PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ERNESTO NARZABAL Y CASTELO, JR., ACCUSED-APPELLANT.

G.R. No. 174066. October 12, 2010

Ponente: MENDOZA, J.

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MENDOZA, J.:

This appeal assails the June 30, 2006 Decision[1] of the Court of Appeals (CA), in CA-G.R. H.C. CR No. 01257, which affirmed with modification the December 10, 2004 Decision[2] of the Regional Trial Court, Branch 15, Tabaco City (RTC), convicting accused Ernesto Narzabal of the crime of Rape with Homicide in Criminal Case No. T-3772.

THE FACTS

On June 26, 2002, accused Ernesto Narzabal, Jr. was indicted for the special complex crime of Rape with Homicide before the RTC. The Information reads:

> That on or about the 2[nd] day of March 2002, at 10:00 o'clock in the evening, more or less, in Purok 2, Barangay Sta. Elena, Municipality of Malinao, Province of Albay, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and by means of violence, force and intimidation, did then and there wilfully, unlawfully and feloniously have sexual intercourse with AAA,[3] against her will and consent, and by reason and on the occasion thereof, accused, with intent to kill, with treachery and taking advantage of superior strength, did then and there wilfully, unlawfully and feloniously assault, attack, strangle the neck and bang the head of aforenamed AAA on the cemented floor, which caused her death, to the damage and prejudice of her legal heirs.
>
> ACTS CONTRARY TO LAW.[4]

During the trial, the prosecution presented four witnesses: (1) the victim's mother, BBB; (2) Chief Tanod Nestor Bonaobra; (3) Barangay Captain Wilfredo Contante; and (4) Dr. Dante Bausa, Municipal Health Officer of Malinao, Albay.

The prosecution's evidence shows that AAA, who was eighteen years old at the time, lived with her parents in Barangay Sta. Elena, Malinao, Albay. [5] Accused Ernesto Narzabal worked as a tricycle driver and lived alone as he was rumoured to be separated from his wife. The victim and her family knew the accused because their houses were only about ten (10) meters apart.[6]

On March 2, 2002, at around 8:00 o'clock in the evening, AAA asked permission from her mother, BBB, to watch a television program at the house of their neighbor, Concepcion Briones. Concepcion's house was located next to that of the accused.[7] By 10:00 o'clock in the evening, BBB noticed that AAA had not yet returned. BBB went out to fetch AAA from the house of Concepcion who, however, informed her that her daughter was not there.[8]

On her way back, BBB heard AAA scream. It was coming from the direction of the house of the accused. BBB heard AAA scream aloud twice, then a muffled cry. After that, BBB did not hear her voice again. BBB then asked

for assistance from their barangay officials. Chief Tanod Nestor Bonaobra (Bonaobra), Barangay Captain Wilfredo Contante (Contante) and Senior Police Officer 4 Jesus Castelo (SPO4 Castelo) responded to her plea.[9] They all proceeded to the house of the accused.

Barangay Captain Contante and SPO4 Castelo knocked on the door and inquired about the missing girl. The accused answered that he knew nothing about AAA's disappearance.[10] Suspicious, Contante, SPO4 Castelo and Bonaobra entered the house. Inside, they saw the lifeless body of AAA lying on the cemented floor, half-naked from waist down, without her panty, with blood stains between her legs, and blood oozing from her ears and nostrils.[11]

Thereafter, SPO4 Castelo brought the accused to Malinao Police Station. Meanwhile, Contante and Bonaobra brought AAA to the Ziga Memorial District Hospital, Tabaco City, where the victim was declared "dead on arrival."[12]

At the request of Police Inspector Jesus M. Resari (P/Insp. Resari) of PNP Malinao, Albay, Dr. Dante B. Bausa (Dr. Bausa), Municipal Health Officer of Malinao, Albay, performed an autopsy on the victim's body. The Autopsy Report[13] revealed that the victim had "contusion over the inferior aspect of bilateral inner lip surface of the labia majora and labia minora; Abrasion with hyperemia over the posterior labial commissior. Superficial incomplete hymenal lacerations with hyperaemic and coaptable borders at 3:00 o'clock and 8:00 o'clock." The cause of death was cardio-respiratory arrest by reason of cerebral hemorrhage and skull fracture.

In his defense, the accused admitted the killing of AAA but denied having raped her. He related that at around 10:00 o'clock in the evening of March 2, 2002, he was drinking with friends.[14] Later, he saw AAA and asked her to buy cigarettes for him. After buying the cigarettes, they had a chat at his porch. Thereafter, he started embracing her. When he pulled down her shorts, she screamed. Rattled, he smashed her head on the floor.[15] Still in shock at what he had done, he heard people looking for her. He hid her body at the back of his house.[16] Moments later, he heard SPO4 Castelo calling for him. He allowed the police officer inside and showed him her lifeless body.[17]

On December 10, 2004, the RTC convicted the accused of the special complex crime of Rape with Homicide.[18] The decretal portion of the decision reads:

> WHEREFORE, premises considered, the accused is found guilty beyond reasonable doubt of the crime of rape with homicide as defined under Article 266-A and penalized under Article 266-B of R.A. No. 8353 (Anti-Rape Law of 1997) and is hereby sentenced to suffer the indivisible penalty of Death and to pay the heirs of AAA the amounts of Php100,000.00 as civil indemnity, and Php50,000.00 as moral damages and to pay the cost.
>
> The records of this case should be forwarded to the Supreme Court for automatic review.

The RTC did not give weight to the assertion of the accused that he did not rape the victim. The autopsy report disclosed contusion and abrasion and superficial incomplete hymenal lacerations with coaptable boarders at the 3:00 o'clock and 8:00 o'clock positions. The report, coupled by Contante's affidavit stating that they found the lifeless victim "half-naked without panty with injuries on her head and blood stains in her two legs," led the RTC to conclude that the accused indeed raped the victim before killing her.[19]

The RTC did not consider the superficial incomplete hymenal laceration, the absence of spermatozoa in the vaginal smears or the finding that the victim is still a virgin to negate the allegation of rape. It held that in the crime of rape, a complete or full penetration of the victim's private part is not necessary. Mere introduction of the male organ into the labia majora or the victim's genitalia consummates the crime.[20]

Initially, the records of this case were forwarded to the Court for automatic review. Pursuant to the Court's ruling

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in People v. Mateo,[21] this case was remanded to the CA for intermediate review.

In his Brief,[22] the accused assigned the following errors:

> THE LOWER COURT A QUO ERRED IN NOT CONSIDERING THE ACCUSED BEING DRUNK AT THE TIME THE CRIME COMMITTED AS AN ALTERNATIVE MITIGATING CIRCUMSTANCE.
>
> THE LOWER COURT A QUO ERRED IN ITS FINDINGS THAT THE ACCUSED RAPED AAA.[23]

The accused insisted that his intoxication at the time of the commission of the crime should have been considered as a mitigating circumstance as it was proven that he was a habitual drunkard. He denied having raped the victim as shown by Dr. Bausa's explanation that there was no penetration because there was no complete laceration and the victim was still a virgin.[24]

The Office of the Solicitor General (OSG) countered that the absence of spermatozoa did not disprove rape because the mere touching of the lips of the pudenda by the male organ was enough to consummate rape.[25] The OSG added that although the victim could no longer testify against her violator,[26] the facts and circumstantial evidence were enough to produce conviction beyond reasonable doubt.[27]

On June 30, 2006, the CA affirmed with modification the RTC decision. The dispositive portion reads:

> WHEREFORE, premises considered, the Decision of the court a quo dated 10 December 2004 is perforced affirmed with a modification that in addition to the civil indemnity and moral damages awarded, temperate damages of P30,000.00 is likewise awarded.
>
> SO ORDERED.

The CA affirmed the finding of rape against the accused, albeit the evidence being circumstantial, because the series of unbroken events presented by the prosecution sufficiently established that he had carnal knowledge with the victim using force and intimidation before ultimately killing her. The CA wrote: "accused-appellant himself admitted that on the incident in question, he embraced the victim and pulled down the latter's shorts but when she screamed he bashed her head on the cemented floor. But according to him, that was the last act that he did to the victim because he was then in a state of shock. Far from the truth, the physical evidence would reveal a different dimension. The victim sustained nineteen (19) injuries on the head, neck and different parts of her body, and a fractured skull as a result of the bashing of her head on the cemented floor that proved fatal. And when the victim was found inside the accused's house, she was half-naked from waist down. The Autopsy Report conducted by Dr. Bausa as well as the latter's testimony showed that there was superficial incomplete hymenal lacerations."[28] The CA further stated that mere introduction of the penis into the labia majora of the victim's genitalia engendered the crime of rape.[29]

The CA did not appreciate the intoxication of the accused as a mitigating circumstance either because, under Article 266-B of the Revised Penal Code, the crime of rape with homicide is punishable by death. In case of an indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstance that may have attended the commission of the offense.[30]

Since actual damages were not adequately established, the CA awarded temperate damages in the amount of P30,000.00 because the family incurred expenses for the wake and burial of the victim.

Hence, this appeal.

Petitioner essentially reiterates the issue he presented before the CA: whether or not the RTC erred in finding him guilty beyond reasonable doubt of the crime of rape with homicide.

The Court sustains the conviction.

In a special complex crime of rape with homicide, the following elements must concur: (1) the accused had carnal knowledge of a woman; (2) carnal knowledge of a woman was achieved by means of force, threat or intimidation; and (3) by reason or on occasion of such carnal knowledge by means of force, threat or intimidation, the accused killed a woman.[31] Both rape and homicide must be established beyond reasonable doubt.[32]

In this case, the prosecution convincingly established the criminal liability of the accused through circumstantial evidence, which was credible and sufficient and led to the inescapable conclusion that he committed the complex crime of rape with homicide. When taken together, the circumstances point to the accused as the perpetrator of the despicable deed to the exclusion of others. These were:

> First. BBB, the mother of the victim, heard screams of her daughter coming from the direction of the house of the accused.
>
> Second. BBB, together with the barangay officials and the police went to the house of the accused where the body of the victim was found . The victim was lifeless, half-naked, without panty, and with blood between legs.[33]
>
> Third. The accused, when confronted, admitted that on that fateful night AAA was in his house[34] and that he embraced her and lowered her undergarments, indicative of his lewd designs against her.[35]
>
> Fourth. The accused admitted hitting the victim's head against the cemented floor.[36] This move rendered her unconscious and gave him ample opportunity to satisfy his lustful desires.
>
> Fifth. Upon medical examination, the victim had incomplete hymenal lacerations in her genitalia.[37]

The accused argued that there was no rape because the doctor who examined the victim's body concluded that she was still a virgin. It does not matter, however, if the victim was medically found to be a virgin; an intact hymen does not negate a finding that the victim was actually sexually violated. It has been repeatedly held that the mere touching of the external genitalia by the penis, capable of consummating the sexual act, is sufficient to constitute carnal knowledge.[38] In People v. Campuhan,[39]the Court clarified that the act of touching should be understood as inherently part of the entry of the penis into the labia of the female organ and not mere touching alone of the mons pubis or the pudendum. Stated differently, to constitute consummated rape, the touching must be made in the context of the presence or existence of an erect penis capable of penetration. There must be sufficient and convincing proof that the erect penis indeed touched the labia or slid into the female organ, and not merely stroked the external surface thereof.[40]

In his testimony, Dr. Bausa positively confirmed that, upon examination of the victim, hymenal incomplete lacerations were found in her genitalia. He testified that "there was contusion over the inferior aspect of bilateral inner lip surface of the labia majora and labia minora. This injury may have been caused when an object forcibly inserted and there was an abrasion hyperemia. The posterior junction of the two labia majora, posterior lid and on the part on the junction of the two majora, there was an abrasion of hyperemia and this injury can be caused forcibly when an object is forcibly inserted on the genital area and, there is also a superficial incomplete hymenal laceration of hyperaemic and coaptable borders at 3:00 o'clock and 8:00 o'clock corresponding to the face of the clock."[41] The physical injuries in the inner lip surface of the labia majora and labia minora of the victim's genitalia show that the requirement in Campuhan was satisfied.

Indubitably, the said medical finding and the testimonies of the other witnesses, who saw the victim's state at the time of the discovery, are proof sufficient enough to support a finding of rape.

As regards the penalty imposed, Rape with Homicide under Article 335 of the Revised Penal Code in relation to

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Republic Act No. 7659, provides that when by reason or on occasion of rape, homicide is committed, the penalty shall be death. However, in view of the effectivity of Republic Act No. 9346,[42] the penalty of death should be lowered to reclusion perpetua, without eligibility for parole.

With respect to the civil indemnity ex delicto, the amount of P100,000.00 was correctly awarded by the RTC.[43] The award of moral damages should, however, be increased from P50,000.00 to P75,000.00 to conform to current jurisprudence.[44] Article 2229 of the New Civil Code permits the award of exemplary damages in order to deter commission of similar acts and allow the courts to forestall behavior that would pose grave and deleterious consequences to society.[45] In this regard, the Court deems it proper to award exemplary damages in the amount of P50,000.00.[46]

WHEREFORE, the June 30, 2006 Decision of the Court of Appeals, in CA-G.R. H.C. CR No. 01257, is hereby AFFIRMED with MODIFICATION. The penalty imposed upon accused Ernesto Narzabal, Jr. is hereby reduced to reclusion perpetua, without eligibility for parole, and the amount of moral damages is increased from P50,000.00 to P75,000.00. The accused is further ordered to pay the heirs of AAA P50,000.00 as exemplary damages.

SO ORDERED.

Corona, C.J., Carpio Morales, Velasco, Jr., Leonardo-De Castro, Brion, Bersamin, Del Castillo, Villarama, Jr., Perez, and Sereno, JJ., concur.
Carpio, J., on official leave.
Nachura, J., no part.
Peralta, J., on leave.
Abad, J., on official leave.

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[1] Rollo, pp. 3-16. Penned by Associate Justice Bienvenido L. Reyes, with Associate Justices Regalado E. Maambong and Enrico A. Lanzanas, concurring.

[2] CA rollo, pp. 16-29.

[3] See People v. Ching, G.R. No. 177150, November 22, 2007, 538 SCRA 117, 121. Pursuant to Republic Act No. 9262, otherwise known as the "Anti-Violence Against Women and Their Children Act of 2004" and its implementing rules, the real name of the victim, together with the real names of her immediate family members, is withheld and fictitious initials instead are used to represent her, both to protect her privacy. (People v. Cabalquinto, G.R. No. 167693, September 19, 2006, 502 SCRA 419, 421-426).

[4] Records, p. 20.

[5] TSN, October 14, 2003, p. 13.

[6] Id. at 4.

[7] Id. at 5.

[8] Records, p. 2.

[9] TSN, October 14, 2003, p. 6.

[10] Records, p. 2.

[11] TSN, October 14, 2003, p. 7

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[12] Id. at 8.

[13] Records, pp. 14-15.

[14] TSN, August 10, 2004, p. 7.

[15] Id. at 8.

[16] Id. at 9.

[17] Id. at 10-11.

[18] CA rollo, pp. 16-29.

[19] Id. at 26-27.

[20] Id. at 27-28.

[21] G.R. Nos. 147678-87, July 4, 2004, 433 SCRA 640.

[22] CA rollo, pp. 33-37.

[23] Id. at 34.

[24] Id. at 34-35.

[25] Id. at 67.

[26] Id. at 69.

[27] Id. at 70.

[28] Id. at 90.

[29] Id. at 91.

[30] Article 63, Revised Penal Code.

[31] People v. Nanas, 415 Phil. 683, 696 (2001).

[32] Diega v. Court of Appeals, G.R. Nos. 173510 and 174099, March 15, 2010.

[33] Records, Exhibit "D," p. 6.

[34] TSN, August 10, 2004, p. 7.

[35] Id. at 8.

[36] Id.

[37] Records, Exhibit "E-3," p. 15.

[38] People v. Brioso, G.R. No. 182517, March 13, 2009, 581 SCRA 485, 494.

[39] 385 Phil. 912 (2000).

[40] Supra at 920-921.

[41] TSN, November 9, 2004, pp. 15-16.

[42] "An Act Prohibiting the Imposition of the Death Penalty in the Philippines."

[43] Supra note 32. See also People v. Paraiso, 402 Phil 372, 393 (2001).

[44] People v. Alegre, G.R. 184812, July 06, 2010, citing People v. Araojo, G.R. No. 185203, September 17, 2009, 600 SCRA 295, 309.

[45] People v. Bascugin, G.R. No. 184704, June 30, 2009, 591 SCRA 453,465.

[46] Id.

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