

## SECOND DIVISION

[ G.R. No. 188979, September 05, 2012 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. CHRISTOPHER PAREJA Y VELASCO, APPELLANT.**

### DECISION

**BRION, J.:**

This is an appeal from the June 15, 2009 decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. CR HC No. 02759. The CA affirmed the February 22, 2007 decision<sup>[2]</sup> of the Regional Trial Court (RTC), Branch 209, Mandaluyong City, finding appellant Christopher Pareja guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer the penalty of *reclusion perpetua*.

#### THE CASE

The prosecution charged the appellant before the RTC with the crime of rape under an Amended Information that reads:

That on or about the 16<sup>th</sup> day of June 2003, in the City of Mandaluyong, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously lie and have carnal knowledge of [AAA],<sup>[3]</sup> 13 years of age, sister of the common law spouse of accused, against her will and consent, thus debasing and/or demeaning the intrinsic worth and dignity of the victim thereby prejudicing her normal development as a child.<sup>[4]</sup>

The evidence for the prosecution disclosed that at around 3:30 a.m. of June 16, 2003, AAA was sleeping beside her two-year old nephew, BBB, on the floor of her sister's room, when the appellant hugged her and kissed her nape and neck.<sup>[5]</sup> AAA cried, but the appellant covered her and BBB with a blanket.<sup>[6]</sup> The appellant removed AAA's clothes, short pants, and underwear; he then took off his short pants and briefs.<sup>[7]</sup> The appellant went on top of AAA, and held her hands. AAA resisted, but the appellant parted her legs using his own legs, and then tried to insert his penis into her vagina.<sup>[8]</sup> The appellant stopped when AAA's cry got louder; AAA kicked the appellant's upper thigh as the latter was about to stand up. The appellant put his clothes back on, and threatened to kill AAA if she disclosed the incident to anyone. Immediately after, the appellant left the room.<sup>[9]</sup> AAA covered herself with a blanket and cried.<sup>[10]</sup>

3 The Court shall withhold the real name of the victim-survivor and shall use fictitious initials instead to represent her. Likewise, the personal circumstances of

the victims-survivors or any other information tending to establish or compromise their identities, as well as those of their immediate family or household members, shall not be disclosed.

At around 6:00 a.m. of the same day, AAA's brother, CCC, went to her room and asked her why she was lying on the floor and crying. AAA did not answer, and instead hurled invectives at CCC.<sup>[11]</sup> AAA went to the house of her other brother, but the latter was not in his house. AAA proceeded to the house of her older sister, DDD, at Block 19, Welfareville Compound, and narrated to her what had happened. Afterwards, AAA and her two (2) siblings went to the Women and Children's Desk of the Mandaluyong City Police Station and reported the incident.<sup>[12]</sup>

For his defense, the appellant declared on the witness stand that he hauled "filling materials" at his house, located at Block 38, Fabella Compound, on the evening of June 15, 2003. At around 10:00 p.m., he went to his room and slept.<sup>[13]</sup> On the next day, the appellant, accompanied by his mother and brother-in-law, went to the municipal hall to ask for financial assistance for his wife who was confined in the hospital. Upon arrival at the hospital, the doctor told him that his wife needed blood. Immediately after, the appellant and his companions went to Pasig City to find blood donors.<sup>[14]</sup>

On the evening of June 16, 2003, and while the appellant was folding the clothes of his son, two policemen entered his house and informed him that a complaint for attempted rape had been filed against him. The police brought him to the Criminal Investigation and Detection Group, forced him to admit the crime, mauled him, and then placed him in a detention cell.<sup>[15]</sup> The appellant added that he filed a complaint before the Office of the Ombudsman against the police officers who beat him up.<sup>[16]</sup>

The RTC convicted the appellant of rape in its decision of February 22, 2007, under the following terms:

WHEREFORE, the Court finds accused CHRISTOPHER PAREJA y VELASCO GUILTY beyond reasonable doubt of the crime of RAPE and hereby sentences him as he is hereby sentenced to suffer the penalty of *reclusion perpetua*; and to indemnify the victim, [AAA,] the amount of P50,000.00 as moral damages and P50,000.00 as civil indemnity.<sup>[17]</sup>

The CA, in its decision dated June 15, 2009, affirmed the RTC decision. It explained that a slight penetration of the *labia* by the male organ is sufficient to constitute rape, and held that a slight penetration took place when the appellant's penis touched AAA's vagina as he was trying to insert it.

The appellate court further ruled that the presence of people in the other room did not make it impossible for the appellant to have raped the victim, because lust is no respecter of time and place. It also held that the victim's lack of tenacity in resisting the appellant's sexual aggression did not amount to consent or voluntary submission to the criminal act.<sup>[18]</sup>

In his brief,<sup>[19]</sup> the appellant argued that the lower courts erred in convicting him

for the crime of rape, as the prosecution failed to prove even the slightest penetration of his penis into the victim's vagina. He added that the victim's testimony was incredible and contrary to human experience.

### **THE COURT'S RULING**

We find that the prosecution failed to prove the appellant's guilt beyond reasonable doubt of the crime of consummated rape. We convict him instead of **attempted rape**, as the evidence on record shows the presence of all the elements of this crime.

#### Carnal Knowledge Not Proven With Moral Certainty

By definition, rape is committed by having carnal knowledge of a woman with the use of force, threat or intimidation, or when she is deprived of reason or otherwise unconscious, or when she is under 12 years of age or is demented.<sup>[20]</sup> "Carnal knowledge is defined as the act of a man having sexual intercourse or sexual bodily connections with a woman."<sup>[21]</sup> Carnal knowledge of the victim by the accused must be proven beyond reasonable doubt, considering that it is the central element in the crime of rape.<sup>[22]</sup>

In her testimony of February 9, 2004, AAA recounted the alleged rape, as follows:

FISCAL TRONCO:

Q: You said that the three of you then was (sic) sleeping on the floor, what is it that happened on that particular day and time that is unusual?

A: It was like somebody was embracing me or hugging me, ma'am.

Q: When you felt that some (sic) is embracing and hugging you, what did you [do]?

A: I didn't mind it because I thought that the person beside me just moved and when he made the movement, it's like that I was embraced, ma'am.

Q: Whom are you referring to?

A: My brother-in-law, ma'am.

Q: And after that, what else happened, if any, [AAA]?

A: Before that happened, my nephew cried and so I picked him up and put him on my chest and after a while[,] I slept again and brought him down again and then "*dumapa po ako*" and I felt that somebody was kissing my nape, ma'am.

Q: Were you able to see who was that somebody kissing your nape?

A: When I tried to evade, I looked on my side where the room was not that dark that I could not see the person and so, I saw that it was my brother-in-law, ma'am.

x x x x

Q: When you saw that it was your brother-in-law kissing your nape while you were on a prone position, what else happened, if any?

A: He kissed my neck, ma'am.  
Q: What was your position while he was kissing your neck?  
A: I was on my side at that time and I was also crying, ma'am.  
x x x x  
Q: Why were you crying at that time while he was kissing your neck?  
A: I was afraid of what will happen next, ma'am.  
Q: Aside from that incident that he was kissing your neck, was there any other previous incident that happened?  
A: Yes, ma'am.  
x x x  
x  
Q: What incident was that?  
A: At that time, my brother-in-law covered me and my nephew with a blanket and he tried to get my clothes off, ma'am.  
Q: When did this happen, [AAA]?  
A: Also on said date, ma'am.  
Q: You said that he covered you and your nephew with a blanket and then taking (sic) off your clothes?  
A: Yes, ma'am.  
x x x  
x  
Q: Was he able to take off your clothes?  
A: Yes, ma'am.  
Q: What particular clothing was he able to take off?  
A: My short pants and underwear, ma'am.  
Q: While he was taking off your short pants and your underwear, what did you do, if any?  
A: I tried to fight him off, ma'am.  
x x x  
x  
Q: You said that he was trying to take off your clothes and undergarments, what was your position at that time?  
A: I was lying down, ma'am.  
Q: What about him?  
A: He was on my lap, ma'am.  
x x x  
x  
Q: You said that you saw him take off his short pants?  
A: Yes, ma'am.  
Q: Did he also take off his brief?  
A: Yes, ma'am.  
x x x  
x  
Q: And after that what happened, [AAA]?  
A: After removing his undergarments, he suddenly brought his body on top of me and he held my hands. At that time I was crying and still resisting and then he was trying to get my legs apart. I was still resisting at that time, and at some point in time I felt weak and he was able to part my legs, ma'am.  
Q: Could you please tell us how did (sic) he able to part your legs?

- A: He did that with his legs while he was holding my hands, ma'am.
- Q: And when he was able to part your legs, what happened next?
- A: **He tried to insert his sexual organ but he was not able to do so, ma'am.**
- Q: **How did you know that he was trying to insert his sexual organ?**
- A: **"Naidikit po niya sa ari ko."**
- Q: **Which part of your body was he able to touch his sexual organ? (sic)**
- A: **On my sexual organ, ma'am.**
- X X X
- X
- Q: **You mentioned earlier that he was not able to penetrate your private part, [AAA]?**
- A: **Yes, ma'am.**
- Q: So, what happened after that?
- A: I cried and then while I was resisting, I hit my wrist on the wall and my wrist was "*nagasgas*," ma'am.
- X X X
- X
- Q: And were you able to successfully resist?
- A: Yes, ma'am, I was able to kicked (sic) his upper thigh, ma'am. <sup>[23]</sup> (*italics supplied; emphasis ours*)

From the foregoing, we find it clear that the appellant's penis did not penetrate, but merely 'touched' (i.e., "*naidikit*"), AAA's private part. In fact, the victim **confirmed on cross-examination that the appellant did not succeed in inserting his penis into her vagina**. Significantly, AAA's *Sinumpaang Salaysay*<sup>[24]</sup> also disclosed that the appellant was holding the victim's hand when he was trying to insert his penis in her vagina. This circumstance – coupled with the victim's declaration that she was resisting the appellant's attempt to insert his penis into her vagina – makes penile penetration highly difficult, if not improbable. Significantly, nothing in the records supports the CA's conclusion that the appellant's penis penetrated, however slightly, the victim's female organ.

Did the touching by the appellant's penis of the victim's private part amount to carnal knowledge such that the appellant should be held guilty of consummated rape?

In *People v. Campuhan*,<sup>[25]</sup> the Court laid down the parameters of genital contact in rape cases, thus:

Thus, *touching* when applied to rape cases does not simply mean mere epidermal contact, stroking or grazing of organs, a slight brush or a scrape of the penis on the external layer of the victim's vagina, or the *mons pubis*, as in this case. There must be sufficient and convincing proof that the penis indeed *touched* the *labias* or slid into the female organ, and not merely stroked the external surface thereof, for an accused to be convicted of consummated rape. As the *labias*, which are