

## THIRD DIVISION

[ G.R. No. 189279, March 09, 2010 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. NELSON PALMA Y HANGAD, APPELLANT.**

### R E S O L U T I O N

**NACHURA, J.:**

On appeal is the Court of Appeals (CA) Decision<sup>[1]</sup> dated June 25, 2009, in CA-G.R. CR-HC No. 03299, affirming the Regional Trial Court<sup>[2]</sup> (RTC) Decision<sup>[3]</sup> dated October 17, 2007, finding appellant Nelson Palma y Hangad guilty beyond reasonable doubt of Robbery with Rape.

The case stemmed from the following facts:

On December 7, 2004, at approximately 7:00 in the evening, AAA, while walking along the C-5 Bridge in Bagong Ilog, Pasig City, noticed that a man had followed her after she passed the *talipapa*. Suddenly, the man placed his arm over her shoulder, poked a sharp object on the left side of her body, then instructed her to go with him. When she turned her head towards the man, she recognized the assailant (although then, she did not know his name) as she regularly saw him at the bridge every time she and her co-workers would pass by.<sup>[4]</sup> Appellant forcibly brought AAA to a dark place under the bridge, covered by big stones that blocked the view of passersby. There, he asked if she had a cellular phone and some money. She replied in the affirmative. He also asked what AAA's phone model was, and she answered that it was a Nokia 3315.<sup>[5]</sup>

Then, appellant hit her on the stomach and told her to undress. But she refused. He thus pushed her towards the sofa (found under the bridge), slashed her clothes and underwear and threatened her with the knife.<sup>[6]</sup> When AAA was already naked, appellant lowered his own short pants and briefs, and forcibly inserted his penis into her vagina and continued pushing it in for about two (2) to three (3) minutes.<sup>[7]</sup> After satisfying his lust, he withdrew his penis and fixed himself. AAA wanted to run away, but she could not do so as she was then totally naked.<sup>[8]</sup>

Appellant thereafter grabbed AAA's bag and took her cellular phone and transportation money amounting to P40.00. AAA was able to locate only her blouse that she used to cover herself. She came out from under the bridge to seek help. A male passerby helped her by giving her a pair of short pants, and escorted her to Bagong Ilog *Barangay* Hall, where the incident was entered in the police blotter.<sup>[9]</sup> The following day, AAA underwent medical examination at the Camp Crame Medico-Legal Crime Laboratory.<sup>[10]</sup>

On December 16, 2004, while conducting their routine patrol, members of the

*barangay* security force chanced upon appellant, whom they found sleeping, using several ladies' wallets as pillows, under the C-5 bridge, near the place where AAA was raped. It appearing that appellant was drunk and recalling the rape incident that occurred a few days earlier, the *barangay* security force brought appellant to the *Barangay* Hall for verification.<sup>[11]</sup> That same day, AAA positively identified appellant as her assailant. Appellant immediately bowed his head and asked AAA for forgiveness.<sup>[12]</sup>

On December 17, 2004, appellant was charged in an Information for Robbery with Rape.<sup>[13]</sup> When arraigned, appellant pleaded "not guilty."

Appellant denied liability and insisted that he only saw AAA in the precinct. He claimed that, on December 7, 2004, he was vending cigarettes at the corner of Crossing and Mandaluyong, and that he slept in Mandaluyong afterwards. When questioned by the court, he, however, admitted that he indeed slept under the C-5 bridge on the date AAA was raped. He later on changed his statement by saying that he only slept under the bridge on the night he was apprehended.<sup>[14]</sup>

On October 17, 2007, the RTC rendered a decision finding appellant guilty beyond reasonable doubt of Robbery with Rape, and sentenced him to suffer the penalty of *reclusion perpetua*. Appellant was, likewise, ordered to pay P50,000.00 as civil indemnity, P50,000.00 as moral damages, and P50,000.00 as exemplary damages.<sup>[15]</sup> On appeal, the appellate court affirmed the RTC decision in its entirety.

Hence, this appeal, raising the following issues:

I.

THE COURT A QUO GRAVELY ERRED IN NOT FINDING THE WARRANTLESS ARREST OF THE ACCUSED-APPELLANT AS ILLEGAL.

II.

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT NOTWITHSTANDING THE LACK OF POSITIVE IDENTIFICATION.

III.

THE COURT A QUO GRAVELY ERRED IN NOT FINDING THAT ACCUSED-APPELLANT'S RIGHTS UNDER REPUBLIC ACT NO. 7438 (AN ACT DEFINING CERTAIN RIGHTS OF PERSON ARRESTED, DETAINED OR UNDER CUSTODIAL INVESTIGATION AS WELL AS THE DUTIES OF THE ARRESTING, DETAINING AND INVESTIGATING OFFICERS, AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF) WERE VIOLATED.

IV.

THE COURT A QUO GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE INCONSISTENT, INCREDIBLE AND IMPROBABLE TESTIMONIES

OF THE PROSECUTION WITNESSES.

V.

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO PROVE THE ELEMENTS OF THE CRIME CHARGED.

VI.

THE COURT A QUO GRAVELY ERRED IN FINDING THE PRESENCE OF THE AGGRAVATING CIRCUMSTANCE OF NIGHTTIME.<sup>[16]</sup>

First, appellant insists that his warrantless arrest was unlawful. Second, he questions the credibility of AAA because of allegedly inconsistent statements in her testimony. Third, he assails the validity of his identification, claiming that it was marked by suggestiveness. Lastly, he avers that the aggravating circumstance of nocturnity should not have been appreciated since nighttime was not taken advantage of in order to ensure the commission of the offense.

We find no reason to reverse appellant's conviction. Hence, we affirm the CA Decision, but with modification.

As to the regularity of appellant's arrest, we have consistently ruled that an accused is estopped from assailing the legality of his arrest if he fails to raise this issue, or to move for the quashal of the information against him on this ground, before arraignment.<sup>[17]</sup> Here, appellant was arraigned, entered a plea of not guilty and actively participated in his trial. He raised the issue of the irregularity of his arrest only during his appeal to the CA. He is, therefore, deemed to have waived such alleged defect by submitting himself to the jurisdiction of the court through his counsel-assisted plea during the arraignment, by actively participating in the trial, and by not raising the objection before his arraignment.<sup>[18]</sup>

On the question of the credibility of the prosecution witnesses, it is well-settled that findings of fact of the trial court on the credibility of witnesses and their testimonies are generally accorded great respect by the appellate court. The assessment of the credibility of witnesses is a matter best left to the trial court, because it is in the best position to observe that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying, which opportunity is denied the appellate court.<sup>[19]</sup>

Neither can we sustain appellant's contention that his identification was marked by suggestiveness, because he was presented to AAA alone and not in a police lineup. As correctly pointed out by the CA, a police lineup is not required for the proper and fair identification of offenders. What is crucial is for the witness to positively declare during trial that the persons charged were the malefactors.<sup>[20]</sup>

Finally, the CA did not err in sustaining the appreciation of the aggravating circumstance of nocturnity. As testified to by AAA, she easily recognized appellant as she regularly saw him standing at the C-5 Bridge every morning. In choosing to