PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALFREDO NAPUD, JR., TOMAS AMBURGO, AND ROMEL BRILLO (AT LARGE), ACCUSED. ALFREDO NAPUD,JR., ACCUSED-APPELLANT.

G.R. No. 123058. September 26, 2001

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

On appeal is the decision[1] of the Regional Trial Court of Iloilo City, Branch 37, in Criminal Cases Nos. 44262 (Robbery with Rape), 44263 (Rape), and 44264 (Forcible Abduction with Rape), which decreed as follows:

> WHEREFORE, in view of the foregoing considerations this Court finds the accused ALFREDO NAPUD, JR., in Criminal Case No. 44262 (guilty) of the complex crime of Robbery with Rape and hereby sentences him to an indeterminate penalty of Ten (10) Years and Eight (8) Months of Prision Mayor as Minimum to Seventeen (17) Years and One (1) Day of Reclusion Temporal as Maximum; whereas finding the accused TOMAS AMBURGO Guilty beyond reasonable doubt of the crime of Robbery in an inhabited house and hereby sentences him to suffer the indeterminate penalty of Six (6) Years and One (1) Day of Prision Mayor as Minimum to Twelve (12) Years and One (1) Day of Reclusion Temporal as Maximum. Both accused are ordered to indemnify the victims the amount of P1,000. Accused Alfredo Napud, Jr., is further ordered to pay his victim, Evelyn Cantiller, P30,000.00 as moral damages.
>
> In Criminal Case No. 44263 for Rape, this Court finds the accused ALFREDO NAPUD, JR., and TOMAS AMBURGO Guilty beyond reasonable doubt of the crime of Rape and hereby sentences each of the accused to suffer the penalty of Reclusion Perpetua.
>
> Both accused are ordered jointly and severally to indemnify the victim Esmaylita Benedicto the sum of P30,000.00 as moral damages.
>
> In Criminal Case No. 44264 for Forcible Abduction with Rape, it is the finding of this Court that the crime of forcible abduction is absorbed by rape when the main objective of the accused is to rape the victim. That being the case and since the accused have already been found guilty for rape in Criminal Case No. 44263, said crimes of rape being likewise the same offense charged with forcible abduction in this case, this case is deemed assimilated with Criminal Case No, 44263 as far as the sentence for rape is concerned, the accused suffering only the penalty in the above-entitled case.
>
> This judgment is without prejudice to the case of their co-accused Romel Brillo, who is presently at large if and when he is apprehended and brought under the jurisdiction of this Court.
>
> SO ORDERED.[2]

The facts gleaned from the records are as follows:

At around 1:00 A.M. on September 21, 1994, appellant with his co-accused, Tomas Amburgo and Romel Brillo, went to the house of the spouses Esmaylita and Ernesto Benedicto at Barangay Jibolo, Janiuay, Iloilo. Amburgo called aloud for the occupants of the house to come down. The Benedictos were awakened by the call, but just

kept quiet since they sensed that it would be dangerous to respond. Unable to elicit any response from the Benedictos, the trio then approached the house of Esmaylita's parents, the spouses Evelyn and Manuel Cantiller, just a few meters away. Again, they called for the residents of the house to come down. The Cantillers were awakened by the call but chose to remain silent. Their grandson Greg Cantiller, who was staying with them, also remained quiet.

Minutes later, Amburgo forcibly pushed the door of the Cantillers' house open. He found Evelyn and Manuel lying on the floor. Amburgo at once pinned down Manuel's head. Meanwhile, appellant broke into the chicken coop beneath the Benedictos' house, caught ten (10) chickens, and handed them to Brillo who was waiting outside. Appellant then barged into the Cantillers' house. He asked Manuel if he had a daughter in the house. The latter said he didn't. Appellant then told the 59 year-old Evelyn Cantiller to step out of the house. He led her to the back of the house and told her to undress. When she refused, appellant threatened her with a knife. Out of fear, Evelyn removed her skirt, appellant then raped her. After a few minutes of coitus, appellant asked Evelyn to assume the woman-on-top position. Warning her that she and her husband would be killed should she attempt to flee, appellant then had Evelyn mount him. The rape was ended when Amburgo saw them and asked appellant to stop, reminding the latter that Evelyn was an old woman.

Amburgo then grabbed Greg Cantiller and ordered him to summon the Benedictos. Greg did as he was told, but the Benedictos would not respond. Angered, Amburgo threatened to burn down their house. Left with no choice, the Benedictos stepped out. Amburgo then ordered Greg to return to the Cantillers' residence.

Once outside, Esmaylita explained that her husband, Ernesto, had a stomach ailment. Ernesto then asked permission to answer a call of nature. Amburgo acceded to his request but warned Ernesto not to flee or report to the authorities. When Ernesto failed to return, Amburgo then grabbed Esmaylita and brought her to a banana plantation located in Barangay Calansonan, some 1-1/2 kilometers away from her house. Still wielding his knife, Amburgo commanded her to lie down. He removed her lower garments, lay on top of her, and had sexual intercourse with her. Esmaylita pleaded with him to stop as she had a small child, but Amburgo threatened to knife her. After Amburgo's lust was spent, he told Esmaylita to put on her clothes and brought her over to appellant, who had been watching the whole affair from a short distance.

Appellant dragged Esmaylita some distance away from Amburgo. He forcibly stripped her naked. He then told her to lie down. When Esmaylita refused, appellant poked a knife at her and made signs that he would kill her. Faced with imminent death, Esmaylita obeyed. Appellant had intercourse with her. After some minutes, appellant made Esmaylita stand up. Esmaylita begged to be allowed to go home, but appellant ignored her and ordered her to sit on top of him. Esmaylita remained motionless as he put his organ into her vagina. Angered, appellant ordered her to do what she usually does with her husband. Esmaylita then made up-and-down motions with her buttocks. After some five minutes of sexual intercourse, appellant made her stand up, forced her legs apart, and again inserted his penis inside her vagina. Appellant then had sexual intercourse with her until his lust was satisfied. At around four o'clock in the morning, Esmaylita was finally released and allowed to go home.

Meanwhile, Esmaylita's husband, Ernesto, had fled to the house of their barangay councilor located a kilometer away from the Benedicto house and reported the incident. The barangay official then accompanied Ernesto to the nearest police detachment. When Ernesto and the law enforcers arrived at the Benedicto house, Esmaylita was already there. She told them that she had been raped.

On November 3, 1994, the Provincial Prosecutor of Iloilo filed an information for Robbery with Rape against appellant and his co-accused with the Regional Trial Court of Iloilo City. Docketed as Criminal Case No. 44262, the accusative portion of the charge sheet reads:

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> That on or about the 21[st] day of September, 1994, in the Municipality of Janiuay, Province of Iloilo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another to better realize their purpose, armed with a butcher's knives (pinute) by means of violence against or intimidation of persons, with intent to gain did then and there willfully, unlawfully and feloniously take, steal and carry away ten (10) heads of chicken valued at ONE THOUSAND PESOS (P1,000.00), Philippine Currency, owned and belonging to Spouses Manuel and Evelyn Cantiller and to their damage and prejudice in the aforesaid amount; that on the occasion or by reason of the said robbery, the accused Alfredo Napud, Jr., armed with a butcher's knife (pinute) in pursuance of their conspiracy, with deliberate intent and lewd design by means of force and intimidation did then and there willfully, unlawfully and feloniously have sexual intercourse with Evelyn Cantiller, against her will and consent.
>
> CONTRARY TO LAW.[3]

On the same day, Esmaylita also filed two separate complaints, one for rape and another for forcible abduction with rape. In Criminal Case No. 44263 for rape, the complaint alleged:

> That on or about the 21[st] day of September, 1994, in the Municipality of Janiuay, Province of Iloilo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused Alfredo Napud Jr. conspiring, confederating with Tomas Amburgo to better realize their purpose and armed with a butcher's knife (pinute) with deliberate intent and lewd design by means of force and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with the undersigned against her will and consent, after Tomas Amburgo had raped her.
>
> CONTRARY TO LAW.[4]

In Criminal Case No. 44264, Esmaylita charged the accused as follows:

> That on or about the 21[st] day of September, 1994, in the Municipality of Janiuay, Province of Iloilo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another to better realize their purpose by means of force, violence, threats and intimidation, and with lewd design did then and there willfully, unlawfully and feloniously take and carry away the offended party against her will from their residence at Brgy. Jibolo, Janiuay, Iloilo to a place about a kilometer and a half away and once thereat, by means of violence and intimidation Tomas Amburgo did then and there willfully, unlawfully and feloniously have carnal knowledge of her against her will and consent while Alfredo Napud Jr. stood by keeping watch.
>
> CONTRARY TO LAW.[5]

When arraigned in each of the three cases, both Napud and Amburgo pleaded not guilty to the charges. The third accused, Romel Brillo, has remained at large.

Both Amburgo and Napud raised the defense of denial and alibi. The trial court summed up Napud's version as follows:

> Accused Alfredo Napud, Jr., alleged that in the afternoon of September 20, 1994, he butchered the ducks of Betty Barato, their neighbor at Brgy. Matag-ub, Janiuay, Iloilo, and then helped her husband in cooking it; that he and Betty Barato's son, husband, and father, had a drinking spree inside the latter's house from 8:00 o'clock that same evening until 2:00 o'clock the following morning, September 21, 1994 and chose to sleep at the Barato's house the rest of the time until he was awakened at about 5:30 o'clock in the morning by Betty Barato informing him that Brgy. Councilwoman Teresita Napud was summoning all male residents of the barangay to assemble at the basketball court for reasons that he did not know; That when he and about 20 other male residents were made to form a line-up he saw Ernesto Benedicto who looked at each of them in the line-up;

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> that after a while all the others in the line-up were sent home while he was brought to the police headquarters where he was again presented to Esmaylita Benedicto and Greg Cantiller but both of them said that he was not the one; that it was only about 11:00 o'clock that same morning inside the cell at the police headquarters, when Esmaylita Benedicto came back, that she identified him as the one who allegedly robbed their parents' house and raped her, in the early morning of September 21, 1994.[6]

Napud's alibi was corroborated by his neighbor, defense witness Betty Barato as well as by his aunt, Teresita Napud.

As earlier stated, the trial court found in favor of the prosecution's version of the events and declared Napud and his co-accused, Amburgo, guilty beyond reasonable doubt of the charges against them.

Only Napud seasonably filed his notice of appeal. His co-accused, Amburgo, opted not to appeal his conviction.

Before us, appellant assigns as errors the following:

> - THAT THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED OF RAPE SINCE NO INJURIES WAS (sic) FOUND IN THE BODY (sic) OF THE COMPLAINANTS.
>
> - THAT THE TRIAL COURT ERRED IN NOT GIVING DUE COURSE AND CREDENCE (TO) THE ACCUSED'S DEFENSE OF ALIBI.
>
> - THAT THE TRIAL COURT ERRED IN NOT GIVING DUE CONSIDERATION (TO) THE ALLEGATION OF THE ACCUSED THAT HIS IDENTITY WAS DOUBTFUL AND THEREFORE HE IS ABSOLVED FROM LIABILITY.

All these alleged errors bring to the fore one principal issue: Did the trial court err in holding that appellant was properly identified and his guilt proven beyond reasonable doubt? In addition, however, we have to determine the propriety of the penalties imposed for the offenses allegedly committed by the appellant.

On the first assigned error. Appellant contends that the lower court erred in convicting him of rape by means of force or intimidation as the prosecution's own evidence shows that there were no physical injuries found on the bodies of either of the complainants. He stoutly insists that if it were true that he forced both of his rape victims to lie down on the ground during the commission of the rape, they should have at least sustained some scratches and other injuries at their backs and other parts of their bodies.

The Office of the Solicitor General (OSG) counters that the absence of physical injuries is not an indicium that rape was not committed. It is not necessary that the force and violence employed in rape should result in physical injuries.

Under Article 335 of the Revised Penal Code, the gravamen of the crime of rape is carnal knowledge of a woman by force or intimidation and against her will or without her consent.[7] What consummates the felony is penile contact, however slight, with the labia of the victim's vagina without her consent. Consequently, it is not required that lacerations be found on the private complainant's hymen. Nor is it necessary to show that the victim had a reddening of the external genitalia or sustained a hematoma on other parts of her body to sustain the possibility of a rape charge. For it is well-settled that the absence of external injuries does not negate rape.[8] This is because in rape, the important consideration is not the presence of injuries on the victim's body, but penile contact with the female genitalia without the woman's consent. Hence, appellant's reliance upon the findings of Dr. Renato Armada, who testified that he examined Evelyn and found no lacerations or hematoma in any part of her body could not prevail over the positive testimony of the offended party and her witnesses that she was sexually abused.

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In this case, the trial court found the testimonies of the two victims on the sexual assaults committed upon each of them convincing and credible. It made the following observations:

> ...Evelyn Cantiller is an elderly woman who would have easily shunned a public trial where her shame and privacy would have to be bared to the public as she initially did when she refused to go to a doctor by having her private parts examined and bare herself and her shame considering her age. But nevertheless, the search for justice made her braver and simply forced herself to face the shame and humiliation of a public trial so [that] their tormentors would be meted their due. How could she concoct and contrive to lodge the complaint against accused if it is not true?
>
> On the other hand, the other victim of the rape is a relatively young married woman who had her husband's name to protect, too. It is hardly imaginable for her to concoct a story where her faithfulness to her marriage vows and her husband's name [be] dragged in court in a public trial. Only the best of reasons, to seek justice and truth could have prevailed upon one such woman to do what she did.[9]

We have thoroughly perused the records of this case and find no reason to disturb the trial court's finding as to the credibility of the two complaining witnesses. The doctrine that an accused may be convicted solely on the testimony of the complainant provided her testimony is credible, natural, convincing, and otherwise consistent with human nature applies squarely in the instant case, and doubly so.

The second and third assigned errors shall be jointly discussed as they are interrelated.

Appellant argues that the weakness of his alibi should not necessarily result in his conviction. He submits that impartial witnesses who had no reason to distort the truth corroborated his alibi. Nor did the prosecution contradict or successfully rebut his alibi. He adds that given the uncertain testimony of the victims regarding his identification and participation, the trial court should have given credence to his alibi.

For the State, the OSG opines that appellant's defense of alibi is not only weak but also unavailing since he was positively identified by his victims as the malefactor. Moreover, appellant failed to present credible and tangible proof of the physical impossibility of his presence at the locus criminis.

For the defense of alibi to prosper, the accused must be able to prove: (a) his presence at another place at the time of the perpetration of the offense; and (b) demonstrate that at that time it is physically impossible for him to be at the scene of the crime.[10]

In the instant case, appellant's alibi is far from convincing. Recall that he averred that he spent the night at his neighbor's residence at Barangay Matag-ub, while the incident occurred in Barangay Jibolo. The trial court, however, found that although the barangay where the crimes were committed was not the same as the place where appellant claimed he passed the night, nonetheless, these two barangays were adjacent and only a few hundred meters apart. The short distance between the two barangays did not foreclose the possibility of appellant's presence at the scene of the crimes.

Appellant claims that Ernesto's failure to identify him during the police line-up at the basketball court raises doubt on appellant's identification as the offender. But Ernesto's hesitation to point at appellant, however, is explainable. Recall that Ernesto saw them only briefly when he was anxious and nervous, such that he left the scene hurriedly to answer a call of nature.

More significantly, even if there was hesitation on Ernesto's part, Esmaylita categorically identified appellant and Amburgo as her rapists and who robbed her parents' house. The other rape victim, Evelyn, also pointed to appellant as her rapist and the one who stole their chickens. Her grandson, Greg, corroborated Evelyn's identification. There is no doubt that the victims in the instant case had a good look at the physical features of

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their tormentors. Their testimonies concur in identifying appellant as perpetrator of the crimes charged.

Appellant gave no reason why the victims should falsely charge him with such grave offenses. Where the victims have no improper motive to testify falsely against the accused and have positively identified him as the culprit, then the defense of alibi must necessarily fail.[11]

Finally, appellant insists that his non-flight from his locality supports his innocence. While we have held that flight may be evidence of guilt,[12] his argument is to say that non-flight is proof of innocence, is a non sequitur.[13]

Let us now proceed to consider the propriety of the penalties imposed on appellant. The trial court found that the forcible abduction with rape alleged in Criminal Case No. 44264 was absorbed by the rape charged in Criminal Case No. 44263. The evidence for the prosecution shows that Esmaylita was brought by Amburgo and appellant to a banana plantation some 1-1/2 kilometers away from her house for the purpose of raping her. Both men then successively had carnal knowledge of her at said place. Where complainant was forcibly taken away for the purpose of sexually assaulting her, then the rape so committed may absorb the forcible abduction.[14] The trial court, thus, correctly held that the rape charged and proved in Criminal Case No. 44263 already absorbed the forcible abduction with rape complained of in Criminal Case No. 44264.

Coming now to Criminal Case No. 44262, the information charged appellant and his co-accused with robbery with rape. On record, the prosecution duly established that appellant committed both robbery and rape. When appellant forcibly entered the Cantillers' chicken coop and took their chickens, while his confederate Amburgo was threatening the Cantiller spouses, he committed the crime of robbery. The elements of the offense -viz: (a) personal property belonging to another; (b) unlawful taking; (c) intent to gain; and (d) violence or intimidation - were all present.[15] Though robbery appears to have preceded the rape of Evelyn, it is enough that robbery shall have been accompanied by rape to be punished under the Revised Penal Code (as amended) for the Code does not differentiate whether the rape was committed before, during, or after the robbery.[16]

We find, however, that the trial court erred in imposing an indeterminate penalty of ten (10) years and eight (8) months of prision mayor as minimum to seventeen (17) years and one (1) day of reclusion temporal as maximum upon appellant for the special complex crime of robbery with rape. Under Article 294 (1) of the Revised Penal Code, as amended by R.A. No. 7659, the imposable penalty for robbery accompanied by rape is reclusion perpetua to death.[17] Note that at the time of the incident on September 21, 1994, the Revised Penal Code was already amended by R.A. No. 7659. The amendment took effect on December 31, 1993, as held in People v. Simon, 234 SCRA 555, 569 (1994). Following the principle that laws which define offenses and prescribe penalties for their violation operate prospectively,[18] the increased penalties should be applied to appellant's offenses.

Reclusion perpetua and death are indivisible penalties. Under Article 63 of the Revised Penal Code, "when there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied." In this case, no aggravating circumstance as provided for in Article 14 of the Revised Penal Code was alleged or proved by the prosecution. Nor were any mitigating circumstances as provided for in Article 13 of said Code established. Hence, the lesser penalty of reclusion perpetua should be imposed upon appellant for the special complex crime of robbery with rape.

In Criminal Case No. 44262, appellant was ordered to pay the offended party, Evelyn Cantiller, the sum of P30,000.00 as moral damages for the rape he committed. Pursuant to current jurisprudence, however, this should be increased to P50,000.00 without need for pleading or proof of the basis thereof.[19] In addition, appellant should also pay the victim P50,000.00 as civil indemnity, in line with current jurisprudence.[20] Considering the

bestiality of the offenses committed, appellant should also pay her the amount of P25,000.00 as exemplary damages.

In Criminal Case No. 44263, the trial court awarded the victim, Esmaylita Benedicto, only P30,000.00 as moral damages. Pursuant to prevailing jurisprudence, however, appellant should be ordered to pay said victim the appropriate amounts as follows: P50,000.00 as civil indemnity, P50,000.00 as moral damages, and P25,000.00 as exemplary damages for the bestial offense committed against her.

As to the co-accused, Tomas Amburgo, who did not appeal his conviction by the lower court, its judgment must be deemed final and executory as to him. As such, it is now beyond the authority of this Court to modify, because said modification would not be favorable to him.

WHEREFORE, the decision of the Regional Trial Court of Iloilo City, Branch 37, in Criminal Cases Nos. 44262-44264 is AFFIRMED, but with the following MODIFICATIONS:

(1) In Criminal Case No. 44262, appellant Alfredo Napud, Jr., is found guilty of the special complex crime of robbery with rape and is hereby sentenced to reclusion perpetua. He is also ordered to indemnify the spouses Manuel and Evelyn Cantiller the sum of P1,000.00 as actual damages as well as to pay Evelyn Cantiller the amount of P50,000.00 as civil indemnity, another P50,000.00 as moral damages, and P25,000.00 as exemplary damages.

(2) In Criminal Case No. 44263, which absorbed and assimilated the charges in Criminal Case No. 44264, appellant Alfredo Napud, Jr., is found guilty beyond reasonable doubt of rape and is hereby sentenced to suffer the penalty of reclusion perpetua. He is further ordered to indemnify the victim, Esmaylita Benedicto, the sum of P50,000.00 as civil indemnity, another P50,000.00 as moral damages, and P25,000.00 as exemplary damages.

No pronouncement as to costs.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

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[1] Records, pp. 209-223.

[2] Id. at 222-223.

[3] Id. at II.

[4] Exhibit "E."

[5] Exhibit "F."

[6] Rollo, pp. 72-73.

[7] People v. Yparraguire, G.R. No. 124391, July 5, 2000, p. 4, citing People v. Igat, 291 SCRA 100 (1998).

[8] People v. Villanueva, G.R. No. 135330, August 31, 2000, p. 10, citing People v. Managaytay, 305 SCRA 316 (1999).

[9] Rollo, p. 79.

[10] People v. Villanos, G.R. No. 126648, August 1, 2000, p. 12, citing People v. Aranjuez, 285 SCRA 466 (1998).

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[11] People v. Aliviano, G.R. No. 133985, July 10, 2000, p. 11, citing People v. Sta. Ana, 291 SCRA 188, 217 (1998).

[12] People v. Carillo, G.R. No. 129528, June 8, 2000, p. 12.

[13] People v. Bionat, 278 SCRA 454, 469 (1997).

[14] People v. Sabredo, G.R. No. 126114, May 11, 2000, p. 7.

[15] People v. Sultan, G.R. No. 132470, April 27, 2000, p. 6.

[16] People vs. Mendoza, 292 SCRA 168, 181-182 (1998).

[17] REV. PEN. CODE. ART. 294. Robbery with violence against or intimidation of persons. - Penalties. - Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

- The penalty of reclusion perpetua to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed or when the robbery shall have been accompanied by rape or intentional mutilation or arson.

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[18] People v. Moran, 44 Phil. 387, 408 (1923).

[19] People v. Melendres, G.R. Nos. 133999-4001, August 31, 2000, p. 13.

[20] People v. Villanos, G.R. No. 126648, August 1, 2000, p. 13.

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