

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALBERTO BUBAN, ACCUSED-APPELLANT.*G.R. No. 172710. October 09, 2009*

Ponente: LEONARDO-DE CASTRO, J.

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Before the Court for automatic review is the decision[1] dated August 31, 2005 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00893 which affirmed, with modification, an earlier decision[2] of the Regional Trial Court (RTC) of Irosin, Sorsogon, Branch 55, in Criminal Case Nos. 1185, 1186, 1187 and 1188, finding herein accused-appellant Alberto Buban guilty beyond reasonable doubt of four counts of rape[3] committed against AAA,[4] and sentenced him to suffer the penalty of Reclusion Perpetua on each count of rape, to pay the amount of P200,000.00 as moral damages, and the costs of the suit. However, the CA modified the penalties imposed by the RTC by awarding an amount of P200,000.00 as civil indemnity in addition to the award of P200,000.00 as moral damages.

Accused-appellant was charged with four (4) counts of rape under four (4) separate Informations, allegedly committed against his wife's first cousin AAA on October 12, 1995,[5] November 15, 1995,[6] January 29, 1996,[7] and February 24, 1996.[8] Except as to the aforesaid different dates of the commission of the crimes, the Informations are similarly worded. The information in Criminal Case No. 1188[9] reads:

That on or about the 12[th] day of October, 1995, at Barangay San Julian, municipality of Irosin, province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there, willfully, unlawfully and feloniously, with lewd designs and thru force and intimidation, had sexual intercourse with AAA, a minor, without her consent and against her will, to her damage and prejudice.

CONTRARY TO LAW.

On August 21, 1996,[10] accused-appellant, duly assisted by counsel, entered a plea of not guilty in each of the four (4) cases. The cases were then set for a pre-trial conference. During the said conference, no plea bargaining nor stipulations of facts were arrived at by the parties. Thus, the joint trial on the merits ensued.[11]

The prosecution presented the testimonies of the victim, AAA; Dr. Nerissa Tagum (Dr. Tagum), Resident Physician of Irosin District Hospital; and EEE, the sister of AAA's father. The prosecution also offered documentary evidence consisting of the medical certificate[12] issued by Dr. Tagum to prove that the victim was subjected to a medico-legal examination and the Certificate of Live Birth[13] of AAA showing that she was born on May 15, 1978.

The RTC summarized the evidence for the prosecution in its Decision as follows:

The victim AAA declared in court - that she is already an orphan, her parents having died while she was still very young. She has two (2) other siblings named BBB (15 years old) and CCC (the youngest). Her brother BBB is residing with his first cousin in Camarines Norte, while her youngest sister CCC is staying with her

uncle DDD. Since she was a small child she had been living with EEE the sister of her father in San Julian, Irosin, Sorsogon. EEE has nine (9) children the eldest of whom named GGG is the one married to the accused in this case Alberto Buban. She had known the accused for a long time being the husband of her cousin GGG. The witness POSITIVELY IDENTIFIED the accused in open court when asked to do so (TSN/AAA, dtd. August 27, 1997, p. 6).

The reason why she is testifying in court is because of the RAPE that was committed on her person by the accused ALBERTO BUBAN. Accordingly, she was raped four (4) times by the accused the first of which happened on October 12, 1995; the second on November 15, 1995; the third on January 29, 1996; and the fourth February 24, 1996. All the four incidents of rape happened inside the house of EEE because the accused and his wife GGG used to live with them in the house of EEE. She was only able to file the cases for rape, on March 20, 1996 because that was the time when EEE noticed that her stomach was getting bigger. Due to the persistent questioning of EEE, she finally told her that she was raped by Alberto Buban. EEE was very angry and got mad at Alberto Buban upon learning about it. She was the one who accompanied her to the police station in order to file the criminal complaint (TSN/AAA, dtd. August 27, 1997, pp. 2 to 9).

The declaration of the aforesaid victim was corroborated by the testimony and the findings of Dr. Nerissa Tagum, medico-legal officer, who examined the offended party, AAA. She made the patient undergo an ultra sound testing in order to determine her gestation. During the examination of the patient on March 19, 1996 it was confirmed from the result thereof that she was five to six months pregnant. According to the doctor, the sexual intercourse which caused said pregnancy could have possibly occurred within the period from September 14, 1995 to October 1995. The witness likewise identified the medical certificate (Exhs. "A" to "A-2") she issued and affirmed the signature appearing therein to be hers (TSN/Dr. Tagum, dtd. February 12, 1997, pp. 3 to 6).

EEE the aunt of AAA corroborated further her testimony when she testified that - she is the sister of the father of AAA whom she took into custody when she was about (5) years old after her father died. The first time she was informed that AAA was sexually molested by the accused Alberto Buban was sometime in the end of February, 1996, when she persistently questioned the victim after noticing that her stomach was bulging. The accused Alberto Buban is the husband of her daughter GGG who stayed with them for a year after their marriage. In the month of February, 1996 the accused and her daughter GGG were already living in a separate house but still visit her very often. Accused Alberto Buban usually passed by her house before reporting for work. She did not tell her daughter GGG about the rape incident although she came to learn about it later. She did not discuss the rape incident with her daughter GGG because the first time she attempted to tell her about it, the latter sided with the accused. In the months of October, 1995 and February, 1996, AAA was about 16 [should be 17] yrs old. From October 12, 1995 to January, 1996 she was able to observe that the stomach of the victim was growing bigger or bulging. At the time the pregnancy of the offended party became apparent, accused Alberto Buban and her daughter GGG were no longer living with them. They transferred to their house across the river in May of 1993. In October, 1995, AAA was in second year high school and was more or less 15 [should be 17] years old. She quits her studies when she became pregnant in February 1996. She didn't have any suitor neither did she see any boy of her age coming to their house. The witness likewise testified that it was the usual habit of the accused Alberto Buban to frequent their place where he usually eats his lunch at least twice (2) a week. In 1995 there were times when the accused passed by her house while she was not around and she came to learn about it because her young daughter who was in Grade II told her. The witness is a businesswoman by occupation. (TSN/EEE, dtd. August 25, 1999, pp. 8 to 16).[14]

The details of the four (4) rape incidents are summarized by the RTC in this wise:

That on October 12, 1995 at more or less 9:00 o'clock in the evening, the victim was in the house of EEE together with the three (3) year old child she was baby sitting when accused Alberto Buban arrived. He sat at the sala for a while then proceeded to the place where their comfort room was. After walking to and fro for a while, the accused entered the room where the offended party together with the child was, and began

undressing her. She pulled down her shorts and panty while she was pleading and crying not to do it. It took the accused sometime to remove her shorts and panty because she was resisting and boxing him. After removing completely her panty he forced her to lie down in bed while she continued to resist and boxed him. The accused then succeeded in having her lie down held her two (2) hands on the side of her body then proceeded to rape her. In inserting his penis, the accused held her vagina and guided his penis into it. As he was able to release her hands she continued to box him but her resistance proved futile as the accused was able to succeed in having carnal knowledge of her. The accused lay on top of her for a long time and while in that position he warned her not to tell anybody, particularly EEE or else something might happen to her. After the incident she just kept on crying. When her companions in the house returned at more or less 11:30 p.m., she did not inform them about what happened because of fear. The victim further testified that the little boy whom she was baby sitting and already asleep at the time she was being sexually abused was transferred by the accused from the bed to the floor. Hence, the logical reason why the small child did not wake up from his slumber. The witness, likewise POSITIVELY IDENTIFIED the accused in open court (TSN/AAA, dtd 8 October 1997, pp. 2 to 7).

That on November 15, 1995 the accused again had carnal knowledge of her. The sexual abuse happened in the same house where she was staying. Oftentimes, she was left alone in the house because her companions were fond of viewing betamax. On the aforesated date at around 10:00 o'clock in the evening, she was alone in their house in San Julian studying when the accused Alberto Buban came. While she was studying in the sala, the accused asked her for an errand and she was asked to enter the room where the accused was. When she heard the voice of the accused calling her, she felt afraid but nevertheless she entered the room and asked him what she will buy. Upon entering the room, the accused came near in front of her and covered her mouth with his left hand while her left shoulder was being held by his right hand. He pulled her to and placed her in the bed and undressed her. While the accused was pulling and undressing her, she kept on boxing and kicking him but her resistance was not successful, and every time she attempted to run away, the accused would block the way. After the accused undressed himself he forced himself into her by separating her thighs and inserting his penis into her vagina. She felt pain on her back hip, vagina and other parts of her body, although according to the victim, the first rape incident on October 12[th] was more painful. (TSN, dtd. October 8, 1997, pp. 8 to 12).

The incidents on October 12[th] and November 15[th] 1995 were again repeated on January 29, 1996. At about 9:00 o'clock in the evening of January 29, 1996 while she was viewing TV alone in their house the accused came and seated himself in one of the chairs. She felt sleepy after a while so she told the accused to just turn off the TV once he is through and proceeded to her room to sleep. When she went to her room to retire, the accused was still in the sala viewing TV. She was awakened from her slumber when the accused put his hand on her mouth and warned her not to make noise. Despite her plea for the accused to leave and telling him even that she will tell somebody about him, the latter refused to yield and even warned her that something bad might happen to her if she tells somebody. Thereafter, the accused started to remove her shorts and panty and despite her resistance, he succeeded in penetrating her. She felt again the pain that she felt during the two (2) previous rapes that she suffered in the hands of the same accused. After the accused had satisfied his bestial desires he went home and left her alone in her room crying. She did not tell her companions in the house about what happened because of fear of the threat from the accused (TSN, dtd. 8 October 1997, pp. 12 to 14).

The fourth and final sexual abuse suffered by the victim in the hands of the accused happened in the 24[th] day of February, 1996, she was raped while EEE was out and her other companions was manning the store. On the aforesated date at about 9:00 o'clock in the morning, she was able to sleep on the long bench situated in their sala while she was whiling away her time, because she was prevailed upon by EEE not to go to school as no one will attend to the house. She was awakened upon feeling that somebody was covering her mouth, and as she opened her eyes she was able to recognize the accused and found out that the door and the window of their house were already closed. When she tried to resist him by boxing him on the chest, he held her two (2) hands with the accused sitting beside her and while she was still in a lying position. Then the accused proceeded to undress her and after he was through removing her underwear, he also undressed himself. She could not run

away because the door was locked and the accused was sitting beside her. The accused made her lie down face up, held her by one of his hands, inserted his penis and had carnal knowledge of her. She again felt the pain that she experienced during the three (3) previous rapes. The accused was able to consummate his carnal desires while they were both on top of the bench (which is similar in length and width to the benches inside the computer room). After the accused was through with her, he warned her again not to tell anybody or else something bad might happen to her. The first person to whom she confided the rapes that happened to her was FFF whose husband is the brother of her late father. This happened on March 24, 1996 while FFF was in their house viewing TV. The reaction of FFF was that of anger against the accused Alberto Buban, but she decided not to divulge what she knew, apprehensive that the accused might flee. When she executed her Sworn Statement with the police she was in the company of FFF and EEE. EEE was likewise with her when she was examined by the doctor. She first learned about her pregnancy when she was told by the doctor who examined her. On March 28, 1996 she was transferred to the custody of the DSWD who took care of her up to the time she gave birth to a baby girl on June 3, 1996 at the Sorsogon Provincial Hospital. The child was then brought to Legaspi City by the Social Worker. According to the victim she doesn't feel any love for her child and she doesn't like her child, because whenever she sees the child she remembers the accused Alberto Buban and she hates him. At present she has returned to the custody of EEE. (TSN, dated 8 October 1997, pp. 14-20)[15]

The defense presented a different version of the facts anchored on the claim that the accused-appellant and AAA were lovers so that their sexual encounters were consensual. As culled from the same Decision of the RTC, the gist of the defense evidence is as follows:[16]

The defense upon the other hand, admitted that the accused had carnal knowledge of the victim for several times, but claims likewise that the sexual intercourse had the mutual consent of both parties considering that they are "sweethearts." The accused alleged that it was the victim who proposed to him that she likes him. The first sexual intercourse allegedly happened on February 9, 1995 followed by several other sexual encounters which he could no longer count. He admitted to be the first one to have carnal knowledge of the victim AAA. The accused denied, however, having sexual intercourse with the victim on October 12, and November 15, 1995 and January 29 and February 24, 1996, because accordingly as early as August 1995 he already asked for a break-up as the victim was asking for a thing which he did not like. He failed however to specify what was that thing that he did not like. And he came to realize that he is not capable of giving what AAA was asking from him after having carnal knowledge of her for more or less one hundred times. In the course of the cross examination it was admitted however by the accused that his wife GGG never confronted him about his affair with AAA because she did not know anything about his relationship with her. And the first time that his wife came to know about his relationship with AAA was when the latter filed the criminal complaint against him, because he told his wife about it as he was already in jail. Finally, the accused admitted that he cannot show any picture, document or letter that would attest to the fact that he had a love affair with the victim in the instant case. (TSN/Alberto Buban, dtd. November 10, 1999, pp. 2 to 16).

On December 20, 2000, the RTC rendered its Decision finding the accused-appellant guilty of four (4) counts of rape and imposed the penalty mentioned above.

The records of these cases were forwarded to this Court in view of the Notice of Appeal[17] filed by the accused-appellant, which this Court accepted in its Resolution[18] dated June 7, 2004. The Court required the parties to submit their respective briefs, and the Director of the Bureau of Corrections to confirm the confinement of accused-appellant within ten days from notice thereof.

In his letter dated July 22, 2004, the Assistant Director of the Bureau of Corrections confirmed that the accused-appellant was received for confinement at the New Bilibid Prison on February 15, 2001.[19]

Accused-appellant filed his Appellant's Brief[20] on December 6, 2004. Meanwhile, before the People, through the Office of the Solicitor General (OSG), filed its Appellee's Brief[21] on April 12, 2005, the Court issued a

Resolution[22] on February 23, 2005, transferring the case to the CA for intermediate review conformably with the ruling in *People v. Mateo*. [23]

As above-stated, the CA, in its decision of August 31, 2005, in CA-G.R. CR-H.C. No. 00893, affirmed with modification the judgment of conviction pronounced by the trial court. The fallo of the CA decision is quoted as follows:

WHEREFORE, finding no reversible error in the appealed Decision dated December 20, 2000 of the RTC, Branch 55 of Irosin, Sorsogon, the same is hereby AFFIRMED with MODIFICATION that appellant ALBERTO BUBAN is ORDERED to pay complainant AAA an additional P200,000.00 as civil indemnity in addition to the award of P200,000.00 as moral damages.

SO ORDERED.

On May 29, 2006, the case was elevated to this Court for further review. [24]

In our Resolution[25] of July 12, 2006, we required the parties to simultaneously submit their respective supplemental briefs. We also required the Director of the Bureau of Corrections to confirm whether the accused-appellant has been committed to said prison and to submit to this Court a report thereon, within ten days from notice.

In compliance with our Resolution, the Assistant Director of the Bureau of Corrections informed this Court that accused-appellant was received for confinement since February 15, 2001. Accused-appellant likewise filed his Supplemental Brief[26] on September 20, 2006, while the OSG adopted in toto the arguments in the Brief for the Appellee dated April 5, 2005 and thereby dispensed with the filing of a supplemental brief.

The accused-appellant raised the following assignment of errors:

I

THE TRIAL COURT A QUO GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE HIGHLY INCREDIBLE TESTIMONY OF THE PRIVATE COMPLAINANT.

II

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIME CHARGED DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

III

THE TRIAL COURT GRAVELY ERRED IN FINDING THAT THE ACCUSED-APPELLANT USED FORCE AGAINST PRIVATE COMPLAINANT IN THE COMMISSION OF THE ALLEGED RAPES.

At the outset, accused-appellant puts at issue the credibility of AAA, specifically as regards the third rape which occurred on January 29, 1996. He avers that it is contrary to human nature and experience that after having been previously raped twice, AAA would still feel comfortable, in the presence of appellant, as she was able to speak to him casually as if nothing traumatic happened between them and she even managed to sleep in her room without locking its door while accused-appellant was in the sala watching television.

Accused-appellant also relies on the inconsistencies between AAA's testimony as to the date of the commission of the four (4) rape incidents and as stated in the four (4) Informations. He alleged that on direct examination, AAA declared that she was sexually abused on October 12, 1995, November 15, 1995, November 24, 1995 and January 29, 1996, while the four (4) Informations clearly stated that the rape incidents took place on October 12, 1995,

November 15, 1995, January 29, 1996 and the last one on February 24, 1996.

Accused-appellant further asserts that there could be no rape where the sexual act was consensual. He maintains that if the sexual intercourse was truly against AAA's will, she could have easily cried for help when he was pulling her on the bed and she could have prevented the second rape by not going in the room knowing fully well that she was alone with the accused-appellant at that time. Further, she had every opportunity to run away but she chose to be left alone with him. Accused-appellant adds that AAA's failure to immediately report the alleged rape to her relatives or friends militates against the latter's credibility.

The Court ruled in *People v. Nazareno*[27] as follows:

In reviewing rape cases, the Court is guided by the following jurisprudential guidelines: (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 in which only two persons are usually involved, the testimony of 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.

Tersely put, the credibility of the offended party is crucial in determining the guilt of a person accused of rape. By the very nature of this crime, it is usually only the victim who can testify as to its occurrence. Thus, in rape cases, the accused may be convicted 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. Else wise stated, the lone testimony of the offended party, if credible, suffices to warrant a conviction for rape.

Guided by these judicial doctrines, the Court scrutinized all the pieces of evidence on record, especially the testimony of AAA and we find no reason to overturn the trial court's assessment of her credibility, which had the opportunity of observing AAA's manner and demeanor on the witness stand. AAA's testimony was indeed candid, spontaneous and consistent. As the trial court observed and we quote:

xxx. Even on re-cross examination the victim remained consistent and unwavering in her claim that she was sexually abused by the accused. Despite her young age and lack of experience in court proceedings she remained steadfast unfazed by the lengthy cross-examinations conducted by the defense, thus, attesting favorably to her credibility.

AAA narrated how appellant had overpowered her into submitting to his desires in this wise:

On the incident of October 12, 1995:

PROS. PURA

Q

What was your position when he was removing your short and panty?

A

I was standing.

Q

What were you doing while he was removing your short and panty?

A

I am boxing him.

Q

Were you able to hit him?

A

Yes.

Q

And what did he do when you hit him?

A

He held my hand.

xxx xxx xxx

Q

Was the accused able to remove your short and panty?

A

Yes.

Q

Completely?

A

Yes.

Q

And how much time did he remove your panty and short?

A

Quite a long time.

Q

And what did he do after he succeeded in completely removing your panty?

A

He let me lie down.

Q

Where?

A

Inside the room.

Q

What were you doing as he was trying to let you lay down on the bed?

A

I kept on boxing him.

Q

Did he succeed in making you lay down?

A

Yes.

Q

And what did you do?

A

He held me and then he raped me.

xxx xxx xxx.

Q

What was the position of your tights when he was able to succeed in having his penis entered your vagina?

A

My thighs were spread open.

Q

Who caused your tights to spread open?

A

It was Alberto Buban.

Q

How did he cause the same to spread open?

A

He used his two hands in separating my thighs.

Q

And after your thighs was separated open, what did the accused do?

A

He kept on raping me already.

xxx xxx xxx

Q

And what happened after that?

A

While he is on top of me he kept on saying to me not to tell anybody especially to Mamay Mina. According to him if I tell somebody something might happen to me.[28]

On the incident of November 15, 1995:

Q

Where was Alberto Buban when he asked you to run errand for him?

A

He was inside the room.

Q

How did you feel then when he called for you?

A

I was afraid.

Q

So were you able to enter the room?

A

Yes, I entered the room as he said, and asked him what will I buy.

Q

So what did he do?

A

He placed his hand on my mouth.

Q

What was your position when he placed his hand on your mouth?

A

He was also standing inside the room.

Q

Where was he in relation to you?

A

He was standing near me.

Q

In what part of your body, on your side, on your back, on your front?

A

In front of me.

Q

What happened to you when he placed his hand on your mouth?

A

I kept on boxing his body but he did not detach his body on me. He kept on covering his hand on my mouth.

xxx xxx xxx

Q

As he was placing you in bed and he was undressing you, what happened?

A

I kept on boxing and kicking him.

Q

Did you succeed in resisting him?

A

I was able to do that.

Q

What happened after that?

A

Then he is also undressing himself.

Q

What was his position when he was undressing himself?

A

He was standing.

Q

You did not try to run away while he was undressing himself?

A

I tried but my attempt is always being blocked by him because he was near me.

Q

Was he able to undress himself?

A

Yes.

Q

And what did he do after undressing?

A

Then he entered his penis into my vagina.

Q

Was he able to enter his penis into your vagina?

A

Yes, sir.

Q

How was he able to enter his penis into your vagina?

A

He held my vagina and held his penis and inserted into my vagina.

Q

This time what was the position of your thighs when he inserted his penis?

A

Separated apart.

Q

And who caused it to be separated?

A

Alberto Buban.

Q

Did you not try to prevent it from being separated?

A

I tried to prevent but I was overcome by him.[29]

On the January 29, 1996 incident:

Q

Where was Alberto Buban?

A

He was still in the sala still viewing TV?

Q

What happened?

A

Then I went to sleep.

Q

At what time did you wake up?

A

I was awoken when he again put his hand on my mouth?

xxx xxx xxx

Q

What happened?

A

Then he undress me again.

Q

Did he succeed in undressing you?

A

Yes.

Q

What did he do after undressing you?

A

He undress himself.

Q

This time what were you doing as one being undress by the accused?

A

I kept on boxing him but he refused to leave.

xxx xxx xxx

Q

After undressing you and undressing himself, what happened next?

A

Then he inserted his penis into my vagina.

Q

What were you doing as the accused was inserting his penis into your vagina?

A

I kept on boxing him.

Q

Was his penis able to enter your vagina?

A

Yes.

xxx xxx xxx

Q

Did you not tell your companions in the house about what happened?

A

I did not because I remember his warning that if I tell somebody something bad might happen to me. [30]

On the incident of February 24, 1996:

Q

What did you do upon seeing that it was again Alberto Buban who covered your mouth?

A

I again boxed him on his chest.

Q

What about him, what did he do?

A

He held my hands.

Q

Which hands?

A

His two hands held my hand.

Q

As you were struggling to free from him, were you still on the bench lying?

A

Yes.

xxx xxx xxx

Q

So what happened after that?

A

Then he proceeded to undress me.

Q

And was he able to undress you?

A

Yes.

Q

What did he do after that?

A

Then he undress himself also.

Q

You did not try to run while he was undressing?

A

I cannot run because the door was locked. He locked the door.

xxx xxx xxx

Q

What did he do when he succeeded in making you lie flat on the bench?

A

He held me by his one hand and he inserted his penis into my vagina.

xxx xxx xxx

Q

What did you feel?

A

Painful.

Q

What happened after that?

A

Then I kept on crying and then he left but before he left he warned me not to tell somebody because if I did something might happened bad with me.[31]

Well-established is the rule that for the crime of rape to exist, it is not necessary that the force employed be so great or be of such character that it could not be resisted; it is only necessary that the force employed by the guilty party be sufficient to consummate the purpose for which it was inflicted. In other words, force as an element of rape need not be irresistible; as long as it brings about the desired result, all considerations of whether it was more or less irresistible are beside the point.[32]

Intimidation must be viewed in the light of the perception of the victim at the time of the commission of the crime, not by any hard and fast rule; it is therefore enough that it produced fear -- fear that if she did not yield to the bestial demands of her ravisher, some evil would happen to her at that moment or even thereafter.[33]

In the present case, there can be no doubt that accused-appellant employed that amount of force sufficient to consummate rape. At the time rape incidents took place, the victim was only seventeen (17) years old, while accused-appellant was more or less twenty-seven years old and in his prime. The obvious disparity between their physical strengths manifests the futility of any resistance exerted by AAA as clearly established in the latter's testimony.

We also reject the argument of accused-appellant that it is simply contrary to human nature and experience for AAA who, after having been previously ravished twice, remained calm talking to him and even slept in her room without locking its door, knowing fully well that he was still in the living room watching television. AAA reasoned out that she did not lock her room because her aunt, who was then watching betamax movie in their neighbor, is going to sleep in that room.

Accused-appellant failed to show any ill motive, on the part of the victim to fabricate such a story. The testimony of accused-appellant that the reason for the filing of these charges against him was because of the quarrel between her wife and AAA after the former learned about his illicit relationship with AAA is opposed to what he declared in open court that the only time his wife came to know about their relationship was after the complaints were filed because he told her about it when he was already in jail. Since there is no evidence to show any improper motive on the part of the complainant to testify against the accused or to falsely implicate him in the commission of a crime, the logical conclusion is that the testimony is worthy of full faith and credence.[34]

As regards the alleged discrepancies as to the dates of the commission of the rape, the rule is well settled that in rape cases, the date or time of the incident is not an essential element of the offense and therefore need not be accurately stated.[35] Section 11 of Rule 110 pertinently provides:

SEC. 11. Date of commission of the offense. - It is not necessary to state in the complaint or information the precise date the offense was committed except when time is a material ingredient of the offense. The offense may be alleged to have been committed on a date as near as possible to the actual date of its commission.

In rape cases, the material fact or circumstance to be considered is the occurrence of the rape, not the time of its commission. The date or time of the commission of rape is not a material ingredient of the said crime because the gravamen of rape is carnal knowledge of a woman through force and intimidation. In fact, the precise time when the rape takes place has no substantial bearing on its commission. As such, the date or time need not be stated with absolute accuracy. It is sufficient if the complaint or information states that the crime has been committed at any time as near as possible to the date of its actual commission.[36]

Finally, the delay of AAA in reporting the incident cannot diminish her credibility. The Court has consistently held that delay in reporting rape because of threats of physical violence should not be taken against the victim. A rape victim is oftentimes controlled by fear rather than reason. It is through fear, springing from the initial rape, that the perpetrator hopes to build up a feeling of extreme psychological terror which will, he hopes, numb his victim to silence and submission.[37] This is true in the case of AAA, whom accused-appellant threatened to kill if she would report the incident to anybody. We are convinced that AAA easily succumbed to fear since she was then an inexperienced young lady. She did not even know that she was pregnant until such time when Dr. Tagum told her of her condition during her medico-legal examination.

We also find no reason to overrule the RTC's rejection, as affirmed by the CA, of accused-appellant's contention that although he and AAA had sexual intercourse several times, they were lovers and their acts were consensual. His allegation that they broke-up in August 1995 for an unspecified thing that he failed to give AAA is unworthy of belief. AAA was persistent in her denial that she had an illicit relationship with the accused-appellant whom she knew very well to be married to her cousin. Her testimony, during the direct and cross-examination, reflected

the strong hatred that she harbored against accused-appellant for what he had done to her. She testified that she did not even have any affection for her child because she would remind her of the accused-appellant's bestial deed.[38]

Verily, accused-appellant's theory that he and AAA were sweethearts is weak and self-serving since he failed to prove the same. His story is a mere concoction in order to exculpate himself from criminal liability. His wife's and sister's testimonies failed to corroborate his claim. Both of them admitted that they never saw accused-appellant and AAA together nor caught them in a compromising situation. In *People v. Turco*, [39] we held:

In *People v. Venerable* (290 SCRA 15 [1998]), we held that the sweetheart theory of the accused was unavailing and self-serving where he failed to introduce love letters, gifts, and the like to attest to his alleged amorous affair with the victim. Hence, the defense cannot just present testimonial evidence in support of the theory that he and the victim were sweethearts. Independent proof is necessary, such as tokens, mementos, and photographs.

Further, the sweethearts defense does not necessarily preclude rape. Even if it were true, such relationship would not, by itself, establish consent, for love is not a license for lust. A love affair could not have justified what appellant did -- subjecting complainant to his carnal desires against her will.[40]

The law applicable in this case is Art. 335 of the Revised Penal Code, as amended by Republic Act 7659. It provides:

Art. 335. When and how rape is committed. - Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

- a) By using force or intimidation;
- b) When the woman is deprived of reason or otherwise unconscious; and
- c) When the woman is under twelve years of age or is demented.

The crime of rape shall be punished by reclusion perpetua.

The prosecution's evidence sufficiently proved the presence of the following elements: first, that the offender had carnal knowledge of a woman; and second, that such act was accomplished by using force or intimidation. Dr. Tagum testified that when she examined AAA on March 19, 1996, the latter was about 5 to 6 weeks pregnant and concluded that the sexual intercourse could have taken place between September 14, 1995 to October 1995. On the other hand, the use of force and intimidation by accused-appellant was testified to by AAA herself. All the elements of the crime being present, we are constrained to affirm appellant's conviction.

Anent accused-appellant's civil liability, AAA is entitled to moral damages in the amount of P200,000.00 as ordered by the trial court. The award of civil indemnity in the amount of P50,000.00 each for four (4) counts of rape imposed by the CA should likewise be affirmed, consistent with existing jurisprudence.[41]

WHEREFORE, the decision of the Court of Appeals in CA-G.R. CR-H.C. No. 00893 is AFFIRMED. ALBERTO BUBAN is found guilty beyond reasonable doubt of rape, on four (4) counts, and is sentenced to suffer, for each count of rape, the penalty of reclusion perpetua. Accused-appellant is also ordered to pay the victim the sum of P50,000.00 as civil indemnity and another P50,000.00 as moral damages or the total amount of P200,000.00 as civil indemnity and P200,000.00 as moral damages.

SO ORDERED.

Corona,[*] Velasco, Jr.,[**] Brion,[***]and Bersamin, JJ., concur.

[*] Acting Chairperson as per Special Order No. 724.

[**] Additional member as per Special Order No. 719.

[***] Additional member as per Special Order No. 725-A.

[1] Penned by Associate Justice Portia Aliño-Hormachuelos, with Associate Justice Juan Q. Enriquez, Jr. and Associate Justice Vicente Q. Roxas concurring; CA rollo, pp. 150-168.

[2] Penned by Judge Adolfo G. Fajardo, id. at 86-114.

[3] Under Art. 335 of the Revised Penal Code as amended by Republic Act No. 7659.

[4] The real name of the victim is withheld to protect her identity and privacy pursuant to Section 29 of Republic Act No. 7610, Section 44 of Republic Act No. 9262, and Section 40 of A.M. No. 04-10-11-SC. See our ruling in *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[5] Crim. Case No. 1188; CA rollo, pp. 10-11.

[6] Crim. Case No. 1185; id. at 4-5.

[7] Crim. Case No. 1187; id. at 8.

[8] Crim. Case No. 1186; id. at 6-7.

[9] *Supra* note 5.

[10] RTC Record of Criminal Case No. 1185, p. 11.

[11] *Id.* at 23.

[12] Exhibit "A" of the prosecution, RTC Record of Crim. Case No. 1188, p. 8.

[13] Exhibit "B" of the prosecution, RTC Record of Crim. Case No. 1185, p. 114.

[14] CA rollo, pp. 27-29.

[15] *Id.* at 29-32.

[16] *Supra* note 2, pp. 51-52.

[17] RTC Record of Crim. Case No. 1185, p. 160.

[18] CA rollo, p. 57.

[19] *Id.* at 59.

[20] *Id.* at 68-84.

[21] *Id.* at 125-142.

[22] *Id.* at 121.

[23] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640, 657-658.

- [24] Rollo, p. 1.
- [25] Id. at 25-26.
- [26] Id. at 40.
- [27] G.R. No. 167756, April 9, 2008, 551 SCRA 16, 31-32.
- [28] TSN, dated October 8, 1997, pp. 4-7.
- [29] Id. at 9-11.
- [30] Id. at 12-14.
- [31] Id. at 16-17.
- [32] People v. Flores, G.R. No. 141782, December 14, 2001, 372 SCRA 421, 430-431.
- [33] Ibid.
- [34] People v. Dreu, G.R. No. 126282, June 20, 2000, 334 SCRA 62, 73-74.
- [35] People v. Taperla, et al., G.R. No. 142860, January 16, 2003, 395 SCRA 310, 315.
- [36] People v. Segovia, G.R. No. 138974, September 19, 2002, 389 SCRA 420, 425.
- [37] People v. David, G.R. Nos. 121731-33, November 12, 2003, 415 SCRA 666, 681-682.
- [38] TSN, dated October 8, 1997, pp. 19-20.
- [39] G.R. No. 137757, August 14, 2000, 337 SCRA 714, 729.
- [40] People v. Flores, G.R. No. 141782, December 14, 2001, 372 SCRA 421, 434.
- [41] People v. Villafuerte, G.R. No. 154917, May 18, 2004, 428 SCRA 427, 436.

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