

FIRST DIVISION

[G.R. No. 166441, October 08, 2014]

**NORBERTO CRUZ Y BARTOLOME, PETITIONER, VS. PEOPLE OF
THE PHILIPPINES, RESPONDENT.**

D E C I S I O N

BERSAMIN, J.:

The intent of the offender to lie with the female defines the distinction between attempted rape and acts of lasciviousness. The felony of attempted rape requires such intent; the felony of acts of lasciviousness does not. Only the direct overt acts of the offender establish the intent to lie with the female. However, merely climbing on top of a naked female does not constitute attempted rape without proof of his erectile penis being in a position to penetrate the female's vagina.

The Case

This appeal examines the decision promulgated on July 26, 2004,^[1] whereby the Court of Appeals (CA) affirmed the conviction for attempted rape of the petitioner by the Regional Trial Court, Branch 34, in Balaoan, La Union (RTC), and imposing on him the indeterminate penalty of imprisonment of four (4) years and two (2) months of *prision correccional*, as minimum, to ten (10) years of *prision mayor*, as maximum, and ordering him to pay moral damages of P20,000.00 to AAA,^[2] the victim.

Antecedents

The petitioner was charged in the RTC with attempted rape and acts of lasciviousness involving different victims. At arraignment, he pleaded *not guilty* to the respective informations, to wit:

Criminal Case No. 2388 Attempted Rape

That on or about the 21st day of December 1993, at about 2:00 o'clock in the morning, along the Bangar-Luna Road, Barangay Central West No. 2, Municipality of Bangar, Province of La Union, Philippines and within the jurisdiction of this Honorable Court, said accused, did then and there willfully, unlawfully and feloniously and by means of force and intimidation commenced the commission of rape directly by overt acts, to wit: While private complainant AAA, an unmarried woman, **fifteen (15) years** old, was sleeping inside the tent along Bangar-Luna Road, the said accused remove her panty and underwear and lay on top of said AAA embracing and touching her vagina and breast with intent of having

carnal knowledge of her by means of force, and if the accused did not accomplish his purpose that is to have carnal knowledge of the said AAA it was not because of his voluntary desistance but because the said offended party succeeded in resisting the criminal attempt of said accused to the damage and prejudice of said offended party.

CONTRARY TO LAW.^[3]

Criminal Case No. 2389 Acts of Lasciviousness

That on or about the 21st day of December 1993, at about 3:00 o'clock in the morning, along the Bangar-Luna Road, Barangay Central West No. 2, Municipality of Bangar, Province of La Union, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with lewd design, did then and there willfully, unlawfully and feloniously touch the vagina of [BBB]^[4] against the latter's will and with no other purpose but to satisfy his lascivious desire to the damage and prejudice of said offended party.

CONTRARY TO LAW.^[5]

Version of the Prosecution

The CA summarized the version of the Prosecution as follows:^[6]

xxx [Petitioner] Norberto Bartolome and [his wife] Belinda Cruz were engaged in the selling of plastic wares and glass wares in different municipalities around the country. On December 20, 1993, Norberto and Belinda employed AAA and BBB to help them in selling their wares in Bangar, La Union which was then celebrating its fiesta. From Libsong East, Lingayen, Pangasinan to Bangar, La Union, AAA and BBB boarded a passenger jeepney owned by Norberto. The young girls were accompanied by Norberto, Belinda, Ruben Rodriguez (driver) and a sales boy by the name of "Jess".

Upon reaching Bangar, La Union, at around 8:00 in the evening of December 20, 1993, they parked in front of Maroon enterprises. They brought out all the goods and wares for display. Two tents were fixed in order that they will have a place to sleep. Belinda and the driver proceeded to Manila in order to get more goods to be sold.

On December 21, 1993, at around 1:00 o'clock in the morning, AAA and BBB went to sleep. Less than an hour later, AAA was awakened when she felt that somebody was on top of her. Norberto was mashing her breast and touching her private part. AAA realized that she was divested of her clothing and that she was totally naked. Norberto ordered her not to scream or she'll be killed. AAA tried to push Norberto away and pleaded to have pity on her but her pleas fell on deaf ears. She fought back and

kicked Norberto twice.

Norberto was not able to pursue his lustful desires. Norberto offered her money and told her not to tell the incident to her mother otherwise, she will be killed. AAA went out of the tent to seek help from Jess (the house boy) but she failed to wake him up.

Thirty minutes later, when AAA returned to their tent, she saw Norberto touching the private parts of BBB. AAA saw her companion awake but her hands were shaking. When she finally entered the tent, Norberto left and went outside.

Later that day, AAA and BBB narrated to Jess the incident that took place that early morning. Later still, while they were on their way to fetch water, AAA and BBB asked the people around where they can find the municipal building. An old woman pointed to them the place.

In the evening of December 21, 1993, AAA and BBB went straight to the municipal hall where they met a policeman by the name of "Sabas".

They told Sabas the sexual advances made to them by Norberto. Norberto was summoned to the police station where he personally confronted his accusers. When Norberto's wife, Belinda, arrived at the police station, an argument ensued between them.

On December 22, 1993, at around 2:20 o'clock in the morning, the police investigator ordered the complainants to return at 6:00 o'clock in the morning. Norberto and Belinda were still able to bring AAA and BBB home with them and worked for them until December 30, 1994, after which they were sent back to Lingayen, Pangasinan.

On January 10, 1994, AAA and BBB went back to La Union and executed their respective sworn statements against Norberto.

Version of the Defense

The petitioner denied the criminal acts imputed to him. His version was presented in the assailed decision of the CA,^[7] as follows:

In a bid to exculpate himself, accused-appellant presents a totally different version of the story. The accused maintains that it was not possible for him to commit the crimes hurled against him. On the date of the alleged incident, there were many people around who were preparing for the "simbang gabi". Considering the location of the tents, which were near the road and the municipal hall, he could not possibly do the dastardly acts out in the open, not to mention the fact that once AAA and BBB would scream, the policemen in the municipal hall could hear them. He believes that the reason why the complainants filed these cases against him was solely for the purpose of extorting money from him.

Judgment of the RTC

After the joint trial of the two criminal cases, the RTC rendered its judgment on April 6, 2000 finding the petitioner guilty beyond reasonable doubt of attempted rape in Criminal Case No. 2388 and acts of lasciviousness in Criminal Case No. 2389,^[8] to wit:

WHEREFORE, in the light of the foregoing, the Court hereby renders judgment declaring the accused NORBERTO CRUZ Y BARTOLOME guilty beyond reasonable doubt of the crimes of ATTEMPTED RAPE and ACTS OF LASCIVIOUSNESS as defined and penalized in Article 335 in relation with (sic) Article 6, par. 3 and Article 336 of the Revised Penal Code respectively.

With respect to the crime of ATTEMPTED RAPE, the Court hereby sentences the accused to suffer an indeterminate penalty of imprisonment from FOUR (4) YEARS and TWO (2) MONTHS PRISION CORRECCIONAL as Minimum to TEN (10) YEARS PRISION MAYOR as Maximum and the accessory penalties provided for by law and to pay the victim AAA the amount of P20,000.00 as moral damages.

With regard to the crime of ACTS OF LASCIVIOUSNESS, the Court hereby sentences the accused to suffer an indeterminate penalty of imprisonment from FOUR (4) MONTHS ARRESTO MAYOR as Minimum to FOUR (4) YEARS and TWO (2) MONTHS PRISION CORRECCIONAL as Maximum and the accessory penalties provided for by law, and to pay the victim BBB the amount of P10,000.00 as moral damages.

The preventive imprisonment suffered by the accused by reason of the two cases is counted in his favor.

SO ORDERED.^[9]

Decision of the CA

On appeal, the petitioner contended that the RTC gravely erred in convicting him of attempted rape despite the dubious credibility of AAA, and of acts of lasciviousness despite the fact that BBB did not testify.

On July 26, 2004, the CA promulgated its decision affirming the conviction of the petitioner for attempted rape in Criminal Case No. 2388, but acquitting him of the acts of lasciviousness charged in Criminal Case No. 2389 due to the insufficiency of the evidence,^[10] holding thusly:

In sum, the arguments of the accused-appellant are too puerile and inconsequential as to dent, even slightly, the overall integrity and probative value of the prosecution's evidence insofar as AAA is concerned.

Under Article 51 of the Revised Penal Code, the penalty for an attempted felony is the "penalty lower by two (2) degrees" prescribed by law for the consummated felony. In this case, the penalty for rape if it had been consummated would have been *reclusion perpetua* pursuant to Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659. The penalty two degrees lower than *reclusion perpetua* is *prision mayor*.

Applying the Indeterminate Sentence Law, the maximum term of the penalty shall be the medium period of *prision mayor* in the absence of any mitigating or aggravating circumstance and the minimum shall be within the range of the penalty next lower to that prescribed for the offense which in this case is *prision correctional* in any of its periods.

We also find that the trial court correctly assessed the amount of P20,000.00 by way of moral damages against the accused-appellant. In a rape case, moral damages may be awarded without the need of proof or pleading since it is assumed that the private complainant suffered moral injuries, more so, when the victim is aged 13 to 19.

Insofar as the crime of acts of lasciviousness committed against BBB, the accused argues that there is not enough evidence to support such accusation. BBB did not testify and neither her sworn statement was formally offered in evidence to support the charge for acts of lasciviousness.

In this case, the evidence adduced by the prosecution is insufficient to substantiate the charge of acts of lasciviousness against the accused-appellant. The basis of the complaint for acts of lasciviousness is the sworn statement of BBB to the effect that the accused-appellant likewise molested her by massaging her breast and touching her private part. However, she was not presented to testify. While AAA claims that she personally saw the accused touching the private parts of BBB, there was no testimony to the effect that such lascivious acts were without the consent or against the will of BBB.^[11]

Issues

In this appeal, the petitioner posits that the CA's decision was not in accord with law or with jurisprudence, particularly:

I.

In giving credence to the incredulous and unbelievable testimony of the alleged victim; and

II.

In convicting the accused notwithstanding the failure of the prosecution to prove the guilt of the petitioner beyond reasonable doubt.