

## FIRST DIVISION

[ G.R. No. 143084, April 01, 2003 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JOSE TORELLOS Y  
AVENDAÑO, APPELLANT.**

### DECISION

**YNARES-SANTIAGO, J.:**

This is an appeal from the decision<sup>[1]</sup> of the Regional Trial Court of Manila, Branch 18, in Criminal Case No. 98-167678, convicting appellant Jose Torellos y Avendaño of the crime of rape, sentencing him to suffer the penalty of *reclusion perpetua* with all the accessory penalties, and ordering him to pay the victim the amounts of P300,000.00 as moral damages, P200,000.00 as nominal damages, P100,000.00 as exemplary damages, and costs.

The Information against appellant reads:

That on or about September 9, 1998, in the City of Manila, Philippines, the said accused with lewd design did then and there willfully, unlawfully and knowingly commit sexual abuse and lascivious conduct upon the person of AAA, a minor, 16 years of age, by then and there undressing her, kissing her breast and her vagina, caressing her body and thereafter placing himself on top of her and inserting his penis into her vagina, thus succeeding in having carnal knowledge with the said complainant, thereby endangering her youth and normal growth and development, to the damage and prejudice of said AAA.

Contrary to law.<sup>[2]</sup>

When arraigned, appellant pleaded not guilty. Trial thereafter ensued.

The evidence for the prosecution established the following facts:

On September 9, 1998, at around 2:30 a.m., complainant, 16 year-old AAA, left her house to visit her friend who lives on Paghanapin Street, Tondo, Manila. However, her friend was not home, so she decided to buy a sandwich at the Burger Machine on Sandico Street. Thereafter, she took a pedicab and proceeded to her house. Along the way, the pedicab she was riding in was blocked by another pedicab with five men on board. One of them, appellant Jose Torellos, whom complainant had previously met, boarded her pedicab and pointed a knife at her. He ordered the driver to bring them to KP Tower in Tondo, Manila. His companions followed them in the other pedicab. When they reached the place, they entered a small shanty. Inside, appellant lit a candle and they inhaled *shabu*. They told complainant to join them but she refused, prompting appellant to hit her on the stomach. Thus, she was forced to inhale the substance, which made her weak that she had to sit down in a

corner of the shanty. Appellant then asked his companions to leave, then locked the door and forcibly undressed complainant and kissed her on the neck, breast and private parts. Then, he lay on top of her and inserted his penis into her vagina. She protested and struggled against the advances but her efforts were in vain. After satisfying his lust, appellant left and locked complainant inside the house, while a certain Kua stood guard outside.

In the afternoon of September 10, 1999, appellant returned to the shanty and raped complainant again. After he left, she peeked through the door to make sure that no one was guarding her, then she forced open the door and boarded a pedicab and proceeded to her brother's house on Asuncion Street. However, she lost consciousness along the way before she could reach her brother's house. When she regained consciousness, she found herself at the Philippine General Hospital with her mother. She underwent a forensic interview and physical examination. Thereafter, accompanied by her mother, she went to Precinct 5 of the Western Police District and filed a complaint against appellant.<sup>[3]</sup>

Dr. Mariella Castillo of the Philippine General Hospital who conducted the physical examination made the following findings:

#### GENERAL PHYSICAL EXAMINATION

Fairly developed, fairly nourished, dirty, unkempt, looked sleepy, oriented and answered questions slowly, [+] depressed affect, walked with support, [+] blank stares and unresponsiveness during physical examination, not in respiratory distress

Head and Neck: normal

Chest, Abdomen, Back: normal

Extremities: normal

#### GENITAL EXAMINATION

Hymen: crescentic, estrogenized hymen, [+] profuse non-foul smelling white vaginal discharge, [+] abrasion and contusion at 6 o'clock position of hymen, [+] abrasion and contusion at fossa navicularis

Anus: normal findings

#### IMPRESSION

Disclosure of sexual abuse

Genital finding of fresh abrasion and contusion in posterior hymenal structure indicate a recent penetration injury.

Acute Stress Disorder

Probable Methamphetamine Toxicity<sup>[4]</sup>

In his defense, appellant alleged that the sexual congress between him and complainant was voluntary and consensual. He testified that he met her sometime in August 1998 when they were introduced by his friend, Niño, who told him that she was a call girl and a *shabu* user. He told Niño to buy *shabu*, then they proceeded to an abandoned house on Recto Avenue. They were joined by their friends, Roger,

Ray and Tupeng. All of them, including complainant, inhaled *shabu*. It was complainant who rolled up a sheet of tissue paper which they used as burner. After a while, Niño and the others left, leaving him and complainant. She undressed herself and they had sexual intercourse for about one hour.<sup>[5]</sup>

On September 9, 1998, at 3:00 a.m., appellant was with Niño, Roger and Tupeng on the corner of Wagas Street when they saw complainant approaching on board a tricycle. She asked them to get in the tricycle and, together, all of them proceeded to KP Tower. They entered a shanty and inhaled *shabu*. When Niño and the others left, appellant and complainant had sexual intercourse. Later, appellant went back to Wagas Street where he found Niño waiting for him.<sup>[6]</sup>

After trial, the court *a quo* rendered judgment, the dispositive portion of which reads:

WHEREFORE, the Accused Jose Torillos y Avendaño, is convicted of the crime of rape under Article 266-A of the Revised Penal Code, attended by the aggravating circumstance of minority of the victim, and sentenced to suffer the penalty of *reclusion perpetua* will all the accessory penalties provided by law and to pay the costs. The accused is further sentenced to pay the victim, AAA, moral nominal and exemplary damages in the respective sums of P300,000.00, P200,000.00 and P100,000.00 with interest thereon at the legal rate of 6% per annum from this date until fully paid.

SO ORDERED.<sup>[7]</sup>

Hence, this appeal where appellant raises the following errors:

#### I

THE TRIAL COURT COMMITTED A REVERSIBLE ERROR IN CONVICTING THE ACCUSED-APPELLANT ON THE BASIS OF THE IMPLAUSIBLE AND IMPROBABLE TESTIMONY OF THE COMPLAINING WITNESS.

#### II

THE TRIAL COURT ERRED IN CONVICTING ACCUSED JOSE TORELLOS WHEN HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

#### III

THE COURT A QUO ERRED IN CONVICTING HIM OF THE CRIME OF RAPE DESPITE THE FAILURE TO ALLEGE IN THE INFORMATION THAT HE SUCCEEDED IN HAVING CARNAL KNOWLEDGE WITH (*sic*) THE PRIVATE COMPLAINANT UNDER ANY OF THE CIRCUMSTANCES ENUMERATED IN ARTICLE 266-A (1) OF THE REVISED PENAL CODE.

#### IV

THE COURT A QUO ERRED IN APPRECIATING THE CIRCUMSTANCE OF MINORITY.

THE COURT A QUO ERRED IN AWARDING MORAL, NOMINAL AND EXEMPLARY DAMAGES IN THE RESPECTIVE SUMS OF P300,000.00, P200,000.00 AND P100,000.00 WITH 6% INTEREST PER ANNUM.

Appellant argues that the information under which he was charged was defective because it failed to allege that he had carnal knowledge of complainant against her will. Moreover, the information failed to specify the acts or omissions complained of as constituting the offense, in contravention of the requirements of Rule 110, Section 6 of the Rules of Court.

The prosecution was able to establish by overwhelming evidence that appellant had carnal knowledge of complainant by means of force and intimidation. We find no reason to depart from this finding. It has been a time-honored doctrine that the trial court's factual findings are conclusive and binding upon appellate courts unless some facts or circumstances of weight and substance have been overlooked, misapprehended or misinterpreted.<sup>[8]</sup> After a careful scrutiny of the evidence on record and the stenographic notes of the witnesses' testimonies, we find sufficient basis for the trial court's conclusion that, indeed, appellant employed force and intimidation in sexually molesting complainant.

Complainant narrated in detail her harrowing experience in the hands of appellant in this wise:

ATTY. VELASCO

X X X X X X X X X

Q. What happened next if any?

A. On my way back after I bought the sandwich, my pedicab was blocked by the pedicab being ridden by the accused and his 4 companions.

Q. What happened next if any?

A. The accused boarded my pedicab and he poked a knife at me then he forcibly took me to his house.

COURT

Q. How about the one boarding your pedicab?

A. He complied because the companions of the accused were following us.

Continue.

ATTY. VELASCO

Q. What happened next if any?

A. On reaching the house of the accused he was