

THIRD DIVISION

[G.R. No. 183619, October 13, 2009]

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. SALVINO SUMINGWA, APPELLANT.

DECISION

NACHURA, J.:

On appeal before us is the January 31, 2008 Court of Appeals (CA) Decision^[1] in CA-G.R. CR No. 30045 affirming with modification the February 14, 2006 Regional Trial Court^[2] (RTC) Consolidated Judgment^[3] against appellant Salvino Sumingwa in Criminal Case Nos. 1644 and 1645 for *Acts of Lasciviousness*; 1646, 1649 and 1654 for *Rape*; 1651 for *Attempted Rape*; and 1655 for *Unjust Vexation*. Assailed also is the June 5, 2008 CA Resolution^[4] denying appellant's motion for reconsideration.

In twelve Informations, the prosecution charged appellant with two (2) counts of Acts of Lasciviousness,^[5] four (4) counts of Rape,^[6] three (3) counts of Unjust Vexation,^[7] one (1) count of Other Light Threats,^[8] one (1) count of Maltreatment,^[9] and one (1) count of Attempted Rape^[10] for acts committed against his minor^[11] daughter AAA from 1999-2001.

Appellant pleaded "not guilty" to all the charges. On September 24, 2004, the RTC dismissed^[12] Criminal Case Nos. 1647 for Rape; 1648 for Unjust Vexation; 1650 for Other Light Threats; 1652 for Unjust Vexation; and 1653 for Maltreatment, on the basis of the Demurrer to Evidence^[13] filed by appellant.

Sometime in August 1999, between 8:00 and 10:00 in the morning, AAA, together with her brothers and her father, appellant herein, was in their residence in Mountain Province, watching television. Appellant called AAA and ordered her to sit in front of him. As she was sitting, appellant told her that it was not good for a girl to have small breasts. Suddenly, he inserted his hands into AAA's shirt then fondled her breast. AAA resisted by moving her hands backwards.^[14]

One afternoon in September 1999, AAA's mother and brothers went to school leaving AAA and appellant in their house. While in the master's bedroom, appellant ordered AAA to join him inside. There, appellant removed his undergarments then forced her to grasp and fondle his penis until he ejaculated. Appellant thereafter told her not to be malicious about it.^[15]

The same incident took place in August 2000. This time, appellant forced AAA to lie down on the bed, went on top of her, removed her short pants and panty, then rubbed his penis against her vaginal orifice. AAA resisted by crossing her legs but

appellant lifted her right leg and partially inserted his penis into her vagina. As she struggled, appellant stood up then ejaculated. AAA felt numbness on her buttocks after the bestial act committed against her.^[16]

Appellant repeated his dastardly act against AAA on separate occasions in September and November 2000. During these times, appellant satisfied himself by rubbing his penis against AAA's vagina without trying to penetrate it. After reaching the top of his lust, he used AAA's short pants to wipe his mess. Instead of keeping her harrowing experience to herself, AAA narrated it to her best friend.^[17]

On November 24, 2000, appellant approached AAA and told her that he wanted to have sex with her. When she refused, appellant forcibly removed her pants and boxed her right buttock. AAA still refused, which angered appellant. He then went to the kitchen and returned with a bolo which he used in threatening her. Luckily, AAA's grandmother arrived, prompting appellant to desist from his beastly desires.^[18]

On December 20, 2000, AAA and her best friend were doing their school work in front of the former's house. When appellant arrived, he embraced AAA. He, thereafter, pulled her inside the house and kissed her on the lips.^[19]

The last incident occurred inside the comfort room of their house on May 27, 2001. When AAA entered, appellant pulled down her short pants and panty, unzipped his trousers, brought out his penis, then repeatedly rubbed it on her vagina while they were in a standing position.^[20]

AAA decided to report the sexual abuses to her grandmother who forthwith brought her to the National Bureau of Investigation where she was examined by the medico-legal officer. It was found during the examination that there were no extragenital physical injuries on AAA's body but there were old, healed, and incomplete hymenal lacerations.^[21]

Appellant denied all the accusations against him. He claimed that in August and September 1999, he was at the house of his mistress in Antipolo City. He also explained that in August 2000, he stayed in Baguio City and worked there as a karate instructor. He added that he only went home in September 2000 but left again in October for Quirino, Ilocos Sur where he stayed for three weeks. When he went back home, his wife informed him that AAA had not been coming home. Thereafter, appellant went to Baguio City to buy medicine for his wife, then returned home again on the third week of December 2000. While there, he was confronted by his wife about his womanizing. His wife got mad and refused to forgive him despite his repeated pleas. Consequently, he became furious and almost choked his wife to death when she ignored and refused to talk to him. This prompted him to leave and go back to Baguio.^[22]

Sometime in April 2001, appellant went back home to reconcile with his wife. While talking to his wife and the latter's family, his mother-in-law berated him and demanded his separation from his wife. Appellant got mad and threatened to kill his wife's family. His mother-in-law, in turn, threatened to file charges against him.^[23]

To belie the claim of AAA that she was sexually abused in August, November and

December 2000, allegedly during school hours, her teacher testified that the former was not absent in class during those times.^[24]

On November 24, 2004, AAA executed an Affidavit of Recantation^[25] claiming that while appellant indeed committed lascivious acts against her, she exaggerated her accusations against him. She explained that appellant did not actually rape her, as there was no penetration. She added that she charged appellant with such crimes only upon the prodding of her mother and maternal grandmother.

On February 14, 2006, the RTC rendered a decision convicting appellant of six (6) counts of acts of lasciviousness,^[26] one (1) count of attempted rape^[27] and one (1) count of unjust vexation,^[28] the dispositive portion of which reads:

WHEREFORE, a Consolidated Judgment is hereby rendered sentencing Salvino Sumingwa to suffer -

1. The penalty of six (6) months of [*arresto mayor*] as minimum to six (6) years of [*prision correccional*] as maximum; and ordering him to pay the offended party P10,000.00 [as] indemnity [*ex-delicto*], P10,000.00 as moral damages and P5,000.00 as exemplary damages for each count of Acts of Lasciviousness charged in Crim. Cases 1644, 1645, 1646, 1649 and 1654;
2. The penalty of six (6) years of [*prision correccional*] as minimum to twelve (12) years of [*prision mayor*] as maximum; and ordering said offender to pay the victim P15,000.00 as indemnity [*ex-delicto*], P15,000.00 as moral damages and P10,000.00 as exemplary damages in Crim. Case 1651 for Attempted Rape; and
3. The penalty of thirty (30) days of [*arresto menor*] and fine of P200.00 for Unjust Vexation in Crim. Case 1655.

SO ORDERED.^[29]

The trial court gave credence to AAA's testimonies on the alleged lascivious acts committed against her. In view of the withdrawal of her earlier claim of the fact of penetration, the court sustained the innocence of appellant on the rape charges and concluded that the crime committed was only Acts of Lasciviousness.

In Criminal Case No. 1651, the RTC found that appellant committed all the acts of execution of the crime of Rape, but failed to consummate it because of the arrival of AAA's grandmother. Hence, he was convicted of attempted rape. In embracing and kissing AAA in full view of the latter's best friend, appellant was convicted of Unjust Vexation.

On appeal, the CA affirmed the conviction of appellant, except that in Criminal Case No. 1646; it convicted him of Qualified Rape instead of Acts of Lasciviousness. The pertinent portion of the assailed decision reads:

WHEREFORE, premises considered, herein appeal is hereby **DISMISSED** for evident lack of merit and the assailed Consolidated Judgment dated 14 February 2006 is hereby **AFFIRMED with the following MODIFICATION**:

1. The Appellant SALVINO SUMINGWA is hereby convicted of the crime of **QUALIFIED RAPE** in **Criminal Case No. 1646** and the penalty of **RECLUSION PERPETUA** is hereby imposed upon him. The Appellant is likewise ordered to pay the Victim, [AAA], civil indemnity in the amount of Php75,000.00 as well as moral damages in the amount of Php50,000.00, in conformity with prevailing jurisprudence.
2. In **Criminal Case No. 1651** for Attempted Rape, the Appellant, is hereby ordered to indemnify the victim [AAA] in the sum of P30,000.00 as civil indemnity, plus the sum of P25,000.00 as moral damages.

SO ORDERED.^[30]

The appellate court concluded that, notwithstanding AAA's retraction of her previous testimonies, the prosecution sufficiently established the commission of the crime of Rape. It added that the qualifying circumstances of minority and relationship were adequately proven.

Hence, this appeal.

First, in light of the recantation of AAA, appellant questions the credibility of the prosecution witnesses and insists that his constitutional right to be presumed innocent be applied.^[31] Second, he argues that in Criminal Case No. 1651 for Attempted Rape, he should only be convicted of Acts of Lasciviousness, there being no overt act showing the intent to have sexual intercourse.^[32] Lastly, he insists that he could not be convicted of all the charges against him for failure of the prosecution to show that he employed force, violence or intimidation against AAA; neither did the latter offer resistance to appellant's advances.^[33]

In rape cases particularly, the conviction or acquittal of the accused most often depends almost entirely on the credibility of the complainant's testimony. By the very nature of this crime, it is generally unwitnessed and usually the victim is left to testify for herself. When a rape victim's testimony is straightforward and marked with consistency despite grueling examination, it deserves full faith and confidence and cannot be discarded.^[34] If such testimony is clear, consistent and credible to establish the crime beyond reasonable doubt, a conviction may be based on it, notwithstanding its subsequent retraction. Mere retraction by a prosecution witness does not necessarily vitiate her original testimony. ^[35]

A retraction is looked upon with considerable disfavor by the courts.^[36] It is exceedingly unreliable for there is always the probability that such recantation may

later on be repudiated. It can easily be obtained from witnesses through intimidation or monetary consideration.^[37] Like any other testimony, it is subject to the test of credibility based on the relevant circumstances and, especially, on the demeanor of the witness on the stand.^[38]

As correctly held by the CA, AAA's testimony is credible notwithstanding her subsequent retraction. We quote with approval its ratiocination in this wise:

Clearly, the retraction made by the Victim is heavily unreliable. The primordial factor that impelled the Victim to retract the rape charges against her father was her fear and concern for the welfare of her family especially her four (4) siblings. It does not go against reason or logic to conclude that a daughter, in hopes of bringing back the harmony in her family tormented by the trauma of rape, would eventually cover for the dastardly acts committed by her own father. Verily, the Victim's subsequent retraction does not negate her previous testimonies accounting her ordeal in the hands for (sic) her rapist.^[39]

We now proceed to discuss the specific crimes with which appellant was charged.

Criminal Case Nos. 1646, 1649 and 1654 for Rape

The CA correctly convicted appellant of Qualified Rape in Criminal Case No. 1646, and of Acts of Lasciviousness in Criminal Case Nos. 1649 and 1654.

The crime of rape is defined in Article 266-A of the Revised Penal Code (RPC), as amended by the Anti-Rape Law of 1997, as follows:

ART. 266-A. *Rape, When and How Committed.* - Rape is committed -

1. By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a. Through force, threat or intimidation.

In her direct testimony, AAA stated that appellant removed her short pants and panty, went on top of her and rubbed his penis against her vaginal orifice. She resisted by crossing her legs but her effort was not enough to prevent appellant from pulling her leg and eventually inserting his penis into her vagina. Clearly, there was penetration.

It is noteworthy that appellant pulled AAA's leg, so that he could insert his penis into her vagina. This adequately shows that appellant employed force in order to accomplish his purpose. Moreover, in rape committed by a father against his own daughter, the former's moral ascendancy and influence over the latter may substitute for actual physical violence and intimidation. The moral and physical dominion of the father is sufficient to cow the victim into submission to his beastly desires, and no further proof need be shown to prove lack of the victim's consent to