

THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. EDWIN GAYETA Y ROBLO ALIAS AZCUNA, “FREDDIE,” APPELLANT. D E C I S I O N

G.R. No. 171654. December 17, 2008

Ponente: TINGA, J.

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TINGA, J.:

Before us on automatic review is the Court of Appeals' decision[1] dated 25 November 2005 in CA-G.R. C.R.-H.C. No. 00111 which affirmed with modifications the judgment[2] of the Regional Trial Court (RTC) finding Edwin Gayeta (appellant) guilty of the crime of robbery with rape in Criminal Case No. P-5420 and of the crime of robbery in Criminal Case No. P-5422.

Appellant, together with a co-accused, was charged in two separate informations filed before the RTC of Pinamalayan, Oriental Mindoro, to wit:

CRIMINAL CASE NO. P-5422

That on or about the 24[th] day of [July 1995] at 9:00 o'clock in the evening, more or less, in [B]arangay [xxx],[3] [P]rovince of Oriental Mindoro, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and acting in common accord, while armed with a firearm, then and there willfully, unlawfully and feloniously and by means of violence and intimidation by hitting with fistic blows one BENJAMIN NICER and thereafter, with intent to gain, took and carried away cash money in the amount of TWO THOUSAND FIVE HUNDRED (P2,500.00) PESOS, more or less, from Conchita Nicer, to the damage and prejudice of the Offended Party in the aforementioned amount.

CONTRARY TO LAW.[4]

CRIMINAL CASE NO. 5420

That on or about the 24[th] day of [July 1995] at 9:00 o'clock in the evening, more or less, in [B]arangay [xxx], province of Oriental Mindoro, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and acting in common accord, while armed with a firearm, then and there willfully, unlawfully and feloniously and by means of violence and intimidation, and with intent of gain, took and carried away cash money, wrist watch and ring with a total value of TEN THOUSAND (P10,000.00) PESOS from Spouses [AAA] and [BBB][5] to the damage and prejudice of the latter; that on the occasion of said robbery, the herein accused Freddie Gayeta in pursuance of their conspiracy, did then and there willfully, unlawfully and feloniously and with lewd and unchaste design, have carnal knowledge of [AAA] against her will, to the damage and [prejudice of] the latter.

That in the commission of the crime, the aggravating circumstances of [evident premeditation], abuse of superior strength, dwelling and nocturnity are attendant.

CONTRARY TO [ART. 294], AS AMENDED [by] R.A. 7659.[6]

The factual antecedents, as summarized by the prosecution, are as follows:

On 24 July 1995, at around 8:00 p.m., spouses Benjamin (Benjamin) and Conchita (Conchita) Nicer were drinking tuba when two armed men barged into their house. One of the armed men, later identified as Arnaldo Reano (Reano), was wearing a bonnet while the other, identified as appellant, was wearing a hat. The duo announced a hold-up and ordered the spouses to lie down on the floor. Conchita initially refused to lie down until appellant who incidentally had a bayonet in his other hand, poked a gun at her neck. Reano meanwhile kicked and boxed Benjamin until the latter bled and eventually lost consciousness. Appellant then ordered Conchita to hand over their money. Conchita went up to the room to get P2,500.00 and gave it to appellant. When the duo fled, the Nicer couple reported the incident to the barangay officials who immediately sought police assistance.

Meanwhile, spouses BBB and AAA were watching television in their living room when two armed men, also later identified as Reano and appellant, entered their house. They likewise ordered the spouses to lie down and asked them to produce their money. BBB asked AAA to get the money from their store, which was located some twenty (20) meters away from their house. Appellant accompanied AAA to the store while Reano stayed with BBB.[7]

Upon reaching the store, AAA took P5,000.00 and gave it to appellant. While in the act of getting the money, appellant inserted one of his hands inside AAA's short pants. Afterwards, appellant ordered her to undress and lie down on the floor. Appellant also removed his pants, lay on top of AAA, and forcibly had sexual intercourse with her. They went back to the house where appellant also forced AAA to hand over several pieces of jewelry. AAA immediately told BBB that appellant had sexually abused her.[8]

The duo fled but came back a few minutes later. Upon seeing them, BBB took the bayonet and tried to stab appellant, but it was deflected by a hard object and fell on the floor. BBB then tried to grab appellant's gun and they grappled for its possession. The gun fired, hitting BBB on his shoulder but he managed to successfully take possession of the gun and fired it twice in appellant's direction. He missed, however. BBB ran after appellant and saw the responding policemen.[9] The two managed to escape.

SPO2 Mario Matining and SPO3 Ronaldo Morada had been conducting an investigation inside the house of the Nicers when they received a report that a robbery was then taking place at the house of Spouses AAA and BBB.[10] They rushed to the other crime scene but failed to apprehend the suspects.[11] They recovered a scabbard with a "JR" marking and a bonnet with red stripes. SPO2 Matining identified the scabbard as owned by Reano, whose nickname was "Junior," having known and worked with the latter for some time.[12]

The policemen conducted a pursuit operation in the early morning of 25 July 1995; they arrested Reano and appellant in their respective houses.

Spouses AAA and BBB, on the other hand, went to a hospital where they were subjected to a physical examination. Dr. Preciosa M. Soller examined AAA and issued the following findings in her medico-legal report:

- scanty pubic hair
- old healed complete laceration of hymen at 3 o'clock, 5 o'clock, 8 o'clock and 11 o'clock
- multiparous [vagina] but rugae still present
- 1-1/2 of thick mucoid, starchy discharge which upon microscopic exams were positive for epithelial and pus cells but no motile sperms were found
- other parts of body unremarkable.[13]

Likewise, upon examination, BBB was found to have sustained a gunshot wound.[14]

For his defense, appellant claimed that he was conducting surveillance and patrol activities as a member of the Brigada Lakas in his barangay from 9:00 p.m. of 24 July 1995 to 5:00 a.m. of 25 July 1995 in Putatan, Muntinlupa City.[15] He presented a record book containing his signature and the date and time he rendered community service. He pointed out that it was physically impossible for him to be in two different places at the same time.

Reano denied the charges against him and maintained that he was at home with his family in Barangay Tianin, Villapag-asa, Bansud, Oriental Mindoro the whole day of 24 July 1995.[16]

After joint trial, the RTC found appellant guilty of robbery with rape while Reano was found guilty of robbery. The dispositive portion of the judgment states:

ACCORDINGLY, in view of the foregoing, judgment is hereby rendered as follows:

In Criminal Case No. P-5422, the Court finds accused Edwin Gayeta alias "Freddie" GUILTY beyond reasonable doubt as principal of the crime of ROBBERY, defined and penalized under Art. 294 (5) of the Revised Penal Code with the aggravating circumstances of night time and in the dwelling of the offended party, without any mitigating circumstance, and hereby sentences him to an imprisonment of FOUR (4) YEARS, TWO (2) MONTHS AND ONE (1) DAY OF PRISION CORRECCIONAL AS MINIMUM to TEN (10) YEARS AND ONE (1) DAY OF PRISION MAYOR as MAXIMUM, and to pay Sps. Benjamin and Conchita Nicer, in the amount of P2,500.00 as reparation for the stolen cash money.

Accused Arnaldo Reano, Jr. is hereby found NOT GUILTY in said criminal case, his [guilt] not having been proven beyond reasonable doubt and he is hereby ACQUITTED, with cost de oficio.

In Criminal Case No. P-5420, accused Arnaldo Reano, Jr., in conspiracy with Edwin Gayeta alias "Freddie" is found GUILTY beyond reasonable doubt as principal of the crime of ROBBERY only, defined and penalized under Art. 294 (4) of the Revised Penal Code with the aggravating circumstances of night time and in the dwelling of the offended party without mitigating circumstance and hereby sentences him to suffer an indeterminate penalty of TEN (10) YEARS, ONE (1) DAY of PRISION MAYOR as MINIMUM to SEVENTEEN (17) YEARS, FOUR (4) MONTHS and ONE (1) DAY of RECLUSION TEMPORAL as MAXIMUM.

Accused Edwin Gayeta alias "Freddie" is found GUILTY beyond reasonable doubt as principal of the special complex crime of ROBBERY with RAPE defined and penalized under Art. 294 (2) as amended by R.A. No. 7659 with the aggravating circumstance of dwelling and there being no mitigating circumstance, hereby sentences him to suffer the most severe penalty of DEATH, together with the accessory penalty provided by law, and to indemnify the victim, [AAA], the amount of P50,000.00 without subsidiary imprisonment in case of insolvency.

In addition, accused Arnaldo Reano, Jr. and Edwin Gayeta alias "Freddie" is ordered to pay Sps. [AAA] and [BBB], jointly and severally, the total amount of P10,000.00 as reparation for the stolen cash money, wrist watch and ring, and to pay the cost of the suit.

In Criminal Case No. P-5421, accused Arnaldo Reano, Jr. is hereby found GUILTY beyond reasonable doubt as principal of the crime of illegal possession of firearm.

Considering that R.A. No. 8294 is favorable to the accused, he is hereby sentenced to an imprisonment of SIX (6) YEARS of PRISION CORRECCIONAL period and a fine of not less than FIFTEEN THOUSAND (P15,000.00) PESOS.

Accused shall be credited with the full term of his preventive imprisonment, if he [has] any to his credit pursuant to the provisions of [Art. 29 of the Revised Penal Code] as amended by R.A. No. 6127 and B.P. Blg.

85, provided that he shall have agreed to abide with the disciplinary rules imposed upon convicted prisoners, otherwise, he shall be entitled to only FOUR FIFTHS of said preventive imprisonment.

SO ORDERED.[17]

In finding appellants guilty, the trial court relied mainly on the testimonies of the prosecution witnesses. It rejected appellants' respective alibis in the light of the positive identification made by prosecution witnesses.

As to the co-accused, Reano, Jr., who did not appeal his conviction by the lower court, its judgment must be deemed final and executory. On the other hand, the cases of appellant (Criminal Cases No. 5420 and 5422) were directly elevated to this Court for automatic review in view of the penalty imposed. However, in a resolution dated 24 August 2004, the Court resolved to transfer the case to the Court of Appeals pursuant to our decision in *People v. Mateo*.^[18]

On 25 November 2005, the Court of Appeals affirmed the decision of the RTC. The decretal portion of the decision reads:

WHEREFORE, in view of the foregoing, we hereby AFFIRM the Regional Trial Court's decision convicting appellant Edwin Gayeta alias "Freddie" of the crime of robbery with rape in Criminal Case No. P-5420 and of the crime of robbery in Criminal Case No. P-5422, with the following MODIFICATIONS:

- Criminal Case No. P-5420

- The appellant shall additionally pay the victim, [AAA], the sum of Fifty Thousand Pesos (P50,000.00) as moral damages and Twenty-Five Thousand Pesos (P25,000.00)[,] as exemplary damages.

- The reparation for the stolen properties that the trial court ordered is reduced from Ten Thousand Pesos (P10,000.00) to Six Thousand and Five Hundred Pesos (P6,500.00).

- Criminal Case No. P-5422

- In lieu of the imprisonment the trial court imposed, the appellant is sentenced to suffer the indeterminate penalty of four years (4) years and two (2) months of prision correccional as minimum to eight (8) years and twenty-one (21) days of prision mayor as maximum.

SO ORDERED.[19]

Giving full faith and credence to the identification of appellant by prosecution witnesses, the Court of Appeals affirmed the trial court's decision finding appellant guilty of the crime of robbery, as well as the complex crime of robbery with rape. Debunking the presence of nighttime as an aggravating circumstance in robbery, the appellate court modified the penalty in Criminal Case No. P-5422 from a maximum imprisonment of ten (10) years and one (1) day of prision mayor to eight (8) years and twenty-one (21) days of prision mayor.

On 28 March 2006, the Court required appellant and the Office of the Solicitor General (OSG) to simultaneously submit their respective supplemental briefs if they so desired.^[20] Both parties manifested that they were adopting their respective briefs filed before the appellate court.^[21] Thereafter, the case was deemed submitted for decision.

Appellant harps on the apparent inconsistencies in the testimonies of the witnesses regarding his identification as the perpetrator. He anchors his alibi on the claim that he was at Putatan in Muntinlupa City, which is nine hours away by land trip from Bansud, Oriental Mindoro where the incident occurred. Finally, appellant proffers that the alleged rape victim's account of the rape was not credible.^[22]

The OSG, in its Brief, maintains that appellant's alibi cannot prevail over the victim's positive identification of appellant as one of the robbers and the person who had raped AAA.^[23]

Appellant was charged with and convicted of one count of robbery in Criminal Case No. P-5420 and one count of robbery with rape in Criminal Case No. P-5422.

In most criminal cases, the issue boils down to the credibility of witnesses. Time and again, we adhere to the principle that the evaluation of the witnesses' credibility is a matter best left to the trial court, because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct and attitude. Findings of the trial court on such matters are binding and conclusive on the appellate court, unless some facts or circumstances of weight and substance have been overlooked, misapprehended or misinterpreted.[24]

The trial court, as affirmed by the Court of Appeals, found the victims' testimonies credible. Indeed, the victims positively identified appellant as the one who broke into the house of the former, and who robbed and ravished the latter.

In Criminal Case No. P-5420, Conchita positively identified the appellant as the one who poked a gun and a bayonet at her neck and ordered her to get money. She gave the money to appellant who, before leaving, even threatened her against reporting the incident to the police.[25]

The crime of robbery as defined under Article 293 of the Revised Penal Code has the following elements: (1) intent to gain; (2) unlawful taking; (3) personal property belonging to another; and (4) violence against or intimidation of person or force upon things. All these elements were sufficiently established through Conchita's testimony. Clearly, robbery was consummated when appellant took the money belonging to Conchita by means of intimidation.

In Criminal Case No. P-5422, AAA testified that she and her husband were watching television in the living room when a man, whom she identified as appellant, barged into the house and ordered them to produce money.[26] It was the same man who ordered her to undress and raped her.[27] All throughout the ordeal, appellant's face was vividly exposed in the well-lighted house, as well as in the store, leading to his easy identification.

Under paragraph 2, Section 294 of the Revised Penal Code, the elements necessary to sustain a conviction for the complex crime of robbery with rape are: (1) the taking of personal property is committed with violence or intimidation against persons; (2) the property taken belongs to another; (3) the taking is done with *animo lucrandi*; and (4) the robbery is accompanied by rape. All these elements were established. First, appellant employed violence against and intimidation on the person of AAA by threatening her with a gun to compel her to give him money. Second, after taking the money of the victim, he raped her.

The Court of Appeals correctly dismissed the inconsistencies in prosecution witness' statements for being trivial and for not having the effect of impairing her credibility as a witness. Inconsistencies as to minor details and peripheral or collateral matters do not affect the credibility of witnesses or the probative weight of their testimonies. Such minor inconsistencies may even serve to strengthen their credibility, as they negate any suspicion that their testimonies are fabricated or rehearsed.[28]

Appellant also assails AAA's narration of the rape incident and insinuates that she should have fought off her attacker, given the numerous opportunities presented to her, such as failing to use the bayonet or the bottles that were within her reach to fight off the attacker. Suffice it to say that tenacious resistance against rape is not required; neither is a determined or a persistent physical struggle on the part of the victim necessary.[29] As aptly pointed out by the Court of Appeals:

x x x To be sure, the lack of active resistance cannot be equated to consent. [XXX] might have failed to actively resist Edwin's advances but her failure need not be a manifestation of voluntary submission under the circumstances of the case; she had a gun to her head before, during and after the rape. Force or intimidation

fully explains a woman's failure to offer active resistance. Jurisprudence holds in a long line of cases that active physical resistance need not be established in rape when intimidation is exercised upon the victim and the latter submits to the rapist's advances because of fear for her life and personal safety. Thus, the law does not impose the burden of active physical resistance on the rape victim when there is attendant force or intimidation.[30]

Anent appellant's alibi, it is inherently weak and cannot prevail over a positive identification from a witness found credible by the trial court.[31] Appellant avers that he was doing his rounds as a member of the Voluntary Lakas Brigade in Muntinlupa, which is nine (9) hours away from Oriental Mindoro, making it physically impossible for him to be at the crime scene. He presented the barangay logbook to support his alibi. The OSG correctly countered that this document was neither authenticated nor identified by the persons who supposedly issued them.[32]

All told, the guilt of appellant has been established beyond reasonable doubt.

Under Article 294(1) of the Revised Penal Code, the penalty of reclusion perpetua to death shall be imposed upon any person guilty of robbery with rape. The Court of Appeals correctly appreciated the aggravating circumstance of dwelling. When the crime is committed in the dwelling of the offended party and the latter has not given provocation, dwelling may be appreciated as an aggravating circumstance.[33] Applying Article 63(1) of the Revised Penal Code, the penalty of death is rightfully imposed in Criminal Case No. P-5420. However, pursuant to Republic Act (R.A.) No. 9346,[34] the penalty of death should be commuted to reclusion perpetua with no eligibility for parole.

Likewise, the award of moral and exemplary damages by the appellate court, as well as the order of reparation in the amount of P6,500.00, is affirmed.

In Criminal Case No. P-5422, the Court of Appeals properly appreciated the aggravating circumstance of dwelling for the same reason as in Criminal Case No. P-5420. The appellate court also correctly ruled out nighttime as an aggravating circumstance, there being no evidence to show that the accused purposely sought nighttime to facilitate the commission of the offense. We thus concur with the Court of Appeals' decision in applying the Indeterminate Sentence Law and imposing the penalty of four (4) years and two (2) months of prision correccional as minimum to eight (8) years and twenty-one (21) days of prision mayor as maximum.

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. C.R.-H.C. No. 00111 affirming with modification the Decision dated 12 March 1999 of the Regional Trial Court, Branch 42, Oriental Mindoro, finding appellant Edwin Gayeta y Roblo guilty beyond reasonable doubt of the crime of robbery in Criminal Case No. P-5420 and robbery with rape in Criminal Case No. P-5422, as well as awarding damages to the victim, is **AFFIRMED** with the **MODIFICATION** that the penalty of death therein imposed is reduced to reclusion perpetua with no eligibility for parole.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Carpio Morales, Azcuna, Chico-Nazario, Velasco, Jr., Nachura, Reyes, and Leonardo-De Castro, JJ., concur.

Corona, J., on official leave.

Brion, J., no part.

[1] Rollo, pp. 3-28; penned by then Court of Appeals Associate Justice Arturo D. Brion (now a member of this Court) and concurred in by Associate Justices Godardo A. Jacinto and Bienvenido L. Reyes.

[2] CA rollo, pp. 20-28; presided by Judge Manuel C. Luna, Jr.

[3] Since the two incidents occurred only in one barangay, the place of commission is withheld to preserve confidentiality of the identity of the victim in Criminal Case No. P-5422. See *People v. Cabalquinto*, G.R. No. 167693, 19 September 2006, 502 SCRA 419, 425-426.

[4] CA rollo, p. 7.

[5] AAA is the wife-victim while BBB is the husband-victim. Their real names are withheld to protect the woman-victim's privacy. See *People v. Cabalquinto*, G.R. No. 167693, 19 September 2006, 502 SCRA 419, 425-426.

[6] Records (Vol. 2), p. 1.

[7] TSN, 29 January 1997, pp. 4-5.

[8] *Id.* at 6-9.

[9] TSN, 20 November 1996, pp. 14-18.

[10] TSN, 19 November 1996, p. 6.

[11] TSN, 28 January 1997, p. 4.

[12] *Id.* at 9-12.

[13] Records (Vol. 3), p.5.

[14] *Id.* at 6.

[15] TSN, 15 September 1998, pp. 4-6.

[16] TSN, 6 October 1997, p. 8.

[17] CA rollo, pp. 27-28.

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

[19] Rollo, p. 28.

[20] *Id.* at 29.

[21] *Id.* at 31-36.

[22] CA rollo, pp. 77-79.

[23] *Id.* at 102.

[24] *People v. Candaza*, G.R. No. 170474, 16 June 2006, 491 SCRA 280, 297.

[25] TSN, 22 April 1997, pp. 4-7.

[26] TSN, 29 January 1997, pp. 4-5.

[27] *Id.* at 7-8.

[28] *People v. Bulan*, G.R. No. 143404, 8 June 2005, 459 SCRA 550, 563.

[29] *People v. Gabawa*, 446 Phil. 616, 632 (2003).

[30] Rollo, p. 21.

[31] *People v. Quirol*, G.R. No. 149259, 20 October 2005, 473 SCRA 509.

[32] CA rollo, p. 102.

[33] *People v. Feliciano*, G.R. No. 102078, 15 May 1996, 326 Phil. 719, 731 (1996).

[34] SEC. 2. In lieu of the death penalty, the following shall be imposed:

(a) the penalty of reclusion perpetua, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code; or

(b) the penalty of life imprisonment, when the law violated does not make use of the nomenclature of the penalties of the Revised Penal Code.

Pursuant to the same law, appellant shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law.

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