

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ALSHER BERMEJO LUMPAYAO, APPELLANT.

G.R. No. 195307. August 06, 2012

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

This is to resolve an appeal from the Decision[1] dated May 12, 2010 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 03494, affirming the Decision[2] dated April 15, 2008 of the Regional Trial Court (RTC) of Makati City, Branch 148, in Criminal Case No. 07-3124, finding appellant Alsher Bermejo y Lumpayao, guilty beyond reasonable doubt of the crime of Rape.

The antecedent facts are:

Private complainant, AAA,[3] a twenty (20) year-old, single and unemployed woman, knew appellant as her neighbor in Misamis Occidental. They later lived in a house, which is actually a room around 12 square meters in size, in Makati City with AAA's brothers BBB and CCC, and her cousin DDD. AAA resided temporarily in the said house while looking for work. Appellant, on the other hand, a construction worker, was allowed by AAA's brothers to live in the house. She had been staying in the room for four (4) months while appellant had been living there for two (2) months on November 4, 2007.

Around 9:00 p.m. of November 3, 2007, the appellant, CCC and DDD had a drinking spree just outside their house. AAA stayed inside the house while the group drank, and around 1:00 a.m. of November 4, 2007, she went to her bed to sleep. Thereafter, the group finished their drinking session and went inside the house. DDD and appellant watched a pornographic movie which awakened AAA, but the latter tried to go back to sleep.

While AAA was lying asleep on the wooden bed and CCC and the appellant were asleep on the floor, around 3:00 a.m., appellant went beside her and kissed her. At that time, only she, her brother CCC, who was fast asleep, and appellant were in the room. Appellant kissed AAA on the lips and on her belly while threatening to kill her if she made any noise. AAA was shocked and she didn't know what to do.

Afterwards, appellant undressed her and kissed her breast before he spread AAA's legs and held her hands. While AAA was in a lying position, appellant inserted his private part in AAA's private part and proceeded to penetrate her for fifteen (15) minutes. AAA was not able to do anything and was crying while she was being penetrated. Appellant then ejaculated inside AAA's private part. Suddenly, appellant, before falling asleep, offered to marry AAA, to which the latter said nothing and merely cried. AAA did not report the incident immediately because of fear.

AAA saw appellant, CCC and DDD go to mass around 6 or 7:00 a.m., after which, she, too went to mass. Eventually, she told her cousin DDD about the incident around 7 p.m. of the same day. DDD informed AAA's brother CCC, who then informed her other brother BBB who was then in Laguna. AAA, CCC and DDD then proceeded to a barangay hall in Makati City to report the rape. Later on, AAA went to the police authorities and

the latter had her examined at the Philippine National Police Crime Laboratory. The following day, November 5, 2007, appellant was arrested.

An Information was then filed against appellant which reads as follows:

That on or about the 4[th] day of November 2007, in the City of Makati, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously through force, threat or intimidation, have carnal knowledge of the complainant, [AAA].

CONTRARY TO LAW.[4]

During arraignment, with the assistance of counsel de oficio, appellant pleaded not guilty. The trial on the merits ensued.

The prosecutor presented the testimony of AAA as to the matters earlier narrated. The testimony of the Medico-Legal Officer, Jesille Baluyot, who examined AAA was also presented. According to her, upon her examination, she found that there was a deep-healed laceration at 3 and 9 o'clock positions in the hymen of AAA. She testified that the deep-healed laceration meant that it may have been caused more than 21 days earlier. She also added that she did not find any spermatozoa inside AAA's private part. She also did not find any wound or contusions on AAA.

For his defense, appellant testified as to the following:

He and AAA were lovers and that their relationship lasted from 2003 to 2004 because he had another girlfriend. He said that during the period that they had a relationship, he and AAA had sexual intercourse. He also claimed that when they were staying at the room in Makati City or after their relationship ended, they had two sexual encounters; first was on October 31, 2007 and second was on November 4, 2007, the latter being the date when AAA claimed that she was raped.

On November 3, 2007, after his drinking spree with CCC and DDD, they all went inside the house and saw AAA watching a pornographic movie. CCC scolded AAA but the latter merely replied that they should all go to sleep because they were drunk. DDD proceeded to sleep on the floor of the room while AAA and appellant continued to watch the movie. After watching the said movie, AAA "challenged" appellant to repeat their sexual encounter on October 31, 2007 which the latter accepted. After having consensual sex, he fell asleep and did not wake up until 5:00 a.m. On that day, he went to mass with CCC and DDD. After the mass, he, CCC, DDD, JS and AAA's other cousin NS had another drinking session. Meanwhile, AAA went to a restaurant. Later, on the same day, AAA asked money from appellant in the amount of P500.00 which the latter failed to give. According to appellant, AAA became angry and shouted invectives at him in front of everybody present in the drinking session. That night, appellant slept at the house of NS located just next to the room where he, AAA, CCC and DDD stayed. The following day, on his way to work, he was arrested by two barangay tanods and found out that he was being accused of raping AAA.

The RTC, on April 15, 2008, found appellant guilty beyond reasonable doubt of the crime of rape under Article 266-A, Par. 1 of the Revised Penal Code. The dispositive portion of the decision reads:

WHEREFORE, premises considered, and finding the accused guilty beyond reasonable doubt of the crime of Rape defined under Article 266-A, par. 1 and penalized under Article 266-B, par. 1 of the Revised Penal Code, said accused ALSHER BERMEJO Y LUMPAYAO x x x is hereby sentenced to suffer the penalty of Reclusion Perpetua.

With all the accessories of the law.

The aforesaid accused is further ordered to pay the amount of P50,000.00 as indemnity; the amount of P50,000.00 for and as moral damages.

With costs against the accused. SO ORDERED.[5]

Aggrieved, appellant elevated the case to the CA. However, the latter, on May 12, 2010, affirmed the decision of the RTC, thus:

WHEREFORE, the appealed decision is AFFIRMED in toto.

SO ORDERED.[6]

Hence, the present appeal.

In his Supplemental Brief[7] dated May 16, 2011, appellant repeats the argument he presented before the CA and contends that the prosecution failed to prove his guilt beyond reasonable doubt. According to him, no force and intimidation happened during the sexual act, thus, a clear indication that what transpired was consensual. He further argues that had AAA really felt fear, she could have easily shouted for help from her brother who was sleeping on the floor of the same room.

This Court finds the appeal meritorious.

In the review of rape cases, this Court is guided by the following principles: (1) an accusation for rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove it; (2) in view of the intrinsic nature of the crime of rape where two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense.[8]

This Court is not unmindful of the general rule that the findings of the trial court regarding the credibility of witnesses are generally accorded great respect and even finality on appeal.[9] However, this principle does not preclude a reevaluation of the evidence to determine whether material facts or circumstances have been overlooked or misinterpreted by the trial court.[10] In the past, this Court has not hesitated to reverse judgments of conviction, where there were strong indications pointing to the possibility that the rape charge was false.[11]

Although it is settled that the accused may be convicted of rape simply on the basis of the complainant's testimony,[12] this principle holds true only if such testimony meets the test of credibility.[13] This requires that the testimony be straightforward, clear, positive and convincing. However, this Court finds the opposite.

AAA gave the following testimony:

Q

So you were awoken when the accused kissed you. Where did he kiss you?

A

He was kissing my lips going down to my belly.

Q

While kissing you, did he say something to you or just kissed (sic) you?

A

Yes, sir. He was threatening me.

Q

How were you threatened by the accused?

A

He was telling me that if I will make a noise he will kill me.

Q

This he was doing while at the same time kissing you?

A

Yes, sir.

Q

And what did you feel when the accused was kissing you, your lips down to your belly while threatening you.

A

I was shocked, sir, and I don't know what to do and I cannot do anything.

Q

You did not offer any resistance?

A

No, sir, because I was already afraid and I don't know what to do.

Q

Why did you say that it was Alsher Bermejo who was kissing you and was attacking you?

A

Because I saw him, sir, approached me and laid beside me.

Q

For how long was the accused-kissed (sic) you?

A

I do not know, sir, but I think it is quite long.

Q So he kissed you in the lips. You did not bite him?

A No, Sir.

Q

Why did you not bite him?

A

Because I was already afraid, sir, I don't know what to do.

Q

After kissing your lips, he proceeded in kissing you where?

A

In my breast, sir.

Q After kissing you in (sic) your breast, what else did he do?

A He entered his organ into my organ.

x x x x

Q

How long was the accused mounted on you - how long did the accused placed himself on top of you while his [private part] was inserted in your [private part]?

A

Long time, sir.

Q

Can you approximate how long is that matagal?

A

About 15 minutes.

Q

During all this time, what were you doing?

A

Nothing, sir, I just cried.

x x x x

Q

During all this time what was DDD, your brother doing?

A

He was just sleeping. He was not able to wake up.

Q

Did you not try to shout during this time of the attack?

A

No more, sir, because I was already in fear, I'm afraid and I don't know what to do.[14]

The Information alleges that the carnal knowledge was attended by force, threat or intimidation, but the testimony of AAA does not indicate the presence of those circumstances. AAA merely mentioned that the unarmed appellant threatened to kill her if she made a noise. To be intimidated by the said threat is highly suspicious for a

20-year-old woman whose brother was sleeping on the floor of the same room where she was alleged to have been defiled. While it has been held that lust is no respecter of time and place and rape can be committed in the unlikeliest of places such as in places where people congregate, in parks, along the roadside, within school premises and even inside a house where there are other occupants or where other members of the family are also sleeping,[15] those cases mostly involve minors whose rapists are those who have moral ascendancy over them. In the present case, it is unbelievable that a 20-year-old woman would easily succumb to a simple threat from someone who does not have any moral ascendancy over her when she could have easily shouted for help and aroused her brother who was sleeping nearby. As ruled in *People v. Castro*:^[16]

Complainant's failure to resist gives rise to the reasonable doubt whether, as she claimed, she was forced to have sexual intercourse with accused-appellant. She could have shouted for help. She could have kicked accused-appellant or pushed him to prevent him from forcing himself on her. But, she did none of these.

It has been held that the offended party in a rape case must put up some resistance or struggle to protect her chastity, not only at the initial stage of its commission but during all the time that the dastardly act is perpetuated upon her. Indeed, a woman's most precious asset is the purity of her womanhood. She will resist to the last ounce of her strength any attempt to defile it.

It is true that any physical overt act manifesting resistance against the act of rape in any degree from the offended party may be accepted as evidence in the prosecution of the acts punished under Art. 266-A par. 1(a) of the Revised Penal Code. Still, however, this provision requires physical overt act that manifests resistance from the offended party. In the case at bar, there is no such overt act but, if at all, a mere initial reluctance.^[17]

Also, in *People v. Gavina*,^[18] this Court ruled that:

x x x A man may lay no hand on a woman, yet if by the array of physical forces he so overpowers her mind that she does not resist or she ceases resistance through fear of greater harm, the consummation of unlawful intercourse by the man would still be rape. Here, we find no showing of such compelling fear, x x x

Appellant had no weapon with him and used none in the commission of the alleged crime. Nowhere in complainant's testimony do we find such degree of intimidation as to cause her to believe that appellant was at that time capable of harming her or killing her had she refused him. We find absent here the element of force or intimidation to support a charge for rape. Where the accused raises doubt as to any material element, but the prosecution is unable to overcome such doubt, we must find that the prosecution has failed to prove the guilt of the accused beyond reasonable doubt and the accused, now appellant, must be acquitted.

In rape committed by force or intimidation, it is imperative that the prosecution should establish that voluntariness on the part of the offended party was absolutely lacking. In the present case, complainant's conduct before, during, and after the alleged rape, as gleaned from her testimony, tells a different story, x x x

xxxx

x x x A presumption indicating guilt does not by itself destroy the presumption of innocence unless the inculcating presumption, together with all the evidence adduced, suffices to overcome the presumption of innocence by proof of guilt beyond reasonable doubt. Until the appellant's guilt is shown in this manner, the presumption of innocence continues and must prevail.^[19]

This Court recognizes that rape victims have no uniform reaction to the sexual assault; while some may offer strong resistance, others may be too intimidated to offer any at all. It must be stressed though, that AAA's failure to resist the alleged assault indubitably casts doubt on her credibility and the veracity of her narration of the incident. Her behavior after the incident, also contributes to the said doubt, thus:

Q

So in the morning after the attack, did you go out in that house of yours?

A

Yes, sir. I went out and attend a mass.

Q

At what time did you go out in that residence and attend the mass?

A

At 7 o'clock in the morning.

Q

Did you still see the accused in this case inside your residence at the house in that morning after the attack?

A

Yes, sir, I saw him.

Q

What was Alsher doing at that time?

A

While I was still inside the house at about 6 o'clock in the morning, they attend also the mass together with my cousin.

x x x x

Q

So Alsher went to mass at 6 o'clock in the morning of that day together with your brother and your cousin, the same persons he was drinking with the night before?

A

Yes, sir.

Q

So from 6:00 to 7:00 in the morning, you were alone inside your residence?

A

Yes, sir.

Q

What were you doing inside your house during that time?

A

I was just lying, crying and thinking what to do.

Q

So at 7 o'clock you decided to go to church?

A

Yes, sir.

x x x x

Q

How long did you stay in the church?

A

At 9:00 I returned to the house and then I left and went to the mall because I don't want to see him there, sir.

Q

When you returned at 9 o'clock, did you still see the accused?

A

Yes, sir. They were drinking together with his co-workers.[21]

The conduct of the victim immediately following the alleged sexual assault is of utmost importance in establishing the truth or falsity of the charge of rape.[22] In the present case, the acts of AAA after the alleged rape are totally uncharacteristic of one who has been raped. Her indifference on the lingering presence of the appellant at the scene of the alleged crime after the same happened instead of immediately reporting the incident naturally makes her testimony tainted with uncertainty. On the other hand, the actuations of appellant after the alleged rape also create a doubt as to his guilt. As testified by AAA, appellant even went to mass with AAA's brother and cousin and stayed at the house until the evening of that day having a drink with his co-workers. It is to be expected that one who is guilty of a crime would want to dissociate himself from the person of his victim, the scene of the crime, and from all other things and circumstances related to the offense which could possibly implicate him or give rise to even the slightest suspicion as to his guilt.[23] However, such did not happen in this case.

Appellant explains that the rape charge was motivated by a grudge on the part of AAA for his failure to give her the money that the latter was asking from him. Nevertheless, even if the assertion is too trite to merit consideration[24] in order to constitute a valid defense, of utmost importance is that there are grounds for reasonable doubt and that all doubts should be resolved in favor of the accused.

Clearly, taking into consideration the evidence presented by the prosecution, this Court finds that doubt naturally arises as to the guilt of the appellant and where two conflicting probabilities arise from the evidence; the one compatible with the presumption of innocence will be adopted.[25] It is better to set a guilty man free than to imprison an innocent man.[26]

WHEREFORE, under these premises, this Court ACQUITS appellant Alsher Bermejo y Lumpayao on grounds of reasonable doubt. Consequently, this Court REVERSES and SETS ASIDE the Decision dated May 12, 2010 of the Court of Appeals in CA-GR. CR-H.C. No. 03494, affirming the Decision dated April 15, 2008 of the Regional Trial Court of Makati City, Branch 148.

Unless confined for any other lawful cause, Alsher Bermejo y Lumpayao is hereby immediately ordered RELEASED from detention. The Director of the Bureau of Corrections is DIRECTED to IMPLEMENT this Decision and to report to this Court the action taken thereon within five (5) days from receipt.

SO ORDERED.

Velasco, Jr., (Chairperson), Abad, Mendoza, and Reyes, JJ., concur.

[*] Designated Acting Member in lieu of Associate Justice Estela M. Perlas-Bernabe, per Special Order No. 1283 dated August 6, 2012.

[1] Penned by Associate Justice Rebecca De Guia-Salvador, with Associate Justices Seginando E. Villon and Amy C. Lazaro-Javier, concurring, rollo, pp. 2-20.

[2] Penned by Judge Oscar B. Pimentel.

[3] In line with this Court's ruling in *People v. Cabalquinto*, GR. No. 167693, September 19, 2006, 502 SCRA 419, citing Rule on Violence Against Women and their Children, Sec. 40; Rules and Regulations Implementing Republic Act No. 9262, Rule XI, Sec. 63, otherwise known as the "Anti-Violence Against Women and their Children Act," the real names of the rape victims will not be disclosed. This Court will instead use fictitious initials to represent them throughout the decision. The personal circumstances of the victims or any other information tending to establish or compromise their identities will likewise be withheld.

[4] CA rollo, p. 7.

[] Id. at 73-90. .

[6] Rollo, p. 19.

[7] Id. at 35-43.

[8] *People v. Molleda*, GR. No. 153219, December 1, 2003, 417 SCRA 53, 57.

[9] *People v. Plana*, GR. No. 128285, November 27, 2001, 370 SCRA 542, 555; *People v. Villanos*, GR. No. 126648, August 1, 2000, 337 SCRA 78, 87; *People v. De Guzman*, GR. No. 124368, June 8, 2000, 333 SCRA 269, 280; *People v. Palma*, G.R. Nos. 130206-08, June 17, 1999, 308 SCRA 466, 476.

[10] *People v. De la Cruz*, GR No. 137967, April 19, 2001, 356 SCRA 704, 714-715; *People v. Domogoy*, GR. No. 116738, March 22, 1999, 305 SCRA 75, 86-87.

[11] *People v. De la Cruz*, supra, at 715; *People v. Domogoy*, supra, at 89; *People v. Medel*, GR. No. 123803, February 26, 1998, 286 SCRA 567, 582.

[12] *People v. Taño*, GR. No. 133872, May 5, 2000, 331 SCRA 449, 464; *People v. Ambray*, GR. No. 127177, February 25, 1999, 303 SCRA 697, 705; *People v. Garcia*, GR. No. 120093, November 6, 1997, 281 SCRA 463, 476; *People v. Abaci*, GR. No. 114144, February 13, 1997, 268 SCRA 246, 250; *People v. Rosare*, GR. No. 118823, November 19, 1996, 264 SCRA 398, 412.

[14] TSN, January 22, 2008, pp. 18-28. (Emphases supplied.)

[15] *People v. Evina*, 453 Phil. 25, 41 (2003), citing *People v. Perez*, G.R. No. 122764, September 24, 1998, 296 SCRA 17; *People v. Alcartado*, GR. Nos. 132379-82, June 29, 2000, 334 SCRA 701.

[16] GR. Nos. 146297-304, August 22, 2002, 387 SCRA 663.

[17] *People v. Castro*, supra, at 681-682. (Citations omitted.)

[18] 439 Phil. 898 (2002).

[19] People v. Gavina, *supra*, at 906-909. (Citations omitted.)

[20] People v. Rabosa, G.R. Nos. 119362 and 120269, June 9, 1997, 273 SCRA 142, 150-151.

[21] TSN, January 22, 2008, pp. 26-36

[22] People v. Sapinoso, G.R. No. 122540, March 22, 2000, 328 SCRA 649, 657; People v. Moreno, G.R.No. 115191, December 21, 1999, 321 SCRA 334, 351-352.

[23] People v. Godoy, G.R. Nos. 115908-09, -December 6, 1995, 250 SCRA 676, 705.

[24] See People v. Lou, G.R. No 146803, January 14, 2004, 419 SCRA 345, 351.

[25] See People v. Agoncillo, 80 Phil. 33, 86 (1948).

[26] People v. Capili, G.R. No. 130588, June 8, 2000, 333 SCRA 354, 366.

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