

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ALEJANDRO CALONGUI Y LOPEZ, APPELLANT.

G.R. NO. 170566. March 03, 2006

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This is an appeal from the October 26, 2005 Decision[1] of the Court Appeals in CA-G.R. CR-H.C. No. 00125, affirming with modification the December 23, 2002 Judgment[2] of the Regional Trial Court of Pili, Camarines Sur, Branch 33 in Criminal Case Nos. P-2813 and P-2814, convicting appellant Alejandro Calongui y Lopez for two counts of rape; sentencing him to reclusion perpetua, and ordering him to indemnify the victim P50,000.00 as civil liability, P50,000.00 as moral damages and P30,000.00 as exemplary damages, for each count of rape.

On July 6, 1999, two separate informations were filed against appellant before the Regional Trial Court of Pili, Camarines Sur, docketed as Criminal Case Nos. P-2813 and P-2814. In Criminal Case No. P-2813, the Information reads:

That on or about the 1st day of January 1998 at about 2:00 o'clock in the morning, at Tagbong, Pili, Camarines Sur, Philippines and within the jurisdiction of this Honorable Court, the said accused, with lewd design, and by means of threats, force and violence, and being the first-cousin of the complaining witness did then and there, willfully, unlawfully and feloniously lie, sexually assaulted and succe[e]ded in having carnal knowledge with (sic) one Marinel O. Colangui, a 13 years old girl, at the latter's house and against her will-to the latter's damage and prejudice in such amount as may be proven in court.

ACTS CONTRARY TO LAW.[3]

The Information[4] in Criminal Case No. P-2814 is similarly worded except as to the alleged date and time of the commission of the rape which was on September 26, 1998 at 3:00 a.m.

The appellant pleaded not guilty to the charges.[5] Thereafter, joint trial on the merits ensued.

The prosecution presented four witnesses, namely, Marinel Calongui, Noel Calongui, Jr., Gracia Calongui, and Dr. Salvacion Pantorgo.

Marinel testified that she was 5 years old when her family took in appellant, who is her first cousin and who was then 21 years old, to live with them and help in the upkeep of the family's farm.

On January 1, 1998, at 2:00 a.m., then 13-year-old Marinel, who slept in the same room as the appellant and her three siblings, awoke to find that appellant had removed her shorts and panties. The latter threatened to kill her and her siblings if she resisted his sexual advances. She tried to repel the sexual assault by moving her body and kicking the appellant's thighs but appellant succeeded in having sexual congress with her. The next morning, she learned that her 12-year old brother, Noel, witnessed the incident but pretended to be asleep because the appellant might harm him. Marinel told Noel not to tell anyone about what he saw. She also did not report the matter to her parents for fear that appellant would make good his threats.

On September 26, 1998 at 3:00 a.m., appellant again raped Marinel which was likewise witnessed by Noel. She was undressed from the waist down and threatened that she and her siblings would be killed if she resisted.

Shortly after the second rape incident, appellant stayed at the B-Meg barracks where he worked as a laborer. Emboldened by his absence, Marinel told her mother of her ordeals which led to the filing of the instant criminal cases.

Noel testified that he saw how appellant raped his sister on both occasions but pretended to be asleep out of fear. He did not report the matter to their parents upon instructions of Marinel and also because of the threats of the appellant.

Gracia, Marinel's mother, testified that Marinel informed her of the rape incidents on November 15, 1998. She thereafter accompanied her daughter to the police authorities.

Dr. Salvacion Pantorgo, Medical Officer at the Bicol Medical Center in Naga City testified that on November 18, 1998, she physically examined Marinel and made the following findings:

PPE: Sparse pubic hair; well-apposed labia majora and minora; (+) old superficial hymenal laceration at 3 and 4 o'clock positions; (+) old complete hymenal lacerations at 6 and 11 o'clock positions. IE: Admits 2 fingers with ease; cervix closed, firm; uterus small; (-) adnexae; (-) vaginal bleeding.[6]

Dr. Pantorgo found Marinel to be in a non-virgin state consistent with the latter's claim that appellant had sexual intercourse with her on two occasions.

Appellant denied having sexual congress with Marinel on January 1, 1998. However, as regards the September 26, 1998 incident, he claimed that it was a consensual act considering that he and Marinel were sweethearts at that time.

After trial, the Regional Trial Court rendered judgment finding the accused guilty of two counts of rape, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, judgment is hereby rendered finding the accused ALEJANDRO CALONGUI y LOPEZ, as follows:

- In Crim. Case No. P-2813, GUILTY beyond reasonable doubt of the crime of Rape under Article 266-A, paragraph 1(a), of Republic Act No. 8353 and imposing upon him the penalty of imprisonment ranging from TWENTY (20) YEARS and ONE (1) DAY TO FORTY (40) YEARS of RECLUSION PERPETUA. Accused is likewise ordered to pay the offended party, MARINEL O. CALONGUI, the sum of Fifty Thousand Pesos (P50,000.00) as civil liability; Fifty Thousand Pesos (P50,000.00) as moral damages; Thirty Thousand Pesos (P30,000.00), as exemplary damages, all in Philippine Currency.

- In Crim. Case No. P-2814, GUILTY beyond reasonable doubt of the crime of Rape under Article 266-A, paragraph 1(a), of Republic Act No. 8353 and imposing upon him the penalty of imprisonment ranging from TWENTY (20) YEARS and ONE (1) DAY TO FORTY (40) YEARS of RECLUSION PERPETUA. Accused is likewise ordered to pay the offended party, MARINEL O. CALONGUI, the sum of Fifty Thousand Pesos (P50,000.00) as civil liability; Fifty Thousand Pesos (P50,000.00) as moral damages; Thirty Thousand Pesos (P30,000.00) as exemplary damages; and

- To pay the costs of the suit.

The accused is credited in full for the period of his preventive imprisonment if he agreed voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners; otherwise, with four-fifths thereof.

SO ORDERED.[7]

Appellant filed a notice of appeal[8] with this Court. In a Resolution[9] dated September 8, 2004 and pursuant to our ruling in *People v. Mateo*,[10] the case was transferred to the Court of Appeals, which rendered the assailed decision affirming with modification the judgment of the trial court thus:

WHEREFORE, the appealed Judgment dated December 23, 2002 is affirmed, subject to the modification of the imprisonment sentence of reclusion perpetua in each case, by deleting the period of twenty (20) years and one (1) day to forty (40) years. The Judgment is affirmed in all other respects.

SO ORDERED.[11]

Hence, this appeal raising the sole issue of whether the prosecution proved appellant's guilt beyond reasonable doubt.

The appeal is bereft of merit.

Regarding the January 1, 1998 rape incident, appellant offers his bare and unsubstantiated denial; a weak, negative and self-serving defense which cannot overcome affirmative testimonies from credible witnesses.[12] In the case at bar, the clear, candid and straightforward testimony of Marinel firmly established that appellant raped her on January 1, 1998.

As regards the September 26, 1998 rape incident, we are not persuaded that what transpired between appellant and Marinel was consensual sexual intercourse. Well-settled is the rule that the sweethearts defense must be proven by compelling evidence, specifically, that the accused and the victim were lovers and that the victim consented to the alleged sexual relations.[13] Appellant's claim that he and Marinel were lovers remained uncorroborated and unsubstantiated. No documentary evidence like mementos, love letters, notes, pictures and the like were presented.[14] Marinel denied the alleged love relationship on direct[15] and cross-examination.[16] Besides, the sweethearts defense does not rule out rape. Even if it were true, the relationship does not, by itself, establish consent for love is not a license for lust.[17]

Appellant further claims that Marinel has bigger physique than him, hence she could have resisted and overcome his advances; or she could have shouted for help because her siblings and parents were nearby.

Appellant's contentions are untenable. Marinel was only 13 years old at the time of the rape incidents. At such a tender age, she could not be expected to put up a resistance as would be expected from a mature woman. Besides, Marinel testified that she was not of bigger built than the appellant at the time she was raped, although at the time she testified two years after the incidents, she indeed look bigger than the appellant.[18] Moreover, her failure to offer tenacious resistance did not make voluntary her submission to the criminal acts.[19]

There is nothing unusual in Marinel's testimony that the sexual intercourse lasted for 30 minutes. A rape victim is not expected to recall every peripheral and sordid detail of her horrible ordeal such as the exact duration of the sexual intercourse. Minor lapses are to be expected when a person is recounting details of a traumatic experience too painful to recall.[20]

The presence of force, threats, and intimidation during the two rape incidents was clearly established, thus:

Q: Now, with respect to the rape incidents you alleged to have occurred on January 1, 1998 at around 2:00 o'clock in the morning, please tell us how did it happen?

A: I was already asleep when I found out that I did not have my shorts anymore.[21]

x x x x

Q: When Alejandro was already on top of you without underwear, what did he do?

A: He just rode on top of me.

Q: What did he do when he rode on top of you?

A: He held both my hands.

Q: Why did he took hold of your two hands?

A: Because I was fighting him.

Q: Why, what was he doing?

A: (Witness is crying.) He placed his "ano" in my "ano."

Q: What is this thing that you named "ano" that was placed in your "ano" that you were referring to?

A: He placed his sex organ or penis inside my ...

(Witness is pointing to her sex organ, vagina.)(22)

x x x x

Q: What did you do also when he was kissing you when his penis inserted into your vagina?

A: I shouted.

Q: How loud did you shout?

A: Not so loud.[23]

x x x x

Q: Why did you not report the matter to your mother or to your parents?

A: Because he told me that if I report the matter to my parents he will kill us.[24]

x x x x

Q: When did he tell you that?

A: When he was doing that thing which is bad to me.

Q: Are you referring to his acts of rape to you?

A: Yes, sir.[25]

x x x x

Q: How did that rape incident happen on September 26, 1998 at around 3:00 o'clock in the morning?

A: He took off my shorts and panty.

Q: Afterwards, what did he do?

A: He went on top of me.

Q: After he went on top of you, what did he do?

A: He inserted his penis into my vagina.[26]

x x x x

Q: Did you resist?

A: Yes, sir.

Q: How did you resist?

A: I kicked him.

Q: After you kicked him twice, what happened?

A: He told me that I should stop moving otherwise he will kill us.[27]

x x x x

Q: Did you not call your parents when he was raping you on September 26, 1998?

A: No, sir.

Q: Why did you not call them?

A: Because he said that if I report the matter he will kill us.[28]

x x x x

Q: Why did it take you to report the matter until November of 1998, when the rape were done to you on January 1 and September 26, 1998?

A: Because he was practically watching my every move and would watch me wherever I go and he was very watchful every time there are conversations and story telling at home.[29]

In sum, we find that the prosecution satisfactorily proved beyond reasonable doubt that appellant had carnal knowledge of Marinel through force, threats and intimidation on January 1, 1998 and September 26, 1998. Under Articles 266-A[30] and 266-B[31] of the Revised Penal Code, as amended by Republic Act No. 8353, or the Anti-Rape Law of 1997, simple rape is punishable by reclusion perpetua. Since the appellant is guilty of two counts of simple rape, the trial court correctly meted out the penalty of reclusion perpetua for each count of rape.

Anent the award of damages, civil indemnity ex delicto is mandatory upon finding of the fact of rape[32] while moral damages is awarded upon such finding without need of further proof because it is assumed that a rape victim has actually suffered moral injuries entitling the victim to such award.[33] Thus, the trial court correctly awarded the sum of P50,000.00 as civil liability and P50,000.00 as moral damages to the offended party in accordance with prevailing jurisprudence.[34]

However, with respect to the award of exemplary damages, the trial court failed to cite any factual and legal bases therefor. In *People v. Catubig*,[35] we held that the presence of an aggravating circumstance, whether ordinary or qualifying, entitles the offended party to an award of exemplary damages. The Revised Rules of Criminal Procedure which took effect on December 1, 2000 now provides that aggravating circumstances must be alleged in the information in order to be validly appreciated by the court.[36] However, the acts of rape and the filing of the two informations in the instant case occurred prior to the effectivity of these rules. Pursuant to *People v. Catubig*, the retroactive application of the Revised Rules of Criminal Procedure cannot adversely affect the rights of a private offended party that have become vested before the effectivity of these rules.[37] Thus, aggravating circumstances which were not alleged in the informations but proved during the trial may be appreciated for the limited purpose of determining the accused's liability for exemplary damages.

This notwithstanding, a review of the records shows that there are no aggravating circumstances present in the case at bar. Dwelling cannot be appreciated because Marinel and the appellant lived in the same house at the time

of the rape incidents.[38] As a result, the rationale for considering dwelling as an aggravating circumstance, i.e., the violation by the offender of the sanctity of the home of the victim by trespassing therein to commit a crime,[39] is absent. Night time cannot likewise be appreciated because there is no proof that the appellant deliberately sought the cover of darkness to facilitate the commission of the crime.[40]

Similarly, relationship is not aggravating because the relationship between Marinel and the appellant as first cousins is not within the concept contemplated in Article 15[41] of the Revised Penal Code.[42] Abuse of confidence is likewise absent because the prosecution did not establish that it facilitated the attainment of the rape. Finally, use of a deadly weapon cannot be appreciated as an aggravating circumstance because Marinel's belated assertion on cross-examination that the appellant used a knife to perpetrate the two rapes raised doubts as to the knife's existence. She also stated on cross-examination that what she saw was an object that "looked like a knife." [43] In view of the foregoing, the award of exemplary damages by the trial court should be deleted.

WHEREFORE, the appeal is DENIED. The October 26, 2005 Decision of the Court Appeals in CA-G.R. CR-H.C. No. 00125 modifying the December 23, 2002 Judgment of the Regional Trial Court, Branch 33 of Pili, Camarines Sur in Criminal Case Nos. P-2813 and P-2814 is AFFIRMED with the MODIFICATION that the award of exemplary damages is DELETED.

SO ORDERED.

Panganiban, C.J., Austria-Martinez, Callejo, SR., and Chico-Nazario, JJ., concur.

[1] Rollo, pp. 137-152. Penned by Associate Justice Fernanda Lampas Peralta and concurred in by Associate Justices Delilah Vidallon Magtolis and Josefina Guevara-Salonga.

[2] Id. at 76-A-86. Penned by Judge Rosario B. Torrecampo.

[3] Id. at 9.

[4] Id. at 10.

[5] Records, vol. 1, p. 15.

[6] Exhibit "B," records, vol. 1, p. 5.

[7] Rollo, pp. 85-86.

[8] Id. at 34.

[9] Id. at 88.

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

[11] Rollo, p. 151.

[12] People v. Serrano, G.R. No. 137480, February 28, 2001, 353 SCRA 161, 170.

[13] People v. Bautista, G.R. No. 140278, June 3, 2004, 430 SCRA 469, 471.

[14] Id. at 490.

[15] TSN, March 27, 2000, p. 20; records, vol. 2, p. 167.

[16] TSN, July 24, 2000, p. 4; records, vol. 2, p. 174.

[17] *People v. Bautista*, supra at 490-491.

[18] TSN, July 24, 2000, p. 5; records, vol. 2, p. 175.

[19] *People v. Vergel*, 374 Phil. 535, 549 (1999).

[20] *People v. Mendoza*, G.R. Nos. 152589 & 152758, January 31, 2005, 450 SCRA 328, 337-338.

[21] TSN, March 27, 2000, p. 8; records, vol. 2, p. 155.

[22] Id. at 10-11; id. at 157-158.

[23] Id. at 11; id. at 158.

[24] Id. at 13; id. at 160.

[25] Id. at 14; id. at 161.

[26] Id. at 15; id. at 162.

[27] Id. at 16; id. at 163.

[28] Id. at 17-18; id. at 164-165.

[29] Id. at 19; id. at 166.

[30] 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

[31] Art. 266-B. Penalties. — Rape under paragraph 1 of the next preceding article shall be punished by reclusion perpetua.

[32] *People v. Gementiza*, 349 Phil. 407, 421-422 (1998).

[33] *People v. Antonio*, G.R. No. 157269, June 3, 2004, 430 SCRA 619, 627.

[34] *People v. Garces, Jr.*, 379 Phil. 919, 939 (2000).

[35] 416 Phil. 102, 120 (2001).

[36] Sections 8 and 9 of Rule 110 of the Rules of Court now provide:

Sec. 8 Designation of the offense. — The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

Sec. 9 Cause of the accusations. — The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment. (Emphasis supplied.)

[37] Supra at 120-121.

[38] *People v. Bañez*, 361 Phil. 198, 214 (1999) citing *People v. Morales*, No. L-35413, November 7, 1979, 94

SCRA 191, 201 and *United States v. Rodriguez*, 9 Phil. 136, 140 (1907).

[39] *People v. Bañez*, *supra*, citing *People v. Balansi*, G. R. No. 77284, July 19, 1990, 187 SCRA 566, 575.

[40] *People v. Degamo*, 450 Phil. 159, 178 (2003).

[41] Art. 15. Their concept. — Alternative circumstances are those which must be taken into consideration as aggravating or mitigating according to the nature and effects of the crime and the other conditions attending its commission. They are relationship, intoxication and the degree of instruction and education of the offender.

The alternative circumstance of relationship shall be taken into consideration when the offended party is the spouse, ascendant, descendant, legitimate, natural, or adopted brother or sister, or relative by affinity in the same degrees of the offender x x x x. (Emphasis supplied.)

[42] See *People v. Balondo*, 140 Phil. 618, 623 (1969); *People v. Lamberte*, 226 Phil. 581, 589 (1986).

[43] TSN, July 24, 2000, p. 6; records, vol. 2, p. 176.

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