

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
HERMANDO DOREMON Y PROMULGATED, MALINAW @ “MANDO/
KALABAW”, ACCUSED-APPELLANT.**

Ponente: GARCIA-FERNANDEZ, J.

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GARCIA-FERNANDEZ, J.:

This is an appeal from the decision[1] of the Regional Trial Court, Branch 13, Malolos City, Bulacan dated January 5, 2011 which found accused-appellant Hermando Doremon y Malinaw @ “Mando/Kalabaw” guilty beyond reasonable doubt of rape penalized under Republic Act No. 8353 in relation to Republic Act No. 7610 in Criminal Case No. 2476-M-2004.

Accused-appellant was charged in an information[2] which reads:

“That on or about the 24[th] day of March 2004, in the City of Malolos, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously, with lewd designs, have carnal knowledge of “AAA”, a 14-year old minor, against her will and through force and intimidation, thereby demeaning and degrading her intrinsic worth as a human being.

Contrary to law.”

During arraignment, accused-appellant pleaded not guilty to the crime charged.

The prosecution's version of the facts is as follows:

The victim AAA[3] testified that she was born on September 23, 1989[4], in Caniogan, Daang Bakal, Malolos, Bulacan. In the evening of March 24, 2004, AAA went out to meet her friend, a certain “Galdi,” who was sent by accused-appellant to ask AAA whether the latter would join the fraternity. When AAA answered in the negative, Galdi told her that she can no longer retract her commitment to join because this would force accused-appellant to do something bad to her. Thus, AAA followed Galdi to the rear of the Malolos Maternity Hospital for her initiation into the fraternity.[5]

When AAA and Galdi reached the spot where her initiation was to take place, accused-appellant blindfolded the latter.[6] Thereafter, accused-appellant started undressing AAA. Soon the latter was lying on the ground and accused-appellant positioned himself on top of her and inserted his penis into her vagina. AAA was not able to shout for help because she was threatened by accused-appellant.[7]

AAA's mother, BBB, testified that she executed an affidavit of non-registration of AAA's birth and that AAA was born in Davao del Sur on September 23, 1989.[8]

The Medico-Legal Report and executed by Dr. Reynaldo R. Dave, Jr. on April 8, 2004 showed that AAA is “in a non-virgin state physically and sustained shallow healed lacerations at 7:00 and 8:00 o'clock positions.”[9]

The defense, on the other hand, presented the facts as follows:

On March 24, 2004 at 10:00 in the evening, accused-appellant was at home together with his siblings, his children and wife while his mother was watching television. He knew the victim AAA as they live in the same barangay. Accused-appellant alleged that AAA filed a case against him because her parents had a grudge against him for the reason that he did not allow his wife to work in the beerhouse, where AAA's mother works as a floor manager. He also denied being a member of a fraternity.[10]

On January 5, 2011, the RTC rendered a decision[11], the dispositive portion of which reads:

“WHEREFORE, premises considered, the Court finds the accused guilty beyond reasonable doubt of the crime of rape committed thru carnal knowledge and hereby sentences him to suffer the penalty of RECLUSION PERPETUA.

Accused is likewise directed to indemnify the minor private complainant in the amount of P100,000.00.

SO ORDERED.”

Accused-appellant filed this appeal, assigning this lone error to the RTC:

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO OVERTHROW THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE IN HIS FAVOR.[12]

Accused-appellant claims that private complainant's testimony is self-serving and implausible; the victim could not seem to make up her mind about the crucial details of her sexual assault which fact renders suspect the trial court's conclusion that private complainant's testimony is consistent in all material respects; that it was unnatural for “AAA” to remain silent and calm while the former allegedly undressed and removed her underwear in the pretext of an alleged initiation; that she could have shouted and struggled or resisted as she was not completely helpless but she chose not to; and that these omissions show that no rape was committed by accused-appellant.

The appeal is bereft of merit.

For a charge of rape to prosper under Article 266-A of the Revised Penal Code, as amended, the prosecution must prove that (1) the offender had carnal knowledge of a woman; and (2) he accompanied such act through force, threat, or intimidation, or when she was deprived of reason or otherwise unconscious, or when she was under twelve years of age or was demented.[13] In the instant case, the prosecution was able to establish beyond reasonable doubt that accused-appellant, through force, threat or intimidation, had carnal knowledge of AAA, who was only fourteen (14) years old at that time. It was established on record that AAA was born on September 23, 1989[14]. Thus, accused-appellant can be prosecuted and convicted either under Sec. 5 (b), Article III of R.A. No. 7610 for sexual abuse, or under Article 266-A of the Revised Penal Code, except for rape under paragraph 1(d).[15]

AAA was consistent, candid, and straightforward in her narration that she was raped by accused-appellant, to wit:

Fiscal Joson:

Q: Ms. Witness, last time you identified a certain Hernando Doremon, on March 24, 2004 do you recall of any unusual incident that happened to which has connection with that person?

A: Yes, sir.

Q: What was that unusual incident that happened?

A: When he raped me, sir.

Q: What time it happened?

A: 9:00 or 10:00 in the evening, sir.

Q: In what place?

A: In the field, behind Malolos Maternity Hospital, sir.¹⁶

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Fiscal Joson:

Q: You said pinuntahan po namin, what do you mean by that?

A: That is where he brought me and we talked, sir.

Q: When you said “We” you are talking to the accused and you?

A: Yes, sir.

Q: How did the accused start raping you on that particular date and time and place?

A: He undressed me and removed my bra, sir.

Q: Why did you allow him to undress you?

A: No, sir, I told him that I was backing up.

Q: Why did you not resist?

A: Because he told me that if I back out something will happen to me, sir.

Q: After he removed your clothes what happened thereafter?

A: Ni half body po niya ako and after that he took off my short, sir.

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Fiscal Joson:

Q: When you said that he kissed your half body (sic)?

A: Yes, sir.

Q: When he took off your short and pants what happened next?

A: He inserted his penis in my vagina, sir.

Q: What happened thereafter?

A: (The witness demonstrating her body movement).

Q: When the accused was doing that, how is your body position related to him?

A: I was lying down and he was on top of me, sir.¹⁷

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Q: Now Ms. Witness, did you like what the accused had done to you?

A: No, sir.

Q: Why did you not shout for help?

A: He was threatening me, sir.

Q: What was he threatening you?

A: That he would kill me if I shout, sir.

Q: Ms. Witness how did the ordeal from the hands of the accused end?

A: When I told him I was hurting and also crying, sir.[18]

These accusations were further buttressed by the findings of Dr. Reynaldo R. Dave, Jr., who found AAA “in a non-virgin state physically and that AAA sustained shallow healed lacerations at 7 and 8 o'clock positions.”[19] Accused-appellant’s bare denial cannot overturn AAA’s positive testimony. Alibi is an inherently weak defense because it is easy to fabricate and highly unreliable. To merit approbation, the accused must adduce clear and convincing evidence that he was in a place other than the situs criminis at the time the crime was committed, such that it was physically impossible for him to have been at the scene of the crime when it was committed.[20] This accused-appellant failed to do.

When it comes to credibility, the trial court’s assessment deserves great weight, and is even conclusive and binding upon this Court, if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence. The reason is obvious. Having the full opportunity to observe directly the witnesses’ deportment and manner of testifying, the trial court is in a better position than the appellate court to evaluate properly testimonial evidence.[21] In the instant case, this Court has no reason not to apply the rule considering the overwhelming evidence showing that accused-appellant had carnal knowledge of AAA without her consent and against her will by means of force and intimidation.

Inconsistencies in the testimony of the witness with regard to minor or collateral matters do not diminish the value of the testimony in terms of truthfulness or weight. Where the inconsistency is not an essential element of the crime, such inconsistency is insignificant and cannot have any bearing on the essential fact testified to. In fact, these inconsistencies bolster the credibility of the witness’ testimony as it erases the suspicion of the witness having been coached or rehearsed. It is when the testimony appears totally flawless that a court might have some misgiving as to its veracity. This is especially true in rape cases where victims are not expected to have a total recall of the incident.[22]

In the case at bar, it is highly unreasonable for accused-appellant to expect the victim to narrate the rape incident vividly as 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 her conscious and subconscious mind would opt to forget. Thus, the victim cannot be expected to mechanically keep and then give an accurate account of the traumatic and horrifying experience she had undergone.[23] Significantly, AAA was unable to scream for help at the time of the rape incident because of the threats made by accused-appellant. For rape to exist, it is not necessary that the force or intimidation employed on the victim is irresistible, as long as the same is sufficient to bring the desired result. This particularly applies to a young and innocent woman who is not expected to decisively act with courage and intelligence as a mature and experienced woman would normally do under the circumstances.[24] In addition, not all rape victims can be expected to act conformably to the usual expectations of everyone. Different and varying degrees of behavioral responses are expected in the proximity of, or in confronting, an aberrant episode. It is settled that different people react differently to a given situation or type of situation and there is no standard form of human behavioral response when one is confronted with a strange, startling or frightful experience.[25]

Article 266-A and Article 266-B of the Revised Penal Code, as amended by Republic Act No. 8353,[26] respectively define and punish simple rape as follows:

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 circumstances:

a) Through force, threat, or intimidation;

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

c) By means of fraudulent machinations 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.

Article 266-B. Penalties. – Rape under paragraph 1 of the next preceding article shall be punished by reclusion perpetua.

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There being no qualifying circumstances in the instant case, the penalty of reclusion perpetua was correctly imposed by the trial court.[27] The Indeterminate Sentence Law does not apply, inter alia, to persons convicted of offenses punished with death penalty or life imprisonment, including reclusion perpetua.[28] In *People vs. Conrado Lucas*[29], the Supreme Court declared that despite the amendment of Article 27 of the Revised Penal Code, reclusion perpetua remained an indivisible penalty. Hence, the penalty does not have any minimum, medium and maximum period.

Under the present law, an award of P50,000.00 as civil indemnity is mandatory upon the finding of the fact of rape. This is exclusive of the award of moral damages of P50,000.00, without need of further proof. The victim's injury is now recognized as inherently concomitant with and necessarily proceeds from the appalling crime of rape which per se warrants an award of moral damages.[30] Accused-appellant is liable to pay exemplary damages in the amount of P30,000.00 to serve as vindication of undue suffering and wanton invasion of the right of the victim. Accused-appellant is further liable for interest of six percent (6%) per annum on all the civil damages.[31]

WHEREFORE, the appeal is DENIED. The decision dated January 5, 2011 of the Regional Trial Court, Branch 13, Malolos City, Bulacan is AFFIRMED with MODIFICATION. Accused-appellant *Hermando Doremon y Malinaw @ "Mando/Kalabaw"* is declared guilty beyond reasonable doubt of simple rape as defined under Article 266-A and sentenced to suffer the penalty of reclusion perpetua pursuant to Article 266-B of the Revised Penal Code, as amended by Republic Act No. 8353. He is ordered to pay the victim P50,000.00 as civil indemnity, P50,000.00 as moral damages, and P30,000.00 as exemplary damages, plus interest of six percent (6%) per annum on all damages from the finality of this decision until fully paid.

SO ORDERED.

Tijam, N. G., Chairperson and Lopez, M. V., JJ., concur.

[1] Rollo, pp. 36-39.

[2] Records, p. 1.

- [3] The real name of the victim, her personal circumstances and other information which tend to establish or compromise her identity, as well as those of their immediate family or household members, shall not be disclosed to protect her privacy and fictitious initials shall, instead, be used, in accordance with *People vs. Cabalquinto*, *People vs. Edgar Jumawan*, G.R. No. 187495, April 21, 2014.
- [4] TSN dated March 12, 2007, p. 4.
- [5] TSN dated November 21, 2005, pp. 7-8.
- [6] TSN dated December 12, 2006, p. 10.
- [7] TSN dated May 8, 2006, pp. 7-9.
- [8] Records, p. 118; TSN, March 12, 2007, pp. 4-5.
- [9] Records, p. 117.
- [10] TSN dated April 13, 2009, pp. 2-5; TSN dated October 22, 2009, pp. 2-3; TSN dated June 3, 2010, pp. 2-7.
- [11] Rollo, pp. 36-39.
- [12] Rollo, p. 25.
- [13] *People of the Philippines vs. Alias Kino Lascano, et al*, G. R. No. 192180, March 21, 2012.
- [14] TSN dated March 12, 2007, p. 4.
- [15] *People of the Philippines vs. Jover Matias y Dela Fuente*, G.R. No. 186469, June 13, 2012.
- [16] TSN dated May 8, 2006, p.4.
- [17] TSN dated May 8, 2006, p. 8.
- [18] TSN dated May 8, 2006, p.9.
- [19] Records, p. 117.
- [20] *People of the Philippines vs. Danilo Mirasol Agustin, et al*, Danilo Mirasol Agustin, G.R. No. 194581, July 2, 2012.
- [21] *People vs. Escultor*, G.R. Nos. 149366-67, May 27, 2004.
- [22] *People of the Philippines vs. Lito Macapanas y Ecija*, G.R. No. 187049, May 4, 2010.
- [23] *People of the Philippines vs. Ronaldo Saludo*, G.R. No. 178406, April 6, 2011.
- [24] *People vs. Berto Bantisil*, G.R. No. 116062, October 18, 1995.
- [25] *People of the Philippines vs. Lito Macapanas y Ecija*, G.R. No. 187049, May 4, 2010 citing *People vs. Salome*, G.R. No. 169077, August 31, 2006.
- [26] Effective October 22, 1997.
- [27] *People of the Philippines vs. Demetrio Salazar*, G.R. No. 181900, October 20, 2010.
- [28] *People of the Philippines vs. Noel T. Adallom*, G.R. No. 182522, March 7, 2012.
- [29] G.R. Nos. 108172-73, May 25, 1994.

[30] People of the Philippines vs. Lito Macapanas y Ecija, G.R. No. 187049, May 4, 2010.

[31] People of the Philippines vs. Adel Ramos y Abellana, G.R. No. 200077, September 17, 2014.

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