

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NINOY ROSALES Y ESTO, ACCUSED-APPELLANT.

G.R. No. 197537. July 24, 2013

Ponente: PEREZ, J.

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PEREZ, J.:

This Appeal seeks the reversal and setting aside of the Decision[1] dated 26 July 2010 of the Court of Appeals in CA-G.R. CR.-H.C. No. 03043, which affirmed the Decision[2] of the Regional Trial Court (RTC) of Caloocan City, Branch 129 convicting appellant Ninoy Rosales y Esto of the crime of rape.

Appellant was charged with rape in an Information,[3] the accusatory portion of which reads as follows:

That on or about the 27[th] day of June, 2004, in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, having knowledge that [AAA],[4] 39 years old, is mentally retarded and has the mind of child below 18 years old, taking advantage of the victim's mental disability, wilfully, unlawfully and feloniously had sexual intercourse with said [AAA].

Appellant pleaded not guilty on arraignment. Trial on the merits ensued.

The victim, AAA, then 39 years of age, testified that in the morning of 27 June 2004, while she was holding a dog outside her residence in X X X,[5] Quezon City, appellant approached her and gave her P200.00 to buy some junk food. Appellant then forced her to go with him to his house located inside a nearby cemetery in Caloocan City. Upon reaching appellant's house, appellant ordered AAA to lie down. He undressed her, sucked her nipple and inserted his penis in her vagina. AAA felt pain. Thereafter, appellant ordered her to put her dress on and took her cellular phone. Appellant sold AAA's phone and bought drinks for his drinking companions. AAA was later fetched by her sister at appellant's house. AAA identified appellant in court as the person who raped her.[6]

On 28 June 2004, BBB[7] accompanied her daughter AAA to the Women and Children Protection Desk of the Caloocan City Police Station to report the incident.

The police investigator immediately prepared a request so that AAA could be physically examined by a medico-legal.[8] After the medical examination, Medico-Legal Report No. M-366-04 was issued by Dr. Filemon C. Porciuncula, Jr. The Report contains the following pertinent findings and conclusion:

GENITAL:

PUBIC HAIR: Abundant

LABIA MAJORA: Full, convex & coapted

LABIA MINORA: With dark brown, hypertrophied. Labia minora congested & abraded on both sides.

HYMEN: Deep healed lacerations at 3&7 o'clock position.

POSTERIOR FOURCHETTE: Abraded, congested

EXTERNAL VAGINAL ORIFICE: Slight resistance of the examining index finger.

VAGINAL CANAL: Narrow with prominent rugosities.

CERVIX: Firm & closed.

PERIURETHRAL AND VAGINAL SMEARS: Negative for spermatozoa & negative for gram negative diplococci.

CONCLUSION: Subject is non-virgin state physically. There are no external signs of application of any form of trauma.[9]

Dr. Lorenda Gozar (Dr. Gozar), a clerical psychologist working with the National Bureau of Investigation, testified on AAA's mental condition. Dr. Gozar had examined AAA and concluded in her Neuro-Psychiatric Examination and Evaluation that AAA has been found suffering from "moderate mental retardation with a Mental Age of (6) six years and (8) eight months and an IQ of (41) forty-one." [10]

Appellant, testifying in his own behalf, denied that he raped AAA. He however admitted that he was having a drinking session in his house with AAA when the alleged rape incident occurred. Appellant stated that prior to the incident, AAA has lived in his house for 4 months. He then denied any knowledge of AAA's mental condition.[11]

On 19 September 2007, the RTC rendered judgment finding appellant guilty of rape and imposing the penalty of reclusion perpetua. The RTC also ordered appellant to pay P50,000.00 as civil indemnity, and P50,000.00 as moral damages.[12]

The trial court found AAA's testimony straightforward, notwithstanding her mental condition. The trial court also dismissed appellant's alibi as weak and unreliable.

On 26 September 2007, appellant filed a notice of appeal.[13]

On 26 July 2010, the Court of Appeals affirmed the decision of the trial court. Consequently, appellant filed a notice of appeal.[14]

On 10 August 2011, this Court informed the parties that it had received the records from the Court of Appeals and required them to file their respective supplemental briefs.[15] Both parties manifested that they would no longer file supplemental briefs, since they had exhaustively argued all the relevant issues in the Briefs they had previously submitted before the Court of Appeals.[16]

The case is now before us. Appellant assigned two (2) errors in his appeal which were initially passed upon by the Court of Appeals, to wit: 1) whether the trial court gravely erred in considering the evidence adduced by the prosecution despite its apparent incredibility; and 2) whether the trial court gravely erred in rendering a verdict of conviction despite the fact that the guilt of the accused-appellant was not proven beyond reasonable doubt.[17]

Appellant contends that AAA's testimony is incredible on the lone argument that the latter did not make an outcry when the alleged lustful advances were made against her.

In *People v. Alipio*, [18] the Court rebuked appellant therein for raising a similar argument. The Court went on to state that it is not fair to judge a mentally-retarded person, one who does not have a good grasp of information and who lacks the capacity to make a mental calculation of the events unfolding before her eyes, according to what is natural or unnatural for normal persons.[19]

In this case where the victim was proven to be a mental retardate, it could certainly not be expected that AAA would have behaved or acted in accordance with what appellant perceived to be as normal.

At any rate, it is an oft-repeated principle that not every witness to or victim of a crime can be expected to act reasonably and conformably to the usual expectations of everyone. People may react differently to the same

situation. One person's spontaneous, or unthinking or even instinctive, response to a horrible and repulsive stimulus may be aggression, while another's may be cold indifference. Yet, it can never be successfully argued that the latter are any less sexual victims than the former.[20]

Moreover, when AAA was called to the witness stand, she never wavered in her assertion that appellant raped her. AAA's testimony is clear and concise, thus:

Q:

Do you know the accused in this case named Ninoy Rosales?

A:

Yes [s]ir.

Q:

And why do you know Ninoy Rosales?

A:

He is a carpenter in Magnas [s]ir.

Q:

Where is this Magnas located?

A:

In Quezon City [s]ir.

Q:

Near your residence in Quezon City?

A:

Far from our house [s]ir.

Q:

Do you remember where were you on June 27, 2004 at about 9:00 a.m.?

A:

I was outside [s]ir.

Q:

Outside your residence?

A:

Yes [s]ir.

Q:

And while you were outside your residence, what were you doing?

A:

I was holding a dog [s]ir.

Q:

And while you were holding this dog, do you remember of any incident that happened on June 27, 2004 at 9:00 a.m.?

A:

He [paid] me P200.00 [s]ir.

Q:

Who paid you P200.00?

A:

Siya po [s]ir.

Interpreter: The witness pointed to a person of the accused your Honor.

Fiscal Azarcon

Q:

So, you want to impress to this Court that the accused handed to you P200.00?

A:

Yes [s]ir.

Q:

And can you tell this Court for what purpose is that P200.00 given to you?

A:

It is for me to buy “sitsirya” (junk foods) [s]ir.

Q:

After receiving this P200.00 from the accused in this case, what happened then?

A:

He forced me to go with him in the cemetery [s]ir.

Q:

And where is this cemetery located?

A:

In Caloocan City [s]ir.

Q:

And what is the name of that cemetery, if you can remember?

A:

No [s]ir.

Q:

And was he able to bring you to the cemetery in Caloocan City?

A:

Yes [s]ir.

Q:

What particular place do you remember in that cemetery in Caloocan City?

A:

He brought me there in the cemetery and then he undressed me [s]ir.

Q:

Could you remember what house, store or any building did he bring you?

A:

In place where there is a concrete wall and a stairway [s]ir.

Q:

Where does this stairway goes?

A:

In going to their house [s]ir.

Q:

House of whom?

A:

To the accused [s]ir.

Q:

You want to impress to this Court Ms. Witness that the house of the accused is located in the cemetery in Caloocan City?

A:

Yes [s]ir.

Q:

And he brought you there in that house?

A:

Yes [s]ir.

Q:

So, what did he do while you were inside his house?

A:

He ordered me to lie down, he undressed me and then, he inserted his penis to my genitalia [s]ir.

Q:

What were you wearing at that time?

A:

Short [s]ir.

Q:

And were you wearing panty at that time?

A:

Yes [s]ir.

Q:

Were you also wearing dress or t-shirt at that time?

A:

No more [s]ir.

Q:

Before going to the place of Ninoy Rosales, were you dressed at that time?

A:

Yes [s]ir.

Q:

What kind of dress were you wearing?

A:

Red [s]ir.

Q:

Is it a t-shirt or blouse?

A:

Blouse [s]ir.

Q:

You said that he undressed you inside the house in [the] cemetery located in Caloocan City, what was the first thing that he undressed you, the lower or upper portion?

A:

All [s]ir.

Q:

And when he undressed you, what did you do, if any?

A:

I was not able to shout [s]ir[.]

Q:

Why?

A:

Because I do not know the people there [s]ir.

Q:

There were other people inside that house or outside the house?

A:

Outside the house [s]ir.

Q:

How about inside the house, how many people were present?

A:

Only the accused [s]ir.

Q:

So, when he undressed you, you were only two inside the house of Ninoy Rosales?

A:

Yes [s]ir.

Q:

You said that after undressing you, he inserted his penis to your vagina, what did you feel, if any?

A:

It was painful [s]ir.

Q:

What else did the accused, Ninoy Rosales, do to you [other] than that?

A:

He sucked my breast [s]ir.

Q:

You said a while ago that “pinahiga niya ako,” was that in the occasion that he undressed you while you were lying down?

A:

Yes [s]ir while he was on top of me [s]ir.

Q:

After he inserted his penis to your private part, thereafter he finished, what happened next?

A:

He ordered me to put on my dress [s]ir.

Q:

And you put your dress on?

A:

Yes [s]ir.[21]

x x x x

Q:

Madam, you are pointing to a person here, the accused in this case, as the one who brought you to his house and raped you, are you sure that that person was the one who brought you and raped you?

A:

Yes [s]ir.

Q:

Will you point to him again?

A:

Siya po [s]ir.

Interpreter: The witness pointed to a person who responded by the name of Ninoy Rosales your Honor.[22]

The fact of AAA's mental retardation did not impair the credibility of her testimony. Mental retardation per se does not affect credibility. A one mentally retarded may be a credible witness. The acceptance of her testimony depends on the quality of her perceptions and the manner she can make them known to the court.[23]

We have thoroughly examined AAA's testimony and found no reason to depart from the legal adage that this Court accords the trial judge's assessment of the credibility of witnesses great respect in the absence of any attendant of grave abuse of discretion on the account that the trial court had the advantage of actually examining both real and testimonial pieces of evidence, including the demeanor of the witnesses, and is in the best position to rule on the matter. The rule finds an even greater application when the trial court's findings are sustained by the Court of Appeals.[24]

Taking into consideration the positive and categorical declaration of AAA and the medical findings to support her claims, we affirm the lower courts' unanimous finding that AAA, by proof beyond reasonable doubt, was raped by the appellant.

Appellant's denials and alibi cannot prevail over the positive, consistent and straightforward testimony of AAA. Alibi is an inherently weak defense because it is easy to fabricate and highly unreliable. To merit approbation, the accused must adduce clear and convincing evidence that he was in a place other than the situs criminis at the time the crime was committed, such that it was physically impossible for him to have been at the scene of the crime when it was committed.[25] Appellant admitted that he was in fact with AAA at his house when the rape incident occurred. Considering that he was at the place where the crime was committed, his alibi cannot be given any

weight or value.

The lower courts, in vague terms, found appellant guilty of rape and imposed the penalty of reclusion perpetua. It is very clear from the Information that the allegations therein actually constitute a criminal charge for qualified rape under Article 266-A, paragraph (1)(a), in relation to Section 266-B, paragraph (10) of the Revised Penal Code, as amended, which 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;
- b) When the offended party is deprived of reason or is otherwise unconscious;
- c) By means of fraudulent machination or grave abuse of authority;
- d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

x x x x

ART. 266-B. Penalties. – Rape under paragraph 1 of the next preceding article shall be punished by reclusion perpetua.

x x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

x x x x

10) 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.

Under the aforementioned provisions, when rape is committed by an assailant who has knowledge of the victim's mental retardation, the penalty is increased to death. This circumstance must be alleged in the information being a qualifying circumstance which increases the penalty to death and changes the nature of the offense from simple to qualified rape.[26]

Although appellant denied any knowledge about AAA's mental condition, it was he himself who volunteered the information that he had been living with AAA for four (4) months in his house. It is therefore logical to assume that appellant was fully aware of the workings of AAA's mental faculties. Furthermore, AAA's mental condition was sufficiently established by medical findings, as well as the testimony of AAA's mother.

Considering the presence of the special qualifying circumstance of the appellant's knowledge of the victim's mental retardation, the same being properly alleged in the Information charging the appellant of the crime of rape and proven during trial, this Court imposes on the appellant the supreme penalty of death. But with the enactment of Republic Act No. 9346,[27] the imposition of the death penalty has been prohibited. This Court accordingly imposes the penalty of reclusion perpetua without eligibility for parole.

The significance of raising the crime charged from simple rape to qualified rape relates to the award of damages. Since the crime of rape is perpetrated with a qualifying circumstance which required the imposition of the death penalty, the civil indemnity and moral damages for the victim shall be increased to P75,000.00 each.[28] Also, the award of exemplary damages in the amount of P30,000.00 is in order.[29]

WHEREFORE, the appeal is DENIED. The Decision dated 26 July 2010 of the Court of Appeals in CA-G.R.

CR.-H.C. No. 03043 is AFFIRMED WITH MODIFICATIONS. Accused-appellant Ninoy Rosales y Esto is GUILTY of qualified rape and is sentenced to suffer the penalty of reclusion perpetua without eligibility of parole, and is ordered to pay AAA the amounts of P75,000.00 as civil indemnity, P75,000.00 as moral damages and P30,000.00 as exemplary damages. The amounts of damages awarded are subject further to interest of 6% per annum from the date of finality of this judgment until they are fully paid.

SO ORDERED.

Carpio, (Chairperson), Brion, Del Castillo, and Perlas-Bernabe, JJ., concur.

[1] Presided by Associate Justice Jose C. Reyes, Jr. with Associate Justices Antonio L. Villamor and Ruben C. Ayson, concurring. Rollo, pp. 2-13.

[2] Penned by Presiding Judge Thelma Canlas Trinidad-Pe Aguirre. CA rollo, pp. 12-20.

[3] Records, p. 2.

[4] The real name and other personal circumstances of the victim are withheld to protect her privacy. See *People v. Cabalquinto*, 533 Phil. 703 (2006).

[5] *Id.*

[6] TSN, 6 September 2006, pp. 5-12.

[7] The real name of the victim's mother is likewise withheld to protect her privacy.

[8] Records, p. 92.

[9] *Id.* at 93.

[10] *Id.* at 87.

[11] TSN, 25 July 2007, pp. 4-9.

[12] CA rollo, p. 59.

[13] *Id.* at 21.

[14] Rollo, p. 14.

[15] *Id.* at 19.

[16] *Id.* at 21-22 and 25-26.

[17] CA rollo, p. 43.

[18] G.R. No. 185285, 5 October 2009, 603 SCRA 40.

[19] *Id.* at 48-49.

[20] *People v. Rosare*, G.R. No. 118823, 19 November 1996, 264 SCRA 398, 411.

[21] TSN, 6 September 2006, pp. 5-10.

[22] *Id.* at 12.

[23] *People v. Tamano*, G.R. No. 188855, 8 December 2010, 637 SCRA 672, 685 citing *People v. Macapal, Jr.*,

501 Phil. 675, 684 (2005).

[24] *People v. Tablang*, G.R. No. 174859, 30 October 2009, 604 SCRA 757, 771 citing *People v. Dela Paz*, G.R. No. 177294, 19 February 2008, 546 SCRA 363, 382.

[25] *People v. Laurino*, G.R. No. 199264, 24 October 2012, 684 SCRA 612, 620 citing *People v. Arpon*, G.R. No. 183563, 14 December 2011, 662 SCRA 506, 529 citing further *People v. Tabio*, G.R. No. 179477, 6 February 2008, 544 SCRA 156, 166.

[26] *People v. Monticalvo*, G.R. No. 193507, 30 January 2013 citing *People v. Maceda*, 405 Phil. 698, 724-725 (2001).

[27] Section 3. Persons convicted of offenses punished with reclusion perpetua, or whose sentences will be reduced to reclusion perpetua, by reason of this Act, shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended.

[28] *People v. Osma, Jr.*, G.R. No. 187734, 29 August 2012, 679 SCRA 428, 443.

[29] *People v. Vitero*, G.R. No. 175327, 3 April 2013.

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