PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MICHAEL LINDO Y VERGARA, ACCUSED-APPELLANT.

G.R. No. 189818. August 09, 2010

Ponente: VELASCO JR., J.

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VELASCO JR., J.:

Before this Court on appeal is the Decision of the Court of Appeals[1] (CA) in CA-G.R. CR-H.C. No. 00283 dated April 25, 2008, which upheld the conviction of accused-appellant Michael Lindo y Vergara (Lindo) of the crime of rape, in Criminal Case No. 01-191273, decided by the Regional Trial Court (RTC), Branch 38 in Manila on June 28, 2004.

The facts of the case are as follows: AAA,[2] the private complainant, born on May 6, 1989, was 11 years old at the time, residing in San Andres Bukid, Malate, Manila, and accused-appellant Lindo was her neighbor.

On April 3, 2001, AAA attended a pabasa at a neighbor's place, during which she fell asleep under a platform that served as a stage. While AAA was sleeping, Lindo took her away to a place near a creek where clothes are placed to dry. It was there that AAA woke up, as Lindo removed her short pants and underwear, and also undressed himself. He tried inserting his penis into her vagina, whereupon his penis made contact with her sex organ but there was no complete penetration. Not achieving full penile penetration, he then made her bend over, and inserted his penis into her anus, causing her to cry out in pain. Lindo then sensed the arrival of a friend of AAA, so he discontinued his act, and told AAA to put on her clothes and go home. These AAA did, and related the incident to her parents, who reported it to the barangay authorities. Lindo was arrested the same day.

AAA was examined by Dr. Evelyn B. Ignacio, National Bureau of Investigation (NBI) Medico-Legal Officer, on the same day, and was found to have extragenital physical injuries as well as abrasions on her anal orifice. Dr. Ignacio theorized that the anal injuries could have been caused by the insertion of a blunt object, such as a penis, finger or pencil.

Lindo raised the defenses of denial and alibi, claiming that as a painter working in Ayala, Makati, his usual work schedule was from 8:00 a.m. to 6:00 p.m. He claimed that on April 3, 2001, he reported for work at 8:00 p.m. until 5:00 a.m., and that when he came home from work at 6:00 a.m., he was arrested by a barangay official and was brought to the police precinct, where he was investigated for rape.

Lindo was charged in an Information dated April 6, 2001, which reads as follows:

> That on or about April 3, 2001, in the City of Manila, Philippines, the said accused, did then and there wilfully, unlawfully and feloniously, with lewd designs and by means of force and intimidation commit sexual abuse to wit: by then and there carrying said [AAA], a minor, 11 years old, and bringing her to a vacant lot, trying to insert his penis into her vagina but said accused was not able to do so, thereafter inserting his penis into her anus, thereby endangering her normal growth and development.
>
> CONTRARY TO LAW.[3]

The RTC found the testimony of AAA to be more credible, and rendered its decision, the dispositive portion of which reads as follows:

> WHEREFORE, judgment is hereby rendered finding the accused GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF Statutory Rape under Art. 335 of the Revised Penal Code in relation to Republic Act No. 7610 and he is hereby sentenced to suffer reclusion perpetua with all the necessary penalties provided by law and to pay the victim the amount of P50,000.00 as and by way of moral damages.
>
> No pronouncement as to costs.
>
> SO ORDERED.[4]

Lindo appealed to the CA, assailing the credibility of AAA.

Lindo failed to persuade the CA, which affirmed his conviction, but modified the award of damages to AAA. The CA found the award of civil indemnity proper, in line with prevailing jurisprudence. Exemplary damages were also found to be proper, for the purpose of being a deterrent to crime. The dispositive portion of the CA decision reads as follows:

> WHEREFORE, premises considered, the Decision appealed from, being in accordance with law and the evidence, is hereby AFFIRMED with the MODIFICATION that accused-appellant MICHAEL LINDO y VERGARA is further ORDERED to pay private complainant indemnity in the amount of P50,000.00 and exemplary damages in the amount of P25,000.00.
>
> SO ORDERED.[5]

Now before this Court, accused-appellant Lindo reiterates his defense presented before the RTC and the CA, questioning the weight given to AAA's testimony and its credibility.

The Court's Ruling

The conviction of accused-appellant Lindo must be affirmed.

At the outset, it must be noted that the RTC and the CA made reference to Article 335 of the Revised Penal Code. The RTC cited Art. 335 in the dispositive portion of its decision, while the CA referred to Art. 335, paragraph 3, as amended. Both courts were in error to do so. The crime of rape is no longer to be found under Title Eleven of the Revised Penal Code, or crimes against chastity. As per Republic Act No. 8353, or the Anti-Rape Law of 1997, the crime of rape has been reclassified as a crime against persons. As of October 22, 1997, the date of effectivity of the Anti-Rape Law, the crime of rape is now defined under Art. 266-A of the Revised Penal Code, with the penalties for rape laid out in Art. 266-B. As the incident happened on April 3, 2001, it is no longer covered by Art. 335 of the Revised Penal Code, but Art. 266-A.

That matter aside, the defense raised by accused-appellant is a reiteration of his questioning of AAA's credibility. He claims that her testimony is unworthy of belief as it runs counter to the course of human experience. Specifically, he argues that no rape could have taken place as the area was in public view. He also argues that the testimony of AAA, that she was lifted while asleep, is incredible as his alleged lifting of her failed to wake her up.

The arguments raised by accused-appellant fail to discredit the victim and cast doubt upon her testimony.

That the act was carried out in a public place does not make it unbelievable. The evil in man has no conscience--the beast in him bears no respect for time and place, driving him to commit rape anywhere, even in places where people congregate such as in parks, along the roadside, within school premises, and inside a house where there are other occupants.[6] There is no rule that rape can only be committed in seclusion.[7] The

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commission of rape is not hindered by time or place as in fact it can be committed even in the most public of places.[8] Clearly, the argument of accused-appellant that there could be no rape as the place was in full view of the public does not have a legal leg to stand on. The fact that the area was in the public eye would not prevent a potential rapist from carrying out his criminal intent.

The RTC found the witness to be credible, and it had the best opportunity to observe her testimony. She testified in a straightforward and clear manner, detailing how accused-appellant had carnal knowledge of her.[9] The RTC, as affirmed by the CA, categorically found thus:

> In the case at bar, the story of the complaining witness even finds support in the medical findings of Dr. Ignacio who examined her immediately after the incident. The physician saw multiple abrasions on the victim's neck supporting the latter's testimony that she was strangled by the accused. Additionally, [wreckage] was seen in her anal area which could have been caused by insertion of a blunt object like a male penis buttressing the victim's claim that accused inserted his private organ into her anus.
>
> While the victim testified that the accused did not succeed in inserting his penis into her vagina, time and again [the Supreme Court] held that the slight penetration of the labia by the male organ still constitutes rape (People vs. Borja, 267 SCRA 370). The lack of lacerated wound does not negate sexual intercourse (People vs. San Juan, 270 SCRA 693). x x x
>
> x x x x
>
> It is clear from the complainant's narration that the accused did not only penetrate her anus but also her vagina only that in the latter case, the accused was not able to insert his penis into the cervical area or the vaginal opening.[10] x x x (Emphasis supplied.)

Accused-appellant failed to show any inconsistencies or discrepancies in AAA's testimony, and failed to put the lie to her words. We have held, time and again, that testimonies of rape victims who are young and immature, as in this case, deserve full credence, considering that no young woman, especially one of tender age, would concoct a story of defloration, allow an examination of her private parts, and thereafter testify about her ordeal in a public trial, if she had not been motivated by a desire to obtain justice for the wrong committed against her.[11]

Against AAA's straightforward testimony, accused-appellant raises the defense of alibi, stating that he was at work from 8:00 p.m. to 5:00 a.m. To successfully invoke alibi, however, an accused must establish with clear and convincing evidence not only that he was somewhere else when the crime was committed, but also that it was physically impossible for him to have been at the scene of the crime at the time of its commission.[12] Accused-appellant offers nothing but his bare word that he was elsewhere, and his word must fail against AAA's testimony and positive identification of him as the perpetrator. He could not present any corroborating witness or evidence to prove his presence elsewhere than at the scene of the crime. It is well-settled that positive identification, where categorical, consistent, and not attended by any showing of ill motive on the part of the eyewitness testifying on the matter, prevails over alibi and denial, which, if not substantiated by clear and convincing evidence, are negative and self-serving evidence undeserving weight in law.[13]

Notable as well, as the trial and appellate courts aptly pointed out, is the presentation of Dr. Ignacio, the NBI Medico-Legal Officer, and the fact that she made a physical examination of AAA, which supports AAA's testimony. AAA testified that accused-appellant tried to insert his penis into her vagina, and inserted it as well in her anus. This jibes with the findings of Dr. Ignacio from her physical examination of AAA. When a rape victim's account is straightforward and candid, and is corroborated by the medical findings of the examining physician, it is sufficient to support a conviction for rape.[14]

It has been proved beyond reasonable doubt that accused-appellant Lindo had carnal knowledge of AAA. The

insertion of his penis into the vagina of AAA, though incomplete, was sufficient. As held in People v. Tablang,[15] the mere introduction of the male organ in the labia majora of the victim's genitalia consummates the crime; the mere touching of the labia by the penis was held to be sufficient. The elements of the crime of rape under Art. 266-A of the Revised Penal Code are present. Under the said article, it provides that rape is committed by a man who shall have carnal knowledge of a woman when the offended party is under twelve years of age. AAA was 11 years old at the time accused-appellant had carnal knowledge of her. As such, that constitutes statutory rape. The two elements of the crime are: (1) that the accused had carnal knowledge of a woman; and (2) that the woman was below 12 years of age.[16] Thus, the CA correctly upheld the conviction of accused-appellant by the RTC.

Both the RTC and the CA, however, erred in finding only one count of rape in the present case. It is settled that in a criminal case, an appeal throws the whole case open for review, and it becomes the duty of the appellate court to correct such errors as may be found in the judgment appealed from, whether they are made the subject of the assignment of errors or not.[17] From the information filed, it is clear that accused-appellant was charged with two offenses, rape under Art. 266-A, par. 1 (d) of the Revised Penal Code, and rape as an act of sexual assault under Art. 266-A, par. 2. Accused-appellant was charged with having carnal knowledge of AAA, who was under twelve years of age at the time, under par. 1(d) of Art. 266-A, and he was also charged with committing "an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person" under the second paragraph of Art. 266-A. Two instances of rape were indeed proved at the trial, as it was established that there was contact between accused-appellant's penis and AAA's labia; then AAA's testimony established that accused-appellant was able to partially insert his penis into her anal orifice. The medical examination also supports the finding of rape under Art. 266-A par. 1(d) and Art. 266-A par. 2, considering the extragenital injuries and abrasions in the anal region reported.

The information, read as a whole, has sufficiently informed accused-appellant that he is being charged with two counts of rape, as it relates his act of inserting his penis into AAA's anal orifice, as well as his trying to insert his penis into her vagina. We held in People v. Dimaano:

> For complaint or information to be sufficient, it must state the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate time of the commission of the offense, and the place wherein the offense was committed. What is controlling is not the title of the complaint, nor the designation of the offense charged or the particular law or part thereof allegedly violated, these being mere conclusions of law made by the prosecutor, but the description of the crime charged and the particular facts therein recited. The acts or omissions complained of must be alleged in such form as is sufficient to enable a person of common understanding to know what offense is intended to be charged, and enable the court to pronounce proper judgment. No information for a crime will be sufficient if it does not accurately and clearly allege the elements of the crime charged. Every element of the offense must be stated in the information. What facts and circumstances are necessary to be included therein must be determined by reference to the definitions and essentials of the specified crimes. The requirement of alleging the elements of a crime in the information is to inform the accused of the nature of the accusation against him so as to enable him to suitably prepare his defense. The presumption is that the accused has no independent knowledge of the facts that constitute the offense.[18]

Two offenses were charged, a violation of Section 13, Rule 110 of the Revised Rules of Criminal Procedure, which states, "A complaint or information must charge only one offense, except when the law prescribes a single punishment for various offenses." Section 3, Rule 120 of the Revised Rules of Criminal Procedure states, "When two or more offenses are charged in a single complaint or information but the accused fails to object to it before trial, the court may convict the appellant of as many as are charged and proved, and impose on him the penalty for

each offense, setting out separately the findings of fact and law in each offense." As accused-appellant failed to file a motion to quash the Information he can be convicted of two counts of rape.

The CA modified the award of damages by the RTC, adding civil indemnity and exemplary damages. This is but proper, considering that was done to conform to prevailing jurisprudence. The award of civil indemnity to the rape victim is mandatory upon finding that rape took place.[19] As to the award of exemplary damages, it finds support in People v. Dalisay.[20] Art. 2229 of the Civil Code serves as the basis for the award of exemplary damages as it pertinently provides, "Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages." Being corrective in nature, exemplary damages, therefore, can be awarded, not only in the presence of an aggravating circumstance, but also where the circumstances of the case show the highly reprehensible or outrageous conduct of the offender.[21] By subjecting a child to his sexual depredations, accused-appellant has displayed behavior that society has an interest in curbing. Thus, the purpose of exemplary damages to serve as a deterrent finds application to the present case, to protect the youth from sexual abuse.

Accused-appellant was found guilty of two counts of rape, rape under Art. 266-A, par. 1(d) and rape through sexual assault, under Art. 266-A, par. 2. The decision of the CA must therefore be modified. Accused-appellant would then be sentenced for one count of rape and another count for rape through sexual assault. For rape under Art. 266-A, par. 1(d), the imposable penalty is reclusion perpetua. For rape through sexual assault under Art. 266-A, par. 2, the imposable penalty is prision mayor; and applying the Indeterminate Sentence Law, accused-appellant would be sentenced to an indeterminate penalty of two years, four months and one day of prision correccional as minimum, to eight years and one day of prision mayor as maximum.

As to the damages awarded, considering that accused-appellant is guilty of committing rape under Art. 266-A, par. 1(d) and rape through sexual assault under Art. 266-A, par. 2 of the Revised Penal Code, the award should reflect that: for rape under Art. 266-A, par. 1(d), civil indemnity is pegged at PhP 50,000, moral damages at PhP 50,000, and exemplary damages increased to PhP 30,000, as per prevailing jurisprudence;[22] and for rape through sexual assault under Art. 266-A, par. 2 of the Revised Penal Code, the award of damages will be PhP 30,000 as civil indemnity, PhP 30,000 as moral damages, and PhP 30,000 as exemplary damages, in line with prevailing jurisprudence.[23]

Children should be protected from sexual predators, and the conviction of accused-appellant, with the award of damages as well to the victim, serves this purpose.

WHEREFORE, the Court AFFIRMS with MODIFICATION the Decision of the CA in CA-G.R. CR-H.C. No. 00283. Accused-appellant Lindo is found guilty of one count of rape under Art. 266-A par. 1(d), Revised Penal Code, and is sentenced to suffer the penalty of reclusion perpetua, and to pay the victim, AAA, PhP 50,000 as civil indemnity, PhP 50,000 as moral damages, and PhP 30,000 as exemplary damages. Accused-appellant is likewise found guilty of one count of rape through sexual assault under Art. 266-A, par. 2 of the Code, and is 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, and to pay the victim, AAA, PhP 30,000 as civil indemnity, PhP 30,000 as moral damages, and PhP 30,000.00 as exemplary damages.

SO ORDERED.

Corona, C.J., (Chairperson), Leonardo-De Castro, Del Castillo, and Perez, JJ., concur.

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[1] Penned by Associate Justice Edgardo F. Sundiam and concurred in by Associate Justices Monina

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[2] The identity of the victim or any information to establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. 7610, "An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes"; Republic Act No. 9262, "An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes"; Section 40 of A.M. No. 04-10-11-SC, known as the "Rule on Violence Against Women and Their Children," effective November 5, 2004; and People v. Cabalquinto, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[3] Rollo, p. 3.

[4] Id.

[5] Id. at 13.

[6] People v. Alipio, G.R. No. 185285, October 5, 2009, 603 SCRA 40, 49.

[7] People v. Montinola, G.R. No. 178061, January 31, 2008, 543 SCRA 412, 425.

[8] People v. Domingo, G.R. No. 177136, June 30, 2008, 556 SCRA 788, 804.

[9] Rollo, p. 9. AAA testified on April 19, 2004, thus:

> Q.
>
> And then when the accused undressed himself, what happened after?
>
> A.
>
> That was when he raped me, sir.
>
> Q.
>
> When you say he raped you, what did you do?
>
> A.
>
> He inserted his penis into my vagina, sir.
>
> Q.
>
> Did he succeed in inserting his penis into your vagina?
>
> A.
>
> No, sir.
>
> Q.
>
> Why?
>
> A.
>
> Because it does not fit, sir.
>
> x x x x
>
> Q.

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And when he was unable to insert his penis, what did he do if any?

A.

Pinatuwad niya po ako.

Q.

And after he made you [bend over], what did he do?

A.

He inserted his penis into my anus (puwit), sir.

Q.

Did he succeed in inserting his penis into your anus?

A.

A little, sir.

[10] CA rollo, pp. 82-83; citing the RTC Decision.

[11] People v. Cañada, G.R. No.175317, October 2, 2009, 602 SCRA 378, 391.

[12] People v. Agustin, G.R. No. 175325, February 27, 2008, 547 SCRA 136, 144.

[13] People v. Ranin, Jr., G.R. No. 173023, June 25, 2008, 555 SCRA 297, 309.

[14] People v. Sumingwa, G.R. No. 183619, October 13, 2009, 603 SCRA 638, 652.

[15] G.R. No. 174859, October 30, 2009, 604 SCRA 757.

[16] People v. Peralta, G.R. No. 187531, October 16, 2009, 604 SCRA 285, 290.

[17] People v. Jabiniao, G.R. No. 179499, April 30, 2008, 553 SCRA 769, 784.

[18] G.R. No. 168168, September 14, 2005, 469 SCRA 647, 666-667.

[19] People v. Tablang, supra note 15, at 774.

[20] G.R. No. 188106, November 25, 2009, 605 SCRA 807.

[21] Id. at 820.

[22] People v. Ofemiano, G.R. No. 187155, February 1, 2010; citing People v. Pabol, G.R. No. 187084, October 12, 2009, 603 SCRA 522, 532-533.

[23] Flordeliz v. People, G.R. No. 186441, March 1, 2010.

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