

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANTONIO MENDOZA Y BUTONES, ACCUSED-APPELLANT.

G.R. Nos. 152589 & 152758. January 31, 2005

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PER CURIAM:

Before Us is the Motion for Reconsideration filed by herein accused-appellant of our Decision dated 24 October 2003 in G.R. No. 152589 and No. 152758.[1] In said decision, we modified the ruling of the Regional Trial Court (RTC), Branch 61, Gumaca, Quezon, in Crim. Case No. 6636-G finding accused-appellant guilty of rape under Articles 266-A and 266-B of the Revised Penal Code and instead, we adjudged him guilty only of attempted rape. We, however, upheld the ruling of the court a quo with regard to Crim. Case No. 6637-G finding accused-appellant guilty of incestuous rape of a minor under Art. 266-B of the Revised Penal Code as amended by Republic Act No. 8353 and for this, we sentenced accused-appellant to suffer the ultimate penalty of death.

Anent Crim. Case No. 6636-G, accused-appellant submits that our pronouncement that —

Under these circumstances, while incestuous rape can be rationally ruled out since there is no evidence of the introduction of the penis of appellant into the aperture or within the pudendum of the vagina of private complainant, accused-appellant is positive for having an intent to lie with his victim. He is guilty of attempted rape.

x x x

x x x

x x x

Appellant's unclothed being which he rubbed against the torso of his daughter whom he had also stripped of clothing, his acts of kissing and touching the victim's breasts while the latter was flat on the bed and rendered purposely unconscious by appellant, evidently demonstrate the intent of appellant to have carnal knowledge of her against her will.[2]

fails to support our conclusion that he is guilty of attempted rape. He argues that at most, he should only be convicted of acts of lasciviousness, defined and punished under Art. 336 of the Revised Penal Code, as the above-quoted portion of our decision does not establish his intent to have carnal knowledge with private complainant.

In its Comment dated 15 September 2004, the Office of the Solicitor General (OSG), on behalf of the government, points to the following portion of private complainant's testimony as the basis for establishing accused-appellant's intent to lie with the former, thus:

PROSECUTOR MATA:

Q

And how were you raped by your father?

A

He removed my clothes, Ma'am.

Q

When he removed your clothes, where was your sister?

A

She was outside, Ma'am.

Q

And after he removed your clothes, what else did he do?

A

He placed himself on top of me, Ma'am.

Q

When he placed himself on top of you, was he fully clothed or without clothes?

A

None, Ma'am.

Q

And after he placed himself on top of you, were both of you naked?

A

Yes, Ma'am.

Q

And what did he do when he was on top of you?

A

He kissed me, Ma'am.

Q

Aside from kissing you, what else did he do?

A

He touched me, Ma'am.

Q

Where were you touched?

A

On my breast, Ma'am.

Q

Where else? What else did he do aside from touching your breast?

A

He threatened me, Ma'am.

Q

How were you threatened?

A

He told me that if I will tell somebody, he will kill us, Ma'am.

Q

After he threatened you and he was on top of you, he touched your breast, what did he do next? You said you were raped. Both of you were naked. He was on top of you. What happened next?

A

He boxed me on my stomach, Ma'am.

Q

After boxing you on your stomach, what else did he do?

A

I do not know already, Ma'am.

Q

Why did you not know?

A

Because I lost consciousness, Ma'am.

Q

You lost consciousness and when you regained consciousness what did you notice about your body?

A

I saw blood, Ma'am.

Q

Where did you see blood?

A

On my thigh, Ma'am.

Q

And where was the blood coming?

A

From my vagina, Ma'am.

Q

And what did you feel in your vagina?

A

It was painful, Ma'am.

Q

Was that your first sexual experience?

A

Yes, Ma'am.

Q

And who caused your vagina to bleed?

A

My father, Ma'am.

Q

And when you regained consciousness, where was your sister?

A

She was at my side, Ma'am.

Q

What did she do, if any, when she saw your condition?

A

None, Ma'am.

Q

How about you? What did you do? I withdraw that question, Your Honor.

Q

When you regained consciousness, were you still naked?

A

Yes, Ma'am.[3]

After a thorough review and evaluation of the records of this case, we find no sufficient basis to modify our earlier decision convicting accused-appellant of attempted rape in Crim. Case No. 6636-G.

There is an attempt to commit rape when the offender commences its commission directly by overt acts but does not perform all the acts of execution which should produce the felony by reason of some cause or accident other than his own spontaneous desistance.[4] The elements, therefore, of an attempted felony are the following: (1) the offender commences the commission of the felony directly by overt acts; (2) he does not perform all the acts of execution which should produce the felony; (3) the offender's act be not stopped by his own spontaneous desistance; and (4) the non-performance of all acts of execution was due to cause or accident other than his spontaneous desistance.[5]

Upon the other hand, Article 366 of the Revised Penal Code states: "(a)ny person who shall commit any act of lasciviousness upon the other person of either sex, under any of the circumstances mentioned in the preceding article, shall be punished by prision correccional." The elements of this crime are: (1) that the offender commits any act of lasciviousness or lewdness; (2) that it is done(a) by using force and intimidation, or (b) when the offended party is deprived of reason or otherwise unconscious, or (c) when the offended party is under 12 years of age; and (3) that the offended party is another person of either sex.[6] As explained by an eminent author of criminal law, rape and acts of lasciviousness have the same nature. There is, however, a fundamental difference between the two. In rape, there is the intent to lie with a woman whereas this element is absent in acts of lasciviousness.[7]

In this case, the series of appalling events which took place on the night of 18 March 1998 inside the humble home of private complainant and of accused-appellant, establish beyond doubt that the latter intended to ravish his

very own flesh and blood. As vividly narrated by private complainant before the trial court, accused-appellant, taking advantage of the cover of darkness and of the absence of his wife, removed her (private complainant's) clothing and thereafter placed himself on top of her. Accused-appellant, who was similarly naked as private complainant, then proceeded to kiss the latter and he likewise touched her breasts until finally, he rendered private complainant unconscious by boxing her in the stomach.[8] These dastardly acts of accused-appellant constitute "the first or some subsequent step in a direct movement towards the commission of the offense after the preparations are made." [9] Far from being mere obscenity or lewdness, they are indisputably overt acts executed in order to consummate the crime of rape against the person of private complainant.

Indeed, had private complainant given a categorical statement that the penis of accused-appellant had in fact penetrated her vagina or that it had at least touched her labia, we would have definitely affirmed the accused-appellant's conviction for consummated rape in Crim. Case No. 6636-G. Unfortunately, the records are bereft of any indication to this effect thus, we are constrained to find accused-appellant guilty only of attempted rape as far as Crim. Case No. 6636-G is concerned lest we obliterate the fine distinction between an attempted and consummated rape.

Worthy of note also is the fact that when confronted with the above-mentioned circumstances during his turn at the witness stand, accused-appellant miserably failed to proffer a credible defense on his behalf. All that accused-appellant managed to do during that time was to deny the accusations hurled against him in the following manner:

Q

Mr. Witness, your daughter AAA, complained that in the night time of March 18, 1998, while her mother was not in the house, and you were sleeping there, you raped her, what can you say about that?

A

That is not true.

Q

And if it is not true, what is the truth about it[?]

A

I was sending my children to school and she always come home late.

Q

In what school was she enrolled prior to March 18, 1998?

A

At Barangay Malusak, Atimonan, Quezon, sir.

Q

Do you know of any reason why your daughter AAA should file a complaint against you if it is not true that you raped her on March 18, 1998 at night time?

A

According to the person who informed me, my daughter was just using me.

Q

And who was that person who informed you that your daughter just accused you?

A

Erlinda Rivera, sir.

Q

From what place is this Erlinda Rivera?

A

From Malusak, Atimonan, Quezon.

Q

And what did this Erlinda Rivera tell you about that?

A

I was informed by Erlinda Rivera that my daughter was always going with several men.

Q

In what place did this Erlinda Rivera tell you that your daughter always go with several men?

A

In her house when I went there.

Q

When was that if you can still remember?

A

I could not exactly recall.

Q

Was it when you were already incarcerated or was it before you were incarcerated when Erlinda Rivera told you about that fact that your daughter was always going with other men?

A

She told me that when I was already incarcerated.

Q

In what place, was it in the Provincial Jail or where?

A

Here in court.[10]

It is well-settled that denial is essentially the weakest form of defense and it can never overcome an affirmative testimony particularly when it comes from the mouth of a credible witness.[11] Accused-appellant's bare assertion that private complainant was just "using" him to allow her to freely frolic with other men, particularly with a certain Renato Planas, begs the credulity of this Court. This is especially true in the light of our consistent pronouncement that "no decent and sensible woman will publicly admit being a rape victim and thus run the risk of public contempt — the dire consequence of a rape charge — unless she is, in fact, a rape victim." [12] More in point is our pronouncement in *People v. Canoy*, [13] to wit:

. . . It is unthinkable for a daughter to accuse her own father, to submit herself for examination of her most intimate parts, put her life to public scrutiny and expose herself, along with her family, to shame, pity or even ridicule not just for a simple offense but for a crime so serious that could mean the death sentence to the very person to whom she owes her life, had she really not have been aggrieved. Nor do we believe that the victim would fabricate a story of rape simply because she wanted to exact revenge against her father, appellant herein, for allegedly scolding and maltreating her.[14]

With regard to Crim. Case No. 6637-G, accused-appellant posits the argument that due to the inconsistencies in the testimony of private complainant, the prosecution failed to establish his guilt beyond reasonable doubt.

The argument fails to persuade.

This Court will not disturb the findings of facts of trial courts unless there is a showing that it failed to consider facts and circumstances, which if taken into account, would materially affect the resolution of a case.[15] In the case at bar, the alleged inconsistencies in private complainant's testimonies pertain to the number of times when she was raped by accused-appellant and the date when her mother, BBB, actually came back from San Narciso, Quezon, to their house at Barangay xxx, xxx, xxx. In her testimony on 29 March 2001, private complainant claimed that her mother returned to their house on 19 March 1998 — the day after the first incident of rape. On the other hand, BBB testified that she stayed in San Narciso for one week.[16]

Needless to state, these supposed inconsistencies deal with minor matters and should not affect the genuineness of private complainant's version of how her harrowing experience came to be. They do not deal with the basic aspects of the who, the how, and the when, of the crime committed.[17] As we have declared before, "inconsistencies on matters of minor details do not detract from the actual fact of rape." [18] Verily, private complainant's consistent retelling of the relevant details regarding the violation of her person by her own father far outweighs the latter's persistent assault on her credibility and candor.

In any case, it is a doctrine in criminal law that minor inconsistencies in testimonies strengthen rather than weaken the witness' credibility for they eliminate the impression of a rehearsed testimony. Particularly in rape cases, this court does not expect a rape victim to recall every minute detail that occurred during her horrible ordeal. As we declared in *People v. Abiera*, [19] "a rape victim cannot push out of her mind the violent attack upon her chastity but she is nevertheless not expected to remember all the sordid details of that traumatic experience." [20]

WHEREFORE, the instant motion for reconsideration is DENIED for lack of merit and our decision dated 24 October 2003 is hereby AFFIRMED.

Costs de oficio.

SO ORDERED.

Davide, Jr., C.J., Puno, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Azcuna, Tinga, Chico-Nazario, and Garcia, JJ., concur.
Callejo, Sr., J., on official leave.

[1] Rollo, pp. 151-166.

[2] Rollo, pp. 167-168; emphasis in the original.

[3] Comment, pp. 2-4; TSN, 29 March 2001, pp. 4-5.

[4] Article 6, The Revised Penal Code.

[5] 1 L. B. Reyes, The Revised Penal Code, 98 (1981).

[6] People v. Caingat, G.R. No. 137963, 06 February 2002; 376 SCRA 387, citing 2 L. B. Reyes, The Revised Penal Code, 781 (1993).

[7] Aquino, Revised Penal Code, Vol. III, p. 412, 1988 edition.

[8] See People of the Philippines v. Alcoreza, G.R. Nos. 135452-53, 05 October 2001, 366 SCRA 655 and People of the Philippines v. Bugarin, G.R. Nos. 110817-22, 13 June 1997, 273 SCRA 384.

[9] People of the Philippines v. Lizada, G.R. Nos. 143468-71, 24 January 2003, 396 SCRA 62, citing People v. Gibson, 94 Cal. App. 2d. 468.

[10] TSN, 18 April 2001, pp. 6-8.

[11] People v. Serrano, G.R. No. 137480, 28 February 2001, 353 SCRA 161.

[12] People v. Ulili, G.R. No. 103403, 24 August 1993, 225 SCRA 594, citing People v. Paringit, 189 SCRA 478.

[13] G.R. Nos. 148139-43, 15 October 2003, 413 SCRA 490.

[14] Id. at pp. 498-499.

[15] People v. Canoy, G.R. Nos. 148139-43, 15 October 2003, 413 SCRA 490.

[16] TSN, 29 March 2001, p. 24.

[17] Supra, note 18 at 605.

[18] Supra, note 14 at 447.

[19] G.R. No. 93947, 21 May 1993, 222 SCRA 378.

[20] Id. at 383.

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