



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,  
Plaintiff-Appellee,

G.R. No. 227705

Present:

CARPIO, J., Chairperson,  
PERALTA,  
PERLAS-BERNABE,  
CAGUIOA, and  
REYES, JR., JJ.

- versus -

HERMIN ROMOBIO y PAULER,  
Accused-Appellant.

Promulgated:

11 OCT 2017  
*[Signature]*

X-----X

DECISION

PERALTA, J.:

This is an appeal from the November 13, 2015 Decision<sup>1</sup> of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06513, which affirmed with modification the August 14, 2013 Decision<sup>2</sup> of the Regional Trial Court (RTC) Branch 22, Naga City, Camarines Sur, finding accused-appellant Hermin Romobio y Pauler (*Hermin*) guilty beyond reasonable doubt of robbery with rape as defined and penalized under Article 294, in relation to Article 266-A and 266-B of the Revised Penal Code (RPC), as amended.

The Information dated August 11, 2009 alleged:

That on or about August 9, 2009, in the City of Naga, Philippines, and within the jurisdiction of this Honorable Court, the above-named

<sup>1</sup> Penned by Associate Justice Sesinando E. Villon, with Associate Justices Nina G. Antonio-Valenzuela and Pedro B. Corales concurring (*Rollo*, pp. 2-19; *CA rollo*, pp. 100-117).  
<sup>2</sup> *CA rollo*, pp. 42-64; *Records*, pp. 213-235.

*[Handwritten mark]*

accused, armed with a deadly weapon did then and there, willfully, unlawfully and feloniously and with the use of violence against or intimidation of persons, take, steal and carry away three cell phones (Samsung E200, Nokia 2660, and another Nokia); Four (4) pcs. gold ring; three (3) wristwatches (2 lady and 1 men); three (3) gold necklaces, cash money of ₱4,000.00, bags, wallet, perfumes, lotions, yellow jacket, BDO and RCBC ATM cards, or a total of ₱120,000.00, belonging to and owned by the herein complaining witness [AAA]<sup>3</sup> and that by reason or on occasion of said robbery, tied, boxed complainant on the different parts of her body causing physical injuries and with the use of a bladed weapon, did then and there [willfully], unlawfully and feloniously thru force and violence, by poking a knife succeeded in having sexual intercourse with the said complaining witness against her will as evidenced by medical certificate hereto attached, to her damage and prejudice.

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

Hermin pleaded “Not Guilty” in his arraignment.<sup>5</sup> Trial ensued while he was under detention.<sup>6</sup> The witnesses for the prosecution were AAA, Dr. Vito C. Borja II, and PO2 Alexander Sierra Lapid. The defense presented Hermin, his mother Rosita Romobio, his brother Henry Romobio, and his wife Annaliza Delos Reyes Romobio.

#### *Version of the Prosecution*

AAA is a 44-year-old woman, separated in fact from her husband, and a mother of a child. In the early morning of August 9, 2009, she was sleeping in her house, which was lighted with a 20 watts fluorescent lamp. She was alone because her daughter slept in the house of her (AAA's) sister just few steps away. Around past 1:00 a.m., she was awakened when she felt the presence of somebody inside the house. When she opened her eyes, she saw a man armed with a knife, wearing a ball cap, and whose face was covered by a white “Good Morning” towel from the middle of the nose to the chin. He made a gesture by placing his forefinger on his lips, warning her not to make a noise if she wanted to live. She was surprised and afraid. He demanded for her cellular phone and bag, and proceeded to open the drawers. She attempted to get up from the bed, but he rushed towards her and hit her forehead several times with the knife handle.

<sup>3</sup> The real name of the victim is withheld pursuant to Section 29 of Republic Act No. 7610, Section 44 of Republic Act No. 9262, and Section 40 of the Rule on Violence Against Women and their Children. In *People v. Cabalquinto* (533 Phil. 703 [2006]), this Court resolved to withhold the real name of the victim-survivor and use fictitious initials instead to represent her in its decisions. 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.

<sup>4</sup> Records, p. 1.

<sup>5</sup> *Id.* at 29-31.

<sup>6</sup> *Id.* at 19-20.

AAA was trembling in fear, while the man kept on ransacking the drawers and placing the items taken in a plastic bag. He told her not to make any sound, otherwise, she would be killed. Every time she tried to move, he would rush towards her and hit her either with his fist or the knife handle.

AAA observed that the man was of medium built and height, with fair complexion and curly hair. As she kept on watching him, with his eyes and forehead exposed, she recognized him as Hermin, a person who used to work as a helper/mechanic at her brother BBB's auto repair shop located in the same compound as her house. She had seen him around the compound since 2006, with the last being sometime February or March in 2009. He likewise did some carpentry and masonry works for her sister. In fact, she had previously talked to him when he was requested by her sister to install the clothesline.

When Hermin noticed that AAA kept on looking at him, he got mad. He took a pajama and covered her eyes. Before she was blindfolded, she was able to see that he took her jewelries and another cellular phone. He also tightly tied her hands and feet. Her arms were raised wide open, while her legs were spread apart. He tied her left hand with one end of a plastic yellow cord and the other end was tied to her right hand and the middle portion of the cord was placed under the mattress. Both of her ankles were "spread-eagle" and tied with a cord to the cabinet ("*aparador*"). The black strap of her bag was also used to tie her. He then inserted a piece of cloth inside her mouth and tied it up with a handkerchief.

Hermin continued ransacking AAA's house, placing all his loot inside a plastic bag. Upon finding two ATM cards, he poked a knife at her throat and asked for their PINs, but she gave him incorrect ones. He then told her that he wanted to drink coffee. When she answered that she had no thermos, he heard him switch on the stove and turn on the television.

Thereafter, Hermin sat at AAA's bed side, removed her blanket, tore her pink T-shirt and white underwear, and removed his belt. He placed himself on top of her, licked her nipples, and inserted his penis inside her vagina. While he was doing it, he said: "*Pasensiya ka na kan gigibohon ko saimo.*" She begged him to stop, reasoning that she is already old. Upon learning her age, however, he told her that she is old yet she is still hard-headed. He ordered her to do what he wanted since her life was in his hands.

While Hermin was raping AAA, he saw one more cellular phone under her pillow. He punched her, hitting her left chin, and told her that she is a liar for not surrendering the phone. After he finished with the sexual act, he stood up and went to the comfort room. She smelled his sperm. With her



eyes still covered, she tried to take a peek and check if he was still around. When he saw her moving, he threw something at her. She then heard him searching for things again.

By almost 4:00 a.m., AAA heard that the barrel vault of the front door opened. Sensing that Hermin already left, she pushed the cloth in her mouth with her tongue and removed the blindfold using her right arm. She called out her nephew, CCC, who lived nearby, but there was no response. When she heard someone murmuring at the adjoining house, she shouted the name of her neighbor, Tiya Rose Bulauan. The latter's son, Ruel, eventually went inside the house, untied her, and later on called her relatives. Meantime, she went to the bathroom to wash herself.

Tiya Rose and her husband went to the nearby police station. When the police officers arrived, they investigated on the surroundings of the house and told AAA that, considering the absence of forcible damage on the front and back doors, the window of the comfort room, measuring approximately 40 cms. x 40 cms., could be the only possible entry point of the perpetrator. AAA, who was obviously in a state of shock, crying and trembling, claimed that she was robbed of ₱120,000.00 worth of valuables, consisting of: three (3) cellular phones, five (5) pairs of earrings, five (5) necklaces, five (5) rings, one (1) bracelet, two (2) wristwatches, two (2) sunglasses, imported perfumes, USB device, cash of not less than ₱4,000.00, bag, jacket, and other personal effects. At the crime scene, the police officers were able to recover, mark, and take into custody the following items: pink T-shirt, white underwear, electrical wire, pajama, blanket, coffee mug, kitchen knife, and handkerchief.

AAA told PO2 Lapid the physical appearance of the perpetrator and that he looked familiar to her. She identified him as Hermin, who, incidentally, was also known to him (*PO2 Lapid*) because there were two to three instances when he personally arrested him and recovered from him things belonging to other persons. Subsequently, the police officers conducted a hot pursuit operation. They went to his residence and that of his brother, but he was not there. The next day, about 11:40 a.m., Hermin was arrested. At the Naga City Central Police Office, AAA positively pinpointed him as the person who robbed and raped her. She recalled that the perpetrator wore a silver square ring on his right hand so she asked the police to check whether he (*Hermin*) was wearing one. The police replied in the affirmative. Hermin was then detained and the necessary papers were prepared for the filing of a complaint.

The Medico-Legal Report of Dr. Borja, who saw and examined AAA on August 11, 2009, indicated the following:



## FINDINGS:

1. Thickened vulva with healed laceration located at perineum.
2. NEGATIVE for Sperm Cells

## Other findings:

1. Contusion hematoma, 4.5 cms. x 3 cms., mandible, left.
2. Contusion hematoma, .5 cm. x 10 cms., wrist, left.
3. Lacerated wound, .5 cm. x 1 cm., anterior neck.
4. Severe pain on the forehead and on the right wrist.<sup>7</sup>

*Version of the Defense*

On August 8, 2009, Hermin reported for work as a mason in the construction of the comfort room in the house of Joy Adorna (*Adorna*) from 8:00 a.m. until 6:00 p.m. He directly went home after. He cooked and ate dinner with his mother Rosita who just arrived from Manila, his wife Annaliza, his three children, and his brothers Herson and Henry. After meal, he and his brothers and some friends had a drinking session in the living room. By 11:00 p.m., he slept in the same room with his mother, wife, and children. He woke up at 6:00 a.m. the following day. After cooking and eating breakfast, he accompanied his mother to the cemetery to visit the grave of his grandfather. Around 10:00 a.m., they returned to the house where they prepared and ate lunch. By 3:00 p.m., he went to Adorna to request for a cash advance. Before going home, he bought milk for his youngest child. After a while, he went again to the store to buy some viand. There, he met Henry who told him that there was a complaint filed against him at the police station. After their conversation, he went home and slept early for his 7:00 a.m. work the following day.

Around 7:30 a.m. on August 10, 2009, Hermin left the house and, together with his son and mother, went to the police substation to verify the complaint filed against him. They waited for SPO2 Lapid, who arrived by 9:00 a.m. and later invited them to go to the Central Police Headquarters. They agreed. There, Hermin was interrogated and frisked by the policemen, made to stand in front of a one-way mirror together with four policemen, and identified by AAA as the one who committed the crime.

Hermin confirmed that he has known AAA since 1995 when he and her nephew, DDD, became friends; he met BBB before her; he worked until 2006 as a helper of BBB whose auto repair shop was inside the same compound where AAA's house was situated; and he was previously asked to fix her door and clothesline when he was still working in the shop.

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<sup>7</sup> *Id.* at 15.

However, he denied the allegation that she was able to identify him because of the ring he wore, reasoning that he does not wear any as he does “dirty” work.

On August 14, 2013, Hermin was convicted by the RTC of the crime charged. The *fallo* of the Decision reads:

WHEREFORE, viewed in the light of the foregoing premises, the Prosecution having proven the guilt of the Accused, JUDGMENT is hereby rendered finding Accused HERMIN ROMOBIO y PAULER, GUILTY beyond reasonable doubt for the special complex crime of ROBBERY with RAPE defined and penalized under Article 294, in relation to Article 266-A and B of the Revised Penal Code and is hereby sentenced to suffer the penalty of RECLUSION PERPETUA; to indemnify [AAA] the amount of SEVENTY- FIVE THOUSAND (PHP 75,000.00) PESOS as MORAL DAMAGES; the amount of THIRTY THOUSAND (PHP 30,000.00) PESOS as EXEMPLARY DAMAGES and to restitute the amount of ONE HUNDRED TWENTY THOUSAND PESOS & 00/100 (PHP 120,000.00) Philippine Currency, representing the value of the stolen property to [AAA].

*Costs de officio.*

SO ORDERED.<sup>8</sup>

Hermin elevated the case to the CA, which denied the appeal for lack of merit. In affirming the RTC Decision, the CA further ordered Hermin to pay an interest of six percent (6%) *per annum* on all the damages awarded reckoned from the finality of the judgment until the same are fully paid.

Before Us, the Office of the Solicitor General manifested that it would no longer file a supplemental brief considering that its arguments have already been amply discussed in the Appellee's Brief filed before the CA.<sup>9</sup> Likewise, the Public Attorney's Office stated that it would adopt its Appellant's Brief filed before the CA, since a supplemental brief would only be a rehash of the previous discussions.<sup>10</sup>

Hermin argues that the judgment of conviction was based on the flawed testimony of AAA and on conjectures and speculations which have no basis in fact and in law. He asserted that he was not positively identified by AAA as the one who robbed and raped her; thus, it is possible that he merely resembled the appearance of the wrongdoer. Also, the testimony of Dr. Borja did not serve to corroborate AAA's version since the former was not able to find injuries in the latter's body that might indicate that she had

<sup>8</sup> CA *rollo*, p. 63; records, p. 234.

<sup>9</sup> *Rollo*, pp. 28-30.

<sup>10</sup> *Id.* at 34-36.



sexual intercourse through force or violence. Moreover, AAA neither adduced a single receipt to prove the value of the items allegedly stolen nor stated the particular value of each and every item that was said to be taken. Finally, not all denials and alibis should be disregarded for being mere fabrications.

The appeal is devoid of merit.

In most criminal cases, the issue boils down to the credibility of witnesses and their testimonies. With respect thereto, We adhere to the principle that the evaluation of the witnesses' credibility is a matter best left to the sound discretion of the trial court because of its unique and direct opportunity to observe the witnesses firsthand, to note their demeanor, conduct and attitude, and, in the process, to ascertain if they were telling the truth or not.<sup>11</sup> These elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying is an opportunity that is denied to the appellate courts.<sup>12</sup> Thus, findings of the trial court on such matters deserve much weight and respect and are even treated as binding and conclusive on the appellate court, unless some facts or circumstances of weight and substance have been overlooked, misapprehended or misinterpreted which, if considered, would materially affect the result of the case.<sup>13</sup>

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. As a special complex crime, the prosecution must necessarily prove each of the component offenses with the same precision that would be necessary if they were made the subject of separate complaints.<sup>14</sup> To sustain a conviction for robbery with rape, it is imperative that the robbery itself must be conclusively established; proof of the rape alone is not sufficient.<sup>15</sup> The crime of robbery, as defined under Article 293 of the *RPC*, has the following elements: (1) intent to gain; (2) unlawful taking; (3) personal property belonging to another; and (4) violence against or intimidation of person or force upon things.<sup>16</sup> In robbery with rape, the State must satisfactorily establish the concurrence of the following essential elements: a) the taking of personal property is committed with violence or intimidation against persons; b) the property taken belongs to another; c) the taking is

<sup>11</sup> *People v. Agudo* (3<sup>rd</sup> Division Resolution), G.R. No. 210453, March 25, 2015; *People v. Obina, et al.*, 632 Phil. 288, 293 (2010); and *People v. Gayeta*, 594 Phil. 636, 645 (2008).

<sup>12</sup> *People v. Palma*, 628 Phil. 693, 699 (2010).

<sup>13</sup> *People v. Obina et al.*, *supra* note 11 and *People v. Gayeta*, *supra* note 11, at 645-646.

<sup>14</sup> *People v. Montanir et al.*, 662 Phil. 535, 549 (2011) and *People v. Talusan*, 610 Phil. 378, 389 (2009).

<sup>15</sup> *People v. Domingo*, 432 Phil. 590, 609-610 (2002).

<sup>16</sup> *People v. Gayeta*, *supra* note 11, at 646.



done with intent to gain or *animus lucrandi*; and d) the robbery is accompanied by rape.<sup>17</sup>

The true intent of the accused must first be determined in robbery with rape, because it determines the offense committed.<sup>18</sup> 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.<sup>19</sup> This felony 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.<sup>20</sup> In other words, the offenders had an intent to rob personal property belonging to another, and such intent preceded the rape.<sup>21</sup> If the original plan was to rape but the accused after committing the rape also committed the robbery when the opportunity presented itself, the offense should be viewed as separate and distinct; if the intention of the accused was to rob, but rape was committed even before the asportation, the crime is robbery with rape.<sup>22</sup> The rape must be contemporaneous with the commission of the robbery.<sup>23</sup> Article 294 of the RPC does not distinguish whether the rape was committed before, during or after the robbery; it suffices that the robbery was accompanied by rape.<sup>24</sup>

In this case, the prosecution proved beyond reasonable doubt all the elements of robbery with rape. The RTC found, which the CA substantially adopted, as follows:

It can be culled from the evidence presented by the Prosecution that before HERMIN raped [AAA] he first ransacked the drawers inside her room and even had a plastic where the things he took from the drawers and “*aparador*” such as her jewelries and cellular phones were placed. Afterwards, HERMIN sat on the bed where [AAA] was lying and tied, removed her blanket, tore her T-shirt and underwear then raped her. The primary intention of HERMIN was made manifest by his actions – that is, to rob [AAA] which precedes his intention to rape her.

x x x As testified to by LAPID, a member of the team who responded to the victim and who went inside the house of [AAA], her belongings were scattered. They checked on the possible entries since there was no damage on the front door and the back door of the house and

<sup>17</sup> *People v. Gabuya*, G.R. No. 209038, June 8, 2016; *People v. Evangelio, et al.*, 672 Phil. 229, 242 (2011); *People v. Amper*, 634 Phil. 283, 291 (2010); *People v. Ortiz et al.*, 614 Phil. 625, 633 (2009); *People v. Suyu*, 530 Phil. 569, 596 (2006); and *People v. Domingo, supra* note 15, at 610.

<sup>18</sup> *People v. Domingo, supra* note 15, at 609 and *People v. Naag*, 404 Phil. 542, 553 (2001).

<sup>19</sup> *People v. Belmonte*, G.R. No. 220889, July 5, 2017; *People v. Evangelio, et al., supra* note 17, at 245; and *People v. Tamayo*, 434 Phil. 642, 654 (2002).

<sup>20</sup> *People v. Belmonte*, G.R. No. 220889, July 5, 2017; *People v. Evangelio et al., supra* note 17, at 245-246; *People v. Tamayo, supra* note 19; and *People v. Domingo, supra* note 15, at 609.

<sup>21</sup> *People v. Suyu, supra* note 17; *People v. Tamayo, supra* note 19; *People v. Domingo, supra* note 15, at 609; and *People v. Naag, supra* note 18, at 554.

<sup>22</sup> *People v. Tamayo, supra* note 19 and *People v. Naag, supra* note 18, at 553-554.

<sup>23</sup> *People v. Suyu, supra* note 17.

<sup>24</sup> *People v. Naag, supra* note 18, at 554.

noticed that there was an open window inside the comfort room which was around 40-50 centimeters wide, thus, the perpetrator must have entered the house of [AAA] through the said open window of the comfort room. [AAA] also testified that when she was awakened, she saw HERMIN holding a knife and upon seeing him he made a gesture telling her not to make noise, otherwise [he] [would] kill her (“*dai ka magribok ta gagadanon ta ka*”), thus, robbery was committed not only with force upon things but through intimidation.

In proving that rape was committed on the occasion of robbery, [AAA] testified that the perpetrator tied her left hand with one end of the plastic yellow cord and the other end was tied to her right hand. The middle portion of the cord was placed on her mattress. Both of her legs and ankles were “spread-eagle apart” and tied by a cord tied to a cabinet or “*aparador*”. Her arms were raised while they were tied and the black strap of her bag was also used in tying her. She was tied while lying in bed then he inserted a piece of cloth inside her mouth and tied it. Thereafter, the perpetrator sat by the side of her bed, removed her blanket then tore her pink T-shirt and white underwear. Afterwards, [AAA] heard a rattling sound of a belt being unfastened then he placed himself on top of her. She felt that he licked her nipples and then inserted his penis into her vagina. While he was raping her, he uttered: “*Pasensiya ka na sa gigibohon ko sa imo.*” [AAA] begged [to] him not to do it since she is already old but HERMIN told her: “*follow what I want because your life is in my hands.*” [AAA] broke [down] in tears and her hands trembled while narrating how HERMIN raped her.<sup>25</sup>

Since rape, by its nature, is usually committed in a place where only the rapist and the victim are present, the prosecution is not bound to present witnesses other than the victim herself.<sup>26</sup> An accused may be convicted solely on the basis of the testimony of the victim provided that such testimony is credible, consistent with human nature and the course of things, and in conformity with the knowledge and common experience of mankind.<sup>27</sup> When an alleged victim of rape says she was violated, she says in effect all that is necessary to show that rape had been inflicted on her.<sup>28</sup> No decent and sensible woman will publicly admit being a rape victim and thus run the risk of public contempt unless she is, in fact, a rape victim.<sup>29</sup>

The Court has closely examined the records and it has found nothing substantial to warrant a reversal of the assessment made by the trial court on the narration given by AAA. There is no evidence to show that she has been motivated by any ill will or improper motive to testify against Hermin. In fact, the RTC noted that AAA would not subject her family and womanhood to humiliation and disgrace for an accusation that is untrue considering that she is a married woman although separated, has a child and a nephew who is

<sup>25</sup> CA rollo, pp. 59-60; records, pp. 230-231.

<sup>26</sup> *People v. Torres*, 469 Phil. 602, 609 (2004).

<sup>27</sup> See *Id.*; *People v. Belmonte*, G.R. No. 220889, July 5, 2017.

<sup>28</sup> *People v. Verceles*, 437 Phil. 323, 332 (2002).

<sup>29</sup> *People v. Tamayo*, *supra* note 19, at 652-653.

a priest.<sup>30</sup> Her act of immediately reporting the incident is a factor that strengthens her credibility.<sup>31</sup> AAA even broke down in tears during the trial.<sup>32</sup> The display of such emotion, which indicates the pain that she had felt in recalling her traumatic experience, is evidence of the truth of the rape charges.<sup>33</sup>

We cannot give credence to Hermin's claim that he was not positively identified by AAA and that it is possible that he merely resembled the appearance of the real culprit. The natural reaction of victims of a crime is to strive to know the identity of their assailants by looking at their appearance, features, and movements and observing the manner the crime was perpetrated to create a lasting impression that could not be erased easily in their memory.<sup>34</sup> Where conditions of visibility are favorable and the victim had no axe to grind against the accused prior to the incident, the assertion of the complaining witness as to the identity of the wrongdoer commands the greater weight over the denial of the suspected offender.<sup>35</sup>

What is crucial is for the witness to positively declare during trial that the person charged was the malefactor.<sup>36</sup> Here, aside from pinpointing Hermin at the police line-up AAA positively and categorically identified him in open court as her molester. She could not have been mistaken because she had seen him a number of times prior to the commission of the crime. At the time of the incident, she also took note of specific details that would help her ascertain his identity. All throughout, she never faltered in identifying him.

The RTC noted that AAA vividly described Hermin's built and physical features, even recalling that he was wearing a ring at the time of the incident. As for the CA, it held:

[HERMIN], however, was positively identified by [AAA] as the one who perpetrated the robbery and sexually assaulted her at the latter's house on August 9, 2009 in Naga City. She noted specific details that would ascertain the identity of her assailant. For one, [she] was familiar with him as he used to work for her brother in the workplace located at the same compound where [she] lives. They even had a previous conversation when [she] requested [him] to fix the door and the clothesline inside her sister's house. She also noted that he was wearing a silver ring during the commission of the crime, which fact was confirmed by the policeman during [his] interrogation at the police station.

<sup>30</sup> CA rollo, p. 61; records, p. 232.

<sup>31</sup> *People v. Torres*, *supra* note 26, at 608 and *People v. Moreno*, 425 Phil. 526, 538 (2002).

<sup>32</sup> See TSN, August 25, 2010, p. 6.

<sup>33</sup> See *People v. Laurian, Jr.*, 723 Phil. 699, 720 (2013); *People v. Vidaña*, 720 Phil. 531, 541 (2013); and *People v. Tamano*, 652 Phil. 214, 231 (2010).

<sup>34</sup> *People v. Moreno*, *supra* note 31, at 540; *People v. Arellano*, 418 Phil. 479, 489 (2001); *People v. San Juan*, 391 Phil. 479, 492 (2000); and *People v. Alipayo*, 381 Phil. 439, 451 (2000).

<sup>35</sup> *People v. San Juan*, *supra*.

<sup>36</sup> *People v. Amper*, *supra* note 17, at 290-291.

x x x

We agree with the submission of the OSG, thus:

“ . . . [Hermin] conveniently downplays the crucial fact that [AAA] was familiar with him. His argument would have been acceptable had the perpetrator been a total stranger, someone whom [she] saw for the first time. That was, however, not the case. [Hermin] used to work for [AAA's] brother and their workplace was in the same compound as [AAA's] house. She [had] seen him around since 2006. Moreover, [he] also did some carpentry and masonry work for [AAA's] sister. [She] even [had] an occasion to talk to [him] while [he] was setting up the clothesline for [her] sister.<sup>37</sup>

Hermin's argument that no injuries were found on AAA's body which would indicate that he had carnal knowledge with her through force or violence was correctly disregarded by the CA. The absence of fresh lacerations in the victim's hymen does not prove that the victim was not raped.<sup>38</sup> A freshly broken hymen is not an essential element of rape and healed lacerations do not negate rape.<sup>39</sup> In addition, a medical examination and a medical certificate are merely corroborative and are not indispensable to the prosecution of a rape case.<sup>40</sup> Even without that report, rape may still be established.<sup>41</sup>

The absence of external signs of physical injuries does not prove that rape was not committed by the accused as proof thereof is not an essential element of rape.<sup>42</sup> To emphasize, tenacious resistance against rape is not required; neither is a determined or a persistent physical struggle on the part of the victim necessary.<sup>43</sup>

x x x It is well settled that physical resistance need not be established in rape when intimidation is exercised upon the victim and the latter submits herself against her will to the rapist's advances because of fear for her life and personal safety. Thus, the law does not impose a burden on the rape victim to prove resistance. What needs only to be proved by the prosecution is the use of force or intimidation by the accused in having sexual intercourse with the victim.<sup>44</sup>

<sup>37</sup> *Rollo*, pp. 9-10; *CA rollo*, pp. 107-108.

<sup>38</sup> *People v. Evangelio et al.*, *supra* note 17, at 245 and *People v. Mamalayan*, 420 Phil. 880, 892 (2001).

<sup>39</sup> *People v. Evangelio et al.*, *supra* note 17, at 245.

<sup>40</sup> *Id.*; *People v. Batuhan*, G.R. No. 219830, August 3, 2016.

<sup>41</sup> *People v. Batuhan*, G.R. No. 219830, August 3, 2016.

<sup>42</sup> *People v. Mamalayan*, *supra* note 38.

<sup>43</sup> *People v. Gayeta*, *supra* note 11, at 647.

<sup>44</sup> *People v. Moreno*, *supra* note 31.

AAA's positive identification of Hermin as the offender in the robbery with rape that took place on August 9, 2009 defeats the latter's defense of denial and *alibi*. Between the categorical statements of the prosecution witness, on one hand, and the bare denial of the appellant, on the other, the former must perforce prevail.<sup>45</sup> An affirmative testimony is far stronger than a negative testimony especially when it comes from the mouth of a credible witness who was not shown to have any ill-motive to testify against the accused.<sup>46</sup> *Alibi* and denial, if not substantiated by clear and convincing proof, are negative and self-serving evidence undeserving of weight in law.<sup>47</sup> They are considered with suspicion and always received with caution, not only because they are inherently weak and unreliable but also because they are easily fabricated and concocted.<sup>48</sup>

As to the defense of *alibi*, the basic rule for it to prosper is that –

the accused must prove that he was somewhere else when the crime was committed and that it was physically impossible for him to have been at the scene of the crime. Physical impossibility refers to the distance between the place where the appellant was when the crime transpired and the place where it was committed, as well as the facility of access between the two places. Where there is the least chance for the accused to be present at the crime scene, the defense of *alibi* must fail.<sup>49</sup>

In the case at bar, Hermin's defense of denial and *alibi* must be dismissed. No fault can be attributed to the RTC for treating with disfavor the “collective uncorroborated testimonies” of Rosita, Henry, and Annaliza who supported the allegation that Hermin was at his residence on the date and time when the felony occurred. To add, the trial court, as the CA quoted, noted not just Hermin's admitted familiarity of AAA but his knowledge of her residence as well. Thus:

It is clear from the testimony of HERMIN that he knows [AAA] well and was very familiar with the place where she lives. He even confirmed that the place of ADORNA was five (5) houses distance away from the house of [AAA] and that there are several pathways to and from Princeton Street going to the direction at the back of her residence as well as to the other houses inside the compound. HERMIN also declared that even during the time when he worked as helper of [BBB], the brother of [AAA], there was no instance that he saw her husband and recalled an incident when [AAA] even requested him to fix the door and the clothesline inside her house. He also knew of the faucet in front of the house of [DDD], as he used to wash (sic machines) engines in that area when he was still working with [BBB]. The [overfamiliarity] by HERMIN

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<sup>45</sup> *People v. Evangelio et al.*, *supra* note 17, at 241.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*; *People v. Belmonte et al.*, G.R. No. 220889, July 5, 2017.

<sup>48</sup> *People v. Evangelio et al.*, *supra* note 17, at 241.

<sup>49</sup> *Id.*



of [AAA], as well as of the place where she lives, were validated and confirmed by his own unequivocal testimony.

x x x No less than [HERMIN] himself declared that the compound where the automobile repair shop and the house of [AAA] are located is nearer to his house than the place of JOY ADORNA. He claimed that it [would] only take him twenty (20) minutes from his house to go to the compound where [AAA] lives and thirty (30) minutes, more or less, to the house of ADORNA.<sup>50</sup>

Under Article 105 of the RPC, Hermin is obliged to return to AAA the personal properties, as alleged in the Information and proven during the trial,<sup>51</sup> that she was unlawfully deprived of, whenever possible, with allowance for any deterioration or diminution of value as determined by the trial court.<sup>52</sup>

Consistent with Article 106 of the RPC, if the accused-appellant can no longer return the things stolen, he is obliged to make reparation for their value.<sup>53</sup> The trial court shall determine the amount of damage, taking into consideration the price of the thing, whenever possible, and its special sentimental value. That the determination of the amount of the deterioration or of the diminution of value, as well as of the damages and losses, has been commended by the law entirely to the discretion of the courts does not mean that proofs are unnecessary and useless.<sup>54</sup> On the contrary, evidence should, whenever possible, be produced to enlighten the discernment of the judge, but with or without proofs, the determination of the question always depends finally upon judicial discretion.<sup>55</sup>

In this case, We are constrained to agree with Hermin that private complainant neither stated the particular value of each and every item that was said to be taken nor adduced a single receipt to prove the value of the items. Both the Information and AAA's direct testimony are wanting of the essential details. Even her statements while under cross-examination, as quoted below, did not reveal much:

<sup>50</sup> CA rollo, pp. 62-63; records, pp. 233-234.

<sup>51</sup> Per Information, AAA was allegedly robbed of P120,000.00 worth of valuables, consisting of: three cell phones (Samsung E200, Nokia 2660, and another Nokia); Four (4) pcs gold ring; three (3) wristwatches (2 lady and 1 men); three (3) gold necklaces, cash money of ₱4,000.00, bags, wallet, perfumes, lotions, yellow jacket, BDO and RCBC ATM cards. During the trial, however, she testified that the items stolen were: three (3) cellphones, five (5) earrings, five (5) necklaces, two (2) wristwatch, five (5) rings, one (1) bracelet, two (2) shades, imported lotion and perfumes, USB, money not less than Four Thousand Pesos (₱4,000.00), black bag, yellow jacket, and other personal effects (See TSN, July 29, 2010, p. 8. and TSN, August 25, 2010, pp. 12-13.).

<sup>52</sup> See *People v. Evangelio et al.*, *supra* note 17, at 250; *People v. Carpio*, 473 Phil. 747, 756 (2004); *People v. Vallejo*, 461 Phil. 672, 699 (2003); *People v. Daniela*, 449 Phil. 547, 575 (2003); and *People v. Napili*, 85 Phil. 521, 527 (1950).

<sup>53</sup> See *People v. Evangelio et al.*, *supra* note 17, at 250; *People v. Carpio*, *supra*; *People v. Daniela*, *supra*; and *People v. Napili*, 85 Phil. 521, 527 (1950).

<sup>54</sup> *United States v. Mendoza*, 21 Phil. 407, 412 (1912).

<sup>55</sup> *Id.*

Q: With [regard] to the missing items, you mentioned three (3) cellphones were missing. Correct?

A: Yes, sir.

Q: Do you own those three (3) cellphones?

A: One of which belongs to my daughter which she failed to bring with her.

Q: Do you have receipt for the cellphone?

A: None, sir, because it was just given to me by my brother.

Q: How about the jewelries, do you own them?

A: Yes, sir.

Q: Did you buy them?

A: They were all given to me by my brother and sister.

Q: How about those perfumes, do you own them?

A: Yes, sir.

Q: You said that you were selling those perfumes. Correct?

A: Yes, sir.

Q: Of all those things that were taken from you during the investigation of the police, did you present any receipt or proof of ownership to tell them that you own them?

A: Only the boxes of cellphones.

Q: And what other box that you showed the police?

A: The three (3) cellphones.

Q: But you did not present receipt?

A: I have no receipt to produce because it was just given to me.<sup>56</sup>

An ordinary witness such as private complainant AAA cannot establish the value of jewelry (consisting of earrings, necklaces, wristwatches, rings, and bracelet in this case) and the trial court cannot take judicial notice thereof because the value of jewelry is neither a matter of public knowledge nor is it capable of unquestionable demonstration.<sup>57</sup> In the absence of receipts or any other competent evidence besides the self-serving valuation made by the prosecution witnesses, we cannot award the reparation for the stolen jewelry.<sup>58</sup> Similarly, there is no evidence to establish the value of the cellular phones and the USB device since no proof as to their description, kind/model, and competent evidence of value was given by

<sup>56</sup> See TSN, April 13, 2011, pp. 9-10.

<sup>57</sup> *Francisco v. People*, 478 Phil. 167, 187-188 (2004); *People v. Salvador*, 446 Phil. 525, 547-548 (2003); *People v. Reanzares*, 390 Phil. 115, 125 (2000); *People v. Cerbito*, 381 Phil. 315, 330 (2000); *People v. Paraiso*, 377 Phil. 445, 467 (1999); *People v. Abdul*, 369 Phil. 506, 536 (1999); and *People v. Marcos*, 368 Phil. 143, 167-168 (1999).

<sup>58</sup> *Id.* See also *People v. Verceles*, *supra* note 28.

the prosecution witnesses.<sup>59</sup> As to the sunglasses, bags, wallet, imported perfumes and lotions, ATM cards, jacket, and other personal effects taken by Hermin, the same could not be compensated as no value therefor was actually alleged in the Information or testified to in court.<sup>60</sup> Nonetheless, Hermin is ordered to pay AAA the amount of ₱4,000.00, representing the amount of cash stolen. This amount was alleged in the Information, established by the prosecution, and not rebutted by the defense.<sup>61</sup>

With respect to the penalty of imprisonment, the RTC and the CA correctly sentenced Hermin to suffer *reclusion perpetua*.

Under Article 294 of the Revised Penal Code, as amended, robbery with rape is penalized by *reclusion perpetua* to death. The penalty being a range consisting of two (2) indivisible penalties, the lesser penalty is applied when, pursuant to Article 63 of the Revised Penal Code, there are no mitigating or aggravating circumstance that are shown to be in attendance. The use by appellant of a knife was the means availed of to perpetrate the crime and to qualify it as being one of robbery with rape. The use of deadly weapon is here a qualifying circumstance, and not being among the aggravating circumstances enumerated in Article 14 of the Revised Penal Code, it cannot also be regarded as a generic aggravating circumstance.<sup>62</sup>

On the award of damages, consistent with *People v. Jugueta*,<sup>63</sup> the amounts of damages shall be ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages. Further, six percent (6%) interest *per annum* is imposed on all the amounts awarded reckoned from the date of finality of this judgment until fully paid.

As a final note, the Prosecution should have alleged in the Information that the crime was committed in the dwelling of the offended party. Dwelling, which is an aggravating circumstance under Article 14 of the RPC, was proven during the trial. Therefore, it should have been appreciated in order to impose a higher penalty, civil liability and damages. The prosecuting arm of the Government is thus reminded that prudence should be exercised as to what should be alleged in the Information, as the latter is the battleground of all criminal cases.

<sup>59</sup> *People v. Salvador*, *supra* note 57, at 548 and *People v. Marcos*, *supra* note 57. See also *People v. Verceles*, *supra* note 28.

<sup>60</sup> *People of the Philippines v. Oranza*, 434 Phil. 417, 433 (2002).

<sup>61</sup> *People v. Salvador*, *supra* note 57 and *People v. Marcos*, *supra* note 57.

<sup>62</sup> *People v. Torres*, *supra* note 26, at 612-613.

<sup>63</sup> G.R. No. 202124, April 5, 2016, 788 SCRA 331.

**WHEREFORE**, the November 13, 2015 Decision of the Court of Appeals in CA-G.R. CR-HC No. 06513, finding accused-appellant Hermin Romobio y Pauler guilty beyond reasonable doubt of robbery with rape, as defined in and penalized under Article 294 of the Revised Penal Code, is **AFFIRMED WITH MODIFICATION**. He is hereby sentenced to suffer the penalty of *reclusion perpetua* and ordered to pay AAA the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages. All monetary awards for damages shall earn an interest rate of six percent (6%) *per annum* to be computed from the finality of the judgment until fully paid.

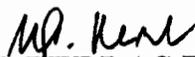
**SO ORDERED.**

  
**DIOSDADO M. PERALTA**  
Associate Justice

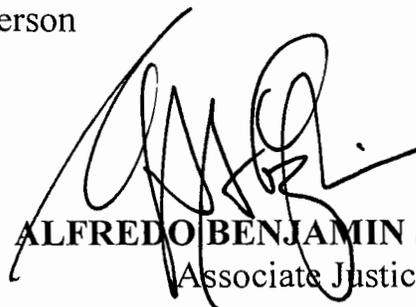
**WE CONCUR:**



**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson



**ESTELA M. BERLAS BERNABE**  
Associate Justice



**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice



**ANDRES B. REYES, JR.**  
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