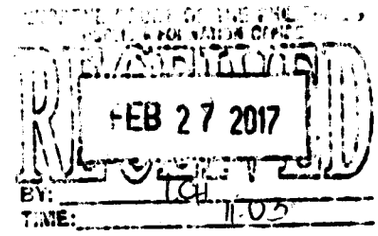
Republic of the Philippines
Supreme Court
Manila



FIRST DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee,*	**G.R. No. 212193**
	Present:
- versus -	SERENO, *C.J., Chairperson,* LEONARDO-DE CASTRO, DEL CASTILLO, PERLAS-BERNABE, *and* CAGUIOA, *JJ.*
JUAN RICHARD TIONLOC *y* MARQUEZ, *Accused-Appellant.*	Promulgated: FEB 15 2017

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DECISION

DEL CASTILLO, *J.*:

When the evidence fails to establish all the elements of the crime, the verdict must be one of acquittal of the accused. This basic legal precept applies in this criminal litigation for rape.

Factual Antecedents

Juan Richard Tionloc *y* Marquez (appellant) appeals the September 26, 2013 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR.-H.C. No. 05452 which affirmed with modification the February 15, 2012 Decision[2] of the Regional Trial Court (RTC) of Manila, Branch 37, in Criminal Case No. 08-264453. The RTC found appellant guilty beyond reasonable doubt of the crime of rape committed against "AAA"[3] under paragraph 1 of Article 266-A of the Revised Penal Code (RPC). The designation of the crime in the Information

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1 CA *rollo*, pp. 113-127; penned by Associate Justice Celia C. Librea-Leagogo and concurred in by Associate Justices Franchito N. Diamante and Melchor Q.C. Sadang.

2 Records, pp. 123-140; penned by Presiding Judge Virgilio V. Macaraig.

3 The identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. 7610, An Act Providing for Stronger Deterrence And Special Protection Against Child Abuse, Exploitation And Discrimination, And for Other Purposes; Republic Act No. 9262, An Act Defining Violence Against Women And Their Children, Providing For Protective Measures For Victims, Prescribing Penalties Therefor, and for Other Purposes; and Section 40 of A.M. No. 04-10-11-SC, known as the Rule on Violence against Women and Their Children, effective November 15, 2004. *People v. Dumadag*, 667 Phil. 664, 669 (2011).

against appellant is rape by sexual assault under paragraph 2, Article 266-A of the RPC. However, the accusatory portion of the Information charges appellant with rape through sexual intercourse under paragraph 1(b), Article 266-A, to wit:

> That on or about September 29, 2008 in the City of Manila, Philippines, the said accused, conspiring and confederating with one whose true name, real identity and present whereabouts are still unknown and mutually helping each other, did then and there wilfully, unlawfully and feloniously, with lewd design and by means of force and intimidation, commit sexual abuse upon the person of "AAA" by then and there making her drink liquor which made her dizzy and drunk, depriving her of reason or otherwise unconsciousness, bringing her to a room and succeeded in having carnal knowledge of her, against her will.
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> Contrary to law.[4]

When arraigned, appellant pleaded "not guilty." Elvis James Meneses (Meneses) was involved in the commission of the crime but could not be prosecuted due to his minority. He was only 14 years old at the time of the incident.

Version of the Prosecution

"AAA" testified that at around 9:30 p.m. of September 29, 2008, she was having a drinking session with appellant and Meneses in the house of appellant. After some time, she felt dizzy so she took a nap. At around 11:00 p.m., she was roused from her sleep by Meneses who was mounting her and inserting his penis into her vagina. She felt pain but could only cry in silence for fear that the knife which they used to cut hotdog and now lying on top of a table nearby would be used to kill her if she resisted. Meneses left after raping her. While still feeling dizzy, afraid and shivering, appellant approached her and asked if he could also have sex with her. When she did not reply appellant mounted and raped her. Appellant stopped only when she tried to reposition her body. "AAA" then left appellant's house and immediately returned to the house she shared with her live-in partner.

The following day, "AAA" reported the incident to the police. She also underwent a medical examination and the results revealed two lacerations in her hymen.

Version of the Defense

Appellant denied raping "AAA." He claimed that on that fateful night, he was having a drinking session with his cousin, Gerry Tionloc. After a while,

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[4] Records, p. 1.

Meneses and "AAA" arrived and joined in their drinking session. Meneses and "AAA" then went inside his bedroom and continued drinking while he went out of the house to buy food. When he returned and entered his bedroom, he saw Meneses and "AAA" having sex. They asked him to leave, so he went to the kitchen. Meneses then came out of the bedroom followed by "AAA" who was holding a bottle of "rugby," which she brought home with her. Appellant contended that nothing more happened that night. Meneses corroborated his version of the incident.

Ruling of the Regional Trial Court

In its Decision[5] dated February 15, 2012, the RTC clarified that appellant is charged with rape through sexual intercourse under paragraph 1, Article 266-A of the RPC based on the allegations in the Information and not with rape by sexual assault under paragraph 2 of the same provision of law, as the designation in the Information suggests. The RTC stressed that this is consistent with the legal precept that it is the allegations or recital in the Information that determine the nature of the crime committed. Thus, the RTC ruled that appellant was guilty beyond reasonable doubt of rape through sexual intercourse against "AAA." It held that the prosecution successfully established the crime through the testimony of "AAA," which was credible, natural, convincing and consistent with human nature and the normal course of things. The dispositive portion of the Decision reads as follows:

> WHEREFORE, the Court finds the accused Juan Richard Tionloc y Marquez GUILTY beyond reasonable doubt of the crime of rape punishable under paragraph 1 of Article 266-A of the Revised Penal Code and hereby sentences him to suffer the penalty of reclusion perpetua. He is ordered to pay the private complainant Php50,000.00 as civil indemnity and Php50,000.00 as moral damages.
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> SO ORDERED.[6]

Appellant appealed the RTC's Decision arguing that discrepancies in the sworn statement of "AAA" and her testimony diminished her credibility. Appellant contended that "AAA" alleged in her sworn statement that: (1) appellant held her hands while Meneses was on top of her; and (2) she slept after Meneses raped her and awakened only when he was on top of her. However, "AAA" did not mention these allegations during her direct examination. Appellant maintained that "AAA" failed to refute his assertions that her aunt and uncle fabricated the charges against him for having previous affairs with two of her cousins.

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5 Id. at 123-140.

6 Id. at 140.

Ruling of the Court of Appeals

In its Decision[7] dated September 26, 2013, the CA ruled that discrepancies between the affidavit and testimony of "AAA" did not impair her credibility since the former is taken *ex parte* and is often incomplete or inaccurate for lack or absence of searching inquiries by the investigating officer. The inconsistencies even preclude the possibility that the testimony given was rehearsed. Moreover, the CA held that a rape victim like "AAA" is not expected to make an errorless recollection of the incident, so humiliating and painful that she might even try to obliterate it from her memory. The CA gave scant consideration to the appellant's claim of ill motive of the aunt and uncle of "AAA," as well as his denial of raping her which cannot overcome her positive, candid and categorical testimony that he was the rapist. The CA therefore affirmed the Decision of the RTC with modification that interest at the rate of 6% *per annum* is imposed on all damages awarded from the date of finality of the CA's Decision until fully paid. The dispositive portion of the CA's Decision reads as follows:

> WHEREFORE, premises considered, the appeal is DENIED. The Decision dated 15 February 2012 of the Regional Trial Court, National Capital Judicial Region, Manila, Branch 37, in Crim. Case No. 08-264453 finding accused-appellant Juan Richard Tionloc *y* Marquez guilty beyond reasonable doubt for the crime of rape under paragraph 1 of Article 266-A of the Revised Penal Code, as amended, and sentencing him to suffer the penalty of *reclusion perpetua* and to pay Php50,000.00 as civil indemnity and another Php50,000.00 as moral damages in favor of private complainant AAA is AFFIRMED with MODIFICATION in that interest at the rate of 6% *per annum* is imposed on all damages awarded from the date of finality of this judgment until fully paid.
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> SO ORDERED.[8]

Still insisting on his innocence, appellant comes to this Court through this appeal.

Assignment of Error

Appellant adopts the same assignment of error he raised before the CA, *viz.*:

> THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED.[9]

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7 CA *rollo*, pp. 113-127.

8 Id. at 124.

9 Id. at 28.

Appellant asserts that he should be acquitted of rape since the prosecution was not able to establish the required quantum of evidence in order to overcome the presumption of innocence.

Our Ruling

The appeal is meritorious.

The Facts Recited In The Information Determine the Crime Charged.

It is apparent that there is a discrepancy in the designation of the crime in the Information (rape by sexual assault under paragraph 2 of Article 266-A of the RPC) and the recital in the Information (rape through sexual intercourse under paragraph 1 of the same provision of law). However, this discrepancy does not violate appellant's right to be informed of the nature and cause of the accusation against him. As ruled correctly by the RTC, the allegations in the Information charged appellant with rape through sexual intercourse under paragraph 1 of Article 266-A of the RPC and said allegations or recital in the Information determine the nature of the crime committed. "[T]he character of the crime is not determined by the caption or preamble of the Information nor from the specification of the provision of law alleged to have been violated, but by the recital of the ultimate facts and circumstances in the complaint or information."[10]

The Use Of Force, Threat or Intimidation Causes Fear on the Part of the Rape Victim.

Be that as it may, the prosecution had to overcome the presumption of innocence of appellant by presenting evidence that would establish the elements of rape by sexual intercourse under paragraph 1, Article 266-A of the RPC, to wit: (1) the offender is a man; (2) the offender had carnal knowledge of a woman; (3) such act was accomplished by using force, threat or intimidation. "In rape cases alleged to have been committed by force, threat or intimidation, it is imperative for the prosecution to establish that the element of voluntariness on the part of the victim be absolutely lacking. The prosecution must prove that force or intimidation was actually employed by accused upon his victim to achieve his end. Failure to do so is fatal to its cause."[11]

Force, as an element of rape, must be sufficient to consummate the purposes which the accused had in mind. On the other hand, intimidation must

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[10] *Pielago v. People*, 706 Phil. 460, 470 (2013), citing *People v. Rayon, Sr.*, 702 Phil. 672, 684 (2013).

[11] *People v. Amogis*, 420 Phil. 278, 292 (2001).

produce fear that if the victim does not yield to the bestial demands of the accused, something would happen to her at that moment or even thereafter as when she is threatened with death if she reports the incident.[12] "Intimidation includes the moral kind as the fear caused by threatening the girl with a knife or pistol."[13]

It this case, the prosecution established that appellant was an 18-year old man who had sexual intercourse with "AAA," a woman who was 24 years old during the incident. However, there was no evidence to prove that appellant used force, threat or intimidation during his sexual congress with "AAA." She testified that appellant and Meneses are her good friends. Thus, she frequented the house of appellant. At around 7:00 p.m. of September 29, 2008, she again went to the house of appellant and chatted with him and Meneses while drinking liquor. From that time up to about 11 p.m. when she took a nap, there is no showing that appellant or Meneses forced, threatened or intimidated her.

As to how appellant and Meneses had sexual intercourse with her, "AAA" merely testified as follows:

> Q - Madam Witness, you said that it was Elvis James who raped you first. And then after he left this Juan Richard Tionloc [accused] approached you and asked if you can do it?
> A - Yes, Ma'am; he asked me but I did not answer because I was still shivering.
>
> Q - And then what else happened after that?
> A - That is it; he was the one who did it.[14]

No allegation whatsoever was made by "AAA" that Meneses or appellant employed force, threat or intimidation against her. No claim was ever made that appellant physically overpowered, or used or threatened to use a weapon against, or uttered threatening words to "AAA." While "AAA" feared for her life since a knife lying on the table nearby could be utilized to kill her if she resisted, her fear was a mere product of her own imagination. There was no evidence that the knife was placed nearby precisely to threaten or intimidate her. We cannot even ascertain whether said knife can be used as a weapon or an effective tool to intimidate a person because it was neither presented nor described in court. These findings are clear from the following testimony of "AAA:"

> Q - While Elvis James was inserting his penis to [sic] your vagina, what are [sic] you doing?
> A - I was crying, Ma'am.

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12 See *People v. Frias*, 718 Phil. 173, 183 (2013), citing *People v. Sgt. Bayani*, 331 Phil. 169, 193 (1996).
13 Id.
14 TSN, May 7, 2009, pp. 6-7.

Q - You did not shout for help?
A - I did not because I was afraid, Ma'am.

Q - Why were you afraid, madam witness?
A - Because there was a knife inside the room which we used in cutting the hotdog and then [I] did not shout anymore because I was afraid that they might stab me, Ma'am.[15]

Even assuming in the nil possibility that Meneses was able to force or instill fear in "AAA's" mind, it should be noted that he was already gone when appellant asked "AAA" for a sexual favor. In other words, the source of the feigned force, threat or intimidation was no longer present when appellant casually asked his friend, "AAA," if she "can do it" one more time. "AAA" did not respond either in the affirmative or **in the negative**.

Resistance Should be Made Before the Rape is Consummated.

Later on, appellant went on top of "AAA" without saying anything or uttering threatening words. For her part, "AAA" neither intimated any form of resistance nor expressed any word of rejection to appellant's advances. It was only when she felt something painful **minutes during their sexual intercourse** that "AAA" tried to move. Thus:

A - During the intercourse that was about few minutes and when I felt the pain that was the time when I tried to move.

Q - When you tried to move, what else happened?
A - When I tried to move he released himself.

Q - And then what happened?
A - He went out of the room.[16]

Three things are thus clear from the testimony of "AAA:" *first*, appellant never employed the slightest force, threat or intimidation against her; *second*, "AAA" never gave the slightest hint of rejection when appellant asked her to have sex with him; and, *third*, appellant did not act with force since he readily desisted when "AAA" felt the slightest pain and tried to move during their sexual congress.

"AAA" could have resisted ***right from the start***. But she did not, and chose not to utter a word or make any sign of rejection of appellant's sexual advances. It was only in the middle of their sexual congress when "AAA" tried to move which

[15] TSN, February 3, 2009, pp. 14-15.
[16] TSN, May 7, 2009, pp. 9-10.

can hardly be considered as an unequivocal manifestation of her refusal or rejection of appellant's sexual advances.

In *People v. Amogis,*[17] this Court held that resistance must be manifested and tenacious. A mere attempt to resist is not the resistance required and expected of a woman defending her virtue, honor and chastity. And granting that it was sufficient, "AAA" should have done it earlier or the moment appellant's evil design became manifest. In other words, it would be unfair to convict a man of rape committed against a woman who, after giving him the impression **thru her unexplainable silence** of her tacit consent and allowing him to have sexual contact with her, changed her mind in the middle and charged him with rape.

The Age Gap Between the Victim and Appellant Negates Force, Threat or Intimidation.

"AAA's" state of "shivering" could not have been produced by force, threat or intimidation. She insinuates that she fell into that condition after Meneses had sexual intercourse with her. However, their age gap negates force, threat or intimidation; he was only 14 while "AAA" was already 24, not to mention that they were friends. In addition, per "AAA's" own declaration, Meneses and appellant did not also utter threatening words or perform any act of intimidation against her.

Drunkeness Should Have Deprived the Victim of Her Will Power to Give her Consent.

The fact that "AAA" was tipsy or drunk at that time cannot be held against the appellant. There is authority to the effect that "where consent is induced by the administration of drugs or liquor, which incites her passion but does not deprive her of her will power, the accused is not guilty of rape."[18]

Here, and as narrated by "AAA" on the witness stand, appellant and Meneses were her friends. Thus, as usual, she voluntarily went with them to the house of appellant and chatted with them while drinking liquor for about four hours. And while "AAA" got dizzy and was "shivering," the prosecution failed to show that she was completely deprived of her will power.

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[17] Supra note 11.

[18] See *State v. Lung*, 21 Nev. 209 (1891), cited in Reyes, L., The Revised Penal Code, Book II, 2001 Edition, p. 523.

"AAA's" degree of dizziness or "shivering" was not that grave as she portrays it to be. "AAA" is used to consuming liquor.[19] And if it is true that the gravity of her "shivering" at that time rendered her immobile such that she could not move her head to signal her rejection of appellant's indecent proposal or to whisper to him her refusal, then she would have been likewise unable to stand up and walk home immediately after the alleged rape.

It has been ruled repeatedly that in criminal litigation, the evidence of the prosecution must stand or fall on its own merits and cannot draw strength from the weakness of the defense. The burden of proof rests on the State. Thus, the failure of the prosecution to discharge its burden of evidence in this case entitles appellant to an acquittal.

WHEREFORE, the appeal is **GRANTED**. The September 26, 2013 Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 05452 affirming with modification the Decision of the Regional Trial Court of Manila, Branch 37, in Criminal Case No. 08-264453 is **REVERSED and SET ASIDE**. Accused-appellant Juan Richard Tionloc *y* Marquez is **ACQUITTED** due to insufficiency of evidence. His immediate **RELEASE** from detention is hereby **ORDERED**, unless he is being held for another lawful cause. Let a copy of this Decision be furnished to the Director of the Bureau of Corrections, Muntinlupa City for immediate implementation, who is then directed to report to this Court the action he has taken within five days from receipt hereof.

SO ORDERED.

MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

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[19] See TSN, February 3, 2009, p. 17.

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
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