

FIRST DIVISION

[G.R. No. 237489, August 27, 2020]

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. DOMINGO ARCEGA Y SIGUENZA, RESPONDENT.

DECISION

PERALTA, C.J.:

Before us is a petition for review on *certiorari* filed by the People of the Philippines, through the Office of the Solicitor General, which seeks to reverse and set aside the Decision^[1] dated August 7, 2017 of the Court of Appeals (CA) in CA-G.R. CR No. 38800, which modified respondent's conviction for attempted rape to acts of lasciviousness. Also assailed is the CA Resolution^[2] dated February 12, 2018 which denied petitioner's motion for reconsideration.

In an Information^[3] dated June 29, 2010, respondent Domingo Arcega y Siguenza was charged in the Regional Trial Court (RTC) of Iriga City with attempted rape, the accusatory portion of which reads:

That at about 8:00 o'clock in the evening of April 25, 2010, at Brgy. [REDACTED], Camarines Sur, Philippines and within the jurisdiction of this Honorable Court, the said accused, did then and there, willfully, unlawfully, and feloniously, with lewd design, through force or intimidation, against her will and without her consent, did then and there willfully, unlawfully and knowingly waited for her to pass by after she took a bath at their neighbor's deep well, while accused was already naked, waylaying the complainant [AAA],^[4] 19 years old, on the grassy portion on her way to their house, by delivering a fistic blow on her nape, covering her mouth, giving her a fistic blow on her right eye causing her to fall to the ground and while she was lying on the ground, accused placed himself on top of her already naked, which complainant tried to resist by kicking him on his private part thereby managing to displace him from his position and giving her the opportunity to run away, thus accused commenced the commission of the crime of RAPE by overt acts, but nevertheless did not produce it because of some cause or accident other than his own spontaneous desistance, that is, her tenacious resistance and the timely intervention of her aunt [BBB] who heard her shouts for help which caused accused to flee in a hurry, to the damage and prejudice of the herein offended party.^[5]

On August 23, 2010, respondent, duly assisted by counsel, was arraigned and pleaded not guilty to the charge.^[6] Pre-trial and trial thereafter ensued.

The antecedent facts are as follows:

At 8 o'clock in the evening of April 25, 2010, AAA, a resident of [REDACTED], Camarines Sur, asked permission from her aunt, BBB, to take a bath in the house of their neighbor, Inocencia Arcega, the mother of respondent.^[7] The bathroom of Inocencia was located at the back of her house, *i.e.*, separate from the main house. It has a manual pump but had no electricity and roof with only the moon illuminating the night.^[8]

After taking her bath for 15 minutes, AAA put on her shorts and T-shirt with no brassiere and went home. While walking, he smelled liquor, but did not see anyone.^[9] Suddenly, someone boxed her nape which caused her pain.^[10] Respondent then covered AAA's mouth with his hands, but the latter struggled and was able to remove his hands to shout for help.^[11] AAA recognized respondent, who was totally naked, when she was able to remove the towel covering his face. Respondent punched her on her left eye which caused her to fall down.^[12] Respondent then went on top of AAA, who was still wearing her t-shirt and shorts, and did "*kayos-kayos*" (*push-and-pull motion*).^[13] Respondent was not able to remove her garments as she managed to roll over and kicked his testicles. Respondent, who was in pain, walked in a "*duck-like manner*"; and AAA took the chance and ran through a grassy portion towards their house.^[14]

BBB, AAA's aunt, heard screams and saw AAA arrived trembling, shock, pale, crying and her hair disheveled. AAA informed her that respondent attempted to rape her, but she resisted and was able to run away. BBB immediately took a bolo and went to the place of the incident where she saw respondent, completely naked, limping while holding his groin. As fear struck her, BBB proceeded to the house of her sister CCC, AAA's mother,^[15] and informed her of the incident. DDD, AAA's father, later learned about the incident, and looked for respondent who was nowhere to be found. AAA's parents submitted her to a medical examination and reported the incident to the police.^[16]

On the other hand, respondent denied the accusation claiming that during the date and time of the alleged incident, he was with his wife at San Isidro, Magarao, Camarines Sur, a place four hours away from [REDACTED], taking care of his child who was then suffering from asthma attacks.^[17] It was only, on April 30, 2010 that he came back to [REDACTED], Camarines Sur.^[18] He admitted that he and AAA's family are neighbors and there was no dispute between them. Mary Jane Arcega, respondent's wife, corroborated his alibi.

On May 26, 2016, the RTC of Iriga City, Branch 60, rendered a Judgment,^[19] the dispositive portion of which reads:

WHEREFORE, the foregoing premises considered and finding the accused Domingo Arcega GUILTY beyond reasonable doubt of the crime of attempted rape, he is hereby sentenced to an indeterminate sentence of two (2) years, four (4) months, and one (1) day of *prision correccional* medium, as minimum, to ten (10) years of *prison mayor* medium, as its maximum. He is further adjudged liable to pay [AAA] P30,000.00 in moral damages, civil indemnity of P20,000.00, and exemplary damages of P20,000.00, all of which shall earn the interest of 6% *per annum* from the finality of this judgment until full payment.

SO ORDERED.^[20]

The RTC found the testimony of AAA to be trustworthy and credible and rejected respondent's denial and alibi. In convicting respondent of attempted rape, the RTC ruled:

Here in the instant case, the accused gave the private complainant fistic blows twice. First at the back of the nape and when she shouted, the accused boxed her one eye. The accused did not stop there. He was already completely naked when he climbed on top of the private complainant. Although the victim still had her shorts and t-shirt on, the accused, after climbing on top of the private complainant did "*kayos-kayos*" (push and pull motion with his hips). When she freed herself from his clutches by rolling over and kicking the accused on the groin, she effectively ended his lewd designs on her. The inference therefore from such circumstances that rape as his intended felony is most logical and highly warranted, lust for and lewd designs towards the private complainant being fully manifest. When the accused boxed the private complainant twice, the clear intention was to render her unconscious or at least to stave off resistance. The violent acts preparatory to sexual intercourse are directly connected to rape as the intended crime and the acts taken together are unequivocal. Without the private complainant's most appropriate manner of resistance, *i.e.*, by kicking her attacker's groin, rape is the only and inevitable conclusion. Virgin at age 19, her having been able to summon every ounce of her strength and courage to thwart any attempt to besmirch her honor and blemish her purity is commendable. What is most reprehensible is the attempt of the accused to commit bestiality on her on a road.^[21]

Dissatisfied, respondent appealed the RTC Judgment to the CA. After the parties submitted their respective pleadings, the case was submitted for decision.

On August 7, 2017, the CA rendered its assailed Decision, the decretal portion of which reads:

WHEREFORE, the Judgment dated 26 May 2016 of the Regional Trial Court, Branch 60, Iriga City, in Criminal Case No. IR-9344 is AFFIRMED with MODIFICATIONS. Accused-appellant Domingo Arcega y Siguenza is adjudged GUILTY beyond reasonable doubt of Acts of Lasciviousness under Art. 336 of the Revised Penal Code, and sentenced to suffer the indeterminate penalty of six (6) months of *arresto mayor*, as minimum[,] to four (4) years and two (2) months of *prision correccional*, as maximum. He is also ordered to pay AAA the amount of Php30,000.00 in moral damages, civil indemnity of Php20,000.00, and exemplary damages of Php20,000.00, all with 6% interest per annum upon the finality of this decision up to its full payment.

SO ORDERED.^[22]

In finding respondent guilty of acts of lasciviousness only, the CA found:

A careful examination of the testimony of AAA will belie the accusation that the accused-appellant attempted to rape her. Her testimony will reveal the following:

x x x

THE COURT

Q. Why, what was the appearance of the accused or the attire of the accused when you first saw him?

THE WITNESS

A. He was totally naked.

Q. He was totally naked. After you succeeded in removing the towel which was covering his face and thereby saw him to be fully naked, did you recognize and having seen his face? (sic) Did you recognize if (sic) who he was?

x x x

A. Domingo Arcega y S[i]guenza.

x x x

PROS. RAMOS:

Q. Afterwards, after you recognized the accused as a person responsible for punching your nape and covering your mouth, what[,] if any, did he do?

A. He boxed me again hitting me on my left eye. Then, I fell down and that was the time when the accused went on top of me.

Q. You mean on top naked?

A. Yes, sir.

Q. How about you, how were your attire (sic)?

A. T-shirts and shorts.

Q. When the accused was already on top of you, what did you do to him, if any?

A. I resisted and I fought him.

x x x

Q. Why did you say earlier that in reporting to your aunt that Arcega was attempting to rape you or to forcibly sexual attribute (sic)? Why did you say that that (sic) he wants to have sex with you?

THE WITNESS

A. Because he had a plan and "*inabangan ako*"

Q. Why do you now say that "*inabangan ako*" or he planned of what happened?

A. Because of what he did to me, he was totally naked. He placed his hand on my mouth and covered his face with towel.

x x x

THE COURT
Clarification.

Q. When you said the accused attempted to rape you, was there any moment when he was able to remove your shorts?

A. No, sir.

Q. What about your shirt, was it ever removed?

A. No, sir.

x x x

THE COURT

Q50: Is it correct for this Court to say that on the basis of the complaint/information, the act of the accused in attempting to rape you was to place himself on top of you while he was totally naked, is that correct?

A50: Yes, your Honor.

Q51: What about you were you also totally naked?

A51: No, your Honor.

Q52: You have your dress covering yourself.

A52: Yes, your Honor.

x x x

Q56: Did he remove these clothes?

A56: No, your Honor.

As can be easily gleaned, AAA's testimony is bereft of proof that the accused-appellant attempted to introduce his organ (penis) to her vagina. Neither was there any testimony that the accused-appellant's penis touched any part of AAA's body. It must be emphasized that AAA is consistent in saying that she was wearing her shorts and t-shirt during the incident. In fact, the accused-appellant never attempted to remove AAA's clothes. All that was testified to by AAA was that the accused-appellant mounted her or went on top of her, covered her mouth, and did the "*kayos-kayos*" which act, again, did not clearly demonstrate the intent of the accused-appellant to lie with her nor introduce his penis into her vagina. Interestingly, the attempt to rape was further belied by AAA when she stated that:

CONTINUATION OF DIRECT EXAMINATION BY PROS. RAMOS:

Q. AAA, what action, if any, of accused Domingo Arcega