

FIRST DIVISION

[G.R. No. 225600, July 07, 2020]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DENEL YUMOL Y TIMPUG, ACCUSED-APPELLANT.

D E C I S I O N

LAZARO-JAVIER, J.:

The Case

This appeal^[1] assails the Decision^[2] dated July 31, 2015 of the Court of Appeals in CA-G.R. CR-HC No. 05810 which affirmed with modification the trial court's verdict of conviction^[3] against appellant Denel Yumol y Timpug for robbery with rape.

The Proceedings before the Trial Court

The Charge

Appellant was charged with robbery with rape under the following Information,^[4] viz.:

That on or about the twenty-first (21st) day of October 2006, in the City of Olongapo, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to gain, did then and there willfully, unlawfully and feloniously poked a gun at said (AAA),^[5] a (16-year-old) minor, take, steal and carry the 3350 Nokia cellphone worth P3,550.00 Pesos, Philippine currency of (AAA), and on the occasion of said robbery did then and there willfully, unlawfully and feloniously commit act of sexual assault on said (AAA) by then and there undressing her and inserting his penis into the (genitalia) of said minor (AAA) against her will and consent to the damage and prejudice of said minor.

CONTRARY TO LAW.

The case was raffled to the Regional Trial Court (RTC)-Olongapo City, Branch 73 and docketed as Criminal Case No. 589-2006.

On arraignment, appellant pleaded "not guilty."^[6] Trial ensued. Complainant AAA, SPO1 Norberto Ventura, SPO3 Edgar Rivera, and Dr. Rolando Marfel Ortiz testified for the prosecution. On the other hand, appellant Denel Yumol y Timpug testified as lone witness for the defense.

Evidence for the Prosecution

AAA testified that on October 21, 2006, between 12 o'clock midnight and 1 o'clock

in the morning, she and her schoolmate were heading home from a mini concert. They boarded a jeepney going to Gordon Heights, Olongapo City. Her classmate alighted first, then she got off at the next block.^[7]

As she was walking home, appellant suddenly approached her from behind, poked a gun at her back, and declared a hold-up. Appellant took her Nokia 3350 mobile phone. He then pointed a gun on her neck and ordered her to go to the nearby children's park. Once there, appellant instructed her to sit on a stair. He started kissing her lips and touching her breast. She tried to push him away but he held her face toward his. Appellant then ordered her to go to the grassy portion of the park and undress. When she refused, appellant threatened to shoot her, thus, forcing her to accede to his demands. After she had undressed, appellant lay on the ground and ordered her to mount him. He inserted his penis into her vagina and forced her to move "up and down." Thereafter, appellant instructed her to give him a fellatio while threatening her with a gun. He poked and pushed his gun against her head while his penis was inside her mouth. He then ordered her to mount him anew and move "up and down" again. While in that position, appellant was constantly inserting his finger into her vagina. She felt a harrowing pain in her vagina caused by appellant's sexual assault.^[8]

After satisfying his lust, appellant told her to put on her clothes and walk toward the nearby school. He took the remaining fifty-peso bill and sim card from her clothing. When they reached the school, appellant told her to walk straight ahead and not to look back, otherwise, he will shoot her.^[9]

When she reached home, she immediately told her parents about the incident. Her parents reported the incident to the barangay officials and police authorities. The police officers accompanied her and her parents to the children's park to search for appellant, but they did not find him there. Thereafter, she was brought to James L. Gordon Memorial Hospital for medical examination.^[10]

SPO1 Norberto Ventura testified that he was on duty at the Police Station 5, Olongapo City Police Office when Police Senior Inspector Camilo Pablo directed him to conduct a follow-up investigation regarding the incident. During her interview, AAA identified appellant from the pictures shown her.^[11]

He and SPO3 Edgar Rivera, together with AAA, proceeded to the crime scene and gathered some information from the residents, using AAA's description of the assailant, *e.g.* fat, with semi-bald hair, and shorter left hand. A bystander, who believed that appellant matched the given description, told them of his whereabouts. Upon finding appellant, they showed him to AAA who immediately identified him as the person who assaulted her. AAA recognized appellant's voice and the same pants he was wearing at the time of the assault. He and SPO3 Rivera noticed several abrasions on appellant's body. They apprehended and brought appellant to the police station.^[12]

SPO3 Edgar Rivera corroborated SPO1 Ventura's testimony. He testified that a senior officer dispatched them to conduct a follow-up operation on the robbery with rape incident involving AAA. A bystander informed them of the whereabouts of the person who fitted AAA's description of her assailant, who turned out to be appellant. When they located the latter, AAA positively identified him as the perpetrator of the

crime. They arrested and brought appellant to the police station.^[13]

Dr. Rolando Marfel Ortiz testified that he examined AAA and noted that she had several injuries on her arms, knees, and legs which indicated struggle. He also found lacerations in her hymen which could have been caused by a forceful entry.^[14]

Evidence for the Defense

Appellant denied the charge. He averred that after being released from prison, he lived in his cousin's house at No. 18 Ruano Street, Gordon Heights, Olongapo City. In the evening of October 20, 2006, around 11 o'clock or 12 midnight, he was at home watching movies. The house was far from where the incident happened. At first, he thought he was arrested for vagrancy when SPO3 Rivera spotted him along Ruano Street. He later learned at the police station that a crime transpired at Gordon Heights and he was pinpointed as the perpetrator by a woman whose face was covered. He had nothing to do with the charge against him.^[15]

The Trial Court's Ruling

As borne by its Decision^[16] dated April 4, 2012, the trial court rendered a verdict of conviction, viz.:

WHEREFORE, judgment is hereby rendered, finding accused Denel Yumol y Timpug alias "Den-Den" GUILTY beyond reasonable doubt of the crime of robbery with rape under Art. 294 of the Revised Penal Code, as amended by Republic Act No. 7659 and is sentenced to suffer the penalty of *Reclusion Perpetua* without eligibility of (*sic*) parole pursuant to Republic Act No. 9346. He is also ordered to return the mobile phone and the money taken from [REDACTED]. Should restitution be no longer possible, he shall pay her the value of the stolen mobile phone (PhP3,550.00) and value in the amount of PhP50.00. He is further directed to pay her the amounts of PhP100,000.00 as civil indemnity, PhP 100,000.00 as moral damages and PhP 100,000.00 as exemplary damages.

SO ORDERED.^[17]

It ruled that the elements of the crime of robbery with rape were duly established. The testimonies of the prosecution witnesses proved that appellant, with intent to gain, took the victim's personal property by means of violence and intimidation and, on the occasion of the robbery, had carnal knowledge of the hapless victim with the use of force and intimidation.

The Proceedings before the Court of Appeals

On appeal, appellant faulted the trial court for finding him guilty of robbery with rape despite the prosecution's alleged failure to prove his guilt beyond reasonable doubt. Appellant essentially argued that his identity was not properly established and AAA's testimony is not credible. AAA could have been mistaken in identifying him as the perpetrator because she never had a clear view of the assailant's facial features considering their relative positions and the lighting condition of the place

where the crime transpired. The sound of his voice cannot be accepted as a means of identification considering that he and AAA had not known each other prior to the alleged incident. The police did not present a line-up of suspects to AAA from among whom she could choose or pinpoint her assailant. They simply presented him to AAA and asked her whether he was the one who robbed and raped her.^[18]

On the other hand, the Office of the Solicitor General (OSG), through Acting Solicitor General Florin T. Hilbay, Assistant Solicitor General Ma. Cielo Se-Rondain, and Associate Solicitor Omar T. Gabrieles riposted that the prosecution proved appellant's identity and guilt beyond reasonable doubt. AAA's positive identification of appellant as the man who robbed and raped her prevails over appellant's self-serving denial and alibi.^[19]

The Court of Appeals' Ruling

In its assailed Decision^[20] dated July 31, 2015, the Court of Appeals affirmed with modification of the award of interest, viz.:

WHEREFORE, we DENY the appeal. The decision appealed from is AFFIRMED with MODIFICATION that an interest at the rate of six percent (6%) *per annum* is imposed on all damages awarded from date of finality of the judgment until full payment.

IT IS SO ORDERED.^[21]

The Court of Appeals agreed with the trial court that the elements of the crime of robbery with rape are present and appellant's defense of denial and alibi must fail.

The Present Appeal

Appellant now seeks affirmative relief from the Court and prays anew for his acquittal. In compliance with *Resolution*^[22] dated September 14, 2016, both the OSG and appellant manifested^[23] that, in lieu of supplemental briefs, they were adopting their respective briefs filed before the Court of Appeals.

Issue

Did the Court of Appeals err in affirming appellant's conviction for robbery with rape?

Ruling

We affirm.

Robbery with rape is defined and penalized under Article 294 of the Revised Penal Code (RPC), as amended by Section 9 of Republic Act No. 7659(RA7659),^[24] viz.:

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.

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Robbery with Rape is a special complex crime that contemplates a situation where the accused's original intent 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. It requires the following elements: (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.^[25]

After a careful evaluation of the records, the Court finds no compelling reason to disturb the trial court's findings, as affirmed by the appellate court. The prosecution was able to establish all the elements of the crime beyond any shadow of doubt.

Taking of personal property was established through direct evidence

Records show that appellant, by means of violence and intimidation, took away AAA's mobile phone, money amounting to P50.00 and sim card without the latter's consent. AAA testified that appellant pointed a gun at her and took away her 3350 mobile phone. He then ordered her to go to the grassy area of a nearby children's park where he forced and threatened her to have sexual intercourse with him and to give him a *fellatio*. Thereafter, he took her remaining money and sim card, ordered her to go to a nearby school and threatened to shoot her should she look back at him.

Intent to gain, or *animus lucrandi*, as an element of the crime of robbery, is an internal act, hence, presumed from the unlawful taking of things.^[26] Since it was established that appellant unlawfully took away AAA's personal properties, intent to gain was deemed sufficiently proven, as well. The first three (3) elements of robbery with rape, therefore, were clearly established.

Rape was committed by reason or on the occasion of a robbery

The prosecution had established beyond moral certainty that rape here was committed by reason or on the occasion of robbery. AAA positively identified appellant as the man who, with the use of force and intimidation, had carnal knowledge of her. She made a clear, candid and positive narration of how appellant pointed a gun on her neck, ordered her to mount him, inserted his penis inside her vagina, and directed her to make an "up and down" motion, give him *fellatio*, and once again, mount him and move "up and down," while constantly threatening to shoot her should she resist.

AAA's testimony solidly conforms with the physical evidence through the medical findings of Dr. Rolando Marfel Ortiz that AAA sustained several abrasions on her forearm, arms, and knees, as well as laceration or tear in her hymen, that could