

SECOND DIVISION

[G.R. No. 148144, April 30, 2004]

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. FLORENCIO CADAMPOG, APPELLANT.

D E C I S I O N

CALLEJO, SR., J.:

This is an appeal from the Decision^[1] of the Regional Trial Court of Malaybalay City, Branch 9, in Criminal Case No. 7823-96, finding the appellant Florencio Cadampog guilty of rape committed against complainant Prudencia Lasara,^[2] and sentencing him to suffer the penalty of *reclusion perpetua* and to pay the sum of P50,000 as moral damages and P10,000 as actual damages.

The Information filed against the appellant reads:

That on or about the 14th day of January 1996, in the afternoon, at Sitio Himaya, Barangay Kuya, Municipality of Maramag, Province of Bukidnon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused prompted by lewd design entered the house of Prudencia Lazara and once inside, did then and there, willfully, unlawfully and criminally, wrestle, kiss, remove the panty of PRUDENCIA LAZARA and accused remove also his pants and have sexual intercourse with the latter against her will, to the damage and prejudice of PRUDENCIA LAZARA in such amount as may be allowed by law.

Contrary to and in violation of Article 335 of the Revised Penal Code in relation to Republic Act No. 7659.^[3]

Upon arraignment on April 10, 1996, the appellant, with the assistance of his *counsel de oficio*, pleaded not guilty to the charge.^[4] Trial thereafter ensued.

The Case for the Prosecution^[5]

The spouses Felipe and Prudencia Lasara were farmers who lived in *Sitio* Himaya, Barangay Kuya, Municipality of Maramag, Bukidnon. Felipe was 41, while Prudencia was 33. They had four children, namely, seven-year-old Jimmymar, six-year-old Jaypee, five-year-old Gemma and one-year-old Jovilyn.^[6]

At about 12:30 p.m. on January 14, 1996, a Sunday, Felipe with his brother-in-law Paul, and his friends Berting and Dodoy, went to the neighboring Barangay Dagumbaan to attend the festivities, as it was the eve of the *fiesta*.^[7] Prudencia was left alone in the house with her young children.

At around 2:30 p.m. of the same day, Prudencia heard the voice of a man asking her two children, who were then playing downstairs, where she was. The children replied that their mother was upstairs. Momentarily, she heard footsteps going up the house. Suddenly, the person, who turned out to be the appellant Florencio Cadampog, their neighbor and her husband's friend, rushed towards her.^[8] The appellant immediately grabbed her by the arm and hooked his other arm around her neck. She maneuvered to back away but the appellant started kissing her. She wanted to shout, but relented when she noticed that the appellant had a sheathed bolo dangling at his waist. Nevertheless, she struggled and vigorously resisted his advances, to no avail. The appellant pushed her against a wall, stripped her of her panties, causing her to be thrown off-balance. Prudencia fell on a bench, astride and supinely flat on her back. The appellant then unzipped his trousers, pulled out his erect penis and inserted it into her vagina. He then made push-and-pull movements. Prudencia continued resisting the bestial assault on her. The appellant retaliated and scratched her face and neck.^[9] Prudencia managed to push the appellant away, causing him to withdraw his penis and ejaculate outside.^[10] The appellant's lust deflated when his semen splattered all over Prudencia's upper thigh.^[11] The appellant dressed himself and warned Prudencia to keep the incident to herself, otherwise, he would kill her.^[12] The appellant then left.

Prudencia immediately proceeded to the barangay secretary and the barangay captain, Mrs. Raguro. She reported the incident to them. The barangay captain told Prudencia that there would be a settlement at 2:00 p.m, but the latter did not agree. She then returned home.^[13] Back home, she hid her husband's bolo in a safe place, and thereafter, patiently waited for her husband to return.^[14]

When Felipe arrived home at around 11:00 p.m., Prudencia told him that the appellant had raped her.^[15] Felipe was so enraged that his initial reaction was to look for and kill the appellant, but he relented when he realized that he had no right to take the law into his own hands.^[16]

The following morning, January 15, 1996, Prudencia reported the incident to the police^[17] and gave a sworn statement. Dr. Venus Tagarda of the Maramag District Hospital examined her and issued a Medical Certificate with the following findings:

PROGNOSIS/FINDINGS	- Linear abrasions left zygomatic - Multiple linear abrasion to upper part of anterior chest and neck
OPERATION PERFORMED	- Introitus-multiparous
REMARKS	- Sperm identification: Vagina smear done - negative for spermatozoa slide I, slide II ^[18]

Dr. Tagarda testified that there were no traces of semen found in the offended party's vagina due to the intervening period from the date of the rape and the

physical examination. The linear abrasion located at the complainant's left cheekbone, and the multiple abrasions on her chest and neck could have been caused by sharp objects such as fingernails or other sharp instruments.^[19]

The Case for the Appellant^[20]

The accused denied the charge. He interposed the defense of alibi. He testified that he lived with his wife, Liza, and their four children in Sitio Himaya, Barangay Kuya, Municipality of Maramag, Bukidnon. They resided in a house built on a farmland owned by Constancio Paragoso, roughly 500 meters from where the spouses Felipe and Prudencia Lasara lived.^[21] On January 14, 1996, the accused, along with his wife and eldest daughter, Lady Rose, were at the farmland's grassland all day long, cutting cogon grasses to be used for Paragoso's house roofing. They started working from 7:00 a.m. until 5:00 p.m. without let up, except for a short lunch break. He chopped firewood upon returning to the house.^[22] The following day, at around 11:00 p.m., lawmen came to his house and arrested him. He was brought to the municipal jail and there he learned of the charge for the first time.^[23]

The appellant claimed that the charge was merely Prudencia's concoction because he refused to be a witness against a certain Romeo Alinas, against whom Prudencia had contemplated filing a criminal charge for rape.^[24] The appellant recalled having a meeting with the spouses Felipe and Prudencia Lasara at their place days before January 14, 1994, where Prudencia asked him to testify in her behalf. For his refusal to do so, he ended up in jail.^[25]

The appellant's wife, Liza, corroborated his story, claiming that her husband was with her and their daughter, Lady Rose, cutting cogon grasses in Paragoso's farmland the whole day of January 14, 1996. Her husband never left the place.^[26] Liza recalled that after the alleged rape, she went to Prudencia, they being close friends, and requested her to withdraw the case. Prudencia however, refused to agree unless given P80,000.^[27]

Constancio Paragoso, a septuagenarian farmer, also corroborated the appellant's alibi. He testified that he hired the accused and his wife to cut cogon grasses for the roofing of his house and paid them P1.00 per bundle. He claimed to be with them. He also vouched for the appellant, claiming that the latter was present at the cogonal area during the whole day of January 14, 1996.^[28]

On January 12, 2001, the trial court rendered a decision finding the accused guilty of rape. The dispositive portion reads:

WHEREFORE, this court, for the foregoing reasons, finds the accused guilty beyond reasonable doubt of the crime of simple rape as defined and penalized under Article 335 of the Revised Penal Code and pursuant thereto is hereby sentenced to the penalty of *reclusion perpetua* together with all the accessory penalties included thereunder and to pay the offended party the sum of P50,000.00 by way of moral damages and actual damages in the amount of P10,000.00.

By virtue of this conviction and pursuant to Section 5 of Rule 114 of [the]

2000 Rules on Criminal Procedure the accused shall continue to be under detention even if the accused should appeal this decision to the proper appellate court. However, the accused shall be entitled to the full credit for the period he is detained pursuant to Article 25 of the Revised Penal Code and subject to the restriction and limitation therein imposed.

SO ORDERED.^[29]

The accused, now the appellant, contends that:

THE TRIAL COURT ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE COMMITTED THROUGH FORCE AND INTIMIDATION WHEN THE INFORMATION WAS FATALLY DEFECTIVE.^[30]

The appellant asserts that the Information against him does not charge him of rape because it does not allege one of its elements, i.e, force or intimidation. He argues that the Information is void. Even if the prosecution was able to prove that he forced Prudencia to have sexual intercourse with him, he cannot be convicted of the crime charged; otherwise, he would be deprived of his right to be informed of the charge against him and to prepare for his defense.^[31]

The Office of the Solicitor General, for its part, contends that the Information is not defective; neither is it void. It argues that although the Information does not specifically allege that the appellant succeeded in having sexual intercourse with the victim with the use of force, threats or intimidation; nonetheless, it alleges that the appellant succeeded in having sexual intercourse with the victim after first wrestling with her and against her will, viz:

Appellant argues that the information is defective since it failed to allege that [the] appellant raped the victim with the use of force and/or intimidation (Appellant's Brief, p. 4).

Appellant's claim is bereft of merit.

Contrary to [the] appellant's claim, a perusal of the information shows that force was alleged therein.

As stated in the information "the above-named accused prompted by lewd design entered the house of Prudencia Lazara and once inside, did then and there, unlawfully and criminally wrestle, kiss, remove the panty of PRUDENCIA LAZARA and, accused remove also his pants and have sexual intercourse with the latter against her will."

An information is sufficient where it clearly states the designation of the offense by the statute and the acts or omissions complained of as constituting the offense. [Sta. Rita vs. CA, 247 SCRA 484 (1995)].

In the case at bar, the failure of the information to state that [the] appellant raped Prudencia "through force and intimidation" was not a fatal omission nor did it make the information defective since the word "wrestle" was used in lieu of the word "force".

"Force" is defined as power, violence, or constraint exerted upon or against a person. It is used to show that an unlawful or wrongful action is meant (Black's Law Dictionary, Sixth Edition, West Publishing Co., Minnesota, 1979, page 644).

"Wrestle," on the other hand, is to engage in a violent or determined purposive struggle to overcome an opposing force (Webster[']s Third New International Dictionary, Massachusetts, 1993, page 2640).

In the case at bar, although the word "force" was not used in the information, the prosecution used the word "wrestle" instead. Thus, it is respectfully submitted that the word "wrestle" synonymously connotes the use of force in the commission of the offense.

Moreover, the use of the phrase "against her will" in the information also implies that the rape was committed with force.^[32]

We agree with the Office of the Solicitor General.

The Revised Rules of Criminal Procedure re-enacted Section 6, Rule 110 of the old Rules, thus:

Sec. 6. Sufficiency of Information - A complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed.

When an offense is committed by more than one person, all of them shall be included in the complaint or information. (6a)

The Information need not use the language of the statute in stating the acts or omissions complained of as constituting the offense. What is required is that the acts or omissions complained of as constituting the offense must be stated in ordinary and concise language sufficient to enable a person of common understanding to know the offense charged. Thus, Rule 110, Section 9 of the Revised Rules of Court provides:

Sec. 9. Cause of the accusation. - The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.

In the case at bar, the appellant is charged with rape through force, threats or intimidation under Article 335, paragraph 1 of the Revised Penal Code. The *gravamen* of rape is carnal knowledge of a woman against her will or without her consent.^[33] We have reviewed the Information^[34] and found that it contains all the