

THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JOSE MAGBANUA Y MORIÑO, APPELLANT.

G.R. No. 176265. April 30, 2008

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TINGA, J.:

Two informations were filed against appellant charging him with the crimes of rape[1] and attempted rape.[2] Appellant pleaded not guilty.

The prosecution presented the victim AAA[3] and the NBI medico-legal officer, Dr. Armie Soreta-Umil. The evidence for the prosecution establishes the following facts:

AAA was residing in the City of Malabon[4] with appellant and her two uncles when appellant sexually assaulted her on two occasions. The four of them shared one room together.

The first incident occurred on 1 October 1998 at around 1 o'clock in the afternoon. AAA was lying on the floor of their room when appellant suddenly pinned her down, covered her mouth, and pointed a knife at her. He told AAA that he was going to marry her no matter what happened; then he threatened to kill her should she reveal the incident to anyone. Thereupon, appellant removed her shorts and raped her. He succeeded in inserting his penis inside her vagina. She did not inform anyone about the incident for fear of appellant. During the rape, her uncles were at work in a construction project.[5]

The second incident occurred on 13 January 1999. AAA was sleeping on the floor of their room when she felt appellant insert his finger into her vagina. This time, she shouted. One of her uncles was awakened and appellant quickly left the house. She told her uncle what appellant did to her.[6]

AAA reported both incidents to the NBI. She underwent a medico-legal examination with Dr. Armie Soreta-Umil conducting the procedure. The doctor made a report.[7]

For his part, appellant did not deny having sexual intercourse with AAA on 1 October 1998. Instead, he interposed the "sweetheart defense," claiming that he and AAA had been lovers since that date. As regards the 13 January 1999 incident, appellant simply dismissed it, noting that there were other persons inside the room with them.[8] Evelyn Magbanua, appellant's sister, tried to corroborate appellant's sweetheart defense by testifying that appellant and AAA were sweethearts as she observed them to be happy and helping each other do household chores.[9]

The trial court[10] found appellant guilty of simple rape[11] and act of lasciviousness[12] in a decision[13] dated 18 July 2001. Undaunted, appellant interposed an appeal.[14]

The Court of Appeals affirmed the trial court's judgment with modification by awarding moral damages in the amount of P50,000.00 in a decision[15] dated 10 April 2006. Undaunted, appellant filed a notice of appeal.[16]

Before this Court, appellant claims that the trial court erred in finding him guilty of the crimes of rape and acts of lasciviousness absent evidence beyond reasonable doubt. The appeal is bereft of merit.

The issues raised by the appellant involve weighing of evidence already passed upon by the trial court and the appellate court. The age-old rule is that the task of assigning values to the testimonies of witnesses in the stand and weighing their credibility is best left to the trial court which forms its first-hand impressions as a witness testifies before it. It is also axiomatic that positive testimony prevails over negative testimony.[17]

Appellant never denied having sexual intercourse with AAA. Instead, he claimed that he and AAA were sweethearts since 1 October 1998. However, all that he adduced to bolster the claim is his naked self-serving assertion and the equally unconvincing observation of his sister. The defense had to be proven. Up to the end it remained unsubstantiated, as appellant failed to present any token of the alleged relationship like love notes, mementos or pictures.[18] In any event, the claim is inconsequential since it is well-settled that being sweethearts does not negate the commission of rape because such fact does not give appellant license to have sexual intercourse against her will, and will not exonerate him from the criminal charge of rape.[19] Being sweethearts does not prove consent to the sexual act.[20]

The use of a fan knife and the threat of death by appellant against AAA constituted sufficient force and intimidation to cow her into obedience.[21] Moreover, appellant, who is known to AAA as her grandfather, undoubtedly exerted a strong moral influence over her. His moral ascendancy and influence over AAA may even substitute for actual physical violence and intimidation.[22]

Appellant also claims that AAA failed to show that she exerted sufficient resistance to his sexual advances. Suffice it to say, in rape cases it is not necessary that the victim should have resisted unto death. Physical resistance need not be established in rape when intimidation is exercised upon the victim and the latter submits herself, against her will, to the rapist's embrace because of fear for life and personal safety. Actual resistance on the part of the victim is not an essential element of rape. What the victim should adequately prove is the use of force or intimidation by the alleged rapist.[23] In any case, from AAA's testimony, it is clear that she tried to stop appellant's advances during the two incidents but her efforts proved futile as her strength was no match to his. Appellant pinned down AAA while the latter was lying on the floor, covered her mouth, and threatened her with a fan knife. AAA could not push appellant off her body.[24]

In a prosecution for rape, the complainant's candor is the single most important issue. If a complainant's testimony meets the test of credibility, the accused may be convicted solely on that basis. [25] We have thoroughly examined AAA's testimony and find nothing that would cast doubt as to her credibility. All said, there is no evidence to show any improper motive on the part of AAA to falsely charge appellant with rape and to testify against him; hence, the logical conclusion is that her testimony is worthy of full faith and credence. The prosecution has established beyond reasonable doubt that appellant had carnal knowledge of AAA against her will, through force and intimidation, and with the use of a fan knife.

Appellant attempted to downplay the 13 January 1999 episode by claiming that there were other persons inside the room with them. It was precisely the presence of other persons that foiled appellant's plan. AAA's uncle heard her scream and appellant scampered away. It was then that AAA revealed that she was raped by appellant. Neither the crampedness of the room, nor the presence of other people inside it, nor the high risk of being found out has been held sufficient and effective obstacles to deter the commission of rape. As this Court observed in *People v. Umali*:[26]

[I]t has become a matter of judicial notice that rape can be committed in many different kinds of places which many would consider as unlikely or inappropriate and that the scene of the rape is not always or necessarily isolated or secluded for lust is no respecter of time or place. Thus, the crime can, and has been, committed in places where people congregate, e.g., inside a place where there are occupants, a five-meter room with five people inside, and even the same room which the victim was sharing with the accused's sisters. Therefore, we

find it not so incredible that accused somehow had the temerity to sexually assault private complainant even with his wife and two small children just nearby. To repeat what has been said before, animal lust is an aberration which this Court will not explain for the benefit of the accused.

Appellant's threats had intimidated AAA and kept her from immediately reporting the sordid rape incident to her uncles. As this Court held, it is not uncommon for young girls to conceal for some time the violation of their honor because of the threats on their lives.[27]

The trial court correctly imposed the penalty of reclusion perpetua for the 1 October 1998 rape. The use by appellant of a knife to consummate the crime is a special aggravating circumstance which warrants the imposition of the penalty of reclusion perpetua to death. Since the prosecution failed to prove any other aggravating circumstance in the commission of the crime, the imposable penalty is reclusion perpetua conformably with Article 63[28] of the Revised Penal Code.

The trial court also correctly sentenced appellant to an indeterminate penalty of four (4) months of arresto mayor as minimum to four (4) years of prision correccional as maximum for the act of lasciviousness, which carries the penalty of prision correccional. In the absence of modifying circumstances,[29] the maximum shall be taken from the medium period of prision correccional, which is two (2) years four (4) months and one (1) day to four (4) years and two (2) months, while the minimum shall be taken from the penalty next lower in degree, which is arresto mayor in its medium period, which ranges from two (2) months and one (1) day to four (4) months.[30]

As to damages, the appellate court correctly awarded P50,000.00 as moral damages, an award that rests on the jural foundation that the crime of rape necessarily brings with it shame, mental anguish, besmirched reputation, moral shock and social humiliation.[31] In addition, exemplary damages in the amount of P25,000.00 should be granted pursuant to the ruling in *People v. Catubig*[32] that the award of exemplary damages is justified pursuant to Article 2230 of the Civil Code.[33] Since the special aggravating circumstance of the use of a deadly weapon attended the commission of the rape, the offended party is entitled to exemplary damages.

The Court further awards moral damages for the act of lasciviousness committed against AAA in the amount of P20,000.00 pursuant to Article 2219[34] of the Civil Code,[35] and civil indemnity in the amount of P20,000.00.[36]

The Court observes that the prosecutor wrongly designated AAA as a minor in the information,[37] when in the same breath he alleged that she was already 18 years of age. While the prosecutor also alleged that appellant is the grandfather of AAA to qualify the crime of rape, yet he failed to prove the relationship beyond reasonable doubt. AAA even testified that she was merely told by her father that appellant is her grandfather but in reality he is only a distant relative since AAA's grandmother and appellant's father are cousins.[38] Even if the prosecutor had succeeded in proving qualified rape,[39] the penalty would still be reclusion perpetua and not death because Republic Act No. 9346[40] prohibits the imposition of death penalty and instead ordains the meting out of reclusion perpetua without the possibility of parole.

The Court of Appeals correctly observed that since the second sexual assault occurred on 13 January 1999, Article 266-A of the Revised Penal Code, as amended by Republic Act No. 8353, otherwise known as "The Anti-Rape Law of 1997" which took effect on 22 October 1997, should have been applied. Under that law, the insertion of one's finger into the genital of another already constitutes rape through sexual assault.[41] Appellant would have been convicted of consummated rape for inserting his finger into the vagina of AAA were it not for the fact that the information charged him with attempted rape only. This being so, he cannot be convicted of the graver offense of rape by sexual assault. Nevertheless, appellant can be convicted of acts of lasciviousness because said crime is included in attempted rape.[42]

WHEREFORE, the Decision of respondent Court of Appeals in CA-G.R. CR-H.C. No. 01658 is AFFIRMED with FURTHER MODIFICATION that appellant is ordered to further pay AAA P25,000.00 as exemplary damages for the rape, and P20,000.00 as civil indemnity and P20,000.00 as moral damages for the act of lasciviousness.

SO ORDERED.

Carpio-Morales, (Chairperson), Tinga, Velasco, Jr., and Brion, JJ., concur.

[1] That on or about the 1[st] day of October 1998, in the Municipality of Malabon, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused being the grandfather of [AAA], a minor 18 years of age, while armed with bladed weapon poking at her with lewd design and exercising ascendancy over said [AAA] and by means of force, violence and intimidation, willfully, unlawfully and feloniously, did then and there have sexual intercourse with [AAA] against her will and without her consent.

CONTRARY TO LAW. (Records, p.1)

[2] That on or about the 13[th] day of January, 1999, in the Municipality of Malabon, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused being the grandfather of [AAA], a minor of 18 years of age, with lewd design, did then and there, willfully, unlawfully and feloniously tried to have carnal knowledge with one [AAA], while asleep, thus accused commences (sic) the commission of the crime of rape directly by overt acts, but nevertheless did not perform it by reason of cause other than his own spontaneous desistance that is, when she fought back and shouted for help.

CONTRARY TO LAW. (CA Rollo, p.5).

[3]The real name of the victim is withheld to protect her privacy. See *People v. Cabalquinto*, G.R. No. 167693, 19 September 2006, 502 SCRA 419,425-426.

[4] The exact address of the victim is withheld to protect her privacy. See *People v. Cabalquinto*, *supra*.

[5] TSN, 16 August 1999, pp. 5-7.

[6]Id. at 8-9.

[7] Records, p.40.

[8] TSN, 16 December 1999, pp. 2-3.

[9] TSN, 4 May 2000, pp. 6-7.

[10] Regional Trial Court (RTC), City of Malabon, Branch 170, presided by Judge Benjamin Antonio.

[11] Art. 266-A. Rape; when and how committed. – Rape is committed –

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat, or intimidation;

b) When the offended party is deprived of reason or otherwise unconscious;

x x x x

2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of

sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

Art. 266-B. Penalties.- Rape under paragraph 1 of the next preceding article shall be punished by reclusion perpetua.

Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death.

x x x x

Rape under paragraph 2 of the next preceding article shall be punished by prision mayor.

[12] 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 prision correccional.

[13] WHEREFORE, premises considered, judgment is hereby rendered as follows:

In Criminal Case No. 20495-MN, the Court finds accused Jose Magbanua y Moriño guilty beyond reasonable doubt of the crime of rape and hereby sentences him to suffer the penalty of reclusion perpetua, to pay the victim [AAA] the sum of P50,000.00 by way of civil indemnity and cost of the suit; and

In Criminal Case No. 20496-MN, the Court finds accused Jose Magbanua y Moriño guilty beyond reasonable doubt of the crime of act of lasciviousness, and hereby sentences him to suffer an indeterminate penalty of four (4) months of arresto mayor, as minimum, to four (4) years of prision correccional, as maximum, and to pay the cost of the suit.

SO ORDERED. (CA rollo, p. 18).

[14] Id. at 19.

[15] Id. at 105; Penned by Associate Justice Rebecca De Guia-Salvador and concurred in by Associate Justices Ruben Reyes (now Associate Justice of the Supreme Court) and Aurora Santiago-Lagman.

[16] CA rollo, p. 107.

[17] People v. Sarabia, 21 January 1997, G.R. No. 124076, 266 SCRA 471, 485.

[18] People v. Malabago y Maquinto, G.R. No. 108613, 18 April 1997, 271 SCRA 464, 476.

[19] People v. Traverro, G.R. No. 110823, 28 July 1997, 276 SCRA 301, 312.

[20] People v. Corea, G.R. No. 114383, 3 March 1997, 269 SCRA 76, 93.

[21] TSN, 16 August 1999, pp. 5-7.

[22] See People v. Casil y Villas, G.R. No. 110836, 13 February 1995, 241 SCRA 285, 292; and People v. Burce, G.R. Nos. 108604-10, 7 March 1997, 269 SCRA 293, 314.

[23] People v. Monfero y Solte, G.R. No. 126367, 17 June 1999, 308 SCRA 396, 409.

[24] TSN, 16 August 1999, pp. 5-7.

[25] People v. De Guzman y Pascual, G.R. No. 124368, 8 June 2000, 333 SCRA 269, 280, citing People v. Abad, 268 SCRA 246(1997).

[26] G.R. No. 76530, 1 March 1995, 242 SCRA 17, 23-24. See also People v. Hinto y Bueno, G.R. Nos.

138146-91, 28 February 2001, 353 SCRA 215, 223.

[27] *People v. Manzana*, G.R. No. 94363, 17 November 1995, 250 SCRA 152, 162.

[28] Art. 63. Rules for the application of indivisible penalties.- x x x x In all cases in which the law prescribes a penalty composed of two indivisible penalties the following rules shall be observed in the application thereof: x x x x

- Where there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied. x x x x

[29] Art. 64. Rules for the application of penalties which contain three periods.—In cases in which the penalties prescribed by law contain three periods, whether it be a single divisible penalty or composed of three different penalties, each one of which forms a period in accordance with the provision of Articles 76 and 77, the courts shall observe for the application of the penalty the following rules, according to whether there are or are no mitigating or aggravating circumstances:

- When there are neither aggravating nor mitigating circumstances, they shall impose the penalty prescribed by law in its medium period. x x x x

[30] See Act No. 4103, Section 1. Hereafter, in 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; and if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same.

[31] *People v. Manallo*, G.R. No. 143704, 28 March 2003, 400 SCRA 129, 145.

[32] G.R. No. 137842, 23 August 2001, 363 SCRA 621, 631.

[33] Art. 2230. In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party.

[34] Art. 2219. Moral damages may be recovered in the following and analogous cases: x x x x

3) Seduction, abduction, rape or other lascivious acts.

[35] *Amployo y Ebalada v. People*, G.R. No. 157718, 26 April 2005, 457 SCRA 282, 297-298.

[36] *People v. Palma y Romera*, G.R. No. 148869-74, 11 December 2003, 418 SCRA 365, 378.

[37] See note 1.

[38] TSN, 16 August 1999, p. 4.

[39] Art. 266-B. Penalties.— x x x x The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

1. When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common law spouse of the parent of the victim. x x x x

[40]SEC. 2. In lieu of the death penalty, the following shall be imposed:

(a) the penalty of reclusion perpetua, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code; or

(b) the penalty of life imprisonment, when the law violated does not make use of the nomenclature of the penalties of the Revised Penal Code.

Pursuant to the same law, appellant shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law.

[41] See *People v. Senieres*, G.R. No. 172226, 23 March 2007, 519 SCRA 13.

[42]CA rollo, pp. 103-104.

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