

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ELIZARDO CABILES ALIAS "SARDO"; APPELLANT.

G.R. No. 181629. September 18, 2009

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

On review is the August 30, 2007 Decision[2] of the Court of Appeals in CA-G.R. CR-H.C. No. 00228 which affirmed[3] that of Branch 19 of the Regional Trial Court of Digos City, Davao del Sur in Criminal Case No. 352(99) finding Elizardo Cabiles alias "Sardo" (appellant) guilty of rape of his minor niece, but modified the death penalty to reclusion perpetua and the award of damages.

The accusatory portion of the Information dated August 16, 1999 against appellant reads:

That on or about the 9[th] day of May, 1995,[4] at about 8:00 o'clock in the morning thereof, more or less, at Barangay Mahayahay, Municipality of Hagonoy, Province of Davao del Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, through force, threat and intimidation, by using a knife, did then and there willfully, unlawfully and feloniously have carnal knowledge with one [AAA],[5] his nine (9)-year old niece, against the latter's will and without her consent.

CONTRARY TO LAW.[6]

The prosecution, through the testimonies of AAA and her father BBB,[7] gave the following version:

On May 9, 1995,[8] at around 8:00 a.m., then nine-year old AAA and her younger sister CCC[9] were playing soccer in their house at Mahayahay, Hagonoy, Davao del Sur when they heard appellant - their uncle, he and their father BBB being allegedly first cousins[10] - calling them from a nearby grassy area to go over to him as there were big guavas. The sisters dutifully went to where appellant was but found no ripe guavas. On appellant's directive, CCC left to buy bread and cigarettes.[11]

AAA wanted to follow CCC but appellant held her hand, blocked her way and kicked her left foot, causing her to fall on the ground. Thereupon, appellant pinned down AAA and threatened her with a knife, saying "Do not try to shout because if you will do so, I will kill you right now." He quickly removed her panties, unzipped his pants and inserted his penis into her vagina. She cried as she felt pain on her vagina, which was oozing with blood. After he sexually abused her, she sat on a "big stone." [12]

Not long after, CCC arrived with the bread and cigarettes. Appellant gave the bread to CCC and told her to, as she did, leave ahead, leaving AAA alone with him. He once again threatened AAA that if she reported the incident to anyone, he would kill her and her father. Mindful of his parting threat, she went home and kept her ordeal to herself.[13]

AAA's elder brother later took her to stay home with him[14] so that she could assist his then pregnant wife. After staying with the couple for two years, AAA returned to her father's home in Mahayahay. While there, in 1999, she noticed that appellant kept following her. Afraid that he might abuse her again, she revealed to her father on June

27, 1999 what appellant had done to her.[15] She was thus medically examined on July 2, 1999 which disclosed the following findings and conclusion:

GENITAL EXAMINATION:

- Scanty Pubic Hair.
- Labia Minora and Labia Majora coaptated.
- Hymen-old lacerated wound at 3 o'clock - 9:00 o'clock correspond to a wall of a clock.
- Internal Examination-admit one (1) finger with resistance.
- Rugae, prominent.

CONCLUSION:

- Old lacerated wound at 3 o'clock - 9 o'clock correspond to a wall of a clock.[16]

AAA soon after gave a sworn statement and the MCTC Judge, by Resolution of July 21, 1999, after noting that the already detained appellant "failed to submit any counter-affidavit as directed," found probable cause to indict appellant.[17]

Denying the accusation, appellant who was 37 years old when he took the witness stand on June 13, 2002, gave the following version:

In April of 1995, he left Mahayahay and lived in Diwalwal, Monkayo, Comval Province where he worked as "trummer." At the time of the alleged rape on May 9, 1995, his cousin BBB and his family were residing in North Cotabato. It was only in November of 1997 that he (appellant) returned to live in Mahayahay at which time BBB and his family also began to reside there, about a hundred meters away from his house.[18]

His relationship with BBB turned sour in 1998 due to a conflict over a farmland, but the same was settled by them amicably before barangay officials, and BBB "was satisfied with the settlement." [19] Despite the settlement, BBB still harbored ill-feelings against him since "he (BBB) did not talk to me anymore." [20]

His relationship with AAA was not good either, because a year before she filed the present complaint or in June of 1998, he admonished her for her unbecoming conduct of sleeping in the house of other people, to which she reacted negatively by telling him that he "[had] nothing to do whatever ... may happen to her." [21] He did not, however, inform AAA's parents about her improper behavior as he had had no chance to do so. [22]

Defense witness Martin Sarabillo related that, among other things, in 1995 when the alleged rape occurred, his neighbor BBB and family had not returned yet to Mahayahay as he did not see them that year. [23]

The trial court credited AAA's testimony as trustworthy, and brushed aside appellant's as "stand[ing] on wobbly foundation."

The trial court thus convicted appellant by Decision dated April 2, 2003, disposing as follows:

CONFORMABLY, with all the foregoing, we find the accused ELIZARDO CABLES alias "SARDO", GUILTY beyond reasonable doubt of RAPE as charged, and the Court hereby sentenced him to suffer a supreme penalty of DEATH, to indemnify the complainant the sum of P50,000.00 as moral damages; P30,000.00 as exemplary damages and to pay the costs.

SO ORDERED.[24]

The records of the case were forwarded to this Court for automatic review. By Resolution of January 25, 2005, [25] this Court referred the case to the Court of Appeals pursuant to People v. Mateo. [26]

The appellate court, by Decision of August 30, 2007, affirmed the factual findings of the trial court convicting appellant of rape. It, however, modified the sentence to reclusion perpetua, finding that "neither AAA's minority nor her relationship by consanguinity or affinity within the third civil degree to appellant has been duly established,"[27] and that he used a knife, a deadly weapon, in committing the crime,[28] an aggravating circumstance which already qualified the rape. It likewise modified the civil aspect of the case by ordering appellant to pay the victim civil indemnity of P75,000 and increasing the moral damages to P75,000. It thus disposed:

WHEREFORE, the assailed Decision is hereby MODIFIED. Appellant's conviction of the crime of Rape is hereby AFFIRMED. His sentence, however, is reduced to reclusion perpetua. Appellant is further ordered to pay private complainant a civil indemnity of P75,000.00 and another P75,000.00 in moral damages, and P30,000.00 in exemplary damages.

SO ORDERED.[29]

In the present appeal, appellant, maintaining that "his guilt was not proven beyond reasonable doubt,"[30] contends that AAA's testimony should not be credited, the report of the alleged rape having been made four years after its alleged commission.

The appeal fails.

The records of the case yield no evident trace that the trial court erred in its assessment of AAA's account on how she was ensnared by appellant into going to the grassy area where he was only to be ravished by him. To the Court, the account abounds with details which only a sincere witness can convey. Significantly, appellant does not assail the specific details of AAA's factual narration of how he raped her. He focuses, instead, on her delay in reporting the rape incident which, so he posits, contradicts the natural course of things.

Contrary to appellant's assertion, the delay does not detract from AAA's credibility. Nor does it indicate that her tale is fabricated. In a number of cases, this Court considered justified the victim's eight and even ten years belated disclosure of the rape, it holding that "delay in reporting the rape incidents, in the face of threats of physical violence," as in the present case, cannot be taken against the victim, considering that "[s]trong apprehensions brought about by fear, stress, or anxiety can easily put the victim to doubt or even distrust what should otherwise be a positive attitude of bringing the culprit to justice."[31]

AAA's unqualified obedience to appellant, her lack of struggle against him, and the studied silence she held on to her ordeal appear to have been brought about by genuine fear posed by his threats to kill her and her father should she disclose to anyone the rape incident. Her apprehension that appellant might ravish her again, after noting appellant's acts of following her in 1999 after she had returned to stay at her father's home, naturally drew her to finally break her silence and report to her father.

Appellant's challenge to the assailed decision having failed, and no circumstance which creates reasonable doubt on his guilt being extant, his conviction must be upheld.

A word on the award of damages. The prevailing jurisprudence on like cases authorizes a civil indemnity of P50,000, not P75,000, in addition to moral damages for a like amount.[32]

WHEREFORE, the assailed Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 00228 is AFFIRMED with Modification in that appellant is ordered to pay the victim only P50,000 as civil indemnity, and P50,000 as moral damages. In all other respects, the appellate court's decision is AFFIRMED.

Costs against appellant.

SO ORDERED.

Ynares-Santiago,[*] Brion, Del Castillo, and Abad, JJ., concur.

[1] Some portions of the record spell appellant's first name as "Felizardo." However, the trial court ordered on May 31, 2001 that said name be amended to read as "Elizardo," in light of appellant's declaration during the trial that the correct spelling of his first name is "Elizardo" (TSN, May 31, 2001, p. 7; see Information dated August 16, 1999, RTC records, p. 1).

[*] Additional member per Special Order No. 691 dated September 4, 2009.

[2] Penned by Associate Justice Romulo V. Borja and concurred in by Associate Justices Mario V. Lopez and Elihu A. Ybanez; Court of Appeals (CA) rollo, pp. 93-110.

[3] Penned by Judge Hilario I. Mapayo.

[4] In her Affidavit-Complaint dated July 6, 1999, the victim stated that she was first sexually abused by appellant, her uncle, in the evening of May 7, 1995 in her house at Mahayahay, Hagonoy, Davao del Sur (pars. 3-9; RTC records, p. 4). The incident happened while she, then nine years old, was sleeping in her room that night and "noticed somebody hugged and caressed my private parts, and when I woke up I saw my uncle [appellant] already on top of me; at this juncture I pleaded to him not to continue his evil and lustful desires..., but instead he poked me with a knife and then I parried it, but he boxed me at the abdomen which made me unconscious; and when I woke up that morning I noticed my panty already bloodied and I felt pain in my vagina." (pars. 7-8, 12, id.).

[5] The real name of the victim is withheld to protect her privacy; instead, fictitious initials are used to represent her, pursuant to Section 44 of Republic Act No. 9262 (the Anti-Violence Against Women and Their Children Act of 2004). 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.

[6] Regional Trial Court (RTC) records, pp. 1-2.

[7] His real name is not disclosed; instead, fictitious initial is used pursuant to R.A. No. 9262.

[8] TSN, August 1, 2001, pp. 15-16; par. 9 of AAA's Affidavit-Complaint, supra note 3.

[9] Her real name is not disclosed; instead, fictitious initial is used pursuant to R.A. No. 9262.

[10] TSN, August 1, 2001, p. 11.

[11] Id. at 5-6.

[12] Id. at 7-8.

[13] Id. at 8-9.

[14] The records do not indicate when and where she stayed at her brother's home.

[15] TSN, August 1, 2001, pp. 10-11, 15-17; TSN, May 31, 2001, pp. 6, 9.

[16] Records, p. 9.

[17] Id. at 8.

[18] TSN, June 13, 2002, pp. 6-9, 18.

[19] *Id.* at 17.

[20] *Id.* at 9, 17-18.

[21] *Id.* at 21-22.

[22] *Id.* at 11.

[23] TSN, August 13, 2002, pp. 4-6.

[24] CA rollo, pp. 12, 16.

[25] *Id.* at 90.

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

[27] *Italics supplied.*

[28] CA rollo, pp. 105-108.

[29] *Id.* at 109.

[30] *Id.* at 39.

[31] *People v. Sandico*, G.R. No. 128104, May 18, 1999, 307 SCRA 204, 216; *People v. Malagar*, G.R. Nos. 98169-73, December 1, 1994, 238 SCRA 512, citing *People v. Coloma*, G.R. No. 95755, May 18, 1993, 222 SCRA 255.

[32] *People v. Labiano*, G.R. No. 145338, June 9, 2003, 403 SCRA 324, 334.

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