

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ELMER BALDO Y SANTAIN, APPELLANT.

G.R. No. 175238. February 24, 2009

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

On appeal is the Decision[1] dated July 4, 2006 of the Court of Appeals in CA-G.R. CR-H.C. No. 01930, which affirmed the Decision[2] of the Regional Trial Court of Antipolo City, Branch 73 in Criminal Case Nos. 00-18080 to 00-18082, convicting and sentencing appellant Elmer S. Baldo to reclusion perpetua for the crime of rape.

On February 17, 2000, three Informations for rape were filed against appellant and were docketed as Criminal Case Nos. 00-18080 to 00-18082. Except for the dates, all three informations were similarly worded as follows:

That on or about the 10[th] day of February 2000 in the City of Antipolo, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, while armed with a fan knife, by means of force and intimidation, did, then and there wilfully, unlawfully and feloniously have sexual intercourse with one [AAA],[3] against her will and consent.

CONTRARY TO LAW.[4]

Upon arraignment on March 16, 2000, appellant pleaded not guilty to the three charges.[5] Trial on the merits thereafter ensued.

The facts as established by the prosecution are as follows:

Twenty-nine-year-old AAA, appellant, and Norman Echani were housemates in a small one-room house in Purok Maligaya II, Mambugan, Antipolo City. Appellant is her nephew while Echani is her cousin. As AAA recently resigned from her job and appellant worked during the night shift in a factory, the two were always left during daytime when Echani was at work.

On February 10, 2000 at 1:00 p.m., appellant professed his love for AAA in their living room. She, however, admonished him against his protestation for they are relatives. He then told her that if she ignores him, he would rape her. She pleaded to him not to do anything against her will if he really liked her. Appellant then held her left hand and poked a balisong (fan knife) at her, and then removed her pants and panty while she was seated at a bench. Then he dragged her and laid her on the floor, removed his shorts and brief, and placed himself on top of her. AAA tried to resist by kicking him but he was stronger. Thereafter he placed the knife aside, then held and pressed her thighs. He then fingered her vagina with his right hand and inserted his penis into it. After two minutes, appellant stood up but threatened to kill her if she reported the incident to their relatives. As she was in shock, AAA just stayed in her room. Appellant thereafter left for work at 5:30 p.m.

According to AAA, appellant repeated his beastly act the following day, February 11 and on the next day, February 12, 2000.

In the evening of February 12, 2000, AAA decided to tell Echani what appellant had done to her. Echani and his brother, Abraham, then accompanied her to the barangay hall to file complaints against appellant.

The medico-legal police officer who examined AAA on February 13, 2000 found "deep healing laceration" in her hymen, "compatible with recent loss of virginity" but negative for spermatozoa.[6] Dr. James Belgira testified that the laceration could have been caused by a penetration of a hard object like an erect penis. He also found contusions on AAA's left arm and thighs.[7]

Appellant, in his own defense, denied the charges against him. He claimed that he and AAA were lovers since November 1999, and that she had consented to have sex with him even prior to February 2000. He contended that she charged him because her parents were against their affair, and that her parents learned of their relationship because two of their neighbors saw them having sexual intercourse. He likewise denied poking a knife at her when they "made love." To prove they are lovers, appellant presented two witnesses: Benjamin Eubra, Purok Maligaya Chairman, and Simeon de los Santos, appellant's uncle and neighbor.

Eubra and De los Santos testified that appellant and AAA were always together and held hands when walking. Being part of the barangay investigating team, Eubra said that the crime scene is a single-room house separated from adjacent houses by plywood and located in a place where market people usually hang out. He did not believe the charges because the neighbors could always see and hear what the occupants inside the house were doing.[8]

On September 26, 2002, the trial court found appellant guilty in Criminal Case No. 00-18080 but acquitted him in Criminal Case Nos. 00-18081 and 00-18082. The fallo reads as follows:

WHEREFORE, premises considered, accused ELMER BALDO y SANTAIN is hereby found guilty of rape beyond reasonable doubt in Criminal Case No. 00-18080 and is hereby sentenced to suffer the penalty of Reclusion Perpetua.

He is further ordered to pay to the complainant, [AAA], the amount of Php 50,000 as indemnity.

Criminal Cases No[s]. 00-18081 and 00-18082 are hereby DISMISSED for insufficiency of evidence.

SO ORDERED.[9]

Since the penalty imposed on appellant is reclusion perpetua, the case was elevated to this Court for automatic review. Pursuant to *People v. Mateo*,^[10] however, we referred the case to the Court of Appeals.

On July 4, 2006, the appellate court affirmed with modification the trial court's decision. Its fallo reads:

WHEREFORE, the Decision appealed from is AFFIRMED, with MODIFICATION by ordering accused-appellant Elmer Baldo y Santain to likewise pay [AAA] the amount of P50,000.00 as moral damages and the amount of P25,000.00 as exemplary damages.

SO ORDERED.[11]

Hence this instant petition based on a lone assignment of error:

THE COURT A QUO ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT FOR THE CRIME CHARGED HAS BEEN [PROVEN] BEYOND REASONABLE DOUBT.[12]

The issue to be resolved in the instant case is whether the crime of rape, particularly the element of force or intimidation, has been proved sufficiently.

Appellant insists that he and AAA are lovers and what happened between them was consensual. He likewise capitalizes on AAA's admission that he was no longer holding the knife when he inserted his finger and

subsequently his penis into AAA's vagina. Thus, she had all the opportunity to resist his alleged sexual assault. Appellant further claims that AAA's failure to make an outcry to call the attention of their neighbors, as the partition between the rooms was only made of plywood, and to immediately disclose the incident to her cousin Echani, showed she consented to the sexual congresses. As he was not covering her mouth, she should have made her protestations in a voice loud enough for others to hear.

The Office of the Solicitor General (OSG) counters that findings of fact of the trial court deserve respect and that witnesses are usually reluctant to volunteer information. It stresses that the elements of simple rape, to wit, carnal knowledge and force or intimidation, were proven during trial. Even granting that appellant and AAA were lovers, such fact was not a valid defense as a man cannot force his sweetheart to have sexual intercourse with him. The OSG adds that AAA's account evinced sincerity and truthfulness and she never wavered in her story, consistently pointing to appellant as her rapist. Besides, no woman would willingly submit herself to the rigors, humiliation and stigma attendant in a rape case if she was not motivated by an earnest desire to punish the culprit.

In our considered view, the prosecution has proven all the elements of the offense of simple rape, including the use of force or intimidation. We affirm appellant's conviction.

For conviction in the crime of rape, the following elements must be proved beyond reasonable doubt: (1) that the accused had carnal knowledge of the victim; and (2) that said act was accomplished (a) through the use of force or intimidation, or (b) when the victim is deprived of reason or otherwise unconscious, or (c) when the victim is under 12 years of age or is demented.[13]

In this case, the presence of the first element is undisputed since appellant admits his sexual congress with complainant. While making such admission however, he contends that there is no force or intimidation to speak of as it was consensual. Appellant alleges that AAA willingly participated in the sexual act because they are lovers. He even presented two witnesses to corroborate his claim. Their testimony, however, leaves us unconvinced of appellant's alleged innocence.

The "sweetheart theory" or "sweetheart defense" is an oft-abused justification that rashly derides the intelligence of this Court and sorely tests our patience.[14] For the Court to even consider giving credence to such defense, it must be proven by compelling evidence.[15] The defense cannot just present testimonial evidence in support of the theory, as in the instant case. Independent proof is required -- such as tokens, mementos, and photographs.[16] There is none presented here by the defense.

Moreover, even if it were true that they were sweethearts, a love affair does not justify rape. As wisely ruled in a previous case, a man does not have the unbridled license to subject his beloved to his carnal desires.[17]

In a desperate attempt to prove the alleged consensual nature of the sexual intercourse, appellant capitalizes on AAA's failure to offer resolute resistance despite the fact that he was no longer holding the knife while consummating the sexual act. Appellant also points to AAA's failure to shout or make an outcry so that their neighbors can come to her rescue.

AAA's failure to shout or to tenaciously resist appellant should not be taken against her since such negative assertion would not ipso facto make voluntary her submission to appellant's criminal act.[18] In rape, the force and intimidation must be viewed in the light of the victim's perception and judgment at the time of the commission of the crime. As already settled in our jurisprudence, not all victims react the same way.[19] Some people may cry out, some may faint, some may be shocked into insensibility, while others may appear to yield to the intrusion.[20] Some may offer strong resistance while others may be too intimidated to offer any resistance at all.[21] Moreover, resistance is not an element of rape.[22] A rape victim has no burden to prove that she did all

within her power to resist the force or intimidation employed upon her.[23] As long as the force or intimidation is present, whether it was more or less irresistible is beside the point.[24] In this case, the presence of a fan knife on hand or by his side speaks loudly of appellant's use of violence, or force and intimidation.

As to the civil indemnity and damages, the trial court, as affirmed by the appellate court, correctly awarded P50,000 civil indemnity and P50,000 moral damages in line with prevailing jurisprudence.[25] Likewise, the award of P25,000 exemplary damages due to the presence of the aggravating circumstance of use of a deadly weapon (fan knife) is proper.[26]

WHEREFORE, the Decision dated July 4, 2006 of the Court of Appeals in CA-G.R. CR-H.C. No. 01930 is AFFIRMED.

SO ORDERED.

Carpio-Morales, Nachura,[*] Brion, and Peralta,**]JJ., concur.

* Additional member in lieu of Associate Justice Dante O. Tinga who is on sabbatical leave.

** Additional member in lieu of Associate Justice Presbitero J. Velasco, Jr. who is abroad on official business.

[1] CA rollo, pp. 116-124. Penned by Associate Justice Marina L. Buzon, with Associate Justices Regalado E. Maambong and Lucenito N. Tagle concurring.

[2] Dated September 26, 2002. Records, pp. 115-124. Penned by Executive Judge Mauricio M. Rivera.

[3] This appellation is pursuant to Republic Act No. 9262, Sec. 44, otherwise known as the "Anti-Violence Against Women and their Children Act of 2004" and our ruling in *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419, wherein this Court has resolved to withhold the real name of the victim-survivor and to use fictitious initials instead to represent her in its decisions. Likewise, the personal circumstances of the victims-survivors or any other information tending to establish or compromise their identities, as well as those of their immediate family or household members, shall not be disclosed.

[4] Id. at 1, 13 and 27.

[5] Id. at 45.

[6] Records, p. 133.

[7] Id. at 136-137. TSN, June 28, 2000, p. 14.

[8] TSN, August 15, 2001, p. 15. TSN, December 5, 2001, pp. 13-14, 16.

[9] Records, pp. 123-124.

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

[11] CA rollo, p. 123.

[12] Id. at 39.

[13] Revised Penal Code, Art. 266-A as amended by Rep. Act No. 8353; *People v. Barangan*, G.R. No. 175480, October 2, 2007, 534 SCRA 570, 592.

[14] *People v. Barangan*, id. at 593.

- [15] *People v. Calongui*, G.R. No. 170566, March 3, 2006, 484 SCRA 76, 84.
- [16] *People v. Batiancila*, G.R. No. 174280, January 30, 2007, 513 SCRA 434, 444.
- [17] *People v. Barangan*, *supra* at 594.
- [18] *People v. Calongui*, *supra* at 85; *People v. Dadulla*, G.R. No. 175946, March 23, 2007, 519 SCRA 48, 58-59.
- [19] *People v. Balonzo*, G.R. No. 176153, September 21, 2007, 533 SCRA 760, 771; *People v. Soriano*, G.R. No. 172373, September 25, 2007, 534 SCRA 140, 145.
- [20] *People v. Ilao*, G.R. Nos. 152683-84, December 11, 2003, 418 SCRA 391, 400.
- [21] *People v. Fernandez*, G.R. No. 172118, April 24, 2007, 522 SCRA 189, 203; *People v. Batiancila*, *supra* at 443.
- [22] *People v. Durano*, G.R. No. 175316, March 28, 2007, 519 SCRA 466, 480.
- [23] *People v. Balonzo*, *supra* at 770.
- [24] *People v. San Antonio, Jr.*, G.R. No. 176633, September 5, 2007, 532 SCRA 411, 428.
- [25] *People v. Natan*, G.R. No. 181086, July 23, 2008, pp. 1, 6-7.
- [26] *People v. Barangan*, *supra* at 596.

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