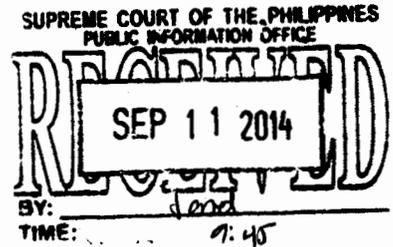




REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE



Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **20 August 2014** which reads as follows:

G.R. No. 196789 **People of the Philippines, plaintiff-appellee v. Thomas Cabacungan, accused-appellant.**

X-----X

This is an appeal from the Decision¹ dated 30 November 2010 of the Court of Appeals in CA-G.R. CR-HC No. 03795 affirming the Decision² dated 7 November 2008 of the Regional Trial Court (RTC) of Cabagan, Isabela, Branch 22, in Criminal Case No. 22-1627, finding herein appellant Thomas Cabacungan guilty beyond reasonable doubt of the crime of rape committed against AAA,³ thereby sentencing him to suffer the penalty of *reclusion perpetua* and ordering him to pay AAA the amounts of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages.

In an Information⁴ dated 30 August 2001, the appellant was indicted for rape committed as follows:

That on or about the 17th day of November 2000, in the municipality of XXX, province of XXX, Philippines and within the jurisdiction of this Honorable Court, the said [herein appellant], **armed with a firearm, and by means of force and intimidation and with lewd designs**, did then and there, willfully, unlawfully and feloniously, **lay with, and have carnal knowledge with one [AAA], a minor girl of 17 years of age, thereby subjecting her to exploitation and sexual abuse, against her will and consent.**

¹ Penned by Associate Justice Isaias Dicdican with Associate Justices Stephen C. Cruz and Elihu A. Ybañez, concurring. *Rollo*, pp. 2-12.

² Penned by Assisting Judge Conrado F. Manuis. *CA rollo*, pp. 9-16.

³ This is pursuant to the ruling of this Court in *People of the Philippines v. Cabalquinto*, 533 Phil. 703 (2006), wherein this Court resolved to withhold the real name of the victim-survivor and to use fictitious initials instead to represent her in its decisions. Likewise, the personal circumstances of the victims-survivors or any other information tending to establish or compromise their identities, as well as those of their immediate family or household members, shall not be disclosed. The names of such victims, and of their immediate family members other than the accused, shall appear as "AAA," "BBB," "CCC," and so on. Addresses shall appear as "XXX" as in "No. XXX Street, XXX District, City of XXX."

The Supreme Court took note of the legal mandate on the utmost confidentiality of proceedings involving violence against women and children set forth in Sec. 29 of Republic Act No. 7610, otherwise known as *Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act*; Sec. 44 of Republic Act No. 9262, otherwise known as *Anti-Violence Against Women and Their Children Act of 2004*; and Sec. 40 of A.M. No. 04-10-11-SC, known as *Rule on Violence Against Women and Their Children* effective 15 November 2004.

⁴ Records, pp. 20-21.

With the **aggravating circumstances**, that the **victim is a minor below 18 year[s] of age**, during the commission of the crime **and that the [appellant] was armed with a firearm.**⁵ (Emphasis supplied).

When arraigned, the appellant pleaded NOT GUILTY to the crime charged.⁶ After the pre-trial conference, trial on the merits ensued.

The prosecution presented the testimonies of AAA, the victim herself, and Dr. Marites Miguel (Dr. Miguel), Medical Officer III, OB-Gyne Department, Cagayan Valley Medical Center, who conducted the medical examination on the victim.

AAA was only 16 years old when the alleged rape incident happened on 17 November 2000, having been born on 27 April 1984 per her Certificate of Live Birth.⁷

At around 12 a.m. of 17 November 2000, while AAA was sleeping alone in her room on the second floor of their house, she was suddenly awakened as she felt somebody on top of her, whom she identified to be the appellant. When AAA attempted to shout, the appellant immediately covered her mouth with his hand, drew a gun from his waist, poked it on her neck and told her to keep quiet. With the gun still poked on AAA's neck, the appellant, who was in a kneeling position, removed her short pants and underwear. The appellant then unzipped and pulled down his *maong* pants and brief; spread AAA's legs apart; and inserted his penis into her vagina. The appellant made a push and pull movement for about three (3) times. On this occasion, AAA felt pain. AAA tried to resist appellant's sexual advances but he continued pressing the gun on her neck. After satiating his lust, the appellant pulled out his penis and ejaculated between AAA's legs. The appellant thereafter stood up and wore his brief and *maong pants*. But, before the appellant left, he threatened AAA by saying, "*Huwag kang magsumbong kundi pati Nanay mo papatayin ko.*"⁸

The appellant's threat cowed AAA to silence and inaction for several months. Besides, the appellant is AAA's neighbor whose house is only three houses away from their house, thus, he can make good of his threat the moment she breaks her silence. However, on 21 April 2001, after gaining enough courage and realizing the futility of her silence, AAA finally told her

⁵ Id. at 20.

⁶ Per RTC Order and Certificate of Arraignment both dated 22 October 2001, id. at 35-36.

⁷ Id. at 6.

⁸ Testimony of AAA, TSN, 6 November 2001, pp. 6-19; Testimony of AAA, TSN, 7 November 2001, pp. 16-19 and 34-44.

older sister regarding her harrowing experience at the hands of the appellant. The two then reported the rape incident to the police authorities.⁹ On the same day, AAA was brought to Cagayan Valley Medical Center in Tuguegarao City, where she was subjected to medical examination by Dr. Miguel,¹⁰ whose findings revealed that AAA sustained a complete healed hymenal laceration at 8 o'clock position, as well as incomplete healed hymenal lacerations at 5 o'clock and 10 o'clock positions.¹¹ Dr. Miguel explained that both the complete and incomplete healed hymenal lacerations found on AAA's vagina could have been caused by a blunt object such as a hardened penis.¹²

The defense, for its part, presented the appellant and his sister-in-law, Editha Cabacungan (Editha), whose testimonies consist mainly of denial and *alibi*.

The appellant strongly denied that he raped AAA. He testified that on 17 November 2000, when the alleged rape incident happened, he was only sleeping in his house. He claimed that the possible motive why AAA fabricated a rape charge against him was his refusal to give her ₱2,000.00 for her high school graduation. The appellant, however, admitted that AAA is his neighbor and relative.¹³

Editha corroborated the aforesaid testimony of the appellant.¹⁴

After analyzing and weighing all the pieces of testimonial and documentary evidence, the trial court gave credence to the accurate, candid and straightforward testimony of AAA, thus, in its Decision dated 7 November 2008, it held the appellant guilty beyond reasonable doubt of the crime charged, sentencing him to suffer the penalty of *reclusion perpetua*. The trial court similarly ordered the appellant to pay AAA ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages.¹⁵

On appeal,¹⁶ the Court of Appeals, in its Decision dated 10 November 2010, affirmed the guilty verdict and the sentence imposed by the trial court.

⁹ Testimony of AAA, TSN, 7 November 2001, id. at 18-23 and 50-53.

¹⁰ Testimony of Dr. Marites Miguel, TSN, 13 August 2003, pp. 8-10.

¹¹ Per Medico-Legal Certificate dated 23 May 2001. Records, p. 7.

¹² Testimony of Dr. Marites Miguel, TSN, 13 August 2003, pp. 15-17.

¹³ Testimony of the appellant, TSN, 31 July 2008, pp. 4-5 and 8-10.

¹⁴ Testimony of Editha Cabacungan, TSN, 9 October 2008, pp. 3-11.

¹⁵ CA *rollo*, p. 16.

¹⁶ Per Notice of Appeal dated 13 November 2008. Id. at 17.

Hence, the instant recourse¹⁷ raising the following alleged errors for this Court's consideration: (1) the court *a quo* gravely erred in failing to consider the material inconsistencies posited by [AAA] in her testimony; and (2) the court *a quo* gravely erred in not finding the prosecution's version implausible.¹⁸

This Court sustains petitioner's conviction and deems it proper to award exemplary damages, in addition, to the civil indemnity and moral damages already awarded by the lower courts.

As can be gleaned, the assigned errors hinge on the issue of credibility of AAA. It is settled that when the issue of credibility is concerned, the appellate court will generally not disturb the findings of the trial court, the latter being in a better position to describe the question, having heard the witnesses and observed the deportment and manner of testifying during the trial, unless certain facts of substance and value had been placidly overlooked which, if considered, might affect the result of the case.¹⁹ This rule finds an even more stringent application where the said findings are sustained by the Court of Appeals.²⁰

In the case under review, this Court finds no compelling reason to deviate from the lower courts' findings that, indeed, the appellant was AAA's ravisher and his guilt was sufficiently proven by the prosecution beyond reasonable doubt.

Furthermore, the alleged inconsistencies between AAA's sworn statement and her open court testimony pointed to by the appellant, to wit: (1) in AAA's sworn statement she declared that she was wearing garterized shorts on the night that she was raped but later on testified that she was wearing tight-fitting *maong* pants; (2) in her sworn statement AAA declared that the appellant first inserted his finger into her vagina before inserting his penis but she never mentioned that in her open court testimony; (3) AAA made inconsistencies as regards the position of the appellant when he removed her undergarments; and (4) AAA first declared that she went back to sleep after she was raped but later on stated that she was not able to sleep at all, refer only to minor and inconsequential matters that have nothing to do with the essential fact of the commission of the crime — carnal knowledge through force or intimidation.²¹ Also, this Court has repeatedly

¹⁷ This is *via* a Notice of Appeal dated 10 December 2010. *Rollo*, pp. 13-14.

¹⁸ Appellant's Brief dated 5 November 2009. *CA rollo*, p. 31.

¹⁹ *People v. Mendiola*, 392 Phil. 195, 201 (2000).

²⁰ *People v. Campomanes*, G.R. No. 187741, 9 August 2010, 627 SCRA 494, 504.

²¹ *People v. Biong*, 450 Phil. 432, 445 (2003).

ruled that inconsistencies between the sworn statements and direct testimony given in open court do not necessarily discredit the witness since affidavits are oftentimes incomplete and are generally inferior to the testimony of the witness in open court.²²

Moreover, as between the positive identification of the appellant by AAA and the appellant's defense of *alibi* and bare denial, the former is entitled to greater weight.²³

With all the foregoing, this Court affirms the appellant's conviction for rape and the penalty of *reclusion perpetua* imposed upon him by the lower courts.

However, this Court in conformity with recent pronouncements increases the awards of civil indemnity and moral damages, both from ₱50,000.00 to ₱75,000.00. It likewise grants the victim the amount of ₱50,000.00 as exemplary damages. In *People v. Macapanas*,²⁴ this Court explained that the award of exemplary damages is intended to serve as deterrent to serious wrongdoings, as a vindication of undue sufferings and wanton invasion of the rights of an injured, or as punishment for those guilty of outrageous conduct.²⁵ Also, in conformity with this Court's recent pronouncements, the interest at the rate of 6% per annum shall be imposed on all damages awarded from the date of the finality of this judgment until fully paid.²⁶

WHEREFORE, the Decision of the Court of Appeals dated 30 November 2010 finding the appellant guilty beyond reasonable doubt of the crime of rape is hereby **AFFIRMED** with **MODIFICATIONS** that the appellant is ordered to pay AAA civil indemnity and moral damages each in the amount of ₱75,000.00 and exemplary damages in the amount of ₱50,000.00 and interest on all damages at the legal rate of 6% per annum from the date of finality of this judgment.

SO ORDERED.

Very truly yours,


MA. LOURDES C. PERFECTO
Division Clerk of Court 17/12

²² *People v. Silvestre*, 366 Phil. 527, 546 (1999).
²³ *People v. Manegdeg*, 375 Phil. 154, 171 (1999).
²⁴ G.R. No. 187049, 4 May 2010, 620 SCRA 54.
²⁵ *Id.* at 76-77.
²⁶ *People v. Linsie*, G.R. No. 199494, 27 November 2013.

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HON. PRESIDING JUDGE (reg)
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