

PO3 BENITO SOMBILON, JR., PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 175528. September 30, 2009

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

This resolves the petition for review which seeks to annul and set aside the following rulings of the Court of Appeals (CA) in C.A. C.R. No. 27729: a) the Decision[1] dated July 28, 2005 which affirmed with modification the decision[2] dated May 13, 2003 of the Regional Trial Court of Davao City (RTC), convicting petitioner of acts of lasciviousness; and b) the Resolution[3] dated September 22, 2006 denying petitioner's Motion for Reconsideration of the aforesaid Decision.

The facts found during trial, as succinctly stated by the CA, are as follows:

The facts found during the trial reveal that on or about August 15, 1998, AAA, a fifteen (15)-year old minor, was investigated by Appellant at the Calinan Police Station, Davao City in connection with a complaint for Theft filed by a certain Aileen Dagoc.

AAA alleged that Appellant, in conducting the investigation, took her inside a room and locked it. She testified that the room had no window but had a cot, a table, and a clothesline where some clothes were hanged. She claimed that Appellant pointed a gun at her, with the end of the barrel touching her forehead and pushed her with it, causing her head to violently bang against the wall, and asked her: "Did you steal the necklace?" She answered that she did not. Appellant then took an electric wire from a drawer and inserted its male plug to a socket. She was ordered to place her two hands on top of the table where her fingers were electrocuted with the end of the wire. She was again asked the same question, which she kept answering in the negative. Subsequently, she was asked: "Dalaga ka na ba?" (Are you a woman now?), and was told: "I am single too." Simultaneously, she was touched all over her body including her breasts, her belly, and her private parts. She was also kissed on her cheek. She struggled to resist the sexual advances but Appellant prevailed. She claimed that they were inside the room for more than one (1) hour.

Thereafter, they went out of the room where Appellant announced to P03 Danilo Mendez and Aileen Dagoc that she had already admitted having stolen the necklace. Pale, AAA was trembling and crying; her hair disheveled, her dress wet. She also had bruises on her forehead.

The police officers allowed AAA and her mother to go home on the condition that they would pay the value of the necklace. Because of AAA's condition, AAA's mother brought her daughter to the Medical Clinic of St. Luke where AAA was examined by Dr. Manuel Garcia, Sr.[4] Dr. Garcia gave AAA a tranquilizer to calm down the latter who was trembling and incoherent.[5] At first, AAA could not answer the doctor when she was asked what happened to her. Later, upon regaining her composure, she revealed that she was electrocuted and sexually molested by petitioner.[6] The Medical Certificate[7] issued by Dr. Garcia disclosed the following injuries:

1. Slight contusion over occiput region.
2. Slight contusion over center area of forehead.

3. Multiple slight contusions of fingers of bilateral hands.
4. Multiple slight contusions of bilateral breast areas.
5. Slight body tremors.

Diagnosis: Slight Physical Injuries

In an Information[8] dated August 23, 1999, petitioner was charged with the crime of Acts of Lasciviousness committed as follows:

The undersigned accuses the above-named accused of the crime of Acts of Lasciviousness, under Art. 336, in relation to Art. 344 of the Revised Penal Code, upon the instance of the complainant AAA, who is 15 years old, whose affidavit is hereto attached to form part of this Information. The crime is committed as follows:

That on or about August 14, 1998, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, motivated by lewd design, willfully, unlawfully, and feloniously upon the person of AAA, by then and there embracing, mashing the breast, and touching the private part, against her will.

CONTRARY TO LAW.

Upon arraignment, petitioner pleaded "not guilty." Trial ensued thereafter.

On May 13, 2003, after trial on the merits, the RTC rendered a decision finding petitioner guilty of acts of lasciviousness with the aggravating circumstance of petitioner's taking advantage of his public position and sentenced him to six (6) months of arresto mayor, as minimum, to five (5) years, four (4) months and twenty-one (21) days of prision correccional, as maximum. The dispositive portion of the Decision reads:

For the foregoing judgment is hereby rendered, finding accused P03 Benito Sombilon, GUILTY beyond reasonable doubt of the crime of Acts of Lasciviousness, under Article 366 of the Revised Penal Code, and is hereby sentenced to suffer imprisonment under the Indeterminate Sentence Law from Six (6) months of Arresto Mayor, as minimum to Five (5) years, Four (4) months and Twenty-one (21) days of Prision Correccional, as maximum and directed to pay private complainant AAA the following:

- a.) by way of moral Damages, the amount of Ten Thousand Pesos (PhP10,000.00); and
- b.) by way of Exemplary Damages, the amount of ten Thousand Pesos (PhP10,000.00).[9]

From the above decision, petitioner interposed an appeal to the CA, which was docketed as CA-G.R. CV No. 40419.

On July 28, 2005, the CA rendered the herein challenged Decision affirming with modification the RTC's judgment of conviction. Appreciating the aggravating circumstance of taking advantage of public position which was adequately established during the trial, the CA increased the maximum penalty imposed against petitioner to its maximum period of six years of prision correccional. The dispositive portion of the Decision reads:

WHEREFORE, the Decision of the Regional Trial Court, Br. 8, Davao City in Criminal Case No. 43, 810-99 is hereby AFFIRMED with MODIFICATION. Appellant P03 Benito Sombilon, as found guilty beyond reasonable doubt of the crime of acts of lasciviousness, defined and penalized under article 336 of the Revised Penal Code, is hereby sentenced to suffer the indeterminate penalty of 6 months of arresto mayor as minimum, to 6 years of prision correccional, as maximum. Appellant is likewise ordered to pay the victim, AAA, the amount of Php10,000.00 as moral damages and another Php10,000.00 as exemplary damages.

With costs.

SO ORDERED.[10]

Thus, petitioner filed the instant petition, with the following allegations:

I

THE HONORABLE COURT OF APPEALS ERRED IN AFFIRMING THE TRIAL COURT THAT THE ACCUSED IS GUILTY OF THE CRIME CHARGED BEYOND REASONABLE DOUBT;

II

ASSUMING BUT NOT ADMITTING, THE HONORABLE COURT OF APPEALS ERRED IN AFFIRMING THE APPRECIATION OF THE AGGRAVATING CIRCUMSTANCE OF TAKING ADVANTAGE OF HIS PUBLIC POSITION FOR FAILURE TO ALLEGE IN THE INFORMATION;

III

THE HONORABLE COURT OF APPEALS ERRED IN AFFIRMING THE AWARD OF DAMAGES.[11]

Petitioner contends that the CA erred in affirming his conviction for acts of lasciviousness. Even as he admits having merely touched the victim, petitioner argues that the act of touching did not constitute lewdness. At most, he could only be convicted of unjust vexation. Petitioner likewise asserts that while the victim was being touched, the latter tried to cover her body with her arms. Lastly petitioner posits that the police station does not favor the perpetration of the crime of acts of lasciviousness.

Petitioner's contention deserves scant consideration.

The crime of acts of lasciviousness as punished under Article 336 of the Revised Penal Code provides:

ART. 336. Acts of lasciviousness.- Any person who shall commit any act of lasciviousness upon other persons of either sex, under any of the circumstances mentioned in the preceding article, shall be punished by prison correccional.

For an accused to be convicted of acts of lasciviousness under the foregoing provision, the prosecution is burdened to prove the confluence of the following essential elements: (1) that the offender commits any act of lasciviousness or lewdness; and (2) that it is done under any of the following circumstances: (a) by using force or intimidation; (b) when the offended woman is deprived of reason or otherwise unconscious; or (c) when the offended party is under twelve (12) years of age.[12]

In the case of *Amployo v. People*,[13] the Court expounded on the definition of the term lewd, thus:

The term "lewd" is commonly defined as something indecent or obscene; it is characterized by or intended to excite crude sexual desire. That an accused is entertaining a lewd or unchaste design is necessarily a mental process the existence of which can be inferred by overt acts carrying out such intention, i.e., by conduct that can only be interpreted as lewd or lascivious. The presence or absence of lewd designs is inferred from the nature of the acts themselves and the environmental circumstances. What is or what is not lewd conduct, by its very nature, cannot be pigeonholed into a precise definition. As early as *U.S. v. Gomez* we had already lamented that -

It would be somewhat difficult to lay down any rule specifically establishing just what conduct makes one amenable to the provisions of article 439 of the Penal Code. What constitutes lewd or lascivious conduct must be determined from the circumstances of each case. It may be quite easy to determine in a particular case that certain acts are lewd and lascivious, and it may be extremely difficult in another case to say just where the line of demarcation lies between such conduct and the amorous advances of an ardent lover.

Undoubtedly, petitioner committed acts which fall within the above described lascivious conduct. It cannot be viewed as mere unjust vexation as petitioner would have the Court do. The intention of petitioner was intended

neither to merely annoy or irritate the victim nor to force her to confess the theft. He could have easily achieved that when he electrocuted the latter. Petitioner intended to gratify his sexual desires.

As found by the RTC and affirmed by the CA, petitioner's acts of kissing the victim, fondling her breasts and touching her private parts constitute lascivious conduct intended to quench his salacious desire. Petitioner's lewd intent was betrayed when he asked AAA, "Dalaga ka na ba?" as a prelude to his lustful advances on the victim, and thereafter conveyed to her that "I am single too." We quote with approval the CA's ratiocination:

Undeniably, appellant committed lewd acts against AAA. "Lewd" is defined as obscene, lustful, indecent, and lecherous. It signifies that form of immorality which has relation to moral impurity; or that which is carried on a wanton manner. The evidence shows that appellant committed lewd acts against AAA when he touched her "all over her body" which includes massaging her breasts, touching her private parts, and kissing her on the cheek. These acts were clearly done with lewd designs as appellant even previously asked AAA, as if it was a prelude for things to come, "Dalaga ka na ba?" and thereafter conveyed to her that "he is single too." [14]

The fact that the victim tried to cover her body with her arms does not negate petitioner's lascivious conduct. Petitioner succeeded in fondling the victim's breasts intense enough to cause multiple slight contusions of bilateral breast areas.

As aptly observed by the CA, petitioner employed force and intimidation against AAA:

Moreover, appellant employed force and intimidation when he committed these acts on AAA. In fact, as found by the trial court, appellant pointed a gun at the forehead of AAA as evidenced by the bruises on her forehead. Further, the medical Certificate shows that AAA suffered slight physical injuries which include "multiple slight contusion of bilateral breast areas" which supports AAA's claim. [15]

In *People v. Victor*, [16] the Court held that in cases of acts of lasciviousness, it is not necessary that intimidation be irresistible. It being sufficient that some compulsion equivalent to intimidation annuls or subdues the free exercise of the will of the offended party. Here, the victim was locked inside a windowless room together with her aggressor who poked a gun at her forehead. Even a grown man would be paralyzed with fear if threatened at gunpoint, what more the hapless victim who was only 15 years old when she was subjected to such atrocity.

Petitioner's assertion that the locus criminis i.e., the police station makes it unlikely for him to commit the crime of acts of lasciviousness is specious. The presence of other policemen on duty and of the victim's mother outside the room where the incident took place does not render commission of the offense impossible. It has been shown that there was a room in the precinct which, except for two doors which could be locked, was totally enclosed. [17] During the commission of the acts of lasciviousness, petitioner and AAA were the only persons inside the room. Lust, as we have often held, is no respecter of either place or time. [18]

As to the appreciation of the aggravating circumstance of taking advantage of public position, petitioner points out that said circumstance was not alleged in the information. The Solicitor General shares the same view.

Sections 8 and 9 of Rule 110 of the Revised Rules of Criminal Procedure, which took effect on December 1, 2000, provide:

Sec. 8. Designation of the offense. -- The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

Sec. 9. Cause of the accusations. -- The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily

in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.

Clearly, it is now a requirement that the aggravating as well as the qualifying circumstances be expressly and specifically alleged in the complaint or information. Otherwise, they cannot be considered by the trial court in its judgment, even, if they are subsequently proved during trial.[19] A reading of the Information shows that there was no allegation of any aggravating circumstance.

In *People v. Buayaban*,[20] the crime was committed and the Information was filed in 1990. Still, the Court gave the 2000 Rules of Criminal Procedure retroactive application since it benefited the accused and disregarded the generic aggravating circumstance of band because it was not alleged in the Information. The Court explained, viz:

Section 8 simply provides that the information or complaint must state the designation of the offense given by the statute and specify its qualifying and generic aggravating circumstances. With regard to Section 9, we held in *People vs. Nerio Suela* that the use of the word "must" in said Section 9 indicates that the requirement is mandatory and therefore, the failure to comply with sec. 9, Rule 110, means that generic aggravating circumstances, although proven at the trial, cannot be appreciated against the accused if such circumstances are not stated in the information.

In this case, we cannot properly appreciate the ordinary aggravating circumstance of band in the commission of the crime since there was no allegation in the information that "more than three armed malefactors acted together in the commission of the crime.

Here, the crime was committed in 1998, the generic aggravating circumstance of taking advantage of public position was not alleged in the information. As such, it cannot be appreciated as an aggravating circumstance. Consequently, the penalty imposed must be modified.

Section 1 of the Indeterminate Sentence Law[21] (ISL) states that (i)n imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense. Under Article 366 of the Revised Penal Code, the penalty for acts of lasciviousness is prision correccional. Since no aggravating or mitigating circumstance attended the commission of the offense in this case, the penalty should be applied in its medium period, the duration of which is two (2) years, four (4) months and one (1) day to four (4) years and two months, as maximum. The minimum shall be within the range of the penalty next lower in degree which is arresto mayor, with the duration of one (1) month and one (1) day to six (6) months.

Applying the ISL, the proper penalty would be imprisonment of six (6) months of arresto mayor as minimum to four (4) years and two (2) months of prision correccional as maximum.[22]

As to the damages awarded, Article 2230 of the Civil Code provides that in criminal offenses, exemplary damages as part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Since the generic aggravating circumstance of taking advantage of public position was not alleged in the Information against petitioner it cannot be appreciated in the imposition of the penalty. But as regards the award of exemplary damages, in the case of *People v. Catubig*,[23] the Court declined retroactive application of the 2000 Rules of Criminal Procedure, to wit:

The retroactive application of procedural rules, nevertheless, cannot adversely affect the rights of the private offended party that have become vested prior to the effectivity of said rules. Thus, in the case at bar, although

relationship has not been alleged in the information, the offense having been committed, however, prior to the effectivity of the new rules, the civil liability already incurred by appellant remains unaffected thereby.

Thus, in accordance with the foregoing pronouncement, the Court affirms the CA's award of exemplary damages to the victim in the amount of P10,000.00.

With regard to the awarded moral damages in the amount of P10,000.00, the same should be increased to P30,000.00. In *People v. Solmoro*[24] we declared that upon a finding of guilt of the accused for acts of lasciviousness, the amount of P30,000.00 as moral damages may be further awarded to the victim in the same way that moral damages are awarded to victims of rape even without need of proof because it is assumed that they suffered moral injury. Considering the immeasurable pain and anguish that the victim had to suffer in the hands of the petitioner; the trauma that she had to endure even after the incident; and the sexual perversity of petitioner, who is a police officer, the award of moral damages in the amount of P30,000.00 is proper.

WHEREFORE, the petition is hereby denied and the Decision dated July 28, 2005 of the Court of Appeals finding petitioner P03 Benito Sombilon GUILTY of the crime of acts of lasciviousness under Article 336 of the Revised Penal Code is AFFIRMED with Modification that he is sentenced to suffer an indeterminate penalty of imprisonment of six (6) months of arresto mayor as minimum to four (4) years and two (2) months of prision correccional as maximum, and to pay the victim the amount of P30,000 as moral damages and P10,000.00 as exemplary damages.

SO ORDERED.

Puno, C.J., (Chairperson,) Carpio, Corona, and Bersamin, JJ., concur.

[1] Penned by Associate Justice Normandie B. Pizarro, with Associate Justices Arturo G. Tayag and Rodrigo F. Lim, Jr., concurring; rollo, pp. 18-31.

[2] Id. at 49-57.

[3] Id. at 47.

[4] TSN, May 22, 2000, p. 11.

[5] TSN, July 5, 2000, p. 8.

[6] TSN, November 13, 2000, p. 7.

[7] Record, p. 15.

[8] Id at 1.

[9] Supra note 2 at 56-57.

[10] Supra note 1 at 30-31.

[11] Rollo, p. 7.

[12] *People v. Victor*, G.R. No. 127904, December 5, 2002, 393 SCRA 472, 485.

[13] G.R. No. 157718, April 26, 2005, 457 SCRA 282, 292.

[14] Supra note 1 at 27.

[15] Id. at 28.

[16] Supra note 12.

[17] Record, p. 114; TSN, July 19, 2000, pp. 6, 15-16.

[18] People v. Candaza, G.R. No. 170474, June 16, 2006, 491 SCRA 282, 298.

[19] People v. Casitas, Jr., 445 Phil. 407, 427 (2003).

[20] G.R. No. 112459, March 28, 2003, 400 SCRA 48, 65.

[21] Act No. 4103, as amended.

[22] People v. Castillo, G.R. No. 131200, February 15, 2002, 377 SCRA 99, 115.

[23] G.R. No. 137842, August 23, 2001, 363 SCRA 621,636.

[24] G.R. Nos. 139187-94 (140427-34), November 27, 2002, 393 SCRA 100, 111-112.

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