

SECOND DIVISION

[G.R. No. 172875, August 15, 2007]

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. DANIEL PEREZ Y BACANI, APPELLANT.

D E C I S I O N

CARPIO MORALES, J.:

Appellant, Daniel Perez y Bacani, was charged before the Regional Trial Court, Antipolo City with rape in an Information^[1] which was docketed as Criminal Case No. 98-14590, the accusatory portion of which reads:

x x x x

That on or about the 27th day of January, 1998, in the Municipality of Antipolo, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a knife, with lewd designs and by means of force and intimidation did, then and there willfully, unlawfully and feloniously have sexual intercourse with [AAA], without her consent and against her will.^[2]

At the time material to the case at bar, appellant and the private complainant, AAA, a mother of four, had been neighbors for around six years, their houses in Pinugay, San Jose, Antipolo being separated only by around three Meralco posts. AAA in fact used to buy some stuff at the store of appellant and his wife. And one of appellant's children is the godson of AAA's husband.^[3] The work of AAA's husband called for him to be out of their house on weekdays and return home during weekends.

At the witness stand, AAA gave the following account:

Between 12 midnight and 12:30 a.m. of January 27, 1998, a Tuesday, AAA, who shared the only bedroom in her one storey house with her four children aged 12, 9, 5, and 1½, was awakened when she felt that a bladed weapon was pointed at her back. She noticed that it was already dark as the light inside the house which she had left switched on was already off. She soon heard appellant warning her not to make any noise or he would kill her.^[4]

Appellant then removed AAA's short pants and inserted his finger inside her vagina in the course of which her one and a half (1½)-year old child who was at her side cried,^[5] drawing her to breastfeed him. In the meantime, as she was pleading with appellant to stop what he was doing, her eldest child 12-year old BBB was awakened. Appellant thereupon threatened that he would kill them.^[6]

AAA lost no time to sit down on the bed in an attempt to restrain appellant from

further molesting her. But appellant dragged her from the room and brought her outside the house, passing through the kitchen door.^[7]

On reaching a mango tree outside the kitchen door, appellant forced AAA to lie down on the ground. Appellant then embraced her at which instant AAA took the knife from appellant which she threw away in the hope that without it, she could flee as she did attempt to flee. After negotiating two steps, however, appellant caught up with her.^[8]

Appellant then again forced AAA to lie down on the ground, pulled down his knee-high trousers and succeeded in inserting his penis into her vagina.^[9]

After appellant had ejaculated and had weakened, AAA ran inside the house and instructed BBB, who witnessed the incident, to ask for help. Afraid, however, that something might happen to him, she changed her mind and instructed BBB not to proceed.^[10]

After the lapse of ten minutes, appellant approached AAA's house and intimidated that he was ready to kill someone, he and his wife having had a quarrel.^[11]

AAA was awake until around 4:00 a.m. when she proceeded to the Antipolo police detachment^[12] where she reported the incident.

When AAA's husband arrived the following Saturday, she informed him about the incident. While her husband was infuriated, he did not take any action against appellant.^[13]

AAA's son BBB gave the following account:

On being awakened by the cry of his baby brother, he saw a "shadow" at the foot of the bed and heard his mother pleading "maawa ka, maawa ka." The "shadow" responded "*tumigil ka kung hindi papatayin kita.*"^[14]

AAA was thereafter dragged to the mango tree which was about four (4) meters outside the kitchen door.^[15]

BBB could hear appellant saying "*Mare, nag-away kami ni mare mo, papatay ako.*" He also saw appellant lying on top of his mother AAA. Overcome by fear, he returned to the bedroom.^[16]

When AAA returned to the house, BBB noticed that she was not wearing her underwear and short pants anymore. From outside, he heard appellant shout "*sige mare, magdemanda ka bukas.*" He then tried to ask help from their neighbor CCC but he immediately returned for fear that appellant was just nearby.^[17]

Police Officer (PO) Loreto Espinelli corroborated AAA's testimony that on January 27, 1998, she filed a complaint for rape at their detachment, adding that her statement was taken by SPO2 Ricardo Aquino. He went on to state that he, together with AAA and PO3 Gripal,^[18] proceeded to the house of appellant at around 4:00 to 5:00

a.m. As they reached appellant's house, his wife woke him up.^[19]

PO Espinelli furthermore stated that when appellant was informed that a complaint was filed against him, he voluntarily went with them to the detachment where he was turned over to the police headquarters.^[20] SPO2 Aquino was unable to secure appellant's statement, however, as he had then no counsel of his choice to assist him.^[21]

P/Sr. Inspector Ruby Grace Sabino, a medico-legal officer, who was presented as an expert witness, interpreted the Medico-Legal Report No. 222-98^[22] of Dr. Dennis Bellin who examined AAA on January 27, 1998. The Report-Exhibit "E" reflected the following findings:

GENERAL AND EXTRAGENITAL

Fairly developed, fairly nourished and coherent female subject. Breasts are pendulous with brownish areola and nipples from which milky secretions could be pressed out. Abdomen is flabby and soft with strae of pregnancy. The following injuries were noted:

- 1) Abrasion, right scapular region, measuring 0.3 x 0.2 cm, 6.7 cm from the posterior midline.
- 2) Abrasion right knee, measuring 0.5 x 0.1 cm, 1.5 cm lateral to its anterior midline.
- 3) Abrasion, proximal 3rd of the right thigh, measuring 0.9 x 0.1 cm, 5.5 cm lateral to its posterior midline
- 4) Abrasion, distal 3rd of the right thigh, measuring 4.9 x 0.1 cm, 9 cm lateral to its posterior midline.
- 5) Abrasion, left knee, measuring 0.8 x 0.1 cm, 1.5 cm lateral to its anterior midline
- 6) Area of multiple abrasions, proximal 3rd of the left leg, measuring 2.4 x 1 cm, 7 cm lateral to its anterior midline
- 7) Area of multiple abrasions, proximal 3rd of the left thigh, measuring 11 x 10 cm, 8 cm lateral to its posterior midline.
- 8) Abrasion, proximal 3rd of the left leg, measuring 0.9 x 0.1 cm, 1 cm lateral to its posterior midline.

GENITAL:

There is abundant growth of pubic hair. Labia majora are full, convex and obaptated with the brownish labia minora presenting in between. On separating the same disclosed and abraded posterior fourchette and carunculae myrtiformis. External vaginal orifice offers slight resistance to the introduction of the examiner's index finger. Vaginal canal is wide with flattened rugosities. Cervix is firm and closed.

CONCLUSION:

Subject is in non-virgin state physically.

Barring unforeseen complications, it is estimated that the above injuries will solve in 5 to 7 days.

REMARKS:

Vaginal and peri-urethral smears are negative for gras negative diplococci and for spermatosoa^[23]

On the other hand, appellant's version goes as follows:

About past 10:00 p.m. of January 26, 1998, he proceeded to the house of AAA whom he was courting and who had hinted that he could go to her house anytime from Monday to Friday.^[24] The two of them went out of the house and sat under the mango tree. From his conversation with AAA who was asking him if "*i-regular ko siya talaga*," he took it to mean that "[m]aybe . . . she will be my paramour."^[25]

After staying under the mango tree until 12 midnight, the two of them went inside the house where they continued conversing in the course of which BBB was awakened. BBB then asked AAA who was he to whom she was talking, but gave no reply. Instead, she asked appellant to go home, and he did.^[26]

Appellant speculates that AAA filed the case against him because she was embarrassed being seen with him by BBB "during that unholy hour."^[27]

Giving more credence to AAA's positive declaration as against appellant's denial in the absence of any ill-motive for her to falsely charge appellant, not to mention that part of her testimony was corroborated by BBB "who witnessed the sexual assault," the trial court convicted appellant.

. . . [T]he Court finds more credence [to] the declaration of the complainant as opposed to the mere denial of the accused.

A candid narration by a rape victim deserves credence particularly where no ill motive is attributed to the rape victim that would make her testify falsely against the accused for no woman in her right mind will admit to having been raped, allow an examination of her most private parts and subject herself as well as her family to the humiliation and shame concomitant with a rape prosecution, unless the charges are true (People vs. Sampior[,], 327 SCRA 31).

All the more in this case where the testimony of the victim was corroborated by the testimony of her son who had witnessed the sexual assault.

However, while it was proven that the sexual assault was made in full view of the victim's child, the ultimate penalty of death cannot be meted, as the information did not include such fact [sic] in the allegations.^[28] (Underscoring supplied)

The trial court thus disposed in its Decision of May 5, 2004:^[29]

WHEREFORE, accused DANIEL PEREZ is hereby found guilty beyond reasonable doubt and is sentenced to suffer the penalty of Reclusion Perpetua pursuant to the provisions of Republic Act 8353.

The accused is also ordered to pay [AAA] the amount of P50,000 as moral damages.^[30]

Appellant appealed to the Court of Appeals, faulting the trial court for

I

x x x GIVING FULL FAITH AND CREDENCE TO THE INCREDIBLE TESTIMONY OF THE PRIVATE COMPLAINANT.

II

x x x CONVICTING THE ACCUSED-APPELLANT FOR RAPE DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.^[31]

In his brief filed before the appellate court, appellant contended that AAA's claim of having thrown the knife which he was allegedly holding and which she allegedly took from him is "unusual," for she could have used it to stab him to defend her honor or to free herself from his embrace.^[32]

And appellant found it incredible that he would still drag AAA outside the house after he inserted his finger inside her vagina, when he could simply have continued his desire inside the house as she and BBB were, by their claim, threatened.^[33]

By Decision of March 16, 2006,^[34] the appellate court thus affirmed the decision of the trial court, modifying it, however, by awarding the victim an additional P50,000 as indemnity *ex delicto*. Thus it disposed:

WHEREFORE, the foregoing premises considered, the appealed Decision dated 05 May 2004 of the Regional Trial Court of Antipolo City (Branch 73), Province of Rizal, in Criminal Case No. 98-14590 is, as it is hereby **AFFIRMED with MODIFICATION** in the sense that in addition to the award of P50,000.00 as moral damages to herein private-complainant, [AAA], accused-appellant DANIEL PEREZ is also ordered to pay her P50,000.00 as civil indemnity.

With costs ***de officio***.^[35] (Emphasis and italics in the original)

On appellant's appeal, the records of this case were forwarded to this Court^[36] which required the parties to file their respective supplemental briefs if they so desired, within 30 days from notice. Both parties manifested that they were no longer filing supplemental briefs as the briefs they filed before the appellate court exhaustively discussed their arguments.

In *People v. Bidoc*, this Court reiterated the well-entrenched guiding principles in reviewing rape cases: