579 Phil. 254

SECOND DIVISION

[G.R. No. 177136 (Formerly G.R. Nos. 153295-99), June 30, 2008]

THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ARTURO DOMINGO Y GATCHALIAN, APPELLANT.

D E C I S I O N

TINGA, J,:

Plain and elementary in criminal law jurisprudence is the rule that in rape cases, the evidence for the prosecution must stand on its own merit and not merely draw strength from the weakness of the defense. We have pored over the records of the instant case and have found not only that the evidence of the defense is weak but also that the evidence of the prosecution is strong enough to overcome the constitutional presumption of innocence. We therefore dismiss the appeal.

The antecedents follow.

In five (5) similarly-worded Informations[1] filed with the Regional Trial Court (RTC) of Malolos, Bulacan, Branch 78, appellant Arturo Domingo y Gatchalian was charged with violation of Articles 266-A and 266-B of the Revised Penal Code, as amended by Republic Act (R.A.) No. 8353[2] for the rapes he committed against AAA[3] on five different occasions. The informations alleged that appellant is the stepfather of AAA and that the latter was a minor at the time of the commission of the offense.

Appellant, assisted *de oficio,* entered a negative plea at the 6 December 1999 arraignment.[4] The case proceeded to trial with the prosecution offering the testimony of AAA.

At the stand,[5] AAA positively identified appellant as her "stepfather" and her assailant.[6] She recounted that she had been raped several times by appellant since May 1996 in their house on a farm somewhere in Malolos, Bulacan.[7]

It was around lunchtime in May 1996 and AAA, with her two siblings aged fourteen and twelve, was taking a nap on the floor of the kitchen. She was suddenly awakened by appellant who tried to strip her clothes. In that instant, appellant also undressed himself, touched AAA's private parts and then mounted her. AAA could not offer any resistance as appellant held her hands firmly down. Neither could she cry out for help because appellant, armed with a knife, threatened to kill her if she did. Taking advantage of AAA's state of helplessness, appellant spread her legs, touched and kissed her breasts and forced his penis into her vagina. AAA felt pain in her genitalia as appellant even used his fingers to facilitate the penetration. After unleashing his bestial outrage, appellant warned that he would kill AAA's mother should the incident be revealed to anyone.[8]

The second rape occurred in the evening of 31 December 1996. Appellant instructed AAA's two siblings to leave the house and as soon as he was alone with AAA he ordered the latter to remove her clothes. Terrified because appellant was holding a kitchen knife, she did as told. She already knew what was going to happen. Appellant took two pillows, placed them on the kitchen floor and ordered AAA to lie down on top of them. Again appellant was able to have carnal knowledge with his victim in the same manner as the first time and after gratifying himself, left her alone crying.[9]

The last time AAA was abused by appellant was in May 1997 in the same manner and under the same circumstances as the first and second rapes[10] except that there was no mention that AAA was threatened by appellant with a knife on this occasion. AAA admitted that she had mustered no courage to relate her ordeal to anyone, not until her younger sister filed her own complaint against appellant for an attempted rape.[11]

Manuel Aves (Dr. Aves), the medical doctor who conducted a vaginal examination on AAA, testified that there was not a trace of physical injury on the victim's body because the rapes occurred three years prior to the examination.[12] Nevertheless, the biological science report[13] signed by Dr. Aves, which was submitted to the court, revealed that AAA was in "non-virgin state" at the time of the examination owing to deep but healed lacerations in her hymen at 3, 5, 6 and 8 o'clock positions.[14]

Appellant, the lone witness for the defense, admitted that AAA is the daughter of his common-law wife ("live-in" partner), BBB.[15] He denied all the charges and claimed that AAA's allegations were ill-motivated as she was merely induced by BBB's mother to fabricate the charges because he would often catch the latter's ire whenever he and BBB quarreled.[16] He narrated that in the years when the alleged rapes took place, he was employed in the market as a *tanod* and porter; that he and BBB would leave their house together in the morning for work with AAA, who would then proceed to school; that in the afternoon, he and BBB would wait for AAA at the market and from there they would head home together at around 5:00 p.m.; and that AAA's two siblings would already be home when the three of them would arrive together[17]—which seems to imply that there could have been no opportunity for him to commit the rapes because AAA had always been in the company of the other members of the family especially on the subject dates. Furthermore he craftily disclosed to the court, when asked if he had raped AAA on the dates stated in the informations, that the latter supposedly had a lover and often came home from school late in the night by reason of which he often scolded her.[18]

After weighing the evidence, the trial court found appellant guilty of committing the alleged rapes against AAA in May and December 1996 and in December 1997, and acquitted him of the rapes allegedly perpetrated in the latter part of 1996 and in the early part of 1997. Appellant was meted three death sentences and ordered to pay, for each of the three counts of rape, the amount of P50,000.00 as civil indemnity, P50,000.00 as moral damages and P10,000.00 as exemplary damages, and to pay the costs.[19]

The case was elevated to this Court on automatic review in view of the imposition of the death penalty. However, in conformity with the decision promulgated in *People v. Mateo*[20] and with the Court's Resolution of 19 September 1995, the case was transferred to the Court of Appeals for intermediate review.[21]

In the appeal brief he submitted to the Court of Appeals, appellant asserted that the trial court committed an error in finding him guilty of the charges and that assuming the trial court did not so err, it nevertheless erroneously imposed the death penalty on him.[22] With reference to the May 1996 rape, appellant noted the improbability of AAA being raped in the presence of her two siblings. Emphasizing that the claim that he was armed with a knife at the time was not even mentioned in AAA's affidavit, he stressed that the same was raised by AAA belatedly at the stand and only when she was repeatedly asked why she did not cry for help or resist appellant's advances.[23] Anent the alleged rapes in December 1996 and May 1997, appellant claimed that AAA acted as though she was not an unwilling victim because as she herself admitted, she willingly stripped her clothes off and allowed herself to be sexually assaulted for yet a second and third time. Appellant tried to cast doubt on the credibility of AAA by pointing out that the prosecution had offered no ample explanation why it took more than two years before the abuses were reported to the authorities.[24] Finally, he questioned the propriety of the imposition of death penalty considering that the qualifying circumstances of relationship and minority, though alleged, had not been conclusively proven at the trial because AAA's birth certificate and appellant and BBB's marriage certificate were not submitted in evidence.[25]

On the contrary, observed the Office of the Solicitor General (OSG), the prosecution evidence sufficed to support a finding of guilt beyond reasonable doubt. The OSG pointed out that inasmuch as rape is no respecter of place, it was not impossible for appellant to carry out his bestial designs against AAA even when the latter's siblings were in the house at the time; that the failure of AAA to allege in her affidavit that her assailant was armed with a knife could not impair her credibility as a witness because affidavits are naturally incomplete; that the lack of any allegation that appellant was armed with a knife at the incident of May 1996 did not diminish the elements of the offense inasmuch as appellant's moral ascendancy over his victim constituted sufficient intimidation, which also explains why AAA did not offer any resistance to appellant's advances nor report the incidents immediately; and that the fact that AAA removed her own clothes when told by appellant did not mean that she was a willing victim. Be that as it may, the OSG recommended that appellant be sentenced instead to *reclusion perpetua* considering that AAA's minority and her relationship to appellant had not been proven with certainty.[26]

In its decision[27] promulgated on 11 August 2006, the Court of Appeals affirmed the findings and conclusions of the trial court except that it sentenced appellant to suffer the penalty of *reclusion perpetua* in lieu of death, considering that the qualifying circumstances of minority and relationship had not been proven.[28]

Appellant filed a Notice of Appeal[29] whereby he intimated that the decision of the appellate court was contrary to the facts and the law, including applicable jurisprudence. Hence, the case is again before the Court bearing the same issues and arguments.

To begin with, let it be emphasized that delay in reporting a case of rape is not always to be taken as an ostensible badge of a fabricated charge.[30] A rape charge becomes doubtful only when the delay in revealing its commission is unreasonable and unexplained.[31] In this case, AAA's reluctance and hesitation in breaking her agonizing silence were sufficiently established by her testimony that appellant was able to instill fear in her by threatening to kill her mother should the incidents be made known to anyone. Such intimidation is sufficient to cower AAA and make her choose to suffer privately instead of disclosing her sordid tale of abuse in the hands of appellant. Settled is the theory that delay or hesitation in reporting the abuse due to the threats of the assailant is justified and must not be taken against the victim, [32] since it is not uncommon that a rape victim conceal for some time the assault against her person on account of fear of the threats posed by her assailant.[33]

Especially in cases where, as in this case, both the offender and the offended party are living under the same roof and are thus expected to give solace and protection to each other, the offender can easily build an atmosphere of psychological terror that effectively numbs the victim to silence.[34] In these cases, it is fear, not reason, which abounds in the mind of the victim both at the time of the assaults and thereafter. Inasmuch as intimidation is addressed to the victim's mind, response thereto and the effect thereof naturally cannot be measured against any hard-and-fast rule such that it must be viewed in the context of the victim's perception and judgment not only at the time of the commission of the crime but also at the time immediately thereafter.[35]

The threat and intimidation in this case, at least in the mind of AAA, were made even more real by the fact that at the time she was being ravished, a knife was drawn to her side which by itself was sufficient to animate her fear that appellant was seriously bent on actualizing his threat of physical harm, or at the very least it placed AAA in a confused situation that effectively sealed her lips for some time. It is thus not strange that it actually took her two long years before she could muster enough courage in taking the bold step towards her expiation, that is, when she has finally decided to join the cause of her own sister who, for an attempted rape, lost no time in filing a complaint against appellant.[36]

Also, appellant posits that AAA, in filing the charges, was moved by no earnest desire to obtain justice because she has merely been pressured by her grandmother to fabricate a tale of rape as the latter often complained about his and BBB's frequent quarrels and often told them that they had better be separated than continue on living together.[37] Appellant in effect would have the Court reassess the credibility of AAA's testimony, which function however as we have held in not a few occasions is best discharged by the trial court. Suffice it to say that when the issue focuses on the credibility of witnesses, or the lack of it, the assessment of the trial court is controlling because of its unique opportunity to observe the witness and the latter's demeanor, conduct and attitude on the stand. And although this rule is open to certain defined exceptions,[38] none obtains in this case. More importantly, other than the bare imputation by appellant of ill motives against AAA and the latter's grandmother, there is nothing more in the evidence which indicates that AAA and her grandmother were animated by improper motives in pinning down appellant. To be sure, it would be highly unlikely and unnatural for a victim of a

crime and her relatives to point to someone else as the author of the crime other than the real culprit.[39]

Appellant likewise attempts to cloud the credibility of AAA by pointing out that contrary to what the latter related in court, her act of willingly and voluntarily stripping her clothes, allowing appellant to have sexual knowledge of her for the second and third time, and failing to cry out for help at the time of the alleged rapes do tend to prove that she was not an unwilling victim. This argument must also fail for certainly, the circumstances under which appellant unleashed his bestial desires upon AAA necessarily subjected the latter to extreme psychological pressure. Considering that appellant ensured the cooperation, or at the very least the non-resistance, of AAA by using a knife and threats of physical harm—coupled with the perversion of whatever moral ascendancy he as a father figure exercises over his hapless victim—AAA cannot be expected to act conformably to the usual expectations of everyone. For the same reason, she cannot be faulted for failing to offer resistance to appellant's advances. Physical resistance is immaterial in a rape case when the victim is sufficiently intimidated by her assailant and she submits against her will because of fear for her life or her personal safety. To reiterate, intimidation in rape assumes a relative interpretation and depends not only on the age, size and strength of the parties but also on their relationship with each other.[40] It is subjective as it is addressed to the mind of the victim and must therefore be viewed in the light of the victim's perception and judgment at the time of the commission of the crime and not by any hard-and-fast rule.[41]

Moreover, that the crime was perpetrated when AAA's siblings were asleep in the same room and under conditions that did not prevent AAA from calling out for help to her neighbors does not negate the rapes committed by appellant. The commission of rape is not hindered by time or place as in fact it can be committed even in the most public of places. The presence of people nearby does not deter offenders from perpetrating their odious act.[42] Indeed, rape can be committed in the same room where other members of the family are also sleeping, in a house where there are other occupants or even in places which to many might appear to be unlikely and high-risk venues for its commission.[43]

Finally, in a last-ditch attempt to exonerate himself from liability, appellant asks why AAA, testifying on the May 1996 incident, belatedly claimed that she was threatened with a kitchen knife when in fact the same was not even mentioned in her affidavit.[44] This argument is puerile. Affidavits or sworn statements are usually incomplete since they are often prepared by administering officers who cast the same in their language and understanding of what the affiant has said. Most of the time, they are products of partial suggestions and sometimes of want of suggestions and searching inquiries without the aid of which witnesses may be unable to recall the circumstances necessary for an accurate recollection.[45] Thus, AAA's belated claim that appellant poked a knife at her in all three instances of rape cannot be taken to hurt the credibility of her testimony. Be that as it may, such lapse in AAA's own narrative does not go into any of the elemental acts necessary to make a reasonable conclusion that appellant is guilty indeed of the charges.

In view of the foregoing, it is readily clear that the evidence adduced by the prosecution is sufficient to support a finding of guilt beyond reasonable doubt. The