

SECOND DIVISION

[G.R. No. 227698, January 31, 2018]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
HERNANDO BONGOS, ACCUSED-APPELLANT.**

D E C I S I O N

PERALTA, J.:

Before this Court is an appeal *via* Rule 45 from the Decision^[1] dated October 16, 2015 of the Court of Appeals in CA-G.R. CR-HC No. 06774, affirming *in toto* the Decision^[2] dated March 7, 2014 of the Regional Trial Court (RTC), Branch 10, Legazpi City in Criminal Case No. 11758, convicting accused-appellant Hernando Bongos y Arevalo of the complex crime of robbery with rape.

On October 14, 2010, the prosecution charged Hernando Bongos y Arevalo *alias* "Ando/Pat" and Ronel Dexisne y Altavano *alias* "Popoy" before the RTC, Legazpi City with the complex crime of robbery with rape.

Only accused Bongos was arrested, while co-accused Ronel Dexisne was at-large. The Information^[3] alleged –

That on or about the 8th day of June, 2010, in the City of Legazpi, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and helping one another for a common purpose, armed with a gun, did then and there willfully, unlawfully and feloniously with intent to gain and by means of violence and intimidation take, steal, and carry away cash money in the amount of P20,000.00 by destroying the lock of the drawer of spouses BBB and CCC without their knowledge and consent; that by reason or on occasion of said robbery, above-named accused conspiring, confederating and helping one another for a common purpose with lewd design, did then and there willfully, unlawfully and feloniously and by means of force and intimidation, have carnal knowledge of one [AAA] househelper of spouses BBB and CCC, against her will and without her consent, and to the damage and prejudice of the aforesaid victims.

CONTRARY TO LAW.

When arraigned on March 15, 2011, Bongos pleaded not guilty to the crime charged, while Dexisne remained at-large. Thereafter, trial on the merits ensued.

The facts are as follows:

At around 7 o'clock in the evening of June 8, 2010, at *Barangay* 123, Legazpi City, AAA, helper of BBB and CCC, was left to tend the house when CCC went to her mother's house. While AAA was washing dishes, two male persons entered the house through the kitchen. She identified them as Bongos, the one wearing bonnet up to his forehead, and Dexisne, the one wearing black short pants with red stripes on the side. She knew them because they are neighbors of her employers. Bongos pointed a gun at her, while Dexisne pointed his knife. They forced her to enter the room where the money of her employer was and demanded her to open the drawer. Since it was locked, Dexisne forced it open using a steel, while Bongos remained at AAA's side poking the gun at her neck. After they took the money, they forcibly dragged AAA outside the house until they reached a clearing on the lower level of the yard. There, armed with a knife and gun, both accused threatened and ordered AAA to undress herself. When she refused to do so, Dexisne got violent and slashed her leg and then hit her chest near her left breast which caused her to lose consciousness.^[4]

When AAA woke up, she no longer had her clothes on and felt pain on her private part. She was afraid so she went to DDD, the grandfather of CCC and asked for help. DDD summoned someone to fetch CCC to come home. Together with CCC, AAA reported the robbery incident to the authorities the following day. However, AAA did not tell CCC of the rape incident because she was ashamed and afraid that accused would really make good of their threat to kill or harm her in case she makes a report about the incident.^[5]

CCC confirmed that on June 8, 2010, at around 8 o'clock in the evening, the two maids of her grandfather went to the house of her mother and told her that an incident happened in her house. When she reached the house of her grandfather, she saw AAA crying. She asked AAA what happened and the latter told her that someone entered her house and took money. CCC testified that she immediately went to her house where she discovered that Php20,000.00 was indeed missing from the drawer. CCC also testified that on June 12, 2010, AAA told her that she was likewise raped by the accused. CCC knew accused "Poypoy" as Dexisne and "Ando" as Bongos since both were her neighbors. They had the incident blotted at the police station on June 14, 2010.^[6]

In the Medico-Legal Report issued on June 17, 2010 by Dr. James Belgira,^[7] the genital examination upon AAA revealed that her hymen was dilated and there were deep-healed lacerations at 3 o'clock and 6 o'clock positions, which concluded that there were clear signs of blunt vaginal penetrating trauma. Later, Dr. Belgira testified that the approximate time wherein the deep-healed lacerations were inflicted was around three to five days prior to the examination day. He examined AAA on June 15, 2010. He further testified that the cause of the dilation and lacerations of the hymen may be due to a blunt protruding hard object inserted in the vagina which has a diameter sufficient enough to break the maximum elasticity of the hymenal body.

For its part, the defense alleged that around 1 o'clock in the afternoon of June 8, 2010, Bongos was at the house of his parents in *Barangay* 123, Legazpi City to fix the tricycle of his father. Those present at the house were his father and mother, Nimfa Bongos and Dexisne. Bongos claimed that he finished fixing the tricycle at

around 8 o'clock in the evening and then he went directly to his house, about 150 meters away from his father's house, while Dexisne was left behind. He only knew of the case against him when he was summoned. Prior to June 8, 2010, he does not know any reason or ill-motive on the part of AAA or spouses BBB and CCC in indicting him in the case. However, later on he was told by CCC that because he testified in favor of Dexisne, he would also be included in the case.

In a Decision^[8] dated March 7, 2014, the court *a quo* convicted Bongos of the complex crime of robbery with rape. The dispositive portion of the decision reads as follows:

Above premises considered, accused Hernando Bongos is hereby declared GUILTY of the complex crime of robbery with rape, as defined and penalized under Article 294 [1] of the Revised Penal Code. He is hereby sentenced to suffer the penalty of *reclusion perpetua*.

He is also ordered to return the amount of P20,000.00, which was proven by the prosecution to have been taken by Bongos and his co-accused, to [CCC] and to pay the latter the amount of P50,000.00 as moral damages for accused' act of having violated the sanctity of [CCC's] home. He is also ordered to pay exemplary damages in the amount of Thirty Thousand Pesos (P30,000.00) to [CCC].

Also, accused is hereby ordered to pay [AAA] the following amounts: (i) P75,000.00 as civil indemnity; (ii) P75,000.00 as moral damages; and (iii) P30,000.00 as exemplary damages.

It is further understood that an interest rate of 6% *per annum*, reckoned upon the finality of this judgment, is imposed on all the damages awarded both to [CCC] and [AAA].

The case against Ronel Dexisne is hereby sent to the archives pending his arrest.

So Ordered.^[9]

The court *a quo* rejected Bongos' defense of alibi and denial, and instead gave credence and probative weight to AAA's testimony. It held that although AAA did not witness the actual rape as she was unconscious when it happened, the circumstantial evidence taken all together proved that on the occasion of robbery, she was raped by the malefactors. It, likewise, found that there was also conspiracy between Bongos and Dexisne from their coordinated acts from the time they gained entry into BBB and CCC's house, until they have successfully taken the money from AAA through force and intimidation and the eventual rape of her.

Unperturbed, Bongos appealed the court *a quo*'s decision before the Court of Appeals. However, on October 16, 2015, in its disputed Decision,^[10] the Court of Appeals affirmed *in toto* the decision of the trial court.

Hence, this appeal, raising the same issue brought before the appellate court, to wit:

WHETHER THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

The appeal lacks merit.

Robbery with rape is a special complex crime under Article 294 of the RPC. To be convicted of robbery with rape, the following elements must concur: (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.^[11]

For a conviction of the crime of robbery with rape to stand, it must be shown that the rape was committed *by reason or on the occasion* of a robbery and not the other way around. This special complex crime under Article 294 of the Revised Penal Code contemplates a situation where the original intent of the accused 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.^[12]

After going over the records of the case, We find no compelling reason to disturb the findings of the trial court as affirmed by the appellate court. The prosecution was able to establish that Bongos and Dexisne entered the house of the victims armed with a handgun and knife and took spouses BBB and CCC's money amounting to P20,000.00 without consent and by means of violence and intimidation.

During trial, AAA testified as to the identity of Bongos and Dexisne as the perpetrators, as well as the events that transpired during the incident, to wit:

x x x x

ARP CALLEJA

Q And, could you please tell us who were those two persons who entered the house?

A Ronel Dexisne and Hernando Bongos y Arevalo.

Q Is this Ronel Dexisne present in Court now?

A He is not in court.

Q How about Hernando Bongos?

A Yes, Sir.

Q Will you please point to him?

A (At this juncture the witness points to a man seated in front of the row of benches inside the court rooms wearing a yellow t-shirt and light blue pants with white stripes, who when asked of his name answered that he is Hernando Bongos)

Q Prior to June 8, 2010 are you familiar with Hernando Bongos?

A Yes, Sir.

Q Could you tell us the reason why you are already familiar with Hernando Bongos?

A He is a neighbor of my employer in Banquerohan.

Q You said that those two persons, Ronel Dexisne and Hernando Bongos, entered the house. After entering the house, what did they do?

A The poked a gun and pointed a knife at me.

Q Who was the person who poked a gun at you?

A It was Hernando Bongos, Sir. (At this juncture the witness points to accused Hernando Bongos)

Q How about the person who pointed a knife at you?

A It was Ronel Dexisne, Sir.

Q After those two persons poked a gun and pointed a knife at you, what happened next?

A They forced me to enter the room.

Q And what happened next, after they forced you to enter the room.

A They were asking me to point where the money of my employer was.

Q Did you comply with that order?

A It took me quite a time before I pointed it to them.

Q After you pointed to them where the money was, what happened next?

A After they get (sic) the money they still wanted me to go with them outside.

Q Where was the money placed?

A Inside the drawer.