Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

THE PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee,	**G.R. No. 224597** Members:
-versus-	**CARPIO, *J.*, *Chairperson*, PERLAS-BERNABE, CAGUIOA, J. REYES, JR.,** and **LAZARO-JAVIER, *JJ.***
DANTE CUBAY y UGSALAN, Accused-Appellant.	Promulgated: 29 JUL 2019

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DECISION

LAZARO-JAVIER, J.:

The Case

This appeal[1] seeks to reverse and set aside the Decision[2] dated November 24, 2015 of the Court of Appeals in CA-G.R. CR-HC No. 01145-MIN, which affirmed the trial court's verdict of conviction[3] against accused-appellant Dante Cubay y Ugsalan for forty-four (44) counts of rape. Its dispositive portion reads:

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1 CA *rollo*, pp. 300-301, filed under Section 2, Rule 125 in relation to Section 3, Rule 56 of the Rules of Court.

2 Penned by Associate Justice Oscar V. Badelles and concurred in by Associate Justices Romulo V. Borja and Pablito A. Perez, *rollo*, pp. 3-13;

3 CA *rollo*, pp. 239-252, Joint Judgment dated January 30, 2013 of the Regional Trial Court, Manolo Fortich, Bukidnon, Branch 11, in Criminal Case Nos. 08-05-3536 to 08-05-3579.

WHEREFORE, the appeal is DENIED. The Joint Judgment dated 30 January 2013 of the Regional Trial Court (RTC) of Manolo Fortich, Bukidnon, Branch 11 in Criminal Case Nos. 08-05-3536 to 08-05-3579 finding accused-appellant Dante Cubay guilty beyond reasonable doubt of forty-four (44) counts of rape is AFFIRMED in *toto*.

SO ORDERED.[4]

The Informations

Appellant Dante Cubay y Ugsalan was charged with forty-four (44) counts of rape under separate Informations which, except for the material dates, uniformly read, thus:

> That on or about the 7th day of September, 2007, in the evening, at XXX, province of Bukidnon, Philippines particularly at the Special Education Dormitory (SPED) and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have sexual intercourse with [AAA], (an) 18 year-old (who) suffered (a) physical defect (hearing impaired) against her will, to the damage and prejudice of [AAA] in such amount as (may be) allowed by law.
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> CONTRARY to (and) in violation of R.A. 8353.[5]

The forty-four (44) Informations bore the following details, *viz:*

	Case Number	*Date of Commission*
1.	Crim. Case No. 08-05-3536	September 7, 2007
2.	Crim. Case No. 08-05-3537	September 10, 2007
3.	Crim. Case No. 08-05-3538	September 11, 2007
4.	Crim. Case No. 08-05-3539	September 12, 2007
5.	Crim. Case No. 08-05-3540	September 13, 2007
6.	Crim. Case No. 08-05-3541	September 14, 2007
7.	Crim. Case No. 08-05-3542	September 17, 2007
8.	Crim. Case No. 08-05-3543	September 18, 2007
9.	Crim. Case No. 08-05-3544	September 19, 2007
10.	Crim. Case No. 08-05-3545	September 20, 2007
11.	Crim. Case No. 08-05-3546	September 21, 2007
12.	Crim. Case No. 08-05-3547	September 24, 2007
13.	Crim. Case No. 08-05-3548	September 25, 2007
14.	Crim. Case No. 08-05-3549	September 26, 2007

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4 *Rollo*, p. 13.

5 Record (Criminal Case No. 08-05-3536), p. 2.

15.	Crim. Case No. 08-05-3550	September 27, 2007
16.	Crim. Case No. 08-05-3551	September 28, 2007
17.	Crim. Case No. 08-05-3552	October 1, 2007
18.	Crim. Case No. 08-05-3553	October 3, 2007
19.	Crim. Case No. 08-05-3554	October 4, 2007
20.	Crim. Case No. 08-05-3555	October 5, 2007
21.	Crim. Case No. 08-05-3556	October 8, 2007
22.	Crim. Case No. 08-05-3557	October 9, 2007
23.	Crim. Case No. 08-05-3558	October 10, 2007
24.	Crim. Case No. 08-05-3559	October 11, 2007
25.	Crim. Case No. 08-05-3560	October 12, 2007
26.	Crim. Case No. 08-05-3561	November 6, 2007
27.	Crim. Case No. 08-05-3562	November 7, 2007
28.	Crim. Case No. 08-05-3563	November 8, 2007
29.	Crim. Case No. 08-05-3564	November 9, 2007
30.	Crim. Case No. 08-05-3565	December 7, 2007
31.	Crim. Case No. 08-05-3566	December 6, 2007
32.	Crim. Case No. 08-05-3567	December 5, 2007
33.	Crim. Case No. 08-05-3568	December 4, 2007
34.	Crim. Case No. 08-05-3569	December 3, 2007
35.	Crim. Case No. 08-05-3570	November 13, 2007
36.	Crim. Case No. 08-05-3571	November 14, 2007
37.	Crim. Case No. 08-05-3572	November 15, 2007
38.	Crim. Case No. 08-05-3573	November 16, 2007
39.	Crim. Case No. 08-05-3574	January 14, 2008
40.	Crim. Case No. 08-05-3575	January 15, 2008
41.	Crim. Case No. 08-05-3576	January 16, 2008
42.	Crim. Case No. 08-05-3577	January 17, 2008
43.	Crim. Case No. 08-05-3578	January 18, 2008
44.	Crim. Case No. 08-05-3579	November 12, 2007

The cases were raffled to the Regional Trial Court, Branch 11, Manolo Fortich, Bukidnon.

Arraignment and Plea

On arraignment, appellant pleaded "not guilty" to all the charges.[6] Thereafter, the cases were consolidated and jointly tried.

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[6] *Id.* at 22-24.

During the trial, complainant AAA, her attending doctor Rubee Ann Go-Gotil, her two aunts BBB and CCC, SPED Teacher DDD, and sign language experts Joshua Asuela, Jr. and Roygie Gantalao testified for the prosecution. On the other hand, appellant Dante Cubay alone testified for the defense.

The Prosecution's Version

Complainant is a congenital deaf mute.[7] Her hearing impairment was classified as "profound" and her level of education in formal sign language, low, *i.e.* that of a grade two (2) pupil. But she is teachable in the informal or basic sign language.

In 2003, complainant started studying at XXX Special Education (SPED) Center – a special school for children with disabilities, *i.e.* mental, visual, and hearing impairment.[8] The SPED Center and dormitory were located inside XXX Elementary School, XXX, Bukidnon. The school required SPED students to stay in the dormitory. Complainant stayed in the dormitory during school days and went home to her grandfather's house at XXX, Bukidnon on weekends.[9]

Appellant is the school watchman assigned at XXX Elementary School, XXX SPED Center, and the SPED dormitory. His wife is the dormitory's caretaker.[10]

Complainant's aunt, BBB is a SPED teacher in XXX SPED Center.[11] One time, complainant's teacher DDD told BBB that she (DDD) saw complainant eating snacks with appellant. To quell rumors about complainant and appellant, BBB convinced her father (complainant's grandfather) to have complainant move in with her.[12] Complainant initially agreed but when her grandfather came to fetch her, she refused to go because she was afraid her grandfather would scold her. Three (3) days later, she voluntarily went to her grandfather's house which was closer to the house of her other aunt CCC.[13]

Complainant's physical and behavioral changes, including her frequent headache and stomach ache aroused her aunts' suspicion. Then CCC learned complainant had missed her menstrual period. CCC caused complainant to take a pregnancy test which yielded a positive result.[14] When asked who the father of her child was and who molested her,

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7 TSN, April 10, 2012, p. 6.
8 TSN, August 11, 2010, p. 5-8; Exhibit "B," Record (Criminal Case No. 08-05-3536), p. 11.
9 TSN, April 6, 2011, pp. 16-18; TSN, April 10, 2012, pp. 4-7.
10 TSN, August 11, 2010, p. 10.
11 *Id.* at 11-12.
12 TSN, August 11, 2010, pp. 11-12; TSN, November 17, 2010, p. 18.
13 TSN, November 17, 2010, pp. 13-20.
14 *Id.* at 25-27.

complainant motioned the name "Dante," herein appellant. She then charged appellant with rape before the XXX Police Station.[15]

With the assistance of sign language interpreters Joshua Asuela, Jr. and Roygie Gantalao, complainant testified that sometime in September 2007, while she was studying inside her dormitory room, appellant entered her room, undressed her, touched her body, and inserted his penis in her vagina. She pushed appellant, but it was in vain.[16] The incident was repeated several times, specifically on September 7, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 24, 25, 26, 27, and 28, 2007; October 1, 3, 4, 5, 8, 9, 10, 11, and 12, 2007; November 6, 7, 8, 9, 12, 13, 14, 15, and 16, 2007; December 3, 4, 5, 6, and 7, 2007; and January 14, 15, 16, 17, and 18, 2008. The rape incidents happened at night during school days inside complainant's dormitory room. Complainant consequently conceived and gave birth to a child in June 2009.[17]

On January 28, 2008, Dr. Rubee Ann Go-Gotil examined complainant and found old healed hymenal lacerations at 3 and 9 o'clock positions. She also confirmed complainant's pregnancy. Her Living Case Report[18] contained her findings.

The prosecution presented as documentary evidence: Living Case Report dated January 29, 2008[19] (Exhibit "A"); Certification dated January 30, 2008[20] (Exhibit "B"); and Complainant's Sworn Statement dated January 27, 2008[21] (Exhibit "C").

The Defense's Version

Appellant denied the charges. He admitted he had sexual congress with complainant for more than forty-four (44) times but asserted they were all consensual. Complainant filed the rape charges only because her pregnancy and illicit affair with him brought embarrassment to her family.

On February 27, 2007, he got employed as watchman of XXX SPED School and Dormitory in XXX Elementary School. He worked from 7:30 in the evening until 4:30 in the morning and resided in the school dormitory. His wife also worked and resided in the SPED dormitory as caretaker tasked to look after the blind students. He met complainant on the same day he got employed. She and her friend EEE frequently roamed around the school premises and visited him in his post at night. Complainant communicated

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15 TSN, April 10, 2012, pp. 17-18; TSN, August 7, 2012, pp. 8-11; TSN, May 29, 2012, pp. 8-11.
16 TSN, April 10, 2012, pp. 7-16.
17 *Id.* at 16-18.
18 Exhibit "A," Record (Criminal Case No. 08-05-3536), p. 10.
19 *Id.*
20 *Id.* at 11.
21 Record (Criminal Case No. 08-05-3537), p. 7.

with him through sign language which EEE, a polio victim with no hearing impairment, would interpret to him.[22]

On February 28, 2007, complainant spoke signs to appellant. EEE said complainant was telling him he was handsome and she liked him. He knew complainant liked him because she even wrote him a letter which his wife had torn. Complainant told him she wanted them to be friends even after he confided to her he was already married. They had since become lovers. Complainant visited him in his post every night. She became close to him and even gave him a stuff toy, watch, and a photo of them together with dedication at the back.[23]

On October 3, 2007, complainant went to his sleeping quarters and gave him a watch and a stuff toy.[24] Because of the heavy rains that night, his companion who occupied the quarters with him did not arrive. He told complainant to go home but the latter refused and even slept beside him. Complainant pinched him, then they started kissing, tickling, and hugging each other. They eventually had sexual intercourse. Complainant never resisted but consented to everything they did. She even sucked his lips when he inserted his sex organ into hers. After October 3, 2007, they had many more nights of sexual congress in his quarters, all with complainant's full consent. Complainant was already of legal age when they started having sexual intercourse.[25] He had sexual intercourse with complainant more than forty-four (44) times.[26] EEE and his wife's male cousin named Rey knew about his sexual congress with complainant as they, too, were lovers.[27]

Complainant charged him with rape only because her aunt BBB had threatened her.[28]

The defense offered in evidence the stuff toy (Exhibit "1"); a ladies' watch (Exhibit "2"); and a picture (Exhibit "3").[29]

The Trial Court's Ruling

By Joint Judgment[30] dated January 30, 2013, the trial court found appellant guilty of forty-four (44) counts of rape, thus:

> WHEREFORE, premises above considered, the court finds DANTE CUBAY y Ugsalan GUILTY beyond reasonable doubt of rape

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22 TSN, November 13, 2012, pp. 7-12.
23 *Id.* at 13-19.
24 TSN, November 27, 2012, p. 26.
25 *Id.* at 13-19.
26 *Id.* at 33.
27 *Id.* at 20-22.
28 *Id.* at 23.
29 See Order dated December 17, 2012, Record (Criminal Case No. 08-05-3537), pp. 123-124; TSN, December 17, 2012, pp. 3-5.
30 Penned by Presiding Judge Jose U. Yamut, Sr., CA *rollo*, pp. 239-252,

of AAA for 44 counts and hereby sentences him to suffer the penalty each of RECLUSION PERPETUA in Criminal Case Numbers 08-05-3536 up to Criminal Case No. 08-05-3579 and he is further ordered:

A – To pay AAA –

1. Civil Indemnity – Php 75,000.00 each for forty-four counts of rape aforementioned;
2. Moral Damages – Php 50,000.00 each for 44 counts of rape aforementioned;
3. Exemplary damages – Php 25,000.00 each for forty-four counts of rape aforementioned;

B – In every case –

4. Recognition of the child of AAA;
5. To support the offspring of AAA; and

C –

6. Pay the costs.

Accused is credited (for) his preventive detention at the PDRC-Manolo Fortich, Bukidnon, and the remainder of his penalties shall be served at the Davao Prison and Penal Farm, B.E. Dujali, Davao del Norte, where he properly belongs.

SO ORDERED.[31]

The Proceedings before the Court of Appeals

On appeal, appellant faulted the trial court for finding him guilty of forty-four (44) counts of rape despite the prosecution's alleged failure to prove his guilt beyond reasonable doubt. Appellant essentially argued: (1) Complainant's testimony did not deserve credence as it was uncorroborated, implausible, and replete with inconsistencies. More, complainant's testimony was only conveyed to the court by sign language interpreters who were engaged by complainant's family and who appeared biased in favor of the prosecution. (2) The trial court erred in allowing the prosecution to propound leading questions on complainant. (3) There was no rape because his sexual congress with complainant was consensual, they being lovers. Although complainant had impaired hearing, she was capable of giving consent to the sexual intercourse. She was already eighteen (18) years old during all their forty-four (44) sexual encounters. She had normal mental faculties during all those times.[32]

On the other hand, the Office of the Solicitor General (OSG), through State Solicitor Alberto T. Talampas maintained that the prosecution was able to prove to a moral certainty that appellant had carnal knowledge of

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[31] *Id.* at 251-252.
[32] CA *rollo*, pp. 209-238.

complainant for forty-four (44) times through force, threat, or intimidation. Her consistent and positive identification of appellant as the man who raped her prevails over appellant's self-serving denial and uncorroborated sweetheart theory.[33]

The Court of Appeals' Ruling

By Decision[34] dated November 24, 2015, the Court of Appeals affirmed.

The Present Appeal

Appellant now seeks affirmative relief from the Court and prays anew for his acquittal. In compliance with Resolution[35] dated July 13, 2016, both appellant and the OSG manifested[36] that, in lieu of supplemental briefs, they were adopting their respective briefs before the Court of Appeals.

Issues

Did the Information validly charge the crime of rape?

Assuming the affirmative, was the prosecution able to prove beyond reasonable doubt the forty-four (44) counts of rape?

Ruling

The Informations do not charge the crime of rape.

The principal purpose of an Information is to ensure that the accused is formally informed of the facts and acts constituting the offense charged[37] in accordance with the rights of the accused enshrined in the Constitution.[38] Toward this end, the Rules of Court requires that the Information clearly accurately allege every element of the offense charged. Section 6, Rule 110 pertinently provides:

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[33] *Id.* at 263-281.
[34] *Rollo*, pp. 3-13.
[35] *Id.* at 19-20.
[36] *Id.* at 21-22, and 24-25.
[37] See *People v. Sandiganbayan*, 769 Phil. 378, 387 (2015).
[38] Article III, Section 14 of the 1987 Constitution pertinently provides:
Section 14. (1) No person shall be held to answer for a criminal offense without due process of law.
(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused: Provided that he has been duly notified and his failure to appear is unjustifiable.

> **Section** 6. *Sufficiency of complaint or information.* - A complaint or information is sufficient if it states the name of the accused, the designation of the offense by the statute, **the acts or omissions complained of as constituting the offense;** the name of the offended party; the approximate time of the commission of the offense, and the place wherein the offense was committed.[39] (Emphasis supplied)

Where the Information is insufficient, it cannot be the basis of any valid conviction. ***Quimvel v. People of the Philippines***[40] decrees:

> The main purpose of requiring the elements of a crime to be set out in the Information is to enable the accused to suitably prepare his defense because he is presumed to have no independent knowledge of the facts that constitute the offense. **The allegations of facts constituting the offense charged are substantial matters and the right of an accused to question his conviction based on facts not alleged in the information cannot be waived.** As further explained in *Andaya v. People*:
>
> > **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. The rule is that a variance between the allegation in the information and proof adduced during trial shall be fatal to the criminal case if it is material and prejudicial to the accused so much so that it affects his substantial rights. (Emphasis added)

Here, appellant was charged with forty-four (44) counts of rape. The elements of rape are as follows: (1) the offender had carnal knowledge of a woman; and (2) the offender accomplished such act through force or intimidation, or when the victim was deprived of reason or otherwise unconscious, or when she was under twelve (12) years of age or was demented.

We quote anew the forty-four (44) separate Informations, which except for the material dates, uniformly read:

> That on or about the 7th day of September, 2007, in the evening, at XXX, province of Bukidnon, Philippines particularly at the Special Education Dormitory (SPED) and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have sexual intercourse with [AAA], (an) 18 year-old (who) suffered (a) physical defect (hearing impaired) against her will, to the damage and prejudice of [AAA] in such amount as (may be) allowed by law.

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[39] See also *People v. Gutierrez*, 451 Phil. 227, 239 (2003).
[40] 808 Phil. 889, 912-913 (2017).

CONTRARY to (and) in violation of R.A. 8353.[41]

The Informations conspicuously lack the second element of rape, *i.e.* the accused employed force or intimidation, or that the victim was deprived of reason, unconscious, under twelve (12) years of age, or was demented.

Surely, being a deaf-mute does not necessarily take the place of the element of force or intimidation or having been deprived of reason, unconscious, or demented. The allegation that "the accused did then and there willfully, unlawfully and feloniously have sexual intercourse with AAA, an 18 year-old (who) suffered a physical defect (hearing impaired) against her will, x x x" does not equate to force or intimidation either.

In fine, the Informations do not validly charge the crime of rape or any offense at all. The same, for sure, cannot be the basis of a valid judgment of conviction.

We are not unmindful of the rule that by his plea, an accused is deemed to have waived all objections to the information. This rule, however, is correct only insofar as formal objections to the pleadings are concerned. By express provision of Section 9, Rule 117 of the Rules of Court and by established jurisprudence, the validity of the Information *vis-à-vis* the essential issue of whether or not it sufficiently charges an offense goes into the very foundation of jurisdiction, hence, may be raised and addressed at any stage of the proceedings. Sections 9 and 3 of Rule 117 relevantly provide:

> Sec. 9. *Failure to move to quash or to allege any ground therefor.* - The failure of the accused to assert any ground of a motion to quash before he pleads to the complaint or information, either because he did not file a motion to quash or failed to allege the same in said motion, **shall be deemed a waiver of any objections except those based on the grounds provided for in paragraphs (a), (b), (g), and (i) of Section 3 of this Rule**. (Emphasis supplied)
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> Sec. 3. *Grounds.* - The accused may move to quash the complaint or information on any of the following grounds:
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> (a) **That the facts charged do not constitute an offense;**
>
> (b) That the court trying the case has no jurisdiction over the offense charged;
>
> x x x x
>
> (g) That the criminal action or liability has been extinguished; and
>
> x x x x

[41] Record (Criminal Case No. 08-05-3536), p. 2.

> (i) That the accused has been previously convicted or acquitted of the offense charged, or the case against him was dismissed or otherwise terminated without his express consent. (Emphasis supplied)

In some cases, the Court considered the omission of the essential element of "force or intimidation" to be non-fatal in view of its recital in the complaint itself which at any rate formed part of the Information.[42]

But this is not the case here. Both the Information and Complaint did not allege the essential element of "force or intimidation," specifically, that the accused employed force or intimidation, or that the victim was deprived of reason, unconscious, under twelve (12) years of age, or was demented. For easy reference, the Complaint reads, thus:

> The undersigned offended party, hereby accuses Dante U. Cubay, 40 years old, married a caretaker of XXX Central School, a resident of XXX, Bukidnon for the crime of RAPE, committed as follows, to wit:
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> > That every ten (o'clock) in the evening during school days of September 7, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 24, 25, 26, 27, 28, 2007, October 1, 3, 4, 5, 8, 9, 10, 11, 12, 2007, November 6, 7, 8, 9, 12, 13, 14, 15, 16, 2007, December 3, 4, 5, 6, 7, 2007 and January 14, 15, 16, 17, 18, 2008 at SPED Dormitory, XXX, Province of Bukidnon, Philippines and within the (jurisdiction) of this Honorable Office of the Department of Justice, the (above-named) accused did then and there willfully, unlawfully, maliciously intend and with lewd desire rape the minor who is a hearing impaired and had given her money and other things thus sex was not freely given.
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> CONTRARY TO LAW, under ART. 335 of the RPC.[43]

To repeat, an Information which does not sufficiently charge an offense is fatally defective and warrants the acquittal of the accused.

Guelos v. People[44] explains the significance of the propriety and sufficiency of the charge made in the information, *viz:*

> In *People v. Flores, Jr.*, as reiterated in the more recent cases of *People v. Pangilinan* and *People v. Dadulla,* the Court ruled that the constitutional right of the accused to be informed of the nature and cause of the accusation against him cannot be waived for reasons of public policy. Hence, it is imperative that the complaint or information filed against the accused be complete to meet its objectives. As such, an indictment *must fully state the elements of the specific offense* alleged to

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42 *People v. Mendez*, 390 Phil. 449, 458 (2000), citing *People v. Oso*, 62 Phil 271, 274-275 (1935).
43 Record (Criminal Case No. 08-05-3536), p. 6.
44 811 Phil. 37, 62-63 (2017), citing *People v. Flores,* 442 Phil. 561, 569-570 (2002).

have been committed. **For an accused cannot be convicted of an offense, even if duly proven, unless it is alleged or necessarily included in the complaint or information.** In other words, the complaint must contain a specific allegation of every fact and circumstance necessary to constitute the crime charged, the accused being presumed to have no independent knowledge of the facts that constitute the offense. **Under Section 9 of Rule 117 of the 2000 Revised Rules on Criminal Procedure, an accused's failure to raise an objection to the insufficiency or defect in the information would not amount to a waiver of any objection based on said ground or irregularity.** (Emphasis supplied)

So must it be.

The elements of rape were not established

Even assuming the Informations validly charged the crime of rape, a verdict of acquittal here is still in order.

In convicting appellant of forty-four (44) counts of rape, the trial court and the Court of Appeals mainly relied on complainant's testimony on direct and cross. The full text of her testimony reads:

Q: Do you recall what did Dante do to you?

A: Yes Dante entered my room and I was raped by Dante. [45]

x x x x x x x x x

Q: Where did this happen?

A: In the room in the dormitory where I was sleeping.

Q: When you said rape, what do you mean by that?

A: Undressed, touched my body and then I pushed him, I was afraid.

Q: You mean he inserted his penis to your vagina?

A: Yes sir. [46]

x x x x x x x x x

Q: Now, if you can recall, how many times did he rape you?

A: September, October, November, December and January. [47]

x x x x x x x x x

Q: And do you recall if these incidents of rape happened during school days?

A: Yes sir. [48]

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[45] TSN, April 10, 2012, p. 8.
[46] *Id.* at 9.
[47] *Id.*
[48] *Id.* at 10.

The thing speaks for itself. On the whole, AAA's testimony is noticeably terse, vague, equivocal, and seriously wanting in details pertaining to the presence of the essential element of force or intimidation. AAA's testimony only bears the element of carnal knowledge.

That AAA pushed appellant when he "undressed, touched my body…, I was afraid" is at best equivocal. Again, this hardly equates with "force or intimidation" within the penal provision defining and penalizing rape.

For one, the act of pushing did not emanate from appellant but from AAA. For another, "pushing" is equivocal subject to different interpretations depending on the attendant circumstances. It may mean a *gentle "no," "not yet," "wait," "I am shy," "not here,"* and many more possible interpretations or meanings. One thing is sure though: under the attendant circumstances, it cannot be deemed sufficient proof of *resistance or unconsented sex.*

In any event, ***People v. Tionloc***[49] decrees that resistance must be *manifested and tenacious*, *viz:*

> In People v. Amogis 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 short and long of it is this: The evidence on record indubitably show that then eighteen (18) year old AAA, albeit she is a deaf-mute with low capacity to learn formal sign language, is in truth, mentally capable of giving or withholding consent.

For even though AAA is a deaf-mute and certified to be only at Grade 2 level in formal sign language education does not mean she is suffering from mental abnormality, deficiency, or retardation which has the effect of hindering her capacity to give consent. ***People v. Butiong***[50] elucidates:

> Carnal knowledge of the female with her consent is not rape, provided she is above the age of consent or is capable in the eyes of the law of giving consent. x x x
>
> x x x x x x x x x

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[49] 805 Phil. 907, 918 (2017).
[50] 675 Phil. 621, 632 (2011).

In his commentary on the Revised Penal Code, Justice Aquino discusses the concept of committing rape against the female's will or without her consent, to wit:

x x x x x x x x x

The deprivation of reason need not be complete. Mental abnormality or deficiency is enough. Cohabitation with a feebleminded, idiotic woman is rape. Sexual intercourse with an insane woman was considered rape. **But a deaf-mute is not necessarily deprived of reason. This circumstances must be proven. Intercourse with a deaf-mute is not rape of a woman deprived of reason, in the absence of proof that she is an imbecile.** x x x (Emphasis supplied)

Notably, AAA had reached Grade VI of elementary education and her teacher assessed her to be an average student and a normal child, *viz.*:[51]

Q: Ms. AAA finished Grade 6 Elementary (Education) the lessons you thought (sic) from the start of the school year from June up to January?

A: Yes Sir.[52]

x x x x x x x x x

Q: The education that you thought (sic) AAA include the education on Morals and Values, is that correct?

A: Yes Sir. [53]

x x x x x x x x x

Q: Now in your teaching, you being instructor or teacher of AAA as per your experience, can you consider her to be intelligent pupil?

A: Yes Sir.

Q: Meaning she can understand the lessons that you thought (sic)?

A: She is average in my assessment.

Q: But in your assessment, she could determine what is right and what is wrong and what is good and what is bad?

A: Yes Sir.[54]

x x x x x x x x x

Q: When you say hearing impaired child, who is a special child, you mean to say she is not a normal child?

A: Normal but she cannot hear and cannot talk that is why they are called special because they are not like us that can hear and can talk.

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[51] TSN, July 30, 2012, pp. 3-6 and 14.
[52] *Id.* at 4.
[53] *Id.* at 5.
[54] *Id.* at 6.

Q: In your lectures and in your dealings with her you treat her as normal but they are not sensitive as to the use of her sense of hearing?

A: Yes Your Honor.

Q: So they are considered special in the sense that, they are normal but they could not hear?

A: They cannot talk because they cannot hear.[55]

Her relatives acknowledged her to be normal and capable of engaging into romantic relations, albeit they opposed the idea as she was still studying at that time.[56]

Q: But you considered (your) niece as normal except that she has hearing impaired?

A: Yes Sir.

Q: Do you not want her happy and have relationship with a person who is of the opposite sex?

A: Maybe in that time. For me it is not proper time that she engaged in that, because she still studying.[57]

In another vein, AAA's broadly sweeping statement that "I was raped ... in September, October, November, December, and January" is a conclusion of law. On this score, We have consistently ruled that the victim's bare statement that the accused raped her again on the succeeding dates is a conclusion of law which cannot serve as sole basis for appellant's conviction. ***People v. Nuyte***[58] lucidly teaches:

> AAA's bare statements that appellant repeated what he had done on her previously were not enough to establish beyond reasonable doubt the incidents subject of Criminal Case Nos. FC-00-781, FC-00-784 and FC-00-785. Said declarations were mere general conclusions. The prosecution must endeavor to present in detailed fashion the manner by which each of the crimes was committed. "Every charge of rape is a separate and distinct crime and each must be proved beyond reasonable doubt." There is no reason why the foregoing principle should not be applied in the aforementioned cases. Prescinding therefrom, appellant should be acquitted in these cases.

To emphasize, sexual intercourse here between appellant and AAA happened at least forty-four (44) times over only a period of five (5) months. And through all these times, AAA never complained. She did not even want

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[55] *Id.* at 14.
[56] TSN, November 17, 2010, p. 21.
[57] *Id.*
[58] G.R. No. 219111, March 12, 2018.

to leave the dormitory where all her forty-four (44) sexual encounters with appellant happened. She was even seen by one of her teachers "eating snacks with appellant," hence her aunt BBB, also a SPED teacher, proposed to AAA's grandfather to pull AAA from the dormitory and make her live with her (BBB) because she did not want ugly rumors to spread.[59]

Too, AAA testified she did not go with her grandfather the first time the latter came to pull her out from the dormitory because "he might scold her." For what? If we put it in context, it was because of the "ugly rumor spreading" about her and appellant.

Finally, AAA revealed the supposed rape (forty-four [44] counts altogether) only when her relatives discovered she was pregnant.

The foregoing circumstances taken singly or collectively, are exculpatory evidence which compel no less than a verdict of acquittal.

It is settled that in every criminal prosecution, the accused is presumed innocent until the contrary is established by the prosecution. The prosecution bears the burden of establishing an accused's guilt beyond reasonable doubt.[60] Its evidence must stand or fall on its own merits and cannot draw strength from the weakness of the defense. When the evidence fails to establish all the elements of the crime, as in this case, the verdict must be one of acquittal.[61]

ACCORDINGLY, the appeal is **GRANTED**. The Decision dated November 24, 2015 of the Court of Appeals in CA-G.R. CR-HC No. 01145-MIN is **REVERSED** and **SET ASIDE** and a new one rendered **ACQUITTING DANTE CUBAY Y UGSALAN** of rape in Criminal Case Nos. 08-05-3536 to 08-05-3579.

The Court **ORDERS** the Superintendent of the Davao Prison and Penal Farm, B.E. Dujali, Davao del Norte to immediately release **DANTE CUBAY Y UGSALAN** unless he is being detained for some other cause; and to submit his compliance report within five (5) days from notice.

Let an entry of final judgment be issued immediately.

SO ORDERED.

AMY C. LAZARO-JAVIER
Associate Justice

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[59] TSN, August 11, 2010, p. 12.
[60] See *People v. Salidaga*, 542 Phil. 295, 308 (2007).
[61] *People v. Tionloc*, supra note 49, at 909.

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

ESTELA M. PERLAS-BERNABE
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

JOSE C. REYES, JR.
Associate Justice

See my concurring opinion

ATTESTATION

I attest 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.

ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

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.

LUCAS P. BERSAMIN
Chief Justice

CERTIFIED TRUE COPY

ATTY. TERESITA A. TUAZON
Deputy Division Clerk of Court