



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Appellee,

G.R. No. 188979

Present:

- versus -

CARPIO, J., Chairperson,
BRION,
DEL CASTILLO,
PEREZ, and
PERLAS-BERNABE, JJ.

Promulgated:

CHRISTOPHER PAREJA y VELASCO,
Appellant.

SEP 05 2012 *[Signature]*

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DECISION

BRION, J.:

This is an appeal from the June 15, 2009 decision¹ of the Court of Appeals (CA) in CA-G.R. CR HC No. 02759. The CA affirmed the February 22, 2007 decision² of the Regional Trial Court (RTC), Branch 209, Mandaluyong City, finding appellant Christopher Pareja guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer the penalty of *reclusion perpetua*.

¹ Penned by Associate Justice Jose L. Sabio, Jr., and concurred in by Associate Justice Vicente S.E. Veloso and Associate Justice Ricardo R. Rosario; *rollo*, pp. 2-17.

² CA *rollo*, pp. 34-42.

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THE CASE

The prosecution charged the appellant before the RTC with the crime of rape under an Amended Information that reads:

That on or about the 16th day of June 2003, in the City of Mandaluyong, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously lie and have carnal knowledge of [AAA],³ 13 years of age, sister of the common law spouse of accused, against her will and consent, thus debasing and/or demeaning the intrinsic worth and dignity of the victim thereby prejudicing her normal development as a child.⁴

The evidence for the prosecution disclosed that at around 3:30 a.m. of June 16, 2003, AAA was sleeping beside her two-year old nephew, BBB, on the floor of her sister's room, when the appellant hugged her and kissed her nape and neck.⁵ AAA cried, but the appellant covered her and BBB with a blanket.⁶ The appellant removed AAA's clothes, short pants, and underwear; he then took off his short pants and briefs.⁷ The appellant went on top of AAA, and held her hands. AAA resisted, but the appellant parted her legs using his own legs, and then tried to insert his penis into her vagina.⁸ The appellant stopped when AAA's cry got louder; AAA kicked the appellant's upper thigh as the latter was about to stand up. The appellant put his clothes back on, and threatened to kill AAA if she disclosed the incident to anyone. Immediately after, the appellant left the room.⁹ AAA covered herself with a blanket and cried.¹⁰

³ The Court shall withhold the real name of the victim-survivor and shall use fictitious initials instead to represent her. Likewise, the personal circumstances of the victims-survivors or any other information tending to establish or compromise their identities, as well as those of their immediate family or household members, shall not be disclosed.

⁴ CA *rollo*, p. 87.

⁵ Records, pp. 109-110, 115-117.

⁶ *Id.* at 118-120.

⁷ *Id.* at 121-124.

⁸ *Id.* at 126-128.

⁹ *Id.* at 130-132.

¹⁰ *Id.* at 133.

At around 6:00 a.m. of the same day, AAA's brother, CCC, went to her room and asked her why she was lying on the floor and crying. AAA did not answer, and instead hurled invectives at CCC.¹¹ AAA went to the house of her other brother, but the latter was not in his house. AAA proceeded to the house of her older sister, DDD, at Block 19, Welfareville Compound, and narrated to her what had happened. Afterwards, AAA and her two (2) siblings went to the Women and Children's Desk of the Mandaluyong City Police Station and reported the incident.¹²

For his defense, the appellant declared on the witness stand that he hauled "filling materials" at his house, located at Block 38, Fabella Compound, on the evening of June 15, 2003. At around 10:00 p.m., he went to his room and slept.¹³ On the next day, the appellant, accompanied by his mother and brother-in-law, went to the municipal hall to ask for financial assistance for his wife who was confined in the hospital. Upon arrival at the hospital, the doctor told him that his wife needed blood. Immediately after, the appellant and his companions went to Pasig City to find blood donors.¹⁴

On the evening of June 16, 2003, and while the appellant was folding the clothes of his son, two policemen entered his house and informed him that a complaint for attempted rape had been filed against him. The police brought him to the Criminal Investigation and Detection Group, forced him to admit the crime, mauled him, and then placed him in a detention cell.¹⁵ The appellant added that he filed a complaint before the Office of the Ombudsman against the police officers who beat him up.¹⁶

¹¹ *Id.* at 135-137.

¹² *Id.* at 140-147.

¹³ Records, pp. 300-302.

¹⁴ *Id.* at 307-310.

¹⁵ *Id.* at 311-315.

¹⁶ *Id.* at 316.

The RTC convicted the appellant of rape in its decision of February 22, 2007, under the following terms:

WHEREFORE, the Court finds accused CHRISTOPHER PAREJA y VELASCO GUILTY beyond reasonable doubt of the crime of RAPE and hereby sentences him as he is hereby sentenced to suffer the penalty of *reclusion perpetua*; and to indemnify the victim, [AAA,] the amount of ₱50,000.00 as moral damages and ₱50,000.00 as civil indemnity.¹⁷

The CA, in its decision dated June 15, 2009, affirmed the RTC decision. It explained that a slight penetration of the *labia* by the male organ is sufficient to constitute rape, and held that a slight penetration took place when the appellant's penis touched AAA's vagina as he was trying to insert it.

The appellate court further ruled that the presence of people in the other room did not make it impossible for the appellant to have raped the victim, because lust is no respecter of time and place. It also held that the victim's lack of tenacity in resisting the appellant's sexual aggression did not amount to consent or voluntary submission to the criminal act.¹⁸

In his brief,¹⁹ the appellant argued that the lower courts erred in convicting him for the crime of rape, as the prosecution failed to prove even the slightest penetration of his penis into the victim's vagina. He added that the victim's testimony was incredible and contrary to human experience.

¹⁷ *Supra* note 2, at 41.

¹⁸ *Supra* note 1, at 9-14.

¹⁹ CA rollo, pp. 72-85.

THE COURT’S RULING

We find that the prosecution failed to prove the appellant’s guilt beyond reasonable doubt of the crime of consummated rape. We convict him instead of **attempted rape**, as the evidence on record shows the presence of all the elements of this crime.

Carnal Knowledge Not Proven With Moral Certainty

By definition, rape is committed by having carnal knowledge of a woman with the use of force, threat or intimidation, or when she is deprived of reason or otherwise unconscious, or when she is under 12 years of age or is demented.²⁰ “Carnal knowledge is defined as the act of a man having sexual intercourse or sexual bodily connections with a woman.”²¹ Carnal knowledge of the victim by the accused must be proven beyond reasonable doubt, considering that it is the central element in the crime of rape.²²

In her testimony of February 9, 2004, AAA recounted the alleged rape, as follows:

FISCAL TRONCO:

Q: You said that the three of you then was (sic) sleeping on the floor, what is it that happened on that particular day and time that is unusual?

A: It was like somebody was embracing me or hugging me, ma’am.

Q: When you felt that some (sic) is embracing and hugging you, what did you [do]?

²⁰ Article 266-A(1) of the Revised Penal Code, as amended.

²¹ See *People v. Bon*, 444 Phil. 571, 579 (2003).

²² See *People v. Briosio*, G.R. No. 182517, March 13, 2009, 581 SCRA 485, 493.

A: I didn't mind it because I thought that the person beside me just moved and when he made the movement, it's like that I was embraced, ma'am.

Q: Whom are you referring to?

A: My brother-in-law, ma'am.

Q: And after that, what else happened, if any, [AAA]?

A: Before that happened, my nephew cried and so I picked him up and put him on my chest and after a while[,] I slept again and brought him down again and then "*dumapa po ako*" and I felt that somebody was kissing my nape, ma'am.

Q: Were you able to see who was that somebody kissing your nape?

A: When I tried to evade, I looked on my side where the room was not that dark that I could not see the person and so, I saw that it was my brother-in-law, ma'am.

x x x x

Q: When you saw that it was your brother-in-law kissing your nape while you were on a prone position, what else happened, if any?

A: He kissed my neck, ma'am.

Q: What was your position while he was kissing your neck?

A: I was on my side at that time and I was also crying, ma'am.

x x x x

Q: Why were you crying at that time while he was kissing your neck?

A: I was afraid of what will happen next, ma'am.

Q: Aside from that incident that he was kissing your neck, was there any other previous incident that happened?

A: Yes, ma'am.

x x x x

Q: What incident was that?

A: At that time, my brother-in-law covered me and my nephew with a blanket and he tried to get my clothes off, ma'am.

Q: When did this happen, [AAA]?

A: Also on said date, ma'am.

Q: You said that he covered you and your nephew with a blanket and then taking (sic) off your clothes?

A: Yes, ma'am.

x x x x

Q: Was he able to take off your clothes?

A: Yes, ma'am.

Q: What particular clothing was he able to take off?

A: My short pants and underwear, ma'am.

Q: While he was taking off your short pants and your underwear, what did you do, if any?

A: I tried to fight him off, ma'am.

x x x x

Q: You said that he was trying to take off your clothes and undergarments, what was your position at that time?

A: I was lying down, ma'am.

Q: What about him?

A: He was on my lap, ma'am.

x x x x

Q: You said that you saw him take off his short pants?

A: Yes, ma'am.

x x x x

Q: Did he also take off his brief?

A: Yes, ma'am.

x x x x

Q: And after that what happened, [AAA]?

A: After removing his undergarments, he suddenly brought his body on top of me and he held my hands. At that time I was crying and still resisting and then he was trying to get my legs apart. I was still resisting at that time, and at some point in time I felt weak and he was able to part my legs, ma'am.

Q: Could you please tell us how did (sic) he able to part your legs?

A: He did that with his legs while he was holding my hands, ma'am.

Q: And when he was able to part your legs, what happened next?

A: **He tried to insert his sexual organ but he was not able to do so, ma'am.**

Q: **How did you know that he was trying to insert his sexual organ?**

A: *"Naidikit po niya sa ari ko."*

Q: **Which part of your body was he able to touch his sexual organ? (sic)**

A: **On my sexual organ, ma'am.**

x x x x

Q: **You mentioned earlier that he was not able to penetrate your private part, [AAA]?**

A: **Yes, ma'am.**

Q: So, what happened after that?

A: I cried and then while I was resisting, I hit my wrist on the wall and my wrist was "*nagasgas*," ma'am.

x x x x

Q: And were you able to successfully resist?

A: Yes, ma'am, I was able to kicked (sic) his upper thigh, ma'am.²³ (italics supplied; emphasis ours)

From the foregoing, we find it clear that the appellant's penis did not penetrate, but merely 'touched' (i.e., "*naidikit*"), AAA's private part. In fact, the victim **confirmed on cross-examination that the appellant did not succeed in inserting his penis into her vagina**. Significantly, AAA's *Sinumpaang Salaysay*²⁴ also disclosed that the appellant was holding the victim's hand when he was trying to insert his penis in her vagina. This circumstance – coupled with the victim's declaration that she was resisting the appellant's attempt to insert his penis into her vagina – makes penile penetration highly difficult, if not improbable. Significantly, nothing in the records supports the CA's conclusion that the appellant's penis penetrated, however slightly, the victim's female organ.

Did the touching by the appellant's penis of the victim's private part amount to carnal knowledge such that the appellant should be held guilty of consummated rape?

In *People v. Campuhan*,²⁵ the Court laid down the parameters of genital contact in rape cases, thus:

Thus, *touching* when applied to rape cases does not simply mean mere epidermal contact, stroking or grazing of organs, a slight brush or a scrape of the penis on the external layer of the victim's vagina, or the *mons pubis*, as in this case. There must be sufficient and convincing proof that the penis indeed *touched* the *labias* or slid into the female organ, *and not merely stroked the external surface thereof*, for an accused to be convicted of consummated rape. As the *labias*, which are required to be "touched" by the penis, are by their natural *situs* or location *beneath* the *mons pubis* or the vaginal surface, to touch them with the penis is to attain some degree of penetration beneath the surface, hence, the conclusion that

²³ Records, pp. 113-131.

²⁴ *Id.* at 5-6.

²⁵ 385 Phil. 912 (2000).

touching the *labia majora* or the *labia minora* of the *pudendum* constitutes consummated rape.

The *pudendum* or *vulva* is the collective term for the female genital organs that are visible in the perineal area, *e.g.*, *mons pubis*, *labia majora*, *labia minora*, the hymen, the clitoris, the vaginal orifice, etc. The *mons pubis* is the rounded eminence that becomes hairy after puberty, and is instantly visible within the surface. The next layer is the *labia majora* or the outer lips of the female organ composed of the outer convex surface and the inner surface. The skin of the outer convex surface is covered with hair follicles and is pigmented, while the inner surface is a thin skin which does not have any hair but has many sebaceous glands. Directly beneath the *labia majora* is the *labia minora*. Jurisprudence dictates that the *labia majora* must be entered for rape to be consummated, and not merely for the penis to stroke the surface of the female organ. Thus, a grazing of the surface of the female organ or touching the *mons pubis* of the *pudendum* is not sufficient to constitute consummated rape. Absent any showing of the slightest penetration of the female organ, *i.e.*, touching of either *labia* of the *pudendum* by the penis, there can be no consummated rape; at most, it can only be attempted rape, if not acts of lasciviousness.²⁶ (italics supplied)

Simply put, “rape is consummated by the slightest penile penetration of the *labia majora* or *pudendum* of the female organ.”²⁷ Without any showing of such penetration, there can be no consummated rape; at most, it can only be attempted rape [or] acts of lasciviousness.”²⁸

As earlier discussed, the prosecution failed to present sufficient and convincing evidence to establish the required penile penetration. AAA’s testimony did not establish that the appellant’s penis touched the *labias* or slid into her private part. Aside from AAA’s testimony, no other evidence on record, such as a medico-legal report, could confirm whether there indeed had been penetration, however slight, of the victim’s *labias*. In the absence of testimonial or physical evidence to establish penile penetration, the appellant cannot be convicted of consummated rape.

²⁶ *Id.* at 920-922 (citations omitted).

²⁷ See *People v. Pancho*, 462 Phil. 193, 205-206 (2003).

²⁸ *People v. Brioso*, *supra* note 22, at 495.

Article 6 of the Revised Penal Code, as amended, states that there is an attempt when the offender commenced the commission of the crime directly by overt acts but does not perform all the acts of execution by reason of some cause or accident other than his own spontaneous desistance. In *People v. Publico*,²⁹ we ruled that **when the "touching" of the vagina by the penis is coupled with the intent to penetrate, attempted rape is committed**; otherwise, the crime committed is merely acts of lasciviousness.

In the present case, the appellant commenced the commission of rape by the following overt acts: kissing AAA's nape and neck; undressing her; removing his clothes and briefs; lying on top of her; holding her hands and parting her legs; and trying to insert his penis into her vagina. The appellant, however, failed to perform all the acts of execution which should produce the crime of rape by reason of a cause other than his own spontaneous desistance, *i.e.*, the victim's loud cries and resistance. The totality of the appellant's acts demonstrated the unmistakable objective to insert his penis into the victim's private parts.

A review of jurisprudence reveals that the Court has not hesitated to strike down convictions for consummated rape when the evidence failed to show that penetration, however slight, of the victim's vagina took place.

In *People v. Bon*,³⁰ the Court found the appellant guilty of attempted rape only, as there was no indication that the appellant's penis even touched the *labia* of the *pudendum* of the victim. We further held that the appellant

²⁹ G.R. No. 183569, April 13, 2011, 648 SCRA 734, 748, citing *People v. Collado*, 405 Phil. 880 (2001).

³⁰ 536 Phil. 897 (2006).

could not be convicted of consummated rape by presuming carnal knowledge out of pain.

The Court had a similar ruling in *People v. Miranda*,³¹ where the accused tried to insert his penis into the victim's private parts, but was unsuccessful, so he inserted his fingers instead. We convicted the accused of attempted rape only due to lack of evidence to establish that there was even a slight penile penetration. We noted, however, that the appellant's act of inserting his fingers would have constituted rape through sexual assault had the offense occurred after the effectivity of the Anti-Rape Law of 1997.

In *People v. Alibuyog*,³² the victim declared that the accused placed his penis *on* her vagina; and claimed that it touched her private parts. The Court set aside the accused's conviction for rape, and convicted him of attempted rape only, because we found the victim's testimony too ambiguous to prove the vital element of penile penetration. We added that the victim's testimony was "replete with repeated denial of penile insertion."³³

Similarly, in *People v. Quarre*,³⁴ the evidence for the prosecution consisted only of the victim's testimony that the accused tried, but failed, to insert his penis into her vagina, and she felt pain in the process. No medico-legal examination report was presented in evidence. Accordingly, the Court reversed the accused's conviction for rape, and found him guilty of attempted rape only.

³¹ 519 Phil. 531 (2006).

³² 469 Phil. 385 (2004).

³³ *Id.* at 393.

³⁴ 427 Phil. 422 (2002).

In *People v. Ocomen*,³⁵ the Court also set aside the appellant's conviction for rape because no proof was adduced of even the slightest penetration of the female organ, aside from a general statement of the victim that she had been "raped."

*People v. Monteron*³⁶ is another noteworthy case where the Court set aside the appellant's conviction for rape. In this case, the victim testified that the accused placed his penis on top of her vagina, and that she felt pain. In finding the accused guilty of attempted rape only, we held that there was no showing that the accused's penis entered the victim's vagina. We added that the pain that the victim felt might have been caused by the accused's failed attempts to insert his organ into her vagina.

In *People v. Mariano*,³⁷ the accused tried to insert his penis into the victim's vagina, but failed to secure penetration. The Court set aside the accused's conviction for three (3) counts of rape and found him guilty of attempted rape only. We explained the necessity of carefully ascertaining whether the penis of the accused in reality entered the labial threshold of the female organ to accurately conclude that rape had been consummated.

In *People v. Arce, Jr.*,³⁸ the Court found the accused guilty of attempted rape only, because the victim did not declare that there was the slightest penetration, which was necessary to consummate rape. On the contrary, she categorically stated that the accused was not able to insert his penis into her private parts because she was moving her hips away. We further ruled that the victim's attempt to demonstrate what she meant by

³⁵ 432 Phil. 57 (2002).

³⁶ 428 Phil. 401 (2002).

³⁷ 420 Phil. 727 (2001).

³⁸ 417 Phil. 18 (2001).

“*idinidikit ang ari*” was unavailing to prove that rape had been consummated.

In *People v. Francisco*,³⁹ the victim testified that the accused “poked” her vagina. The Court set aside the accused’s conviction for qualified rape, and convicted him instead only of attempted rape after failing to discern from the victim’s testimony that the accused attained some degree of penile penetration, which was necessary to consummate rape.

In *People v. Dimapilis*,⁴⁰ the Court refused to convict the accused for consummated rape on the basis of the victim’s testimony that she felt the accused’s penis pressed against her vagina as he tried to insert it. We explained that in order to constitute consummated rape, there must be entry into the vagina of the victim, even if only in the slightest degree.

Finally, in *People v. Tolentino*,⁴¹ the Court reversed the accused’s conviction for rape and convicted him of attempted rape only, as there was paucity of evidence that the slightest penetration ever took place. We reasoned out that the victim’s statements that the accused was “trying to force his sex organ into mine” and “*binundol-undol ang kanyang ari*” did not prove that the accused’s penis reached the *labia* of the *pudendum* of the victim’s vagina.

“In rape cases, the prosecution bears the primary duty to present its case with clarity and persuasion, to the end that conviction becomes the only logical and inevitable conclusion.”⁴² We emphasize that a conviction cannot be made to rest on possibilities; strongest suspicion must not be permitted to

³⁹ 406 Phil. 947 (2001).

⁴⁰ 397 Phil. 607 (2000).

⁴¹ 367 Phil. 755 (1999).

⁴² See *People v. Poras*, G.R. No. 177747, February 16, 2010, 612 SCRA 624, 644.

sway judgment. In the present case, the prosecution failed to discharge its burden of proving all the elements of consummated rape.

The Proper Penalty and Indemnities

Under Article 51 of the Revised Penal Code, the impossible penalty for attempted rape is two degrees lower than the prescribed penalty of *reclusion perpetua* for consummated rape. Two degrees lower from *reclusion perpetua* is *prision mayor* whose range is six (6) years and one (1) day to 12 years. Without any attendant aggravating or mitigating circumstances and applying the Indeterminate Sentence Law, the maximum of the penalty to be imposed upon the appellant is *prision mayor* in its medium period, while the minimum shall be taken from the penalty next lower in degree, which is *prision correccional* whose range is six (6) months and one (1) day to six (6) years, in any of its periods. Accordingly, we sentence the appellant to suffer the indeterminate penalty of six (6) years of *prision correccional*, as minimum, to 10 years of *prision mayor*, as maximum.

In addition, we order the appellant to pay the victim ₱30,000.00 as civil indemnity, ₱25,000.00 as moral damages and ₱10,000.00 as exemplary damages, in accordance with prevailing jurisprudence on attempted rape cases.⁴³

WHEREFORE, premises considered, the June 15, 2009 decision of the Court of Appeals in CA-G.R. CR HC No. 02759 is **MODIFIED**, as follows:

⁴³

Supra note 29, at 752.

The appellant's conviction for the crime of rape is **VACATED**, and

- (1) we find appellant Christopher Pareja y Velasco **GUILTY** of the crime of **ATTEMPTED RAPE**;
- (2) we **SENTENCE** him to suffer the indeterminate penalty of six (6) years of *prision correccional*, as minimum, to 10 years of *prision mayor*, as maximum; and
- (3) we **ORDER** him to **PAY** the victim the amounts of ₱30,000.00 as civil indemnity; ₱25,000.00 as moral damages; and ₱10,000.00 as exemplary damages.

SO ORDERED.


ARTURO D. BRION
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Associate Justice
Chairperson

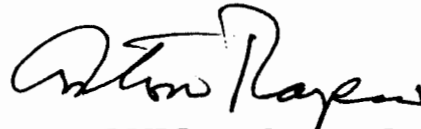

MARIANO C. DEL CASTILLO
Associate Justice


JOSE PORTUGAL PEREZ
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

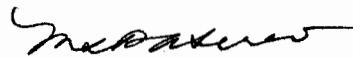


ANTONIO T. CARPIO

Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO

Chief Justice