

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. MANUEL BRIOSO Y TANDA, APPELLANT.

G.R. No. 182517. March 13, 2009

Ponente: NACHURA, J.

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NACHURA, J.:

This is an appeal from the November 16, 2007 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 02556 which affirmed with modifications the decision of the Regional Trial Court (RTC), Branch 57, Libmanan, Camarines Sur.

In three separate Informations, the prosecution charged appellant Manuel Brioso, 53 years old, with raping the 13-year-old daughter of his common-law wife. The cases were docketed as Criminal Case Nos. L-3844, L-3845, and L-3846.

Appellant pleaded not guilty to the three charges. During pre-trial, appellant admitted that he is the common-law husband of the victim's mother.

The victim narrated that, sometime in February 2003, at about 2:30 a.m., appellant arrived home from fishing. At that time, the victim and her younger siblings were at the upper level of their house, while their mother was working in Lucena. Appellant suddenly dragged the victim to the lower portion of their house where he forced her to lie down. He then removed her shorts and panty. She cried because she could do nothing. Afterwards, appellant also undressed himself and tried to insert his penis into her vagina but he did not succeed. She felt his penis touch her vagina and she felt pain because he was forcing his penis into her vagina. After around five minutes, appellant ceased trying and threatened to kill her siblings if she told anyone about the incident. After that, appellant and the victim dressed up and went upstairs.[2]

The victim recounted that the sexual abuse was repeated a week later (same month) also during the early morning. At that time, the victim's younger siblings were at the house while their mother was still in Lucena. This time, appellant inserted his penis into her vagina. After dismounting from her, appellant let her go upstairs. Appellant woke up her siblings and told them to segregate his fish catch from the shrimps. He again threatened to kill her and her siblings.[3]

On December 5, 2003, around 5:30 in the morning, appellant dragged the victim to the lower level of their house and onto the bed. He then caused her to remove her short pants and panty; afterwards, the former also undressed himself by removing his short pants and brief. Appellant placed himself on top of her while she was lying down on the bed. He then inserted his penis into her vagina. She felt pain. The sexual abuse lasted for a while only, after which, appellant prepared his things to fish. Before leaving, appellant again threatened to kill her and her siblings.[4]

Feeling severely tormented, the victim told her mother about the incident when she arrived home that morning from the fishing port. Her mother was very angry when she learned about the rape incidents.[5] The victim further

testified that appellant raped her so many times but she could only remember these three incidents. She cried several times in the course of her testimony. She also positively identified appellant in open court.[6]

The victim was brought to the Libmanan District Hospital for medical examination. The Medico-Legal Certificate stated the following findings:

- Old lacerated wound at one o'clock, three o'clock, seven o'clock, and nine o'clock
- Fresh contusion (L) labia minora, level four o'clock
- Fresh abrasion (R) labia majora level nine o'clock
- Admits 1 finger
- Presence of seminal fluid

The physician who conducted the medical examination having retired, Dr. Emma Rariza-Rana, a physician and officer-in-charge of the same hospital, testified on said findings.

The defense presented appellant as its sole witness. As to the first two charges of rape, appellant raised the defense of alibi. He claimed that he would usually go out to fish at 10:00 p.m. and return at about 4:00 a.m. and that there was never an instance that he did not go out to fish, as it was their source of livelihood. He added that the victim told him that it was a certain Richard, adopted child of the victim's mother, who raped her. He allegedly mauled Richard in her defense, and then he told the victim's mother about the rape, but the latter did not file any complaint against Richard.[7]

As to the third charge of rape, appellant admitted that he had sexual intercourse with the victim but claimed that it was consensual. Appellant disclosed that he and the victim were sweethearts and were sexually active since August 20, 2003.[8]

On August 2, 2006, the RTC rendered judgment finding appellant guilty beyond reasonable doubt of attempted rape in Criminal Case No. L-3844 and simple rape in Criminal Cases Nos. L-3845 and L-3846, thus:

WHEREFORE, the prosecution having proved the guilt of [appellant] beyond reasonable [doubt] of the crime of attempted rape in Criminal Case No. L-3844, he is hereby sentenced to suffer the indeterminate penalty of imprisonment of 3 years of prision correccional in its medium period as minimum to 9 years and 1 day of prision mayor as maximum; [appellant] is also ordered to pay [the] victim, the amount of P25,000.00 as moral damages and P30,000.00 as civil indemnity.

The prosecution also having proved the guilt of the accused beyond reasonable doubt in Criminal Case Nos. L-3845 & L-3846, he is hereby CONVICTED of the crime of RAPE, and in accordance with Republic Act No. 9346, which abolished the death penalty, this court hereby imposes upon him x x x the penalty of reclusion perpetua in each case, and further accused is also ordered to pay the victim the amount of P50,000.00 as moral damages and another P50,000.00 as civil indemnity in each case.

SO ORDERED.[9]

The RTC gave credence to the victim's testimony which was considered to be "clear, forthright, direct, detailed and unwavering, despite the close scrutiny of the defense." The trial court opined that this testimony, as corroborated by the report of the medico-legal officer, was sufficient to erase any reasonable doubt as to the culpability of the accused.[10]

The RTC held that appellant's defense of alibi cannot prevail over the positive and credible declaration by the prosecution witnesses about the incident. It also dismissed appellant's claim that he and the victim were sweethearts. The trial court did not believe that the victim, who was only 13 years old, would consent to have sexual intercourse with appellant, her 53-year old stepfather, and to live with him as husband and wife.[11]

However, the RTC found no adequate evidence to sustain a finding of consummated rape in Criminal Case No. L-3844, only attempted rape. In this regard, the trial court noted the victim's testimony that appellant did not succeed in inserting his penis inside her vagina and that the medico-legal examination did not clearly establish that the hymenal lacerations were the result thereof.[12]

On appeal, the CA disagreed with the trial court's conclusion that only attempted rape was proven in Criminal Case No. L-3844 and that appellant is guilty of simple rape in Criminal Cases Nos. L-3845 and L-3846. On the contrary, the appellate court found appellant guilty beyond reasonable doubt of three counts of qualified rape.

The CA essentially concurred with the findings of the trial court that the victim had been sexually abused. However, relying on the victim's testimony that appellant's penis touched her vagina and that she felt pain, the CA held that the first incident of sexual abuse, subject of Criminal Case No. L-3844, warranted a conviction for consummated rape. Moreover, the CA held that appellant should be held guilty of three counts of qualified rape considering that the three Informations uniformly alleged that the accused, who is the "live-in partner/common law spouse of complainant's mother," had carnal knowledge of a 13-year old and these circumstances were adequately established by the prosecution during the trial. The dispositive portion of the CA Decision dated November 16, 2007 states:

WHEREFORE, the appealed decision is AFFIRMED with modifications as follows:

- 1) finding accused-appellant Manuel Brioso y Tanda guilty of qualified rape in Criminal Case No. L-3844 and, accordingly, sentencing him to suffer the penalty of reclusion perpetua; and
- 2) ordering him to pay private complainant, for each count of rape, the following:
 - (a) civil indemnity in the amount of P75,000.00;
 - (b) moral damages in the amount of P75,000.00; and
 - (c) exemplary damages in the amount of P25,000.00.

SO ORDERED.[13]

On December 5, 2007, appellant filed a Notice of Appeal.[14] The CA gave due course to the appeal and directed the elevation of the records to this Court.[15]

In his Supplemental Brief, appellant argues that the CA erred in convicting him of consummated rape in Criminal Case No. L-3844. He emphasizes that although the victim testified that his penis touched her vagina and she felt pain, this testimony is not sufficient proof of carnal knowledge. It was not convincingly shown that the part allegedly touched was the labia majora or that the cause of the pain was the introduction of the male organ into the labia.

The appeal is partly meritorious.

We fully agree with the findings of the trial court, as affirmed by the appellate court, that the victim has been sexually abused on three occasions. The trial court and the CA were correct in giving credence to the victim's testimony, in dismissing appellant's defense of alibi, and disbelieving his allegations that he and the victim were sweethearts and that the victim's mother concocted the accusation.

Nonetheless, we find that the appellate court erred in finding that the prosecution was able to prove beyond reasonable doubt that appellant had carnal knowledge of the victim during the first alleged incident of sexual abuse so as to justify a conviction for consummated rape.

For the accused to be held guilty of consummated rape, the prosecution must prove beyond reasonable doubt that: (1) there has been carnal knowledge of the victim by the accused; (2) the accused achieved the act through force

or intimidation upon the victim because the latter was deprived of reason or otherwise unconscious.[16] Considering that carnal knowledge is the central element in the crime of rape, it must be proven beyond reasonable doubt.[17] Carnal knowledge of the victim by the accused may be proved either by direct evidence or by circumstantial evidence that rape has been committed and that the accused was the perpetrator thereof.[18]

A finding that the accused is guilty of rape may be based solely on the victim's testimony if such testimony meets the test of credibility.[19] This Court has ruled that when a woman states that she has been raped, she says in effect all that would be necessary to show that rape did take place. However, the testimony of the victim must be scrutinized with extreme caution.[20]

The victim's account of the first alleged rape incident states as follows:

Q:

You said you were dragged by your stepfather to that bed. When you were dragged to the bed, what happened next?

A:

He forced me to lie down and he removed my shorts and panty.

Q:

While doing this, what if anything did you do?

A:

I cried because I could do nothing.

Q:

When he removed your garments and you were made to lie on the bed, what happened next?

A:

He also undressed himself and tried to insert his penis to my vagina, but it did not succeed.

Q:

Now, on what part of your body did you feel that his penis touched?

A

My vagina.

Q:

So, what happened after that?

A:

He dressed up and I also dressed up and went up stairs.

Q:

So, how long therefore, was he on top of you?

A:

Around five (5) minutes.

Q:

While on top of you on that duration as you approximated it, what if anything did you feel?

A:

Painful.

Q:

Which is painful?

A:

My vagina.

Q:

Why is it painful?

A:

Because he was trying to insert his penis to my vagina.[21]

Noticeably, the victim categorically denied that appellant's penis penetrated her vagina. In fact, during cross-examination, the victim was asked twice whether the accused was able to insert his penis into her vagina and in both instances, she replied in the negative.[22]

Significantly, the victim testified that appellant's penis merely touched her vagina and she felt pain because of his attempt to insert his penis into her vagina. The question, therefore, that begs to be answered is whether such testimony suffices to prove that there was even a slight penetration of the labia.

In a number of cases, we have held that the mere touching of the external genitalia by the penis, capable of consummating the sexual act, is sufficient to constitute carnal knowledge.[23] However, in *People v. Campuhan*,[24] the Court clarified that the act of touching should be understood as inherently part of the entry of the penis into the labia of the female organ and not mere touching alone of the mons pubis or the pudendum. In other words, to constitute consummated rape, the touching must be made in the context of the presence or existence of an erect penis capable of penetration. There must be sufficient and convincing proof that the penis indeed touched the labia or slid into the female organ, and not merely stroked the external surface thereof, for an accused to be convicted of consummated rape.[25]

Absent any showing of the slightest penetration of the labia of the pudendum by the penis, there can be no consummated rape; at most, it can only be attempted rape, if not acts of lasciviousness.[26] Aside from the victim's testimony, there was no other evidence that could confirm whether there was penetration of the labia. As noted by the trial court, the medical examination report was of no use in relation to the first alleged rape incident as the examination was conducted only after the third incident which happened several months later.

A review of the Court's decisions dealing with relatively the same amount of evidence as in this case reveals that, in the absence of any evidence showing that there was even a slight penetration of the vagina, the Court was loath to convict an accused for rape solely on the basis of the pain experienced by the victim as a result of efforts to insert the penis into the vagina.[27]

For instance, in *People v. Quarre*,[28] the evidence for the prosecution consisted only of the testimony of victim

that the accused tried, but failed, to insert his penis into her vagina and she felt pain in the process. No medico-legal examination report was presented in evidence. The Court, therefore, convicted the accused of attempted rape only. The Court brushed aside the prosecution's contention that the statement of pain alone proves that the penis of the accused touched the labia, ratiocinating that -

Clearly, it is carnal knowledge, not pain, that is the element to consummate rape. While pain may be deduced from the sexual act whatever worth this inference may have, we certainly cannot convict for rape by presuming carnal knowledge out of pain. It is truly a dangerous proposition to equate the victim's testimony of pain with proof of carnal knowledge. The peril lies in the absolute facility of manufacturing testimonies asserting pain. Pain is subjective and so easy to feign. Our jurisprudence dictates positive proof of even the slightest penetration, more accurately, the touching of the labias by the penis, before rape could be deemed consummated.[29]

Then again in *People v. Miranda*,[30] the Court convicted the accused only of attempted rape due to lack of evidence to establish that there was even a slight penile penetration. The victim testified that the accused tried to insert his penis into her private parts; when he did not succeed, he inserted his finger instead; and she felt pain. The medical examination report also did not establish that there was even a slight penile penetration, as it merely found that the abrasions on her vulva were caused only by the fingers.

The Court recently issued a similar ruling in *People v. Bon*,[31] wherein the prosecution's evidence consisted of the victim's testimony that the accused repeatedly tried to insert his penis into her vagina and that she felt pain in the process. In that case, the Court affirmed appellant's conviction for attempted rape only, ratiocinating that the accused could not be convicted of rape by presuming carnal knowledge out of pain.[32]

In some cases, this Court held that even where penetration is not fully established, consummated rape can still be anchored on the victim's testimony that she felt pain in the attempt at penetration.[33] In such cases, however, there were at least some other details in the victim's testimony, or other pieces of evidence, that helped convince the Court that there was likely a penetration of the labia of the pudendum.

In *People v. Torres*,[34] other than the victim's testimony that she felt pain when the accused tried to insert his penis into her vagina, the National Bureau of Investigation medico-legal officer noted that, while there was no hymenal laceration, there were two contusions on the victim's vagina. The medico-legal office concluded that it was possible that a "mere partial or an incomplete hymenal penetration resulted in the sexual assault." Despite the victim's testimony that there was no penetration, the Court, therefore, held that the rape was consummated.

Also in *People v. Orande*,[35] the case cited by the CA, the finding of consummated rape was not solely based on the victim's testimony that she experienced pain. In that case, the victim specifically averred that appellant was able to slightly penetrate her because she felt pain and her vagina bled.

Earlier in *People v. Ombreso*,[36] the Court debated on whether to convict the accused of attempted or consummated rape. In the end, majority voted for his conviction of consummated rape while two members of the Court dissented. The Court stated that considering the pain caused, there could be no doubt that there was at least partial entry. Hence, while the medical examination of the victim showed that she did not suffer hymenal laceration or abrasion, the Court, nonetheless, concluded that there was a slight penetration of the victim's genitalia. In this case, the victim did not only state that appellant's penis touched her vagina, but she was made to demonstrate which part of her vagina it touched and she pointed to the upper part of her vaginal opening. Moreover, the victim testified that appellant's penis was "hard" while it was touching her vagina.

The victim's testimony as to the first incident is sorely lacking in details. In *People v. Tolentino*,[37] the Court criticized the prosecution for its failure to extract important details from the victim, which prevented a conviction

for consummated rape, thus:

The prosecution did not ask her the appropriate questions to get some more important details that would demonstrate beyond any shadow of doubt that TOLENTINO's penis reached the labia of the pudendum or the lips of RACHELLE's vagina. It should have, for instance, asked whether TOLENTINO's penis was firm and erect or whether RACHELLE's legs were spread apart to bring us to the logical conclusion that, indeed, TOLENTINO's penis was not flabby and had the capacity to directly hit the labia of the pudendum or the lips of RACHELLE's vagina. There is paucity of evidence that the slightest penetration ever took place. Consequently, TOLENTINO can only be liable for attempted rape.[38]

In the present case, no other evidence from which we could reasonably conclude that there was even a slight penetration of the vagina, and not just a mere touching, was presented in evidence. We reiterate that penile penetration cannot be presumed from pain alone. The prosecution must present some other piece of evidence from which the Court could reasonably deduce that there was indeed carnal knowledge by the accused of the victim, be it positive testimony that there was slight penetration of the vagina, or testimony that the penis was erect at the time that it was touching the vagina, or that her vagina bled due to the attempt to insert the penis, or that there were abrasions or contusions on the labia of the vagina.

Since there was no showing that appellant succeeded in having carnal knowledge of the victim, appellant can only be convicted of attempted rape. There is only an attempt to commit rape when the offender commences its commission directly by overt acts but does not perform all acts of execution which should produce the felony by reason of some cause or accident other than his own spontaneous desistance.[39]

The appellate court properly appreciated the twin aggravating circumstances of minority and relationship. The victim's minority and her relationship with appellant were alleged in the Informations and sufficiently established during trial. The victim's birth certificate was presented in evidence to show that she was born on October 15, 1990, which means that she was actually only 12 years old when she was first sexually assaulted. Appellant, during pre-trial, admitted that he is the common-law husband of the victim's mother.

With the abolition of the death penalty by Republic Act No. 9346, the penalty for qualified rape is reclusion perpetua. Pursuant to *People v. Bon*,[40] the penalty for attempted rape should also be reckoned from reclusion perpetua. In the scale of penalties in Article 71 of the Revised Penal Code, the penalty two degrees lower than reclusion perpetua is prision mayor. Applying the Indeterminate Sentence Law, absent any modifying circumstance, the maximum term of the indeterminate penalty shall be taken from the medium period of prision mayor or from 8 years and 1 day to 10 years, while the minimum term is one degree lower than prision mayor, i.e., prision correccional, from 6 months and 1 day to 6 years.

The appellate court correctly awarded civil indemnity of P75,000.00, moral damages of P75,000.00 and exemplary damages of P25,000.00.[41] For the attempted rape, appellant should also pay the victim P30,000.00 as civil indemnity, P25,000.00 as moral damages and P10,000.00 as exemplary damages pursuant to prevailing jurisprudence.[42]

WHEREFORE, the Court of Appeals Decision dated November 16, 2007 is AFFIRMED WITH MODIFICATIONS. Appellant Manuel Brioso y Tanda is found guilty of:

- ATTEMPTED QUALIFIED RAPE in Criminal Case No. L-3844 and sentenced to an indeterminate penalty of two (2) years, four (4) months and one (1) day of prision correccional as minimum, to eight (8) years and one (1) day of prision mayor as maximum. In addition, appellant is ORDERED to indemnify the victim in the amounts of P30,000.00 as civil indemnity, P25,000.00 as moral damages and P10,000.00 as exemplary damages;
- Two counts of QUALIFIED RAPE in Criminal Cases Nos. L-3845 and L-3846 and sentenced to suffer the

penalty of reclusion perpetua for each count. For each count of rape, appellant is likewise ORDERED to indemnify the victim --

- civil indemnity in the amount of P75,000.00;
- moral damages in the amount of P75,000.00; and
- exemplary damages in the amount of P25,000.00.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Chico-Nazario and Peralta, JJ., concur.

[1] Penned by Associate Justice Rebecca de Guia-Salvador, with Associate Justices Magdangal M. de Leon and Ricardo R. Rosario, concurring; rollo, pp. 2-27.

[2] CA rollo, p. 16.

[3] Id. at 16-17.

[4] Id. at 16.

[5] Id.

[6] Id. at 17.

[7] Id. at 18.

[8] Id. at 19.

[9] Id. at 55-56.

[10] Id. at 20.

[11] Id. at 21.

[12] Id. at 21-22.

[13] Rollo, p. 26.

[14] CA rollo, p. 118.

[15] Id. at 121.

[16] *People v. Sumarago*, 466 Phil. 956, 966 (2004).

[17] *People v. Sinoro*, G.R. Nos. 138650-58, April 22, 2003, 401 SCRA 371, 390.

[18] *People v. Sumarago*, supra note 16, at 966.

[19] Id.

[20] Id.

[21] TSN, April 21, 2005, pp. 11-12.

[22] TSN, August 15, 2005, pp. 7, 8.

[23] *People v. Lomerio*, 383 Phil. 434 (2000); *People v. Lerio*, 381 Phil. 80 (2000); *People v. Quiñanola*, 366 Phil. 390 (1999).

[24] 385 Phil. 912 (2000).

[25] *Id.* at 920-921.

[26] *Id.*

[27] But see *People v. Makilang*, 420 Phil. 188 (2001), wherein the Court convicted the accused of consummated rape even if he did not succeed in inserting his penis into the vagina solely on the basis of the victim's repeated assertion that she felt pain in her vagina when the accused tried to insert his penis into her vagina.

[28] 427 Phil. 422 (2002).

[29] *Id.* at 434.

[30] G.R. No. 169078, March 10, 2006, 484 SCRA 555.

[31] G.R. No. 166401, October 30, 2006, 506 SCRA 168.

[32] See also *People v. Sumarago*, *supra* note 16, wherein the Court pronounced that carnal knowledge cannot be presumed simply because the victim felt pain in her vagina after she regained consciousness.

[33] *People v. Torres*, 469 Phil. 602, 610-611 (2004); *People v. Orande*, 461 Phil. 403 (2003); *People v. Ombreso*, 423 Phil. 966 (2001).

[34] *Supra*.

[35] *Supra* note 33.

[36] *Id.*

[37] 367 Phil. 755 (1999).

[38] *Id.* at 764.

[39] *People v. Bon*, *supra* note 31, at 188-189.

[40] *Supra* note 31.

[41] *People v. Capwa*, G.R. No. 174058, December 27, 2007, 541 SCRA 516; *People v. Bon*, *supra* note 31.

[42] *People v. Bon*, *supra* note 31.

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