

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ERNESTO MERCADO, APPELLANT.

G.R. No. 189847. May 30, 2011

Ponente: BRION, J.

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BRION, J.:

We resolve in this Resolution the appeal from the July 14, 2009 decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 03120. The CA affirmed with modification the decision[2] of the Regional Trial Court (RTC), Branch 32, Agoo, La Union, finding Ernesto Mercado (appellant) guilty beyond reasonable doubt of two (2) counts of rape, and sentencing him to suffer the penalty of reclusion perpetua for each count.

AAA[3] is the fifth child of the appellant and BBB. Sometime in 2000, BBB (AAA's mother) and CCC (AAA's sister), went to Ambalite, Pugo, La Union. AAA, her two other siblings, and the appellant, were left in their house at Rosario, La Union. At around 8:00 a.m., and while AAA was doing her school assignment, the appellant entered her room and sat in a corner. Afterwards, the appellant sat beside AAA, kissed her on the right cheek, and removed her shorts and panty. The appellant threatened to kill AAA if she shouted. The appellant then removed his shorts and briefs, went on top of AAA, and inserted his penis into her vagina.[4]

AAA also recalled that at around 2:00 p.m. of July 26, 2000, while BBB was at the market and AAA's siblings were at their aunt's house, the appellant again sexually abused her.[5]

Sometime in 2003, AAA and the appellant were cleaning a banana grove when the latter told her to take a rest. AAA did as instructed, and while she was resting, the appellant embraced her and kissed her on the cheek and lips. The appellant removed AAA's clothes and panty, and laid her on the grass. The appellant took off his own shorts and briefs, went on top of AAA, and inserted his penis into her vagina.[6]

According to AAA, the appellant sexually abused her five (5) times from 2000 to 2003.[7]

Dr. Sheila Fe (Dr. Fe), a physician at the Rosario District Hospital, conducted a medical examination of AAA on August 3, 2003, and found healed lacerations at 3 and 9 o'clock positions in her private part.[8]

The prosecution charged the appellant with three (3) counts of rape before the RTC.[9] The appellant denied the charges against him, and claimed that his brother was the one who raped AAA.[10]

The RTC found the appellant guilty beyond reasonable doubt of two (2) counts of rape, and sentenced him to suffer the penalty of reclusion perpetua for each count. It also ordered him to pay AAA P75,000.00 and P50,000.00 as moral damages and civil indemnity, respectively, for each count.[11]

The CA, in its decision of July 14, 2009, affirmed the RTC decision with the following modifications: (1) the civil indemnity was increased to P75,000.00; and (2) the appellant was further ordered to pay the victim P25,000.00 as exemplary damages.[12]

The CA held that AAA positively identified the appellant as the person who had sexually abused her on different

occasions. AAA was firm in her narration, and did not waver despite the rigid cross examination by the defense. In addition, the defense failed to impute any ill motive on her part to falsely testify against her father.

The CA also held that AAA's failure to specify the exact dates of the rapes do not detract from her credibility. The CA explained that it is too much to require from a young girl, who had been raped several times, to mechanically recall the exact dates of each rape.[13]

The CA further added that AAA's delay in reporting the rape was due to the appellant's threats on her life.

We resolve to deny the appeal for lack of merit, but we modify the amount of the awarded indemnities.

AAA positively identified the appellant as the person who had raped her on two occasions in 2000 and 2003, respectively. Her testimonies were clear and straightforward; she was consistent in her recollection of the details of her defloration. If the sexual abuses did not happen, we see no plausible reason showing why AAA should testify against her own father, imputing on him the grave crime of rape.

AAA's testimony was also corroborated by Dr. Fe, who found hymenal lacerations on AAA's private part. We have held that when the testimony of a rape victim is consistent with the medical findings, there is sufficient basis to conclude that there has been carnal knowledge.[14]

We find AAA's testimony regarding the rape that happened on July 26, 2000, to be deficient; it lacked specific details on how the rape was committed. AAA's statement that she had been "fucked" [sic] for the second time by the appellant "in the same house," without nothing more, is insufficient to establish carnal knowledge with moral certainty. Every charge of rape is a separate and distinct crime and each must be proved beyond reasonable doubt.[15] The lower courts were thus correct in convicting the appellant of only two (2) counts of rape.

We find unmeritorious the appellant's argument that AAA's testimony is unreliable due to the inconsistencies in the dates when the rapes were committed.

It is settled that the findings of facts and assessment of credibility of witnesses are matters best left to the trial court which had the unique opportunity to observe the demeanor of the witnesses and was in the best position to discern whether they were telling the truth. At any rate, the date of the commission of the rape is not an essential element of the crime of rape, for the gravamen of the offense is carnal knowledge of a woman. The discrepancies in the actual dates the rapes took place are not serious errors warranting a reversal of the appellant's conviction.[16] What is decisive in a rape charge is the victim's positive identification of the accused as the malefactor.[17]

The appellant's denial must also crumble in light of AAA's positive testimony. We have consistently held that positive identification of the accused, when categorical and consistent and without any showing of ill motive of the part of the eyewitness testifying, should prevail over the mere denial of the appellant whose testimony is not substantiated by clear and convincing evidence.[18]

We also do not find merit in the appellant's contention that his brother (now deceased) was the one who had raped AAA. The appellant did not present any evidence to substantiate this claim.

The Proper Indemnities

The award of civil indemnity to the rape victim is mandatory upon a finding that rape took place. Moral damages, on the other hand, are awarded to rape victims without need of proof other than the fact of rape under the assumption that the victim suffered moral injuries from the experience she underwent.[19]

Considering that the death penalty was not imposed due to the prosecution's failure to prove the minority of the

victim, we reduce the amounts of civil indemnity and moral damages from P75,000.00 to P50,000.00, respectively, for each count.[20]

We also increase the amount of exemplary damages from P25,000.00 to P30,000.00 in accordance with current jurisprudence.[21]

WHEREFORE, premises considered, we hereby AFFIRM the July 14, 2009 decision of the Court of Appeals in CA-G.R. CR-HC No. 03120 with the following MODIFICATIONS:

(a) the awards of civil indemnity and moral damages is REDUCED from P75,000.00 to P50,000.00, respectively, for each count; and

(b) exemplary damages is INCREASED from P25,000.00 to P30,000.00 for each count.

Costs against appellant Ernesto Mercado.

SO ORDERED.

Carpio Morales, (Chairperson), Bersamin, Villarama, Jr., and Sereno, JJ., concur.

[1] Penned by Associate Justice Rosmari D. Carandang, and concurred in by Associate Justice Mariflor P. Punzalan Castillo and Associate Justice Ramon M. Bato, Jr.; rollo, pp. 2-16. The dispositive portion reads:

WHEREFORE, premises considered, the instant appeal is DENIED, and accordingly, the assailed November 6, 2007 Joint Decision of the trial court convicting appellant Ernesto Dela Paz Mercado of Rape is affirmed. The Joint Decision is hereby modified by increasing the award of indemnity for each conviction of Rape to Php75,000.00, and by ordering Ernesto to pay the sum of Php25,000.00 for each of his convictions by way of exemplary damages.

[2] Penned by Judge Jennifer A. Pilar; CA rollo, pp. 17-27.

[3] See *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[4] TSN, August 31, 2004, pp. 3-13.

[5] *Id.* at 15-16.

[6] *Id.* at 17-20; See also TSN, September 27, 2004, p. 2.

[7] TSN, August 31, 2004, pp. 15-16.

[8] TSN, January 26, 2005, pp. 2-4.

[9] FC Case Nos. A-324-326.

[10] TSN, September 5, 2007, pp. 7-9.

[11] CA rollo, pp. 17-27.

[12] *Supra* note 1.

[13] Rollo, pp. 2-16.

[14] See *People v. Buban*, G.R. No. 166895, January 24, 2007, 512 SCRA 500, 522.

[15] See *People v. Marahay*, G.R. Nos. 120625-29, January 28, 2003, 396 SCRA 129, 143.

[16] See *People v. Aure*, G.R. No. 180451, October 17, 2008, 569 SCRA 836, 863.

[17] *People v. Orilla*, G.R. Nos. 148939-40, February 13, 2004, 422 SCRA 620, 631.

[18] See *People v. Caraang*, G.R. Nos. 148424-27, December 11, 2003, 418 SCRA 321, 349.

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

[20] See *People v. Flores*, G.R. No. 188315, August 25, 2010; *People v. Lindo*, G.R. No. 189818, August 9, 2010; *People v. Ogan*, G.R. No. 186461, July 5, 2010; and *People v. Cadap*, G.R. No. 190633, July 5, 2010.

[21] See *People v. Malana*, G.R. No. 185716, September 29, 2010.

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