



Mis. JDC Batt  
MISAELO DOMINGO C. BATTUNG III  
Deputy Division Clerk of Court  
Third Division

Republic of the Philippines  
Supreme Court  
Manila

AUG 18 2017

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,  
Plaintiff-Appellee,

G.R. No. 223138

Present:

VELASCO, JR., J.,  
Chairperson,  
BERSAMIN,  
\*DEL CASTILLO,  
REYES, and  
TIJAM, JJ.

- versus -

Promulgated:

RICKY PRIMAVERA y REMODO,  
Accused-Appellant.

July 5, 2017

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DECISION

TIJAM, J.:

This is an appeal from the Decision<sup>1</sup> dated March 13, 2015 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 06306, sustaining the conviction of Ricky Primavera y Remodo (accused-appellant) for the crime of Rape, held by the Regional Trial Court (RTC), in San Jose, Camarines Sur, Branch 58, in its Decision<sup>2</sup> dated June 5, 2013 in Criminal Case No. T-2949.

The Facts

Accused-appellant was charged with rape in an Information, the accusatory portion of which reads as follows:

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

<sup>1</sup> Penned by Associate Justice Stephen C. Cruz, with Associate Justices Fernanda Lampas Peralta and Ramon Paul L. Hernando concurring; *rollo*, pp. 2-27.

<sup>2</sup> Penned by Presiding Judge Ma. Angela Acompañado-Arroyo; CA *rollo*, pp. 46-57.

“That on or about 2:00 o'clock in the morning of November 17, 2005, in barangay Sta. Maria, Lagonoy, Camarines Sur, Philippines and within the jurisdiction of [the] Honorable Court, the said accused, with intent to lie, by means of force, intimidation and influence, did then and there willfully, unlawfully and feloniously lie and succeeded in having carnal knowledge with one AAA,<sup>3</sup> a minor, 16 years old, against her will and consent, to her damage and prejudice.

CONTRARY TO LAW.<sup>4</sup>

Upon arraignment, accused-appellant pleaded not guilty to the charge. Pre-trial, and thereafter, trial ensued.

During trial, the prosecution presented the following witnesses, to wit: AAA; BBB, AAA's mother; Lagonoy, Camarines Sur Municipal Health Officer Dr. Ramon Odiamar (Dr. Odiamar); and National Bureau of Investigation (NBI) Regional Office, Naga City Special Investigator Rogelio G. Intia (Intia).

AAA testified that around 2:00 a.m. of November 17, 2005, she was sleeping alone in their living room while BBB and her siblings were sleeping in their store adjacent to their living room. She was suddenly awakened by the voice of accused-appellant, who was their neighbor, telling her not to make any noise, otherwise he will kill her with a gun. Accused-appellant also told AAA that he has been wanting her and her elder sister but the latter already got married. He also told AAA that he will bring her to hell. He recognized accused-appellant as the latter turned on a flashlight as he wanted to see her face. AAA tried to reach for the xylophone and flat iron beside her to hit him with the same but the accused-appellant was able to stop her and instead, strangled her with the cord of the flat iron.<sup>5</sup>

Accused-appellant then proceeded to kiss her breasts and bite her nipples. He also managed to take off his and AAA's shorts/pants and underwears, open AAA's legs, insert his penis into AAA's vagina, and make push and pull movements. Thereafter, accused-appellant played with AAA's breast and vagina.<sup>6</sup> After the sexual abuse, accused-appellant pulled AAA's hair, made her sit on a chair, and threatened to kill her, BBB, and her siblings if she tells anyone about the incident.<sup>7</sup>

That morning, AAA went to school and told her cousin about the abuse. When she got home that day, she saw accused-appellant talking to BBB, asking if she found a cap in their house. Upon hearing this, AAA

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<sup>3</sup> 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).

<sup>4</sup> *Rollo*, p. 3.

<sup>5</sup> *Id.* at 3-4.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

went to their living room where accused-appellant raped her and found the cap that accused-appellant was looking for and kept the same.<sup>8</sup>

That evening, AAA's grandmother came to their house and told BBB that AAA was raped. Apparently, her cousin told her grandmother about it. BBB then confronted AAA and the latter confessed that accused-appellant indeed raped her. They immediately proceeded to the municipal police station to report the incident. The family, however, decided to file the case directly with the NBI. AAA was then subjected to a medical examination.<sup>9</sup>

AAA's testimony was corroborated by BBB's testimony on material points, to wit: AAA's age at the time of the incident; that accused-appellant asked her about his lost cap that morning; that AAA's grandmother told her about the abuse; and that she brought AAA to the police station and NBI to report the incident and file a complaint.

Dr. Odiamar testified to interpret the report prepared and issued by Dr. Raoul Alcantara of the NBI as regards AAA's medical examination. No injury was found on AAA's genital. AAA's hymen was found to be intact. AAA's hymenal orifice was found to be 3.0 centimeters in diameter, which allows complete penetration of an average-sized adult Filipino male organ in full erection without producing hymenal injury.<sup>10</sup>

For its part, the defense presented the testimonies of the accused-appellant, Ronnie Capuz (Capuz) and Virgilio Rebuya (Rebuya).

The accused-appellant denied the accusation against him. He testified that he has known AAA for a long time as he and AAA's parents were close to each other. He further testified that AAA had once requested him to teach her how to drive a motorcycle to which he acceded. She also asked him one time to fetch her from an outing. BBB also used to borrow money from him but the last time she did, she asked for PhP 10,000 and he was not able to lend her because he also needed money at that time. Because of this, BBB got mad and threatened him that he will "find what he is looking for." According to the accused-appellant, this is the reason why he was charged with rape. He also interposed an *alibi*, saying that at the time of the alleged incident, he was at home sleeping with his children.<sup>11</sup>

Capuz testified that on the night of November 16, 2005 until about 5:00 a.m. of the following day, he was at the billiard hall in front of AAA's house. He averred that he saw accused-appellant pass by at around 7:30 p.m. to collect *jueteng* bets. He never saw accused-appellant thereafter.<sup>12</sup>

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<sup>8</sup> Id.

<sup>9</sup> Id. at 4-5.

<sup>10</sup> Id. at 6-7.

<sup>11</sup> Id. at 8.

<sup>12</sup> Id. at 9.

Rebuya testified that he frequently saw accused-appellant and AAA riding the former's motorcycle. He also saw AAA and BBB frequent accused-appellant's house and when he asked the accused-appellant about it, the latter responded that BBB borrows money from him. Rebuya further testified as to the proximity of accused-appellant's house to that of AAA's.<sup>13</sup>

### The RTC Ruling

On June 5, 2013, the RTC, giving more weight to AAA's positive testimony than accused-appellant's *alibi* and denial, found the latter guilty beyond reasonable doubt of the crime of rape, thus:

WHEREFORE, all the foregoing considered, accused Ricky Primavera is hereby found GUILTY BEYOND REASONABLE DOUBT of the felony of RAPE defined and penalized under Article[s] 266-A and 266-B of the Revised Penal Code as amended by RA 8353 and he is hereby sentenced to suffer the penalty of Reclusion Perpetua. He is likewise ordered to pay the private complainant (AAA) the amount of Php 50,000.00 as moral damages and Php 50,000.00 as civil indemnity.

SO ORDERED.<sup>14</sup>

### The CA Ruling

The CA upheld the conviction but modified the monetary awards as follows:

WHEREFORE, in view of the foregoing premises, the instant appeal is hereby **DENIED**. The Decision dated June 5, 2013 of the Regional Trial Court of San Jose, Camarines Sur, Branch 58 is hereby **AFFIRMED with MODIFICATION**, that is, accused-appellant Ricky Primavera y Remodo is found **GUILTY** beyond reasonable doubt of the crime of Rape defined and penalized under Article[s] 266-A and 266-B of the Revised Penal Code as amended by RA 8353 and he is hereby sentenced to suffer the penalty of *Reclusion Perpetua*. Accused-appellant is **ORDERED** to pay the victim AAA the following sums: a) Php75,000.00 as and for civil indemnity; b) Php75,000.00 as and for moral damages; c) Php30,000.00 as and for exemplary damages as provided by the Civil Code in line with recent jurisprudence plus legal interest on all damages awarded at the legal rate of 6% per annum from the date of finality of this Decision until fully paid.

SO ORDERED.<sup>15</sup>

Hence, this appeal.

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<sup>13</sup> Id. at 9-10.

<sup>14</sup> CA rollo, pp. 56-57.

<sup>15</sup> Rollo, pp. 26-27.

Both parties manifested that they will no longer file supplemental briefs since the same will just be a rehash of arguments already reflected in their respective briefs filed before the CA.

### The Issue

Basically, the pivotal issue to be resolved by this Court is whether the prosecution was able to prove beyond reasonable doubt that accused-appellant is guilty of the crime of rape.

### This Court's Ruling

The Court affirms the conviction of accused-appellant with modifications only as regards the monetary awards.

Articles 266-A and 266-B of the Revised Penal Code (RPC), as amended, provide:

ART. 266-A. *Rape; When and How Committed.* – Rape is Committed:

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

- a) Through force, threat, or intimidation;
- b) When the offended party is deprived of reason or otherwise unconscious;
- c) By means of fraudulent machination or grave abuse of authority; and
- d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

x x x x

ART. 266-B. *Penalties.* – Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

x x x x

Thus, for a successful prosecution of rape, the following elements must be proved beyond reasonable doubt, to wit: (1) that the accused had carnal knowledge of the victim; and (2) that said act was accomplished: (a) through the use of force and intimidation, or (b) when the victim is deprived of reason or otherwise unconscious, or (c) when the victim is under 12 years of age or is demented.<sup>16</sup>

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<sup>16</sup> *People v. Ocdol, et al.*, G.R. No. 200645, August 20, 2014.

The RTC and the CA found that the prosecution successfully proved beyond reasonable doubt all the elements of the crime of rape and accused-appellant's guilt.

The accused-appellant, however, faults the trial court for relying upon AAA's testimony in ruling for his conviction. Accused-appellant points out the impossibility of consummating rape considering the proximity between the room of AAA's mother and siblings and the living room, where AAA was allegedly raped. Accused-appellant also insists on his *alibi* that he was home, sleeping with his children, at the time that the rape allegedly occurred. The accused-appellant further points out the fact that no extragenital physical injury nor hymenal laceration was found on AAA, arguing thus that such fact *albeit* not an element of the crime, negates rape and casts reasonable doubt on the accused-appellant's guilt.

Essentially, thus, the appeal boils down to the credibility of AAA's testimony.

Due to its intimate nature, rape is usually a crime bereft of witnesses, and more often than not, the victim is left to testify for herself. Thus, in the resolution of rape cases, the victim's credibility becomes the primordial consideration.<sup>17</sup> For this matter, this Court has always adhered to the rule that unless there appears certain facts or circumstances of weight and value which the lower court overlooked or misappreciated and which, if properly considered, would alter the result of the case, the trial court's conclusions on the credibility of witnesses in rape cases are generally accorded great weight and respect, and at times even finality.<sup>18</sup> This rule is even more stringently applied if the appellate court has concurred with the trial court.<sup>19</sup>

In *People v. Sapigao, Jr.*,<sup>20</sup> this Court explained the rationale for the above-mentioned principle, *viz.*:

It is well-settled that the evaluation of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct, and attitude under grilling examination. These are important in determining the truthfulness of witnesses and in unearthing the truth, especially in the face of conflicting testimonies. For, indeed, the emphasis, gesture, and inflection of the voice are potent aids in ascertaining the witness' credibility, and the trial court has the opportunity and can take advantage of these aids. These cannot be incorporated in the record so that all that the appellate court can see are the cold words of the witness contained in transcript of testimonies with the risk that some of what the witness actually said may have been lost in the process of transcribing. As correctly stated by an American court, "There is an inherent impossibility of determining with any degree of accuracy what

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<sup>17</sup> *Id.*

<sup>18</sup> *People v. Ballacillo*, G.R. No. 201106, August 3, 2016.

<sup>19</sup> *People v. Barcelá*, G.R. No. 208760, April 23, 2014.

<sup>20</sup> G.R. No. 178485, September 4, 2009.



credit is justly due to a witness from merely reading the words spoken by him, even if there were no doubt as to the identity of the words. However artful a corrupt witness may be, there is generally, under the pressure of a skillful cross-examination, something in his manner or bearing on the stand that betrays him, and thereby destroys the force of his testimony. Many of the real tests of truth by which the artful witness is exposed in the very nature of things cannot be transcribed upon the record, and hence they can never be considered by the appellate court.<sup>21</sup>

After a careful review of this case, We find no cogent reason to depart from the findings of the RTC, as affirmed by the CA, including the calibration of AAA's credibility. We do not find any reason to cast aspersion on AAA's naivety and honesty to view her clear and straightforward testimony as to her horrifying experience in accused-appellant's hands with incredulity. She categorically testified that accused-appellant forced himself upon her, inserted his penis in her vagina, and threatened her not to tell anyone about it.

Time and again, this Court held that testimonies of rape victims who are young and immature deserve full credence, considering that no young woman, especially of tender age, would concoct a story of defloration, allow an examination of her private parts, and thereafter pervert herself by being subject to a public trial, if she was not motivated solely by the desire to obtain justice for the wrong committed against her. Youth and immaturity are generally badges of truth. What is merely required in establishing rape through testimonial evidence is that the victim be categorical, straightforward, spontaneous and frank in her statements about the incident of rape.<sup>22</sup>

Accused-appellant's imputation of ill motive against BBB must be ignored. Motives such as resentment, hatred, or revenge have never swayed this Court from giving full credence to the testimony of a minor rape victim.<sup>23</sup> More so in this case, where the improper motive is imputed against the victim's mother. Indeed, accused-appellant's allegation that the case was filed against him because BBB got mad at him for not lending her money is too flimsy and insignificant for BBB's daughter to falsely accuse him of such a serious crime and to publicly disclose that she had been raped. It is also highly inconceivable for BBB to allow her daughter to undergo such humiliation and anxiety solely for recrimination.

Also, the close proximity of relatives at the scene of the rape does not negate the commission of the crime, contrary to the accused-appellant's argument. It has always been held that rape can be committed even in places where people congregate, in parks, along the roadside, within school premises, inside a house where there are other occupants, and even in the

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<sup>21</sup> Id.

<sup>22</sup> *People v. Ballacillo*, supra note 18.

<sup>23</sup> *People v. Abat*, G.R. No. 202704, April 2, 2014.

same room where other members of the family are also sleeping.<sup>24</sup> It is not impossible or incredible for the members of the victim's family to be in deep slumber and not to be awakened while a sexual assault is being committed. Lust is no respecter of time and place.

Accused-appellant also harps on the medical report, arguing that the absence of extragenital physical injury and hymenal laceration belies the accusation of rape. This Court has consistently ruled that the presence of lacerations or injuries in the victim's sexual organ is not necessary to prove the crime of rape and its absence does not negate the fact of rape.<sup>25</sup> In fact, a medical report is not indispensable in a prosecution of rape.<sup>26</sup> What is essential is that AAA's testimony meets the test of credibility, and that is sufficient to convict the accused-appellant.<sup>27</sup> Besides, Dr. Odiamar, whose expertise and competence to testify on the matter was admitted by the defense, explained that the opening or the orifice of the hymen may be small or big.<sup>28</sup> The orifice of AAA's hymen was found to be 3.0 cm in diameter, or a little more than one inch.<sup>29</sup> With this diameter, according to the doctor, the penetration or entrance of a fully erect Filipino penis can be allowed without producing laceration or without producing injury to the hymen. It is thus possible that rape be consummated while the hymen remains intact.<sup>30</sup>

Pitted against AAA's clear, categorical, and straightforward testimony, accused-appellant's *alibi* and denial cannot prevail. This Court has never favorably looked upon the defenses of *alibi* and denial, which constitute self-serving negative evidence that cannot be accorded greater evidentiary weight than the positive declaration of a credible witness.<sup>31</sup> Accused-appellant's *alibi* was unsupported. The testimonies of the defense witnesses did not, in any way, corroborate the accused-appellant's *alibi* and denial. At most, Capuz merely testified that he did not see accused-appellant in the area at the time of the incident nor did he notice any unusual incident therein. Rebuya, on the other hand, even exacerbated accused-appellant's *alibi* when he testified that accused-appellant's house is near AAA's house and it would only take five minutes to get there by walking. For the defense of *alibi* to prosper, the accused-appellant must prove that he was somewhere else when the offense was committed and that he was so far away that it was not possible for him to have been physically present at the place of the crime or at its immediate vicinity at the time of its commission.<sup>32</sup> Clearly, that is not the case herein.

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<sup>24</sup> *People v. Cabral*, G.R. No. 179946, December 23, 2009.

<sup>25</sup> *People v. Sarcia*, G.R. No. 169641, September 10, 2009.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *CA rollo*, pp. 50-51.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*; *People v. Valdez*, G.R. No. 133194-95 and 141539, January 29, 2004.

<sup>31</sup> *People v. Abat*, *supra* note 23.

<sup>32</sup> *People v. Piosang*, G.R. No. 200329, June 5, 2013.

In all, having properly alleged in the Information and proven during trial that AAA was 16 years old at the time she was raped and that the same was perpetrated through force and intimidation by accused-appellant, the RTC, as affirmed by the CA, properly imposed the penalty of *reclusion perpetua* in accordance with Arts. 266-A, paragraph 1(a) and 266-B of the RPC, above-quoted.

While sustaining, however, the awards of civil indemnity and moral damages in the amount of PhP 75,000 each, as well as the interest imposed upon all the monetary awards, We find it proper to increase the exemplary damages from PhP 30,000 to PhP 75,000 pursuant to the prevailing jurisprudence on the matter.<sup>33</sup>

**WHEREFORE**, premises considered, the instant appeal is **DISMISSED**. Accordingly, the Decision dated March 13, 2015 of the Court of Appeals in CA-G.R. CR-H.C. No. 06306 is hereby **AFFIRMED with MODIFICATION**, thus, accused-appellant Ricky Primavera y Remodo is found **GUILTY** beyond reasonable doubt of the crime of Rape as defined and penalized under Articles 266-A and 266-B of the Revised Penal Code, and is therefore sentenced to suffer the penalty of *reclusion perpetua* and ordered to pay the victim the amounts of PhP 75,000 for civil indemnity, PhP 75,000 for moral damages, and **PhP 75,000 for exemplary damages**. An interest at the rate of six percent (6%) *per annum* is imposed on all the monetary awards from the date of finality of this Decision until fully paid.

**SO ORDERED.**

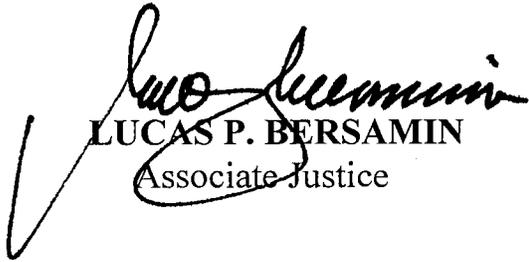
  
**NOEL GIMENEZ TIJAM**  
Associate Justice

**WE CONCUR:**

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

<sup>33</sup> *People v. Jugueta*, G.R. No. 202124, April 5, 2016.



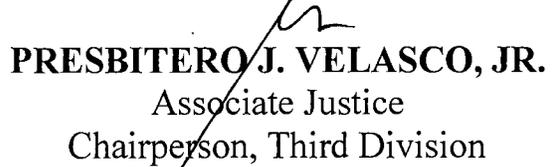
  
**LUCAS P. BERSAMIN**  
 Associate Justice

  
**MARIANO C. DEL CASTILLO**  
 Associate Justice

  
**BIENVENIDO L. REYES**  
 Associate Justice

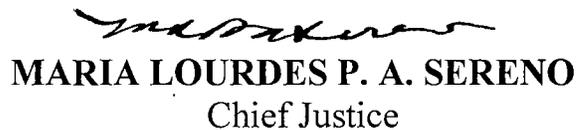
**ATTESTATION**

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

**CERTIFIED TRUE COPY**

  
**MISAELO DOMINGO C. BATTUNG III**  
 Deputy Division Clerk of Court  
 Third Division

AUG 18 2017