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WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
AUG 0 2 2017

Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee,	**G.R. No. 217459**
	Present:
-versus-	VELASCO, JR., *J.*, *Chairperson*, BERSAMIN, REYES, MARTIRES*, and TIJAM, *JJ.*
ALBERTO FORTUNA ALBERCA, Accused-Appellant.	Promulgated: June 7, 2017

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DECISION

TIJAM, *J.*:

Questioned in this appeal is the Decision[1] dated July 16, 2014 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01071, which sustained accused-appellant's conviction for two counts of Qualified Rape by the Regional Trial Court (RTC), Branch 25 in Maasin City, Southern Leyte, in its Decision[2] dated June 15, 2009 in Criminal Case Nos. 2304 and 2305.

The Factual and Procedural Antecedents

In two separate Amended Informations, accused-appellant was charged with Qualified Rape in this manner, *viz.*:

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*Designated as additional member as per raffle datd March 15, 2017.

[1]Penned by Court of Appeals Associate Justice Renato C. Francisco and concurred in by Associate Justices Gabriel T. Ingles and Pamela Ann Abella Maxino, CA *rollo*, pp. 4-20.

[2] Penned by Judge Ma. Daisy Paler Gonzales, id. at 34-45.

In Criminal Case No. 2304

That on or about the 7th day of September 2000 at 1:00 o'clock in the afternoon, more or less, at barangay Tigbawan, city of Maasin, province of Southern Leyte, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused, who is the common-law husband of the mother of the victim, with lustful intent and by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously ravish the victim, AAA, 11 years of age, and successfully had sexual intercourse with said victim without her consent and against her will, to the damage and prejudice of said AAA and of the social order.

CONTRARY TO LAW.[3]

In Criminal Case No. 2305

That on or about the 4th day of January 2001 at 7:00 o'clock in the morning, more or less, at barangay Canyuom, city of Maasin, province of Southern Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, who is the common-law husband of the mother of the victim, with lustful intent and by means of force, threat and intimidation, did then and there willfully, unlawfully, and feloniously ravish the victim, AAA, 11 years of age, and successfully had sexual intercourse with said victim without her consent and against her will, to the damage and prejudice of said AAA and of the social order.

CONTRARY TO LAW.[4]

Upon arraignment on May 10, 2001, accused-appellant pleaded not guilty to the charges.[5] Pre-trial and trial thereafter ensued.[6]

During trial, the prosecution presented the testimonies of the following witnesses, to wit: AAA, the victim; CCC, the mother of the victim; Dr. Teodula K. Salas, the doctor who physically examined AAA; SPO2 Generoso Guerra, the officer on duty when the victim was brought to the police station to file a complaint; and Jumar Carsola, AAA's classmate who was with her before the second rape happened.[7]

AAA testified that on September 7, 2000, at around one o'clock in the afternoon, on her way home from her grandmother's house, the accused-appellant, her mother's live-in partner, waylaid her and dragged her towards the forest. Upon reaching the Mabaguhan trees, accused-appellant removed his short pants and then undressed her. She tried to resist but he threatened to kill her with the long firearm that he was carrying at that time. He then made her lie down, held her hands together, placed himself on top of her, inserted his penis into her vagina and made rapid push and pull movements.

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[3]Supra note 1, at 5.
[4]Id.
[5]Id.
[6]Id.
[7]Accused-Appellant's Brief, CA *rollo*, pp. 21-33.

Thereafter, AAA went home and did not tell anybody about the incident as accused-appellant threatened to kill her and her family.[8]

On January 4, 2001, at around seven o'clock in the morning, AAA was on her way to school with her brother and classmates when they saw accused-appellant. Accused-appellant told AAA to go with him to the forest and ordered her brother and classmates to go ahead and leave her. AAA refused but accused-appellant held her hands and made her walk ahead of him. When they reached the forest, he dragged her inside the hut, took his short pants off, undressed her, made her lie down, inserted his penis into her vagina, and made repeated push and pull movements. Thereafter, he told her to go to school. AAA's brother and classmates told her mother that accused-appellant brought AAA to the forest. This prompted CCC to bring AAA to the police station to report the incident and to the hospital for an examination, where it was found out that AAA was no longer a virgin.[9]

On April 3, 2001, AAA was re-examined and found out that she was about four months pregnant. The child was, however, delivered prematurely at seven months on July 26, 2001 and died.[10]

AAA's testimony was corroborated by the other prosecution witnesses.

SPO2 Guerra testified that he was on duty when AAA was brought to the police station. AAA narrated to him the rape incidents. He then assisted AAA in executing her affidavit. SPO2 Guerra also testified that accused-appellant was invited for questioning but he could not be found at his residence. On January 14, 2001, however, accused-appellant voluntarily appeared at the police station and admitted that he raped AAA.[11]

For its part, the defense presented the testimonies of Dr. Salas, Barangay Captain Antonio Jualo of Barangay, Tigabawan, Maasin City, and accused-appellant.[12]

In the main, accused-appellant raised the defense of denial and alibi, alleging that he could not have raped AAA on September 7, 2000 at one o'clock in the afternoon as he was at that time processing copra in another barangay, which is six kilometers away from the barangay where the rape was allegedly committed.[13] He also averred that he could not have raped AAA in the morning of January 4, 2001 as AAA and BBB left to go to the police station at around eight o'clock that morning to report that he slapped

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[8] Id.
[9] Id. at 25.
[10] Id.
[11] Id. at 6-7.
[12] Supra note 7, at 27.
[13] Id.

them both on January 2, 2001 and that by 8 o'clock that evening, he was arrested and placed in jail.[14]

Accused-appellant further averred that AAA was ill-motivated in filing false charges of rape against him because she wanted him and her mother to separate.[15]

Accused-appellant also pointed out that AAA was already pregnant before the alleged second rape on January 4, 2001 as testified to by Dr. Salas, hence, accused-appellant theorized that he could not have fathered the child.[16]

The Ruling of the RTC

In its June 15, 2009 Decision, the RTC gave full faith and credit to AAA's testimony, being a girl in her tender years, pursuant to the principle that youth and immaturity, especially in a rape case, are generally badges of truth and sincerity.[17] The RTC observed that no amount of enmity or desire to have the accused leave her mother would impel a child to subject herself to such a traumatic process as public as a trial for rape.[18]

The findings of Dr. Salas also corroborate AAA's testimony. The RTC ruled that the non-virgin state of the victim when first examined is enough proof that penetration occurred, which is an essential requisite of carnal knowledge. The RTC also noted that the age of the stillborn child at the time of delivery is consistent with the date of the second rape, January 4, 2001. It further ruled that the absence of marks of external bodily injuries does not negate rape as proof of injury is not an essential element of the crime.[19]

AAA's conduct after the rape incidents, according to the trial court, should not be taken against her. Her non-revelation of the rape incidents can be attributed to her fear as the accused-appellant threatened to kill her and her family.[20]

The RTC ruled that the positive and categorical testimony of a rape victim should prevail over the accused-appellant's bare denial and alibi, the latter being self-serving.

Finally, the RTC took into consideration the special qualifying circumstance of the accused-appellant's relationship to the victim, the same

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[14] Id.
[15] Id.
[16] Id.
[17] Supra note 2, at 40.
[18] Id.
[19] Id.
[20] Id.

being properly alleged in the Amended Informations and proven during the trial.[21]

The RTC disposed, thus:

> **WHEREFORE**, premises considered, the court finds the accused Alberto Fortuna Alberca GUILTY beyond reasonable doubt of two (2) counts of qualified rape committed against (AAA), eleven-year-old daughter of his common-law spouse, and sentences him to suffer *reclusion perpetua* in each case, instead of death, in accordance with Republic Act No. 9346.
>
> For each count of qualified rape, the accused is hereby ordered to pay (AAA) the sums of seventy five thousand pesos (P75,000.00) as civil indemnity, seventy five thousand pesos (P75,000.00) as moral damages, and twenty five thousand pesos (P25,000.00) as exemplary damages.
>
> **SO ORDERED**.[22]

The Ruling of the CA

The CA sustained accused-appellant's conviction as found by the RTC, upholding AAA's credibility as a witness as she was firm and unrelenting in pointing to the accused-appellant as the one who raped her on two occasions.[23]

The CA also ruled that there is no standard behavioral response from rape victims; hence, the truth or falsehood of an allegation of rape cannot be gauged therefrom, contrary to the accused-appellant's argument.[24]

The CA likewise dismissed accused-appellant's argument that the absence of physical injury, hymenal laceration, and seminal fluid negates the fact of rape, the same not being an essential element of the crime.[25]

The fact that AAA was found to be seven months pregnant on July 26, 2001, leading to the conclusion that she was already pregnant on December 26, 2000, does not negate the fact of rape on January 4, 2001.[26] The CA cited jurisprudence to the effect that a month's difference in the stage of pregnancy as shown by the physical examination is not substantial.[27]

The CA, thus, affirmed the RTC's finding that the prosecution was able to establish accused-appellant's guilt beyond reasonable doubt to the charges. The appellate court, however, modified the penalty by increasing

[21] Id. at 43.
[22] Id. at 45
[23] Id. at 9.
[24] Id. at 16.
[25] Id.
[26] Id.
[27] Id.

the exemplary damages awarded by the RTC from Twenty Five Thousand Pesos (Php25,000) to Thirty Thousand Pesos (Php30,000) to conform with the prevailing jurisprudence at that time.[28] Also, the CA imposed an interest on the rate of six percent per annum on all the damages awarded from the finality of the judgment until said amounts are fully paid.[29]

The CA, in its appealed Decision, disposed thus:

> **WHEREFORE**, the appeal is hereby **DENIED**. The Regional Trial Court's Decision finding accused-appellant Alberto Fortuna Alberca guilty beyond reasonable doubt of two (2) counts of the crime of qualified rape, sentencing him to suffer the penalty of *reclusion perpetua, in lieu* of death and ordering him to pay the offended party P75,000.00 as civil indemnity and P75,000.00 as moral damages for each count of qualified rape is **AFFIRMED** with **MODIFICATION** that the exemplary damages is increased to P30,000.00 for each count of qualified rape.
>
> Accused-appellant Alberto Fortuna Alberca is further ordered to pay the offended party interest on all damages awarded at the legal rate of 6% per annum from the date of finality of this decision until such amounts shall have been duly paid.
>
> **SO ORDERED**.[30]

Hence, this appeal.

Both the Office of the Solicitor General (OSG), for the People, and the accused-appellant manifested before this Court that they are adopting their respective Briefs filed before the CA in lieu of the supplemental briefs required by this Court.[31]

The Issue

The sole issue in this case is whether or not the accused-appellant is guilty beyond reasonable doubt of two counts of Qualified Rape.

This Court's Ruling

In the main, accused-appellant attacks AAA's credibility, averring that the facts and circumstances narrated by AAA are improbable and questionable.[32] Specifically, accused-appellant points out that AAA did not shout and ask for help while she was allegedly being dragged along the road. AAA likewise did not run away when she had the opportunity to do so while accused-appellant was allegedly taking off his pants which took time. Also,

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[28] Id. at 19.
[29] Id.
[30] Id. at 20.
[31] *Rollo*, pp. 33-37 and 40-43.
[32] Supra note 7, at 28.

AAA's story that accused-appellant told her to come with him to the forest when she was with her brother and classmates in a public road during daytime was unbelievable, according to the accused-appellant, as she could have refused to go with him, cried for help, and fought back but she did not. Accused-appellant avers that the RTC merely assumed the truthfulness of the said narration pursuant to the principle on minor witnesses. The accused-appellant also raises the fact of the absence of seminal fluid and physical injury, and the improbability of having sexual intercourse with AAA from December 18, 2000 to January 4, 2001, as the latter was already pregnant during that period.[33]

We affirm the conviction.

The Court is not at all swayed by the arguments of the accused-appellant. The RTC and the CA have aptly and thoroughly discussed every defense raised by the accused-appellant.

Time and again, this Court has held that questions on the credibility of witnesses should best be addressed to the trial court because of its unique position to observe the elusive and incommunicable evidence of witnesses' deportment on the stand while testifying which is denied to the appellate courts.[34] Hence, the trial judge's assessment of the witnesses' testimonies and findings of fact are accorded great respect on appeal. In the absence of substantial reason to justify the reversal of the trial court's assessment and conclusion, as when no significant facts and circumstances are shown to have been overlooked or disregarded, the reviewing court is generally bound by the former's findings. The rule is even more strictly applied if the appellate court has concurred with the trial court as in this case.

We are, thus, one with the RTC and CA in applying the jurisprudential 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.[35] Accused-appellant's imputation of ill-motive to the young victim deserves scant consideration. Indeed, no woman, least of a child, will concoct a story of defloration, allow an examination of her private parts, and subject herself to public trial or ridicule if she has not, in truth, been a victim of rape and impelled to seek justice for the wrong done to her.[36] As found by the RTC and CA, AAA's testimony was candid, spontaneous, and consistent. We find no cogent reason to deviate from such finding.

Besides, as can be gleaned from the records, the assailed findings and ruling were not solely based on AAA's testimony. The testimonies of the

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[33] Id.

[34] *People of the Philippines v. Floro Buban Barcela*, G.R. No. 208760, April 13, 2014.

[35] *People of the Philippines v. Ricardo Pamintuan y Sahagun*, G.R. No. 192239, June 5, 2013.

[36] *People of the Philippines v. Gregorio Corpuz y Espiritu*, G.R. No. 168101, February 13, 2006.

other prosecution witnesses, corroborating that of AAA's, were also considered. Jumar Carsola's testimony corroborated that of AAA's narration of facts as to the second rape in that they were together on their way to school when the accused-appellant asked AAA to go to the forest with him and ordered the others to go ahead and leave AAA with him. The medical findings of Dr. Salas that AAA was not a virgin anymore, as well as the period of her pregnancy, coincided with the rape incidents. Thus, while it has been held in the past that the accused in rape cases may be convicted solely on the basis of the victim's testimony which passed the test of credibility,[37] in this case, there is more than sufficient evidence presented to arrive at such conclusion.

The absence of hymenal laceration is of no moment. Contrary to the accused-appellant's theory, the same does not negate the fact of rape as a broken hymen is not an essential element of rape[38]. In fact, this Court has, in a previous case, affirmed the conviction of the accused for rape despite the absence of laceration on the victim's hymen since medical findings suggest that it is possible for the victim's hymen to stay intact despite repeated sexual intercourse.[39]

Likewise, the absence of hymenal fluid or spermatozoa is not a negation of rape.[40] The presence or absence thereof is immaterial since it is penetration, not ejaculation, which constitutes the crime of rape.[41] Besides, the absence of the seminal fluid from the vagina could be due to a number of factors, such as the vertical drainage of the semen from the vagina, the acidity of the vagina, or simply the washing of the vagina after the sexual intercourse.[42] At any rate, the presence of spermatozoa is not an element of the crime of rape.[43]

Anent accused-appellant's theory as to the impossibility of sexual intercourse with AAA on January 4, 2001 as she was already pregnant on December 26, 2000, being found as seven months pregnant on July 26, 2001, the CA aptly cited the case of *People v. Adora*[44], thus:

> Computation of the whole period of gestation, thus, becomes a purely academic endeavor. In this light, while most authorities would agree on an average duration, there are still cases of long and short gestations.
>
> Thus, the stage of development of the fetus cannot be determined with any exactitude, and an error of at least two weeks, if not more,

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[37] *People of the Philippines v. Floro Manigo y Macalua*, G.R. No. 194612, January 27, 2014.
[38] *People of the Philippines v. Hilario Opong y Taesa*, G.R. No. 177822, June 17, 2008.
[39] *People of the Philippines v. Hilario Opong y Taesa*, G.R. No. 177822, June 17, 2008.
[40] *People of the Philippines v. Jose Perez @ Dalegdeg*, G.R. No.182924, December 24, 2008.
[41] Id.
[42] Id.
[43] Id.
[44] G.R. No. 116528-31, July 14, 1997.

> should be allowed for this, together with the recognized variation in the duration of normal pregnancies, makes it very unsafe to dogmatize in a medico-legal case xxx.
>
> More importantly, it should be pointed out that these consolidated cases are criminal cases for rape, not civil actions for paternity or filiation. The identity of the father of the victim's child is a non-issue. Even her pregnancy is beside the point. What matters is the occurrence of the sexual assault committed by the appellant on the person of the victim xxx. At any rate, that the victim was already pregnant before the first rape does not disprove her testimony that the appellant raped her.

The CA correctly concluded, therefore, that the finding that AAA was already seven months pregnant as of July 26, 2001 cannot be considered a hundred percent accurate assessment and thus, does not discount the possibility that accused-appellant raped and even impregnated AAA on January 4, 2001, which notably was just nine days apart from the estimated start of AAA's pregnancy on December 26, 2000.

Accused-appellant's argument that AAA's demeanor after the alleged rape incidents was unbelievable and contrary to human experience also could not sway Us. As already settled in jurisprudence, not all victims react the same way.[45] Some people may cry out, some may faint, some may be shocked into insensibility, others may appear to yield to the intrusion.[46] Some may offer strong resistance, while others may be too intimidated to offer any resistance at all.[47] The mere fact that accused-appellant has moral ascendancy over AAA, being the latter's surrogate father, coupled with AAA's tender age and accused-appellant's threat against her, would suffice to justify AAA's fear in abiding by accused-appellant's orders, failure to resist, and also option to keep the harrowing experience to herself.

Lastly, pitted against AAA's clear, convincing, and straightforward testimony, accused-appellant's unsupported denial and alibi cannot prevail.

Denial and alibi are inherently weak defenses and must be brushed aside when the prosecution has sufficiently and positively ascertained the identity of the accused.[48] And as often stressed, a categorical and positive identification of an accused, without any showing of ill-motive on the part of the witness testifying on the matter, prevails over denial, which is a negative and self-serving evidence undeserving of real weight in law unless substantiated by clear and convincing evidence.[49]

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[45] *People of the Philippines v. Leonardo Battad and Marcelino Bacnis*, G.R. No. 206368, August 6, 2014.

[46] Id.

[47] Id.

[48] *People of the Philippines v. Dione Barberan and Dione Delos Santos*, G.R. No. 208759, June 22, 2016.

[49] Supra note 60.

All told, We find no reversible error in the factual findings and legal conclusions of the RTC, as affirmed by the CA.

As regards the penalty, however, while We uphold the imposition of *reclusion perpetua* in lieu of the death penalty pursuant to Republic Act (R.A) No. 9346,[50] the victim being below 18 years old and the offender being a step-parent or common-law spouse of the victim's mother,[51] We find it proper to modify the award of damages in accordance with the prevailing jurisprudence pronounced in the case of *People v. Jugueta,*[52] stating that when the penalty imposed is death but reduced to *reclusion perpetua* pursuant to R.A. No. 9346, the civil indemnity, moral damages, and exemplary damages to be imposed will each be PhP100,000 for each count of rape.

WHEREFORE, premises considered, the instant appeal is **DISMISSED**. Accordingly, the assailed Decision of the Court of Appeals dated July 16, 2014 in CA-G.R. CR-HC No. 01071 is hereby **AFFIRMED WITH MODIFICATION** as follows:

> "WHEREFORE, the appeal is hereby DENIED. The Regional Trial Court's Decision finding accused-appellant Alberto Fortuna Alberca guilty beyond reasonable doubt of two (2) counts of the crime of qualified rape, sentencing him to suffer the penalty of *reclusion perpetua, without eligibility for parole, in lieu of death* and ordering him to pay the offended party **PhP100,000 as civil indemnity, PhP100,000 as moral damages, and PhP100,000.00 as exemplary damages for each count of qualified rape is AFFIRMED**.
>
> Accused-appellant Alberto Fortuna Alberca is further ordered to pay the offended party interest on all damages awarded at the legal rate of 6% per annum from the date of finality of this Decision until such amounts shall have been fully paid."

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[50] ART. 266-B. Penalties. - Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua.*

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The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

1) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.; in relation to:

SEC. 2. In lieu of the death penalty, the following shall be imposed.

(a) the penalty of *reclusion perpetua*, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code;

[51] Article 266-B.

[52] *People of the Philippines v. Ireneo Jugueta,* G.R. No. 202124, April 5, 2016.

SO ORDERED.

NOEL GIMENEZ TIJAM
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

LUCAS P. BERSAMIN
Associate Justice

BIENVENIDO L. REYES
Associate Justice

(On Leave)
SAMUEL R. MARTIRES
Associate Justice

ATTESTATION

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

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 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

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