

THE PEOPLE OF THE PHILIPPINES, Appellee, vs. ROBERTO GINGOS y LATABI and NESTOR MARGOTE y CAICDOY, Appellants.

G.R. No. 176632 (Formerly G.R. Nos. 151570-71). September 11, 2007

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TINGA, J.:

For review is the decision[1] of the Court of Appeals dated 22 December 2006 affirming with modification the judgment[2] dated 7 March 2003 of the Regional Trial Court (RTC)[3] of Muntinlupa City, Branch 276, finding appellants Roberto Gingos y Latabi (Gingos) and Nestor Margote y Caicdo (Margote) guilty beyond reasonable doubt of two (2) counts of rape, and sentencing them to suffer the penalty of reclusion perpetua for each count.

In two (2) separate Informations[4] dated 3 November 1999, appellants were charged with rape, thus:

Criminal Case No. 99-1191

That on or about the 28[th] day of October, [sic] 1999, in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, the above-named accused ROBERTO GINGOS Y LATABI @ BOBET, conspiring and confederating with one NESTOR MARGOTE Y CAICDOY, mutually helping and aiding one another, by means of force, threat or intimidation, did then and there willfully, unlawfully and feloniously, alternating one after the other, had carnal knowledge of one [AAA],[5] a 14-year old girl, against the latter's will and consent.

Contrary to law.

Criminal Case No. 99-1191-A

That on or about the 28[th] day of October, [sic] 1999, in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, the above-named accused NESTOR MARGOTE Y CAICDOY, conspiring and confederating with one ROBERTO GINGOS Y LATABI @ BOBET, mutually helping and aiding one another, by means of force, threat or intimidation, did then and there willfully, unlawfully and feloniously, alternating one after the other, had carnal knowledge of one [AAA], a 14-year old girl, against the latter's will and consent.

Contrary to law.[6]

When arraigned, appellants pleaded not guilty to the crime charged. A joint trial on the merits followed with the prosecution presenting AAA as its sole witness and espousing the following version of the facts:

On 28 October 1999, at about 8:00 p.m., 14-year old AAA was at home in their family residence in Upper Buli Creek, Muntinlupa City when she was sent on an errand to buy kerosene for a neighbor, Mang Tony. After completing her chore, AAA was grabbed by appellant Margote as she was leaving Mang Tony's home. Margote dragged her into the adjacent house where he and appellant Gingos lived. Gingos, who was with Margote at that time, likewise entered the house as AAA was dragged in.[7]

Once inside, appellants forced AAA to lie down on the floor and thereafter undressed her. Margote then went on top of AAA, straddled her and inserted his penis into her vagina. In the meantime, Gingos was positioned near the

head of the victim, holding both of her arms securely above her head. After Margote had satisfied his lust upon AAA, he switched positions with Gingos who then proceeded to forcefully have intercourse with the victim while the former held AAA's hands over her head. After appellants had each completed their assault on AAA, they told her to dress up and warned her against reporting the incident to anyone under threat of physical harm. AAA, although afraid of being scolded, eventually summoned enough courage to tell her mother of her ordeal three (3) days later. They immediately went to the police to file a complaint against appellants.[8]

The defense of appellants consisted of denial and alibi. In support thereof, they presented the testimony of Gingos and his grandfather Guillermo Gingos (Guillermo).

Gingos denied the charges and asserted that he and his co-accused could not have committed the crimes imputed to them as they were not in Upper Buli Creek at the time the rapes were alleged to have been perpetrated. He claimed that on the night of the incident, he was with Margote at the residence of his grandfather Guillermo in Carmina Compound, Muntinlupa City. According to Gingos, he and Margote did not return to Upper Buli Creek, about two (2) kilometers away from Carmina Compound, until 7:00 a.m. of 29 October 1999.[9]

Guillermo testified to corroborate his grandson's alibi and maintained that on 28 October 1999, both Gingos and Margote were with him in his house in Carmina Compound where they all stayed the night. He averred that he did not notice appellants leave the house in the afternoon or evening of the date in question and that at about 10:00 p.m. that day, they had all gone to sleep.[10]

Finding that the prosecution had proven beyond reasonable doubt the guilt of appellants of the crime of rape, the RTC rendered judgment against them on 7 March 2003. Appellants were sentenced to suffer the penalty of life imprisonment and to pay civil indemnity to AAA in the amount of P50,000.00 and the cost of the proceedings.[11]

With the penalty imposed on appellant, the case was elevated to this Court on automatic review. However, pursuant to our ruling in *People v. Mateo*,^[12] the case was transferred to the Court of Appeals for intermediate review. On 22 December 2006, the appellate court affirmed with modification the challenged decision. Noting the error of the trial court in imposing the penalty of life imprisonment on appellants, the Court of Appeals modified the decision *a quo* as to penalty and damages, thus:

WHEREFORE, We affirm the conviction of accused-appellants but for two (2) counts of Rape, sentencing each of them to suffer the penalty of two (2) reclusion perpetua. Accused-appellants are further directed to pay the victim [AAA] the amount of P50,000.00 as civil indemnity and P50,000.00 as moral damages for each count of rape.

Before us, appellants adopt their brief submitted to the appellate court and once again raise as the sole assignment of error the failure of the trial court to appreciate the testimony of the Gingos and that of their corroborating witness. Appellants maintain that the charges against them are fabricated and that the testimony of AAA merely presented general allegations without supporting evidence. More particularly, they make issue of AAA's failure to offer in evidence the medical certificate and report issued by the physician who allegedly examined her after the incident. Finally, appellants point out as suspicious AAA's failure to manifest physical resistance against her alleged ravishers and her claim that Gingos had raped her for an hour.

We affirm the decision of the Court of Appeals.

The duty to ascertain the competence and credibility of a witness rests primarily with the trial court,^[13] because it has the unique position of observing the witness' deportment on the stand while testifying. Absent any compelling reason to justify the reversal of the evaluations and conclusions of the trial court, the reviewing court

is generally bound by the former's findings.[14]

In rape cases particularly, the conviction or acquittal of the accused most often depends almost entirely on the credibility of the complainant's testimony. By the very nature of this crime, it is generally unwitnessed and usually the victim is left to testify for herself.[15] Her testimony is most vital and must be received with the utmost caution.[16] When a rape victim's testimony, however, is straightforward and marked with consistency despite grueling examination, it deserves full faith and confidence and cannot be discarded. Once found credible, her lone testimony is sufficient to sustain a conviction.[17]

Jurisprudence has established doctrinal guidelines in scrutinizing such trustworthiness, viz: (1) the appellate tribunal will not disturb the findings of the lower court unless there is a showing that it had overlooked, misunderstood, or misapplied some fact or circumstance of weight and substance that would have affected the result of the case; (2) the findings of the trial court pertaining to the credibility of witnesses are entitled to great respect and even finality as it had the opportunity to examine their demeanor as they testified on the witness stand; and (3) a witness who testified in a categorical, straightforward, spontaneous and frank manner and remained consistent on cross-examination is a credible witness.[18]

The trial judge made the following observations on AAA:

In contrast [to the appellants' contentions] the declaration of the 13-year old victim is very credible.

x x x

Complainant has no reason to charge both accused if she was in fact not sexually molested. Her assertion is so detailed, spontaneous and [straightforward], without artifice, which could come only from one who had gone thru [sic] the experience. Her positive identification of the two is not overcome by the alibi of both accused. Their defense is evidently an afterthought. The declarations of Roberto, does not even agree with the assertions of his grandfather. Alibi cannot be sustained against the clear and positive identification of both Accused.(Emphasis supplied)[19]

We agree that AAA's narration of her tormenting and traumatic experience, both in direct testimony and on cross-examination, is worthy of credit, to wit:

Fiscal Campomanes:

Q On October 28, 1999 at about 8:00 o'clock in the evening, where were you?

A At home.

x x x x

Q What happened while you were at [home] at that time?

A I was sent on an errand by Mang Tony.

x x x x

Q What was the errand you were sent to (sic) by this Mang Tony?

A To buy gas.

Q Where are [sic] you supposed to buy gas?

A In Alabang.

Q Did you actually went [sic] out of your house to buy gas?

A Yes, Ma'am.

x x x x

Q After you gave the gas to Mang Tony[,] what happened?

A When we went downstairs I saw these two men.

Q What is the family name of Nestor?

A Ma[r]gote.

Q And how about Roberto?

A Gingos.

Q Do [sic] you know them at that time?

A Yes, I know [sic] them.

Q Why do you know them?

A They are the barkada of the gangmates of my father.

Q And where do (sic) they live if you know at that time?

A I do not know.

Q So what happened after that, Miss Witness?

A They grabbed me.

Q Where in particular in your body?

Clerk of Court:

Witness demonstrating that she was being dragged on [sic] her left arm.

Q Who grabbed you?

A It was Nestor who grabbed me.

Q How about Roberto?

A Roberto went inside the house.

Q What house?

A The house of Roberto and Nestor in Alabang.

Q And where is this house located in relation to the house of Mang Tony?

A It was near [sic] from the house of Mang Tony the house of Roberto & Nestor.

Q And after Nestor grabbed you, what happened next?

A I was made to lie on the floor.

Q Floor where?

A At the house of Nestor.

Q After you were made to lie on the floor what happened?

A Nestor removed my clothes.

Q Who made you lie on the floor?

A It was Nestor who made me lie on the floor.

Q How about Roberto[,] what was he doing at that time?

A He was just standing by.

Q What did Nestor did [sic] to you while you were lying on the floor?

A He sat on top of me.

Q Before that, what did he do at the time when Nestor went on top of you, what did he do?

A He held me by the hands by my two hands.

Q What did you do at that time when Nestor grabbed your hands and brought you inside their house?

A I cried.

Q Why did you cry?

A I cried because they were about to rape me, Nestor pulled down my shorts.

Q And what happened when Nestor placed himself on top of you after he pulled down your shorts?

A Kinabayo niya ako.

Q After Nestor "kinabayo" what happened? What did he do?

A He inserted his organ.

Q Where?

A To [sic] my sex organ.

Q When Nestor inserted his organ into your organ what did you do?

A I said "aray" or "ouch."

Q And how about Roberto where was he at the time when Nestor inserted his organ into your organ?

A He was positioned near my head.

Q And what was he doing?

A He was holding my two hands.

Q And after that what happened[,] Miss Witness?

A I said "aray."

Q Why did you said [sic] "aray?"

A Because it was painful.

Q And so what did, after he inserted his organ what more did he do if any,

Nestor [sic]?

A After he inserted his penis[,] afterwards [he] removed it and Roberto

also inserted his penis in my organ.

Q And when Roberto inserted his organ[,] where was Nestor?

A He went to my head.

Q What did he do there?

A He held my two hands.

Q And after Roberto inserted his organ into your sex organ what happened?

A Afterwards he told me to dress up.

Q And what did you do?

A After dressing up they told me not to report the incident.

Q Why?

A Because if it happened they will kill me.

Q And you believed them at that time?

A Yes, Ma'am.

x x x x[20]

We have consistently held that a woman who says she has been raped in effect says all that is necessary to show that rape has been inflicted on her.[21] This is especially true for minors because no woman, especially one of tender age, would concoct a story of defloration, allow an examination of her private parts and be subjected to public trial and humiliation if her claim is not true.[22] No woman would want to go through the process, the trouble and the humiliation of trial for such a debasing offense unless she actually has been the victim of abuse and her motive is but a response to the compelling need to seek and obtain justice. In this case, no ill will on the part of AAA, a fourteen (14)-year old girl, has been shown that might have impelled her to falsely charge her neighbors with the crime of rape if it were not true.

Conversely, appellants have not shown any compelling reason for this Court to depart from the RTC's finding that AAA was telling the truth in accusing them of raping her. The inconsistencies and improbabilities in her testimony relate to minor, trivial, and inconsequential matters which do not alter the essential fact in the crime of rape, i.e., carnal knowledge through force or intimidation.[23] In fact, they may even be considered a badge of truthfulness which obliterates any misgivings that AAA is a rehearsed witness.[24]

Moreover, it is well-settled that a categorical and positive identification of an accused, without any showing of

ill-motive on the part of the eyewitness testifying on the matter, prevails over alibi and denial, which are negative and self-serving evidence undeserving of bona fide weight in law unless substantiated by clear and convincing evidence.[25] The denial and alibi of appellants in this case are weak and cannot prevail over AAA's positive identification of them. For alibi to prosper, they must establish by clear and convincing evidence (a) their presence at another place at the time of the perpetration of the offense and (b) the physical impossibility of their presence at the scene of the crime.[26] Appellants' claim that they were in Guillermo's house two (2) kilometers away from the place of the crime does not convince us. It was not physically impossible for them to return to Upper Buli Creek and perpetrate the crime, for Guillermo's house in Carmina Compound is but a short distance away. In fact, Gingos initially testified that the distance between the two places was only 150 meters, which he curiously changed to two (2) kilometers subsequently in the course of his testimony.[27]

The failure of AAA to shout for help or resist the sexual advances of her rapists was not tantamount to consent. Physical resistance need not be established in rape when threats and intimidation are employed and the victim submits herself to her attackers because of fear. Physical resistance is not the sole test to ascertain whether or not a woman involuntarily yielded to the lust of her attacker.[28] Rape victims show no uniform reaction. Some may offer strong resistance while others may be too intimidated to offer any resistance at all.[29] Here, it is not difficult to appreciate how AAA was cowed to submission by the sudden attack of two grown men who aided each other to facilitate their carnal intentions, taking advantage of the victim's surprise, fear, youth and vulnerability.

We do not agree with appellants' claim that AAA's failure to present any medical certificate issued by her examining physician is fatal to the prosecution's cause. A medical certificate is not indispensable to prove the commission of rape. The non-presentation of the medical certificate, which is merely corroborative, does not give rise to the presumption that if presented, it would be adverse to the prosecution.[30] The testimony of the victim alone, if credible, is sufficient to convict the accused of the crime.[31]

All told, we rule that the finding of guilt of both RTC and the Court of Appeals should be sustained. We find that appellants must each be held liable for the two (2) counts of rape as charged. Clearly, there was conspiracy as shown by their obvious, concerted efforts to perpetrate, one after the other, the crime charged.[32] It was established during the trial that while one of the appellants was raping the victim, the other restrained her hands; and then thereafter, appellants reversed roles as the other forced intercourse with the victim while his fellow aggressor this time held her hands above her head.

There is thus no impediment in affirming the sentence of reclusion perpetua on appellants for each count of rape. Likewise, the award of civil indemnity of P50,000.00 and moral damages in the amount of P50,000.00 each for the two (2) counts of rape is proper for victims of simple rape in accordance with prevailing jurisprudence.[33]

WHEREFORE, the decision of the Court of Appeals, in CA-G.R. CR-H.C. No. 02079, is **AFFIRMED** in toto. Appellants ROBERTO GINGOS y LATABI and NESTOR MARGOTE y CAICDOY are each sentenced to suffer the penalty of reclusion perpetua for each of the two (2) counts of rape and to pay the victim AAA (to be identified through the Information in this case) P50,000.00 as civil indemnity and P50,000.00 as moral damages for each count of rape. No pronouncement as to cost.

SO ORDERED.

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

[1]Rollo, pp. 3-15. Penned by Associate Justice Rosmari D. Carandang and concurred in by Associate Justices

Renato C. Dacudao and Estela M. Perlas-Bernabe.

[2]CA rollo, pp. 12-24.

[3]Presided by Judge Norma C. Perello.

[4]Records, pp. 1-2.

[5]The real name of the victim is withheld per R.A. No. 7610 and R.A. No. 9262. See *People v. Cabalquinto*, G.R. No. 167693, 19 September 2006, 502 SCRA 419.

[6]CA rollo, pp. 5-6.

[7]TSN, 26 July 2000, pp. 4-7.

[8]Id. at 8-15.

[9]TSN, 15 January 2001, pp. 3-5.

[10]TSN, 4 September 2002, pp. 6-8.

[11]CA rollo, p. 23.

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

[13]*People v. Biong*, 450 Phil. 432, 445 (2003), citing *People v. Tadeo*, G.R. Nos. 128884-85, 3 December 2001, 371 SCRA 303.

[14]Id., citing *People v. Glabo*, G.R. No. 129248, 7 December 2001, 371 SCRA 567.

[15]*People v. Corral*, 446 Phil. 652, 661 (2003).

[16]*People v. Penaso*, 383 Phil. 200, 208 (2000), citing *People v. Domogoy*, G.R. No. 116738, 22 March 1999, citing *People v. Casim*, 213 SCRA 390 (1992). See also *People v. Babera*, 388 Phil. 44, 53 (2000), citing *People v. Gallo*, 284 SCRA 590 citing *People v. Rivera*, 242 SCRA 26.

[17]*People v. Penaso*, supra, citing *People v. Caratay*, G.R. Nos. 119418, 119436-37, 5 October 1999. See also *People v. Babera*, supra, citing *People v. Gapasan*, 243 SCRA 53 and *People v. Bulaybulay*, 248 SCRA 601.

[18]*People v. Antonio*, 447 Phil. 731, 739 (2003), citing *People v. Cepeda*, G.R. No. 124832, 1 February 2000, 324 SCRA 290. See also *People v. Penaso*, supra. See also *People v. Corral*, 446 Phil. 652, 661-662 (2003); *People v. Pascua*, 462 Phil. 245, 251-252 (2003).

[19]CA rollo, pp. 22-23.

[20]TSN, 26 July 2000, pp. 4-12. Emphasis ours.

[21]*People v. Zabala*, 456 Phil. 237, 243 (2003), citing *People v. Villaruel*, G.R. No. 135401, 6 March 2002. See also *People v. Ambray*, 363 Phil. 324, 332 (1999).

[22]Id. *People v. Villaruel*, 428 Phil. 449, 461 (2002), citing *People v. Oliver*, 303 SCRA 72 (1999). See also *People v. Talavera*, 461 Phil. 883 (2003) and *People v. Hilet*, 450 Phil. 481 (2003).

[23]*People v. Agravante*, 423 Phil. 278, 292 (2001); citing *People v. Veloso*, 330 SCRA 602 (2000).

[24]Id., citing *People v. Perez*, G.R. No. 113265, 5 March 2001; *People v. Austria*, 334 SCRA 398 (2000).

[25]*People v. Corpuz*, G.R. No. 168101, 13 February 2006, 482 SCRA 435, 449; citing *People v. Intong*, G.R.

Nos. 145034-35, 5 February 2004, 422 SCRA 134 (2004).

[26]People v. Gonzales, G.R. No. 141599, 29 June 2004, 433 SCRA 102; citing People v. Del Ayre, G.R. No. 133385, 7 December 2001, 371 SCRA 595.

[27]TSN, 15 January 2001, pp. 2-4.

[28]People v. David, 461 Phil. 364, 385 (2003); citing People v. Mostrales, 294 SCRA 701 (1998).

[29]Id., citing People v. Buendia, 314 SCRA 655 (1999).

[30]People v. Quiamco, 335 Phil. 988, 1001 (1997); citing People v. Gapasan, 243 SCRA 53.

[31]People v. Limon, 366 Phil. 29, 37 (1999); citing People v. Abordo, G.R. No. 101187, 23 July 1993, 224 SCRA 725.

[32]See People v. Plurad, 441 Phil. 587, 600 (2002); citing People v. Quinanola, 306 SCRA 710 (1999).

[33]People v. Cornelio, G.R. No. 170475, 7 June 2007; People v. Astrologo, G.R. No. 169873, 8 June 2007.

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