

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. WENDEL OCDOL Y MENDOVA, EDISON TABIANAN, AND DANTE BORINAGA, ACCUSED. WENDEL OCDOL Y MENDOVA, ACCUSED-APPELLANT.

G.R. No. 200645. August 20, 2014

Ponente: PEREZ, J.

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PEREZ, J.:

Before this Court is an appeal filed solely by accused Wendel Ocdol y Mendova questioning the Decision[1] of the Eighteenth Division of the Court of Appeals, Cebu City (CA) in CA-G.R. CEB CR-H.C. No. 00305 affirming in toto the Decision dated 16 January 2003[2] in Criminal Case No. 6027-0 rendered by the Regional Trial Court (RTC) of the City of Ormoc, Branch 35. The RTC Decision found Wendel Ocdol (appellant) guilty beyond reasonable doubt of the crime of rape, while Edison Tabianan and Dante Borinaga both guilty beyond reasonable doubt as accomplices for the said crime. We affirm the conviction. It is in accord with a textbook of principle in the law on and procedure in rape cases, which we by this case restate.

THE FACTS

The accused were charged under the Information[3] docketed as Criminal Case No. 6027-0 for the crime of rape under Republic Act (R.A.) No. 8353, otherwise known as the Anti-Rape Law of 1997, which reads as follows:

That on the 31[st] day of August, 2000 at around 8:00 O' clock in the evening, more or less, in sitio Pingag, barangay Matlang, Municipality of Isabel, Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously conspiring, confederating and mutually helping one another, accused Wendel Ocdol y Mendova by means of force and intimidation, did lie, place on top of [AAA],[4] 15 years old, removed her pant(y) and succeeded in having carnal knowledge with the latter while his companions Edison Tabianan and Dante Borinaga were looking at the sexual assault of their companion Wendel Ocdol y Mendova, while pointing their knives to the lady-victim, thus, consumating (sic) the crime of rape against her will and without the consent of said [AAA], a minor.

All accused pleaded not guilty during arraignment. Thereafter, a full-blown trial proceeded.[5]

Based on the evidence presented, records reveal that the prosecution established the following factual antecedents:

The evidence of the prosecution shows that on August 31, 2000 at around 8:00 o'clock in the evening, AAA was sent by her mother to buy ice at the store of Shirley Guadas which is situated at Sitio Pingag, Barangay Matlang, Isabel, Leyte. While AAA was about to go home, Edison Tabianan (hereafter referred to as Edison) who was then in front of the store called AAA's attention. Since AAA knew Edison, she went to the latter and asked what he wanted. Edison told AAA "just something" and he immediately held AAA's arm dragging her to a darkened portion of a chapel near the store. AAA resisted but she could not move because Edison poked a knife at her. Then, AAA saw two (2) people in the place where she was dragged. She identified the two as Dante Borinaga (hereafter referred to as Dante) and Tisoy known as Wendel Ocdol (hereafter referred to as

Wendel) since there was an illumination coming from the light at the pier. Dante likewise poked an arrow locally known as “indian pana” at AAA’s neck. Wendel suddenly held AAA’s hand, laid her on the ground, and removed her shorts and panty. AAA still resisted the attack by stamping (sic) her feet. Wendel took off his shorts and brief, mounted on top of AAA and inserted his penis into AAA’s vagina causing the latter to feel so much pain. Wendel also kissed AAA on the lips and fondled her breasts but the latter could not shout as Edison and Dante were respectively poking a knife and an indian pana at the victim. When the three (3) accused heard that someone was looking for AAA, Wendel immediately got up and put on his brief and shorts and three (3) accused scampered away. AAA put her panty and shorts on, and ran towards home without bringing the ice she bought from the store. When AAA arrived home, she saw her mother waiting for her at the door. She immediately went upstairs and fell asleep. The following day, AAA’s grandmother came and it was only then that AAA narrated what happened to her. Upon learning of the incident, AAA’s grandmother left and reported it to Rufino Villarino, the barangay captain of Matlang. Rufino summoned three (3) of his barangay tanods who arrested Edison and Dante. The barangay officials referred the matter to the police who picked-up the two accused for investigation. Upon advice of the policemen, AAA was brought by her mother to a doctor for medico-legal examination.

Dr. Refelina Cerillo Baje, the Municipal Officer in the Municipality of Isabel, Leyte who conducted the physical and genital examination of AAA testified that the labia minora and majora of the victim were moderately coaptated; the vaginal canal was slightly loose and admits one finger with slight resistance; there were fresh hymenal lacerations corresponding to the 2:00 o’clock, 5:00 o’clock and 10:00 o’clock position; there is presence of erythematous area surrounding the vaginal opening which could have been caused by severe friction, and she noted an abrasion at the posterior vaginal fourchette. Dr. Baje also testified that the vaginal canal which was slightly loosened had undergone some kind of stretching due to insertion of a hard object. The friction could have been caused by an object which was inserted into the vagina. According to her, AAA at the time of examination was having her period. Thus, the vaginal smear revealed absence of male seminal fluid and sperm cell even if the alleged rape incident took place a day before the examination was conducted.[6]

For its part, the defense presented another version of the facts, to wit:

Wendel vehemently denied having raped AAA and put up the “sweetheart defense”. He testified that he first came to the Barangay Sawang Isabel, Leyte, in 1999 to visit his uncle, Winnie Mendova and stayed there until 2000. Then, he went to his home in Basey, Samar but returned to Isabel, Leyte in that same year. This time, he stayed at the house of his friend, Philip Sambilad (hereafter referred to as Philip). On August 27, 2000, Philip introduced [him] to AAA at the pier in Pingag, Isabel, Leyte until they became friends. He met AAA again on August 29, 2000 at Philip’s house when the latter came to visit him. They talked at the balcony of Philip’s house for one (1) hour and courted AAA until they became sweethearts. The next time he saw AAA was in the morning of August 30, 2000 in Philip’s house when curious onlookers milled around a captured python. AAA who was among the crowd told Wendel to meet her at the pier at 7 o’clock in the evening of that day. He acceded to AAA’s invitation and they met in a hut just beside the video “carirahan.” The hut was not lighted and there were no other people except them. There were people inside the “carirahan” but they could not see them inside the hut. When they were there, AAA embraced him first and so he returned the favor, and they kissed each other. Then, he removed his shorts and AAA also took off her shorts and panty. Wendel inserted his organ into the vagina of AAA but he was not able to penetrate because the latter felt pain. During the sexual act, AAA neither cried nor shouted. Not long thereafter, they stopped and went home. Wendel brought AAA to a store near the latter’s house and that was the last time he saw the latter. On his way home, Wendel met Philip Sambilad and he told the latter that he almost got AAA. Wendel denied the allegation that Dante and Edison were with him in the evening of August 30, 2000. Neither did he see the two on August 31, 2000. Wendel strongly denied having raped AAA as it was their agreement to meet in the evening of August 30, 2000. He only learned that he was accused of raping AAA when the police arrested him at his uncle’s house on September 1, 2000.[7]

THE RULING OF THE RTC

In its Decision dated 16 January 2003,[8] the RTC of the City of Ormoc, Branch 35, convicted appellant of rape and his co-accused as accomplices thereof. The RTC gave much evidentiary weight to the testimony of AAA considering that it was plain, straightforward, and positive, and without showing of any motive to falsely testify against her accused. The court a quo declared that between the positive testimony of the rape victim, AAA, in narrating that both accused Edison Tabianan and Dante Borinaga pointed their weapons at her while she was being raped by appellant, as against the mere denial by them, it is axiomatic in adjective of law that positive evidence is always stronger than that which is merely negative in character.[9]

Furthermore, with regard to appellant's proffered "sweetheart theory," it was found to be a self-serving allegation and deemed fabricated, as it was not supported by any independent and concrete evidence.[10] In other words, the RTC ruled that the prosecution have successfully discharged its burden of proving beyond reasonable doubt that appellant forced AAA to have sex with him, with the assistance of his co-accused on 31 August 2000. Thus:

WHEREFORE, premises considered, the Court finds the accused Wendel Ocdol GUILTY beyond reasonable doubt of the crime of Rape as principal for which he is hereby sentenced to suffer the penalty of Reclusion Perpetua, he is also ordered to indemnify the private complainant the sum of Fifty Thousand (P50,000.00) Pesos as civil indemnity; Fifty Thousand (P50,000.00) Pesos as moral damages, and Twenty Five Thousand (P25,000.00) Pesos as exemplary damages.

As against the accused Edison Tabianan and Dante Borinaga, the Court finds both accused Guilty beyond reasonable doubt as accomplices for the crime of Rape and appreciating in their behalves the mitigating circumstance of minority and after applying the provisions of the Indeterminate Sentence Law, hereby imposes the penalty of Two (2) Years, Four (4) Months and One (1) Day of prision correccional medium as minimum to Eight (8) Years and One (1) Day of Prision Mayor, medium as Maximum, they are also ordered to indemnify the private complainant [AAA] the sum of Fifty Thousand (P50,000.00) Pesos as indemnity; Fifty Thousand (P50,000.00) Pesos as moral damages and Twenty-Five Thousand (P25,000.00) Pesos as exemplary damages and to pay the costs.

If the accused are detained, the period of their imprisonment shall be credited in full if they abide by the terms for convicted prisoners, otherwise, only four-fifths (4/5) thereof.[11]

THE RULING OF THE CA

Upon appellate review, the CA affirmed in toto the RTC's Decision in convicting the accused. It adhered to the rule that failure of the victim to shout or offer tenacious resistance does not make voluntarily the victim's submission to the criminal acts of the accused. Not all rape victims can be expected to act conformably to the usual expectations of everyone. Different people react differently to a given situation or type of situation.[12] Thus, the CA explained that AAA's failure to shout was attributed to the shock and horror she felt from the force and intimidation employed by the two other accused to ensure the consummation of appellant's sexual assault.[13] This was consistent with the legal position that no woman would want to go through the process, the trouble and the humiliation of trial for such debasing offense unless she actually has been a victim of abuse and her motive is but a response to the compelling need to seek and obtain justice. More so, testimonies of child-victims are given full faith and credit since youth and immaturity are generally badges of truth and sincerity. Assessment of the credibility of witnesses and their testimonies is best undertaken by a trial court, whose findings are binding and conclusive on appellate courts, since the former had the opportunity to observe the elusive and incommunicable evidence of such witness deportment on the stand during examination.[14]

In addition, having invoked the positive defense of a romantic relationship with the victim, appellant bears the burden of proof to support said defense by some documentary and/or other evidence such as mementos, love

letters, notes, pictures, and the like. Unfortunately for the appellant, he miserably failed to do so since apart from the self-serving testimonies of appellant and his friend Philip Sambilad, no documentary or any other concrete proof of the alleged relationship was shown. As a matter of fact, the appellate court further pointed out that even granting that there was indeed such relationship between appellant and AAA, such does not preclude rape. A sweetheart cannot be carnally embraced against her will, for love is not a license for lust.[15]

Consequently, the CA Decision affirmed the RTC Decision, the pertinent portion of its disposition is quoted hereunder:

All told, the testimony of AAA adequately proved that appellant had indeed raped her. AAA's assertion of forced coitus was substantially corroborated by the medical findings on the presence of vaginal injuries. Thus, this Court is convinced that the prosecution was able to prove the guilt of appellant Wendel beyond reasonable doubt and that the trial court was correct in finding him guilty of rape.

WHEREFORE, the appeal solely filed by Wendel Ocdol y Mendova is denied for lack of merit. Accordingly, the January 16, 2003 decision of the Regional Trial Court, Branch 35 of Ormoc City is AFFIRMED in toto.[16]

THE RULING OF THE COURT

In our considered view, the prosecution has proven all the elements of the offense of simple rape, including the use of force or intimidation. Accordingly, we resolve to affirm the Decision of the CA with modification as to the payment of interest imposed on all damages awarded in this case.

At the outset, for conviction in the crime of rape, the following elements must be proved beyond reasonable doubt: (1) that the accused had carnal knowledge of the victim; and (2) that said act was accomplished: (a) through the use of force or intimidation, or (b) when the victim is deprived of reason or otherwise unconscious, or (c) when the victim is under 12 years of age or is demented.[17]

In the case at bench, the presence of the first element is undisputed since appellant admits his sexual congress with complainant.[18] While making such admission however, he contends that there was no force or intimidation to speak of as it was consensual. Appellant alleges that AAA willingly participated in the sexual act because they were lovers. He even presented a witness to corroborate his claim. Notwithstanding, their testimonies leave us unconvinced of appellant's alleged innocence.

The "sweetheart theory" is an admission of carnal knowledge of the victim and consequently places on the accused the burden of proving the supposed relationship by substantial evidence.[19] Otherwise called as the "sweetheart defense," it is an oft-abused justification that rashly derides the intelligence of this Court and sorely tests our patience.[20] The defense cannot just present testimonial evidence in support of the theory, as in the instant case. Independent proof is required – such as tokens, mementos, and photographs.[21] Appellant presented no such evidence to substantiate his claim.

Moreover, we agree with the pronouncement of the appellate court that even if it were true that they were indeed sweethearts, a love affair does not justify rape. As judiciously enunciated, a man does not have the unbridled license to subject his beloved to his unreciprocated carnal desires.[22]

First and foremost, in adjudging rape cases, the Court is guided by the following principles: (a) an accusation of rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (b) in view of the nature of the crime in which only two persons are involved, the testimony of the complainant must be scrutinized with extreme caution; and (c) 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.[23]

Here, the trial court found complainant's narration of the alleged rape to be clear, convincing and straightforward. Accordingly, we see no cogent reason to disturb the factual findings of the RTC, as affirmed by the CA, that appellant forced AAA to engage in sexual intercourse with him. This position is consistent with the time-honored doctrine that where the issue is one of credibility of witnesses, and in this case their testimonies as well, the findings of the trial court are not to be disturbed unless the consideration of certain facts of substance and value, which have been plainly overlooked, might affect the result of the case.[24]

As correctly pointed out in the 19 September 2011 Decision of the CA, the court a quo was in the best position to weigh the evidence presented during trial and ascertain the credibility of the witnesses who testified. In addition, there was no showing that the lower court overlooked, misunderstood, or misapplied facts or circumstances of weight which would have affected the outcome of the case.[25]

Again, by way of emphasis, we adhere to the rule that due to its intimate nature, rape is usually a crime bereft of witnesses, and, more often than not, the victim is left to testify for herself. Thus, in the resolution of rape cases, the victim's credibility becomes the primordial consideration. It is settled that when the victim's testimony is straightforward, convincing, and consistent with human nature and the normal course of things, unflawed by any material or significant inconsistency, it passes the test of credibility, and the accused may be convicted solely on the basis thereof. Inconsistencies in the victim's testimony do not impair her credibility, especially if the inconsistencies refer to trivial matters that do not alter the essential fact of the commission of rape. The trial court's assessment of the witnesses' credibility is given great weight and is even conclusive and binding.[26]

In *People v. Sapigao, Jr.*,[27] this Court expounded on the rationale for the abovementioned guideline:

It is well settled that the evaluation of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct, and attitude under grilling examination. These are important in determining the truthfulness of witnesses and in unearthing the truth, especially in the face of conflicting testimonies. For, indeed, the emphasis, gesture, and inflection of the voice are potent aids in ascertaining the witness' credibility, and the trial court has the opportunity and can take advantage of these aids. These cannot be incorporated in the record so that all that the appellate court can see are the cold words of the witness contained in transcript of testimonies with the risk that some of what the witness actually said may have been lost in the process of transcribing. As correctly stated by an American court, "There is an inherent impossibility of determining with any degree of accuracy what credit is justly due to a witness from merely reading the words spoken by him, even if there were no doubt as to the identity of the words. However artful a corrupt witness may be, there is generally, under the pressure of a skillful cross-examination, something in his manner or bearing on the stand that betrays him, and thereby destroys the force of his testimony. Many of the real tests of truth by which the artful witness is exposed in the very nature of things cannot be transcribed upon the record, and hence they can never be considered by the appellate court."

Applying the foregoing jurisprudential pronouncements in the present case and based on the findings of the trial court, AAA's demeanor during her testimony reveals the pain of remembering that ill-fated event. Her narration of the entire traumatic ordeal was clear, candid, and straightforward. It was clearly and convincingly established through her testimony that both carnal knowledge and the use of force and intimidation, indicating absence of consent, were extant in the present case. Consequently, by use of force and intimidation, AAA succumbed to the carnal desires of appellant even if it was against her will. AAA, while recounting her unfortunate ordeal, positively identified the appellant as the perpetrator; and she never wavered in this identification.

Finally, appellant's defense of denial is weak and cannot succeed to overturn his conviction. The victim's credible testimony was a sufficient basis for the CA to sustain the RTC's Decision convicting the appellant. Accordingly, the RTC and the CA correctly imposed the penalty of reclusion perpetua under Article 266-B of the

Revised Penal Code, as amended by R.A. No. 8355, or the Anti-Rape Law of 1997.

However, the civil indemnity, the awards of moral damages and exemplary damages, must be increased to P75,000.00, P75,000.00 and P30,000.00, respectively.

WHEREFORE, the Decision dated 19 September 2011 of the Court of Appeals in CA-G.R. CEB CR-H.C. No. 00305 is AFFIRMED with MODIFICATIONS that the civil indemnity, the awards of moral damages and exemplary damages shall be increased to P75,000.00, P75,000.00 and P30,000.00, respectively, and that an interest at the rate of six percent (6%) per annum shall be imposed on all the damages awarded in this case, from the date of finality of this judgment until they are fully paid.

SO ORDERED.

Carpio, (Chairperson), Velasco, Jr.,[*] Del Castillo, and Perlas-Bernabe, JJ., concur.

[*] Per Special Order No. 1757 dated 20 August 2014.

[1] Rollo, pp. 4-17; Penned by Acting Executive Justice Pampio A. Abarintos with Associate Justices Eduardo B. Peralta, Jr. and Gabriel T. Ingles concurring.

[2] CA rollo, pp. 28-34; Penned by Acting Presiding Judge Eric F. Menchavez.

[3] CA rollo, p. 9.

[4] Pursuant to R.A. No. 7610, “An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes;” R.A. No. 9262, “An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefore, 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 15 November 2004; and *People v. Cabalquinto*, 533 Phil. 703 (2006), the real name of the rape victim is withheld and, instead, fictitious initials are used to represent her. Also, the personal circumstances of the victim or any other information tending to establish or compromise her identity, as well as those of her immediate family or household members, is not disclosed.

[5] Rollo, p. 5.

[6] Id. at 6-7.

[7] Id. at 7-8.

[8] CA rollo, pp. 28-34.

[9] Id. at 32-33; RTC Decision dated 16 January 2003 citing *People v. Marcos*, G.R. No. 83325, 8 May 1990, 185 SCRA 154.

[10] Id. at 33 citing *People v. Burgos*, 421 Phil. 1006 (2001).

[11] Id. at 34.

[12] Rollo, pp. 10-11.

[13] Id. at 11.

[14] Id. at 12 citing *People v. Laboa*, G.R. No. 185711, 24 August 2009, 596 SCRA 733, 742; *People v. Dimacuha*, 467 Phil. 342, 349 (2004); and *People v. Del Mundo, Jr.*, 408 Phil. 118, 129 (2001).

[15] Id. at 13-15 citing *People v. Dreu*, 389 Phil. 429, 435 (2000); *People v. Garces, Jr.*, 379 Phil. 919, 937 (2000); and *People v. Barcelona*, 382 Phil. 46, 57 (2000).

[16] Id. at 16.

[17] REVISED PENAL CODE, Art. 266-A as amended by Republic Act No. 8353; *People v. Barangan*, 560 Phil. 811, 834 (2007) (Emphasis supplied).

[18] CA rollo, p. 32; RTC Decision dated 16 January 2003; Note that there was a factual finding that accused-appellant admitted to have sex with the victim at 8:00 o'clock in the evening of 31 August 2000 during the clarificatory questioning of the RTC Judge.

[19] *People v. Hapin*, 557 Phil. 762, 776 (2007).

[20] *People v. Barangan*, 560 Phil. 811, 835 (2007).

[21] *People v. Batiancila*, 542 Phil. 420, 431 (2007).

[22] *People v. Barangan*, supra note 20.

[23] *People v. Panique*, G.R. No. 125763, 13 October 1999, 316 Phil. 757, 763-764.

[24] *People v. Lardizabal*, G.R. No. 89113, 29 November 1991, 204 SCRA 320, 329.

[25] *People v. Estrada*, G.R. No. 178318, 15 January 2010, 610 SCRA 222, 231 citing *People v. Dalisay*, G.R. No. 188106, 25 November 2009, 605 SCRA 807, 814-815.

[26] *People v. Dion*, G.R. No. 181035, 4 July 2011, 653 SCRA 117, 133.

[27] G.R. No. 178485, 4 September 2009, 598 SCRA 416, 425-426 cited in *People v. Dion*, id. at 133-134.

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