

## THIRD DIVISION

[ G.R. No. 180425, July 31, 2008 ]

**FELIX RAIT, PETITIONER, VS. THE PEOPLE OF THE PHILIPPINES  
RESPONDENT.**

### R E S O L U T I O N

**NACHURA, J.:**

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeking the reversal of the Court of Appeals (CA) Decision<sup>[1]</sup> in CA-G.R. CR No. 23276 dated January 26, 2006 and its Resolution<sup>[2]</sup> dated October 10, 2007. The Court of Appeals upheld the Decision<sup>[3]</sup> of the Regional Trial Court (RTC) of Cagayan de Oro City, Branch 20, wherein petitioner Felix Rait was convicted of attempted rape.

On November 18, 2003, AAA<sup>[4]</sup> asked permission from her parents to go to her brother's house in Nazareth Street to get her athletic pants. When she was there, her brother requested her to buy cigarettes from a nearby store. While in the store, petitioner Rait and one Janiter Pitago arrived. The two ordered beer and invited AAA to join them. She initially refused. However, when Aurora Raez, another neighbor, joined them, AAA was forced to drink beer. After drinking a glass of beer, she became drunk. When she was feeling weak, petitioner and his co-accused brought her out to 20<sup>th</sup> and 21<sup>st</sup> Streets where the petitioner and his co-accused brought her to the side of the street and forcibly removed her pants and underwear. Petitioner then forcibly inserted his finger into her vagina. AAA tried to shout for help but petitioner covered her mouth while Pitago held her feet. Petitioner was on top of her and about to insert his penis into her vagina but she was able to kick both men and run away.<sup>[5]</sup>

AAA then went to her brother's house and related the incident to him. Her brother went out to find petitioner. When AAA's brother did find petitioner, he tried to beat petitioner with a stick but the latter ran away. AAA and her brother then went home to their parents' house in Tambo, Macasandig, Cagayan de Oro City and told them what happened. At about 3:00 a.m. of November 19, AAA was accompanied by her brother and stepmother to *Operation Kahusay ug Kalinaw* to report the incident. They also went to *Bombo Radyo* to appeal for help in apprehending petitioner. From there, they went to the Provincial Hospital for AAA to undergo medical examination.<sup>[6]</sup> They then proceeded to the police station where the incident was recorded on the police blotter under Entry No. 8085.<sup>[7]</sup>

On May 26, 1994, Rait and Pitago were charged in an Information, which reads:

That on or about November 19, 1993, at 2:00 o'clock in the morning, more or less (sic) at Nazareth, Cagayan de Oro City, Philippines and

within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping one another, did then and there, wilfully (sic), unlawfully and feloniously commence the commission of the crime of Rape, directly by overt acts, on the person of a [17-year-old] minor, [AAA], by then and there (sic), with force and against the latter's will while she was in a state of intoxication, touching her breasts, removing her panty, holding her feet (by Janiter Pitago) and lying on top of her (by Felix Rait), but did not perform all the acts of execution which would produce the crime of Rape, by reason of some cause other than his own spontaneous desistance, that in when (sic) offended party was able to kick them and the two ran away.

Contrary to and in violation of Article 335 in relation to Article 6, of the Revised Penal Code.

After trial, the RTC rendered a Decision, the dispositive portion of which reads:

WHEREFORE, premises considered, this court hereby finds the accused Felix Rait guilty beyond reasonable doubt of the crime of Attempted Rape.

The basic penalty for Attempted Rape under Article 335 is two degrees lower than Reclusion Perpetua or Prision Mayor in its full extent. Applying the Indeterminate Sentence Law, the accused is entitled to a penalty lower to (sic) Prision Mayor or that of Prision Correccional in its full extent, (sic) hence, accused FELIX RAIT is sentenced to an Indeterminate Sentence of PRISION CORRECCIONAL in its medium period as the minimum to PRISION MAYOR in its medium period as the maximum under the same law.

The accused is entitled to his credit in full (sic) in his favor the period during which he was under preventive imprisonment pending litigation.

Accused herein is further ordered to pay the complainant the sum of P20,000.00 pesos (sic) as indemnity for Attempted rape to the complainant (sic); P5,000.00 pesos (sic) for actual damages and expenses and to pay the costs.

SO ORDERED.<sup>[8]</sup>

Petitioner appealed the judgment to the CA-Cagayan de Oro. Petitioner alleged that the RTC erred in: (1) giving credence to the prosecution witnesses despite their inconsistent, contradictory and incredible testimonies; (2) in not finding that petitioner was implicated in the case by reason of spite and vengeance; and (3) in finding petitioner guilty beyond reasonable doubt of the crime of attempted rape despite the failure of the prosecution to prove his guilt.<sup>[9]</sup>

The CA denied the appeal and affirmed the trial court's ruling in all respects. <sup>[10]</sup> Petitioner's motion for reconsideration was likewise denied.

Petitioner now comes before this Court on the following grounds:

THE HONORABLE COURT OF APPEALS IN AFFIRMING THE DECISION OF THE TRIAL COURT CONVICTING THE PETITIONER FOR THE CRIME OF ATTEMPTED RAPE, DECIDED A QUESTION OF SUBSTANCE NOT IN ACCORD WITH THE LAW ON RAPE AND JURISPRUDENCE ON THE MATTER.

THAT THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERROR IN [NOT DOWNGRADING] THE CRIME OF ATTEMPTED RAPE TO ACTS OF LASCIVIOUSNESS IF NOT THAT OF UNJUST VEXATION.<sup>[11]</sup>

Petitioner argues that he should be acquitted of the crime of attempted rape. If he is to be found guilty of any offense, he puts forward the theory that based on this Court's ruling in *Baleros, Jr. v. People*,<sup>[12]</sup> he should be convicted only of unjust vexation.

The petition is bereft of merit. We deny the Petition for Review.

First, the findings of fact of the trial court, especially when affirmed by the CA, are conclusive upon this Court. In this case, the trial court found the acts imputed to petitioner to have been duly proven by the evidence beyond reasonable doubt. We are bound by such finding.

On the strength of those proven facts, the next question is: what was the offense committed?

Petitioner argues that this Court's ruling in *Baleros* is applicable to his case.

In *Baleros*, accused was convicted of attempted rape. The CA sustained the conviction. Upon review, this Court reversed the conviction and found accused guilty of light coercion. The Court declared:

Expounding on the nature of an attemptedfelony, the Court, speaking thru Justice Claro M. Recto in *People vs. Lamahang*, stated that " *the attempt which the Penal Code punishes is that which has a logical connection to a particular, concrete offense; that which is the beginning of the execution of the offense by overt acts of the perpetrator, leading directly to its realization and consummation.*" Absent the unavoidable connection, like the logical and natural relation of the cause and its effect, as where the purpose of the offender in performing an act is not certain, meaning the nature of the act in relation to its objective is ambiguous, then what obtains is an attempt to commit an indeterminate offense, whichis not a juridical fact from the standpoint of the Penal Code.

There is absolutely no dispute about the absence of sexual intercourse or carnal knowledge in the present case. The next question that thus comes to the fore is whether or not the act of the petitioner, *i.e.*, the pressing of a chemical-soaked cloth while on top of Malou, constitutes an overt act of rape.

Overt or external act has been defined as some *physical activity or deed* , indicating the intention to commit a particular crime, *more than* a mere