PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JOVEN OCAMPO AND ERWIN MAGALLONES, ACCUSED.

G.R. No. 171731. August 11, 2006

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

For review is the December 23, 2005 Decision[1] of the Court of Appeals in CA-G.R. CR.-H.C. NO. 01552 which affirmed in toto the July 2, 2001 Decision[2] of the Regional Trial Court of Irosin, Sorsogon, Branch 55 in Criminal Case No. 1137 finding Joven Ocampo and Erwin Magallones guilty beyond reasonable doubt of the crime of rape.

On September 11, 1995, Joven Ocampo and Erwin Magallones were charged with rape in an Information that reads:

> That on or about the 14[th] day of July, 1995, at barangay Macawayan, municipality of Irosin, province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, enter[ed] the house of Diane Balesnomo thru the window and once inside, by means of force and intimidation, did then and there, willfully, unlawfully and feloniously have sexual intercourse with said offended party, against her will and without her consent, to her damage and prejudice.
>
> CONTRARY TO LAW.[3]

During arraignment, both accused pleaded not guilty.[4] Thereafter, a "Motion to Release Accused Joven Ocampo from Jail for being Youthful Offender"[5] was filed which was granted by the trial court after a favorable recommendation from the Department of Social Welfare and Development (DSWD).[6] Meanwhile, the petition for bail filed by Magallones was denied in a Resolution dated April 27, 2000.[7] Thereafter, trial on the merits ensued.

The facts as found by the trial court[8] are as follows:

On July 14, 1995 at about 7:00 o'clock in the evening, Diane Balesnomo bought lemon from a store located about 80 to 100 meters away from their house. On her way home, Ocampo, Magallones and Totong Echano invited her to go to the waiting shed but when she refused, they followed her home. When she was already in the house, Ocampo and Magallones went near the window in the sala and told her to go to the back of the house but Diane instead went to her room. However, Ocampo and Magallones were able to enter the room by climbing up the window. She attempted to go out but they pulled her back.

Magallones proceeded to undress her and inserted his penis into her vagina while she was standing. She tried to push them away but she was easily overcome by the two. The sexual assault by Magallones lasted for about one minute afterwhich he went home.

Ocampo took his turn and had sexual intercourse with her. In the same standing position, he pulled her legs open

and inserted his penis into her vagina. While his penis was inside her, he kept on mashing her breast. She tried to push him but she was already feeling weak. The sexual act lasted for about three minutes.

When Diane's mother called her to eat, she put on her dress and went outside while Ocampo hid in the bodega near Diane's room. While Diane was narrating the incident to her mother, they saw Ocampo jump out of the window.

On July 2, 2001,[9] the trial court convicted Ocampo and Magallones of the crime of rape and sentenced them, thus:

> WHEREFORE, premises considered, accused JOVEN OCAMPO and ERWIN MAGALLONES having been found GUILTY beyond reasonable doubt of the crime of RAPE (Art. 335, R.P.C. as amended by R.A. 7659) absent any other mitigating or aggravating circumstances, are hereby sentenced as follows:
>
> (a) JOVEN OCAMPO to an indeterminate penalty of Ten (10) years and One (1) Day of prision mayor maximum, as minimum, to Seventeen (17) years and Four (4) Months of reclusion temporal medium, as maximum, to indemnify Diane Balesnomo in the amount of P50,000.00 as moral damages and another P25,000.00 as exemplary damages, and to pay the costs;
>
> (b) ERWIN MAGALLONES to a single indivisible penalty of RECLUSION PERPETUA, regardless of any mitigating or aggravating circumstances present; to indemnify Diane Balesnomo in the amount of P50,000.00 as moral damages and another P25,000.00 as exemplary damages, and to pay the costs.
>
> The period of preventive imprisonment already served by accused ERWIN MAGALLONES shall be credited in the service of his sentence in accordance with the provision of Art. 29 of the Revised Penal Code, as amended.
>
> SO ORDERED.[10]

The trial court found that Diane positively identified the two accused because they are personally known to her since childhood. Likewise, no prior intimate relationship was proven between the malefactors and Diane to induce her to consent to the sexual intercourse. Moreover, the claim of rape was amply supported by the medical findings and the testimony of Dr. Ma. Nerissa B. Tagum. Finally, no ill motive could be attributed to the victim in accusing Ocampo and Magallones of rape.[11]

The July 2, 2001 Decision of the trial court was promulgated on July 11, 2001 in the presence only of Magallones because Ocampo jumped bail.[12]

The case was elevated to this Court for automatic review because the penalty imposed was reclusion perpetua. However, pursuant to our ruling in People v. Mateo,[13] the case was referred to the Court of Appeals. In a Decision dated December 23, 2005,[14] the Court of Appeals affirmed the trial court in toto.

The Court of Appeals ruled that as regards Ocampo, the decision is final and executory since he jumped bail, failed to attend the promulgation of the decision, and did not appeal within 15 days from notice thereof. The appellate court disregarded Magallones' argument that there was no evidence to prove force and intimidation during the sexual assault. It found that the alleged failure of the victim to ask for help during the incident does not mean there was no force or intimidation as different people react differently to the same set of circumstances.[15]

Magallones avers that the testimony of Diane is not credible considering that at the time she was raped, she never resisted her rapists nor called for help. He claims that since he was not armed and she was not threatened, there was no showing of force or intimidation.

Appellant's contention lacks merit.

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The rule is well-settled that factual findings of trial courts and those which revolve on matters of credibility of witnesses deserve to be respected when no glaring errors bordering on a gross misapprehension of the facts, or where no speculative, arbitrary and unsupported conclusions, can be gleaned from such findings.[16] The evaluation of the credibility of witnesses and their testimonies are best undertaken by the trial court because of its unique opportunity to observe the witnesses' deportment, demeanor, conduct and attitude under grilling examination. As this opportunity is denied the appellate court, the lower court's findings of fact and assessment of the credibility of witnesses are generally binding on this Court absent a clear showing that they were reached arbitrarily or that the trial court had plainly overlooked certain facts or substance of value which, if considered, might affect the result of the case.[17] In the instant case, we find nothing in the records which warrants a departure from the findings of the trial court.

The workings of a human mind are unpredictable; people react differently and there is no standard form of behavior when one is confronted by a shocking incident. More so, if one is a victim of a misfortune which in the victim's young mind is beyond comprehension.[18] The Court also notes the testimony of Diane[19] that she suffers from excessive trembling when her parents quarrel or when she is surprised, to wit:

> Direct Examination of Diane Balesnomo
>
> x x x x
>
> Q -
>
> Are you still studying?
>
> A -
>
> No more, sir.
>
> Q -
>
> Since when did you stop going to school?
>
> A -
>
> July 1995.
>
> Q -
>
> Prior to July 1995, where were you studying?
>
> A -
>
> In Holy Spirit.
>
> x x x x
>
> Q -
>
> You said a while ago that you stopped going to school since July 1995, why did you stop going to school?
>
> A -
>
> Because I got sick.
>
> Q -
>
> Did you inform any authority from your school that you are going to stop schooling?

A -

Yes, sir.

Q -

What did the principal tell you?

A -

She told me that I could stop and continue my schooling next year.

Q -

Since when have you been experiencing this sickness?

A -

Since my childhood.

Q -

Can you please explain to this court what exactly do you feel?

A -

I am trembling.

Q -

In what instances do you experience this trembling?

A -

When my parents or every time they quarrel(l)ed it makes me tremble and everytime I was surprised.

Cross-Examination of Diane Balesnomo

x x x x

Q -

The time when you got the match you were not already trembling, do I get you right?

A -

I was still trembling.

Q -

The same as you are now before this Court, that you are always trembling?

A -

Yes sir.

Q -

So the trembling you are now feeling is just an ordinary mood of your life as a matter of fact from the moment you were presented to Court you began trembling, do I get you right?

A -

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Yes sir.

Q -

And that feeling is just the same that occurred on July 14, 1995 on that particular evening?

A -

This trembling started since my childhood.

Q -

Will you please tell the Honorable Court when you were very happy you were trembling, do I get you right?

A -

No, it is only when I am surprised that I tremble. (Emphasis supplied)

It is of no moment that Magallones was not armed, it was enough that she felt threatened by a man bigger than she is and who climbed the window and entered her room surreptitiously.

Magallones also claims that the testimony of Diane was not corroborated by the medical findings that there were no signs of injury, contusion or abrasion in any part of her body.

The absence of any external injury does not negate the use of force. Neither does it mean that she consented to the sexual intercourse. Besides, the examining physician, Dr. Ma. Nerissa B. Tagum, found positive hymenal lacerations.[20] Physical resistance, in any case, need not be established in rape cases when threats and intimidation are employed and the victim ultimately gives up to the unwanted embrace of her rapist.[21] In this case, the presence of two men inside her room would be enough to intimidate a 16 year old girl who is easily plagued with nervousness.

In rape cases, courts are guided by the following principles: (1) to accuse a man of rape is easy, but to disprove it is difficult though the accused may be innocent; (2) considering that in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence for the prosecution must stand or fall on its own merit and not be allowed to draw strength from the weakness of the evidence for the defense.[22]

The evidence of the prosecution is unassailable. The trial court found the testimony of Diane consistent and credible to sustain a verdict of conviction. On the contrary, Magallones' admission that he and Ocampo entered the room of the victim by passing through the window because they wanted to assist in carrying her invalid father is hardly credible.[23] Significantly, Ocampo and Magallones did not impute any ill motive that would have prompted Diane to file a case of rape against them. When there is no evidence to show any improper motive on the part of the complainant to testify against the accused or to falsely implicate him in the commission of the crime, the logical conclusion is that the testimony is worthy of full faith and credence.[24]

This Court is convinced beyond reasonable doubt that Ocampo and Magallones committed the crime of rape by having carnal knowledge of Diane using force and intimidation. Thus, the trial court properly imposed on Magallones the penalty of reclusion perpetua for the crime of simple rape through force and intimidation.[25]

Regarding damages, this Court has consistently held that upon a finding of the fact of rape, the award of civil indemnity ex delicto is mandatory.[26] Diane is therefore entitled to P50,000.00 as civil indemnity. The trial court correctly awarded moral damages in the amount of P50,000.00. Even without allegation or proof of the trauma constituting the basis for the award, the same is necessarily included in a conviction of rape.[27] Under Article

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2230 of the Civil Code, exemplary damages as part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances.[28] Considering that no aggravating circumstance attended the commission of the crime, the award by the trial court of exemplary damages in the amount of P25,000.00 is without basis and should be deleted.

The award of interest on damages is proper and allowed under Article 2211 of the Civil Code, which states that in crimes and quasi-delicts, interest as a part of the damages may, in proper case, be adjudicated in the discretion of the court.[29]

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. CR-H.C. NO. 01552 which affirmed in toto the July 2, 2001 Decision of the Regional Trial Court of Irosin, Sorsogon, Branch 55, in Criminal Case No. 1137, finding Erwin Magallones guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer the penalty of reclusion perpetua and ordering him to pay P50,000.00 as moral damages is AFFIRMED with the MODIFICATION that Magallones is ordered to pay Diane Balesnomo the sum of P50,000.00 as civil indemnity. The award of exemplary damages is DELETED for lack of basis. The amounts of P50,000.00 as moral damages and another P50,000.00 as civil indemnity should each earn legal interest at the rate of six percent (6%) per annum computed from the date of the judgment of the trial court.

SO ORDERED.

Panganiban, C.J., (Chairperson), Austria-Martinez, Callejo, Sr., and Chico-Nazario, JJ., concur.

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[1] Penned by Associate Justice Fernanda Lampas Peralta and concurred in by Associate Justices Josefina Guevara-Salonga and Sesinando E. Villon; rollo, pp. 2-24.

[2] CA rollo, pp. 79-104. Penned by Judge Adolfo G. Fajardo.

[3] Records, p. 1.

[4] Id. at 21.

[5] Id. at 24.

[6] Id. at 42.

[7] Id. at 170-171.

[8] CA rollo, pp. 80-81.

[9] Id. at 79-104.

[10] Id. at 104.

[11] Id. at 100-101.

[12] Records, p. 230.

[13] G.R. Nos. 147678-87, July 7, 2004, 464 SCRA 640.

[14] Rollo, pp. 2-24.

[15] Id. at 9-10.

[16] People v. Mirafuentes, 402 Phil. 233, 243 (2001).

[17] People v. Samson, 427 Phil. 248, 261 (2002).

[18] People v. Ybañez, G.R. No. 136257, February 14, 2001, 351 SCRA 589, 593-594.

[19] TSN, January 10, 1996, pp. 2-4 and May 15, 1996, pp.14-15.

[20] Exhibit "A", records, p. 11.

[21] People v. Rapisora, 403 Phil. 194, 205 (2001).

[22] People v. Belga, 402 Phil. 734, 740 (2001).

[23] TSN, October 20, 1999, pp. 2-3.

[24] People v. Belga, supra at 743.

[25] Revised Penal Code, Art. 266-B, as amended.

[26] People v. Biong, 450 Phil. 432, 448 (2003).

[27] People v. Umbaña, 450 Phil. 493, 520 (2003).

[28] People v. Torellos, 448 Phil. 287, 301 (2003).

[29] Id.

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