

SPECIAL TWENTIETH DIVISION

[CA-G.R. CR NO. 01839, July 17, 2014]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROLDAN CARRERA, ACCUSED-APPELLANT.**

D E C I S I O N

QUIJANO-PADILLA, J.:

This an appeal from the Decision^[1] dated August 5, 2011 of the Regional Trial Court, Branch 66, Barotac Viejo, Iloilo, in Criminal Case No. 2004-2699 convicting herein accused-appellant Roldan Carrera of the crime of rape by sexual assault under Article 266-A (2) of the Revised Penal Code.

Accused-appellant Roldan Carrera ("appellant Carrera") was charged in the following information, viz:

"That on or about June 13, 2004 in the Municipality of Barotac Viejo, Province of Iloilo, Philippines and within the jurisdiction of this Honorable Court, the above-named accsed, by means of force, threat or intimidation, with lewd design, did then and there wilfully, unlawfully and feloniously commit an act of sexual assault on the victim [AAA]^[2] by inserting his finger on her vagina against her will and consent.

CONTRARY TO LAW."^[3]

When arraigned, appellant Carrera pleaded not guilty to the charge. Pre-trial was conducted and, thereafter, trial ensued.

To establish the elements of the crime as charged, the prosecution presented the testimonies of the victim AAA,^[4] AAA's mother,^[5] PO2 Rubie Hubo,^[6] and Dr. Aimee Icamina.^[7] The gist of their testimonies is summarized, thus:

In the rainy evening of June 13, 2004, at around 7:00, AAA was walking on her way home from a tailor shop. When she was about to reach their house at about ten (10) meters away, appellant Carrera suddenly came out from a dark portion of the street and waylaid AAA. Upon recognizing that it was appellant Carrera who appeared in front of her, AAA asked him whether there was any problem, and even invited him to eat supper at their house. AAA recognized appellant Carrera because the latter had worked as a carpenter when their house was constructed.^[8]

Appellant Carrera then uttered to AAA "Hipos karon, patyon ta" (Quiet! Or else I will kill you). He then grabbed AAA's arm and forcefully dragged her toward a church. When the two reached the left side part of the church, AAA being dragged there, appellant Carrera pushed AAA to the ground. She fell on the ground face down, so he immediatly pinned her by placing his knees on her back and by holding her left

arm. Appellant Carrera, then, with one hand pulled down AAA's garterized shorts and panty while she was pinned down.^[9]

While AAA was pinned down by appellant Carrera, he inserted his finger in her vagina against her will. While doing this, he also kissed AAA along her ears and her face. AAA struggled, but appellant Carrera overpowered her. She tried to kick and box him but because of her position, she was unable to reach him. She shouted for help, but the heavy rains drowned her voice.^[10]

AAA continued struggling and crawling, and when appellant Carrera loosened his hold on her arm, she was able to move both her hands and was able to break free.^[11] Upon this chance, AAA ran toward their house half naked, without any underwear.^[12]

When AAA arrived home, her mother was shocked when she saw her daughter without any underwear, with blood on her legs and mud all over her body. So, AAA's mother lost no time to go to the nearby police station, and there she reported the incident.^[13]

AAA submitted herself for medical examination the following day. Dr. Aimee Icamina found fresh and complete hymenal laceration in AAA's genitalia, and she issued a Medico-Legal certificate^[14] stating:

“Physical Findings:

External Genitalia

(+) fresh complete hymenal lacerations at 3 & 7 o'clock position;

(+) fresh laceration fourchette.

Impression: Disclosure of sexual abuse. Medical evaluation shows definite evidence of abuse or sexual contact.”^[15]

For his defense, appellant Carrera presented himself as witness^[16] corroborated by the testimonies of Ananias Balleras,^[17] Jovan Cartagena,^[18] and Nancy Vistal.^[19] The version of their defense mainly centered on alibi and denial.

According to appellant Carrera, he was at Brgy. Sto. Tomas Barotac Viejo, Iloilo, the place where he was residing at the time of the commission of the crime. He narrated that at daytime of January 13, 2004, he went to Dumarao, Capiz to attend a burial of a relative and left the place at around 3:00 in the afternoon.^[20] He then arrived at Barotac Viejo Terminal at around 5:00 in the afternoon. From the terminal he boarded a single motorcycle driven by Jovan Cartagena, who drove him home to Brgy. Sto. Tomas.^[21] Upon reaching Brgy. Sto. Tomas, he stopped by a store and had a drinking spree with some friends. After drinking, he, together with a friend, Ananias Balleras went home by foot.^[22] Upon arriving home, he was seen by Nancy Vistal, his sister-in-law. He took his dinner and thereafter went to sleep at 7:30 in the evening. While he was in deep slumber, he was suddenly awakened by the police. The police then informed him that there was a complaint against him. So, the

police brought him to the police station of Barotac Viejo, where he was detained. He also found, to his surprise, that his brother, Rodeo Carrera, was also being detained there because the latter was also one of the suspects. His brother was later on released when AAA pointed at appellant Carrera as the perpetrator.^[23]

After hearing the parties' respective evidence, the trial court gave more credence and weight on the prosecution's evidence and found that the defense of alibi and denial by the accused weak. The trial court found that the elements of the crime to have been established beyond reasonable doubt. It did not give weight on the evidence of the defense because it is not physically impossible for appellant Carrera to be at the scene of the incident considering the fact that the distance between Brgy. Sto. Tomas and the Poblacion was only a thirty-minute drive through a motorcycle. It further underscored that there could be no mistake in the identification by AAA of appellant Carrera as the perpetrator because the two had already known and seen each other prior the incident. Thus, the trial court concluded that appellant Carrera's bare denial cannot outweigh AAA's affirmative testimony.

As such, the trial court ruled, thus:

"WHEREFORE, the court hereby finds the accused Roldan Carrera guilty beyond reasonable doubt of the crime of Rape by Sexual Assault defined and penalized under Art. 266-A (2) of the Revised Penal Code and sentences the said accused an indeterminate prison term ranging from four (4) years, two (2) months, and one (1) day of prision correccional as minimum to six (6) years and one (1) day of prision mayor as maximum, together with the accessory penalty provided by law, and to pay the costs.

SO ORDERED."^[24]

Aggrieved, appellant Carrera filed this appeal assigning to the trial court the following errors:

1. "THE HONORABLE REGIONAL TRIAL COURT HAS ERRED IN FINDING THE ACCUSED GUILTY OF VIOLATION OF THE CRIME OF RAPE BY SEXUAL ASSAULT DEFINED AND PENALIZED UNDER ARTICLE 266-A(2) OF THE REVISED PENAL CODE;
2. THE HONORABLE REGIONAL TRIAL COURT HAS FAILED TO CONSIDER THE ABSENCE OF FORCE, THREAT OR INTIMIDATION AT THE TIME OF OR ON THE OCCASION OF THE ALLEGED SEXUAL ASSAULT."^[25]

In his Brief,^[26] appellant Carrera raised the following issues: a) whether or not there was force, threat, or intimidation at the time of of or on the occasion of the alleged sexual assault; b) whether or not the element of voluntariness on the part of private complainant AAA was absolutely lacking.^[27]

He then argued that the prosecution failed to prove actual force, threat or intimidation was used in committing the alleged sexual assault. As bases of this conclusion, he cites the following:

1. The prosecution failed to prove that appellant at that time was carrying any deadly weapon or any object which can be used as to produce fear, and that it failed to prove any actual threatening words or intimidating words uttered to AAA by the appellant at the very time of or on the occasion of the alleged sexual assault;[28]

2. It is highly improbable for AAA not to immediately make an outcry against an unarmed accused when she had every opportunity to do so; and,[29]

3. AAA, who was at that time already twenty-seven years old is matured enough as to be easily succumbed, threatened, intimidated in the absence of any weapon or harmful object employed against her, and that she should have moral ascendancy over the appellant because the latter was employed by her family as a carpenter.[30]

Appellant Carrera likewise proffered the following arguments to establish that voluntariness on the part of AAA was present, thus:

1. The possibility of being fingered with the consent of the victim is possible as testified by the Dr. Aimee Icamina who examined the victim; [31]

2. The medical findings did not show any bruise, abrasion, injury on any part of AAA's body, thus no actual force was employed;[32]

3. There was no indication that AAA did her very best to resist the accused in order to protect her honor considering that she did not see to it that her shorts and panty would not be removed by tightening both her legs and by holding the same firmly;[33]

4. The shorts and panty of the victim was not even torn or damaged when the same was alleged to have been grabbed and pulled down from her;[34]

5. AAA did not testify that she employed physical attack against the appellant to show her resistance, and that this absence of resistance is shown by the absence of any bruise or injuries on her hands and body; [35] and,

6. It is quite improbable and contrary to human experience for rape to occur on the street where the crime was allegedly committed because at that time the street was busy because of the fiesta.[36]

For the prosecution, the Office of the Solicitor General's (OSG) Brief[37] maintained that the elements of the crime of rape by sexual assault were established beyond doubt. It underscored that the AAA's testimony to prove that force was employed in the commission of the crime, and that AAA's resistance was futile because the appellant overpowered her. It then reiterated that appellant's alibi cannot be given weight on the face of AAA's positive identification.

We now resolve.

We find no merit in appellant Carrera's appeal.

Appellant Carrera's brief as previously mentioned centered on the absence of the elements of the crime and that the same elements were not completely established by the prosecution beyond reasonable doubt.

In gist, appellant's arguments focused on the absence of force or intimidation and the absence of evidence showing absolute absence of voluntariness.

We, however, find that, based on AAA's categorical and straightforward testimony, the elements of rape by sexual assault were established beyond reasonable doubt.

The elements of rape by sexual assault are:

“(1) That the offender commits an act of sexual assault;

(2) That the act of sexual assault is committed by any of the following means:

(a) By inserting his penis into another person’s mouth or anal orifice;
or

(b) or any instrument or object, into the genital or anal orifice of another person.

(3) That the act of sexual assault is accomplished under any of the following circumstances:

(a) By using force or intimidation;

xxx.”^[38]

Very clear from AAA's testimony that appellant Carrera committed an act of sexual assault on her against her will by inserting his finger into her vagina, with the use of force.

The force employed and the sexual act committed was clearly recounted by AAA in her testimony, thus:

“Pros. Con-el:

Q: At that time when you were approaching your house at a distance of about ten (10) meters, can you tell the court if there was any unusual incident that happened to you?

A: While I was walking with umbrella considering that it was raining, suddenly a man just surfaced from my side and then went directly in front of me.

Q: What else did that man do to you?

A: When he was right in front of me I was able to identify him immediately and I said “What is the problem? Come to our house for