

**FELIX RAIT, PETITIONER, VS. THE PEOPLE OF THE PHILIPPINES
RESPONDENT.***G.R. No. 180425. July 31, 2008*

Ponente: NACHURA, J.

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Before this Court is a Petition for Review on Certiorari under Rule 45 of the Rules of Court seeking the reversal of the Court of Appeals (CA) Decision[1] in CA-G.R. CR No. 23276 dated January 26, 2006 and its Resolution[2] dated October 10, 2007. The Court of Appeals upheld the Decision[3] of the Regional Trial Court (RTC) of Cagayan de Oro City, Branch 20, wherein petitioner Felix Rait was convicted of attempted rape.

On November 18, 2003, AAA[4] asked permission from her parents to go to her brother's house in Nazareth Street to get her athletic pants. When she was there, her brother requested her to buy cigarettes from a nearby store. While in the store, petitioner Rait and one Janiter Pitago arrived. The two ordered beer and invited AAA to join them. She initially refused. However, when Aurora Raez, another neighbor, joined them, AAA was forced to drink beer. After drinking a glass of beer, she became drunk. When she was feeling weak, petitioner and his co-accused brought her out to 20th and 21st Streets where the petitioner and his co-accused brought her to the side of the street and forcibly removed her pants and underwear. Petitioner then forcibly inserted his finger into her vagina. AAA tried to shout for help but petitioner covered her mouth while Pitago held her feet. Petitioner was on top of her and about to insert his penis into her vagina but she was able to kick both men and run away.[5]

AAA then went to her brother's house and related the incident to him. Her brother went out to find petitioner. When AAA's brother did find petitioner, he tried to beat petitioner with a stick but the latter ran away. AAA and her brother then went home to their parents' house in Tambo, Macasandig, Cagayan de Oro City and told them what happened. At about 3:00 a.m. of November 19, AAA was accompanied by her brother and stepmother to Operation Kahusay ug Kalinaw to report the incident. They also went to Bombo Radyo to appeal for help in apprehending petitioner. From there, they went to the Provincial Hospital for AAA to undergo medical examination.[6] They then proceeded to the police station where the incident was recorded on the police blotter under Entry No. 8085.[7]

On May 26, 1994, Rait and Pitago were charged in an Information, which reads:

That on or about November 19, 1993, at 2:00 o'clock in the morning, more or less (sic) at Nazareth, Cagayan de Oro City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping one another, did then and there, wilfully (sic), unlawfully and feloniously commence the commission of the crime of Rape, directly by overt acts, on the person of a [17-year-old] minor, [AAA], by then and there (sic), with force and against the latter's will while she was in a state of intoxication, touching her breasts, removing her panty, holding her feet (by Janiter Pitago) and lying on top of her (by Felix Rait), but did not perform all the acts of execution which would produce the crime of Rape, by reason of some cause other than his own spontaneous desistance, that in when (sic) offended party was able to kick them and the two ran away.

Contrary to and in violation of Article 335 in relation to Article 6, of the Revised Penal Code.

After trial, the RTC rendered a Decision, the dispositive portion of which reads:

WHEREFORE, premises considered, this court hereby finds the accused Felix Rait guilty beyond reasonable doubt of the crime of Attempted Rape.

The basic penalty for Attempted Rape under Article 335 is two degrees lower than Reclusion Perpetua or Prision Mayor in its full extent. Applying the Indeterminate Sentence Law, the accused is entitled to a penalty lower to (sic) Prision Mayor or that of Prision Correccional in its full extent, (sic) hence, accused FELIX RAIT is sentenced to an Indeterminate Sentence of PRISION CORRECCIONAL in its medium period as the minimum to PRISION MAYOR in its medium period as the maximum under the same law.

The accused is entitled to his credit in full (sic) in his favor the period during which he was under preventive imprisonment pending litigation.

Accused herein is further ordered to pay the complainant the sum of P20,000.00 pesos (sic) as indemnity for Attempted rape to the complainant (sic); P5,000.00 pesos (sic) for actual damages and expenses and to pay the costs.

SO ORDERED.[8]

Petitioner appealed the judgment to the CA-Cagayan de Oro. Petitioner alleged that the RTC erred in: (1) giving credence to the prosecution witnesses despite their inconsistent, contradictory and incredible testimonies; (2) in not finding that petitioner was implicated in the case by reason of spite and vengeance; and (3) in finding petitioner guilty beyond reasonable doubt of the crime of attempted rape despite the failure of the prosecution to prove his guilt.[9]

The CA denied the appeal and affirmed the trial court's ruling in all respects. [10] Petitioner's motion for reconsideration was likewise denied.

Petitioner now comes before this Court on the following grounds:

THE HONORABLE COURT OF APPEALS IN AFFIRMING THE DECISION OF THE TRIAL COURT CONVICTING THE PETITIONER FOR THE CRIME OF ATTEMPTED RAPE, DECIDED A QUESTION OF SUBSTANCE NOT IN ACCORD WITH THE LAW ON RAPE AND JURISPRUDENCE ON THE MATTER.

THAT THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERROR IN [NOT DOWNGRADING] THE CRIME OF ATTEMPTED RAPE TO ACTS OF LASCIVIOUSNESS IF NOT THAT OF UNJUST VEXATION.[11]

Petitioner argues that he should be acquitted of the crime of attempted rape. If he is to be found guilty of any offense, he puts forward the theory that based on this Court's ruling in *Baleros, Jr. v. People*, [12] he should be convicted only of unjust vexation.

The petition is bereft of merit. We deny the Petition for Review.

First, the findings of fact of the trial court, especially when affirmed by the CA, are conclusive upon this Court. In this case, the trial court found the acts imputed to petitioner to have been duly proven by the evidence beyond reasonable doubt. We are bound by such finding.

On the strength of those proven facts, the next question is: what was the offense committed?

Petitioner argues that this Court's ruling in *Baleros* is applicable to his case.

In Baleros, accused was convicted of attempted rape. The CA sustained the conviction. Upon review, this Court reversed the conviction and found accused guilty of light coercion. The Court declared:

Expounding on the nature of an attempted felony, the Court, speaking thru Justice Claro M. Recto in *People vs. Lamahang*, stated that " the attempt which the Penal Code punishes is that which has a logical connection to a particular, concrete offense; that which is the beginning of the execution of the offense by overt acts of the perpetrator, leading directly to its realization and consummation." Absent the unavoidable connection, like the logical and natural relation of the cause and its effect, as where the purpose of the offender in performing an act is not certain, meaning the nature of the act in relation to its objective is ambiguous, then what obtains is an attempt to commit an indeterminate offense, which is not a juridical fact from the standpoint of the Penal Code.

There is absolutely no dispute about the absence of sexual intercourse or carnal knowledge in the present case. The next question that thus comes to the fore is whether or not the act of the petitioner, i.e., the pressing of a chemical-soaked cloth while on top of Malou, constitutes an overt act of rape.

Overt or external act has been defined as some physical activity or deed, indicating the intention to commit a particular crime, more than a mere planning or preparation, which if carried out to its complete termination following its natural course, without being frustrated by external obstacles nor by the voluntary desistance of the perpetrator, will logically and necessarily ripen into a concrete offense.

Harmonizing the above definition to the facts of this case, it would be too strained to construe petitioner's act of pressing a chemical-soaked cloth in the mouth of Malou which would induce her to sleep as an overt act that will logically and necessarily ripen into rape. As it were, petitioner did not commence at all the performance of any act indicative of an intent or attempt to rape Malou. It cannot be overemphasized that petitioner was fully clothed and that there was no attempt on his part to undress Malou, let alone touch her private part. For what reason petitioner wanted the complainant unconscious, if that was really his immediate intention, is anybody's guess. The CA maintained that if the petitioner had no intention to rape, he would not have lain on top of the complainant. Plodding on, the appellate court even anticipated the next step that the petitioner would have taken if the victim had been rendered unconscious. Wrote the CA:

The shedding of the clothes, both of the attacker and his victim, will have to come later. His sexual organ is not yet exposed because his intended victim is still struggling. Where the intended victim is an educated woman already mature in age, it is very unlikely that a rapist would be in his naked glory before even starting his attack on her. He has to make her lose her guard first, or as in this case, her unconsciousness.

At bottom then, the appellate court indulges in plain speculation, a practice disfavored under the rule on evidence in criminal cases. For, mere speculations and probabilities cannot substitute for proof required to establish the guilt of an accused beyond reasonable doubt.

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Lest it be misunderstood, the Court is not saying that petitioner is innocent, under the premises, of any wrongdoing whatsoever. The information filed against petitioner contained an allegation that he forcefully covered the face of Malou with a piece of cloth soaked in chemical. And during the trial, Malou testified about the pressing against her face of the chemical-soaked cloth and having struggled after petitioner held her tightly and pinned her down. Verily, while the series of acts committed by the petitioner do not determine attempted rape, as earlier discussed, they constitute unjust vexation punishable as light coercion under the second paragraph of Article 287 of the Revised Penal Code. In the context of the constitutional provision assuring an accused of a crime the right to be informed of the nature and cause of the accusation, it cannot be said that petitioner was kept in the dark of the inculpatory acts for which he was proceeded against. To be sure, the information against petitioner contains sufficient details to enable him to make his defense. As aptly observed by then Justice Ramon C. Aquino, there is no need to allege malice, restraint or compulsion in information for unjust vexation. As it were, unjust vexation exists even without the element of restraint or compulsion for the reason that this term is

broad enough to include any human conduct which, although not productive of some physical or material harm, would unjustly annoy or irritate an innocent person. The paramount question is whether the offender's act causes annoyance, irritation, torment, distress or disturbance to the mind of the person to whom it is directed. That Malou, after the incident in question, cried while relating to her classmates what she perceived to be a sexual attack and the fact that she filed a case for attempted rape proved beyond cavil that she was disturbed, if not distressed by the acts of petitioner.[13]

We are not persuaded by petitioner's argument. Several facts attendant to this case distinguish it from Baleros, enough to convince us to arrive at a different conclusion.

Unlike in Baleros, the acts of petitioner clearly establish his intention to commence the act of rape. Petitioner had already successfully removed the victim's clothing and had inserted his finger into her vagina. It is not empty speculation to conclude that these acts were preparatory to the act of raping her. Had it not been for the victim's strong physical resistance, petitioner's next step would, logically, be having carnal knowledge of the victim. The acts are clearly "the first or some subsequent step in a direct movement towards the commission of the offense after the preparations are made." [14]

Under Article 6, in relation to Article 335, of the Revised Penal Code, rape is attempted when the offender commences the commission of rape directly by overt acts, and does not perform all the acts of execution which should produce the crime of rape by reason of some cause or accident other than his own spontaneous desistance.[15]

This Court has held that an overt or external act -

is defined as some physical activity or deed, indicating the intention to commit a particular crime, more than a mere planning or preparation, which if carried out to its complete termination following its natural course, without being frustrated by external obstacles nor by the spontaneous desistance of the perpetrator, will logically and necessarily ripen into a concrete offense. The *raison d'être* for the law requiring a direct overt act is that, in a majority of cases, the conduct of the accused consisting merely of acts of preparation has never ceased to be equivocal; and this is necessarily so, irrespective of his declared intent. It is that quality of being equivocal that must be lacking before the act becomes one which may be said to be a commencement of the commission of the crime, or an overt act or before any fragment of the crime itself has been committed, and this is so for the reason that so long as the equivocal quality remains, no one can say with certainty what the intent of the accused is. It is necessary that the overt act should have been the ultimate step towards the consummation of the design. It is sufficient if it was the "first or some subsequent step in a direct movement towards the commission of the offense after the preparations are made." The act done need not constitute the last proximate one for completion. It is necessary, however, that the attempt must have a causal relation to the intended crime. In the words of Viada, the overt acts must have an immediate and necessary relation to the offense.[16]

Thus, we find that petitioner was correctly convicted of attempted rape.

A final observation. We note that the trial court's Decision sentenced petitioner to a prison term without specifying the period this sentence covers. We will rectify this error even as we affirm petitioner's conviction.

The penalty for attempted rape is prison mayor, or two degrees lower than reclusion perpetua, the penalty for consummated rape. Petitioner should be sentenced to an indeterminate sentence the minimum of which is in the range of prison correccional, or within six months and one day to six years, and the maximum of which is prison mayor medium, or within eight years and one day to ten years. In this case, the trial court sentenced petitioner to "an Indeterminate Sentence of PRISION CORRECCIONAL in its medium period, as the minimum, to PRISION MAYOR in its medium period, as the maximum."

WHEREFORE, the foregoing premises considered, the Court of Appeals Decision in CA-G.R. CR No. 23276 dated January 26, 2006 and its Resolution dated October 10, 2007 affirming petitioner's conviction for ATTEMPTED RAPE are AFFIRMED WITH MODIFICATION . The petitioner is sentenced to an indeterminate sentence of two (2) years, four (4) months, and one (1) day of prision correccional medium, as minimum, to ten (10) years of prision mayor medium, as its maximum. In all other respects, the trial court's Decision is AFFIRMED.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Marinez, Chico-Nazario and Reyes,. JJ., concur.

[1] Penned by Associate Justice Edgardo A. Camello, with Associate Justices Normandie B. Pizarro and Ramon R. Garcia, concurring; rollo, pp. 36-43.

[2] Penned by Associate Justice Edgardo A. Camello, with Associate Justices Jane Aurora C. Lantion and Elihu A. Ybañez, concurring; id. at 44-45.

[3] Penned by Judge Alejandro M. Velez, id. at 66-77.

[4] Per Republic Act No. 9262, the Anti-Violence Against Women and Their Children Act of 2004 and Republic Act No. 7610, the Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act. See *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[5] RTC Decision, rollo, p. 67.

[6] Id. at 67-68.

[7] Id. at 69.

[8] Id. at 77.

[9] Id. at 38.

[10] Id. at 42.

[11] Id. at 20.

[12] G.R. No. 138033, February 22, 2006, 483 SCRA 10.

[13] *Baleros v. People*, id. at 27-30. (Citations omitted).

[14] *People v. Mendoza*, G.R. Nos. 152589 & 152758, January 31, 2005, 450 SCRA 328, 334, citing *People v. Lizada*, 396 SCRA 62, 95 (2003).

[15] *People v. Campuhan*, 385 Phil. 912, 927 (2000).

[16] *People v. Lizada*, supra note 14, at 94-95. (Citations omitted).

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