

FIRST DIVISION

[G.R. No. 234943, January 19, 2021]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
CARLOS TAMAYO Y UMALI, ACCUSED-APPELLANT.**

DECISION

CARANDANG, J.:

This is an appeal^[1] from the Decision^[2] dated July 17, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 07651 finding accused-appellant Carlos Tamayo y Umali (Tamayo) guilty beyond reasonable doubt of the crime of Robbery with Rape and Attempted Homicide.

Facts of the Case

Tamayo was charged with the crimes of Robbery with Rape and Frustrated Homicide in two separate Informations^[3] which respectively read as follows:

Criminal Case No. 2711-M-2010 (Robbery with Rape)

That on or about the 18th day of April, 2010, in the municipality of Hagonoy, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and feloniously, with intent to gain and by means of force, violence and intimidation, take, rob and carry away the bag with cellphone, USB, wallet and cash worth P3,000.00 owned by one [AAA],^[4] that on the occasion of the said robbery and by reason thereof accused Carlos Tamayo y Umali feloniously touch (sic) the breasts and vagina of said AAA, forcibly laid her down on a cemented floor and inserted his finger on (sic) and lick her vagina.

Contrary to law.^[5]

Criminal Case No. 2712-M-2010 (Frustrated Homicide)

That on or about the 18th day of April, 20 10, in the municipality of Hagonoy, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a bladed instrument and with intent to kill one [BBB]^[6] did then and there willfully, unlawfully and feloniously attack, assault and stab with the said bladed instrument the said BBB, hitting him on his chest, thereby inflicting upon him serious physical injuries, which ordinarily would have

caused the death of the said BBB, thus performing all acts of execution which should have produced the crime of homicide as a consequence, but nevertheless did not produce it by reason of causes independent of their will, that is, by the timely and able medical assistance rendered to said BBB which prevented his death.

Contrary to law.^[7]

According to the prosecution witnesses, at around 9:00 p.m. of April 18, 2010, AAA was heading to her house in Gatbuca, Calumpit, Bulacan when she saw an individual, later identified as Tamayo, urinating at the side of a *tawiran* or footbridge located at the boundary of Santo Nino and Santa Monica. While AAA was already near the Sta. Monica side of the footbridge, Tamayo suddenly put his arms around her shoulder and poked a knife on her side. Tamayo instructed AAA not to shout and to just bow her head.^[8] Tamayo brought AAA back to the dark portion of the Sto. Nino side of the footbridge where he was previously seen urinating. AAA claimed that he made her sit and took her personal belongings which include a Louis Vuitton wallet given to her by her aunt containing more or less P3,000.00, identification cards, a cellular phone, and a USB with approximately P500.00.^[9]

When AAA's cellphone was already in Tamayo's possession, her then boyfriend and now husband, BBB, sent a message to AAA's number asking where she was. Tamayo allegedly sent a reply to BBB saying, "*Gago ka, girlfriend ko si AAA.*"^[10]

AAA added that after Tamayo took her belongings, he put them aside and started molesting her. Tamayo allegedly lifted AAA's shirt and bra and touched and licked her breasts. Tamayo allegedly removed AAA's pants and underwear and forcibly laid her on the cemented floor. Tamayo then licked AAA's vagina and inserted his finger in it. He also allegedly inserted his penis into her vagina.^[11] AAA claimed that there were few people who walked past them but Tamayo instructed her to ignore them, keep her head bowed, and not to make any noise.^[12]

BBB claimed that after more or less two hours of waiting for AAA at her house, he looked for her at the footbridge and found Tamayo forcing AAA to suck his penis.^[13] AAA claimed that Tamayo forced her to suck his penis for about 15 minutes.^[14] When BBB confronted Tamayo, the latter stood up and stabbed BBB on the chest.^[15] When Tamayo was about to stab BBB again, BBB jumped into the river.^[16] Sensing that she was also about to be stabbed, AAA jumped into the river and screamed for help.^[17] After a while, the friends of AAA's brother arrived. Tamayo got AAA's bag and fled the scene. AAA went to the police station to report the incident while BBB was rushed to the hospital.^[18]

On April 19, 2010, AAA was examined by Dra. Shiela I. Almario (Dra. Almario). The Medico-Legal Report^[19] dated May 11, 2010 prepared by Dra. Almario indicated the following findings:

PHYSICAL
FINDING - (+) Hematoma lower lip area.
- (+) Abrasion both knee.
- (+) Abrasion left leg.

- (+) Abrasion right foot.^[20]

Meanwhile, BBB was hospitalized for two days for the stab wound he sustained on his chest.^[21] The Discharge Summary reflecting the final diagnosis on BBB stated "SOFT TISSUE INJURY 2⁰ STABBING."^[22]

Tamayo denied the charges against him. In his defense, he invoked the "Sweetheart Theory." He narrated that he met AAA in December 2009 when she became a passenger in his tricycle. AAA asked him if Abril Tamayo or "Abe" (Abril) was his brother. When Tamayo answered yes, AAA told him that Abril was the former boyfriend of her sister.^[23] Sometime in January 2010, AAA became his passenger again. He joked that she was beginning to be a regular passenger of his tricycle, to which she replied, "*oo nga parang sinasadya ng pagkakataon.*"^[24] Tamayo asked if she has a boyfriend and AAA said yes. Tamayo then said, "*may boyfriend ka na pala sayang balak pa naman kita ligawan.*"^[25] Tamayo asked her if he could court her and AAA answered that she would think about it.^[26] Two weeks later, Tamayo claimed that he saw AAA again and started courting her. They allegedly agreed that they would only have a "mutual understanding" because she already has a boyfriend. On their fourth meeting, they became a couple.^[27]

Tamayo narrated that on April 18, 2010, he and AAA again saw each other because AAA told him to meet her at the footbridge. Tamayo offered to bring AAA home but she insisted on staying. While they were talking, they held each other's hands. AAA asked him to go down the footbridge because people might notice them. They sat on a bench and talked about themselves.^[28]

After some time, a man holding a flashlight arrived who shouted "*mga demonyo kayo, mga walanghiya kayo, mga manloloko kayo.*"^[29] Tamayo later recognized the man holding the flashlight as BBB. Tamayo stood up and noticed that BBB was carrying a knife. BBB attacked Tamayo but AAA stood between them. BBB then dragged AAA and the latter rolled over the ground. When Tamayo asked why BBB did that to AAA, BBB replied "*gago ka pala syota ko yan.*"^[30] Tamayo and BBB wrestled for the knife. Both of them rolled over the ground and BBB was accidentally stabbed. AAA then told Tamayo to run. Due to fear, he fled the scene, boarded a tricycle, and went home.^[31] Tamayo claimed that no one knew about their relationship except him and AAA. He added that there were instances when he kissed AAA without resistance.^[32]

Ruling of the Regional Trial Court

On June 30, 2015, the Regional Trial Court (RTC) rendered its Decision,^[33] the dispositive portion of which reads:

VIEWED IN THE LIGHT OF THE FOREGOING, as regards Criminal Case No. 2711-M-2010, accused Carlos Tamayo y Umali is hereby found guilty beyond reasonable doubt of the crime of Robbery with Rape. The Court imposes upon the accused the penalty of Reclusion Perpetua and to pay the private complainant Php 4,500.00 actual damages, Php 50,000.00 moral damages and Php 50,000.00 civil indemnity.

With respect to Criminal Case No. 2712-M-2010, accused Carlos Tamayo y Umali is hereby found guilty beyond reasonable doubt of the crime of the crime of Attempted Homicide and is hereby sentenced to suffer an indeterminate penalty of six months of Arresto Mayor as minimum to six years of Prision Correccional as maximum and to pay private complainant Php 20,000.00 as moral damages.

SO ORDERED.^[34]

The RTC held that the prosecution was able to prove the crime of Robbery with Rape. The RTC gave credence to the testimony of AAA and rejected the Sweetheart Theory Tamayo invoked. The RTC described Tamayo's testimony as scripted and rehearsed. For the RTC, Tamayo was not able to substantiate his defense as he does not even know the mobile number of AAA.^[35]

As to the crime of Frustrated Homicide, the RTC only convicted Tamayo of the crime Attempted Homicide because the prosecution failed to present any evidence showing that the chest wound BBB sustained was fatal.^[36]

On appeal,^[37] Tamayo impugned the findings of the RTC and raised the following errors:

I.

THE TRIAL COURT GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE INCONSISTENT AND INCREDIBLE TESTIMONIES OF THE PRIVATE COMPLAINANTS, AND DISREGARDING THE ACCUSED-APPELLANT'S DEFENSE.

II.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED IN CRIMINAL CASE NO. 2711-M-2010, DESPITE THE INSUFFICIENCY OF EVIDENCE AGAINST HIM.

III.

IN CRIMINAL CASE NO. 2712-M-2010, ASSUMING THAT THE PROSECUTION'S VERSION OF THE EVENTS ACTUALLY TRANSPIRED, THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF ATTEMPTED HOMICIDE DESPITE THE PROSECUTION'S FAILURE TO PROVE THE ESSENTIAL ELEMENT OF INTENT TO KILL.^[38]

Tamayo argued that the inconsistent and incredible testimony of AAA casts doubt on her credibility. He claimed that AAA stated in her *Sinumpaang Salaysay* that she took off her pants upon the order of Tamayo. However, during AAA's direct examination, AAA testified that it was Tamayo who pulled down her pants.^[39] Tamayo also pointed out that the allegation that he inserted his penis into AAA's vagina was not reflected in the Police Blotter nor in her *Sinumpaang Salaysay*. This allegation was only introduced during AAA's direct examination.^[40] For Tamayo, the reason given by the RTC for AAA's reluctance to admit that he inserted his penis into

her vagina, that she was ashamed to disclose such fact in the presence of many people and BBB at the police station, was not supported by evidence. In fact, AAA admitted that she went to the police station with her mother and the friends of her brother while BBB was rushed to the hospital.^[41]

Moreover, Tamayo claimed that the Medico-Legal Report contradicted AAA's claim that Tamayo had carnal knowledge of AAA. The photographs she submitted in evidence merely revealed a cut in her lips and abrasions on her knees and feet.^[42]

Lastly, Tamayo maintained that the prosecution failed to prove the element of intent to kill BBB. For Tamayo, if he had really intended to kill BBB, he would have inflicted more serious wounds on him. Tamayo posited that since BBB was hospitalized for only two days, he should be held liable for the lesser crime of slight physical injury punished under Article 266, paragraph 1 of the Revised Penal Code (RPC).^[43]

Ruling of the Court of Appeals

On July 17, 2017, the CA rendered its Decision,^[44] the dispositive portion of which reads:

WHEREFORE, premises considered, the appeal is **DENIED**. The Decision dated 30 June 2015 of Branch 9, Regional Trial Court (RTC) of Malolos City, Bulacan in Criminal Case Nos. 2711-M-2010 and 2712-M-2010 is **AFFIRMED** with **MODIFICATION** that.

1. In Criminal Case No. 2711-M-2010, accused-appellant Carlos Tamayo y Umali is found **GUILTY** beyond reasonable doubt of the crime of Robbery with Rape and is sentenced to suffer the penalty of ***reclusion perpetua without eligibility for parole*** pursuant to Section 3 of Republic Act No. 9346, He is **ORDERED** to pay AAA the following amounts: P75,000.00 as moral damages, P75,000.00 as civil indemnity and P75,000.00 as exemplary damages;

2. In Criminal Case No. 2712-M-2010, accused appellant Carlos Tamayo y Umali is found **GUILTY** beyond reasonable doubt of the crime of Attempted Homicide and is sentenced to suffer an indeterminate penalty of one (1) month and one (1) day of *arresto mayor* as minimum to four (4) years and two (2) months of *prision correccional* as maximum. He is **ORDERED** to pay BBB the amounts of P20,000.00 as civil indemnity and P20,000.00 as moral damages; and

3. Accused-appellant Carlos Tamayo y Umali is further **ORDERED** to pay interest on all damages awarded at the rate of six percent (6%) per annum from the time of finality of this decision until fully paid.

SO ORDERED.^[45] (Emphasis and italics in the original)

In Criminal Case No. 2711-M-2010, the CA found that Tamayo committed the special complex crime of Robbery with Rape as his acts revealed that he was initially motivated by *animus lucrandi*. The CA noted that he first took the belongings of AAA before molesting AAA by touching and licking her breasts, inserting his finger in her