

PEOPLE OF THE PHILIPPINES, Appellee, vs. EDWIN MALICSI, Appellant.

G.R. No. 175833. January 29, 2008

Ponente: CARPIO, J.

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CARPIO, J.:

This is an appeal from the 18 August 2006 Decision[1] of the Court of Appeals in CA-G.R. CR-HC No. 01368. The Court of Appeals affirmed with modification the decision of the Regional Trial Court, Branch 42, Pinamalayan, Oriental Mindoro, finding appellant Edwin Malicsi guilty beyond reasonable doubt of four counts of rape.

In four separate Informations dated 28 May 1998, the prosecution charged appellant with raping AAA, who was then alleged to be 13 years old when she was raped for the first time and 15 years old during the succeeding rape incidents.

Appellant pleaded not guilty upon arraignment.

During the trial, the prosecution presented three witnesses namely, AAA, AAA's mother, and Dr. Marlon dela Rosa (Dr. dela Rosa), the examining physician.

AAA testified that sometime in December 1996 at 7 o'clock in the evening, her father asked her to buy wine from a store 10 meters away from their house. AAA was only 13 years old then. The house of AAA's family is some 20 meters away from appellant's house. On her way home, AAA chanced upon appellant who is her uncle, her father being the brother of appellant's wife. Appellant placed AAA on his lap. Appellant switched off AAA's flashlight and embraced her. Appellant ordered AAA to bend over. AAA acceded because appellant threatened to kill her. Appellant removed AAA's shorts and underwear. Appellant, while poking a knife at AAA's breast, succeeded in inserting his penis inside her vagina. AAA felt pain. Appellant warned AAA not to say anything to her parents.

AAA further testified that sometime in March 1998, her mother asked her to gather coconuts that have fallen off from the tree at the bamboo grove. Appellant followed her and grabbed one of the coconuts she was holding. AAA tried to retrieve the coconut but appellant forced her to lie on her back. Appellant removed her underwear and inserted his penis inside her vagina. AAA struggled to no avail. Appellant again threatened to kill her if she informed her parents about the incident.

AAA added that on 1 April 1998, appellant ordered AAA to meet him at a banana grove. Out of fear, AAA went there because she knew appellant always carried a knife. Again, appellant forced her to lie on the ground and inserted his penis inside her vagina.

AAA alleged that three days later, appellant caught up with her while she was gathering firewood. AAA was again forced to lie on the ground and appellant inserted his penis inside her vagina. AAA's cousin witnessed the incident and informed AAA's mother. When AAA confirmed to her mother that appellant raped her, they went to the police headquarters to file a complaint against appellant. AAA testified that she was thereafter brought to the

doctor for physical examination.

AAA's mother testified that appellant is her brother-in-law. Sometime in April 1998, her nephew informed her that he saw appellant rape AAA. Thereafter, AAA confirmed to her mother that appellant raped her on different occasions. AAA's mother discussed the matter with her husband and they decided to report the rape incidents to the police authorities. AAA's mother alleged that appellant's wife offered to settle the case for P10,000 but she refused the offer because of the dishonor to her daughter.

Dr. dela Rosa testified that he examined AAA and executed a Medical Certificate with the following findings:

“P.E.

Vagina: nulliparous introitus with old hymenal lacerations at 1o, 7o and 5o positions.”[2]

Dr. dela Rosa added that based on his findings, AAA had lost her virginity. On cross-examination, Dr. dela Rosa stated that the hymenal lacerations were inflicted possibly by the insertion of a hard object.[3]

The defense presented appellant as its only witness. Appellant denied the accusations of rape and alleged that he and AAA were sweethearts and they mutually agreed to engage in sexual intercourse. Appellant claimed that AAA visits their house about thrice a week when his wife is not at home. Appellant then recounted the incidents of his sexual intercourse with AAA.

Appellant claimed that sometime in December 1996, he arrived home from Manila and he told his wife to go to the market. After she left, he slept. Then, he sensed someone entering his house. Upon seeing that it was AAA, appellant asked her if she needed something but she replied negatively. Appellant then stood up, held her hands and kissed her. AAA told him that they might be seen by her mother as the door was not closed. Appellant and AAA then entered the room and he embraced and kissed her. AAA also embraced and kissed him. Then, he told her, “maghubo ka ng panty (take off your underwear).” While taking off her underwear, appellant also removed his briefs. While AAA was lying in bed face upward, she had no violent reaction but merely closed her eyes when he inserted his penis inside her vagina. After the sexual intercourse, AAA went home.[4]

Appellant contended that the second time they had sexual intercourse was in 1998 before AAA's graduation. It happened at the banana grove. He was urinating at the creek when he called her by a whistle. AAA approached him. He held her hands and they embraced each other. Then, they removed their undergarments. AAA lay on the banana leaves while he placed himself on top of her. He inserted his penis inside her vagina and while doing so, AAA was embracing him. Afterwards, she went home.[5]

Appellant alleged that the third sexual intercourse happened on 4 April 1998 at the banana plantation where they agreed to meet. AAA arrived while appellant was gathering “puso ng saging.” When she approached him, they embraced each other and removed their undergarments. AAA lay on the banana leaves while he placed himself on top of her and inserted his penis inside her vagina. AAA was merely looking at him while he was doing it. After the sexual act, she went home.[6]

Appellant also alleged that in these three occasions, AAA gave her consent since they were sweethearts. Appellant attested that after he learned about the rape charges, he did not have the opportunity to talk to AAA anymore.

The trial court gave credence to the testimonies of the prosecution witnesses. The trial court took note of the fact that AAA was barely 13 years old when the first rape took place while appellant was in his early 30's.[7] The trial court also noted that appellant was AAA's uncle, thus he exercised some sort of moral ascendancy over AAA.[8] The trial court was not persuaded by appellant's defense that AAA was his girlfriend and that the sexual

encounters were done with her consent due to the lack of outcry, lack of tenacious resistance, and delay in reporting the rape charges to the authorities. The trial court disbelieved appellant's testimony that they were sweethearts because there was no sufficient proof to substantiate the alleged love relationship. Appellant merely relied on his own uncorroborated testimony. The trial court added that a love affair is not a license for sexual intercourse.[9]

The trial court ruled that the lack of outcry and tenacious resistance did not make the sexual congress voluntary because being of tender age, AAA did not possess discernment and was incapable of giving an intelligent consent to the sexual act. Moreover, there is no standard form of human behavioral response to a startling or frightful experience such as rape being perpetrated by the victim's uncle. Furthermore, the resistance on the part of the victim need not be carried out to the point of inviting death or physical injuries, it being sufficient that the coitus takes place against her will or that she yields to a genuine apprehension of great harm.[10]

The trial court acknowledged that there was delay in reporting the rape incidents. However, the trial court believed that the delay was due to the death threats made by appellant coupled with the victim's immaturity. The fact that appellant was holding a knife is suggestive of the force or intimidation that would cause the victim to conceal for sometime the violation on her honor.[11]

On 8 October 2001, the trial court rendered its decision, finding appellant guilty of four counts of qualified rape. The trial court sentenced appellant to suffer the penalty of death for each count of rape, and to pay AAA P300,000 as civil indemnity (P75,000 for each count), and P200,000 as moral damages (P50,000 for each count).[12]

On appeal, appellant contended that the trial court erred in giving weight and credence to the incredulous testimonies of the prosecution witnesses especially AAA's testimony. Appellant alleged that the prosecution failed to prove his guilt beyond reasonable doubt. Appellant also questioned the imposition of death penalty considering the attendant circumstances of the case.

In its 18 August 2006 Decision, the Court of Appeals affirmed the trial court's decision with modification, finding appellant guilty of four counts of simple rape instead of qualified rape and reducing the penalty imposed to reclusion perpetua. The Court of Appeals stated that AAA was a minor at the time of the commission of the crime and appellant was a family relative by affinity. The Court of Appeals believed that the family relationship made AAA subject to appellant's moral ascendancy. Moreover, it was clearly established during the trial that AAA exerted efforts to free herself from appellant. AAA acceded to appellant's sexual urges because appellant threatened to kill her and appellant actually poked a knife on her breast during the incidents. The appellate court added that these circumstances belie appellant's claim that AAA did not offer tenacious resistance. AAA's fear for her life and safety made her conceal the fact that she was being molested by appellant.[13]

The Court of Appeals did not believe appellant's "sweetheart" defense because it was not supported by some documentary or other evidence of the relationship other than his bare assertions. Such claim obviously deserves scant consideration. Assuming arguendo that appellant and AAA were sweethearts, this relationship still does not, by itself, make their sexual intercourse voluntary because even a lover can be forced to engage in a sexual act against her will and consent.[14]

The Court of Appeals noted that from the time of the first rape incident, there was a lapse of almost two years before AAA reported the rape incidents to the police authorities. The appellate court explained that this delay is not an indication of a false accusation. The fact of AAA's failure to disclose for two years that appellant molested her was not unexplained. AAA had repeatedly testified during the trial that appellant warned her not to say anything to her parents and appellant threatened to kill her if she would tell them. The appellate court stated that it is even common for young girls to conceal for some time the assault against their virtue because of threats on their

lives. The Court of Appeals upheld the finding of the trial court on AAA's credibility on the face of appellant's bare denials, more especially that appellant had not adduced any evidence that AAA or her family had any ill-motive to testify against him.[15]

However, the Court of Appeals agreed with appellant that the trial court erred in sentencing him to suffer the death penalty on four counts of qualified rape and that he should only be convicted of simple rape. The minority of the victim and the offender's relationship to the victim, which constitute only one special qualifying circumstance, must be alleged in the Information and proved with certainty. In this case, the Informations filed against appellant merely stated that he is the "uncle" of AAA. This is not the sufficient allegation required by law because the Information must allege that he is a relative by consanguinity or affinity within the third civil degree and the same should be proven during the trial. The Court of Appeals further held that since Republic Act No. 9346[16] now prohibits the imposition of the death penalty, the penalty of reclusion perpetua should be imposed. This new law must be given retroactive application because it is favorable to the accused.

Hence, this appeal.

We find the appeal without merit. The Court of Appeals was correct in affirming with modification the ruling of the trial court that four counts of rape were clearly established by the prosecution witnesses. The findings and observations of the trial court on the credibility of the prosecution witnesses are binding and conclusive on the appellate court unless some facts or circumstances of weight and substance have been overlooked, misapprehended or misinterpreted,[17] which is not true in the present case. Moreover, AAA's testimony is worthy of belief because she categorically pointed to appellant as the person who sexually abused her.

AAA's testimony is entitled to great weight in contrast to appellant's bare denials. "Denial is a negative, self-serving evidence which cannot be given greater weight than the testimony of credible witnesses who testified on affirmative matters. Between the positive declarations of the prosecution witnesses and the negative statements of the accused, the former deserve more credence." [18] Besides, neither AAA nor her family had any ill-motive to falsely testify and impute a serious crime against the appellant who is a close relative.

Appellant's allegation that they were sweethearts is barren of factual support because he failed to substantiate his claim by some documentary or other evidence of the relationship. The "sweetheart defense" appears to be a fabrication to exculpate himself from the rape he committed. Although appellant admitted having carnal knowledge with AAA in three separate occasions,[19] he failed to discharge the burden of proving the affirmative defense by clear and convincing evidence.

This Court is not persuaded by appellant's contention that the lack of outcry, lack of tenacious resistance, and delay in reporting the incidents signify that the sexual encounters were consensual.[20] First, appellant exercised moral ascendancy over AAA, being AAA's uncle. Second, appellant had instilled fear upon AAA's young mind during the sexual assaults by using a knife and threatening to kill her. These circumstances have led AAA to keep her ordeals in secret until her mother learned of the incidents from AAA's cousin. This Court declared in *People v. Garcia*: [21]

[R]ape is committed when intimidation is used on the victim and this includes the moral kind of intimidation or coercion. Intimidation is a relative term, depending on the age, size and strength of the parties, and their relationship with each other. It can be addressed to the mind as well. Moreover, the intimidation must be viewed in the light of the victim's perception and judgment at the time of rape and not by any hard and fast rule. It is therefore enough that it produces fear – fear that if the victim does not yield to the lustful demands of the accused, something would happen to her at the moment or thereafter.

AAA's tender age and appellant's moral ascendancy made AAA subservient to appellant's sexual desires. This psychological predicament explains why AAA did not give any outcry or offer any resistance when appellant was raping her. Moreover, the physical differences between appellant, who was a man in his early 30's then, and AAA, a 13 and 15-year-old girl during the rape incidents, afforded appellant the greater advantage such that no amount of resistance from AAA could have overcome the coercive physical force of appellant.

The appellate court was correct in finding appellant guilty of four counts of simple rape. We have ruled that the special circumstance of relationship, that is, appellant is the victim's uncle and they are related within the third civil degree of affinity, must be alleged in the Information.[22] The fact that such relationship was proved will not justify the imposition of the death penalty and appellant cannot be convicted of qualified rape.[23]

We find that the Court of Appeals correctly imposed the penalty of reclusion perpetua on appellant. The appellate court also correctly affirmed the award by the trial court of P200,000 in moral damages. Moral damages are automatically granted to the rape victim without presentation of further proof other than the commission of the crime.[24]

However, we reduce the award of civil indemnity from P300,000 to P200,000 in accordance with prevailing jurisprudence.[25] Civil indemnity in the amount of P50,000 for each count of simple rape is automatically granted once the fact of rape is established.[26]

WHEREFORE, we AFFIRM the 18 August 2006 Decision of the Court of Appeals in CA-G.R. CR-HC No. 01368 finding appellant Edwin Malicsi guilty beyond reasonable doubt of four counts of simple rape with the MODIFICATION that the award of civil indemnity is reduced to P200,000.

SO ORDERED.

Quisumbing, J., (Chairperson), Carpio Morales, Tinga, and Velasco, Jr., JJ., concur.

[1] Penned by Associate Justice Jose C. Reyes, Jr. with Associate Justices Bienvenido L. Reyes and Enrico A. Lanzanas, concurring.

[2] Records IV, p. 6.

[3] TSN, 8 September 1998, p. 5.

[4] TSN, 15 November 1999, pp. 5-8.

[5] Id. at 8-10.

[6] Id. at 10-11.

[7] CA rollo, p. 21.

[8] Id.

[9] Id. at 23.

[10] Id. at 21-22.

[11] Id. at 22-23.

[12] Id. at 24.

[13] Rollo, pp. 16-17.

[14] Id. at 18-19.

[15] Id. at 17-19.

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

[17] People v. Alarcon, G.R. No. 174199, 7 March 2007, 517 SCRA 778, 784.

[18] People v. Fraga, 386 Phil. 884, 906 (2000).

[19] TSN, 15 November 1999, pp. 4-11.

[20] CA rollo, pp. 21-22.

[21] 346 Phil. 475, 493-494 (1997).

[22] People v. Sabredo, 387 Phil. 682, 692 (2000).

[23] People v. Abala, 434 Phil. 241, 262-263 (2002).

[24] People v. Dizon, 463 Phil. 581, 605 (2003).

[25] People v. Biong, 450 Phil. 432 (2003).

[26] People v. Molleda, 462 Phil. 461, 471 (2003).

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