

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FIDEL CANETE, ACCUSED-APPELLANT.

G.R. No. 182193. November 07, 2008

Ponente: VELASCO JR., J.

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VELASCO JR., J.:

This is an appeal from the November 20, 2007 Decision of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 01230 which affirmed the May 26, 2005 Decision of the Regional Trial Court (RTC), Branch 85 in Malolos, Bulacan in Criminal Case Nos. 2557-M-2001 to 2562-M-2001. The RTC found accused-appellant Fidel Canete guilty beyond reasonable doubt of six (6) counts of simple rape.

The Facts

Except for the dates and times of the admission of the offense, the six Informations filed against accused-appellant contain the same accusatory portion as the first Information (Criminal Case No. 2557-M-2001), as follows:

That in or about the year 1994, in the municipality of BBB,[1] province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being the uncle of the offended party, AAA, did then and there willfully, unlawfully and feloniously, by means of force and intimidation and with lewd designs, have carnal knowledge of the said AAA, then 9 years old, against her will and without her consent.

Contrary to law.[2]

At his arraignment, accused-appellant pleaded not guilty to all the charges.

During trial, the prosecution presented AAA as its sole witness. The defense likewise presented only one witness, accused-appellant.

The following are the events that transpired according to the prosecution:

Sometime in June 1994, at around one o'clock in the afternoon, AAA, then nine (9) years old, was gathering wood with accused-appellant, her uncle, at a farm some 500 meters away from their house. While they were gathering wood, accused-appellant suddenly grabbed AAA, quickly undressed her, went on top of her, and, despite her protests, succeeded in inserting his penis inside her vagina, making her cry in pain. Accused-appellant then ordered AAA to get dressed as they would be going home. He left AAA at the farm, however.

AAA subsequently went to her neighbor Rose's house. She cried upon seeing Rose. When probed about her tears, she merely said she was scolded by her grandmother as she was warned by accused-appellant not to tell anyone of the rape incident. She left Rose's house after two hours. When she arrived home, she saw accused-appellant and her grandmother, who ordered her to cook. She did not recount her ordeal to her grandmother for fear she might receive a spanking.[3]

Three days later, accused-appellant again raped AAA, this time at their house while her grandmother and sister were asleep. That evening, AAA felt accused-appellant lay down beside her. She became frightened and

unsuccessfully tried to rouse her grandmother from sleep. Accused-appellant pinned her down when she tried to stand up. He embraced her and held her legs and stomach. When AAA tried to resist, he punched her arm. He then undressed her, took off his shorts, and inserted his penis inside her vagina. She did not shout as accused-appellant threatened to kill her if she revealed what he was doing to her. Accused-appellant then slept next to AAA. AAA again tried to wake her grandmother up but she was sound asleep. AAA then cried herself to sleep in her frustration.[4]

On September 2, 1995, accused-appellant arrived home after a few months of working elsewhere. AAA celebrated her birthday three days later, and accused-appellant brought her some food.[5] A few days after AAA's birthday, her father and another uncle went back to their places of work while accused-appellant stayed behind.[6] Outside the house, her grandmother was washing clothes and her sister was playing. AAA was listening to the radio on her papag when accused-appellant started touching her and offering her money. He forced her to lie next to him and started to embrace and touch her. He removed her shorts and covered her mouth when she started to cry. She tried to remove his hand and get up but he held her hand.[7] He succeeded in inserting his penis into her sexual organ a couple of times. He then told her that if she reported the incident to anyone she would no longer see the light of day (Huwag daw po akong magkakamaling magsabi sa iba kasi daw po malalaman din niya iyon, hindi na daw po ako sisikatan ng araw). He then gave her money for merienda.[8] After buying food, she placed it on the table and went to the farm to cry. She did not tell her grandmother about what happened as she was afraid she would side with accused-appellant, who is her grandmother's son.

AAA did not see accused-appellant again until January 1996, the period of which AAA remembered clearly as it is the month when the town fiesta is celebrated. During this period, accused-appellant was on a one-month vacation from work. One night, her grandmother visited her daughter-in-law who had just given birth. AAA, her sister, and accused-appellant were the only ones home. At around one o'clock in the morning, AAA laid down next to her sister. She then felt accused-appellant lie down beside her. He started to embrace her, making her feel nervous and afraid. He started to kiss her cheeks and pulled her away from her sleeping sister. AAA protested but, still, accused-appellant told her to remove her clothes. When she refused, he removed her clothes and went on top of her. She tried to resist again but eventually he was able to insert his penis into her vagina.[9] When she started to cry, he told her not to worry as he would not neglect her. He then went outside to smoke. AAA put her clothes on and woke up her sister, who noticed she was crying. AAA merely explained that she missed their father. She did not dare divulge the rape as accused-appellant warned her that he would not stop molesting her if she did.[10]

Another rape incident occurred in August 1997. AAA and her sister were in bed by nine o'clock in the evening. While they were asleep, some of their neighbors had a drinking spree with accused-appellant and his brother, Erning. At around 10 o'clock, accused-appellant woke up AAA and asked her to make him some coffee. He then embraced and kissed her and offered her PHP 50 but she refused the money. He made her lie down and amid her protests, covered her mouth and removed her shorts as well as his own clothes. He told AAA he loved her very much. He then forced himself on her and molested her. Accused-appellant slapped AAA when she tried to shout. When someone suddenly knocked on the door, he quickly removed his penis from AAA's vagina and ordered her to get dressed. Accused-appellant then went back outside. AAA's uncle Erning returned home that same evening and asked her why she was crying. She told him that she had a stomachache. After the rape incident, AAA ran away from home.[11]

Sometime in November 1998, accused-appellant sexually abused AAA once again. At around 10 o'clock in the evening, he woke her up while she was sleeping next to her sister. He made her lay on a bench and started to embrace her. He then went outside to smoke and returned at around one o'clock in the morning. He again roused AAA from her sleep, caressed her, and told her to be quiet. He removed her pajamas and inserted his penis inside

her vagina. He then threatened her again that he would kill her if she reported the rape to anyone. He then left the house after her grandmother died and was laid to rest.[12]

Two more rapes were committed by accused-appellant sometime in 1999. Accused-appellant followed AAA to her home following a house blessing at their neighbor's place. He pulled her and warned her that something would happen to her if she resisted his advances. He then satisfied his urge while AAA was crying.

By June 1999, AAA had moved to a house of a councilor in Barangay CCC, BBB, Bulacan. While she was visiting her sister at their old house, accused-appellant went inside the room where she and her sister were sleeping. He laid down next to her and undressed her. He inserted his penis into her sexual organ. He told her not to make any noise when she started crying.[13]

The next morning, AAA divulged to her friend, Daisy Manlapit, the sexual abuse to which she had been subjected. Daisy advised her to ask barangay officials for help. She told the councilor about her ordeal. Accompanied by her friend, Rose, AAA executed an affidavit at the barangay narrating the rape incidents.[14]

As the lone defense witness, accused-appellant denied all the charges hurled at him. His testimony was summarized by the trial court as follows:

x x x He testified that in 1994, he was living with his employer Councilor Lucas in Sto. Niño, Meycauayan, Bulacan; that he stayed with his employer from 1994 to 1995; that his brother Rollie lives in Meycauayan and was then residing in the house of Captain Javier; that before 1994, he lived in Marilao for six (6) years; that he knew AAA because she was staying in [B]arangay CCC, BBB, Bulacan where he saw her; that the reason why he was detained was because he was implicated by his brother x x x in this case; he does not know why he was implicated by his brother but [the latter] drove away AAA and after that she worked as a maid in Councilor Lucas' house.[15]

On May 26, 2005, the RTC found accused-appellant guilty of all six (6) counts of rape. The dispositive portion of its Decision reads:

WHEREFORE, premises considered, this Court finds accused Fidel Canete GUILTY beyond reasonable doubt of six (6) counts of Simple Rape defined and penalized under Art. 226B of the Revised Penal Code as amended and hereby sentences him to suffer the penalty of RECLUSION PERPETUA in each of the six (6) Informations filed against him. Accused is also ordered to pay private complainant [AAA], in each case, civil indemnity ex-delicto of P50,000.00, exemplary damages of P25,000.00 and moral damages of P50,000.00.

SO ORDERED.[16]

Accused-appellant appealed the adverse decision. In his appeal before the CA, he claimed that the RTC erred in finding him guilty beyond reasonable doubt as AAA's testimony was doubtful.

On November 20, 2007, the CA affirmed the RTC Decision with a modification on damages awarded. In ruling against accused-appellant, the appellate court found that:

- (1) AAA had positively and categorically identified accused-appellant as her rapist. Her testimony on the rape incident was consistent and replete with details;
- (2) Even without a deadly weapon, accused-appellant was able to intimidate AAA into submission by his moral ascendancy over her as her uncle;
- (3) The allegation that AAA's father is falsely implicating accused-appellant is undeserving of consideration. No father would stoop so low as to subject his daughter to the trauma and embarrassment of a public trial. Moreover, family resentment, revenge, or feud has not swayed the Court from giving full credence to a rape victim's

testimony;

(4) Accused-appellant failed to show evidence of his non-culpability of the charges against him. He was unable to prove that it was physically impossible for him to be at the places where the crimes were committed. No one corroborated his alibi to prove his assertion that he was not living in the same house with AAA from 1994 to 1995;

(5) The argument that no rape could have taken place while AAA was sleeping in the same room with her grandmother and sister is not convincing as it has been held that lust is no respecter of time and place;

(6) The prosecution failed to prove the minority of AAA and her relationship with accused-appellant in the informations. Accused-appellant was thus correctly convicted of simple rape; and

(7) The award of exemplary damages must be deleted in view of the absence of the qualifying circumstances of minority and relationship.

The CA disposed of the case as follows:

WHEREFORE, premises considered, the decision dated May 26, 2005 of the Regional Trial Court (RTC), 3rd Judicial Region, Malolos, Bulacan, Branch 85, in Criminal Case Nos. 2557-M-2001 to 2562-M-2001 is AFFIRMED with MODIFICATION by deleting the award of exemplary damages.

SO ORDERED.[17]

On December 10, 2007, accused-appellant filed his Notice of Appeal of the November 20, 2007 Decision of the CA.

Accused-appellant presents a lone issue for this Court's consideration:

WHETHER THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF RAPE

We find no merit in the appeal.

Accused-appellant advances the theory of the improbability of the rape incidents having occurred based on certain details in the victim's testimony. He wonders how it was possible for the offenses to have transpired when the victim's relatives were in the same room. He likewise avers that the victim should have cried out for help while she was being raped. He argues that there was no proof that he could inflict immediate harm on AAA as he supposedly did not have a deadly weapon during the rape incidents.

Accused-appellant's exculpatory allegations do not merit concurrence. Rape has been known to be committed not only in seclusion but in public places, inside an occupied house, or even where there are other people around.[18] We have accordingly ruled that rape is not a respecter of people, time, or place.[19] It is not improbable that accused-appellant was able to succumb to his lechery while AAA's grandmother and sister were sound asleep. Moreover, AAA testified that accused-appellant warned her not to tell anyone of the sexual abuse or else he would kill her. It is not unnatural then for AAA to have kept silent during the rape for fear for her personal safety. The failure of the victim to shout for help does not negate the commission of rape.[20]

On the alleged impossibility of inflicting immediate harm on AAA since accused-appellant had no deadly weapon at the time of the rape incidents, we held in *People v. Santos* that it is common for a young victim of tender age to be fearful in the face of the mildest threat against her life.[21] Although not alleged in the informations, the moral ascendancy of accused-appellant over his victim as her uncle was more than sufficient to cow her into submission, even without use of a deadly weapon.

Given the previous discussion, we find no reason to reverse the findings of the trial and appellate courts which gave full credence to AAA's testimony.

We likewise uphold the award of damages. Jurisprudence holds that for the special circumstances of minority and relationship to be appreciated between the victim and the accused as her uncle, as here, within the third civil degree, this must be particularly alleged in the Information.[22] Moreover, although minority was sufficiently alleged, the circumstance was not proved or established by the prosecution apart from AAA's testimony on the date she was born.[23] As we have previously held, the circumstances that qualify a crime should be proved beyond reasonable doubt just as the crime itself.[24] Since qualified rape was not sufficiently alleged in the Informations against accused-appellant, the award of PhP 50,000 only as civil indemnity for each count of simple rape is warranted. The award of PhP 50,000 as moral damages is sustained as it is awarded without need of proof of mental anguish or moral suffering.[25] The deletion of exemplary damages is also correct as it cannot be awarded as part of the civil liability since the crime was not committed with one or more aggravating circumstances.[26]

WHEREFORE, the appeal is DISMISSED. The November 20, 2007 Decision of the CA in CA-G.R. CR-H.C. No. 01230 finding accused-appellant guilty of six (6) counts of simple rape is AFFIRMED.

SO ORDERED.

Quisumbing, (Chairperson), Carpio-Morales, Tinga, and Brion, JJ., concur.

[1]The victim's real name and other personal circumstances are withheld to protect her privacy pursuant to Republic Act No. 7610 (Special Protection of Children Against Child Abuse, Exploitation, and Discrimination Act) and People v. Cabalquinto, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[2]Rollo, p. 3.

[3]Id. at 5.

[4] Id. at 6.

[5] TSN, January 14, 2001, p. 27.

[6]Id. at 28.

[7] Rollo, pp. 5-6.

[8] TSN, supra note 5, at 31-32.

[9] Rollo, p. 6.

[10]Id. at 6-7.

[11] Id. at 7.

[12] Id. at 7-8.

[13]Id. at 8.

[14] Id. at 9.

[15]CA rollo, pp. 22-23.

[16] Id. at 70. Penned by Judge Ma. Belen Ringpis Liban.

[17] Rollo, p. 19. Penned by Associate Justice Marlene Gonzales-Sison and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Vicente S.E. Veloso.

[18] People v. Olaybar, G.R. Nos. 150630-31, October 1, 2003, 412 SCRA 490, 501.

[19] People v. Cariñaga, G.R. Nos. 146097-98, August 26, 2003, 409 SCRA 614, 623.

[20] People v. Madronio, G.R. Nos. 137587 & 138329, July 29, 2003, 497 SCRA 337, 354.

[21] G.R. No. 145305, June 26, 2003, 405 SCRA 87, 98.

[22] People v. Malicsi, G.R. No. 175833, January 29, 2008, 543 SCRA 93, 103; citing People v. Sabredo, 387 Phil. 682, 692 (2000).

[23] Rollo, p. 18.

[24] People v. Espino, G.R. No. 176742, June 17, 2008.

[25] People v. Astrologo, G.R. No. 169873, June 8, 2007, 524 SCRA 477, 491.

[26] People v. Yatar, G.R. No. 150224, May 19, 2004, 428 SCRA 504, 522-523.

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