

## EN BANC

[ G.R. No. 174066, October 12, 2010 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ERNESTO NARZABAL Y CASTELO, JR., ACCUSED-APPELLANT.**

### D E C I S I O N

#### **MENDOZA, J.:**

This appeal assails the June 30, 2006 Decision<sup>[1]</sup> of the Court of Appeals (CA), in CA-G.R. H.C. CR No. 01257, which affirmed with modification the December 10, 2004 Decision<sup>[2]</sup> of the Regional Trial Court, Branch 15, Tabaco City (RTC), convicting accused Ernesto Narzabal of the crime of Rape with Homicide in Criminal Case No. T-3772.

#### **THE FACTS**

On June 26, 2002, accused Ernesto Narzabal, Jr. was indicted for the special complex crime of Rape with Homicide before the RTC. The Information reads:

That on or about the 2<sup>nd</sup> day of March 2002, at 10:00 o'clock in the evening, more or less, in Purok 2, Barangay Sta. Elena, Municipality of Malinao, Province of Albay, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and by means of violence, force and intimidation, did then and there wilfully, unlawfully and feloniously have sexual intercourse with AAA,<sup>[3]</sup> against her will and consent, and by reason and on the occasion thereof, accused, with intent to kill, with treachery and taking advantage of superior strength, did then and there wilfully, unlawfully and feloniously assault, attack, strangle the neck and bang the head of aforementioned AAA on the cemented floor, which caused her death, to the damage and prejudice of her legal heirs.

ACTS CONTRARY TO LAW.<sup>[4]</sup>

During the trial, the prosecution presented four witnesses: (1) the victim's mother, BBB; (2) Chief *Tanod* Nestor Bonaobra; (3) Barangay Captain Wilfredo Contante; and (4) Dr. Dante Bausa, Municipal Health Officer of Malinao, Albay.

The prosecution's evidence shows that AAA, who was eighteen years old at the time, lived with her parents in Barangay Sta. Elena, Malinao, Albay. <sup>[5]</sup> Accused Ernesto Narzabal worked as a tricycle driver and lived alone as he was rumoured to be separated from his wife. The victim and her family knew the accused because their

houses were only about ten (10) meters apart.<sup>[6]</sup>

On March 2, 2002, at around 8:00 o'clock in the evening, AAA asked permission from her mother, BBB, to watch a television program at the house of their neighbor, Concepcion Briones. Concepcion's house was located next to that of the accused.<sup>[7]</sup> By 10:00 o'clock in the evening, BBB noticed that AAA had not yet returned. BBB went out to fetch AAA from the house of Concepcion who, however, informed her that her daughter was not there.<sup>[8]</sup>

On her way back, BBB heard AAA scream. It was coming from the direction of the house of the accused. BBB heard AAA scream aloud twice, then a muffled cry. After that, BBB did not hear her voice again. BBB then asked for assistance from their barangay officials. Chief *Tanod* Nestor Bonaobra (*Bonaobra*), Barangay Captain Wilfredo Contante (*Contante*) and Senior Police Officer 4 Jesus Castelo (*SPO4 Castelo*) responded to her plea.<sup>[9]</sup> They all proceeded to the house of the accused.

Barangay Captain Contante and SPO4 Castelo knocked on the door and inquired about the missing girl. The accused answered that he knew nothing about AAA's disappearance.<sup>[10]</sup> Suspicious, Contante, SPO4 Castelo and Bonaobra entered the house. Inside, they saw the lifeless body of AAA lying on the cemented floor, half-naked from waist down, without her panty, with blood stains between her legs, and blood oozing from her ears and nostrils.<sup>[11]</sup>

Thereafter, SPO4 Castelo brought the accused to Malinao Police Station. Meanwhile, Contante and Bonaobra brought AAA to the Ziga Memorial District Hospital, Tabaco City, where the victim was declared "dead on arrival."<sup>[12]</sup>

At the request of Police Inspector Jesus M. Resari (*P/Insp. Resari*) of PNP Malinao, Albay, Dr. Dante B. Bausa (*Dr. Bausa*), Municipal Health Officer of Malinao, Albay, performed an autopsy on the victim's body. The Autopsy Report<sup>[13]</sup> revealed that the victim had "contusion over the inferior aspect of bilateral inner lip surface of the *labia majora* and *labia minora*; Abrasion with hyperemia over the posterior labial commissior. Superficial incomplete hymenal lacerations with hyperaemic and coaptable borders at 3:00 o'clock and 8:00 o'clock." The cause of death was cardio-respiratory arrest by reason of cerebral hemorrhage and skull fracture.

In his defense, the accused admitted the killing of AAA but denied having raped her. He related that at around 10:00 o'clock in the evening of March 2, 2002, he was drinking with friends.<sup>[14]</sup> Later, he saw AAA and asked her to buy cigarettes for him. After buying the cigarettes, they had a chat at his porch. Thereafter, he started embracing her. When he pulled down her shorts, she screamed. Rattled, he smashed her head on the floor.<sup>[15]</sup> Still in shock at what he had done, he heard people looking for her. He hid her body at the back of his house.<sup>[16]</sup> Moments later, he heard SPO4 Castelo calling for him. He allowed the police officer inside and showed him her lifeless body.<sup>[17]</sup>

On December 10, 2004, the RTC convicted the accused of the special complex crime of Rape with Homicide.<sup>[18]</sup> The decretal portion of the decision reads:

WHEREFORE, premises considered, the accused is found guilty beyond reasonable doubt of the crime of rape with homicide as defined under Article 266-A and penalized under Article 266-B of R.A. No. 8353 (Anti-Rape Law of 1997) and is hereby sentenced to suffer the indivisible penalty of Death and to pay the heirs of AAA the amounts of Php100,000.00 as civil indemnity, and Php50,000.00 as moral damages and to pay the cost.

The records of this case should be forwarded to the Supreme Court for automatic review.

The RTC did not give weight to the assertion of the accused that he did not rape the victim. The autopsy report disclosed contusion and abrasion and superficial incomplete hymenal lacerations with coaptable borders at the 3:00 o'clock and 8:00 o'clock positions. The report, coupled by Contante's affidavit stating that they found the lifeless victim "half-naked without panty with injuries on her head and blood stains in her two legs," led the RTC to conclude that the accused indeed raped the victim before killing her.<sup>[19]</sup>

The RTC did not consider the superficial incomplete hymenal laceration, the absence of spermatozoa in the vaginal smears or the finding that the victim is still a virgin to negate the allegation of rape. It held that in the crime of rape, a complete or full penetration of the victim's private part is not necessary. Mere introduction of the male organ into the *labia majora* or the victim's genitalia consummates the crime.<sup>[20]</sup>

Initially, the records of this case were forwarded to the Court for automatic review. Pursuant to the Court's ruling in *People v. Mateo*,<sup>[21]</sup> this case was remanded to the CA for intermediate review.

In his Brief,<sup>[22]</sup> the accused assigned the following errors:

**THE LOWER COURT A QUO ERRED IN NOT CONSIDERING THE ACCUSED BEING DRUNK AT THE TIME THE CRIME COMMITTED AS AN ALTERNATIVE MITIGATING CIRCUMSTANCE.**

**THE LOWER COURT A QUO ERRED IN ITS FINDINGS THAT THE ACCUSED RAPED AAA.**<sup>[23]</sup>

The accused insisted that his intoxication at the time of the commission of the crime should have been considered as a mitigating circumstance as it was proven that he was a habitual drunkard. He denied having raped the victim as shown by Dr. Bausa's explanation that there was no penetration because there was no complete laceration and the victim was still a virgin.<sup>[24]</sup>

The Office of the Solicitor General (OSG) countered that the absence of spermatozoa did not disprove rape because the mere touching of the lips of the pudenda by the male organ was enough to consummate rape.<sup>[25]</sup> The OSG added that although the

victim could no longer testify against her violator,<sup>[26]</sup> the facts and circumstantial evidence were enough to produce conviction beyond reasonable doubt.<sup>[27]</sup>

On June 30, 2006, the CA affirmed with modification the RTC decision. The dispositive portion reads:

WHEREFORE, premises considered, the Decision of the court *a quo* dated 10 December 2004 is perforced affirmed with a modification that in addition to the civil indemnity and moral damages awarded, temperate damages of P30,000.00 is likewise awarded.

SO ORDERED.

The CA affirmed the finding of rape against the accused, albeit the evidence being circumstantial, because the series of unbroken events presented by the prosecution sufficiently established that he had carnal knowledge with the victim using force and intimidation before ultimately killing her. The CA wrote: "accused-appellant himself admitted that on the incident in question, he embraced the victim and pulled down the latter's shorts but when she screamed he bashed her head on the cemented floor. But according to him, that was the last act that he did to the victim because he was then in a state of shock. Far from the truth, the physical evidence would reveal a different dimension. The victim sustained nineteen (19) injuries on the head, neck and different parts of her body, and a fractured skull as a result of the bashing of her head on the cemented floor that proved fatal. And when the victim was found inside the accused's house, she was half-naked from waist down. The Autopsy Report conducted by Dr. Bausa as well as the latter's testimony showed that there was superficial incomplete hymenal lacerations."<sup>[28]</sup> The CA further stated that mere introduction of the penis into the *labia majora* of the victim's genitalia engendered the crime of rape.<sup>[29]</sup>

The CA did not appreciate the intoxication of the accused as a mitigating circumstance either because, under Article 266-B of the Revised Penal Code, the crime of rape with homicide is punishable by death. In case of an indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstance that may have attended the commission of the offense.<sup>[30]</sup>

Since actual damages were not adequately established, the CA awarded temperate damages in the amount of P30,000.00 because the family incurred expenses for the wake and burial of the victim.

Hence, this appeal.

Petitioner essentially reiterates the issue he presented before the CA: *whether or not the RTC erred in finding him guilty beyond reasonable doubt of the crime of rape with homicide.*

The Court sustains the conviction.

In a special complex crime of rape with homicide, the following elements must