



Republic of the Philippines
Supreme Court
 Manila

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Wilfredo V. Lapitan
 WILFREDO V. LAPITAN
 Division Clerk of Court
 Third Division

AUG 22 2017

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
 Plaintiff-Appellee,

G.R. No. 220889

Present:

- versus -

*CARPIO, J.,
 VELASCO, JR.,
Chairperson,
 BERSAMIN,
 REYES, and
 TIJAM, JJ.

MARLON BELMONTE y
SUMAGIT, MARVIN BELMONTE
y SUMAGIT, ENRILE GABAY y
DELA TORRE a.k.a "PUNO", and
NOEL BAAC y BERGULA,
 Accused,

MARLON BELMONTE y
SUMAGIT,
 Accused-Appellant.

Promulgated:

July 5, 2017
Wilfredo V. Lapitan

X-----X

DECISION

TIJAM, J.:

Accused-appellant Marlon Belmonte y Sumagit assails the Decision¹ dated April 22, 2014 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 05774, affirming his conviction for Robbery with Rape in Criminal Case No. 135982-H.

^{*} Designated additional Member per Raffle dated March 15, 2017 *vice* Associate Justice Francis H. Jardeleza.

¹ Penned by Associate Justice Fernanda Lampas Peralta, concurred in by Associate Justices Francisco P. Acosta and Myra V. Garcia-Fernandez; *rollo*, pp. 2-35.

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The Facts

Accused-appellant and his co-accused, namely, Marvin Belmonte (Marvin), Enrile Gabay (Enrile), and Noel Baac (Noel) were charged with Robbery with Rape in an Information dated September 3, 2007 that reads:

The Prosecution, through the undersigned Public Prosecutor, charges Marlon Belmonte y Sumagit, Marvin Belmonte y Sumagit and Enrile Gabay y Dela Torre @ "Puno" with the crime of robbery with rape, committed as follows:

On or about September 1, 2007, in Pasig City and within the jurisdiction of this Honorable Court, the above accused, armed with a gun, conspiring and confederating together with one Noel Baac who is still at-large and all of them mutually helping and aiding one another, with intent to gain and by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously take, steal, and divest from complainants the following, to wit:

x x x x

x x x [A]nd on the occasion thereof said Noel Baac, by means of force, threats and intimidation and with the use of a gun, willfully, unlawfully, and feloniously, have carnal knowledge with AAA,² against her will and consent, which is aggravated by the circumstances of nighttime and dwelling, to the damage and prejudice of the said victim.

Contrary to law.³

The trial of the case proceeded against the accused-appellant, his cohorts, Marvin and Enrile, who all pleaded not guilty to the crime charged. However, Noel remained at large.⁴

The prosecution evidence established that, in the evening of August 31, 2007, Hiroshi Emmanuel Zorilla (Hiroshi) celebrated his 17th birthday with his friends in the house of his aunt Teodora and uncle Robert Dela Cruz in Pasig City. When it was already 12:00 midnight, Jolly Pantaleon (Jolly), one of Hiroshi's friends who was present at the celebration, left the group to buy some beer from a nearby store. At the store, Jolly met Enrile, who asked him if he could join them in the drinking spree at Hiroshi's place. Enrile then helped Jolly carry the half case of beer and joined in the drinking spree at Hiroshi's house.⁵

² The real name of the victim, her personal circumstances and other information which tend to establish or compromise her identity, as well as those of her immediate family or household members, shall not be disclosed to protect her privacy and fictitious initials shall, instead, be used, in accordance with *People v. Cabalquinto* (533 Phil. 703 [2006]), and A.M. No. 04-11-09-SC dated September 19, 2006.

³ CA *rollo*, pp. 13-14.

⁴ Id. at 20.

⁵ Id. at 20-21.

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At around 2:00 a.m. of September 1, 2007, Jolly left the group and was followed by Enrile, but the latter soon returned to the party and was accompanied by accused-appellant and his brother Marvin, and Noel. Armed with guns and a knife,⁶ the three men approached and suddenly boxed Enrile, then tied the hands of all the persons inside the house and ordered them to lie down on the floor as they took their personal belongings.

Meanwhile, the maids of spouses Teodora and Robert, namely, AAA and Rhea Brioso, were awakened inside their quarters by the presence of two men, later identified as accused-appellant and Noel. Upon Noel's order, AAA was left inside the room. Noel immediately locked the door, and at gunpoint, ordered AAA to remove her pants. He told AAA to lie down, then he inserted his penis into her vagina.⁷

Thereafter, Noel and Marvin entered the room of spouses Teodora and Robert through the window. Teodora was awakened and was surprised, hence, she shouted which prompted Robert to get up from bed. At gunpoint, Noel and Marvin ordered the spouses to lie on the bed while they searched the room; then they took away some pieces of jewelry, laptop, ATM card, cash amounting to PhP 6,700 and 23 pieces of Yen.⁸ Teodora recognized the faces of Noel and Marvin since the room was illuminated by light coming from a lamp shade.

For his part, Enrile, testified that, at around 1:00 a.m. of September 1, 2007, he and other bystanders were in front of a bakery store, about four streets away from Hiroshi's house when Jolly arrived to buy one and a half cases of beer. He helped Jolly carry the cases of beer upon the latter's request, and when they arrived at Hiroshi's house, he was asked to join in the drinking session. Thereafter, some men entered the house and suddenly ordered them to lie down on the floor and tied their hands. The men took away his jewelry and cellular phone.⁹

Accused-appellant and Marvin, on the other hand, proffered *alibi* and claimed that they were sleeping in their house when the alleged crime was committed.¹⁰

After trial, the RTC convicted accused-appellant, Marvin, and Enrile of the crime of Robbery with Rape, thus:

WHEREFORE, the Court finds accused Marlon Belmonte y Sumagit, Marvin Belmonte y Sumagit, and Enrile Gabay y Dela Torre a.k.a. "Puno" guilty beyond reasonable doubt of the crime of Robbery with Rape and hereby sentences each of them to suffer the penalty of *reclusion perpetua*. The accused are also ordered to jointly and severally pay Hiroshi Emmanuel L. Zorilla the amount of P23,000.00, as

⁶ Id. p. 21-22.

⁷ Id. at 22.

⁸ Id. at 23.

⁹ *Rollo*, p. 6.

¹⁰ Id.

actual damages; Spouses Teodora and Robert Dela Cruz, the amount of P132,150.00, as actual damages; and [AAA], the amount of P50,000.00, as civil indemnity and P50,000.00, as moral damages.

SO ORDERED.¹¹

On appeal, the CA modified the trial court's decision as follows:

WHEREFORE, the appealed Decision dated June 6, 2012 is modified as follows:

(1) Accused-appellant Enrile Gabay y Dela Torre is acquitted on ground of reasonable doubt. Unless detained for some other lawful reasons, accused-appellant Enrile Gabay y Dela Torre is hereby ordered released immediately.

(2) Accused-appellant Marvin Belmonte is hereby found guilty beyond reasonable doubt of the crime of simple robbery and is sentenced to suffer the penalty of imprisonment at 4 years and 2 months of *prision correccional* medium, as the minimum period, to 10 years of *prision mayor* maximum, as the maximum period. As ordered by the trial court, accused-appellant Marvin Belmonte and accused-appellant Marlon Belmonte should jointly and severally pay actual damages to Hiroshi Emmanuel Zorilla in the amount of Php23,000.00, and to spouses Teodora and Robert Dela Cruz in the amount of Php132,150.00.

(3) The conviction of accused-appellant Marlon Belmonte for robbery with rape is affirmed. He is sentenced to suffer the penalty of *reclusion perpetua without eligibility for parole*. He is also ordered to pay AAA Php75,000.00 as civil indemnity, Php75,000.00 as moral damages and Php30,000.00 as exemplary damages, plus interest at the rate of six percent (6%) per annum on all damages awarded from the date of finality of judgment.

SO ORDERED.¹²

Only accused-appellant appealed to this Court for review.

The Issue

Whether or not accused-appellant's guilt was proven beyond reasonable doubt.

The Court's Ruling

The appeal lacks merit.

The crime of Robbery with Rape is penalized under Article 294 of the Revised Penal Code (RPC), as amended by Section 9 of Republic Act No. 7659. Robbery with Rape is a special complex crime under Article 294 of

¹¹ CA rollo, p. 57.

¹² Rollo, pp. 33-34.

the RPC. It contemplates a situation where the original intent of the accused was to take, with intent to gain, personal property belonging to another and rape is committed on the occasion thereof or as an accompanying crime.¹³

In *People v. Tamayo*,¹⁴ the Court ruled that:

For a conviction of the crime of robbery with rape to stand, it must be shown that the rape was committed by reason or on the occasion of a robbery and not the other way around. This special complex crime under Article 294 of the RPC contemplates a situation where the original intent of the accused was to take, with intent to gain, personal property belonging to another and rape is committed on the occasion thereof or as an accompanying crime.¹⁵

There is no basis to disturb the findings of the trial court as affirmed by the CA respecting accused-appellant's criminal culpability. The prosecution's evidence established with certainty that accused-appellant, together with his brother Marvin, and co-accused Noel, have intruded the house of spouses Teodora and Robert on the occasion of Hiroshi's birthday celebration thereat. They aided each other in divesting the guests of Hiroshi of their personal belongings through violence and intimidation. The evidence disclosed that they were armed with guns and knife, and they tied the hands of their victims and threatened them with harm if they disobeyed their orders. Noel and Marvin, on the same occasion, entered the room of spouses Teodora and Robert through the window and succeeded in taking away from their possession some pieces of jewelry, laptop, ATM card, and cash.

It behooves Us to rule that the testimonies of prosecution witnesses, Teodora and Hiroshi, as to the foregoing, are sufficient and credible to sustain the conviction of accused-appellant. Evidence to be believed, must proceed not only from the mouth of a credible witness but must be credible in itself as to hurdle the test of conformity with the knowledge and common experience of mankind.¹⁶ Here, the prosecution witnesses' positive identification of the accused-appellant as one of the malefactors in the robbery that took place on September 1, 2007 defeats accused-appellant's lone defense of *alibi*. Absent any showing of ill motive on the part of the witnesses, a categorical, consistent, and positive identification of the accused-appellant shall prevail over the latter's *alibi* and denial. Unless substantiated by clear and convincing proof, *alibi* and denial are negative, self-serving and undeserving of any weight in law.¹⁷

The evidence further show that, on the occasion of the robbery, AAA was raped. The RTC and the CA are correct in their appreciation that the original intent of the accused-appellant and his cohorts was to take, with intent to gain, the personal effects of their victims. Rape was committed on the occasion thereof or as an accompanying crime. Accused-appellant was

¹³ *People v. Tamayo*, G.R. No. 137586, July 30, 2002.

¹⁴ G.R. No. 137586, July 30, 2002.

¹⁵ *Id.*

¹⁶ *People v. Cantila, Jr.*, G.R. No. 139458, December 27, 2002.

¹⁷ *People v. Catuiran, et al.*, G.R. No. 134761, October 17, 2000.

implicated because he was positively identified as Noel's companion inside the room where AAA and Rhea were soundly sleeping. The CA, affirming the RTC's finding ruled, *viz.*:

The trial court correctly convicted accused-appellant Marlon Belmonte of the special complex crime of robbery with rape **even if he did not rape AAA, as accused-appellant Marlon Belmonte had the opportunity but did not endeavor to stop accused Noel Baac from raping AAA.** x x x The accused's failure to prevent his co-accused from committing rape despite an opportunity to do so made him liable for the rape committed. x x x.¹⁸ (Emphasis and underscoring ours)

While the evidence directly points to Noel as AAA's rapist, accused-appellant did not prevent him from committing the lustful act despite an opportunity to do so.

Pertinently, in *People v. Verceles, et al.*,¹⁹ We held:

In the course of the robbery, one of them, particularly Mamerto Soriano, succumbed to lustful desires and raped [the victim] while accused-appellants just stood outside the door and did nothing to prevent Mamerto Soriano. We have previously ruled that once conspiracy is established between two accused in the commission of the crime of robbery, they would be both equally culpable for the rape committed by one of them on the occasion of the robbery, unless any of them proves that he endeavored to prevent the other from committing the rape. **The rule in this jurisdiction is that whenever a rape is committed as a consequence, or on the occasion of a robbery, all those who took part therein are liable as principals of the crime of robbery with rape, although not all of them took part in the rape.** (Emphasis ours)

As stated above, once conspiracy is established between several accused in the commission of the crime of robbery, as in the present case, they would all be equally culpable for the rape committed by anyone of them on the occasion of the robbery, *unless anyone of them proves that he endeavored to prevent the others from committing rape.*²⁰ The immediately preceding condition is absent in this case. The factual finding of the trial court as affirmed by the CA is already irreversible holding that while accused-appellant did not rape AAA, he, however, did not endeavor to stop Noel despite an opportunity.

The fact that AAA was raped cannot be over-emphasized. The CA made the following categorical findings:

AAA's testimony was straightforward, candid and consistent on material points detailing the bestial act of accused Noel Baac in ravishing her. Besides, her statement was corroborated by the medical certificate dated September 7, 2007 finding AAA's genitals to have suffered from deep fresh laceration. No young and decent woman in her right mind especially of tender age as that of AAA who is 18 years old would concoct a story of defloration, allow the examination of her private parts and

¹⁸ *Rollo*, p. 32.

¹⁹ G.R. No. 130650, September 10, 2002.

²⁰ *People v. Evangelio*, G.R. No. 181902, August 31, 2011.

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thereafter pervert herself by being subjected to a public trial, if she was not motivated solely by her desire to obtain justice for the wrong committed against her.²¹

On the face of the evidence against him, accused-appellant's defense consisting merely of his bare allegation that he and his brother Marvin were at their house when the crime was committed does not persuade Us to rule in his favor. By their own admission, they live at 97 Eastbank Road, Kapitbahayan, Floodway, Sta. Lucia, Pasig City. It was easy for them to negotiate the distance between their house and the victims' house. Their place of residence and the place where the crime was committed are both situated in Barangay Sta. Lucia, and the distance could be negotiated within 15 minutes.

Ergo, his conviction is sustained.

The CA correctly noted that *the imposable penalty upon accused-appellant should have been death considering that the aggravating circumstance of dwelling was alleged in the Information and proven. However, with the passage of R.A. No. 9346²² prohibiting the imposition of the death penalty, the trial court correctly reduced the penalty of death to reclusion perpetua, without eligibility for parole.*²³

Clearly, the imposable penalty against accused-appellant is death. However, by reason of R.A. No. 9346 as stated above, the penalty was reduced to *reclusion perpetua*. In view hereof, the CA's award of civil indemnity in the amount of PhP 75,000, moral damages in the amount of PhP 75,000, and exemplary damages in the amount of PhP 30,000 to AAA, must be modified pursuant to the guidelines laid down in *People v. Jugueta*,²⁴ to wit:

II. For Simple Rape/Qualified Rape:

1.1 Where the penalty imposed is Death but reduced to *reclusion perpetua* because of RA 9346 :

- a. Civil indemnity – PhP 100,000.00
- b. Moral damages – PhP 100,000.00
- c. Exemplary damages – PhP 100,000.00

Accordingly, accused-appellant shall pay AAA civil indemnity of PhP 100,000, moral damages of PhP 100,000, and exemplary damages of PhP 100,000.

²¹ *Rollo*, p. 25.

²² AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES.

Approved on June 24, 2006.

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Section 2. In lieu of the death penalty, the following shall be imposed.

(a) the penalty of reclusion perpetua, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code; or

X X X X

²³ *Rollo*, p. 32.

²⁴ G.R. No. 202124, April 5, 2016.

The CA's order directed against accused-appellant to pay, jointly and severally with Marvin Belmonte, actual damages to Hiroshi and spouses Teodora and Robert must stand. The CA on the matter held that:

The trial court correctly awarded actual damages suffered by Hiroshi Emmanuel L. Zorilla and spouses Teodora and Robert Dela Cruz in the amounts of P23,000.00 and P132,150.00, respectively, **as they are duly supported by receipts.**²⁵ (Emphasis ours)

Truly, actual damages to be compensable must be proven by clear evidence, as in this case.

WHEREFORE, the instant appeal is **DISMISSED**. The Decision of the Court of Appeals in CA-G.R. CR-HC No. 05774 dated April 22, 2014, finding accused-appellant Marlon Belmonte **GUILTY** of the crime of Robbery with Rape is **AFFIRMED with MODIFICATION** in that the accused-appellant is **ORDERED** to pay AAA civil indemnity of PhP 100,000, moral damages of PhP 100,000, and exemplary damages of PhP 100,000. Interest at the rate of six percent (6%) *per annum* is imposed on all the damages awarded in this case from date of finality of this Decision until fully paid. The rest of the assailed CA Decision **STANDS**.

SO ORDERED.


NOEL GIMENEZ TIJAM
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Associate Justice


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

²⁵ *Rollo*, p. 32.


LUCAS P. BERSAMIN
 Associate Justice


BIENVENIDO L. REYES
 Associate Justice

ATTESTATION

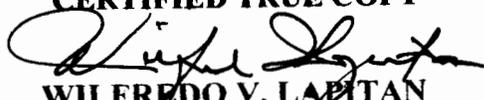
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


PRESBITERO J. VELASCO, JR.
 Associate Justice
 Chairperson, Third 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

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WILFREDO V. LAPIDAN
 Division Clerk of Court
 Third Division
 AUG 22 2017