

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SPO1
ARNULFO A. AURE AND SPO1 MARLON H. FEROL,
ACCUSED-APPELLANTS.**

G.R. No. 180451. October 17, 2008

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

For review is the Decision[1] of the Court of Appeals in CA-G.R. CR-HC No. 01127, dated 29 July 2005, affirming in toto the Decision,[2] dated 5 December 2000, of the Caloocan City Regional Trial Court (RTC), Branch 127, in Criminal Cases No. C-58617 and No. C-58693, finding accused-appellants Senior Police Officer 1 (SPO1) Arnulfo A. Aure and SPO1 Marlon H. Ferol guilty of rape, and imposing upon them the penalty of reclusion perpetua.

The records of the case bear the following facts:

On 20 January 2000, two separate informations[3] for rape were filed with the RTC charging appellants of rape, thus:

In Criminal Case No. C-58617:

That on or about the 7[th] day of November, 1999 in Caloocan City, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and mutually helping one another, with lewd design and by means of force and intimidation, did then and there willfully, unlawfully and feloniously lie and have sexual intercourse with one AAA,[4] 45 years old, married, against the latter's will and without her consent.

In Criminal Case No. C-58693:

That on or about the 7[th] day of November, 1999 in Caloocan City, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and mutually helping one another, with lewd design and by means of force and intimidation did then and there willfully, unlawfully and feloniously lie and have sexual intercourse with one AAA, 45 years old, against the latter's will and without her consent.

Subsequently, these cases were consolidated for joint trial. When arraigned on 30 May 2000, appellants, assisted by their respective counsels de parte, pleaded "Not guilty" to the charges.[5] Trial on the merits thereafter followed.

The prosecution presented as witnesses AAA, Philippine Anti-Organized Crime Task Force (PAOCTF) Police Chief Inspector Ricardo Dandan (Inspector Dandan), National Bureau of Investigation (NBI) Agent Ronald Abulencia (Agent Abulencia), NBI Agent Antonio Erum, Jr. (Agent Erum), Dr. Nora Leonor Espino (Dr. Espino), Dr. Annabelle Soliman (Dr. Soliman) and Federico Abesia (Abesia). Their testimonies, woven together, present the following narrative:

On 7 November 1999, at around 3:00 p.m., AAA slept inside her house located at XXX. Later, CCC (AAA's son), awakened AAA and told her that several policemen entered the house. AAA stood up and saw appellant Aure accompanying her housemaid, Maricel Formentera (Formentera), in walking out of the house. AAA rushed to appellant Aure and Formentera and tried to pull back Formentera inside the house but she failed to do so. AAA went out of the house and saw appellant Ferol and a certain SPO4 Honest Gaton (SPO4 Gaton) holding her two minor housemates, Nerissa Ubay (Ubay) and Judelyn Borenaga (Borenaga). She also saw several barangay tanods and kibitzers standing nearby. At this juncture, AAA asked appellant Aure why they were taking the three young girls and why they entered her house without warrant. Appellant Aure replied that they are Central Intelligence Service (CIS) agents and were tasked to rescue the three young girls whom she was keeping and allegedly abusing and exploiting. Appellant Aure told AAA to explain her side at the Central Intelligence Division Group (CIDG) office. Thereafter, appellants, SPO4 Gaton and several barangay tanods took AAA and the three young girls to the XXX barangay hall where the incident was blotted and, afterwards, to the CIDG office for booking and investigation.[6]

At about 7:00 p.m. of the same day, while still inside the CIDG office for interrogation, AAA sat on a sofa near the main door of the office. Appellant Aure, who was inside the computer room of the office, called AAA and instructed her to approach him. When AAA entered the computer room, appellant Aure told her to sit beside him. AAA complied. Appellant Aure asked her where she hid the two other minor companions of Ubay and Borenaga but AAA disclaimed any knowledge thereof. Irked, appellant Aure accused her of deriving her livelihood from trading the flesh of the children. Thereupon, appellant Aure placed his hand on her shoulder and gradually massaged her back. She resisted these moves but appellant Aure told her: "HUWAG KA NANG PUMALAG, MAGPAKABAIT KA NA LANG." She shouted for help but nobody responded. She tried to free herself but he punched her thigh and held her shoulder tightly. He pointed a gun at her side and directed her to stand. She fought back by pulling down his head but he punched her other thigh. He made her stand by poking a gun at her side. At this point, he started kissing her from face down to her breast. She shouted and fought back again but he threatened her "PAPATAYIN KITA, HUWAG KA NG PUMALAG." He forcibly pulled down her pants which caused her to fall on the floor. Afterwards, he took off his own pants and placed himself on top of her. She struggled by putting her knees together but he forcibly separated her legs. He kissed her face, neck and breast and pinned her both arms. Thereafter, he inserted his penis into her vagina and made pumping motions for less than five minutes until she felt a warm liquid inside her vagina.[7]

Appellant Aure, who was panting for breath, stayed on top of her for a few minutes. Later, he stood up and wore his pants. He picked AAA's pants and threw it at her. He told her to dress up and act as if nothing happened. He peeped through the window of the computer room and warned her not to tell anyone of what happened or he would kill her. He then went out of the computer room. After several minutes, he instructed her to get out of the computer room which she did. She sat on the sofa and saw appellant Aure join several persons drinking liquor and playing cards inside the office. She saw appellant Aure talking and drinking liquor with appellant Ferol and some police officers. Subsequently, appellant Aure left the office while appellant Ferol stayed and continued drinking liquor with some police officers.[8]

While AAA was sleeping on the sofa inside the office at about 2:00 a.m. of 8 November 1999, appellant Ferol tapped her shoulder and signaled her to proceed to his table. He gave her coffee and told her to produce P300,000.00 in exchange for the dropping of the cases they would file against her. She answered that she did not have that amount of money and would rather be jailed. Disgusted, he remarked "TIGNAN NATIN KUNG HINDI KA IIYAK BUKAS SA DAMI NG MGA KASONG IPA-FILE NAMIN LABAN SA IYO." He poked a gun at her temple and back and instructed her to go to the computer room. While inside the computer room, he ordered her to remove her pants but she was unable to move due to fear and numbness. He removed her pants and pushed

her to the ground. He placed himself on top of her and kissed her face, neck and breast. He forcibly separated her legs, pulled up her arms and uttered to her "HUWAG KA NA LANG PUMALAG PATAPUSIN MO NA LANG AKO KUNG AYAW MONG MASAKTAN." Thereupon, he inserted his penis into her vagina and made pumping movements. When he stood up, she saw sperm cell on his organ. He ordered her to dress up and fix herself. He warned her "WALANG DAPAT MAKAAALAM NITO, TANDAAN MO PAPATAYIN KITA." Later, both of them went out of the computer room.[9]

At about 8:30 a.m. of the same day, appellants and other CIDG operatives took AAA and the three young girls to Prosecutor Dionisio Sison (Prosecutor Sison) of the Caloocan City Prosecutor's Office for inquest proceedings on the charges of Violation of Republic Act No. 7610 otherwise known as the Anti-Child Abuse Law, Physical Injuries, and Illegal Recruitment.[10]

After the inquest, appellants and SPO4 Gaton brought AAA to the Ospital ng Kalookan for medical examination. AAA refused to be examined therein and was constantly crying and refusing to answer the questions of her attending physician, Dr. Espino. Hence, Dr. Espino did not push through with the examination and merely indicated in AAA's medico-legal certificate the following observation: "No visible sign of external physical injury." Thereafter, appellants and SPO4 Gaton brought AAA to the Caloocan City Jail where she was detained.[11]

At 6:00 p.m. of the same day, AAA was released from jail pursuant to a Release Order issued by Prosecutor Sison. BBB, husband of AAA, then immediately brought AAA to the Ospital ng Kalookan for a second medical examination with Dr. Espino. During the examination, Dr. Espino found linear abrasions on the forearms of AAA. Dr. Espino included this finding in AAA's medico-legal certificate.[12]

On 9 November 1999, at around 10:00 a.m., AAA, per advice of Dr. Espino, went back to the Ospital ng Kalookan for a third medical examination. Dr. Espino discovered the following injuries on AAA's body: "Old contusions both scapular area; (RT) & (L) arm, middle 3[rd] both thighs." Dr. Espino added these observations in AAA's medico-legal certificate. The over-all findings of Dr. Espino, as stated in AAA's medico-legal certificate, are as follows:

November 8, 1999 - 11:40 a.m.

- No Visible Sign of External Physical Injury
- Disposition: Back to SPO2 Marlon Ferol

Came back around 7:10 p.m. of November 8, 1999 with the following injuries:

- Linear abrasions forearm posterior aspect bilateral; arm anterior aspect bilateral.

Follow-up OPD - November 9, 1999 - 10:00 a.m. shows:

- Additional findings: Old contusions both scapular area; (RT) & (L) arm, middle 3[rd] both thighs.
- Disposition: Referred to NBI for OB-GYNE Examination.[13]

During the examination, AAA broke down and confided to Dr. Espino that she was raped. Dr. Espino handed her a Laboratory Request for OB-GYNE examination.[14]

On 11 November 1999, AAA, per advice of her lawyer, reported the rape incident to the NBI. The case was assigned to Agent Abulencia and Agent Erum, Jr. before whom AAA narrated the rape incident. The incident was reduced into AAA's sworn statement. NBI Medico-Legal Officer Dr. Soliman also conducted a genital examination on AAA.[15] The findings of Dr. Soliman as stated in AAA's medical certificate are as follows:

CONCLUSIONS:

- No evident signs of extragenital physical injury was noted on the body of the subject at the time of the examination.
- Hymen posteriorly attenuated.
- Vaginal orifice wide (3.0 cms. in diameter) as to allow complete penetration by an average-sized adult Filipino male organ in full erection without producing new hymenal injury.[16]

After investigation, the NBI, through Director Federico Opinion, Jr., submitted a letter-referral to the Caloocan City Prosecutor's Office recommending the conduct of inquest proceedings on appellants and the filing of charges against appellants for robbery, extortion and rape. The letter-referral was studied by Caloocan City Chief Inquest Prosecutor Oscar Yu (Prosecutor Yu). Prosecutor Yu also conducted a preliminary examination on AAA. Thereafter, Prosecutor Oscar Yu, Agent Abulencia, Agent Erum, a certain Agent Sixto Comia, and four other NBI agents proceeded to the CIDG office for the purpose of inquesting appellants. Upon arriving therein, however, Colonel Edgar C. Danao (Colonel Danao), Chief of the CIDG office, refused to turn over appellants to Prosecutor Yu and to the NBI agents for inquest proceedings. Prosecutor Yu and the NBI agents then left the CIDG office.[17]

Subsequently, a preliminary investigation on the case was conducted but appellants did not appear during the hearings despite notice. Thereupon, appellants were charged with rape before the RTC and corresponding warrants for their arrest were issued.[18] Appellants then were arrested and detained at the PAOCTF office by Inspector Dandan and his men.[19]

The prosecution also proffered documentary evidence to bolster the testimonies of its witnesses, to wit: (1) sworn statement of AAA (Exhibit A)[20]; (2) medico-legal certificate of AAA issued by Dr. Soliman (Exhibit B)[21]; (3) referral-letter of the NBI to the Caloocan City Prosecutor's Office (Exhibit C)[22]; (4) joint-affidavit of Agent Abulencia, Agent Erum and other NBI agents (Exhibit E)[23]; (5) medico-legal certificate of AAA issued by Dr. Espino (Exhibit G)[24]; (6) release order for AAA (Exhibit H)[25]; (7) laboratory request for genital examination of AAA (Exhibit J)[26]; (8) resolution of the Caloocan City Prosecutor's Office dismissing the charges of violation of Republic Act No. 7610 and Illegal Recruitment against AAA (Exhibit K)[27]; (9) resolution of the Department of Justice (DOJ) dismissing the charge of physical injuries against AAA (Exhibit L)[28]; and (10) memorandum from the CIDG-NCR confirming the arrest and detention of appellants by PAOCTF operatives pursuant to the warrant of arrest issued by the RTC (Exhibit N).[29]

For its part, the defense presented the testimonies of appellants, SPO2 Jaime Acido, Virgilio Torres, Ronald Orcullo, Mary Ann Aglibar, Roberto Illut, Juvy Winnie de Guzman, Colonel Danao, Barangay Chairman Antonio Galgana and Dr. Reymundo Dave and Ms. Florenda Negre to refute the foregoing accusations. Appellants denied any liability and interposed the defense of alibi. Appellants' version of the incident, as corroborated by their witnesses, are as follows:

On 7 November 1999, at around 7:30 a.m., appellants reported for work in the CIDG office. At about 11:30 in the morning of the same day, a certain Emelita Pajaron (Pajaron) and Analyn Guinarez (Guinarez) arrived at the office and reported that their two cousins, Ubay and Borenaga, were being detained and maltreated by AAA at the latter's house in XXX. After securing the approval of their boss, Colonel Danao, appellants, together with Pajaron and Guinarez, went to the barangay hall of XXX to coordinate their rescue operation of Ubay and Borenaga. Thereafter, appellants, Pajaron, Guinarez and several barangay tanods proceeded to the house of AAA at XXX. Upon arriving thereat, appellants saw Ubay, Borenaga and Formentera at the gate of AAA's house. The three young girls were waving at them and crying. AAA went out of the house and told the three young girls to get

inside the house but they refused. AAA berated and cursed appellants. Appellants then invited AAA to the CIDG office for investigation to which the latter acceded. Appellants, Ubay, Borenaga, Pajaron, Guinarex and AAA went first to the barangay hall to blotter the incident and thereafter proceeded to the CIDG office.[30]

Upon arriving at the CIDG office at about 5:00 p.m., appellants brought the three young girls to the Ospital ng Kalookan for medical examination of the injuries found on their bodies. Appellants and the three young girls went back to the CIDG office at 7:00 p.m. where they were met and interviewed by members of the media namely, Aglibar, Illut and de Guzman. Later, BBB, CCC, AAA's daughter-in-law, and an unnamed policeman-friend of AAA, arrived at the office and talked with AAA. At this juncture, appellants were busy preparing the pertinent documents for the filing of charges against AAA. Appellants went back and forth to the computer room checking the drafts and having them typed by their encoder, Torres. The interview of the three young girls by members of the media and appellants' preparation of relevant documents lasted until 11:30 p.m. Thereafter, at about 12:00 midnight of 8 November 1999, appellants, Aglibar, Illut, de Guzman and the three young girls proceeded to Waray Waray Restaurant at Pier 12 to rescue two more minors allegedly kept by AAA in the said place. Appellants' surveillance and operation yielded negative results. Thus, appellants and company went back to the CIDG office arriving therein at about 3:00 a.m. After half an hour, appellant Aure left the office and proceeded home.[31] Appellant Ferol stayed in the office because he was then on 24-hour duty. Appellant Ferol slept on his table inside the office until 8:30 in the morning. Orcullo and a certain Ricky Masangkay, both of whom were errand boys of the office, also slept inside the office near appellant Ferol.[32]

At about 8:30 a.m., appellant Aure arrived at the office. Subsequently, Colonel Danao also arrived. Appellants then brought AAA to the Caloocan City Prosecutor's Office for inquest proceedings. AAA was charged with violation of Republic Act No. 7610, Physical Injuries and Illegal Recruitment and was detained in Caloocan City Jail.[33]

On 12 November 1999, Prosecutor Yu and several NBI agents swooped down in the CIDG office to conduct an inquest proceeding on appellants for the rape of AAA. Colonel Danao refused to turn over appellants because the proceeding was improper as appellants were not previously arrested.[34]

The defense also adduced documentary and object evidence to bolster the testimonies of its witnesses, to wit: (a) referral-letter of Colonel Danao to the Caloocan City Prosecutor's Office requesting inquest of AAA for Violation of Republic Act No. 7610 and for Physical Injuries (Exhibit 1)[35]; (b) preliminary report of Dr. Soliman (Exhibit 2)[36]; (c) medico-legal certificate issued by Dr. Soliman (Exhibit 3)[37]; (d) medico-legal certificate issued by Dr. Espino (Exhibit 4)[38]; (e) Pinagsama-Samang Salaysay of Ubay, Borenaga and Formentera (Exhibit 5)[39]; (f) joint-affidavit of de Guzman, Aglibar and Illut (Exhibit 6)[40]; (g) a picture showing the entrance to the computer room of the CIDG office (Exhibit 8)[41]; (h) sketch of the CIDG office (Exhibit 10)[42]; (i) certificate of completion of the Practical Investigative Techniques issued by the CIDG to appellant Aure (Exhibit 11)[43]; (j) complaint sheet charging AAA of maltreatment of minors, illegal recruitment and illegal detention (Exhibit 12)[44]; (k) certification issued by Chairman Galgana that appellants proceeded to the barangay hall before going to the house of AAA (Exhibit 13)[45]; and (l) joint-affidavit of appellants (Exhibit 14).[46]

After trial, the RTC rendered a Decision on 5 December 2000 convicting appellant Aure of rape in Criminal Case No. C-58617 and acquitting him of rape in Criminal Case No. C-58693. On the other hand, appellant Ferol was convicted of rape in Criminal Case No. C-58693 but was acquitted of rape in Criminal Case No. C-58617. The RTC explained that in Criminal Case No. C-58617, the prosecution has duly established that appellant Aure raped AAA on 7 November 1999, at around 7:00 p.m., inside the computer room of the CIDG office. Nonetheless, the prosecution failed to prove that appellant Ferol conspired with appellant Aure in raping AAA at such time and, hence, appellant Ferol is acquitted of rape in Criminal Case No. C-58617. With regard to Criminal Case No.

C-58693, the prosecution had proven that appellant Ferol raped AAA on 8 November 1999, at 2:00 a.m. inside the computer room of the CIDG office. However, appellant Aure is acquitted of rape in this instance because there was no evidence that he conspired with appellant Ferol in committing such rape.

In addition to the penalty of reclusion perpetua, each of the appellants was also ordered to pay AAA the amounts of P50,000.00 as civil indemnity, P60,000.00 as moral damages, and P70,000.00 as attorney's fees. The dispositive portion of the RTC Decision reads:

WHEREFORE, premises considered and the prosecution having established to a moral certainty the guilt of Accused ARNULFO A. AURE and Accused MARLON H. FEROL in Crim. Case Nos. 58617 and 58693, respectively, of the crime of Rape as defined and penalized under R.A. 8353, this Court in the absence of any modifying circumstances, hereby sentences each of the said Accused to suffer the lesser penalty of Reclusion Perpetua; to each indemnity the Private Complainant the civil indemnity of P50,000; and to each pay her moral damages of P60,000.00 as well as attorney's fee of P70,000.00 each, and to pay the costs, without any subsidiary imprisonment in case of insolvency.

Anent the respective criminal liability of Accused MARLON FEROL in Crim. Case No. 58617 and Accused ARNULFO AURE in Crim. Case No. 58693, for failure of the prosecution to overcome with the required quantum of proof their constitutional presumption of innocence, they are ACQUITTED of the crime charged.

The preventive imprisonment suffered by both Accused shall be credited in full in the service of their respective sentences in accordance with Art. 29 of the Revised Penal Code.[47]

Appellants filed a motion for reconsideration[48] but this was denied.[49]

On 10 February 2002, appellants elevated the instant case to us for review.[50] However, pursuant to our ruling in *People v. Mateo*,[51] we remanded the case to the Court of Appeals for proper disposition.

On 29 July 2005, the Court of Appeals promulgated its Decision affirming in toto the RTC Decision. Appellants filed a motion for reconsideration[52] which was denied.[53]

Before us, appellants assigned the following errors:

I.

THE RTC ERRED IN CONVICTING ACCUSED-APPELLANT AURE IN CRIMINAL CASE NUMBER 58617 WITH RAPE DEFINED AND PENALIZED UNDER R.A. 8353 COMMITTED ON NOVEMBER 7, 1999 AND AT THE SAME TIME ACQUITTING HIM IN CRIMINAL CASE NUMBER 58693 OF THE ALLEGED CRIME OF RAPE DEFINED AND PENALIZED UNDER R.A. 8353 ALLEGEDLY COMMITTED ON SAME AND ONE OCCASION/INCIDENT OF RAPE - NOVEMBER 7, 1999.

II.

THE RTC ERRED IN CONVICTING ACCUSED-APPELLANT FEROL IN CRIMINAL CASE 58693 WHICH ACCUSES ACCUSED-APPELLANT FEROL WITH THE CRIME OF RAPE DEFINED AND PENALIZED UNDER R.A. 8353 COMMITTED ON NOVEMBER 7, 1999 AND AT THE SAME TIME ACQUITTING HIM IN CRIMINAL CASE NUMBER 58617 ALSO OF THE CRIME OF RAPE DEFINED AND PENALIZED UNDER R.A. 8353 COMMITTED ON NOVEMBER 7, 1999, WORST ACCUSED-APPELLANT FEROL WAS CONVICTED OF THE CRIME OF RAPE COMMITTED ON NOVEMBER 8, 1999 WITH WHICH HE WAS NOT BEING CHARGED IN CRIMINAL CASE NUMBER 58693.

III.

THE RTC ERRED IN CONVICTING ACCUSED-APPELLANTS OF THE CRIME OF RAPE DEFINED

AND PENALIZED UNDER R.A. 8353 WHEN THE PROSECUTION FAILED TO PROVE AND ESTABLISH THE GUILT OF THE ACCUSED-APPELLANTS OF THE COMMISSION AND CIRCUMSTANCES OF THE ALLEGED CRIMES OF RAPE DEFINED AND ALLEGED IN THE TWO (2) INFORMATIONS UNDER CRIMINAL CASE NUMBERS 58167 AND 58693.

IV.

THE RTC ERRED IN CONVICTING ACCUSED-APPELLANTS EACH OF THE CRIME OF RAPE WHEN THE PROSECUTION FAILED TO ESTABLISH THE ALLEGATION AND CHARGE OF CONSPIRACY AND WHEN "RESPONDENT JUDGE" HERSELF FOUND ABSENCE OF CONSPIRACY.

V.

THE RTC ERRED IN HOLDING THAT THE TESTIMONIES OF ACCUSED-APPELLANTS AND WITNESSES ARE BUT ALIBI AND DEFINITELY FALLS WITHIN THE CATEGORY OF NEGATIVE AND SELF-SERVING EVIDENCE.

VI.

THE RTC ERRED IN DENYING THE REQUEST OF ACCUSED APPELLANTS FOR THE CONDUCT OF THE REQUISITE PRELIMINARY INVESTIGATION.

VII.

THE RTC IN RENDERING AND PROMULGATING THE SUBJECT ASSAILED DECISION MANIFESTED CLEAR SIGNS OF BIAS, PARTIALITY AND PREJUDICE AGAINST ACCUSED-APPELLANTS.

VIII.

THE RTC ERRED IN ORDERING ACCUSED-APPELLANTS TO PAY FOR DAMAGES AND COST IN FAVOR OF "PRIVATE COMPLAINANT."

In reviewing rape cases, this Court is guided by three principles, to wit: (1) 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; (2) in view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merits and cannot draw strength from the weakness of the evidence for the defense.[54]

As a result of these guiding principles, credibility of the complainant becomes the single most important issue. If the testimony of the victim is credible, convincing and consistent with human nature, and the normal course of things, the accused may be convicted solely on the basis thereof.[55]

We have carefully examined AAA's court testimony and found it to be credible and trustworthy. Her positive identification of appellant Aure as the one who ravished her on 7 November 1999 and of appellant Ferol as the one who defiled her 8 November 1999, as well as her direct account of the bestial acts, are clear and consistent, viz:

ATTY. DIETA TO WITNESS:

x x x x

A

[At] 7:00 p.m. [7 November 1999] SPO1 Aure called me to the computer room.

Q

After you were brought to the computer room by SPO1 Aure, what happen?

A

I was made to sit and he sat beside me.

x x x x

Q

After that what transpired next?

A

He place his hand on my shoulder.

Q

What was your reaction when Aure place his arm to your shoulder?

A

Hinahawi ko po iyong kamay niya na nakapatong sa balikat ko. Pero po iyong kamay niya inihahagod po niya sa may likuran ko.

Q

After that what transpired?

A

Sabi niya, Huwag ka ng pumalag, magpakabait ka na lang.

Q

What was your reaction to the statement of Aure?

A

I was shouting for help because of what he was doing.

Q

Did anybody respond to your shout for help?

A

Wala pong sumaklolo sa akin.

Q

After that what transpired?

A

Pinipilit ko po na alisin and kamay ni SPO1 Aure sa likod ko, nagpipiglas po ako, bigla po niyang sinuntok ang hita ko.

Q

After Aure hit your thigh, what happen next?

A

Inakbayan po niya ako ng mahigpit sa balikat, itinutok po niya iyong baril sa tagiliran ko.

x x x x

ATTY. DIETA TO WITNESS:

Q

What was your reaction when Aure poked the gun to your side?

A

I was very afraid and do not know what to do.

Q

After that what happen?

A

He was forcing me to stand by pulling up my shoulder.

Q

After that what happen?

A

I was trying to release myself from his hold and try to get hold of his head.

Q

When you were not able to reach the head of Aure what transpired?

A

He got mad and punch me on the other thigh.

x x x x

ATTY. DIETA TO WITNESS:

Q

After Aure hit your thigh again what transpired?

A

Pilit po niya akong itinatayo. He was forcing me to stand up and went behind my back and his hand were near my breast.

COURT:

Q

To make you stand with his both hands?

A

Bale nakatutok po sa may tagiliran ko iyong baril. Iyong kamay po niya iyong isa nakayakap po dito sa pagitan po ng suso ko.

ATTY. DIETA TO WITNESS:

Q

What hand of Aure is holding the gun?

A

Right hand holding the gun.

Q

After that what happen?

A

He was able to make me stand.

Q

When you were already on standing position what transpired?

A

Pinaghahalikan na po niya ako sa iba-ibang parte ng katawan, nagsisisigaw po ako, nanlalaban po ako sa kanya.

x x x x

Q

For how long did Aure kissed you in different parts of the body?

A

Noong nakatayo na po kami, nanlalaban po ako sa kanya. Sinabi niya sa akin, papatayin kita, huwag ka ng pumalag.

Q

What was your reaction when Aure threatened you of death?

A

I was very afraid. I almost die.

Q

After that what transpired next?

A

He told me to take off my pants.

Q

Did you do as Aure directed you to take off your pants?

A

Sa takot ko po hindi ko po namalayan na sumunod po ako sa kanya. Inalis ko po ang butones at saka po binaba ko po. [56]

ATTY. DIETA TO WITNESS:

x x x x

Q

After that what happened?

A

SPO1 Aure pulled my pants down, sir.

Q

After SPO1 Aure pulled your pants down, what happened next?

A

"Napaupo po ako at bumagsak sa cemento."

x x x x

ATTY. DIETA TO WITNESS:

Q

What was SPO1 Aure doing at that time when you were already on the floor?

A

Taking off his pants, sir.

Q

After he took off his pants, what happened?

A

I cringed in fear and trembling, sir.

Q

After that what happened next?

A

SPO1 Aure approached me and held my knee.

x x x x

ATTY. DIETA TO WITNESS:

Q

What was your reaction to the action of SPO1 Aure?

A

I was trying to free myself from his hold and made my knees stucked (sic) together.

Q

After that what transpired?

A

"Nag-iiyak po ako sa takot. Nasasaktan po ako sa ginagawa niya."

x x x x

ATTY. DIETA TO WITNESS:

Q

Was he able to open your knees?

A

Yes, sir.

Q

And when SPO1 Aure opened your knees, what happened next?

A

"Itinuhod po niya yung tuhod niya sa pagitan ng aking mga hita."

Q

After that what did SPO1 Aure do, if any?

A

He laid down at (sic) top me, sir.

Q

When SPO1 Aure laid down on top of you, was he already naked?

A

Yes, no more pants, and brief, sir.

x x x x

ATTY. DIETA TO WITNESS:

x x x x

Q

When SPO1 Aure put his knees between your legs, what transpired next after that?

A

He laid at (sic) top me and kissed all over my body, sir.

Q

What particular parts of your body did SPO1 Aure kiss?

A

My face, neck and breast sir.

Q

For how long that situation last?

A

I tried to fight back as I tried to lift his body from me, and I even hit him on the back.

Q

When you were fighting back with SPO1 Aure what was his reaction?

A

"Napakalakas niya, yung dalawang braso ko inipit niya sa dalawang kamay niya."

Q

After that what happened?

A

"Nag-pump na po siya tuloy-tuloy po yung pag-papump niya, pabilis ng pabilis po."

x x x x

ATTY. DIETA TO WITNESS:

Q

Do you recall how long SPO1 Aure was pumping above you?

A

Seconds only then he kissed my body, sir.

Q

After that what happened?

A

I felt his foot kicked my pants down until it was taken off, sir.

Q

After your pants was taken off, what transpired?

A

"Tinutok niya yung ari niya sa aking pagkababae."

ATTY. DIETA:

At this point Your Honor I would like to manifest that the witness is already crying.

x x x x

COURT TO WITNESS:

Q

You want to tell this Court that he was able to insert his penis into your private part?

A

"Opo."

ATTY. DIETA TO WITNESS:

Q

After SPO1 Aure inserted his penis to your private part, what did he do next?

A

"Pabilis ng pabilis ang kanyang pagpapump hanggang sa may naramdaman po akong mainit na likido na pumasok sa aking ari."

Q

Do you recall how long did that pumping happen after you felt a warm liquid to your vagina?

A

"Wala pa pong limang minuto."

Q

After you felt that liquid discharged from SPO1 Aure, what happened next?

A

"Humihingal si SPO1 Aure na bigla na lang po siyang dumagan sa katawan ko, flat po."

x x x x

Q

After that what happened?

A

SPO1 Aure stood up and wore his pants.

Q

After SPO1 Aure put on his pants, what did he do next?

A

"Hinagis po niya ang aking pantalon at sinabi po niya na mag-ayos ako ng aking sarili na parang walang nangyari."

Q

On your part what did you do when SPO1 Aure gave your pants back?

A

"Hindi ako makakilos sa takot at hindi ko kaagad naisuot yun."

Q

What about SPO1 Aure what did he do?

A

He approached me and poked the gun on my face.

Q

What was your reaction when SPO1 Aure poked his gun on your face?

A

I obeyed him and put on my panty and my pants.

Q

After you put on your panty and pants, what happened next after that?

A

I sat on a chair and SPO1 Aure went to the door.

Q

After that what did SPO1 Aure do?

A

He opened the door and peeped outside, sir.

Q

After SPO1 Aure opened the door and peeped outside, what happened next?

A

"Lumapit po sa kinauupuan ko at sinabi niya na tandaan mo walant dapat makakaalam nito kundi papatayin kita."

Q

What was your reaction to his statement?

A

"Umiyak ako ng umiyak, hindi po ako makakilos."

x x x x

ATTY. DIETA TO WITNESS:

Q

So it was SPO1 Ferol who approached you and tapped your shoulder at about 2:00 a.m. of November 8, 1999?

A

Yes, sir.

x x x x

Q After that what happened next?

A He poked his gun on my temple and told me to enter the computer room.

Q When you were inside the computer room, what transpired, if any?

A "Pinahuhubad niya po sa akin yung pantalon ko."

x x x x

ATTY. DIETA TO WITNESS:

Q

While you were inside the computer room, what happened next?

A

He told me to take off my pants, sir.

Q

What did you do?

A

"Sa pagkakataon pong yun di ako makakilos, namamanhid po yung buong katawan ko sa nerbiyos."

Q

As you mentioned that you were already numb due to fright, what did you do if any?

A

I could not move and I felt that he was the one unbuttoning my pants.

Q

You mentioned that he was the one unbuttoning your pants, to whom are you referring to?

A

Ferol, sir.

Q

Was SPO1 Ferol about to unbutton your pants?

A

Yes, up to my thigh.

Q After that what happened next?

A He pushed me to the folding bed, sir.

Q After he pushed you to the folding bed, what happened?

A Facing down to the folding bed he pulled me down to the cement floor and my back hitting the floor first.

x x x x

ATTY. DIETA TO WITNESS:

Q

After you were pulled down to the cement, what happened next?

A

He approached me and pulled my pants down.

Q

After SPO1 Ferol pulled your pants down, what did he do next?

A

He hurriedly took off his pants, sir.

Q

After SPO1 Ferol took off his pants, what did he do if any?

A

"Dinaganan niya po ako sa aking katawan paluhod."

Q

That particular moment what were you doing at that time?

A

"HINDI NA PO AKO MAKAKILOS SA NERBIYOS."

Q

When SPO1 Ferol was already kneeling above your body as you mentioned, what transpired next?

A

He took off his T-shirt, sir.

x x x x

ATTY. DIETA TO WITNESS:

Q

After SPO1 Ferol put off his T-shirt, what did he do next?

A

He bent down and started kissing me. "Malikot po siya."

Q

Will you tell this Court what part of your body was kissed by SPO1 Ferol at that time?

A

Face, neck, head, body up to my breast.

x x x x

ATTY. DIETA TO WITNESS:

Q

When SPO1 Ferol was kissing you what were you doing at that time?

A

I was trying to free myself but he was forcing me to open my legs.

Q

Was SPO1 Ferol able to open your legs?

A

Yes, sir.

Q

After he opened your legs, what did he do next?

A

"Nag-pump siya ng nag -pump, ang katawan niya nasa pagitan ng aking mga hita."

Q

For how long did SPO1 Ferol make that pumping motion between your legs?

A

Due to fright I could not remember anything.

Q

After that what transpired?

A

I tried to hit or box him but he held both my arms and pulled it up.

Q

After SPO1 Ferol held your hands, what happened next?

A

"Sabi po niya, huwag ka na lang pumalag patapusin mo na lang ako kung ayaw mo masaktan."

Q

What was your reaction to the statement of SPO1 Ferol?

A

I was trying to free myself and crying but I could not do so.

Q

After you were not able to free yourself from the body of SPO1 Ferol what happened next?

A

Nag-pump po siya ng nag-pump.

COURT: (butts in) TO WITNESS:

x x x x

Q

When he was pumping, was his penis inside your private part already?

A

Yes, he was able to make his organ entered to (sic) my organ, Your Honor.

ATTY. DIETA TO WITNESS:

Q

For how long did SPO1 Ferol make this pumping?

A

Only for a short while, all I felt was I could not feel anything except fear.

Q

After that what happened?

A

He stood up and I saw white sperm in front of him.

Q

Where did you see that white sperm?

A

Outside of his organ, sir.

Q

After that what did you do, if any?

A

"Napaluhod po ako, nanginginig po ako sa takot. Inutusan po niya akong magsuot ng aking panty at pantalon."

Q

Were you able to put on your panty and pants?

A

I could not move at that time.

x x x x

ATTY. DIETA TO WITNESS:

Q

After that what happened?

A

He told me to fix myself or else he will kill me and due to fear I crawled to get my pants.

Q

Were you able to put on your panty and pants?

A

Yes, sir.

Q

After that what did you do next?

A

I was crying and he told me "walang dapat makaalam nito, tandaan mo papatayin kita." [57]

It is settled that the testimony of a married rape victim, such as AAA, is given full weight and credence because no married woman with a husband and children would place herself on public trial for rape where she would be subjected to suspicion, morbid curiosity, malicious imputations, and close scrutiny of her personal life, not to speak of the humiliation and scandal she and her family would suffer, if she was merely concocting her charge and would not be able to prove it in court. [58]

It is also significant to note that the RTC gave full credence to the foregoing testimony of AAA as she relayed her painful ordeal in a candid manner. It found the testimonies of AAA to be "clear, spontaneous and reliable." Jurisprudence instructs that when the credibility of a witness is of primordial consideration, as in this case, the findings of the trial court, its calibration of the testimonies of the witnesses and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings, are accorded respect if not conclusive effect. This is because the trial court has had the unique opportunity to observe the demeanor of the witnesses and was in the best position to discern whether they were telling the truth. When the trial court's findings have been affirmed by the appellate court, as in the present case, said findings are generally binding upon this Court. [59]

Further, the abovementioned testimonies are consistent with the documentary evidence submitted by the prosecution. The RTC and the Court of Appeals found the testimonies of AAA to be credible.

Appellants, nonetheless, claim in their first, second and fourth assigned errors that the informations in Criminal Cases No. C-58617 and No. C-58693 both alleged that they conspired in raping AAA once on 7 November 1999. The RTC, however, found no conspiracy between appellants in raping AAA. Nonetheless, it held that appellant Aure alone raped AAA on 7 November 1999 and thus convicted him of rape in Criminal Case No. C-58617 but acquitted him of rape in Criminal Case No. C-58693; while appellant Ferol alone raped AAA on 8 November 1999 and, hence, convicted him of rape in Criminal Case No. C-58693 but acquitted him of rape in Criminal Case No. C-58617. Appellants maintain that the foregoing findings and rulings of the RTC are inconsistent with the

allegations of conspiracy in the two informations and that the RTC cannot individually and separately convict appellants of rape because the informations in the two cases alleged conspiracy between them in raping AAA. Also, appellant Ferol cannot be convicted in Criminal Case No. C-58693 of rape committed on 8 November 1999 because such fact was not alleged in the informations. Appellants argued that the said finding and ruling of the RTC violated their constitutional rights to be informed of the nature of the case against them, to be presumed innocent of the charges, and to due process.[60]

Although the informations in Criminal Cases No. C-58617 and No. C-58693 both alleged that appellants conspired in raping AAA, it does not necessarily follow that the RTC cannot individually and separately convict appellants of rape. The rule is that once a conspiracy is established, the act of one is the act of all, and each of the conspirators is liable for the crimes committed by the other conspirators. It follows then that if the prosecution fails to prove conspiracy, the alleged conspirators should be held individually responsible for their own respective acts.[61] In the instant cases, the RTC ruled that the prosecution failed to establish conspiracy between appellants in raping AAA. Nevertheless, on the basis of AAA's credible testimony and documentary evidence for the prosecution, the RTC found that appellant Aure alone raped AAA on 7 November 1999 and that appellant Ferol alone raped AAA on 8 November 1999. Thus, the RTC was correct in holding appellants individually responsible for their respective acts of rape.

It is true that the information in Criminal Case No. C-58693 alleged that appellants conspired in raping AAA on 7 November 1999, and that the RTC convicted appellant Ferol alone in Criminal Case No. C-58693 of raping AAA on 8 November 1999. Nonetheless, the discrepancy on the actual date of rape does not constitute a serious error warranting the reversal of appellant Ferol's conviction. 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. The precise time or date when the rape took place has no substantial bearing on its commission. As such, the date or time need not be stated with absolute accuracy. It is sufficient that the information states that the crime has been committed at any time as near as possible to the date of its actual commission.[62] In sustaining the view that the exact date of commission of rape is immaterial, we held in *People v. Purazo*[63] that:

We have ruled, time and again, that the date is not an essential element of the crime of rape, for the gravamen of the offense is carnal knowledge of a woman. As such, the time or place of commission in rape cases need not be accurately stated. As early as 1908, we already held that where the time or place or any other fact alleged is not an essential element of the crime charged, conviction may be had on proof of the commission of the crime, even if it appears that the crime was not committed at the precise time or place alleged, or if the proof fails to sustain the existence of some immaterial fact set out in the complaint, provided it appears that the specific crime charged was in fact committed prior to the date of the filing of the complaint or information within the period of the statute of limitations and at a place within the jurisdiction of the court.

Further, we have held that even a variance of a few months between the time set out in the information and that established by the evidence during trial does not constitute a serious error warranting the reversal of conviction solely on that ground.[64] In the case at bar, the difference between date/time of the rape as alleged in Criminal Case No. C-58693 (7 November 1999) and as testified to by AAA (8 November 1999) was one day only. Indeed, appellant Ferol's actual commission of rape was not that remote or far with the date of rape alleged in the information under Criminal Case No. C-58693. Besides, all the essential elements of rape were stated in the said information and the prosecution had duly established that appellant Ferol had carnal knowledge of AAA through force and intimidation on 8 November 1999.

Appellants posit in their third and fifth assigned errors that AAA was motivated by revenge in charging them with rape because they refused her plea to dismiss the charges of child abuse, illegal recruitment and physical injuries on her; that AAA's non-disclosure of the rape incident to Prosecutor Sison during her inquest with the latter for

child abuse, illegal recruitment and physical injuries shows that the rape charges were fabricated; that it was physically impossible for appellants to rape AAA because the latter was taller and stronger than them; that AAA's statement in her Sinumpaang Salaysay that she felt pain in her vagina after the rape incidents was inconsistent with the medical findings of Dr. Soliman that AAA's "vaginal orifice was wide (3.0 centimeters in diameter) as to allow complete penetration by an average-sized adult Filipino male organ in full erection without producing hymenal injury"; and that their corroborating witnesses were credible and should have been believed by the RTC.[65]

Motives such as resentment, hatred or revenge have never swayed this Court from giving full credence to the testimony of a rape victim.[66] Also, ill motives become inconsequential if there is an affirmative and credible declaration from the rape victim which clearly established the liability of the accused.[67] In the present case, AAA categorically identified appellants as the one who ravished her. Her recount of the incidents, as found by the RTC, the Court of Appeals, and by this Court, was sincere and truthful.

Delay in reporting an incident of rape due to death threats and shame does not affect the credibility of the complainant nor undermine her charge of rape.[68] The silence of a rape victim or her failure to disclose her misfortune to the authorities without loss of material time does not prove that her charge is baseless and fabricated. It is a fact that the victim would rather privately bear the ignominy and pain of such an experience than reveal her shame to the world or risk the rapist's making good on his threat to hurt or kill her.[69]

AAA testified that appellants threatened to kill her if she would divulge the sexual attacks on her.[70] Considering that appellants were police officers and armed, and that AAA was still under appellants' custody when Prosecutor Sison inquested AAA, the latter's initial reluctance to report the incidents was understandable. Further, she narrated that she did not immediately tell the authorities and her husband of the rape incidents because she was confused and ashamed.[71]

Besides, AAA's delay in reporting the rape incidents was not that unreasonably long. The rape incidents took place on 7 and 8 November 1999 and AAA reported the matter to the NBI after three days therefrom, or on 11 November 1999. In several cases we have decided,[72] the delay in reporting the rape incidents lasted for months and even for years; nevertheless, the victims were found to be credible.

The fact that AAA was taller and stronger than appellants does not imply that it was physically impossible for appellants to rape AAA. It should be recalled that appellants poked a gun at AAA and inflicted physical injuries on the latter during the commission of rapes. Further, the rapes were committed in the office of appellants. Under these circumstances, AAA was no match for appellants and could not use her tall and strong built to resist the advances of appellants.

The alleged inconsistency between AAA's Sinumpaang Salaysay and the medical findings of Dr. Soliman is immaterial. Whether or not AAA felt pain in her vagina during the rapes is beside the point since virginity is not an element of rape. Further, rape is consummated from the moment the offender had carnal knowledge of the victim.[73] Full penetration of the vagina is not essential; any penetration of the female organ by the male organ, however slight, is sufficient.[74] AAA testified that appellants inserted their penis into her vagina through force and intimidation.

Denial is inherently a weak defense as it is negative and self-serving. Corollarily, alibi is the weakest of all defenses for it is easy to contrive and difficult to prove. For alibi to prosper, it is not enough for the accused to prove that he was somewhere else when the crime was committed. He must likewise prove that it was physically impossible for him to be present at the crime scene or its immediate vicinity at the time of its commission.[75]

Appellant Aure claims he was inside the CIDG office and was constantly in and out of the computer room at around 7:00 p.m. of 7 November 1999. AAA testified that she was raped inside the computer room of the CIDG office at the same time and date. On the other hand, appellant Ferol alleges that he was at Pier 12, Tondo, Manila, at 2:00 a.m. of 8 November 1999 and subsequently slept on his table inside the CIDG office at around 3:00 a.m. of the same date. AAA testified that he was raped by appellant Ferol inside the computer room of the CIDG office at around 2:00 a.m. of 8 November 1999. It is apparent from the foregoing that appellants were at or near the crime scene during the rape incidents and that it was not physically impossible for them to be at the crime scene during the rape incidents. Having failed to comply with the requirements of the law for an alibi to prosper, appellants' respective alibis, though corroborated by other defense witnesses, cannot serve as basis for their acquittal. It should be stressed further that as between denials and alibi of appellants and positive testimony of AAA, the latter is accorded greater evidentiary weight.[76]

Appellants maintain in their sixth, seventh and eighth assigned errors that the Caloocan City Prosecutor's Office did not conduct preliminary investigation prior to the filing of the present cases; that they did not receive any subpoena as regards the said preliminary investigation; and that the RTC judge, Judge Myrna Dimaranan Vidal, was bias, partial and rendered the assailed Decision without any factual and legal basis.[77]

It appears from the records that upon filing of a complaint by AAA for rape against appellants with the Caloocan City Prosecutor's Office, a preliminary investigation was scheduled on 3 and 17 December 1999 by Prosecutor Yu.[78] Thereafter, two subpoenas for the said investigation, dated 22 November 1999 (for the 3 December 1999 schedule) and 3 December 1999 (for the 17 December 1999 schedule), were sent by Prosecutor Yu to appellants at the latter's CIDG office.[79] Despite receipt of these subpoenas, appellants did not appear during the conduct of preliminary investigation. Appellants' claim that they did not receive said subpoenas in the CIDG office does not inspire belief because they were active, on-duty police officers at the CIDG during the period of November and December 1999. In fact, appellant Ferol was the acting Chief of the Warrant Department of the CIDG office during the period of November and December 1999.[80] The said department was in charge of receiving subpoenas and warrants from courts and other offices. It was unbelievable that they did not receive, nor was informed, of the subpoenas.

Mere imputation of bias and partiality against a judge is not enough since bias and partiality can never be presumed.[81] There was no plausible proof that Judge Vidal was bias. On the contrary, the records show that Judge Vidal was fair and considerate to both prosecution and defense. We have examined the RTC Decision and found that it contains sufficient factual and legal basis. In the said 47-page Decision, Judge Vidal has thoroughly and extensively discussed the facts and the law on which appellants' conviction for rape were based.

We shall now determine the propriety of the penalties imposed by the RTC as affirmed by the Court of Appeals.

Article 266-B of the Revised Penal Code provides that the penalty for rape committed through force and intimidation, as in these cases, is reclusion perpetua. The same provision also states that the death penalty shall be imposed if the victim was raped while under the custody of the police authorities, or, when the rape is committed by any member of the Philippine National Police (PNP) or any law enforcement agency.[82]

In the case under consideration, AAA was raped by appellants while she was under the custody of the CIDG. Further, appellants were members of the PNP-CIDG at the time they raped AAA. Nonetheless, these aggravating/qualifying circumstances were not specifically alleged in the informations. It is settled that the aggravating/qualifying circumstances be expressly and specifically alleged in the information, otherwise they cannot be appreciated, even if they are subsequently proved during the trial.[83] Thus, the RTC was correct in imposing the penalty of reclusion perpetua on each of the appellants.

The RTC was also correct in holding that each of the appellants is liable for civil indemnity in the amount of P50,000.00 because such award is mandatory upon the finding of fact of rape.[84] Also, the award of moral damages is proper but the amount thereof should be reduced from P60,000.00 to P50,000.00 for each of the appellants pursuant to prevailing jurisprudence.[85] Likewise, the award of attorney's fees in the amount of P70,000.00 is in order[86] because the records show that AAA incurred such expenses in hiring a private prosecutor for the instant case.[87] However, such attorney's fees should be paid jointly by appellants and not by each of them as erroneously held by the RTC. AAA testified that she spent a total amount of P70,000.00 in prosecuting both Criminal Cases No. C-58671 and No. C-58693.[88]

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. CR-HC No. 01127, dated 29 July 2005, is hereby AFFIRMED with the following MODIFICATIONS: (1) the amount of P60,000.00 imposed on each of the appellants as moral damages is reduced to P50,000.00; and (2) the amount of P70,000.00 as attorney's fees should be paid jointly by appellants and not by each of them. Costs against appellants.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Carpio-Morales[*], and Nachura, JJ., concur.

[*] Justice Conchita Carpio Morales was designated to sit as additional member replacing Justice Ruben T. Reyes per raffle dated 18 February 2005.

[1] Penned by Associate Justice Ruben T. Reyes (now a member of this Court) with Associate Justices Rebecca de Guia-Salvador and Fernanda Lampas-Peralta concurring; rollo, pp. 3-25.

[2] Penned by Presiding Judge Myrna Dimaranan Vidal; CA rollo, pp. 47-91.

[3] Records, pp. 2 & 13.

[4] Pursuant to Republic Act No. 9262, otherwise known as the "Anti-Violence Against Women and Their Children Act of 2004" and its implementing rules, the real name of the victim, together with the real names of her immediate family members, is withheld and fictitious initials instead are used to represent her, both to protect her privacy. *People v. Cabalquinto*, G.R. No. 167693, 19 September 2006, 502 SCRA 419, 421-426.

[5] Records, p. 102.

[6] TSN, 10 July 2000, pp. 1-6; TSN, 18 July 2000, pp. 1-8.

[7] TSN, 18 July 2000, pp. 8-26; TSN, 19 July 2000, pp. 2-8.

[8] TSN, 19 July 2000, pp. 8-11.

[9] *Id.* at 11-20.

[10] *Id.* at 20-26.

[11] *Id.* at 26-28.

[12] *Id.* at 28-34; TSN, 26 July 2000, pp. 2-7.

[13] Folder of Exhibits for the Prosecution, pp. 19-20.

[14] TSN, 26 July 2000, pp. 7-9.

[15] *Id.* at 11-15.

[16] Folder of Exhibits for the Prosecution, pp. 9-10.

[17] TSN, 26 July 2000, pp. 15-25.

[18] Id. at 26-37.

[19] TSN, 14 August 2000, pp. 1-23.

[20] Folder of Exhibits for the Prosecution, pp. 1-3.

[21] Id. at 4-5.

[22] Id. at 6-9.

[23] Id. at 10-11.

[24] Id. at 16-17.

[25] Id. at 15-16.

[26] Id. at 17.

[27] Id. at 18-24.

[28] Id. at 25-27.

[29] Id. at 29.

[30] TSN, 14 September 2000, pp. 2-24.

[31] TSN, 14 September 2000, pp. 24-36.

[32] TSN, 7 September 2000, pp. 43-44.

[33] TSN, 14 September 2000, pp. 37-40.

[34] TSN, 5 September 2000, pp. 19-25.

[35] Folder of Exhibits for the Defense, pp. 1-2.

[36] Id. at 3.

[37] Id. at 4.

[38] Id. at 5-6.

[39] Id. at 7-8.

[40] Id. at 9-10.

[41] Id. at 11.

[42] Id. at 13.

[43] Id. at 14.

[44] Id. at 17.

[45] Id. at 18.

[46] Id. at 32-35.

- [47] Rollo, pp. 90-91.
- [48] Records, pp. 449-458.
- [49] Id. at 459-460.
- [50] CA rollo, pp. 232-235.
- [51] G.R. Nos. 147678-87, 7 July 2004, 433 SCRA 640.
- [52] CA rollo, pp. 67-79.
- [53] Rollo, p. 80.
- [54] *People v. Mangitngit*, G.R. No. 171270, 20 September 2006, 502 SCRA 560, 572.
- [55] Id.
- [56] TSN, 18 July 2000, pp. 20-25.
- [57] TSN, 19 July 2000, pp. 3-21.
- [58] *People v. Degamo*, 450 Phil. 159, 174-175 (2003); *People v. Ferrer*, 415 Phil. 188, 200 (2001); *People v. Mendoza*, 354 Phil. 177, 188 (1998); *People v. Igdanes*, 338 Phil. 624, 631 (1997).
- [59] *People v. Bejic*, G.R. No. 174060, 25 June 2007, 525 SCRA 488, 504.
- [60] CA rollo, pp. 276-284, 311-313; rollo, pp. 34-42.
- [61] *People v. Figueroa*, 390 Phil. 561, 574 (2000).
- [62] *People v. Ching*, G.R. No. 177150, 22 November 2007, 538 SCRA 117, 129.
- [63] 450 Phil. 651, 671-672 (2003).
- [64] *People v. Soriano*, G.R. No. 172373, 25 September 2007, 534 SCRA 140, 146; *People v. Buban*, G.R. No. 166895, 24 January 2007, 512 SCRA 500, 518.
- [65] CA rollo, pp. 284-311, 313-17.
- [66] *People v. Audine*, G.R. No. 168649, 6 December 2006, 510 SCRA 531, 549.
- [67] *People v. Santos*, G.R. No. 172322, 8 September 2006, 501 SCRA 325, 343.
- [68] *People v. Salome*, G.R. No. 169077, 31 August 2006, 500 SCRA 659, 670.
- [69] *People v. Bertulfo*, 431 Phil. 535, 549 (2002).
- [70] TSN, 18 July 2000, pp. 8-26; TSN, 19 July 2000, pp. 2-11.
- [71] TSN, 26 July 2000, p. 8.
- [72] *People v. Arsayo*, G.R. No. 166546, 26 September 2006, 503 SCRA 275, 290; *People v. Dimaano*, G.R. No. 168168, 14 September 2005, 469 SCRA 647, 663; *People v. Salvador*, 444 Phil. 325, 332 (2003).
- [73] *People v. Orita*, G.R. No. 88724, 3 April 1990, 184 SCRA 105, 114; *People v. Campuhan*, 385 Phil. 912, 920 (2000); *People v. Arango*, G.R. No. 168442, 30 August 2006, 500 SCRA 259, 279.
- [74] Id.

- [75] *People v. Aguila*, G.R. No. 171017, 6 December 2006, 510 SCRA 642, 661-662.
- [76] *People v. Major Comiling*, 468 Phil. 869, 890 (2004).
- [77] CA rollo, pp. 317-324.
- [78] TSN, 26 July 2000, p. 25-26; TSN, 5 April 2000, p. 2.
- [79] TSN, 5 April 2000, pp. 2 & 21; TSN, 6 April 2000, p. 6; Exhibits A-Motion and B-Motion.
- [80] TSN, 5 April 2000, pp. 16-17; Records, pp. 72-73.
- [81] *Mendoza v. People*, G.R. No. 173551, 4 October 2007, 534 SCRA 668, 700.
- [82] Revised Penal Code, Article 266-B (2) & (7).
- [83] *Catiis v. Court of Appeals*, G.R. No. 153979, 9 February 2006, 482 SCRA 71, 84.
- [84] *People v. Calongui*, G.R. No. 170566, 3 March 2006, 484 SCRA 76, 88; *People v. Antonio*, G.R. No. 157269, 3 June 2004, 430 SCRA 619, 627; *People v. Esperida*, 443 Phil. 818, 826 (2003).
- [85] *People v. Candaza*, G.R. No. 170474, 16 June 2006, 491 SCRA 280, 298; *People v. Balbarona*, G.R. No. 146854, 28 April 2004, 428 SCRA 127, 145; *People v. Antivola*, 466 Phil. 394, 418 (2004).
- [86] *People v. Barbosa*, 414 Phil. 542, 560 (2001); *People v. Tabarangao*, 363 Phil. 248, 262 (1999); *People v. De Guzman*, 333 Phil. 50, 71 (1996).
- [87] TSN, 31 July 2000, p. 21.
- [88] *Id.*

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