792 Phil. 837

THIRD DIVISION

[G.R. No. 218086, August 10, 2016]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CHARLIE BALISONG, ACCUSED-APPELLANT.

DECISION

PERALTA, J.:

Before the Court is an appeal from the Decision[1] dated October 17, 2014 of the Court Appeals (*CA*) in CA-G.R. CR-HC No. 06252, which affirmed the Decision[2] dated January 21, 2013 of the Regional Trial Court (*RTC*), Branch 45, Masbate City, in Criminal Case No. 14968 for rape with homicide.

The antecedent facts are as follows:

In an Information[3] dated September 5, 2011, accused-appellant Charlie Balisong was charged with the special complex crime of rape with homicide, committed by wilfully, unlawfully, and feloniously having sexual intercourse with AAA,[4] the 62-year-old mother of his common-law wife, against her will and by means of force and intimidation, and thereafter choking her to death. The accusatory portion of said Information reads:

> That on or about September 3, 2011, in the evening thereof, at Brgy. Poblacion East, Municipality of Milagros, Province of Masbate, Philippines, within the jurisdiction of this Honorable Court, the abovenamed accused, with lewd design and by means of force, and intimidation, did then and there, willfully, unlawfully, and feloniously succeed in having sexual intercourse with the herein complainant, AAA, a 62-year old woman, and thereafter choked to death the said victim, against her will.
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> CONTRARY TO LAW.[5]

Upon arraignment, appellant pleaded not guilty to the offense charged.[6] Thereafter, during trial, the prosecution presented the testimonies of BBB, the 8-year-old stepson of appellant and grandson of AAA, and Dr. Irene Grace Calucin, the Municipal Health Officer of Milagros, Masbate.[7]

BBB testified that in the evening of September 3, 2011, he and his grandmother, AAA, were sleeping in AAA's house when appellant, his stepfather, suddenly entered the house and undressed himself and AAA. AAA shouted for help but appellant did not stop and continued to choke her. When AAA became unconscious, appellant went on top of her and proceeded to rape her. Thereafter, appellant dragged her lifeless body and threw her into a nearby river. BBB was unable to shout for help because he was afraid of appellant. The following morning, he reported the incident

to his mother, DDD, and grandfather, EEE, in the presence of appellant, who denied the same.[8] Thereafter, DDD and EEE rushed to the river and found AAA's lifeless body, which was naked from the waist-up, with her lower garments below her knees.[9] That same day, they reported the incident to the Milagros Municipal Police Station of Masbate and brought the cadaver to the Office of the Municipal Health Officer where the autopsy thereon was performed.[10]

BBB's testimony was corroborated by the testimony of Dr. Calucin, who conducted the post-mortem examination on AAA's body and prepared the corresponding Necropsy Report thereon revealing the physical injuries sustained by AAA, such as abrasions on her throat, neck, breasts, arms, and legs. The report likewise identified choking and drowning as AAA's cause of death.[11]

In contrast, the defense countered by presenting the lone testimony of appellant who essentially denied the charges against him. He averred that at the time of the alleged incident, he was at his house, about five hundred (500) meters away from the house where AAA and BBB were. He claimed that he could not have committed the crime for he was in the company of his common-law wife, DDD, and his father-in-law, EEE, conversing with them until midnight. Appellant also argued that the rape charge was contradicted by the post-mortem examination which stated that there were no signs of sexual assault. Thus, even if he may be held liable for the death of AAA, the fact that the sexual assault was not proven means he can only be convicted of homicide.[12]

On January 21, 2013, the RTC found appellant guilty beyond reasonable doubt of the crime of rape and rendered its Decision, the dispositive portion of which reads:

> WHEREFORE, the prosecution having been able to prove the guilt of the accused beyond reasonable doubt of the crime of rape with homicide, a special complex crime provided under Article 266-B, paragraph 5 of the Revised Penal Code, as amended by Republic Act (R.A.) No. 8353, the accused, CHARLIE BALISONG, is hereby sentenced to suffer the penalty of RECLUSION PERPETUA. Accused is further ordered to indemnify the heirs of the victim the amount of one hundred thousand (P100,000.00) pesos as civil indemnity; fifty thousand (P50,000.00) pesos as moral damages and thirty thousand (P30,000.00) pesos as exemplary damages.
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> Costs against the accused.
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> SO ORDERED.[13]

The RTC gave credence to the fact that BBB testified in a categorical, candid, spontaneous and frank manner regarding the rape and the killing of AAA. He vividly recognized appellant, whose familiarity as his stepfather was unassailable.[14] The fact that BBB stated that appellant placed himself on top of AAA and inserted his penis inside AAA's anus does not make BBB's testimony untrue for he is not expected to distinguish an anus from a vagina, being merely eight (8) years old. In fact, the trial court found the innocent mistake to even strengthen his credibility, showing that BBB's testimony was natural and un-coached.[15] Moreover, said testimony was corroborated by the medical certificate issued as an off-shoot of the

post-mortem examination conducted by Dr. Calucin in the early morning following the rape which shows the presence of spermatozoa in the vaginal canal of AAA. Thus, while such presence is not an essential element of rape, it can be taken as corroborative evidence to prove that the victim was subjected to sexual assault or had engaged in a sexual intercourse before the examination. As to the killing of AAA, the RTC found that BBB's statement that appellant strangled AAA to death was sufficiently confirmed by the medical findings showing that AAA's neck bore marks of strangulations.

On appeal, the CA affirmed the RTC Decision finding that all the following elements of the special complex crime of rape with homicide are present herein: (1) the accused had carnal knowledge of a woman; (2) the carnal knowledge of the woman was achieved by means of force, threat or intimidation; and (3) by reason or on occasion of such carnal knowledge by mean of force, threat or intimidation, the accused killed the woman.[16] First of all, the appellate court found that BBB positively identified appellant as the person who raped his grandmother. Jurisprudence dictates that testimonies of a child are normally given full weight and credit for youth and immaturity are generally badges of truth and sincerity, especially in the absence of indubitable proof that the accused could not have committed the rape.[17] Second, the Necropsy Report reveals that the physical injuries sustained by the victim corroborates BBB's testimony that appellant was choking his grandmother to death. His testimony on how appellant entered AAA's house, undressed her, raped her, choked and later killed her was clear, categorical, straightforward, and free of any serious flaw.[18] The evidentiary value of such testimony is strengthened by the fact that there is no evidence to show any improper motive on BBB's part to falsely testify against appellant to implicate him in the commission of so heinous a crime as rape with homicide.

The appellate court added that appellant's bare denial and alibi can hardly overcome BBB's positive declaration of the identity and involvement of appellant in the crime attributed to him.[19] It noted that his contention that he was in his house conversing with his father-in-law, EEE, was actually belied by the fact that it was EEE himself who requested the police to enter the commission of the crime in the police blotter. Equally important was the fact that since appellant was merely 500 meters away from the scene of the crime, as he admitted, it was not physically impossible for him to have been at the scene of the crime at the time of its commission.

As to appellant's claim that the post-mortem examination found no trace of sexual assault on the victim, the CA held that the absence of fresh lacerations does not preclude the finding of rape, as neither hymenal rupture, vaginal laceration or genital injury is an element of rape. Citing several jurisprudential teachings, the appellate court ruled that a medical examination is merely corroborative in character and not an indispensable element for conviction in rape for what is important is that the testimony of the eyewitness about the incident be clear and credible.[20]

As for the imposable penalty of *reclusion perpetua*, the CA noted that the same should carry the qualification that appellant shall not be eligible for parole as provided for by Republic Act (RA) No. 9346, entitled "An Act Prohibiting the Imposition of the Death Penalty in the Philippines."[21] In addition, in view of prevailing jurisprudence, the award of P50,000.00 as moral damages and

P30,000.00 as exemplary damages should be increased to P75,000.00 and P50,000.00 respectively.[22]

Consequently, appellant filed a Notice of Appeal[23] on November 6, 2014. Thereafter, in a Resolution[24] dated June 22, 2015, the Court notified the parties that they may file their respective supplemental briefs, if they so desire, within thirty (30) days from notice. Both parties, however, manifested that they are adopting their respective briefs filed before the CA as their supplemental briefs, their issues and arguments having been thoroughly discussed therein. Thus, the case was deemed submitted for decision.

In his Brief, appellant assigned the following error:

I.

> THE COURT OF APPEALS ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[25]

Appellant essentially argues that he should not be convicted of the crime charged herein because of the prosecution's failure to prove the elements thereof, particularly, that he succeeded in having carnal knowledge of AAA. According to him, the findings of Dr. Calucin did not indicate the presence of any sexual assault. Thus, assuming without necessarily admitting that appellant is responsible for the death of AAA, he should only be liable for homicide, due to the fact that the sexual assault was not proven beyond reasonable doubt.[26]

We affirm appellant's conviction, with modification as to the award of damages.

The felony of rape with homicide is a special complex crime, that is, two or more crimes that the law treats as a single indivisible and unique offense for being the product of a single criminal impulse.[27] It is penalized under Articles 266-A and 266-B of the Revised Penal Code as follows:

> Art. 266-A. Rape, When and How Committed. - Rape ts committed -
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> > 1. By a man who shall have **carnal knowledge** of a woman under any of the following circumstances:
> >
> > a. Through **force, threat or intimidation**;
> >
> > b. When the offended party is deprived of reason or is otherwise unconscious;
> >
> > c. By means of fraudulent machination or grave abuse of authority;
> >
> > x x x x
>
> Article 266-B. Penalties. - Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

x x x x

When **by reason or on the occasion of the rape, homicide is committed**, the penalty shall be death.[28]

Thus, in the special complex crime of rape with homicide, the following elements must concur: (1) the appellant had carnal knowledge of a woman; (2) carnal knowledge of a woman was achieved by means of force, threat or intimidation; and (3) by reason or on occasion of such carnal knowledge by means of force, threat or intimidation, the appellant killed a woman.[29] Accordingly, the prosecution must necessarily prove each of the component offenses with the same precision that would be necessary if they were made the subject of separate complaints.[30]

In the instant case, the Court concurs with the rulings of both the trial and appellate courts in categorically finding the presence of the foregoing elements. In proving the guilt of appellant, the prosecution presented the testimonies of BBB, the 8-year-old stepson of appellant and grandson of AAA, as well as that of Dr. Calucin, the Municipal Health Officer of Milagros, Masbate who conducted the post-mortem examination on AAA's body. A plain and simple reading of BBB's testimony reveals his unquestionable certainty as to the identity of appellant as well as to the manner by which AAA was raped and killed. From a distance of a mere few feet away, BBB witnessed, with his own eyes, the event in its entirety from the moment appellant entered the house and undressed himself and AAA, to the time he choked and placed himself on top of her, up until the moment when he dragged her lifeless body out of the house to throw her into a nearby river. In fact, as aptly observed by the trial court, he unmistakably pointed at appellant, whose familiarity as his stepfather was unassailable. We quote the pertinent portion of BBB's testimony, thus:

Q. x x x In the evening of September 3, 2011, you saw (appellant) in your house with your lola?
A: Yes, sir.
Q. You saw your lola AAA naked?
A: Yes sir she was naked.
Q. Did she on her own undress or did somebody else undress her?
A: (Appellant) undressed her.
Q. When your grandmother was being undressed by (appellant), what was your lola AAA doing?
A: She was shouting for help.

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Q. While your grandmother was shouting for help, what did (appellant) do, if any?
A: He was choking my grandmother.
Q. Was (appellant) able to undress your grandmother of her panty?
A: Yes sir.

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Q. After (appellant) undressed your grandmother and she was already naked and you saw (appellant) also undressed (sic) his shirt and pants, leaving only his brief, what happened thereafter?
A: She was raped.
Q. Mr. witness, did you see (appellant) lying on top of your