



Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,  
Plaintiff-Appellee,

G.R. No. 210658

Present:

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

- versus -

Promulgated:

PRIMO P. JAPSON alias "Longlong",  
Accused-Appellant.

September 17, 2014

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RESOLUTION

REYES, J:

Accused-appellant Primo P. Japson alias "Longlong" (accused-appellant) challenges in this appeal the Decision<sup>1</sup> dated March 26, 2013 of the Court of Appeals (CA) in CA-G.R. CEB-CR-H.C. No. 01203, which affirmed the Joint Decision<sup>2</sup> of conviction for two counts of Rape defined under Article 266-A<sup>3</sup>

\* Additional member per Raffle dated September 15, 2014 in view of the inhibition of Associate Justice Francis H. Jardeleza.

<sup>1</sup> Penned by Associate Justice Gabriel T. Ingles, with Associate Justices Pampio A. Abarintos and Marilyn B. Lagura-Yap, concurring; CA *rollo*, pp. 79-96.

<sup>2</sup> Records, Volume I, pp. 83-93.

<sup>3</sup> 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 following circumstances:

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

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of the Revised Penal Code in relation to Republic Act No. 7610,<sup>4</sup> rendered against him on May 13, 2010 by the Regional Trial Court (RTC) of Sogod, Southern Leyte, Branch 39 in Criminal Case Nos. R-469<sup>5</sup> and R-470.<sup>6</sup>

AAA,<sup>7</sup> the complainant, testified that on August 30, 2005 at around six o'clock in the evening, while she was on her way to her grandmother's house to bring the feeds that her grandmother ordered, the accused-appellant, who looked tipsy as his eyes and cheeks were reddish, suddenly appeared, embraced her and brought her to a grassy portion. AAA shouted for help but the nearest house was still 80 to 100 meters away from where she was brought. AAA resisted and tried to free herself but to no avail as the accused-appellant was stronger than her. The accused-appellant then laid her down, and immediately placed himself on top of her as he placed his legs between her thighs and held her arms with his hands. Since AAA was still wearing her school uniform and a skirt, the accused-appellant pulled down her underwear with his left hand and kicked it away with his left foot. He then inserted his index finger and forefinger inside AAA's vagina causing her to feel pain and become weak. Thereafter, he inserted his penis into her vagina, and made push and pull movements. A few minutes later, AAA noticed that fluids came out from the accused-appellant's sexual organ.<sup>8</sup>

Unfulfilled, the accused-appellant sexually abused AAA for the second time. He again, inserted his two fingers inside AAA's vagina and afterwards his penis. Before the accused-appellant left AAA, he threatened her not to tell her mother or grandmother about the incident, otherwise, he would kill her.<sup>9</sup>

AAA then proceeded to her grandmother's house. Notwithstanding accused-appellant's threat, AAA relayed the incident to her grandmother who in turn related the matter to his son and reported the incident to the police.<sup>10</sup>

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<sup>4</sup> AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, AND FOR OTHER PURPOSES.

<sup>5</sup> Records, Volume I, p. 1.

<sup>6</sup> Records, Volume II, p. 1.

<sup>7</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>8</sup> TSN, June 1, 2007, pp. 46-53.

<sup>9</sup> Id. at 52-54.

<sup>10</sup> Id. at 54-55.

On cross-examination, AAA admitted that she had a relationship with accused-appellant for one month, from May 2005 to June 2005. She said that she broke up with the accused-appellant on July 2005 because her mother was against their relationship because she was only 15 years old and was still studying.<sup>11</sup>

AAA's mother corroborated her testimony and said that at about nine o'clock in the evening of August 30, 2005, she was awakened by her mother-in-law who asked her to go to the latter's house. She then rushed to her in-laws' house where she saw AAA who appeared to be weak. AAA confessed that she was raped by the accused-appellant. When they inspected AAA's uniform, they found out that it was dirty and her underwear was torn.<sup>12</sup>

On the following day or on August 31, 2005, AAA, together with her mother and aunt, went to the Liloan Police Station to formally lodge a complaint against the accused-appellant and to submit herself to a physical examination. AAA's medical report revealed that she has fresh hymenal lacerations at the 9, 6 and 5 o'clock positions.<sup>13</sup>

The accused-appellant, testifying in his own behalf, denied the charges against him and claimed that their sexual intercourse was a consensual act. He said that on August 30, 2005 at six o'clock in the evening, he met AAA near the Bongon Beach. He carried the feeds that AAA brought with her and they talked. Then they agreed to have sex near the cogonal area.<sup>14</sup> After they finished their sexual act, they both dressed up and proceeded to the house of AAA. However, AAA did not allow her to enter the house because the parents of AAA were against their relationship so they proceeded to the house of AAA's grandmother.<sup>15</sup> After bringing AAA to her grandmother's house, he went back to the place where he was staying and ate supper. Subsequently, he heard a commotion because AAA's uncle tried to enter the house in order to kill him alleging that he raped AAA.<sup>16</sup>

On cross-examination, the accused-appellant said that he and AAA had been sweethearts for one (1) month but he alleged that they eventually continued their relationship. He said that he usually meets AAA when she returned home from school but does not visit her in her house because her mother is strict.<sup>17</sup>

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<sup>11</sup> Id. at 60.

<sup>12</sup> TSN, September 26, 2007, pp. 85-87.

<sup>13</sup> Records, Volume I, p. 6.

<sup>14</sup> TSN, October 29, 2009, pp. 193-198.

<sup>15</sup> TSN, April 15, 2010, pp. 218-221.

<sup>16</sup> TSN, January 27, 2010, pp. 208-210.

<sup>17</sup> TSN, April 15, 2010, pp. 217-218.

CCC, the uncle of AAA who also happened to be the brother of AAA's father, and his son, DDD, witnessed for the accused-appellant. They testified that the accused-appellant could not have raped AAA because the two were sweethearts. They both stated that AAA used to send love letters to the accused-appellant through CCC's daughter-in-law.<sup>18</sup> DDD also testified that on the date and time of the incident, he saw AAA and the accused-appellant walking by the seashore going to the house of their grandmother as he was watching them at a distance of five arm stretches and the place was moonlighted. He also said that while the accused-appellant was already in jail, AAA sent the latter a love letter through him.<sup>19</sup>

The RTC rendered judgment on May 13, 2010, finding the accused-appellant guilty for the two (2) counts of Rape of which he was charged and was sentenced to suffer the penalty of *reclusion perpetua* for each rape. The RTC also ordered him to pay the complainant moral damages of ₱75,000.00 and civil indemnities of ₱75,000.00, for each count of rape.<sup>20</sup>

On appeal, the CA rendered a Decision dated March 26, 2013, affirming the RTC decision in its entirety. The accused-appellant then appealed to this Court for review.

The Court finds the appeal without merit.

To support his claim of innocence, the accused-appellant anchors his prayer for acquittal on the following defenses: (1) the testimony of AAA is not credible; (2) there was no showing of force or intimidation; and (3) AAA was his sweetheart and they had an intimate relationship.

In resolving rape cases, the primordial question is given to the credibility of the victim's testimony because conviction for rape may be solely based on the victim's testimony provided it is credible, natural, convincing, and consistent with human nature and the normal course of things.<sup>21</sup> Here, the trial judge, who had the opportunity of observing AAA's manner and demeanor on the witness stand, found AAA's testimony to be credible in itself. The Court emphasizes that a trial court's assessment of a witness' credibility, when affirmed by the CA, is even conclusive and binding, if not tainted with arbitrariness or oversight of some fact or circumstance of weight or influence,<sup>22</sup> which are absent in this case. This is

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<sup>18</sup> TSN, July 4, 2008, pp. 134-136.

<sup>19</sup> TSN, April 16, 2009, pp. 166-171.

<sup>20</sup> Records, Volume I, p. 93.

<sup>21</sup> *People v. Banig*, G.R. No. 177137, August 23, 2012, 679 SCRA 133, 142.

<sup>22</sup> *People of the Philippines v. Joel Dioquino y Garbin*, G.R. No. 191390, April 2, 2014.

so because of the judicial experience that trial courts are in a better position to decide the question of credibility, having heard the witnesses themselves and having observed firsthand their deportment and manner of testifying under gruelling examination.

The sole testimony of AAA, recounting the facts and circumstances of her ordeal in the hands of the accused-appellant was sufficiently straightforward, spontaneous and consistent. AAA was really positive and firm in pointing an accusing finger on the accused-appellant as the very person who sexually assaulted her. She remained steadfast in her narration of the details of her harrowing experience despite the relentless bullying of the defense counsel who tried to impeach her testimony, but failed to do so.

Further strengthening AAA's credibility was her conduct immediately following the alleged rape. Her behavior after the incident was indicative of her resistance to the accused-appellant's bestial acts. It should be recalled that on the same night that the crimes of rape were committed, after the accused-appellant threatened her, she hurriedly went home and upon seeing her grandmother, AAA directly reported to her that she was raped. The incident was immediately reported to the police that same evening negating any opportunity for concoction. On the following day after the incident, AAA went to the police station to formally lodge a complaint against the accused-appellant and to submit herself to a medical examination. AAA's testimony is buttressed by the medico-legal findings that she was forced to submit to sexual intercourse.<sup>23</sup> Indeed, AAA would not have sought police and medical assistance if her claim of rape were a simple trumped-up story. Hence, the circumstances in this case make us believe that the rape charge was motivated by AAA's earnest desire to see that justice is done for what she suffered.

There is no question that AAA had sexual intercourse as admitted by the accused-appellant himself and as shown by the medical findings. However, the accused-appellant denied having raped AAA and instead claimed that they were lovers. He advanced the consensual sex theory and averred that there was no force or intimidation to speak of as AAA willingly participated in the sexual act.

From the foregoing argument, the burden of evidence has shifted to the accused-appellant. He should then prove with clear and convincing evidence his affirmative defense that it was a consensual sexual intercourse.<sup>24</sup> To prove his claim of the alleged consensual nature of the sexual act, accused-appellant capitalizes on AAA's failure to offer tenacious resistance during and after the alleged rape. He points out that the absence

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<sup>23</sup> TSN, March 16, 2007, pp. 33-35.

<sup>24</sup> *People v. Alcober*, G.R. No. 192941, November 13, 2013, 709 SCRA 479, 487-489.

of injuries in AAA's body negates the employment of force upon her. The accused-appellant also argued that AAA's failure to shout or make an outcry is indicative of the absence of rape.

The accused-appellant's arguments are misplaced. "A rape victim has no burden to prove that she did all within her power to resist the force or intimidation employed upon her."<sup>25</sup> The lack of active resistance cannot be equated to consent. "[I]t is not necessary on the part of the victim to put up a tenacious physical struggle."<sup>26</sup> Besides, resistance is not an element of rape.<sup>27</sup> Similarly, "absence of external signs or physical injuries does not negate the commission of rape since proof of injuries is not an essential element of the crime."<sup>28</sup> Hence, the absence of abrasions or contusions in AAA's body is inconsequential. Moreover, an examination of the testimony of AAA shows that the alleged rape had not been attended by a huge physical struggle that would have caused injuries to AAA. Instead, the accused-appellant apparently subdued AAA by threatening to kill her. The lack of injuries, therefore, is consistent with the testimonial evidence presented by the prosecution.

The record also showed that AAA did not consent to the sexual act as she, in fact, resisted his aggression. Contrary to the accused-appellant's claim, AAA indeed shouted for help but no one came to her rescue because the place where the crime took place was about 80 to 100 meters away from an inhabited house.<sup>29</sup> AAA's failure to tenaciously resist the accused-appellant's advances should not be taken as a manifestation of her voluntary acquiescence to the accused-appellant's sexual advances. The fact that the accused-appellant threatened her is enough to intimidate AAA.

In any event, the accused-appellant's bare invocation of the sweetheart theory cannot stand. For one, such claim was not substantiated by the evidence on record. The only evidence adduced by the accused-appellant was his testimony and those of his relatives, CCC and DDD. These testimonies are unpersuasive and rely too much on hasty conclusions rather than factual observations. CCC merely said that he knew of AAA and the accused-appellant's relationship because the latter told him, while the testimony of DDD as regards seeing AAA and the accused-appellant on the date and time of the incident walking together does not in any way suggest a romantic or sexual relationship between them.

To the mind of the Court, these are not enough evidence to prove that an amorous relationship existed between the accused-appellant and AAA. A

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<sup>25</sup> *People v. Rivera*, G.R. No. 200508, September 4, 2013, 705 SCRA 187, 205.

<sup>26</sup> *Supra* note 22, at 146.

<sup>27</sup> *People v. Durano*, 548 Phil. 383, 397 (2007).

<sup>28</sup> *People of the Philippines v. Felimon Patentes y Zamora*, G.R. No. 190178, February 12, 2014.

<sup>29</sup> TSN, June 1, 2007, pp. 48-49.

sweetheart defense, to be credible, should be substantiated by some documentary or other evidence of relationship such as notes, gifts, pictures, mementos, and the like.<sup>30</sup> The alleged love letter sent by AAA, through DDD, to the accused-appellant when the latter was already in jail was never produced in court, if indeed, there really was one. Thus, the accused-appellant's bare testimony that he and AAA are lovers is insufficient for the defense of sweetheart theory to prosper. Besides, even if it were true that the accused-appellant and AAA were sweethearts, this fact does not necessarily negate rape. "[A] love affair does not justify rape for a man does not have the unbridled license to subject his beloved to his carnal desires against her will."<sup>31</sup>

Moreover, the medical findings that AAA has fresh hymenal lacerations on her genitalia at the 9, 6, and 5 o'clock positions gave further credence to AAA's testimony that the sexual intercourse were done with force and without her consent. The medico-legal officer who examined AAA the day after the alleged rape had adequately explained that the possible cause of the lacerations in AAA's hymen was the insertion of the male organ.<sup>32</sup> He continued that the accused-appellant have probably used more tension in order to provoke those lacerations because if the incident was consensual, the extent of the injury would not be that severe.<sup>33</sup>

Furthermore, the elements necessary to sustain a conviction for rape were positively established by the prosecution. *First*, the accused-appellant had carnal knowledge of the victim. AAA was unwavering in her assertion that the accused-appellant inserted his penis into her vagina, and her testimony was strongly corroborated by the medico-legal findings. *Second*, the accused-appellant employed threat, force and intimidation to satisfy his lust. In this case, AAA testified that she shouted for help and tried to free herself but the accused-appellant proved too strong. As a minor, AAA could not reasonably be expected to resist in the same manner that an adult would under the same or similar circumstances. AAA also revealed that the accused-appellant threatened to kill her if she disclosed the incident to her mother or grandmother. Thus, rape was established.

In trying to impute ill motive on AAA's testimony, the accused-appellant claimed that AAA's mother concocted the rape charges against him because she disapproved of their relationship and in order to save face in their small rural community. However, the accused-appellant failed to present any evidence to substantiate his allegation. The Court, in its own assessment of the case, finds no plausible ground to disturb the findings of the trial court, as sustained by the CA. Thus, the accused-appellant's

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<sup>30</sup> Supra note 25, at 488.

<sup>31</sup> Supra note 22, at 149.

<sup>32</sup> TSN, March 16, 2007, p. 34.

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

Consequently, in view of the foregoing, the Court affirms the penalty imposed by the CA which was *reclusion perpetua* for each conviction of simple rape. With respect to the civil aspect, however, the award of moral damages and civil indemnity should be reduced from ₱75,000.00 to ₱50,000.00 in line with the latest jurisprudence.<sup>34</sup> The attendance of AAA's minority as an aggravating circumstance should also justify the grant of exemplary damages in order to set a public example and to establish a deterrent against elders who abuse and corrupt the youth. The grant in this regard should be in the sum of ₱30,000.00.<sup>35</sup> Lastly, in accordance with current jurisprudence, the damages awarded shall earn legal interest at the rate of six percent (6%) *per annum* to be reckoned from the date of finality of this judgment until fully paid.<sup>36</sup>


**WHEREFORE**, the instant appeal is **DENIED**. The Court of Appeals Decision in CA-G.R. CEB-CR-H.C. 01203 dated March 26, 2013 which found accused-appellant Primo P. Japson alias "*Longlong*" **GUILTY** in Criminal Case Nos. R-469 and R-470 for two (2) counts of rape, is **AFFIRMED** with **MODIFICATIONS** that: (a) the award of moral damages and civil indemnity are decreased from Seventy-Five Thousand Pesos (₱75,000.00) to Fifty Thousand Pesos (₱50,000.00); (b) exemplary damages in the amount of Thirty Thousand Pesos (₱30,000.00) be awarded to AAA; and (c) interest at the rate of six percent (6%) *per annum* is imposed on all damages awarded from the date of finality of this Resolution until fully paid.

**SO ORDERED.**



**BIENVENIDO L. REYES**  
Associate Justice

**WE CONCUR:**



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

<sup>34</sup> *People of the Philippines v. Rene Santiago*, G.R. No. 196970, April 2, 2014.

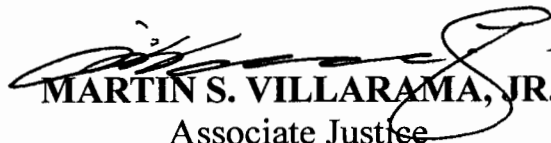
<sup>35</sup> *People v. Reyes*, G.R. No. 173307, July 17, 2013, 701 SCRA 455, 465.

<sup>36</sup> *People v. Cabungan*, G.R. No. 189355, January 23, 2013, 689 SCRA 236, 249.



**DISODADO M. PERALTA**

Associate Justice

**MARTIN S. VILLARAMA, JR.**

Associate Justice

**JOSE PORTUGAL PEREZ**

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

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, 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