

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ALIAS KINO LASCANO (AT LARGE) AND ALFREDO DELABAJAN ALIAS TABOYBOY, ACCUSED.

G.R. No. 192180. March 21, 2012

Ponente: BRION, J.

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BRION, J.:

We decide the appeal, filed by Alfredo Delabajan (appellant), from the decision[1] of the Court of Appeals (CA) dated May 25, 2006 in CA-G.R. CEB-CR-H.C. No. 00228. The CA decision affirmed with modification the November 26, 2001 decision[2] of the Regional Trial Court (RTC), Branch 23, Allen, Northern Samar, and found the appellant guilty beyond reasonable doubt of three (3) counts of rape, sentencing him to suffer the penalty of reclusion perpetua for each count.

The RTC Decision

In its November 26, 2001 decision, the RTC found the appellant guilty beyond reasonable doubt of three (3) counts of rape. It gave credence to the testimony of AAA[3] that alias Kino Lascano and the appellant took turns in raping her. According to the trial court, the victim recognized her assailants through their respective voices. The trial court held that a public accusation by a blind Filipina whose virtue has been unblemished is worthy of belief. It also disregarded the appellant's alibi, as he failed to show that it was physically impossible for him to be at the scene of the crime. The RTC sentenced the appellant to suffer the penalty of reclusion perpetua for each count, and to pay the victim the amounts of P50,000.00 as civil indemnity and P50,000.00 as moral damages, also for each count.[4]

The CA Decision

On intermediate appellate review, the CA affirmed the RTC decision with the modification that the appellant is guilty beyond reasonable doubt of six (6) counts of qualified rape. It held that the appellant actively participated with Kino in raping AAA; he tied the victim's hands, and then held her feet when Kino was raping her. In addition, AAA's testimony was corroborated by the medical findings of Dr. Ethel Simeon. The appellate court also rejected the appellant's alibi in light of the victim's positive declaration, and for the appellant's failure to show that it was physically impossible for him to be at the locus criminis.[5]

Our Ruling

We dismiss the appeal, but modify the counts of rape committed and the awarded indemnities.

Sufficiency of Prosecution Evidence

For a charge of rape to prosper under Article 266-A of the Revised Penal Code, as amended, the prosecution must prove that (1) the offender had carnal knowledge of a woman; and (2) he accompanied such act through force, threat, or intimidation, or when she was deprived of reason or otherwise unconscious, or when she was under twelve years of age or was demented.[6]

In her September 20, 2000 testimony, AAA narrated in detail how the appellant and Kino threatened to kill her, and then took turns in raping her. AAA explained that she recognized her assailants through their respective voices. We emphasize that the victim, although blind, knew the identities of her two assailants because they were her neighbors. AAA explained that Kino and the appellant often went to her residence in Sitio Maraga-as because they were the friends of her brother. Notably, the appellant admitted that he talked to AAA on many occasions.

We view AAA's testimony to be clear, convincing and credible considering especially the corroboration it received from the medical certificate and testimony of Dr. Simeon. Our examination of the records shows no indication that we should view the victim's testimony in a suspicious light. It bears stressing that identification of an accused by his voice has been accepted, particularly in cases where, as in this case, the victim has known the perpetrator for a long time;^[7] for the blind voice recognition must be a special sense that has been developed to a very high degree. Besides, it is inconceivable that a blind woman would concoct a story of defloration, allow an examination of her private parts and subject herself to public trial or ridicule if she has not, in truth, been a victim of rape and impelled to seek justice for the wrong done to her. Thus, to us, the prosecution positively established the elements of rape required under Article 266-A of the Revised Penal Code. First, the appellant and Kino succeeded in having carnal knowledge with the victim. AAA was steadfast in her assertion that both the appellant and Kino had raped her, as a result of which, she felt pain. She also felt that something "sticky" came out of the appellant's and Kino's private parts. Second, the assailants employed force, threat and intimidation in satisfying their bestial desires. According to AAA, the appellant and Kino threatened to kill her if she refused to obey them.

The Presence of Conspiracy

We agree with the CA that the appellant and Kino conspired in sexually assaulting AAA. "Conspiracy exists when the acts of the accused demonstrate a common design towards the accomplishment of the same unlawful purpose."^[8] In the present case, the acts of Kino and of the appellant clearly indicate a unity of action: (1) Kino and the appellant entered the victim's house at around 9:00 p.m.; (2) Kino and the appellant ordered the victim to lie down, and threatened to kill her if she refused to do so; (3) Kino undressed AAA, while the appellant tied her hands; (4) the appellant held AAA's feet, while Kino inserted his penis into the victim's private parts; and (5) the appellant raped AAA afterwards.

Clearly, the appellant and Kino performed specific acts with such closeness and coordination as to indicate an unmistakably common purpose or design to commit the felony. Thus, they are liable for two (2) counts of rape on account of a clear conspiracy between them, shown by their obvious concerted efforts to perpetrate, one after the other, the rapes. Each of them is responsible not only for the rape committed personally by him but also for the rape committed by the other as well.

The Appellant's Defenses

We reject the appellant's claim that he was gathering coconuts in Sitio Pasakayon on the date and time of the rapes. It is settled that the defense of alibi is inherently weak and easily fabricated, particularly when it is corroborated only by the wife of the appellant, as in this case. In order for the defense of alibi to prosper, it is not enough to prove that the appellant was somewhere else when the offense was committed, but it must likewise be demonstrated that he was so far away that it was not possible for him to have been physically present at the place of the crime or its immediate vicinity at the time of its commission.^[9]

In the present case, the appellant admitted that Sitio Pasakayon is just a 30-minute walk from Sitio Maraga-as. Considering how near he was to the place where the crime was committed, the appellant's alibi cannot be given any value. Clearly, the defense failed to prove that it was physically impossible for the appellant to have been at the locus criminis at the time of the commission of the rapes.

The Court also finds unmeritorious the appellant's contention that AAA had been instigated by Wawing Lascano to falsely testify against him. The appellant alleged that Wawing was mad at him because he struck the latter's pigs. Aside from being uncorroborated, we find this claim implausible as the victim has no relation at all to Wawing. It is inconceivable that a young girl would be willing to drag her honor to a merciless public scrutiny, and expose herself and her family to scandal upon the mere command and instigation of a complete stranger.

The Other Rapes Not Proven With Moral Certainty

As earlier stated, the CA convicted the appellant of six (6) counts of qualified rape. After a meticulous reading of the records, we sustain the appellant's conviction for only two (2) counts of rape. It is settled that each and every charge of rape is a separate and distinct crime that the law requires to be proven beyond reasonable doubt.[10] The prosecution's evidence must pass the exacting test of moral certainty that the law demands to satisfy the burden of overcoming the appellant's presumption of innocence.[11]

AAA's testimonies on two of the sexual abuses were explicit, detailing the participations of the appellant and Kino, and clearly illustrating all the elements of the crime. However, AAA's statements that the appellant and Kino each raped her three times were too general and clearly inadequate to establish beyond reasonable doubt that each accused committed two other succeeding rapes. Her testimonies were overly generalized and lacked specific details on how the other rapes were committed. We stress that a witness is not permitted to make her own conclusion of law; whether the victim had been raped is a conclusion for this Court to make based on the evidence presented.[12]

The Proper Penalty

Under Article 266-B of the Revised Penal Code, the penalty of reclusion perpetua to death shall be imposed whenever the rape is committed by two or more persons. Since reclusion perpetua and death are two indivisible penalties, Article 63[13] of the Revised Penal Code applies; when there are neither mitigating nor aggravating circumstances in the commission of the deed, as in this case, the lesser penalty shall be applied. The lower courts were, therefore, correct in imposing the penalty of reclusion perpetua on the appellant.

It bears noting that under Article 266-B, paragraph 10 of the Revised Penal Code, the death penalty shall be imposed when the offender knew of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime. However, the information in the present case merely stated that the victim was blind; it did not specifically allege that the appellant knew of her blindness at the time of the commission of the rape. Hence, we cannot impose the death penalty on the appellant.

The Civil Indemnities

The award of civil indemnity to the rape victim is mandatory upon the 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. Therefore, this Court affirms the award of P50,000.00 as civil indemnity and P50,000.00 as moral damages, based on prevailing jurisprudence.[14]

In addition, we likewise award exemplary damages in the amount of P30,000.00 for each count of rape.[15] The award of exemplary damages is justified under Article 2229 of the Civil Code to set a public example or correction for the public good.

WHEREFORE, the decision of the Court of Appeals dated May 25, 2006 in CA-G.R. CEB-CR-H.C. No. 00228 is **AFFIRMED** with the following **MODIFICATIONS**: (a) Alfredo Delabajan is found guilty beyond reasonable

doubt of two (2) counts of rape; and (b) he is further ordered to pay the victim the amount of P30,000.00 as exemplary damages for each count of rape.

SO ORDERED.

Carpio, (Chairperson), Perez, Sereno, and Reyes, JJ., concur.

[1] Penned by Associate Justice Isaias P. Dicdican, and concurred in by Associate Justices Ramon M. Bato, Jr. and Apolinario D. Bruselas, Jr.; rollo, pp. 4-12.

[2] CA rollo, pp. 23-32.

[3] Pursuant to our ruling in *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[4] CA rollo, p. 32.

[5] *Supra* note 1.

[6] *People v. Cañada*, G.R. No. 175317, October 2, 2009, 602 SCRA 378, 388.

[7] See *People v. Bandin*, G.R. No. 176531, April 24, 2009, 586 SCRA 633, 639; *People v. Reynaldo*, 353 Phil. 883, 893 (1998); and *People v. Calixtro*, 271 Phil. 317, 328 (1991).

[8] *People v. Dela Torre*, G.R. No. 176637, October 6, 2008, 567 SCRA 651, 657.

[9] *People v. Malones*, 469 Phil. 301, 329 (2004).

[10] See *People of the Philippines v. Ernesto Mercado*, G.R. No. 189847, May 30, 2011.

[11] See *People of the Philippines v. Henry Arpon y Juntilla*, G.R. No. 183563, December 14, 2011.

[12] *People v. Matunhay*, G.R. No. 178274, March 5, 2010, 614 SCRA 307, 319.

[13] Rules for the application of indivisible penalties.

[14] See *People of the Philippines v. Bernabe Pangilinan y Crisostomo*, G.R. No. 183090, November 14, 2011; *People of the Philippines v. Marcelo Perez*, G.R. No. 191265, September 14, 2011; and *People of the Philippines v. Alex Condes y Guanzon*, G.R. No. 187077, February 23, 2011.

[15] See *People of the Philippines v. Vicente Publico y Amodia*, G.R. No. 183569, April 13, 2011.

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