



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
 Plaintiff-Appellee,

G. R. No. 199268

Present:

- versus -

SERENO, C.J.,
 LEONARDO-DE CASTRO,
 BERSAMIN,
 VILLARAMA, JR., and
 REYES, JJ.

Promulgated:

AURELIO JASTIVA,
 Accused-Appellant.

FEB 12 2014

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DECISION

LEONARDO-DE CASTRO, J.:

Before this Court is the final appeal¹ of Aurelio Jastiva from his conviction for the crime of rape in Criminal Case No. 12772, entitled "*People of the Philippines v. Aurelio Jastiva*," by the Regional Trial Court (RTC), Branch 9, in Dipolog City on September 1, 2009,² which the Court of Appeals affirmed with slight modification through its Decision³ promulgated on August 31, 2011 in CA-G.R. CR.-H.C. No. 00754-MIN.

Gathered from the records of the case, the facts are as follows:

On September 29, 2004, appellant Jastiva was charged in the RTC with rape penalized under Article 266-A in relation to Article 266-B of the Revised Penal Code, as amended, under the following information:

That in the evening, on or about the 3rd day of August, (sic) 2004, in x x x, Zamboanga del Norte, within the jurisdiction of this Honorable Court, the said accused, armed with a knife, by means of force and

¹ Ordinary Appeal under Rule 44 of the Rules of Court, as amended.

² Records, pp. 101-113; penned by Judge Yolinda C. Bautista.

³ *Rollo*, pp. 4-22; penned by Associate Justice Zenaida T. Galapate-Laguilles with Associate Justices Rodrigo F. Lim, Jr. and Pamela Ann Abella Maxino, concurring.

MLA

intimidation, did then and there willfully, unlawfully and feloniously succeed in having sexual intercourse with one [AAA⁴], a 67-year-old married, against her will and without her consent.

CONTRARY TO LAW (Viol. of Art. 266-A of the Revised Penal Code).⁵

With the assistance of counsel, appellant Jastiva pleaded “*not guilty*” to the crime charged when he was arraigned on November 26, 2004.⁶

Thereafter, trial ensued.

The prosecution presented the following witnesses, namely (i) AAA,⁷ the private offended party, 69 years old, married, a farmer, and a resident of Sitio WWW, Poblacion YYY, Municipality of ZZZ, Zamboanga del Norte; (ii) BBB,⁸ the husband of AAA, 74 years old, a farmer, and a resident of Sitio WWW, Poblacion YYY, Municipality of ZZZ, Zamboanga del Norte; (iii) Dr. Domiciano Talaboc,⁹ Municipal Health Officer, ZZZ Rural Health office, Zamboanga del Norte; (iv) Celedonio Paul T. Payla, Jr.,¹⁰ Barangay Kagawad, Poblacion YYY, Municipality of ZZZ, Zamboanga del Norte; and (v) Police Officer (PO) 3 Alfredo Esmade,¹¹ Desk Officer, PNP Dapitan City, Zamboanga del Norte; and several pieces of documentary evidence,¹² specifically: (i) the Medical Certificate¹³ of AAA dated August 5, 2004 issued by the Office of the Municipal Health Officer; (ii) the Barangay Blotter;¹⁴ (iii) a Certification¹⁵ of the Excerpt from the Record Book of Dapitan City Police Station; and (iv) the Affidavit¹⁶ of BBB.

As summarized by the Court of Appeals, the prosecution tried to establish from the preceding enumerated testimonial and documentary pieces of evidence that –

On August 3, 2004, then [67¹⁷]-year old AAA was drying corn in their small barn (“*kamalig*”) in a farmland located at [Sitio XXX], Zamboanga del Norte, when her husband[,] BBB[,] left her alone. BBB

⁴ Pursuant to *People v. Cabalquinto* (533 Phil. 703, 709 [2006]), the “Court shall withhold the real name of the victim-survivor and shall use fictitious initials instead to represent her x x x, 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.”

⁵ Records, p. 1.

⁶ Id. at 26; Per Certificate of Arraignment.

⁷ TSN, September 5, 2006.

⁸ TSN, May 9, 2007, pp. 6-13.

⁹ TSN, November 28, 2006.

¹⁰ TSN, March 19, 2007.

¹¹ TSN, May 9, 2007, pp. 2-6.

¹² Records, pp. 58-59; Prosecution’s Formal Offer of Evidence.

¹³ Id. at 60; Exhibit “A” for the prosecution.

¹⁴ Id. at 61; Exhibit “B” for the prosecution.

¹⁵ Id. at 62; Exhibit “C” for the prosecution.

¹⁶ Id. at 63; Exhibit “D” for the prosecution.

¹⁷ Originally, the Court of Appeals quoted AAA’s age to be 65 years at the time the crime was committed, however, upon review of the records of the case, AAA was actually 67 years old at the time.

spent that night in their permanent residence at [Sitio WWW] because their daughter has (sic) no companion.

At about 11:00 x x x in the evening, AAA was fast asleep when a certain man she later identified as accused-appellant Aurelio Jastiva covered her mouth, threatened her with a knife and told her not to scream because he will have sexual intercourse with her. AAA grabbed accused-appellant's hand and felt the blade of the knife he held. Thereafter, accused-appellant removed AAA's underwear. However, he cannot proceed with his lewd design because his penis was not yet erected (sic), accused-appellant therefore toyed with AAA's sexual organ by licking it. Accused-appellant then made his way up and tried to suck AAA's tongue. The latter evaded her assaulter's sexual advances by closing her lips tightly and in the process wounded the same through her teeth. Once done, accused-appellant held his penis and inserted it to (sic) AAA's vagina. After fulfilling his sexual desire and before AAA could stand up, accused-appellant tapped AAA's shoulder and said "*Salamat*" (Thank [y]ou).

AAA stood up and opened the door to let accused-appellant out. When the latter passed through (sic) AAA, it was then that the (sic) AAA clearly recognized, through the illumination of the moon, that it was their (sic) neighbor accused-appellant who abused her. Engulfed with fear, AAA immediately closed the door because she thought that accused-appellant might go (sic) back and kill her. AAA later learned that accused-appellant destroyed a particular rack in their kitchen to enter the small barn. AAA was no longer able to sleep after the incident.

At about 5:00 x x x in the morning of the next day, AAA relayed her ordeal to her neighbor Corazon Mokot and her husband BBB. The latter immediately told her that they will bring the matter to the attention of the authorities.

On August 5, 2004, they [AAA and BBB] went to the *Barangay* Hall of *Barangay* [YYY] to report the incident. *Barangay Kagawad* Celedonio Paul Payla, Jr., the officer-on-duty wrote a *barangay* blotter about the incident. On the same day, AAA was medically examined by Dr. Domiciano Talaboc, the Municipal Health Officer of the Municipality of [ZZZ]. The Medical Certificate dated August 5, 2004 revealed that AAA's labia majora and labia minora on both sides showed signs of irritation and are reddish in color, in addition to a partial separation of tissues noted between the labium. AAA's vaginal opening also showed signs of irritation and are (sic) reddish in color. The same also stated that AAA sustained multiple scratches at both her upper and lower lips.

On August 6, 2004, assisted by Police Inspector and Chief of Police of the Philippine National Police, [ZZZ] Police Station of Zamboanga del Norte, AAA filed a Complaint for Rape against accused-appellant. A warrant for the arrest of accused-appellant was subsequently issued and on August 29, 2004, accused-appellant was apprehended by the police authorities.¹⁸ (Citations omitted.)

To counter the evidence summarized above, the defense offered the testimonies of the following witnesses: (i) Gloria Ordas (Ordas),¹⁹ 48 years

¹⁸ *Rollo*, pp. 5-7.

¹⁹ TSN, September 3, 2007.

old, housekeeper, and a resident of Villahermosa, Municipality of ZZZ, Zamboanga del Norte; (ii) Vilma Jastiva (Vilma),²⁰ the common-law wife of appellant Jastiva, 56 years old, laundry woman, and a resident of Sitio XXX, Poblacion YYY, Municipality of ZZZ, Zamboanga del Norte; (iii) Merlyn Jastiva (Merlyn),²¹ the daughter of appellant Jastiva, 25 years old, and also a resident of Sitio XXX, Poblacion YYY, Municipality of ZZZ, Zamboanga del Norte; and (iv) appellant Jastiva,²² 54 years old, and a resident of Sitio XXX, Poblacion YYY, Municipality of ZZZ, Zamboanga del Norte. And the defense formally offered a single documentary evidence – the Medical Certificate of AAA.

According to the defense, appellant Jastiva, 49 years old at the time of the incident, could not have committed the crime because on the date and time thereof, he was at home sleeping. Likewise, as digested by the Court of Appeals, the testimonies of appellant Jastiva, Vilma and Merlyn, common-law wife and daughter of appellant Jastiva, respectively, as well as Ordas, a friend of Merlyn, were offered to show that –

On August 3, 2004, accused-appellant Aurelio Jastiva was in their house at the Municipality of [ZZZ], Zamboanga del Norte. He was then with his wife Vilma and his youngest child. The Jastivas had a visitor that time, a certain Gloria Ordas, the friend of accused-appellant's daughter, Merlyn.

At around 11:00 x x x in the evening, the time the alleged incident happened, accused-appellant was fast asleep with his wife. This fact was corroborated by Vilma.

Merlyn also corroborated his father's story that he was sleeping at the time of the incident because their house has only one door and nobody can go out without waking the other members of the family. Merlyn narrated that his father could not have left the house unnoticed because their feet were blocking the door. Merlyn does not remember waking on the day of the incident. Thus, accused-appellant could not have gone outside their house. This fact was also confirmed by Gloria who visited and eventually spent the night with the Jastivas on August 3, 2004. Gloria recounted that she was sleepless that night and she clearly saw that accused-appellant was sleeping at around 11:00 x x x on that evening.²³ (Citations omitted.)

After trial and upon evaluation of the evidence on record, the RTC found appellant Jastiva guilty of the crime charged. The dispositive of the Decision dated and promulgated on September 1, 2009 states:

WHEREFORE, premised in the foregoing, judgment is hereby rendered finding the accused Aurelio Jastiva GUILTY beyond reasonable doubt of the crime of rape penalized under Article 266-A in relation to

²⁰ TSN, December 5, 2007.

²¹ TSN, October 29, 2008.

²² TSN, February 17, 2009.

²³ *Rollo*, pp. 7-8.

Article 266-B of the Revised Penal Code, as amended. Accordingly, he is hereby sentenced to serve the determinate penalty of reclusion perpetua. In view of his conviction and without need of further proof, he is also ordered to pay complainant [AAA] the amount of FIFTY THOUSAND PESOS (₱50,000.00) as civil indemnity and FIFTY THOUSAND PESOS (₱50,000.00) as moral damages.

Being a detention prisoner, Aurelio Jastiva is entitled to the full benefit of his preventive detention.²⁴ (Citations omitted.)

Aggrieved, appellant Jastiva questioned his conviction to the Court of Appeals grounded on the following: *(i)* the RTC “gravely erred by giving weight to the testimony of [AAA] that she recognized the accused-appellant when he went out of the house of [AAA];” and *(ii)* the RTC “gravely erred in convicting [the] accused-appellant despite the failure of the prosecution to prove his guilt beyond reasonable doubt.”²⁵

In his Brief,²⁶ appellant Jastiva particularly argued the following points, *(i)* that “[t]he identity of the appellant was not established,” x x x “considering that the private complainant herself admitted that the room where the alleged incident happened was dark;” *(ii)* that “the witness could not possibly identify the real culprit” because she testified that “she only saw his back, albeit the alleged moonlight;” *(iii)* that “private complainant even opened the door for her rapist to let the latter go out of her house x x x private complainant had all the opportunity to shout for help but she did not do so;” *(iv)* that the private complainant’s two conflicting statements – in her sworn affidavit that appellant Jastiva removed her panty and inserted his penis in her vagina *vis-à-vis* her testimony in open court that appellant Jastiva removed her panty but first sucked her vagina to make his penis erect, and then inserted his penis into her vagina – seriously cast doubts on her credibility; *(v)* that “[t]he testimony of the private complainant failed to show any force or intimidation exerted upon her person” as appellant Jastiva was still able to engage in sexual foreplay with leisure prior to the actual sexual intercourse; *(vi)* that “[t]he absence of rape is further bolstered by the medial (sic) findings x x x the medical certificate states, among other things, that no sign of irritation at the external genitalia; external genitalia appeared multiparous with corrugated skin folds x x x;” and *(vii)* that his defense of alibi and denial should be given great weight in view of the weakness of the evidence of the prosecution.²⁷

The Office of the Solicitor General (OSG) for appellee People of the Philippines, rebutted the foregoing points with the two basic counter-arguments: *(i)* that “[b]ased on the x x x testimonies [of AAA], there is no doubt that the victim positively identified appellant as the individual who raped her on the night of August 3, 2004 x x x positive identification, when

²⁴ Records, pp. 112-113.

²⁵ CA *rollo*, p. 10.

²⁶ Id. at 9-24.

²⁷ Id. at 14-23.

categorical and consistent and without ill motive on the part of the eyewitness testifying on the matter, prevails over alibi and denial;”²⁸ and (ii) that “[t]he act of holding a knife is by itself strongly suggestive of force or at least intimidation, and threatening the victim with a knife is sufficient to bring her into submission x x x. Inasmuch as intimidation is addressed to the victim’s mind, response thereto and the effect thereof cannot be measured by any hard and fast rule such that it must be viewed in the context of the victim’s perception and judgment not only at the time of the commission of the crime but also at the time immediately thereafter. Physical resistance is immaterial in a rape case when the victim is sufficiently intimidated by her assailant and submits against her will because of fear for her life or personal safety x x x.”²⁹

On August 31, 2011, the Court of Appeals promulgated its Decision affirming the decision of the RTC albeit with a slight modification, *i.e.*, that appellant Jastiva be further required to pay interest on all damages awarded to AAA. The *fallo* of the Court of Appeals decision reads:

WHEREFORE, the appealed decision is **AFFIRMED** in all respects except that accused-appellant Aurelio Jastiva is further ordered to pay AAA interest on all damages awarded at the legal rate of 6% per annum from the finality of this Decision.³⁰ (Citation omitted.)

In affirming the conviction of appellant Jastiva, the Court of Appeals held that the elements of the crime of rape as defined under paragraph 1 of Article 266-A of the Revised Penal Code were established by the prosecution, that is, “[a]ccused-appellant had carnal knowledge of AAA through intimidation as shown by her sordid experience x x x”³¹ coupled with the positive identification of appellant Jastiva by AAA as her tormentor. On the issue that the RTC erred in giving weight to AAA’s testimony that she saw her assailant’s face; hence, she could positively identify appellant Jastiva, the Court of Appeals stated that –

Accused-appellant however[,] maintains that the trial court erred in heavily relying on AAA’s positive identification because her testimony on this matter is dubious considering that AAA herself admitted that the small barn, where the alleged incident happened, was dark, hence[,] she could not have identified him. Accused-appellant added that AAA could not have seen him due to the illumination of the moon when he went out of the small barn because AAA testified that she only saw his back through the window when he was going towards his house.

Accused-appellant’s argument is misleading.

True, the place where the incident happened was dark[,] which prevented AAA from recognizing accused-appellant as the author of her honor’s ravishment. But it was *not only* through the window when AAA

²⁸ Id. at 60.

²⁹ Id. at 63-64.

³⁰ *Rollo*, p. 22.

³¹ Id. at 10.

saw accused-appellant *but also when he passed through her upon going out the door of the small barn*. This put AAA in a position to clearly see accused-appellant. AAA's testimony on this point is revealing:

Q: And you also said that you were the one who opened the door to let him go out, is that correct?

A: Yes, sir. I was afraid if he will stay longer, he will kill me.

Q: So you were already standing up?

A: Yes, considering I was the one who unlocked the door.

x x x x

Prosecutor Olvis: (to the witness)

Mrs. Witness, you stated that you were the one who unlocked the door to let Aurelio Jastiva got (sic) out form (sic) your house. So when he passed the door, you saw him, clearly, isn't it?

A: Yes, ma'am.

Q: You stated that the room was dark. How were you able to see him?

A: **When the door was opened, he was illuminated by a moonlight.**

Q: So, it was Aurelio Jastiva who left your house when you opened the door?

A: Yes, ma'am.

Q: He was the one who raped you?

A: Yes, ma'am.

x x x x

Atty. Velasco: (to the witness)

Now when you saw the person who came out from your house, did you see exactly his face?

A: Yes, sir. In fact, when he walked away, I even looked at him over the window.

Q: Why (sic) was he walking towards you or walking away from you?

A: He was walking to the direction of his house.

Q: So in other words, his back was directed towards you while the front of his body was directed to where he was going?

A: **After he passed the door, I saw him. When he already walked away, what I only saw was his back.**

- Q: But in your room, the surroundings was still dark?
A: **Yes, sir. Inside the house was dark but when he came out, there was a moonlight, so I saw him clearly.**³²

And on the various points above-quoted anent the supposed failure of the trial court to prove appellant Jastiva's guilt beyond reasonable doubt, the Court of Appeals had this to say:

Accused-appellant next asserts that the case of *People v. Castro* is on all fours with the instant case. He claims that if indeed AAA saw him as [her] attacker, she should have mentioned distinguishing features or physical appearance on his body to recognize him.

We do not agree.

In *Castro*, x x x [t]herein accused-appellant Castro was practically a *stranger* to private complainant Edith, thus the need x x x for the latter to mention distinguishing features in the face or physical appearance of the former to show that she indeed recognized him as the person who raped her.

Unlike in this case, AAA testified that she knows accused-appellant very well, they being neighbors. In fact, she is a friend of accused-appellant's wife as sometimes, the latter would sleep with her at night. Accused-appellant even admitted that she knows AAA and that the latter could not have mistaken her for someone else. Thus, AAA does not need to mention any distinguishing features of accused-appellant.

Accused-appellant next posits that AAA's testimony below failed to show any force or intimidation exerted upon her. Accused-appellant stated that what further erodes the credibility of AAA is her testimony that accused-appellant appeared to have indulged in "sexual foreplay" first, *i.e.*[,] he sucked AAA's vagina and then went up to kiss her, which does not happen in rape cases. Usually, according to accused-appellant, a rapist is pressed with (sic) time so as not to be caught *in flagrante delicto*; thus, a rapist would not leisurely engage in sexual intercourse with his victim being in consonance with reason and common experience.

We still disagree.

For one, the "sexual foreplay" referred to by accused-appellant was not improbable considering that as testified to by AAA, accused-appellant was not yet erected (sic) at that time. For another, there is a sufficient reason to believe why accused-appellant did this because he may have been aware that BBB, AAA's husband, was not around on that night. Certainly and more likely, accused-appellant would not have acted upon his lewd design had he known that BBB was there in the small barn with AAA. In addition to this was accused-appellant's testimony that aside from the fact that he knows AAA very much, he also knows that sometimes AAA's family would stay in their small barn in *Barangay*

³² Id. at 12-14.

XXX and sometimes in their permanent residence in *Barangay ZZZ*.³³
(Citations omitted.)

As to the damages awarded by the RTC to AAA, though the Court of Appeals affirmed the same, however, in the dispositive portion of the decision, it further imposed upon appellant Jastiva the need to pay interest on all the damages due at the legal rate of 6% per annum from the finality of its decision – the Court of Appeals anchored its directive upon this Court’s decisions in *People v. Galvez*³⁴ and *People v. Abella*.³⁵

On September 9, 2011, appellant Jastiva filed a Notice of Appeal before the Court of Appeals. In a Resolution dated October 4, 2011, the appellate court resolved to grant the same and ordered its Judicial Records Division to elevate the records of the case to this Court.

Hence, this appeal under Rule 44 of the Rules of Court, as amended, wherein appellant Jastiva essentially prays for his acquittal based on reasonable doubt.

Appellant Jastiva reiterates his assignment of errors in the Court of Appeals, *viz*:

I.

THE COURT A QUO GRAVELY ERRED BY GIVING WEIGHT AND CREDENCE TO THE TESTIMONY OF THE PRIVATE COMPLAINANT THAT SHE RECOGNIZED THE ACCUSED-APPELLANT WHEN HE WENT OUT OF THE HOUSE OF THE PRIVATE COMPLAINANT.

II.

THE COURT A QUO GRAVELY ERRED IN CONVICTING HEREIN ACCUSED-APPELLANT DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.³⁶

To restate, according to appellant Jastiva, the evidence presented by the prosecution was not sufficient to establish his guilt beyond reasonable doubt as the perpetrator of the crime charged; and “[t]he manner by which AAA was allegedly raped is incredible,”³⁷ and is tantamount to reasonable doubt as to his legal culpability thereto, *viz*:

From her testimony, it would appear that accused-appellant indulge (sic) into (sic) foreplay in raping AAA. This is highly unbelievable. Normally, a rapist, who is pressed for time so as not to be caught *in flagrante*, would

³³ Id. at 14-15.

³⁴ G.R. No. 181827, February 2, 2011, 641 SCRA 472.

³⁵ G.R. No. 177295, January 6, 2010, 610 SCRA 19.

³⁶ CA *rollo*, p. 10.

³⁷ *Rollo*, p. 34.

not leisurely engage in sexual intercourse with his victim, as what actually happened in this case.³⁸

And in his Supplemental Brief³⁹ filed before this Court, appellant Jastiva continues to insist that his guilt had not been proven beyond reasonable doubt. He argues further that AAA's claim that he indulged in sexual foreplay prior to having sexual intercourse with her is unbelievable and contrary to the normal conduct of a rapist, to wit:

The manner by which AAA was allegedly raped is incredible. From her testimony, it would appear that accused-appellant indulge (sic) into (sic) foreplay in raping AAA. This is highly unbelievable. Normally, a rapist, who is pressed for time so as not to be caught *in flagrante*, would not leisurely engage in sexual intercourse with his victim, as what actually happened in this case.

x x x x

With utmost due respect to the Court of Appeals, we beg to disagree with its findings that the "sexual foreplay" was not improbable considering that accused-appellant may have been aware that AAA's husband was not around on the night of the alleged rape. With all due respect, there was no evidence showing that the accused-appellant was indeed aware of the fact that AAA's husband was not around at that night so that [the] accused-appellant can do the sexual foreplay without fear of having (sic) caught. Apparently, the Court of Appeals made a conclusion which was not present in evidence x x x it merely made a conclusion that the accused-appellant "may have been aware that AAA's husband was not around during the night of rape" thereby the accused-appellant could have resorted to sexual foreplay. Why would the accused-appellant resort to sexual foreplay knowing that the husband of AAA might arrive anytime of the night?

The postulation therefore that the accused-appellant could resort to sexual foreplay is possible because he is aware that BBB was not around at the night of the alleged rape cannot be taken against the accused-appellant's resulting in his conviction especially so if there is no evidence that indeed accused-appellant was aware of the absence of BBB. The said theory is merely a suspicion not supported by evidence. It is hornbook doctrine that suspicions and speculations can never be the basis of conviction in a criminal case. Courts must ensure that the conviction of the accused rests firmly on sufficient and competent evidence, and not the results of passion and prejudice.

We humbly submit that the foregoing evidence leads to one conclusion, that is, the guilt of the accused-appellant has not been proven

³⁸ Id. at 34-35.

³⁹ In a Resolution dated January 18, 2012, this Court resolved to allow the parties to submit their respective Supplemental Briefs if they so desired. Appellant Jastiva filed a Supplemental Brief on May 3, 2012. On the other hand, the appellee, People of the Philippines, filed a Manifestation (in lieu of a Supplemental Brief) stating that it is foregoing filing a Supplemental Brief "considering that all the errors assigned in the Appellant's Brief dated February 15, 2010 [filed before the Court of Appeals] have already been thoroughly refuted and discussed in its Appellee's Brief dated June 29, 2010."

beyond reasonable doubt there being doubt as to who the real culprit was.⁴⁰ (Citations omitted.)

On March 29, 2012, appellee People manifested that it will no longer file a *Supplemental Brief* as it had already refuted thoroughly in its *Appellee's Brief* all the assignments of error raised by appellant Jastiva filed before the Court of Appeals.

The principal issue in this case, therefore, is whether or not the prosecution was able to prove the guilt of appellant Jastiva beyond reasonable doubt on the basis of the testimonies of the prosecution witnesses and the documentary evidence presented.

The appeal is bereft of merit.

Article 266-A of the Revised Penal Code defines the crime of rape, *viz.*:

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[.]

From the above-quoted provision of law, the elements of rape (under paragraph 1, subparagraph a) are as follows: (1) that the offender is a man; (2) that the offender had carnal knowledge of a woman; and (3) that such act is accomplished by using force, (threat) or intimidation.⁴¹

The RTC and the Court of Appeals were one in finding that appellant Jastiva had carnal knowledge of AAA against the latter's will through force and intimidation. Despite his vigorous protestations, this Court agrees in the finding that the crime of rape committed by appellant Jastiva against AAA was proved by the prosecution beyond reasonable doubt on the basis of the following:

- a) AAA's credible, positive and categorical testimony relative to the circumstances surrounding her rape;
- b) AAA's positive identification of appellant Jastiva as the one who raped her;
- c) The physical evidence consistent with AAA's assertion that she was raped; and

⁴⁰ *Rollo*, pp. 34-37.

⁴¹ L. Reyes, *THE REVISED PENAL CODE*, Book Two (15th ed., 2001), p. 519.

- d) The absence of ill motive on the part of AAA in filing the complaint against appellant Jastiva.

Consequently, this appeal is denied, and the conviction of appellant Jastiva is affirmed.

Firstly, the appeal of appellant Jastiva centers on the credibility of AAA, the main prosecution witness. But credibility of a witness is the sole province of the RTC being the trial court in this case. Basic is the rule that the findings of fact of the trial court on matters of credibility of witnesses are generally conclusive on this Court, which is not a trier of facts. Such conclusiveness derives from the trial court's having the first-hand opportunity to observe the demeanor and manner of the victim when he/she testified at the trial.⁴² Undeniably, the calibration of the testimony of a witness, and the assessment of the probative weight thereof, are virtually left, almost entirely, to the trial court which has the opportunity to observe the demeanor of the witness at the stand. Unless there are substantial matters that might have been overlooked or discarded, generally, the findings of the trial court as to the credibility of a witness will not be disturbed on appeal.⁴³ The foregoing is especially true when such findings are affirmed by the appellate court. In this case, with appellant Jastiva not showing that the RTC and the Court of Appeals overlooked any fact or material of consequence that could have altered the outcome had they taken it into consideration, this Court will not disturb on appeal the RTC's findings of fact, but must fully accept the same.

At this point, it is worthy to recall the three guiding principles in rape prosecutions: (1) an accusation of rape is easy to make, and difficult to prove, but it is even more difficult to disprove; (2) bearing in mind the intrinsic nature of the crime, the testimony of the complainant must be scrutinized with utmost care and caution; and (3) the evidence of the prosecution must stand or fall on its own merits; and cannot draw strength from the weakness of the defense. So, when a woman says that she has been raped, she says in effect all that is necessary to show that the crime of rape was committed. In a long line of cases, this Court has held that if the testimony of the rape victim is accurate and credible, a conviction for rape may issue upon the sole basis of the victim's testimony. This is because no decent and sensible woman will publicly admit to being raped and, thus, run the risk of public contempt unless she is, in fact, a rape victim.⁴⁴

In this case, appellant Jastiva insistently makes an issue out of AAA's failure to shout for help or struggle against him, which for him does nothing but erode her credibility. This Court, however, does not agree. It does not follow that because AAA failed to shout for help or struggle against her attacker means that she could not have been raped. The force, violence, or

⁴² *People v. Taguilid*, G.R. No. 181544, April 11, 2012, 669 SCRA 341, 350.

⁴³ *People v. Batiacila*, 542 Phil. 420, 429 (2007).

⁴⁴ *Id.* at 425-426.

intimidation in rape is a relative term, depending not only on the age, size, and strength of the parties but also on their relationship with each other.⁴⁵ And 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.⁴⁶ Record disclose that in this case, AAA was already 67 years of age when she was raped in the dark by appellant Jastiva who was armed with a knife. Justifiably, a woman of such advanced age could only recoil in fear and succumb into submission. In any case, with such shocking and horrifying experience, it would not be reasonable to impose upon AAA any standard form of reaction. Time and again, this Court has recognized that different people react differently to a given situation involving a startling occurrence.⁴⁷ The workings of the human mind placed under emotional stress are unpredictable, and people react differently - some may shout, others may faint, and still others may be shocked into insensibility even if there may be a few who may openly welcome the intrusion.⁴⁸

More to the point, physical resistance is not the sole test to determine whether a woman involuntarily succumbed to the lust of an accused.⁴⁹ Some may offer strong resistance while others may be too intimidated to offer any resistance at all,⁵⁰ just like what happened in this case. 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 victim⁵¹ – which it did in the case at bar.

The preceding paragraphs altogether, the testimony of AAA was shown to be credible, natural, convincing and consistent with human nature; and the fact that AAA is already of advanced age lends more credence to her protestations of rape and inspires the thought that this case was filed for the genuine reason of seeking justice.

Secondly, the circumstances after the commission of the rape testified to by AAA sufficed to establish the ability of the latter to identify appellant Jastiva as the perpetrator of the crime. Appellant Jastiva's assertions that the cover of darkness and lack of lighting inside the "kamalig" where the crime took place, utterly diminished AAA's ability to identify him or anyone for that matter, is downright specious. AAA never claimed to have seen her attacker inside the "kamalig." What AAA testified to was the fact that she saw appellant Jastiva when he walked past her by the open door of the

⁴⁵ *People v. Barcena*, 517 Phil. 731, 742 (2006).

⁴⁶ *People v. Moreno*, 425 Phil. 526, 538 (2002).

⁴⁷ *People v. Gonzales*, G.R. No. 141599, June 29, 2004, 433 SCRA 102, 115.

⁴⁸ *People v. Taguilid*, supra note 42 at 351; citing *People v. San Antonio, Jr.*, 559 Phil. 188, 205 (2007).

⁴⁹ *People v. Batiancila*, supra note 43 at 429.

⁵⁰ *People v. David*, 461 Phil. 364, 385 (2003).

⁵¹ *People v. Batiancila*, supra note 43 at 430.

“*kamalig*” and his face was finally illuminated by the moonlight. As explained by the RTC –

In not a few cases, though, the High Court held that an accused need not always be identified under a perfect or near perfect visibility. This was demonstrated in *People v. Villaruel* with the Supreme Court saying that –

Our cases have held that wicklamps, flashlight, even moonlight and starlight may, in proper situations, be sufficient illumination, making the attack on the credibility of witnesses solely on this ground unmeritorious.

The ruling in *People v. Pueblos*, citing the earlier ruling in *People v. Vacal*, is even more to the point, thus:

[I]f identification of persons is possible even by the light of stars, with more reason that one could identify persons by moonlight.⁵² (Citations and emphases omitted.)

From the above, the RTC correctly held that “the Court is not disposed to doubt the evidenced ability of the complainant to identify her rapist especially because her familiarity of the latter could easily be strengthened by the fact that the accused is her neighbor living some 100 meters away from the crime scene.”⁵³

Thirdly, contrary to appellant Jastiva’s claim that the “absence of rape is x x x bolstered by the medical findings,”⁵⁴ the *Medical Certificate* issued by Dr. Domiciano P. Talaboc, Municipal Health Officer of the town where the crime of rape was committed, stating his medico-legal findings of his examination of AAA made on August 5, 2004 showing:

Findings: 1) Patient is ambulatory, conscious, coherent and oriented as to time, day and place.

2) Multiple scratches noted at both upper and lower lips, towards the inner folds.

x x x x

5) On internal examination, both labia majora and labia minora on both sides showed signs of irritation, reddish in color, and partial separation of tissues between labia majora and labia minora on both sides was noted with more separation on the right side.⁵⁵

is consistent with AAA’s assertion that appellant Jastiva succeeded in having sexual intercourse with her.

⁵² Records, p. 110.

⁵³ Id.

⁵⁴ CA *rollo*, p. 22.

⁵⁵ Records, p. 60.

And, *fourthly*, worth noting is the fact that appellant Jastiva did not allege, much less show, that AAA was prompted by improper or malicious motives to impute upon him such a serious charge. This being so, the categorical and positive identification of appellant Jastiva prevails over the latter's plain alibi and bare denial.

Moreover, such prevarication was devoid of any persuasion due to its being easily and conveniently resorted to, and due to denial being generally weaker than and not prevailing over the positive assertions of an eyewitness. It has been held that for the defense of alibi to prosper, the accused must prove the following: (i) that he was present at another place at the time of the perpetration of the crime; and (ii) that it was physically impossible for him to be at the scene of the crime during its commission. Physical impossibility involves the distance and the facility of access between the crime scene and the location of the accused when the crime was committed; the accused must demonstrate that he was so far away and could not have been physically present at the crime scene and its immediate vicinity when the crime was committed.⁵⁶

Here, appellant Jastiva utterly failed to satisfy the above-quoted requirements. From the testimonies of the witnesses, it was shown that the distance between AAA's farmhouse and appellant Jastiva's house was only 150 meters, more or less.⁵⁷ Certainly, 150 meters is not too far as to preclude the presence of appellant Jastiva at the farmhouse of AAA. That he presented witnesses to attest to his presence at his own home around the time the rape was said to have been committed did not help him one bit. If truth be told, the testimonies of his wife and daughter were more deleterious to his defense because they contradicted each other's account on material points relative to the circumstances of that fateful night. Appellant Jastiva's common-law wife, Vilma, testified that:

Q: Mrs. Witness, how are you related with (sic) Aurelio Jastiva?
A: My husband, sir.

Q: Where were you on August 3, 2004 at around 11:00 x x x in the evening?
A: In our house.

x x x x

Q: How about Aurelio Jastiva, where was he on August 3, 2004 at around 11:00 x x x in the evening?
A: He was still in our house because during the time we had a visitor in our house.

Q: Who was your visitor in your house at that time?
A: Gloria Ordas.

⁵⁶ *People v. Ramos*, G.R. No. 190340, July 24, 2013.

⁵⁷ Appellant Jastiva's admission during his cross-examination on February 17, 2009, p. 8.

Q: Why can you say that Aurelio Jastiva was in your house at that time?

A: I was a witness because I was there also in our house.

Q: Now, Aurelio Jastiva is charged of alleged Rape which allegedly happened on August 3, 2004 at around 11:00 x x x in the evening, what can you say about that?

A: I have no knowledge about that old woman who was raped because she was lying.

Q: Why can you say that?

A: **Because I have no knowledge about that incident considering that we are on a far place.**⁵⁸ (Emphasis supplied.)

On the other hand, the testimony of appellant Jastiva's daughter, Merlyn, is quite informative:

Q: Merlyn Jastiva, how are you related with the accused Aurelio Jastiva?

A: He is my father, sir.

Q: Where were you in the evening of August 3, 2004?

A: At home, sir.

x x x x

Q: Where was Aurelio Jastiva in the evening of August 3, 2004?

A: He was sleeping at home.

Q: Before 11:00 x x x in the evening, where was Aurelio Jastiva?

A: He did not leave the house. He just stayed home.

Q: At about 11:00 x x x in the evening of that day, August 3, 2004 where was Aurelio Jastiva?

A: At home sleeping.

Q: Why can you say that during that time Aurelio Jastiva was in your house?

A: **Because I was sleeping with my parents. I know that my father slept beside my mother.**

Q: Will you be able to notice if your father went out of your house in that evening of August 3, 2004?

A: Yes, because we have only one door in our house.

Q: Did he go out of the house in that evening of August 3, 2004 at about 11:00 x x x in the evening?

A: No sir, he already fall (sic) asleep.⁵⁹ (Emphasis supplied.)

But when she was cross-examined, Merlyn revealed that her father did not actually sleep beside her mother; thus, contradicting her earlier

⁵⁸ TSN, December 5, 2007, pp. 3-4.

⁵⁹ TSN, October 29, 2008, pp. 3-4.

declaration that her father slept beside her mother, and she (Merlyn) slept with them, *viz*:

Q: You said earlier that your brothers used to go out even at night. Now, during that time was any of your brothers was (sic) out during that night?

A: No ma'am. We already fall (sic) asleep.

Q: Where was Rolly [her brother] sleeping at that time?

A: We, women are sleeping near the door and the other siblings in the other corner of the house.

Q: You said the women are sleeping near the door?

A: Yes, ma'am.

Q: And the men sleep safely far from the door?

A: Yes ma'am.

x x x x

Q: And your father is just sleeping far from the door? From the women?

A: Yes, ma'am. **Because he slept with my brother siblings.**⁶⁰
(Emphasis supplied.)

The aforequoted testimonies highlighted the fact that appellant Jastiva could have slipped in and out of their house undetected by Vilma and Merlyn. Such scenario is all the more likely as appellant Jastiva himself admitted upon questioning by the RTC that he actually slept in another room; hence, his wife and daughter had no way of being sure if he was inside their house or not, to wit:

Q: How about the "*kamalig*". How far is the *kamalig* to your house?

A: 150 meters more or less.

Q: Who are the occupants of your house [on] August 3, 2004?

A: We, your Honor.

Q: Who are those "we"?

A: My children together with my wife.

Q: How many children do you have?

A: Seven (7) children and my wife.

Q: Meaning, all of you were at your house at [Poblacion YYY], [ZZZ], Zamboanga del Norte on August 3, 2004?

A: Yes ma'am.

Q: And the dimension of the house is 8x12 with only one room?

A: Yes ma'am, Only one (1) room.

⁶⁰ Id. at 15-16.

- Q: Meaning, there is no division in your house?
A: There is a division ma'am which divides the house into two.
- Q: In that division are there doors or what?
A: Yes, your Honor, going to the sala.
- Q: So, the sala and the other room is used for sleeping?
A: Yes, ma'am.
- Q: All the nine (9) of you were asleep in that one (1) room?
A: No your Honor. **Only my wife together with our youngest sleep in that room.**
- Q: How about the other six (6) children of yours? Where do they sleep?
A: In the sala, your Honor.⁶¹ (Emphasis supplied.)

Appellant Jastiva further tries to interject reasonable doubt by pointing out that AAA's claim that he indulged in sexual foreplay prior to having sexual intercourse with her is unbelievable and contrary to the normal conduct of a rapist, *i.e.*, that "[n]ormally, a rapist, who is pressed for time so as not to be caught *in flagrante*, would not leisurely engage in sexual intercourse with his victim, as what actually happened in this case."⁶² He reasons that he could not have engaged in sexual foreplay because he could not have known that AAA would be all alone in the farmhouse on the night in question.

Case law, however, shows numerous instances of rape committed under indirect and audacious circumstances.⁶³ The lust of a lecherous man respects neither time nor place. Neither the crampedness of the room, nor the presence of people therein, nor the high risk of being caught, has been held sufficient and effective obstacle to deter the commission of rape.⁶⁴

Also, appellant Jastiva's objections are without basis, and at best, merely lip service. During his cross-examination, he admitted that he knew AAA; in fact, he acknowledged that she could easily identify him, to wit:

- Q: And the residence of [AAA] is also at [Poblacion YYY], [ZZZ], Zamboanga del Norte?
A: It is not their real residence it is only a barn.
- Q: That place is just near from your house. Is that right?
A: Yes, ma'am. We are only apart by a rice field which is about more or less 150 meters.

X X X X

⁶¹ TSN, February 17, 2009, pp. 10-11.

⁶² *Rollo*, pp. 34-35.

⁶³ *People v. Pangilinan*, 547 Phil. 260, 286 (2007).

⁶⁴ *People v. Rellota*, G.R. No. 168103 (formerly G.R. Nos. 155930-32), August 3, 2010, 626 SCRA 422, 433.

Q: You know very well [AAA]?

A: Yes, ma'am.

Q: And she could not be mistaken of your identity. Right?

A: Yes ma'am, being a neighbor.⁶⁵

And when the RTC propounded clarificatory questions, appellant Jastiva disclosed that he knew pretty well the routine of the spouses AAA and BBB, viz:

Q: You mentioned about "kamalig" or barn. Is that where [AAA] and her family live?

A: Yes, ma'am. If they are working in the field.

Q: How about when they do not work in the field, where does [AAA] live?

A: In [WWW]. Their real residence.

Q: And [she] live there in [WWW] together with her family?

A: Yes, ma'am.

Q: Who are the members of her family if you know?

A: She has only two (2) children.

x x x x

Q: How far is the residence of [AAA] from [WWW] to your residence at [YYY], [ZZZ], Z.N.?

A: About a kilometer ma'am.⁶⁶

All told, this Court is convinced beyond reasonable doubt that appellant Jastiva committed the crime of rape by having carnal knowledge of AAA using force and intimidation. Under Article 266-B of the Revised Penal Code, the proper penalty to be imposed is:

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

Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death.

But the imposition of death penalty has been prohibited by Republic Act No. 9346, entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines;" thus, the RTC, as affirmed by the Court of Appeals, properly imposed upon appellant Jastiva the penalty of *reclusion perpetua*.

Relative to the award of damages, the RTC correctly awarded ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages. Civil indemnity is in the nature of actual and compensatory damages, and is

⁶⁵ TSN, February 17, 2009, p. 8.


⁶⁶ Id. at 9.

obligatory upon conviction of rape. As to moral damages, it is automatically awarded to rape victims without the necessity of proof, for it is assumed that they suffered moral injuries entitling them to such award. Similarly, the Court of Appeals fittingly imposed interest on all damages awarded to AAA, the private offended party, at the legal rate of six percent (6%) per annum from the date of the finality of this Court's decision in conformity with present jurisprudence.⁶⁷

This Court notes, however, that both the RTC and Court of Appeals overlooked the award of exemplary damages. Being corrective in nature, exemplary damages can be awarded even in the absence of an aggravating circumstance if the circumstances of the case show the highly reprehensible or outrageous conduct of the offender.⁶⁸ Thus, this Court deems it necessary to modify the civil liability of appellant Jastiva to include exemplary damages for the vindication of the sense of indignity and humiliation suffered by AAA, a woman of advanced age, and to set a public example, to serve as deterrent to those who abuse the elderly, and to protect the latter from sexual assaults.

WHEREFORE, the Decision dated August 31, 2011 of the Court of Appeals in CA-G.R. CR.-H.C. No. 00754-MIN is **AFFIRMED with MODIFICATION**. Appellant Aurelio Jastiva is found **GUILTY** beyond reasonable doubt of the crime of simple rape and is sentenced to suffer the penalty of *reclusion perpetua*, and ordered to pay AAA the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱30,000.00 as exemplary damages. Appellant Aurelio Jastiva is further ordered to pay legal interest on all damages awarded in this case at the rate of six percent (6%) per annum from the date of finality of this decision until fully paid.

SO ORDERED.


TERESITA J. LEONARDO-DE CASTRO
Associate Justice

⁶⁷ *People v. Diaz*, G.R. No. 200882, June 13, 2013; citing *Sison v. People*, G.R. No. 187229, February 22, 2012, 666 SCRA 645, 667.

⁶⁸ *People v. Dalisay*, G.R. No. 188106, November 25, 2009, 605 SCRA 807, 820.

WE CONCUR:



MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson



LUCAS P. BERSAMIN
Associate Justice



MARTIN S. VILLARAMA, JR.
Associate Justice



BIENVENIDO L. REYES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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