

PEOPLE OF THE PHILIPPINES, APPELLEE, PRESENT: VS. EDGARDO P. NOVERAS, APPELLANT.

G.R. NO. 171349. April 27, 2007

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Before this Court for review is the Decision[1] of the Court of Appeals (CA) in CA-G.R. CR No. 01394 dated September 30, 2005 which affirmed with modification the Decision[2] of the Regional Trial Court (RTC) of Manila, Branch 6, in Criminal Case No. 88-61880 convicting appellant Edgardo P. Noveras of rape.

The Case for the Prosecution

The victim (BBB), who is the niece of the appellant's wife,[3] worked as the couple's household help in their residence at Sta. Ana, Manila. BBB was paid a monthly wage of P300.00.[4] The appellant was an overseas contract worker, while the appellant's wife worked at a barber shop.[5]

On March 17, 1988, the appellant's wife slept at her sister's house in Laguna.[6] The following were left in the house: BBB; the spouses' children — DDD (the daughter of appellant's wife by another man), EEE (the appellant's daughter with another woman), a five-year-old girl, and a baby less than a year old; a cousin of the children; and the appellant, who was then in the country. At around 4:00 a.m. on March 18, 1988, while BBB and the two small children were sleeping in the sala, the appellant arrived, drunk.[7] BBB stood up and went to the comfort room. She returned to the sala, took her blanket and pillow, then went inside the room where the other three children were sleeping.[8]

As she was preparing to go back to sleep, the appellant went inside the room where BBB and the children were, and proceeded to the bathroom. He asked BBB if she was able to gather water, and she answered in the affirmative. The appellant told her to turn on the faucet outside because he wanted to take a bath with "fresh water," not with what was stored inside the container. BBB stood up to do as she was told, but as soon as she was outside, the appellant told her not to turn the faucet on anymore, and that the stored water would do. BBB went back inside the house, but to her surprise, the appellant suddenly embraced her. He then poked a knife on the left side of her neck when she reached the sala. BBB pleaded to the appellant saying, "Tiyong, h'wag po, maawa po kayo sa akin." The appellant, who was wearing only his underwear, just kept on kissing her.

Meanwhile, EEE had stood up and had gone into the sala. The appellant yelled at her and ordered her to get back inside the room. EEE did as she was told. BBB continued to plead to be left alone. Eventually, the appellant gave way and released her.[9]

BBB then went inside the room, sat at the edge of the bed and cried. EEE was also crying. BBB was about to go back to sleep when the appellant ordered her to prepare coffee. BBB pleaded to EEE to prepare the beverage, but the child refused because she was afraid of her father. BBB was then forced to do as she was told. By the time she gave the coffee to the appellant, the latter was again holding a knife and would not let her go back inside the

room. BBB cried and pleaded that she be released. The appellant assured her that he would ask her some things about her aunt. He then ordered her to sit on the sofa, and asked if his wife would be arriving home. BBB answered in the negative.

As the appellant was inching closer and closer to her, BBB stood up. The appellant grabbed her by the hand and told her to stay put. BBB sat down, and the appellant started kissing her. BBB pleaded for mercy. The appellant inserted his hand inside her dress, held her breast then sucked it. He then kissed BBB's private part and told her to lie on the sofa. BBB tried to resist and kicked the appellant. She also tried to wake up the five-year-old child by kicking her, to no avail. BBB was forced to lie down on the sofa, and the appellant inserted his penis into her private part.[10]

Afterwards, BBB stood up and went to the comfort room to urinate. As she stepped out of the comfort room, she saw EEE, all dressed up for school, crying and just standing there.[11] BBB went out of the house to buy bread. She again saw EEE on the way back, and told her about the incident. EEE replied that she knew about it. EEE instructed BBB to follow her to the house of a relative, and they later went to their aunt's house nearby. Eventually, the appellant's wife was informed about the incident, and she declared that the appellant should be arrested. BBB, together with a relative, reported the matter to the authorities.[12]

After the police had taken BBB's sworn statement, police officers Leonardo Garduce, Balmadres and Samuel Rojas, together with BBB and her aunt, went to the appellant's house on board a jeep. The three policemen alighted a few meters from the appellant's house, and instructed BBB and her aunt to remain in the jeep. They came across a man on their way, and asked if he knew where the appellant lived. The man, who turned out to be the appellant himself, pointed to the house then started to run. Upon seeing this, BBB and her aunt shouted to the policemen that the man who had run past them was the appellant. The policemen gave chase until the appellant was arrested at a street somewhere in Sta. Ana, Manila.[13] Leonardo Garduce warned the appellant not to resist and to go with them peacefully. He also apprised the appellant of his constitutional right to remain silent and to be assisted by counsel.[14] Appellant went with the arresting police officers to Precinct No. 6. After the investigation, the corresponding booking sheet and arrest report were prepared.[15]

Thereafter, BBB went to the National Bureau of Investigation (NBI) for medical examination. She was examined by Medico-Legal Officer Carmelita B. Belgica, who prepared a medical report with the following conclusions: (1) no evident sign of extragenital physical injuries noted on the body of the subject at the time of examination; and (2) fresh healing laceration.[16]

On March 22, 1988, BBB filed a Complaint[17] before the RTC of Manila. An Amended Complaint was filed on April 13, 1988, and the accusatory portion reads:

That on or about March 18, 1988, in the City of Manila, Philippines, the said accused, by means of force and intimidation, to wit: by holding her breast, removing her panty and lying on top of her, and threatening to kill her with a bladed weapon should she resist, did then and there willfully, unlawfully and feloniously have carnal knowledge of the undersigned against her will and consent, to the damage and prejudice of the undersigned in such amount as may be awarded to her under the provisions of the New Civil Code.

Contrary to law.[18]

The appellant posted a P100,000.00 bail bond through the Utility Assurance Corporation,[19] and was released on April 25, 1988. However, for failure to renew his bail bond, the appellant was again arrested,[20] but later released[21] after the required bond was filed.

The Case for the Defense

The appellant admitted that he talked to BBB at 4:00 a.m. on March 18, 1988. He declared that he wanted to know how he could get in touch with BBB when he was already in Saudi Arabia.[22] He likewise admitted that he kissed BBB on the cheeks then on the lips, but since BBB did not have a negative reaction, he continued to kiss her. The appellant recounted that they were sitting on the sofa. Then, he knelt between her thighs, raised her shirt, kissed her breasts, and touched her between her thighs. Still, BBB did not complain and just told him that somebody might see them in that position. He then kissed her private part, removed her panties, then his briefs. After the sexual act was consummated, the appellant brought water for them. He then told BBB to prepare breakfast.

The appellant also admitted that he talked to the apprehending officers prior to his arrest and that he did not reveal his identity. He claimed, however, that he was in a hurry then because he had an appointment.[23]

The appellant was initially cross-examined on May 28, 1992, but due to his repeated failure to present himself, his testimony was not completed. The prosecutor moved that such testimony be considered to be of no value and prayed that it be erased from the record. The court granted the motion in an Order[24] dated January 11, 1994. The pertinent portion of the order reads:

In view of the foregoing, the motion of the prosecution to consider the testimony of the accused as of no value or erased from the record because he failed to finish his testimony is hereby granted. Failure on the part of the accused to present himself for cross-examination up to this point in time and to present any evidence is hereby considered as waiver of his right to present further evidence for his defense and this case is now submitted for decision.

SO ORDERED.[25]

The Ruling of the Trial Court

On April 14, 1997, the RTC rendered a Decision[26] finding the appellant guilty beyond reasonable doubt of the crime of rape. The fallo reads:

WHEREFORE, after painstakingly evaluating the evidence on record, this court has come to the conclusion, and so holds, that accused Edgardo Noveras y Pascua is GUILTY beyond reasonable doubt, as principal, of the crime of rape defined and penalized in Article 335 of the Revised Penal Code, and hereby imposes upon him the penalty of Reclusion Perpetua. The penalty of death cannot be meted out as its imposition was suspended or prohibited by the 1987 Constitution.

The accused is further ordered to pay to the complainant the amount of One Hundred Thousand (P100,000.00) Pesos as moral damages.

SO ORDERED.[27]

The trial court concluded that the evidence of the prosecution was undisputed, in view of the fact that the appellant's testimony was considered erased from the record for failure to present himself for cross-examination. The RTC was convinced that the prosecution proved beyond doubt that the appellant had committed the crime of rape through the clear, positive, straightforward and credible testimony of the victim. It likewise gave credence to the testimony of the medico-legal officer who examined the victim within 12 hours from the time of the incident.[28]

The case initially came up to this Court via notice of appeal; however, in deference to the ruling in *People v. Mateo*,[29] the case was transferred to the CA.

The Ruling of the Court of Appeals

In his Brief,[30] the appellant alleged that what transpired between him and BBB was consensual. Appellant pointed out that the alleged victim did not resist; she did not even exert any effort to ask for help from her cousins, who were sleeping at the foot of the sofa. He further claimed that BBB had every opportunity to escape, but that she did not.[31]

On September 30, 2005, the CA affirmed the decision of the trial court with modification.[32] The appellate court reduced the award of moral damages from P100,000.00 to P50,000.00. The fallo of the decision reads:

WHEREFORE, the appealed Decision is AFFIRMED with MODIFICATION. Appellant EDGARDO NOVERAS y PASCUA is hereby ordered to pay private complainant [BBB] moral damages in the reduced amount of Fifty Thousand Pesos (P50,000.00).

SO ORDERED.[33]

In finding the appellant guilty as charged, the CA also considered the excluded testimony of the appellant "in the higher interest of substantial justice." The CA concluded that BBB had truthfully narrated how she was sexually assaulted by the appellant, and that she had no improper motive to so testify other than a desire to tell the truth. The appellate court ruled that the following factors rendered BBB virtually helpless when the crime was committed: BBB's status as a domestic servant; her age; the absence of her aunt who could have protected her; her gender and physique; and the fact that the appellant exerted moral ascendancy over her and was armed with a knife.

The Ruling of the Court

Indeed, a rape charge is a serious matter with pernicious consequences both for appellant and complainant; hence, utmost care must be taken in the review of a decision involving a conviction for rape.[34] In reviewing rape cases, this Court has always been guided by three well-entrenched principles: (1) an accusation of rape can be made with facility and while the accusation is difficult to prove, it is even more difficult for the person accused, though innocent, to disprove; (2) considering the intrinsic nature of the crime, only two persons being usually involved, the testimony of complainant should be scrutinized with great caution; and (3) the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense.[35] Accordingly, in resolving rape cases, primordial consideration is given to the credibility of the victim's testimony.[36]

It is likewise a settled principle that the trial court's conclusions on the credibility of witnesses in rape cases are generally accorded great weight and respect, and at times even finality, unless there appear in the record certain facts or circumstances of weight and value which the lower court overlooked or misappreciated and which, if properly considered, would alter the result of the case.[37]

After a careful review of the records of the case, we find no cogent reason to overturn the trial court's assessment of the victim's credibility. We find BBB's account to be truthful and credible, having convincingly narrated in detail how the crime was committed, thus:

Q: And what happened when you entered the house?

A: When I entered the house, I was surprised when [appellant] suddenly embraced me, ma'am, and poked a knife at me.

Q: Will you please tell us where, particularly, were you in the house where [appellant] embraced you as you entered?

A: In the sala, ma'am.

Q: And what did you do when he embraced you?

A: I shouted, "Tiyong, huwag po, maawa po kayo sa akin."

Q: What did [appellant] do?

A: He told me to keep silent or else he will kill me.

Q: While [appellant] was embracing you, may you please tell us what hand was he holding the knife?

A: With his right hand, ma'am.

Q: And what did he do with the knife that he was holding while he was embracing you?

COURT:

She said he poked the knife at her.

ATTY. BONDOC:

Q: May you please tell this Honorable Court what part of your body did he poke the knife?

A: At the upper left portion of my neck, ma'am, just behind the left ear.

Q: May you please tell us, Miss Witness, if you know how far is the knife to your nape or behind the left ear?

A: It is very near because I felt it on my skin.

Q: Miss Witness, aside from embracing you, what did [appellant] do while he was holding that particular knife, if any?

A: He was kissing me, ma'am.

Q: Please tell us, Miss Witness, your position and the position of [appellant] while he was embracing you at that particular time?

A: We were standing, ma'am.

x x x x

Q: And what happened, Miss Witness, after that?

A: After handing to him the cup of coffee, I was about to enter the room again but he prevented me from doing so.

Q: How did he prevent you from entering the room, Miss Witness?

A: He held one of my hands, ma'am, while his other hand was holding the knife.

Q: And what did you do when he held one of your hands?

A: I cried again and pleaded again and I asked him to go to sleep because he was drunk.

Q: What happened after that?

A: He told me that he will only ask me some things about [my aunt].

Q: When you were talking to him and he was talking to you, may you please tell us if he was still holding your hand?

A: Yes, ma'am.

Q: And how about the knife, Miss Witness?

A: He was still holding it, ma'am.

Q: And what happened after?

A: I continued to beg him and I kept on crying, ma'am.

Q: And what did [appellant] do when you pleaded to him and was crying?

A: He told me that nothing will happen to me if I would obey him.

Q: What did you do, Miss Witness?

A: I continued to tell him to go to sleep because he was drunk.

Q: And after that, what happened?

A: He told me to sit on the sofa.

Q: You mentioned a while ago that [appellant] was also seated on the sofa, how far were you from [him]?

A: I was on one end of the sofa while [he] was on the other end of the sofa.

x x x x

Q: While you were sitting, will you please inform the Honorable Court what happened aside from your conversation with him?

A: While he was sitting down, he was getting closer and closer to me, ma'am.

Q: You told us that you were not looking at him, why were you not looking at him?

A: Because I was afraid, ma'am.

x x x x

Q: How far did you reach, Miss Witness, inching his way towards you?

A: When he was already very close to me, I stood up but he grabbed my hand.

x x x x

Q: And what happened when you sat down again, Miss Witness?

A: When I sat down, he was already seated next to me, ma'am, and he started kissing me.

Q: And what else happened aside from [appellant] kissing you?

A: While he was kissing me, I was pleading to him to have mercy on me. I was pleading to him to have mercy because my father depends on me.

Q: And what did [appellant] do aside from kissing you?

A: He inserted his hand inside my clothes.

Q: Aside from that, Miss Witness, aside from inserting his hand, was he telling you anything?

ATTY. CABUG-OS:

Objection, Your Honor, leading.

COURT:

Sustained.

Q: Miss Witness, what did you do when he inserted his hand inside your dress?

A: I tried to prevent his hand from getting inside my dress.

Q: And what happened after that?

A: But he still inserted his hand and he held my breast. I pleaded to him again and asked him why he was doing that to me when I have done nothing wrong to him

Q: At this point, are you ready and prepared to tell this Honorable Court the things that happened after [appellant] inserted his hand and you were pleading to him, may you please inform us now, Miss Witness, what happened?

A: While he was holding my breast, he was also inserting his head inside my dress and sucked my breast and I kept on pleading to him not to do that to me and to have mercy on me but he continued with what he was doing and kissed my private part.

Q: And what did you do, Miss Witness?

A: I was trying to prevent him from doing those things to me and pleaded to him to have mercy on me.

Q: What happened after he kissed your private part?

A: He sucked my breast again.

x x x x

Q: After that, Miss Witness, what happened?

A: He told me to lie down on the sofa.

Q: And what happened next, Miss Witness, when he asked you to lie down on the sofa?

A: I did not want to obey him.

Q: What did [appellant] do?

A: He told me that something bad will happen to me if I would not follow him.

Q: And did you follow him?

A: I said "Tiyong, huwag po," and then he was holding the knife.

Q: And what happened while he was holding the knife?

ATTY. CABUG-OS:

The questions have been leading ever since, your Honor.

COURT:

No, she is being asked what happened.

A: He forced me to lie down. I resisted and kicked him but he was very strong.

Q: And what happened next, Miss Witness, after that?

A: When he was able to force me to lie down on the sofa, he inserted his penis inside my vagina.

Q: Will you please inform this Honorable Court if [appellant] was able to insert his private part to your private part?

A: Yes, ma'am.

Q: What did you feel when he inserted his private part to your private part?

A: I felt pain.[38]

The physical evidence also corroborates the victim's testimony. According to the Medico-Legal Report[39] of Dr. Belgica, the victim suffered hymenal lacerations at 6:00 and 3:00 positions. Dr. Belgica also testified that the fresh healing laceration indicates force, and that the common cause of laceration might have been sexual intercourse.[40] It is settled that when the victim's testimony is corroborated by the physician's finding of penetration, there is sufficient foundation to conclude the existence of the essential requisite of carnal knowledge. Laceration, whether healed or fresh, is the best physical evidence of forcible defloration.[41] The absence of spermatozoa does not necessarily mean that rape was not committed; the slightest penetration of the female organ is enough. In this case, the lacerations on the victim's hymen sufficiently established that sexual intercourse took place.[42]

We are not persuaded by the appellant's insistence that he and BBB had consensual sex. The failure of the victim to shout for help or resist the sexual advances of the rapist is not tantamount to consent. Physical resistance need not be established in rape when threats and intimidation are employed, and the victim submits herself to her attackers because of fear. Besides, physical resistance is not the sole test to determine whether a woman involuntarily succumbed to the lust of an accused. Rape victims show no uniform reaction. Some may offer strong resistance while others may be too intimidated to offer any resistance at all.[43]

In the instant case, BBB testified that before she was sexually abused, appellant poked a knife at her and threatened to kill her. The act of holding a knife is by itself strongly suggestive of force or at least intimidation, and threatening the victim with a knife is sufficient to bring her into submission.[44]

More importantly, BBB is the appellant's niece, being the daughter of his wife's sister; she resided with appellant and his wife and worked as their household help. Appellant therefore had moral ascendancy over her. It is a settled rule that in rape committed by a close kin, moral ascendancy takes the place of violence and intimidation.[45]

Rape is defined and penalized under Article 335 of the Revised Penal Code, as amended:

Article 335. When and how rape is committed. — Rape is committed by having carnal knowledge of a woman under any of the following circumstances.

- By using force or intimidation;
- When the woman is deprived of reason or otherwise unconscious; and
- When the woman is under twelve years of age or is demented.

The crime of rape shall be punished by reclusion perpetua.

Whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death. (Emphasis supplied)

On whether the aggravating circumstance of nighttime may be considered against the appellant, the records show

that on that fateful day, he arrived home at 4:00 a.m. There is, however, no indication as to the exact time when the victim was actually raped. Her testimony shows that after the appellant had his way with her, she went to the comfort room and when she went out, she saw one of the children dressed up for school; she then went out to buy bread for breakfast.[46] The aggravating circumstance of nighttime cannot thus be appreciated since there is no proof that the crime began and was completed at nighttime. However, the use of a bladed weapon in the commission of the crime was properly alleged and sufficiently proven during the trial of the case.

The crime committed is therefore punishable by two indivisible penalties, i.e., reclusion perpetua and death. According to Article 63 of the Revised Penal Code, where the penalty prescribed by law is composed of two indivisible penalties, and there being no mitigating or aggravating circumstances in the commission of the crime, the lesser penalty shall be imposed. Other than the use of a deadly weapon (which is already taken into account to raise the penalty to reclusion perpetua to death), no other aggravating circumstance was alleged and proven. Hence, the trial and appellate courts correctly imposed the penalty of reclusion perpetua against the appellant.

The victim is entitled to moral damages without need of proof other than the fact of the rape itself because it is assumed that the victim has suffered moral injuries entitling her to such an award.[47] Thus, the award of P50,000.00 in moral damages is in order.

The appellate court erred, however, in not awarding civil indemnity to the victim. An award of P50,000.00 as civil indemnity is mandatory upon the finding of the fact of rape.[48] In addition, she is entitled to P25,000.00 representing exemplary damages, since the qualifying aggravating circumstance of use of a deadly weapon attended the commission of the crime.[49]

IN LIGHT OF ALL THE FOREGOING, the Decision of the Court of Appeals in CA-G.R. CR No. 01394 is **AFFIRMED WITH MODIFICATIONS**. Appellant Edgardo P. Noveras is hereby ordered to pay the victim P50,000.00 as civil indemnity and P25,000.00 as exemplary damages, in addition to the P50,000.00 awarded by the CA as moral damages.

SO ORDERED.

Ynares-Santiago, Austria-Martinez, Chico-Nazario, and Nachura, JJ., concur.

[1] Penned by Associate Justice Magdangal M. de Leon, with Associate Justices Portia Aliño-Hormachuelos and Mariano C. del Castillo, concurring; rollo, pp. 3-13.

[2] Penned by Assisting Judge Romulo T. Arellano (pursuant to SC Adm. Order 153-94, as amended), CA rollo, pp. 25-35.

[3]TSN, February 2, 1990, p. 15.

[4] Id. at 18.

[5] Id. at 20.

[6] Id. at 38.

[7] Id. at 23-24.

[8] Id. at 24-25.

[9] Id. at 27-34.

[10] Id. at 34-45.

[11] TSN, August 3, 1990, p. 17.

[12] Id. at 15-22.

[13] TSN, October 20, 1988, p. 9.

[14] TSN, November 18, 1988, p. 9.

[15] Id. at 10.

[16] Records, p. 52.

[17] The pertinent portion of the complaint reads:

That on or about March 18, 1988, in the City of Manila, Philippines, the said accused, by means of force and intimidation, to wit: by holding her breast, removing her panty and lying on top of her and threatening to kill her with a bladed weapon should she resist, did then and there willfully, unlawfully and feloniously have carnal knowledge of the undersigned against her will and consent.

Contrary to law (records, p. 1).

[18] Records, p. 4.

[19] Id. at 32.

[20] Id. at 138.

[21] Id. at 151.

[22] TSN, March 13, 1992, p. 6.

[23] Id. at 8-16.

[24] Records, pp. 250-251.

[25] Id. at 251.

[26] CA rollo, pp. 25-35.

[27] CA rollo, pp. 34-35.

[28] Id. at 33-34.

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

[30] CA rollo, pp. 109-122.

[31] Id. at 118-120.

[32] Rollo, pp. 3-13.

[33] Id. at 12.

[34] People v. Malones, G.R. Nos. 124388-90, March 11, 2004, 425 SCRA 318, 329.

[35] People v. Mangitngit, G.R. No. 171270, September 20, 2006, 502 SCRA 560, 572; People v. Quiachon, G.R. No. 170236, August 31, 2006, 500 SCRA 704, 714; People v. Malones, *supra*.

[36] People v. Mangitngit, supra; People v. Quiachon, supra.

[37] People v. Mangitngit, supra, at 572-573; People v. David, G.R. Nos. 121731-33, November 12, 2003, 415 SCRA 666, 672.

[38] TSN, February 2, 1990, pp. 30-45.

[39] Exhibit "A," records, p. 52.

[40] TSN, August 18, 1988, pp. 11-13.

[41] People v. Galido, G.R. Nos. 148689-92, March 30, 2004, 426 SCRA 502, 515-516; People v. Malones, supra, at 335; People v. Rabago, 448 Phil. 539, 550 (2003).

[42] People v. Malones, supra, at 335.

[43] People v. David, supra, at 681.

[44] People v. Galido, supra, at 515; People v. David, supra, at 680-681; People v. Gutierrez, 451 Phil. 227, 239-240 (2003).

[45] People v. Gutierrez, supra, at 240.

[46] TSN, August 3, 1990, pp. 17-18.

[47] People v. Tonyacao, G.R. Nos. 134531-32, July 7, 2004, 433 SCRA 513, 534; People v. Ulit, G.R. Nos. 131799-801, February 23, 2004, 423 SCRA 374, 405.

[48] People v. Ulit, supra.

[49] People v. Tonyacao, supra; People v. Ulit, supra.

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