

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V. JOSELITO BRINGCULA Y FERNANDEZ, ACCUSED-APPELLANT.*G.R. No. 226400. January 24, 2018*

Ponente: PERALTA, J.

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This is to resolve the appeal of appellant Joselito Bringcula y Fernandez that seeks to reverse and set aside the Decision[1] dated April 8, 2016 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01294-MIN finding him guilty beyond reasonable doubt of the crime of robbery with rape.

The facts follow.

On the night of May 2, 2011, private complainant AAA was sleeping in her house together with her children, househelper and niece. She was awakened at early dawn by the barking of the dog and when she stood up to see if there was any one inside their house, she saw no one and went back to sleep. She was again awakened when a man wearing a mask touched her shoulder and poked a firearm at her neck. The man told her that it was a robbery and that she should keep quiet or else he would kill her. She was able to recognize the voice of the man to be that of appellant Bringcula. Then, she was ordered to lie face down and was hogtied using a shoelace. The appellant took AAA's two bracelets and wedding ring, and asked her where her money was. AAA pointed at her bag inside the aparador beside her bed, where she placed her money which the appellant also took.

Appellant, thereafter, made AAA lie on her back and pulled her pajama and underwear. He also removed his own clothing including his mask. Appellant proceeded to lick AAA's vagina, kissed her neck, laid on top of her and inserted his penis into her vagina. AAA was unable to cry for help because appellant threatened to kill her if she does. After satisfying his lust, appellant dressed up and took AAA's necklace and two (2) cellular phones. When appellant left, AAA awakened her niece and told her to shout for help. A certain BBB, Barangay Captain CCC, Kagawad EEE and some neighbors arrived at AAA's house and when they asked who the culprit was, she opted not to immediately disclose appellant's identity.

Later in the morning, AAA went to the police station to report the incident and submitted herself for a medical examination.

Thus, the following Information was filed against the appellant:

That on or about the 2[nd] day of May, 2011, in _____, municipality of _____, Province of Bukidnon, Philippines, within the jurisdiction of this Honorable Court, the above-named accused, armed with firearm, by means of force and violence, did then and there wilfully, unlawfully and feloniously, with intent to gain and without the consent of the owner thereof enter the house of AAA and once inside entered the room of AAA and rob, take, and carry away: necklace worth P1,000.00, bracelet worth P1,500.00, ring worth P600.00, two (2) cellular phones worth P1,500.00 and cash money in the amount of P5,000.00 with a total value of P9,600, Philippine currency, belonging to AAA;

That on the occasion of the said robbery, accused, prompted by lewd designs, by means of threat and intimidation, did then and there wilfully, unlawfully and feloniously poke the firearm in the neck of AAA, hogtied her, remove her pajama and panty, lick her vagina, place himself on top of her and inserted his penis into her vagina and have sexual intercourse with AAA, against her will.

CONTRARY to and in violation of Article 294(1) of the Revised Penal Code.[2]

Appellant denied the allegations and interposed alibi as a defense. He claimed that in the evening of May 2, 2011, he was at home sleeping. His testimony was corroborated by his wife who testified that appellant was sleeping beside her on May 2, 2011 around 1 o'clock in the early morning.

The Regional Trial Court (RTC),[3] Branch 11, xxxxxxxxxxxx, Bukidnon found appellant guilty beyond reasonable doubt of the crime charged; thus, he was sentenced with the following:

Premises above-considered and with no mitigating or aggravating circumstance, the court finds the accused DDD Guilty beyond reasonable doubt of the special complex crime of Robbery with Rape and hereby sentences him to suffer the penalty of imprisonment of Reclusion Perpetua. The preventive detention undergone by the accused at the BJMP, xxxxxxxxxxxx shall be credited to his penalty of imprisonment, the remainder of which he shall serve at the Davao Penal and Prison Farm, B.E. Dujali Davao Del Norte.

Furthermore, the accused is hereby ordered to pay PC the following:

- P 9,600.00 Actual damages, if restitution is not feasible with legal interest.
- P75,000.00 Moral damages
- P50,000.00 Exemplary damages
- Costs of the suits.

SO ORDERED.[4]

According to the RTC, the elements of the crime charged are present in the case and that the defense of appellant is weak.

The CA affirmed the decision of the RTC with modification that appellant pay AAA 75,000.00 as civil indemnity, thus:

WHEREFORE, the appeal is DENIED, the 25 March 2014 Decision of the Regional Trial Court of xxxxxxxxxxxx, Branch 11, is hereby AFFIRMED with MODIFICATION. Appellant is DIRECTED to pay AAA P75,000.00 as civil indemnity, in addition to the other damages awarded by the lower court. Interest at the rate of six percent (6%) per annum is imposed on all the damages awarded in this case from date of finality of this judgment until fully paid.

SO ORDERED.[5]

The CA agreed with the RTC that the elements of the crime of robbery with rape are present. It also agreed that appellant's defense of denial and alibi must fail. The CA also ruled that the aggravating circumstance of dwelling must be appreciated.

Hence, the present appeal.

Appellant claims that the prosecution failed to prove his guilt beyond reasonable doubt. He contends that his identity was not properly established and that the testimony of AAA is not credible because of its inconsistencies. He also questions the legality of his warrantless arrest.

The crime of Robbery with Rape is penalized under Article 294 of the Revised Penal Code (RPC), as amended by Section 9 of Republic Act (R.A.) No. 7659. Robbery with Rape is a special complex crime under Article 294 of the RPC. It contemplates a situation where the original intent of the accused was to take, with intent to gain, personal property belonging to another and rape is committed on the occasion thereof or as an accompanying crime.[6]

In *People v. Evangelio, et al.*,[7] this Court ruled that:

For a conviction of the crime of robbery with rape to stand, it must be shown that the rape was committed by reason or on the occasion of a robbery and not the other way around. This special complex crime under Article 294 of the Revised Penal Code contemplates a situation where the original intent of the accused was to take, with intent to gain, personal property belonging to another and rape is committed on the occasion thereof or as an accompanying crime. x x x[8]

Thus, to be convicted of robbery with rape, the following elements must concur: (1) the taking of personal property is committed with violence or intimidation against persons; (2) the property taken belongs to another; (3) the taking is characterized by intent to gain or *animus lucrandi*; and (4) the robbery is accompanied by rape.[9]

The RTC and the CA were correct in ruling that the elements of robbery with rape are present in this case. As ruled by the CA:

As to the asportation by appellant of private complainant's personal properties constituting the first three (3) elements of the crime, We find the same sufficiently established by the evidence on records. The prosecution was able to prove that appellant entered the house of private complainant and took her money, some pieces of jewelry and cellphones by means of violence and intimidation. Appellant barged into the house of the victim armed with a weapon, tied her down to immobilize her, and robbed her of some personal belongings. Private complainant saw the perpetrator leaving her house carrying the pieces of jewelry and other items taken from her.

Having established that the personal properties of the [victim were] unlawfully taken by the appellant, intent to gain was sufficiently proven.x x x

x x x x

The prosecution was likewise able to establish that appellant raped private complaint on the occasion of the robbery.

Private complainant's account on what appellant did to her was straightforward, candid and carries a disturbing ring of sordid truth. She vividly recounted how appellant forced himself on her and succeeded in having carnal knowledge with her. x x x

x x x x

It is a settled rule that the foremost even sometimes, the only consideration in the prosecution for rape is the victim's testimony. The victim's testimony alone, if credible, is sufficient to convict. A rape victim, who testifies in a categorical, straightforward, spontaneous, and frank manner, and remains consistent on all material points, is a credible witness.[10]

The prosecution was also able to establish, based on AAA's testimony, that the robbery preceded the crime of rape and that the latter crime was an incident to the original intent of the appellant to rob AAA, thus:

Q: Now that was the first word asked by the accused that he was looking for money from you, am I right?

A: After he called my attention by touching my shoulder and he tied me, he asked where is the money.

Q: At that time you were already lying on your back or still facing down?

A: I was still lying face down.

Q: But according to you, the first thing that the accused allegedly got from your possession is your wedding ring and your bracelet, am I right?

A: Yes sir because when he ordered me to lay (sic) on my face and tied my hands, he saw the wedding ring and the bracelet and he took it.

Q: And after that, the accused asked you where is your money?

A: Yes sir.

Q: Now, according to you, the accused then removed your pajama, am I right?

A: Yes sir.

Q: At that time, what was your position?

A: I was lying on my back.

Q: And you mean to say, you were already face to face looking with (sic) the accused, am I right?

A: Yes sir.

Q: But at that time, the accused was allegedly still concealing his identity with the use of the clothing?

A: No more.

Q: In other words, when you were already lying on your back, you already saw the accused already removing the clothing, to show his identity?

A: Yes sir.[11]

As to the issue raised by appellant that the testimony of AAA is not credible because it was impossible for her to have identified her aggressor because of her inconsistent statements and that she did not disclose the violation committed against her person immediately after the incident, deserves no merit. This Court has ruled in several cases that inconsistencies of witnesses with respect to minor details and collateral matters do not affect the substance of their declarations, their veracity or the weight of their testimonies. It would be unfair to expect a flawless recollection from one who is forced to relive the gruesome details of a painful and humiliating experience such as rape.[12] What is clear is that AAA was able to testify in a straightforward manner the incident that took place or on how she was raped, thus:

Q: So he tied your hands behind your back while you were lying down and he undressed himself or he undress you first?

A: He first remove[s] my pajama.

Q: And your underwear?

A: Yes sir.

Q: And he followed that up by undressing himself?

A: Yes sir.

Q: Which one was undressed on the part of the accused?

A: He removed all his clothing.

Q: You want to impress to this court that the accused was entirely naked?

A: Yes sir.

Q: That is before he licked your vagina?

A: Yes sir.

Q: Now, when the accused laid on top of you, he was doing such push and pull movement, am I right?

A: Yes sir.[13]

When the testimony of a rape victim is simple and straightforward, unshaken by rigorous cross-examination and unflawed by any serious inconsistency or contradiction, the same must be given full faith and credit.[14]

Also, AAA's behavior after the incident, particularly opting not to disclose her ordeal in the hands of the appellant immediately thereafter, is inconsequential. Jurisprudence has established that delay in revealing the commission of rape is not an indication of a fabricated charge, and the same is rendered doubtful only if the delay was unreasonable and unexplained.[15]

Anent the defense of denial and alibi interposed by appellant, such must not be appreciated by the Court. Between the categorical statements of the prosecution witness, on one hand, and the bare denial of the appellant, on the other, the former must perforce prevail. An affirmative testimony is far stronger than a negative testimony especially when it comes from the mouth of a credible witness. Alibi and denial, if not substantiated by clear and convincing evidence, are negative and self-serving evidence undeserving of weight in law. They are considered with suspicion and always received with caution, not only because they are inherently weak and unreliable but also because they are easily fabricated and concocted.[16] Denial cannot prevail over the positive testimony of prosecution witnesses who were not shown to have any ill-motive to testify against the appellant.[17]

As to the legality of his warrantless arrest, appellant is already estopped from questioning such because it was never raised prior to his having entered a plea of not guilty. Moreover, the rule is that an accused is estopped from assailing the legality of his arrest if he failed to move to quash the information against him before his arraignment.[18] Any objection involving the arrest or the procedure in the acquisition by the court of jurisdiction over the person of an accused must be made before he enters his plea, otherwise, the objection is deemed waived.[19] Even in the instances not allowed by law, a warrantless arrest is not a jurisdictional defect, and objection thereto is waived where the person arrested submits to arraignment without objection.[20] The subsequent filing of the charges and the issuance of the corresponding warrant of arrest against a person illegally detained will cure the defect of that detention.[21] As aptly ruled by the CA:

In the present case, appellant was arrested on the very same day that the crime was committed. Albeit the arrest was not effected immediately after the incident, this is readily explained by the fact that private complainant opted not tell anyone who [her] assailant was until that morning when she officially filed her complaint in the police station. True enough, she cannot just divulge to her companions that she was raped, a conduct consistent with a woman who had just underwent a grievous ordeal. It was thus only upon the filing of the complaint and on the basis thereof that the police found a reasonable ground to make appellant a suspect of the crime and accordingly caused his arrest. With the fact that appellant and private complainant are neighbors, the latter's identification of the former as her assailant strongly created the probable cause of the guilt of appellant. As such, in the inquest investigation, the Provincial Prosecutor found a probable cause that appellant committed the crime of robbery with rape, thus rendering his arrest without warrant legal.

At any rate, accused-appellant already pleaded not guilty to the crime charged against him during his arraignment without questioning his warrantless arrest. He actively participated in the proceedings before the trial court thereafter. In effect, appellant is deemed to have submitted himself to the jurisdiction of the court and waived any perceived defect or irregularity that may have attended his arrest.

Settled is the rule that an accused is estopped from assailing any irregularity with regard to his arrest if he fails to raise this issue or to move for the quashal of the information against him on this ground before his arraignment. Any objection involving a warrant of arrest or the procedure by which the court acquired jurisdiction over the person of the accused must be made before he enters his plea; otherwise, the objection is deemed waived.[22]

As to imposition of the penalty, the crime of robbery with rape is a special complex crime punishable under Article 294 of the Revised Penal Code, as amended by R.A. 7659.[23] Article 294 provides for the penalty of reclusion perpetua to death, when the robbery was accompanied by rape. The provision reads as follows:

Art. 294. Robbery with violence against or intimidation of persons; Penalties. - Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

1. The penalty of reclusion perpetua to death when by reason or on occasion of the robbery, the crime of homicide shall have been committed; or when the robbery shall have been accompanied by rape or intentional mutilation or arson; x x x

The CA is correct in appreciating the aggravating circumstance of dwelling. Dwelling aggravates a felony where the crime is committed in the dwelling of the offended party provided that the latter has not given provocation therefor.[24] In this particular case, robbery with violence was committed in the house of the victim without provocation on her part. In robbery with violence and intimidation against persons, dwelling is aggravating because in this class of robbery, the crime may be committed without the necessity of trespassing the sanctity of the offended party's house.[25] It is considered an aggravating circumstance primarily because of the sanctity of privacy that the law accords to the human abode.[26] He who goes to another's house to hurt him or do him wrong is more guilty than he who offends him elsewhere.[27] Hence, under Article 63, paragraph 1 of the RPC, the imposable penalty upon appellant is death since the aggravating circumstance of dwelling was duly alleged and proven. However, since the death penalty has been prohibited under R.A. 9346, the penalty of reclusion perpetua should be imposed.

As to the award of damages, the amounts must be modified in accordance with *People v. Jugueta*. [28] Since the imposable penalty is death but due to R.A. 9346, the actual penalty imposed is reclusion perpetua, the amounts of civil indemnity, moral damages and exemplary damages shall be P100,000.00 each. Also, the CA was correct in awarding civil indemnity in view of the finding of rape.[29]

WHEREFORE, PREMISES CONSIDERED, the Court DISMISSES the present appeal and AFFIRMS the Decision dated April 8, 2016 of the Court of Appeals in CA-G.R. CR HC No. 01294-MIN finding appellant Joselito Bringcula y Fernandez guilty beyond reasonable doubt of the crime of Robbery with Rape under Article 294 the Revised Penal Code with MODIFICATION that the same appellant is ORDERED to PAY the victim, the amounts of P100,000.00 as civil indemnity, P100,000.00 as moral damages, and P100,000.00 as exemplary damages per *People v. Jugueta*, [30] with legal interest on all the said damages awarded at the rate of six percent (6%) per annum from the date of the finality of this Decision until fully paid.

SO ORDERED.

Carpio (Chairperson), Perlas-Bernabe, Caguioa, and Reyes, Jr., JJ., concur.

[1] Penned by Associate Justice Ruben Reynaldo G. Roxas with the concurrence of Associate Justices Edgardo T. Lloren and Rafael Antonio M. Santos; rollo, pp. 3-16.

[2] Records, pp. 1-2.

[3] Penned by Judge Jose U. Yamut, Sr.

[4] CA rollo, pp. 48-49.

[5] Rollo, p. 16.

- [6] *People v. Marlon Belmonte, et al.*, G.R. No. 220889, July 5, 2017, citing *People v. Tamayo*, 434 Phil. 642, 654 (2002).
- [7] 672 Phil. 229 (2011).
- [8] *Id.* at 245-246, citing *People v. Tamayo*, *supra* note 6.
- [9] *People v. Suyu*, 530 Phil. 569, 596 (2006).
- [10] *Rollo*, pp. 9-11.
- [11] *TSN*, October 29, 2012, pp. 17-18.
- [12] *People v. Bautista*, 474 Phil. 531, 555 (2004).
- [13] *TSN*, January 29, 2013, p. 11.
- [14] *People v. Sernadilla*, 403 Phil. 125, 140 (2001).
- [15] *People v. Suyu*, *supra* note 9, at 588, citing *People v. Baway*, 402 Phil. 872, 892 (2001).
- [16] *People v. Evangelio, et al.*, *supra* note 7, at 241, citing *People v. Togahan*, 551 Phil. 997, 1014 (2007).
- [17] *Id.*, citing *Gan v. People*, 550 Phil. 133, 157 (2007).
- [18] *People v. Bongalon*, 425 Phil. 96 (2002).
- [19] *Id.*
- [20] *Id.*
- [21] *Id.*
- [22] *Rollo*, pp. 8-9.
- [23] Otherwise known as An Act to Impose the Death Penalty on Certain Heinous Crimes Amending for that Purpose the Revised Penal Code, As amended, Other Special Penal Laws, and for Other Purposes.
- [24] *People v. Bragat*, 416 Phil. 829, 843 (2001).
- [25] *People v. Paraiso*, 377 Phil. 445, 464 (1999).
- [26] *People v. Taboga*, 426 Phil. 908, 929 (2002).
- [27] *People v. Bragat*, *supra* note 24.
- [28] G.R. No. 202124, April 5, 2016, 788 SCRA 331.
- [29] *People v. Ortiz*, 614 Phil. 625 (2009).
- [30] *Supra* note 28.

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