

ROLDAN CARRERA, PETITIONER, VS. THE PEOPLE OF PHILIPPINES, RESPONDENT.

G.R. No. 217804. September 02, 2015

Ponente: VELASCO JR., J.

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VELASCO JR., J.:

This petition for review on certiorari under Rule 45 of the Rules of Court assails and seeks to set aside the Decision[1] and Resolution[2] dated July 17, 2014 and March 4, 2015, respectively, of the Court of Appeals (CA) in CA-G.R. CR No. 01839 which affirmed with modification the August 5, 2011 Decision[3] of the Regional Trial Court (RTC) of Barotac Viejo, Iloilo, Branch 66, adjudging Roldan Carrera (Carrera) guilty beyond reasonable doubt of the crime of rape by sexual assault under Article 266-A (2) of the Revised Penal Code (RPC) and penalized under Article 266-B thereof.

Pursuant to Republic Act (R.A.) No. 7610 and in line with our ruling in *People v. Cabalquinto*,[4] the real name of the victim, as well as any information which tends to establish or compromise her identity shall be withheld. The initials AAA shall be used instead to identify her.

The Facts

In an Information dated August 26, 2004 filed with the RTC of Barotac Viejo, Iloilo, Carrera was charged with rape allegedly committed as follows:

That on or about June 13, 2004 in the Municipality of Barotac Viejo, Province of Iloilo, Philippines and within the jurisdiction of this Honorable Court, the above-named [accused], by means of force, threat or intimidation, with lewd design, did then and there wilfully, unlawfully and feloniously commit an act of sexual assault on the victim [AAA] by inserting his finger on her vagina against her will and consent.

CONTRARY TO LAW.[5]

Docketed in the RTC as Crim. Case No. 2004-2699, the Information was eventually raffled to Branch 66 thereof.

When arraigned, Carrera entered a plea of not guilty.

In the ensuing trial, the prosecution, to buttress its case against Carrera, as accused, presented as evidence the testimonies of AAA, her mother, Dr. Aimee Icamina (Dr. Icamina) and PO2 Rubie Hubo.

The People's version of the incident, as narrated in the decision now on appeal, may be summarized as follows:

It happened at around 7:00 o'clock on a rainy evening of June 13, 2004. At about that time, AAA was walking on her way home from a tailor shop in poblacion Barotac Viejo. Some ten (10) meters away from her house, a man who AAA recognized to be Carrera suddenly emerged from a dark portion of the street and waylaid AAA. Obviously taken aback by Carrera's sudden appearance, AAA then asked the latter if there was any problem, followed by an invitation to have supper at her house. AAA knew Carrera in person as he had done carpentry work when their house was being constructed.[6]

Carrera reacted by uttering the following ominous lines: "hipos karon, patyon ta" (Quiet! Or else I will kill you), after which he grabbed AAA's arm and dragged her toward a nearby church. Upon reaching the left side of the church structure, Carrera pushed AAA to the ground, then immediately pinned her down by placing his knees on top of her back and holding her left arm. Carrera then pulled down AAA's garterized shorts and panty with his free hand while she was pinned down^[7] and then inserted a finger into her vagina against her will. While doing this, Carrera also kissed AAA along her ears and her face. AAA struggled, only to be overpowered by the stronger Carrera. She tried kicking and boxing him, but her position on the ground proved to be an obstacle. She shouted for help, but the heavy downpour drowned her voice.^[8]

AAA would continue struggling and crawling until her attacker loosened his hold on her arm, enabling AAA to move both her hands and to break free. Upon this chance, AAA ran toward their house half naked. The sight of AAA when she reached home without any underwear, with blood on her legs and mud all over her body impelled the shocked mother to immediately repair to the nearby police station to report the incident.^[9]

AAA submitted herself for medical examination the following day. Dr. Icamina, the examining physician, found fresh and complete hymenal laceration in AAA's external genitalia and so indicated her findings in the Medico-Legal Certificate, as follows:

"Physical Findings:

External Genitalia

(+) fresh complete hymenal lacerations at 3 & 7 o'clock position;

(+) fresh laceration fourchette.

Impression: Disclosure of sexual abuse. Medical evaluation shows definite evidence of abuse or sexual contact."^[10]

For its part, the defense offered the testimonies of Carrera himself and the corroborating testimonies of a sister-in-law, a friend and one other.

The CA decision likewise summarizes the version of the defense, mainly centered on alibi and denial.^[11]

Carrera declared on the stand where he was on the date and hour in question. According to him, he was at Brgy. Sto. Tomas, Barotac Viejo, Iloilo, his place of residence, at the time the supposed crime was committed. He narrated that on June 13, 2004, he went to Dumarao, Capiz to attend the burial of a relative, after which event he boarded a bus at around 3:00 p.m. for his return trip. He arrived at Barotac Viejo Terminal at around 5:00 p.m. and from there, he boarded a tricycle driven by Jovan Cartagena, who drove Carrera to his home barangay. At Brgy. Sto. Tomas, Carrera stopped by a store to join a group of drinking friends. After the drinking spree, Carrera, together with a friend, Ananias Balleras, went home by foot. Nancy Vistal, a sister-in-law, saw him reaching home. He took his dinner and thereafter went to sleep at about 7:30 p.m. While in deep slumber, he was suddenly awakened by the police. Upon being informed by the police about a complaint against him, Carrera was brought to and detained at the police station of Barotac Viejo, where, to his surprise, his brother, Rodeo Carrera, was also being detained, also as a suspect. His brother would later be released when AAA pointed at Carrera as the perpetrator.^[12]

After trial, the RTC rendered on August 5, 2011 a Decision finding Carrera guilty as charged, disposing as follows:

"WHEREFORE, the court hereby finds the accused Roldan Carrera guilty beyond reasonable doubt of the crime of Rape by Sexual Assault defined and penalized under Art. 266-A(2) of the Revised Penal Code and sentences the said accused to an indeterminate prison term ranging from four (4) years, two (2) months, and

one (1) day of [prison correctional] as minimum to six (6) years and one (1) day of [prison] mayor as maximum, together with the accessory penalty provided by law and to pay the costs.

SO ORDERED."[13]

The trial court pronounced AAA's testimony on the rape incident adequate to establish Carrera's guilt of the felony charged beyond reasonable doubt, overruling in the process the latter's proffered defense of alibi and denial. Giving short shrift to Carrera's alibi defense, the RTC stated the observation that it was not physically impossible for Carrera to be at the scene of the crime considering that the distance between Brgy. Sto. Tomas and the poblacion was only a thirty-minute drive by a motorcycle. The court underscored the fact that AAA, who has known and seen Carrera prior to the incident, was able to positively point to Carrera as the perpetrator. To the trial court, Carrera's bare denial cannot outweigh AAA's affirmative testimony.

Aggrieved, Carrera appealed to the CA, the recourse docketed as CA-G.R. CR No. 01839. By Decision dated July 17, 2004, the appellate court affirmed that of the RTC, with modification in that it further ordered Carrera to pay AAA civil indemnity in the amount of Thirty Thousand Pesos (P30,000.00), moral damages in the amount, of Thirty Thousand Pesos (P30,000.00), and exemplary damages in the amount of Thirty Thousand Pesos (P30,000.00), plus legal interest at the rate of six percent (6%) per annum on all damages awarded from the finality of judgment until fully paid. The dispositive portion of the CA Decision reads:

WHEREFORE, the instant appeal is DENIED, and the Decision dated August 5, 2011 of the Regional Trial Court, Branch 66, Barotac Viejo, Iloilo, in Criminal Case No. 2004-2699 is hereby AFFIRMED with MODIFICATIONS insofar as the payment of civil indemnity, moral damages, and exemplary damages in favor of the private complainant.

Thus, accused-appellant is hereby ORDERED to pay the private complainant Thirty Thousand Pesos (P30,000.00) as civil indemnity, Thirty Thousand Pesos (P30,000.00) as moral damages, and Thirty Thousand Pesos (P30,000.00) as exemplary damages. In addition, legal interest at the rate of six percent (6%) per annum is imposed on all amounts of damages awarded to the private complainant from the date of finality of this judgment until fully paid.

SO ORDERED.

Carrera moved for reconsideration of the said Decision, but the CA denied the same in a Resolution dated March 4, 2015.

Hence, Carrera filed this petition and prays for reversal of his conviction, arguing that the lower courts have erred:

1. x x x in convicting the accused of the crime charged and imposing upon him the civil liability;
2. x x x in convicting the accused of sexual assault by means of force despite that the prosecution has failed to establish that the element of voluntariness on the part of the victim was absolutely lacking; and
3. x x x in convicting the accused despite the total absence of physical evidence to corroborate complainant's claim of use of force against her.[14]

The Issue

Verily, the principal issue at bench is whether or not the prosecution has proven the guilt of Carrera for the crime charged beyond reasonable doubt, which in turn resolves itself into the principal question of the credibility of the prosecution's key witness, AAA herself.

Petitioner Carrera would assert at every turn that the prosecution has failed to prove that he employed force upon AAA in committing the alleged assault, adding in this regard that there is total absence of physical evidence to

corroborate AAA's claim of use of force against her. According to him, the absence of defensive wounds and lack of proof of resistance of AAA while the purported assault was taking place show that there was voluntariness on her part.

Pushing the point, petitioner calls attention to the medical certificate adduced as evidence which was negative of any finding of the presence of contusion, bruises, scratches, hematoma, or any injury on AAA's arms and the back portion of her upper body.[15] Petitioner would also express disbelief how AAA's shorts and underwear could have remained intact and undamaged if he indeed forcibly stripped her of these dress items.[16] Petitioner would also argue, citing the cases of *People v. Lamarroza*[17] and *People v. Gavina*,[18] that he should be acquitted, lacking as here of any showing of the element of total absence of voluntariness on the part of the party assaulted. In *Gavina*, the Court held: "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." [19]

The Court's Ruling

The appeal must fail.

It must be pointed out right off that the petitioner would have this Court review the uniform factual findings of the courts below, an exercise which necessarily entails evaluating the credence accorded by them on AAA's account of her sordid experience in the hands of petitioner. It is a hornbook rule, however, that factual determinations of trial courts when substantiated by evidence on record carry great weight and respect on appeal. It is not the function of this Court in a petition for review to evaluate evidence all over again,[20] save in exceptional circumstances, such as where the findings of the trial court and the CA are absurd, contrary to the evidence on record, impossible, capricious or arbitrary, or based on a misappreciation of facts.[21] The extant case does not fall under the exceptions to this general rule. It is germane to state, however, that the Court has assumed an attitude of caution and circumspection in evaluating testimonies in rape cases, bearing in mind the familiar dictum that an accusation for rape can be made with facility, albeit difficult to prove, but more difficult for the accused to disprove, though innocent.

Article 266-A of the RPC, as amended by R. A. No. 8353,[22] enumerates the manner by which rape by sexual assault 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.

2. By any person who, under any of the circumstances mentioned in paragraph 1 hereof shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

Clearly then, rape can be committed either through sexual intercourse or by sexual assault.[23] Rape by sexual assault is committed under any of the circumstances mentioned in paragraph 1 and through any of the means enumerated under paragraph 2 of Article 266-A. The gravamen of rape through sexual assault is "the insertion of the penis into another person's mouth or anal orifice, or any instrument or object, into another person's genital or anal orifice." [24] It is also called "instrument or object rape" or "gender-free rape." [25]

AAA accuses petitioner Carrera of inserting his finger into her vagina without her consent and by use of force, the overt act constituting rape by sexual assault within the purview of Article 266-A.

As a matter of settled jurisprudence, when a woman says she has been raped, she says in effect all that is necessary to show that she has been raped and her testimony alone is sufficient if it satisfies the exacting standard of edibility and consistency needed to sustain a conviction."^[26] Rape is essentially an offense of secrecy, not generally attempted save in secluded or dark places. By the distinctive nature of rape cases, their prosecution usually commences on the word and conviction usually rests solely on the basis of the testimony of the victim, if credible, natural, convincing, and consistent with human nature and the normal course of things.^[27] Thus, the victim's credibility becomes the primordial consideration in the resolution of rape cases.^[28]

People v. Abat^[29] teaches that the evaluation of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court, owing to its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct, and attitude under grilling examination. In the case at bar, the trial court and later the CA found the victim and her testimony to be credible. It is well-settled that factual findings of the trial court, its calibration of the testimonies of the witnesses, and its conclusions anchored on its findings are accorded by the appellate court high respect, if not conclusive effect, more so when affirmed by the CA.^[30]

Contrary to petitioner's posture, there can be no quibbling, as the evidence show, that he employed force upon AAA who, in turn, put up an incessant fierce struggle during her nauseating ordeal. The RTC and CA were one in saying that AAA did not voluntarily submit to the petitioner's lustful desire. The force employed and the sexual abuse committed by the accused was clearly recounted by AAA in her testimony, thus:

Pros. Con-el:

Q: At that time when you were approaching your house at a distance of about ten (10) meters, can you tell the court if there was any unusual incident that happened to you?

A: While I was walking with umbrella considering that it was raining, suddenly a man just surfaced from my side and then went directly in front of me.

Q: What else did that man do to you?

A: When he was right in front of me I was able to identify him immediately and I said "What is the problem? Come to our house for supper."

Q: What did he answer if he answered anything?

A: He said, "Quite (sic), I will kill you".

Q: After that what did he do if he did anything to you?

A: He immediately got hold both my arms and held them very tight and he throw (sic) me at the other side of the road.

Q: After that what happened?

A: I fell to the ground face down and he immediately placed himself behind me with his (sic) knees placed on my back then he immediately pulled down my shorts and panty.

Q: Were your panty and shorts totally taken off by the accused?

A: Yes, sir.

Q: After that what happened when the accused have already totally taken off your shorts and panty?

A: He fingered me at the same time kissing me. He kissed me along my ears and the rest of my face while still in that position.

x x x x

Q: You said that you were fingered and kissed by the said accused. How many times did he do that to you?

A: I was not able to count because during that time I was struggling and I was trying to free myself but he was very strong. I was thinking of boxing him or anything that I can do to free myself.

x x x x

Q: You said that the incident happened in front of the 7th Day Adventist Church. Can you tell the Honorable Court if aside from this church there are some other houses around?

A: Yes, sir.

Q: What was the distance of these houses from the scene of the incident.

A: The distance of this church to our house is about ten (10) meters and across this church is the house of Atty. Vencer which is also about ten (10) meters away.

Q: Did it not occur to your mind to ask for help by shouting to the neighbours around?

A: I did shout to the top of my voice but they cannot hear because the rain was pouring heavily.

Q: In the act of struggling in order to free yourself from the hold of the accused, can you tell the court if you were able to free yourself from the hold of the accused?

A: Yes, sir I crawled. I really tried to free myself but I really find (sic) it hard because he was on top of me, but later I was able to free myself.

Court:

Q: How were you able to free yourself for a period of ten (10) minutes?

A: He was kneeling behind me with his left hand holding firmly my left arm and his right hand at my anus and to my vagina. But later he loosened his hold on my left arm and I continued to struggle and move both my arms and later I succeeded in freeing myself, Your Honor.[31]

And to be sure, AAA, after mustering the test of credibility and consistency during direct examination has withstood an intense cross-examination.

Petitioner's pretense that the prosecution failed to establish that he employed force upon AAA in committing the sexual assault deserves scant consideration. Indeed, AAA testified that the petitioner had to hold both of her arms and drag her toward the church, where the actual assault was committed. All the while, she tried to set herself free but was unsuccessful. Surely the mix of the adverted acts of the petitioner constitute, as aptly observed by the CA, the force contemplated in the law. The absence of visible bruises, scratches or contusion on the body, if this be the case, is in context of little moment. External signs of physical injuries on the victim is not an element of the crime of rape, and their absence, without more, does not necessarily negate the commission of rape.[32]

Moreover, Carrera's suggestion that AAA voluntarily participated in his libidinous adventure as shown, so he claims, by her failure to put up resistance to the attack does not inspire concurrence. AAA in fact recounted her efforts to repel the assault against her honor and how her cry for help was left unheeded due to the strong downpour at the time of the rape. On this point, the CA noted, thus:

On the contrary, We found that there is a total absence of voluntariness on the part of AAA. Her testimony is very categorical when she narrated that while she was pinned down by the appellant she struggled very hard, she tried to kick or box appellant but she could not overpower him. She testified that she fell on the ground facing down, and that appellant immediately knelt on her back to restrain her with his weight and held one of her arms, while appellant's other arm was used to commit the sexual assault. Her efforts were indeed futile because the appellant overpowered her, but that does not mean she did not exert any effort to resist.[33]

In any event, the failure to shout or offer tenacious resistance does not make voluntary the victim's submission to the criminal act of the offender.[34]

While AAA's testimony alone is sufficient to sustain the petitioner's conviction, the prosecution saw fit to present her mother to testify seeing her daughter, during the fateful night, half-naked, without any underwear, with mud all over her body and blood covering her legs,[35] indicating that she has been molested. Of course AAA's allegation of sexual abuse finds collaboration too from the Medico-Legal Certificate issued by Dr. Icamina, who declared that the fresh and complete hymenal laceration found in AAA's external genitalia suggests that some object was inserted in her private part.

All told, there is a total absence of voluntariness on the part of AAA. The conviction of Carrera for the rape by sexual assault of AAA stands. Nothing in the records would show any circumstance of substance, like hostility, malice or ill sentiments, and accepted by the courts below that would becloud the veracity of AAA's narration of every ugly detail of her traumatic experience.

A final observation. Before the trial court, petitioner had interposed the defense of alibi, but would change tack in the proceedings before this Court to advance the argument that he could not possibly be convicted of object rape given that AAA contributed in some way to the realization of an act otherwise punishable as a felony. The abrupt shift in the petitioner's approach is not lost on the Court.

In accordance with Article 266-B of the RPC, the penalty for the offense of rape by sexual assault is one degree lower than that imposed for rape by sexual intercourse, or prision mayor. Applying the Indeterminate Sentence Law, the minimum of the indeterminate penalty shall be taken from the full range of the penalty next lower in degree than that prescribed by law, which is prision correccional, and the maximum of which shall come from the proper penalty that could be imposed under the RPC. Thus, the trial court correctly imposed the penalty of four (4) years, two (2) months, and one (1) day of prision correccional, as minimum, to six (6) years and one (1) day of prision mayor, as maximum. The civil liability imposed by the CA is likewise affirmed, in line with *People v. Crisostomo*,[36] the prevailing jurisprudential guide on the matter.

WHEREFORE, the petition is DENIED. The Decision dated 17, 2014 and Resolution dated March 4, 2015 of the Court of Appeals (CA) in CA-G.R. CR No. 01839 are hereby AFFIRMED in TOTO.

SO ORDERED.

Brion,[*] Peralta, Villarama, Jr., and Perez,[**] JJ., concur.

September 18, 2015

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on ___September 2, 2015___ a Decision, copy attached herewith, was rendered by the

Supreme Court in the above-entitled case, the original of which was received by this Office on September 18, 2015 at 9:30 a.m.

Very truly yours,

(SGD)

WILFREDO V. LAPITAN

Division Clerk of Court

[*] Additional Member per raffle dated May 20, 2015.

[**] Acting Member per Special Order No. 2084 dated June 29, 2015.

[1] Rollo, pp. 89-104. Penned by Associate Justice Ma. Luisa C. Quijano-Padilla, with the concurrence of Associate Justices Gabriel T. Ingles and Marie Christine Azcarraga-Jacob.

[2] Id. at 115-117.

[3] Id. at 23-25.

[4] G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[5] Supra note 1 at 23.

[6] Id. at 90.

[7] Id. at 90-91.

[8] Id. at 91.

[9] Id.

[10] Id. at 92.

[11] Id.

[12] Id. at 92-93.

[13] Id. at 25.

[14] Id. at 9.

[15] Id. at 14.

[16] Id. at 12.

[17] G.R. No. 126121, November 24, 1998, 229 SCRA 116.

[18] G.R. No. 143237, October 28, 2002, 391 SCRA 287.

[19] Id. at 296.

[20] Tan v. People, G.R. No. 173637, April 21, 2009, 586 SCRA 139, 151.

[21] Tad-y v. People, G.R. No. 148862, August 11, 2005, 466 SCRA 474, 492.

[22] Otherwise known as the "Anti-Rape Law of 1997."

[23] People v. Soria, G.R. No. 179031, November 14, 2012, 685 SCRA 483, 497.

[24] Ricalde v. People, G.R. No. 211002, January 21, 2015, citing Pielago v. People, G.R. No. 202020, March 13, 2013, 693 SCRA 476, 488.

[25] Supra note 23.

[26] People v. Gahi, G.R. No. 202976, February 19, 2014, 717 SCRA 209, 227.

[27] People v. Ayade, G.R. No. 188561, January 15, 2010, 610 SCRA 246, 251.

[28] People v. Ocdol, G.R. No. 200645, August 20, 2014, 733 SCRA 561, 574.

[29] G.R. No. 202704, April 2, 2014, 720 SCRA 557, 564.

[30] Supra note 27 at 253.

[31] Supra note 1 at 97-99, citing TSN, January 12, 2006, pp. 17-20.

[32] People vs. Alfonso, G.R. No. 72573, August 31, 1987, 153 SCRA 487, 499. 13 Supra note 1 at 100.

[34] People v. Dadulla, G.R. No. 175946, March 23, 2007, 519 SCRA 48, 58.

[35] Supra note 1 at 103.

[36] G.R. No. 196435, January 29, 2014, 715 SCRA 99, 113-114.

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