

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. EFREN CUSTODIO Y ESTEBAN, APPELLANT.

G.R. No. 176062. July 04, 2008

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

On appeal is the March 31, 2006 Decision[1] of the Court of Appeals in CA-GR CR-HC No. 01756 which affirmed with modification the September 27, 2000 Decision [2] of Branch 21 of the Regional Trial Court in Malolos, Bulacan finding appellant guilty of three counts of simple rape in Crim. Case Nos. 333-M-2000, 334-M-2000, and 335-M-2000.

Except for the dates of commission of the three offenses charged -November 5, 1999, November 6, 1999 and November 7, 1999, the three Informations[3]uniformly read as follows:

That on or about the __[th] day of November, 1999, in the [M]unicipality of Plaridel, province of Bulacan Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and feloniously, with lewd designs, have carnal knowledge of the said [AAA], his niece, 19 years old, against her will and consent.[4](Underscoring supplied)

Appellant, an ambulant cigarette vendor, is the uncle of the victim AAA, he being the younger brother of her father.

From the records of the cases, the following version was established by the prosecution:

In the afternoon of November 4, 1999 at around 2:00 p.m., the then 19 years old high school graduate private complainant AAA met by chance the then 37 years old widower-uncle-appellant along the public market of Malolos, Bulacan. On being told that AAA was scouting for a job, appellant told her that he could help her as he knew of an employer in Capalangan, Apalit, Pampanga.[5]

On appellant's invitation, AAA at once went with him to Capalangan, arriving there at around 2:45 p.m. Claiming that he forgot the address of the employer, appellant and AAA wandered around the place for more than one and a half hours until it was already dark, drawing AAA to indicate her desire to go home which appellant restrained. At the point of a balisong,appellant warned AAA not to shout as they boarded a tricycle and repaired to the house of his friend. He instructed AAA to carry the name "Maritess dela Cruz." On reaching his friend's house, appellant introduced AAA as his wife and claimed that they were married in civil rites three months earlier.[6]

The next day, or on November 5, 1999, they left Capalangan and proceeded to Plaridel, Bulacan. They arrived at around 6:00 a.m. at the house of appellant's friend identified as Asing, a tricycle driver, and his wife Wena, an employee at a "feria." Appellant, again introducing AAA as his wife whose parents "did not want him to be her husband," sought Asing's permission, which the latter granted, to let them temporarily stay in his house.[7]

While at the house of Asing, appellant took AAA's money, telling her that he did it so she would not escape or go home.[8] AAA did not reveal to the couple her predicament as "the way she look[ed] at them they were like close

friends."

At nightfall, while Asing and his wife were away leaving them to themselves, appellant undressed AAA at the point of a balisong, Appellant removed his own clothes and had sexual intercourse with AAA, warning her not to report the matter to anyone lest she would be killed.[9] This was the incident subject of the first Information.

The second incident of rape occurred also at the house of Asing on November 6, 1999 before midnight and, just like the first incident, appellant threatened AAA with "the same `balisong' poked on [her] on November 5, 1999." [10]

The third incident of rape also still occurred in Plaridel on November 7, 1999 before Asing and his wife returned at around 11:30 p.m. While AAA cried and pleaded for mercy, appellant remained unmoved.[11]

AAA wanted to escape, but she could not as appellant was closely guarding her; and while appellant slept, he was a "light sleeper," always moving and he even locked the door and placed a chair behind it. Besides, AAA did not know how she could leave as that was her "first time" to be in Plaridel.[12]

On November 8, 1999, at past noon, AAA's brother CCC who, along with other family members, appear to have conducted a search on her whereabouts and eventually got wind of where she was, repaired to Asing's house together with appellant's brother-in-law tricycle driver DDD. At Asing's house, appellant told CCC that he arranged for AAA's employment as a maid. Fearing for her safety and that of her brother, AAA kept silent as she was fetched. [13]

Upon reaching their house on even date, November 8, 1999, AAA narrated her ordeal to her parents and siblings. AAA and her parents at once proceeded to the Municipal Hall where she executed a sworn statement [14] and filed complaints[15] for rape against appellant.[16]

The following day, or on November 9, 1999, AAA was examined by Dr. Ivan Richard A. Viray, Medico-Legal Officer at the PNP Bulacan Provincial Crime Laboratory in Malolos, Bulacan who came out with the following

FINDINGS:

GENERAL AND EXTRAGENITAL:

PHYSICAL BUILT: Light Built

MENTAL STATUS: Coherent female subject

BREAST: Conical in shape, with pinkish brown areola and nipples from which no secretions could be pressed out

ABDOMEN: flat and soft

PHYSICAL INJURIES: No injuries noted

GENITAL:

PUBIC HAIR: Moderate growth

LABIA MAJORA: full convex and coaptated

LABIA MINORA: in between labia majora, dark brown in color

HYMEN: classic fleshytype with the presence of shallow healed laceration at 3 & 9 o'clock position and deep healing laceration at 5 o'clock position

POSTERIOR FOURCHETTE: v shape

EXTERNAL VAGINAL ORIFICE: offers moderate resistance to examining index finger

VAGINAL CANAL: with slightly flattened nigosities

CERVIX: firm and closed

PERI-URETHRAL AND VAGINAL SMEARS: negative for both spermatozoa and gram(-) diplococci

CONCLUSION:

Subject is in Non-virgin state

There are no external signs of application of any form of trauma.

x x x[17](Emphasis in the original).

Appellant did not deny having sexual intercourse with AAA in Plaridel. He advanced the "sweetheart theory," however. He claimed that AAA called him "Love" and gave him a handkerchief [18] as a token of their love for each other. In return, he gave her a T-shirt, a pair of shorts, and an underwear.[19]

Appellant went on to claim as follows:

At the time he was staying with AAA's family after he was widowed, she would give hints that she liked him but he ignored them as she is his niece. AAA would always see him in front of Jollibee in Malolos where he was peddling cigarettes.[20]

On November 4, 1999, AAA went to see him again and told him that she was looking for a job. On his move, they went to Apalit to see a movie following which AAA suggested that they elope. Appellant agreed and they went to the house of his former employer named Jerry in Calumpit, Bulacan where he introduced AAA as his wife and they were allowed to stay overnight.[21]

In the morning of the following day, November 5, 1999, as AAA wanted to look for a house to rent, they left Calumpit for Plaridel where they rented a house together with another couple.[22]

The trial court convicted appellant of three counts of simple rape, even if the use of a deadly weapon attended their commission was established, the prosecution having failed to allege the same in each of the Informations.

Thus, the trial court disposed in its Decision of September 27, 2000:

WHEREFORE, all premises considered, this Court finds and so resolves that the prosecution was able to discharge its procedural undertaking. Accordingly, the accused Efren Custodio y Esteban is hereby found GUILTY beyond reasonable doubt of simple RAPE on three counts. Forthwith, in the absence of any mitigating or aggravating circumstances and since the Indeterminate Sentence Law is inapplicable, he is hereby ordered to suffer the penalties of Reclusion Perpetua in all three (3) Criminal Cases No. 333-M-2000, 334-M-2000 and 335-M-2000. In line with recent decisions, he is further condemned to indemnify [AAA] in the sum of P75,000.00 each of all said three (3) cases and to pay her moral damages in the amounts of P100,000.00 in each of all said three (3) cases.

With costs against the accused.[23] (Underscoring in the original; italics supplied)

The records of the cases were forwarded to this Court in view of the Notice of Appeal[24] filed by appellant. Per *People v. Mateo*,[25] this Court referred the cases to the Court of Appeals by Resolution of September 29, 2004.[26]

The appellate court affirmed the factual findings of the trial court. It modified the decision, however, by reducing the amount of civil indemnity in each count, from P75,000 to P50,000, consistent with prevailing jurisprudence. And it likewise reduced the amount of moral damages in each count from P100,000 to P50,000.

The appellate court thus disposed:

WHEREFORE, the appealed judgment is hereby AFFIRMED with the MODIFICATION that the adjudged civil indemnity against appellant is reduced from P75,000.00 to P50,000 for each count of rape or a total of P150,000.00. The award for moral damages is reduced from P100,00.00 to P50,000.00 for each count of rape or a total of P150,000.00.[27](Emphasis in the original)

After the records of the cases were forwarded to this court following appellant's filing of a Notice of Appeal,[28] the Court, by Resolution[29] of March 12, 2007, required the parties to submit Supplemental Briefs, if they so desired, within thirty days from notice. The People, through the Office of the Solicitor General, filed a Manifestation[30]stating that a supplemental brief would no longer be filed as the arguments for the People had been exhaustively discussed in an earlier brief.

In his original Appellant's Brief,[31] appellant faulted the trial court

- I.
... IN FINDING ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED.
- II.
... IN GIVING FULL WEIGHT AND CREDENCE TO THE TESTIMONY OF PRIVATE COMPLAINANT [AAA].
- III.
... IN REJECTING THE "SWEETHEART" THEORY INTERPOSED BY ACCUSED-APPELLANT.
- IV.
... IN NOT ACQUITTING ACCUSED-APPELLANT AS THE INFORMATIONS UNDER WHICH HE WAS ARRAIGNED ARE DEFECTIVE. [32] (Underscoring supplied)

In his Supplemental Brief,[33] appellant, reiterates his contention that the Informations are defective for failure to allege that he employed force and intimidation in committing the alleged rapes. Hence, he maintains that his constitutional right to be informed of the nature and cause of the accusation against him as provided for under Article III, Section 14 (2) of the 1987 Constitution was infringed. The contention is devoid of merit. *People v. Galido*[34] is instructive:

An information that fails to allege the use of force and intimidation in a rape [case] is cured by the failure of the accused to question before the trial court the sufficiency of that information; by the allegation in the original complaint that the accused is being charged with rape through force and intimidation; and by unobjected competent evidence proving that the rape was indeed committed through such means.[35] (Italics in the original; emphasis and underscoring supplied)

All of these circumstances obtain in the case at bar.

Appellant was arraigned and pleaded not guilty to each of the Informations. There was no showing that he did not understand the import of his plea. He did not raise the issue of defect in the Informations prior to his arraignment by filing either a motion to quash under then Section 8[36] (now Section 9), Rule 117 or a motion for a bill of particulars under then Section 10[37] (now Section 9), Rule 116 of the Rules of Criminal Procedure.

The trial court's Order of March 6, 2000 records show the arraignment was carried out:

The accused Efren Custodio y Esteban, assisted by PAO lawyer Atty. Benjamin Medrano[,] having been furnished a copy of the Informations, was arraigned by reading in open Court the Informations specifying the nature and cause of the accusation against him in Tagalog, which is the dialect understood by him, and knowing fully well its import and significance, he pleaded "Not Guilty" to all the offense[s] charged.[38]

The complaints filed before the Municipal Trial Court of Malolos, Bulacan,[39] except for the dates of commission of the offenses, uniformly alleged "force and intimidation" as follows:

That on or about starting on the 5[th] day of November 1999 by means of fraudulent machination and grave abuse of authority in the [M]unicipality of Malolos, Province of Bulacan, Philippines and within the jurisdiction of this Honorable Court, the above named accused [had] succeeded taking away his niece, one [AAA], 19 years old while walking along Public Market of Malolos, Bulacan[,] daughter of his brother [BBB], and with lewd design and with the use of force and intimidation, threaten to kill the undersigned and have a carnal knowledge on November 5, 1999 with the latter without her con[s]ent in Plaridel, Bulacan. [40] (Emphasis and underscoring supplied)

Appellant participated in the trial. He claimed that the acts of sexual intercourse were consensual as even AAA hatched the idea for the two of them to elope.

Significantly, the trial court made the following observations:

As to the other circumstance, constitutive of rape, we cannot adopt the same attitude. That is so because the Court seems to be impressed that there is a flaw in the drafting of the Informations. Firstly, there is no mention that [appellant] had carnal knowledge of [AAA] under any of the circumstances enumerated. While the law makes use of the words "a) through force, threat or intimidation", what the public prosecutor alleged were "against her will and consent"; commenting on this matter, an authority stated that in a case of Rape

the allegations of carnal knowledge "all against h[er] will and/or without her consent renders the Information to be insufficient to warrant conviction for the simple reason that such allegations do not correctly describe the crime of Rape in any of its forms. (Francisco, Criminal Procedure, p. 97 citing *People vs. Oso*, 62 Phil. 297).

However, fortunately for the People, the procedural infirmity which could result to embarrassing consequences, may have been cured by the failure on the part of the defense to object or to move to quash the Information under Section 8, Rule 117, and such deficiency was supplied by competent proof. (*People vs. Belga*, 100 Phil. 996) . . .[41] (Emphasis and underscoring supplied)

As for the merits of appellant's sweetheart theory, the same fails. Asing and Wena in whose house appellant and AAA stayed for three and a half days, could have been the best witnesses to prove such theory. Appellant failed to present them, however. Appellant's claim that AAA hatched the idea of eloping fails too, given that AAA carried no dress and underwear except those she was wearing at the time she was inveigled by appellant to look for an employer. And so does appellant's claim that AAA wanted to look for a house for them to rent. His income as a cigarette vendor could not have sufficed to pay of rent of a house for him and the jobless AAA.

AAA is also entitled to an award of exemplary damages which jurisprudence pegs at P25,000 for each count as it was proven, although not alleged in the informations, during the trial that the use of deadly weapon attended the commission of each of the crimes. It bears stating that while

such circumstance cannot be appreciated for the purpose of fixing a heavier penalty, it can be considered as basis for an award of exemplary damages.[42]

WHEREFORE, the appeal is DISMISSED. The assailed Decision of the Court of Appeals in CA-GR CR-HC No.

01756 is AFFIRMED, with the MODIFICATION that Efren Custodio y Esteban is ORDERED to pay the private complainant the sum of Twenty Five Thousand Pesos (P25,000) in each of the three counts of rape as exemplary damages.

SO ORDERED.

Quisumbing, (Chairperson), Tinga, Velasco, Jr., and Brion., JJ., concur.

[1] CA rollo, pp. 113-127. Penned by Associate Justice Portia Aliño-Hormachuelos with the concurrence of Associate Justices Amelita G. Tolentino and Vicente S.E. Veloso.

[2] Records, pp. 86-93.

[3] Crim. Case No. 333-M-2000, Crim. Case No. 334-M-2000, Crim. Case No. 335-M-2000, id. at 1-2, 9-10, 12-13.

[4] Records, p. 1.

[5] TSN, April 1, 2000, p. 2.

[6] Id. at 3-4.

[7] TSN, May 22, 2000, pp. 2-3.

[8] Id. at 4.

[9] Id. at 3-5.

[10] Id. at 7.

[11] Id. at 7-8.

[12] TSN, May 26, 2000, p. 4.

[13] TSN, May 22, 2000, p. 2.

[14] Records, pp. 64-66.

[15] The complaints were docketed as Criminal Cases No. 99-1184, 99-1185, 99-1186, and 99-1187 but only three charges were filed before the Regional Trial Court in Bulacan as the other charge happened in Pampanga.

[16] TSN, May 24, 2000, pp. 2-5.

[17] Records, p. 67.

[18] The handkerchief is attached at page 95 of the records.

[19] TSN, September 18, 2000, pp. 8-9.

[20] TSN, September 13, 2000, pp. 3-4.

[21] Ibid.

[22] Id. at 5-7.

[23] Records, pp. 92-93.

[24] Id. at 96.

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

[26] CA rollo, p. 111.

[27] Id. at 127.

[28] Id. at 130-131.

[29] Rollo, p. 18.

[30] Id. at 19-20.

[31] CA rollo, pp. 54-66.

[32] Id. at 54-55.

[33] Rollo, pp. 32-35.

[34] G.R. Nos. 148689-92, March 30, 2004, 426 SCRA 502.

[35] Id. at 504. Vide *Olivarez v. Court of Appeals*, G.R. No. 163866, July 29, 2005, 465 SCRA 465; *People v. Cadampog*, G.R. No. 148144, April 30, 2004, 428 SCRA 536; *People v. Navarro*, 460 Phil. 565 (2003).

[36] Sec. 8 Failure to move to quash or to allege any ground therefore. - The failure of the accused to assert any ground of a motion to quash before he pleads to the complaint or information, either because he did not file a motion to quash or failed to allege the same in said motion, shall be deemed a waiver of the grounds of a motion to quash, except the grounds of no offense charged, extinction of the offense or penalty and jeopardy, as provided for in paragraphs (a), (b), (f) and (h) of Section 3 of this Rule.

[37] Sec. 10. Bill of Particulars. - Accused may, at or before arraignment, move for a bill of particulars to enable him properly to plead and to prepare for trial. The motion shall specify the alleged defects and the details desired.

[38] Records, p. 20.

[39] Id. at 68-70.

[40] Id. at 68. Vide *People v. Mendez*, 390 Phil. 449, 459 (2000) where this Court ruled: "The failure of the information to state that ROSENDO raped VIRGINITA "through force and intimidation" is not a fatal omission in this case because the complaint alleged the ultimate fact that ROSENDO raped VIRGINITA "by means of force." So, at the outset, ROSENDO could have readily ascertained that he was being accused of rape committed through force . . ."

[41] Id. at 89-90.

[42] Vide *People v. Dagami*, 461 Phil. 139 (2003); *People v. Roa*, 453 Phil. 501 (2003); *People v. Durohom*, 440 Phil. 944 (2002); *People v. Victor*, 441 Phil. 798 (2002); *People v. Del Ayre*, 439 Phil. 73 (2002) .

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