

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EULOGIO SORONGON, JR. Y AMBO, ACCUSED-APPELLANT.

Ponente: CAMELLO, J.

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CAMELLO, J.:

On appeal is the joint Judgment[1] promulgated on July 27, 2011 by the Regional Trial Court Branch 12 of Davao City convicting accused-appellant Eulogio Sorongon, Jr. of the three (3) crimes charged in Criminal Case Nos. 55,932-04, 56,619-05 and 56,620-2005.

Appellant[2] was charged with Rape under Article 266-A in relation to Article 266-B of the Revised Penal Code, as amended by RA No. 8353 in an Information[3] that reads:[4]

CRIMINAL CASE No. 55,932-04

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That on or about December 21, 2004, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with force, did then and there willfully, unlawfully and feloniously, had carnal knowledge of AAA, his lawfully wedded wife, against the latter's will.

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Appellant was also accused, in two separate Informations, of two (2) distinct Violations of Section 5, paragraphs (a) and (i) of Republic Act No. 9262, as follows:

CRIMINAL CASE No. 56,619-05[5]

The undersigned accuses xxx of the crime of Violation of Section 5, par. (i) of Republic Act No. 9262, committed as follows:

That prior to December 21, 2004, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, willfully, unlawfully and knowingly caused mental and emotional anguish to his wife, complainant AAA, by unleashing his anger at her and forcing her to have sexual intercourse with him while inflicting pain then afterwards becoming affectionate and asking for forgiveness.

CONTRARY TO LAW.

CRIMINAL CASE No. 56,620-2005[6]

The undersigned accuses xxx for Viol. Of Sec. 5 (a) of Republic Act No. 9262, committed as follows:

That on or about December 21, 2004, in the City of Davao, Philippines and within the jurisdiction of this Honorable Court, the above-mentioned accused, willfully, unlawfully and knowingly kicked the hips of his (accused) wife while lying on the bed causing her to fall down to the floor; then forcibly made his wife AAA to have sexual intercourse with him (accused) and when the wife refused, accused twisted both her arms and locked both feet with accused knee in order to immobilize the said complainant and further twisted her neck causing the following injuries, to wit: "LINEAR ABRASION, INFRA AURICULAR AREA, SOFT TISSUE

CONTUSION RIGHT WRIST AND BOTH KNEES” which injuries required the necessary medical attendance for a period of seven (7) days and incapacitated the said offended party from performing her customary labor for the same period of time.

CONTRARY TO LAW.

To all these charges, the accused pleaded not guilty. The cases were consolidated and heard jointly.

The facts of the case as narrated in the People’s brief:[7]

Private Complainant AAA is the lawfully wedded wife of appellant Eulogio Ambo Sorongon, Jr. They were married on April 15, 2004 at the Kingdom Hall of Jehova’s Witnesses in Cabaguio Avenue, Davao City. At the time of the filing of the criminal complaints against appellant, AAA had been married to him for around ten (10) months.

On December 21, 2004, at around 10:00 o’clock in the evening, AAA was at PAN Bakery, which was owned by her sister-in-law, BBB. AAA was busy cleaning, fixing things thereat and making ice-water. While she was thus engaged, appellant (the manager of the bakery) was drinking beer with his nephew.

An hour later, or around 11:00 o’clock in the evening, after finishing her tasks, AAA called it a night and proceeded to their living quarters on the second floor of the building (on top of the bakery). Once she was in their bedroom, AAA changed out of her work clothes and wore just her underwear, shorts and a bathrobe.

When she had fallen half-asleep, appellant entered their bedroom around 12:00 o’clock midnight. He was walking around near the bed as though he was worried and uneasy. Upon seeing AAA lying on the bed, he removed his shorts and was wearing only his brief. He went up and down the bed three (3) times, which prompted AAA to tell him to stop pacing around because it was disturbing her and she could not sleep.

Appellant became enraged at AAA for reprimanding him. He stood up and kicked AAA on the thigh, near the hip area. Due to the force of his kick, AAA fell from the bed and she shouted in shock and asked for help.

Appellant grew furious at AAA. He pulled her by the hair and slapped her face. AAA continued screaming for help from the other inhabitants of the house and their neighbors. Appellant then went over to the digital piano in their room and threw the same to the floor, completely shattering it. Not content with destroying the instrument, appellant opened the aparador (closet) and threw out AAA’s clothes.

AAA tried to stop appellant from making a mess of their room. However, he prevailed upon her by hitting her on the head and neck then twisting her wrist and thigh. While AAA was crying on the bed, appellant grabbed her by the hair and forced her to lie down. AAA cried out because she could not lie down due to the pain he inflicted on her. Instead of taking pity on his wife, appellant ripped of her dress, pulled down his brief, forcibly pushed his penis inside AAA’s vagina and forced her to have sexual intercourse with him even though she was already weak and injured.

When AAA struggled against him, appellant warned her not to report the rape to the elders of their church (i.e. Jehovah’s Witnesses) or to her relatives. Otherwise, he would kill her.

Due to the intense fear because appellant had repeatedly struck her and cursed her even before they got married, AAA could only cry after her husband finished raping her. She waited until around 4:00 o’clock in the morning of the next day, or on December 22, 2004, when appellant finally left their bedroom and went down to the bakery.

AAA waited for a few hours, or until around 6:30 o’clock before she mustered the courage to clothe herself again. After a while, or around 7:00 o’clock in the morning, AAA came out of their bedroom and slowly went down the stairs. When she saw that appellant was no longer in the vicinity, she rushed outside and proceeded to Skyline Store, which was owned by her sister, BBB. xxx

Upon arriving at Skyline, BBB noticed that AAA appeared to be sick. The latter could barely walk, move her neck and seemed very weak. This prompted BBB to ask AAA what happened to her. Although she was fearful because of the threat earlier made to her by appellant, AAA tearfully confessed that her husband beat her then raped her the night before. BBB and her family were shocked by AAA's revelation and urged her to report the matter to the police.

That same day, BBB accompanied AAA to the Sta. Ana Police Station where she was advised to have a medical check-up. The sisters proceeded to the Davao Medical Center (DMC), where they were in turn referred to the Women and Children's Protection Unit (WCPU).

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After the intake (preliminary interview conducted by the social worker, Janice Geagania)), Dr. dela Paz conducted a thorough physical examination of AAA. The following indices of physical and sexual abuse were revealed:

Tenderness in the left side of the head, could not move her neck and had difficulty moving left to right; there was also redness on the right forearm; multiple marks, contusions and pressure marks in the right wrist and knees.

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ANO-GENITAL EXAMINATION:

Genitalia: Well-estrogenized hymen, (+) complete transaction of hymen at 6:00 position, abrasion at 4:00 to 6:00 position of perihymenal area.

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FINDINGS: Definitive for Physical Injury

xxx. In the medical certificate he issued, Dr. Pantaleon stated that AAA had suffered "linear abrasions" or "gasgas" in the infra-auricular area and also soft tissue contusions or "bun-og" on the right wrist and on both knees.

Later, vaginal samples taken from AAA were tested by Dr. Marlon Maramion, the pathologist on-duty at DMC. The laboratory exams revealed the presence of fresh spermatocytes (sperm cells), xxx.

At the Sta. Ana Police Station, AAA executed two (2) affidavits which detailed how appellant mauled and raped her in the late evening of December 21, 2004 until the morning hours of December 22, 2004. She likewise narrated several past instances when appellant hit her and cursed her before and after the celebration of their wedding on April 15, 2004.

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After joint trial following accused's negative pleas to the charges, the lower court rendered Judgment as follows:[8]

WHEREFORE, Premises Considered, Judgment is hereby rendered:

AS TO CRIM. CASE No. 55,932-04 FOR RAPE

The Court finds Accused guilty beyond reasonable doubt of the crime of Rape, defined and penalized under Art. 266-A in relation to Art. 266-B of the Revised Penal Code as amended by RA 8353 and he is hereby sentenced to suffer the penalty of RECLUSION PERPETUA and to pay AAA the sum of Seventy Five Thousand (Php 75,000.00) Pesos as civil indemnity and Fifty Thousand (Php 50,000.00) Pesos as moral

damages.

AS TO CRIM. CASE No. 56,619-05 FOR VIOLATION OF SEC. 5 (i), RA 9262.

The Court finds Accused guilty beyond reasonable doubt for Violation of Sec. 5(i) in relation to Sec. 6(f), R.A. 9262 and hereby is sentenced to suffer the indeterminate penalty of SIX (6) MONTHS and ONE (1) DAY OF PRISION CORRECCIONAL in its minimum period as minimum to EIGHT YEARS and ONE (1) DAY of PRISION MAYOR in its medium period as maximum with all the accessory penalties' as provided for by law and to pay AAA Twenty Thousand (Php 20,000) Pesos as moral damages.

AS TO CRIM. CASE No. 56,620-05 FOR VIOLATION OF SEC. 5 (a), RA 9262.

The Court finds Accused guilty beyond reasonable doubt for Violation of Section 5 (a), in relation to Sec. 6(a), Par. No. 2 of RA 9262, and he is hereby sentenced to suffer the penalty of TWO MONTHS imprisonment.

Under Art. 29 of the Revised Penal Code, the Accused is hereby entitled to the full credit of his preventive imprisonment if he agreed voluntarily in writing to abide by the rules and regulations imposed upon convicted prisoners. If he did not agree, he shall be entitled to 4/5 of his preventive imprisonment.

SO ORDERED.

Aiming for acquittal, accused-appellant brought this appeal upon this lone assignment of error:[9]

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE APPELLANT OF THE OFFENSES CHARGED NOTWITHSTANDING THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

The gravamen of the offense of rape is sexual intercourse with a woman against her will or without her consent.[10] Appellant argues that the trial court erred in finding that the sexual intercourse between him and AAA was against her will. He further asserts that being AAA's lawfully wedded husband, he could not have raped her as she claimed.

At the time of the rape, Republic Act No. 8353 or the Anti-Rape Law of 1997, which amended Article 335 of the Revised Penal Code and classified rape as a crime against persons - and no longer as one against chastity - was already effective. The new provisions on rape, provided under Articles 266-A, state:

Article 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 otherwise unconscious;

c)

By means of fraudulent machination or grave abuse of authority; and

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.

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In reviewing rape cases, the Court has been guided by the following well-established principles: (a) 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) due to the nature of the crime of rape where only two persons are usually involved, the testimony of the private complainant must be scrutinized with extreme caution; and (c) 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 for the defense.[11]

Determining guilt or innocence based solely on the victim's testimony is never an easy task, especially for a reviewing court in rape and sexual abuse cases. For these cases are typically committed in private, involving only the direct parties who alone could narrate what actually happened. Their testimonies are, accordingly, mostly uncorroborated as to the exact details of commission. Generally, the nature of the offense is the only evidence that can prove the guilt of the accused is the testimony of the victim herself. Thus, the prosecution of rape cases is anchored mainly on the credibility of the complaining witness.[12]

In the case at bar, it is admitted that appellant and his wife AAA had sexual intercourse on the night in question. That leaves Us only two issues to determine, one factual and the other legal. The issue of fact, however, is whether appellant had employed force, as charged, to have sexual congress with his wife AAA. And the issue of law, under the circumstances of the case at bar, is whether conviction for rape is proper, despite the undisputed fact that appellant and AAA were then lawfully married?

On the factual question, after a painstaking review and evaluation of the record, the Court rule in the negative, as it finds the evidence insufficient to establish, beyond reasonable doubt, that the accused used force to have sexual intercourse with his wife. The trial court failed to appreciate material and relevant facts and circumstances which cast doubt on the story of AAA that she was raped by the accused on December 21, 2004.

The familiar maxim on credibility says that evidence to be believed must not only proceed from the mouth of a credible witness; it must also be credible in itself, such that common experience and observation of mankind lead to the inference of its probability under the circumstances. We sometimes have no test of the truth of human testimony, except its conformity to our knowledge, observation, and experience.[13]

Intimidation and coercion must be viewed in light of the victim's perception and judgment at the time of the rape and not by any hard-and-fast rule. The presence or absence depends on several factors like difference in age, size, and strength of the parties and their relationship.[14]

On the question of force and intimidation, AAA's narration of the details and circumstances of the alleged rape, sounded this way:[15]

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Q:

How many times where you forced by the accused to have sexual intercourse prior to December 21, 2004?

A:

Many times.

Q:

Try to recall the days because that is alleged in the Information?

A:

One month after the marriage.

Q:

Can you recall how was he forced to have sexual intercourse (sic)?

A:

If he wanted sexual intercourse he would do it to you without feeling whether you are feeling well or not.

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Q:

What happened to you when you have sex and when he forced himself upon you?

A:

I was weak.

Q:

Why were you weak?

A:

Because of all the things that he did to me.

Q:

What are those things.

A:

He forced me.

Q:

How did he forced you?

A:

If ever he wants sex he would do it immediately without knowing whether I'm in the mood or not and feeling well or not.

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Q:

Would you mind to tell the Court how often times you would have sexual intercourse because from your narration everytime you have sexual intercourse you were forced to have sexual intercourse?

A:

Every night and there were nights three times.

Q:

Are you telling the Court all these times you were forced to have sexual intercourse?

A:

Minsan lang (once)

Q:

What do you mean by "minsang lang", what do you mean by that statement?

A:

I think only three (3) times that he did not forced me.

Q:

Are you telling the Court that from the time you got married on April 15, 2004, you can only recall three times that you voluntarily have sex with your husband?

A:

Yes sir.

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Q:

At about 10:00 o'clock in the evening of December 21, 2004, where were you?

A:

At the bakery.

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Q:

Now, what happened to you after you made the ice water and after you clean the bakery?

A:

I first go up the bedroom.

Q:

What did you do when you reached the bedroom?

A:

I change my clothings for the night and lie down.

Q:

What were you wearing towards going to sleep?

A:

I was wearing bathrobe and shorts.

Q:

And you have underwear underneath the bathrobe?

A:

Yes Ma'am.

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Q:

What time did you sleep?

A:

11:00 in the evening.

Q:

What happened about 12:00 midnight?

A:

I was awoken when he went up and I saw my husband enter the room.

Q:

What did he do when he entered the room?

A:

I saw him as if he was worried and uneasy.

Q:

what was he wearing?

A:

T-shirt and shorts

:Q

Did he remove his shorts?

A:

Yes ma'am.

Q:

What was he wearing after that?

A:

He just wears shorts. After that he took off his shorts.

Q:

Did he still wear anything in his body?

A:

Only the brief.

Q:

What did he do if you recall?

A:

I noticed he was walking back and forth.

Q:

How many times if you can recall?

A:

Two times

Q:

And then what happened?

A:

Then he went up on our bed.

Q:

And what did he do when he was on the bed?

A:

He went up the bed and because I was lying down he went over me.

Q:

Where did he go now?

A:

At the side of the wall.

Q:

You said he went over you, what happened after that?

A:

Then after that, he went down again.

Q:

And then?

A:

He went up again.

Q:

And what happened the second time he went up the bed?

A:

Then he was walking back and forth on the floor.

Q:

And then what happened.

A:

He went up again.

Q:

How many times did he go up the bed and went down again?

A:

Three (3) times.

Q:

After that what happened the third time?

A:

After that I told him why were you very disturbing, you keep on coming up and going down the bed.

Q:

After that what happened?

A:

After I told him that, he immediately kicked me.

Q:

Where did he kick you?

A:

On my hip, on my thigh.

Q:

What happened to you after that as a result of that kicking?

A:

I fell down from the bed to the floor. After I fell down I was able to shout because I was shocked.

Q:

After you fell down on the floor, what happened?

A:

After shouting he took hold of my hair and slapped me and pulled me by my hair.

Q:

What else happened?

A:

Because of that I was able to scratch his breast.

Q:

What happened next?

A:

Then I shouted for help. After I shouted for help he stopped and then he got the instrument he destroyed it, threw it on the floor then got my clothes from the aparador and then threw it on the floor.

Q:

What parts of your body were hurt?

A:

My head, on my neck, up to now, I still feel pain, he twisted my wrist and my thigh.

Q:

What happened after he got hold of the piano?

A:

After he got the piano I cried on the bed.

Q:

And then?

A:

He forced me to lie down on the bed but I cannot lie down because of pain, but he forced me to lie down.

Q:

So he forced you to lie down, what happened to you?

A:

Then when I was already lying on the bed he pulled my hair then he immediately undressed me and then started pumping immediately.

Q:

What do you mean when you say he pumped immediately?

A:

He took off my dress and pulled out his brief and forced me to have sex.

Q:

What happened next?

A:

He warned me not to report to the elders or to my relatives.

He threatens me if I report that is not enough what he did to me.

Q:

So you have sexual intercourse with him that night?

A:

Yes.

Q:

Did he ejaculate inside you.

A:

Yes.

Q:

What did you do while the sex act was taking place?

A:

So I was weaken (sic) that time I cannot do anything, I just waited, after he threaten (sic) me, so I just waited for the morning.

Q:

Why did you decide to wait?

A:

Because if I go out of the door, out of the house he would kill me.

Q:

What made you say that?

A:

Because he threatens me already if I report.

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Q:

What was the exact words?

A:

Be careful, watch out, if you report to your relatives or to the elders

Q:

So, what happened around 4:00 o'clock in the morning of December 22?

A:

I noticed he went down first and went to the bakery.

Q:

And then?

A:

And then around 7:00 o'clock, I slowly went down, I was waiting for that hour so that many people would see me coming down. If he would do something to me then many people could see.

Q:

What did you do after that?

A:

Then around 7:00 o'clock, I went to my sister which is just near our bakery.

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Given these circumstances, We are of opinion that evidence is insufficient to warrant a reasonable conclusion that the rape complained of had been committed. This insufficiency becomes more evident upon a comparative examination of the testimony of appellant which went this way:

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Q:

Since you said that these criminal cases are not true, why, where were you on December 21, 2004 at around 10:00 o'clock in the evening?

A:

In our bakery xxx.

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Q:

And then after that, what happened?

A:

I felt sleepy so I transferred to the bed where she was lying but unfortunately when I passed by, her feet were touched, Ma'am.

Q:

Can you please tell the Honorable Court whose feet were those that you are referring to?

A:

My wife's feet Ma'am.

Q:

What happened after that?

A:

She kicked me for no reason at all, Ma'am.

Q:

Did you feel any unusual for that when she kicked you for no reason at all?

A:

No, Ma'am.

Q:

What did you do?

A:

I lied on the bed but I stood up to get my cell phone which was left on the floor Ma'am.

Q:

Were you able to get your cell phone?

A:

Yes Ma'am.

Q:

What happened next?

A:

When I was in the act of lying on the bed, again she kicked me on my thigh, Ma'am.

Q:

She kicked you for the second time around?

A:

Yes, Ma'am.

Q:

And what was your reaction?

A:

I told her, what was happening to you when I am not doing anything wrong against you?

Q:

What did she reply?

A:

She kicked me again, and that was the time that I kicked Ma'am.

Q:

You kicked her also.

A:

Yes Ma'am.

Q:

Was she hit?

A:

She was hit and she fell down from the bed Ma'am.

Q:

And then what happened after that?

A:

She stood up and wrestled me. She was throwing me anything that she can hold, Ma'am.

Q:

Like what?

A:

electric fan Ma'am.

Q:

And did you do anything to stop her?

A:

I just parried those things away because I felt that I committed a mistake Ma'am.

Q:

What happened after that?

A:

She was not satisfied with what she was doing, she pulled my two legs, Ma'am.

Q:

She pulled your two legs while you were standing?

A:

Lying down, Ma'am.

Q:

What did you do then?

A:

I fell from the bed and stood up on the floor Ma'am.

Q:

what happened after that?

A:

I held her two hands, ma'am.

Q:

Why did you hold her hands?

A:

Because she was wrestling me Ma'am.

Q:

What do you mean by that?

A:

She was hurting me Ma'am.

Q:

Were you hit?

A:

I took hold of her hands to stop her Ma'am

Q:

What happened after that when you were holding her hands?

A:

She was shouting for help that she was being mauled Ma'am

Q:

How loud was her voice?

A:

The loudest voice Ma'am.

Q:

Do you have neighbors adjacent to your house at that time?

A:

Yes Ma'am.

Q:

And those houses were adjacent to each other.

A:

Yes Ma'am.

Q:

Did your neighbors hear your wife shouting for help?

A:

Yes Ma'am.

Q:

And when your wife was shouting for help, what did your neighbors do if any?

A:

None Ma'am.

Q:

What did you do next?

A:

Because of my anger, I was not able to hold my temper Ma'am.

Q:

What did you do?

A:

I told her to sit down and I was on the act of boxing her, Ma'am.

Q:

Did you box her?

A:

No Ma'am.

Q:

What happened after that?

A:

What she did, she faced me and challenged me to box her, at the same [time] reminding me of her threats that she made before Ma'am.

Q:

Why what are those threats, if you can remember that she did before?

A:

When she was in Cebu in 2004, in August 2004, I requested her to come home and he told me that if she will go back to Davao, I must be ready to sacrifice Ma'am.

Q:

You mean to say Mr. Witness that when you got married on April 15, 2004 that was four months you got married, there was threat or remark made by your wife to you?

A:

Yes, she had a bahad Ma'am.

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Q:

Now going back to that moment that she was challenging you to box her and reminding you about her threats that she made before, what did you do then?

A:

I loosen my hold on her, Ma'am.

Q:

After that what happened?

A:

She stood up and wants to wrestled (sic) me again Ma'am.

Xxx

Q:

What happened after that?

A:

Again I hold her hands, Ma'am.

Q:

Then?

A:

I held her hairs, and almost box her Ma'am.

Q:

Just almost?

A:

Yes Mam.

Q:

Why?

A:

Because despite all the provocations and physical hurts that she inflicted on me, I still hold my temper because I do not want to destroy our Marriage Ma'am.

Q:

What did you do?

A:

I did not do anything more, by calming ourselves Ma'am.

Q:

After that what happened?

A:

We continued arguing, Ma'am.

Q:

And how did your argument end?

A:

She told me that she will leave. I was hurt but I was able to control my feelings and so I took her clothes Ma'am.

Q:

Did she leave?

A:

No, Maam.

Q:

What did she do?

A:

She sat on the bed Ma'am.

Q:

What was she doing on the bed?

A:

She was just sitting Ma'am.

Q:

Upon seeing her sitting on the bed, what did you do?

A:

I just keep quiet, Ma'am.

Q:

And then?

A:

I apologized and plans to sleep in the bakery at that time.

Q:

Were you able to sleep in the bakery at that time?

A:

When I was looking for my wallet, she embraced me and told me that she does not like me to leave, because if I will leave, she will go with me Ma'am.

Q:

In what way she embraced you?

A:

At my back Ma'am.

Q:

When she embraced you, did you react?

A:

When I looked down, I saw many people?

Q:

What happened after that?

A:

We were embracing Ma'am.

Q:

What happened next?

A:

I sat down on the stairs, I was thinking what to do the following day Ma'am.

Q:

What happened to your quarrel on that day December 21, 2004?

A:

We settled Ma'am.

Q:

What happened next if any?

A:

I thought that she will report the incident to her sister and since I do not like that to happen, what I did was to embrace her and asked forgiveness, Ma'am.

Q:

What was the reply?

A:

None, Ma'am.

Q:

Where was she at the time that you were asking forgiveness from her?

A:

She was seated on the bed, Ma'am.

Q:

How about you, where were you seated?

A:

I approached her from the stairs, Ma'am.

Q:

After asking forgiveness and there was no reply from her. What happened, if any?

A:

I just lied down Ma'am.

Q:

Where?

A:

On the bed Ma'am.

Q:

The same bed where your wife was seated?

A:

Yes Ma'am.

Q:

What happened after that?

A:

Less than ten minutes, she lied down Ma'am.

Q:

What happened next?

A:

I again embraced her and asked forgiveness Ma'am.

Q:

And what was the reaction of your wife?

A:

Nothing Ma'am.

Q:

What do you mean by that?

A:

There was no reaction. She did not say anything Ma'am.

Q:

After that what happened?

A:

We had an intercourse Ma'am.

Q:

How did your wife reaction to that sexual intercourse?

A:

Normal with those previous sexual intercourse that we have Ma'am.

Q:

Now, that time, that you and your wife had a sexual intercourse, did she resist?

A:

No, Ma'am.

xxx

Q:

Mr. Witness, you have been telling us that all the allegations of your wife are not true at all, do you know why these cases were filed against you.

A:

Four reasons. She wants me to be imprisoned. She wants me to be convicted.

Q:

What are those four reasons?

Atty. Toreon: We object that, your Honor.

A:

First, she is determined that I will be imprisoned. Second, she does not like that our problem will reach the judicial committee of our congregation. Third, to protect her reputation, and fourth, she is serious to cover up her sins Ma'am.

Q:

Why is she doing this?

A:

Because she wants that her membership with the congregation will not be restraint Ma'am.

xxx

Cross examination:[16] [by Atty. Torreon]

Q:

Now, Mr. Sorongon, you stated during the direct examination that in 2004, you requested your wife to come home after she left, and she told you that she will come back, but you must be willing to sacrifice, am I correct?

A:

She warned me that if she will go back, I will be sacrificing.

Q:

So, when she asked you, because it is reflected in page seven of the transcript of stenographic notes and to quote "Why, what are those grudge that she did before and your answer was, when she was in Cebu in 2004, in

August 2004, I requested her to come home and she told me, if she will go back to Davao I must be ready to sacrifice ma'am. The question again was, you mean to say Mr. Witness that when you got married on April 15, 2004 that was four (4) months after you got married, there was a threat or remark made by your wife to you, and your answer was yes, she had a bahad Ma'am. Do you stand by what is stated in this transcript?

A:

That was the threat, she wants that we will be separated.

Q:

xxx You mean to say that you considered a threat the statement of your wife that if she comes home you will have to sacrifice??

A:

What she told me is that if you want me to go back to you, I will go back but you must be ready to sacrifice.

Q:

Mr. Witness, your wife shouted during that incident in December 21, 2004, right from your bedroom, am I correct?

A:

When she was in the act of attacking me she was raising her voice and when I took hold of her hand she shouted and she was shouting to the neighbor asking for help because she was mauled and that is why I took hold of her hand very tightly.

Q:

She said "mga silingan tabangi ko ninyo kay gikulata ko", were those her words?

A:

Yes Ma'am, she is asking for help because she is mauled.

Q:

And she said those words in a shouting manner asking for help?

A:

yes Ma'am.

Q:

How many times if you can recall that she shouted those words asking for help?

A:

I cannot remember how many times.

Q:

In your estimate, how many times?

A:

More than one (sic).

Q:

And you look out of the window while the incident was going on between you and your wife, the windows of your bedroom?

A:

That was after our quarrel, when I was about going down (sic) that was the time that I peep on the windows and there were already neighbors looking at us.

xxx

Q:

You saw neighbors?

A:

When I was about to go out, I saw neighbors.

Q:

What time did you almost, about to go out?

A:

Ten thirty.

Q:

That was after the incident between you and your wife.

A:

Yes.

Q:

That was after the intercourse that took place between you and your wife?

A:

No, not yet.

xxx

Q:

Now, that morning, December 22, 2004, what time did you leave the house?

A:

At 3:30 I went back to cook pandesal and that was up to seven o'clock.

Q:

So at 3:30 you already left the room?

A:

Yes.

Q:

And at that time your wife was in the room.

A:

Yes.

Q:

She was not sleeping, am I correct?

A:

I do not know if she was awake or not because when I left she was lying down.

Q:

So you went to the bakery downstairs?

A:

Yes.

Q:

And when did you realize that your wife was no longer in the bakery in the other room?

A:

After I baked pandesal at around 7:00 o'clock or seven thirty I dressed up and I noticed that she was not there anymore.

Q:

And she never did return?

A:

At 10:00 o'clock when I came back coming from buying ingredients I saw her, I met her, that was the time when I arrived and she arrived also.

Q:

Now, Mr. Sorongon, did you report your so called physical injuries to the police, to the barangay, to the authorities on December 21, 2004?

A:

No, Ma'am.

Xxx

Q:

You said that you had sexual intercourse with your wife that evening of December 21, 2004, is that correct?

A:

After our quarrel, I went down and after that we had sex.

Q:

Who initiated the sex?

A:

I initiated it because when she came in the room I was already lying down and when she sat on the bed, I embraced her and I asked for an apology from her so that the trouble will not be big and so sex happened.

Q:

And at that time, Mr. Sorongon, you ejaculated inside the private parts of the private complainant?

A:

Yes.

Q:

So at that time when you had sexual intercourse your wife's wrist were already reddish or swollen?

A:

I did not notice yet.

xxx

Without a doubt, physical force was used during their disagreement. But in order to be convicted of rape, the accused's unwanted sexual acts must be committed against the victim's will, and performed by force, threat or intimidation or when the victim is incapacitated to give consent. It is notable that during the testimony of the accused, no objection from the prosecution had found its way into the records. We observed that the sexual congress happened during the time when the fighting had completely ceased, and the husband was in the process of apologizing and trying to win back the wife's feelings. Quite curiously, AAA had not shown in a specific way, the kind of threat or force employed upon her when appellant asked for forgiveness and embraced her in the bed. Instead of giving a response, AAA kept her silence despite the advances made by the accused and during the time the alleged rape took place. No force or intimidation appears to have been employed against AAA, nor was she being threatened when and as they did the act. We have not found any form or sign of resistance from AAA when accused initiated the sexual act itself. By AAA's silence and lack of resistance, she somehow submitted to the sexual desires of her husband.

What is clear from the quoted testimony was AAA's passivity when the accused was removing her clothes. She was not at all restrained, either. She could have screamed for help, or pushed or kicked him. Instead, she stayed lying in bed and went through the sexual act. Her failure to even attempt to escape from her accused-husband or at least shout for help as she did previously during their fight, despite opportunities to do so, casts a reasonable doubt on the credibility of her story, and renders her claim of lack of voluntariness and consent difficult to believe, without question.

On the issue of AAA's credibility, case law often underscores the great weight and respect accorded to the factual findings of the trial court, especially on the credibility of witnesses, which are not usually disturbed on appeal. The rule, however, admits of exceptions such as where there exists a fact or circumstance of weight and influence which has been ignored or misconstrued by the court, or where the trial court has acted arbitrarily in its appreciation of the facts.[17]

This case is one such exception. The test for determining the credibility of a witness' testimony is whether the testimony is in conformity with common knowledge and consistent with the experience of mankind and that whatever is repugnant to those standards becomes incredible and lies outside of judicial cognizance.[18] We find that AAA's testimony dismally wanting when measured by such test.

AAA's overall deportment during her supposed ordeal defies comprehension. AAA claimed that she was weak when the alleged rape took place, but a careful reading of her testimony as well as that of appellant, failed to reveal the kind and degree of resistance she employed under the circumstances. Remarkable is her failure to

scream or shout when the alleged rape took place, despite the clear presence of neighbors around the bakery, all or most of whom - is not unreasonable to presume - could have easily heard a cry for help. These neighbors even included her nephews and nieces who were living near the bakery area. While a rape victim is not expected to resist to death, it still is contrary to normal human experience that AAA did not even make an outcry or use her hands and legs which have been free most of the time to ward off the lustful advances of her husband-appellant.[19]

In sum, We find that the guilt of the accused has not been proved beyond a reasonable doubt. Our minds cannot rest easy on the certainty of appellant's guilt, thus, We cannot sustain his conviction in Criminal Case No. 56,619-05 for the crime of rape under Article 266-A in relation to Article 266-B of the Revised Penal Code as amended by Republic Act No. 8353.

In Our criminal justice system, what is important is not whether the court entertains doubts about the innocence of the accused since an open mind is willing to explore all possibilities, but whether it entertains a reasonable, lingering doubt as to his guilt. For, it would be a serious mistake to send an innocent man to jail where such kind of doubt hangs on to one's inner being, like a tiny fragment of meat lodged stubbornly between teeth.

Will this Court send the accused to spend the rest of his life in prison based on an unclear testimony that leaves enough room for doubts as to whether or not consent attended the marital act between the accused-husband and wife AAA on the night of December 21, 2004?

Having posed that question – which in itself proclaims the Court's reasonable doubt regarding the commission of the alleged rape, We deem it no longer necessary to delve into the more labyrinthian legal question of whether a husband could be held guilty of raping his wife, during their marriage, and absent a prior judicial declaration of legal separation from bed and board. There had not been any definitive pronouncement from Philippine courts in answer even during the long period whether Rape had been defined and penalized under the rubric of crimes against chastity. Much less, obviously, is the possibility of any such authoritative determination under the new and present classification of rape as a crime against persons. Yet, because of the factual conclusion already reached, this Court finds itself outside of an appropriate occasion to give an authoritative answer to such a fine legal question.

As to the charged violations of Republic Act 9262 in Criminal Cases Nos. 56,619-05 for violation of Sec. 5, par. (i) and 56,620-05 for violation of Sec. 5, par. (a), appellant failed to disprove the allegations of AAA with his mere denial of the charges against him. The rule is that denials are self-serving negative evidence which cannot prevail over the positive, straightforward, and unequivocal testimony of the victim.[20]

It is well-settled in law and jurisprudence that the guilt of an accused must be proven beyond reasonable doubt before he can be convicted of the crime charged.[21] Absolute guarantee of guilt is not demanded by law to convict a person of a criminal charge but there must, at least, be moral certainty on each element essential to constitute the offense and on the responsibility of the offender. Proof beyond reasonable doubt is meant to be that, all things given, the mind of the judge can rest at ease concerning its verdict.[22]

Section 3 of R.A. No. 9262 defines violence against women and their children as any act or a series of acts committed by any person against a woman who is his wife, former wife, or against a woman with whom the person has or had a sexual or dating relationship, or with whom he has a common child, or against her child whether legitimate or illegitimate, within or without the family abode, which result in or is likely to result in physical, sexual, psychological harm or suffering, or economic abuse including threats of such acts, battery, assault, coercion, harassment or arbitrary deprivation of liberty.

Section 5(a) and 5(i) of Republic Act 9262,[23] reads:

SECTION 5. Acts of Violence Against Women and Their Children.- The crime of violence against women and their children is committed through any of the following acts:

a. Causing physical harm to the woman or her child;

xxx

(i)

Causing mental or emotional anguish, public ridicule or humiliation to the woman or her child, including, but not limited to, repeated verbal and emotional abuse, and denial of financial support or custody of minor children of access to the woman's child/children.

The above provisions, taken together, indicate that the elements of the crime of violence against women are:

1)

That the offender is the husband, ex-husband who has or had sexual or dating relationship with the offended woman;

2)

The offender commits an act or series of acts causing physical harm to the woman or her child

3)

That such act or acts causes mental or emotional anguish, public ridicule or humiliation to the woman or her child, including but not limited to, repeated verbal and emotional abuse, and denial of financial support or custody of minor children of access to the woman's child/children

Appellant's claim that he did not physically assault his wife AAA was simply inconsistent with the evidence submitted to the trial court especially the medical reports showing the injuries sustained by AAA which incapacitated her from performing customary labor for a period of seven days.

Appellant himself admitted that he had inflicted injuries on his wife AAA during their fight on December 21, 2004. The injuries suffered by AAA was supported by the testimony given by Dr. Ingente and Dr. Pantaleon, Jr together with the medical certificates issued by them.[24]

This Court cannot measure the trauma that AAA experienced from her husband on that fateful night. What is injurious to an offended woman can only be determined based on the circumstances of each case. Here, AAA suffered not only physical pain but emotional trauma as well when he was mauled by her husband. Surely, AAA had suffered mental and emotional anguish as a result of the injuries she sustained from the hands of her husband-appellant. Thus, We find accused-appellant to have been properly held guilty beyond reasonable doubt of Violation of Section 5(a) and (i) of Republic Act 9262.

FOR THESE REASONS, the appealed joint conviction in Criminal Case No. 55-932-04 finding the accused guilty of rape is reversed, and accused-appellant is ACQUITTED on reasonable doubt. However, the appealed decision of the trial court with regard to Criminal Cases Nos. 56,619-05 and 56,620-05 are AFFIRMED in toto.

SO ORDERED.

Inting and Perez, JJ., concur.

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- [1] Record, pp. 247-288, Decision datelined July 15, 2011; penned by Judge Pelagio S. Paguican.
- [2] Arrested on July 11, 2005, Record for Crim. Case No. 55,932-2004, p. 73, Return of Warrant of Arrest, Detained at Davao Prison and Penal Farm, Panabo City, Davao del Norte.
- [3] Consistent with the Supreme Court's decision in *People v. Cabalquinto* [G.R. No. 167693, 502 SCRA 419] promulgated on September 19, 2006, citing Rule on Violence Against Women and their Children, Sec. 40; Rules and Regulations Implementing Republic Act No. 9262, Rule XI, Sec. 63, otherwise known as the Anti-Violence Against Women and their Children Act, the real names of the victim(s), as well as their personal circumstances tending to establish their identities, will not be disclosed; instead, fictitious initials will be used to represent the victim throughout the decision.
- [4] Record, p. 1, Volume 1, Crim. Case No. 55,932-04.
- [5] Record, p. 1, Vol. 1, Crim. Case No. 56,619-2005.
- [6] Record, p. 1, Vol. 1, Crim. Case No. 56,620-05.
- [7] Rollo, pp. 130-137.
- [8] Rollo, pp. 107-108.
- [9] Rollo, p. 43, Appellant's brief.
- [10] *People v. Mateo*, G.R. No. 170569, September 30, 2008, 567 SCRA 244, 255.
- [11] *People v. Ruales*, 457 Phil. 160, 169 (2003); *People v. Rizaldo*, 439 Phil. 528, 533 (2002).
- [12] *People v. Coja*, G.R. No. 179277, 18 June 2008, 555 SCRA 176, 186 citing *People v. Buenviaje*, 408 Phil. 342, 351 (2001); *People v. Bares*, 407 Phil. 747, 759 (2001).
- [13] *People v. Dayag*, 56 SCRA 439, 449-450 [1974].
- [14] *People v. Dumanon*, 348 SCRA 461 [2000].
- [15] TSN of AAA dated October 5, 2006, pp. 33-49.
- [16] TSN of Sorongon dated June 1, 2010, pp. 19-25.
- [17] *People v. Quejada*, 223 SCRA 77 [1993].
- [18] *People v. Subido*. 253 SCRA 196 [1996].
- [19] See *People v. Ollamina*, 376 SCRA 337 [2002].
- [20] *People v. Bascugin*, G.R. No. 144195, May 25, 2004, 429 SCRA 140, 151.
- [21] Section 2, Rule 133 of the Revised Rules on Evidence; *People v. Abujan*, G.R. No. 140870, February 11, 2004, 422 SCRA 449, 457.
- [22] *People v. Lumibao*, G.R. Nos. 144080-81, 26 January 2004, 421 SCRA 65, 74.
- [23] An Act defining violence against women and their children, providing for protective measures for victims,

prescribing penalties therefore, and for other purposes.

[24] Exhibit “E” and “F”.

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