

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JOSEPH AMPER Y REPASO, APPELLANT.

G.R. No. 172708. May 05, 2010

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

In this case, appellant Joseph Amper y Repaso not only robbed his victim of her material possessions; he also robbed her of her virginity.

On appeal is the Decision[1] dated August 18, 2005 of the Court of Appeals (CA), in CA-G.R. CR-H.C. No. 00716, which affirmed with modification the Decision[2] dated January 30, 2003 of the Regional Trial Court (RTC) of Gumaca, Quezon, Branch 61, in Criminal Case No. 5195-G, convicting appellant of the crime of robbery with rape. Also assailed is the Resolution[3] dated December 5, 2005 denying the motion for reconsideration.

Version of the Prosecution

On August 17, 1995, at approximately 7:30 in the evening, "AAA"[4] was walking along Mateo Manila Street near Leon Guinto Memorial College located at Brgy. Zone II, Poblacion, Atimonan, Quezon to buy peanuts for her father.[5] While approaching the place of a certain Noni Magisa, appellant suddenly put his hand on "AAA's" shoulder, poked a pointed instrument at the left side of her body and ordered her not to make any move.[6] The appellant then directed her to walk casually towards the direction of the church. [7] When they reached the back of the church, appellant ordered "AAA" to sit on the cemented floor and to remove all the pieces of jewelry she was wearing, particularly her wrist watch, bracelet and pair of earrings.[8]

After ordering "AAA" to lie down on the floor,[9] appellant removed "AAA's" shorts and underwear[10] then also lowered his own pants and briefs[11] and forcibly inserted his penis into her vagina and made push and pull movements.[12] All this time, appellant poked a weapon at the left side of "AAA's" neck which prevented her from shouting for help.[13] After satisfying his lust, appellant told "AAA" not to leave until he was gone.[14]

After about two minutes, "AAA" put on her garments and hurried home

where she narrated the incident to her father.[15] Both proceeded to the place where the incident happened[16] but appellant could no longer be found.[17] "AAA" and her father proceeded to the police station and reported the matter.[18] Thereafter, Dr. Lourdes Taguinod (Dr. Taguinod) of Doña Martha Hospital examined her.[19]

On August 22, 1995, appellant was arrested for robbery and attempted rape committed against another individual.[20] On the following day,[21] "AAA" went to the police station and identified appellant as the person who robbed and raped her.[22]

Subsequently, an Information was filed against appellant charging him with the crime of robbery with rape,[23] viz:

That on or about the 17[th] day of August 1995, at Barangay Zone II, Municipality of Atimonan, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a pointed instrument, with intent to gain and to rob, and by means of force, violence against and intimidation of person, taking advantage of nighttime and his superior strength to better facilitate his purpose, did then and there willfully, unlawfully and feloniously take from AAA the following:

One (1) ring

P 400.00

Bracelet

314.00

Wrist Watch

300.00

Pair of Earring

220.00

[_____]

Total

P 1,234.00

with a total value of ONE THOUSAND TWO HUNDRED THIRTY FOUR PESOS (P1,234.00) Philippine currency, belonging to said "AAA", to her damage and prejudice in the said amount; and that by reason thereof and on the same occasion, the above-named accused, with lewd design, by means of force, threats, violence and intimidation, did, then and there willfully, unlawfully and feloniously have carnal knowledge of the aforesaid "AAA", a minor, 14 years of age, against her will.

Contrary to law.

Upon arraignment,[24] appellant pleaded not guilty to the charge. Trial thereafter ensued.

Version of the Defense

Appellant denied liability and insisted that he only saw "AAA" for the first time in the police station. He claimed that on August 17, 1995, he left his place of work at Hopewell Power Plant at around 6:30 in the evening[25] and arrived at the Atimonan town proper at past 9:00 o'clock in the evening. [26] Thus he could not have robbed or raped "AAA". In support of his claim, appellant submitted "Cepa Slip Form Power System Ltd." showing that he was at the power plant project site between 6:16 in the morning up to 5:21 in the afternoon of August 17, 1995[27] and a letter addressed to all jeepney operators stating the time when they should depart from the site.[28]

On cross-examination, however, appellant admitted that he could take a passenger jeepney from the gate of Hopewell Power Plant going to the junction of Maharlika highway[29] which would take around 45 to 50 minutes. From the junction, he could reach Atimonan town proper in 30 minutes by taking a passenger bus.[30]

Ruling of the Regional Trial Court

On January 30, 2003, the RTC rendered its Decision convicting appellant of the crime of robbery with rape, and sentencing him to suffer the penalty of reclusion perpetua. The RTC did not give credence to appellant's alibi

since he failed to prove that it was impossible for him to be at the situs of the crime at the time it took place. The trial court also found "AAA's" testimony to be clear and convincing; hence there was no reason to disbelieve her.

The dispositive portion of the RTC Decision reads:

WHEREFORE, premises considered, the Court finds accused JOSEPH AMPER guilty beyond reasonable doubt of the crime of Robbery with Rape under Article 294 of the Revised Penal Code, as amended by R.A. 7659 and he is therefore sentenced to suffer the penalty of RECLUSION PERPETUA and to pay the amount of P75,000.00 as indemnity to the victim and the amount of P50,000.00 as moral damages and to pay the amount of P1,340.00 in restitution of the value of jewelries taken from "AAA".

SO ORDERED.[31]

Ruling of the Court of Appeals

The appellate court affirmed with modification the Decision of the trial court. It held that the prosecution satisfactorily proved all the elements of the complex crime of robbery with rape, to wit: a) the taking of personal property is committed with violence or intimidation against persons; b) the property taken belongs to another; c) the taking is done with animus lucrandi, and d) the robbery is accompanied by rape.

The dispositive portion of the CA Decision reads:

WHEREFORE, in view of the foregoing, the appealed decision is hereby AFFIRMED in all aspects with the MODIFICATION that the civil indemnity is reduced from P75,000.00 to P50,000.00.

SO ORDERED.[32]

Hence, this appeal.

Our Ruling

The appeal lacks merit.

We have consistently ruled that an accused is estopped from assailing the legality of his arrest if he fails to raise this issue, or to move for the quashal of the information against him on this ground, which should be made before arraignment.[33] In this case, appellant only raised for the first time the alleged irregularity of his arrest in his appeal before the CA. This is not allowed considering that he was already properly arraigned and even actively participated in the proceedings. He is, therefore, deemed to have waived such alleged defect when he submitted himself to the jurisdiction of the court.

We likewise cannot sustain appellant's contention that his identification was marked by suggestiveness. Appellant claims that he was arrested after the incident based on the suggestion of the police officer and not on the identification made by "AAA". It must be stressed that what is crucial is for the witness to positively declare during trial that the persons charged were the malefactors.[34] In this case, "AAA" positively and categorically identified appellant during trial as her molester. She could not have been mistaken because she had a fairly good look at appellant's face even before the commission of the crime.[35] The place where she first saw the appellant was well-lighted.[36] Moreover, "AAA" never faltered in her identification of the appellant.

That the crime was committed at the back of the church and that there are several establishments in the area would not make the commission of the same highly improbable. It is settled jurisprudence that rape can be committed even in a public place, in places where people congregate, in parks, along the roadside, within school premises, inside a house or where there are other occupants, and even in the same room where there are other members of the family who are sleeping.[37]

Both the trial court and the appellate court correctly found appellant guilty of the complex crime of robbery with rape, the elements of which are as follows: (1) the taking of personal property is committed with violence against or intimidation of persons; (2) the property taken belongs to another; (3) the taking is characterized by intent to gain or *animus lucrandi*; and (4) the robbery is accompanied by rape.

The first three elements were proven by "AAA" who testified that appellant brought her at knife point to the back of the church and divested her of her belongings. Appellant also threatened her with bodily harm if she refused.[38] From the foregoing, it is clear that the crime of robbery was committed.

As to the attendant rape, we find the testimony of "AAA" worthy of full faith and credence. The records show that "AAA" was only 15 years old at the time she testified. Her credibility was also strengthened by the fact that she immediately reported the incident to her father, who in turn reported the same to the police authorities. The results of the medical examination likewise corroborated her testimony that she was indeed raped as the presence of spermatozoa was even found in her vagina.[39] "AAA's" declaration of her sexual ordeal, which was given in a straightforward, convincing, credible and satisfactory manner, shows no other intention than to obtain justice for the wrong committed by the appellant against her.

The trial court and the appellate court properly disregarded appellant's defense of alibi. Aside from the fact that the same cannot prevail over the positive identification made by "AAA" of the appellant as the perpetrator of the crime, appellant also failed to prove that it was physically impossible for him to be at the scene of the crime at the time of its commission. Here, appellant claimed that he was at his workplace at the time the crime was committed and that he left work at around 6:00 o'clock in the evening and reached his home at around 9:00 o'clock in the evening. However, on cross examination, he admitted that it is possible to reach Maharlika Highway junction from his place of work in 45 to 50 minutes and from there reach Atimonan town proper in 30 minutes.[40] It will be recalled that the incident happened at about 7:30 in the evening; thus, it is not impossible for the appellant to be at the crime scene at the time it was committed.

Article 294 of the Revised Penal Code provides for the penalty of reclusion perpetua to death, when the robbery was accompanied by rape. Thus, both the trial court and the appellate court correctly imposed upon the appellant the penalty of reclusion perpetua and to pay the amounts of P50,000.00 as civil indemnity, P50,000.00 as moral damages, and P1,340.00 in restitution of the value of the jewelries taken from "AAA".

WHEREFORE, premises considered, the Decision of the Court of Appeals dated August 18, 2005 in CA-G.R. CR-H.C. No. 00716, which affirmed with modification the Decision dated January 30, 2003 of the Regional Trial Court of Gumaca, Quezon, Branch 61, in Criminal Case No. 5195-G, convicting appellant of the crime of robbery with rape, and the Resolution dated December 5, 2005 denying the motion for reconsideration, are **AFFIRMED**.

SO ORDERED.

Carpio, (Chairperson), Carpio Morales[*], Abad, and Perez, JJ., concur.

[*] In lieu of Justice Arturo D. Brion, per Raffle dated December 21, 2009.

[1] CA rollo, pp. 153-169; penned by Associate Justice Eliezer R. De los Santos and concurred in by Associate Justices Eugenio S. Labitoria and Arturo D. Brion.

[2] Records, pp. 392-428; penned by Judge Aurora V. Maqueda-Roman.

[3] CA rollo, p. 192.

[4] Pursuant to Section 44 of Republic Act (RA) No. 9262, otherwise known as the Anti-Violence Against Women and Their Children Act of 2004, and Section 63, Rule XI of the Rules and Regulations Implementing RA 9262, the real name of the child-victim is withheld to protect his/her privacy. Fictitious initials are used instead to represent him/her. Likewise, the personal circumstances or any other information tending to establish or compromise his/her identity, as well as those of his/her immediate family or household members shall not be disclosed.

[5] TSN, September 10, 1996, pp. 8-9.

[6] Id. at 10.

[7] Id.

[8] Id. at 12.

[9] Id. at 13.

[10] Id.

[11] Id. at 14-15.

[12] Id. at 18-20.

[13] Id. at 20.

[14] Id. at 20-21.

[15] Id. at 21.

[16] Id.

[17] TSN, May 28, 2001, pp. 8-9.

[18] TSN, September 10, 1996, p. 22.

[19] Id. at 25.

[20] TSN, May 28, 2001, p. 11

[21] Id. at 12.

[22] TSN, February 12, 2001, p. 6.

[23] Records, pp. 2-3.

[24] Id. at 19.

[25] TSN, May 7, 2002, p. 9.

[26] Id. at 9.

[27] Id. at 11.

[28] Id. at 11-12.

[29] TSN, September 24, 2002, p. 7.

[30] Id. at 9.

[31] Records, pp. 427-428.

[32] CA rollo, p. 169.

[33] *People v. Alunday*, G.R. No. 181546, September 3, 2008, 564 SCRA 135, 149.

[34] *People v. Martin*, G.R. No. 177571, September 29, 2008, 567 SCRA 42, 49.

[35] TSN, September 10, 1996, p. 10.

[36] *Id.* at 24.

[37] *People v. Mendoza*, 440 Phil. 755, 772 (2002).

[38] TSN, September 10, 1996, p. 12.

[39] TSN, September 24, 1996, pp. 7-8.

[40] *Id.* at 7-9.

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