429 Phil. 686

THIRD DIVISION

[G.R. No. 138445-50, April 03, 2002]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BENNY CONDE Y GOTA, ACCUSED-APPELLANT.

D E C I S I O N

MELO, J.:

Appellant Benny Conde appeals from the decision dated March 26, 1999 of the Regional Trial Court of the 10th Judicial Region (Branch XIX, Cagayan de Oro City, Misamis Oriental) finding him guilty of six counts of rape.

On April 24, 1997, six complaints for rape were filed against appellant with the Regional Trial Court of Misamis Oriental, docketed therein as Criminal Cases No. 97-935 and 97-945-949. The complaint in Criminal Case No. 97-935 alleged:

> That on or about April 19, 1997, at Brgy. 24, Capt. V. Roa Street (particularly at accused's residence), Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with force and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge with undersigned complainant victim, Noveliza C. Radaza, then 10 years of age and against her will.
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> (p. 1, Original Record.)

The other complaints were similarly worded as the above, except that they respectively charged that the offenses therein charged had allegedly been committed on or subsequent to October 1996.

Upon arraignment, appellant pleaded not guilty to each charge. The six criminal cases were thereafter consolidated and jointly tried.

The evidence for the prosecution established the following facts:

Noveliza Radaza was born on November 6, 1986 and she lived at Captain Vicente Roa Street, Barangay 24, Cagayan de Oro City. Noveliza had known appellant since October 1996 because he was her neighbor and his house was only 50 meters away from hers (tsn, August 10, 1998, pp. 4-14).

Five days after their first meeting in October 1996, while Noveliza was outside playing, she was called by appellant, who was in his house that time. He asked her to buy some biscuits. Noveliza bought five pieces of biscuits and brought them to appellant. Once inside appellant's house, he began to undress Noveliza. Thereafter, appellant instructed her to lie down on his bed, which she did. Appellant then took off his clothes, placed himself on top of Noveliza and inserted his penis in her vagina

for about 5 minutes. Noveliza felt pain in her vagina. Afterwards, appellant, without a word, gave her P50.00 which she accepted (*ibid.*, pp. 14-22).

A similar incident took place in the afternoon of November 1996. While Noveliza was strolling near their house, appellant, who was then in his house, called her. Then, appellant brought her to his room. As what happened the first time, appellant undressed Noveliza, undressed himself, went on top of Noveliza and did pumping motions. Noveliza felt pain in her vagina as appellant's penis was quite hard. Appellant gave Noveliza P30.00 and instructed her not to tell her mother about the incident (*ibid.*, pp. 24-32).

Again, sometime in December 1996, appellant called Noveliza into his house. Inside, appellant inserted his penis into Noveliza's vagina for about two minutes. Appellant again gave Noveliza P60.00 while warning her not to tell her parents about what had happened (*ibid.*, pp. 33-38).

In January 1997, appellant called Noveliza while playing. As in the three previous incidents, appellant had sexual intercourse with Noveliza, which lasted for three minutes. After molesting her, appellant gave her P50.00 (*ibid.*, pp. 40-44).

In the afternoon of February 1997, Noveliza was strolling near appellant's house when the latter called to her. Once inside his house, appellant sexually abused Noveliza. Afterwards, he gave Noveliza P50.00 (*ibid.*, pp. 46-50).

On April 19, 1997, while Noveliza was playing about nine meters away from appellant's house, the latter called to her anew. Noveliza obliged and went inside the house of appellant. Thereafter, appellant removed her clothes and performed the sexual act on Noveliza for five minutes. After that, appellant gave Noveliza P50.00 and told her not to reveal what had occurred to her parents (*ibid.*, pp. 52-57).

Like all dastardly deeds, appellant's malefic actions would ultimately be brought to light. On April 22, 1997, appellant called Noveliza while the latter was strolling near their house. Inside his room, appellant undressed the latter and inserted his right forefinger into Noveliza's vagina, while his other hand fondled her breasts. In the meantime, however, Noveliza's brother, Clifford, had informed his mother, Severa Radaza, that Noveliza was inside appellant's house. Severa went to appellant's house and called on Noveliza to come out of the house. Appellant replied that Noveliza was not in his house. Immediately thereafter, appellant told Noveliza to hide under the bed, after which appellant came out of his room. When Severa saw appellant, who was then wearing only his long pants, she asked him whether her daughter Noveliza was in his room, to which query appellant answered in the negative. Someone, however, peeped into appellant's room and saw Noveliza hiding under the bed. April, the elder sister of Noveliza, kicked and forcibly opened the door of appellant's room. Seeing Noveliza crying under the bed, April helped Noveliza up. Severa embraced Noveliza upon seeing her. Severa then ran out of the room to look for appellant but he was gone (tsn, August 19, 1997, pp. 9-11). Severa asked her husband, her brother, and Barangay Tanod Felipe Ubalde to look for appellant.

That very same day, Noveliza was brought to the Northern Mindanao Medical Center for a physical examination (*ibid.*, pp. 11-12). Conducted by Dr. Maria Orfa

Alonsabe, Noveliza's physical examination revealed that she had old healed vaginal lacerations at the 3 and 9 o'clock positions, which, according to Dr. Alonsabe, could have been caused by the insertion of male organ into her vagina (tsn, August 4, 1997, pp. 8 & 12).

Appellant was arrested later that afternoon aboard a rural bus transit headed for Iligan City. He was detained at the Lumbia Detention Center at Cagayan de Oro City (tsn, January 29, 1998, pp. 8-9).

In denying criminal liability, the defense presented the following version: Appellant first arrived in Cagayan de Oro City in 1996 to work as a caretaker for Dr. Jacinto Tan, owner of several trucks hauling Coca-Cola products. He, together with six other workers, stayed in a small shanty at Camp Vicente Roa Street, Brgy. 24, Cagayan de Oro City, where he came to know the Radazas, including the complainant. Appellant denied sexually abusing the complainant on any of the six occasions testified to by Noveliza. Appellant testified that he heard Noveliza telling her friends that her father had touched her vagina. On April 22, 1997, when he was arrested by law enforcers, he was on his way to Iligan City to get the allowance of his co-workers. It was at the police station when he learned for the first time that he was accused of raping Noveliza (tsn, Nov. 23, 1998, pp. 3-12).

Appellant further testified that he and Noveliza's father, Paulino, had a disagreement, first, when he refused to lend money to Paulino and then when he prohibited Paulino from parking his taxi in front of appellant's house (*ibid.*, p. 26).

On March 26, 1999, the trial court promulgated its decision finding appellant guilty of the crimes charged. It debunked appellant's version of events, stating that appellant's claim of resentment and bad blood as the cause for the filing of rape charges against him lacked credibility. The decretal portion of the decision stated as follows:

> WHEREFORE, the court hereby sentences him to six (6) *reclusion perpetuas*, to indemnify Noveliza Radaza the total sum of P300,000.00, pay her P300,000.00 in moral damages and to pay the costs.
>
> His custodian is hereby ordered to ship his person to the national penitentiary without delay as required by law.
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> SO ORDERED.
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> (p. 46, Rollo.)

Appellant seasonably appealed the decision to this Court assailing the trial court's pronouncement on the following grounds:

I. THE COURT *A QUO* GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE UNBELIEVABLE AND INCREDIBLE TESTIMONY OF NOVELIZA RADAZA.

II. THE COURT *A QUO* ERRED IN FINDING THAT THE GUILT OF APPELLANT FOR THE CRIME CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT.