

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JOEL GUILLERMO, APPELLANT.

G.R. No. 177138. January 26, 2010

Ponente: CORONA, J.

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CORONA, J.:

On November 3, 1998, appellant Joel Guillermo was charged by AAA with three counts of rape as defined in Article 266-A of the Revised Penal Code (RPC) in the Regional Trial Court (RTC) of Rosales, Pangasinan, Branch 53.[1]

On November 23, 1998, appellant was likewise charged by BBB with rape under Article 266-A of the RPC in the same RTC.[2]

Appellant pleaded not guilty during arraignment.

The prosecution presented AAA, Crisantina Raguindin, AAA's elementary school teacher, and Dr. Ingrid Irene Ganciña,[3] the Municipal Health Officer of Rosales, Pangasinan, as its witnesses.

AAA testified that when she was 13 years of age, she and appellant, who is her first cousin, lived at her grandparents' house. She, with her siblings, slept in the sala illuminated by a kerosene lamp. On three separate occasions,[4] she woke up in the middle of the night to find the appellant wielding a knife and removing her clothes and blanket. He subsequently forced her to engage in sexual intercourse with him. The appellant threatened to kill her and the rest of her family if she reported the incident. Because she believed the threats of the appellant, she kept quiet about the incidents until her elementary school teacher noticed that she was pregnant.

Raguindin corroborated AAA's testimony. Because she noticed that AAA's abdomen was getting bigger, she asked the girl whether she was pregnant. AAA revealed to her the dastardly acts of the appellant. She accompanied AAA to report the matter to her father. They then proceeded to the police station to file the complaint.

Dr. Ganciña testified that AAA disclosed that appellant forced her to engage in sexual relations with him. She found that AAA had cervical lacerations and confirmed that AAA was 5 to 6 months pregnant.

BBB testified that on September 28, 1998, when she was 12 years old, appellant sexually abused her. She lived at her grandparents house. At night, she slept in the sala (which was illuminated by a kerosene lamp) beside her siblings. One evening, she woke up as she felt someone licking her genitals. To her surprise, she discovered that her clothes had been removed and appellant was on top of her. Appellant succeeded in having sexual intercourse with her. Throughout the entire ordeal, appellant was holding a knife and threatening to kill her and her family if she told anyone about the incident.

Dr. Ganciña testified that, after examining BBB she found four healed lacerations in the child's cervix.

For its part, the defense argued that AAA was the sweetheart of appellant, and they had four sexual encounters

beginning March 8, 1998 when she accepted his love proposal. His mother, Virginia Guillermo, corroborated his testimony claiming that her son told her that the sexual relations were consensual. On one occasion she even saw her son and AAA "exchanging snacks."

The defense attacked AAA's credibility, saying she had made a contrary statement earlier. An affidavit of desistance was presented by the defense and it was identified, confirmed and affirmed by AAA. The document, among others, stated that the acts of sexual intercourse she had with appellant on three occasions were voluntary and without force or intimidation. On cross-examination, however, AAA explained that she recanted her previous testimony because appellant promised to support her and her baby, and give her a parcel of land. But appellant refused to fulfill his promise, forcing her to revive the instant cases.

With respect to BBB's accusation, appellant said that BBB was like a sister and he treated her accordingly. He was not aware of any reason for her to accuse him of molesting her. He remembered one occasion, however, when he had a quarrel with BBB over a guava fruit. Appellant's mother, Virginia, on the other hand, claimed that appellant was in Manila at the time of the alleged rape.

In decisions dated November 5, 2002[5] and November 6, 2002,[6] the RTC said that settled is the rule in rape cases that the lone testimony of the victim, if credible, is enough to sustain a conviction.[7] It found both victims' testimonies to be straightforward and candid. There was no showing that complainants had been animated by any ill feeling or evil motive so as to falsely testify or impute the crime to appellant. Moreover, their testimonies were corroborated by the results of the physical examination.

With regard to AAA, appellant's proffered "sweetheart theory" was found to be a self-serving allegation, as it was not supported by any independent and concrete evidence. Thus:

The court found the accused Joel Guillermo guilty beyond reasonable doubt of the crime of rape in each of the instant cases, defined and penalized under Article 335[8] of the Revised Penal Code. Accordingly, he is hereby sentenced as follows:

- Criminal Case No. 3923-R

- a) to suffer the penalty of reclusion perpetua;
- b) to indemnify private complainant AAA the amount of P50,000;
- c) to pay the private complainant AAA the sums of P50,000 as moral damages and P25,000 as exemplary damages; and
- d) to pay the cost of suit.

- Criminal Case No. 3924-R

- a) to suffer the penalty of reclusion perpetua;
- b) to indemnify private complainant AAA the amount of P50,000;
- c) to pay the private complainant AAA the sums of P50,000 as moral damages and P25,000 as exemplary damages; and
- d) to pay the cost of suit.

- Criminal Case No. 3925-R

- a) to suffer the penalty of reclusion perpetua;
- b) to indemnify private complainant AAA the amount of P50,000;
- c) to pay the private complainant AAA the sums of P50,000 as moral damages and P25,000 as exemplary damages; and
- d) to pay the cost of suit.

SO ORDERED.

As to BBB, appellant's imputation of ill motive in claiming that complainant was animated by a quarrel over a guava fruit was rejected by the RTC for being trivial. Likewise discarded by the RTC was the appellant's alibi. Thus:

The Court finds the accused Joel Guillermo guilty beyond reasonable doubt of the crime of rape, defined and penalized under Article 335 of the Revised Penal Code. Accordingly he is sentenced:

- to suffer the penalty of reclusion perpetua;
- to pay the private complainant BBB the sum of P50,000 as indemnity;
- to pay the private complainant BBB the sums of P50,000 as moral damages and P25,000 as exemplary damages; and
- to pay the costs of suit.

SO ORDERED.

A consolidated appeal[9] was filed by appellant in the Court of Appeals (CA).

In a decision[10] dated January 19, 2007, the CA affirmed the findings of the RTC but modified the penalty and award of damages. It held that at the time of the commission of the crimes, Article 335 of the RPC had already been amended by Article 266-A of RA No. 8353. However, the failure to designate the offense by statute or mention the specific provision penalizing the act or an erroneous specification of the law violated did not vitiate the Information because there was a clear recitation of the facts constituting the crime charged.[11] Appellant had been apprised of the crimes imputed to him and was able to defend himself accordingly. Thus, there was no need to modify the penalty imposed by the court as it conformed to Article 266-B[12] of RA No 8353.

The awards for exemplary damages were deleted by the CA. Exemplary damages are awarded only in the presence of aggravating circumstances, whether ordinary or qualifying.[13] Here, neither the minority of AAA and BBB nor their relationship with the appellant may be considered as generic aggravating circumstances justifying the award of exemplary damages.

We affirm the decision of the CA but modify the award of damages.

We see no cogent reason to disturb the factual findings of the RTC, as affirmed by the CA, that appellant forced AAA, on three separate occasions, and BBB, to engage in sexual intercourse with him.

The "sweetheart theory" is an admission of carnal knowledge of the victim and consequently places on the accused the burden of proving the supposed relationship by substantial evidence.[14] Appellant presented no evidence to substantiate his claim.

Furthermore, the Court does not look with favor on affidavits of retraction. Recanted testimony is highly questionable because it can be secured through monetary considerations. It is dangerous for courts to reject testimonies solemnly given before the courts of justice simply because the witnesses who made them change their minds later on. Such a rule would make solemn trials a mockery and place the investigation of truth at the mercy of unscrupulous witnesses.[15] Here, the affidavit of retraction was precisely executed by AAA in exchange for financial assistance and land (which she never received).

Lastly, the Court has time and time again ruled that denial and alibi are inherently weak defenses as these are self-serving.

Appellant's guilt of the crime of simple rape through force or intimidation has been established beyond reasonable doubt. Pursuant to recent jurisprudence, the award of P50,000 as civil indemnity,[16] P50,000 as moral damages[17] and P25,000 as exemplary damages for each count of rape (or P375,000 to AAA and P125,000 to BBB) is in order. Inasmuch as the minority of both AAA and BBB was not proven and their relationship with appellant was outside the scope of Article 14 of the RPC and Article 266-B of RA No 8353,[18] these circumstances cannot be considered as aggravating circumstances.

Nonetheless, the victims are entitled to exemplary damages since appellant used a deadly weapon to perpetrate the offense.[19] While the use of a deadly weapon is not one of the generic aggravating circumstances in Article 14 of the RPC, under Article 266-B thereof, the presence of such circumstance in the commission of rape increases the penalty, provided that it has been alleged in the Information and proved during trial.[20] This manifests the legislative intent to treat the accused who resorts to this particular circumstance as one with greater perversity and, concomitantly, to address it by imposing a greater degree of liability. Thus, even if the use of a deadly weapon is not alleged in the Information but is proven during the trial, it may be appreciated to justify the award of civil liability, particularly exemplary damages.[21]

In this instance, while the Information did not state that appellant possessed a deadly weapon, the prosecution sufficiently established that he threatened his victims with a knife in order to facilitate the commission of his bestial acts and cow his victims into silence. Inasmuch as appellant may not be sentenced to death, the presence of such circumstance justifies the award of exemplary damages.[22]

WHEREFORE, the January 19, 2007 decision of the Court of Appeals in CA-G.R. CR-H.C. No. 00616 is hereby **AFFIRMED WITH MODIFICATION**. Appellant Joel Guillermo is hereby found **GUILTY** of three counts of simple rape against AAA and one count of simple rape against BBB for which he is sentenced to suffer the penalty of reclusion perpetua for each count of rape. He is further ordered to pay AAA and BBB P50,000 civil indemnity ex delicto, P50,000 moral damages and P30,000 exemplary damages for every count of rape.

Costs against the appellant.

SO ORDERED.

Velasco, Jr., Nachura, Peralta and Mendoza, JJ., concur.

[1] Identical Informations filed, charging the appellant with Article 335 of the Revised Penal Code, read:

Criminal Case No. 3923-R:

That on or about the 8th day of May 1998, in Brgy. Rabago, Municipality of Rosales, Province of Pangasinan, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there, willfully, unlawfully and feloniously have sexual intercourse with AAA, a minor of about thirteen (13) years old, against her will and consent and to her damage and prejudice.

Contrary to Article 335, Revised Penal Code.

The informations for Criminal Case Nos. 3924-R and 3925-R differed from the above information only insofar as the date of commission of the crime (June 16, 1998 and July 18, 1998, respectively).

[2] Criminal Case No. 3940-R:

That on or about the 17th day of September 1998, in Brgy. Rabago, Municipality of Rosales, Province of Pangasinan, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and

intimidation, did then and there, willfully, unlawfully and feloniously have sexual intercourse with BBB, a minor of about twelve (12) years old, against her will and consent and to her damage and prejudice.

Contrary to Article 335, Revised Penal Code.

[3] Also referred to in the records as Gancinia.

[4] Evening of May 8, 1998, June 16, 1998 and July 18, 1998.

[5] Criminal Case Nos. 3923-R, 3924-R, 3925-R penned by Judge Teodorico P. Bauzon. CA Rollo, pp. 25-41.

[6] Criminal Case No. 3940-R penned by Judge Teodorico P. Bauzon. Id., pp. 114-128.

[7] Citing *People v. Quitariano*, 226 SCRA 373.

[8] Erroneously referred to in decision as Article 325.

[9] Docketed as CA-G.R. CR-H.C. No. 00616.

[10] Penned by Associate Justice Japar B. Dimaampao and concurred in by Associate Justices Portia Aliño-Hormachuelos and Mario L. Guariña III of the Third Division of the Court of Appeals. SC rollo, pp. 3-28.

[11] Citing Oscar M. Herrera. REMEDIAL LAW, Volume IV, p. 78 (2001).

[12] Article 266-B of the REVISED PENAL CODE provides:

Article 266-B. Penalty. - 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.

xxx

[13] Citing *People v. Cayabyab*, 465 SCRA 681, 693 (2005).

[14] *People v. Hapin*, G.R. No. 175782, 24 August 2007, 531 SCRA 224.

[15] *People v. Joya*, G.R. No. 79090, 1 October 1993, 227 SCRA 9.

[16] *People v. Mendoza*, 432 Phil. 666 (2002); *People v. Tabio*, G.R. No. 179447, 6 February 2008, 544 SCRA 156.

[17] *People v. Mayao*, G.R. No. 170636, 27 April 2007, 522 SCRA 748; *People v. Agustin*, 28 February 2008, 547 SCRA 136.

[18] *People v. Fernandez*, G.R. No. 176060, 5 October 2007, 535 SCRA 159.

[19] *People v. Hapin*, G.R. No. 175782, 24 August 2007, 531 SCRA 224, 239.

[20] *People v. Legaspi*, G.R. No. 136164-65, 20 April 2001, 357 SCRA 234.

[21] *People v. Catubig*, 461 Phil. 102 (2001); *People v. Custodio*, G.R. No. 176062, 4 July 2008, 557 SCRA 293, 304-305.

[22] Id.

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