

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOEY TORIAGA, ACCUSED-APPELLANT.*G.R. No. 177145. February 09, 2011*

Ponente: BERSAMIN, J.

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Joey Toriaga appeals the decision promulgated on November 17, 2006 in CA-G.R. CR-HC No. 01617,[1] whereby the Court of Appeals (CA) affirmed his conviction for raping AAA[2] under the decision dated February 26, 2002 rendered by the Regional Trial Court (RTC), Branch 128 in Caloocan City.[3]

Toriaga was no trivial stranger to AAA and her family. Her father was Toriaga's close friend and "drinking buddy," and CCC, AAA's aunt, regarded Toriaga as a trusted employee in her balut selling business. CCC even furnished Toriaga a sleeping area inside her house. At the time material to this case, AAA was a 13-year old lass.[4] She happened to be alone in keeping watch of the house of CCC in the early evening of November 26, 1995 while CCC and her family went to church for mass. At around then, Toriaga and AAA's father were drinking at the latter's house, which was only about 20 meters away from CCC's house. Then, feeling already drunk, Toriaga returned to CCC's house. Hearing him knocking at around 7 o'clock p.m. AAA opened the door and let him in. She then casually went up to the second floor to watch television. Later, AAA went downstairs, and saw Toriaga opening his folding bed and switching off the lights. Thinking that Toriaga was going to bed, she sat on the stairs. But she was not prepared for what happened next, because Toriaga grabbed and poked an icepick at her neck and dragged her downstairs. Holding the icepick to her neck, he ordered her to strip naked and to lie on the folding bed. Out of fear she complied. He undressed himself and mounted her. He inserted his penis into her vagina. She felt the penetration. He was on top for about 10 minutes, stopping only because she pretended losing consciousness. He lifted her and brought her upstairs, covering her mouth with a pillow. When she felt the icepick being pressed into her stomach, she fought and parried the blow, thereby preventing the icepick from penetrating her flesh. To protect herself, she turned face down, but he stabbed her back with the icepick. Although she was in pain, she kept silent and still, which made him stop stabbing her, probably believing that she was already dead. She soon heard him washing his hands downstairs. But just when she tried to rise, she heard him coming back. She thus laid down again and pretended to be asleep. Satisfied that she had not moved, he went out of the house and closed the door. She then crawled to the window and shouted for help. Several neighbors responded and rushed her to the hospital for medical treatment.

The medico-legal findings disclosed her injuries, to wit:

Wound, sutured, roughly elliptical, with contused edges, 0.5 cm. nape.

Wounds, sutured, roughly elliptical with contused edges, posterior chest, right side; 0.7 cm., infrascapular area, 5.5 cms. from the posterior median line; 0.6 cm. infrascapular area, 4.5 cms. from the posterior median line; 0.7 cm., infrascapular area, along paravertebral line, 4.0 cms. from the posterior median line; 0.6 cm. infrascapular area, along midscapular line, 6.5 cms., from the posterior median line; 0.7 cm., infrascapular area, 4.3 cms., from the posterior median line; 0.6 cm., area just above the right buttocks, along posterior

axillary line, 9.5 cms., from the posterior median line.

Wounds, roughly elliptical with contused edges: 0.3 cm., right hypochondrium, abdomen with a curvilinear reddish abrasion measuring 6.5 cms.; 0.5 cm., intergluteal area, along posterior median line; 0.5 cm., outer upper quadrant, right buttocks, 10.0 cms. from the posterior median line.

GENITAL EXAMINATIONS:

Pubic hair, fine, scanty. Labia majora, coaptated. Labia minora, coaptated. Fourchette, with a superficial laceration, edges still bleeding. Vestibule, congested with a contusion at the left lateral portion. Hymen, short, thick, intact. Hymenal orifice, admits a tube measuring 2.0 cms. in diameter with moderate resistance. Vaginal walls, tight. Rugosities, prominent.[5]

On November 28, 1995, the following information for rape was filed in the RTC, viz:

That on or about the 26[th] day of November, 1995 at Kalookan City, Metro-Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and by means of threat and intimidation by using a bladed weapon (knife) employed upon the person of 13-year old AAA, did then and there willfully, unlawfully and feloniously lie and have sexual intercourse with said AAA, against her will and without her consent.

Contrary to law.[6]

A separate information for frustrated homicide was also filed.

Initially, the RTC consolidated the two cases, and Toriaga pleaded not guilty to both charges on January 17, 1996. In view of his intervening conviction for frustrated homicide, however, only the charge for rape remained. During the presentation of evidence for the accused, he moved to be allowed to change his plea to guilty. Thus, upon re-arraignment, he pleaded guilty to the information for rape. But he withdrew his plea on November 20, 2000 upon being apprised of the imposable penalty and the consequences of the plea.

Toriaga denied raping AAA, claiming that he returned to CCC's house and slept. He insisted that BBB had instigated AAA to charge him with rape and to testify against him due to a previous misunderstanding between them.

On February 26, 2002, the RTC convicted Toriaga, viz:

WHEREFORE, in view of all the foregoing, this Court finds the accused Joey Toriaga guilty beyond reasonable doubt of the crime of Rape and hereby sentenced him to suffer imprisonment of Reclusion perpetua and all the accessory penalties attached thereto. He is further adjudged to pay the victim the sum of P50,000.00 as civil indemnity and the amount of P75,000.00 as for moral damages with no subsidiary imprisonment in case of insolvency.

Considering that the accused is already serving sentence at the New Bilibid Prisons for having been convicted for the crime of Frustrated Homicide in another case, furnish the Director of the New Bilibid Prisons copy of this Decision, for the proper imposition of his sentence in this case.

SO ORDERED.[7]

Thus, Toriaga appealed to this Court, which, on September 6, 2004, transferred the records to the CA for intermediate review, conformably with *People v. Mateo*.^[8]

In the CA, Toriaga changed his defense of denial and alibi for the first time to the affirmative defense of consensual sexual intercourse with AAA, whom he insisted had undressed herself freely and did not shout when the incident was taking place. He contended that he was liable only for qualified seduction because he was a

domestic within the contemplation of the law.

In its decision, the CA rejected his contentions, because, firstly, he was found not to have been charged with the custody or authority over the minor victim; secondly, AAA was not a member of the household of CCC, nor was he a member of the victim's household; and thirdly, the complaint for rape neither averred nor embodied the elements of seduction. Consequently, the CA affirmed the conviction for rape.

In his appeal, Toriaga's main argument of consensual sexual intercourse rested on the failure of AAA to shout during the rape and on her failure to escape when he momentarily left her and while he was busy undressing himself. He insisted that the proximity of the houses in the neighborhood should have emboldened her to put up some resistance had the sexual encounter been forced. Her demeanor was inconsistent with that of an ordinary Filipina whose instincts dictated that she summoned every ounce of her strength and courage to thwart any attempt to defile her virtue.

The appeal fails.

Firstly, the defense of consensual sexual intercourse, like the sweetheart defense, demands corroboration. Yet, Toriaga offered no corroboration, thereby exposing his belatedly offered defense as a self-serving after-thought resorted to after his original defenses of denial and alibi had failed to ensure his acquittal by the CA. Thus, his new defense deserved scant consideration.

Secondly, the physical evidence spoke more vividly than the testimony of the victim, whose multiple injuries confirmed the use of brutal force and violence in her rape. Also, the multiple stab wounds she sustained negated his claim of consensual sexual intercourse.

Third, the CA's rejection of Toriaga's contention of being liable only for qualified seduction was correct. Indeed, the information did not allege the presence of the elements of qualified seduction, to wit: (a) that AAA was a virgin; (b) that she was over 12 and under 18 years of age; (c) that he had sexual intercourse with her; and (d) that there was abuse of authority, or of confidence, or of relationship.

Fourthly, the RTC and the CA correctly determined the penalty of reclusion perpetua as imposable. The information alleged the use of a bladed weapon in the commission of the rape. Article 335 of the Revised Penal Code provides that whenever the crime of rape is committed with use of a deadly weapon the imposable penalty is reclusion perpetua to death. The Prosecution established that the accused wielded an icepick to intimidate her into submission and later to assault AAA with intent to kill her to seal her mouth forever. Under Article 63, 2, Revised Penal Code, where the prescribed penalties of reclusion perpetua and death, and there are neither mitigating nor aggravating circumstances present or attendant, like herein, the lesser penalty of reclusion perpetua is imposable.

And, fifthly, we will not disturb the awards of P50,000.00 as civil indemnity and P75,000.00 as moral damages, but we add the amount of P30,000.00 as exemplary damages by reason of the established presence of the qualifying circumstance of use of a deadly weapon. Under Art. 2230 of the Civil Code, AAA was entitled to recover exemplary damages.[9]

WHEREFORE, we affirm the decision promulgated on November 17, 2006 in C.A.-G.R. CR-HC No. 01617 in all respects, with the modification that JOEY TORIAGA is ordered to pay the victim the further sum of P30,000.00 as exemplary damages.

SO ORDERED.

Carpio Morales, (Chairperson), Brion, Peralta,[*] and Villarama, Jr., JJ., concur.

[*] In lieu of Justice Maria Lourdes P. A. Sereno who is on leave per Office Order No. 944 dated February 9, 2011.

[1] Rollo, pp. 3-18; penned by Associate Andres B. Reyes, Jr. (now Presiding Justice), with Associate Justices Hakim S. Abdulwahid and Mariflor P. Punzalan-Castillo, concurring.

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

[3] Records, pp. 194-198.

[4] *Id.*, p. 153.

[5] Records, p. 151.

[6] *Id.*, p. 1.

[7] Records, p. 198.

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

[9] *People v. Catubig*, G.R. No. 137842, August 23, 2001, 363 SCRA 621, 635.

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