

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JOVEN JUMAWID, APPELLANT.*G.R. No. 184756. June 05, 2009*

Ponente: NACHURA, J.

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We review the March 12, 2008 Decision[1] of the Court of Appeals (CA), Mindanao Station, which affirmed the guilty verdict rendered by the Regional Trial Court (RTC), Branch 18, Cagayan de Oro City,[2] promulgated on September 12, 2002 against appellant Joven Barbillas Jumawid (Jumawid), with modification on the amount of civil indemnity and exemplary damages to be paid to his victim, AAA. This review is made pursuant to the pertinent provisions of Sections 3 and 10 of Rule 122 and Section 13 of Rule 124 of the Revised Rules on Criminal Procedure, as amended by A.M. 00-5-03-SC.

The factual findings of both courts show that on August 26, 2001, at about 9 o'clock in the evening, 18-year-old AAA was with her 2-year-old brother inside their parents' house at 123 St., XYZ in Cagayan de Oro City. She was cooking dinner when appellant Joven Jumawid, a neighbor for 10 years, entered their house reeking with liquor and carrying a knife. When appellant inquired where her father was, she replied that he had not arrived yet. Appellant then went behind her, choked her neck with his left hand, and pointed the knife at her neck using his right hand. She shouted for help, but because of the loud sound coming from the karaoke in appellant's house, nobody came to her aid.[3]

Appellant dragged her to the bedroom and told her to undress or he would kill her. When she refused, appellant proceeded to remove her short-pants and underwear with the knife pointed at her waist. He instructed her to lie on the floor. Again she refused, so he pushed her, mounted her and removed her clothes. Appellant kissed and bit her lips and left breast and, while on top of her, inserted his penis into her vagina. AAA moved her buttocks to prevent appellant's organ from penetrating her vagina, but she still felt a portion of his penis enter her.[4] Appellant shouted that she should let his penis fully enter her vagina; otherwise, he would kill her.[5] Because appellant was not able to fully insert his penis, he bit her lips and vagina, and continued to insert his penis.[6]

At this point, AAA's father, BBB, arrived and called for her. Appellant hurriedly put on his clothes, warned AAA not to tell anybody else or he would kill her, and went out. When AAA's 8-year-old brother, CCC, went inside the house, she told him to immediately tell their mother that she was raped by appellant.[7]

Meanwhile, BBB decided to run to the police station in XYZ to ask for help because he knew appellant to have been previously imprisoned for stabbing a person.[8] When he passed by his wife's mango stall, she told him that AAA told CCC that she was raped.[9] Meanwhile, Jumawid went back to AAA's house, still with a knife, and called for her.

At the police station, Senior Police Officer (SPO)³ Josefino Mercado Balili (Balili) was on duty at around 9:30 p.m. on August 26, 2001. He testified that BBB arrived at the station and asked for police assistance in arresting the person he saw in his house and claimed that his daughter was raped. He, BBB, and a certain SPO1 Caburatan,

immediately proceeded to the house where they saw AAA, frightened and moaning. They found Jumawid crouching at the back door. When Balili was about to handcuff Jumawid, the latter dropped the knife he was holding. They then brought Jumawid, together with AAA, to the police station. Subsequently, they accompanied AAA for medial examination at the Northern Mindanao Medical Center.[10]

The following day, an Information[11] charging appellant Jumawid with the crime of rape was filed by the Assistant City Prosecutor. At his arraignment on October 2, 2001, Jumawid entered a plea of "not guilty." [12]

During the trial, Dr. Soraya Munti of the Department of OB-GYNE at the Northern Mindanao Medical Center testified that, while on duty on August 26, 2001, she examined AAA. She found bite marks on the left upper areola of AAA. She also found that AAA's genitalia bore lacerations consisting of 1 centimeter (cm.), at the left labia majus mid 1/3[rd]; laceration 0.7 cm., right labia majora, mid 1/3[rd]; abrasion, 0.5 cm. at posterior fourchette; and multiple abrasion 1 cm. around the vulva.[13] She, however, found AAA's hymen to be apparently intact.[14]

Dr. Rolando Galeon of the Department of EENT of the said hospital also testified that when he examined the victim on August 26, 2001, he noted a contusion on her lower lip, a superficial puncture on the inner lip, an abrasion on the infralabial area, and a superficial punctured wound also on the infralabial area.[15]

Appellant interposed an entirely different version of the incident. He maintained that he and AAA were sweethearts. They had been neighbors since their childhood days, but their romantic relationship began in 1997 and even continued while AAA stayed with her aunt in Manila at the time when he was also working in Manila as a security guard. He said that on the night of August 26, 2002, he and AAA's relatives were drinking liquor at AAA's house. AAA's cousin, DDD, instructed him to go upstairs and get some food. When he went inside, he saw AAA cooking dinner. They talked about their relationship, appellant kissed AAA and she kissed him back. When he placed his hand on AAA's private parts, she resisted and reminded him that she was still going to school. Then, he heard AAA's father, BBB, call for AAA. He went downstairs and gave his respects. He and BBB drank some liquor, and thereafter left the house together and walked towards the mango stall of BBB's wife.[16]

Later that night, another of AAA's cousins, EEE, instructed appellant to return to AAA's house to discuss something. Upon reaching the house, AAA's grandmother asked appellant if it was true that BBB saw him and AAA kissing at the stairway; he denied the allegation. BBB subsequently arrived, accompanied by policemen, who arrested appellant at the stairway of the house.[17]

On September 12, 2002, the RTC found Jumawid guilty of the crime of rape. Pertinent portion of the fallo reads:

WHEREFORE, in view of the foregoing, the Court finds accused JOVEN JUMAWID y BARBILLAS GUILTY beyond reasonable doubt of the crime of rape, punishable under Article 266-A and B of the Revised Penal Code, as amended by R.A. 8353, attended by a qualifying aggravating circumstance with the use of a deadly weapon, plus a generic aggravating [circumstance] of nocturnity, and there being no mitigating circumstance, accused JOVEN JUMAWID y BARBILLAS is hereby sentenced and SO ORDERED to suffer the supreme penalty of death by lethal injection, including its accessory penalties. He is also directed to indemnify the victim the sum of P75,000.00, as compensatory damages, plus moral damages in the amount of P50,000.00.

x x x x

SO ORDERED. Cagayan de Oro City, September 12, 2002.[18]

Upon review, the CA agreed with the RTC in rejecting Jumawid's sweetheart theory and found sufficient basis to conclude that sexual intercourse did take place.[19] The CA also sustained the RTC's finding that the rape was

qualified by the use of a deadly weapon, but favored appellant's contention that the prosecution failed to establish that he took advantage of the darkness of the night or that such circumstance facilitated his commission of the crime. The dispositive portion of the CA decision states:

WHEREFORE, the Decision a quo is AFFIRMED with MODIFICATIONS. Appellant is found GUILTY of the crime of Rape, and is hereby sentenced to suffer the penalty of reclusion perpetua. The appellant is also DIRECTED to pay the victim, [AAA], the amounts of Fifty Thousand Pesos (P50,000.00) as civil indemnity, Twenty Five Thousand Pesos (P25,000.00) as exemplary damages, and Fifty Thousand Pesos (P50,000.00) as moral damages.

SO ORDERED.[20]

On review, we rule in favor of the People.

The law is clear. Under the first paragraph of Article 266-A of the Revised Penal Code, it is provided:

ART. 266-A. Rape, When and How Committed. - Rape is committed -

1. By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a. Through force, threat or intimidation;

b. When the offended party is deprived of reason or is otherwise unconscious;

c. By means of fraudulent machination or grave abuse of authority;

d. When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above [are] present.

The factual findings of the RTC, as affirmed by the CA, indubitably prove that appellant consummated his dastardly objective even if there was no full penetration of the female genital organ. In *People v. Boromeo*,^[21] we explained that proof of hymenal laceration is not an element of rape so long as there is enough proof of entry of the male organ into the labia of the pudendum of the female organ. Penetration of the penis by entry into the lips of the vagina, even without laceration or rupture of the hymen, and even with the briefest contact, consummates the crime of rape.^[22]

In this case, AAA was consistent in her testimony that appellant was able to penetrate her despite her efforts of moving her buttocks to prevent the latter from fully inserting his penis inside her vagina. The medical examination conducted by Dr. Munti confirms that there was indeed partial penetration of the victim's vagina.

As to the appreciation of the qualifying circumstance of use of a deadly weapon, we sustain the CA's conclusion that the Information explicitly contained such allegation. There is no need for the allegation to be preceded by the words "qualifying/aggravating, qualifying, or qualified by" in order that such circumstance may be appreciated as such,^[23] more so when it is the law itself which provides for the qualification of the crime.

Article 266-B of the Revised Penal Code is explicit:

ART. 266-B. Penalties. - Rape under paragraph 1 of the next preceding article shall be punished by reclusion perpetua.

Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death.

x x x

The use of a deadly weapon, having been specifically averred in the Information and duly proven during the trial qualifies the rape committed by the appellant.[24] Under 266-B of the Revised Penal Code, the penalty for qualified rape should be reclusion perpetua to death. However, since the prosecution failed to prove that appellant took advantage of the night or that such circumstance facilitated the commission of the crime, the lesser penalty of reclusion perpetua is hereby imposed.[25]

As to the variation between the monetary awards imposed by the RTC and CA, we rule that the appropriate civil indemnity should be P50,000.00 in light of prevailing jurisprudence regarding civil indemnity for qualified rape.[26] Such award partakes the nature of actual or compensatory damages and is mandatory upon a conviction for qualified rape.[27]

The presence of a qualifying circumstance in the commission of rape not only increases the penalty but justifies the award for exemplary or corrective damages as well, the purpose being to impose a harsher penalty on account the offender's greater perversity. Hence, we sustain the award of P30,000.00 as exemplary damages in favor of the victim. We, likewise, affirm the award of P50,000.00 as moral damages.

WHEREFORE, premises considered, the Decision[28] of the Court of Appeals in CA G.R. CR-HC No. 00201 dated March 12, 2009 is hereby **AFFIRMED** with the modification that exemplary damages is increased to P30,000.00.

SO ORDERED.

Ynares-Santiago, (Chairperson), Carpio,[*] Corona,**] and Peralta, JJ., concur.

[*] Additional member in lieu of Associate Justice Conchita Carpio Morales per Special Order No. 646 dated May 15, 2009.

[**] Additional member in lieu of Associate Justice Minita V. Chico-Nazario per Special Order No. 631 dated April 29, 2009.

[1] Docketed as CA G.R. CR-HC No. 00201, penned by Associate Justice Michael P. Elbinias, with Associate Justices Teresita Dy-Liacco Flores and Rodrigo F. Lim, Jr., concurring; rollo, pp. 4-14.

[2] CA rollo, pp. 17-29.

[3] Id. at 25.

[4] Supra note 1, at 6, 11.

[5] Id. at 6.

[6] Supra note 2, at 19.

[7] Id.

[8] Id. at 21.

[9] Supra note 1, at 7.

[10] Supra note 2, at 19.

[11] The Information reads:

The undersigned Asst. City Prosecutor accuses JOVEN JUMAWID y BARBILLAS, of the crime of RAPE,

committed as follows:

That on August 26, 2001, at about 9:00 o'clock in the evening, more or less, at [123] Street, [XYZ], Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, violence and intimidation upon person, with lewd design, did then and there willfully, unlawfully, and feloniously have sexual intercourse with [AAA], 18 years old, virgin, without her consent and against the latter's will.

That the commission of the above offense is attended with the aggravating circumstance of night time purposely sought by the accused to insure and facilitate his commission thereof. Furthermore, the rape was committed with the use of a deadly weapon.

Contrary to and in Violation of Article 266 of the Revised Penal Code. (Pursuant to R.A. 8353.) (Rollo, p. 5.)

[12] Rollo, p. 5.

[13] *Id.* at 7.

[14] *Id.*

[15] *Supra* note 2, at 20.

[16] *Supra* note 1, at 8.

[17] *Id.* at 8-9.

[18] *Supra* note 2, at 28.

[19] *Supra* note 1, at 11-12.

[20] *Id.* at 14.

[21] G.R. No. 150501, June 3, 2004, 430 SCRA 533.

[22] *Id.* at 542.

[23] *People v. Garin*, G.R. No. 139069, June 17, 2004, 432 SCRA 394, 411, citing *People v. Aquino*, G.R. Nos. 144340-42, August 6, 2002, 386 SCRA 391.

[24] See Regalado, *Criminal Law Conspectus*, 2007, pp. 588-9.

[25] *People v. Manambay*, G.R. 130684, February 5, 2004, 422 SCRA 73, 89, citing *People v. Ayuda*, G.R. No. 128882, October 2, 2003, 412 SCRA 539. See also *People v. Arevalo*, G.R. Nos. 150542-87, February 3, 2004, 421 SCRA 604, citing *People v. Sabredo*, G.R. No. 126114, May 11, 2000, 331 SCRA 663, 671-672.

[26] *People v. Gabelino*, G.R. Nos. 132127-29, March 31, 2004, 426 SCRA 608; *People v. Canoy*, 459 Phil. 933 (2003); *People v. Sambrano*, 446 Phil. 145 (2003) and *People v. Soriano*, 436 Phil. 719 (2002).

[27] *People v. Dimaano*, G.R. No. 168168, September 14, 2005, 469 SCRA 647, 669 and *People v. Glodo*, G.R. No. 136085, July 7, 2004, 433 SCRA 544, 549.

[28] *Supra* note 1.

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