

FIRST DIVISION

[G.R. NO. 170474, June 16, 2006]

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ALEX CANDAZA Y CALVADORES, APPELLANT.

DECISION

YNARES-SANTIAGO, J.:

For review is the Decision^[1] of the Court of Appeals in CA-G.R. CR HC No. 00474 which affirmed *in toto* the judgment of Branch 172, Regional Trial Court, Valenzuela City in Criminal Case Nos. 676-V-00 and 677-V-00 finding appellant Alex Candaza y Calvadores guilty beyond reasonable doubt of the crimes of simple rape and acts of lasciviousness.

The prosecution's version of the antecedent facts is as follows:

At around three o'clock in the afternoon of June 18, 2000, the then 13-year old victim, Kristine Dorado, was alone sleeping in their house at No. 395 Rico Compound, Barangay Palasan, Valenzuela City, when she was awakened by somebody's presence. Upon opening her eyes, she saw her neighbor, appellant Alex Candaza, standing behind her. Kristine was about to stand up when appellant, who was drunk, held her shoulders and told her to remain lying down. Appellant then pinned Kristine down by putting both his hands around her neck. He subsequently released his right hand from Kristine's neck and removed her short pants and underwear.^[2] Kristine tried to free herself but appellant was too strong.

While warning Kristine not to report the incident to anyone, appellant removed his own short pants and briefs. He thereafter mounted the girl, inserted his penis into her vagina and lay motionless on top of her for five minutes. He also mashed her breasts and kissed her lips. Because of his relative strength, Kristine failed to ward off appellant's sexual advances.

Subsequently, Kristine asked appellant to stop, pushed him aside and stood up. Before she could leave the house, however, appellant threatened to kill her family if she would report the incident to anyone.^[3]

Kristine's sordid encounter with appellant did not prove to be the last. On August 12, 2000, she woke up at 10:30 in the evening to fix the water containers in their yard, when appellant suddenly approached her. He told Kristine not to go to sleep yet but when she refused, he held her shoulders and slapped her. Afterwards, he led her to a nearby bench, instructed her to sit down and proceeded to undress her. He subsequently kissed her on the lips, licked her vagina and mashed her breasts. Kristine tried to push appellant away but could not do so. After a while, appellant stopped.

Kristine then put on her clothes and wept. Appellant sat beside her and placed his hand on her shoulders. Again, he told Kristine not to report the incident to anyone or he would kill her family. No one saw them since the place was dark and there were no light posts around.^[4]

Six days later, Kristine's father, Arturo Dorado, Jr., looked for Kristine and found her crying in the house of her aunt, Jenny Tenorio, who lived three houses away. At that time, Kristine had already told her aunt that appellant raped her. But when Kristine could not bring herself to reveal the incidents to her father, Arturo asked a *barangay* volunteer, Rolando Hernandez, to speak to his daughter. It was then that Kristine related what appellant did to her.^[5]

Kristine was thus brought to the Philippine National Police (PNP) Women and Children Concern Office (WACCO) at Camp Crame, Quezon City where she executed a sworn written statement.^[6] She was also brought to the PNP Crime Laboratory where a medico-legal examination was conducted by Dr. Winston Tan who issued a medico-legal report^[7] dated August 18, 2000 with the following findings:

Hymen: presence of deep healed laceration at 3 o'clock position.

x x x x

Conclusion: Subject is in non-virgin state physically.

There are no external signs of application of any form of trauma.^[8]

On August 21, 2000, two separate informations for rape and acts of lasciviousness were filed against appellant before the Regional Trial Court of Valenzuela City, respectively docketed as Criminal Case Nos. 676-V-00 and 677-V-00 and raffled to Branch 172 presided by Judge Floro P. Alejo. The information in Criminal Case No. 676-V-00 alleged:

That on or about the 18th day of June 2000, in the City of Valenzuela, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, did then and there willfully, unlawfully and feloniously have sexual intercourse with one KRISTINE DORADO, 14 years old (minor).

CONTRARY TO LAW.^[9]

Meanwhile, the information in Criminal Case No. 677-V-00 stated:

That on or about the 12th day of August 2000, in the City of Valenzuela, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, did then and there willfully, unlawfully and feloniously commit act of lasciviousness, upon the person of one KRISTINE DORADO, 14 years old (minor) by licking her vagina and mashing her breast.

CONTRARY TO LAW.^[10]

Appellant interposed a negative plea to both charges^[11] after which trial on the merits ensued.

Appellant denied the criminal acts imputed to him. He averred that at the day and time that the alleged rape transpired, he was inside their house resting with his live-in partner, Melissa Abarico, and their one-year old child. He was then very tired as he had just come home from work.

On the other hand, he was in Caloocan City at the place of his employer, Engineer Hector Cornejo, at around 10:30 in the evening of August 12, 2000. He worked overtime and it was only at about 11:00 in the evening that he left his place of work.

Abarico and Cornejo corroborated appellant's alibi.^[12] Another defense witness, Renato Candazo, claimed that at the day and time of the alleged rape, he was in the house with appellant and the latter's family.^[13]

According to appellant, Kristine may have filed the cases against him because she had a crush on him and did not want him to take Abarico as his common-law wife.

Kristine allegedly showed interest in him by always approaching him and touching his head. He allegedly told Kristine to stay away from him because she was too young.^[14]

In due course, the trial court rendered judgment convicting appellant thus:

WHEREFORE, judgment is hereby rendered as follows:

1) In Crim. Case No. 676-V-00, the Court finds accused ALEX CANDAZA y CALVADORES guilty beyond reasonable doubt and as principal of the crime of rape in relation to Republic Act 7610 as defined and penalized under Article 266-A, par. 1(a) and Article 266-B, 1st par. of the Revised Penal Code, without any attending mitigating or aggravating circumstance, and hereby sentences him to reclusion perpetua. The accused is further sentenced to pay Kristine Dorado the amount of P50,000.00 as moral damages and to indemnify said complaining witness the amount of P50,000.00, both without subsidiary imprisonment in case of insolvency. Finally, the accused is sentenced to pay the costs of suit.

2) In Crim. Case No. 677-V-00, the Court finds accused ALEX CANDAZA y CALVADORES guilty beyond reasonable doubt and as principal of the crime of acts of lasciviousness as defined and penalized under Article III, par. 5(b) of Republic Act 7160 without any attending mitigating or aggravating circumstance and, applying the Indeterminate Sentence Law, hereby sentences him to suffer a penalty of TWELVE (12) YEARS and FOUR (4) MONTHS of reclusion temporal as minimum to FOURTEEN (14) YEARS EIGHT (8) MONTHS and ONE (1) DAY OF reclusion temporal as maximum. The accused is further sentenced to pay Kristine Dorado the amount of P30,000.00 as moral damages and to indemnify said complaining witness the amount of P30,000.00, both without subsidiary imprisonment in case of insolvency. Finally, the accused is sentenced to pay the costs of suit.

SO ORDERED.^[15]

In view of the penalty of *reclusion perpetua* imposed on appellant, the cases were at first directly elevated to this Court for review. Subsequently, however, these were referred to the Court of Appeals^[16] pursuant to our ruling in *People v. Mateo*.^[17]

The appellate court eventually rendered the assailed decision dated September 28, 2005, affirming the trial court *in toto*. Hence, the instant appeal.

On February 8, 2006, the Court required the parties to simultaneously submit their respective supplemental briefs if they so desire.^[18] Both parties manifested that they shall adopt their briefs filed before the appellate court in order to avoid repetition of their arguments and to expedite the resolution of the instant case.^[19] Thereafter, the case was deemed submitted for decision.

Appellant contends that he could not be convicted under the two informations which, he claims, are defective. The information in Criminal Case No. 676-V-00 did not allege "force and intimidation", which is an essential element of the crime of rape, while the information in Criminal Case No. 677-V-00 failed to allege "coercion" as an essential element of acts of lasciviousness.^[20]

In addition, appellant maintains that the prosecution failed to prove his guilt beyond reasonable doubt. He questions Kristine's credibility on the ground that her account of the events is contrary to human experience. He asserts that it would have been unnatural for him to lie motionless on top of Kristine for five minutes after he had fully penetrated the latter. Likewise, it was improbable that he would commit lascivious acts against Kristine in front of her house where her father and sisters were sleeping. Unless he was so sure that Kristine would not make any noise or summon her father, he would not dare expose himself to the danger of being caught *in flagrante delicto*.

The appeal has no merit.

In *People v. Galido*,^[21] the Court held that the failure to allege the element of force and intimidation in an information for rape is not a fatal omission that would deprive the accused of the right to be informed of the nature and cause of accusation against him. This is based on the fact that the offended party's sworn written complaint specifically charged the accused with rape through force and intimidation, which gave the latter the opportunity to readily ascertain at the outset what crime he is being charged with. In other words, although the information failed to allege this essential element, the complaint, as in this case, nonetheless stated the ultimate facts which constitute the offense; and since the complaint forms part of the records and is furnished the accused, the latter may still suitably prepare his defense and answer the criminal charges hurled against him.

We also held in *People v. Palarca*^[22] that the failure of the accused to interpose any objection to the presentation of evidence which tended to prove the element of force and intimidation constitutes a waiver of his right to be informed of the nature and cause of accusation against him. Any insufficiency in the allegations in the information should be raised prior to arraignment by filing a motion to quash,

otherwise the accused is deemed to have waived any objection on such ground.^[23]
This is consistent with the omnibus motion rule embodied in Section 9, Rule 117 of the Rules of Court.^[24]

Consequently, it is now too late for appellant to assail the sufficiency of the informations on the ground that there was failure to allege therein an essential element of the crime. An information which lacks essential allegations may still sustain a conviction when the accused fails to object to its sufficiency during the trial, and the deficiency was cured by competent evidence presented therein.^[25] In the instant case, appellant did not question the sufficiency of the informations at any time that the criminal cases were pending before the trial court. Neither did he object to the evidence of the prosecution which proved the elements of force and intimidation, as well as coercion, in the commission of the two offenses. He is thus deemed to have waived any objections against the sufficiency of the informations.

On appellant's indictment for rape through force and intimidation, the victim in this case testified as follows:

FISCAL BORNASAL:

Miss Witness on June 18, 2000 at around 3:00 o'clock in the afternoon do you recall where you were?

A I was inside our house, sir.

x x x x

Q What were you doing Miss Witness on June 18, 2000 at around 3:00 p.m.?

A I was sleeping, sir.

Q So while you were sleeping were you awoken from your sleep?

ATTY. AGUSTIN:

Leading, your Honor

FISCAL:

I am allowed to ask leading questions, your Honor.

A Yes, sir.

x x x x

Q Why were you awoken?

A Because it seems to me that there was a person at my back and then I saw the suspect, sir.

Q Who is this suspect you are referring to?

A Alex Candaza, sir.