

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LITO MACAPANAS Y ECIJA, ACCUSED-APPELLANT.

G.R. No. 187049. May 04, 2010

Ponente: VILLARAMA, JR., J.

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VILLARAMA, JR., J.:

For review is the Decision[1] dated November 24, 2006 of the Court of Appeals in CA-G.R. CR-H.C. No. 00222 which affirmed with modification the Decision[2] of the Regional Trial Court (RTC) of Guiuan, Eastern Samar, Branch 3, finding appellant Lito E. Macapanas guilty of rape and sentencing him to suffer the penalty of reclusion perpetua.

On February 1, 2000, an Information was filed charging appellant of the crime of rape. The Information reads,

That on or about the 7[th] day of December, 1999, at about 7:30 o'clock in the morning, in between Brgy. XXX and Brgy. YYY, Salcedo, Eastern Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused while the victim was on her way to school, she was waylaid by the accused wearing a bonnet armed with a sharp-pointed bolo locally known as "sundang" and brought her to an isolated hut where she was alone and ordered her to undress and forced her to lie down and by means of force and intimidation did then and there willfully, unlawfully and feloniously succeed in having carnal knowledge with AAA,[3] a 19-year-old girl without her consent and against her will.

Contrary to law.[4]

When arraigned on March 27, 2000, appellant, with the assistance of counsel, pleaded not guilty to the offense charged.[5] Trial thereafter ensued.

The prosecution presented the following witnesses: (1) Dr. Elizabeth Co-Loyola, Medical Officer IV of Southern Samar General Hospital;[6] (2) Senior Police Officer 4 Isidro E. Bajar, Officer-in-Charge (OIC) of the Philippine National Police at Guiuan, Eastern Samar;[7] and (3) AAA, the private complainant.[8]

From their testimonies, we gather the version of the prosecution:

At around 7:30 a.m. on December 7, 1999, AAA, a student of Eastern Samar State Agricultural College, was walking on the feeder road of Barangay XXX, Salcedo, Eastern Samar going to the waiting shed where she was to take a ride to school. She was 50 to 60 meters away from the waiting shed when the appellant, wearing a makeshift ski mask and armed with a bladed weapon locally known as sundang, grabbed her hair. Appellant poked the sundang on her side and pulled her towards a grassy area. She tried to free herself and pleaded for mercy, but to no avail. Appellant simply continued to drag her.

When they reached a nearby stream, appellant shoved AAA towards an uninhabited house with the knife. Inside, appellant told her to undress, but AAA did not obey. She asked appellant to remove his mask so she could identify him. Appellant acceded and removed his mask. Then, he ordered her anew to remove her dress. When she refused, appellant grabbed her skirt and forcibly removed the buttons to open her skirt. Appellant then pushed her

to the floor where he removed her panty. He mounted her and succeeded in having intercourse with her. After satisfying his lust, appellant allowed AAA to put on her dress with a warning that he would kill her if she tells anyone about what happened. With appellant behind her, AAA walked back towards the waiting shed.

When AAA saw plenty of people on the road, she shouted for help. Appellant then stabbed her at the back and fled. AAA was brought to the Southern Samar General Hospital where she was confined for nine (9) days.

At the hospital, Dr. Elizabeth Co-Loyola examined AAA and found an incised wound on her back.[9] On the third day of AAA's confinement, they suspected that something more had happened to AAA, but she merely cried and did not answer their questions. On her sixth day of confinement, AAA, accompanied by her mother, admitted she was also raped. Dr. Co-Loyola thus conducted additional examination on AAA and found that she had a partially healed "Hymenal Laceration at [the] 5:00 o'clock position." [10] Dr. Co-Loyola said she believed a hard object like a penis could have caused the laceration.

Police officers, among them SPO4 Bajar, also interviewed AAA on the afternoon of December 7, 1999. AAA told SPO4 Bajar that the person who assaulted her had tattoos on his right shoulder and in between his thumb and index finger. She said she was merely touched in her private parts and was stabbed by the suspect, but did not tell SPO4 Bajar that she was raped.

On the evening of December 11, 1999, SPO4 Bajar brought appellant to the hospital where AAA identified appellant as the one (1) who stabbed her. SPO4 Bajar revealed that when he brought appellant to the hospital, his purpose was to present him as a suspect for stabbing AAA and not for raping AAA.

AAA also testified that before the incident, she once saw the appellant pass by the waiting shed where she used to wait for a ride to school. She explained that one (1) time, she was with her classmates in the waiting shed when appellant passed by looking at them. A classmate informed her that the person looking at them was appellant Lito Macapanas. She added that she was familiar with appellant's father and sister because she often saw them pass by the waiting shed. She also said appellant's two (2) brothers, Sitoy and Pepe, were her classmates in grade school and that she even knows their address. These matters, however, were not revealed by her to the police.

The defense, for its part, presented the following witnesses: (1) Vangie Macapanas, appellant's sister-in-law; [11] (2) Rose B. Macapanas, appellant's wife; [12] and (3) appellant Lito E. Macapanas. [13]

Appellant vehemently denied raping AAA. He alleged that he was at his house in Barangay XXX, Salcedo, Eastern Samar the entire day of December 7, 1999, gathering coconuts. Around 5:00 a.m. on the said date, he cooked breakfast then rested. At around 6:00 a.m., he started gathering coconut in his yard and finished in the afternoon. The next day, he husked the coconuts he had gathered, cut them in halves and placed them in the kiln. On December 9, 1999, he smoked the coconuts, separated the cooked coconut meat from their shells and placed them in a sack. Then, on the morning of December 10, 1999, appellant, his father and Domingo Basijan, the owner of the coconuts, sold the copra in Salcedo, Eastern Samar.

On the afternoon of December 10, 1999, while playing basketball at the public plaza, his cousin Obet Macapanas invited him to the former's house in Barangay Talandawan, Salcedo, Eastern Samar to help Obet's family prepare food for a celebration of a death anniversary. It was while he was in Obet's house that he was arrested by a certain police officer Cabrera, who arrived together with another policeman and a barangay tanod. Cabrera allegedly tied his hands. When he asked them what his fault was, Cabrera replied that there was a complaint against him and that he was bringing him to AAA. Aboard a garbage truck, appellant, together with Obet and his nephew, Anthony Amor, was brought to the Southern Samar General Hospital and presented before AAA.

AAA allegedly failed to pinpoint him as the culprit, but he and his two (2) relatives were nonetheless incarcerated

at the Salcedo Municipal Jail. Appellant added that his two (2) relatives were released from jail the following morning. While he was in jail, Cabrera brought in two (2) women victims to identify him (appellant) if he was the one (1) who waylaid them. The women, however, declared he was not the one (1) who assaulted them. Cabrera has ill feelings towards him because he defied Cabrera's order to stop cutting trees. He explained that cutting trees is his only source of livelihood.

Vangie Macapanas, on the other hand, testified that on the morning of December 7, 1999, she was at her house which was about only 10 meters away from appellant's house. From 6:00 a.m. to 7:00 a.m. of the said day, she saw appellant and the latter's wife, Rose, fixing the roof of their house. After eating breakfast, appellant went out of his house and started gathering coconuts near her yard because the coconuts which appellant was gathering were located behind her house. She said appellant finished gathering coconuts from Domingo Basijan's land at around 11:00 a.m. She alleged that appellant never left his house or the land where he gathered coconuts from 6:00 a.m. to 11:00 a.m. She, however, said that she cannot see the entire coconut plantation from her house and did not see appellant at all times while he was gathering coconuts at the plantation.

Vangie added that she knows Barangay YYY, where the crime happened, and declared that said barangay is about three and a half (3½) kilometers away from her house in Barangay XXX. Motor vehicles also regularly ply the route from Barangay XXX to Barangay YYY.

Appellant's wife, Rose B. Macapanas, for her part, testified that appellant left their house in Brgy. XXX at 6:00 a.m. on December 7, 1999 to gather coconuts at the plantation of Domingo Basijan where he was a tenant. At 8:00 a.m., her husband returned to their house and they fixed the roof of their house. At around 9:00 a.m., they finished fixing the roof and his husband returned to the coconut plantation to gather coconuts anew until 11:00 a.m. Thereafter, she said appellant went home and rested. According to her, from 6:00 a.m. to 11:00 a.m., her husband did not go to any other place except the coconut plantation. During all that time, she knew that appellant was in the plantation because she heard the sound of coconuts dropping to the ground.

On May 14, 2003, the trial court promulgated its decision dated April 15, 2003, the dispositive portion of which reads as follows:

WHEREFORE, the Court finds accused LITO E. MACAPANAS guilty beyond reasonable doubt of the crime of consummated rape under Article 266-A (a) of Republic Act No. 8353 (An Act Expanding the Definition of the Crime of Rape) and hereby sentences him to suffer the penalty of RECLUSION PERPETUA. The accused is further ordered to indemnify the offended party in the amount of Fifty Thousand Pesos (P50,000.00) without subsidiary imprisonment in case of insolvency, and to pay the costs.

SO ORDERED.[14]

In convicting appellant, the trial court was convinced that it was appellant who sexually assaulted AAA because of the identification she made of appellant. It found that AAA had no reason or motive to fabricate the serious charge against appellant. It did not accord credence to appellant's denial and alibi. It found the testimonies of the defense witnesses doubtful and unconvincing. Explained the trial court:

... They tried to establish that the accused was in Brgy. XXX during the time of the commission of the crime in Brgy. YYY. But their testimonies are not convincing. Vangie Macapanas, who is a sister-in-law of the accused, testified that she saw the accused the whole morning of December 7, 1999. But clearly[,] that is not true because she herself declared that when the accused went around the coconut land which is [quite] large he was out of her sight and could only [hear] the coconuts dropping to the ground. While the declaration of Rose Macapanas, the wife of the accused, that her husband left their house at about 6:00 o'clock in the morning to harvest coconuts and return two hours later does not preclude the possibility that her husband could have sneaked to Brgy. YYY that morning. Ditto with the testimony of the accused. Considering the proximity of

Brgy. YYY from Brgy. XXX, he could have easily reach[ed] Brgy. YYY in no time and committed the crime and then return to the coconut land and resume harvesting coconuts.[15]

The trial court further ruled that despite the prosecution evidence showing that appellant stabbed AAA after raping her, appellant cannot be convicted for such stabbing no matter how conclusive and convincing the evidence is because such offense was not charged or included in the Information.

Appellant filed a Motion for Reconsideration,[16] but the trial court denied it in a Resolution[17] dated June 11, 2003.

On November 24, 2006, the Court of Appeals affirmed appellant's conviction but modified the penalty, ordering appellant to pay the additional amount of P50,000.00 as moral damages. The decretal portion of the appellate court's decision reads:

WHEREFORE, the Decision of the Regional Trial Court, Branch 3, Guiuan, Eastern Samar, in Criminal Case No. 1837 finding accused-appellant Lito Macapanas y Ecija guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer the penalty of reclusion perpetua is AFFIRMED with MODIFICATION. Accused-appellant must pay to the private offended party, [AAA], P50,000.00 as civil indemnity and another P50,000.00 as moral damages, together with the costs.[18]

Appellant filed his Notice of Appeal on December 18, 2006.[19] On June 1, 2009,[20] the Court required the parties to file their respective supplemental briefs, if they so desire. The parties, however, opted not to file any on the ground that they have already fully argued their positions in their respective briefs.

Appellant cites a lone error:

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT [OF] THE CRIME CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[21]

Essentially, for our resolution is the issue of whether appellant's guilt for the crime of rape has been proven beyond reasonable doubt.

Appellant maintains that the trial court erred in giving greater weight to the testimony of the private complainant than the testimonies of the defense witnesses despite finding that some portions in her testimony appeared to be peculiar and tended to render its credibility suspect. He contends that the accusation of rape was concocted on hindsight because AAA only disclosed that she was raped after several days of confinement and after identifying appellant to SPO4 Bajar as the person who stabbed her.

We are not convinced.

The fact that AAA did not immediately reveal that she was raped by appellant does not necessarily impair AAA's credibility. How the victim comported herself after the incident was not significant as it had nothing to do with the elements of the crime of rape.[22] Not all rape victims can be expected to act conformably to the usual expectations of everyone. Different and varying degrees of behavioral responses are expected in the proximity of, or in confronting, an aberrant episode. It is settled that different people react differently to a given situation or type of situation and there is no standard form of human behavioral response when one is confronted with a strange, startling or frightful experience.[23] In *People v. Luzorata*,[24] we held:

This Court indeed has not laid down any rule on how a rape victim should behave immediately after she has been abused. This experience is relative and may be dealt with in any way by the victim depending on the circumstances, but her credibility should not be tainted with any modicum of doubt. x x x.

Delay in revealing the commission of rape is not an indication of a fabricated charge.[25] It has been repeatedly held that the delay in reporting a rape incident due to death threats cannot be taken against the victim.[26] The charge of rape is rendered doubtful only if the delay was unreasonable and unexplained. In this case, the delay in reporting the sexual assault was reasonable and explained. AAA adequately explained that she did not immediately inform anyone of her ordeal because she was ashamed and afraid because appellant had threatened to kill her.[27] Thus, her reluctance that caused the delay should not be taken against her. Neither can it be used to diminish her credibility nor undermine the charge of rape.

We find no reason to reverse the findings of the trial court, as affirmed by the Court of Appeals. We find AAA's narration of her ghastly ordeal to be clear, straightforward and worthy of belief. AAA recounted her nightmare as follows:

Q

On December 7, 1999, at about 7:30 o'clock in the morning, do you remember where you were?

A

Yes, sir, I was at the cemented feeder road of Brgy. [XXX], Salcedo, Eastern Samar.

Q

And what were you doing on that feeder road?

A

I was walking sir.

Q

Where were you walking to?

A

I was on my way walking to the waiting shed.

Q

Now, where were you from when you were walking to that waiting shed along Barangay [XXX]?

A

I came from our house at Brgy. [YYY], Salcedo, E. Samar.

Q

And what was your purpose in going to that waiting shed?

A

I was about to wait for a transportation going to ESSAC.

Q

Now, when you were walking on that feeder road towards that shed, was there anything unusual that happened?

A

Yes, sir.

Q

And what was that?

A

I was waylaid by a man who was wearing a bonnet and with a sharp pointed bolo locally known as "sundang".

Q

When you said bonnet, what do you mean?

A

A piece of cloth wear around the head and there is a whole for the eyes covering the face.

Q

Now, when you were waylaid by this person, what happened?

A

He immediately grabbed my hair and dragged to the grass.

Q

What happened thereafter when you said you were dragged to the grasses by this person?

x x x x

A

He brought me to the stream and let me go.

Q

What do you mean when you said the person let you go when you reached that stream?

A

That is now the time when he let me go.

Q

Now, you said you were forced to walk, what happened thereafter?

A

While I was walking he was poking behind me his bolo.

Q

What happened thereafter?

A

He brought me to the place to uninhabited house.

Q

What happened when you reached that uninhabited house?

A

He let me go inside that house.

Q

Were you able to get inside that house?

A

Yes.

Q

And then what happened when you are inside the house?

A

He told me to undress.

Q

And what did you do when you told to take-off your clothes?

A

I did not follow to his instruction instead I told him to take-off his bonnet.

Q

And then what happened[?]

A

And he took off his bonnet and I saw him watching my bag.

Q

What happened thereafter?

A

He again told me to take-off my clothes.

Q

And then what did you do?

A

I did not take-off my uniform then he immediately grabbed my uniform.

Q

What happened to your uniform?

A

He immediately pushed me to the floor.

Q

You said while ago that this person take-off his bonnet, could you identify the person?

x x x x

A

Yes.

Q

Will you please look around the court room and identify if you see him around to be the same person who take-off his bonnet.

Court interpreter

(Witness pointing to the accused who when asked answers the name of Lito Macapanas).

Court

Are you sure of that - that he is really the one who was wearing a bonnet, be sure because the consequence that you are charging him with a serious offense, but if it is not true, then that guy who abused you is just laughing. Be sure he is the guy.

A

Yes sir he is the one, I am sure.

Q

You said while ago that this person whom you point out and grabbed your uniform, what part of your uniform was grabbed by this person?

A

In front of my blouse.

Q

How did he grab your blouse?

Court interpreter

(Witness demonstrating by using his two (2) hands to open her blouse).

Q

And then what did he do?

Court interpreter

(Witness demonstrating by using her both hands by opening at her blouse).

Q

What else happened after he grabbed your blouse?

A

He immediately pushed me to the floor.

Q

What happened to your skirt?

A

He destroyed the buttons of my skirt.

Q

What happened after he destroyed your buttons in your skirt?

A

He removed my panty.

Q

When he grabbed your blouse, what did you do if any?

A

I was in the floor then he immediately placed himself on top of me.

Q

And what happened thereafter?

A

He made a push and pulls motion and inserted his penis.

Q

Now, was he able to insert his penis inside your vagina?

A

Yes, sir.

Q

And then what happened after that?

A

After he made a sexual intercourse with me he let me put on my dress.

Q

What happened after that?

A

And he told me not to tell anybody, if you tell somebody I will kill you?

Q

And then what happened thereafter?

A

Then he let me walked towards the waiting shed.

Q

And were you able to walk towards the waiting shed?

A

Yes.

Q

And where was he when you were walking towards that waiting shed?

A

He was following behind me.

Q

What happened then if any?

A

I immediately shouted because I saw many people at the road and he immediately stabbed me at my back.

Q

What was your purpose in shouting?

A

Because I am asking for help to that people.

Q

When you shouted you were stabbed by the accused, what happened to you when you were stabbed by the accused?

A

I fell down to the ground.

Q

What about the accused what did he do?

A

He immediately ran away.[28]

When it comes to credibility, the trial court's assessment deserves great weight, and is even conclusive and binding upon this Court, if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence. The reason is obvious. Having the full opportunity to observe directly the witnesses' deportment and manner of testifying, the trial court is in a better position than the appellate court to evaluate properly testimonial evidence.[29] In the instant case, we have no reason not to apply the rule considering the overwhelming evidence showing that appellant had carnal knowledge of AAA without her consent and against her will by means of force and intimidation.

Positive identification made with moral certainty suffices to convict the accused.[30] AAA's claim that she was raped was amply supported by the testimony and finding of Dr. Elizabeth Co-Loyola that she suffered a hymenal laceration at the five (5) o'clock position which is consistent with penile intrusion.

Appellant contends that his identification by AAA in the hospital should not have been given consideration because the identification was not made in a police line-up and that the procedure adopted constituted suggestive identification for he alone was brought in front of AAA.

Again, we find such contention untenable.

While appellant was not placed in a police line-up for identification by AAA, the absence of such police line-up does not make AAA's identification of appellant as the one (1) who raped her, unreliable. There is no law or police regulation requiring a police line-up for proper identification in every case. Even if there was no police line-up, there could still be proper and reliable identification as long as such identification was not suggested or instigated to the witness by the police.[31] What is crucial is for the witness to positively declare during trial that the person charged was the malefactor.[32]

In *People v. Teehankee, Jr.*,[33] we explained the procedure for out-of-court identification and the test to determine the admissibility of such identification. We said:

Out-of-court identification is conducted by the police in various ways. It is done thru show-ups where the suspect alone is brought face to face with the witness for identification. It is done thru mug shots where photographs are shown to the witness to identify the suspect. It is also done thru line-ups where a witness identifies the suspect from a group of persons lined up for the purpose. Since corruption of out-of-court identification contaminates the integrity of in-court identification during the trial of the case, courts have fashioned out rules to assure its fairness and its compliance with the requirements of constitutional due process. In resolving the admissibility of and relying on out-of-court identification of suspects, courts have adopted the totality of circumstances test where they consider the following factors, viz: (1) the witness' opportunity to view the criminal at the time of the crime; (2) the witness' degree of attention at that time; (3) the accuracy of any prior description given by the witness; (4) the level of certainty demonstrated by the witness at the identification; (5) the length of time between the crime and the identification; and, (6) the suggestiveness of the identification procedure.

We have applied the totality of circumstances test in the instant case and find AAA's identification of appellant via a show-up as the one (1) who raped her to be credible. Appellant's out-of-court identification is valid. AAA positively identified appellant as her abuser because the latter removed the mask he was wearing and revealed his face to her. AAA even recalled the tattoos on appellant's body and hand. The out-of-court identification made by AAA was done a few days after the incident and confirmed during the trial. There is likewise no evidence that SPO4 Bajar had supplied or even suggested to AAA the identity of appellant as her attacker. Even assuming *arguendo* that the out-of-court identification was defective, the defect was cured by the subsequent positive identification in court for the inadmissibility of a police line-up identification should not necessarily foreclose the admissibility of an independent in-court identification.[34]

Appellant attacks private complainant's credibility arguing that it would have been inconceivable for an assailant to accede to AAA's request to remove the mask and to reveal his identity when he had already conveniently clothed himself with anonymity.

However, we agree with the Court of Appeals that it is not inconceivable for appellant to have acceded to her request to reveal his identity by removing the mask that hid his face. We have ruled that it is not uncommon for criminals to be careless or to even intentionally reveal their identities to their victims. The failure by a criminal to

conceal his identity would not make the commission of the crime any less credible. Braggadocio among criminals is not unexpected. Very often too, they feel secure in the thought that they have instilled sufficient fear in their victims that the latter will not give them away to the authorities.[35] Here, unfortunately for appellant, AAA tried to seek the assistance of the people near the waiting shed at the first opportunity. After mustering enough courage, AAA also revealed her ordeal and identified appellant as the one (1) who raped her.

Appellant ascribes to the private complainant an alleged material inconsistency as to whether she had seen appellant even before the rape or saw him for the first time on December 7, 1999, which perceived inconsistency allegedly affects the veracity of her testimony. Such inconsistency, which we consider to be minor or trivial, will however not impair AAA's credibility.

Inconsistencies in the testimony of the witness with regard to minor or collateral matters do not diminish the value of the testimony in terms of truthfulness or weight. The gravamen of the felony is the carnal knowledge by the appellant of the private complainant under any of the circumstances provided in Article 335[36] of the Revised Penal Code, as amended. Where the inconsistency is not an essential element of the crime, such inconsistency is insignificant and cannot have any bearing on the essential fact testified to.[37] In fact, these inconsistencies bolster the credibility of the witness's testimony as it erases the suspicion of the witness having been coached or rehearsed.[38] It is when the testimony appears totally flawless that a court might have some misgiving as to its veracity. This is especially true in rape cases where victims are not expected to have a total recall of the incident.[39]

Appellant interposed the defenses of denial and alibi. However, mere denial, if unsubstantiated by clear and convincing evidence, has no weight in law and cannot be given greater evidentiary value than the positive testimony of a rape victim.[40] Denial is intrinsically weak, being a negative and self-serving assertion.[41]

To be believed, denial must be buttressed by strong evidence of non-culpability. Otherwise, it is purely self-serving and without merit.[42] Here, there was no strong and credible evidence adduced to overcome the testimony of private complainant pointing to appellant as the culprit. Hence, no weight can be given appellant's denial. The Court finds the testimonies of appellant's wife and sister-in-law unconvincing. The testimonies of close relatives and friends are necessarily suspect and cannot prevail over the unequivocal declaration of the complaining witness.[43]

Appellant's defense of alibi likewise fails. As against the positive identification by the private complainant, appellant's alibi is worthless.[44] Having been identified by the victim herself, appellant cannot escape liability. Moreover, for alibi to prosper, it must be proven that during the commission of the crime, the accused was in another place and that it was physically impossible for him to be at the locus criminis.[45] From the evidence on record, it was not physically impossible for appellant to be at the crime scene when the crime was committed since the crime scene was only three and a half (3-½) kilometers away from where appellant was allegedly working. Moreover, as testified to by his sister-in-law, motor vehicles regularly ply the Barangay XXX - Barangay YYY route. We have held that:

Alibi, the plea of having been elsewhere than at the scene of the crime at the time of the commission of the felony, is a plausible excuse for the accused. Let there be no mistake about it. Contrary to the common notion, alibi is in fact a good defense. But to be valid for purposes of exoneration from a criminal charge, the defense of alibi must be such that it would have been physically impossible for the person charged with the crime to be at the locus criminis at the time of its commission, the reason being that no person can be in two places at the same time. The excuse must be so airtight that it would admit of no exception. Where there is the least possibility of accused's presence at the crime scene, the alibi will not hold water.[46]

Appellant tried to discredit the prosecution by imputing ill motives, not on the victim, but on a police officer named Cabrera whom he claimed had a grudge against him. Said claim, which has not been substantiated, is an act of desperation. For one (1), said police officer is not even known to private complainant. For another, we find it highly improbable that AAA would impute to appellant a crime so serious as rape if what she claims is not true. All told, we find that the trial court did not err in convicting appellant of the crime of rape.

Articles 266-A and 266-B of the Revised Penal Code, as amended, respectively provide:

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;

x x x x

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 x

For one (1) to be convicted of qualified rape, at least one (1) of the aggravating/qualifying circumstances mentioned in Article 266-B of the Revised Penal Code, as amended, must be alleged in the Information and duly proved during the trial.[47] In the case at bar, appellant used a sharp-pointed bolo locally known as sundang in consummating the salacious act. This circumstance was alleged in the Information and duly proved during trial. Being in the nature of a qualifying circumstance, "use of a deadly weapon" increases the penalties by degrees, and cannot be treated merely as a generic aggravating circumstance which affects only the period of the penalty. This so-called qualified form of rape committed with the use of a deadly weapon carries a penalty of reclusion perpetua to death. As such, the presence of generic aggravating and mitigating circumstances will determine whether the lesser or higher penalty shall be imposed. When, as in this case, neither mitigating nor aggravating circumstance attended the commission of the crime, the minimum penalty, i.e., reclusion perpetua, should be the penalty imposable pursuant to Article 63 of the Revised Penal Code.[48] Thus, both trial and appellate courts properly imposed on appellant the penalty of reclusion perpetua.

As to the award of damages, the trial court awarded P50,000.00 as civil indemnity. The Court of Appeals, in addition thereto, awarded moral damages in the amount of P50,000.00. Under the present law, an award of P50,000.00 as civil indemnity is mandatory upon the finding of the fact of rape. This is exclusive of the award of moral damages of P50,000.00, without need of further proof. The victim's injury is now recognized as inherently concomitant with and necessarily proceeds from the appalling crime of rape which per se warrants an award of moral damages.[49]

Exemplary damages should likewise be awarded pursuant to Article 2230 of the Civil Code since the special aggravating circumstance of the use of a deadly weapon attended the commission of the rape. When a crime is committed with an aggravating circumstance, either qualifying or generic, an award of P30,000.00 as exemplary damages is justified. This kind of damages is intended to serve as deterrent to serious wrongdoings, as a vindication of undue sufferings and wanton invasion of the rights of an injured, or as punishment for those guilty of outrageous conduct.[50]

WHEREFORE, the Decision of the Court of Appeals dated November 24, 2006 finding appellant guilty beyond

reasonable doubt of the crime of rape is AFFIRMED with MODIFICATION. Appellant is further ordered to pay private complainant exemplary damages in the amount of P30,000.00.

With costs.

SO ORDERED.

Puno, (C.J., (Chairperson), Carpio Morales, Leonardo-De Castro, and Bersamin, JJ., concur.

[1] CA rollo, pp. 122-137. Penned by Associate Justice Marlene Gonzales-Sison with Associate Justices Arsenio J. Magpale and Pampio A. Abarintos concurring.

[2] Records, pp. 65-77. Penned by Presiding Judge Rolando M. Lacdo-o.

[3] Pursuant to Republic Act No. 9262, otherwise known as the "Anti-Violence Against Women and Their Children Act of 2004" and its implementing rules, the real name of the victim, together with the real names of her immediate family members, is withheld and fictitious initials instead are used to represent her, both to protect her privacy. *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419, 421-426.

[4] Records, p. 1.

[5] *Id.* at 14.

[6] TSN, February 7, 2001.

[7] TSN, March 15, 2001.

[8] TSN, August 7 and 22, 2001.

[9] Exh. "A-4," records, p. 7.

[10] Exh. "A-5," *id.* at 6.

[11] TSN, January 9, 2002.

[12] TSN, April 2, 2002.

[13] TSN, December 11, 2002; TSN, January 22, 2003.

[14] Records, p. 77.

[15] *Id.* at 75-76.

[16] *Id.* at 81-87.

[17] *Id.* at 90.

[18] CA rollo, p. 136.

[19] *Id.* at 140-143.

[20] Rollo, p. 26.

[21] CA rollo, p. 48.

[22] *People v. Binarao*, G.R. Nos. 134573-75, October 23, 2003, 414 SCRA 117, 129-130.

- [23] *People v. Salome*, G.R. No. 169077, August 31, 2006, 500 SCRA 659, 670.
- [24] 350 Phil. 129, 134 (1998).
- [25] *People v. Romero*, 435 Phil. 182, 194 (2002).
- [26] *People v. Lucas*, G.R. No. 80102, January 22, 1990, 181 SCRA 316, 325.
- [27] TSN, August 7, 2001, pp. 58 and 61.
- [28] TSN, August 7, 2001, pp. 53-59.
- [29] *People v. Escutor*, G.R. Nos. 149366-67, May 27, 2004, 429 SCRA 651, 661.
- [30] *People v. Dela Cruz*, G.R. No. 171272, June 7, 2007, 523 SCRA 433, 446-447.
- [31] *People v. Escote, Jr.*, G.R. No. 140756, April 4, 2003, 400 SCRA 603, 629.
- [32] *People v. Martin*, G.R. No. 177571, September 29, 2008, 567 SCRA 42, 49.
- [33] G.R. Nos. 111206-08, October 6, 1995, 249 SCRA 54, 95-96.
- [34] *People v. Rivera*, G.R. No. 139185, September 29, 2003, 412 SCRA 224, 239.
- [35] *People v. Lovedor*, G.R. No. 139340, January 17, 2001, 349 SCRA 402, 415; *People v. Yabut*, G.R. No. 133186, July 28, 1999, 311 SCRA 590, 598.
- [36] Article 335 has been repealed by R.A. No. 8353 (The Anti-Rape Law of 1997) effective October 22, 1997. New provisions on Rape are found in Arts. 266-A to 266-D.
- [37] *People v. Sabardan*, G.R. No. 132135, May 21, 2004, 429 SCRA 9, 19.
- [38] *People v. Murillo*, G.R. Nos. 128851-56, February 19, 2001, 352 SCRA 105, 118.
- [39] *People v. Albior*, G.R. No. 115079, February 19, 2001, 352 SCRA 35, 46.
- [40] *People v. Esperas*, G.R. No. 128109, November 19, 2003, 416 SCRA 216, 225-226.
- [41] *People v. Agsaoay, Jr.*, G.R. Nos. 132125-26, June 3, 2004, 430 SCRA 450, 466.
- [42] *Belonghilot v. Hon. Angeles*, 450 Phil. 265, 293 (2003).
- [43] *People v. Opeña*, G.R. No. 142751, September 30, 2003, 412 SCRA 343, 354.
- [44] *People v. Oco*, G.R. Nos. 137370-71, September 29, 2003, 412 SCRA 190, 215.
- [45] *People v. Alfaro*, G.R. Nos. 136742-43, September 30, 2003, 412 SCRA 293, 305.
- [46] *People v. Malones*, G.R. Nos. 124388-90, March 11, 2004, 425 SCRA 318, 339.
- [47] *People v. Caliso*, 439 Phil. 492, 507-508 (2002).
- [48] *People v. Ballester*, G.R. No. 152279, January 20, 2004, 420 SCRA 379, 387.
- [49] *People v. Suyat*, G.R. No. 173484, March 20, 2007, 518 SCRA 582, 601.
- [50] *People v. Marcos*, G.R. No. 185380, June 18, 2009, p. 15.

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