

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ERNESTO G. MAGALONG, JR. ALIAS “BONJONG”, ACCUSED-APPELLANT.

Ponente: BALTAZAR-PADILLA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/109a3f7a150f/>

BALTAZAR-PADILLA, J.:

Before US is an appeal[1] from the Decision[2] dated December 2, 2012 rendered by the Regional Trial Court of Baguio City, Branch 4, in Criminal Case No. 28737-R for Rape, finding accused-appellant guilty of the offense charged in an Information[3] which reads as follows:

“That on or about the 13th day of March, 2008, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously and taking advantage of the unconscious state of private complainant-minor AAA[4], a 17 year old minor, who was then under the influence of alcohol, have carnal knowledge of the private complainant minor against her will and consent, to her damage and prejudice.

CONTRARY TO LAW.”

On October 10, 2008, Branch 59 of the Regional Trial Court of Baguio City, where the case was initially raffled, issued a single warrant of arrest[5] for accused-appellant for Criminal Cases Nos. 28737-R for Rape on complaint of AAA and 28752-R for Acts of Lasciviousness on complaint of Mary Anne Ibasitas.[6]

On the strength of the said warrant of arrest, accused-appellant was arrested on October 10, 2008 at Brgy. Sta. Maria, San Jacinto, Pangasinan.[7]

A Petition for Bail[8] was filed by accused-appellant on November 10, 2008. Comment[9] thereto was filed by the prosecution on November 12, 2008.

The record shows that on November 17, 2008, accused-appellant when arraigned in Criminal Cases Nos. 28737-R (Rape) and 28752-R (Acts of Lasciviousness) pleaded “not guilty”[10] to each of the offenses charged against him. Thereafter, the petition for bail in Criminal Case No. 28737-R was set for hearing.[11]

In the pre-trial[12] that ensued, the following issues were raised, to wit:

- “c. Whether or not the Accused is guilty of the acts complained of; and
- d. Whether or not he could be held civilly liable.”

To establish that there is strong evidence of guilt against accused-appellant, the prosecution presented three (3) witnesses in the hearing on the petition for bail, to wit: private complainant, Dr. Sheilah Via Marie P. Mapalo and private complainant's father BBB.

As aptly summarized by the trial court, the prosecution's evidence tends to establish the following facts:

“xxx private complainant AAA and accused-appellant Ernesto Magalong, Jr. (hereinafter Bonjong or Accused) are neighbors in Sta. Maria, San Jacinto, Pangasinan since childhood. At the time of the commission of the offense, AAA was only sixteen (16) years old and a first year BS Tourism student at Saint Louis University,

Baguio City. While studying in Baguio, she stayed at Rm. 303 (hereafter Unit), Apo Manaoag Dormitory, T. Alonzo Street, with a helper named Mary Anne Ibasitas (Mary Anne), also a neighbor.

On March 12, 2008, before going back to Baguio from San Jacinto, AAA and Mary Anne asked another neighbor and a homosexual childhood friend, Miguel Solomon (Migz), to accompany them to the terminal of vans bound for Baguio City in Dagupan City. Upon reaching the terminal, AAA and Mary Anne implored Migz to go with them to Baguio for an overnight stay. Migz acceded. The trio came up to Baguio and went straight to AAA's Unit.

At about 9 o'clock in the evening, the trio were already telling stories in bed when Mary Anne received a text message from Bonjong inviting them to go out for a drink. AAA and Migz told Mary Anne to tell Bonjong that they do not like to go out because they were not used to going out at night time. Bonjong texted again telling Mary Anne that if they do not want to go out, he might as well go to the Unit and have a drinking spree with them. AAA and Migz agreed. After about 20 minutes, Bonjong texted that he was already downstairs. AAA, Mary Anne and Migz went down and met Bonjong on the floor at the road level. Bonjong gave them P100 to buy drinks. AAA and Migz went to the store and bought four GSM Blue while Bonjong and Mary Anne were left behind. The four of them went up together to the Unit.

When Bonjong saw the GSM Blue, he told them he does not drink gin. He then ordered Mary Anne to buy a bottle of Red Horse beer. After buying beer, Mary Anne and Migz mixed their chaser at the dining area while AAA went to her room to get her cellphone. When she was going out, the doorknob got stuck. Bonjong approached her and offered to fix the doorknob. After fixing the doorknob, he asked AAA for a kiss. Thereafter, the four of them started with their drinking binge at the living room of the Unit. AAA, Mary Anne and Migz partook of the GSM Blue with juice as chaser while Bonjong drank his Red Horse Beer.

AAA recalled that she drank the most as she was challenged by Bonjong to drink more. After AAA, Mary Anne and Migz were done with the GSM Blue, they helped Bonjong finish his drink as he consumed only less than half of the bottle of the 1-liter Red Horse beer. They stopped drinking at 2 o'clock in the early morning of the following day, March 13, 2008, when the Red Horse beer was consumed.

Migz went ahead to the room and AAA followed. When AAA entered the room, Migz was already asleep on the floor. AAA slept on the bed. While AAA was sleeping, she felt somebody go on top of her. She recognized Bonjong's voice but did not understand what he was saying because she was dizzy. She felt Bonjong kissing her, then, she felt something went inside her vagina. It was warm and painful. She was not aware anymore what transpired next since she was so dizzy and she fell asleep.

AAA recounted that when she regained consciousness at 8 o'clock in the morning on the next day, March 13, 2008, she was still dizzy. Her vagina was painful and "mahapdi". Bonjong was no longer around. When she noticed blood stains in her T-shirt and panty, she woke up Mary Anne and Migz and told them that she was raped by Bonjong. AAA claimed that before the incident, she had no sexual experiences and she was still a virgin.

AAA later identified the Sworn Statement she executed in relation to this case. She explained that it was only after six months from the date of the incident or on September 8, 2008 when she executed her sworn statement because she was ashamed of what happened to her. She was also afraid of what her father would do to her if he learned (sic) about the incident. The incident was made known to her father by her boyfriend, Cris Dwave. Cris came to know about the incident when he was still courting AAA who told him about her ordeal.

AAA testified on cross-examination that she graduated from high school at Sto. Tomas Catholic School. In her 4th year high school, she became acquainted with a certain Beverly Aquino Morales but they never became close friends. She denied that she was used to drinking GSM Blue in high school. She admitted that they were prohibited to accept visitors after 8:30 o'clock in the evening in her dormitory. However, when Bonjong came at 9 o'clock in the evening, she did not tell him about the curfew in the dormitory. She clarified that when she

and Migz went to buy GSM Blue, Bonjong and Mary Anne waited for them so that the four of them went up to the Unit together. She further testified that Bonjong is her immediate neighbor in Sta. Maria, San Jacinto, Pangasinan as Bonjong's house is situated in front of their house just across the road (tapat sa bahay).

On re-direct examination, AAA testified that after the case was filed with the NBI, she learned that Bonjong offered to marry her.

DR. SHEILAH VIA MARIE P. MAPALO of the NBI-CAR conducted internal examination on AAA. Upon examination of the vaginal canal, she noted the presence of numerous rugosities. According to her, this shows that the patient did not have numerous sexual intercourse or contact. She indicated her finding in the Medico-Legal Report wherein she stated in her impression : "Genital findings show clear evidence of healed injury secondary to intravaginal penetration by a blunt object."

BBB, AAA's father, testified that he learned about the incident from Cris Dwave, AAA's suitor. On August 30, 2008, Cris came to their house for a visit. While AAA was in her room, Cris told him that AAA has a big problem that she cannot reveal. When prodded, Cris told him that AAA was raped by Ernesto Magalong, Jr. BBB immediately verified Cris' report and asked AAA why did she not tell him. AAA confirmed that she was really raped by Ernesto Magalong, Jr. but she was afraid to tell him (BBB). He then asked AAA if she was willing to sue Magalong, Jr. AAA answered in the affirmative provided he will give his support. They proceeded to NBI Dagupan but they were advised to lodge their complaint before the NBI Baguio because the incident took place in Baguio City. On September 8, 2008, BBB and Miguel Solomon (earlier referred to as Migz) accompanied AAA to Baguio. They fetched Mary Anne from SM before the five of them (AAA, BBB, Migz, Mary Anne and her boyfriend) went to NBI Baguio. At the NBI Baguio, BBB assisted AAA when she executed her Sworn Statement.

On September 26, 2008, a conference/confrontation between Ernesto Magalong, Jr., together with his parents, Ernesto Magalong, Sr. and Betty Magalong, and BBB was held at the Barangay Health Center of Barangay Sta. Maria, San Jacinto, Pangasinan. The conference was conducted in the presence of Rogelio Revilla Punong Barangay of Imelda, an adjacent Barangay of Sta. Maria, San Jacinto, Pangasinan, Barangay Kagawad Samuel de Vega and Barangay Secretary Crisanto Nicomedes of the same barangay. During the conference, Bonjong admitted that he raped AAA and offered to marry her. BBB told them that he would talk to his daughter first. He would let them know their decision after a few days. However, when he asked AAA if she was willing to accept Bonjong's offer, AAA refused. She told him that she does not like the offer of marriage because Bonjong raped her. To prove his claim, BBB submitted the minutes of the conference."

In the interim, a Motion for Immediate Resolution of Petition for Bail[13] was filed by accused-appellant. Attached thereto were an Affidavit of Desistance[14] executed by Mary Anne in the related case for Acts of Lasciviousness (Criminal Case No. 28752-R) that the latter filed against accused-appellant; a handwritten statement[15] of Mary Anne; and two certifications[16] issued by the Provincial Office of the PNP in San Jacinto, Pangasinan dated November 16, 2008 and December 12, 2008. Comment[17] to the said motion was filed by the prosecution on December 3, 2009. In its January 6, 2010 Order,[18] the trial court denied the said motion for lack of merit.

On April 13, 2010, the trial court issued an Order[19] denying accused-appellant's petition for bail after finding that there is strong evidence of the guilt of accused-appellant. Thereafter, the case was set for presentation of the prosecution's evidence in chief.

At the scheduled day for presentation of the prosecution's evidence in chief, the prosecution manifested that it was dispensing with the presentation of its other two witnesses, Miguel Solomon and NBI Agent Matit. It further prayed that it be given time to file its formal offer of evidence.[20]

On September 16, 2010, the prosecution filed a Manifestation and Offer of Evidence[21] dated September 15,

2010 stating that it is adopting all the evidence and witnesses offered in its formal offer of evidence on the opposition to the petition for bail. The prosecution offered the following documents in evidence which were all admitted by the lower court, viz –

- “1. EXHIBITS “A” & “A-1” - The Medico Legal Report submitted by DR. SHEILAH MARIE P. MAPALO of the National Bureau of Investigation;
 2. EXHIBITS “B” & “B-1” - The Certification issued by the Municipal Civil Registrar of San Jacinto, Pangasinan and the NSO Certificate;
 3. EXHIBIT “C” - The Sworn Statement of KRISANTA ELLASUS dated September 8, 2008;
 4. EXHIBIT “D” - The Sworn Statement of MARY ANNE IBASITAS dated September 8, 2008 attached to the records of the above-entitled case;
 5. EXHIBITS “E”, “E-1” & “E-2” - pages from the blotter of the Records of Barangay Sta. Maria, San Jacinto, Pangasinan covering September 26, 2008; EXHIBIT “E-3” - Signature of Ernesto Magalong, Jr.; EXHIBIT “E-4” - Signature of Ernesto Magalong, Sr.; EXHIBIT “E-5” - Betty Magalong; EXHIBIT “E-6” - Signature of Punong Barangay BBB; EXHIBIT “E-7” - Signature of Punong Barangay Rogelio S. Revilla; EXHIBIT “E-8” - Signature of Brgy. Kagawad Samuel C. Dela Vega; EXHIBIT “E-9” - Signature of Crisanto Nicomedes;
- EXHIBIT “F” - Resolution No. 001, Series of 2007 of Barangay Sta. Maria, San Jacinto, Pangasinan;”[22]

After the prosecution rested its case, the trial was set for presentation of defense evidence.[23]

Instead of presenting Estrella Gallardo, Viberly Morales and Salvador de Guzman on the witness stand, the prosecution and defense had stipulated[24] that their testimonies would be those as appearing in their respective sworn affidavits.[25]

On November 12, 2010, the defense filed a motion[26] asking the court a quo for leave to allow it to present Mary Anne Ibasitas as a hostile witness and accused-appellant's mother as an ordinary defense witness because their testimonies are vital to know what truly and actually happened on March 12-13, 2008 between AAA and accused-appellant. The defense explained that Mary Anne was not listed among the defense witnesses because she was the complainant in the related case for acts of lasciviousness filed against accused-appellant that emanated from the same incident which transpired on March 12-13, 2008 at the Apo Manaog Dormitory in Baguio City. Her testimony would shed light on the events that took place in the late afternoon of March 12, 2008 to the early morning of March 13, 2008 involving her, her employer AAA, their friend Migz and accused-appellant. Accused-appellant's mother, on the other hand, would testify on what actually occurred during the barangay conference scheduled by the barangay chairman, BBB, relative to the cases filed against her son by BBB's daughter AAA and Mary Anne.

A “Comment and Opposition to the Motion to Allow Witnesses”[27] was filed by the prosecution on November 22, 2010. It anchored its objection on the pre-trial Order dated March 19, 2009 whereby accused-appellant bound himself to present only one witness, i.e., himself. Thru the said pre-trial Order, the court gave the parties five (5) days from receipt of the said Order within which to make their comments and objections thereto with a warning that no amendments will be entertained after the lapse of the said period unless it will result to manifest injustice. The affidavit of desistance of Mary Anne was executed three days before the scheduled March 19, 2009 pre-trial of the case, ergo, it cannot qualify as a newly discovered evidence or a document not in existence during the pre-trial.

In its Order[28] dated November 23, 2010, the trial court denied the defense's motion to present additional

witnesses.

With the denial of its motion, the defense presented accused-appellant as its lone witness in refutation of the prosecution's version. His testimony as summarized by the trial court is as follows:

“ERNESTO MAGALONG, JR. admitted having sexual intercourse with AAA but claimed that he was seduced by the latter. In support of his defense, he testified that he has been a resident of Sta. Maria, San Jacinto, Pangasinan for fifteen (15) years. He had known AAA who is also a resident of the same barangay. AAA was then SK Chairman in March 2008. AAA's father, BBB, was their barangay captain. AAA's brother Dwight is his friend. As such, he used to visit AAA's house wherein he had the opportunity to talk and tell stories with AAA. During those instances, AAA talked about her drinking habits.

In 2008, he was enrolled in a caregiving course at MMS Development Training Center Corporation, Puso ng Baguio. After his classes on March 12, 2008, he texted Mary Anne, AAA's housemaid. They exchanged pleasantries through text messages until he invited her and AAA to go jamming at a videoke bar. After 2-3 minutes, Mary Anne replied that they can have their drinking spree at the boarding house of AAA. Since he does not know where to go, he took a taxi and proceeded to the address given by Mary Anne. Upon reaching the place between 7-8 o'clock in the evening, he texted Mary Anne and the latter instructed him to wait for them to fetch him.

When the trio (AAA, Mary Anne and Migz) arrived, he confirmed from AAA if they can really drink in her Unit and that the latter answered in the affirmative. AAA volunteered to buy the drinks. He then gave P100 as his share for their drinks and “pulutan”. AAA and Migz went to the nearby store to buy drinks. When they came back, AAA got his backpack and placed the drinks inside then passed the bag to Migz for him to carry. Before they went upstairs, AAA talked to the guard and asked permission for Bonjong to get in her Unit, AAA referred to Bonjong as her classmate. When they got to AAA's Unit, AAA ordered Mary Anne to prepare their drinks. Upon seeing the bottle of GSM Blue, he told AAA that GSM Blue is not his brand and that he drinks Red Horse beer. AAA requested Mary Anne to go back to the store. He then gave Mary Anne another P100. Mary Anne got his backpack for her to place the beer that she will buy. She went back to the store with Migz.

While waiting for Mary Anne and Migz, AAA lighted a cigarette. He asked her whose cigarette butts were those scattered on the roof and AAA said those were hers. Then, she showed him about 15 empty GSM bottles inside the cabinet. He commented that she must be a hard drinker. AAA answered. “sanayan yan lang” (It is just a matter of getting used to it). She bragged that when she was still in high school, she was already drinking and smoking. In the course of their conversation, AAA asked how his relationship with his girlfriend Mary Jane Ferrer was. When he told her they were doing good, AAA held his left hand and gave him a meaningful look (“Tinitigan niya ako ng malagkit”).

When Mary Anne and Migz came back after 10-15 minutes, they proceeded to the dining area and prepared their chaser while Accused was seated at the sofa. Moments later, AAA entered her room and requested him to go with her to repair the doorknob. He belied AAA's testimony that he asked for a kiss after fixing the doorknob. According to him, he could not have done that because he was ashamed of Mary Anne and Migz who were preparing their drinks and who were about 2 to 3 meters away from them.

The four of them (AAA, Mary Anne, Migz and the accused) had their drinks at the dining area of AAA's Unit. AAA, Mary Anne and Migz consumed the contents of the GSM Blue using one glass. They took turns in drinking the GSM Blue by passing the glass while Bonjong drank Red Horse. In the course of their drinking session, AAA lighted a cigarette and said, “Ako ang Tanggera” (the person who pours drinks on the glass that was being passed around). While drinking, AAA told them stories about her activities as SK Chairman, her oath taking and the incident where she got drunk at the Nevada Disco Bar and danced while under the influence of liquor. When he asked Mary Anne if that was true, the latter confirmed AAA's story. When the trio finished the GSM Blue, he was only able to consume nearly one-half of the Red Horse beer. AAA told him

she will help him finish his drink together with Mary Anne and Migz. After they were done with their drinking session between 1 to 2 o'clock in the early morning of March 13, 2008, he bid(sic) AAA goodbye and told her he still have(sic) classes in the morning. However, AAA prevented him from leaving. She said it was not safe for him to go home so that he should just sleep over. Mary Anne and Migz agreed with AAA. He then accepted their invitation. Migz went ahead to the room followed by Mary Anne. Migz slept on the floor while Mary Anne stayed in the bed of one of the double-deck beds. After AAA went to the other bed, she signaled her right hand for him to lay beside her. At first, he was hesitant because he was ashamed to their companions. He noticed that the two were still awake because they were making sounds and they kept on moving. At the second signal of AAA, however, he lay(sic) down beside her. AAA got up and switched off the lights. After putting off the lights, AAA embraced him and started fondling his sex organ. By then, he noticed that their two companions were still awake. He asked AAA why she was doing that to him. AAA said, 'Don't worry, I will not put you in trouble.' Finally, he responded to her advances. He kissed her and she kissed him unceasingly. When he responded with a kiss, she removed her upper and lower garments including her panty. AAA was then wearing a jersey shorts and a T-shirt. She put her clothes below the bed. Then AAA removed his pants and asked him to lick her organ and she performed fellatio on him ("sinubo-subo niya ang organ ko"). While they were having sex, AAA assured him not to worry because he would not put him into trouble.

Accused asserted that there was no truth to AAA's testimony that her upper blouse and panty were bloodied because he did not see any blood stain. He claimed that during their sexual intercourse, he noticed that AAA was no longer a virgin. Although their companions were still apparently awake, they did not mind what they were doing. After their first sexual intercourse, he put on his pants and went to the comfort room. When he went back to bed, AAA was still naked. She kissed him again and after about 5-6 minutes, she went on top of him and put his organ into her mouth.

After their second sexual intercourse, they slept together. When Accused woke up at 5 o'clock in the morning, he awakened AAA and bid(sic) goodbye. AAA was still naked. Before he went down from the bed he checked if there were blood stains on the sheets and white blanket, but found none. AAA told him to wait for her to dress up so that she could accompany him down. As they were on the alley going down, AAA told him again not to worry because she will not put him into trouble and she will not reveal what happened to them to her father. After leaving AAA's dormitory, he texted Mary Anne and asked how was AAA. Mary Anne replied that AAA was okay and still lying down.

On September 25, 2008, their Barangay Captain BBB sent their neighbor Mr. Roco Sta. Cruz, to summon him for a possible amicable settlement. At first, it was only his parents who gave in to the invitation of BBB. They were told to go back the next day and meet at the Barangay Health Center. The following day, September 26, 2008, he and his parents went to the Barangay Health Center of Sta. Maria, San Jacinto, Pangasinan. It was there that they met BBB in the company of Mr. Rogelio Revilla, Barangay Captain of Imelda, San Jacinto together with the barangay secretary and one barangay kagawad. He was not advised to engage the services of a lawyer to assist him during the conference. While they were interrogating him, the barangay secretary prepared the minutes which they let him sign later.

At the Barangay Health Center, BBB interviewed Accused about the incident. Thereafter, BBB suggested for him to marry his daughter. Accused replied that it is up to them if they could accept him despite his having a girlfriend soon to give birth to their baby. Upon hearing his response, BBB got mad. During their confrontation, BBB propounded the questions which he answered which the barangay secretary recorded. The conference was finished at about 6 to 7 o'clock in the evening. They were made to sign the minutes in the dark using only the light coming from a cellphone."

Accused-appellant formally offered the following documentary exhibits, to wit:

"Exhibit "1" - The Affidavit of Estela C. Gallardo dated October 28, 2008, subscribed and sworn to before Asst. City Prosecutor Oliva A. Biala-Nudo of Dagupan City.

Exhibit “2” - The Affidavit of Viberly A. Morales dated October 28, 2008 subscribed and sworn to before Asst. City Prosecutor Nimia T. Castillo-Peralta of Dagupan City.

Exhibit “3” - The Affidavit of Salvador V. de Guzman dated October 28, 2008 subscribed and sworn to before Asst. City Prosecutor Nimia T. Castillo-Peralta of Dagupan City;

Exhibit “4” and series – This is the same documentary evidence marked Exh. “E” by the prosecution and already forms part of the record of the case.

Exhibit “5” - The certification bearing the Office of the Punong Barangay of Imelda, San Jacinto, Pangasinan dated February 22, 2010 issued by Brgy. Captain Rogelio S. Revilla, the Barangay Captain of Brgy. Imelda, San Jacinto, Pangasinan.

Exhibit “6” - Certification issued by the National Statistics Office, Manila dated November 15, 2010.

Exhibit “7” - The Affidavit of Desistance of Mary Ann Ibasitas, assisted by her mother dated March 16, 2009, which was attached as Exh. “A” thereof with the Motion for Immediate Resolution of the Petition for Bail dated November 9, 2009, filed on December 1, 2009 and forming part of the record of this case for Rape, together with a handwritten letter of Mary Ann Ibasitas dated May 6, 2009, attached to the said Affidavit of Desistance, which is marked as Exhibit “A-1”. The said Affidavit of Desistance was used by the prosecution in the criminal case for Acts of Lasciviousness filed against the same accused, Ernesto Magalong, Jr. as Exh. “A” and adopted by the defense as Exh. “1” in said case.

Part of the said Affidavit of Desistance was previously marked Exh. “1” in the case for Acts of Lasciviousness that was filed and dismissed by this Honorable Court, together with the hand written letter of Mary Ann Ibasitas, attached therewith and is truly adopted in this case as part of a public record.

Exhibit “8” - The Counter Affidavit of accused Ernesto Magalong, Jr. dated September 22, 2008, submitted before the Office of the City Prosecutor of Baguio City. This was marked as Exhibit “2” in the case for Acts of Lasciviousness. It is prayed that it be remarked as Exh. “8”.

Exhibit “9” - Certificate of Entry in the Police Blotter dated November 19, 2010 this was marked Exh. “3” in the case for Acts of Lasciviousness. But, is requested to be remarked as Exh. “9”.

Exhibit “10” and series – The Letter Complaint for Grave Threats dated 5-12-09, together with the Sworn Statement of Janica B. Solomon and Affidavit Complaint of Felicidad P. Sangalang. These documents were previously marked Exh. “5” (letter), Exh. “5-A” (Sworn Statement of Janica Solomon) and “5-B” (Sworn Statement of Felicidad Sangalang).

Exhibit “11” and series – Certification of Entry in the Police Blotter of San Jacinto, Pangasinan.

Exhibit “12” and series – The Transcript of Stenographic Notes dated December 7, 2010 consisting of twelve (12) pages, including the page whereon the certification of the transcript of stenographic notes is the true and correct transcript of stenographer taken on December 7, 2010.

Exhibits “12-C-1”, “12-C-2”, “12-D-1”, “12-D-2”, “12-E-1” and “12-F-1” - Pages 4, 5, 6 and 7 of the Transcript of Stenographic Notes taken on December 7, 2010 before the same Sala, RTC, Branch IV provided by the same Hon. Mia Joy C. Oallares-Cawed, in the criminal case for Acts of Lasciviousness, where Govt. Prosecutor Maria Nenita A. Opiana, City Prosecutor's Office, Baguio City, the same Govt. Prosecutor in the Rape case asked the following questions with the said Mary Ann Ibasitas, gave the following answers on direct examination:

“Q:

Other than your statement today, is there anything else that you want to say considering this complaint that you filed against the accused?

A:

I just wanted to tell that there is no truth in the cases that we filed.

Q:

When you say WE, you are referring to whom?

A:

My friends, AAA and Migs.

COURT:

Are there other cases filed by Migs?

PROS. OPIANA:

Just two cases. The early case and this case.

COURT:

She said AAA and Migs.

PROS. OPIANA:

Q:

You said AAA and Migs?

A:

Yes, ma'am.

Q:

To your knowledge, other than these cases, what other cases were filed?

A:

The rape case. ma'am.

Q:

And who is the complainant in that case as far as you know?

A:

AAA, ma'am.

(pp. 4 and 5, TSN, dated December 7, 2010)

Further, on “Cross-examination by ATTY. CABRERA” appearing on pages 6 to 7 of the Transcript of

Stenographic Notes, the same reads:

Q:

It appears from the Information that this case for acts of lasciviousness was filed at your instance only on September 29, 2008 but in your Sworn Statement, you stated March 12, 2008. Why Madam Witness, did you cause the filing of this case only on September 29, 2008 when according to you the incident happened already sometime on March 12, 2008?

A:

Because on September 8, 2008, we were brought by Barangay Captain BBB to the NBI, the father of AAA, to file a case.

Q:

Why were you brought to the NBI Dagupan City by Barangay Captain BBB?

COURT:

Did she state Dagupan City?

Q:

NBI, what place of the NBI is that you are referring to?

A:

Baguio City.

Q:

Ay, Baguio, I'm sorry. Why were you brought to the NBI-Baguio?

A:

To file a case about what happened to Ernesto Magalong, Jr. and AAA and that we are the witnesses."

Exhibit "13" - The Order dated March 10, 2011, issued by Hon. Mia Joy C. Oallares-Cawed declaring that "x x x this case is hereby PERMANENTLY DISMISSED".[29]

The court a quo admitted Exhibits "1" to "5" and "8". Exhibits "6", "7", "9", "10", "11" and series, "12" and series, and Exhibit "13", on the other hand, were denied admission.

After the prosecution and the defense rested their respective cases, the court a quo rendered its assailed Decision finding accused-appellant guilty beyond reasonable doubt of the offense charged in the Information.

Feeling aggrieved, accused-appellant comes to US challenging the said Decision and assigning the following errors as allegedly committed by the court a quo, to wit:

"1. THE TRIAL COURT ERRED IN "DECIDING" THE CASE NOT ON THE BASIS OF THE FACTS AND THE LAW BUT ON ITS CONTRIVED VERSION THEREOF.

THE TRIAL COURT ERRED IN COMPULSIVELY AND OBSESSIVELY DEPENDING ON JURISPRUDENTIAL CITATIONS, IRRESPECTIVE OF THEIR APPLICABILITY TO THE INSTANT CASE.

THE TRIAL COURT ERRED IN PRE-JUDGING THE CASE AND IN IGNORING THE APPELLANT'S CONSTITUTIONAL RIGHT TO BE PRESUMED INNOCENT.

THE TRIAL COURT ERRED IN DENYING THE APPELLANT HIS CONSTITUTIONAL RIGHT TO BAIL.

THE TRIAL COURT ERRED IN DISALLOWING THE APPELLANT TO OFFER IN EVIDENCE HIS COUNTER-AFFIDAVIT AND IN DEPRIVING HIM OF HIS CONSTITUTIONAL RIGHT TO SUMMON WITNESSES DURING HIS TRIAL.”[30]

In his brief, accused-appellant maintains that the evidence presented by the prosecution is insufficient to justify his conviction. He maintains the defense that the sexual congress that occurred on the date and time in question was consensual and it was AAA who seduced him into having sexual intercourse with her.

He claims that the trial court erred in finding that AAA was “deprived of reason or otherwise unconscious” since she was in an “unconscious or semi-unconscious state or drunken stupor when the sexual intercourse occurred”. It could be gleaned from her testimony in court that AAA was not at all deprived of reason or otherwise unconscious. Neither was she “semi-unconscious, dizzy from intoxication or in a drunken stupor”. In fact, she was well aware of what was going on around her and it was only after she was kissed and mounted or when the alleged rape was consummated that she allegedly lost consciousness. Further, in the sworn affidavit executed by Mary Anne Ibasitas to support AAA's complaint, the former stated therein that Migz and herself were awakened when they heard AAA and accused-appellant in their “salacious slurping and sensual entanglement”. She even saw them kissing.

According to accused-appellant, the trial court also erred when it concluded that he was not a credible witness without explaining how it arrived at the said conclusion. It also failed to properly weigh the evidence presented by the parties for it merely relied on jurisprudential doctrines which are not applicable to the instant case.

Accused-appellant asserts that he was not given enough opportunity to defend himself and prove his innocence as the trial court did not allow him to present two additional witnesses, namely, Mary Anne Ibasitas and his mother, whose testimonies are vital to the case, in violation of his constitutional right enshrined in Section 14 (2) of the Constitution and reiterated in Section 1, Rule 115 of the Revised Rules of Court.

He further claims that the trial court overlooked the testimony given by Mary Anne before the same court in the related case for acts of lasciviousness that the latter filed against him which supports his contention that the coitus that transpired between him and AAA was consensual.

The issues raised by accused-appellant boil down to whether or not the prosecution was able to establish his guilt beyond reasonable doubt and whether or not the trial court did not err in not allowing him to present additional witnesses.

By the very nature of the crime of rape, conviction or acquittal depends almost entirely on the credibility of the complainant's testimony because of the fact that, usually, only the participants can directly testify as to its occurrence. Since normally only two persons are privy to the commission of rape, the evaluation of the evidence thereof ultimately revolves around the credibility of the complaining witness.[31] Nonetheless, conviction always rests on the strength of the prosecution's evidence, never on the weakness of the defense.

The guiding principles in determining guilt in rape cases are: (a) that an accusation of rape can be made with facility; it is difficult to prove, but more difficult for the person accused, though innocent, to disprove; (b) that in view of the intrinsic nature of the crime which usually involves two persons, the testimony of the complainant must be scrutinized with extreme caution; and (c) that the evidence for the prosecution must stand or fall on its

own merits and cannot be allowed to draw strength from the weakness of the evidence of the defense.[32]

The essence of rape is carnal knowledge of a female either against her will (through force or intimidation) or without her consent (where the female is deprived of reason or otherwise unconscious, or is under 12 years of age, or is demented).[33]

As per the Information filed in this case, accused-appellant is charged of raping AAA while the latter was in “unconscious state”, being “under the influence of liquor”. The prosecution tried to establish during the trial that accused-appellant had sexual coitus with AAA against her will and without her consent for she was unconscious or semi-conscious or in a drunken stupor at the time the alleged rape happened. Considering the nature of the rape charge against accused-appellant, the prosecution must establish beyond reasonable doubt these two essential elements, to wit: that accused-appellant had carnal knowledge of AAA and that such act was done while AAA was in unconscious state.

It is a basic rule that findings of facts of the trial court, especially on the credibility of the witness are not to be disturbed on appeal as the trial court is in the best position to evaluate the same given their unique opportunity to observe the witness' demeanor, conduct and deportment while testifying.[34] This, however, is not an iron-clad rule. It admits of exceptions as where the trial court has overlooked, ignored or disregarded some facts or circumstances of weight or significance that, if considered would alter the outcome of the case.[35] In the present case, the trial court evidently overlooked, ignored and disregarded some facts which are very material and relevant as they have a bearing on whether or not AAA had fallen into an unconscious state and whether or not the accused-appellant had carnal knowledge of AAA while in that state.

A meticulous scrutiny of the records of the case reveals that the prosecution failed to convincingly establish that private complainant was in that condition as to be incapable of giving free consent to have sexual intercourse with accused-appellant. The following testimony of AAA should be carefully weighed, viz –

“WITNESS

q:

You said earlier that you, Mary Anne Ibasitas and Miguel Solomon were drinking the GSM Blue. My question is, were you able to finish it?

a:

Yes sir.

q:

From your recollection, who drank the most?

a:

Me sir.

q:

Why did you say that?

a:

Because when we were drinking, Magalong is teasing me that I'm not drinking with them.

q:

So because of that, what did you do?

a:

And so I joined them.

q:

How about t Magalong, was he able to finish the Red Horse beer?

a:

No sir.

q:

About how much was he able to drink?

a:

Mahigit kalahati pa po yung natira.

q:

He drank more than one-half or more than one-half was still left?

a:

More than one-half po yung natira.

q:

What was done with the Red Horse or the contents of the Red Horse beer that he was not able to finish?

a:

Tinulungan po namin siya ni Miguel po, kami po yong umubos ni Miguel sa natira.

q:

After you had already drank all the GSM Blue?

a:

Yes sir.

q:

Now, when you stopped drinking in the morning of March 13, both bottles, the contents had already been consumed?

a:

Yes sir.

q:

What did you do at 2 a.m.?

a:

I went inside my room to sleep sir.

ATTY. SANIDAD:

q:

What did you feel at that time?

WITNESS:

a:

I feel(sic) dizzy sir.

q:

So you went to sleep?

a:

Yes sir.

q:

Where did you go to sleep?

a:

In my bed sir.

q:

This place where you were drinking is separate from where you went to sleep?

a:

Yes sir.

q:

So there is a room inside that unit aside from the sala?

a:

Yes sir.

q:

Were you able to go to the bed, to go and sleep?

a:

Yes sir.

q:

When you entered the room, was there anyone there?

a:

Yes sir.

q:

Who was there?

a:

Miguel Solomon sir.

q:

What was Miguel Solomon doing?

a:

Sleeping sir.

q:

Where?

a:

On the floor sir.

q:

You are telling us that Miguel Solomon enter the room before you did?

a:

Yes sir.

q:

How long after... if you recall, how long after Miguel Solomon entered the room did you follow?

a:

Around 5 minutes. Magkasunod lang kami.

q:

Now, where did you go to sleep?

a:

On the bed.

q:

Were you able to go to sleep?

a:

Yes sir.

q:

Now, while you were sleeping, do you recall anything unusual that happened?

a:

Yes sir.

q:

What was that?

a:

I felt somebody went on top of me.

q:

Would you know who was this who went on top of you?

a:

Yes sir.

q:

Who?

a:

Si Magalong sir.

q:

The accused that you pointed out earlier?

a:

Yes sir.

q:

Why do you know that it was Magalong?

a:

Because I heard his voice?

q:

What did he say?

a:

I don't understand sir.

q:

Why is it that you do not understand what he was saying?

a:

Because I am(sic) already very dizzy and I just wanted to go to sleep.

q:

And what happened next?

a:

And I felt that he was kissing me sir.

q:

What did he say?

q:

And after that, what else happened?

a:

I felt that something went inside of me.

ATTY. SANIDAD:

Can we have that read back? That is important?

STENOGRAPHER:

I felt that something went inside of me sir.

ATTY. SANIDAD:

Vagina.

STENOGRAPHER:

I felt that something went inside my vagina.

ATTY. SANIDAD:

q:

What did you feel when something went inside your vagina?

WITNESS:

a:

I felt it is warm and painful.

q:

Did you fight him?

a:

No sir.

q:

Why not?

a:

Because I was so dizzy at that time, I just wanted to sleep.

q:

And what happened next?

a:

I do not know anymore because I lost consciousness sir.

q:

Did you regain consciousness?

a:

In the morning after already sir.

q:

About what time approximately did you say you regain consciousness?

a:

About 8 a.m. sir.”[36] (Underscoring supplied.)

As per AAA's foregoing testimony, her group finished their drinking session at around 2:00 o'clock in the morning of March 13, 2008. Allegedly, at that point in time, AAA was already dizzy that she wanted to sleep. The question now is how dizzy was she at that time? Apparently, her dizziness did not cripple her senses as to render her incapable of discerning who were the people in the area where she was and what was happening around her. Thus, when she entered the bedroom, she noticed Miguel Solomon to be lying on the floor sleeping. She even knew that Miguel entered the room earlier than her by five minutes. This was her condition before getting to sleep. She was still very conscious that she was able to recognize Miguel, what Miguel was doing and where Miguel exactly was when she entered the room. Not only that, she was also able to get to her bed.

When already asleep, AAA recounted that she felt that somebody went on top of her. She knew it was accused-appellant from the sound of his voice. She can remember he kissed her and then something went inside her vagina. For all these sexual advances, she alleged that she was not able to offer resistance because she was so dizzy at that time that all she “just wanted (was) to sleep”. After the insertion of that something into her private organ, AAA claimed she already lost consciousness.

Clearly, AAA was cognizant of every move accused-appellant had taken on her until the consummation of the sexual act, a fact overlooked or ignored by the court a quo. Despite being conscious, AAA did not put up any opposition. Her declaration that “I just wanted to sleep” implied a voluntary surrender of her body to accused-appellant's sexual desires constitutive of consent to having sexual congress with accused-appellant.

Apart from the aforementioned testimony of AAA, her Sworn Statement[37] given before the NBI Agent Fabienne P. Matit (Exhibit “C”) is also telling. Her recollection of what accused-appellant did to her is even more vivid, thus –

“Q: What else happened?

A: At around 2:00AM, after we finished all the alcoholic drinks, we asked BONJONG to go home but he said he cannot go home because he is drunk and that they don't have rides going to their place anymore. We agreed that he can sleep beside MIGZ on the floor of the room I and ME-ANN shares(sic). MIGZ first went in and I

followed. I fell down on my bed because I feel(sic) dizzy and weak and I feel(sic) asleep. After sometime I felt somebody kissing me, I know it's BONJONG because I can recognized(sic) his voice. I didn't have the strength to push him. Then I felt BONJONG remove my clothes. I was wearing a jersey shorts, t-shirt, panty and bra at that time. I felt him kissing my lips and fondling my body. I felt him got on top of me and something warm touching my vagina.”(Underscoring supplied.)

The foregoing only further supports this Court's finding that AAA had not fallen into an unconscious or semi-conscious state or in a drunken stupor when the sexual intercourse happened. WE, therefore strongly disagree with the following ratiocination of the trial court:

“The elements of rape relevant to this case defined under Article 266-A of the revised Penal Code are as follows: (1) That the offender had carnal knowledge of a woman; and (2) That such act was accomplished while the complainant was unconscious.

In the case at bench, the complainant was in an unconscious and semi-unconscious state or in a drunken stupor when the sexual intercourse occurred. In that state, AAA could not completely and clearly describe the details of how she was sexually violated. In the similar case of *People vs. Fabro*, the Supreme Court ruled:

“It is but to be expected that if the sexual assault was committed against the victim while the latter was in state of unconsciousness, she would not be able to testify on the actual act of sexual intercourse. It is precisely when the sexual intercourse is performed when the victim is unconscious that the act constitutes the statutory offense of rape (e)specially when, as in the instant case, the loss of consciousness was the result of appellant's act of violence.”

In the case at bench, AAA was able to testify not only on the actual act of sexual intercourse, but even on those other steps taken by accused-appellant preliminary to the coitus itself. As per her account, she lost consciousness only after the sexual act.

That AAA had remained conscious all the time despite having consumed GSM Blue and Red Horse Beer could be explained by the fact that drinking alcoholic beverages, gin and beer included, was not new to her. The affidavits of defense witnesses Estrella Gallardo, Viberly Morales and Salvador de Guzman all point to this fact. The presentation of these witnesses on the witness stand was done away with because of the stipulation entered into by the prosecution and the defense that if called to testify, they will state the same things as those stated in their respective affidavits marked as Exhibits “1”, “2” and “3” which were all admitted by the court a quo.

Estrella Gallardo, in her affidavit, alleged the following:

“xxx

That in the year 2007 during my on-the-job training at the Municipal Health Office of Mangaldan, I saw AAA at Jayo's videoke bar at Poblacion, Mangaldan, Pangasinan, drinking and smoking with her group;

That I saw her twice where we would go and relax after our duty;

xxx”[38]

In her Affidavit, Viberly Morales, declared, thus:

“x x x

That we became close friends and she regularly visited me at home where she would smoke cigarettes such as Philip Morris, Champion, Hope and Winston;

That she is fond of drinking liquor such as San Miguel gin and Red Horse beer at Jayo's videoke bar in Poblacion, Mangaldan, Pangasinan where she and our classmates would go after classes in the afternoon;

That I know her drinking spree with our classmates because AAA would invite me to go with them.

That even when we were not in the same section anymore in high school, she would invite me to go with them to drink at Jayo's"[39]

Salvador de Guzman, on the other hand, came up with the following claim:

“x x x

That in 2004-2005, I was the choreographer of the second year high school students of Sto. Tomas Catholic School, Mangaldan, Pangasinan, dance presentation during the school's foundation day. One of the dancers was AAA.

That during break time of the dance rehearsals, I often saw AAA smoke outside the school premises. Sometimes when they come back, I saw her and some of her classmates bringing in drinks contained in plastic but I suspected that it is not softdrinks because the color is yellowish and with bubbles and their breath is alcoholic.”[40]

With such damning description of AAA, it is surprising why the prosecution did not opt to let these witnesses testify in open court and subject them to thorough cross-examination.

The said statements of the three witnesses very well disclose that AAA was used to drinking gin and beer. Ergo, consuming a bottle of GSM Blue with two friends and half-bottle of Red Horse Beer with a friend did not render AAA dead drunk or cause her to lose her consciousness, partly or totally. The amount of gin and beer she took on that occasion was not enough to get her intoxicated as to make her unable to comprehend what was happening and impair her will power to resist accused-appellant's sexual advances. What is clear to the Court is that she chose not to react, not to offer a fight, not to raise an opposition. She passively submitted herself to accused-appellant until the sexual act was finally consummated.

It should not be forgotten that aside from AAA and accused-appellant, also in the same room were AAA's maid Mary Anne and friend, Miguel. If she really wanted to oppose accused-appellant's moves, she could have easily called the attention of the two.

In the Information filed against accused-appellant, it is alleged that accused-appellant perpetrated the crime of Rape by taking advantage of AAA's “unconscious state”, she being then “under the influence of alcohol”. Contrary to the said claim, AAA was conscious when accused-appellant had sex with her.

As held by the Supreme Court in the case of *People vs. Silvino Salarza, Jr.*[41] –

“Third, Zareen was not deprived of reason or otherwise unconscious when the accused had intercourse with her. Her lame excuse was that she was half-asleep. However she admitted that in the early morning of 1 May 1994 she woke up to find someone removing her underwear. Thuswise it cannot be said that she was deprived of reason or unconscious. She knew, hence was conscious, when her panties were being pulled down; she knew, hence was conscious, when her legs were being parted to prepare for the sexual act; she knew, hence was conscious, when the man was pulling down his briefs to prepare himself likewise for the copulation; she knew, hence was conscious, when the man mounted her and lusted after her virtue.xxxx

xxxx

xxx To repeat, all these details vividly recalled and recounted by her ineluctably indicate that she was awake all the time and capable of comprehending the nature of the sexual act and of exercising her own free will as to yield to or resist a Lothario's libido.

xxxx

In *People v. Bacalzo*, the accused boxed his victim into unconsciousness. When the victim regained her consciousness she felt the flaccid penis of her ravisher still inside her vagina and that thereafter he removed his sexual organ. He then warned her not to divulge what had happened or else she and her family would be killed. Force, which was used to knock the victim into unconsciousness, was employed before the act was done to ensure its consummation. In *People v. Corcino* the complaining witness was totally asleep and when she woke up the organ of the accused was already inside her genitalia. In *People v. Caballero* the victim was fully asleep when the accused had carnal communication with her, such that when she woke up the crime of rape was already consummated. The same was true in *People v. Inot*. In *People v. Dayo*, the rapist's organ was already in the vagina of the offended party when she woke up, so she pushed him away and screamed. But the accused pulled out his revolver and threatened to kill her if she made any further outcry. She fainted, and the accused continued having sex with her. In fine, in all these cases rape was already consummated before the offended parties could even exercise their volition to grant or deny access to erotic consortium.” (Underscoring supplied.)

The High Court pointed out that “in the case of Zareen, her 'consent' was given prior to the carnal act, i.e., the act was done because of her passivity, if not consent.”

The alleged confession and offer of marriage made by accused-appellant during the barangay conference held at Barangay Health Center of Barangay Sta. Maria, San Jacinto, Pangasinan of which AAA's father was the chairman, are of questionable probative value for several reasons. First, the conference was called by AAA's own father, BBB. Second, the barangay conference was presided by BBB himself. Third, the interrogation was likewise conducted by BBB. Fourth, BBB's purpose of holding such a conference is dubious. Crimes punishable by imprisonment exceeding one year or fine exceeding P5,000.00 including rape, of course, cannot be compromised,[42] yet, he called a conference where he required accused-appellant and his parents to appear. Fifth, instead of conciliation proceeding, what was done by BBB was an investigation of the case. Sixth, BBB did not allow accused-appellant to be assisted by a lawyer considering the nature of the proceeding and the seriousness of the charge hurled against accused-appellant. Seventh, the alleged confession and offer to marry were all in the handwriting of the barangay secretary.

It is very evident from the foregoing circumstances that BBB hatched this scheme to push accused-appellant to the wall, so to speak. The barangay conference was held not to conciliate the parties but to interrogate accused-appellant and extract confession from him. Thus, while he enjoined accused-appellant and his parents to appear at the barangay health center, he did not require his daughter to be present.

It should be noted that in the minutes allegedly taken during the said barangay conference,[43] it was BBB for and in behalf of her daughter who is the complainant against accused-appellant. BBB should have inhibited himself and let another barangay official preside over and conduct the proceeding. The fact that he did not do so, spoke volumes of his sinister motive, i.e., to take undue advantage of his position as the captain of their barangay vis-a-vis accused-appellant and the latter's parents who are his constituents.

Further, even if the alleged confession is to be considered, the same standing on its own will not suffice to justify a conviction. It is a well settled doctrine in criminal law that an extrajudicial confession made by an accused shall not be a sufficient ground for conviction, unless corroborated by evidence of corpus delicti.[44]

The term corpus delicti means the actual commission by someone of the particular crime charged. It literally means “the body or substance of the crime”, but applied to a particular offense, it means the actual commission by someone of the particular crime charged.[45]

A mere voluntary extrajudicial confession uncorroborated by independent proof of the corpus delicti does not suffice to sustain a guilty verdict. There must be independent proof of the corpus delicti. The evidence may be

circumstantial but, just the same, there should be some evidence substantiating the confession.[46] It means that there should be some evidence apart from the confession showing the commission of the crime.

In this case, aside from the confession allegedly made by accused-appellant, as extensively expounded in the preceding paragraphs, there exists no adequate proof that the crime of rape was committed while AAA was in unconscious state.

There was no offer of marriage by accused-appellant. As he clearly testified, it was BBB who suggested that he marry his daughter. His response was it is up to the chairman if he would still want him (accused-appellant) to marry AAA despite the fact that he already had a girlfriend who would soon deliver a baby sired by him. BBB got mad at his reply.[47] The offer of marriage must ofcourse be clear, certain, unequivocal and one that is freely and voluntarily made to be considered as evidence of one's guilt.

Aside from the extant case for rape, another criminal case was filed against accused-appellant arising from the same incident. That other case is for Acts of Lasciviousness with AAA's maid, Mary Anne, the complainant. The cases for Rape and Acts of Lasciviousness were assigned to the same court. Thus, the judge who tried the Rape case is the same judge who heard the case for Acts of Lasciviousness.

Mary Anne later decided to have the action for Acts of Lasciviousness dismissed. She executed an Affidavit of Desistance[48] for the purpose which was subscribed and sworn to by her before Prosecutor I Ma. Nenita Opiana of Baguio City on March 16, 2009. She was called to the witness stand by the public prosecutor on December 7, 2010 to identify the said Affidavit and testify thereon.

This is the same Mary Anne that accused-appellant wanted to present as an additional witness aside from himself. The Motion to allow him to present Mary Anne (aside from his mother, Beatriz Magalong) was filed by accused-appellant on November 12, 2010. The trial court denied the said motion, in this wise:

“The Court resolves to DENY the Motion.

A cursory reading of the records in this case shows that both parties were duly furnished with a copy of the Pre-trial Order. There is no showing that the testimony of both Mary Ann Ibasitas y Pasaron and Beatriz G. Magalong were unavailable at that time nor the said testimonies in the nature of newly discovered evidence. The Accused was represented by a counsel de parte during the pre-trial and the Accused is bound by the manifestations and actions of his counsel. Further, the records show that there is no motion to amend the Pre-trial Order dated March 19, 2009 filed by either the Defense or the Prosecution. Thus, the parties are bound by the declarations in the Pre-trial Order.[49]

In so denying the said motion, the court a quo committed a grave error by applying a simplistic and restrictive approach on the matter. It applied rigidly what was provided in the pre-trial Order particularly the portion thereof which says that comments/objections to the said Order must be made within 5 days from receipt by the parties of copy thereof and if none is made within the given period, no amendment to the Order shall be entertained.

Considering the nature of the testimony of Mary Anne and the defense of accused-appellant that it was a consensual sexual intercourse that took place between him and AAA, the trial court judge should have allowed the presentation of Mary Anne as defense witness. This is the more prudent thing to do and one that is in consonance with the demands of substantial justice and fair play specially taking into account the seriousness of the offense of which accused-appellant is charged and the gravity of the penalty prescribed by law therefor. After all, the pre-trial Order itself recognizes an exception to the provision that no amendment thereto shall be allowed after the lapse of the period provided therein with this phrase “unless it will result to manifest injustice”.

The pertinent portions of the testimony of Mary Anne given in open court on December 7, 2010 relative to her

Affidavit of Desistance are quoted hereunder:

“Q:

Under your present oath, Madam Witness, do you still maintain the truthfulness of the statements in this Affidavit of Desistance dated March 16, 2009?

A:

Yes, ma'am..

Q:

Were you ever forced or coerced into executing that Affidavit of desistance?

A:

No, ma'am.

Q:

Who asked you to come and testify today?

A:

Atty. Cabrera.

Q:

Madam Witness, were you given any consideration by the accused in this case to drop this complaint against him?

A:

None, ma'am.

PROS. OPIANA:

Q:

Madam Witness, were you given any consideration by the accused in this case to drop this complaint against him?

We have nothing more to ask from this witness. May we just pray that this be marked as Exhibit “A” for the prosecution.

COURT:

Any cross?

ATTY. CABRERA:

Yes, your honor. May I borrow the records please.

CROSS-EXAMINATION BY:

ATTY. CABRERA:

Q:

It appears from the Information that this case for acts of lasciviousness was filed at your instance only on September 29, 2008 but in your Sworn Statement, you stated March 12, 2008. Why Madam Witness, did you cause the filing of this case only on September 29, 2008 when according to you the incident happened already sometime on March 12, 2008?

A:

Because on Septmebr 8, 2008, we were brought by Barangay Captain BBB to the NBI, the father of AAA, to file a case.

Q:

Why were you brought to the NBI Dagupan City by Barangay Captain BBB?

COURT:

Did she state Dagupan City?

Q:

NBI, what place of the NBI is that you are referring to?

A:

Baguio City.

Q:

Ay, Baguio, I'm sorry. Why were you brought to the NBI-Baguio?

A:

To file a case about what happened to Ernesto Magalong, Jr. and AAA and that we are the witnesses.

Q:

Did you join the father BBB?

A:

Yes, ma'am.

Q:

And you executed an affidavit or sworn statement when you came here, Madam Witness?

A:

Yes, ma'am.

Q:

That is referring to the rape case and your complaint also (against) the accused in this case Ernesto Magalong, Jr.?

A:

Yes, attorney?

Q:

You were saying that as far as your complaint is concern(sic), your sworn statement there is not true, why do you say that is not true?

A:

[Nasabi ko pong hindi totoo kasi po nuong kinaumagahan nung nangyari po yun nung gabi ng March 12, 2008, around 8:00 a.m. po, ginising po kami ni AAA. Tapos sinabi po niya na may nangyari sa kanila ni Ernesto Magalong, Jr. tapos sabi din po niya na nakatwo rounds pa po sila tapos nagbiro pa po si Migs po tinatanong niya kung maliit o malaki yung ari ni Ernesto, ang sagot po ni AAA is maliit sabi niya, attorney.]"[50]

The trial court judge was very well aware of the tenor of Mary Anne's testimony as she was the one who presided over the hearing of December 7, 2010. She knew how vital it is to the defense of accused-appellant in the Rape case. Mary Anne was not exhaustively examined in so far as the rape charge is concerned because she was presented only for her to identify the Affidavit of Desistance she executed in relation to the crime for Acts of Lasciviousness and testify on the reasons for the execution thereof.

With the denial of his Motion to present Mary Anne, accused-appellant just offered as part of his documentary evidence, Mary Anne's Affidavit of Desistance as his Exhibit "7" and the December 7, 2010 transcript of stenographic notes as his Exhibit "12". However, both were likewise denied admission by the lower court in an Order dated May 29, 2012 on the grounds that the said Exhibits are irrelevant, immaterial to the case, were not identified and presented during the reception of evidence and were not listed as exhibits during the pre-trial conference. WE disagree with this ruling at least with respect to Exhibit "12".

As expounded in the preceeding paragraphs, Exhibit "12" for the defense is very relevant and material as it pertains to what had really happened in the early morning of March 13, 2008. True it is that the said exhibit was not identified and presented during the reception of evidence but it was for the reason that the court a quo did not permit the defense to present Mary Anne whose testimony is the one recorded in the said transcript. It should have been admitted, it being as exception to the hearsay rule. Section 47, Rule 130 of the Rules of Court provides –

“SEC. 47. Testimony or deposition at a former proceeding. - The testimony or deposition of a witness deceased or unable to testify, given in a former case or proceeding, judicial or administrative, involving the same parties and subject matter, may be given in evidence against the adverse party who had the opportunity to cross-examine him.”

Mary Anne's testimony tends to show that AAA's father, a barangay captain, pressured her to contrive stories that would pin down accused-appellant by making it appear that accused-appellant not only raped AAA but also molested her. That Mary Anne yielded to such pressure is understandable because she was working as AAA's maid at that time. Her regular source of livelihood was at stake.

The testimony of Mary Anne together with the other pieces of evidence on record prove that there was no rape. The coitus was the result of sexual outbursts on the part of AAA and accused-appellant triggered by the alcoholic drinks they took prior thereto. Simply put, it was a product of two consenting individuals.

The Court is not unaware that AAA was a minor at the time she was allegedly ravished by accused-appellant. The Court is also not unmindful of its duty to protect minors from all kinds and forms of abuse and exploitation. There is, however, no law that mandates courts to automatically hand-out a guilty verdict against the accused everytime the victim is a minor. Such verdict must stand on proof beyond reasonable doubt of accused-appellant's guilt.

It must be stressed that AAA was not a child of tender years at that time. She was already 16 years old and can hardly be described as a naïve, demure and shy provinciana lass we knew in the past. AAA, although still a minor, was not innocent of the wordly aspects of life. She drank beer or gin with boys, jammed with them until the wee hours of the morning and even slept with them in the same room. This Court can take judicial notice of the sad fact that many teenage girls of this modern period of advance information technology are into such activities. Therefore, it is not unbelievable that AAA passively allowed accused-appellant to have sex with her.

The cases cited by the trial court to support its judgment of conviction are not applicable to the extant case. In all these cases, the rape was already consummated before the offended parties could even exercise their volition to grant or deny access to erotic consortium, to borrow the words used in Salarza case.

In *People v. Gaufo*,^[51] the victim was hit on her head by the accused but she fought back and asked for help. The accused then punched her abdomen causing her to lose consciousness. Upon regaining her bearings, she noticed that her underwear was missing, her vagina was bleeding and her body was painful. The combination of these circumstances, among others, led the Court to declare the accused guilty of rape.

In *People v. Pabol*,^[52] the accused admitted hitting the victim causing her to fall and leaving her on the side of the road. The victim fell unconscious. The admission of the accused taken with all the circumstances of the case point to no other logical conclusion but that the accused was the perpetrator of the crime.

The facts surrounding the extant case are far different from those obtaining in the cases invoked by the trial court. At the risk of redundancy but for the purpose of emphasis, it constituting an essential element of the crime herein charged, AAA was not unconscious. She was totally cognizant of what was happening around her and what was being done to her by accused-appellant. It was her passivity that allowed accused-appellant to have carnal knowledge of her. The prosecution's evidence is wanting that it fails to overcome accused-appellant's presumption of innocence.

In *People vs. Ignacio Poras*,^[53] the Supreme Court cited the following cases where it did not hesitate to set aside convictions in rape cases involving unconscious victims because the circumstantial evidence were found insufficient to convict, thus –

“In *People v. Sumarago* the victim testified that the accused boxed her, rendering her unconscious. When she regained consciousness, she had a severe headache. However, she still had her clothes on. She suspected that the appellant had carnal knowledge of her because her vagina was painful. The examining physician also found incomplete lacerations on her private parts. In acquitting the accused, the Court explained:

“There is no proof beyond reasonable doubt that the appellant's penis entered the labia of the pudendum of Norelyn. It is possible that while [the victim] was unconscious, the appellant undressed her, removed her panties and inserted his private organ into her vagina; and after satisfying himself, put her clothes back on before she regained consciousness. But such possibility is not synonymous with evidence. That the appellant had carnal knowledge of the victim cannot be presumed simply because she felt pain in her vagina when she regained consciousness, and that for over a period of time, the appellant warned her not to tell anybody.”

In *People v. Arcillas*, the accused hit the victim with a wooden stick on the head rendering her unconscious. When she woke up, she found herself covered in blood. The laboratory examination showed that she was positive for sperm cells in her private parts. In setting aside the accused's conviction of rape with frustrated

homicide, this Court held that although the prosecution amply proved that private complainant had been clubbed into unconsciousness by the accused, the proffered evidence was inadequate to prove that she had been raped. The mere presence of spermatozoa in the vagina, according to the Court, did not prove that the accused raped the private complainant since these sperm cells could have been introduced by sexual contact earlier or later than the alleged rape.

Similarly, in *People v. Daganta*, the accused was acquitted of the charge of raping a minor. According to the prosecution, the accused invited the supposed victim to his room and once inside, the accused started kissing her on the cheek and then on her lips. He then sprayed an insect repellant on her face, rendering her unconscious. When she woke up, she found the accused sitting outside his room. The lower portion of her umbilicus was painful; she felt pain in her private parts when she urinated. The physical examination of the alleged victim revealed that there was hymenal laceration at five o'clock indicative of the entry of a hard object into her private parts. Despite all these, the Court reversed the lower court decision based on reasonable doubt, and held that the prosecution's evidence was hazy, contradictory and sorely lacking in material details. It added that the chain of circumstances did not show a coherent and consistent story that would give rise to a certitude sufficient to convince this Court to impose on the accused the grave penalty of reclusion perpetua.

Finally, in *People v. Masalihit*, the victim saw the accused on top of her and wiping his private parts when she woke up. Nonetheless, the Court acquitted the accused because there was no evidence showing that the act of "wiping" was preceded by an intercourse; the prosecution also failed to show that what was wiped was semen.

In rape cases, the prosecution bears the primary duty to present its case with clarity and persuasion, to the end that conviction becomes the only logical and inevitable conclusion. The Constitution requires moral certainty or proof beyond reasonable doubt; a conviction cannot be made to rest on possibilities."

As instructively held by the Supreme Court in the case of *People vs. Masalihit*:^[54]

"Before we condemn, however, the crime must first be positively established and that the accused is guilty sans any scintilla of doubt. This is elementary and fundamental in our criminal justice system. Any suspicion or belief that the accused is guilty – no matter how strong – cannot substitute for the quantum of evidence that is required to prove his guilt beyond reasonable doubt."

Absolute certainty of guilt is not demanded by the law to convict one of any criminal charge, but moral certainty is required nevertheless.^[55] Every vestige of doubt having a rational basis must be removed.^[56] If there is reasonable doubt as to the guilt of the accused, he is entitled to be acquitted.

WHEREFORE, all the foregoing considered, the Decision of the court a quo is hereby REVERSED and SET ASIDE. A new judgment is hereby issued ACQUITTING accused-appellant of the crime of Rape on reasonable doubt.

The Director of the Bureau of Corrections is ordered to immediately release accused-appellant upon receipt of this Decision unless he is being held for some other lawful cause, and show compliance herewith within five (5) days from notice.

SO ORDERED.

Baltazar-Padilla, and Reyes-Carpio, JJ., concur.

[1] Record, p. 666.

[2] Ibid, pp. 643-663.

[3] Ibid, p. 1.

[4] Pursuant to Sec. 29 of Republic Act No. 7610, Sec. 44 of Republic Act No. 9262 and Sec. 40, Rule on Violence Against Women and their Children as well as the recent case of People v. Gloria (G.R. No. 168476, September 26, 2006 citing the case of People vs. Cabalquinto [G.R. No. 167693, September 19, 2006]), and per Resolution dated September 19, 2006 in A.M. No. 04-11-09-SC, the Court shall use fictitious initials in lieu of the real names of the victim/s and immediate family members other than the accused, and delete the exact addresses of the victim.

[5] Record, p. 13.

[6] See Order dated October 10, 2008, Record, p. 12.

[7] Record, p. 23.

[8] Record, p. 43.

[9] Record, pp. 48-49

[10] Record, p. 53.

[11] See Order dated December 8, 2008, Record, p. 54.

[12] See Pre-trial Order dated March 19, 2009, Record, pp. 65--66.

[13] Record, pp. 129-130.

[14] Record, pp. 131-132.

[15] Record, p. 133.

[16] Record, pp. 134-135.

[17] Record, pp. 136-137.

[18] Record, p. 141.

[19] See Order dated April 13, 2010, Record, pp. 221-230.

[20] See Order dated September 9, 2010, Record, p. 303.

[21] Record, pp. 304-305.

[22] See Formal Offer of Evidence on the Opposition to the Petition for Bail, pp. 306—307.

[23] See Order dated October 5, 2010, Record, pp. 321-322.

[24] See Order dated November 10, 2010, Record, p. 330.

[25] See Exhibits “1”, “2”, “3”, Record, pp. 472, 473 and 474.

[26] Record, pp. 333-336.

[27] Record, pp. 345-350.

[28] Ibid, p. 351.

[29] See Formal Offer of Exhibits in Evidence for the Accused, Record, pp. 464-470.

[30] Rollo, p. 57.

[31] See *People v. Villaflores*, 422 Phil. 776, 786 (2001); *People v. Abuan*, 348 Phil. 52, 60-61 (1998); *People v. Fortich*, 346 Phil. 596, 614 (1997); *People v. Soriano*, 339 Phil. 144, 149 (1997).

[32] See *People vs. Feliciano Ulit*; G.R. Nos. 131799-801, February 23, 2004.

[33] See *People vs. Edgardo Lupac*, G.R. No. 182230, September 19, 2012; *People v. Taguilid*, G.R. No. 181544, April 11, 2012; *People v. Butiong*, G.R. No. 168932, October 19, 2011; *People v. Flores, Jr.*, G.R. Nos. 128823-24, December 27, 2002, 394 SCRA 325, 333; see also *People v. Masalihit*, G.R. No. 124329, December 14, 1998, 300 SCRA 147, 155.

[34] See *People vs. de Guzman*, G.R. No. 76742, August 7, 1990.

[35] See *People vs. Vhilan*, G. R. No. 125086, July 28, 1999.

[36] TSN dated July 16, 2009, pp. 26-29.

[37] Record, p. 4.

[38] Record, p. 472.

[39] Record, p. 473.

[40] *Ibid*, p. 474.

[41] G.R. No. 117682, August 18, 1997.

[42] See Section 408 (c), R.A. 7160 (The Local Government Code of the Philippines).

[43] See Exhibit “E” of the prosecution, Record, p. 196.

[44] See Section 3, Rule 133, Revised Rules of Court.

[45] See *People vs. Mantung*, G. R. No. 130372, July 20, 1999.

[46] See *U.S. vs. de la Cruz*, 2 Phil. 148.

[47] See TSN dated December 7, 2010, p. 35.

[48] See Exhibit “7” of the defense, Record, pp. 478-479.

[49] See Order dated November 23, 2010, Record, p. 351.

[50] TSN in Criminal Case No. 28752-R for Acts of Lasciviousness dated December 7, 2010, Record, pp. 496-498.

[51] G.R. No. 132146, March 10, 2004.

[52] G.R. No. 187084, October 12, 2009.

[53] G.R. No. 177747, February 16, 2010.

[54] G.R. No. 124329, December 14, 1998.

[55] See *People vs. Fortin*, 97 Phil. 94 (1995).

[56] See *People vs. Capilitan*, G.R. No. 73382, February 15, 1990.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.