

FIRST DIVISION

[G.R. No. 202868, October 02, 2013]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MICHAEL ESPERA Y CUYACOT, ACCUSED-APPELLANT.**

D E C I S I O N

LEONARDO-DE CASTRO, J.:

This an appeal from the Decision^[1] dated July 28, 2011 of the Court of Appeals in CA-G.R. CEB-CR-H.C. No. 000923 denying the appeal of the appellant Michael Espera and affirming (with modification of the damages awarded) the Omnibus Decision^[2] dated September 21, 2007 of the Regional Trial Court (RTC) of Talibon, Bohol, Branch 52 in Criminal Case Nos. 99-511 and 99-512, which found the appellant guilty of the crimes of rape by sexual assault and rape by sexual intercourse.

The following Informations were filed against the appellant:

A. In Criminal Case No. 99-511

That on or about the 26th day of January, 1999 in the municipality of Ubay, province of Bohol, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with criminal intent and with the use of force, threat and intimidation by using a deadly weapon – a short firearm, did then and there willfully, unlawfully and feloniously insert his penis into the mouth of the victim [Ana^[3]] against her will and without her consent; to the damage and prejudice of the victim.

Acts committed contrary to the provisions of Art. 266-A[,], par. 2, in relation to Article 266-B of R.A. No. 8353.^[4]

B. In Criminal Case No. 99-512

That on or about the 26th day of January, 1999 in the municipality of Ubay, province of Bohol, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with criminal intent and with the use of force, threat and intimidation by using a deadly weapon – a short firearm, did then and there willfully, unlawfully and feloniously drag and push the victim [Ana] to the ground and with lewd designs, have sexual intercourse with the victim against her will and without her consent; to the damage and prejudice of the victim.

Acts committed contrary to the provisions of Art. 266-A[,], No. 1, in relation to Article 266-B of R.A. No. 8353 and of R.A. No. 7659.^[5]

The appellant pleaded not guilty to both charges when arraigned.^[6] Pre-trial was conducted and, thereafter, trial ensued.

The prosecution established that at around 11:30 in the evening of January 26, 1999, Ana and "Susie,"^[7] Ana's co-worker at the "Get Well Clinic"^[8] at Fatima, Ubay, Bohol decided to share a ride as they were both residents of "Barangay Ekis"^[9] in Ubay, Bohol. They hailed a tricycle at the junction of the provincial road and the *barangay* road, some 50 meters away from the clinic. Streetlights illuminated the area. There was also light coming from the nearby chapel and the houses in the vicinity. As was her wont, Susie beamed a flashlight on the front part of the tricycle. She recognized the driver, the appellant in this case, as one of her husband's friends. Ana recognized the driver by face, although she did not know his name. She noticed that he was wearing a red polo shirt and *maong* pants.^[10]

Upon reaching Barangay Ekis, Susie was the first to disembark as Ana's house was some 150 to 250 meters farther down the unpaved sloping road. Ana asked the driver to stop the tricycle when they were near her house but he kept on driving, telling her that the tricycle's brakes were not working. The tricycle finally stopped at the quarry site. The appellant asked Ana to get off as the tricycle purportedly ran out of gas. She offered to pay her fare but he did not accept it on account of his failure to bring Ana home.^[11]

As Ana was tracing her way home under a bright moonlight,^[12] she heard the rustling of another person's pants behind her. She realized she was being followed. She turned around. She saw the appellant, naked from the waist up, with his red polo shirt now covering his face. She saw a gun in his hand. She ran away from him and shouted for help. He ran after her and immediately caught her. He covered her mouth and pointed the gun on her head. He threatened to kill her if she shouted.^[13] She recognized his voice -- it was the voice of the tricycle driver.^[14] She tried to ward off his hands but she lost her balance in the process and fell to the ground. She tried to kick him but he overpowered her. He punched her in the upper part of her stomach. She felt pain. She pretended to lose consciousness, hoping that he would leave her.^[15] She was wrong.

The appellant dragged Ana by the hair to a more secluded place. After he pushed her to the ground, she tried to stand up but he boxed her several times. She cried and begged him to stop. Her pleas fell on deaf ears. He forcefully undressed her, removing her pants, shirt and bra. He pinned her to the ground with his hands. He then stood and removed his pants and underwear. He rubbed his body against her. He then knelt and placed his groin on her face. He ordered her to suck his manhood. She refused but he punched her again in the upper part of her stomach and forced his organ inside her mouth.^[16]

After inserting his organ in Ana's mouth, the appellant forcibly opened her legs and inserted his fingers in her vagina. She cried but he continued to ignore her pleas and again threatened to kill her.^[17] He commanded her to guide his sex organ to

hers, she initially refused but was left no choice when he pointed the gun at her head.^[18] He then forcefully penetrated her, causing her to shout because of extreme pain. This enraged the appellant, prompting him to bite her lips and lower jaw.^[19]

After ravishing Ana, the appellant asked her if she knew him and if she remembered the markings of his tricycle. She denied both, fearing that he might kill her if she would tell him the truth. Finished with his dastardly deed, he repeated his threat to kill her. He ordered her to remove her shirt and to blindfold herself with it. He commanded her to remain seated on the ground until after 15 minutes from the time he had started the tricycle. She did as told. When she sensed that he was already gone, she immediately stood up, wrapped her body with a *malong* and went home.^[20]

On the next day, Ana told her mother about what happened to her.^[21]

And on the day after that, when Susie visited her to ask why she did not report at the clinic, Ana told Susie that she was raped by the driver of the tricycle who brought them to Barangay Ekis two nights ago.^[22]

Thereafter, Ana had herself examined by a doctor. The medical examination revealed that she suffered multiple contusions, lacerations and abrasions on different parts of her body. In particular, she had contusions in the right side of her face, from the jaw to the temple and at the base of the right ear. She had bruise on the right forehead. She also had contusions below her lower left breast and lower chest. She had a laceration running from the jaw to the lower lip and a wound indicating a bite mark in her upper lip. There was marked tenderness in the upper part of her stomach and there were fingernail marks in her right shoulder, left wrist and in her back. Her labia were lacerated, her hymen was ruptured and dead spermatozoa were found in her vagina.^[23]

Thereafter, Ana was assisted by her parents in reporting the matter to the authorities.^[24] When she saw the appellant at the police station, she recognized him although he cut his hair and shaved his beard. And when she heard his voice, she became more certain that he was her assailant and,^[25] with that realization, she could only cry and was unable to say anything.^[26]

Subsequently, the appellant suddenly left Ubay, Bohol without informing anyone where he went. He was finally apprehended in Pampanga in August 2003.^[27]

The appellant admitted that he was a tricycle driver. In his defense, he claimed that he lives in Fatima, Ubay, 1 ½ kilometers away from the crime scene.^[28] At the time of the alleged incident, he was in his house sleeping. In fact, he was already sleeping by 6:00 in the evening as he drank alcohol in the market earlier that day. He woke up at around 8:00 in the morning of the following day; he noticed nothing unusual.^[29]

Sometime after January 26, 1999, the appellant was invited by authorities to the police station. There, he met Ana for the first time. He was informed that he is

among the suspects in connection with the rape of Ana. He was also informed that when Ana was asked if he was the culprit, she did not say anything but simply cried.
[30]

The appellant further stated that he did not drive the tricycle on January 29, 1999 because the owner would use it for the Ubay town fiesta. After the town fiesta, the appellant left for Manila to look for a better paying job. He was subsequently hired as a security guard and he was arrested while he was at his post as security guard at Jollibee in Dau, Pampanga.^[31]

After hearing the parties, the trial court gave credence to Ana's account of her harrowing experience in a "richly detailed testimony, delivered in a clear, forthright and straightforward manner."^[32] The results of the medical examination describing the injuries Ana suffered underscored the truthfulness of her story. Her positive identification of the appellant as her assailant negated his alibi. His sudden flight from Ubay, Bohol also indicated guilt on his part.^[33] Thus, in an Omnibus Decision dated September 21, 2007, the RTC found the appellant guilty beyond reasonable doubt of the crimes of rape by sexual assault and rape by sexual intercourse, both of which were committed with the use of deadly weapon. The dispositive portion of the decision reads:

WHEREFORE, in Criminal Case No. 99-511 the Court finds the accused guilty beyond reasonable doubt of rape under Art. 266-A, paragraph 2 in relation to Art. 266-B of the Revised Penal Code, as amended by R.A. No. 8353 and hereby sentences him to suffer the penalty of 4 years and 2 months of prision correccional to 14 years, 8 months and 1 day of reclusion temporal with all the accessory penalties of the law, with costs.

In Criminal Case No. 99-512 the Court likewise finds the accused guilty beyond reasonable doubt of rape under Art. 266-A, paragraph 1 in relation to Art. 266-B of the Revised Penal Code, as amended by RA No. 8353 and sentences him to suffer the penalty of reclusion perpetua, with costs.

The accused is further ordered to pay the offended party the amount of P50,000 as civil indemnity and P50,000 as moral damages in each of the two cases.^[34]

The appellant appealed his case to the Court of Appeals. He asserted that the trial court erred in convicting him despite the fact that his guilt was not proven beyond reasonable doubt.^[35] He mentioned various matters to make his point: the identity of the alleged perpetrator of the crime was doubtful; the prosecution failed to prove that it was the appellant who was driving the tricycle on the night of the alleged rape and that it was the appellant who raped Ana; the darkness of the night prevented Ana from seeing clearly and recognizing her attacker; Ana's behavior and reaction before, during and after the alleged rape was questionable, in particular, she did not shout when she was being chased by her rapist, she did not do anything to prevent the assault against her, she did not call for help or attempt to free herself when she had the opportunity; and, the medical certificate neither stated nor proved

the appellant's involvement in the rape of Ana.^[36]

The Court of Appeals, however, agreed with the RTC that it was proven beyond reasonable doubt that the appellant violated Article 266-A(2) and committed rape by sexual assault against Ana when he placed his penis into her mouth after poking a gun at her head and punching her. The Court of Appeals also agreed with the RTC that it was proven beyond reasonable doubt that the appellant violated Article 266-A(1)(a) and committed rape by sexual intercourse against Ana when he had carnal knowledge of her against her will through force and intimidation. The medical findings detailing the injuries inflicted upon Ana further confirm the commission of the crimes against her.^[37]

The Court of Appeals rejected the contentions of the appellant and upheld the finding of the RTC that his victim had positively identified him as her assailant. The prosecution established that Susie and Ana recognized the appellant's face when they boarded his tricycle because the place was illuminated by streetlights and light from the nearby chapel and the houses in the area. Moreover, when Susie beamed her flashlight at the tricycle, Ana had the opportunity to recognize the appellant as the driver and to notice that he was wearing denim pants and a red polo shirt.^[38]

The Court of Appeals also pointed out that Ana identified the appellant not only by his appearance but also by the sound of his voice. She remembered his voice when he was negotiating with her and Susie for a ride to Barangay Ekis, when Susie disembarked from the tricycle, and when he told her that the tricycle's fuel had gone empty. Ana's positive identification of the accused-appellant as her assaulter negated the appellant's denial and alibi.^[39]

The appellate court found no merit in the appellant's claim that Ana's failure to shout for help and to repel the assault of her rapist eroded her credibility and made her allegation of sexual intercourse against her will unbelievable. The appellate court noted Ana's consistent testimony that she ran away and shouted for help but the appellant caught her, covered her mouth, pointed his gun at her and threatened to kill her; that she fought against him, even when she was already on the ground, but he mercilessly punched her; that she cried and begged him to stop but he ignored her and threatened her again; and, that she shouted because of pain when he forcefully inserted his penis into her vagina.^[40]

Finally, the Court of Appeals modified the appellant's civil liability. It awarded Ana P30,000.00 civil indemnity, P30,000.00 moral damages and P30,000.00 exemplary damages for the rape by sexual assault in Criminal Case No. 99-511, and P50,000.00 civil indemnity, P50,000.00 moral damages and P30,000.00 exemplary damages for the rape by sexual intercourse in Criminal Case No. 99-512.^[41]

Thus, in a Decision dated July 28, 2011, the Court of Appeals denied the appeal of the appellant and affirmed the Omnibus Decision dated September 21, 2007 of the RTC which found the appellant guilty of the crimes of rape by sexual assault and rape by sexual intercourse committed against Ana. The decretal portion of the Decision dated July 28, 2011 reads: