



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 243625

Present:

PERALTA, C.J., Chairperson,
CAGUIOA,
CARANDANG,
ZALAMEDA, and
GAERLAN, JJ.

- versus -

JEFFREY DEREKO y HAYAG,
Accused-Appellant.

Promulgated:

DEC 02 2020

x ----- x

DECISION

PERALTA, C.J.:

Before this Court is an appeal under Rule 45 of the Rules of Court seeking the reversal of the Decision¹ dated April 11, 2017 of the Court of Appeals in CA-G.R. No. CR-HC No. 08172, which affirmed with modification the Decision² dated November 16, 2015 of the Regional Trial Court (RTC) of Quezon City, Branch 76, finding accused-appellant Jeffrey Dereco y Hayag guilty beyond reasonable doubt of rape under Article 266-A of the Revised Penal Code, as amended.

The antecedent facts are as follows:

In an Information³ dated September 1, 2009, accused-appellant was charged with the special complex crime of Robbery with Rape, to wit:

¹ Penned by Associate Justice Franchito N. Diamante, with Associate Justices Japar B. Dimaampao and Zenaida T. Galapate-Laguilles concurring; *rollo* pp. 2-15.

² Records, pp. 334-342.

³ *Id.* at 1.

That on or about the 26th of August 2009, in Quezon City, Philippines, the said accused JEFFREY DEREKO Y HAYAG, conspiring and confederating with another person who is at-large, and mutually helping each other, with intent to gain and by means of force, violence and intimidation against person, did then and there willfully, unlawfully and feloniously rob one [AAA]⁴ in (sic) following manner, to wit: on the date and place aforementioned, while complainant was walking along [REDACTED], this City, accused, pursuant to their conspiracy, appeared from behind and thereafter took and carried away from her one (1) Nokia cellphone worth Php5,000.00, one (1) gold ring 18k worth Php3,000.00, and cash money worth Php1,000.00, all valued in the total amount of Php9,000.00, Philippine Currency, belonging to said [AAA], and on the occasion of the Robbery, by means of force and intimidation, with lewd designs, accused one after another and mutually helping each other, had carnal knowledge with the said complainant, all against her will and without consent, to her damage and prejudice.

CONTRARY TO LAW.⁵

During arraignment, accused-appellant pleaded not guilty to the crime charged. On pre-trial, the parties stipulated on the identity of the accused-appellant as the same person named in the Information. Thereafter, trial on the merits ensued.

The prosecution established that on August 26, 2009, at around 4 o'clock in the morning, while victim AAA was texting on her cellphone and walking along Quirino Highway on her way to work, she was suddenly approached by two (2) men. One of them, later identified as accused-appellant, grabbed her and immediately poked a knife on her left side, while the other, identified as alias "Biboy," grabbed her bag and rummaged through her belongings. They dragged her towards a vacant lot where the accused-appellant, still poking a knife at her, lifted her blouse and mashed her breasts, with Biboy serving as lookout. AAA struggled, but to no avail. Accused-appellant pulled her pants and underwear down to her knees and inserted his finger in her genitalia. Despite AAA's resistance, accused-appellant did not stop and instead spread her legs, while Biboy shouted "*Bilisan mo!*" When AAA lifted her pants to cover herself, Biboy warned her, "*Auntie, huwag kang sisigaw kung ayaw mong patayin ka namin dahil may dala kaming baril.*"⁶

AAA further testified that Biboy, at some point, made her turn around and face the wall. He went behind her, forcibly pushed her head down to her knees to make her bend and after removing her pants and underwear, he

⁴ The victim's name and personal circumstances, as well as the names of the victim's immediate family or household members, are withheld and replaced with fictitious initials pursuant to Section 44 of Republic Act No. 9262 and Section 40 of A.M. No. 04-10-11-SC or the Rule on Violence Against Women and their Children. See *People v. Cabalquinto*, 533 Phil. 703 (2006).

⁵ Records, p. 1.

⁶ TSN, June 2, 2010, pp. 3-8.

inserted his penis into her genitalia. As Biboy was ravishing her, the accused-appellant, who was in front of her and poking a knife at her side, was mashing her breasts and forcibly kissing her mouth. When Biboy was done, the accused-appellant went behind her forcibly pushed her head down to her knees and inserted his penis into her genitalia for about a minute. After accused-appellant was done, AAA sat down and cried while dressing herself up. Out of fear, she did not leave immediately as accused-appellant and Biboy told her not to leave.⁷

After accused-appellant and Biboy left, AAA walked towards the highway and decided to go to work. Upon arriving at her workplace, she told her boss about what happened to her.⁸ She was then brought to the police station where she reported the incident, and subsequently underwent medico-legal examination, as evidenced by Medico-Legal Report No. SC-35-2009. On August 29, 2009, the police operatives arrested the accused-appellant at his residence. AAA then positively identified accused-appellant as one of the perpetrators of the crime.⁹

In the Medico-Legal Report No. SC-35-2009¹⁰ dated August 29, 2009, Dr. Shane Lore Dettabali (*Dr. Dettabali*), who personally examined AAA, reported that upon examination, AAA's hymen had a deep healed laceration at 5 o'clock position, absence of hymenal tissue on the 6 -7 o'clock positions and acute sign of trauma or erythematous. Dr. Dettabali concluded that the laceration signified previous blunt force or penetrating genital trauma, specifically a male erect organ. It was also reported that there was a positive presence of spermatozoa which shows definite evidence of sexual contact.

For the defense, it solely relied on the testimony of the accused-appellant to refute the prosecution's allegations. Accused-appellant denied the charges against him. He narrated that on the date of the incident, August 26, 2009, he was plying his pedicab within the area of Villaflor Street, Barangay Gulod from 6 o'clock in the morning until 8 o'clock in the evening.¹¹ At around 5 o'clock in the afternoon of August 29, 2009, while he was resting at his house in Araceli Street, Bgry. Gulod, Novaliches, police officers came and arrested him.¹² He was brought to the police station and was presented later on before a woman for identification, who was later identified as AAA. He claimed that AAA repeatedly hit him with a glass she was then holding but he did not know why. Later, accused-appellant claimed that the police officers pinned him as the one who raped the woman, and instructed the victim to identify him.

⁷ *Id.* at 9-12.

⁸ *Id.* at 12-13.

⁹ *Id.* at 14-15.

¹⁰ Records, p. 92.

¹¹ TSN, October 22, 2015, pp. 8-9.

¹² *Id.* at 10-11.

In its Decision¹³ dated November 16, 2015, the RTC of Quezon City, Branch 76, ruled that accused-appellant cannot be convicted of the special crime of robbery with rape as the prosecution failed to establish the presence of all the elements of robbery with rape. Nonetheless, it found accused-appellant guilty beyond reasonable doubt of the crime of rape as all the elements of rape were duly proven and established. The dispositive portion of the Decision reads:

WHEREFORE, accused Jeffrey Dereco y Hayag is hereby found GUILTY beyond reasonable doubt of violation of paragraph (1) of Art. 266-A of the Revised Penal Code, otherwise known as Rape.

He is hereby sentenced to suffer the penalty of RECLUSION PERPETUA, with no eligibility for parole, and TO PAY the private complainant victim AAA that amount of Php 50,000 as civil indemnity, P50,000 as moral damages, and P30,000 as exemplary damages, with all such amounts to earn interest of 6% per annum from the finality of this decision until full payment.

SO ORDERED.¹⁴

Unperturbed, accused-appellant appealed the court *a quo's* decision before the Court of Appeals. However, on April 11, 2017, in its disputed Decision,¹⁵ the Court of Appeals affirmed with modification the decision of the trial court. The dispositive portion of which reads:

WHEREFORE, in view of the foregoing, the appeal is DENIED. The Decision dated November 16, 2015 of the Quezon City Regional Trial Court, Branch 76, in Criminal Case No. Q-09-160418 is hereby AFFIRMED with MODIFICATIONS, in that the phrase "without eligibility for parole" is DELETED and the accused-appellant is ordered to indemnify the private complainant the following amounts: (1) Php75,000.00 as civil indemnity; (2) Php75,000.00 as moral damages; and (3) Php75,000.00 as exemplary damages, with interest on all damages awarded at the rate of 6% per annum from the date of finality of this judgment until fully paid.

All other aspects of the assailed Decision STAND.

SO ORDERED.¹⁶

Thus, before this Court, accused-appellant reiterated the following arguments previously raised before the appellate court to argue his conviction, to wit:

¹³ CA rollo, pp. 51-59.

¹⁴ *Id.*

¹⁵ *Supra* note 1.

¹⁶ *Id.*

I

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF RAPE DESPITE THE INCONSISTENCIES AND INCREDIBILITY IN THE TESTIMONY OF THE PRIVATE COMPLAINANT.

II

THE COURT A QUO GRAVELY ERRED IN GIVING PROBATIVE WEIGHT TO PRIVATE COMPLAINANT'S TESTIMONY DESPITE BEING CONTROVERTED BY THE PHYSICAL EVIDENCE ON RECORD.

III

THE COURT A QUO GRAVELY ERRED IN GIVING CREDENCE AND UNDUE CONSIDERATION TO THE PRIVATE COMPLAINANT'S INCREDIBLE AND INCONSISTENT TESTIMONY WHILE COMPLETELY DISREGARDING THE ACCUSED-APPELLANT'S DEFENSE OF ALIBI AND DENIAL.

In seeking the reversal of the assailed CA decision, accused-appellant asserts that the prosecution failed to prove his guilt beyond reasonable doubt. He claims that AAA's testimony was riddled with inconsistencies and improbabilities. Thus, accused-appellant asserts that the courts *a quo* erred in giving credence to AAA's testimony as her credibility was questionable.¹⁷

The Court finds no reason to reverse conviction.

The Court upholds the findings of the RTC which were affirmed by the CA, that AAA's testimony was credible. It is settled that the RTC's findings on the credibility of witnesses and their testimonies are entitled great weight and respect and the same should not be overturned on appeal in the absence of any clear showing that the trial court overlooked, misunderstood, or misapplied some facts or circumstances which would have affected the case. Questions on the credibility of witnesses are best addressed to the trial court due to its unique position to observe the witnesses' deportment on the stand while testifying.¹⁸ In this case, both the RTC and the CA held that AAA was credible, and her testimony categorically identified accused-appellant and his companion as the malefactors who, with the use of a knife, intimidated her and raped her. The Court finds no reason to doubt the findings of both the RTC and the CA, especially since no evidence was adduced showing that AAA had ill motive to falsely charge appellant with the crime of rape.

Article 266-A of the Revised Penal Code defines when and how the felony of rape is committed, to wit:

¹⁷ CA rollo, pp. 43-46.

¹⁸ *People v. Avelino, Jr. y Gracillan*, G.R. No. 231358, July 8, 2019.

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.

2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

In the instant case, both the RTC and the CA correctly found that all the elements of rape were established by the prosecution. The prosecution sufficiently established beyond reasonable doubt that on August 26, 2009, accused-appellant had carnal knowledge with AAA, and inserted his finger inside AAA's genitalia, while Biboy acted as look-out. It was also proven that accused-appellant employed force, threat, and intimidation upon AAA when he continuously poked a knife at AAA's left side.

The trial court found AAA's testimony to be clear and unequivocal. She positively identified accused-appellant as one of the two (2) men who raped her, *albeit* Biboy was not tried as he remained at-large. Her recollection of the material details of her harrowing experience at the hands of accused-appellant and Biboy was consistent, to wit:

Prosecutor Usita:

The witness is crying.

Q What happened after one of them grabbed you?

A The accused Jeffrey Dereco immediately poked a knife at my left side while Biboy was at my right side and suddenly grabbed my bag.

Q After that, what happened, Madam Witness?

A They dragged me to a vacant lot.

Q While they were dragging you towards the vacant lot, what did you do, if any?

A I was trying to free myself and told them to just get everything they want but not to harm me.

Q What was the reply of the accused and his companion?
A While I was trying to free myself, Jeffrey kept poking his knife at me.

Q Thereafter, what happened next?
A When we were already on the far end of the vacant lot, Jeffrey raised my clothes.

Q While Jeffrey was raising your clothes, what did you do?
A I tried to fight back but he kept on mashing my breasts.

Q Who was mashing your breasts?
A Jeffrey Dereco.

Q After Dereco kept on mashing your breasts, what happened next?
A Dereco unzipped my pants and lowered my underwear down to my knees.

Q After Dereco unzipped your pants and lowered your underwear, what did you do?
A I tried fighting bank but he kept spreading my legs.

Q Was accused Dereco able to spread your legs?

Atty. Cabarrubias:
Leading, your honor.

Prosecutor Usita:
Anyway, it is a follow-up question but we already established the basis that the accused was trying to spread the thighs of the witness.

Q. Was he able to spread your legs?
A Yes, sir.

Q What happened after the accused was able to spread your legs?
A He inserted his fingers in my vagina.

Q Was he able to insert his finger into your vagina?

Atty. Cabarrubias:
Leading, your honor.

Prosecutor Usita:
Follow-up question, your honor.

Witness:
A. Yes, sir.

Prosecutor Usita:
Q. What did you feel?
A. It hurts.



Q. How about the companion of accused Dereco, what was he doing at the time?

A. He was just looking around and said, "*Bilisan mo.*"

Q. What else did he utter after saying, "*Bilisan mo?*"

A. Biboy approached me and said, "*Auntie, huwag kang sisigaw kung ayaw mong patayin ka namin dahil may dala kaming baril.*"

Q. After uttering those words, what happened next?

A. Biboy then pushed me and told me to turn around and face the wall and then he went on my back.

Q. What happened next?

A. Then he kept on trying to remove my pants and underwear. I kept fighting back.

Q. What happened next?

A. They were stronger than me. When Biboy was at my back, he kept pushing my head downwards.

Q. What did you do after Biboy pushed your head downwards?

A. I fought back but they were stronger than me.

Q. What was Dereco doing while Biboy was pushing your head down?

A. Dereco was in front of me and he was helping Biboy in spreading my legs.

Q. What happened next?

A. After they were able to remove my pants and underwear, Biboy, who was at my back, inserted his penis in my vagina.

Q. What happened next, Madam Witness?

A. At that moment, Dereco, who was in front of me, knelt and he was pressing my mouth open and kissed me.

Q. What did you do?

A. I kept fighting back and begging them not to do what they were doing.

Q. What was the response of Dereco to your pleading?

A. They did not mind what I was saying and instead, pressed hard on the knife pointed at me.

Q. Who in particular was pointing that knife at you?

A. Jeffrey Dereco, at first.

Q. Then who came next?

A. It was still Dereco pointing the knife at me because he was in front of me at the time.

Q. After Biboy inserted his penis inside you, what happened next?

A They changed places and it was [the] turn of Dereco to go to my back.

Q What happened after Dereco went to your back?

A He removed his shorts and pulled out his penis and was pushing me and at the same time, I felt I was going to be killed.

Q What happened after that?

A Dereco did the same thing that Biboy did to me.

Q What did he exactly do to you?

A He inserted his penis into my vagina.

Q What did you feel at the time, Madam Witness?

A It was painful.

Q How long did Dereco insert his penis into your vagina?

A More or less, a minute.

Q Before Dereco inserted his penis into your vagina, what did you do?

A I was fighting back.

Q What happened when you tried to fight back?

A The more I fought back, the more they exerted efforts to pin my head down.

Q What happened after Dereco inserted his penis into your vagina for about a minute?

A Then he left my back and I just sat down at the place of incident.

Q Could you describe the lighting condition at the time at the place of the incident?

A The light came from the post at the corner of the street.

Q You said you sat down on the spot of the incident, how long did you sit down on that place?

A I do not recall but I remember that I just put on my pants and underwear.

Q How about the accused Dereco and his companion, what did they do after that?

A They told me not to leave and out of fear, I just "*sumiksik sa dulo.*"

Q After that, what happened?

A When I felt that they were no longer around, I stood up and walked towards the highway.

x x x.¹⁹

¹⁹

TSN (Direct examination of AAA, June 2, 2010); records, pp. 5-12.

Dr. Shanne Lore A. Dettabali, M.D., who conducted the medico-legal examination on AAA on the same day of the alleged commission of rape, also testified that upon examination, AAA's hymen not only appeared to be "erythematous"²⁰ but also, there was "positive presence of spermatozoa" found in her vagina which shows a "definite evidence of sexual contact."²¹

It is settled in this jurisdiction that as long as the testimony of the witness is coherent and intrinsically believable as a whole, discrepancies of minor details and collateral matters do not affect the veracity, or detract from the essential credibility of the witnesses' declarations.²² In fact, the accused may be convicted solely on the basis of the testimony of the victim that is credible, convincing, and consistent with human nature and the normal course of things.²³ Further, no ill motive on the part of AAA to falsely accuse accused-appellant was ever brought up by the defense during trial. This only serves to further strengthen AAA's case since we have consistently held that a rape victim's testimony as to who abused her is credible where she has absolutely no motive to incriminate and testify against the accused.²⁴

Anent the alleged inconsistent statements made by AAA in her testimony, we have constantly declared that a few discrepancies and inconsistencies in the testimonies of witnesses referring to minor details and not in actuality touching upon the central fact of the crime do not impair the credibility of the witnesses because they discount the possibility of their being rehearsed testimony.²⁵ Furthermore, the alleged inconsistencies and discrepancies which accused-appellant raised anew before us, *i.e.*, AAA's failure to immediately report the incident to the police, absence of fresh lacerations in AAA's hymen, the non-presentation of the weapon used to threaten and force AAA, the incredibility of AAA's story considering that she had sighting of men at the site of crime yet she continued to walk alone along Quirino Highway, were all satisfactorily discussed and debunked before the courts *a quo* that there is no need for this Court to belabor on them. Moreso, as these issues are factual in nature. The trial court's evaluation shall be binding on this Court unless it is shown that certain facts of substance and value have been plainly overlooked, misunderstood, or misapplied.²⁶ None of the exceptions is present in this case.

Moreover, accused-appellant's defense of denial and alibi cannot stand against the prosecution's evidence. Alibi is an inherently weak defense because it is easy to fabricate and highly unreliable. To merit approbation, he

²⁰ Records, pp. 6-7.

²¹ *Id.*

²² *People v. Empuesto*, 851 Phil. 611, 628 (2018).

²³ *People v. Ganaba*, G.R. No. 219240, April 4, 2018, 860 SCRA 513, 525.

²⁴ *People v. Gahi*, 727 Phil. 642, 659 (2014).

²⁵ *People v. Gerola*, 813 Phil. 1055, 1066 (2017).

²⁶ *People v. Amoc*, 810 Phil. 253, 259 (2017).



must adduce clear and convincing evidence that he was in a place other than the *situs criminis* at the time when the crime was committed, such that it was physically impossible for him to have been at the scene of the crime when it was committed.²⁷ This accused-appellant failed to prove.

As a final note, as pointed out by the trial court, the prosecution should have indicted accused-appellant for rape through sexual assault. Accused-appellant should have been convicted of two (2) counts of rape, *i.e.*: (1) rape through sexual intercourse by means of force, threat and intimidation, as described and punishable under paragraph 1 of Art. 266-A of the RPC, and (2) rape through sexual assault, as described and punishable under paragraph 2 of Art. 266-A of the same Code. However, due to the failure of the prosecution to allege in the information the rape through sexual assault, as described and punishable under paragraph 2 of Art. 266-A of the RPC, accused-appellant can only be found guilty of rape through force, threat, and intimidation, even though rape through sexual assault was also proven during trial. This is due to the material differences and substantial distinctions between the two modes of rape; thus, the first mode is not necessarily included in the second, and vice-versa. Consequently, to convict accused-appellant of rape by sexual assault when what he was charged with was rape through carnal knowledge, would be to violate his constitutional right to be informed of the nature and cause of the accusation against him.²⁸

It is fundamental that, in criminal prosecutions, every element constituting the offense must be alleged in the Information before an accused can be convicted of the crime charged. No matter how conclusive and convincing the evidence of guilt may be, an accused cannot be convicted of any offense unless it is charged in the information on which he is tried or is necessarily included therein. To convict him of a ground not alleged while he is concentrating his defense against the ground alleged would plainly be unfair and underhanded. Thus, the prosecuting arm of the Government is reminded that prudence should be exercised as to what should be alleged in the Information, as the latter is the battleground of all criminal cases.²⁹

WHEREFORE, the April 11, 2017 Decision of the Court of Appeals in CA-G.R. No. CR-HC No. 08172, finding accused-appellant Jeffrey Dereco y Hayag **GUILTY** beyond reasonable doubt of rape, as defined in and penalized under Article 266-A of the Revised Penal Code, is **AFFIRMED**. He is hereby sentenced to suffer the penalty of *reclusion perpetua* and **ORDERED** to **PAY** AAA the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages. All monetary awards for damages shall earn an interest rate of six percent (6%) *per annum* to be computed from the finality of this Decision until fully paid.

²⁷ *People v. Gani*, 710 Phil. 466, 473 (2013).

²⁸ *People v. Pareja*, 724 Phil. 759, 783 (2014).

²⁹ *People v. Romobio*, G.R. No. 227705, October 11, 2017, 842 SCRA 512, 538.

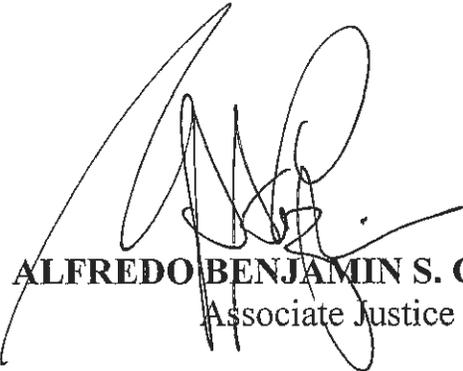


SO ORDERED.



DIOSDADO M. PERALTA
Chief Justice

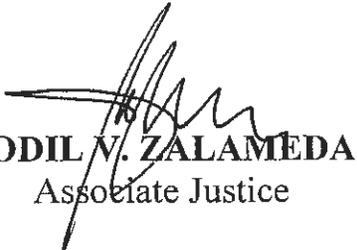
WE CONCUR:



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



ROSMARI D. CARANDANG
Associate Justice



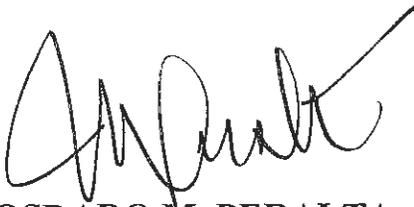
RODIL N. ZALAMEDA
Associate Justice



SAMUEL H. GAERLAN
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.



DIOSDADO M. PERALTA
Chief Justice