

THIRD DIVISION

[G.R. No. 212814, July 12, 2017]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ERNIE CARILLO Y PABELLO ALIAS "NANNY," RONALD ESPIQUE Y LEGASPI ALIAS "BORLOK," RAFAEL SUSADA Y GALURA ALIAS "RAFFY," ACCUSED,

ERNIE P. CARILLO AND RONALD L. ESPIQUE, ACCUSED-APPELLANTS.

DECISION

TIJAM, J.:

Accused-appellants Ernie P. Carillo (Carillo) and Ronald L. Espique (Espique) challenge before Us the July 8, 2013 Decision^[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 05088, which found them guilty beyond reasonable doubt for the crime of Rape and sentenced them to suffer the penalty of *reclusion perpetua*.

Accused-appellants and Rafael Susada y Galura alias "Raffy" (Rafael), together with Randel Susada y Galura (Randel) and Dante Fabillar y Lumagbas (Dante) were charged with the crime of Rape under Article 266-A paragraph 1 of the Revised Penal Code (RPC), in an Amended Information, which reads:

That on or about [the] 6th day of October 2006, in the City of Las Piñas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating and all of them mutually helping and aiding one another, with lewd design and while the woman is unconscious, did then and there willfully, unlawfully and feloniously have carnal knowledge with AAA,^[2] against her will and consent.

CONTRARY TO LAW.^[3]

Upon arraignment, accused-appellants and Rafael entered separate pleas of not guilty. However, Randel and Dante were not arraigned because they remained at large. Trial on the merits ensued with respect to accused-appellants and Rafael.

Evidence for the Prosecution:

AAA testified that she was a nursing student at Perpetual Help School in Las Piñas City. She said that on October 6, 2006 at around 1:00 p.m., AAA was in Zapote, Las Piñas City, waiting for a jeepney ride going to Bacoar, Cavite to attend a party. Suddenly, someone held her right arm and instructed her to just walk normally as if nothing was happening. She complied but due to extreme fear and coupled with her menstrual period, after several steps, she lost consciousness.^[4]

Upon regaining consciousness, AAA noticed that she was lying on a "papag" inside a nipa hut (*kubo*) with only her bra and panty on. AAA saw five male persons standing in front of her. They were laughing, smoking and drinking. Carillo, then went on top of her, pulled AAA's panty and held her breasts. Carillo inserted his penis into AAA's vagina and made a push and pull movement. Thereafter, Espique went on top of her and did what Carillo did to her. AAA also stated that while accused-appellants were sexually abusing her, their three companions were shouting "*sige pa, sige pa*." She felt very weak and lost her consciousness again.^[5]

When AAA woke up, she was alone and was already wearing her bra and panty. She immediately put on her clothes and left. AAA proceeded to her classmate's house in Bacoar, Cavite, and narrated what happened. Upon learning of the incident, her classmate's mother accompanied AAA to her uncle's house in BF Homes, Parañaque. They went immediately to Bacoar Police Station to lodge a complaint, but they were referred to Las Piñas Police Station which had jurisdiction over the case. Thereafter, AAA was referred to Camp Crame, Quezon City for her medical examination.^[6]

Further, AAA testified that she did not actually see the other three accused, Rafael, Randel and Dante at the time of the incident. It was Espique who provided their names and not AAA.^[7]

Evidence for the Defense:

Espique for his defense, asserted that on the date of the incident, he was in his house located at No. 340, Basa Compound, Zapote, Las Piñas City, helping his parents take care of their pigs. On October 7, 2006, he was surprised when three police officers invited him to the police precinct. At the police station, he, together with Carillo, was ordered to stand in front of a woman. The latter pointed at Carillo, hence, Espique was allowed to go home.^[8] Espique learned later that the woman is the AAA in this case.

On October 18, 2006 around midnight, when Espique was on his way home after attending a wake, some police officers grabbed him and brought him to Camp Crame, where he was tortured. Said police officers forced him to admit that he raped AAA.^[9]

Carillo for his part, denied any participation in the crime imputed against him. Carillo alleged that he was at a store in Lalig, Zapote waiting for his friends, namely Dante and Randell.^[10]

Rafael, on the other hand, claimed that he was in his house located at No. 340 Basa Compound, Zapote, Las Piñas City. Later in the morning, he went to his mother's house in Bacoar to ask for money. Rafael arrived there at around 9:30a.m. and stayed there for about one hour. He went back to Zapote and proceeded directly to his father. They chatted for about 20 minutes and he immediately left. Rafael stated that thereafter, he stayed home with his wife and children, watched television, and they all went to sleep. He woke up around 4:00p.m. and bought snacks at a bakery. He learned about the case against him only on October 18, 2006, when he received a subpoena. Rafael further claimed that he never met AAA and he does not know of any reason why she would point at him.^[11]

The RTC, in a Decision^[12] dated July 8, 2011, found accused-appellants and Rafael guilty beyond reasonable doubt for two (2) counts of rape. Accused-appellants and Rafael were sentenced to suffer the penalty of *reclusion perpetua* for each count of rape without eligibility of parole. The dispositive portion of the RTC decision reads:

WHEREFORE, accused Ernie Carillo y Pabella [sic] alias "Nanny", Ronald Espigue @ "Borlok", and Rafael Susada y Galura @ "Raffy" @ "Raflly" are each found guilty beyond reasonable doubt of two (2) counts of consummated rape and accordingly, sentenced the penalty of *reclusion perpetua* for each count without eligibility for parole.

Further, said accused are ordered to pay jointly and severally [AAA] the sum of Php 150,000.00 by way of indemnity for the two counts of consummated rape plus Php 100,000.00 as moral damages and to pay the costs of suit.

SO ORDERED.^[13]

On appeal, the CA, in a Decision^[14] dated July 8, 2013, affirmed the RTC's decision with modification. It ruled that the RTC erred in convicting accused-appellants for two counts of rape, since they were charged only under a single information for a single crime of rape. As for Rafael, the prosecution failed to prove his guilt beyond reasonable doubt as co conspirator to the crime of raping AAA, since AAA testified that she did not actually see the other three accused, Rafael, Randel and Dante at the time of the incident. It was Espique who provided their names and not AAA. Hence, the CA acquitted Rafael and ordered his immediate release. The CA decision's *fallo* provides:

WHEREFORE, in view of the foregoing, the Decision dated July 8, 2011 is hereby **AFFIRMED with MODIFICATION**. AccusedAppellants Ernie Carillo y Pabella [sic] alias "Nanny", Ronald Espigue alias "Borlok" are found GUILTY only of one count of Rape as charged in the Information and sentenced to Reclusion Perpetua. They are also ordered to pay jointly and severally [AAA] the sum of P50,000.00 plus P50,000.00 as moral damages and to pay the costs of suit. Accused-appellant **RAFAEL SUSADA** is hereby **ACQUITTED**. The Court orders his immediate release from custody unless he is being held for some other lawful cause.

SO ORDERED.^[15]

Hence, this appeal.

Accused-appellants question the CA decision and argue that the prosecution failed to prove their guilt beyond reasonable doubt due to AAA's inconsistent statements and her immediate conduct following the incident of rape.

The appeal lacks merit.

There is no cogent reason to deviate from the CA ruling affirming the RTC's factual finding that accused-appellants are guilty of rape. The issues raised are factual in nature. The trial court's evaluation shall be binding on this Court unless it is shown that certain facts of substance and value have been plainly overlooked,

misunderstood, or misapplied.^[16] None of the exceptions are present in this case.

Even if We consider the factual issues raised, the findings of fact of the RTC and the CA still sufficiently support the conviction of and imposition of the penalty of *reclusion perpetua* on accused-appellants for the crime of rape against AAA.

Article 266-A 1(b) of the RPC, as amended, pertinently reads:

Article 266-A. *Rape, When And How Committed.* - Rape is committed -

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat or intimidation;

b) When the offended party is deprived of reason or is otherwise unconscious;

c) By means of fraudulent machination or grave abuse of authority; and

d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

We find that the evidence on record sufficiently established that the elements of rape are present in this case. In convicting accused-appellants, the appellate court relied upon a finding that AAA was unconscious when accused-appellants had carnal knowledge of her, which We uphold. As testified by AAA, accused-appellants went on top of her and ravished her; thereafter, she felt dizzy, weak and unconscious. This enabled accused appellants to consummate their bestial design on AAA. Clearly, the requisites of Article 266-A(1)(b) of the RPC were satisfied.

Also, as correctly observed by the CA, the prosecution was able to prove that a crime of rape has been committed against AAA, that accused appellants were present at the scene of the crime and that they were positively identified by AAA as her sexual assailants.

AAA was able to positively identify accused-appellants as her sexual assailants. But due to their positive identification, they now argue that there are inconsistencies in AAA's testimony vis-a-vis her statements in her complaint-affidavit. They point out that in AAA's testimony, she stated that she lost consciousness right after she was abducted, but regained consciousness just in time to see the perpetrators' faces and that she was awake during her harrowing experience, while in her complaint-affidavit, she stated that she was totally unconscious during the incident. The argument of inconsistencies can hardly affect the credibility of AAA and We still sustain accused-appellants' conviction.

In *People v. Burce*,^[17] the Court held that:

As a general rule, on the question whether to believe the version of the prosecution or that of the defense, the trial court's choice is generally viewed as correct and entitled to the highest respect because it is more