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



JUL 17 2017

Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

PEOPLE OF THE PHILIPPINES, G.R. No. 216937
Plaintiff-Appellee,

Present:

VELASCO, JR., J.,
Chairperson,
BERSAMIN,
REYES,
PERLAS-BERNABE*, and
TIJAM, JJ.

- versus -

TITO AMOC y MAMBATALAN
Accused-Appellant.

Promulgated:

June 5, 2017

Wilfredo V. Lapitan

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DECISION

TIJAM, J.:

Accused-appellant Tito Amoc y Mambatalan challenges before Us the December 9, 2014 Decision of the Court of Appeals (CA)¹, which affirmed his conviction for two counts of rape, with modification as to the award of damages, rendered against him by the Regional Trial Court (RTC), Branch 2, Tagum City, Davao Del Norte, in its July 23, 2012 Decision².

Accused-appellant was charged with two counts of rape in violation of Article 266-A of the Revised Penal Code (RPC), in two separate Informations, the accusatory portions of which read as follows:

* Designated as an additional member as per Raffle dated February 20, 2017.

¹Penned by Associate Justice Pablito Perez and concurred in by Associate Justices Edgardo A. Camello and Henri Jean Paul B. Inting, *rollo*, pp. 3-16.

²Penned by Judge Ma. Susana T. Baua, *CA rollo*, pp. 36-40.

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For Criminal Case No. 16705:

That on or about July 12, 2009, in the Municipality of Talaingod, Province f (sic) Davao del Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of one AAA³, his step-daughter, a thirteen (13) year old minor, against her will.

For Criminal Case No. 16961:

That sometime in April 2009, in the Municipality of Talaingod, Province of Davao del Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of one AAA, his step-daughter, a thirteen (13) year old minor, against her will.⁴

During arraignment, accused-appellant pleaded not guilty to both accusations. Trial ensued thereafter.

Version of the Prosecution

Prosecution witness and victim AAA narrated her tragic experience which happened in April 2009 at around 6 o'clock in the morning, when she was only thirteen years old. Accused-appellant brought her into their bedroom, took off all her clothes, tied her legs with a rope, undressed himself, and proceeded to have carnal knowledge of her. Accused-appellant covered AAA's mouth to prevent her from asking help. Accused-appellant pointed a knife at her and tried to stab her. AAA could not tell her mother what happened because accused-appellant was always tailing her.⁵

AAA also testified that the second sexual abuse happened on July 12, 2009. Accused-appellant even warned AAA not to say anything about the incident.⁶

AAA's mother, BBB, noticed that AAA's stomach had a slight bulge and conducted a pregnancy test, which yielded a positive result. AAA later on divulged that accused-appellant had been raping her and that he is the father of her baby. AAA gave birth to a baby girl sometime in December 2009.⁷

³In view of the ruling in *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, the real name and personal circumstances of the victim, and any other information tending to establish or compromise her identity, including those of her immediate family or household members, are not disclosed in this Decision.

⁴*Rollo*, pp. 3-4.

⁵CA Decision dated December 9, 2014, *id.* at 4.

⁶*Id.*

⁷*Id.* at 5.



Accused-appellant admitted that he had sexual congress with AAA but argued that the same was consensual. Accused-appellant claimed that it was an accepted practice among the Ata-Manobo; an indigenous cultural group, to take one's daughter as a second wife.⁸

The RTC found accused-appellant guilty beyond reasonable doubt of two counts of rape in a Decision dated July 23, 2012. Accused-Appellant was sentenced to suffer the penalty of *reclusion perpetua* for each count of rape, and ordered to pay AAA the following indemnity: Php 75,000 as civil indemnity; Php 75,000 as moral damages; and, Php 25,000 as exemplary damages. The dispositive portion of the RTC Decision provides:

WHEREFORE, by his own admission, there being proof beyond reasonable doubt, accused **TITO AMOC Y MAMBATALAN** is hereby found **GUILTY** of the rape of AA (sic) as charged in both of the above-entitled cases and is:

1. Sentenced to suffer the penalty of *reclusion perpetua* for each count of rape; and
2. Likewise for each count of rape, he is ordered to pay the victim P75,000.00 as civil indemnity, P75,000.00 as moral damages, and P25,000.00 as exemplary damages.

SO ORDERED⁹

On appeal, the CA in a Decision dated December 9, 2014, affirmed the RTC's Decision with modification as to the award of damages. The awards for civil indemnity and moral damages were decreased to Php 50,000 for each count of rape. The CA Decision's *fallo* reads:

WHEREFORE, the appeal is **DENIED**. The Judgment of the Regional Trial Court of Tagum City, Branch 2, dated 23 July 2012 is **AFFIRMED** with **MODIFICATIONS**.

The award of civil indemnity is decreased to P50,000.00 and the award of moral damages is likewise decreased to P50,000.00, for each count of rape.

Appellant Tito Amoc is also ordered to support the offspring born as a consequence of the rape. The amount of support shall be determined by the trial court after due notice and hearing, with support in arrears to be reckoned from the date the appealed decision was promulgated by the trial court.

SO ORDERED.¹⁰

Hence, this appeal.

⁸ Id. at 6.

⁹ CA *rollo*, p. 40.

¹⁰ *Rollo*; p. 15.

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Accused-appellant questions the CA Decision and argues the following: 1) that the prosecution failed to prove the element of force and intimidation; and, 2) that his admission of carnal knowledge of AAA does not amount to rape.

The appeal lacks merit.⁷

There is no cogent reason to deviate from the CA ruling affirming the RTC's factual finding that the accused-appellant is guilty of two counts of rape. The issues raised are factual in nature. The trial court's evaluation shall be binding on this Court unless it is shown that certain facts of substance and value have been plainly overlooked, misunderstood, or misapplied.¹¹ None of the exceptions is present in this case.

Even if We consider the factual issues raised, the findings of fact of the RTC and the CA still sufficiently support the conviction of and imposition of the penalty of *reclusion perpetua* on the accused-appellant for the crime of rape against AAA.

Article 266-A of the RPC pertinently reads:

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;
xxx xxx xxx

For a charge of rape under the above-mentioned provision to prosper, the following elements must be present: (1) accused-appellant had carnal knowledge of AAA; and, (2) he accompanied such act by force, threat or intimidation.

The first element of carnal knowledge is present because accused-appellant, in fact, admits that he had carnal knowledge of AAA. The point of contention is whether there was force, or intimidation, or threat in the said act.

We find that the evidence on record sufficiently established that the accused-appellant employed force, intimidation and threat in carrying out his sexual advances on AAA. The CA correctly found that the accused-appellant employed force upon the person of AAA. Accused-appellant tied AAA's legs with a rope, climbed on top of her, and covered her mouth to prevent her from asking for help. Accused-appellant also threatened AAA when he pointed a knife at her and tried to stab her. Clearly, contrary to the accused-

¹¹*People v. Ofemiano*, G.R. No. 187155, February 1, 2010.



appellant's contention, the element of force and intimidation is present in this case.

And even assuming *arguendo* that AAA failed to resist, the same does not necessarily amount to consent to accused-appellant's criminal acts. It is not necessary that actual force or intimidation be employed; as moral influence or ascendancy takes the place of violence or intimidation. Jurisprudence holds that the failure of the victim to shout for help does not negate rape. Even the victim's lack of resistance, especially when intimidated by the offender into submission, does not signify voluntariness or consent.¹² In the cases of *People v. Ofemariano*¹³ and *People v. Corpuz*¹⁴, it has been acknowledged that even absent any actual force or intimidation, rape may be committed if the malefactor has moral ascendancy over the victim. Considering that accused-appellant was the common-law spouse of AAA's mother, and as such, he was exercising parental authority over AAA. Indeed, in this case, moral ascendancy is substituted for force and intimidation.

As to the alleged inconsistencies in the testimony of AAA (that accused-appellant inserted his penis when AAA's legs were tied together, AAA pressed her hands on the back, and her prior statement that she tried to push him), this can hardly affect the credibility of AAA.

As a general rule, on the question of whether to believe the version of the prosecution or that of the defense, the trial court's choice is generally viewed as correct and entitled to the highest respect because it is more competent to conclude so, having had the opportunity to observe the witnesses' demeanor and deportment on the witness stand as they gave their testimonies. The trial court is, thus, in the best position to weigh conflicting testimonies and to discern if the witnesses were telling the truth. Without any clear showing that the trial court and the appellate court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance, the rule should not be disturbed.¹⁵

It is settled in this jurisdiction that as long as the testimony of the witness is coherent and intrinsically believable as a whole, discrepancies of minor details and collateral matters do not affect the veracity, or detract from the essential credibility of the witnesses' declarations.¹⁶

¹²Id. at 12.

¹³Id.

¹⁴G.R. No. 175836, January 30, 2009.

¹⁵*People v. Burce*, G.R. No. 201732, March 26, 2014.

¹⁶See *People v. Basbas*, G.R. No. 191068, July 17, 2013.

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Also, in prosecuting a crime of rape, the accused may be convicted solely on the basis of the testimony of the victim that is credible, convincing, and consistent with human nature and the normal course of things.¹⁷

Moreover, accused-appellant's defense of denial and alibi cannot stand against the prosecution's evidence. Alibi is an inherently weak defense because it is easy to fabricate and highly unreliable.¹⁸ To merit approbation, he must adduce clear and convincing evidence that he was in a place other than the *situs criminis* at the time when the crime was committed, such that it was physically impossible for him to have been at the scene of the crime when it was committed.¹⁹ Accused-appellant failed in this regard.

Lastly, the Informations alleged that the accused-appellant was the stepfather of AAA. The evidence, however, shows that the accused-appellant was merely the common-law spouse of AAA's mother, BBB. There was no evidence adduced to prove that accused-appellant was legally married to BBB. Thus, notwithstanding the fact that it was proven during trial that accused-appellant was the common-law spouse of AAA's mother, the same cannot be appreciated as a qualifying circumstance for it was not specifically alleged in the Informations. The circumstances of relationship and minority must be both alleged in the Informations and proved during trial, to be convicted of the crime of qualified rape. Therefore, We find no cogent reason to disturb the findings of the RTC and the CA for the conviction of accused-appellant for two counts of simple rape as they were sufficiently supported by the evidence on record.

The CA properly imposed the penalty of *reclusion perpetua* in conformity with Article 266-B of the RPC. However, to conform to prevailing jurisprudence, We deem it proper to modify the amount of damages awarded in this case. The Court modifies the award of damages as follows: PhP 75,000 as civil indemnity, and PhP 75,000 as moral damages.²⁰

We note that exemplary damages in the amount of PhP 25,000 was awarded to AAA. In accordance with the case of *People v. Jugueta*²¹, exemplary damages in rape cases are awarded for the inherent bestiality of the act committed, even if no aggravating circumstance attended the commission of the crime, and so We hereby increase the award of exemplary damages to PhP 75,000 for each count of rape.

¹⁷ *People v. Espenilla*, G.R. No. 192253, September 18, 2013.

¹⁸ *People v. Gani*, G.R. No. 195523, June 5, 2013.

¹⁹ See *People v. Jimmy Tabio*, G.R. No. 179477, February 6, 2008.

²⁰ *People v. Jugueta*, G.R. No. 202124, April 5, 2016.

For Simple Rape/Qualified Rape:

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2.1 Where the penalty imposed is *reclusion perpetua*, other than the above-mentioned:

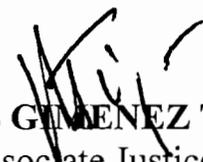
- a. Civil indemnity – PhP75,000.00
- b. Moral damages – PhP75,000.00
- c. Exemplary damages – PhP75,000.00

²¹ *Id.*

In addition, all damages awarded shall earn legal interest at the rate of 6% *per annum* from the date of finality of judgment until fully paid.²²

WHEREFORE, premises considered, the appeal is **DISMISSED**. The Court of Appeals' Decision dated December 9, 2014, finding accused-appellant Tito Amoc y Mambatalan guilty beyond reasonable doubt of two counts of rape and sentencing him to suffer the penalty of *reclusion perpetua* is **AFFIRMED with MODIFICATION**. The civil indemnity, moral damages and exemplary damages awarded are all modified to PhP 75,000. Likewise, the award of damages shall earn interest at the rate of 6% *per annum* from the date of finality of judgment until fully paid.

SO ORDERED.

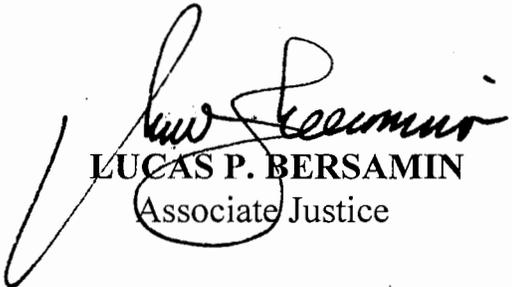


NOEL GIMENEZ TIJAM
Associate Justice

WE CONCUR:



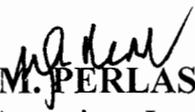
PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson



LUCAS P. BERSAMIN
Associate Justice



BIENVENIDO L. REYES
Associate Justice



ESTELA M. PERLAS-BERNABE
Associate Justice

²²*People v. Sabal*, G.R. No. 201861, June 2, 2014.

A T T E S T A T I O N

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.



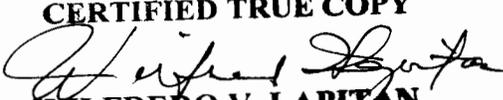
PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

C E R T I F I C A T I O N

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. LAPITAN
Division Clerk of Court
Third Division
JUL 17 2017