

FIRST DIVISION

[G.R. No. 176740, June 22, 2011]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. CARLO DUMADAG
Y ROMIO, APPELLANT.**

D E C I S I O N

DEL CASTILLO, J.:

The fact of sexual intercourse in this case is undisputed. What confronts this Court is the question of whether the sexual congress between appellant and the private complainant was done through force and intimidation or was voluntary and consensual.

For review is the July 3, 2006 Decision ^[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 01843 affirming with modification the Decision ^[2] dated April 16, 2001 ^[3] of the Regional Trial Court (RTC), Branch 08, Aparri, Cagayan, finding Carlo Dumadag y Romio (appellant) guilty of the crime of rape.

Factual Antecedents

On June 14, 1999, an Information for rape was filed with the RTC against appellant, which contained the following accusations:

The undersigned Provincial Prosecutor accuses CARLO DUMADAG Y ROMIO, upon complaint filed by the offended party, "AAA", ^[4] in the Municipal Trial Court of "CCC", "DDD" found on page one (1) of the records of the case and forming an integral part of this Information, of the crime of Rape, defined and penalized under Article 335 [sic], of the Revised Penal Code, as amended by Section 11, of Republic Act No. 7659, committed as follows:

That on or about December 25, 1998, in the Municipality of "CCC", province of "DDD", and within the jurisdiction of the Honorable Court, the above-named accused, armed with a knife, with lewd design, by use of force or intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the herein offended party, a woman below eighteen (18) years of age, all against her will and consent.

CONTRARY TO LAW. ^[5]

During his arraignment on October 26, 1999, appellant, with the assistance of his counsel *de officio*, entered a negative plea to the charge. At the pre-trial conference, the prosecution and the defense made stipulation of facts as to the

identities of the private complainant and the appellant and that a medical certificate was issued to the former. Shortly after termination of the conference, trial on merits commenced.

Version of the Prosecution

The evidence for the prosecution established the following facts:

"AAA", a young barrio lass, 16 years of age at the time she testified on February 21, 2000, declared that in the early morning of December 25, 1998, she was on her way home after hearing the midnight mass at "BBB", "CCC", "DDD". She was a little bit behind Thelma, Carlos and Clarence, all surnamed Dumadag. All of a sudden, appellant approached her from behind and poked a Batangas knife on her threatening to stab her if she shouts. He pulled her towards the house of Joel "Boyot" Ursulum (Boyot). Once inside, she was forced to remove her pants and panty because of fear. Appellant also removed his pants and brief and pushed her on a bamboo bed. Pointing the knife at the left portion of her abdomen, appellant ordered her to hold his penis against her vagina. Appellant succeeded in having carnal knowledge of her. After appellant was through, they stayed inside the house until six o'clock in the morning of December 25, 1998. All this time, appellant continued to hold the knife. Pleading that she be allowed to go home, appellant finally let her go after threatening to kill her if she reports the incident to her parents. "AAA" decided not to disclose what transpired because of fear. Nevertheless, "AAA's" uncle, "EEE" learned from appellant himself that the latter had sexual intercourse with her. Her uncle relayed the information to her father who confronted her about the incident. After confirming the same from "AAA", they decided to report the matter to the police where she was investigated and her sworn statement taken.

Dr. Jane Toribio-Berona (Dr. Toribio-Berona) conducted a physical examination on "AAA". She identified the medical certificate [6] issued by her wherein it was indicated that there was laceration on "AAA's" hymen.

Version of the Defense

On the other hand, appellant does not deny having had sexual intercourse with "AAA". Instead, he claimed that it was voluntary and without the use of force since they were lovers. To support his claim that "AAA" was his girlfriend, appellant presented Boyot and Nieves Irish Oandasan (Nieves Irish) who both corroborated his sweetheart defense.

Ruling of the Regional Trial Court

After trial, the RTC declared appellant guilty beyond reasonable doubt of the charge lodged against him after finding "AAA"'s testimony to be credible [7] as it was given in a candid and straightforward manner. [8] It rejected appellant's "sweetheart" defense holding that a sweetheart cannot be forced to have sex against her will. [9] Consequently he was condemned to suffer the penalty of *reclusion perpetua* and payment of damages, viz:

WHEREFORE, the Court finds accused, CARLO DUMADAG Y ROMIO, guilty beyond reasonable doubt and is hereby sentenced to suffer the penalty of Reclusion Perpetua and to pay "AAA" the amount of ONE HUNDRED THOUSAND PESOS (p100,000.00) as moral damages and FIFTY THOUSAND PESOS (P50,000.00) as civil indemnity.

SO ORDERED. [10]

Appellant filed a Notice of Appeal [11] on April 24, 2001 with the trial court. The records of this case were transmitted to this Court. Both parties filed their respective Briefs. [12] Consistent however to this Court's pronouncement in *People v. Mateo*, [13] the case was referred to the CA for appropriate action and disposition. [14]

In his brief, appellant assigned the following errors, viz:

- I. The trial court erred in giving weight and credence to the testimony of [the] private complainant that accused poked a knife at the left side of her [abdomen] after she came out from [the] church.
- II. The trial court erred in not acquitting accused-appellant on [the] ground of reasonable doubt. [15]

Ruling of the Court of Appeals

Resolving jointly the foregoing imputations against the trial court, the CA affirmed with modification the appealed judgment of conviction. The CA ruled that there is nothing on record which shows that the trial court had overlooked, misunderstood or misapplied a fact or circumstance of weight and substance which would have affected the case. The CA junked appellant's contentions that he and "AAA" were lovers; that no force or intimidation was employed on "AAA;" and that there was contradiction as to which of his hands was placed around the neck of "AAA." The CA further held that "AAA's" simple account of her ordeal evinces sincerity and truthfulness. It disposed of the appeal in its assailed Decision promulgated on July 3, 2006, thus:

WHEREFORE, premises considered, the assailed Decision promulgated on April 19, 2001 of the Regional Trial Court of Aparri, Cagayan, Branch 08, in Criminal Case No. 08-1157, finding the accused-appellant **Carlo Dumadag y Romio** guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer the penalty of reclusion perpetua is hereby **AFFIRMED** with the **MODIFICATION** that appellant is ordered to pay the victim "AAA" the reduced amount of Php50,000.00 as moral damages, in addition to the Php50,000.00 civil indemnity awarded by the trial court.

SO ORDERED. [16]

Aggrieved, appellant is now before this Court submitting anew for resolution the same matters he argued before the CA. Per Resolution [17] dated June 4, 2007, the parties were notified that they may file their respective supplemental briefs if they so desire within 30 days from notice. Appellant informed the Court that he would no longer file a supplemental brief as all relevant matters were already taken up. [18] Appellee, for its part, opted not to file any supplemental brief. [19] Thus, this case was submitted for decision on the basis of their respective briefs filed with the CA.

In his bid for acquittal, appellant points out several circumstances purportedly showing that "AAA's" testimony is not worthy of credence. According to appellant, it is highly improbable for him to poke a knife on her without being noticed since the members of his (appellant) family were just a little bit ahead of her. He claims that from a distance of 200 meters from the church to the house of Boyet, it would be impossible that nobody saw them considering that his right arm was allegedly placed around her neck and at the same time a knife was poked on the left side of her body. He further asserts that she could have made an outcry considering that she was with his (appellant) parents in going home after the midnight mass.

Our Ruling

The appeal is bereft of merit.

The improbabilities alluded to by the appellant hinge on the assessment of the credibility of "AAA". When credibility is the issue that comes to fore, this Court generally defers to the findings of the trial court which had the first hand opportunity to hear the testimonies of witnesses and observe their demeanor, conduct and attitude during their presentation. Hence, the trial court's factual findings especially when affirmed by the appellate court are accorded the highest degree of respect and are conclusive and binding on this Court. A review of such findings by this Court is not warranted save upon a showing of highly meritorious circumstances "such as when the court's evaluation was reached arbitrarily, or when the trial court overlooked, misunderstood or misapplied certain facts or circumstances of weight and substance which[, if considered, would] affect the result of the case." [20] Unfortunately for appellant, none of these recognized exceptions necessitating a reversal of the assailed Decision obtains in this instance.

The gravamen of the offense of rape is sexual intercourse with a woman against her will or without her consent. [21] On the basis of the records, the Court finds "AAA" candidly and categorically recounted the manner appellant threatened her and succeeded in having sexual intercourse with her against her will. "AAA" consistently testified that while she was on her way home after hearing the midnight mass on December 24, 1998, appellant suddenly and unexpectedly grabbed her, placed his right hand around her neck and poked a knife at the left portion of her abdomen, threatening to kill her if she shouts. He made her walk towards the house of Boyet where she was forced to lie on a bed and with the knife aimed at her side succeeded in having carnal knowledge of her. [22] Reviewing the antecedents of this case, the Court, just as the courts below, is convinced of the truth and sincerity in the account of "AAA". It bears to stress that "[a]s a rule, testimonies of child victims of rape are given full weight and credit for youth and immaturity are badges of truth." [23]

Neither is it improbable for appellant to employ such criminal design in the presence of his (appellant) own family especially when overcome by lust. "It is a common judicial experience that rapists are not deterred from committing their odious act by the presence of people nearby." [24] "[L]ust is no respecter of time and place." [25] As established, "AAA" was silenced by appellant's threat of killing her with a knife. [26] Thus, the reason for "AAA's" failure to shout or cry for help is because she was overcome by fear. It has been held that minors, like "AAA", could be easily intimidated and cowed into silence even by the mildest threat against their lives. [27]

Also it is not impossible for them to walk from the church to the house of Boyet unnoticed. Except for his bare argument, nothing was adduced that churchgoers passed through that road about the same time as the incident. In fact, "AAA" testified that she did not encounter other persons on the way to the house of Boyet. [28]

In trying to discredit further "AAA's" testimony, appellant assails her behavior before, during and after the rape incident. He contends that in all these instances, "AAA" had all the chances to escape but she did not. He argues that "AAA" had the opportunity to run when they were entering the house of Boyet and during their more or less five hours stay inside the house yet she decided to remain. He claims that such behavior is unnatural, incredible and beyond human experience.

Appellant's contentions fail to persuade.

The failure of "AAA" to flee despite opportunity does not necessarily deviate from natural human conduct. It bears emphasis that human reactions vary and are unpredictable when facing a shocking and horrifying experience such as sexual assault. There is no uniform behavior expected of victims after being raped. [29] Moreover, "[n]ot all rape victims can be expected to act conformably to the usual expectations of everyone." [30] "AAA", being then a minor and subjected to a threat to her life, should not be judged by the norms of behavior expected of mature persons.

The fact that there is no evidence of resistance on the part of "AAA" does not cloud her credibility. "The failure of a victim to physically resist does not negate rape when intimidation is exercised upon [her] and the latter submits herself, against her will, to the rapist's assault because of fear for life and physical safety." [31] In this case, "AAA" was dragged by appellant with a knife pointed on her neck and warned not to shout or to reveal the incident to anyone or else she would be killed. That warning was instilled in "AAA's" mind such that even when appellant was just holding his weapon after the intercourse, she did not attempt to flee. The intimidations made by the appellant are sufficient since it instilled fear in her mind that if she would not submit to his bestial demands, something bad would befall her. "Well-settled is the rule that where the victim is threatened with bodily injury, as when the rapist is armed with a deadly weapon, such as a pistol, knife, ice pick or bolo, such constitutes intimidation sufficient to bring the victim to submission to the lustful desires of the rapist." [32]

There is no question that "AAA" underwent sexual intercourse as admitted by