



Republic of the Philippines
Supreme Court
 Manila

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WILFREDO V. LAPITAN
 Division Clerk of Court
 Third Division

OCT 06 2016

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
 Plaintiff-Appellee,

G.R. No. 199397

Present:

VELASCO, JR., J.,
Chairperson,

-versus-

BRION,*
PERALTA,
PEREZ, and
REYES, JJ

DARWIN GITO y CORLIN,
 Accused-Appellant.

Promulgated:

September 14, 2016

X----------X

RESOLUTION

PEREZ, J.:

Before us for review is the Court of Appeals' Decision¹ promulgated on 26 May 2011 in CA-G.R. CR-HC No. 03464. The Decision affirmed the Regional Trial Court (RTC), Branch 63, Camarines Sur's conviction of appellant Darwin Gito y Corlin for rape.

Appellant, together with one Jonery Arabaca y Salufraña (Jonery) are charged with rape in the following Information:

Criminal Case No. 03-884

That on or about 11th day of May, 2003, at around 1:00 o'clock in the morning in [XXX] and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, willfully, unlawfully and feloniously through force and

* Additional Member per Raffle dated 14 September 2016.
 Rollo, pp. 2-10; Penned by Associate Justice Mario L. Guarina III with Associate Justices Apolinario D. Bruselas, Jr. and Manuel M. Barrios concurring.

intimidation had carnal knowledge with [AAA],² fourteen years old, against her will, and to her damage and prejudice.³

Criminal Case No. 03-884

That on or about 11th day of May, 2003, around 1:00 o'clock in the morning in [XXX] and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, willfully, unlawfully and feloniously through force and intimidation had carnal knowledge with [AAA], fourteen years old, against her will, and to her damage and prejudice.

The crime is committed with the following attendant aggravating/qualifying circumstances:

The crime is committed with the use of a deadly weapon.⁴
(Emphasis omitted)

Appellant was arrested in 28 August 2006 while the other accused, Jonery remained at large.

Upon arraignment, appellant pleaded not guilty.

The prosecution's version of the rape incident goes:

AAA, then fourteen years old, lived with her partner, Alexander Arabaca (Alexander), at the house of her grandmother. They slept in a portion of the house separated only by a plastic sack as partition while AAA's grandmother and two minor cousins slept on the other part of the house. On 11 May 2003 at around 1:00am, AAA was sleeping beside Alexander when she was awakened to see the latter's brother, Jonery and appellant standing beside her. After waking her up, Jonery told AAA that he wanted to talk, then forcibly pulled her out from the bed. AAA tried to resist and even called for Alexander, but the latter was too intoxicated to wake up. Jonery and appellant dragged AAA out and into the back of the house. Appellant pushed AAA to the ground. Thereat, AAA was raped first by Jonery and followed by appellant. While doing their bestial act, Jonery threatened AAA with a knife while appellant pricked her skin with his long fingernail. After satisfying their lust, Jonery and appellant fled the scene. AAA then went back to bed and woke Alexander up. She told Alexander what had happened but the latter did not believe her. AAA just kept crying

² The real name of the victim and her address are withheld to protect her privacy. See *People v. Cabalquinto*, 533 Phil. 703 (2006).

³ Records (Crim. Case No. RTC-'03-884), p. 1.

⁴ Records (Crim. Case No. RTC-'03-885), p. 1.



and eventually fell asleep. When she woke up the following day, Alexander was no longer around. She immediately saw Tia Lita Bugate and told her that she was raped. She reported the incident to the *barangay*⁵ and underwent a medical examination on 15 May 2003 where she was found to have healed lacerations in her genital area.⁶ AAA was certified by the Municipal Civil Registrar's Office to be fourteen years old at the time of the alleged rape.

Bugate is AAA's neighbor. Her house is located at about two (2) meters away from AAA's house. Bugate testified that on even date and time, she heard AAA calling for "Alex" numerous times. On the following morning, AAA told her that Jonery and appellant raped her.⁷

Alexander testified that he slept in the house of AAA's grandmother from 10 to 11 May 2003. He woke up at around 1:00 a.m. and went back to sleep after thirty (30) minutes. AAA was sleeping beside him. He finally woke up at 4:00 a.m. and went to his parent's house. Upon reaching his parents' house, Jonery, who just woke up, showed Alexander a letter from AAA manifesting her love for Jonery. Alexander confirmed that the handwriting on the letter was that of AAA.⁸

Appellant testified on his behalf. He claimed that on the alleged date of the crime, he was in the public market of Naga City with his mother. They waited for the arrival of fruits until 12:00 o'clock midnight of 10 May 2003. When the fruits arrived, they inspected them before buying. They then hired a tricycle and arrived at the jeepney terminal at 2:00 a.m. of 11 May 2003. They slept at the terminal until 9:00 a.m.⁹ On 12 May 2003, AAA confronted appellant and accused him of spreading stories about her relationship with Jonery. Appellant surmised that he was falsely accused of rape because AAA held a grudge against him.¹⁰

In a Decision¹¹ dated 24 June 2008, the trial court found appellant guilty beyond reasonable doubt of two counts of rape. The dispositive portion of the decision reads:

⁵ TSN, 6 December 2006, pp. 2-11.

⁶ Records (Crim. Case No. RTC-'03-885), p. 6.

⁷ TSN, 13 December 2006, pp. 14-17.

⁸ TSN, 19 June 2007, pp. 3-8.

⁹ TSN, 28 August 2007, pp. 4-6.

¹⁰ Id. at 10.

¹¹ Records (Crim. Case No. RTC-'03-884), pp. 120-140.

WHEREFORE, in view of the foregoing, the prosecution having proven the guilt of the accused Darwin Gito y Corlin beyond reasonable doubt of the offense of rape as charged, defined and penalized under Article 266-A I relation to Article 266-B, as amended by Republic Act 8353, accused Darwin Gito y Corlin is hereby sentenced to suffer the following penalties:

1. In Crim. Case No. RTC'03-884, accused Darwin Gito y Corlin is hereby sentenced to suffer the penalty of reclusion perpetua. He is likewise ordered to pay the victim [AAA] civil indemnity in the amount of P50,000.00 and moral damages in the amount of P50,000.00 and to pay the costs.
2. In Crim. Case No. RTC'03-885, accused Darwin Gito y Corlin is hereby sentenced to suffer the penalty of reclusion perpetua. He is likewise ordered to pay the victim [AAA] civil indemnity in the amount of P50,000.00 and moral damages in the amount of P50,000.00 and to pay the costs.

Considering that accused Darwin Gito y Corlin has undergone preventive imprisonment, he shall be credited in the service of his sentence with the time he has undergone preventive imprisonment subject to the conditions provided for by law. Accused is likewise meted the accessory penalty of perpetual absolute disqualification as provided for under Article 41 of the Revised Penal Code.

The records insofar as accused Jonery Arabaca y Salufrana is concerned, who is still at large, is hereby ordered sent to the archives without prejudice of reviving the same in the event that said accused is arrested. Meanwhie, let an alias warrant of arrest be issued for the arrest of accused Jonery Arabaca y Salufraña.¹²

The trial court gave full credence to the testimony of AAA that she was raped by Jonery and appellant. The trial court dismissed appellant's sweetheart defense considering that a mere love letter is not sufficient to prove that AAA had a relationship with Jonery. The trial court did not give weight to the alleged motive of revenge proffered by appellant. The trial court considered appellant's flight as an indication of guilt.

On 26 May 2011, the Court of Appeals affirmed the decision of the trial court. It ruled that AAA was able to positively identify the perpetrators.

In his Brief,¹³ appellant reiterates that he was at the Naga City public market buying fruits with his mother at around 1:00 a.m. making it impossible for him to have committed the crime charged. Appellant claims

¹² Id. at 139-140.

¹³ CA rollo, pp. 45-62.



that AAA's testimony is fraught with incredulity as evidenced by her behavior before and during the rape incident. First, appellant argues that if AAA was certain that he and Jonery raped her, then she could have easily told Alexander to run after them. Second, AAA could have easily shouted for help from her grandmother and cousins, who were also sleeping inside the same house. Third, it was impossible for Alexander not to wake up when AAA tried to wake him up by calling for him and touching his feet.

The Office of the Solicitor-General maintains AAA had described in unmistakable clarity that she was raped and said fact was corroborated by the medical findings. The OSG points out that appellant's denial and alibi cannot prevail over the positive declaration of the victim.

Simply put, the credibility of AAA is being assailed in this case.

It is axiomatic that where the issue is one of credibility of witnesses, and in this case their testimonies as well, the findings of the trial court are not to be disturbed unless the consideration of certain facts of substance and value, which have been plainly overlooked, might affect the result of the case.¹⁴ *People v. Abat*¹⁵ expounded on the rationale behind this principle, thus:

It is well settled that the evaluation of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct, and attitude under grilling examination. These are important in determining the truthfulness of witnesses and in unearthing the truth, especially in the face of conflicting testimonies. For, indeed, the emphasis, gesture, and inflection of the voice are potent aids in ascertaining the witness' credibility, and the trial court has the opportunity and can take advantage of these aids. These cannot be incorporated in the record so that all that the appellate court can see are the cold words of the witness contained in transcript of testimonies with the risk that some of what the witness actually said may have been lost in the process of transcribing. As correctly stated by an American court, "[t]here is an inherent impossibility of determining with any degree of accuracy what credit is justly due to a witness from merely reading the words spoken by him, even if there were no doubt as to the identity of the words. However artful a corrupt witness may be, there is generally, under the pressure of a skillful cross-examination, something in his manner or bearing on the stand that betrays him, and thereby destroys the force of his testimony. Many of the real tests of truth by which the artful witness is exposed in the

¹⁴ *People v. Mangune*, 698 Phil. 759, 769 (2012).

¹⁵ G.R. No. 202704, 2 April 2014, 720 SCRA 557.



very nature of things cannot be transcribed upon the record, and hence they can never be considered by the appellate court.”¹⁶

We find no valid reason to depart from the abovementioned doctrine especially when both the lower courts found AAA’s testimony categorical and positive.

AAA categorically narrated in court her harrowing experience in the hands of appellant and Jonery, to wit:

Q: While you were there at around 1:00 o’clock in the morning, what incident if any, has occurred?

A: While we were already asleep, Darwin and Jonery arrived and this Jonery tried to wake me up.

Q: You said Darwin and Jonery, will you please tell us what is the surname of this Darwin?

A: Gito.

Q: What about Jonery?

A: Arabaca.

Q: You said you were asleep. Where were you sleeping?

A: I was sleeping together with my husband.

Q: Will you please describe to us that place where you were sleeping?

A: The walls of the room are only made of sacks and it is only open. One of the portion of the room is open.

PROS. CARINO:

May I make of record that the witness is already crying.

Q: What about your grandmother, in what part of the house is she sleeping with two of your cousins?

A: Just beside that place where we were sleeping.

Q: Is that another room?

A: Yes, ma’am.

Q: You said that Jonery woke you up and you said that his surname is Arabaca. How is he related to Alexander Arabaca whom you said your common-law husband?

A: They are brothers.

Q: After Jonery woke you up, what happened next, if any?

A: He called me and told me that he wanted to talk to me.

¹⁶ Id. at 564-565 citing *People v. Banzuela*, 723 Phil. 797, 815 further citing *People v. Sapigao, Jr.*, 614 Phil. 589, 599 (2009).

Q: What did he do after he called you and told you that he wanted to talk to you?

A: He suddenly pulled me forcibly.

Q: Where was he when he called you, how far was he from the place where you were sleeping with Alex?

A: He was standing on our right side, here.

x x x x

Q: When Jonery pulled you, what did you do, if any?

A: I fought him and I was calling Alex.

Q: Why were you calling Alex?

A: Because they were forcing me and Alex then was dr[u]nk that's why he did not wake up.

x x x x

Q: After Jonery pulled you and you said you were trying to fight him and calling the name [of] Alex, what happened next?

A: I was parrying him with my hands, as demonstrated by the witness, and I was touching the feet of Alex with my other hand and this Darwin was pushing me.

Q: After Darwin has pushed you, what happened next after that?

A: I was brought at the back of our house.

Q: Will you please point to us the distance from the bed to the place where you [were] brought?

INTERPRETER:

The witness pointed to the door of the courtroom.

PROS. CARINO:

Which is about 8 meters more or less.

COURT:

More or less 8 meters as agreed upon by both counsels.

Q: How were you brought on that area?

A: They were pulling me.

Q: Who pulled you?

A: It was Darwin who was holding me until he made me lie down on the ground.


Q: After Darwin laid you down on the ground, what happened next?

- A: He told Jonery to be the first one.
- Q: When Darwin laid you down on the ground, what did you do, if any?
- A: I tried to stand up.
- Q: After Darwin said, you be the first to Jonery, what happened next?
- A: Jonery immediately laid on top of me, so I could not move.
- Q: After Jonery laid on top of you, what happened next, if any?
- A: A fan knife was poked on me.
- Q: And after he poked a knife at you, what happened next?
- A: My panty and shorts were removed.
- Q: And so, after they were removed, what happened next?
- A: He pulled out his penis and inserted it into my vagina.
- Q: From where did he pull it out?
- A: To my vagina.
- Q: After he inserted his penis into your vagina, what happened next, if any?
- A: He made a push and pull movement.
- Q: After he made a push and pull movement, Jonery, what happened next?
- A: When he was already finished, he stood up and I tried to pull my panty up but Darwin, his very long fingernails pricked on my veins on my wrist.

COURT:

- Q: Who made that?
- A: Him.
- Q: Who inserted his penis into your vagina?
- A: It was Jonery who first inserted his penis into my vagina.

PROS. CARINO:

- Q: After you said you were trying to pull your panty but Darwin pricked you with his long fingernails, what happened next after he pricked your wrist with that long fingernails?
- A: I felt very weak. Even I wanted to stand up but I was not able to do so because he immediately pulled down my panty.
- Q: After he pulled down your panty, what did Darwin do next, if any?
- A: He immediately removed his brief and shorts.
- Q: After he did that what happened next, if any?
- A: He inserted his penis into my vagina.
- 

Q: After he inserted his penis into your vagina, what did he do next, if any?

A: He had sexually molested me.

Q: After he did that what happened next?

A: They left me alone there.¹⁷

The trial court correctly favored AAA's account as her testimony jived with other testimonial and physical evidence, thus:

In the instant case, [AAA] had testified that she was raped on May 11, 2003 at about 1:00 o'clock in the early morning, first by Jonery Arabaca and afterwards by Darwin Gito. According to her, she was dragged from the place where she was then sleeping together with her common-law husband Alex who is the brother of Jonery Arabaca. A knife was poked at her and immediately Jonery Arabaca had removed her pants, shorts and panty and inserted his penis into her vagina and made a push and pull movement. Afterwards, Darwin Gito also followed wherein he also sexually molested her. This happened at the back of their house where she was dragged by the two accused. This testimony of [AAA] was clear, straightforward and she never faltered even on cross, as a matter of fact, the following morning after the incident, she told her Tia Lita Bugate, one of their neighbors about the incident that she was raped on that night in the early morning of May 11, 2003 by the two accused and that she then called Alex, her common-law husband but he had not waken up because at that time he was dr[u]nk. This testimony of [AAA] that she was calling Alex was corroborated by her Tia Lita Bugate that she had heard her calling Alex at about 1:00 o'clock early morning of May 11, 2003 while she was at their residence drinking coffee together with her husband but they did not mind when they heard [AAA] calling her husband because they thought they were just having a discussion. Immediately she made a report to the barangay authorities and on May 15, 2003, she reported for medical examination and having examined by Dr. Ursolino Primavera and then on May 19, she reported to the police authorities of what happened to her. Dr. Primavera then corroborated the testimony of [AAA] that indeed she had examined [AAA] on May 15, 2003 and in his examination, he found out that her vagina admits two fingers, meaning there were lacerations on the hymen and healed laceration. He further explained that what he had stated in his findings was that the healed laceration could be either an old or fresh laceration. Old healed laceration could be already a month ago while fresh healed laceration could be two weeks below. He concluded that when he had examined the patient she has a menstrual cycle usually last from 5 to 7 days. This therefore, corroborated the testimony of [AAA] that indeed she had immediately submitted herself to medical examination. The reporting made by [AAA] of what happened to her shows that indeed she was telling the truth that she was allegedly

¹⁷ TSN, 6 December 2006, pp. 3-8.

raped by both accused Darwin Gito and Jonery Arabaca who is still at large.¹⁸

Appellant points out to incredulities in AAA's statements such as her failure to shout for help; the failure of Alexander to wake up to her aid; and the fact that AAA's relatives did not notice anything when they were sleeping in the same house as AAA.

AAA's failure to shout for help can be attributed to the fact that she was threatened by Jonery with a knife while she was being ravished. This continuing intimidation had certainly cowed AAA into submission. The failure of Alexander to wake up to come to AAA's aid was sufficiently explained by his intoxication. Alexander had in fact admitted that he drank gin before going to the house of AAA to sleep. Finally, we have repeatedly held that lust is no respecter of time and place. Rape may even be committed in the same room where other family members also sleep.¹⁹

Based on the testimony of AAA, there was carnal knowledge first, between her and Jonery and second, between her and appellant. Conspiracy was correctly appreciated by the trial court when it ruled in this wise:

In these particular cases, it was proven by the prosecution that [AAA] was being dragged by Jonery Arabaca and pushed by Darwin Gito at about 1:00 O'clock in the morning of May 11, 2003 towards the back of their kitchen and upon reaching outside of the house where [AAA] was staying at that time, Jonery Arabaca poked a knife at her and pushed her down and removed her panty and shorts and laid on top of her, inserted his penis into her vagina and make a push and pull movement while Darwin Gito was watching Jonery Arabaca doing the act and after Jonery Arabaca had finished doing the act Darwin Gito also laid on top of her and inserted his penis into her vagina. These acts therefore of the two accused connotes the existence of conspiracy. There was an intentional participation on the part of the two accused to furtherance of their common design and purpose of raping [AAA]. An aggravating circumstances of using deadly weapon was duly proven by the prosecution as well as stated in the information itself.²⁰

Appellant's alibi and denial did not escape the trial court's scrutiny and it found that they cannot stand against the overwhelming evidence of the prosecution.

¹⁸ Records (Crim. Case No. RTC-'03-884), pp. 129-130.

¹⁹ *People v. Rubio*, 683 Phil. 714, 726 (2012).

²⁰ Records (Crim. Case No. RTC-'03-884), p. 138.



The “sweetheart” theory of appellant cannot prosper. The alleged love letter presented by the defense was disregarded by the lower court in view of AAA’s denial of writing the same. Moreover, we emphasized the doctrine that being sweethearts does not negate the commission of rape because such fact does not give appellant license to have sexual intercourse against her will, and will not exonerate him from the criminal charge of rape. Being sweethearts does not prove consent to the sexual act.²¹

Under the second paragraph of Article 266-B, the penalty of *reclusion perpetua* to death shall be imposed if the crime of rape is committed with the use of a deadly weapon. Since there was no other aggravating circumstance alleged in the Informations and proven during the trial, the imposed penalty of *reclusion perpetua* for each count of rape is proper.

Finally, a modification of damages is in order. We deem it proper to award exemplary damages in favor of AAA. The award of exemplary damages is justified under Article 2230 of the Civil Code if there is an aggravating circumstance, whether ordinary or qualifying.²² Pursuant to *People v. Jugueta*,²³ civil indemnity, moral damages and exemplary damages should be increased to ₱100,000.00 each. In addition, interest at the rate of six percent (6%) *per annum* shall be imposed on all monetary awards from date of finality of this Resolution until fully paid.

WHEREFORE, the assailed 26 May 2011 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 03464 finding appellant Darwin Gito y Corlin guilty beyond reasonable doubt of the crime of rape is **AFFIRMED with MODIFICATION**. Appellant shall pay AAA civil indemnity of ₱100,000.00; moral damages of ₱100,000.00; and exemplary damages of ₱100,000.00; and all monetary awards shall earn interest at the rate of six percent (6%) *per annum* from date of finality of this Resolution until fully paid.

SO ORDERED.



JOSE PORTUGAL REREZ
Associate Justice

²¹ *People v. Olesco*, 663 Phil. 15, 25 (2011) citing *People v. Magbanua*, 576 Phil. 642, 647-648 (2008).

²² *People v. Tabayan*, 736 Phil. 543, 562 (2014).

²³ G.R. No. 202124, 5 April 2016.

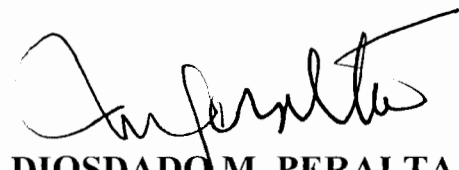
WE CONCUR:



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson



ARTURO D. BRION
Associate Justice



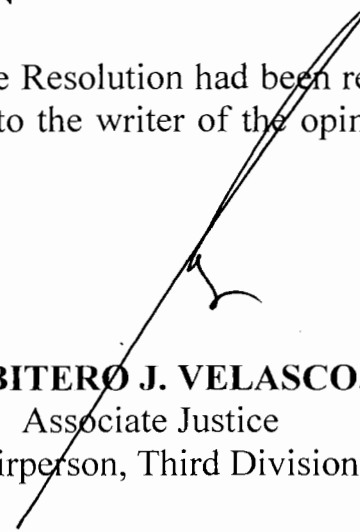
DIOSDADO M. PERALTA
Associate Justice



BIENVENIDO L. REYES
Associate Justice

ATTESTATION

I attest 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.



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division


CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, it is hereby certified 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.



MARIA LOURDES P. A. SERENO
Chief Justice

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WILFREDO V. LAPITAN
Division Clerk of Court
Third Division

OCT 06 2016