

SECOND DIVISION

[G.R. No. 180501, November 24, 2008]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROGER MENDOZA Y DELA CRUZ, ACCUSED-APPELLANT.

DECISION

VELASCO JR., J.:

This is an appeal from the Decision dated June 29, 2007 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00651, modifying the Decision dated October 27, 2004 of the Regional Trial Court (RTC), Branch 276 in Muntinlupa City in Criminal Case No. 00-410. The RTC adjudged accused-appellant Roger Mendoza guilty of rape.

The Facts

On April 28, 2000, accused-appellant was charged with rape in an Information which reads as follows:

That on or about the 25th day of April 2000, in the city of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, with force, intimidation and grave abuse of confidence, accused being employed as a driver in the business of the father of [AAA],^[1] a six (6) year old minor, did then and there willfully, unlawfully and feloniously insert his finger inside the latter's vagina against the will and consent of the said complainant.

Contrary to law.^[2]

When arraigned, accused-appellant entered a plea of not guilty.

During trial, the prosecution presented AAA and both her parents as witnesses. Accused-appellant appeared as the lone witness for the defense.

The gist of AAA's account of the incident is as follows: It occurred in the early afternoon of April 25, 2000 after her parents had left for work. She was then six (6) years old. At home with her on that day was the maid and accused-appellant, who was reapplying as family driver. As she was playing with the water hose in the garage, her dress got wet forcing her to repair to her room to change. Accused-appellant followed. Once inside the room, accused-appellant tried to undress her, tightly held her hands, and told her to lie in the bed. He thereupon pulled her panties down. In reaction, she pulled it up but accused-appellant quickly pulled it down again. It was at this moment when, according to AAA, accused-appellant

touched her vagina with his fingers and kissed her on the left cheek. All the while, he repeatedly assured her of being her friend and that they were just playing the mother-and-father roles. Shortly after, she ran to her parents' room and locked the door. Accused-appellant followed but left after AAA ignored his insistence to continue with the father-mother game.

Later in the evening, AAA told her parents about her ordeal, after which they reported the matter to *barangay* officials and the police. AAA was then asked to undergo a medical examination.^[3]

In the course of her direct examination, AAA was presented a sketch of a female body to assist her pinpoint what part of her body accused-appellant touched. In response, she shaded the area in between the legs of the female figure.^[4]

AAA's father testified that accused-appellant first applied as a driver in 1995. He came back to reapply on April 24, 2000, was asked to drive on that day, and stayed for the night. The following morning, her father left early for work leaving the still sleeping applicant behind.

The father narrated what his daughter disclosed when he arrived home from work, adding that, when he routinely called the house at about 3:00 in the afternoon, the answering AAA called accused-appellant "*bastos*" and explained why so.

AAA's mother corroborated for the most part her husband's testimony. She attested that AAA was only six years old when it happened.

Testifying in his defense, accused-appellant admitted to being at AAA's family home on April 24, 2000 and staying overnight. He remained in the house the following day waiting for AAA's father to return so he could collect what he earned for a day's work. To while his time away, he went outside to watch and talk to persons doing road repair work. And while outside, he suddenly felt water falling upon him. As it turned out, AAA was playing in the yard with the water hose aimed at him, which he did not mind.^[5] She continued to play with the hose and ended up flooding the garage. Thereafter, he asked the road workers about the possibility of working with them only to be told he would need a *barangay* clearance. He then left, returning a few days later to submit his clearance to the workers' foreperson and to collect his one-day salary. According to accused-appellant, AAA's father was so angry at him for not waiting last April 25, 2000 that he pushed accused-appellant and banged his head against the garage wall. After AAA's mother pacified her irate husband, *barangay* officials arrived and brought accused-appellant to the police station. Once there, accused-appellant was charged with molesting AAA, who, however, did not say anything at the police station; it was her mother who answered all the questions of the police investigator. He was charged with fingering the sexual organ of AAA. He denied the accusation, asserting that he did not touch the child, being outside their house on the day in question watching men doing road repair work.^[6]

On October 27, 2004, the RTC rendered judgment finding accused-appellant guilty of rape. The dispositive portion of the RTC's decision reads:

Under these declarations and these statutes, the Court is convinced that

the crime of Rape has been committed by accused ROGER MENDOZA Y DELA CRUZ as defined and penalized by the aforesaid laws. He is therefore sentenced to suffer imprisonment for all of his natural life or to life imprisonment. This sentence will be served at the New Bilibid Prison, pending appeal should he desire to so appeal. The Jail Warden is therefore directed to commit the said Accused, to the said prison.

It is SO ORDERED.^[7]

Accused-appellant appealed the RTC decision to the CA. Before the appellate court, accused-appellant raised the following errors allegedly committed by the trial court: (1) in not dismissing the case on account of the violation of his right to speedy trial; (2) in considering the prosecution's testimonial evidence which was not formally offered; and (3) in convicting him for rape without the prosecution presenting proof of his guilt beyond reasonable doubt.

As preliminarily indicated, the CA modified the RTC's decision, the modification consisting of downgrading the crime to and finding accused-appellant guilty of acts of lasciviousness, a crime which is necessarily included in the offense charged in the underlying Information. The *fallo* of the CA decision dated June 29, 2007 reads, as follows:

WHEREFORE, in light of all the foregoing, the October 27, 2004 Decision of the Regional Trial Court of Muntinlupa City, Branch 276 in Criminal Case No. 00-410 finding accused-appellant guilty of the crime of rape and sentencing him to life imprisonment, is hereby MODIFIED. Accused-appellant Roger Mendoza y De La Cruz is found guilty beyond reasonable doubt of the crime of acts of lasciviousness, as defined and penalized under article 336 of the Revised Penal Code, in relation to Article III, Section 5 (b), of Republic Act No. 7610, and is sentenced to suffer the indeterminate penalty of 12 years and 1 day of reclusion temporal, as minimum, to 15 years, 6 [months] and 20 days of reclusion temporal as maximum and to pay the victim the amount of P30,000.00.

SO ORDERED.^[8]

The CA predicated its modificatory disposition on the interplay of the following premises: The RTC hastily concluded that rape was committed because there was insertion by accused-appellant's finger into the private part of AAA.^[9] The records, however, show that accused-appellant merely stroked the external surface of AAA's vagina.^[10] The medical findings also showed that there was no physical manifestation of insertion into AAA's vagina, bolstering the inference that no insertion took place.^[11]

On July 12, 2007, accused-appellant filed his Notice of Appeal of the CA decision.

On February 18, 2008, the Court required the parties to submit supplemental briefs if they so desired. They, however, manifested willingness to submit the case on the basis of available records, logically suggesting that they are, in the main, reiterating

the very same arguments they raised before the CA.

Thus, the issues tendered in this appeal may be formulated, as follows:

- 1) whether or not accused-appellant's right to speedy trial was violated below;
- 2) whether or not the trial court erred in considering the testimonial evidence of the prosecution not formally offered;
- 3) whether or not the CA erred in convicting accused-appellant for the crime of acts of lasciviousness on the basis of the evidence presented.

The Court's Ruling

Right to Speedy Trial Not Violated

Accused-appellant states that while he has been detained since April 26, 2000, his arraignment came only on March 2, 2001 and the prosecution started to present its evidence only on May 9, 2001. To compound matters, the prosecution was not deemed to have terminated its presentation of evidence until April 14, 2004.^[12] Accused-appellant thus argues that the delays attending his case should have been enough for the trial court to have dismissed it.

The Court is not convinced.

The right to speedy trial, as an adjunct to the right of all persons to a speedy disposition of their cases before judicial and quasi-judicial bodies, requires that court proceedings should be conducted according to fixed rules and must be free from vexatious, capricious, and oppressive delays.^[13] The same right may also be considered violated when unjustified postponements of the trial are asked for and secured; or when without cause or justifiable motive, a long period of time is allowed to elapse without the parties having their case tried.^[14] None of these circumstances are, to us, present in the instant case. While perhaps there might have been delays, accused-appellant does not state in some detail what or who caused the delays, or whether these are of the vexatious or oppressive kind.

What is more, accused-appellant belatedly invoked his right to speedy trial only before the CA. The proceedings cannot now be claimed to be attended by vexatious, capricious, and oppressive delays. Accused-appellant cannot plausibly seek the protection of the law to benefit from the adverse effects of his failure to assert his right at the first instance.^[15] As the CA correctly and judiciously observed:

As can be gleaned from the records, accused-appellant never invoked in the RTC that he has been deprived of his right to speedy trial and speedy disposition of case. As it is, any allegation of violations of rights should first be ventilated with the RTC concomitant with the prayer to dismiss the case with prejudice. It is a bit too late in the day for herein accused-appellant to invoke now his right to speedy trial (*People vs. Tee*, 395 SCRA 443 [2003]). By raising this point belatedly with the [CA], accused-

appellant has thus waived his objection and accordingly forfeits his right to the aforesaid constitutional guarantees.^[16] x x x

Objection to Prosecution's Defective Offer of Evidence Waived

Accused-appellant next questions the manner in which AAA's testimonial evidence was offered. He claims that her testimony was only offered for the purpose of establishing her minority,^[17] not to establish the fact of molestation. The trial court, he says, supposedly erred in considering evidence which did not conform to the purpose specified in the offer, in accordance with Section 34 of Rule 132 of the Rules of Court.^[18]

Accused-appellant posture is valid to a point. But despite the improper formal offer of AAA's testimony, the defense failed to make a timely objection to the presentation of such testimonial evidence. Accused-appellant in fact proceeded with the trial of the case and, as the CA noted, "even subjected the witness to a rigorous cross-examination."^[19] The unyielding rule is that evidence not objected to may be deemed admitted and be validly considered by the court in arriving at its judgment.^[20] In point is *People v. Sanchez*,^[21] in which the prosecution called several persons to testify. No formal offer of testimonial evidence was made prior to or after their testimonies. The trial court, nonetheless, considered the testimonies owing to the adverse party's failure to object to the presentation of such testimonial evidence. The Court sustained the trial court, reproducing what it earlier said in *People v. Java*:

x x x Section 36 [of Rule 132 of the Rules of Court^[22]] requires that an objection in the course of the oral examination of a witness should be made as soon as the grounds [therefor] shall become reasonably apparent. Since no objection to the admissibility of evidence was made in the court below, an objection raised for the first time on appeal shall not be considered.^[23]

Accused-appellant's belated invocation of the strict application of the rules on evidence to suit his purpose is quite misplaced, for evidence not objected to, AAA's testimony in this case, becomes the property of the case, and all the parties to the case are considered amenable to any favorable or unfavorable effects resulting from the evidence.^[24]

The Prosecution Presented Sufficient Proof of Accused-Appellant's Guilt

In a bid to escape liability owing to insufficiency of evidence, accused-appellant avers, in context, that the medical findings presented in court do not support the conclusion made by the trial court that accused-appellant inserted his fingers into AAA's sexual organ, causing it to hurt. He likewise insists that the testimonies of AAA's parents were hearsay.^[25]

The direct examination of AAA yields the following: