

THIRD DIVISION

[G.R. No. 228223, June 10, 2019]

ROEL PENDOY Y POSADAS, PETITIONER, VS. HON. COURT OF APPEALS (18TH DIVISION) - CEBU CITY; THE HON. DIONISIO CALIBO, JR., PRESIDING JUDGE OF BRANCH 50, REGIONAL TRIAL COURT OF LOAY, BOHOL; AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

DECISION

PERALTA, J.:

Petitioner Roel Pendoy y Posadas (*Pendoy*) seeks to reverse and set aside the June 24, 2016 Decision^[1] of the Court of Appeals (CA) in CA-G.R. CEB CR No. 02486 finding him guilty beyond reasonable doubt of the crimes of simple rape and rape by sexual assault committed against AAA^[2] via a petition for *certiorari* and prohibition with prayer for the issuance of a writ of preliminary injunction and/or temporary restraining order to enjoin said appellate court from enforcing the assailed judgment.

The Facts

Pendoy was indicted for the crime of Rape in an Information^[3] dated April 7, 2006, filed before the Regional Trial Court, [REDACTED], Bohol (*RTC*) on May 9, 2006 and docketed therein as Criminal Case No. 1089. The accusatory portion of the said Information states:

That on or about the 24th day of January 2006, in the Municipality of [REDACTED], Province of [REDACTED], Philippines, acting as a Family Court, the above-named accused, with lewd design and with the use of force or intimidation, did then and there willfully, unlawfully and feloniously made one AAA, a sixteen (16)-year-old minor (born on December 11, 1989), lie down on the kitchen floor and remove her panty and insert his finger into her vagina and, thereafter, place himself on top of her and insert his erect penis into her vagina, thereby succeeding in having carnal knowledge with the said victim without her consent and against her will; to the damage and prejudice of the said offended party.

Acts committed contrary to the provisions of Article 266-A(1) of the Revised Penal Code, as amended.

Upon arraignment, Pendoy pleaded not guilty to the charge. After pre-trial was terminated, trial on the merits followed.

Evidence for the prosecution tends to show that AAA was the househelp of petitioner Pendoy, his wife and three children. On January 24, 2006 at about 6 o'clock in the

evening, AAA was washing clothes near the kitchen inside the house of the Pendoy s, wearing a black shirt and green maong shorts. The area was lighted with a yellow bulb. When AAA turned her back, she saw petitioner turn off the light. Petitioner then pulled her down, forced her and made her lie on the floor. He lowered her underwear and her shorts. He also removed her shirt and unhooked her brassiere. AAA pleaded for petitioner to desist from what he was doing by saying, "*Don't Kuya*." Petitioner did not heed her plea and instead kissed her on the cheeks, her lips, neck, and her breast. Pendoy inserted his finger into her vagina. Thereafter, he mounted her and inserted his penis into her vagina.

AAA was crying throughout this ordeal and she was not able to move as petitioner was holding her hands down. She was afraid of petitioner since prior to this incident, she heard from a neighbor that petitioner had killed someone in the past. Petitioner withdrew his penis from AAA's vagina and something came out from his penis. Petitioner went out of the house after committing the dastardly act.

Later, AAA's textmate called her up and inquired from her why she was crying. She eventually told him what petitioner had done to her. She asked her textmate to call her sister and report to her what had happened. Her sister, who was residing in [REDACTED], then informed their cousin, a certain Wewart Buslon, who was the one who contacted the police in [REDACTED].

The police arrived at the house of the Pendoy s and brought AAA to the police station of [REDACTED] where she executed an affidavit. She was then 16 years old as she was born on December 11, 1989. On the following day, AAA was examined by Dr. Nonaluz Pizarra s (*Dr. Pizarra s*) of the Governor Celestino Gallares Memorial Hospital. Dr. Pizarra s found that there was a trauma or injury on the genitalia of AAA which may have been caused by probable sexual abuse.

Pendoy vehemently denied the charge against him and claimed that he was not in his house at the time the alleged crime was committed. The evidence for the defense shows that on January 24, 2006 at 8 o'clock in the morning, Pendoy, a tour guide, left his house and went to Panglao Island Nature Resort (*PINR*), in Panglao Island, Bohol to fetch the guests of his employer, the Baclayon Travel and Tours. He took the guests to some scenic spots in Bohol. While touring the guests, Pendoy met his tour guide colleague, Norlyn Palban, who reminded him of the meeting of their tour guide association at the house of Janice Talip in Lindaville Subdivision, Tagbilaran City around 7 o'clock in the evening of that day.

When the tour was over, Pendoy brought the guests back to *PINR* at almost 6 o'clock in the evening. After a brief talk with the guests and sharing his tip with the driver, Pendoy proceeded to Lindaville Subdivision for the meeting of the tour guide association. However, as he wanted to have the chain of his motorcycle fixed and the tire aligned, Pendoy decided to stop by at the house of a certain Pablito Maestrado. It took Pablito about 20 to 30 minutes to finish the repair job. He arrived at Lindaville Subdivision at past 7:00 in the evening. He left the meeting at 8:30 in the evening and proceeded to the house of his half-brother, Fernando Tero, at La Paz, Cortes, Bohol to join his wife and children there. He arrived at his half-brother's house at around 9 o'clock in evening and left at 10:30 in the evening with his wife, on board his motorcycle, while their children boarded the van of their neighbor.

They arrived at their house in San Isidro, Baclayon, Bohol at around 11 o'clock in

the evening. Pendoy found it odd that AAA suddenly asked him the exact location of their house shortly after their arrival. He also noticed that AAA's bag was already packed up and placed under a table. Few minutes later, policemen arrived at his house together with AAA's uncle. Pendoy confronted AAA and asked her what the problem was, but AAA merely told him that she only wanted to go home. Confused about what was happening, he asked the policemen why they had to fetch AAA, and they answered that AAA was reportedly raped by him at 6 o'clock in the evening of that day. This came as a surprise to him because he was not in his house the whole day. The police also told him that maybe AAA just wanted to go home.

The RTC Ruling

In its December 11, 2014 Decision,^[4] the RTC convicted Pendoy of the crime of Qualified Seduction, the dispositive portion of which reads:

Wherefore, premises considered, the court hereby finds accused guilty beyond reasonable doubt of qualified seduction. Accordingly, the accused is hereby sentenced to an indeterminate penalty of six months of *Arresto Mayor* to four years and two months of *Prision Correccional Medium*. He is further ordered to indemnify the victim the amount of P20,000 in moral damages and P20,000 in exemplary damages.

SO ORDERED.^[5]

The RTC ratiocinated that while it is morally convinced that the penis of Pendoy at least touched the pudenda of AAA, there is, however, no showing that accused employed force, violence or intimidation in the commission of the sexual molestation and, hence, Pendoy cannot be held criminally liable for rape. The RTC, however, ruled that Pendoy is guilty of qualified seduction committed against AAA, who was then sixteen years old and under his custody at the time of the perpetration of the said crime.

Not in conformity, Pendoy appealed the December 11, 2014 RTC Decision before the CA.

In his Appellant's Brief, Pendoy argued that his conviction of the crime of qualified seduction was erroneous because the recital of facts in the Information does not constitute said crime. He claimed that he is entitled to an acquittal inasmuch as his conviction violated his constitutional right to due process, particularly his right to be informed of the nature and cause of the accusation against him.

The OSG, in the Appellee's Brief, concurred with Pendoy's observation and conceded that the RTC wrongly convicted him of qualified seduction. It, however, submitted that Pendoy should be held criminally liable for rape and for rape by sexual assault contending that the elements of these two crimes were sufficiently alleged in the Information and were duly proven during trial. According to the OSG, although these two offenses were charged in the same criminal information that would have merited its quashal, the defect was never objected to by Pendoy before trial and, thus, he can be convicted of both offenses which were adequately alleged in the Information and established by the prosecution evidence.

The CA Ruling

On June 24, 2016, the CA rendered its assailed Decision setting aside the December 11, 2014 Decision of the RTC and convicted Pendoy of simple rape and rape by sexual assault, the *fallo* of which reads:

WHEREFORE, the appeal is DENIED for reasons aforesated, the Decision of the Regional Trial Court, [REDACTED], in Criminal Case No. 1089, is hereby SET ASIDE. Roel Pendoy y Posadas is found guilty beyond reasonable doubt of simple rape and is sentenced to suffer the penalty of *reclusion perpetua*; and rape by sexual assault and is sentenced to suffer the penalty of six (6) years of *prision correccional*, as minimum, to twelve (12) years of *prision mayor*, as maximum. Accordingly, Roel Pendoy y Posadas is ordered to pay [AAA] civil indemnity of Fifty Thousand Pesos (P50,000.00) and moral damages of Fifty Thousand Pesos (P50,000.00) for the crime of simple rape and another civil indemnity of Thirty Thousand Pesos (P30,000.00) and moral damages of Thirty Thousand Pesos (P30,000.00) for the crime of rape by sexual assault, with six percent (6%) interest from finality of judgment until fully satisfied.

In view of the foregoing, We,

- (1) Order the bonding company concerned to surrender Roel Pendoy y Posadas to the Regional Trial Court, [REDACTED], for the implementation of this decision, within ten (10) days from notice, and to report to this court the fact thereof, within ten (10) days from notice of such fact; and
- (2) In case of non-compliance by the bonding company, DIRECT the Regional Trial Court, [REDACTED],
 - (i) to cancel the bond posted for the provisional liberty of Roel Pendoy y Posadas and to require the bonding company to explain its failure to surrender Roel Pendoy y Posadas;
 - (ii) to order the arrest of Roel Pendoy y Posadas for the immediate implementation of this decision; and
 - (iii) to report to this court the action taken hereon, within ten (10) days from notice.

SO ORDERED. ^[6]

Citing *People v. Patosa*,^[7] the CA held that since Pendoy is definitely charged with rape, he cannot be convicted of qualified seduction because the charge of rape does not include qualified seduction. After reviewing and examining the records of Criminal Case No. 1089, the CA declared that all the elements of simple rape and rape by sexual assault were duly alleged in the Information and were satisfactorily established by the prosecution through the testimony of AAA. The appellate court rejected Pendoy's twin defenses of denial and alibi holding that the same were not substantiated by clear and competent evidence, and not at all persuasive when pitted against the positive and convincing identification by AAA.

Pendoy filed a motion for reconsideration, but the same was denied by the CA in its October 27, 2016 Resolution.^[8]

The Issue

Unfazed, Pendoy filed the present petition and raises the following sole issue:

The assailed Decision dated 24 June 2016 as well as the assailed Resolution dated 27 October 2016 both issued by first public respondent Honorable Court of Appeals were, with all due deference to all concerned, both issued with grave abuse of discretion amounting to lack or excess of jurisdiction because the conclusions of law drawn therefrom vis-a-vis the facts clearly established therein are gravely erroneous. x x x.^[9]

Essentially, petitioner claims that the prosecution evidence failed to overcome his constitutional presumption of innocence. He maintains that the prosecution failed to establish that force, threat or intimidation was exerted upon AAA in the alleged commission of the sexual congress with the latter, and this is also in consonance with the findings of the RTC. Pendoy argues that the CA erred in giving credence to the testimony of AAA which he alleged to have been riddled with inconsistencies and improbabilities tending to cast serious doubt on the veracity of her charge. Petitioner points out that AAA's actuations were inconsistent to that of one who had just been raped as AAA was seen happy, jovial and kept on sending text messages right after the alleged incident of felonious coitus.

Pendoy submits that even assuming that he had sexual intercourse with AAA, a reading of the latter's narration of the events leading to the alleged rape would reveal that the coitus was committed with her acquiescence because: (1) she did not offer even a small amount of resistance to the sexual advances; and (2) she did not shout for help or try to escape from the perpetrator despite the opportunity to do so. Lastly, he asserts that his alibi assumes importance in view of the alleged weakness of the evidence for the prosecution.

In its Comment, respondent People of the Philippines, through the OSG, asserts that the appeal of the December 11, 2014 Decision of the RTC threw the entire records of Criminal Case No. 1089 open for review. Respondent maintains that Pendoy can be properly convicted of as many offenses as were charged and proven. According to the respondent, the April 7, 2006 Information contains the averments that Pendoy had committed acts punishable under paragraphs 1 and 2, Article 266-A of the Revised Penal Code (*RPC*). It claims that the elements for both rape and sexual assault were adequately proven through the credible, consistent and forthright testimony of AAA, which was corroborated by the medico-legal report issued by Dr. Pizarra. Respondent prays that the June 24, 2016 Decision of the CA be affirmed *in toto*.

The Court's Ruling

We sustain the conviction of Pendoy. The appeal is devoid of merit.

Preliminarily, the Court finds that Pendoy's resort to the special civil action for *Certiorari* under Rule 65, in his quest to reverse and set aside the assailed June 24, 2016 Decision and the October 27, 2016 Resolution of the CA, is erroneous. Pendoy