

THIRD DIVISION

[G.R. No. 187494, December 23, 2009]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ELMER BARBEROS ALIAS "EMIE," ACCUSED-APPELLANT.

D E C I S I O N

VELASCO JR., J.:

The Case

Before us is an appeal from the Decision^[1] dated March 5, 2008 of the Court of Appeals (CA) in CA-G.R. CEB-CR-HC No. 00316 which affirmed with modification the Judgment^[2] of the Regional Trial Court (RTC), Branch 14 in Cebu City, convicting accused-appellant Elmer Barberos alias "Emie" of the crime of rape.

The Facts

In an Information dated January 11, 1999 filed before the RTC of Cebu City and docketed thereat as Criminal Case No. CBU-49307, appellant Elmer was indicted for the crime of rape, as defined under Article 266-A of the Revised Penal Code (RPC), as amended by Republic Act No. (RA) 8353,^[3] allegedly committed as follows:

That on or about the 22nd day of December 1998, at around 12:00 o'clock past dawn, more or less, in Sitio Cambuntan, Barangay Bolinawan, Municipality of Carcar, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, with lewd design and by means of force and intimidation, the accused, did then and there willfully, unlawfully and feloniously choke her throat and threaten her "SABA RON KAY PATYON TA KA" (GO AHEAD SHOUT AND I WILL KILL YOU), then forcibly open her short pants and panty, tearing her sando, place himself on top of her and forcibly insert his penis into her vagina and succeed in having sexual intercourse with x x x [AAA], a 15 year-old girl against her will and consent.^[4]

Upon arraignment, Elmer pleaded not guilty to the above charge.

Version of the Prosecution

The prosecution presented the following witnesses: AAA, the private complainant, and Dr. Daphnie Rana, the examining doctor, to establish the following facts:

In the evening of December 21, 1998, AAA, then 15 years old, along with four friends, watched a variety show near the cemetery of Cambuntan, Bolinawan,

Carcar, Cebu. At around 10:00 or 11:00 p.m., a neighbor informed AAA that her father and uncle were quarreling at her grandmother's place. AAA immediately proceeded to her grandmother's house and heard, as she was nearing the place, the raised voices of her father and uncle. Alarmed, she cried for help but nobody heeded her call. It was at this instance that Elmer, a neighbor, drew near her and told her not to worry because he would protect her. Upon the urging of Elmer, AAA went with him to his two-storey house some 50 meters away. He then led her to a room at the second floor and, once inside, locked the door.

After a while, Elmer made his move and, despite AAA's loud protestation, succeeded in placing himself on top of AAA, who shouted for help but only to be choked and told, "*Saba ron kay patyon ta ka.*" (Do not shout, otherwise I will kill you.) AAA's attempt to wrestle herself free from Elmer's hold did not prevent the latter from getting inside her, although she felt a less-than-total penetration. And at some point during the struggle, AAA was able to cover her private part with her left hand while grabbing Elmer's sex organ with her right hand.

Then, someone knocked at the door. When Elmer stood up to open it, AAA lost no time in picking up her short pants and panty and jumped out the window. Upon reaching her grandmother's place at around 1:00 a.m., she told her grandmother the ordeal she just went through. She then washed herself. Even at that late hour, she was raring to report the incident to the police until she noticed Elmer standing outside their house.

At about 10:00 a.m. of December 22, 1998, AAA, with her mother, reported the matter to the police. From Carcar, AAA and her mother, accompanied by a policewoman, proceeded to the Don Vicente Sotto Medical Center, where Dr. Rana conducted an examination on AAA. Her findings: an intact hymen and the absence of spermatozoa in the vaginal canal. As to the first phenomenon, the doctor ventured the opinion that a woman raped could still have an intact hymen either because there was no full penile insertion, the penetration was limited only to the *labia*, or the hymen was distensible. The absence of spermatozoa in the vagina could be due to the fact that there might have been no ejaculation, or the sperm might have been washed out.

Version of the Defense

Elmer denied the crime imputed to him. To buttress his defense, Elmer presented his wife, Paterna, who testified being in the vicinity of AAA's grandmother's house when AAA's father and uncle were having an argument. Apparently, the uncle fired at AAA's father, with the explosion and noisy altercation attracting the neighbors.

Upon reaching home on the night in question, Paterna was surprised to find a crying AAA on the second floor, visibly afraid because of the firing incident and crying her help. When Elmer arrived with one Elijorde Paniroso,^[5] AAA rushed toward the window apparently to flee and, despite Elmer's admonition to be careful, eventually jumped out.

The defense proffered the theory that the fabricated rape charge was due to a standing feud between the Barberoses and AAA's family which started when the Barberoses built their house on a piece of land formerly tilled by AAA's family.

The Ruling of the RTC

After trial, the RTC, on November 13, 2000, rendered judgment,^[6] finding Elmer guilty of the crime charged and accordingly sentenced him, thus:

WHEREFORE, foregoing premises considered, JUDGMENT is hereby rendered finding the accused ELMER BARBEROS GUILTY beyond reasonable doubt of RAPE falling under paragraph 1, subparagraph a, ART. 266-A of the Revised Penal Code as amended by R.A. No. 8351 [sic] and hereby imposes upon him the penalty of RECLUSION PERPETUA as imposed under ART. 266-B of the same Code, as amended.

Accused is, likewise, ordered to pay private complainant the amount of P50,000.00 as his civil liability to her.

SO ORDERED.^[7]

Therefrom, Elmer appealed directly to this Court, the appeal initially docketed as **G.R. No. 147241**. Following, however, the submission by the parties of their respective briefs, *People v. Mateo*^[8] was promulgated. And in line with *Mateo*, the Court, via its November 22, 2004 Resolution,^[9] referred the instant case to the CA for intermediate review.

The Ruling of the CA

On March 5, 2008, in CA-G.R. CEB-CR-HC No. 00316, the appellate court rendered the appealed decision, affirming that of the RTC, but with the modification awarding AAA moral damages in the amount of PhP 50,000. The *fallo* of the CA decision reads:

All told, the assailed Decision dated 13 November 2000 by the Regional Trial Court, Branch 14, in Cebu City finding the accused **guilty beyond reasonable doubt of RAPE** and sentencing him to suffer the **penalty of reclusion perpetua** is hereby **AFFIRMED**. The Civil aspect of the case is **MODIFIED** to read as follows: Appellant is **ORDERED** to pay private complainant the amount of P50,000.00 as moral damages and the amount of P50,000.00 as civil indemnity.

SO ORDERED.^[10]

On April 3, 2008, Elmer filed his notice of appeal, to which the CA, per its resolution of December 12, 2008, gave due course.

In response to the Court's Resolution for them to submit supplemental briefs if they so desired, the parties manifested their willingness to have the case resolved on the basis of the Brief for the Accused-Appellant^[11] and Brief for the Appellee,^[12] respectively, filed in **G.R. No. 147241**.

The Issues

Consequently, from his Brief, appellant raises the same assignments of errors earlier passed over and resolved by the CA, to wit: *first*, that the courts *a quo* erred in finding him guilty beyond reasonable doubt of the crime of rape; and *second*, that the courts *a quo* gravely erred in adjudging him guilty of consummated rape instead of attempted rape.

The Court's Ruling

After a circumspect review of the records, the Court affirms appellant's conviction.

Prefatorily, while it is not wont to go over and re-assess the evidence adduced during the trial, more so when the appellate court affirms the findings and conclusions of the trial court, the Court, in criminal cases falling under its review jurisdiction under the Constitution,^[13] is nonetheless tasked to assiduously review such cases, as in the instant appeal. Besides, utmost care is required in the review of a decision involving conviction of rape due to the pernicious consequences such conviction bear on both the accused and the offended party.^[14]

By the distinctive nature of rape cases, conviction usually rests solely on the basis of the victim's testimony, provided it is credible, natural, convincing, and consistent with human nature and the normal course of things.^[15] Accordingly, the Court has unfailingly adhered to the following guiding principles in the review of similar cases, to wit: (1) an accusation for rape can be made with facility; while the accusation is difficult to prove, it is even more difficult for the accused, though innocent, to disprove; (2) considering that, in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense.^[16]

Complementing the foregoing principles is the rule that the credibility of the victim is always the single most important issue in prosecution for rape;^[17] that in passing upon the credibility of witnesses, the highest degree of respect must be afforded to the findings of the trial court.^[18]

Rape is defined and penalized under Arts. 266-A and 266-B of the RPC, as amended, which provide:

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;**

b. When the offended party is deprived of reason or is otherwise unconscious;

x x x x (R.A. No. 8353, October 22, 1997.)

ART. 266-B. *Penalties.* -- **Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.**
(Emphasis supplied.)

Thus, in context, for the charge of rape to prosper, the prosecution must prove that (1) the offender had **carnal knowledge of a woman**, (2) **through force, threat, or intimidation**.

In the instant case, the prosecution established the elements of carnal knowledge and the force, threat, or intimidation employed. AAA, with firmness and certainty, pointed to appellant Elmer as the person who sexually molested her. She never wavered in her identification and was straightforward in her narration of how the assault occurred. Both the RTC and CA found the eloquent testimony of AAA positive and candid, and not at all rebutted during the cross-examination, thus deserving full weight and credit. To quote directly from the records:

Atty. Yongco: **What is the full name of this Emie you are referring to?**

AAA: **Elmer Barberos** my neighbor.

Q: You mean the accused in this case?

A: Yes.

x x x x

Q: After he put his arms around your shoulder, what did he say if any?

A: He told me that don't worry about that

x x x x

Q: After then (sic) after that, what happened next?

A: He told me he will keep me in his residence.

Q: Did you not ask why he is going to keep you in his residence?

A: He told me that he will just keep me in his residence because if my uncle would see me he might kill me.

x x x x

Q: After you were told by Emie that he will keep you in his residence, what did you do?

A: I went with him.