



Republic of the Philippines  
**Supreme Court**  
Manila

**FIRST DIVISION**

**PEOPLE OF THE PHILIPPINES,**  
Plaintiff-Appellee,

**G.R. No. 201151**

Present:

*-versus-*

SERENO, C. J.,  
Chairperson,  
LEONARDO-DE CASTRO,  
BERSAMIN,  
PEREZ, and  
PERLAS-BERNABE, JJ.

**NESTOR SUAREZ y**  
**MAGTAGNOB,**  
Accused-Appellant.

Promulgated:

**JAN 14 2015**

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**DECISION**

**PEREZ, J.:**

For review is the Decision<sup>1</sup> of the Court of Appeals dated 23 September 2011, affirming with modification the Decision<sup>2</sup> of the Regional Trial Court (RTC), Branch 43 of Virac, Catanduanes, dated 25 February 2010, finding appellant Nestor Suarez y Magtagnob guilty beyond reasonable doubt of the crime of rape.

In an Information dated 28 July 2009, appellant was indicted before the RTC for the rape of his minor niece. The accusatory portion of the Information reads:

<sup>1</sup> Penned by Associate Justice Agnes Reyes-Carpio with Associate Justices Fernanda Lampas Peralta and Priscilla J. Baltazar-Padilla, concurring. *Rollo*, pp. 2-22.

<sup>2</sup> Penned by Presiding Judge Lelu P. Contreras. Records, pp. 114-125.

That on or about [21 December 2008] at *Barangay XXX, XXX, XXX, Catanduanes, Philippines* and within the jurisdiction of this Honorable Court, accused, who is a relative within the third civil degree by affinity being the uncle of fifteen (15) year old [AAA],<sup>3</sup> driven by malice and lewd design, did then and there, willfully, knowingly, unlawfully and feloniously through force, threat, intimidation and grave abuse of authority, lie and succeed in having carnal knowledge of said AAA against her will.

The special aggravating/qualifying circumstance that the offender is a relative within the third civil degree by affinity and the victim who is a minor under eighteen years of age is present.

Nighttime as aggravating circumstance is also present during the commission of the crime.<sup>4</sup>

During the pre-trial, the parties stipulated on the following facts:

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2. That the accused Nestor Suarez is the uncle of the victim, [AAA], his wife being the sister of the victim's mother;
3. That [AAA] was born on December 18, 1993; the defense admitted the genuineness and authenticity of the Certificate of Live Birth;
4. That the distance between the house of the accused and that of the family of the victim is about thirty (30) meters, with two (2) houses in between[.]<sup>5</sup>

After appellant pleaded not guilty, trial ensued with AAA as the first prosecution witness, testifying to the following facts:

On the night of 21 December 2008, AAA, who was then 15 years old, went to sleep next to her 12-year old sister. Her parents were not at home at that time. At around 10:00 p.m., AAA was awakened by someone mashing her breasts. She saw her uncle on top of her legs wearing only his briefs. AAA asked where her sister was but appellant replied: "*dai ka na magpalibok, tibaad anong mangyaring kalaen sa tugang mo*" (Don't make any noise because if you do something bad might happen to your sister). AAA tried to free herself but she was too weak. Appellant first kissed her

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<sup>3</sup> The victim's real name is withheld pursuant to Sec. 29 of R.A. No. 7610, Sec. 44 of R.A. No. 9262 and Sec. 40 of A.M. No. 04-10-11-SC. See *People v. Cabalquinto*, 533 Phil. 703 (2006). Consequently, the real names of AAA's immediate relatives shall likewise be withheld.

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

<sup>5</sup> Id. at 26.

on different parts of her body and sucked her breast before he lowered AAA's shorts and underwear and inserted his penis into her vagina. After completing his dastardly act, appellant, who had earlier carried AAA's sleeping sister out of the room, carried AAA's still sleeping sister back into the room. Appellant once again threatened AAA not to tell anyone or something bad will happen to her sister. Thereafter, appellant left. AAA could not sleep and just kept on crying. AAA's parents arrived only at around 11:00 in the evening, but she did not immediately tell them of her ordeal. After the rape incident, AAA's monthly menstruation period stopped in January 2009. She told appellant that her monthly period was delayed. Appellant gave her a white tablet and told her to take it in January and again, in February of the same year. In March, however, AAA refused to take another white tablet. On April 2009, she told her cousin, a certain Ate Helen about the rape incident. Helen related to her father what happened to AAA and the latter in turn told AAA's sister BBB.<sup>6</sup>

To corroborate AAA's testimony, BBB testified that she learned of the rape when AAA, together with their aunt, went to her house and told her that she was abused by appellant. They went to the Virac Police Station. AAA, who was assisted by BBB, executed a sworn statement before the Women and Children Protection Desk of Virac.<sup>7</sup>

The Medico Legal Certificate issued by Dr. Petronio Batulio shows that during the medical examination, AAA's had whitish vaginal discharge, healed vaginal laceration at 6 o'clock position, and was found to be positive for pregnancy.<sup>8</sup>

Appellant testified as the sole witness on his behalf, proffering denial and alibi as his defenses. According to appellant, he was at home resting on 21 December 2008. He slept at 8:00 in the evening and woke up at around 12:00 midnight to urinate. He then went back to sleep and woke up the next day.<sup>9</sup> He denied the rape charge and asserted that he was falsely accused of the crime because the mother of AAA held a grudge against him and his family over an inherited property.<sup>10</sup> Appellant also claimed that he saw the man courting AAA fetch the latter on 29 November 2008.<sup>11</sup> Appellant's wife and daughter corroborated his statement. Appellant's wife added that AAA even went with her to visit appellant in jail.

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<sup>6</sup> Testimony of AAA. TSN, 7 October 2009, pp. 6-10.

<sup>7</sup> Testimony of BBB. TSN, 8 October 2009, pp. 6-9.

<sup>8</sup> Records, p. 10.

<sup>9</sup> Testimony of Appellant. TSN, 3 December 2009, p. 14.

<sup>10</sup> Id. at 5.

<sup>11</sup> Id. at 4.

Finding that the prosecution had proven beyond reasonable doubt the guilt of appellant of the crime of rape, the RTC rendered judgment against appellant and sentenced him accordingly, thus:

WHEREFORE, finding NESTOR SUAREZ y MAGTAGNOB guilty beyond reasonable doubt of rape, he is, hereby, sentenced to suffer the penalty of *reclusion perpetua* and to pay AAA Fifty Thousand (P50,000.00) Pesos as civil indemnity, Fifty Thousand (P50,000.00) Pesos as moral damages and Twenty-Five Thousand (P25,000.00) Pesos as exemplary damages.<sup>12</sup>

Appellant filed a Notice of Appeal. On 23 September 2011, the Court of Appeals rendered its decision affirming appellant's conviction, but with modification as to damages awarded to the victim. The dispositive portion of the decision states:

WHEREFORE, premises considered, the assailed Judgment of the the Regional Trial Court (RTC), Branch 43, Virac, Catanduanes, finding accused-appellant guilty beyond reasonable doubt of the crime of Rape in Criminal Case No. 4089, is hereby AFFIRMED with the following MODIFICATIONS:

1. The award for civil indemnity is increased to P75,000.00;
2. The award for moral damages is increased to P75,000.00; and
3. The award for exemplary damages is increased to P30,000.00.<sup>13</sup>

We affirm the decision of the Court of Appeals with modifications.

The conviction or acquittal of one accused of rape most often depends almost entirely on the credibility of the complainant's testimony. By the very nature of this crime, it is generally unwitnessed and usually the victim is left to testify for herself. Her testimony is most vital and must be received with the utmost caution. When a rape victim's testimony, however, is straightforward and marked with consistency despite grueling examination, it deserves full faith and confidence and cannot be discarded. Once found credible, her lone testimony is sufficient to sustain a conviction.<sup>14</sup>

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<sup>12</sup> Records, p. 125.

<sup>13</sup> *Rollo*, pp. 21-22.

<sup>14</sup> *People v. Abulon*, 557 Phil. 428, 440 (2007) citing *People v. Corral*, 446 Phil. 652, 661 (2003); *People v. Penaso*, 383 Phil. 200, 208 (2000) citing *People v. Domogoy*, 364 Phil. 547, 558 (1999) citing further *People v. Casim*, G.R. No. 93634, 2 September 1992, 213 SCRA 390; *People v. Babera*, 388 Phil. 44, 53 (2000) citing *People v. Gallo*, 348 Phil. 640, 665 (1998) further citing *People v. Rivera*, 312 Phil. 420, 427 (1995); *People v. Caratay*, 374 Phil. 590, 601 (1999); *People v. Gapasan*, 312 Phil. 964, 970 (1995); *People v. Bulaybulay*, G.R. No. 104275, 28 September 1995, 248 SCRA 601, 607.

The trial court, as affirmed by the Court of Appeals found the testimony of AAA credible. We, too, affirm the finding of credibility considering that AAA's narration is clear, spontaneous, and straightforward, thus:

PROS. MOSATALLA

Q: [AAA], on December 21, 2008 at around 10:00 o'clock in the evening, do you remember where you were?

A: I was in our house, ma'am.

Q: What were you doing then?

A: I was sleeping, ma'am.

Q: Where were you sleeping?

A: In our house, in my room.

Q: Where is your house located?

A: At [XXX XXX, XXX], Catanduanes.

Q: Who were with you during that time?

A: My youngest sister, [CCC].

Q: How old is your sister?

A: She is twelve (12) years old.

Q: During that time that you were sleeping, do you remember where is your sister?

A: She was beside me, ma'am.

Q: At around 10:00 o'clock in the evening on that date, do you remember any untoward incident that happened?

A: Yes, ma'am.

Q: What is that incident, can you tell us?

A: I just awakened when I felt somebody mashing my breast and I saw my uncle on top of my legs only wearing brief and then, I asked my uncle where is my sister and he answered "*dai ka na magpalibok, tibaad anong mangyaring kalaen sa tugang mo.*" (At the same time the witness is demonstrating with the used of her hand pointing to the breast and then, to the legs).

Q: What happened next?

A: I struggled but I was weak.

Q: After that what happened?

A: And then, he kissed me at my different parts of my body and then, he sucked my breast.

Q: After that what happened?

A: And then, he lowered my shorts and my panty, then, he inserted his penis.

Q: Inserted where?

A: In my vagina.

May I just put on record that the witness is crying.

x x x x

Q: After that?

A: And then, he took my sister from outside and returned it where she was sleeping.

Q: After that what happened?

A: He brought back my sister beside me and then, he told me not to tell anybody because something bad will happen to my sister.

Q: After that what did he do next?

A: And then, he left.

Q: How about you, what did you do?

A: I was not able to sleep. I just kept on crying.

Q: By the way, where were your parents during that time?

A: They were at the house of *Tiyo* Henry because they were dividing their shares in the *sociedad*.

Q: Do you remember what time did your parents go home?

A: I think it was 11:00 o'clock in the evening because I was not able to sleep until my parents arrived.

Q: During that night, did you tell your parents about what your uncle did to you?

A: No, ma'am. I did not.

Q: After that night did you see your uncle again?

A: Yes, ma'am.

Q: When did you see him again?

A: When I passed by their place and when he went to our house, he is talking with my papa because he is our family.

Q: And every time you would see him, what did he do?

A: Sometime he threatened me not to tell anybody that something bad will happen to my sister.<sup>15</sup>

Appellant seeks to demolish the testimony of AAA by alleging that her version of the incident reeks of improbabilities. According to appellant,

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<sup>15</sup> Testimony of AAA. TSN, 7 October 2009, pp. 6-8.

there appears to be no significant resistance on the part of AAA, who did not shout when appellant was allegedly defiling her. Moreover, AAA's parents were just a house away at the time of the alleged rape so she should have been encouraged to shout for help or exerted strong resistance against appellant's sexual advances.

It has been settled that in rape cases, the law does not impose a burden on the rape victim to prove resistance because it is not an element of rape. Not all victims react the same way. Some people may cry out, some may faint, some may be shocked into insensibility, while others may appear to yield to the intrusion. Some may offer strong resistance while others may be too intimidated to offer any resistance at all. The failure of a rape victim to offer tenacious resistance does not make her submission to accused's criminal acts voluntary. What is necessary is that the force employed against her was sufficient to consummate the purpose which he has in mind.<sup>16</sup>

Appellant points out that it is strange that AAA would cooperate with appellant in trying to conceal her impending pregnancy. Appellant omits the fact, however, that the effort at concealment was done when AAA's actions were yet controlled by her fear foisted by her uncle, the appellant.

Appellant also finds it unusual that he purportedly abused AAA without rousing the attention of her sister who remained sleeping. We must point out that AAA sufficiently explained that before appellant committed the dastardly act, he carried AAA's sleeping sister outside the bedroom.

Appellant contests the medical findings because the cause of AAA's vaginal laceration was not revealed. Appellant then poses the possibility of a consensual sex with another man. The medical examination of the victim is not an element of rape. Moreover, the medical examination does not seek to establish who committed the crime, rather it merely corroborates the testimony of the rape victim that she has been raped. The prime consideration in the prosecution of rape is the victim's testimony, not necessarily the medical findings; a medical examination of the victim is not indispensable in a prosecution for rape. The victim's testimony alone, if credible, is sufficient to convict.<sup>17</sup>

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<sup>16</sup> *People v. Bacatan*, G.R. No. 203315, 18 September 2013 citing *People v. Baldo*, G.R. No. 175238, 24 February 2009, 580 SCRA 225, 233; *People v. Olesco*, G.R. No. 174861, 11 April 2011, 647 SCRA 461, 469.

<sup>17</sup> *People v. Perez*, G.R. No. 191265, 14 September 2011, 657 SCRA 734, 743 citing *People v. Otos*, G.R. No. 189821, 23 March 2011, 646 SCRA 380, 383-384 further citing *People v. Cadap*, G.R. No. 190633, 5 July 2010, 623 SCRA 655, 662-663; *People v. Llanas, Jr.*, G.R. No. 190616, 29

Appellant contends that considering the weak evidence of the prosecution, he does not even need to present evidence as it has no viable case to meet. We cannot agree. In proper context, the prosecution evidence in the case is sufficient proof for conviction.

It is a well-entrenched principle that testimonies of child victims are given full weight and credit, for when a woman or a girl-child says that she has been raped, she says in effect all that is necessary to show that rape was indeed committed. Youth and immaturity are generally badges of truth and sincerity.<sup>18</sup>

Indeed, and as contrasted to AAA's convincing recital of facts, appellant's denial and alibi will not stand. Alibi and denial cannot prevail over the positive and categorical testimony and identification of the complainant.<sup>19</sup>

The records disclose that nobody corroborated his alibi. The testimonies of his family relate to discrediting AAA's credibility by mere speculations that AAA could have been impregnated by her boyfriend. They never supported appellant's alibi. Alibi must be supported by credible corroboration from disinterested witnesses, otherwise, it is fatal to the accused.<sup>20</sup> Further, for alibi to prosper, it must be demonstrated that it was physically impossible for appellant to be present at the place where the crime was committed at the time of its commission.<sup>21</sup> By his own testimony, appellant clearly failed to show that it was physically impossible for him to have been present at the scene of the crime when the rape was alleged to have occurred. Appellant lived two houses away from AAA's family and he admitted to have free access to AAA's house being their close relatives.

All told, we are in accord with the findings of the trial court, as affirmed by the Court of Appeals, which led to the finding that appellant is guilty of the crime of rape, qualified by minority and relationship. Both qualifying circumstances were sufficiently alleged in the information admitted by the accused during pre-trial.

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June 2010, 622 SCRA 602, 613; *People v. Barberos*, G.R. No. 187494, 23 December 2009, 609 SCRA 381, 399; *People v. Araojo*, G.R. No. 185203, 17 September 2009, 600 SCRA 295, 308-309.

<sup>18</sup> *People v. Pamintuan*, G.R. No. 192239, 5 June 2013 citing *People v. Corpuz*, 517 Phil. 622, 636-637 (2006).

<sup>19</sup> *People v. Amistoso*, G.R. No. 201447, 9 January 2013 citing *People v. Abulon*, supra note 14 at 447.

<sup>20</sup> *People v. Abulon*, id. at 448.

<sup>21</sup> *People v. Linsie*, G.R. No. 199494, 27 November 2013.



Under Article 266-B of the Revised Penal Code, the death penalty shall be imposed when the victim is below 18 years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common law spouse of the parent of the victim. However, in view of Republic Act No. 9346,<sup>22</sup> we cannot impose the penalty of death. In lieu thereof, the penalty shall be *reclusion perpetua* without eligibility for parole as correctly imposed by the trial court.

In conformance with the prevailing jurisprudence however, we deem it proper to modify the amount of damages awarded in this case. In *People v. Gambao*,<sup>23</sup> we increased the amounts of indemnity and damage where the penalty for the crime committed is punishable by death which cannot however be imposed because of Republic Act No. 9346. As increased, the amount of damages to be awarded are as follows:

1. ₱100,000.00 as civil indemnity;
2. ₱100,000.00 as moral damages which the victim is assumed to have suffered and thus needs no proof; and
3. ₱100,000.00 as exemplary damages to set an example for the public good.

All damages awarded shall earn legal interest at the rate of 6% per annum from the date of finality of judgment until fully paid.<sup>24</sup>

**WHEREFORE**, the Court of Appeals' Decision dated 23 September 2011 finding appellant Nestor Suarez y Magtagnob guilty beyond reasonable doubt of rape and sentencing him to *reclusion perpetua* is **AFFIRMED with MODIFICATION**. The civil indemnity awarded is increased to ₱100,000.00; the moral damages to ₱100,000.00; and the exemplary damages to ₱100,000.00. The award of damages shall earn interest at the rate of 6% per annum from the date of finality of the judgment until fully paid.

**SO ORDERED.**

  
**JOSE PORTUGAL PEREZ**  
Associate Justice

<sup>22</sup> An Act Prohibiting the Imposition of Death Penalty in the Philippines.

<sup>23</sup> G.R. No. 172707, 1 October 2013.

<sup>24</sup> Id.; *People v. Buclao*, G.R. No. 208173, 11 June 2014.


WE CONCUR:

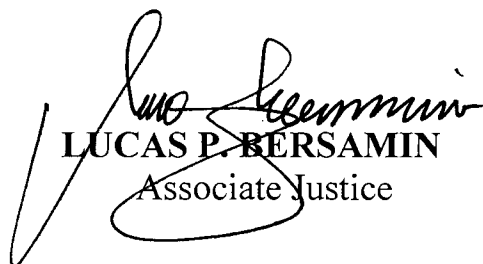



**MARIA LOURDES P. A. SERENO**

Chief Justice

Chairperson

  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice

  
**LUCAS P. BERSAMIN**  
Associate Justice

  
**ESTELA M. PERLAS-BERNABE**  
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