

THIRD DIVISION

[G.R. No. 177756, March 03, 2008]

PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, vs. SALVADOR NIETO y CABALSE @ "ADOR," Accused-Appellant.

DECISION

CHICO-NAZARIO, J.:

For review is the Decision^[1] dated 31 October 2006 of the Court of Appeals in CA-G.R. CR-HC No. 02006, which affirmed the Decision^[2] dated 15 September 2000 of the Regional Trial Court (RTC) of Urdaneta City, Branch 46, in Criminal Cases No. U-10586 and No. U-10587, finding herein appellant Salvador Nieto y Cabalse @ "Ador" guilty beyond reasonable doubt of the crime of simple rape in both cases committed against AAA,^[3] a mental retardate with a mental age of five years and three months, and sentencing him in each case to suffer the penalty of reclusion perpetua, and to indemnify AAA in the amount of P50,000.00 as civil indemnity and P20,000.00 as exemplary damages with the modification for an additional award of moral damages amounting to P50,000.00.

On 13 March 2000, appellant was charged in two separate Informations with the crime of rape, as defined and penalized under Article 335 of the Revised Penal Code, as amended by Republic Act No. 8353,^[4] committed against AAA on 30 December 1999 and 3 January 2000, respectively. The two Informations read as follows:

Criminal Case No. U-10586

The undersigned accuses SALVADOR NIETO alias "Ador," of the crime of RAPE, committed as follows:

That on or about [3 January 2000] at Brgy. xxx, [Municipality of] xxx, [Province of] XXX, and within the jurisdiction of this Honorable Court, the above-named accused by means of force, did then and there wilfully (sic), unlawfully and feloniously have sexual intercourse with AAA, a mentally retardate with mental age of five (5) years and three (3) months, without her consent and against her will, to her damage and prejudice.

CONTRARY to Art. 335, Revised Penal Code, as amended by R.A. 8353.^[5]

Criminal Case No. U-10587

The undersigned accuses SALVADOR NIETO Y CABALSE, alias "Ador," of the crime of RAPE, committed as follows:

That on or about [30 December 1999] at Brgy. XXX, [Municipality of] XXX, [Province of] XXX and within the jurisdiction of this Honorable Court, the above-named accused by means of force, brought and carried at the ricefield AAA, a mentally retardate with a mental age of five (5) years and three (3) months, did then and there wilfully (sic), unlawfully and feloniously have sexual intercourse with said AAA, without her consent and against her will, to her damage and prejudice.

CONTRARY to Art. 335, Revised Penal Code, as amended by R.A. 8353.^[6]

When arraigned on 17 April 2000, appellant, assisted by counsel *de officio*, pleaded NOT GUILTY to the charges against him. Thereafter, trial on the merits ensued.

The pieces of evidence presented by the prosecution to prove its allegations are the testimonies of the following witnesses: AAA, the victim; SPO3 Maximiano Balelo, Chief Investigator of the Pozorrubio Philippine National Police (PNP); Dr. Francisco Llamas, Medico-Legal Officer of the Pozorrubio Community Hospital; and Ruby Martinez Bell, the psychologist at the Philippine Mental Health Association, Inc., Baguio-Benguet Chapter.

AAA was already 24 years old when the alleged first rape incident happened. Her parents BBB and CCC were already separated.^[7] Since the separation, she started to live with her grandmother in Barangay XXX, Municipality of XXX, Province of XXX, up to the present. AAA only reached Grade II because of her illnesses.^[8]

In her testimony, AAA stated that on the night of 30 December 1999, while she was alone at the house of her grandmother, who was in Malokiat, Pangasinan at that time, somebody entered their house. She then recognized that somebody to be the herein appellant, who was also their neighbor. According to AAA, the appellant approached her, fooled her and pulled her out of their house and brought her to the nearby farmland. In the farmland, the appellant removed all his clothes. He likewise undressed her. When they were both naked, the appellant started to fondle her breasts. Thereafter, the appellant inserted his penis into her vagina. As a result, she felt so much pain in her private part.^[9]

Again, on the night of 3 January 2000, while AAA's grandmother was in Manila, the appellant went to their house. Initially, appellant struck up a conversation with her. When the appellant learned that AAA's grandmother went to Manila and that only the two of them were in the said house, the appellant began to force her to have sexual intercourse with him. She resisted, but the appellant was much stronger than her; hence, despite her resistance, appellant succeeded in inserting his penis into her vagina.^[10]

AAA revealed her harrowing experience in the hands of the appellant to her sister, DDD, and brother, EEE. Her brother cried when she told him about her ordeal; but, her sister was brave enough to tell their mother what had happened to AAA.^[11]

AAA, accompanied by her sister and aunt, went to the police station to report the rape incidents that happened to her on 30 December 1999 and 3 January 2000.

They also went to the hospital in Urdaneta, Pangasinan, where AAA was physically examined by Dr. Francisco Llamas.^[12]

During her cross-examination, AAA disclosed that she had been previously raped, five times, by one Arsenio Corpuz when she was still living in Cuyapo, Nueva Ecija.^[13]

SPO3 Maximiano Balelo corroborated the testimony of AAA. He admitted that AAA was brought to him for investigation on 6 January 2000. He took the statements of AAA and those of AAA's sister and aunt. AAA told him that she was sexually abused by the appellant on two occasions. The first rape incident happened on 30 December 1999 and the second was on 3 January 2000.^[14] The statements^[15] of AAA, her sister and aunt were reduced into writing. He recorded the rape incidents report in the Police Blotter under Entry No. 02858.^[16]

Dr. Francisco Llamas, the Medico-Legal Officer of Pozorrubio Community Hospital affirmed that he physically examined AAA on 6 January 2000. On the basis of such examination, he said that he did not find any physical injury on AAA's head and neck. He noticed, however, that there were some hyperemic or red areas on AAA's breasts. AAA also had a healed laceration on her hymen at the 6:00 o'clock position. He concluded that the said laceration could have been caused by a blunt object, possibly an erect penis, which was inserted into AAA's vagina. He further stated that AAA's healed laceration was already a day old.^[17] He also reduced his findings into writing as evidenced by the Medico-Legal Report.^[18]

Ruby Martinez Bell, the psychologist who examined^[19] AAA to determine her mental condition, was also presented by the prosecution to prove the allegation that AAA is indeed a mental retardate. The said psychologist declared that she gave AAA a Stanford-Binet Test, Draw-a-Person Test, Bender-Gestalt Test and Vineyard Social Maturity Scale and she even attempted to give AAA a Sentence Completion Test, but AAA could not do it as she could not understand the same. Based on the result of the psychological tests, she concluded that AAA belonged to the severely mentally retarded category with an Intelligence Quotient (I.Q.) of 30 and an I.Q. level equivalent to that of a five-year-and-three-month-old child. She further stated that on the basis of the different tests she gave to AAA, she noticed that AAA was unable to comprehend those tests. Although she can recognize some common objects, she cannot, however, do much in terms of reasoning and definition of abstract terms.^[20]

On the part of the defense, it presented the testimony of the following witnesses to prove that it was impossible for the appellant to have raped AAA on 30 December 1999 and 3 January 2000, namely: Calixto Parocha; Ernesto Salvatierra; CCC, the father of the victim; Dominador Nieto, the brother of the appellant; Leticia Nieto, the sister-in-law of the appellant; and herein appellant.

The testimonies of Calixto Parocha, Ernesto Salvatierra and CCC focused on the rape incident that happened to AAA while she was still in Cuyapo, Nueva Ecija, which was allegedly committed by Arsenio Corpuz. The aforesaid witnesses admitted that their statements before the trial court were given in connection with the rape incident that happened in Cuyapo, Nueva Ecija, and not on the matters that transpired in Barangay XXX, Municipality of XXX, Province of XXX.^[21] Obviously, the testimonies

of these witnesses are irrelevant insofar as this case is concerned.

According to Dominador Nieto, on the night of 30 December 1999, he was at the barangay dance party acting as a guard because he was a member of the barangay Civilian Volunteers Organization. He claimed that the appellant was also at the said party because he was the barangay electrician and he was there to fix the lightings. Both of them went there at about 7:00 p.m. and they stayed there until 3:00 a.m. of 31 December 1999. And from that period, there was never an instance that the appellant left the dance party. However, in his cross-examination, he admitted that the place where the dance party was held was only one kilometer away from the place where the rape incident happened.^[22]

Leticia Nieto testified that she is the wife of Melecio Nieto, the brother of the appellant. She stated that on 3 January 2000, the appellant went to their house at around 6:00 p.m. in order to compute the cost of the materials for the construction of the terrace and main door of their house. The appellant also had dinner with them at around 8:00 p.m. and stayed there until 11:00 p.m. After that, the appellant went home. She likewise stated that their house was only 20 meters away from the house of the appellant and 100 meters away from the house of the complainant.^[23]

Appellant was the final witness presented by the defense. **The justification offered by him by way of exculpation was both denial and alibi.** He denied having seen AAA on 30 December 1999 and 3 January 2000; thus, it was impossible for him to have committed the offenses he was charged with. He maintained that on 30 December 1999, he was at the barangay dance hall. Being the barangay electrician, he was designated to install the sound system and the lights to be used at the dance party. He went there at around 7:00 p.m. and stayed there until 3:00 a.m. of 31 December 1999. Further, on 3 January 2000, he testified that he was at his brother's house located about 20 meters away from his house. His brother is Melecio Nieto, the husband of Leticia Nieto. He stated that he went to his brother's house at around 6:00 p.m. to talk about the cost of the materials to be used in constructing the terrace and main door of his brother's house. He even ate dinner there at around 8:00 p.m. He stayed there until 11:00 p.m. and then he went home.^[24]

During his cross-examination, he affirmed that the dance hall where he was on 30 December 1999 was only a kilometer away from the house of the complainant. A tricycle could reach the said house as it was near the road. By walking, he could reach the said house in about an hour. Likewise, he admitted that the house of his brother was more than 100 meters away from the house of the complainant and the house of the latter was about 80 meters away from his house.^[25]

After trial, the RTC rendered the assailed Decision on 15 September 2000, finding the appellant guilty beyond reasonable doubt of the crime of simple rape in both cases. The decretal portion of the aforesaid Decision reads, thus:

WHEREFORE, JUDGMENT is hereby rendered CONVICTING beyond reasonable doubt SALVADOR NIETO of the crime of Simple Rape and the Court sentences him:

1. CRIM. CASE NO. U-10586, to suffer the penalty of Reclusion Perpetua; to indemnify AAA the sum of P50,000.00 and to pay another sum of P20,000.00 as exemplary damages;
2. CRIM. CASE NO. U-10587, to suffer the penalty of Reclusion Perpetua; to indemnify AAA the sum of P50,000.00 and to pay another sum of P20,000.00 as exemplary damages.^[26]

The records of this case were originally transmitted before this Court on appeal. Pursuant to *People v. Mateo*,^[27] the records were transferred to the Court of Appeals for appropriate action and disposition.

In his brief, the appellant's lone assignment of error was, *the court a quo gravely erred in finding appellant guilty beyond reasonable doubt of the crime of rape*.^[28]

Accordingly, the Court of Appeals, taking into consideration the assignment of error stated by the appellant in his Appellant's Brief and after a thorough study of the records of the case, rendered a Decision on 31 October 2006, affirming the conviction of the appellant for two counts of simple rape with the modification for an additional award of moral damages in the amount of P50,000.00 in each case. The dispositive portion of the Decision reads:

WHEREFORE, the Decision of the Regional Trial Court, Branch 46, of Urdaneta City dated 15 September 2000 is hereby **AFFIRMED** with a **modification** that an additional award of moral damages amounting to P50,000.00 each in both instances is hereby awarded to the complainant.^[29]

The appellant filed a Notice of Appeal.^[30] In view thereof, the appellate court forwarded to this Court the records of this case.

On 11 July 2007,^[31] this Court resolved to accept the present case and notify the parties that they may file their respective supplemental briefs, if they so desired. Both the Office of the Solicitor General and the appellant manifested that they were adopting their respective briefs dated 30 May 2002 and 24 January 2002, filed before the appellate court, respectively, as their supplemental briefs.

After a meticulous review of the records of the present case, this Court finds no reason to reverse the judgment of the trial court and the appellate court.

There appears to be no controversy that the victim in this case is a mental retardate. Such fact was proven by the testimony of Ruby Martinez Bell, the psychologist who examined AAA to determine her mental condition, and by the psychological report she prepared. The series of psychological tests she gave to AAA revealed that the latter is a mental retardate. AAA belonged to the severely mentally retarded category with an I.Q. of 30 and an I.Q. level equivalent to that of a five-year-and-three-month-old child.^[32] Thus, the only issue left for this Court's resolution is the credibility of the victim's testimony as regards the fact of sexual congress between her and the appellant.

The appellant averred that the testimony of AAA should be disregarded, as there are