

THIRD DIVISION

[G.R. No. 182792, August 25, 2009]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PEPITO NEVERIO, ACCUSED-APPELLANT.

D E C I S I O N

VELASCO JR., J.:

The Case

This is an appeal from the November 23, 2007 Decision^[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 01374 entitled *People of the Philippines v. Pepito Neverio*, which held accused-appellant Pepito Neverio guilty of two counts of rape. The CA Decision affirmed the September 30, 2004 Decision^[2] in Criminal Cases Nos. P-3182 and P-3183 of the Regional Trial Court (RTC), Branch 32 in Pili, Camarines Sur.

The Facts

AAA^[3] is a mentally deficient lass, who resides with her family in *Barangay Sagurong*, Pili, Camarines Sur. Because of her mental condition, she was not able to go to school for most part of her life. Nonetheless, she learned to cook for the family and clean their house.^[4]

In the morning of June 29, 2001, AAA, then 20 years old, was alone in their home cooking. Her father was farming, while her mother was at the *poblacion*^[5] of Pili. Her siblings, too, were somewhere else--somewhere in school and others were tending a neighborhood store away from their residence.^[6]

Suddenly, Pepito, AAA's cousin, entered the kitchen by lifting the bamboo barrier with a bolo. Pepito then poked a fan knife to AAA's neck, placed the bolo on the table, and dragged AAA to her brother's room. He pushed AAA on the bed and went on top of her. Still poking the knife against AAA's neck, he removed her shorts and panty; then he also removed his pants. He then began to insert his penis inside AAA's vagina. AAA shouted in pain, but Pepito covered her mouth and continued removing and inserting his penis inside her vagina. When Pepito was done, he put on his pants and threatened to kill AAA should she share with anyone what had happened. Fearing for her life, AAA kept mum about the incident.^[7]

On July 27, 2001, Pepito committed the same abuse against AAA. At around five o'clock in the afternoon, while AAA was alone in their home, Pepito again entered AAA's house through the kitchen. He poked his knife against AAA's neck, dragged her to the nearby room, and pushed her on the bed. AAA fought back but did not succeed in getting out of the room. Pepito then brought AAA back to the bed. Still

pointing the knife against AAA, Pepito removed her lower garments, and thereafter removed his shorts and brief. He then proceeded to insert his penis inside AAA's vagina. Satiated, he stood up and got dressed. Before he left, he again warned AAA not to tell anyone what had happened; otherwise, he would kill her.^[8]

On August 1, 2001, AAA's mother arrived from Naga City. She saw AAA crying under the bamboo grove. She asked why AAA was crying and AAA finally revealed what Pepito had done to her. She then sought the assistance of law enforcement authorities in investigating and in filing the appropriate charge against Pepito.^[9]

On August 28, 2001, the National Bureau of Investigation medico-legal expert Jane Perpetua-Fajardo conducted a physical examination on AAA. She noted that her hymen had one healed laceration. She further stated that AAA's injury was probably caused by sexual intercourse and that the healed laceration was compatible with the time that the alleged incidents of rape happened.^[10]

On October 17, 2001, two Informations were filed against Pepito. Except for the date and time of the commission of the crime, both Informations contained the same allegations, thus:

That on or about 10:00 A.M. on June 29, 2001 in Barangay Sagurong, Municipality of Pili, Province of Camarines Sur, Philippines and within the jurisdiction of the Honorable Court, the above named accused, with lewd designs and grave abuse of confidence being a cousin of the private complainant, did then and there willfully, unlawfully and feloniously, with the use of force and intimidation succeed in having carnal knowledge, with [AAA], a 20 years old mental retardate against her will and without her consent, to her damage and prejudice in such amount as may be awarded by the Honorable Court.^[11]

The other information averred the commission of the crime of rape against AAA on July 27, 2001 at 5:00 p.m.^[12]

During trial, Pepito did not present any evidence but instead filed a Demurrer to Evidence with Leave of Court. On February 24, 2004, the trial court denied the Demurrer to Evidence. Despite the said denial, the defense still chose not to present any evidence. Thereafter, instead of filing a memorandum, the defense adopted its Demurrer to Evidence as its memorandum.^[13]

On September 30, 2004, the RTC rendered a Decision, the dispositive part of which reads:

Wherefore, in view of the foregoing considerations, judgment is hereby rendered in Crim. Cases No. P-3182 and P-3183, finding the accused, Pepito Neverio, a.k.a. "Totoy", GUILTY in both cases, of the crime of rape, defined and penalized under Art. 266-A, R.A. 8353, and accordingly sentences him [to suffer] the penalty of RECLUSION PERPETUA for each RAPE, to indemnify the offended party, [AAA], the sum of [PhP] 50,000.00 as indemnity for each rape, plus the sum of [PhP] 50,000.00 for each rape, as moral damages, and to pay the costs, with all the accessories of the penalty; he is credited in full for his preventive

detention had he agreed to abide with the rules for convicted prisoners, otherwise, for 4/5 of the same.

SO ORDERED.^[14]

The case was appealed to the CA.

The Ruling of the CA

Aware that Pepito did not present any evidence to support his cause, the CA, in its November 23, 2007 Decision, carefully reviewed the evidence of the prosecution. It re-assessed the testimony of AAA and was convinced of its credibility. It found that despite AAA's mental retardation, her testimony was "direct, natural and unvarnished."^[15] It noted further that the physical evidence fully supports the allegations of AAA.

Finding that the prosecution successfully proved its charges against Pepito, the CA affirmed the September 30, 2004 Decision of the RTC.

Hence, we have this appeal.

The Issues

In a Resolution dated July 30, 2008, this Court required the parties to submit supplemental briefs if they so desired. On September 30, 2008, Pepito, through counsel, signified that he was no longer filing a supplemental brief. Thus, the following issues raised in Pepito's Brief dated August 30, 2006 are now deemed adopted in this present appeal:

I.

The Court a quo, gravely erred in finding the accused-appellant guilty beyond reasonable doubt of the crime of rape.

II.

The Court a quo, gravely erred in failing to appreciate the arguments of the defense in the Motion to Dismiss with Demurrer to Evidence.^[16]

The Ruling of the Court

The appeal is without merit.

In his Brief, Pepito argues that the prosecution failed to prove two elements of the crime as alleged in the Information--AAA's mental retardation and the use of force and intimidation in committing the sexual act. He claims that medical findings confirming AAA's mental retardation should have been presented; however, none was given in this case. Also, he maintains that it was incredible for him to have managed to hold a knife against AAA with one hand, while at the same time undressing and later having sex with her with only one hand free. We, however, hold that his arguments deserve scant consideration.