

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ILLUSTRE LLAGAS A.K.A. NONOY LLAGAS, APPELLANT.

G.R. NO. 178873. April 24, 2009

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

By Information filed on May 28, 2003 before the Regional Trial Court of Baguio City, docketed as Criminal Case No. 21514-R, Illustre Llagas (appellant) was charged with rape as follows:

That on or about the 16[th] day of April, 2003, in the City of Baguio, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously and by means of violence and intimidation, have carnal knowledge of the said complainant [AAA],[1] against her will and consent.[2]

The prosecution gave the following version of the incident:

AAA worked as a waitress at a restaurant and karaoke bar[3] in Baguio City.[4] Her work schedule was from 5:00 p.m. to 1:00 a.m. of the next day. As she was residing in La Trinidad, she often slept at the house of her co-worker, BBB,[5] in Baguio City.

On February 24, 2003,[6] appellant, BBB's cousin, whose wife was an overseas worker in Hongkong, met AAA in BBB's house. From then on, appellant would sometimes bring food to BBB's house where the three of them would take lunch and watch television (TV) together.[7]

On April 16, 2003, as previously agreed, appellant and AAA met at 2:00 p.m. in front of McDonald's, Center Mall, Baguio City as she was going to buy his cellphone. Appellant, having told AAA that he left the phone charger at his house at Km. 4, Asin Road, Baguio City, suggested that they go there to get it. AAA demurred, saying she would go somewhere and he could just give it to her the following day. He persisted, however, assuring her that they would not be alone since his mother and sister were there. With that assurance, AAA relented.[8]

Via a taxi, appellant and AAA repaired to appellant's house. On finding that they were alone in the house, AAA tried to leave but appellant quickly locked the door. When she insisted to leave, he boxed her twice on the stomach causing her to sit. She begged for mercy, but he would hear none of it. When she struggled to leave, he strangled her on the neck, threatening her not to shout or else he would kill her. He then took a knife from a table and aimed it at her chest. He pulled her inside a room but she struggled, so he boxed her again on the stomach, rendering her weak. He finally succeeded in pulling her inside the room and putting her on the bed. She tried to push him away but failed as he was still holding a knife. He kissed her, removed her T-shirt, pants, and panties. He then removed his shirt and pants, went on top of her and inserted his penis into her vagina while she was crying helplessly. After ejaculating, he stood up and sneered at her, saying she would not be able to go out of the house anymore. While she was crying, his cellphone rang. It was a call from his wife. While he was talking with

his wife, she swiftly took the opportunity to escape.

AAA went home to Sison, Pangasinan. Still shocked and not knowing what to do, she went to San Fabian of the same province and related the incident to her uncle, a policeman. With the assistance of her uncle, she filed a complaint against appellant for rape before the police authorities in Baguio City.[9]

Dr. Lorelle Coquia, a physician of the Baguio City General Hospital, found AAA to be coherent and oriented as to date, time, and place. Since it was already more than a week from the occurrence of the incident, the doctor found no evident injury on AAA's body, but discovered a healed laceration in her hymen at 3:00 o'clock and 9:00 o'clock positions, which could have been caused by a penetrating trauma like that of an erect male organ.[10]

Appellant, denying the accusation that he raped AAA on April 16, 2003, claimed that he had had sexual intercourse with her, but on February 28 or 29, 2003 while they were watching TV at BBB's house; and that it happened by mutual consent.

By Decision[11] of March 26, 2005, the trial court (Branch 6) found appellant guilty of rape, disposing as follows:

WHEREFORE, premises considered, the Court finds the accused Illustre Llagas also known as Nonoy Llagas guilty of Rape as defined and penalized under Art. 266-A in relation to Art. 266-B Chapter 3 Title 8 of the Revised Penal Code as amended by Sec. 2 of Republic Act 8353 and sentences him to suffer the penalty of Reclusion Perpetua, to indemnify the offended party x x x the sum of P50,000.00 as Civil Indemnity and the sum of P100,000.00 as Moral Damages for the pain and anguish suffered by her, both without subsidiary imprisonment in case of insolvency and to pay the costs.

The accused Illustre Llagas being a detention prisoner is entitled to be credited 4/5 of his preventive imprisonment in the service of his sentence in accordance with Art. 29 of the Revised Penal Code.

SO ORDERED.

Before the Court of Appeals to which appellant appealed his conviction, he faulted the trial court

I

... IN FINDING THAT ACCUSED-APPELLANT USED FORCE AND INTIMIDATION WHEN IN FACT THE SEXUAL INTERCOURSE WAS WITH THE MUTUAL CONSENT OF THE PRIVATE COMPLAINANT AND THE ACCUSED-APPELLANT.

II

... IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE WEAK EVIDENCE PRESENTED BY THE PROSECUTION AGAINST HIM.

III

... IN AWARDING ONE HUNDRED THOUSAND PESOS (P100,000.00) AS MORAL DAMAGES FOR BEING NOT IN ACCORDANCE WITH THE PREVAILING JURISPRUDENCE.[12]

The People, through the Office of the Solicitor General (OSG), maintained that, except for the award of moral damages which should be reduced to P50,000, the appealed decision, being in conformity with the law and evidence, should be affirmed.[13]

The appellate court, by Decision[14] of April 13, 2007 in CA-G.R. CR-HC No. 01407, affirmed the factual findings of the trial court, but modified the award of moral damages by reducing it from P100,000 to P50,000, consistent with prevailing jurisprudence.[15] The appellate court thus disposed:

WHEREFORE, the decision of the RTC, Branch 6, Baguio City, in Criminal Case No. 21514-R appealed from is AFFIRMED with the MODIFICATION that the amount of moral damages is reduced to P50,000.00.

SO ORDERED.[16] (Emphasis in the original)

Hence, appellant's present appeal. In separate Manifestations, appellant and the OSG found it no longer necessary to file their respective supplemental briefs.

In the main, appellant submits in his Appellant's Brief filed before the appellate court that his act of answering a phone call from his wife "on the very same date and time that he was allegedly raping [AAA] is more of an evidence of consensual sexual intercourse and not of forced carnal knowledge"[17] (Underscoring supplied).

Such change of theory on appeal can only be construed against his innocence, however. For while before the trial court appellant denied having had sexual intercourse with AAA on April 16, 2003, he admitted having done so but on February 28 or 29, 2003 and with AAA's consent.

But even if the Court were to credit appellant's change of position when the case reached the appellate court, his citation of his having received his wife's phone call as negating the use of force or intimidation is illogical, to say the least. For it was, in fact, on account of his talking to his wife on the phone that AAA found the opportunity to escape.

AAA's following vivid account, quoted verbatim, which was punctuated with her crying, of how she was sexually assaulted by appellant clearly shows the total absence of consensual sex as claimed by him:

Q

You said earlier that the accused mentioned his mother and a sister in the house. Were those two inside the house when you arrived?

A

When I was already inside the house I noticed that there is no person inside so I asked him, "Where is your mother and your sister?" and he said "they just left for a while and they will be coming back soon."

x x x x

Q

So what else happened after that?

A

I was already standing and I have the intention of going out but he suddenly locked the door.

Pros. Tabangin:

We put on record the observation that the witness is now starting to cry.

Q

All right, so what happened after the locking of the door? May we have a recess, Your Honor.

Court:

All right, get hold of yourself.

Pros. Tabangin:

Q

All right, how did he lock the door?

A

He pushed the doorknob, sir.

Q

Then, what happened after he locked the door?

A

He suddenly boxed me twice on my stomach.

Q

And what happened to you after you were boxed on your stomach?

A

I was forced to sit because I was hurt of the x x x blow from him and I pleaded to him saying, "Maawa ka (have mercy)."

Q

Where in the house did this take place?

A

In the living room near the bedroom, sir.

Q

And you were forced to sit, where? On the floor?

A

Yes, sir, on the floor.

Q

And what else did he do after boxing you twice?

A

He choked me on my neck and said, "Do not shout or else I will kill you."

Q

How did he choke your neck? Will you demonstrate?

A

(Witness demonstrating the way she was choked by putting her hands on her neck.)

Pros. Tabangin:

And what did you feel as the accused was choking you with his two hands?

A

I coughed for the forcible tightening of my neck with his two hands.

Q

How long did he choke your neck?

A

For a while but then he suddenly took hold of a knife from the table and pointed it on my chest.

Q

What kind of knife was that?

A

Kitchen knife, sir.

x x x x

Q

And after pointing the knife on [sic] your chest, what did he do next?

A

He pulled me inside the room but I was struggling so he boxed me again on my stomach.

x x x x

Q

And what happened to you after you were boxed for the third time?

A

I became weak and I could no longer fight him so he continued pulling me inside the room.

Q

Then what happened inside the room?

A

While we were inside the room he put me on the bed and I was trying to push him away but still the knife was with him so I cannot fight him anymore.

x x x x

Pros. Tabangin:

You said earlier that you pleaded for mercy from him. What else did you tell him, if there was any?

A

I was pleading for mercy but he does not hear me and I am already weak and still the knife was beside him.

Court:

Put it on record that the witness is continuously crying at this point. Continue.

Pros. Tabangin:

Then, after he laid you down on the bed, what did he do to you?

A

While I was on the bed he kept on kissing me, then (he) removed my upper shirt and pants and he removed everything. I was naked.

Q

And after removing all your clothes, what did he do next?

A

He went on top of me and he inserted his penis into my vagina.

Q

By the way, you said that all your clothes were removed by him, how about the accused was he wearing anything?

A

He removed also his t-shirt and pants.

Q

When he was removing his shirt and pants, how about you, how did you feel?

A

I kept on crying because the knife is [sic] still there beside him.

Q

You said that he inserted his penis into your vagina, how long did he remain on top of you?

A

For a while because after ejaculating he stood up.

Q

And after standing up, what did he do next?

A

He was even sneering telling me that I cannot get out from that house anymore.

Q

And what about you, what did you do also?

A

I continued crying, sir, and while we were inside the room, the cellphone rang and he received the call so he went out of the room.

Q

So, when he went out of the room, what did you do also?

A

I immediately put on my clothes, sir.

Q

And after putting on your clothes, what did you do?

A

I got out from the room but I noticed he could see me so I was afraid to go out.

Q

So, what did you do next?

A

I was inside the sala walking to and fro thinking how to escape.

Q

And what else happened?

A

I notice that he was still talking with his wife thru the cellphone and I even heard saying "Noynoy" and I heard him telling to the wife that "there [is] no woman here in the house and I don't want to be imprisoned again."

Q

And what did you say that the accused was talking with his wife?

A

Yes because that was the call he was waiting, the call of his wife.

Q

"Noynoy" is the same accused?

A

Yes, sir.

Q

All right, and were you able to get out of the house eventually?

A

Yes sir.[18] (Underscoring supplied)

The trial and appellate courts found AAA's straightforward, candid, and spontaneous testimony credible as it bears the hallmarks of a truthful witness, unflawed by inconsistencies or contradictions. The credibility of a rape victim is augmented where, as here, there is absolutely no evidence which even remotely suggests that she could have been actuated by ill-motive to testify against appellant.[19]

Appellant goes on to attack AAA's character as a witness as he finds her weeklong delay in reporting the rape to the authorities to be an indication that she "could have easily fabricated an elaborate scheme to destroy the life of

appellant."[20]

Appellant's position fails to impress. There is nothing in the records to indicate that AAA has a debased character to prompt her to weave an untruthful tale just to ruin another's life. On the contrary, the records depict her as a decent, resourceful, and hardworking Filipina trying to earn a living while waiting for a job abroad.

As for AAA's one week delay in reporting the rape, she did not know what to do as she feared appellant's threat that he would kill her if she told anybody of the incident.[21] It has been held that delay or vacillation in making a criminal accusation does not necessarily weaken the credibility of a witness where, as here, such delay is satisfactorily explained.[22]

Respecting the civil aspect of the case, the Court finds that AAA is also entitled to an award of exemplary damages which jurisprudence pegs at P25,000 as it was proven, although not alleged in the information, during the trial that the use of deadly weapon attended the commission of the crime. It bears stating that while such circumstance cannot be appreciated for the purpose of fixing a heavier penalty, it can be considered as basis for an award of exemplary damages.[23]

WHEREFORE, the appeal is DISMISSED. The assailed Decision of the Court of Appeals in CA-G.R. CR-HC No. 01407 is AFFIRMED, with the MODIFICATION that appellant Illustre Llagas a.k.a. Nonoy Llagas is ORDERED to pay the private complainant the sum of Twenty Five Thousand Pesos (P25,000) as exemplary damages.

SO ORDERED.

Tinga, Velasco, Jr., Leonardo De-Castro[*], and Brion, JJ., concur.

[*] Additional member in lieu of Justice Leonardo A. Quisumbing who is on official leave.

[1] Pursuant to Section 44 of Republic Act (R.A.) No. 9262, otherwise known as the Anti-Violence Against Women and Their Children Act of 2004, and Section 63, Rule XI of the Rules and Regulations Implementing R.A. No. 9262, the real name of the victim is withheld to protect her privacy. Fictitious initials are used instead to represent her. Likewise, the personal circumstances or any other information tending to establish or compromise her identity, as well as those of her family members, shall not be disclosed.

[2] CA rollo, p. 11.

[3] Name of place withheld for the same reason stated in note 1.

[4] Transcript of Stenographic Notes (TSN), March 18, 2004, pp.5-7.

[5] Fictitious initials are used for the same reason stated in note 1.

[6] TSN, *supra*, at 8-11.

[7] *Id.*, December 8, 2004, pp. 3-5, 9-10, 13-16.

[8] *Id.*, May 24, 2004, pp. 4-8.

[9] *Id.* at 8-24.

[10] TSN, July 5, 2004, pp. 12-15.

[11] CA rollo, pp. 11-20.

[12] Brief for the Appellant, id. at 35.

[13] Brief for the Appellee, id. at 95.

[14] Penned by Associate Justice Hakim S. Abdulwahid and concurred in by Associate Justices Martin S. Villarama, Jr. and Arturo G. Tayag. CA rollo, pp. 102-112.

[15] *People v. Calongui*, G.R. No. 170566, March 3, 2006, 484 SCRA 76, 88.

[16] CA rollo, p. 112.

[17] Id. at 42-43 (underscoring supplied).

[18] TSN, May 24, 2004, pp. 11-17.

[19] *People v. Manallo*, G.R. No. 143704, March 28, 2003, 400 SCRA 129, 141.

[20] Brief for the Appellant, CA rollo, p. 43.

[21] TSN, May 24, 2004, pp. 20-24.

[22] *People v. Astorga*, G.R. No. 110097 December 22, 1997, 283 SCRA 420, 432; *People v. Aleman*, G.R. No. L-39776, February 20, 1981, 102 SCRA 765, 774.

[23] *People v. Custodio*, G.R. No. 176062, July 4, 2008, 557 SCRA 293, 304-305, citing *People v. Dagami*, 461 Phil. 139 (2003) and other cases.

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