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THIRD DIVISION

[G.R. No. 201110, July 06, 2015]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JEFFREY VICTORIA Y CRISTOBAL, ACCUSED-APPELLANT.

DECISION

VILLARAMA, JR., J.:

Before us is an appeal from the Decision[1] dated July 28, 2011 of the Court of Appeals (CA) in CA-G.R. CR.-H.C. No. 03973 which affirmed the conviction of Jeffrey Victoria (accused-appellant) for the crime of rape.

The Information[2] dated December 5, 2006, which charged the accused-appellant with rape, reads:

> That, on or about the 1st day of December 2006, in the Municipality of Binangonan, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with [AAA[3]], a minor, fifteen (15) years old at the time of the commission of the offense, against her will and consent, to her damage and prejudice.
>
> CONTRARY TO LAW.

Upon arraignment, the accused-appellant pleaded not guilty to the charge. Trial on the merits ensued.

The facts, as culled from the records, follow:

The prosecution presented three witnesses: (1) AAA, the private complainant herself, (2) Police Senior Inspector (P/Sr. Insp.) Edilberto Antonio of the Philippine National Police Crime Laboratory, the medico-legal officer who conducted the physical examination of the private complainant, and (3) BBB, the mother of the private complainant.

AAA testified that in the evening of December 1, 2006, she was at Jumil's Funeral Homes in Calumpang, Rizal to collect payments for "*ending*" a betting game of chance. While waiting for payments from the players, AAA saw accused-appellant sit at the opposite side of the same bench where she sat. Thereafter, Noel and Michael, friends of accused-appellant, arrived at Jumil's Funeral Homes and invited him to eat *lugaw* with them. Accused-appellant accepted the invitation and also convinced AAA to come with them. However, upon finding that the *lugawan* was closed, the group decided to return to their homes. At this point, AAA claimed that accused-appellant told her to instruct Noel and Michael to head home first. Then, AAA alleged

that accused-appellant lured her to a dark place where he covered her mouth with one hand, and succeeded in having carnal knowledge with her.

BBB testified that she observed that AAA was pale and crying when she arrived at their house. Furthermore, BBB noticed the dirty clothes of AAA and the bloodstains on her buttocks and groin. When BBB asked AAA about her condition, the latter positively identified the accused-appellant as her assailant. BBB proceeded to the house of the accused-appellant, but they did not find him there. AAA and BBB reported the incident to the *barangay* and police authorities.

Meanwhile, P/Sr. Insp. Edilberto Antonio testified that he conducted a physical examination of AAA a day after the alleged act by the accused-appellant, and found the following injuries on AAA's genitalia: shallow fresh hymenal lacerations at 3 o'clock position, and perihymenal contusions at 9 o'clock and 3 o'clock positions. These findings led him to conclude that AAA suffered from a blunt force or penetrating trauma on her genitalia. Finally, he also observed that AAA had an ecchymosis (kiss mark) on her neck.

On the other hand, accused-appellant admitted that he had sexual intercourse with AAA, but claimed that such act was consensual as AAA was his girl friend. Thus, accused-appellant contended that he did not employ force, threat or intimidation in having sexual intercourse with AAA.

Accused-appellant narrated that in the evening of December 1, 2006, he was at Jumil's Funeral Homes when his girlfriend, AAA, approached him and invited him to make a bet in "*ending*". Instead of making a bet, accused-appellant invited AAA to eat *lugaw*, which the latter accepted. While they were walking towards the *lugawan,* they encountered Noel and Michael who invited them to visit a certain place near the highway. When accused-appellant refused their invitation, he persuaded AAA that they instead visit a vacant lot near the APS Construction Supply Store. Upon reaching the vacant lot, accused-appellant started to kiss AAA. However, when accused-appellant noticed that someone was watching them, he proceeded to the end of the vacant lot where AAA followed him. There, they had sexual intercourse.

Accused-appellant further testified that he asleep immediately after having sexual intercourse with AAA. When he woke up, AAA was no longer beside him, so he decided to go home.

The defense also presented the testimony of Edison Baltar who claimed that in the evening of December 1, 2006, he passed by Jumil's Funeral Homes where he saw accused-appellant sitting on AAA's lap. He also testified that AAA kissed accused-appellant on his forehead.

On April 29, 2009, the Regional Trial Court (RTC) of Binangonan, Rizal, Branch 67, rendered its Decision[4] in Criminal Case No. 06-700 finding accused-appellant guilty of rape, to wit:

> The foregoing considered, we find accused Jeffrey Victoria **GUILTY** beyond reasonable doubt of rape under Article 266-A, Paragraph l(a) in relation to Article 266-B, Revised Penal Code and sentence him to serve a penalty of *Reclusion Perpetua.* We further order him to pay P50,000.00 as moral damages and P50,000.00 as exemplary damages plus costs.

SO ORDERED.[5]

In finding the accused-appellant guilty of the crime of rape, the trial court gave full faith and credence to the testimony of AAA. According to the trial court, her testimony was straightforward, candid, unshaken by cross-examination and unflawed by inconsistencies or contradictions in its material points. Furthermore, the trial court also ruled that her testimony was supported by the medico-legal findings of hymenal lacerations which showed forcible defloration. On the other hand, the trial court struck down the accused-appellant's "sweetheart defense" which was not substantiated by any documentary evidence like mementos, love letters, notes, pictures and the like. Assuming the "sweetheart defense" can pass muster, the trial court observed that such sweetheart cannot be forced to have sex against her will.

On May 11, 2009, accused-appellant filed his Notice of Appeal[6] which was given due course by the trial court.

In his Brief filed before the CA, accused-appellant argued that his sexual intercourse with AAA was consensual. To support his argument, accused-appellant referred to the acts and omissions of AAA before and after the sexual intercourse which show her consent, to wit: (1) acceptance of the invitation of the accused-appellant to eat *lugaw* and to proceed to a dark place, (2) failure to display emotions after the sexual intercourse, and (3) failure to report the incident immediately to BBB. Accused-appellant also claimed that there was no force, threat, or intimidation involved when he had sexual intercourse with AAA because at the time of the incident he was not armed with any weapon and neither did AAA sustain any abrasions on her body.

On the other hand, the Solicitor General on behalf of the State, argued that the acts and omissions of AAA before and after the sexual intercourse cannot be immediately construed as consent to the sexual act. They posited that the presence of any weapon on the part of the assailant and abrasion on the body of the victim is irrelevant in determining whether force, threat, or intimidation was involved in the act of sexual intercourse.

On July 28, 2011, the appellate court affirmed the trial court's Decision, *viz*:

> **WHEREFORE,** premises considered, the appeal is hereby **DENIED.** The assailed Decision dated 29 April 2009 of the Regional Trial Court, Branch 67 of Binangonan, Rizal is **AFFIRMED.**
>
> **SO ORDERED**[7]

Hence, this appeal.

Accused-appellant reiterates his argument that the acts and omissions of AAA before and after the sexual intercourse reveal that she consented thereto. He also emphasizes that the absence of any abrasion on AAA's body indicate that the latter consented to the sexual intercourse.

We dismiss the appeal.

In *People v. Bautista*[8] we laid down the requirements before the accused can seek refuge behind the "sweetheart defense" to wit:

> In rape, the "sweetheart" defense must be proven by compelling evidence: *first,* that the accused and the victim were lovers; and, second, that she consented to the alleged sexual relations. The second is as important as the first, because this Court has held often enough that love is not a license for lust.

Accused-appellant failed in both aspects.

Firstly, in order to prove that the accused and the victim are indeed sweethearts, we have ruled in a long line of cases that it is incumbent upon the accused to present documentary and/or other evidence of the relationship like mementos, love letters, notes, pictures and the like.[9] In the present case, aside from the self-serving testimony of accused-appellant and that of his friend Edison Baltasar, the defense failed to present any other documentary evidence of the alleged relationship between AAA and the accused-appellant. On the other hand, AAA clearly and categorically denied having any romantic relationship with accused-appellant.

Secondly, the evidence for the prosecution clearly shows that accused-appellant employed force, threat, or intimidation in order to succeed in having carnal knowledge with AAA.

In *People v. Flores,*[10] we ruled that in rape through force or intimidation, the force employed by the guilty party need not be irresistible. It is only necessary that such force is sufficient to consummate the purpose for which it was inflicted. Similarly, intimidation should be evaluated in light of the victim's perception at the time of the commission of the crime. It is enough that it produced the fear in the mind of the victim that if she did not yield to the bestial demands of her ravisher, some evil would happen to her at that moment or even thereafter. Hence, what is important is that because of force and intimidation, the victim was made to submit to the will of the appellant.

We give credence to the testimony of AAA before the trial court as she specifically narrated how the accused-appellant employed force, threat, or intimidation against her:

> xxxx
>
> Q - After you were informed that the *lugawan* was closed what happened?
>
> A - I was ahead of them in walking, ma'am.
>
> Q - What did the accused do when you were walking ahead of them?
>
> A - He called me and told me to let Michael and Noel go ahead, ma'am.
>
> Q What happened? What did you do when you were instructed to

- let the two go ahead?

A - I stopped and he sat down at the ground, ma'am.

Q - Where was that when he sat down?

A - At the APS Construction Supply, ma'am.

Q - What happened while you were seated there in front of APS Construction Supply?

A - I asked him to leave APS ma'am.

Q - And what did the accused do when you asked him to leave the APS?

A - He stood up and proceeded to a dark place, ma'am.

Q - How about you, what did you do when he proceeded to the dark place?

A - He called me, ma'am.

Q - What did you do when he summoned you?

A - I came near, ma'am.

Q - When you approached him what happened next?

A - He stood up and he sat down again on the pile of gravel, ma'am.

Q - What happened after that?

A - He sat down and he pulled me and told me to sit down also, ma'am.

Q - What did you do when he pulled you down?

A - I sat down and he embraced me and he brought me to a grassy place, ma'am.

Q - How far was that from the APS Construction Supply?

A - It's also there at the APS ma'am.