

THIRD DIVISION

[G.R. No. 177145, February 09, 2011]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOEY TORIAGA, ACCUSED-APPELLANT.

R E S O L U T I O N

BERSAMIN, J.:

Joey Toriaga appeals the decision promulgated on November 17, 2006 in CA-G.R. CR-HC No. 01617,^[1] whereby the Court of Appeals (CA) affirmed his conviction for raping AAA^[2] under the decision dated February 26, 2002 rendered by the Regional Trial Court (RTC), Branch 128 in Caloocan City.^[3]

Toriaga was no trivial stranger to AAA and her family. Her father was Toriaga's close friend and "drinking buddy," and CCC, AAA's aunt, regarded Toriaga as a trusted employee in her *balut* selling business. CCC even furnished Toriaga a sleeping area inside her house. At the time material to this case, AAA was a 13-year old lass.^[4] She happened to be alone in keeping watch of the house of CCC in the early evening of November 26, 1995 while CCC and her family went to church for mass. At around then, Toriaga and AAA's father were drinking at the latter's house, which was only about 20 meters away from CCC's house. Then, feeling already drunk, Toriaga returned to CCC's house. Hearing him knocking at around 7 o'clock p.m. AAA opened the door and let him in. She then casually went up to the second floor to watch television. Later, AAA went downstairs, and saw Toriaga opening his folding bed and switching off the lights. Thinking that Toriaga was going to bed, she sat on the stairs. But she was not prepared for what happened next, because Toriaga grabbed and poked an icepick at her neck and dragged her downstairs. Holding the icepick to her neck, he ordered her to strip naked and to lie on the folding bed. Out of fear she complied. He undressed himself and mounted her. He inserted his penis into her vagina. She felt the penetration. He was on top for about 10 minutes, stopping only because she pretended losing consciousness. He lifted her and brought her upstairs, covering her mouth with a pillow. When she felt the icepick being pressed into her stomach, she fought and parried the blow, thereby preventing the icepick from penetrating her flesh. To protect herself, she turned face down, but he stabbed her back with the icepick. Although she was in pain, she kept silent and still, which made him stop stabbing her, probably believing that she was already dead. She soon heard him washing his hands downstairs. But just when she tried to rise, she heard him coming back. She thus laid down again and pretended to be asleep. Satisfied that she had not moved, he went out of the house and closed the door. She then crawled to the window and shouted for help. Several neighbors responded and rushed her to the hospital for medical treatment.

The medico-legal findings disclosed her injuries, to wit:

Wound, sutured, roughly elliptical, with contused edges, 0.5 cm. nape.

Wounds, sutured, roughly elliptical with contused edges, posterior chest, right side; 0.7 cm., infrascapular area, 5.5 cms. from the posterior median line; 0.6 cm. infrascapular area, 4.5 cms. from the posterior median line; 0.7 cm., infrascapular area, along paravertebral line, 4.0 cms. from the posterior median line; 0.6 cm. infrascapular area, along midscapular line, 6.5 cms., from the posterior median line; 0.7 cm., infrascapular area, 4.3 cms., from the posterior median line; 0.6 cm., area just above the right buttocks, along posterior axillary line, 9.5 cms., from the posterior median line.

Wounds, roughly elliptical with contused edges: 0.3 cm., right hypochondrium, abdomen with a curvilinear reddish abrasion measuring 6.5 cms.; 0.5 cm., intergluteal area, along posterior median line; 0.5 cm., outer upper quadrant, right buttocks, 10.0 cms. from the posterior median line.

GENITAL EXAMINATIONS:

Pubic hair, fine, scanty. Labia majora, coaptated. Labia minora, coaptated. Fourchette, with a superficial laceration, edges still bleeding. Vestibule, congested with a contusion at the left lateral portion. Hymen, short, thick, intact. Hymenal orifice, admits a tube measuring 2.0 cms. in diameter with moderate resistance. Vaginal walls, tight. Rugosities, prominent.^[5]

On November 28, 1995, the following information for rape was filed in the RTC, viz:

That on or about the 26th day of November, 1995 at Kalookan City, Metro-Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and by means of threat and intimidation by using a bladed weapon (knife) employed upon the person of 13-year old AAA, did then and there willfully, unlawfully and feloniously lie and have sexual intercourse with said AAA, against her will and without her consent.

Contrary to law.^[6]

A separate information for frustrated homicide was also filed.

Initially, the RTC consolidated the two cases, and Toriaga pleaded *not guilty* to both charges on January 17, 1996. In view of his intervening conviction for frustrated homicide, however, only the charge for rape remained. During the presentation of evidence for the accused, he moved to be allowed to change his plea to *guilty*. Thus, upon re-arraignment, he pleaded *guilty* to the information for rape. But he withdrew his plea on November 20, 2000 upon being apprised of the imposable penalty and the consequences of the plea.