

## SECOND DIVISION

[ G.R. No. 183455, October 20, 2010 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMY ATADERO, ACCUSED-APPELLANT.**

### DECISION

**MENDOZA, J.:**

This is an appeal from the January 24, 2008 Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00106, affirming the November 28, 2002 Decision<sup>[2]</sup> of the Regional Trial Court Branch 37, Dumaguete City (RTC), in Criminal Case Nos. 14247, 14248, and 14249, which convicted accused Romy Atadero of the crime of rape in Criminal Case No. 14249 but acquitted him in Criminal Case Nos. 14247 and 14248.

In Criminal Case No. 14249, the Information dated October 6, 1999, reads:

That on or about June 27, 1999 at about, 7:00 o'clock in the morning in Sitio Balastro, Barangay Casala-an, Siaton, Negros Oriental, Philippines, within the jurisdiction of this Honorable Court, the said accused entered the house of XXX<sup>[3]</sup> who was then and there alone, and by means of force and intimidation, willfully, unlawfully, and feloniously did lie, and succeeded in having carnal knowledge of said XXX.

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

During the trial, the prosecution presented two witnesses, private complainant XXX and her husband YYY. As set forth in the Appellee's Brief, the thrust of the prosecution's evidence is as follows:

Sometime in September of 1998, accused-appellant Romy Atadero, from Barangay Kakha, Sta. Catalina, Negros Oriental, visited the home of private complainant XXX and her husband YYY in Sitio Balastro, Casala-an, Siaton, Negros Oriental, to get acquainted with XXX's husband and to look for land to work on. After the initial visit, appellant went to his cousin Nory Atadero's house in the same sitio where he stayed for two (2) weeks.

After two (2) weeks, he went back to XXX's house and asked permission from her husband if he could stay with them. Sympathetic of appellant, XXX's husband allowed him to stay with them. Appellant indeed sojourned in their house from September 1998 to February 1999 until he moved to the house of Carmelita Lago in the same sitio where he

organized a farming association. He still visited and even fetched XXX's husband to plow his farm.

On June 27, 1999, at 7:00 in the morning, XXX was caring for her one and a half (1½) year old child in her house when appellant arrived. Appellant immediately went up the house as he looked for XXX's husband. In reply, XXX told appellant that her husband went to Siaton Public Market in Siaton, Negros Oriental to sell eggplants. Upon learning that her husband was not around, he lay down on the floor of the room. XXX, for her part, went inside the room and rocked the cradle of her child.

Meanwhile, appellant closed the main door. When XXX opened the door that appellant closed, he got up, held her shoulders, and told her that he was going to kiss her. She resisted by pushing him away, but he pointed a gun at her head. As he held his gun with his left hand, he used his right hand to unzip his pants, held her left shoulder and pushed her to the floor.

In an instant, appellant removed XXX's shorts and panty, went on top of her and forcefully forced his penis into her vagina, even as she resisted by moving her body left and right. For five (5) minutes, he satisfied himself on the helpless XXX until he ejaculated seminal fluid inside her. Thereafter, he put the gun on his waist and sat down on the stairs. XXX could not do anything but cried. He stayed on for five (5) minutes, then threatened her not to tell anyone.

That same day, at 4:00 o'clock in the afternoon, XXX's husband arrived. XXX, however, was mum. She was just too afraid to disclose her defilement. Appellant's gun and the threat to her life appeared so real and imminent. Besides, appellant also made XXX believe that he was an NPA Commander and that his brothers were NPA members.

XXX also narrated two (2) other instances of sexual assault, one - on June 29, 1999 and the other - on July 4, 1999. As appellant was acquitted on these two (2) charges, the facts relating thereto become irrelevant in this appeal.

At any rate, XXX eventually told her husband of the incident of July 4, 1999. It appears that at 2:00 o'clock in the afternoon of said date, XXX's husband came home and saw her crying. It was then that she gathered enough courage to disclose the humiliation and ordeal she had undergone, that she was mauled and raped by appellant early that morning and several times days before.<sup>[5]</sup>

The defense presented as witnesses in this case, accused Romy Atadero, Bienvenido Valiente (*Valiente*) and Ronnie Climaco (*Climaco*).

The accused interposed the defense of alibi and advanced the theory that the XXX and YYY imputed such a crime on him because he was the president of a rival farmer's association.

The accused testified that in the early morning of June 27, 1999 when the rape was allegedly committed, he was having breakfast in the house of Leopoldo Lago in Sitio Balastro, Casala-an, Siaton. After eating, he waited for the other members of Casala-an Independent Small Farmers Association (CISFA) for a scheduled weeding/plowing activity in the Balastro area. They started working at around 7:30 o'clock in the morning and finished at about 4:00 o'clock in the afternoon. As the CISFA president, he led the activity and stayed with the group from the start up to the very end. Thus, he claimed that he had neither the time nor opportunity to go to the house of XXX and YYY that morning to rape the private complainant.

His alibi was corroborated by Valiente, a farmer residing in Apoloy, Siation and a fellow-officer of CISFA. On June 24, 1999, he went to Sitio Balastro and stayed there for three (3) days to participate in the weeding/plowing activity. He shared a room and bed with the accused in the house of Leopoldo Lago. At 6:00 o'clock in the morning of June 27, 1999, Valiente woke up and helped the accused and Leopoldo Lago prepare their breakfast. They ate at about 7:00 o'clock and thirty (30) minutes later, they sat at the porch talking and waiting for the other members of their association. When about thirty (30) members had gathered, they proceeded to the tract of land that they would weed/plow, which was about a kilometer away. Valiente testified that he was with the accused the entire time that they were working on the land. He was convinced that the accused could not have committed the rape because they were together cooking, eating, and working at the time the rape allegedly took place.

Another member of CISFA, Climaco, reinforced the testimonies of the accused and Valiente. He claimed that from 7:00 to 11:00 o'clock in the morning of June 27, 1999, he was with the accused and the other members of CISFA, weeding and plowing the land. Those who participated were made to sign an attendance list. The first person to sign was the accused, while Climaco was eighteenth (18<sup>th</sup>) on the list. He brought to the court a photocopy of the said attendance list saying that the original document was misplaced by the secretary.

On November 28, 2002, the RTC handed down the subject decision, the dispositive portion of which reads:

WHEREFORE, accused ROMY ATADERO is hereby declared GUILTY of one (1) felony of rape in Criminal Case No. 14249 and sentenced to suffer the penalty of *reclusion perpetua* and to indemnify XXX the sum of Fifty Thousand (-P-50,000.00) Pesos as moral damages, and another Fifty Thousand (-P-50,000.00) Pesos as civil indemnity. He shall, however, be credited with the full time of his preventive imprisonment in accordance with Article 29 of the Revised Penal Code, as amended by Republic Act No. 6127, if the conditions therein prescribed have been complied with.

With respect to Criminal Case Nos. 14247 and 14248, the accused is hereby ACQUITTED for failure of the prosecution to prove his guilt beyond reasonable doubt.

SO ORDERED. [6]

In reaching said determination, the RTC gave credence to the lone testimony of XXX finding it to be candid and straightforward, and rejected the defense of alibi of the accused.

On appeal, the CA affirmed in *toto* the RTC conviction in a Decision dated January 24, 2008, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, judgment is hereby rendered *DISMISSING* the appeal. The decision dated November 28, 2002, of the Regional Trial Court of Dumaguete City, Branch 37, finding the accused-appellant Romy Atadero guilty of the crime of rape and sentencing him to *reclusion perpetua* in Criminal Case No. 14249 is hereby *AFFIRMED*.

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

Dissatisfied, the accused interposes this appeal praying for the reversal of the subject decision and adopts his Appellant's Brief filed with the CA as his Supplemental Brief, with the following assignment of errors:

#### I

THE TRIAL COURT GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE INCREDIBLE TESTIMONY OF THE PRIVATE COMPLAINANT.

#### II

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME OF RAPE DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

The accused contends that the RTC failed to apply the principle that in rape cases, the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the defense, as the testimony of the private complainant was not truthful, and her story smacked of improbabilities and incredibilities. These contentions must fail.

The Court is mindful of the guiding principles it has laid down in reviewing the evidence of rape cases, namely: (1) an accusation for rape can be made with facility; while the accusation is difficult to prove, it is even more difficult for the accused, though innocent, to disprove; (2) considering that, in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense.<sup>[8]</sup>

Complementing such principles is the rule that the credibility of the victim is always

the single most important issue in a prosecution for rape.<sup>[9]</sup>

The elements of rape, relevant to this case, are defined under Article 266-A of the Revised Penal Code as follows:

- (1) That the offender had carnal knowledge of a woman; and
- (2) That such act was accomplished through force, threat or intimidation.

The private complainant's testimony proved the elements of carnal knowledge accomplished through force, threat or intimidation, to wit:

ATTY. ZERNA:

Q: After opening that door what did Romy Atadero do? I withdraw that. Then what happened next when you opened the door?

A: After I opened the door he suddenly stood up and held me.

COURT:

Q: Where did he hold you?

A: On my shoulder.

Q: What did you do when he held you on your shoulder?

A: He said: "Let me kiss you."

ATTY. ZERNA:

Q: Then what did you do?

A: I pushed him.

Q: After pushing him what did he do?

A: He pointed a gun at me.

Q: At what part of your body did he point the gun?

A: At my head.

Q: Then after that what did he do?

A: He zipped down the zipper of his pants.

Q: Then after unzipping his pants what did he do?

A: He undressed me.

Q: Did you resist? You said he undressed you, did you resist?

A: Yes.

Q: How did you resist?

A: While I resisted I pushed him.