

SECOND DIVISION

[G.R. No. 178061, January 31, 2008]

PEOPLE OF THE PHILIPPINES, Appellee, vs. JOHN MONTINOLA @ TONY MONTINOLA, Appellant.

D E C I S I O N

CARPIO, J.:

The Case

This is an appeal from the 28 February 2007 Decision^[1] of the Court of Appeals in CA-G.R. CR-HC No. 01440. The Court of Appeals affirmed without modification the 26 August 2005 Joint Decision^[2] of the trial court finding John Montinola @ Tony Montinola (Montinola) guilty beyond reasonable doubt of rape, three counts of attempted rape, and acts of lasciviousness.

The Facts

In six informations,^[3] the prosecution charged Montinola with raping his minor daughter, AAA,^[4] on 29 October 1999, 19 December 1999, February 2000, March 2000, 4 November 2000, and January 2001. AAA was born on 12 October 1987.

In Criminal Case No. 02-720, AAA alleged that on 29 October 1999, at around 3:00 p.m., Montinola was inside the house and drunk. He allowed all his children to play outside, except AAA. While AAA was in the living room, Montinola came out of the bedroom wearing only his underwear. He approached AAA, forced her to remove her clothes, and raped her. She tried to resist but he strangled her and spread her legs. When he inserted his penis in her vagina, she felt pain. He threatened her that if she told anyone about what happened, he would cut her throat, as well as the throats of her siblings. AAA believed Montinola's threats. She was scared of him because he often beat her severely.^[5]

AAA attempted to report the 29 October 1999 incident to her mother. However, whenever she tried to tell her mother, Montinola interrupted her and told her mother that, "*Kasi ginulpi ko 'yan, kaya 'yan ganyan. x x x ginulpi ko 'yan dahil may ginawa 'yang kasalanan.*"^[6]

In Criminal Case No. 02-721, AAA alleged that on 19 December 1999, at around 4:00 a.m., she and her siblings were preparing to attend the midnight mass. Montinola did not allow AAA to attend the midnight mass because, according to him, she was just flirting with boys at the church. After her siblings had left, he asked her why she failed to clean the house and bathe her siblings the night before. He then told her, "*Alam mo na ang mangyayari sa 'yo.*" He forced her to remove her clothes and tried to insert his penis in her vagina. He told her that he would rape her every

time she did something wrong. He failed to insert his penis because she resisted and kept on moving.^[7]

AAA did not report the 19 December 1999 incident to her mother because her mother was at work most of the time and AAA was scared of Montinola, who always kept an eye on her.^[8]

In Criminal Case No. 02-722, AAA alleged that on 15 February 2000, at around 1:00 a.m., Montinola ordered her to remove her clothes. Her sisters were sleeping and her mother was at work. During the trial, AAA stated that, "*Ganoon pa rin po, pinahubad pa rin niya ako. Tapos ano po noong ginalaw na naman niya ako, pinahubad na naman niya ako.*" She begged for mercy and asked Montinola why he would rape her. He told her that she was being punished because she did something wrong.^[9]

In Criminal Case No. 02-723, AAA alleged that on 28 March 2000, at around 8:00 p.m., she was sleeping beside her three sisters. She awoke when Montinola started to remove her clothes. She pretended to be asleep, but when Montinola started to insert his penis in her vagina, she resisted and cried. She was not sure whether he was able to insert his penis. Then on 29 March 2000, at around 8:00 p.m., Montinola caressed AAA's body. He said it was his gift to her because she had just graduated from elementary school. Again, she resisted and cried. He told her to stop resisting, fondled and kissed her breasts, and tried to insert his penis in her vagina. She thought he was able to insert his penis.^[10]

In Criminal Case No. 02-724, AAA alleged that on 4 November 2000, at around 1:00 a.m., AAA was sleeping on the sofa in the living room. She awoke when Montinola touched her. He was drunk. He forcibly removed her shorts, pulled her underwear, tried to insert his penis in her vagina, and told her not to resist — as a birthday gift to him. She resisted and she was not sure whether Montinola was able to insert his penis.^[11]

In Criminal Case No. 02-725, AAA alleged that in the last week of January 2001, at around 5:30 a.m., she was sleeping on the sofa in the living room. Montinola roused her from her sleep wearing only his underwear. He caressed her right thigh, slipped his hand under her shorts, and touched her vagina. Suddenly, AAA's mother walked in on them. After seeing what was happening, AAA's mother asked Montinola, "*Anong ginagawa mo?*" AAA's parents then went inside the bedroom and argued heatedly.^[12]

In the first week of March 2001, AAA ran away and went to her friends for help. She told them that she was being beaten at home, but did not say anything about the sexual abuses. When asked why she did not tell her friends about the incidents, AAA stated that, "*Ano naman po ang magagawa nila at saka iniisip ko po baka ipagsabi nila sa ibang kapitbahay namin.*"^[13]

One of her friends' older sister, Cheche, accompanied AAA to the Makati office of the Department of Social Welfare and Development (DSWD). There, AAA talked to a social worker about Montinola's physical and sexual abuses. The DSWD kept AAA in its custody for one week then returned her to her parents after they explained to

the DSWD that AAA was just being disciplined at home.^[14]

Thereafter, AAA ran away again and went to her friend's cousin's house in Pasay. She went to Batangas with her friend's cousin's aunt and did not return home for two weeks. She learned that her parents were looking for her when she saw a notice in the newspaper saying that she was missing.^[15]

Cheche referred AAA to one Atty. Crystal Tenorio for legal assistance. On 26 March 2001, AAA went to the National Bureau of Investigation (NBI) where she executed affidavits. Dr. Maria Salome Fernandez of the NBI examined AAA and found a healed hymenal laceration:

Q What about x x x the genital examination, Dra., what was the result?

x x x x

A x x x I was able to note the presence of hymenal laceration which was already healed at the 6 o'clock position of the hymen. The edges are already rounded and non-coaptable.

x x x x

Q In layman's language, Dra., could you explain to us the result of the genital examination?

A This means that [AAA] has had injuries before around probably more than two (2) weeks before the examination was done because the laceration has already showed signs of healing. That means that it does not bleed anymore. The edges of the laceration are already rounded. Meaning, bleeding has already taken place.

Q And what was your conclusion regarding these cases of [AAA]?

A x x x It would fall under conclusive evidence of injury secondary to intravaginal penetration by a blunt object.

x x x x

Q Could you say with certainty that [AAA] is a victim of sexual abuse?

x x x x

A Yes.^[16]

Montinola was charged with six counts of rape. He pleaded not guilty to all of them.^[17] He claimed that AAA made up the accusations against him because he often beat her. Moreover, he claimed that, if it were true that he raped her, (1) he would have been caught by people outside the house, if there were any; and (2) she would have sustained injuries in her vagina because his penis has pellets embedded in it.^[18] AAA's mother, two brothers, and sister corroborated Montinola's claim that he

did not rape AAA.^[19]

The Trial Court's Ruling

In its 26 August 2005 Joint Decision, the trial court found Montinola guilty beyond reasonable doubt of rape, three counts of attempted rape, and acts of lasciviousness:

WHEREFORE, premises considered:

1. In **Criminal Case No. 02-720**, and finding the accused JOHN MONTINOLA @ TONY MONTINOLA guilty beyond reasonable doubt of the crime of Rape, defined and punished under Article 266(a) of the Revised Penal Code, as amended by RA 8353 in relation to RA 7610, said accused is hereby sentenced to suffer the penalty of reclusion perpetua, with all the accessories of law.

The accused is further ordered to pay the offended party, [AAA], the amount of P75,000.00 as indemnity for the loss of her honor plus moral damages in the amount of P50,000.00 and exemplary damages of P50,000.00. With cost against the accused.

2. In **Criminal Case No. 02-721**, and finding accused JOHN MONTINOLA @ TONY MONTINOLA guilty beyond reasonable doubt of the crime of Attempted Rape and not as consummated rape as charge [sic], said accused is hereby sentenced to an indeterminate penalty of from 4 years and 2 months of prision correccional as minimum to 10 years of prision mayor as maximum plus P10,000.00 as moral damages, with all the accessories of law. With cost against the accused.

3. In **Criminal Case No. 02-722**, and finding accused JOHN MONTINOLA @ TONY MONTINOLA not to be [sic] guilty of the crime of Rape on the ground of reasonable doubt, he is hereby ACQUITTED.

4. With respect to **Criminal Case No. 02-723**, and finding accused JOHN MONTINOLA @ TONY MONTINOLA guilty beyond reasonable doubt of the crime of Attempted Rape, said accused is hereby sentenced to suffer an indeterminate penalty of from 4 years and 2 months of prision correccional as minimum to 10 years of prision mayor as maximum plus P10,000.00 as moral damages to be paid to [AAA]. With cost against the accused.

5. With respect to **Criminal Case No. 02-724**, and finding accused JOHN MONTINOLA @ TONY MONTINOLA guilty beyond reasonable doubt of the crime of Attempted Rape, said accused is hereby sentenced to suffer an indeterminate penalty of from 4 years and 2 months of prision correccional as minimum to 10 years of prision mayor as maximum, and to pay [AAA] the sum of P10,000.00 as moral damages. With cost against the accused.

6. And finally, in **Criminal Case No. 02-725**, and finding the accused JOHN MONTINOLA @ TONY MONTINOLA guilty beyond reasonable doubt of Acts of Lasciviousness resulting to Child Abuse of a Minor, who is over 12 years of age, as defined and punished under Article 336 of the Revised Penal Code, as amended by RA 7610, said accused is hereby sentenced to suffer an indeterminate penalty of from 2 years and 4 months of prision correccional as minimum to 6 years and 1 day of prision mayor as maximum, with all the accessories of law.^[20]

The trial court held that (1) AAA's testimony was categorical, straightforward, and consistent; (2) her failure to immediately report the incidents to her relatives or to the proper authorities did not affect her credibility; and (3) rape can be committed even in places where there are other people.^[21]

On appeal, Montinola contended that the trial court erred in giving full weight and credence to AAA's testimony and finding him guilty beyond reasonable doubt of the crimes charged.^[22] He claimed that AAA was not credible: (1) her testimony was inconsistent, (2) her testimony was not in accord with human experience, (3) she failed to immediately report the incidents to her relatives or to the proper authorities, (4) she admitted that there were other people in the house when the alleged incidents took place yet she did not ask them for help, and (5) the medical report did not prove that Montinola was the one who raped AAA.^[23]

The Court of Appeals' Ruling

In its 28 February 2007 Decision, the Court of Appeals affirmed the trial court's decision without modification: **"WHEREFORE**, in view of the foregoing, the assailed judgment dated August 26, 2005 of the Regional Trial Court of Makati City, Branch 144, is **AFFIRMED** in **TOTO**."^[24]

The Court of Appeals held that (1) AAA's testimony was candid, straightforward, spontaneous, honest, sincere, and categorical; (2) the minor inconsistency in AAA's testimony did not affect her credibility; (3) AAA's failure to immediately report the incidents to her relatives or to the proper authorities did not affect her credibility; and (4) rape can be committed even in places where there are other people.^[25]

Hence this appeal.

The Court's Ruling

The Court finds the appeal unmeritorious. AAA is credible and the lower courts did not err.

An appeal in a criminal case opens the entire case for review. The Court can correct errors unassigned in the appeal.^[26]

The Court is not impressed with Montinola's claim that AAA's testimony is not credible because it contains an inconsistency. Montinola pointed out that, on direct examination, AAA stated that she was not sure whether Montinola was able to insert his penis in her vagina during the 28 March 2000, 29 March 2000, and 4 November