

## THIRD DIVISION

[ G.R. No. 184791, April 16, 2009 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PEDRO NOGPO, JR. A.K.A. "TANDODOY," ACCUSED-APPELLANT.**

### D E C I S I O N

**CHICO-NAZARIO, J.:**

For Review under Rule 45 of the Revised Rules of Court is the Decision<sup>[1]</sup> dated 28 February 2008 of the Court of Appeals in CA-G.R. CR-H.C. No. 00745, entitled, *People of the Philippines v. Pedro Nogpo, Jr. a.k.a. "Tandodoy,"* affirming the Decision<sup>[2]</sup> rendered by the Regional Trial Court (RTC) of Naga City, Branch 25, in Criminal Case No. 2001-0724, finding accused-appellant guilty beyond reasonable doubt of rape under paragraph (1)(a), Article 266-A of the Revised Penal Code, as amended by Republic Act No. 8353, sentencing him to *reclusion perpetua* and ordering him to pay Fifty Thousand Pesos (P50,000.00) as civil indemnity and Fifty Thousand Pesos (P50,000.00) as moral damages and *costs de officio*.

The following are the factual antecedents:

On 20 August 2001, the Assistant Provincial Prosecutor of Camarines Sur filed rape charges against accused-appellant Pedro Nogpo, Jr. alias "Tandodoy," before the RTC of Naga City, Branch 25, in Criminal Case No. 2001-0724, under paragraph (1)(a), Article 266-A of the Revised Penal Code, as amended by Republic Act No. 8353.<sup>[3]</sup> The Information, charging accused-appellant with rape, reads:

That on or about 4:00 a.m. of March 9, 2001, in Barangay XXX, Municipality of XXX, Province of XXX, in Philippines and within the jurisdiction of this Honorable Court, the accused with lewd design, using force, threats and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of one (AAA),<sup>[4]</sup> against her will, to her damage and prejudice.<sup>[5]</sup>

On his arraignment on 15 October 2001, the Information was read to accused-appellant in *Bikol*, a dialect known to him. Duly assisted by counsel, he pleaded not guilty to the offense charged.

Pre-trial was terminated on 23 October 2001, with the parties agreeing to the following stipulations:

1. Identities of the accused and the [private complainant];
2. Presence of the accused at (XXX) on [9 March 2001];

3. The [private complainant] has six (6) minor children;
4. Existence of the medical certificate of the [private complainant];
5. The accused was arrested at Magallanes, Lopez, Quezon on 3 May 2001.<sup>[6]</sup>

The Prosecution presented six witnesses: private complainant's husband, BBB; Dr. Catherine Buban; Rolando Delloro; Cipriano Palominano, Jr.; private complainant, AAA; and Dr. Rico Nebres, for its evidence-in-chief. It also presented four witnesses on rebuttal: private complainant, AAA; private complainant's husband, BBB; Jacobo Pasilaban and another witness CCC. On the other hand, the defense presented two witnesses, Ofelia Nogpo and accused-appellant Pedro Nogpo, Jr., for its evidence-in-chief; and two witnesses on sur-rebuttal: Renato Rubio and Domingo Palino.

The prosecution's version of the events is narrated as follows:

Spouses BBB and private complainant AAA, with their six children, ages 12, 10, 7, 5, 2, and 3 mos., resided at XXX, which was approximately 30 meters away from their nearest neighbor. In order to earn a living, BBB would leave his house early every morning to drive the passenger jeepney owned by his sister-in-law plying the Naga-Pasacao route. His wife, AAA, who finished Grade 1 and who was suffering from defective hearing, was a housewife.

On 9 March 2001 at around 3:00 o'clock in the early morning, BBB left their house in order to go to Iraya to haul and transport coconuts to the Naga City Supermarket. When he left, private complainant AAA closed the door of their house and returned to sleep on a wooden bed beside her 3-month-old baby. Private complainant was awakened upon smelling a strong odor of *Ginebra San Miguel* tonic that emanated from accused-appellant, who was then seated on the bed trying to embrace her. Shocked at the events that were transpiring, she shouted for help from her husband, BBB, but accused-appellant punched her on the abdomen. After she shouted for help a second time, accused-appellant punched her again, this time hitting her breast. Accused-appellant locked her neck, mashed her thigh, and warned her not to continue making noises; otherwise she would get killed. Although private complainant tried to put up resistance, she was nevertheless subdued by accused-appellant when her strength gave way, and so he had sexual intercourse with her. At the time accused-appellant was lying on top of her, he covered her mouth because she was shouting for help. Her baby, who was only three months old at that time, was also crying loudly. After accused-appellant was through having carnal knowledge of her, he warned private complainant not to report the incident to the police authorities; otherwise he would kill all of them. He then exited through their front door and left AAA's residence. At about that time, which was already 5:00 o'clock in the morning, Rolando Delloro (Delloro), who was then fetching water at the back portion of AAA's house, saw accused-appellant at the vicinity, walking away from the house going towards the road leading to the *Barangay* Hall. AAA saw Delloro and asked his help in apprehending accused-appellant for raping her. Delloro's wife, Merly, accompanied AAA to the latter's mother-in-law, CCC, whose house was 100 meters away. Upon learning of what had happened, CCC immediately reported the incident to the *Bgy.* Captain. When BBB returned home at around 6 a.m. of the same day, AAA informed him that she was raped by accused-appellant. They then reported the incident to the police station of Pasacao, Camarines Sur, where AAA gave her statement.

Thereafter, they proceeded to the Bicol Medical Center in Naga City, where private complainant was subjected to a physical examination by Dr. Catherine Buban and Dr. Rico Nebres, who examined her private parts and issued a Medical Certificate with the following diagnosis:

(+) Tenderness left breast in palpation

(+) Hematoma left mid clavicular line 2.0 cm widest laceration is in level of sub-coastal area diameter.

Clinical Microbiological Report: stained smear shows presence of spermatozoa.<sup>[7]</sup>

Accused-appellant vehemently denied the accusations against him, with the defense presenting a counter-statement of facts.

Accused-appellant admitted having sexual congress with private complainant on 9 March 2001. He testified, however, that he and private complainant had been maintaining illicit relations from 6 June 1998 until 9 March 2001. According to him, the alleged rape imputed to him was consensual sexual intercourse between them. He alleged that on 8 March 2001 at 11:00 o'clock in the morning, he was told by private complainant to go to her house on the following day or on March 9, at around 4:00 o'clock in the early morning, because her husband BBB would be away driving a jeepney. Following private complainant's instructions, he went to her house. Upon knocking at the window of private complainant's house and after calling her name, he was allowed by her to enter. Once inside, private complainant led him to the bed and they had sex. After having sex for almost two hours, he decided to leave, fearing that private complainant's husband, BBB, might arrive. She told him to return at around lunchtime the following day. The next day, he returned to private complainant's house and they talked about their relationship. He wanted to put a stop to their relationship, because private complainant was a married woman, but she pleaded with him not to end the affair.

He further testified that he only had sex with private complainant on two occasions. The first was on 6 June 1998, when their relationship started, and the last was on 9 March 2001. Between said dates, they had no sexual intercourse but would meet twice a month.<sup>[8]</sup>

Ofelia Nogpo, a sister of accused-appellant, corroborated the latter's testimony. She testified that on 8 March 2001 at 10:00 o'clock in the morning, private complainant went to her store looking for accused-appellant. Since her brother was not around, private complainant instructed her to tell him to just go to her house. She later informed accused-appellant about private complainant's visit. Even prior to 9 March 2001, private complainant used to frequent her store looking for her brother.<sup>[9]</sup>

On sur-rebuttal, Renato Rubio, a driver, testified that accused-appellant worked as an "extra" conductor of BBB in 1996 or 1997. He had seen accused-appellant about three times riding BBB's jeepney and holding money. He likewise saw accused-appellant counting money at the terminal.

Domingo Palino, a baggage carrier, testified that accused-appellant worked as

conductor for BBB in 1996 or 1997. He used to ride BBB's jeepney whenever his *padyak* developed trouble. He had seen accused-appellant at private complainant's house in 2001 when he went to *Barangay* Odicon to collect money from his brother.

After trial on the merits, the trial court rendered judgment on 12 June 2003, finding accused-appellant guilty of rape, adjudicating as follows:

WHEREFORE, in view of all the foregoing, judgment is hereby rendered finding the accused, PEDRO NOGPO JR. alias "Tandodoy," GUILTY beyond reasonable doubt of the crime of rape and hereby sentences him to suffer the penalty of RECLUSION PERPETUA, and is ordered to pay the sum of Fifty Thousand (P50,000.00) Pesos as civil indemnity, and another Fifty Thousand (P50,000.00) Pesos as moral damages to the [private] complainant, (AAA). With costs de oficio.

Considering that the accused has been undergoing detention during the pendency of the trial of this case, the same is hereby credited in the service of his sentence.<sup>[10]</sup>

Accused-appellant filed a Notice of Appeal on 3 July 2003. Thereafter, on 28 February 2008, the Court of Appeals affirmed the RTC conviction of accused-appellant in this wise:

WHEREFORE, the appealed decision of the Regional Trial Court of Naga City, Branch 25, in Criminal Case No. 2001-0724 dated June 12, 2003 is AFFIRMED.<sup>[11]</sup>

Hence, this appeal.

Accused-appellant, in his brief, ascribes to the trial court the following errors:

I.

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

II.

THE TRIAL COURT GRAVELY ERRED IN NOT CONSIDERING THE DEFENSE INTERPOSED BY THE ACCUSED-APPELLANT.<sup>[12]</sup>

Accused-appellant claims that the trial court gravely erred in finding him guilty beyond reasonable doubt of the crime of rape.

The appeal is bereft of merit.

At the time of the rape, Republic Act No. 8353 or the Anti-Rape Law of 1997, which amended Article 335 of the Revised Penal Code and classified rape as a crime against persons, was already effective. The new provisions on rape, provided under Articles 266-A, state:

ART. 266-A. Rape; When and How Committed.- Rape is committed.

1) By a man who have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat or intimidation; x x x.

In reviewing rape cases, this Court has been guided by the following well-established principles: (a) an accusation of rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (b) due to the nature of the crime of rape where only two persons are usually involved, the testimony of the private complainant must be scrutinized with extreme caution; and (c) 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>[13]</sup>

Private complainant narrated on the witness stand how accused-appellant sexually abused her in a manner reflective of honest and unrehearsed testimony, thus:

PROS. TADEO:

May I proceed. Mrs. AAA, this is a continuation of your direct examination. We are already in the stage where you were awakened. You stated during the previous hearing that when your husband left your house to drive a passenger jeepney, you followed him and after you locked the door, you went to your bed again, were you able to sleep that early morning?

A Yes sir.

Q What awaken[ed] you in that early morning?

A I was awakened when I smelled gin.

Q What else?

A Upon smelling that gin I woke up and I saw him (witness pointing to the accused Pedro Nogpo, Jr.).

Q What was your position when you first saw him, that person whom you pointed a while ago?

A I was lying on my bed.

Q What else did the person you pointed a while go did (sic) to you?

A He was sitting besides (sic) me and tried to embrace me.

Q What else?

COURT:

Q What did Pedro Nogpo do to you in that early morning of March 9, 2001?