

FIRST DIVISION

[CA-G.R. CR-H.C. No. 05963, September 03, 2014]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MARCIANO ROXAS Y ELARMO AND LEXTER CASTILLO Y LOPEZ,
ACCUSED-APPELLANTS.**

DECISION

BRUSELAS, JR. J.:

Brought to us for review is a *Decision*^[1] and *Order*^[2] that found the accused-appellants, Marciano Roxas y Elarmo ("Roxas") and Lexter Castillo y Lopez ("Castillo") guilty beyond reasonable doubt of rape, the dispositive portions of which read as follows:

"ACCORDINGLY, in view of the foregoing, judgment is hereby rendered as follows:

1. In Criminal Case No. this Court finds the accused MARCIANO ROXAS y ELARMO and LEXTER CASTILLO y LOPEZ GUILTY beyond reasonable doubt as principals of the crime of RAPE, and in default of any modifying circumstances attendant, hereby sentences him to suffer the penalty of RECLUSION PERPETUA, together with the accessory penalties provided by law, and with credit for preventive imprisonment undergone, if any, to pay the private complainant the amount of P 50,000.00 as civil indemnity, P 50,000.00 as exemplary damages, and P 50,000.00 as moral damages, and to pay the costs;

2. In Criminal Case No. this Court finds the accused MARCIANO ROXAS y ELARMO and LEXTER CASTILLO y LOPEZ GUILTY beyond reasonable doubt as principals of the crime of RAPE, and in default of any modifying circumstances attendant, hereby sentences him to suffer the penalty of RECLUSION PERPETUA, together with the accessory penalties provided by law, and with credit for preventive imprisonment undergone, if any, to pay the private complainant the amount of P 50,000.00 as civil indemnity, P 50,000.00 as exemplary damages, and P 50,000.00 as moral damages, and to pay the costs.

SO ORDERED."^[3]

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"Finding no cogent or sufficient reason to reverse or modify this Court's Decision dated January 25, 2011, the Motion for Reconsideration filed by counsel for the accused is hereby DENIED.

SO ORDERED.”^[4]

Appellants Lopez and Castillo were charged with the crime of rape via two (2) separate pieces of Information, the accusory portions of which state:

Criminal Case No. 05-8055

“That on or about April 22, 2005, at around 9:00 o'clock in the morning, more or less, at Sitio XXX, Barangay XXX^[5] Municipality of Puerto Galera, Province of Oriental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, motivated by lust, lewd and unchaste desire, and by means of force, violence, threats and intimidation, conspiring, confederating and mutually helping one another, did then and there willfully, unlawfully and feloniously have carnal knowledge of AAA,^[6] a girl sixteen (16) years of age, against the will and without the consent of said private complainant, thereby violating her person and chastity, acts of sexual abuse which debase, degrade and demean the intrinsic worth and dignity of the said AAA as a child and as a human being, to her damage and prejudice.

CONTRARY TO LAW.”^[7]

Criminal Case No. CR 05-8056

“That on or about April 22, 2005, at around 9:00 o'clock in the morning, more or less, at Sitio XXX, Barangay XXX, Municipality of Puerto Galera, Province of Oriental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, motivated by lust, lewd and unchaste desire, and by means of force, violence, threats and intimidation, conspiring, confederating and mutually helping one another, did then and there willfully, unlawfully and feloniously have carnal knowledge of AAA, a girl sixteen (16) years of age, against the will and without the consent of said private complainant, thereby violating her person and chastity, acts of sexual abuse which debase, degrade and demean the intrinsic worth and dignity of the said AAA as a child and as a human being, to her damage and prejudice.

CONTRARY TO LAW.”^[8]

During the arraignment, both Roxas and Castillo pleaded “*Not Guilty*” to the charges against them. A joint trial on the merits thereafter ensued.

The prosecution presented the following witnesses: 1) Medical Officer Dr. Rosse Villaruel (“*Dr. Villaruel*”); 2) the victim, “AAA”; and 3) the mother of the victim, “BBB”. Likewise offered were the following documentary evidence: 1) Sworn Statement of AAA; 2) National Statistics Office (NSO) authenticated copy of birth certificate of AAA; 3) Medical Certificate of AAA; 4) Sworn Statement of BBB; and 5) Letter of Ramon Tulfo to the Puerto Galera Municipal Police Station.

The defense, on the other hand, presented the following witnesses: (1) Accused-appellant Castillo; (2) Accused-appellant Roxas; and (3) Retired Police Officer Kimye

Kong ("Police Officer Kong"). They also offered the 2nd Paragraph of the *Sinumpaang Salaysay* dated April 26, 2005 executed by BBB.^[9]

The facts, as found by the trial court, are as follows:

"Version of the Prosecution

Dr. Rosse C. Villaruel, Medical Officer V of the Puerto Galera Municipal Hospital, testified that he examined AAA on April 22, 2005. According to the doctor, the private complainant told him that she was raped by the accused and that during the course of the incident, the accused also inflicted physical injuries on different parts of her body. After examining the victim, the doctor found out that she sustained the following injuries: contusion on the pit of her stomach area, shallow puncture wounds on the lateral angle right eye and wounds on the back and thighs. As per vaginal examination of the victim, the doctor reported that her introitus was tender to touch, there was shallow abrasion between the labia majora and minora and the hymen was no longer intact. However, no discharge was noted by the doctor as the victim had already taken a bath at the time of her medical examination.

The victim testified that on April 22, 2005, at around 9:00 o'clock in the morning while she was waiting for a tricycle along the highway of Poblacion, Puerto Galera, on her way to work at the Buddy Bar and Restaurant in White Beach, accused Roxas who was then driving a tricycle, and accused Castillo who was then riding at the motorcycle's back, stopped in front of her and offered her a ride. According to the victim, accused Roxas told her that they were also bound to White Beach at that time. Thinking that it was a passenger tricycle anyway, the victim boarded the vehicle. However, when they were already at Barangay Sto. Niño, three (3) male persons flagged down the tricycle. The said three (3) male persons approached and talked to accused Roxas. But the victim failed to overhear what their conversation was all about. After a while though, one (1) of the three (3) male persons approached her and told her that he would just get something from the tricycle's tool box. As the said person stooped down as if to get something from the tool box, the said person suddenly hit her with a fistic blow which landed on her stomach. She felt sharp pain and before she could make a move, the three (3) unidentified persons hurriedly covered her mouth with a handkerchief which made her very dizzy to the point that she became unconscious. When the victim regained consciousness, she realized that she was already being carried by the two accused going to an abandoned beach resort at Sitio Boquete. She remembered the beach resort to be grassy but with an unused swimming pool and an old comfort room. Realizing that her life was already in great danger, she struggled to free herself from the accused. However, accused Roxas was able to overpower her and she was again hit in the stomach. The blow made her so weak that she nearly fainted. Seconds later, she was laid down on the grass by the two. There, accused Roxas took out *shabu* and an aluminum foil from his pocket. The two accused then sniffed *shabu* and even ordered her to do the same. Since she refused to sniff *shabu*, the accused again delivered a blow on her body. With her refusal, accused Castillo then

poked a knife at her and threatened to kill her if she would not sniff *shabu* with them. Despite this threat, the victim remained steadfast and refused to give in to the demands of the accused. This apparently irked accused Roxas who hit her on her right waist. Thereafter, accused Castillo found a broken glass nearby and since she still refused to sniff *shabu*, said accused slightly slashed the right side of her forehead.

After the two accused finished their pot session, they then dragged the victim inside the old comfort room. Accused Castillo then hit her again several times and afterwards removed her shorts and panty. With her private parts already exposed, said accused forcibly inserted his penis into her vagina. After ejaculating, said accused pulled out his penis from the victim's vagina. Apparently, still unsatisfied, said accused then *fingered* her vagina for a while. Afterwards, accused Roxas entered the comfort room while accused Castillo exited. Accused Roxas also forcibly inserted his penis into the vagina of the victim, and after ejaculating also inserted his finger inside her private part. Accused Roxas then brought the victim out of the comfort room. Outside, she saw accused Castillo waiting and already holding a dried coconut frond. Accused Roxas pushed her to the ground while accused Castillo started hitting her with the dried coconut frond. Fortunately, they heard a noise that seemed to be heading towards their direction. This alarmed the accused, who immediately scampered away leaving her lying on the ground. She felt so weak and helpless to stand up and remained lying on the ground for sometime. After the victim was able to regain some of her energy, she managed to stand up and walk towards the highway. However, when the victim reached the highway, she again saw the two accused at the junction standing by their tricycle. Upon seeing her, accused Castillo immediately approached her and poked a knife at her. The victim was pulled towards the tricycle where she was again boarded. The two accused then drove towards White Beach where she was left. Still feeling dizzy, the victim then decided to proceed to her place of work where she related to her co-workers the unfortunate incident that befell that morning. As she was advised by her co-workers to report the incident to the police, she went to the police station together with her parents. But to her dismay, she was not given proper attention as the police officers were then playing *tong-its*. With the help of her father's brother-in-law, who happened to be a police officer, the two (2) accused were arrested, but after three (3) days of detention, they were also released. Her case seemed to be at the losing point during the time and out of desperation, she decided to seek help from the famous radio commentator Ramon Tulfo who gave her an endorsement addressed to the Police of the Puerto Galera Municipal Police Station. It was only when her statement was taken by the investigator.

BBB, mother of the victim, testified that on April 22, 2005 at around 3:00 o'clock in the afternoon, the victim arrived in their house and narrated what had happened to her. According to the witness, the victim told her that she had already reported the incident to the police, who advised her to go to a doctor and have herself medically examined. Without wasting any time, she accompanied the victim to Dr. Villaruel for medical examination, as required by the police. After the examination, they

brought the medical certificate to the police station. However, the policemen at the station did not pay them much attention, which made them decide to go to Manila and seek the assistance of radio commentator Ramon Tulfo. Their travel proved not to be in vain, as the said Ramon Tulfo wrote an endorsement letter addressed to the Chief of Police of Puerto Galera Municipal Police Station regarding their predicament. With the endorsement letter, the Chief of Police immediately acted on the complaint and had the two accused incarcerated.

Version of the accused

Accused Lexter Castillo y Lopez denied that he raped the victim as alleged in the Information. The accused testified that on April 22, 2005, at around 9:00 o'clock in the morning, he was driving the tricycle owned by his co-accused Roxas, who was riding in tandem with him. While they were driving along the highway, they chanced upon the victim, who seemed to be waiting for a ride. The victim flagged down their tricycle and requested the accused to drive her to Buddy's Bar and Restaurant at White Beach. Since he was also *en route* to White Beach, and considering that the victim was his former schoolmate in high school, he allowed her to board the tricycle. However, when they reached the boundary of Balatero and Sto. Niño, the victim asked him to stop the tricycle. The victim talked to him and his co-accused Roxas and asked them if they could lend her P 3,000.00. The victim explained to them that if they could lend her the money, she would be able to account to her boss for the P 3,000.00 she was able to spend during the drinking spree the other night. When they told the victim that they do not have money, the victim then requested them to bring her instead to the beach in Sitio Boquete. Upon arrival at the beach, the victim pleaded that they (the witness and accused Roxas) inflict physical injuries on different parts of her body to make her boss believe that she was victimized by robbers and that the P 3,000.00 entrusted to her was carted away. According to the accused, they were hesitant to accede to the request of the victim but due to the insistent pleas of the latter, they eventually agreed to "injure" the victim. The accused admitted that he caused some slight scratches on the thigh of the private complainant. Afterwards, they then brought the victim to White Beach.

Accused Marciano Roxas mainly corroborated the testimony given by his co-accused Lexter Castillo y Lopez but emphasized that it was only the latter who inflicted physical injuries on the victim. The accused testified that they brought the victim to Boquete beach where the latter and accused Castillo talked. He learned that the victim was asking accused Castillo to inflict on her some injuries to make it appear that she was robbed as the money entrusted to her by her boss was spent on a drinking spree just the other night. After accused Castillo caused injury to the victim by means of a piece of broken glass, they brought the latter to White Beach as requested. The accused insisted that they did not rape the accused and after they brought to White Beach, they already left.

Retired Police Officer Kimye Kong ("*Police Officer Kong*") testified that on