 12-13.

[40] Vide records, Vol. I, pp. 166-167, 177; Exhibit "A," Folder of Exhibits, p. 1; TSN, September 24, 1998, p. 11;

[41] CA rollo, pp. 82-84.

[42] Vide People v. Valdez, 466 Phil. 116, 139 (2004); People v. Abella, 373 Phil. 650, 658 (1999).

[43] TSN, May 18, 1998, p. 37; TSN, June 5, 1998, p. 15; TSN, November 16, 1998, p. 7.

[44] TSN, November 16, 1998, p. 2.

[45] TSN, May 13, 1998, p. 26.

[46] TSN, June 5, 1998, p. 14.

[47] TSN, May 13, 1998, p. 26.

[48] CA rollo, pp. 197-198.

[49] TSN, August 14, 1998, pp. 7, 14;

[50] TSN, November 18, 1998, p. 11.

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