

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDUARDO MORAN JR. Y GORDULA, ACCUSED-APPELLANT.

G.R. NO. 170849. March 07, 2007

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

For review is the Decision[1] of the Court of Appeals in CA-G.R. CR-H.C. No. 01352 which affirmed the Decision of the Regional Trial Court (RTC) of Pasig City, Branch 70, finding accused-appellant Eduardo Moran, Jr. y Gordula guilty of the crime of rape and sentencing him to suffer the penalty of reclusion perpetua and ordering him to pay the costs of the suit. The Court of Appeals, however, modified the RTC decision ordering the accused-appellant to pay the victim, AAA,[2] the amount of P100,000.00 as moral and exemplary damages by deleting the award of exemplary damages. It fixed the award of moral damages to P50,000.00 and added the amount of P50,000.00 as civil indemnity.

On 10 November 1994, appellant was charged before the RTC with the crime of rape under Article 355 of the Revised Penal Code, as amended by Republic Act No. 7659, the accusatory portion of which reads:

That on or about the 4th day of November 1994, in the Municipality of Pasig, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs and by means of force, threats and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with AAA who was under 14 years of age, without her consent and against her will.[3]

During his arraignment on 22 November 1994, appellant, with the assistance of counsel, entered a plea of not guilty.

Trial on the merits ensued after appellant waived the pre-trial conference.

The evidence of the prosecution, as culled from the collective testimonies of the victim (AAA), the victim's aunt (BBB), the victim's cousin (CCC), PO3 Digna Cas, and Dr. Rosalie Cosidon, are as follows:

The victim was a 14-year old high school student living under the custody of her aunt, BBB, at the time of the alleged incident. In the evening of 3 November 1994, AAA attended the wake of MMM at the chapel of Arkong Barko, Kapitolyo, Pasig City. The latter is the husband of the former's aunt NNN.

At about two o'clock the following morning, AAA decided to sleep in the house of DDD, another aunt of hers whose house is just a few meters away from where the wake was held. AAA slept on a bench near the door. Also sleeping in the same house were her cousins, nine-year old CCC and four-year old EEE. AAA purposely left the door unlocked because she expected her aunt DDD to come home anytime after attending the wake.

AAA, however, was roused from her sleep when she felt that somebody, whom she could not recognize then because it was dark, hit her in the abdomen. The aggressor's second blow made her unconscious. When she regained consciousness, she found herself lying on the bench feeling drained and weak with her body aching. She was no longer wearing her shorts and underwear. Glancing at her side, she vaguely saw the face of one whom she

later identified as the appellant who was standing beside her. She had earlier seen the appellant, together with her Uncle XXX and Kuya YYY, drinking during the wake. AAA shouted for help but appellant immediately covered her mouth with his hand while poking a pointed object on the right side of her body. Appellant covered her with a blanket, punched her again twice on the stomach and threatened to kill her if she will report the incident. As appellant went out of the house, AAA peeped through the door and with the illumination from a nearby lightpost, she was able to see vividly appellant's face.

Appellant's acts of covering AAA with a blanket and punching her were witnessed by CCC as the latter was awakened when appellant grabbed his blanket and used the same to cover AAA.

When appellant left, AAA turned on the light right away, went to the toilet and washed off the sticky substance from her private part. She went out of the toilet and found her cousins CCC and EEE awake and crying. Grippled in fear, she locked the door. Later, someone knocked at the door. AAA refused to open it for she was afraid. Neither did her cousins move. When the person asked: "AAA, buksan mo ang pintuan. Bakit ka umiiyak?" CCC recognized that it was their Uncle XXX. CCC opened the door. Uncle XXX asked AAA why she was sobbing and she replied: "May pumasok na lalake, natatakot po ako."

Thereafter, the victim's cousins, CCC and EEE, hurriedly left the house to look for their aunt BBB. When they found their aunt they told her: "Pinasok si Ate ng lalake." BBB immediately rushed to DDD's house and found AAA seated on the sofa with her legs folded, crying and shouting hysterically: "Papano na ang kinabukasan ko? Natatakot ako." When she asked AAA what had happened, the latter said that appellant violated her womanhood. Not being able to contain herself, BBB went back to the wake where she confronted appellant.

At around 9:00 o'clock that morning, AAA, together with her aunts and grandmother, went to Camp Crame, Quezon City, for a medico-legal examination. After the examination, Dr. Rosalie Cosidon, a PNP Medico-Legal Officer, found that the subject was no longer a virgin and her hymen has healed lacerations. Congestion or reddening of her labia minora was noted, which according to the examining doctor, could have been caused by friction with a fully erected penis or a hard object. It was also found that the victim's vagina is negative for spermatozoa and that there were no external signs of violence applied against her. The medical report provides:

FINDINGS:

GENERAL AND EXTRAGENITAL:

Fairly developed, fairly nourished and coherent female subject. Breasts are hemispherical with pinkish brown areola and nipples from which no secretions could be pressed out. Abdomen is flat and soft.

GENITAL:

There is moderate growth of pubic hair. Labia majora are full, convex and gaping with the congested labia minora presenting in between. On separating the same disclosed an elastic, fleshy-type hymen with deep healed lacerations at 3 and 9 o'clock and shallow healed laceration at 7 o'clock position. External vaginal orifice offers moderate resistance to the introduction of the examining index finger and the virgin-sized vaginal speculum. Vaginal canal is narrow with prominent rugosities. Cervix is normal in size, color and consistency.

CONCLUSION:

Subject is in non-virgin state physically.

There are no external signs of application of any form of violence.

REMARKS:

Vaginal and peri-urethral smears are positive for gram-negative diplococci but negative for spermatozoa.[4]

After receiving the medico-legal report, they proceeded to the Eastern Police Station where they reported the incident to PO3 Digna Cas and filed a complaint for rape against the appellant.

Appellant denied the charge. He offered a different story. He declared that from 7:00 p.m. of 3 November 1994 until the early morning of 4 November 1994, he was attending the wake of the deceased, MMM. At 7:00 a.m. of that day, he went home to his residence at Pineda, Pasig City. Later, while he was watching television, a policeman arrived at his house, poked a gun at him, placed him in handcuffs, and brought him to the police station for investigation.

Appellant also stated that the case was concocted by NNN, the wife of the deceased and the aunt of the victim, because she wanted to get back at him for being a bad influence to her husband.

Appellant further testified that it was only in the evening of 3 November 1994 that he saw AAA who was serving coffee at the wake and that he had no occasion to see AAA afterwards. While at the wake, he said he watched people gambling. Afterwards, he slept near the coffin and woke up the next morning.

The trial court, in convicting the appellant, gave credence to the version of the prosecution and sentenced him to suffer the penalty of reclusion perpetua. Appellant was also ordered to indemnify his victim in the amount of P100,000.00 by way of moral and exemplary damages.

In finding appellant guilty of the crime of rape, the trial court made the following findings:

The evidence of the prosecution consisting principally in the testimony of the complainant, AAA, substantially points to the fact that she was sexually abused while in a state of unconsciousness after being punched twice in the abdomen by somebody whom she later identified as herein accused. AAA who was only 14 years old at the time of the incident was then sleeping at the house of her Tita DDD in Barrio Kapitolyo, Pasig City, after attending the wake of an uncle. After regaining consciousness, she distinctly remembers feeling her whole body ache and noticing that she was no longer wearing anything from the waist down.

Anent the identity of the perpetrator, there is no question in the Court's mind that it is the accused, Jun Moran, who raped private complainant. As AAA vividly narrated in her direct testimony:

Q. When you felt ache in your body when you regain (sic) consciousness, who (sic) did you see?

A. Naaninagan ko lang po yon mukha ni Jun Moran pero hindi po ako sigurado na siya nga po talaga iyon (TSN, May 30, 1995, p. 14)

x x x x

Q. The first time that you saw the face of Jun Moran, you said that the face of Jun Moran was illuminated that's why you saw him, how far was this Jun Moran when you first saw him from you?

A. Malapit lang po. He was standing where I was lying (TSN, May 30, 1995, p. 17).

x x x x

Q. And what was your first reaction when you saw Jun Moran standing?

A. Sumigaw po ako ng saklolo pero bigla po niyang tinakpan ang bibig ko (TSN, May 30, 1995, p. 19).

x x x x

Q. After Jun Moran held your mouth with his hand, what else did he do if any?

A. He poked something on the right side of my body (TSN, May 30, 1995, p. 20).

x x x x

Q. After you felt this what else happened?

A. Kinumutan niya po ako tapos sinuntok niya ako ulit ng dalawang beses.

x x x x

Q. What happened after you were hit by the punch?

A. Sabi niya "huwag kang magsumbong kahit kanino. Pag nagsumbong ka, papatayin kita" (TSN, May 30, 1995, p. 21).

Accused's identity as the defiler of the complainant was further and more firmly ascertained when the latter testified that when accused went out of the house, she peeped thru the door and saw accused clearly through the illumination given by a light post, thus:

Q. After Jun Moran went out of the door, what did you do?

A. Sinilip ko siya sa may pintuan at nakita ko siya talaga.

Q. What direction did Jun Moran go after he went out of the house?

A. Papunta po sa likod ng bahay.

COURT:

How were you able to recognize the face of Jun Moran and you were able to confirm that it was he indeed?

A. Kasi po yong pintuan at may ilaw sa dulo, sa may poste (TSN, May 30, 1995, pp. 23-24).

Prosecution witness, CCC corroborated private complainant's testimony when he testified that he saw herein accused covering AAA with a blanket and boxing her thrice in the stomach (TSN, Jan. 14, 1998, pp. 6-7).

Testimonies of rape victims who are young and immature are credible. No woman especially of tender age would concoct a story of defloration, allow an examination of her private part, and thereafter pervert herself by being subjected to a public trial, if she were not motivated solely by the desire to tell the truth and to have the culprit apprehended and punished (People v. Henson, 270 SCRA 634).

The defense of accused Eduardo Moran, Jr. that the instant case is a mere brainchild of AAA's aunt NNN as the latter had an ax to grind against him is difficult to believe. No person, much less an aunt of a 14-year old child, would use her niece and allow her to be subjected to the ordeal and embarrassment of a public trial and to expose her private part to examination just to settle a score with the accused (which is itself unclear) (People v. Perez, 270 SCRA 526).

Anent the findings of the PNP-medico legal officer, Dr. Rosalie Cosidon, that complainant is in a non-virgin state and the vaginal smears are negative for spermatozoa, these do not preclude a finding of rape.

As admitted by complainant in her cross-examination, she has had a previous sexual encounter while she was in the sixth grade, or more than two years ago (1992). The absence of spermatozoa in the vaginal smears is not very material in the prosecution for rape case since it is well-settled that penetration, however slight, and not ejaculation, constitutes rape (People v. Antonio De la Paz, Jr., G.R. No. 118316, Nov. 24, 1998). What is essential to prove is the entrance or introduction of the male organ into the labia of the pudendum (Ibid). Neither would the absence of freshly broken hymen or fresh laceration disprove rape (People v. Oliva, 282 SCRA 470).

In the instant case, the medico-legal officer testified that the reddening of private complainants labia minora

could be produced by the rubbing or friction with a hard rough object, not limited to a hardened penis. Since the Court is convinced of the veracity of AAA's testimony, it has no doubt that the reddening of her labia minora was caused by accused's hardened penis.

All-told, accused's attempt to exculpate himself of liability based on his testimony alone, cannot prevail vis-à-vis AAA's testimony which was given in clear, straight-forward and convincing manner.[5]

Appellant filed a notice of appeal.[6] The trial court ordered the transmittal of the entire records of the case to this Court. Thereafter, this Court ordered the referral of the case to the Court of Appeals conformably with the ruling in the case of *People v. Mateo*. [7]

The Court of Appeals, on 27 October 2005, promulgated its Decision affirming the judgment of the trial court convicting the accused. It, however, modified the trial court's award of damages by deleting the award of exemplary damages and ordering the appellant to pay AAA P50,000.00 as civil indemnity. The dispositive portion of the decision pronounces:

WHEREFORE, premises considered, the appeal is DENIED. The assailed Decision dated November 25, 1999 is AFFIRMED with MODIFICATION. Appellant is ordered to pay AAA the amount of P50,000.00 as moral damages and the additional sum of P50,000.00 as civil indemnity.[8]

Hence, the instant recourse.

First, the appellant claims that the Court of Appeals erred in convicting him despite the absence of positive identification since no one witnessed the commission of the crime or could pinpoint him as the perpetrator thereof. Second, he questions the veracity of the victim's narration of what had transpired in the early morning of 4 November 1994. According to him, it was strange for AAA to have left the door unlocked and that if he really intended to rape her, he could have easily done it while she was sleeping instead of punching her to make her unconscious. He could not have sexually abused her, knowing that her cousins were just nearby.

Appellant's contentions are not meritorious.

In cases where the victim could not testify on the actual commission of the rape because she was rendered unconscious at the time the crime was perpetrated, Rule 133, Section 4, of the Revised Rules on Evidence sanctions the courts to rule on the basis of circumstantial evidence, viz:

Sec. 4. Circumstantial evidence, when sufficient. - Circumstantial evidence is sufficient for conviction if:

- (a) There is more than one circumstance;
- (b) The facts from which the inferences are derived are proven; and
- (c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

A related rule is that the totality or the unbroken chain of the circumstances proved leads to no other logical conclusion than the guilt of the appellant.[9]

There have already been instances when this Court convicted an accused of the crime of rape, committed while their victims were unconscious, based on circumstantial evidence. In *People v. Villanueva*, [10] the Court affirmed the conviction for rape, overruling the defense's posture that the prosecution failed to present evidence of the actual defloration. In that case, the accused-appellant claimed that if the victim was unconscious during the sexual assault, she would be incapable of knowing that, indeed, she was raped. Debunking the claim of the accused-appellant that the circumstantial evidence was not sufficient to prove rape, the Court, taking into consideration the events that transpired before and after the victim lost consciousness, i.e., the perpetrator

compulsorily commanded her to remove her panty and forced her to lie down then punched her in the stomach which rendered her unconscious and that when she came to, she felt pain in the nest of womanhood, found accused-appellant guilty of rape.

In *People v. Santiago*,^[11] the accused therein was convicted of rape despite the fact that the prosecution failed to adduce direct evidence as to the actual act of coitus.

Also, in the case of *People v. Tolentino*,^[12] it was shown that the accused therein struck the victim's head that made her pass out. Later, the victim was found on the street near the accused's house still unconscious. When she regained consciousness, she declared that she had been raped and that she could identify the person who molested her. It was in the police line-up that the victim pinned down her assailant. Notwithstanding the absence of details as to how the victim was raped, the Court found the accused guilty of the charge.

In the case under consideration, the prosecution adequately established the following: first, appellant was within the vicinity where the incident happened; second, appellant knocked the victim out by punching her twice in the abdomen; third, when she regained consciousness, she felt pain all over her body and she was no longer wearing her shorts and underwear; fourth, appellant was beside her and covered her mouth when she attempted to shout for help and then covered her with a blanket, punched her again and threatened to kill her if she told anyone of his brutish act; fifth, when she touched her private part, she found sticky substance; sixth, the act of covering the victim and boxing her was corroborated by the victim's cousin; seventh, the medical findings revealed that the labia minora of the victim was congested or reddened which is consistent with her claim that she was molested.

Taken together, the circumstances establish beyond moral certainty that AAA was ravished while she was deprived of consciousness and that appellant was the one culpable for defiling her. These pieces of evidence adduced by the prosecution constitute an unbroken chain of events which ineluctably points to appellant as the guilty person.

Appellant capitalizes much on the fact that no one witnessed his dastardly act of sexually assaulting the victim.

This argument deserves scant consideration. Definitely, the victim could not have witnessed the bestial act of the appellant while she was in the state of unconsciousness. As articulated in *People v. San Pedro*^[13]

Of course, an unconscious woman will not know who is raping her. If the defense theory were to be adopted, then it would be impossible to convict any person who rapes an unconscious woman, except only where a third person witnesses the crime. Henceforth, the clever rapist would simply knock his potential victim out of her senses before actually raping her, to be later immunized from conviction for insufficient identification.

It is precisely when the sexual intercourse is performed when the victim is unconscious that the act constitutes the statutory offense of rape specially when, as in this case, the loss of consciousness was the result of appellant's violent act.^[14] Thus, while AAA was asleep, appellant knocked her out by hitting her twice in the stomach. It was then that appellant succeeded in satisfying his bestial desires. This is evidenced by the fact that the lass, upon regaining consciousness, saw her underwear removed. Appellant threatened to kill her if she squealed. She also felt pain all over her body. Her private part was wet with a sticky substance.

In dire need of an alibi to exculpate him from the charge, appellant clutches at straws. He claims that the instant case is a brainchild of AAA's aunt NNN as the latter had an ax to grind against him. He also insinuates that this case is the victim's attempt to redeem her lost honor, having been caught in a voluntary sexual congress with the appellant. This is preposterous. As correctly ruled by the trial court, no person, much less an aunt of a 14-year old child, would utilize her niece and allow her to be subjected to the ordeal and embarrassment of a public trial and to expose her private part to examination just to get even with the appellant. Likewise incredulous is the claim that

AAA had voluntarily consented to the act of the appellant. It takes a lot of perversity for a 14-year old child to acquiesce to a coitus accompanied by violence and threat. Only a sexually depraved person can even think of this kind of defense. Besides, appellant's defense that what had transpired was consensual is inconsistent with his defense of denial and alibi.

Appellant further endeavors to discredit the victim's credibility, stating that- (a) it is strange that AAA left the door of her aunt's residence unlocked during the early morning of 4 November 1994; (b) he could not have punched her before raping her since he could have easily satisfied his lust while she was asleep; (c) the incident could not have taken place within the hearing and seeing distance of her cousins; (d) it is incredible that he did not escape before AAA recovered her consciousness; and (e) AAA's wetness as a result of the incident negates rape.

The victim clarified that she left the door unlocked because she was expecting her aunt to come into the house anytime after attending the wake in the nearby chapel and for her not to be disturbed from her sleep. This explanation is credible. Young as she is, the victim was unsuspecting that someone who knew her grief over the loss of a relative was lurking in the dark ready to devour her maidenhood. Protecting her safety from despicable-minded mortals was the least of her concerns.

The assertion that appellant need not hit the victim as he could have raped her while she was slumbering is feeble. Appellant purposely knocked her out so he could have carnal knowledge of her without any resistance and to prevent her from creating noise that could possibly wake up her cousins who were also sleeping beside her.

Appellant cannot put premium on the victim's admission that she had sexual intercourse two years before the questioned incident. Suffice it to state that the reddening of AAA's labia minora could not have been caused by her sexual experience two years before the assailant raped her.

The fact that appellant did not leave the house before AAA regained consciousness does not at all demonstrate his innocence. He stayed and waited for her to wake up in order to threaten her not to tell the incident to anyone and to instill insurmountable fear in the young mind of the lass that if she told anyone he would make good his threat.

As to appellant's suggestion that AAA experienced an orgasm, thus, rendering the incident consensual, is unfounded. When she declared that there was sticky substance that came out of her organ, she was implying that such substance came from appellant, thus:

Q - After you saw Moran left the house, what did you do?

A - Binuksan ko po yong ilaw at pumunta agad ako sa banyo at naghugas ako.

Q - Why did you wash?

A - Kasi po marami pong lumabas sa kin na $\frac{1}{2}$

Q - You were wet?

A - Opo.

Q - You said that maraming lumabas sayo, was this thing sticky?

A - Opo.[15]

The Court has long adhered to the rule that findings of the trial court on the credibility of witnesses and their testimonies are accorded great respect unless it overlooked substantial facts and circumstances, which, if considered, would materially affect the result of the case.[16] In rape cases, the evaluation of the credibility of witnesses is addressed to the sound discretion of the trial judge whose conclusion thereon deserves much weight

and respect because the judge has the direct opportunity to observe them on the stand and ascertain if they are telling the truth or not.[17] This deference to the trial court's appreciation of the facts and of the credibility of witnesses is consistent with the principle that when the testimony of a witness meets the test of credibility, that alone is sufficient to convict the accused.[18] In the case under consideration, this Court finds that the trial court as well as the Court of Appeals committed no error in giving credence to the evidence of the prosecution and finding appellant guilty of the charge.

The Court of Appeals' ruling deleting the award of exemplary damages and awarding to the victim the amount of P50,000.00 as civil indemnity in addition to the amount of P50,000.00 as moral damages is also affirmed.

Jurisprudence has it that exemplary damages may be given only when one or more aggravating circumstances are alleged in the information and proved during the trial.[19] Here, none are attendant. Thus, the deletion of the award of the same is proper.

In accordance with prevailing jurisprudence, the award of P50,000.00 as civil indemnity in favor of the victim is in order.[20] Likewise, the award of P50,000.00 as moral damages is justified conformably with the recent pronouncement of the Court.[21]

WHEREFORE, the Decision of the Court of Appeals dated 27 October 2005, affirming the Decision dated 7 July 2004 of the Regional Trial Court, Branch 70, Pasig City, in Criminal Case No. 107249-H, finding accused-appellant Eduardo Moran, Jr. guilty beyond reasonable doubt of rape and sentencing him to suffer the penalty of RECLUSION PERPETUA with the MODIFICATION that he is ordered to pay the victim P50,000.00 as civil indemnity and P50,000.00 as moral damages, is hereby AFFIRMED.

SO ORDERED.

Ynares-Santiago, and Austria-Martinez, JJ., concur.

Callejo, Sr., J., on leave.

Nachura, J., no part.

[1] Penned by Associate Justice Juan Q. Enriquez, Jr. with Associate Justices Conrado M. Vasquez, Jr. and Vicente Q. Roxas, concurring; rollo, pp. 3-13.

[2] Under Republic Act No. 9262 also known as "Anti-Violence Against Women and Their Children Act of 2004" and its implementing rules, the real name of the victim and those of her immediate family members are withheld and fictitious initials are instead used to protect the victim's privacy.

[3] Records, p. 1.

[4] Id. at 18.

[5] Rollo, pp. 18-21.

[6] Records, p. 250.

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

[8] Rollo, p. 10.

[9] *People v. Tolentino*, G.R. No. 139834, 19 February 2001, 352 SCRA 228, 233.

[10] 459 Phil. 856, 867-868 (2003).

- [11] G.R. No. 46132, 28 May 1991, 197 SCRA 556.
- [12] G.R. No. 139351, 23 February 2004, 423 SCRA 448.
- [13] G.R. No. 94128, 3 February 1993, 218 SCRA 384, 388.
- [14] *People v. Palapal*, G.R. No. L-42646, 29 June 1982, 114 SCRA 783, 787.
- [15] TSN, 30 May 1995, pp. 25-26.
- [16] *People v. Dagpin*, G.R. No. 136254, 4 December 2000, 346 SCRA 860, 869; *People v. Velasquez*, G.R. Nos. 137383-84, 23 November 2000, 345 SCRA 728, 736.
- [17] *People v. Digma*, 398 Phil. 1008, 1023 (2000).
- [18] *People v. Cula*, 385 Phil. 742, 752 (2000).
- [19] *People v. Invencion*, 446 Phil. 775, 792 (2003); *Talay v. Court of Appeals*, 446 Phil. 257, 278-279 (2003).
- [20] *People v. Alviz*, G.R. Nos. 144551-55, 29 June 2004, 433 SCRA 164, 176.
- [21] *People v. Tolentino*, *supra* note 10 at 444; *People v. Cultura*, G.R. No. 133831, 14 February 2003, 397 SCRA 368, 380.

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