

FIRST DIVISION

[G.R. No. 212193, February 15, 2017]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JUAN
RICHARD TIONLOC Y MARQUEZ, ACCUSED-APPELLANT.**

D E C I S I O N

DEL CASTILLO, J.:

When the evidence fails to establish all the elements of the crime, the verdict must be one of acquittal of the accused. This basic legal precept applies in this criminal litigation for rape.

Factual Antecedents

Juan Richard Tionloc y Marquez (appellant) appeals the September 26, 2013 Decision^[1] of the Court of Appeals (CA) in CA-G.R. CR.-H.C. No. 05452 which affirmed with modification the February 15, 2012 Decision^[2] of the Regional Trial Court (RTC) of Manila, Branch 37, in Criminal Case No. 08-264453. The RTC found appellant guilty beyond reasonable doubt of the crime of rape committed against "AAA"^[3] under paragraph 1 of Article 266-A of the Revised Penal Code (RPC). The designation of the crime in the Information against appellant is rape by sexual assault under paragraph 2, Article 266-A of the RPC. However, the accusatory portion of the Information charges appellant with rape through sexual intercourse under paragraph 1(b), Article 266-A, to wit:

That on or about September 29, 2008 in the City of Manila, Philippines, the said accused, conspiring and confederating with one whose true name, real identity and present whereabouts are still unknown and mutually helping each other, did then and there wilfully, unlawfully and feloniously, with lewd design and by means of force and intimidation, commit sexual abuse upon the person of "AAA" by then and there making her drink liquor which made her dizzy and drunk, depriving her of reason or otherwise unconsciousness, bringing her to a room and succeeded in having carnal knowledge of her, against her will.

Contrary to law.^[4]

When arraigned, appellant pleaded "not guilty." Elvis James Meneses (Meneses) was involved in the commission of the crime but could not be prosecuted due to his minority. He was only 14 years old at the time of the incident.

Version of the Prosecution

"AAA" testified that at around 9:30 p.m. of September 29, 2008, she was having a drinking session with appellant and Meneses in the house of appellant. After some

time, she felt dizzy so she took a nap. At around 11:00 p.m., she was roused from her sleep by Meneses who was mounting her and inserting his penis into her vagina. She felt pain but could only cry in silence for fear that the knife which they used to cut hotdog and now lying on top of a table nearby would be used to kill her if she resisted. Meneses left after raping her. While still feeling dizzy, afraid and shivering, appellant approached her and asked if he could also have sex with her. When she did not reply appellant mounted and raped her. Appellant stopped only when she tried to reposition her body. "AAA" then left appellant's house and immediately returned to the house she shared with her live-in partner.

The following day, "AAA" reported the incident to the police. She also underwent a medical examination and the results revealed two lacerations in her hymen.

Version of the Defense

Appellant denied raping "AAA." He claimed that on that fateful night, he was having a drinking session with his cousin, Gerry Tionloc. After a while, Meneses and "AAA" arrived and joined in their drinking session. Meneses and "AAA" then went inside his bedroom and continued drinking while he went out of the house to buy food. When he returned and entered his bedroom, he saw Meneses and "AAA" having sex. They asked him to leave, so he went to the kitchen. Meneses then came out of the bedroom followed by "AAA" who was holding a bottle of "rugby," which she brought home with her. Appellant contended that nothing more happened that night. Meneses corroborated his version of the incident.

Ruling of the Regional Trial Court

In its Decision^[5] dated February 15, 2012, the RTC clarified that appellant is charged with rape through sexual intercourse under paragraph 1, Article 266-A of the RPC based on the allegations in the Information and not with rape by sexual assault under paragraph 2 of the same provision of law, as the designation in the Information suggests. The RTC stressed that this is consistent with the legal precept that it is the allegations or recital in the Information that determine the nature of the crime committed. Thus, the RTC ruled that appellant was guilty beyond reasonable doubt of rape through sexual intercourse against "AAA." It held that the prosecution successfully established the crime through the testimony of "AAA," which was credible, natural, convincing and consistent with human nature and the normal course of things. The dispositive portion of the Decision reads as follows:

WHEREFORE, the Court finds the accused Juan Richard Tionloc y Marquez GUILTY beyond reasonable doubt of the crime of rape punishable under paragraph 1 of Article 266-A of the Revised Penal Code and hereby sentences him to suffer the penalty of reclusion perpetua. He is ordered to pay the private complainant Php50,000.00 as civil indemnity and Php50,000.00 as moral damages.

SO ORDERED.^[6]

Appellant appealed the RTC's Decision arguing that discrepancies in the sworn statement of "AAA" and her testimony diminished her credibility. Appellant contended that "AAA" alleged in her sworn statement that: (1) appellant held her hands while Meneses was on top of her; and (2) she slept after Meneses raped her

and awakened only when he was on top of her. However, "AAA" did not mention these allegations during her direct examination. Appellant maintained that "AAA" failed to refute his assertions that her aunt and uncle fabricated the charges against him for having previous affairs with two of her cousin.

Ruling of the Court of Appeals

In its Decision^[7] dated September 26, 2013, the CA ruled that discrepancies between the affidavit and testimony of "AAA" did not impair her credibility since the former is taken *ex parte* and is often incomplete or inaccurate for lack or absence of searching inquiries by the investigating officer. The inconsistencies even preclude the possibility that the testimony given was rehearsed. Moreover, the CA held that a rape victim like "AAA" is not expected to make an errorless recollection of the incident, so humiliating and painful that she might even try to obliterate it from her memory. The CA gave scant consideration to the appellant's claim of ill motive of the aunt and uncle of "AAA," as well as his denial of raping her which cannot overcome her positive, candid and categorical testimony that he was the rapist. The CA therefore affirmed the Decision of the RTC with modification that interest at the rate of 6% *per annum* is imposed on all damages awarded from the date of finality of the CA's Decision until fully paid. The dispositive portion of the CA's Decision reads as follows:

WHEREFORE, premises considered, the appeal is DENIED. The Decision dated 15 February 2012 of the Regional Trial Court, National Capital Judicial Region. Manila, Branch 37, in Crim. Case No. 08-264453 finding accused-appellant Juan Richard Tionloc y Marquez guilty beyond reasonable doubt for the crime of rape under paragraph 1 of Article 266-A of the Revised Penal Code, as amended, and sentencing him to suffer the penalty of *reclusion perpetua* and to pay Php50,000.00 as civil indemnity and another Php50,000.00 as moral damages in favor of private complainant AAA is AFFIRMED with MODIFICATION in that interest at the rate of 6% *per annum* is imposed on all damages awarded from the date of finality of this judgment until fully paid.

SO ORDERED.^[8]

Still insisting on his innocence, appellant comes to this Court through this appeal.

Assignment of Error

Appellant adopts the same assignment of error he raised before the CA, viz.:

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED.^[9]

Appellant asserts that he should be acquitted of rape since the prosecution was not able to establish the required quantum of evidence in order to overcome the presumption of innocence.

Our Ruling

The appeal is meritorious.

The Facts Recited In The Information Determine the Crime Charged.

It is apparent that there is a discrepancy in the designation of the crime in the Information (rape by sexual assault under paragraph 2 of Article 266-A of the RPC) and the recital in the Information (rape through sexual intercourse under paragraph 1 of the same provision of law). However, this discrepancy does not violate appellant's right to be informed of the nature and cause of the accusation against him. As ruled correctly by the RTC, the allegations in the Information charged appellant with rape through sexual intercourse under paragraph 1 of Article 266-A of the RPC and said allegations or recital in the Information determine the nature of the crime committed. "[T]he character of the crime is not determined by the caption or preamble of the Information nor from the specification of the provision of law alleged to have been violated, but by the recital of the ultimate facts and circumstances in the complaint or information."^[10]

The Use Of Force, Threat or Intimidation Causes Fear on the Part of the Rape Victim.

Be that as it may, the prosecution had to overcome the presumption of innocence of appellant by presenting evidence that would establish the elements of rape by sexual intercourse under paragraph 1, Article 266-A of the RPC, to wit: (1) the offender is a man; (2) the offender had carnal knowledge of a woman; (3) such act was accomplished by using force, threat or intimidation. "In rape cases alleged to have been committed by force, threat or intimidation, it is imperative for the prosecution to establish that the element of voluntariness on the part of the victim be absolutely lacking. The prosecution must prove that force or intimidation was actually employed by accused upon his victim to achieve his end. Failure to do so is fatal to its cause."^[11]

Force, as an element of rape, must be sufficient to consummate the purposes which the accused had in mind. On the other hand, intimidation must produce fear that if the victim does not yield to the bestial demands of the accused, something would happen to her at that moment or even thereafter as when she is threatened with death if she reports the incident.^[12] "Intimidation includes the moral kind as the fear caused by threatening the girl with a knife or pistol."^[13]

In this case, the prosecution established that appellant was an 18-year old man who had sexual intercourse with "AAA," a woman who was 24 years old during the incident. However, there was no evidence to prove that appellant used force, threat or intimidation during his sexual congress with "AAA." She testified that appellant and Meneses are her good friends. Thus, she frequented the house of appellant. At around 7:00 p.m. of September 29, 2008, she again went to the house of appellant and chatted with him and Meneses while drinking liquor. From that time up to about 11 p.m. when she took a nap, there is no showing that appellant or Meneses forced, threatened or intimidated her.

As to how appellant and Meneses had sexual intercourse with her, "AAA" merely testified as follows: