



Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,  
Plaintiff-Appellee,

G.R. No. 209590

Present:

VELASCO, JR., J.,  
Chairperson,  
PERALTA,  
VILLARAMA, JR.,  
MENDOZA,\* and  
REYES, JJ.

- versus -

GABRIEL DUCAY y BALAN,  
Accused-Appellant.

Promulgated:

November 19, 2014

X-----X

RESOLUTION

REYES, J:

For review is the Decision<sup>1</sup> dated June 7, 2013 of the Court of Appeals (CA), in CA-GR. CR-HC No. 00792-MIN, which affirmed with modification the Judgment<sup>2</sup> dated November 11, 2009 of the Regional Trial Court (RTC) of Cagayan de Oro City, Branch 37, in Criminal Case No. 2001-279, finding accused-appellant Gabriel Ducay y Balan (accused-appellant) guilty of Rape and sentencing him to suffer the penalty of *reclusion perpetua*.

The criminal information that spawned the herein proceedings and to which the accused-appellant pleaded "Not Guilty" read as follows:

\* Additional member per Raffle dated October 1, 2014 *vice* Associate Justice Francis H. Jardeleza.

<sup>1</sup> Penned by Associate Justice Oscar V. Badelles, with Associate Justices Romulo V. Borja and Renato C. Francisco, concurring; *CA rollo*, pp. 72-87.

<sup>2</sup> Issued by Judge Jose L. Escobido; *id.* at 38-46.

1

That on or about June 10, 2001 at more or less 11:20 o'clock in the evening at the Seashore of Purok 3, Barangay Puerto, Cagayan de Oro City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with the use of force, threat and intimidation with lewd design, did then and there willfully, unlawfully and feloniously have carnal knowledge of the undersigned complainant, [AAA,]<sup>3</sup> 12 years old, single and against the will of the latter.

That the accused voluntarily surrendered to the authorities dated June 12, 2001 [sic].

Contrary to Article 266-A of the Revised Penal Code as amended.<sup>4</sup>

During the pre-trial conference, the prosecution and the defense stipulated that AAA was more than 12 years old at the time the crime was committed.<sup>5</sup> Trial thereafter ensued.

The prosecution presented the testimonies of AAA, Charlene Cagadas (Charlene), and Dr. Marie Hazel C. Talja (Dr. Talja). Culled from their narrations are the following events:

AAA was born in Tikala, Manolo Fortich, Bukidnon and thereat took her Grades 1 to 5 elementary studies. When she reached Grade 6, she transferred to Puerto, Cagayan de Oro City and lived in the house of her uncle, Carlito Cagalawan (Carlito). On June 10, 2001, the birthday of Carlito's grandchildren, who were also Charlene's sons, was celebrated. The accused-appellant, being one of the neighbors, was invited as a guest. After the affair, at around 11:20 p.m., AAA and Charlene went out to buy sugar. Along the way, they passed by the accused-appellant's house.<sup>6</sup>

The accused-appellant followed the two girls, called them and volunteered to run the errand for them since he was also going to buy cigarettes. Charlene acceded and gave him the money. He forthwith walked ahead of them towards the store.<sup>7</sup>

The two then stayed outside a church. A few minutes later, the accused-appellant appeared and instructed Charlene to send AAA to get the sugar from him because he still had to buy cigarettes.<sup>8</sup> He was about five

---

<sup>3</sup> The real name of the victim, her personal circumstances and other information which tend to establish or compromise her identity, as well as those of her immediate family or household members, shall not be disclosed to protect her privacy and fictitious initials shall, instead, be used, in accordance with *People v. Cabalquinto* (533 Phil. 703 [2006]), and A.M. No. 04-11-09-SC dated September 19, 2006.

<sup>4</sup> CA rollo, p. 38.

<sup>5</sup> Id.

<sup>6</sup> Id. at 39.

<sup>7</sup> Id.

<sup>8</sup> Id. at 39-40.

houses away from where AAA and Charlene stood and it was dark in the area where he waited.<sup>9</sup>

AAA obliged and moved towards him. Upon approaching, the accused-appellant grabbed AAA and covered her mouth with a towel. He tied her hands with a rope and walked her over to the coconut trees at the seashore. The accused-appellant then made AAA lie on the sand, and, with her hands still tied at her back, he removed her shirt and shorts then squeezed her breasts. The accused-appellant thereafter removed his shorts and brief, laid on top of AAA and inserted his penis into her vagina twice. After satisfying his lust, he put his shorts back on. As the accused-appellant turned his back, AAA crawled slowly away from him. He did not notice her until a dog barked at her, at which point AAA started running. He gave her a chase but was unable to catch up. AAA kept running until she reached the plaza in Agora. She was thereafter brought to the police station by a *barangay* captain.<sup>10</sup>

Meanwhile, when AAA failed to return, Charlene proceeded to the spot where AAA met the accused-appellant. Unable to find her, Charlene went home and told her parents and sister about AAA's disappearance. She also went to the accused-appellant's house at 12:00 midnight but he was not there. The accused-appellant's wife then accompanied her to look for AAA but they failed. At dawn of June 11, 2001, Charlene found the accused-appellant in his house. When asked as to the whereabouts of AAA, the accused-appellant answered that he did not know and then he ran away.<sup>11</sup> On the night of June 11, 2001, they finally found AAA at the Plaza of Agusan, Cagayan de Oro City which is four kilometers away from Puerto. AAA was sitting near a tree and her short pants had blood stains.<sup>12</sup> When asked about what happened to her, AAA, who looked stunned, embraced Charlene and said that she was raped by the accused-appellant.<sup>13</sup>

On June 12, 2001, AAA was examined by Dr. Talja of the Northern Mindanao Medical Center. Her medical findings yielded the following results:

“GENITAL EXAMINATION

Genitalia: (+) fresh laceration with minimal blood at 6, 9 & 11 o'clock positions.  
Admits 1 finger with ease, cervix closed, corpus not enlarged, adnexae no mass/tenderness, discharge scanty whitish discharge.”<sup>14</sup>

---

<sup>9</sup> Id. at 74.

<sup>10</sup> Id. at 40, 74.

<sup>11</sup> Id. at 41.

<sup>12</sup> Id. at 29.

<sup>13</sup> Id. at 41.

<sup>14</sup> Id. at 42.

Dr. Talja explained that because there is still evidence of blood coming from the hymen, although minimal, she considered it a fresh laceration.<sup>15</sup>

The accused-appellant raised denial and *alibi* for his defense. He claimed that, on June 10, 2001, he went to Charlene's house to help slaughter a goat and cook *caldereta* for the birthday celebration of Charlene's twin sons. The accused-appellant claimed not to have seen AAA at the house. He went home at around 7:00 p.m. Charlene then brought him some of the *caldereta*. He ate dinner at around 8:00 p.m. and thereafter watched television with his live-in partner, Chuchi Denaword.<sup>16</sup>

At around 11:00 p.m., Charlene knocked at the door of the accused-appellant's house asking if his store still had milk available for sale. Charlene had no companion. Since his store ran out of milk and other nearby stores were already closed, Charlene requested the accused-appellant to buy milk for her. The accused-appellant heeded her request. He came back 30 minutes later unable to buy milk so he returned the ₱60.00 Charlene gave him.<sup>17</sup>

The following day, June 11, 2001, Charlene went to the accused-appellant's house again inquiring about AAA. He told her to check if she was at the house of his neighbor since he had an inkling that AAA and his neighbor were together. On June 12, 2001, upon the request of his cousin, the accused-appellant went to the Chief of Police of Puerto Police Station and thereupon learned that AAA was accusing him of rape. The accused-appellant declared that he knew nothing about the rape incident.<sup>18</sup>

The accused-appellant went back to the police station on June 13, 2001 and saw AAA together with her mother and uncle Carlito. AAA's mother almost stabbed the accused-appellant with an umbrella.<sup>19</sup> Meanwhile, Carlito asked him to pay ₱50,000.00 rather than be sentenced to death penalty. The accused-appellant refused to pay because he was innocent of the accusations against him. He also revealed to the court that Carlito demanded money from him because Carlito knew that the house where he was staying was already sold for ₱45,000.00 and the money was about to be paid. Carlito wanted to buy the same house for ₱30,000.00. Sometime in June 2005, Carlito talked to him and asked for his forgiveness but he could no longer testify to confirm that as he is already dead.<sup>20</sup>

---

<sup>15</sup> Id. at 75.

<sup>16</sup> Id. at 42.

<sup>17</sup> Id.

<sup>18</sup> Id. at 42-43.

<sup>19</sup> Id. at 43.

<sup>20</sup> Id. at 75-76.

Eugene Suarez (Suarez) was also presented as a defense witness. Suarez testified that at around 10:00 p.m. of June 10, 2001, he saw AAA with Raphy Mercado and six other teenagers in his store. He again saw them at around 12:00 midnight while he was on his way home. The group even invited him to go to Agusan, but he declined.<sup>21</sup>

In its Judgment<sup>22</sup> dated November 11, 2009, the RTC accorded more weight and credence to the evidence of the prosecution and based thereon found that all the elements of rape were established beyond reasonable doubt. Accordingly, the RTC adjudged the accused-appellant guilty and sentenced him as follows:

WHEREFORE, premises considered, this Court finds accused Gabriel Ducay y Balan guilty beyond reasonable [sic] of the crime of rape against the victim, and said accused is hereby sentenced to suffer the penalty of reclusion perpetua. Moreover, the accused is sentenced to pay the minor offended party the sum of Fifty Thousand Pesos (P50,000.00) as moral damages and another Fifty Thousand Pesos (P50,000.00) by way of civil indemnity.

SO ORDERED.<sup>23</sup>

On appeal, the CA upheld the RTC's findings but modified the award of damages. The CA Decision<sup>24</sup> dated June 7, 2013 thus read:

**WHEREFORE**, premises considered, the instant appeal is **DENIED**. The Judgment dated 11 November 2009 rendered by the RTC, Branch 37 of Cagayan de Oro City, finding the accused-appellant Gabriel Ducay y Balan **GUILTY** beyond reasonable doubt of the crime of rape is hereby **AFFIRMED** with **MODIFICATION**.

In addition to the damages already imposed by the trial court, said accused-appellant is hereby sentenced to pay the victim the exemplary damages in the amount of P30,000.00 plus the interest rate of 6% per annum on all the damages awarded from the date of the finality of this judgment until fully paid. All other disposition in the said Judgment, remains. No cost.

**SO ORDERED.**<sup>25</sup>

---

<sup>21</sup> Id. at 76.

<sup>22</sup> Id. at 38-46.

<sup>23</sup> Id. at 46.

<sup>24</sup> Id. at 72-87.

<sup>25</sup> Id. at 86.

Hence, the present review. In a Resolution<sup>26</sup> dated December 11, 2013, the Court required the parties to file their supplemental briefs within 30 days from notice. In their respective Manifestations,<sup>27</sup> the parties waived the filing of the same and instead adopted the briefs filed before the CA. As submitted before the CA, the Court shall resolve the following arguments proffered by the accused-appellant for his acquittal:

- (I) The accused-appellant's guilt was not established beyond reasonable doubt due to: (a) the contradictory versions of the prosecution's witnesses as to how AAA was found after the alleged rape incident; and (b) the date of incident stated in the Living Case Report of Dr. Talja is different from AAA's testimony.
- (II) The testimony of defense witness Suarez showed that AAA did not go home for two days because she was wandering around with her friends and not because she was afraid to go home after the alleged rape incident.<sup>28</sup>

The Court affirms the accused-appellant's conviction.

There exists no compelling reason to deviate from the findings of the courts *a quo*.

The irregularities imputed by the accused-appellant actually pertain to the issue of assessment of the credibility of witnesses and their testimonies. It is a well-entrenched rule that, when credibility is in issue, the Court generally defers to the findings of the trial court. Its factual findings and evaluation on the credibility of witnesses, especially when affirmed by the appellate court, are accorded the highest degree of respect and are generally conclusive and binding. Having had the first hand opportunity to hear the witnesses and observe their demeanor, conduct and attitude during their presentation, the task of assigning values to their testimonies and weighing their credibility is best left to the trial court.<sup>29</sup>

“[Its] findings will be re-opened for review only upon a showing of highly meritorious circumstances such as when the court's evaluation was reached arbitrarily, or when the trial court overlooked, misunderstood or misapplied certain facts or circumstances of weight and substance, which, if considered, would affect the result of the case.”<sup>30</sup> None of these exceptional instances obtain in the present case.

---

<sup>26</sup> *Rollo*, p. 24.

<sup>27</sup> *Id.* at 25-28, 30-31.

<sup>28</sup> *CA rollo*, pp. 16-36.

<sup>29</sup> *People v. Bacatan*, G.R. No. 203315, September 18, 2013, 706 SCRA 170, 184.

<sup>30</sup> *Id.*

It is likewise well-settled rule that when a woman, more so if she is a minor, says she has been raped, she says in effect, all that is necessary to prove that rape was committed. Courts give greater weight to the testimony of a girl who is a victim of sexual assault, especially a minor, for it is most unnatural for a young and immature girl to fabricate a story as sordid as her own defilement, allow a medical examination of her genitalia, subject herself to a public trial and expose herself to public ridicule for no reason other than her thirst for justice.<sup>31</sup>

Based on the foregoing guiding principles, the Court upholds the RTC in giving full faith and credence to AAA's testimony rather than the mere denial and *alibi* of the accused-appellant. AAA's clear, straightforward and candid narration sufficiently established the fact of rape and the identity of the accused-appellant as the perpetrator, *viz*:

Q: What happened when you meet (sic) Gabriel Ducay at the road?

A: He volunteer (sic) that he will be the one to buy sugar.

x x x x

Q: If he is in Court can you point to him?

x x x x

A: Yes, (witness pointing to the man wearing yellow T-shirt, and when asked of his name answered Gabriel Ducay.

Q: You said a while ago that Gabriel Ducay was able to buy sugar, did he came from where you were?

A: He was in my back, according to him he will give the sugar but he was not able to buy the sugar then he grabbed me and covered my mouth.

x x x x

Q: After he grabbed you, did you happened (sic) to go near him, what happened next?

A: He grabbed me to the seashore (sic) behind that coconut tree.

Q: Going away from your ate?

A: Yes, ma'am.

Q: Did you shout?

A: I could not shout because he covered my mouth.

x x x x

Q: Did he touch you?

A: Yes.

---

<sup>31</sup> *People v. Montemayor*, 444 Phil. 169, 185-186 (2003).

Q: Where?

A: (Witness pointing to her breast)

Q: What else did he touch?

A: My vagina. (Witness pointing to her vagina).

Q: Do you remember of him on top of you? (sic)

A: Yes, ma'am.

x x x x

Q: And you said also that he made you lie on the sand, is that correct?

A: Yes.

Q: Can you remember what happened when you were lying already?

A: He remove my short, my t-shirt and that is all I could remember.

Q: You said a while ago that he touched your breast, did he touch softly or squeeze it[?]

A: He squeeze it. [sic]

Q: When he remove your short, did he also remove his clothing?

A: He remove his clothes. [sic]

Q: After he remove your clothes, he got his? [sic]

A: Yes.

x x x x

Q: Can you remember what did he do to you while he was on top of you?

A: Yes.

Q: What happened?

A: He remove (my) panty and he remove also his brief.

Q: And what happened?

A: He then laid on top of me.

Q: What happened, did he place inside of you or what? [sic]

A: Yes.

Q: What did he put inside of you?

A: His penis.

Q: To where?

A: (witness is crying) In my vagina, (whispered to the interpreter.)

Q: After that, what happened?

A: He put on his short and he turn his back to (sic) me, that was the time I ran away.<sup>32</sup>

---

<sup>32</sup>

CA rollo, pp. 79-82.



AAA further recounted that: “A towel was tied around [her] mouth and nose. She walked ahead because her two hands were tied behind her with a rope. She attempted to shout, but she could not do so [a]nd the [accused-appellant] made her lie on the sand. He laid on top of her, and then [s]he felt his penis was inserted in her vagina [sic]. At this moment, her hands were still tied behind her back. He inserted his penis into her vagina twice. The first time he inserted his penis into her vagina, [she] was able to shout because it was very painful. When she turned her head on one side, the towel loosened and [it] dropped from her mouth and at [that] moment she was able to shout.”<sup>33</sup>

The foregoing declarations, corroborated by Dr. Talja’s findings of penetration on AAA’s genitals, established with moral certainty the following elements of rape, viz: (1) the accused-appellant had carnal knowledge of AAA; and (2) it was accomplished through the use of force.<sup>34</sup>

When the victim’s testimony is corroborated by the physician’s finding of penetration, there is sufficient foundation to conclude the existence of the essential requisite of carnal knowledge. Laceration is the best physical evidence of forcible defloration.<sup>35</sup> Force, on the other hand, is evident in the manner by which the accused-appellant physically coerced AAA to submit to his dastardly desires. After grabbing her, the accused-appellant tied AAA’s hands behind her and covered her mouth and nose with a towel. She remained so bound and gagged while he was consummating the felonious coitus such that any attempt on her part to resist his depraved deed was futile.

The discrepancy in the testimonies of prosecution witnesses as to the place where AAA was eventually found were mere trivial matters since they pertain to events that occurred after the fact of rape. “[W]hat is decisive in a prosecution for rape is whether the commission of the crime has been sufficiently proven. Inconsistencies and discrepancies on minor details that are irrelevant to the constitutive elements of the crime cannot be considered grounds for acquittal.”<sup>36</sup> Moreover, minor inconsistencies actually tend to buttress, rather than weaken, a witness’ credibility, as they indicate that the testimony was not contrived.<sup>37</sup>

---

<sup>33</sup> Id. at 40.

<sup>34</sup> Revised Penal Code, Article 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 circumstances:  
a) Through force, threat, or intimidation;  
b) When the offended party is deprived of reason or otherwise unconscious;  
c) By means of fraudulent machinations or grave abuse of authority; and  
d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

<sup>35</sup> Supra note 31, at 185.

<sup>36</sup> *People v. Manalo*, 444 Phil. 654, 665 (2003).

<sup>37</sup> *People v. Montejo*, 407 Phil. 502, 520 (2001).

Neither can the discrepancy in the date of incident written in Dr. Talja's Living Case Report and the alleged date of commission of the crime convincingly reverse a finding of guilt. When she took the witness stand, Dr. Talja clarified that the date June 6, 2001 indicated in her report is a clerical error that should be corrected to June 10, 2001.<sup>38</sup>

The testimony of defense witness Suarez was insufficient to negate the commission of the crime. His declarations were uncorroborated by the persons with whom AAA was supposedly seen. Even if it were true, AAA's conduct of going with her friends after the commission of the rape should not be taken against her. Rape victims, especially minor victims, should not be expected to act the way mature individuals would when placed in such a situation. It is not proper to judge the actions of children who have undergone traumatic experience by the norms of behavior expected from adults under similar circumstances. "The range of emotions shown by rape victims is yet to be captured even by the calculus. It is thus unrealistic to expect uniform reactions from rape victims."<sup>39</sup>

All told, the courts *a quo* were correct in convicting the accused-appellant with rape and sentencing him to suffer the penalty of *reclusion perpetua* in accordance with Article 266-A in relation to 266-B of the Revised Penal Code (RPC).<sup>40</sup> Further, the accused-appellant shall not be eligible for parole pursuant to Section 3 of Republic Act No. 9346<sup>41</sup> which states that "[p]ersons convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, by reason of this Act, shall not be eligible for parole under Act No. 4180, otherwise known as the Indeterminate Sentence Law, as amended."<sup>42</sup>

The reason for such non-eligibility was explained in *People v. Gardon*<sup>43</sup> in this wise:

*Reclusion perpetua* is an indivisible penalty without a minimum or maximum period. Parole, on the other hand, is extended only to those sentenced to divisible penalties as is evident from Sec. 5 of the Indeterminate Sentence Law, which provides that it is only after "any prisoner shall have served the minimum penalty imposed on him" that the Board of Indeterminate Sentence may consider whether such prisoner may be granted parole.<sup>44</sup> (Citation omitted and italics in the original)

---

<sup>38</sup> Rollo, p. 6.

<sup>39</sup> Supra note 31, at 186.

<sup>40</sup> *People v. Sabadlab*, G.R. No. 175924, March 14, 2012, 668 SCRA 237, 249.

<sup>41</sup> AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES

<sup>42</sup> Supra note 29, at 186; *People v. Dejillo*, G.R. No. 185005, December 10, 2012, 687 SCRA 537, 556.

<sup>43</sup> 534 Phil. 894 (2006).

<sup>44</sup> Id. at 911.

Recently, in *People of the Philippines v. Rogelio Manicat y De Guzman*,<sup>45</sup> the Court clarified that the phrase “without eligibility for parole” does not exclusively apply to qualified rape. Article 266-B of the RPC is explicit that rape committed through force, threat, or intimidation is punishable by *reclusion perpetua*. Resolution No. 24-4-10<sup>46</sup> of the Board of Pardons and Parole also states that those convicted of offenses punishable by *reclusion perpetua* are disqualified for parole.

Lastly, the damages and civil indemnity awarded by the courts *a quo* were in accord with prevailing jurisprudence.<sup>47</sup>

**WHEREFORE**, all the foregoing considered, the Decision dated June 7, 2013 of the Court of Appeals in CA-GR. CR-HC No. 00792-MIN is hereby **AFFIRMED** and **MODIFIED** to read:

Accused-appellant Gabriel Ducay y Balan is found **GUILTY** beyond reasonable doubt of **RAPE** and is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole and ordered to pay victim AAA the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱30,000.00 as exemplary damages. The award of damages shall earn legal interest at the rate of six percent (6%) *per annum* from the finality of this judgment until fully paid.

**SO ORDERED.**

  
**BIENVENIDO L. REYES**  
 Associate Justice

<sup>45</sup> G.R. No. 205413, December 2, 2013.

<sup>46</sup> RE: Amending and Repealing Certain Rules and Sections of the Rules on Parole and Amended Guidelines for Recommending Executive Clemency of the 2006 Revised Manual of the Board of Pardons and Parole

x x x x

RULE 2.2. Disqualifications for Parole - Pursuant to Section 2 of Act No. 4103, as amended, otherwise known as the “Indeterminate Sentence Law,” parole shall not be granted to the following inmates:

x x x x

i. Those convicted of offenses punished with *reclusion perpetua*, or whose sentences were reduced to *reclusion perpetua* by reason of Republic Act No. 9346 enacted on June 24, 2006, amending Republic Act No. 7659 dated January 1, 2004[.]

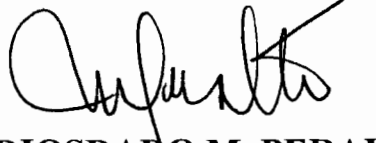
<sup>47</sup> Supra note 29, at 186-187.


1

**WE CONCUR:**

**PRESBITERO J. VELASCO, JR.**

Associate Justice  
Chairperson

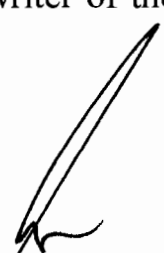
  
**DIOSDADO M. PERALTA**  
Associate Justice

  
**MARTIN S. VILLARAMA, JR.**  
Associate Justice

  
**JOSE CANRAL MENDOZA**  
Associate Justice

**ATTESTATION**

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

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



## CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Resolution 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

