

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. DIOSDADO BALOBALO, APPELLANT.

G.R. No. 177563. October 10, 2008

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Appellant was charged before the Regional Trial Court of Calabanga, Camarines Sur with two counts of Rape which were docketed as Criminal Case Nos. RTC'98-300 and RTC'98-302, and Attempted Rape which was docketed as RTC'98-301. He was acquitted in the second and third cases, but was convicted in the first case, hence, the present appeal.

The accusatory portion of the Information in Criminal Case No. RTC'98-300 subject of the present appeal reads:

That on or about 1:00 o'clock [sic] in the morning of January 16, 1997 at Barangay Salvacion Baybay, Municipality of Calabanga, Camarines Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with lewd designs [sic], wil[l]fully, unlawfully and feloniously, by means of force, threat and intimidation[,] succeed [sic] in having carnal knowledge with his 12-year[-]old daughter, AAA[,] against her will and without her consent, to her damage and prejudice as evidenced by the Medical Certificate marked as Annex "A" hereof.

ACTS CONTRARY TO LAW.[1] (Underscoring supplied)

The victim, AAA, gave the following account.

At around one o'clock in the morning of January 16, 1997, as AAA was sleeping together with her siblings in a room in their house, she was awakened by appellant who was caressing her right leg. Appellant soon instructed her to transfer to his room and to move therefrom her brother to her room. AAA obliged.

Appellant then led AAA to his room where he ran his fingers on her jogging pants. As she restrained appellant, he asked her if she loves him, to which AAA replied in the affirmative. Appellant thereupon proceeded to caress her breasts, and instructed her to pull down her jogging pants.[2] As she started crying, appellant removed her jogging pants, mounted her, inserted his penis into her vagina and made "push-and-pull movements." He then laid next to her and cautioned her not to reveal the incident to her mother, BBB, who had repaired to Naga City following a quarrel with him over his alleged mistress. He warned her that if she did not heed him, he would abandon her and her siblings and they would grow up without a father.[3]

AAA then returned to her room, crying and in pain. She kept her silence, however, out of fear that appellant would abandon them.[4] She was later to confide about what appellant did to her to her cousin CCC[5] who, on May 1, 1998,[6] echoed it to her uncle DDD.

On May 4, 1998, AAA was examined by Dr. Salvacion Pantorgo who noted in her medical certificate[7] the presence of old "multiple hymenal lacerations at 2, 7 and 8 o'clock positions" which the doctor opined were likely caused by sexual intercourse.[8]

Prosecution witness AAA's mother BBB, who is the common-law wife of appellant, declared that AAA, who was born on June 27, 1983, is the eldest of nine children she begot with appellant. She identified the birth certificate[9] of AAA where her and appellant's name appear as the parents of AAA.[10]

Denying the charges and proffering alibi, appellant, a motorcycle sales agent for a marketing company, claimed that on January 15, 1997, at 8:00 in the evening, he, together with another agent, Jesus Tible Jr., went to the house of a prospective client, Augusto Tible, to follow up a projected sale of a motorcycle to him, and their meeting lasted up to 2 o'clock the next morning of January 16, 1997.[11]

Appellant insinuated that AAA's mother-his former common-law wife BBB and the latter's brother DDD may have influenced AAA in the filing of the cases after they learned that he was going to marry another woman.[12]

Jesus Tible, Jr. corroborated appellant's testimony.

Towing appellant's defensive line, appellant's mother EEE declared that on January 16, 1997, she was at appellant's residence to take care of his children, including AAA, as appellant and BBB were said to have been in Naga City at the time.[13] She added that appellant was with Jesus Tible Jr. on the third week of February 1997.[14]

Joy Babiera, a sister of appellant, related that AAA confided to her that she was not raped by her father and that the charges were hatched by BBB and DDD to put appellant to jail.[15]

The three cases having been consolidated and tried before Branch 63 of the Calabanga RTC, the trial court, by Joint Decision of February 26, 2001, convicted appellant of rape only in Criminal Case No. RTC'98-300 as stated earlier on. The fallo of the trial court's decision reads:

WHEREFORE, in view of the foregoing, the prosecution having proven the guilt of the accused beyond reasonable doubt in Crim. Case No. RTC'98-300, accused Diosdado Balobalo is hereby found guilty of the offense of rape as charged. He is sentenced to suffer the penalty of DEATH and to pay AAA the amount of P75,000.00 as indemnity, P50,000.00 as moral damages, P25,000.00 as exemplary damages and to pay the costs.

In Crim. Case No. RTC '98-301[,] the prosecution having failed to prove the guilt of the accused beyond reasonable doubt, accused Diosdado Balobalo is hereby ACQUITTED of the offense of attempted rape as charged. No pronouncement as to cost.

In Crim. Case No. RTC '98-302, accused Diosdado Balobalo is likewise ACQUITTED for reason that Republic Act No. 8353 otherwise known as the Anti-Rape Law of 1997 which took effect only on October 22, 1997, and the law cannot be given retroactive effect, hence the acquittal. No pronouncement as to cost.

SO ORDERED.[16] (Emphasis and underscoring supplied)

In brushing aside appellant's version in Criminal Case No. RTC No. 98-300, the trial court held:

x x x. [H]is alibi is self-serving in the absence of any showing that it was impossible for him to be on that early morning to go to his own residence [after] coming either from the Cristy Pub House located at x x x or x x x. His alibi became even more doubtful because of his failure to present Augusto Tible as his witness in order to corroborate his story that indeed he was at his residence on January 15, 1997 at 8:00 o'clock P.M up to 2:00 o'clock the following morning (January 16, 1997). x x x. Likewise, the testimony of his mother that he went to xxx at the residence of Augusto Tible to follow-up the sale of his motorcycle was inconsistent with his testimony. His mother testified that it was on the third week of February, 1997 that he went to Balongoy to follow-up the sale of his motorcycle not on the evening of January 15, 1997.[17] (Emphasis and underscoring supplied)

Appellant appealed to this Court which, pursuant to *People v. Mateo*,^[18] referred the case to the Court of Appeals for disposition.^[19]

By Decision of October 31, 2006, the appellate court affirmed the judgment of the trial court but modified the penalty to reclusion perpetua in view of the prohibition of the imposition of the death penalty after the passage of Republic Act No. 9346.^[20]

Hence, the present appeal, appellant insisting that the trial court erred in

- FINDING [HIM] GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE.
- GIVING CREDENCE TO THE INCONSISTENT AND INCREDIBLE TESTIMONIES OF PROSECUTION WITNESSES . . .
- NOT CONSIDERING THE DEFENSE OF ALIBI INTERPOSED BY THE ACCUSED-APPELLANT.^[21] (Underscoring supplied)

Appellant assails the evidence for the prosecution as insufficient. And he questions the trial court's appreciation of the result of the medical examination which was conducted more than a year after the alleged occurrence of the crime.

Appellant invites particular attention to the testimony of AAA on the fact of penetration, specifically that given during the preliminary examination of the case conducted on May 13, 1998,^[22] thus:

x x x x

Q

What did your father do next?

A

He forced me to lie down and raped me, sir.

Q

What do you mean by ["he raped you"]?

A

What I mean of rape is that he was trying to insert his organ to my organ, sir.

Q

Was he able to insert his organ into your vagina?

A

No sir, he was not able to.

x x x x (Emphasis and underscoring supplied)

And appellant finds it incredible that the rape subject of this appeal, like the two other cases, was allegedly committed at a fixed time - 1:00 a.m. Additionally, he reasserts that AAA was merely induced by her mother and uncle to fabricate the charge in retaliation for his pending marriage to another woman.

The People through the Office of the Solicitor-General (OSG) points to appellant's having expediently omitted the succeeding portions of AAA's testimony during the preliminary examination, viz:

Q

Are you sure that he was not able to insert his penis into your vagina even a little?

A

I am not sure, sir, but when I urinate [sic] early in the morning I felt pain.

Q

So there is a probability that he was able to insert his penis inside your vagina?

A

I had a wound near the rectum, sir. (Emphasis and underscoring supplied)

And the People reiterates this Court's instruction in *People v. Brigildo*[23] that "the mere touching of the labia or pudendum by the phallus is already enough to consummate the crime of rape."

To sustain a conviction for rape, there must be proof of the penetration of the female organ.[24] Consider the following testimony of AAA:

Q

When he lied [sic] on top of you what[,] if anything[,] did he do next?

A

He placed his penis on my vagina. He made a push and pull movement of his body while on top of my body.

Q

And what[,] if anything[,] did you feel when you were seeing your father when he were [sic] making a pumping motion[?].

A

I got scared and I was crying.

Q

What[,] if anything[,] did you feel on your organ?

A

Painful, sir.

Q

Why was it painful?

A

Because his penis was pressing my vagina. (Emphasis and underscoring supplied)

The foregoing testimony vis a vis Dr. Pantargo's finding of the presence of "old multiple hymenal lacerations at 2, 7 and 8 o'clock positions" which constitute physical evidence of forcible defloration[25] suffices to sustain the case for the prosecution.

That AAA was medically examined more than a year after the commission of the rape does not lose significance,

for healed lacerations do not negate the commission of rape.[26]

The medical report aside as anyway it is not indispensable to an accused's conviction, nay an element of rape, AAA's testimony suffices to convict appellant.[27]

As this Court has unrelentingly stressed, the issue of a witness' credibility is best addressed to the sound discretion of the trial court, it having the exclusive opportunity to scrutinize her demeanor, analyze her conduct and assess her attitude while under taxing inquisition. Since no compelling reason was shown why this Court should veer off from the findings of the trial court, the clear and credible testimony of AAA remains.

As for the alleged fixed time of the commission of the subject and of the two other charges as affecting the credibility of AAA's testimony, the Court finds the OSG's following rationalization thereon well-taken.

The time indicated by AAA is a mere estimate of the time when the crime took place because during all those instances, she was suddenly awakened from her slumber and, given the circumstances of her father's actuations, had no opportunity to check the exact time. She only knew that it was still dark and that all the people in the house were still fast asleep when her father woke her up . . . Hence her own calculation of the time when the rapes took place is not incredible. (Emphasis and underscoring supplied)

Respecting the purported motive that induced the filing of this case, the Court notes that it was only after appellant was confronted by BBB that he abandoned his family.[28] His claim of a pending marriage thus appears to be an after-thought, contrived in order to impute motive on AAA and her mother to file false charges against him. If BBB was impelled by any motive, it could not have been other than to bring justice to her daughter. BBB would not expose her daughter to such ignominy in retaliation for an alleged nuptial rebuff.

On appellant's alibi, given AAA's positive, forthright and unwavering testimony even on cross examination and her positive identification of appellant as her rapist, such defense fails.[29]

Except for the award of moral damages the amount of which is increased from P50,000 to P75,000 conformably with current jurisprudence,[30] the Court affirms the modified penalty imposed by the appellate court.

WHEREFORE, the assailed Decision of the Court of Appeals is **AFFIRMED** with **MODIFICATION**. As modified, appellant, Diosdado Balobalo, is found guilty of qualified rape in Criminal Case No. RTC '98-300 and is sentenced to suffer reclusion perpetua without eligibility for parole, to pay the victim the amounts of P75,000 as civil indemnity, P75,000 as moral damages and P25,000 as exemplary damages.

No pronouncement as to costs.

SO ORDERED.

Quisumbing, (Chairperson), Tinga, Velasco, Jr., and Brion, JJ., concur..

[1] Records, p. 1.

[2] TSN, January 19, 1999, p. 4.

[3] Id. at 5.

[4] Id at 7.

[5] TSN, February 3, 1999, pp. 8-9; Cross-examination of AAA.

[6] TSN, February 23, 1999, p. 3.

- [7] Records, p. 7; Exhibit "A."
- [8] TSN, February 26, 1999, p. 8-9.
- [9] Records, p. 69; Exhibit "B."
- [10] Ibid.; Exhibits "B-2" and "B-3."
- [11] TSN, June 30, 1999, pp. 2-3; Direct examination of appellant.
- [12] Id. at 12.
- [13] TSN, June 2, 1999, p. 5.
- [14] Id. at 6.
- [15] TSN, May 26, 2000, pp. 3-10.
- [16] CA rollo, pp. 153-154.
- [17] Id. at p. 144.
- [18] G.R. No. 147678-87, July 7, 2004, 433 SCRA 640. Said case modified Section 3 and Section 10 of Rule 122. Section 13 of Rule 134, Section 3 of Rule 125 of the Revised Rules of Criminal Procedures and any other rule in insofar as they provide direct appeals from the RTC to this Court in cases where the penalty imposed is death, reclusion perpetua or life imprisonment and allowed an intermediate review by the Court of Appeals before such cases are elevated to this Court.
- [19] Per Resolution dated September 28, 2004.
- [20] An Act Prohibiting the Imposition of the Death Penalty in the Philippines, which took effect on June 29, 2006
- [21] CA rollo, p. 157.
- [22] Exhibit "H"- "H-1"; records, pp. 10-11.
- [23] 380 Phil. 610, 623 (2000).
- [24] People v. Pandapatan, G.R. No. 173050, April 13, 2007, 521 SCRA 304, 319.
- [25] People v. Montemayor, 444 Phil. 169, 185 (2003) citing People v. Belen, 432 Phil. 881 (2002); People v. Alcala, G.R. No. 168442, 307 SCRA 330, 345 (1999).
- [26] People v. Teodoro, G.R. No. 170473, October 12, 2006, 504 SCRA 304 (2006); People v. Espinoza, 317 Phil. 79, 87 (1995).
- [27] People v. Arango, 168442, August 30, 2006, 500 SCRA 259.
- [28] TSN, March 3, 1999, pp. 25-28.
- [29] People v. Bidoc, G.R. No. 169430, October 31, 2006, 506 SCRA 481.
- [30] People v. Salome, G.R. No. 169077, August 31, 2006, 500 SCRA 659; People v. Quiachon, G.R. No. 170236, August 31, 2006, 500 SCRA 704, 719; People v. Sambrano, 446 Phil. 145 (2003).

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