

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ANTONIO ORTIZ, CHARITO CHAVEZ, EDWIN DASILIO AND JERRY DOE, APPELLANTS.

G.R. No. 179944. September 04, 2009

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

For review on certiorari is the Decision[1] dated July 18, 2007 of the Court of Appeals, in CA-G.R. CR H.C. No. 01305, which affirmed with modification the Decision[2] dated August 23, 2004 of the Regional Trial Court of Pili, Camarines Sur, Branch 32, in Criminal Case No. P-3064, convicting appellants Antonio Ortiz, Charito Chavez and Edwin Dasilio for the crime of robbery with rape.

In an Information[3] dated August 14, 2000, Ortiz, Chavez, Dasilio and Jerry Doe (at large) were charged with the crime of Robbery with Multiple Rape allegedly committed as follows:

That on or about the 22[nd] of April 2000 at around 7:00 o'clock in the evening at Zone xxx, Brgy. xxx, Municipality of Pili, Province of Camarines Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and with intent to gain and while all armed with guns, by means of force and violence against the persons of BBB and AAA[4] at their residence, did then and there willfully, unlawfully and feloniously, take, steal and carry away the following items, to wit: 1 pair gold rings, 1 pc. Cellphone (Nokia), 1 pc. walkman, 1 pc. Radio cassette (sony), 2 pcs. wrist watch, 2 pcs. flashlights, 1 pc. emergency light, assorted ID's amounting to Thirty Thousand (P30,000.00) Pesos and cash of Three Thousand (P3,000.00), all valued at a total amount of Thirty[-]Three Thousand (P33,000.00) Pesos Philippine Currency, but before leaving with the loots the above-named accused, with violence, force and intimidation of person, at gun point succeeded in having carnal knowledge of the same AAA, one after the other, in taking their turns in satisfying their carnal desires, against her will, to the damage and prejudice of the spouses, BBB and AAA.

ACTS CONTRARY TO LAW.

Upon arraignment, appellants Ortiz, Chavez and Dasilio pleaded not guilty to the charge. Whereupon, trial ensued.

The factual antecedents follow.

On April 22, 2000 at around seven o'clock in the evening, Candido Oliva and his son, Dennis, were inside their camalig when they heard BBB's dog barking. This prompted Candido to go outside and verify what was happening. As it was dark outside, he decided to get a flashlight, but before he could enter the camalig, somebody with a revolver pushed him inside. The man who pushed him introduced himself as "Sergeant" and was later identified only as Jerry Doe.

Thereafter, Jerry Doe called Dasilio inside the camalig. Dasilio, who was then armed with a sword, ordered Candido to sit beside Dennis, who was interminably crying out of fear. Father and son were then made to lie face down while appellants tied their hands with a tie wire.

At about the same time, spouses AAA and BBB were watching television inside their house, which was situated just 12 to 15 meters from the camalig, when they heard Dennis crying. BBB proceeded to Candido's house to investigate but he was also herded inside Candido's house where he was tied by Dasilio. Thereafter, Candido, Dennis and BBB were ordered to proceed to BBB's house. On their way there, BBB saw Ortiz and Chavez.

Jerry Doe and Chavez went to BBB's house ahead of the group, and tied AAA's hands with plastic tape. After Ortiz and Dasilio arrived, appellants ransacked the spouses' house while Jerry Doe held AAA at gunpoint. Subsequently, the four victims were shoved inside the spouses' bedroom. Jerry Doe and Dasilio continued to loot the house while Chavez and Ortiz acted as lookout.

After the looting was over, AAA was asked to get food from the camalig. After feeding Candido, she was again ordered to get water from the camalig. This time, Jerry Doe and the appellants accompanied AAA.

While in the camalig, Jerry Doe ordered AAA to remove her shorts and panty. AAA pleaded with Jerry Doe and appellants not to rape her, but despite her pleas, the four took turns in raping her in the presence of each other.

After succeeding in raping AAA, the four all went back to the house of AAA and BBB. Before leaving, the four warned the victims not to venture out as they had allegedly placed a grenade at the door. Heeding the warning, the victims kept mum until morning. As soon as they verified that there was no grenade by the door, they went out and reported the incident to the police authorities.

During the investigation, SPO2 Nestor Huerno recovered a calculator, which was one of the items taken from AAA and BBB's house on the night of the robbery, from Asuncion Casiano. Upon the police's inquiry, Casiano declared that his neighbor, Dasilio, bartered the said calculator in exchange for some grocery items from her store. Additionally, Florentino Bueno, a friend of the appellants, emerged during the investigation. He said that Ortiz and Chavez invited him a week before April 22, 2000 to join them in robbing private complainants. Bueno also revealed that in a drinking spree, Ortiz and Chavez boasted in his presence about the robbery they committed and the rapes perpetrated on AAA.

Satisfied that the prosecution has discharged its duty to prove the guilt of the appellants, the trial court rendered a decision on August 23, 2004 convicting appellants for the crime charged. It decreed that it cannot give credence to appellants' alibi since they failed to prove that it was impossible for them to be at the situs of the crime at the time it took place. The trial court also held that the testimonies given by the private complainants were likewise clear and convincing; hence, there was no reason to disbelieve them.

The decretal portion of the trial court's decision reads:

IN VIEW OF THE FOREGOING, judgment is rendered in favor of the People of the Philippines, and against all the accused:

1. Finding the accused Antonio Ortiz, Charito Chavez, and Edwin Dasilio (also spelled as Dacillo), guilty beyond reasonable doubt of Robbery with Multiple Rape, defined and penalized under Article 294, subsection 1 of the Revised Penal Code, as amended by R.A. 7659, and considering the aggravating circumstance that it was committed by an armed band, and with ignominy, sentences all of them, to death;
2. Ordering all of the accused to pay the spouses BBB and AAA the sum of P30,000.00 as actual damages, P50,000.00 as indemnity and P50,000.00 each as moral damages, for every rape committed by them as well as that committed by Jerry Doe, an indicted co-conspirator, to AAA, or P200,000.00 in all, solidarily, and to pay the costs.

SO ORDERED.[5]

On appeal, the Court of Appeals in a Decision dated July 18, 2007 affirmed the ruling of the trial court, with the modification that: (1) the penalty was reduced to reclusion perpetua without eligibility for parole pursuant to Republic Act No. 9346;^[6] (2) actual damages was reduced to P28,082.00 as established from the testimony of AAA and BBB; and (3) exemplary damages was awarded in favor of AAA in the amount of P25,000.00.

The fallo of the appellate court's decision reads:

WHEREFORE, in view of the foregoing, the August 23, 2004 decision of the Regional Trial Court of Pili, Camarines Sur, Branch 32, in Criminal Case No. P-3064 is AFFIRMED with MODIFICATION. As modified, the judgment is as follows: Appellants Antonio Ortiz, Charito Chavez and Edwin [Dasilio] (also [spelled] as Dacillo) are found guilty beyond reasonable doubt of robbery with rape and are hereby sentenced to reclusion perpetua without eligibility for parole; to make reparation for the value of the items they unlawfully took in the amount of P28,082.00; to solidarily pay the offended parties P50, 000.00 as civil indemnity, solidarily, (sic); to solidarily pay AAA P50,000.00 each or a total of P200,000.00 as moral damages, and P25,000.00 as exemplary damages.

Costs de officio.

SO ORDERED.^[7]

Hence, the present appeal.

On June 4, 2008, this Court directed the parties to simultaneously file their supplemental briefs.^[8] Both the appellants and the Solicitor General manifested that they are dispensing with the filing of a supplemental brief as their positions have already been assiduously discussed before the appellate court.

Appellants anchor their appeal on the sole assignment of error that:

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANTS GUILTY BEYOND REASONABLE DOUBT OF ROBBERY WITH MULTIPLE RAPE.^[9]

Appellants argue that the calculator, which was bartered by Dasilio, was not one of the items allegedly stolen from the spouses as the same was not specifically enumerated in the complaint filed by them. They assert that the inclusion of the calculator as a lost item was a mere afterthought to bolster the prosecution's theory that appellants perpetrated the crime as its possession can be easily traced to one of them.^[10]

Further, appellants assert that AAA's testimony regarding the alleged rapes should be taken with caution because she gave similar testimonies regarding the different incidents of rape. They maintain that a witness whose testimony is perfect in all aspects lays herself open to suspicion of having been coached or having memorized statements earlier rehearsed.^[11]

Finally, appellants maintain that their defense of alibi should not have been viewed immediately with disfavor since there are situations where an innocent person accused of committing a crime may really have no other defense but denial and alibi. Besides, the onus probandi in establishing the guilt of an accused lies with the prosecution, and conviction should not rest on the weakness of the defense.^[12]

For its part, the Office of the Solicitor General (OSG) counters that appellants' conviction was not anchored solely on the recovery of the calculator, and cites several valid reasons why their alibi was disregarded, including the fact that appellants were positively identified by the private complainants as the malefactors. The OSG further argues that appellants are now estopped from objecting to the admission of the calculator in evidence as they failed to do so when the prosecution presented SPO2 Huerno, Casiano and AAA to testify on the recovery of the calculator and its identification as one of the things stolen from the spouses.^[13]

The OSG adds that the testimony of AAA on the commission of the rapes is worthy of credence. It cites the ruling of this Court that when an alleged victim of rape says that she was raped, she says in effect all that is necessary to show that rape was indeed committed, and so long as her testimony meets the test of credibility, the accused may be convicted on the basis thereof.[14]

Simply, the issue for our resolution is: Did the prosecution prove beyond reasonable doubt appellants' guilt for the crime of Robbery with Rape?

We rule in the affirmative.

Article 294, paragraph 1 of the Revised Penal Code provides:

Art. 294. Robbery with violence against or intimidation of persons --Penalties.--Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

1. The penalty of reclusion perpetua to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed, or when the robbery shall have been accompanied by rape or intentional mutilation or arson.

x x x x

Simply, robbery with rape is committed when the following elements concur: (1) the taking of personal property is committed with violence against or intimidation of persons; (2) the property taken belongs to another; (3) the taking is characterized by intent to gain or animus lucrandi; (4) the robbery is accompanied by rape.[15]

In this case, we find the evidence sufficient to prove beyond reasonable doubt that appellants committed the crime of robbery with rape.

The first three elements were proven by the following established facts: the victims categorically identified appellants as the ones who threatened them and took their personal belongings; all appellants held weapons; appellants entered the house of Candido, herded Candido and his son, Dennis, in a corner of their house and tied their hands; BBB heard the cries of Dennis and when he checked where the cries were coming from, appellants intercepted him and tied his hands as well; appellants entered the house of BBB and AAA, and thereafter ransacked the said house taking valuable items.[16] From the foregoing, it is clear that the crime of robbery was committed.

The trial court likewise did not err in admitting and giving weight to the testimony of Asuncion Casiano and SPO2 Nestor Huerno that Dasilio bartered the calculator which was identified as part of appellants' loot from the victims. Section 36,[17] Rule 132 of the Revised Rules on Evidence provides that where the proponent offers evidence deemed by counsel of the adverse party as inadmissible for any reason, the latter has the right to object. The failure to object, when there is an opportunity to speak, operates as a waiver of the objection. Here, appellants failed to timely object to the testimonial evidence presented by the prosecution; hence, the same was validly admitted and considered by the trial court in arriving at its judgment.[18]

Absent any showing that the trial court overlooked or misappreciated certain facts or circumstances of weight and influence which, if considered, would affect the result, we find no reason to overturn the trial court's finding of robbery which is fully supported by the evidence on record.

As to the attendant rape, we find the testimony of AAA worthy of full faith and credence. As observed by the appellate court:

While appellants would like to persuade us that AAA's testimony deserves no merit, it is beyond cavil that appellants raped AAA as an afterthought after robbing valuable items in the house.

First, records show that AAA cried during her direct examination. Such spontaneous emotional outburst strengthens her credibility. The Supreme Court has held that the crying of the victim during her testimony is evidence of the credibility of the rape charge with the verity born out of human nature and experience.

Second, although the examination of Dr. Fajardo of AAA's genital area revealed no laceration in her hymen, it is a settled rule that laceration is not an element of the crime of rape. Simply put, the absence of lacerations does not negate rape. Moreover, hymenal lacerations after sexual congress normally occur on women who have had no prior sexual experience. In this case, AAA is a married woman, who has had prior sexual experience. In the case of *People v. Llanita*, the Supreme Court noted that the strength and dilatability of the hymen are invariable; it may be so elastic as to stretch without laceration during intercourse.

Third, the Supreme Court has held, time and time again, that no woman in her right mind would declare to the whole world that she was raped, unless she is telling the truth....

x x x x

Finally, in the absence of evidence of improper motive on the part of private complainant AAA to falsely testify against appellants, her testimony deserves great weight and credence.[19]

x x x x

The victim's declaration of her sexual ordeal, which was given in a straightforward, convincing, credible and satisfactory manner, shows no other intention than to obtain justice for the wrong committed by the appellants against her. The Court finds no reason to depart from the rule that the trial court's evaluation of the credibility of the testimonies of the witnesses is accorded great weight because it has the unique opportunity of hearing the witnesses testify and observing their deportment and manner of testifying.[20]

Regarding appellants' defense of alibi, the same cannot prevail over the positive identification of appellants as perpetrators of the crime charged. For alibi to prosper, it is not enough for the appellants to prove that they were somewhere else when the crime was committed. They must further demonstrate that it was physically impossible for them to have been at the scene of the crime at the time of its commission.[21] Here, appellants interposed the alibi that they were at a place other than Brgy. xxx, xxx, xxx xxx at the time the crime was committed; however, no one corroborated their testimonies. Hence, we agree that their alibi deserves no merit.

Considering the above, the appellate court did not err in affirming appellants' conviction for the crime of Robbery with Rape as defined under Article 294, paragraph 1 of the Revised Penal Code. In view of Republic Act No. 9346 entitled, "An Act Prohibiting the Imposition of Death Penalty in the Philippines," which was signed into law on June 24, 2006, the death penalty was likewise correctly reduced to reclusion perpetua, without eligibility for parole under the Indeterminate Sentence Law.[22]

We, however, modify the award of civil indemnity. In line with prevailing jurisprudence, the civil indemnity to be awarded should be P75,000.00, not P50,000.00, since the crime committed by the appellants is qualified by circumstances, including the use of firearms and of superior number, which warrant the imposition of the death penalty.[23]

WHEREFORE, the Decision dated July 18, 2007 of the Court of Appeals in CA-G.R. CR H.C. No. 01305 finding appellants guilty for the crime of Robbery with Rape is **AFFIRMED**, with the **MODIFICATION** that the award for civil indemnity is increased to P75,000.00. Costs de oficio.

SO ORDERED.

Carpio Morales, Brion, Del Castillo, and Abad, JJ., concur

[1] Rollo, pp. 3-20. Penned by Associate Justice Marlene Gonzales-Sison, with Associate Justices Juan Q. Enriquez, Jr. and Vicente S.E. Veloso concurring.

[2] CA rollo, pp. 30-32. Penned by Judge Nilo A. Malanyaon.

[3] Records, p. 2.

[4] In line with the Court's ruling in *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419, 425-426, the real name of the rape victim in this case is withheld and instead fictitious initials are used to represent her. Also, the personal circumstances of the victim or any other information tending to establish or compromise her identity, as well as those of her immediate family or household members will likewise be withheld; See also Resolution dated September 19, 2006 in A.M. No. 04-11-09-SC.

[5] CA rollo, p. 32.

[6] AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES, approved on June 24, 2006.

[7] Rollo, p. 19.

[8] Id. at 28.

[9] CA rollo, p. 58.

[10] Id. at 61.

[11] Id. at 61-62.

[12] Id. at 62-63.

[13] Id. at 95-97.

[14] Id. at 117.

[15] *People v. Suyu*, G.R. No. 170191, August 16, 2006, 499 SCRA 177, 202-203.

[16] Rollo, p. 8.

[17] SEC. 36. Objection.--Objection to evidence offered orally must be made immediately after the offer is made.

Objection to a question propounded in the course of the oral examination of a witness shall be made as soon as the grounds therefor shall become reasonably apparent.

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[18] *Heirs of Marcelino Doronio v. Heirs of Fortunato Doronio*, G.R. No. 169454, December 27, 2007, 541 SCRA 479, 494.

[19] Rollo, pp. 16-17.

[20] *People v. Verceles*, G.R. No. 130650, September 10, 2002, 388 SCRA 515, 523.

[21] *People v. Bracero*, G.R. No. 139529, July 31, 2001, 362 SCRA 184, 200-201.

[22] AN ACT TO PROVIDE FOR AN INDETERMINATE SENTENCE AND PAROLE FOR ALL PERSONS CONVICTED OF CERTAIN CRIMES BY THE COURTS OF THE PHILIPPINE ISLANDS; TO CREATE A BOARD OF INDETERMINATE SENTENCE AND TO PROVIDE FUNDS THEREFOR; AND FOR OTHER PURPOSES (Act No. 4103, as amended), approved and effective on December 5, 1933.

[23] *People v. Jabiniao, Jr.*, G.R. No. 179499, April 30, 2008, 553 SCRA 769, 788.

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