

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ROMEO BANDIN, APPELLANT.

G.R. No. 176531. April 24, 2009

Ponente: CORONA, J.

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CORONA, J.:

For review is the September 23, 2005 decision[1] of the Court of Appeals (CA) in CA-G.R. CR HC No. 00152. It affirmed with modification the August 29, 2000 decision[2] of the Regional Trial Court (RTC) of Cagayan de Oro City, Branch 18 in Criminal Case No. 93-1761 which found appellant Romeo Bandin guilty of the crime of rape[3] and sentenced him to suffer the penalty of reclusion perpetua.

The complaint read:

That on or about May 21, 1993, at 12.30 P.M., more or less, at Tagpangi, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, with force and intimidation, did [then] and there willfully, unlawfully and feloniously have carnal knowledge with complainant-victim, AAA[4], a 16 [-year] old woman, against her will.

CONTRARY TO and in violation of Article 335 of the Revised Penal Code.[5]

Cagayan de Oro City, Philippines. July 22, 1993.

On August 20, 1993, the trial court issued a warrant of arrest. It could not be served on appellant, however, as he could not be found.

On May 4, 1994, another warrant of arrest was issued. This was returned on January 20, 1999. On the same date, appellant was committed to the city correctional officer of Cagayan de Oro City.

On arraignment, appellant entered a plea of not guilty. Thereafter, pre-trial and trial ensued.

The prosecution presented two witnesses, namely: the victim, AAA, and Dr. Aziel Diel,[6] a pathologist of the Northern Mindanao Regional Training Hospital who conducted the vaginal examination of AAA.

During the trial, the prosecution established that on May 21, 1993, AAA and her older sister, BBB,[7] went to sleep in their hut in Agora, Tagpangi, Cagayan de Oro City at about 7:00 p.m. Their other siblings and parents were then in Batinay and Lanao del Norte, respectively.

AAA woke up at past midnight because she felt a heavy burden on top of her. It was a naked man who was holding her tightly and who uttered in a commanding voice, "Don't move!" She recognized the man's voice as belonging to her brother-in-law, the appellant in this case.

Thereafter, appellant removed the victim's short pants and underwear. AAA covered her genitals with her right hand and pleaded with her brother-in-law to stop. Appellant, however, proceeded to remove AAA's hand from her genitals, spread her legs and immediately inserted his penis inside her vagina. She shouted for help several times

but no one responded. She was too frightened to resist appellant because he was armed with a long firearm which he placed beside her.

Meanwhile, AAA's sister, BBB, was awakened because of the commotion. Fearing that she would be appellant's next victim, she ran out of the house.

Finally, after having his way with the victim, appellant warned her to keep silent about the incident; otherwise, he would kill her and her parents. Subsequently, appellant fled from the scene, leaving the victim crying from the pain she felt in her vagina. She then discovered that there was blood and semen in it. Alarmed, she went to the house of her aunt, CCC, which was about ten meters away from their house. Once there, she relayed the whole incident to CCC.

The victim also reported the incident to her father the following morning. However, it took her father several days to decide on what to do as he was afraid of appellant who was a member of the Citizen Auxiliary Force Geographical Unit (CAFGU) in Tagpangi, Cagayan de Oro City.

AAA finally submitted herself a week later to a physical examination conducted by Dr. Diel. The medical certificate revealed that "there were healed lacerations at three and six o'clock positions which were irregular, sharp and coaptated." [8] Citing NBI [9] statistics, Dr. Diel stated that this indicated that sexual intercourse had indeed occurred.

For its part, the defense presented the testimonies of appellant and his fellow CAFGU members, Isidro Encoy [10] and Junifer Baal. Appellant's defense hinged on denial and alibi. He contended that he did not rape AAA. He claimed that he was sleeping in the bunker of the CAFGU station in Tagpangi, Cagayan de Oro City, which was about two kilometers away from AAA's house. His testimony was corroborated by Encoy and Baal.

He further asserted that his in-laws merely fabricated the charges against him because they blamed him for the death of his daughter which caused his wife, DDD (AAA's other sister), to become insane.

On rebuttal, AAA denied fabricating the charges leveled against her brother-in-law. She countered that she would not want to undergo humiliation just to get back at appellant. She also denied harboring any hatred against appellant because she was only 4 years old when her niece (appellant's daughter) died in 1980. Had she really wanted to concoct a rape case against her brother-in-law, she could have done so sooner.

After trial on the merits, the RTC found that AAA positively identified appellant and categorically pointed to him as the one who raped her. Weighing the evidence of the prosecution against that of the defense, the trial court found appellant guilty beyond reasonable doubt of the crime charged. The dispositive portion of the decision [11] read:

WHEREFORE, finding accused ROMEO BANDIN GUILTY beyond reasonable doubt of the crime of rape punishable by the Revised Penal Code, Article 335, and there being two generic aggravating circumstances with the use of weapon and dwelling, without any mitigating circumstance, the said accused is hereby sentenced to serve an imprisonment of RECLUSION PERPETUA. He is also directed to pay the complainant the sum of Fifty Thousand Pesos (P50,000.00) as actual damages, another Fifty Thousand (P50,000.00) as moral damages, plus another Fifty Thousand (P50,000.00) as exemplary damages. The period of his preventive imprisonment shall be credited in his favor.

SO ORDERED.

The case was forwarded to this Court on automatic review but we referred it to the CA in accordance with *People v. Mateo*. [12] The CA affirmed the RTC decision with modifications. It held that since the complaint contained no allegations pertaining to the aggravating circumstances of dwelling and use of deadly weapon, the same cannot

be appreciated in the imposition of the penalty. The dispositive portion of the CA decision thus read:

WHEREFORE, the instant appeal is hereby DISMISSED for lack of merit. The assailed decision is hereby AFFIRMED with the modification that the aggravating circumstances of dwelling and use of deadly weapon, the same not having been alleged in the Complaint, be not appreciated. No costs.

SO ORDERED.

We affirm the decision of the CA with modifications.

In this case, we find no reason to overturn the conclusion arrived at by the trial court as affirmed by the CA. It held that AAA's testimony was credible as she delivered her testimony in a clear, direct and positive manner. Through his voice, she positively identified appellant as the man who sexually abused her. Identification of an accused by his voice has been accepted, particularly in cases where, as in this case, the victim has known the perpetrator for a long time.[13]

Consequently, appellant's defense of denial and alibi must crumble in the face of AAA's positive and clear identification of him as the perpetrator of the crime. Denial and alibi cannot be given greater evidentiary value than the testimonies of credible witnesses who testify on affirmative matters. Positive identification destroys the defense of alibi and renders it impotent, especially where such identification is credible and categorical.[14]

However, we deem it fit to reduce the amount of exemplary damages awarded to private complainant from P50,000 to P30,000 in line with recent jurisprudence.[15]

WHEREFORE, the decision of the Court of Appeals in CA-G.R. CR HC No. 00152 is hereby AFFIRMED with MODIFICATIONS. Romeo Bandin is hereby found guilty beyond reasonable doubt of rape. He is sentenced to reclusion perpetua and ordered to pay the victim AAA P50,000 civil indemnity, P50,000 moral damages and P30,000 exemplary damages.

SO ORDERED.

Carpio, (Acting Chairperson),[*] Austria-Martinez,[**] Velasco, Jr., and[***] Leonardo-De Castro, JJ., concur.

* Per Special Order No. 623 dated April 17, 2009.

** Per Special Order No. 626 dated April 21, 2009.

*** Per Special Order No. 624 dated April 17, 2009.

[1] Penned by Associate Justice Normandie B. Pizarro and concurred in by Associate Justices Edgardo A. Camello and Rodrigo F. Lim, Jr. of the Twenty-Third Division of the Court of Appeals. Rollo, pp. 5-18.

[2] Penned by Judge Edgardo T. Lloren. CA rollo, pp. 66-75.

[3] As penalized under Art. 335 of the Revised Penal Code.

[4] "The Court shall withhold the real name of victim-survivor and shall use fictitious initials instead to represent her. 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." (People v. Cabalquinto, G.R. No. 167693, 19 September 2006, 502 SCRA 419, 425-426.)

[5]CA rollo, p. 9.

[6] One of her assignments in the said hospital was to conduct physical examination of rape victims. She claimed that she had already examined more or less one hundred (100) rape victims. See CA decision, rollo, p. 7.

[7] It was said that BBB's left eye was totally blind, while her right eye had blurred vision. She was not presented as a witness for AAA. She died on August 19, 1998. Id., p. 6.

[8] Id., p. 7.

[9] The National Bureau of Investigation.

[10] Also referred to as Isidro Ingkoy in the decision of the RTC.

[11] CA rollo, pp. 27-28.

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

[13] People v. Intong, 466 Phil. 733, 742 (2004), citing People v. Avillano, 336 Phil. 534, 542 (1997).

[14] People v. Delim, et al., G.R. No. 175942, 13 September 2007, 533 SCRA 366, 379.

[15] People v. Abellera, G.R. No. 166617, 3 July 2007, 526 SCRA 329, 343.

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