

## SECOND DIVISION

[ G.R. No. 222180, November 22, 2017 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ELEUTERIO BRAGAT, ACCUSED-APPELLANT,**

**JUNDIE BALVEZ AND TWO (2) JOHN DOES, ACCUSED.**

### R E S O L U T I O N

**CARPIO, J.:**

#### The Case

This is an appeal from the 12 August 2015 Decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. CEB CR-H.C. No. 01433 which affirmed with modification the 19 January 2012 Decision<sup>[2]</sup> of the Regional Trial Court (RTC) of Toledo City, Cebu, Branch 29.

#### The Charge

Criminal Case No. TCS-5344, entitled *People of the Philippines v. Eleuterio Bragat, Jundie Balvez, and Two (2) John Does*, was filed against Eleuterio Bragat (appellant) for the special complex crime of robbery with rape under Article 294 of the Revised Penal Code, as amended, alleged to have been committed as follows:

That on the 9<sup>th</sup> day of February, 2005 at 7:00 in the evening, more or less, xxx, Province of Cebu, Philippines and within the jurisdiction of this Honorable Court, accused Eleuterio Bragat and Jundie Balves and their two (2) other companions herein designated as "John Does" who are still at-large and whose real names are yet to be ascertained, armed with firearms and a bladed weapon, with intent [to] gain, conspiring, confederating and mutually helping one another, and by means of violence against and force and intimidation upon persons, did then and there willfully, unlawfully and feloniously enter the house of SPOUSES AAA and BBB<sup>[3]</sup> inhabited by them with their children and thereafter take, steal and carry away their money in the amount of [P]600.00 and a pair of earrings worth P3,000.00, to the damage and prejudice of said spouses in the total amount of THREE THOUSAND SIX HUNDRED ([P]3,600.00) PESOS; That by reason or on the occasion of said robbery, accused ELEUTERIO BRAGAT, moved by lewd design and by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with AAA, against her will.

CONTRARY TO LAW.<sup>[4]</sup>

Only appellant was arraigned on 26 January 2006 and he pleaded not guilty. Jundie Balvez was initially detained but escaped from the Tabuelan Municipal Jail in March 2005. He still remains at large up to this day.<sup>[5]</sup>

### **Version of the Facts of the Prosecution**

On 9 February 2005, at around 7:00 in the evening, spouses AAA (wife) and BBB (husband) were in their house with their 10-month-old child when someone called from outside, "[B], we are thirsty. Will you please give us water?"<sup>[6]</sup> B is BBB's nickname.

BBB recognized that the caller was Jundie Balvez, a classmate of their child and someone who would usually drop by their house. AAA signalled to BBB not to open the door. When the spouses went to the kitchen to lock their door, four armed and masked men had already barged into their kitchen. The four armed and masked men, consisting of appellant and three other companions, hogtied the spouses with nylon rope and asked them where they kept their money. When BBB told them they had no money, appellant and his companions beat him up and pointed a gun to his head. Two men brought BBB to the spouses' bedroom' and proceeded to ransack their house. Appellant brought AAA to the back of the kitchen and directed one of his companions to watch over the 10-month-old baby.

At the back of the kitchen, appellant told AAA to lie on her side. Appellant took off AAA's shorts and underwear, and unbuttoned his own pants. He laid on top of her. When AAA tried to resist and told him that she had menstruation, appellant pointed a gun at her and threatened to kill her, her husband, and their child if she did not give in. Appellant removed his bonnet, kissed AAA and had sexual intercourse with her.

After appellant was done raping AAA, he brought AAA to the bedroom where BBB and the other men were because BBB refused to cooperate and tell them where they kept their money.

When AAA told appellant and his companions that they did not keep their money in the bedroom, the spouses were brought to the kitchen. AAA pointed to a small box in their kitchen where they kept all their money amounting to Six Hundred (P600.00) Pesos. When appellant and his companions demanded for more, AAA also gave them the only piece of jewelry she had, a small pair of gold earrings worth Three Thousand (P3,000.00) Pesos.

AAA testified that after appellant and his companions took the money and her earrings, they left. On the other hand, BBB testified that after appellant and his companions took their money and the earrings, they brought the spouses back to the bedroom and searched their things one last time before leaving.

On 10 February 2005, at 4:00 in the morning, the spouses went to the barangay captain and informed him about the incident.

The spouses subsequently proceeded to the Women and Children Friendly Center of the Vicente Sotto Memorial Medical Center in Cebu City to have AAA checked. Dra. Madeline Amadora (Dra. Amadora) physically examined AAA and conducted sperm identification on her. Dra. Amadora testified in the RTC that the tests yielded negative results because of three possible reasons: (a) studies show that only 30% of sperm identification is positive within 24 hours because of the patient's post-sexual activities like washing the genitalia, urinating or bathing; (b) there was no penetration and/or ejaculation; and (c) AAA had menstruation when she was raped by appellant. A Medical Certificate which she and Dra. Michelle Ann Dy, an OB-Gyne resident, had signed was presented to the RTC as Exhibit "C."

### **Version of the Facts of the Defense**

Appellant testified that he did not know his co-accused, Jundie Balvez and the spouses.

On 9 February 2005, appellant was in the house of his employer, Celestino Jojo Andales, Jr. in Poblacion, Tuburan, Cebu. His employer owns the *trisikad* appellant was driving since 2004 until he was arrested.

At around 7:00 that evening, appellant had just returned the *trisikad* to his employer's garage. After an hour of talking to his employer, appellant slept in his employer's house together with two other *trisikad* drivers, Federico Casas and Berto Bensolan. Appellant only goes home on weekends to his family in another town named Tabuelan, Cebu.

On 10 February 2005, AAA pointed to appellant while appellant was waiting for passengers. Appellant was subsequently arrested by two policemen who were not in uniform and were not armed with a warrant of arrest. The policemen brought appellant to the Tabuelan Police Station.

Appellant claims that he is innocent.

### **The Ruling of the RTC**

In its Decision dated 19 January 2012, the RTC found appellant guilty beyond reasonable doubt of the crime of robbery with rape. The dispositive portion reads:

WHEREFORE, in the light of all the foregoing, judgement is hereby rendered finding accused Eleuterio Bragat guilty beyond reasonable doubt of the crime of Robbery with Rape, and he is hereby sentenced to suffer the penalty of Reclusion Perpetua with all the accessory penalties provided by law and to indemnify private complainant, AAA joined by her husband, BBB the following amounts:

- a. Seventy-Five Thousand Pesos (P75,000.00) by way of civil indemnity;
- b. Seventy-Five Thousand Pesos (P75,000.00) by way of moral damages; and
- c. Thirty Thousand Pesos (P30,000.00) by way of exemplary damages.

Accused is also ordered to pay complainants the amount of Six Hundred Pesos (P600.00) representing the money taken and to return to complainants the pair of earrings, and if the return is already impossible, to pay complainants the value thereof which is Three Thousand Pesos (P3,000.00).

Further, all the said monetary awards shall bear interest at six percent (6%) per annum from the finality of this Decision until fully paid.

x x x x

With costs against accused.

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

### **The Ruling of the Court of Appeals**

The Court of Appeals denied the appeal of appellant. The dispositive portion of its Decision reads:

WHEREFORE, the appeal is DENIED. The Decision dated January 19, 2012 rendered by Branch 29 of the Regional Trial Court (RTC) of Toledo City finding accused-appellant Eleuterio Bragat guilty of robbery with rape is AFFIRMED with MODIFICATION. The award of civil indemnity is reduced to P50,000.00 and the award of moral damages is also reduced to P50,000.00.

SO ORDERED.<sup>[8]</sup>

Hence, this appeal.

### **The Issue**

The issue in this case is whether appellant Eleuterio Bragat is guilty of the crime of robbery with rape.