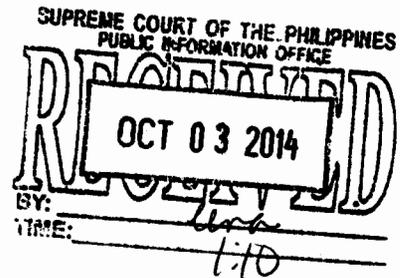




Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE



Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated September 10, 2014, which reads as follows:

“G.R. No. 208520 - PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, v. PEDRO FUENTES a.k.a. “PEDRING,” Accused-Appellant.

Accused-appellant Pedro Fuentes (Fuentes), alias “Pedring,” challenges the Decision¹ dated October 25, 2012 in CA-G.R. CR.-H.C. No. 00834-MIN of the Court of Appeals, which affirmed his conviction for rape and modified his civil liability with the imposition of interest at the rate of 6% per annum on all damages awarded from the date of finality of the judgment until fully paid.

In an Information² dated August 8, 2008, docketed as Criminal Case No. 2033-13, accused-appellant Fuentes was charged with the rape of AAA, committed as follows:

“That on or about May 10, 2008 at about 8:35 o’clock in the evening, in [B]arangay XXX, x x x [P]rovince of YYY, Philippines, and within the jurisdiction of this Honorable Court, the abovenamed accused, did then and there willfully, unlawfully and feloniously destroy the door and enter the room of AAA who alone with her two month old infant and one year old child and by means of force, threat and intimidation, covered her mouth, poked a knife at her and then succeeded in having carnal knowledge with the said AAA against her will.

¹ CA rollo, pp. 169-183.
² Records, pp. 2-3.

- over – eleven (11) pages

CONTRARY TO LAW, with the presence of generic aggravating circumstance of dwelling and qualifying aggravating circumstance of using a deadly weapon in the commission of the crime.”

Accused-appellant Fuentes pleaded “not guilty” to the charge.³ During the pre-trial conference held on August 13, 2009,⁴ the prosecution and the defense stipulated on the following matters: (1) the identity of the accused, (2) the jurisdiction of the court, and (3) the fact that AAA is a married woman with two children.⁵

As summarized by the Court of Appeals, the facts of the case culled from the testimonies of the witnesses are:⁶

AAA testified that accused-appellant had raped her on two occasions, first on 6 May 2008 and again on 10 May 2008. Her testimony in this case pertains to the second rape incident. She recalled that she was in their bunkhouse on the night of 10 May 2008 together with her two children. Her husband, BBB, was away in Katipunan at that time. She went to sleep at 8:00 p.m. and lay between her two-month old and 1-year old children on the matted floor of their bedroom. She was shortly awakened by accused-appellant covering her mouth and pointing a 10-inch knife at her right breast, who thereafter removed her short pants and panty, and placed his two legs in between her two thighs. She wiggled and cried in fear. While keeping her mouth covered, accused-appellant removed his gartered shorts and placed himself on top of her and then had carnal knowledge of her. She cried hard, wiggled and tried to push him but he was so strong. Although accused-appellant had not said a word, AAA recognized him as she can clearly see his face while lying atop her because the room is lit by a shaft of light from a 40-watt fluorescent lamp located at a shop that is four meters away. The light from the shop passed through the 2-inch gaps of the bunkhouse’s wooden grill that is located in front of the open door of the bedroom.

AAA recalled that after accused-appellant raped her, he left but threatened her of killing her husband if she tells the latter about the incident. She was able to look at the bedroom wall clock when accused-appellant left, which read 8:35 p.m. When he was gone, she traced and discovered that he entered the bunkhouse though the kitchen door, which she had locked before going to sleep. The lock is a wooden bar which ends are anchored on the opposing sides of the door jamb so that it is placed across the door x x x. Afraid that he might come back again that night, AAA went to the house of her uncle, CCC, in Santa Cruz, bringing along her youngest child. She left her older child behind as she could not carry both of them but she had returned to the bunkhouse accompanied

³ Id. at 29-30.

⁴ Id. at 32-33.

⁵ Id.

⁶ CA *rollo*, pp. 170-174.

by her aunt and got her other child. When her husband arrived later that night, they all returned to the bunkhouse.

Moreover, AAA testified that her uncle CCC was the first person she told about being raped by accused-appellant that night and that it was CCC who then told BBB about the rape incident as she could not tell the latter herself for fear that he would kill accused-appellant or that it would be the other way around. AAA added that she had known accused-appellant for about three years because the latter and her husband respectively worked as culvert maker and chainsaw operator for Delos Santos x x x.

Witness CCC x x x testified that he knows AAA because her husband is his nephew. x x x. CCC recalled that at about 8:45 p.m. on 10 May 2008, AAA arrived at his house carrying her 2-month old child and crying hard. When he asked why she was crying, it took long for AAA to answer, eventually telling him that she feared for their lives because accused-appellant had threatened to kill them all. She then told him that the latter had raped her in their bunkhouse earlier that night x x x. Thereafter, AAA, together with his [CCC's] wife, DDD, went back to [the] bunkhouse to get her [AAA's] other child. When BBB arrived around 10:00 o'clock that evening, [CCC] told him that accused-appellant had raped AAA, which made [BBB] angry. As it was already late, they (BBB and his family) spent the night in his [CCC's] house. On the following day, he (CCC) and Celso Mahinay accompanied AAA to the police station and reported the incident.

x x x x

Accused-appellant interposed denial and alibi as defense, declaring that the accusation against him is false. He testified being with his wife and children at 8:00 p.m. of 10 May 2008 in their bunkhouse owned by delos Santos. They were watching TV near their sleeping area and he fell asleep while watching. According to him, AAA made up the charge of rape against him and lied in her testimonies because she is angry at him for refusing to lend her ₱2,000.00 when he won in the "swertres." Because of his refusal, she cursed him to die and vowed for revenge. She also got angry at him when he asked from her the steel saw that her husband had borrowed, saying why asked it from her when she was not the one who borrowed it.

As for CCC, accused-appellant declared that the former was motivated by anger in testifying against him as they had quarreled over a piglet that CCC and his wife, DDD, had bought from him x x x.

x x x x

Witness Aida Fuentes is accused-appellant's wife. She corroborated the latter's testimonies and added that nothing unusual had

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happened at 8:00 p.m. of 10 May 2008 x x x. Accused-appellant slept beside her.

As for witness Telly Pabatang (hereafter Pabatang), she testified being the present occupant of the bunkhouse [previously] occupied by AAA on 10 May 2008. x x x. According to her such structures had not undergone any renovation since 2008 and there is no lighting installed in the shop.

On cross-examination, however, Pabatang declared that picture of the bunkhouse was taken sometime in January of 2010 by accused-appellant's counsel, who had asked her to testify. She confirmed that a portion of the bunkhouse's walls has gaps, which is located before the bedroom door and faces the shop. She reiterated that the shop has no electric light since she started residing therein in July 2008. She did not notice, however, if there was light on it in May 2008.

After trial, the Regional Trial Court (RTC), Branch 13, Oroquieta City, found accused-appellant Fuentes guilty of the crime charged. The dispositive portion of its Decision⁷ dated May 25, 2010 reads:

WHEREFORE, finding accused Pedro Fuentes guilty beyond reasonable doubt of rape with generic aggravating circumstances of nighttime and unlawful entry, the court sentences him to reclusion perpetua and to pay complainant rape indemnity of ₱50,000.00 and moral damages of ₱50,000. With costs.

On appeal, the Court of Appeals affirmed the conviction of accused-appellant Fuentes with modification by imposing an interest on the award of damages. In its Decision dated October 25, 2012, the appellate court ruled that:

WHEREFORE, for lack of merit, the present appeal is hereby DISMISSED and the assailed Decision dated [25] May 2010 of the Regional Trial Court (RTC), 10th Judicial Region, Branch 13 of Oroquieta City in Criminal Case No. 2033-13 is hereby AFFIRMED with the MODIFICATION that accused-appellant Pedro Fuentes a.k.a. 'Pedring' is additionally liable for interest of 6% *per annum* on each of the amounts of the damages awarded, reckoned from the finality of this decision.⁸

Undaunted, the accused-appellant filed a Notice of Appeal on November 8, 2012.⁹

⁷ Records, pp. 82-86, penned by Judge Ma. Nimfa Penaco-Sitaca.

⁸ CA *rollo*, pp. 182.

⁹ Id. at 184-185.



Just like in the Court of Appeals, accused-appellant Fuentes raises a single error for this Court's disposition, *i.e.*, that the RTC failed to prove his guilt beyond reasonable doubt. He insists that AAA's testimony failed to meet the test of credibility because, if, indeed, AAA was first raped on May 6, 2008 and again on May 10, 2008, how come she only complained about the latter incident? Specifically, he finds fault in the fact that (1) the supposed rape on May 6, 2008 was never included in the criminal information covering the rape on May 10, 2008; (2) AAA failed to take safety measures to prevent the possible re-commission of the rape that happened on May 6, 2008; and (3) AAA did not attempt to shout for help or resist the advances of accused-appellant Fuentes.¹⁰

On the other hand, the Office of the Solicitor General (OSG) for the People of the Philippines counters the foregoing with the following arguments: (1) that "[e]ach and every charge of rape is a separate and distinct crime x x x each of the other rapes should be proven beyond reasonable doubt"; (2) that AAA's failure to report the May 6, 2008 rape does not affect her credibility as a witness; and (3) that AAA's failure to shout for help or resist the advances of accused-appellant Fuentes does not negate the force or intimidation exercised upon her by accused-appellant Fuentes.¹¹

The appeal is bereft of merit.

Article 266-A of the Revised Penal Code defines the crime of rape, *viz*:

ART. 266-A. *Rape, When and How Committed.* – 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;

From the above-quoted provision of law, the elements of rape (under paragraph 1, subparagraph a) are: (1) that the offender is a man; (2) that the offender had carnal knowledge of a woman; and (3) that such act is accomplished by using force, (threat) or intimidation.¹²

¹⁰ Id. at 11-21.

¹¹ Id. at 63-83.

¹² L. Reyes, *The Revised Penal Code*, Book Two, p. 519 (15th ed., 2001).

In this case, the trial and appellate courts are one in finding that accused-appellant Fuentes had carnal knowledge of AAA against the latter's will, through force, threat or intimidation. Despite accused-appellant Fuentes' protestations, this Court agrees in said finding and that the crime of rape committed by accused-appellant Fuentes against AAA was proved by the prosecution beyond reasonable doubt on the basis of the following:

- a) AAA's credible, positive and categorical testimony relative to the circumstances surrounding her rape;
- b) AAA's positive identification of accused-appellant Fuentes as the one who raped her; and
- c) The absence of ill motive on the part of AAA in filing the complaint against accused-appellant Fuentes.

The crux of the appeal of accused-appellant Fuentes is the credibility of AAA, the victim. But credibility of a witness is the sole province of the trial court. Oft repeated is the rule that findings of fact of the trial court on matters of credibility of witnesses is generally conclusive on this Court, which is not a trier of facts.¹³ Such conclusiveness derives from the trial court's having the first-hand opportunity to observe the demeanor and manner of the victim when she testified at the trial.¹⁴ And in the absence of any clear showing that the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance that would have affected the result of the case, its findings on the matter of credibility of witnesses will not be disturbed on appeal,¹⁵ especially when such findings have been affirmed by the Court of Appeals.

All the same, this Court has carefully scrutinized the records of this case but found no indication that the trial and the appellate courts overlooked or failed to appreciate facts that, if considered, would change the outcome of this case. When a woman says that she has been raped, she says in effect all that is necessary to show that the crime of rape was committed. In a long line of cases, this Court has held that if the testimony of the rape victim is accurate and credible, a conviction for rape may issue upon the sole basis of the victim's testimony. This is because no decent and sensible woman will publicly admit to being raped and, thus, run the

¹³ *People v. Jastiva*, G.R. No. 199268, February 12, 2014.

¹⁴ *People v. Taguilid*, G.R. No. 181544, April 11, 2012, 669 SCRA 341, 350.

¹⁵ *People v. Batiencila*, 542 Phil. 420, 429 (2007).



risk of public contempt unless she is, in fact, a rape victim.¹⁶ Thus, this Court upholds the RTC and the Court of Appeals' ruling that the eyewitness account of AAA positively and categorically established that accused-appellant Fuentes had carnal knowledge of her through force, threat or intimidation.

Accused-appellant Fuentes makes much ado about AAA's failure to (1) officially complain about the supposed May 6, 2008 rape; and (2) to shout for help or resist his advances during the May 10, 2008 rape.

For this Court, however, the points raised do not create enough reasonable doubt to reverse his conviction.

Firstly, from the record of this case, it appears that the May 6, 2008 rape is already the subject of another case, to wit:

COURT:

How about the other rape case?

PROS. OMANDAM:

Before Branch 12, your Honor.

COURT:

This is the second rape.

PROS. OMANDAM:

May 10 incident. In Branch 12, that is May 6 incident.¹⁷

The foregoing notwithstanding, however, as correctly observed by the Court of Appeals, "the non-inclusion of the first rape in the Information filed against accused-appellant for the second rape did not in any way diminish AAA's credibility as a witness. Besides, to charge two offenses in a single Information is violative of Section 13, Rule 110 of the Revised Rules of Criminal Procedure, which provides [that] the complaint or [I]nformation must charge but only one offense except only in those cases in which existing laws prescribe a single punishment for various offenses."¹⁸ Therefore, the alleged May 6, 2008 rape must be covered by a separate complaint or information.

¹⁶ Id. at 426.

¹⁷ TSN, October 20, 2009, p. 10.

¹⁸ CA *rollo*, p. 179.

And *secondly*, it does not follow that because AAA failed to shout for help or struggle against her attacker means that she could not have been raped. Physical resistance need not be established in rape when intimidation is exercised upon the victim and the latter submits herself against her will to the rapist's advances because of fear for her life and personal safety.¹⁹ Records disclose that accused-appellant Fuentes threatened AAA with a knife. Justifiably, such circumstance would cause AAA to recoil in fear and succumb into submission. In any case, with such shocking and horrifying experience, it would not be reasonable to impose upon AAA any standard form of reaction. The workings of the human mind placed under emotional stress are unpredictable, and people react differently - some may shout, others may faint, and still others may be shocked into insensibility even if there may be a few who may openly welcome the intrusion.²⁰

Moreover, it bears to stress that physical resistance is not the sole test to determine whether a woman involuntarily succumbed to the lust of an accused.²¹ The law does not impose a burden on the rape victim to prove resistance. What needs only to be proved by the prosecution is the use of force or intimidation by the accused in having sexual intercourse with the victim²² – which it did in the case at bar.

As for accused-appellant Fuentes' defense of denial and alibi, this Court is not persuaded.

In order to merit credibility, denial must be buttressed by strong evidence of non-culpability which accused-appellant Fuentes failed to show. Moreover, since denial is easily and conveniently resorted to, it cannot prevail over the positive assertions of an eyewitness.

And for the defense of alibi to prosper, the accused must prove the following: (1) that he was present at another place at the time of the perpetration of the crime; and (2) that it was physically impossible for him to be at the scene of the crime during its commission. Physical impossibility involves the distance and the facility of access between the crime scene and the location of the accused when the crime was committed; the accused must demonstrate that he was so far away and

¹⁹ *People v. Moreno*, 425 Phil. 526, 538 (2002).

²⁰ *People v. Taguilid*, supra note 14 at 351, citing *People v. San Antonio, Jr.*, 559 Phil. 188, 205 (2007).

²¹ *People v. Batiancila*, supra note 15 at 429-430.

²² *Id.* at 430.



could not have been physically present at the crime scene and its immediate vicinity when the crime was committed. In this case, accused-appellant Fuentes utterly failed to satisfy the above-quoted requirements. From the testimonies of the witnesses, it was shown that the distance between AAA's bunkhouse and accused-appellant Fuentes' bunkhouse was only about 15 to 30 meters, more or less. Certainly, 15 to 30 meters is not too far as to preclude the presence of accused-appellant Fuentes at the bunkhouse of AAA.

Regarding the allegation of accused-appellant Fuentes that AAA and CCC were prompted by improper or malicious motives to impute upon him such a serious charge, this Court takes note of the fact that he was unable to support his allegation. Bare allegations, unsubstantiated by evidence, are not equivalent to proof.²³ Therefore, the lack of proof of dubious motive as well as the findings of the trial court on the credibility of AAA and CCC, should overcome accused-appellant Fuentes' self-serving claim.

All told, this Court is convinced beyond reasonable doubt that accused-appellant Fuentes committed the crime of rape by having carnal knowledge of AAA using force, threat and intimidation. Under Art. 266-B of the Revised Penal Code, the proper penalty to be imposed is:

Art. 266-B. *Penalties.* – Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death.

But considering that accused-appellant Fuentes committed the crime with a qualifying circumstance, the use of a knife, a deadly weapon, which was alleged in the Information and proved during trial, the prescribed penalty is *reclusion perpetua* to death. Corollarily, Article 63 of the Revised Penal Code provides that if in the commission of the crime there is one aggravating circumstance, the greater penalty is to be imposed. Herein, the prosecution alleged and proved the generic aggravating circumstance of dwelling; hence, the higher penalty should be imposed. Since the imposition of death penalty is prohibited by Republic Act No. 9346, entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines," the RTC, as affirmed by the Court of Appeals,

²³ *Domingo v. Robles*, 493 Phil. 916, 921 (2005); *Ongpauco v. Court of Appeals*, 488 Phil. 396, 401 (2004).

properly imposed upon accused-appellant Fuentes the penalty of *reclusion perpetua*.

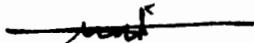
Relative to the award of damages, pursuant to this Court's ruling in *People v. Salome*,²⁴ the amounts for moral and civil damages awarded by the RTC must be increased from ₱50,000.00 to ₱75,000.00. But the Court of Appeals fittingly imposed interest on all damages awarded to AAA at the legal rate of 6% per annum from the date of the finality of this Court's decision in conformity with present jurisprudence.²⁵

This Court also notes that both the RTC and Court of Appeals overlooked the award of exemplary damages. When a crime is committed with an aggravating circumstance either as qualifying or generic, an award of exemplary damages is justified under Article 2230²⁶ of the New Civil Code.²⁷ Thus, conformably with the foregoing, an award of exemplary damages in the amount of ₱30,000.00 is herein given.

WHEREFORE, the Decision dated October 25, 2012 of the Court of Appeals in CA-G.R. CR.-H.C. No. 00834-MIN is **AFFIRMED with MODIFICATION**. Accused-appellant Pedro Fuentes a.k.a. "Pedring" is found **GUILTY** beyond reasonable doubt of the crime of rape and is sentenced to suffer the penalty of *reclusion perpetua*, and is ordered to pay AAA the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages. Accused-appellant Pedro Fuentes is further ordered to pay legal interest on all damages awarded in this case at the rate of 6% per annum from the date of finality of this decision until fully paid.

SO ORDERED. *SERENO, C.J.*, on leave; *VELASCO, JR., J.*, acting member per S.O. No. 1772 dated August 28, 2014.

Very truly yours,


EDGAR O. ARICHETA
Division Clerk of Court *pk/akr*
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²⁴ G.R. No. 169077, August 31, 2006, 500 SCRA 659, 676.

²⁵ *People v. Diaz*, G.R. No. 200882, June 13, 2013.

²⁶ Art. 2230 of the New Civil Code – In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party.

²⁷ *People v. Cabungan*, G.R. No. 189355, January 23, 2013, 689 SCRA 236, 248-249.

Resolution

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G.R. No. 208520
September 10, 2014

The Solicitor General (x)
Makati City

Court of Appeals
9000 Cagayan de Oro City
(CA-G.R. CR H.C. No. 00834-MIN)

The Superintendent
Davao Prison and Penal Farm
Dujali, Davao del Norte

The Hon. Presiding Judge
Regional Trial Court, Br. 13
7207 Oroquieta City
(Crim. Case No. 2033-13)

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PUBLIC ATTORNEY'S OFFICE
Counsel for Accused-Appellant
Regional Special and Appealed Cases
Unit-Mindanao Station
2/F, Hall of Justice
9000 Cagayan de Oro City

Judgment Division (x)
Supreme Court

Mr. Pedro Fuentes
Accused-Appellant
c/o The Superintendent
Davao Prison and Penal Farm
Dujali, Davao del Norte

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