

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARCIANO ROXAS Y ELARMO AND LEXTER CASTILLO Y LOPEZ, ACCUSED-APPELLANTS.

Ponente: BRUSELAS, JR. J.

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BRUSELAS, JR. J.:

Brought to us for review is a Decision[1] and Order[2] that found the accused-appellants, Marciano Roxas y Elarmo (“Roxas”) and Lexter Castillo y Lopez (“Castillo”) guilty beyond reasonable doubt of rape, the dispositive portions of which read as follows:

“ACCORDINGLY, in view of the foregoing, judgment is hereby rendered as follows:

1. In Criminal Case No. this Court finds the accused MARCIANO ROXAS y ELARMO and LEXTER CASTILLO y LOPEZ GUILTY beyond reasonable doubt as principals of the crime of RAPE, and in default of any modifying circumstances attendant, hereby sentences him to suffer the penalty of RECLUSION PERPETUA, together with the accessory penalties provided by law, and with credit for preventive imprisonment undergone, if any, to pay the private complainant the amount of P 50,000.00 as civil indemnity, P 50,000.00 as exemplary damages, and P 50,000.00 as moral damages, and to pay the costs;

2. In Criminal Case No. this Court finds the accused MARCIANO ROXAS y ELARMO and LEXTER CASTILLO y LOPEZ GUILTY beyond reasonable doubt as principals of the crime of RAPE, and in default of any modifying circumstances attendant, hereby sentences him to suffer the penalty of RECLUSION PERPETUA, together with the accessory penalties provided by law, and with credit for preventive imprisonment undergone, if any, to pay the private complainant the amount of P 50,000.00 as civil indemnity, P 50,000.00 as exemplary damages, and P 50,000.00 as moral damages, and to pay the costs.

SO ORDERED.”[3]

xxx xxx xxx

“Finding no cogent or sufficient reason to reverse or modify this Court's Decision dated January 25, 2011, the Motion for Reconsideration filed by counsel for the accused is hereby DENIED.

SO ORDERED.”[4]

Appellants Lopez and Castillo were charged with the crime of rape via two (2) separate pieces of Information, the accusory portions of which state:

Criminal Case No. 05-8055

“That on or about April 22, 2005, at around 9:00 o'clock in the morning, more or less, at Sitio XXX, Barangay XXX[5] Municipality of Puerto Galera, Province of Oriental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, motivated by lust, lewd and unchaste desire, and by means of force, violence, threats and intimidation, conspiring, confederating and mutually helping one another, did then and there willfully, unlawfully and feloniously have carnal knowledge of AAA,[6] a girl sixteen (16)

years of age, against the will and without the consent of said private complainant, thereby violating her person and chastity, acts of sexual abuse which debase, degrade and demean the intrinsic worth and dignity of the said AAA as a child and as a human being, to her damage and prejudice.

CONTRARY TO LAW.”[7]

Criminal Case No. CR 05-8056

“That on or about April 22, 2005, at around 9:00 o'clock in the morning, more or less, at Sitio XXX, Barangay XXX, Municipality of Puerto Galera, Province of Oriental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, motivated by lust, lewd and unchaste desire, and by means of force, violence, threats and intimidation, conspiring, confederating and mutually helping one another, did then and there willfully, unlawfully and feloniously have carnal knowledge of AAA, a girl sixteen (16) years of age, against the will and without the consent of said private complainant, thereby violating her person and chastity, acts of sexual abuse which debase, degrade and demean the intrinsic worth and dignity of the said AAA as a child and as a human being, to her damage and prejudice.

CONTRARY TO LAW.”[8]

During the arraignment, both Roxas and Castillo pleaded “Not Guilty” to the charges against them. A joint trial on the merits thereafter ensued.

The prosecution presented the following witnesses: 1) Medical Officer Dr. Rosse Villaruel (“Dr. Villaruel”); 2) the victim, “AAA”; and 3) the mother of the victim, “BBB”. Likewise offered were the following documentary evidence: 1) Sworn Statement of AAA; 2) National Statistics Office (NSO) authenticated copy of birth certificate of AAA; 3) Medical Certificate of AAA; 4) Sworn Statement of BBB; and 5) Letter of Ramon Tulfo to the Puerto Galera Municipal Police Station.

The defense, on the other hand, presented the following witnesses: (1) Accused-appellant Castillo; (2) Accused-appellant Roxas; and (3) Retired Police Officer Kimye Kong (“Police Officer Kong”). They also offered the 2nd Paragraph of the Sinumpaang Salaysay dated April 26, 2005 executed by BBB.[9]

The facts, as found by the trial court, are as follows:

“Version of the Prosecution

Dr. Rosse C. Villaruel, Medical Officer V of the Puerto Galera Municipal Hospital, testified that he examined AAA on April 22, 2005. According to the doctor, the private complainant told him that she was raped by the accused and that during the course of the incident, the accused also inflicted physical injuries on different parts of her body. After examining the victim, the doctor found out that she sustained the following injuries: contusion on the pit of her stomach area, shallow puncture wounds on the lateral angle right eye and wounds on the back and thighs. As per vaginal examination of the victim, the doctor reported that her introitus was tender to touch, there was shallow abrasion between the labia majora and minora and the hymen was no longer intact. However, no discharge was noted by the doctor as the victim had already taken a bath at the time of her medical examination.

The victim testified that on April 22, 2005, at around 9:00 o'clock in the morning while she was waiting for a tricycle along the highway of Poblacion, Puerto Galera, on her way to work at the Buddy Bar and Restaurant in White Beach, accused Roxas who was then driving a tricycle, and accused Castillo who was then riding at the motorcycle's back, stopped in front of her and offered her a ride. According to the victim, accused Roxas told her that they were also bound to White Beach at that time. Thinking that it was a passenger tricycle anyway, the victim boarded the vehicle. However, when they were already at Barangay Sto. Niño, three (3) male persons flagged down the tricycle. The said three (3) male persons approached and talked to accused Roxas.

But the victim failed to overhear what their conversation was all about. After a while though, one (1) of the three (3) male persons approached her and told her that he would just get something from the tricycle's tool box. As the said person stooped down as if to get something from the tool box, the said person suddenly hit her with a fistic blow which landed on her stomach. She felt sharp pain and before she could make a move, the three (3) unidentified persons hurriedly covered her mouth with a handkerchief which made her very dizzy to the point that she became unconscious. When the victim regained consciousness, she realized that she was already being carried by the two accused going to an abandoned beach resort at Sitio Boquete. She remembered the beach resort to be grassy but with an unused swimming pool and an old comfort room. Realizing that her life was already in great danger, she struggled to free herself from the accused. However, accused Roxas was able to overpower her and she was again hit in the stomach. The blow made her so weak that she nearly fainted. Seconds later, she was laid down on the grass by the two. There, accused Roxas took out shabu and an aluminum foil from his pocket. The two accused then sniffed shabu and even ordered her to do the same. Since she refused to sniff shabu, the accused again delivered a blow on her body. With her refusal, accused Castillo then poked a knife at her and threatened to kill her if she would not sniff shabu with them. Despite this threat, the victim remained steadfast and refused to give in to the demands of the accused. This apparently irked accused Roxas who hit her on her right waist. Thereafter, accused Castillo found a broken glass nearby and since she still refused to sniff shabu, said accused slightly slashed the right side of her forehead.

After the two accused finished their pot session, they then dragged the victim inside the old comfort room. Accused Castillo then hit her again several times and afterwards removed her shorts and panty. With her private parts already exposed, said accused forcibly inserted his penis into her vagina. After ejaculating, said accused pulled out his penis from the victim's vagina. Apparently, still unsatisfied, said accused then fingered her vagina for a while. Afterwards, accused Roxas entered the comfort room while accused Castillo exited. Accused Roxas also forcibly inserted his penis into the vagina of the victim, and after ejaculating also inserted his finger inside her private part. Accused Roxas then brought the victim out of the comfort room. Outside, she saw accused Castillo waiting and already holding a dried coconut frond. Accused Roxas pushed her to the ground while accused Castillo started hitting her with the dried coconut frond. Fortunately, they heard a noise that seemed to be heading towards their direction. This alarmed the accused, who immediately scampered away leaving her lying on the ground. She felt so weak and helpless to stand up and remained lying on the ground for sometime. After the victim was able to regain some of her energy, she managed to stand up and walk towards the highway. However, when the victim reached the highway, she again saw the two accused at the junction standing by their tricycle. Upon seeing her, accused Castillo immediately approached her and poked a knife at her. The victim was pulled towards the tricycle where she was again boarded. The two accused then drove towards White Beach where she was left. Still feeling dizzy, the victim then decided to proceed to her place of work where she related to her co-workers the unfortunate incident that befell that morning. As she was advised by her co-workers to report the incident to the police, she went to the police station together with her parents. But to her dismay, she was not given proper attention as the police officers were then playing tong-its. With the help of her father's brother-in-law, who happened to be a police officer, the two (2) accused were arrested, but after three (3) days of detention, they were also released. Her case seemed to be at the losing point during the time and out of desperation, she decided to seek help from the famous radio commentator Ramon Tulfo who gave her an endorsement addressed to the Police of the Puerto Galera Municipal Police Station. It was only when her statement was taken by the investigator.

BBB, mother of the victim, testified that on April 22, 2005 at around 3:00 o'clock in the afternoon, the victim arrived in their house and narrated what had happened to her. According to the witness, the victim told her that she had already reported the incident to the police, who advised her to go to a doctor and have herself medically examined. Without wasting any time, she accompanied the victim to Dr. Villaruel for medical examination, as required by the police. After the examination, they brought the medical certificate to the police station. However, the policemen at the station did not pay them much attention, which made them decide to go to Manila and seek the assistance of radio commentator Ramon Tulfo. Their travel proved not to be in vain, as

the said Ramon Tulfo wrote an endorsement letter addressed to the Chief of Police of Puerto Galera Municipal Police Station regarding their predicament. With the endorsement letter, the Chief of Police immediately acted on the complaint and had the two accused incarcerated.

Version of the accused

Accused Lexter Castillo y Lopez denied that he raped the victim as alleged in the Information. The accused testified that on April 22, 2005, at around 9:00 o'clock in the morning, he was driving the tricycle owned by his co-accused Roxas, who was riding in tandem with him. While they were driving along the highway, they chanced upon the victim, who seemed to be waiting for a ride. The victim flagged down their tricycle and requested the accused to drive her to Buddy's Bar and Restaurant at White Beach. Since he was also en route to White Beach, and considering that the victim was his former schoolmate in high school, he allowed her to board the tricycle. However, when they reached the boundary of Balatero and Sto. Niño, the victim asked him to stop the tricycle. The victim talked to him and his co-accused Roxas and asked them if they could lend her P 3,000.00. The victim explained to them that if they could lend her the money, she would be able to account to her boss for the P 3,000.00 she was able to spend during the drinking spree the other night. When they told the victim that they do not have money, the victim then requested them to bring her instead to the beach in Sitio Boquete. Upon arrival at the beach, the victim pleaded that they (the witness and accused Roxas) inflict physical injuries on different parts of her body to make her boss believe that she was victimized by robbers and that the P 3,000.00 entrusted to her was carted away. According to the accused, they were hesitant to accede to the request of the victim but due to the insistent pleas of the latter, they eventually agreed to "injure" the victim. The accused admitted that he caused some slight scratches on the thigh of the private complainant. Afterwards, they then brought the victim to White Beach.

Accused Marciano Roxas mainly corroborated the testimony given by his co-accused Lexter Castillo y Lopez but emphasized that it was only the latter who inflicted physical injuries on the victim. The accused testified that they brought the victim to Boquete beach where the latter and accused Castillo talked. He learned that the victim was asking accused Castillo to inflict on her some injuries to make it appear that she was robbed as the money entrusted to her by her boss was spent on a drinking spree just the other night. After accused Castillo caused injury to the victim by means of a piece of broken glass, they brought the latter to White Beach as requested. The accused insisted that they did not rape the accused and after they brought to White Beach, they already left.

Retired Police Officer Kimye Kong ("Police Officer Kong") testified that on April 22, 2005, when he was still in the service and connected with the Puerto Galera Municipal Police Station, the victim came to their office complaining that she was raped by two (2) male persons, accused Marciano Roxas and Lexter Castillo y Lopez. The victim narrated to him what happened and after hearing her story, he advised her to see a doctor for medical examination. During the interview he conducted, the victim was crying and he noted that she was very uneasy. When the victim returned with the medical report, he learned from the document that as per the examining doctor's findings, the accused sustained physical injuries only. He thus instructed the victim to return to the doctor so that a new medical report would be issued indicating the fact of rape. The witness denied that the police at that time did not immediately pay attention to the complaint of the victim. The policeman explained that at the time when the victim came in to report the incident, he was then interviewing Mangyans and therefore could not accommodate the victim at once. So as not to waste time, the witness therefore deemed it proper to advise the victim to secure first a medical certificate from a doctor since this document is necessary anyway for the conduct of the investigation."

After trial, the court a quo rendered the assailed decision finding both the accused-appellants guilty beyond reasonable doubt of rape. The accused-appellant Castillo subsequently moved to reconsider but the motion for reconsideration was denied by the court a quo via the assailed order. Hence, this appeal.

The appellants seek their acquittal raising the following assignment of errors:

I.

THE HONORABLE RTC ORIENTAL MINDORO BRANCH 39 ERRED IN FAILING TO FIND THAT THE CHARGES WERE FABRICATED;

II.

THE HONORABLE RTC ORIENTAL MINDORO BRANCH 39 ERRED IN FINDING THE ALLEGED VICTIM AS A CREDIBLE WITNESS;

III.

THE HONORABLE RTC ORIENTAL MINDORO BRANCH 39 ERRED IN FAILING TO SEE SEVERAL CRUCIAL INCONSISTENCIES IN THE EVIDENCES RAISING REASONABLE DOUBT ON THE TRUTHFULNESS OF THE CHARGES;

IV.

THE HONORABLE RTC ORIENTAL MINDORO BRANCH 39 ERRED IN DENYING ACCUSED'S MOTION FOR RECONSIDERATION TO THE DECISION WITHOUT LEGAL BASIS;

V.

THE HONORABLE RTC ORIENTAL MINDORO BRANCH 39 ERRED IN DECIDING THE CASE WITH PARTIALITY IN FAVOR OF THE PROSECUTION."

We fail to find merit in the appeal.

In a nutshell, the appellants contend that the court a quo erred when it found them guilty of rape beyond reasonable doubt despite that: (a) the charges of the prosecution were fabricated; (b) the allegations by the prosecution regarding the facts and circumstances of the incident were unreliable, untrue, incredible and insufficiently proven; (c) AAA not being a credible witness; and (d) there were crucial inconsistencies in the prosecution's evidence.

The felony under which the appellants had been charged is defined in Article 266-A of the Revised Penal Code, as amended by R.A. No. 8353,[10] which provides:

"ART. 266-A. Rape, When and How Committed.- Rape is committed-

1.) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a. Through force, threat or intimidation;

b. When the offended party is deprived of reason or is otherwise unconscious;

c. By means of fraudulent machination or grave abuse of authority;

d. When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present;

2.) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person."

In contending that the prosecution's charges were merely fabricated, the appellants argue that the court a quo erred when it simply relied on the version of the facts presented by the prosecution which rests substantially on the testimony of AAA and her witnesses, without other solid, factual evidence that can confirm the truthfulness of

their statements. Moreover, the appellants enumerate the following as bases for their claim that there is reasonable doubt that rape had been committed:

- (1) the improbability that the alleged abduction and eventual rape of AAA was committed by the appellants in broad daylight and in a public place;
- (2) the conflicting versions appearing in the testimonies and records of the prosecution witnesses regarding the exact number of perpetrators of the alleged crime;
- (3) the fact that the appellants, after the alleged rape incident, provided a tricycle ride to AAA to her requested destination at the Buddy's Bar and Restaurant at White Beach, her place of work;
- (4) the fact that Dr. Villaruel, the examining physician testified that based on AAA's narration during her medico-legal examination, the appellants, together with the other alleged perpetrators, had previously talked to her days before the rape incident, implying they already knew each other and that the rape had been planned prior to its execution, which contradicts the testimony of AAA that prior to the incident she did not know the appellants and that the crime happened randomly;
- (5) The testimony of AAA as reflected on Page 12 of the TSN dated June 7, 2006 which discussed the following:
 - (a) it is known that tricycles do not have their tool box inside or within the passenger's seat because the tool box is located near or just beside the driver's seat or beneath the driver's seat itself; (b) it is also impossible for anyone to punch a passenger at his stomach when the passenger is seated inside the tricycle; (c) any girl, 16 years of age would have immediately fallen unconscious if punched on the stomach by a male person; (d) the alleged punching transpired in a public place so the infliction of injury upon a young girl by punching her at the stomach would have caused a commotion; gotten the attention of the public; (e) no rapist would waste time looking for a broken glass only to wound his victim on her forehead; (f) AAA's claim that upon reaching Boquete beach, she regained consciousness which would demand a long time for her to recuperate and regain her normal strength and senses; (g) if there was indeed an intention to rape the victim, the alleged participation of five (5) malefactors (even if there were only two), would make the rape act easily accomplished without the infliction of physical injuries; (h) the alleged perpetrators would simply need to place a handkerchief on AAA's nose for her to lose consciousness without the need to punch her several times alternatively; (i) if indeed AAA was punched several times, she would not have been able to do the acts she testified to have done after the incident, such as walking towards the highway for thirty minutes, walking to her place of work after being driven by tricycle, going home alone to report to her mother the incident, going to the police and doctor, and many other activities undertaken; (j) a would-be rapist would have not wasted time taking out shabu, using it, and asking the would-be victim to sniff the same as to entitle the victim a chance to escape since their attention would be focused in their taking the prohibited substance; (k) assuming that the appellants indeed sniffed shabu and that they even asked AAA to do the same, would make it difficult for the appellants to drive a tricycle and inflict a mere shallow wound below AAA's forehead without causing a fatal injury; (l) the act of rape could not have been done in a small comfort room with very limited space to lay the victim; (m) the victim should have sustained additional physical injuries considering the small size of the room; and that physical aggression could not have been easily accomplished; (n) the alleged continuous boxing by the accused of her stomach simultaneously while raping her is also highly improbable; (o) being boxed in the stomach, both parties would be down on the floor, and in such position, common sensically, there would have been no way to uncork a punch from that position; (p) the alleged insertion of a finger by each of the accused in the vagina of AAA after the penetration of each of their sexual organs is also unnatural as it should have been done prior to the latter; (q) AAA testified that she was only punched on the stomach, but a more natural course of things would be to injure or punch the alleged victim at different parts of her body; (r) the alleged participation of three (3) other malefactors who allegedly blocked the path is also incredible as there was no way for those 3 other persons to know that the tricycle of the accused would be passing by that road at such time, much less, to

know that AAA was their passenger, if AAA was making it appear that everything happened randomly; and (s) if it were true that appellants were the ones who brought her to her place of work, the victim could have, along the way to their destination, easily called upon anyone or her friends for assistance to have the perpetrators accosted, but she failed to do so.

To support the appellants' claim that AAA is not a credible witness, the appellants point to AAA's behavior during and after the alleged incident of rape. In trying to discredit AAA's testimony, the appellants raise the following circumstances: (1) the investigating officer, retired Police Officer Kong, did not find any indication of rape; (2) the testimony of the examining doctor, Dr. Villaruel, clearly contradicted the testimony of AAA that both appellants ejaculated, and yet he failed to find traces of spermatozoa or semen discharge during the medical examination which was conducted immediately after the alleged incident; (3) the act of AAA in seeking help from Mr. Ramon Tulfo shows her case was weak since she needed the intervention of a media personality to support her claim; (4) a perusal of the transcript of stenographic notes would show that AAA had difficulty in testifying about the sequence of events, specially on the manner by which the alleged rape was committed; (5) the failure to elaborate the alleged prior planning of the rape incident testified to by the prosecution witnesses produce clear doubt about the credibility of the rape accusation; (6) the discrepancy in the number of accused, as found in the conflicting testimonies of AAA and Dr. Villaruel, was left without explanation by the prosecution to clarify the inconsistency; (7) the inconsistencies in the claim of the prosecution that the rape incident began to happen at around 9 o'clock in the morning, but during the testimony of AAA during the hearing, she testified that the incident began to happen at 9:00 in the evening; (8) AAA's conduct immediately after the supposed rape incident of not trying to escape, despite the chance of doing so; (9) After extricating from the scene of the rape incident, it was too incredible for AAA to see her tormentors again along the highway and not avoid them or change her direction; (10) a genuine rape victim would not have wasted time telling her story before her co-workers, but would have immediately gone to the police to have the perpetrators arrested; and (11) Police Officer Kong mentions of the several inconsistencies declared by AAA before him and the examining doctor.

The appellants also highlight the fact that AAA, despite being a young 16-year old teenager, had a live-in partner, as testified to by Dr. Villaruel and BBB. They claim that the fact that she could indulge in immoral relations, especially considering her young age, shows clearly that she is not really an innocent, young lady pictured in the trial court's decision. AAA's behavior in school - of having been suspended and kicked out due to misbehavior and having possessed pornographic magazines - are pointed out as signs of having loose morals; that another sign of having loose morals is indicated by the fact that even at very young age of 16, she already worked in a bar and that her mother allowed her to engage in such kind of work.

Our assessment.

We see no compelling reason to doubt the trial court in finding AAA as a credible prosecution witness. In resolving issues pertaining to the credibility of the witness, the court is guided by the following principles: (1) the reviewing court will not disturb the findings of the lower court, unless there is a showing that the lower court overlooked or misapplied some fact or circumstance of weight and substance that may affect the result of the case; (2) the findings of the trial court on the credibility of witnesses are entitled to great respect and even finality, as it had the opportunity to examine their demeanor when they testified on the witness stand; and (3) a witness who testifies in a clear, positive and convincing manner is a credible witness.[11] In the case under review, we find no such facts and circumstances as would warrant a critical alteration of the findings and conclusions reached by the trial court.

By the distinctive nature of rape cases, conviction rests solely on the basis of the testimony of the victim provided that such testimony is credible, natural, convincing and consistent with human nature and the normal course of

things.[12] If the victim's testimony meets the test of credibility, as in the case under review, then the accused-appellant can justifiably be convicted on the basis thereof; otherwise, he should be acquitted of the crime.[13] In here, we find the victim's testimony of her harrowing experience to be candid, straightforward and credible, even on cross-examination; hence, deserving of full faith and credit.

The conduct of AAA during and after the rape incident does not necessarily deviate from natural, human conduct. We must note that human reactions vary and are unpredictable when facing a shocking and horrifying experience such as a sexual assault. There is no uniform behavior expected of victims after being raped. Not all rape victims can be expected to act conformably to the usual expectations of everyone.[14]

The defense's attempt to depict the victim as a woman of loose morals deserves scant consideration. The victim's character or reputation is immaterial in rape, there being absolutely no nexus between it and the odious deed committed.[15] Even granting that AAA was a woman of loose morals, she could still be a victim of rape; the essence thereof being carnal knowledge of a woman without her consent.[16] For that matter, even a prostitute may be the victim of a rapacious act, for she could still refuse his perpetrators' lustful advances.[17]

The inaccuracies and inconsistencies referred to by the accused-appellants in AAA's testimony are generally expected. Rape is a painful experience which is oftentimes not remembered in detail. For such an offense is not analogous to a person's achievement or accomplishment as to be worth recalling or reliving; rather, it is something which causes deep psychological wounds and casts a stigma upon the victim, scarring her psyche for life and which conscious and subconscious mind would opt to forget. Thus, a rape victim cannot be expected to mechanically keep and then give an accurate account of the traumatic and horrifying experience she had undergone.[18]

The apparent inconsistency anent the time when AAA started to travel for White Beach, Puerto Galera on April 22, 2005, which led to the commission of the crime of rape, becomes only relevant when it creates serious doubt as to the commission of the rape itself or the sufficiency of the evidence necessary to convict. In the case at hand, except for the single instance in AAA's testimony wherein she answered in the positive, when confronted by the prosecutor about her whereabouts on April 22, 2005 at around nine o'clock in the evening,[19] nowhere else in any of the testimonial or documentary evidence of the prosecution can it be found that the happening of the rape incident occurred in the evening of April 22, 2005. Moreover, during AAA's cross-examination, the defense counsel even confirmed with the victim that it was at 9:00 in the morning of April 22, 2005 that she was bound for White Beach, Puerto Galera. In fact, in all the other evidence presented by both the prosecution and the defense, it is clear that the rape incident transpired at about 9:00 in the morning of April 22, 2005.

The accused-appellants' arguments that it was impossible for the abduction and eventual rape incident to have occurred in the morning of April 22, 2005 in broad daylight and in a public place at that, as well as for it to have happened inside a small, comfort room with a cramped space, in an abandoned resort, are not at all persuasive. As consistently held by the Supreme Court, many rape cases were not always committed in seclusion. Lust is no respecter of time or place, and rape defies constraints of time and space.[20]

Anent the alleged delay in reporting the rape incidents, we have to note that delay in reporting an incident of rape is not an indication of a fabricated charge and does not necessarily cast doubt on the credibility of the complainant.[21] The alleged delay here is not even a significant period of time.

In sum, the inconsistencies referred to by the appellants are trivial and only pertained to inconsequential matters that do not alter the essential fact of the commission of rape. What is decisive in a rape charge is that the commission of rape has been sufficiently proven; the alleged inconsistencies and discrepancies, not significant enough to successfully tilt the scales of justice in favor of the appellants.

Anent the appellants allegation that a view of the wounds inflicted upon AAA, after considering their superficiality and locations, reveals that such wounds are not the wounds that would befall a rape victim, we simply recall that even the absence of external signs or physical injuries does not negate the commission of the crime of rape. Proof of injuries is not necessary because this is not an essential element of the crime.[22]

Further, the fact that the victim and her mother had been shown to have been resolute in seeking justice for the victim's plight by seeking the assistance of Mr. Ramon Tulfo, only strengthens AAA's claim that she had been raped by the appellants. No woman, least of all an adolescent, would easily concoct a story of defloration, allow examination of her private parts and subject herself to public trial and ridicule if she has not, in truth, been a victim of rape and impelled to seek justice for the wrong done to her being.[23]

According to the appellants, the issuance of two (2) medico-legal reports with conflicting accounts of the incident, one for physical injury and another for physical injury with rape, of AAA involving the same incident without any satisfactory explanation by the prosecution as to the cause or reason for having two reports with varying contents, produce the natural conclusion that the charge of rape against both the accused is unreliable and doubtful.

The appellants claim that the alleged first medical report for physical injury, which was secured by them after rendition of the assailed decision (a copy of which they attached to their appellants' brief,)[24] was cunningly concealed from the defense but was, nonetheless, accessed by them only after the judgment of conviction.

According to the appellants, the differences between the two (2) medico-legal reports are as follows: (1) the alleged 1[st] report reflects the surname of AAA as Gado, which is actually the surname of her live-in partner named Jefferson Gado and her civil status stated- "married". In the 2[nd] report, offered as evidence by the prosecution, it already revealed her true name and her status as "single with live-in partner" to remove the false statement about her personal circumstances; (2) The nature of the incident which was originally stated as "Physical Injury" but later changed to "Physical Injury with Rape," was not reflected in the alleged first medico-legal report; (3) contradictions on the manner by which the incident occurred-- in the first report, AAA mentioned of an incident the night before April 22, 2005, of waiting for a ride and encountering guys on her way with balisong who hit her on the ankle which compelled her to run to White Beach and to sleep there till morning, were incidents not reflected in the 2[nd] report.

It is too late in the day to present the alleged 1st medico-legal Report as the same had not been presented, its issuance cross-examined and offered as evidence during the trial of the case. Even assuming for the sake of argument that we give consideration to the alleged 1[st] medico-legal report, we must remember that a medical certificate, in fact, is not necessary to prove the commission of rape, as even a medical examination of the victim is not indispensable in a prosecution for rape.[25] Expert testimony is merely corroborative in character and is not essential for conviction.[26] The medical examination merely bolsters a victim's accusation of rape.

The absence of spermatozoa in the the victim's sex organ does not disprove rape.[27] The important consideration is not the emission of semen but the penetration of the female genitalia by the male organ.[28] As observed by Dr. Villaruel, the absence thereof may have been the result of the victim's having washed her vagina prior to her examination.[29]

The appellants interpose the defense of denial and alibi. It is a settled rule that in order to merit credibility, denial must be buttressed by strong evidence of non-culpability which herein appellants failed to show. In order for the defense of alibi to prosper, it is not enough to prove that the appellants were somewhere else when the offense was committed; it must, likewise, be demonstrated that they were so far away that it was not possible for them to have been physically present at the place of the crime or its immediate vicinity at the time of its commission.[30] In this case, however, it was admitted by both appellants that they were indeed physically present at the exact

place of the incident. The appellants' defense of denial and alibi cannot prevail over AAA's positive identification of them as the perpetrators of the crime.

Juxtaposed against the claim of AAA, the counter-assertion of the appellants fail to muster credibility. It is implausible for the appellants to have acceded to AAA's request to help her injure herself to make it appear that she fell victim to robbers to justify the loss of the money entrusted to her by her boss. The appellants, in fact, admitted that they were indeed in the company of AAA at the time and place of the commission of the crime. Appellant Castillo even admitted to having injured AAA allegedly because of the latter's request, which was corroborated by appellant Roxas. The appellants were consistent in their testimonies that at 9:00 in the morning of April 22, 2005, they were riding a tricycle heading to White Beach and they chanced upon AAA who was also heading to the same place. It was only when they reached Barangay Sto Niño that they started to testify about two (2) different versions of the events.

The appellants contend that the court a quo erred in denying their motion for reconsideration of the assailed decision without legal basis. They argue that while such motion contained several arguments raising the perceived flaws in the decision, the court a quo opted to deny the same via the assailed order in violation of Section 14,[31] Article 8 of the 1987 Constitution.

The constitutional requirement that a decision must express clearly and distinctly the facts and law on which it is based pertains to decisions. Resolutions disposing of petitions fall under the constitutional provision which provides that, "No petition for review x x x shall be refused due course x x x without stating the legal basis therefor" (Section 14, Article VIII, Constitution). When the Court, after deliberating on a petition and any subsequent pleadings, manifestations, comments, or motions decides to deny due course to the petition and states that the questions raised are factual or that reversible error in the respondent court's decision is shown or for some other legal basis stated in the resolution, there is a sufficient compliance with the constitutional requirement.[32]

Anent the penalty, while we sustain the penalty imposed by the court a quo against the appellants, we find a different basis for such imposition.

Article 266-B in relation to Article 266-A (1) of the Revised Penal Code, as amended, provides:

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

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

xxx xxx xxx"

From the foregoing, whenever the crime committed is simple rape, the penalty to be imposed is the single penalty of reclusion perpetua. On the other hand, 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.

In the present case, the aggravating circumstance of "rape being committed by two or more persons" was alleged in the two Informations; hence, the correct penalty that should have been imposed against each of the appellants is reclusion perpetua to death, not simply reclusion perpetua.

Corollarily, Article 63 of the Revised Penal Code provides:

"Art. 63. Rules for the application of indivisible penalties. - In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.

"In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

1. When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied.
2. When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.
3. When the commission of the act is attended by some mitigating circumstance and there is no aggravating circumstance, the lesser penalty shall be applied.
4. When both mitigating and aggravating circumstances attended the commission of the act, the courts shall reasonably allow them to offset one another in consideration of their number and importance, for the purpose of applying the penalty in accordance with the preceding rules, according to the result of such compensation."

In the present case, there is neither aggravating nor mitigating circumstance that attended the commission of the crime. Thus, we impose upon the appellants the lesser penalty of reclusion perpetua.[33]

With respect to the civil liability of the appellants, for simple rape, the amounts P 50,000.00 as civil indemnity and P 50,000.00 as moral damages are proper.[34] The amount of P 50,000.00 exemplary damages that had been awarded, however, should be reduced to P 30,000.00 to conform with prevailing jurisprudence.[35]

All damages awarded shall earn interest at the legal rate of 6% per annum from date of finality of this judgment until fully paid.[36]

WHEREFORE, the appeal is DENIED. The assailed decision in Criminal Case Nos. CR-05-8055 and CR-05-8056 is AFFIRMED except that the award for exemplary damages is reduced to P 30,000.00 and interest at the rate of 6% per annum is imposed on all damages awarded from the date of finality of judgment until fully paid.

IT IS SO ORDERED.

Reyes, Jr., and Gaerlan, JJ., concur.

[1] Written by Judge Manuel C. Luna of Branch 39, Regional Trial Court of Calapan City, Oriental Mindoro in Criminal Case Nos. CR-05-8055 and CR-05-8056 dated January 25, 2011; Records, pp. 229-237.

[2] Records, p. 283.

[3] Records, pp. 236-237.

[4] Ibid, p. 283.

[5] Substituted name/alias pursuant to Sec. 44 of R.A. 9262 (VAWC Law) prohibiting publication/identification of women and child victims of violent crimes; *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, wherein the Court resolved to withhold the real names of the victims-survivors and to use fictitious initials instead to represent them in its decisions. Likewise, the personal circumstances of the victims-survivors or any other information tending to establish or compromise their identities, as well as those of their immediate family or household members, shall not be disclosed. The names of such victims, and of their immediate family members other than the accused, shall appear as "AAA", "BBB", and so on. Addresses shall appear as "XXX" as in "No. XXX, Street XXX, District XXX, City of XXX"

[6] Ibid.

[7] Records, Volume 1, p. 1.

[8] Ibid, Volume 2, p. 1

[9] Records, Volume 1, p. 7. “Na noong ika-22 ng Abril 2005, ang oras ay humigit kumulang sa ika-3:00 ng hapon ay nagsumbong sa akin si AAA na siya nga raw ay pinagsamantalahan at sinaktan ng limang (5) kalalakihan dito sa Boquete, barangay Sto. Nino, Puerto Galera, Sil. Mindoro;”

[10] RA 8353 (which took effect on October 22, 1997) reclassified rape as a crime against person and repealed Article 335 of the Revised Penal Code. The new provisions on rape are found in Articles 266-A to 266-D of the said code. Article 335, paragraph 3 is now Article 266-A(1)(d) of the Revised Penal Code.

[11] People v. Dioquino, G.R. No. 191390, April 2, 2014, citing People v. Mirandilla, Jr. , G.R. No. 186417, July 27, 2011, 654 SCRA 761.

[12] People v. Malibiran, G.R. No. 173471, March 17, 2009, 581 SCRA 655.

[13] People v. Marcos, G.R. No. 185380, June 18, 2009, 589 SCRA 661.

[14] People v. Dumadag, G.R. No. 176740, June 22, 2011, 652 SCRA 535.

[15] People v. Felan, G.R. No. 176631, 02 February 2011, 641 SCRA 449; People v. Navarro, G.R. No. 137597, October 24, 2003, 414 SCRA 395.

[16] People v. Navarro, *ibid*; People v. Bernaldez, G.R No. 132779-82, January 19, 2000, 322 SCRA 462.

[17] People v. Felan, *supra* at footnote 15.

[18] People v. Pareja, G.R. No. 202122, January 15, 2014, citing People v. Saludo, G.R. No. 178406, April 6, 2011, 647 SCRA 374.

[19] TSN dated June 7, 2006, p. 7.

[20] People v. Pareja, *supra* at footnote 18.

[21] People v. Velasco, G.R. No. 190318, November 27, 2013.

[22] People v. Zafra, G.R. 197363, June 26, 2013, 700 SCRA 106, citing People v. Rabanes, 93709, May 8, 1992, 208 SCRA 768.

[23] People v. Buban, G.R. No. 208760, April 23, 2014.

[24] Rollo, p. 93.

[25] People v. Velasco, *supra* at footnote 21; People v. Arivan, G.R No. 176065, April 22, 2008, 552 SCRA 448.

[26] People v. Colorado, G.R. No. 200792, November 14, 2012, 685 SCRA 660.

[27] People v. Arivan, *supra* at footnote 25; People v. Asuncion, G.R. No. 123916, June 19, 2001, 358 SCRA 661; People v. Dela Paz, Jr. G.R. No. 118316, November 24, 1998, 299 SCRA 86.

[28] People v. Pelagio, G.R. No. 173052, December 16, 2008, 574 SCRA 53.

[29] People v. Arivan, *supra* at footnote 25; People v. Balleno, G.R. No. 149075, August 7, 2003, 408 SCRA 513.

[30] People v. Tubat, G.R. No 183093, February 1, 2012, 664 SCRA 712; People v. Cabudbod, G.R. No. 176348,

April 16, 2009, 585 SCRA 499.

[31] Section 14. No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based.

No petition for review or motion for reconsideration of a decision of the the court shall be refused due course or denied without starting the legal basis therefor.

[32] *Komatsu Industries (Inc.) v. Court of Appeals*, G.R. No. 127682, April 24, 1998, 289 SCRA 604, citing *Macario Tayamura, et al. v. Intermediate Appellate Court, et al.*, G.R. No. G.R. No. 76355, May 21, 1987.

[33] *People v. Ayuda*, G.R. No. 128882, October 02, 2003, 538 SCRA 42.

[34] *People v. Dioquino*, G.R. No. 191390, April 2, 2014; *People v. Santiago*, G.R. No. 196970, April 2, 2014; *People v. Hallarte*, G. R. No. 205382, April 2, 2014; *People v. Obogne*, G.R. No. 199740, March 24, 2014.

[35] *Ibid.*

[36] *Ibid.*

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