ERNESTO GARCES, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. NO. 173858. July 17, 2007

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This Petition for Review on Certiorari assails the Decision[1] dated January 31, 2006 of the Court of Appeals which affirmed with modification the Judgment[2] rendered by Branch 1 of the Regional Trial Court of Bangued, Abra, finding petitioner Ernesto Garces guilty as an accessory to the crime of Forcible Abduction with Rape. Also assailed is the Resolution[3] dated July 27, 2006 denying petitioner's motion for reconsideration.

In an Information dated December 10, 1992, Rosendo Pacursa, Senando Garces, Antonio Pira, Jr., Aurelio Pira, and petitioner Ernesto Garces, were charged with Forcible Abduction with Rape committed as follows:

> That on or about the 2nd day of August, 1992, in the evening, at x x x, Province of Abra, Philippines and within the jurisdiction of this Honorable Court, the said accused, conspiring, confederating and mutually helping one another, with criminal and carnal intent, with lewd design and by means of force, accused Rosendo Pacursa, did, then and there, willfully, unlawfully and feloniously, after covering her mouth, forcibly abduct, pull and take away one AAA while walking to the church to the tobacco flue-curing barn and while inside the barn lie and succeeded in having sexual intercourse and carnal knowledge of the offended party; that accused Ernesto Garces later on covered the mouth of AAA and take her out of the barn; that accused Senando Garces, Antonio Pira, Jr. and Aurelio Pira stand guard outside the barn while Rosendo Pacursa is raping AAA; to the damage and prejudice of the offended party.
>
> CONTRARY TO LAW with the aggravating circumstances of: (1) uninhabited place, and (2) nighttime.[4] (Emphasis supplied)

All the accused, except Senando Garces who is still at large, pleaded not guilty.

The prosecution's version of the incident is as follows:

On August 2, 1992, between 8:00 and 9:00 o'clock in the evening, AAA was on her way to the chapel when the five accused suddenly appeared and approached her. Rosendo Pacursa covered her mouth with his hands and told her not to shout or she will be killed. He then brought her inside a nearby tobacco barn while his four companions stood guard outside.[5]

Inside the barn, Pacursa started kissing AAA. Private complainant fought back but to no avail. Thereafter, Pacursa succeeded in having carnal knowledge of her. After a while, they heard people shouting and calling the name of AAA. At this point, petitioner Ernesto Garces entered the barn, covered AAA's mouth, then dragged her outside. He also threatened to kill her if she reports the incident.[6]

Upon reaching the house of Florentino Garces, petitioner released AAA. Shortly afterwards, AAA's relatives found her crying, wearing only one slipper and her hair was disheveled. They brought her home but when asked

what happened, AAA could not answer because she was in a state of shock. After a while, she was able to recount the incident.[7]

Rosendo Pacursa denied that he raped the victim, while his co-accused presented alibis as their defense.

Pacursa testified that he and AAA were sweethearts for almost a year prior to the incident. On the night of August 2, 1992, he was on his way to the house of Antonio Pira, Jr. to watch a televised basketball game when he saw AAA. The latter allegedly wanted to have a talk with him so he led her to the tobacco barn about 15 meters away, so that no one might see them. They were alone by the door of the barn talking, embracing and kissing. They only parted ways when he saw the relatives of AAA. He denied having sexual intercourse with her. After the incident, he received a letter[8] from AAA asking him to elope.[9]

On the other hand, petitioner, Antonio Pira, Jr., and Aurelio Pira, testified that they were watching a televised basketball game at the house of Antonio Pira, Jr. at the time the alleged rape transpired. They denied seeing Pacursa that night.[10]

After trial on the merits, the trial court rendered its decision finding Pacursa guilty of Forcible Abduction with Rape while petitioner Garces was found guilty as an accessory to the crime. Antonio Pira, Jr. and Aurelio Pira were acquitted for insufficiency of evidence.[11]

The dispositive portion of the decision reads:

> WHEREFORE, PREMISES CONSIDERED, accused ROSENDO PACURSA and ERNESTO GARCES are hereby found guilty of the crime of Forcible Abduction With Rape punishable under the Revised Penal Code committed upon the person of AAA. The other accused ANTONIO PIRA, JR. and AURELIO PIRA are hereby ACQUITTED as accessory for the crime of Forcible Abduction With Rape.
>
> ROSENDO PACURSA, the principal accused in this case is hereby sentenced to one degree lower than that prescribed by law for the offense, for being 16 years old at the time of the commission of the crime pursuant to Art. 68 of the Revised Penal Code. Taking into consideration the aggravating circumstances of uninhabited place and nighttime, he is hereby sentenced to suffer an indeterminate penalty of 11 years of prision mayor as minimum to 18 years of reclusion temporal as maximum.
>
> Ernesto Garces, being an accessory to the commission of the crime is hereby penalized two degrees lower than that prescribed by law for the offense. Accordingly, he is hereby sentenced to suffer an indeterminate penalty of 4 years of prision correccional as minimum to 8 years of prision mayor as maximum.
>
> Both accused are jointly and solidarily liable to pay the victim the amount of P50,000.00 as and by way of actual and moral damages plus the cost of this suit.
>
> SO ORDERED.[12]

Both Pacursa and petitioner appealed the decision with the Court of Appeals. However, Pacursa subsequently withdrew his appeal.

On January 31, 2006, the Court of Appeals rendered its Decision affirming with modification the decision of the trial court, thus:

> WHEREFORE, premises considered, the appealed Decision convicting accused ROSENDO PACURSA as principal and accused-appellant ERNESTO GARCES as accessory of the crime of forcible abduction with rape is AFFIRMED.
>
> However, accused-appellant Ernesto Garces' sentence is MODIFIED in that he is to suffer the indeterminate penalty of imprisonment ranging from FOUR (4) YEARS of prision correccional, as minimum, to EIGHT (8)

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YEARS and ONE (1) DAY of prision mayor, as maximum.

SO ORDERED.[13]

Petitioner filed a motion for reconsideration but same was denied. Hence, the instant petition for review on certiorari.

Petitioner claims that no rape was committed and that there is no evidence to show that he covered the mouth of the complainant when he brought her out of the barn.

The petition lacks merit.

It has been established that Pacursa forcibly took AAA against her will and by use of force and intimidation, had carnal knowledge of her. The trial court found complainant's testimony to be credible, consistent and unwavering even during cross-examination.

Regarding the letter she wrote to Pacursa asking him to elope with her, she explained that she felt uncertain at that time and was trying to avoid the possible trouble or scandal the incident might bring upon her,[14] which we find plausible. In pursuing the case, she had to transfer to another school because of the threats of her assailants and their persistence in settling the case. Furthermore, no improper motive was shown why she would accuse and testify against Pacursa who was her boyfriend, and the other accused, who are her relatives.[15]

Prosecution witness Grace Liberto likewise corroborated the testimony of complainant when she testified that she saw the latter crying, wearing only one slipper, and her hair disheveled,[16] immediately after the incident. The medico-legal findings of Dr. Herminio Venus also showed that there was a laceration in complainant's private parts possibly caused by sexual contact.[17]

Pacursa, however, could not be convicted of the crime of forcible abduction with rape because the crime committed was only simple rape. Forcible abduction is absorbed in the crime of rape if the real objective of the accused is to rape the victim.[18] Based on the evidence presented, the accused intended to rape the victim when he took her to the tobacco barn. Hence, forcible abduction is absorbed in the crime of rape.[19]

We also note that the trial court failed to make any definitive finding as to the existence of aggravating circumstances. However, we find that the aggravating circumstances of nighttime and uninhabited place did not attend the commission of the crime.

Nocturnity is aggravating when it is deliberately sought to prevent the accused from being recognized or to ensure his unmolested escape.[20] The mere fact that the rape was committed at nighttime does not make nocturnity an aggravating circumstance.[21] In the instant case, other than the fact that the crime was committed at night, there is no other evidence that the peculiar advantage of nighttime was purposely and deliberately sought by the accused.

The aggravating circumstance of uninhabited place cannot likewise be appreciated in the absence of evidence that the accused actually sought an isolated place to better execute their purpose.[22] The records do not show that solitude was purposely sought or taken advantage of to facilitate the commission of the crime.

Although Pacursa has withdrawn his appeal, the Court's ruling that the crime committed is simple rape and not forcible abduction with rape, shall apply to him. Section 11 (a), Rule 122 of the Rules of Court specifically provides that an appeal taken by one or more of several accused shall not affect those who did not appeal, except insofar as the judgment of the appellate court is favorable and applicable to the latter.

As regards petitioner's complicity, his defense of alibi cannot prevail over complainant's positive identification of

her assailants. Denial and alibi are inherently weak defenses and constitute self-serving negative evidence which can not be accorded greater evidentiary weight than the positive declaration of credible witnesses.[23]

For alibi to prosper, the accused must establish by clear and convincing evidence (a) his presence at another place at the time of the perpetration of the offense and (b) the physical impossibility of his presence at the scene of the crime.[24] Petitioner alleged he was watching television at Aurelio Pira's house, which is about 20 meters away from the barn at the time of the incident. However, it will only take one minute for him to reach the barn from the house.[25] Thus, it was not physically impossible for him to be at the scene of the crime at the time of its commission.

Contrary to petitioner's contention, there is proof that petitioner covered AAA's mouth when he dragged her out of the barn. Complainant executed a sworn statement recounting her harrowing experience which she identified during her direct examination and offered as Exhibits A, A-1, and A-2[26] for the prosecution and admitted by the trial court.[27] In her sworn statement, AAA narrated thus:

> Q -
>
> Will you relate carefully the manner by which Rosendo Pacursa raped you?
>
> A -
>
> x x x Then someone came inside the barn, shut-off my mouth, then brought me out and away southward and when we reach the house of Florentino Garces he released me and as I walked down the path my uncle Bartolome Florendo was able to light me with his flashlight
>
> x x x x
>
> Q -
>
> Who was that person who later came inside the barn who brought you out shutting-off your mouth then took you away southward?
>
> A -
>
> Ernesto Garces also from our place, sir.
>
> Q -
>
> Why, has Rosendo Pacursa other companions?
>
> A -
>
> He has, sir. They are Ernesto Garces, Senando Garces, Antonio Pira, Jr. and Aurelio Pira.
>
> Q -
>
> What did these companions of Rosendo Pacursa do?
>
> A -
>
> They stayed outside the barn but it was Ernesto Garces who brought me out, sir. [28]

Complainant's failure to testify during her direct examination that her mouth was covered by petitioner when she was pulled out of the barn does not preclude resort to her sworn statement to provide the missing details, since said sworn statement forms part of her testimony. As held in People v. Servano:[29]

> Evidence in criminal cases is not limited to the declarations made in open court; it includes all documents,

> affidavits or sworn statements of the witnesses, and other supporting evidence. It comprehends something more than just the mere testimony of a witness. Thus, when a sworn statement has been formally offered as evidence, it forms an integral part of the prosecution evidence which should not be ignored for it complements and completes the testimony on the witness stand. A sworn statement is a written declaration of facts to which the declarant has sworn before an officer authorized to administer oaths. This oath vests credibility and trustworthiness on the document. The fact that a witness fails to reiterate, during trial, the contents of his sworn statement should not affect his credibility and render the sworn statement useless and insignificant, as long as it is presented as evidence in open court. This is not to say, however, that the sworn statement should be given more probative value than the actual testimony. Rather, the sworn statement and the open court declarations must be evaluated and examined together in toto so that a full and thorough determination of the merits of the case may be achieved. Giving weight to a witness' oral testimony during the trial should not mean being oblivious to the other pieces of available evidence such as the sworn statement. In like manner, the court cannot give probative value to the sworn statement to the exclusion of the oral testimony. In every case, the court should review, assess and weigh the totality of the evidence presented by the parties. It should not confine itself to oral testimony during trial. x x x[30]

Petitioner also faults the court a quo in finding that he threatened AAA while leading her out of the barn. He argues that complainant failed to positively identify the person who issued the threats because she vaguely referred to said person merely as "they".

The contention lacks merit.

The use of the word "they" in referring to the person who threatened complainant is of no moment. When the threats were issued, both Pacursa and petitioner were inside the barn; thus, it is logical to conclude that the threats came from both of them.

Petitioner likewise cannot take refuge in the acquittal of Antonio and Aurelio Pira. Both were acquitted because there was no evidence to show their participation in the crime. Complainant only testified that she heard their voices which the trial court considered insufficient. However, in the case of petitioner, complainant positively identified him as one of the companions of Pacursa who remained outside the barn and who eventually entered upon noting the presence of AAA's relatives nearby. He thereafter covered complainant's mouth and led her out of the barn. All these circumstances demonstrate petitioner's complicity.

We do not agree, however, that petitioner should be convicted as an accessory to the crime.

It is a settled rule that an appeal in a criminal proceeding throws the whole case open for review and it becomes the duty of the Court to correct any error in the appealed judgment, whether it is made the subject of an assignment of error or not. Such an appeal confers upon the appellate court full jurisdiction and renders it competent to examine the records, revise the judgment appealed from, increase the penalty and cite the proper provision of the penal law.[31]

In finding petitioner guilty as an accessory, the Court of Appeals found that his participation was after or subsequent to the rape and that his acts were employed as a means of concealing the commission of the crime and assisting Rosendo to escape.

We find otherwise. The facts show that petitioner participated in the commission of the crime even before complainant was raped. He was present when Pacursa abducted complainant and when he brought her to the barn. He positioned himself outside the barn together with the other accused as a lookout. When he heard the shouts of people looking for complainant, he entered the barn and took complainant away from Pacursa.

Having known of the criminal design and thereafter acting as a lookout, petitioner is liable as an accomplice,[32]

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there being insufficient evidence to prove conspiracy,[33] and not merely as an accessory. As defined in the Revised Penal Code, accomplices are those who, not being included in Article 17, cooperate in the execution of the offense by previous or simultaneous acts.[34] The two elements necessary to hold petitioner liable as an accomplice are present: (1) community of criminal design, that is, knowing the criminal design of the principal by direct participation, he concurs with the latter in his purpose; and (2) performance of previous or simultaneous acts that are not indispensable to the commission of the crime.[35]

The crime committed in the case at bar is simple rape, the penalty for which under the Revised Penal Code is reclusion perpetua. Since Pacursa was a minor when the crime was committed, the penalty must be reduced by one degree, to reclusion temporal.[36] Applying the Indeterminate Sentence Law and in the absence of aggravating and mitigating circumstances, the maximum of the penalty shall be within the medium range of reclusion temporal, or fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months. The minimum of the indeterminate penalty shall be within the range of the penalty next lower in degree, which is prision mayor, ranging from six (6) years and one (1) day to twelve (12) years.[37]

With respect to petitioner, the penalty imposed upon accomplices in a consummated crime is the penalty next lower in degree than that prescribed for the felony.[38] Since simple rape is punishable with reclusion perpetua, the penalty of reclusion temporal should also be imposed on petitioner in its medium period in the absence of any aggravating or mitigating circumstances. Applying the Indeterminate Sentence Law, the imposable penalty should range from prision mayor, as minimum, to reclusion temporal in its medium period, as maximum.

Every person criminally liable for a felony is also civilly liable.[39] If there are two or more persons civilly liable for a felony, as in this case, the court shall determine the amount for which each must respond[40] to be enforced in accordance with Article 110 of the Revised Penal Code. Thus, the amount of damages to be awarded must be apportioned according to the respective responsibilities of the accused to be paid by them solidarily within their respective class and subsidiarily for the others.[41]

Consistent with prevailing jurisprudence, the complainant in rape cases is entitled to an award of P50,000.00 as civil indemnity ex delicto and another P50,000.00 as moral damages. Civil indemnity ex delicto is mandatory upon finding of the fact of rape which is distinct from moral damages awarded upon such finding without need of further proof because it is assumed that a rape victim has actually suffered moral injuries entitling the victim to such award.[42]

In determining the civil liability of petitioner, a clarification of the trial court's decision is necessary. The dispositive portion of the trial court's decision held Pacursa and petitioner "jointly and solidarily liable to pay the victim the amount of P50,000.00 as and by way of actual and moral damages plus the cost of suit." For our purposes, we shall treat the amount of P50,000.00 awarded by the trial court as the civil indemnity ex delicto for which, as an accomplice, petitioner should be solidarily liable with Pacursa only for one-half of the said amount, or P25,000.00, and is subsidiarily liable for the other P25,000.00 in case the principal is found insolvent.[43]

In addition, complainant must be awarded another P50,000.00 as moral damages. However, this additional award should not apply to Pacursa who has withdrawn his appeal as the same is not favorable to him.[44] Hence, the additional monetary award can only be imposed upon petitioner who pursued the present appeal.[45]

WHEREFORE, the petition is DENIED. The Decision of the Court of Appeals finding Rosendo Pacursa guilty as principal by direct participation, and petitioner Ernesto Garces as an accessory, to the crime of Forcible Abduction with Rape, is MODIFIED. Accused Rosendo Pacursa is found GUILTY beyond reasonable doubt of the crime of RAPE, and being a minor at the time the crime was committed, is sentenced to suffer an indeterminate penalty ranging from eight (8) years and one (1) day of prision mayor, as minimum, to 15 years of reclusion temporal, as

maximum. Petitioner Ernesto Garces is found guilty as an accomplice to the crime of rape, and is also sentenced to suffer an indeterminate penalty ranging from eight (8) years and one (1) day of prision mayor, as minimum, to 15 years of reclusion temporal, as maximum.

Rosendo Pacursa and Petitioner Ernesto Garces are ORDERED to pay complainant P50,000.00 as civil indemnity ex delicto. Being an accomplice, petitioner is held solidarily liable with the principal only for half of the amount or P25,000.00 and their subsidiary liability shall be enforced in accordance with Article 110 of the Revised Penal Code. Petitioner is likewise ordered to pay complainant P50,000.00 as moral damages.

SO ORDERED.

Austria-Martinez, and Chico-Nazario, JJ., concur.
Nachura, J., No part. Filed pleadings as Sol Gen.

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[1] Rollo, pp. 64-75. Penned by Associate Justice Edgardo F. Sundiam and concurred in by Associate Justices Martin S. Villarama, Jr. and Japar B. Dimaampao.

[2] Id. at 28-37. Penned by Judge Charito B. Gonzales.

[3] Id. at 93-94.

[4] Records, p. 1.

[5] Rollo, p. 147.

[6] Id. at 147-148.

[7] Exhibit "C," records, pp. 14-15.

[8] Exhibit "2," records, p. 126; TSN, June 15, 1993, p. 31, Translated to read as follows: "Let us elope, please answer this to tell me of your decision. the one who wrote Bing".

[9] TSN, October 20, 1993, pp. 27-38.

[10] Id. at 2-15.

[11] Rollo, pp. 28-37.

[12] Id. at 36-37.

[13] Id. at 75.

[14] TSN, June 15, 1993, pp. 30, 32.

[15] See People v. Domingo, G.R. No. 97921, September 8, 1993, 226 SCRA 156, 174.

[16] Exhibit "C," records, pp. 14-15; TSN, July 28, 1993, pp. 13-15.

[17] Exhibt "B," not found in the records; TSN, July 28, 1993, pp. 3-10.

[18] People v. Almanzor, 433 Phil. 667, 700 (2002).

[19] See People v. Lining, 433 Phil. 797 (2002), where accused were convicted for simple rape. In this case, complainant was dragged towards the ricefield and was forcibly carried to an unoccupied house where she was subsequently raped.

[20] People v. Fortich, 346 Phil. 596, 617 (1997).

[21] People v. Lining, supra at 812.

[22] People v. Fortich, supra at 618.

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

[24] People v. Gonzales, G.R. No. 141599, June 29, 2004, 433 SCRA 102, 116.

[25] TSN, October 20, 1993, pp. 27-38.

[26] TSN, June 15, 1993, pp. 5-6.

[27] Records, p. 92.

[28] Id. at 10-11.

[29] People v. Servano, 454 Phil. 256 (2003).

[30] Id. at 277-278.

[31] People v. Las Piñas, Jr., 427 Phil. 633, 641 (2002).

[32] Cf. People v. Corbes, 337 Phil. 190, 197 (1997).

[33] See People v. Tulin, 416 Phil. 365 (2001). As a rule, if there is lack of complete evidence of conspiracy, the liability is that of an accomplice and not as principal since any doubt as to the participation of an individual in the commission of the crime is always resolved in favor of lesser responsibility.

[34] Revised Penal Code, Art. 18.

[35] People v. De Vera, 371 Phil. 563, 584 (1999).

[36] People v. Clores, Jr., G.R. No. 130488, June 8, 2004, 431 SCRA 210, 222.

[37] Reyes, Jr. v. Court of Appeals, 424 Phil. 829 (2002).

[38] REVISED PENAL CODE, Art. 52.

[39] Id., Art. 100.

[40] Id., Art. 109.

[41] People v. Garcia, 424 Phil. 158, 194 (2002).

[42] People v. Calongui, G.R. No. 170566, March 3, 2006, 484 SCRA 76, 88.

[43] People v. Flores, 389 Phil. 532, 552 (2000).

[44] RULES OF COURT, Rule 122, Sections 11-12. See People v. Doctolero, G.R. No. 34386, February 7, 1991, 193 SCRA 632.

[45] People v. Arondain, 418 Phil. 354 (2001).

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