

Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated October 16, 2019 which reads as follows:

“G.R. No. 247542 (*Diosdado Estimada y Gaviola v. People of the Philippines*)

After a review of the records, this Court resolves to **DENY** the petition for failure to sufficiently show that the Court of Appeals (CA) committed any reversible error in its November 28, 2018 Decision¹ and May 23, 2019 Resolution,² as to warrant the exercise of the Court’s appellate jurisdiction.

As correctly held by the CA, all the elements of the crime of attempted homicide under Article 249³ of the Revised Penal Code (RPC) were proven by the prosecution’s evidence warranting the affirmance of the judgment of the courts *a quo* convicting petitioner.

The Court, however, deems it proper to modify the penalty imposed upon petitioner in line with Our ruling in *People v. Jugueta*.⁴ Petitioner is, thus, ordered to pay private complainant ₱20,000.00 as civil indemnity and ₱20,000.00 as moral damages, with legal interest at the rate of six percent (6%) *per annum*.

WHEREFORE, the petition is **DENIED**. The November 28, 2018 Decision and the May 23, 2019 Resolution of the Court of Appeals in CA-G.R. CR No. 40831, finding petitioner Diosdado

¹ *Rollo*, pp. 37-47; penned by Associate Justice Apolinario D. Bruselas, Jr., with Associate Justices Geraldine C. Fiel-Macaraig and Gabriel T. Robeniol, concurring.

² *Id.* at 49-49-A.

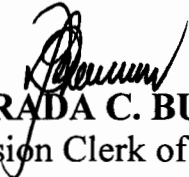
³ Art. 249. *Homicide*. – Any person who, not falling within the provisions of Article 246, shall kill another without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by reclusion temporal.

⁴ 783 Phil. 806 (2016).

Estimada y Gaviola **GUILTY** beyond reasonable doubt of Attempted Homicide as defined under Article 249 and penalized under Article 250 of the Revised Penal Code, are **AFFIRMED with MODIFICATION**. Petitioner is hereby **SENTENCED** to suffer the penalty of imprisonment for an indeterminate period of six (6) months of *arresto mayor*, as minimum, to two (2) years, four (4) months, and one (1) day of *prision correccional*, as maximum. He is further **ORDERED** to pay the victim the amount of ₱20,000.00 as civil indemnity and ₱20,000.00 as moral damages, with legal interest at the rate of six percent (6%) *per annum* from the date of finality of this Resolution until full payment thereof.

SO ORDERED.” *Perlas-Bernabe, J., on Official Business; Gesmundo, J., designated as Acting Working Chairperson per Special Order No. 2717 dated October 10, 2019; Zalameda, J., designated as Additional Member per Special Order No. 2712 dated September 27, 2019.*

Very truly yours,


LIBRADA C. BUENA
Division Clerk of Court ^{10/16/19}

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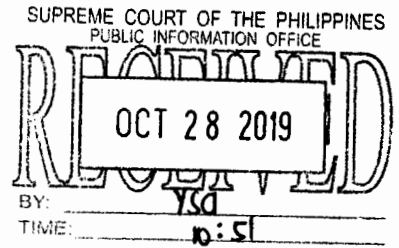
The Solicitor General
134 Amorsolo Street, Legaspi Village
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The Presiding Judge
Regional Trial Court, Branch 278
1550 Mandaluyong City
(Criminal Case No. 102007-R-00-00)

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Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated October 1, 2019 which reads as follows:

“G.R. No. 226159 (*People of the Philippines v. Dave Barrera y Cruz alias “Bogie”, Michael Calapi and Alberto Taeza, Jr. alias “Boboy”*)

Before this Court is an appeal seeking to reverse and set aside the September 16, 2015 Decision¹ of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06419. The CA affirmed the August 7, 2013 Decision² of the Regional Trial Court of Pasig City, Branch 261 (RTC) in Criminal Case No. 135693-H, finding Dave Barrera (*Barrera*), Michael Calapi (*Calapi*) and Alberto³ Taeza, Jr. (*Taeza*) [collectively, appellants] guilty beyond reasonable doubt of the crime of rape under Article 266-A(1) of the Revised Penal Code (RPC), as amended, in relation to Section 5(a) of Republic Act (R.A.) No. 8369.

Antecedents

Appellants were charged in two Informations for the crimes of rape under Article 266-A, paragraph 1(a) and (b) of the RPC,⁴ docketed as Criminal Case No. 135693-H, and rape by sexual assault,⁵ docketed as Criminal Case No. 135694-H.

In Crim. Case No. 135693-H, the accusatory portion reads:

On or about July 14, 2007, in Pasig City, and within the jurisdiction of this Honorable Court, the accused, conspiring and

¹ *Rollo*, pp. 2-13; penned by Associate Justice Ma. Luisa C. Quijano-Padilla, with Associate Justices Normandie B. Pizarro and Samuel H. Gaerlan, concurring.

² *CA rollo*, pp. 16-28 and 61-73; penned by Presiding Judge Florian Gregory D. Abalajon.

³ Referred to as “Roberto” in other parts of the *rollo*.

⁴ *CA rollo*, pp. 10-11.

⁵ *Id.* at 12-13.

confederating together with Michael Calapi and Roberto Taeza, alias "Boboy" both at-large, all of them mutually helping and aiding one another, by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with [AAA], 15 years old, a minor, against her will, after the accused deprived her of reason, while under the influence of alcohol, as a result of which, the said victim could no longer resist the sexual assault of the accused, to her damage and prejudice.

Contrary to law.⁶

In Crim. Case No. 135694-H, the accusatory portion reads:

On or about July 14, 2007, in Pasig City, and within the jurisdiction of this Honorable Court, the accused, conspiring and confederating together with Michael Calapi and Roberto Taeza, alias "Boboy" both at-large, all of them mutually helping and aiding one another, by means of force, threat and intimidation, did then and there wilfully, unlawfully and feloniously commit an act of sexual assault against the person of [AAA], 15 years old, a minor, by then and there put (sic) his penis into her mouth, against her will and consent.

Contrary to law.⁷

Version of the Prosecution

On July 14, 2007, at around 9:00 o'clock in the evening, AAA⁸ (*the victim*), then 15 years old, was invited by Barrera to his birthday celebration. She agreed to join him since he was an acquaintance. After she got drunk, Barrera convinced her that they should go to the house of a certain "Ate Mayang." Barrera assisted her and helped her lie down on a nearby bench located in a dark area near Ate Mayang's house.⁹

Afterwards, Barrera removed the victim's shorts and underwear and his own undergarments. He then went on top of the victim and inserted his penis in her vagina. The victim tried to resist Barrera's advances and begged him to stop, but because of his superior strength and her drunken state, her efforts were futile.¹⁰

⁶ Id. at 10.

⁷ Id. at 12.

⁸ The complete names and personal circumstances of the victim's family members or relatives, who may be mentioned in the court's decision or resolution have been replaced with fictitious initials in conformity with Administrative Circular No. 83-2015 (*Subject: Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders Using Fictitious Names/Personal Circumstances*).

⁹ Rollo, p. 3; CA rollo, pp. 19-20.

¹⁰ Id. at 4; CA rollo, p. 20.

A few minutes later, Calapi and Taeza passed by and saw what Barrera was doing. After entering into some sort of understanding, the three put back on the victim's undergarments and brought her to another house. There, the three took turns in having carnal knowledge with the victim. The victim repeatedly asked appellants to stop, but to no avail. Instead, she heard them laughing.¹¹

When appellants were done, they brought her to Ate Mayang's house. A certain "Kuya Joey," Ate Mayang's brother, asked Barrera about what happened. Thereafter, Kuya Joey opened Ate Mayang's house and allowed the victim to rest and sober up. Appellants left afterwards, leaving the victim alone.¹²

The following morning, the victim went home and acted as if nothing happened to her. However, her mother noticed a kiss mark on her neck. The victim told her mother the whole story. They immediately proceeded to the police station where the victim executed her *Sinumpaang Salaysay*.¹³ Afterwards, the police brought the victim to the Philippine National Police Crime Laboratory (*PNP Crime Lab*) for medical examination.¹⁴

Police Captain (formerly Senior Inspector) Maria Anna Lissa G. Dela Cruz (*P/Capt. Dela Cruz*), medico-legal officer assigned at the PNP Crime Lab in Quezon City, conducted the medical examination on the victim. Her Medical Examination¹⁵ revealed that the victim's hymen had a deep-healed laceration at the 8 o'clock position and a shallow-healed laceration at the 4 o'clock position. She also noted the presence of spermatozoa in the victim's vagina. She concluded that there was definite evidence of sexual abuse or contact.¹⁶

Version of the Defense

Appellants denied raping the victim and offered different versions of the incident.

Calapi testified that he was at home watching television at around 7 o'clock in the evening on the day of the incident. At around 8:30 o'clock in the evening, he went out to get some air and saw Barrera and the victim drinking in front of Aling Siony's store.

¹¹ *Id.*

¹² *Id.*

¹³ Records, pp. 8-9.

¹⁴ *Id.* at 12.

¹⁵ *Id.*

¹⁶ *Rollo*, p. 4.

Barrera invited him to join them and he obliged. After thirty (30) minutes, he left the two and went home to sleep.¹⁷

Barrera, for his part, denied that he was drinking with the victim in the evening of July 14, 2007. He claimed that he did not have any company while drinking and that, at around 10:30 o'clock in the evening, he went home after consuming three (3) bottles of beer. He alleged that he did not know Calapi, Taeza and the victim.¹⁸

Taeza likewise denied any participation in the alleged incident. He testified that he was at the house of his girlfriend, Evelyn Singcoy, discussing the latter's plan to go abroad. Their conversation allegedly lasted until 1:00 o'clock in the morning and thereafter, he went home.¹⁹

Ruling of the RTC

In its August 7, 2013 Decision,²⁰ the RTC found appellants guilty of simple rape in Criminal Case No. 135693-H and sentenced them to suffer the penalty of *reclusion perpetua*. It ordered appellants to each pay the victim ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱25,000.00 as exemplary damages. The RTC, however, acquitted appellants in Criminal Case No. 135694-H. The dispositive portion of the decision reads:

WHEREFORE, premises considered, there being proof beyond reasonable doubt that the three accused **DAVE BARRERA [y CRUZ]**, alias "Bogie", **MICHAEL CALAPI** and **ALBERTO TAEZA, Jr.**, alias "Boboy", have committed the crime of Rape under Article 266-A par. 1(a) & (b) of the Revised Penal Code, as amended, in relation to Section 5(a) of R.A. 8369. Article 266-A of the Revised Penal Code, the Court hereby [pronounces] them **GUILTY** beyond reasonable doubt and they are hereby sentenced to suffer the penalty of *Reclusion Perpetua* in Criminal Case No. 135693-H. Each [of the] accused is ordered to pay AAA the amount of ₱50,000.00 by way of civil indemnity, ₱50,000.00 each as moral damage and ₱25,000.00 as exemplary damages.

Accordingly, in Criminal Case No. 135694-H, the prosecution having failed to prove the guilt of the accused, **DAVE BARRERA [y CRUZ]**, beyond reasonable doubt in Criminal Case No. 135694-H, he is hereby **ACQUITTED** of Rape under Article 266-A paragraph 2 in relation to Article 266-B 17th par. of the

¹⁷ Id.

¹⁸ Id. at 4-5.

¹⁹ Id. at 5.

²⁰ CA rollo, pp. 61-73.

Revised Penal Code, as amended by R.A. 8353 and in further relation to Section 5(a) of R.A. 8369.

SO ORDERED.²¹

Aggrieved, appellants appealed to the CA, arguing that the prosecution failed to overcome the constitutional presumption of innocence.

Ruling of the CA

In its September 16, 2015 Decision,²² the CA affirmed with modification the RTC decision, increasing the award of exemplary damages to ₱30,000.00. The dispositive portion of the decision reads:

WHEREFORE, the instant appeal is **DENIED** and the Decision dated August 7, 2013 of the Regional Trial Court, Branch 261, Pasig City in Criminal [Case] Nos. 135693-H and 135694-H is **AFFIRMED** with **MODIFICATION**. The award for exemplary damages is increased to ₱30,000.00.

SO ORDERED.²³

The CA deferred with the RTC's assessment of the victim's testimony which it found to be straightforward and direct. The testimony was corroborated by the medical findings of P/Capt. Dela Cruz which confirmed that the victim was indeed sexually assaulted.

Undeterred, appellants filed a Notice of Appeal.²⁴

In an October 17, 2016 Resolution,²⁵ the Court asked the parties to submit their respective supplemental briefs if they wish to do so. However, both the Public Attorney's Office for appellants,²⁶ and the Office of the Solicitor General,²⁷ for the people, manifested that they will adopt their respective supplemental briefs filed before the CA.

The Court's Ruling

The Court affirms appellants' conviction.

²¹ Id. at 73.

²² *Rollo*, pp. 2-13; *CA rollo*, pp. 101-112.

²³ Id. at 13; id. at 112.

²⁴ *Rollo*, pp. 14-16.

²⁵ Id. at 20-21.

²⁶ Id. at 22-24.

²⁷ Id. at 27-29.

To sustain a conviction for rape by carnal knowledge under Art. 266-A of the RPC, as amended by R.A. No. 8353, the prosecution must prove the following elements beyond reasonable doubt: (1) that the accused had carnal knowledge of the victim; and (2) that said act was accomplished (a) through the use of force or intimidation, or (b) when the victim is deprived of reason or otherwise unconscious, or (c) by means of fraudulent machination or grave abuse of authority, or (d) when the victim is under 12 years of age or is demented.²⁸

Corollary thereto, the Court is guided by three well-entrenched principles in determining the guilt or innocence of the accused in rape cases: (1) an accusation of rape can be made with facility and while the accusation is difficult to prove, it is even more difficult for the person accused, though innocent, to disprove the charge; (2) considering that, in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence of the prosecution must stand or fall on its own merit, and cannot be allowed to draw strength from the weakness of the evidence for the defense.²⁹

From the foregoing, the prosecution is burdened to prove, not only the elements of the crime, but also the identity of the offender for there can be no conviction without proof of the identity of the criminal beyond reasonable doubt.³⁰

Here, the Court finds that the prosecution established the elements of rape and the identities of the victim's rapists.

The victim positively identified Barrera and Calapi because she already knew them prior to the incident. While she did not know Taeza personally, she categorically identified him in open court. His name was also supplied by Barrera and Calapi. Besides, she could not have been mistaken as to their identities, despite her drunken state, "for nothing could be spatially closer than a rapist and his victim during the commission of the sexual assault."³¹

Moreover, the elements of sexual congress and force and intimidation were proven through the victim's testimony, which showed how Barrera brought her to a nearby bench in a dark area, removed her undergarments, held her hands to prevent resistance, and satisfied his lust against her will. Her testimony also showed how Calapi and Taeza helped Barrera take her to another house and how

²⁸ *People of the Phils. v. Esteban*, 735 Phil. 663, 670 (2014).

²⁹ See *People of the Phils. v. Ramos*, 577 Phil. 297, 304 (2008).

³⁰ See *People of the Phils. v. Pineda*, 473 Phil. 517, 548 (2004).

³¹ *People of the Phils. v. Abordo*, 296 Phil. 620, 627 (1993).

they took turns in sexually abusing her while the others held her down. Sexual congress was further proven by P/Capt. Dela Cruz, who stated that the lacerations on the victim's vagina were caused by the insertion of an object and that her vagina had the presence of spermatozoa.

For their defense, appellants question the victim's credibility. They claim that the victim's testimony was replete with circumstances contrary to human experience such as: her failure to shout while she was allegedly being raped where there are houses nearby; her failure to tell Kuya Joey that she was raped; and more notably, her decision to act as if nothing happened when she finally went home.³²

Appellants' arguments fail to convince.

Victims of a crime as heinous as rape cannot be expected to act within reason or in accordance with society's expectations.³³ One cannot be expected to act as usual in an unfamiliar situation as it is impossible to predict the workings of a human mind placed under emotional stress.³⁴ Some victims seek immediate vindication of the wrong that was done to them, while others, like the victim, suffer in silence.

On the other hand, the prosecution was able to justify the victim's behaviour. She was heavily intoxicated and dizzy that night that she did not have the strength to resist Barrera's advances. When Calapi and Taeza joined in, she became even more helpless. When they were done raping her, she did not even have the strength to walk, much less ask for help from Kuya Joey when all three appellants were still around. The victim sobered up only after she was able to rest at Ate Mayang's house. This is when she made a conscious decision to hide what happened to save herself and her family from shame. Had her mother not discovered the kiss marks, then the perpetrators would have escaped liability.

Further, appellants also did not show any ill-motive on the part of the victim or her family to falsely accuse any one of them of a crime. The only logical reason, therefore, is vindication for the wrong that was done to her. The Court, thus, agrees with the RTC in ruling the victim to be competent and her testimony credible.

³² CA rollo, pp. 55-56.

³³ *People of the Phils. v. Pareja*, 724 Phil. 759, 778-779 (2014).

³⁴ *Id.*

Appellants insist that the courts should have given credence to their defenses of denial and alibi.

For denial to be worthy of consideration, it should be substantiated by clear and convincing evidence, which appellants failed to do. Further, denial, which is negative and self-serving in nature, is an inherently weak defense that cannot secure a more worthy status than the victim's testimony, which clearly and positively identified appellants as the rapists.³⁵ Besides, appellants offered different and even contradicting versions, making it hard to give weight to their denial.

As for their different alibis, they should also establish, by clear and convincing evidence, (a) their presence at another place at the time of the perpetration of the offense and (b) the physical impossibility of their presence at the scene of the crime.³⁶ Their testimonies still placed them within a few minutes away from the *locus criminis* at the time of the commission of the crime. Further, their self-serving alibis were uncorroborated. Similar to their denial, their alibis cannot prevail over the positive identification and testimony of the victim.

As we have ruled in a multitude of cases, the trial court judge is in the best position to make this determination as the judge was the one who personally heard the witnesses of both parties, as well as observed their demeanor and the manner in which they testified during trial.³⁷ Further, the same assessment was affirmed by the appellate court. Since there is no showing that the courts misappreciated facts and evidence or that they acted with grave abuse of discretion, this Court sees no reason to depart from their findings and conclusion.

With respect to the penalty and award of damages, the CA correctly affirmed the penalty of *reclusion perpetua* without the benefit of parole, pursuant to Art. 266-B, paragraph 2 of the RPC as amended by R.A. 8353.³⁸ As regards the monetary awards, they are hereby modified to conform to recent jurisprudence.³⁹

WHEREFORE, the September 16, 2015 Decision of the Court of Appeals in CA-G.R. CR-HC No. 06419 is **AFFIRMED with**

³⁵ See *People of the Phils. v. Teñoso*, 637 Phil. 595, 610 (2010).

³⁶ *People of the Phils. v. del Ayre*, 439 Phil. 73, 92-93 (2002).

³⁷ *People of the Phils. v. Bautista*, 665 Phil. 815, 826 (2011).

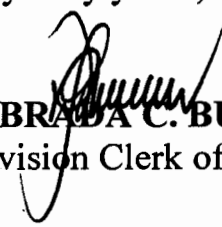
³⁸ Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death.

³⁹ *People of the Phils. v. Jugueta*, 783 Phil. 806 (2016).

MODIFICATION. Appellants Dave Barrera y Cruz, Michael Calapi and Alberto Taza, Jr. are found **GUILTY** beyond reasonable doubt of Rape⁴⁰ and sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole. They are **ORDERED** to pay the victim the amount of ₱75,000.00 as civil indemnity; ₱75,000.00 as moral damages; and ₱75,000.00 as exemplary damages, with interest on all damages awarded at the legal rate of six percent (6%) *per annum* from the date of finality of this judgment until fully paid.

SO ORDERED. *Zalameda, J., designated as additional Member per Special Order No. 2712 dated September 27, 2019. Carandang, J., on official leave.*

Very truly yours,


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Messrs. Dave Barrera y Cruz, Michael
Calapi, Alberto Taza, Jr.
Accused-Appellants
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⁴⁰ Rape under Art. 266-A(1) in relation to Art. 266-B of the RPC, pursuant to *People of the Phils. v. Tulagan*, G.R. No. 227363, March 12, 2019.