

SECOND DIVISION

[G.R. No. 172708, May 05, 2010]

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JOSEPH AMPER Y REPASO, APPELLANT.

D E C I S I O N

DEL CASTILLO, J.:

In this case, appellant Joseph Amper y Repaso not only robbed his victim of her material possessions; he also robbed her of her virginity.

On appeal is the Decision^[1] dated August 18, 2005 of the Court of Appeals (CA), in CA-G.R. CR-H.C. No. 00716, which affirmed with modification the Decision^[2] dated January 30, 2003 of the Regional Trial Court (RTC) of Gumaca, Quezon, Branch 61, in Criminal Case No. 5195-G, convicting appellant of the crime of robbery with rape. Also assailed is the Resolution^[3] dated December 5, 2005 denying the motion for reconsideration.

Version of the Prosecution

On August 17, 1995, at approximately 7:30 in the evening, "AAA"^[4] was walking along Mateo Manila Street near Leon Guinto Memorial College located at *Brgy.* Zone II, Poblacion, Atimonan, Quezon to buy peanuts for her father.^[5] While approaching the place of a certain Noni Magisa, appellant suddenly put his hand on "AAA's" shoulder, poked a pointed instrument at the left side of her body and ordered her not to make any move.^[6] The appellant then directed her to walk casually towards the direction of the church. ^[7] When they reached the back of the church, appellant ordered "AAA" to sit on the cemented floor and to remove all the pieces of jewelry she was wearing, particularly her wrist watch, bracelet and pair of earrings.^[8]

After ordering "AAA" to lie down on the floor,^[9] appellant removed "AAA's" shorts and underwear^[10] then also lowered his own pants and briefs^[11] and forcibly inserted his penis into her vagina and made push and pull movements.^[12] All this time, appellant poked a weapon at the left side of "AAA's" neck which prevented her from shouting for help.^[13] After satisfying his lust, appellant told "AAA" not to leave until he was gone.^[14]

After about two minutes, "AAA" put on her garments and hurried home

where she narrated the incident to her father.^[15] Both proceeded to the place where the incident happened^[16] but appellant could no longer be found.^[17] "AAA" and her father proceeded to the police station and reported the matter.^[18] Thereafter, Dr.

Lourdes Taguinod (Dr. Taguinod) of Doña Martha Hospital examined her.^[19]

On August 22, 1995, appellant was arrested for robbery and attempted rape committed against another individual.^[20] On the following day,^[21] "AAA" went to the police station and identified appellant as the person who robbed and raped her.^[22]

Subsequently, an Information was filed against appellant charging him with the crime of robbery with rape,^[23] viz:

That on or about the 17th day of August 1995, at Barangay Zone II, Municipality of Atimonan, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a pointed instrument, with intent to gain and to rob, and by means of force, violence against and intimidation of person, taking advantage of nighttime and his superior strength to better facilitate his purpose, did then and there willfully, unlawfully and feloniously take from AAA the following:

One (1)	ring	P 400.00
	Bracelet	314.00
	Wrist Watch	300.00
	Pair of Earring	220.00
Total			<hr/> P 1,234.00

with a total value of ONE THOUSAND TWO HUNDRED THIRTY FOUR PESOS (P1,234.00) Philippine currency, belonging to said "AAA", to her damage and prejudice in the said amount; and that by reason thereof and on the same occasion, the above-named accused, with lewd design, by means of force, threats, violence and intimidation, did, then and there willfully, unlawfully and feloniously have carnal knowledge of the aforesaid "AAA", a minor, 14 years of age, against her will.

Contrary to law.

Upon arraignment,^[24] appellant pleaded not guilty to the charge. Trial thereafter ensued.

Version of the Defense

Appellant denied liability and insisted that he only saw "AAA" for the first time in the police station. He claimed that on August 17, 1995, he left his place of work at Hopewell Power Plant at around 6:30 in the evening^[25] and arrived at the Atimonan town proper at past 9:00 o'clock in the evening. ^[26] Thus he could not have robbed or raped "AAA". In support of his claim, appellant submitted "Cepa Slip Form Power System Ltd." showing that he was at the power plant project site between 6:16 in the morning up to 5:21 in the afternoon of August 17, 1995^[27] and a letter

addressed to all jeepney operators stating the time when they should depart from the site.^[28]

On cross-examination, however, appellant admitted that he could take a passenger jeepney from the gate of Hopewell Power Plant going to the junction of Maharlika highway^[29] which would take around 45 to 50 minutes. From the junction, he could reach Atimonan town proper in 30 minutes by taking a passenger bus.^[30]

Ruling of the Regional Trial Court

On January 30, 2003, the RTC rendered its Decision convicting appellant of the crime of robbery with rape, and sentencing him to suffer the penalty of *reclusion perpetua*. The RTC did not give credence to appellant's alibi since he failed to prove that it was impossible for him to be at the situs of the crime at the time it took place. The trial court also found "AAA's" testimony to be clear and convincing; hence there was no reason to disbelieve her.

The dispositive portion of the RTC Decision reads:

WHEREFORE, premises considered, the Court finds accused JOSEPH AMPER guilty beyond reasonable doubt of the crime of Robbery with Rape under Article 294 of the Revised Penal Code, as amended by R.A. 7659 and he is therefore sentenced to suffer the penalty of RECLUSION PERPETUA and to pay the amount of P75,000.00 as indemnity to the victim and the amount of P50,000.00 as moral damages and to pay the amount of P1,340.00 in restitution of the value of jewelries taken from "AAA".

SO ORDERED.^[31]

Ruling of the Court of Appeals

The appellate court affirmed with modification the Decision of the trial court. It held that the prosecution satisfactorily proved all the elements of the complex crime of robbery with rape, to wit: a) the taking of personal property is committed with violence or intimidation against persons; b) the property taken belongs to another; c) the taking is done with *animo lucrandi*, and d) the robbery is accompanied by rape.

The dispositive portion of the CA Decision reads:

WHEREFORE, in view of the foregoing, the appealed decision is hereby AFFIRMED in all aspects with the MODIFICATION that the civil indemnity is reduced from P75,000.00 to P50,000.00.

SO ORDERED.^[32]

Hence, this appeal.