



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

THE PEOPLE OF THE
PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 255389

Present:

— versus —

GESMUNDO, *CJ.*, Chairperson
CAGUIOA,
LAZARO-JAVIER,
LOPEZ, M.,
LOPEZ, J.Y., *JJ*

CARLO DIEGA *y* ZAPICO,
Accused-Appellant.

Promulgated:

SEP 14 2021

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RESOLUTION

LOPEZ, M., *J.*:

An accused is responsible not only for the Rape he personally committed but also for the other counts of Rape that his co-conspirators perpetrated although they were unidentified or are at large.¹ We observe this dictum in this appeal assailing the Decision² of the Court of Appeals (CA) dated June 29, 2020 in CA-G.R. CR HC No. 11398.

ANTECEDENTS

Carlo Diega *y* Zapico (Carlo), together with three (3) “John Does”,³ were charged with the crime of Rape under Article 266-A, Paragraph 1(a) of the

¹ *People v. Plurad*, 441 Phil. 587, 600 (2002).

² *Rollo*, pp. 4-22. Penned by Associate Justice Louis P. Acosta, with concurrence of Associate Justices Japar B. Dimaampao and Bonifacio S. Pascua.

³ *Id.* at 4.

Revised Penal Code before the Regional Trial Court (RTC) docketed as Criminal Case No. C-89752, thus:

That on or about the 14th day of April 2013 in x x x and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together, confederating and mutually aiding one another, with lewd design, by means of force, and by depriving the offended victim of reason or otherwise unconscious, that is, by intoxication employed upon the person of AAA,⁴ 12 years old, minor, did then and there willfully, unlawfully and feloniously have carnal knowledge with the said AAA, 12 years old, minor, against her will and without her consent.

Contrary to law.⁵

Carlo pleaded not guilty.⁶ Trial then ensued. The prosecution established that on April 14, 2013, at 8:00 p.m., AAA and her friend JJJ were walking home after tending a grocery store. En route, a certain Ismael blocked their way and invited AAA to hang out. Meantime, JJJ left and went home. Ismael then brought AAA to a nearby store and introduced her to his friends' *alias* Obat, *alias* Kalbo, and Carlo. Obat suggested to have a drinking session. AAA told them that she wanted to go home, but Ismael held her hand and dragged her along. The group proceeded to a nearby riverbank where they started drinking. Obat offered AAA to drink. After initially refusing, AAA drank the liquor. All the while, Ismael held AAA's hand.⁷

Later, the group left the riverbank and went to a vacant lot near the store. Thereat, they continued the drinking session. AAA felt dizzy and started to drowse off. AAA laid down and saw Carlo remove her pants and underwear. AAA tried to kick him, but someone held her legs and spread them apart and another held her hands. AAA then felt someone spitting on her vagina. Carlo went on top of AAA, inserted his penis into her vagina, and made pumping motions. Afterwards, Kalbo, Ismael, and Obat took turns in having carnal knowledge with AAA. At that time, AAA was crying and shouting throughout, but no one came to her aid. Soon after, AAA fell asleep and the group left her at the vacant lot.⁸

Around 5:00 a.m. of the following day or on April 15, 2013, AAA awakened, dressed herself and went home. Distraught and muddled, AAA relayed the ordeal to her parents and reported the incident to the barangay hall and the

⁴ Any information to establish or compromise the identity of the victim, as well as those of her immediate or household family members, shall be withheld, and fictitious names are used, pursuant to Republic Act (RA) No. 7610, "AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, AND FOR OTHER PURPOSES"; RA NO. 9262, "AN ACT DEFINING VIOLENCE AGAINST WOMEN AND THEIR CHILDREN, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFOR, AND FOR OTHER PURPOSES"; Section 40 of Administrative Matter No. 04-10-11-SC, Rule on Violence Against Women and Their Children; and *People v. Cabalquinto*, 533 Phil. 703, 706 (2006).

⁵ *Rollo*, p. 5.

⁶ *Id.*

⁷ *Id.* at 5-6; *CA rollo*, pp. 53-54.

⁸ *Id.* at 6-7; *Id.* at 54-55.

police station. After performing a physical and genital examination on AAA, Police Senior Inspector Ma. Felicidad Mercedes A. Aulida (PSI Aulida) concluded that the “*anogenital findings show[ed] recent evidence of blunt penetrating trauma to the genitalia.*”⁹ PSI Aulida explained that the injuries on the hymen of the victim could have been caused by an erected penis or any instrument with soft smooth edges. The findings were consistent with the narrative of AAA in the Sexual Crimes Protocol.¹⁰

Carlo denied the accusation and claimed that on April 14, 2013, he was engaged in a drinking spree with AAA, Ismael, Obat, *alias* Caloy, and *alias* Jayson. At 10:00 p.m., Carlo went home to change his clothes. Thereafter, Carlo went out and overheard a group of women looking for AAA. Carlo returned to the drinking spree and told AAA that someone was looking for her. However, AAA did not want to go home because she was intoxicated and will be scolded. Around 11:30 p.m., Carlo went home and slept. The next morning, Carlo was awakened by a loud knocking on his door. A barangay tanod suddenly handcuffed Carlo and said, “*Pasensiya ka na kasi yung mga kasama mo ay tumakas.*” Carlo was brought to the barangay hall where he was accused of raping AAA.¹¹

On April 16, 2018, the RTC found Carlo guilty of Rape and gave credence to the account of AAA which was supported by medical findings. The RTC further held that Carlo and his three (3) companions conspired with each other to commit the crime of Rape.¹² Lastly, the RTC rejected Carlo’s defense of alibi considering the short distance between his house and the vacant lot where the crime was committed, thus:

WHEREFORE, the court finds accused CARLO DIEGA Y ZAPICO **guilty** beyond reasonable doubt of the crime of [R]ape. Accordingly, he is hereby sentenced to suffer the penalty of reclusion perpetua.

Further, the accused is hereby adjudged civilly liable to AAA. Accordingly, he is hereby ordered to pay said private complainant: a) PhP75,000.00 as civil indemnity; b) PhP75,000.00 as moral damages; and c) PhP50,000.00 as exemplary damages, with interest thereon at the rate of six percent (6%) [*per annum*] reckoned from the finality of this Decision until fully paid.

Costs against the accused.

SO ORDERED.¹³

Aggrieved, Carlo elevated the case to the CA docketed as CA-G.R. CR HC No. 11398. Carlo contended that AAA’s testimony is incredible. In her *Sinumpaang Salaysay*, AAA narrated that she was successively raped by Carlo,

⁹ CA rollo, pp. 56-57. Medico-Legal Report No. R-13-359 dated April 16, 2013.

¹⁰ Rollo, pp. 7-8; Id.

¹¹ Id. at 8-9; Id. at 57-58.

¹² Id. at 52-76. Penned by Presiding Judge Glenda K. Cabello-Marin. Docketed as Criminal Case No. C-89752.

¹³ Id. at 76.

Kalbo, Ismael, and Obat, and yet, during her direct examination, she could not recall who between the accused, raped her after Carlo. Also, Carlo maintained the impossibility of committing the crime because he already went home before the drinking spree ended.¹⁴ In contrast, the Office of the Solicitor General countered that the testimony of AAA was consistent in all material matters. Moreover, it was not physically impossible for Carlo to be at the crime scene because his house was located near the crime scene.¹⁵

On June 29, 2020, the CA affirmed the RTC's findings but modified the award of damages,¹⁶ to wit:

ACCORDINGLY, the appeal is hereby **DENIED**.

The Decision dated 16 April 2018 of the Regional Trial Court ("RTC"), x x x, in Criminal Case No. C-89752 finding accused-appellant Carlo Diega [y] Zapico guilty for the crime of Rape, is hereby **AFFIRMED WITH MODIFICATIONS**.

The accused-appellant Carlo Diega [y] Zapico is ordered to pay the victim the following amounts: Php100,000.00 as civil indemnity, Php100,000.00 as moral damages [,] and Php100,000.00 as exemplary damages. He is further ordered to pay interest on all damages awarded at the rate of 6% [*per annum*] from finality of this decision until fully paid.

SO ORDERED.¹⁷ (Emphases in the original.)

Hence, this recourse. In their manifestations, the parties dispensed with the filing of supplemental briefs, and adopt their pleadings filed before the CA.¹⁸ Carlo impugns the credibility of AAA and maintains his defenses of denial and alibi.¹⁹

RULING

The appeal is unmeritorious.

Carlo assailed his conviction on the ground that AAA's testimony is incredible. On this point, we stress that the CA and the RTC's assessment on the credibility of the prosecution witness and the veracity of her testimony are given the highest degree of respect,²⁰ especially if there is no fact or circumstance of weight or substance that was overlooked, misunderstood or misapplied, which

¹⁴ CA rollo, pp. 37-49.

¹⁵ Id. at 83-101.

¹⁶ Rollo, pp. 4-22.

¹⁷ Id. at 22.

¹⁸ Id. at 31-32, 35-37.

¹⁹ Id.; CA rollo, pp. 37-49.

²⁰ *People of the Philippines v. Jemreich Matignas, et al.*, 428 Phil. 834, 869 (2002); citing *People v. Basquez*, 418 Phil.426, 439 (2001).

could affect the result of the case.²¹ Moreover, the trial court had the best opportunity to determine the credibility of the prosecution witness, having evaluated her emotional state, reactions, and overall demeanor in open court.²² Here, AAA positively identified Carlo and his three companions as her ravisher. Also, AAA vividly recounted her harrowing experience, to wit:

SACP GRAVINO:

xxxx

Q: xxx Were you lying down at that time when your undergarments were removed by them?

A: Yes, ma'am.

xxxx

Q: Okay, and after that they were able to successfully remove your pants and panty, what else happened, Madam Witness?

A: "Nararamdaman kong may pinapasok".

Q: On what? Where was that object being inserted or entered?

A: "Sa loob ko."

xxxx

Q: So, that inside of your body that you said where an object was inserted, is that pertaining to your vagina, Madam Witness?

A: Yes, ma'am.

Q: And what was inserted in it?

A: "Ari niya po."

SACP GRAVINO:

Witness is moving her head towards the accused, Your Honor.

Q: So specifically, who, whose penis, who is that?

INTERPRETER:

Witness is pointing to the accused.

SACP GRAVINO:

Q: You said, Madam Witness, that you were lying down when your undergarments were removed, were you lying down face-up at that time or face-down?

A: I was lying face-up, ma'am.

Q: x x x how did Carlo position his body into your body, Madam Witness, when he inserted his penis into your vagina?

A: He was on top of me, ma'am.

Q: I see, and you said you felt that, that penis was inserted, why did you have that sensation, Madam Witness? I mean, did you feel pain during the insertion?

A: When they were trying to insert it, they were spitting on my

²¹ *People v. Orosco*, 757 Phil. 299, 310 (2015); citing *People v. De Leon*, 608 Phil. 701, 721 (2009).

²² *People v. Gerola*, 813 Phil. 1055, 1064 (2017); and *People v. Lumikid*, G.R. No. 242695, June 23, 2020.

vagina, ma'am.

xxxx

Q: But you are sure that it was Carlo Diega who went on top of you and inserted his penis into your vagina?

A: Yes, ma'am.

Q: The spitting on your vagina, Madam Witness, was it done before the insertion by Carlo of his penis into your vagina?

A: Yes, ma'am.

Q: And when that spitting was done, were your legs spread?

A: Yes, ma'am.

Q: So, it was them who spread your legs?

INTERPRETER:

Witness is nodding.

SACP GRAVINO:

Q: And all the while, you said you were kicking them?

A: I was resisting and someone was holding both my hands up, ma'am.

INTERPRETER:

Witness is demonstrating by raising both her hands, Your Honor.

SACP GRAVINO:

Q: So[,] there was a person who held your hands and there was also a person who held your legs to make it spread, correct?

A: Yes, ma'am.

Q: And there was another person that spit on your vagina?

A: Yes, ma'am.

Q: They were doing that at the same time, holding your hands, someone holding your legs and someone spitting on your private part?

A: Yes, ma'am.

xxxx

Q: And you said after the spitting, it was then that Carlo Diega laid on top of you and inserted his penis on your vagina, correct?

A: Yes, ma'am.

Q: Was he making a pumping motion, Madam Witness?

A: Yes, ma'am.

xxxx

Q: And after that, Madam Witness, what happened after Carlo Diega was making pumping motions on your body at the same time inserting his penis into your vagina?

A: He was talking, ma'am.

Q: And after that, x x x was he already finished?

A: Then the three others came next after him.

Q: Who followed soon to Carlo Diega among the three?

A: I don't know exactly who, but Kalbo, Obat and Ismael were there, ma'am.

Q: But why do you say that the three of them x x x followed soon on the doings of Carlo Diega to you?

A: Because I felt it, when Carlo was done, a penis went inside of my vagina and then somebody held my breast, ma'am.

Q: So Madam Witness, when the next one, you said Ismael had inserted his penis on your vagina, someone also was holding your body parts, like in the same manner when Carlo Diega did done [sic] to you?

A: Yes, it was the same, ma'am.

SACP GRAVINO:

xxxx

Q: And that you are sure of what you said as to who went on top of you and raped you, correct?

A: Yes, ma'am.

Q: Can you tell us again who did that first, second and the rest, Madam Witness?

A: Carlo, Kalbo, Ismael and Obat, ma'am.

Q: The four of them?

A: Yes, ma'am.

Q: x x x each one of them inserted their penis in your vagina, Madam Witness, one at a time?

A: Yes, ma'am.²³ (Emphases supplied)

Under Article 266-A of the Revised Penal Code, the elements of Rape are: (1) the offender had carnal knowledge of a woman; and (2) such act was accomplished through the use of force, threat, or intimidation.²⁴ The above testimony is sufficient to establish that Carlo and his three companions had carnal knowledge of AAA and that they employed force to consummate the bestial acts. It is settled that force need not be irresistible but just enough to bring about the desired result.²⁵ It is not necessary that the rape victim resisted unto death.²⁶ The rule is that resistance may be proved by any physical overt act in any degree from the offended party.²⁷ In this case, AAA protested and resisted but Carlo and his companions forced her to submit to their bestial designs.

²³ CA rollo, pp. 60-66.

²⁴ *People v. Ramos*, 838 Phil. 797, 809 (2018).

²⁵ *People v. Canada*, 617 Phil. 587, 601-602 (2009).

²⁶ *People vs. Edem*, 428 Phil. 43, 67 (2002).

²⁷ *People v. Rivera*, 717 Phil. 380, 393-394 (2013); citing Article 266-D of the Revised Penal Code, to wit: Article 266-D. Presumptions - Any physical overt act manifesting resistance against the act of rape in any degree from the offended party, or where the offended party is so situated as to render her/him incapable of giving valid consent, may be accepted as evidence in the prosecution of the acts punished under Article 266-A.

The CA and the RTC likewise properly appreciated the existence of the conspiracy. Jurisprudence consistently teaches us that conspiracy may be deduced from the mode and manner in which the offense was perpetrated,²⁸ showing that at the time of the commission of the offense, all the perpetrators have the same purpose and were united in its execution.²⁹ The records show that Carlo and his three (3) companions successively raped AAA and that while one of them had carnal knowledge of the victim, the others held her arms and kept her from struggling. Viewed in its totality, the individual participation of each perpetrator pointed to a joint purpose and criminal design.³⁰

Contrary to Carlos' theory, there was no inconsistency in AAA's testimony as to who raped her. To be sure, there is proof of guilt beyond reasonable doubt that Carlo and his three (3) companions conspired and took turns in raping AAA. The rapes were committed in the following order, first by Carlo, second by Kalbo, third by Ismael, and fourth by Obat. Thus, the victim was raped four (4) times. In several cases, the Court held the accused-appellant responsible not only for the Rape he committed but also for the other counts of Rape that his co-conspirators perpetrated although they were unidentified or at large. This is clear from the decisions in *People v. Plurad*,³¹ *People v. Catubig, Jr.*,³² *People v. Sabal*,³³ and *People v. Rondina*,³⁴ consistent with the rule that where there is a conspiracy, the act of one conspirator is the act of all.

In *Plurad*, the accused-appellant was responsible not only for the Rape committed personally by him but also for the two (2) other counts of Rape committed by his co-accused Roberto Bernadas and Juvanie Cañedo who remained at large. In *Catubig, Jr.*, the Court affirmed the trial court's decision convicting the accused-appellant with five (5) counts of Rape committed by him and four (4) other unidentified persons. In *Sabal*, the appellants Tonelo Sabal and Armando Juarez were held liable not only for their own unlawful acts but also for those of the other four (4) unidentified malefactors for, in conspiracy, the act of one is the act of the other. Therefore, the Court affirmed the trial court's conviction of both accused of six (6) counts of Rape. In *Rondina*, the accused-appellants, together with a third person who is still unidentified and at large, in conspiracy with and helping each other, took turns in raping the victim. In view of the established conspiracy among the three, each one of them is guilty of three (3) Rapes, for the one (1) he committed and for the two (2) where he helped his companions to commit. Consequently, Carlo must be held liable for four counts of Rape.

²⁸ *People vs. Suyum*, 428 Phil. 465, 479 (2002); *People vs. Concorcio*, 419 Phil. 872, 902 (2001); *People vs. Aquino*, 418 Phil. 547, 562 (2001).

²⁹ *People v. Licayan*, 415 Phil. 459 (2001).

³⁰ *People v. Mesias, Jr.*, 221 Phil. 742, 750 (1984); See also *People v. Reglos*, 203 Phil. 724, 750 (1982).

³¹ 441 Phil. 587, 600 (2002).

³² 396 Phil. 345, 354-355 (2000).

³³ 394 Phil. 345, 363 (2000).

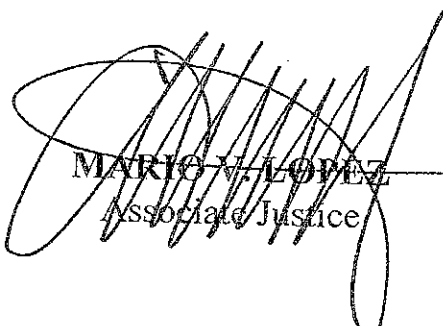
³⁴ 233 Phil. 125, 137-138 (1987).

Lastly, Carlo's uncorroborated denial and alibi cannot prevail over the positive declaration of the prosecution witness. These negative defenses are self-serving and undeserving of weight in law absent clear and convincing proof.³⁵ Notably, Carlo did not adduce evidence that he was somewhere else when the crime was committed and that it was physically impossible for him to be present at the crime scene or its immediate vicinity at the time of its commission.³⁶

All told, the Court fully agrees with the CA and the RTC that the prosecution has established the gravamen of the crime of Rape, which is sexual congress with a woman against her will or without her consent. As discussed earlier, however, Carlo must be convicted with four (4) counts of Simple Rape and should be sentenced with *Reclusion Perpetua* for each count, which merits the award of ₱75,000.00 civil indemnity, ₱75,000.00 moral damages, and ₱75,000.00 exemplary damages for each count pursuant to prevailing jurisprudence.³⁷ Lastly, Carlo should be made solidarily liable to pay the award of damages for each count. It is settled that the nature of the obligation of the co-conspirators in the commission of the crime requires solidarity, and each debtor may be compelled to pay the entire obligation.³⁸

FOR THESE REASONS, the appeal is **DISMISSED**. The Court of Appeals' Decision dated June 29, 2020 in CA-G.R. CR-HC No. 11398 is **AFFIRMED** with **MODIFICATIONS** in that the appellant Carlo Diega y Zapico is found **GUILTY** of four (4) counts of Simple Rape and is sentenced to suffer the penalty of *Reclusion Perpetua* for each count. The appellant is also held solidarily liable to pay the victim the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages for each count of Rape, all with legal interest at the rate of 6% *per annum* from the finality of judgment until full payment.

SO ORDERED."


MARIO V. LOPEZ
Associate Justice

³⁵ *People v. Togahan*, 551 Phil. 997, 1013-1014 (2007).

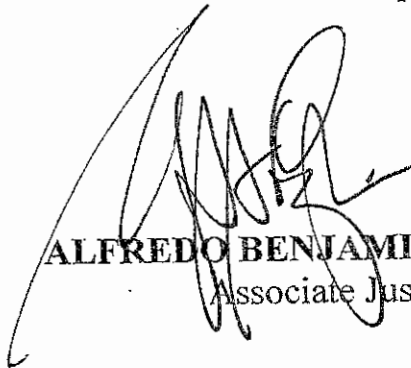
³⁶ *People of the Philippines v. Madelo Espina*, 383 Phil. 656, 668 (2000); citing *People v. Francisco*, 373 Phil. 733, 744 (1999); *People v. Baniel*, 341 Phil. 471, 481 (1997); *People v. Patawaran*, G.R. No. 108616, 274 SCRA 130, 139 (1997) *People v. Henson*, 337 Phil. 318, 324 (1997).


³⁷ *People v. Jugueta*, 783 Phil. 806, 826 (2016).

³⁸ See *People v. Sartagoda*, 293 Phil. 259, 270 (1993).

WE CONCUR:


ALEXANDER G. GESMUNDO
Chief Justice

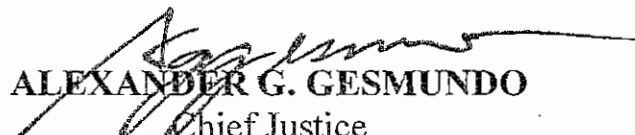

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice


AMY C. LAZARO-JAVIER
Associate Justice


JHOSEP Y. LOPEZ
Associate Justice

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.


ALEXANDER G. GESMUNDO
Chief Justice
Chairperson