

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROLLY MONTESA Y LUMIRAN, ACCUSED-APPELLANT.

G.R. No. 181899. November 27, 2008

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

For review is the Decision of the Court of Appeals in CA-G.R. CR HC No. 00314, dated 22 December 2006,[1] affirming with modifications the Decision of the Regional Trial Court (RTC), Branch 61, of Kabankalan City, Negros Occidental, in Criminal Case Nos. 98-2035 and 98-2036,[2] finding accused-appellant Rolly Montesa y Lumiran guilty of rape and imposing upon him the supreme penalty of death in each of the cases.

The records of the case generate the following facts:

On 29 December 1997, two separate informations[3] were filed with the RTC charging appellant with rape, thus:

In Criminal Case No. 98-2035

That on the 19[th] day of September, 1997, in the Municipality of XXX, Province of XXX, Philippines, and within the jurisdiction of this Honorable Court, the above-name accused, armed with a bladed weapon, by means of force, violence and intimidation, did then and there, willfully, unlawfully and feloniously have carnal knowledge of and/or sexual intercourse with AAA,[4] 12 years old, against her will, and in her own house.

In Criminal Case No. 98-2036

That on the 21[st] day of September, 1997, in the Municipality of XXX, Province of XXX, Philippines, and within the jurisdiction of this Honorable Court, the above-name accused, by means of force, violence and intimidation, armed with a bladed weapon, did then and there, willfully, unlawfully and feloniously have carnal knowledge of and/or sexual intercourse with AAA, 12 years old, against her will, and in her own house.[5]

Subsequently, these cases were consolidated for joint trial. When arraigned on 29 April 1998, appellant, assisted by his counsel de oficio, pleaded "Not guilty" to the charges.[6] Trial on the merits thereafter followed.

The prosecution presented as witnesses AAA, BBB, Dr. Roena C. Abilla (Dr. Abilla), Felicito D. Patricio (Felicito), Police Officer 1 Jose Dennis T. Santes (PO1 Santes), and Pepito Bonilla (Pepito). Their testimonies are summarized as follows:

AAA, herein victim, testified that she and her mother, BBB, had been residents of XXX. Their house had two floors with two rooms at the ground floor and four rooms at the second floor. She and BBB occupied one of the rooms on the ground floor while the other room was rented by a certain Monalyn who operated a small eatery thereat. The second floor was leased to several tenants.[7]

On 15 September 1997, BBB left the house and went to Barangay (Brgy.) Damutan, Hinoba-an, Negros Occidental.

On the evening of 19 September 1997, AAA went out of the house and watched a "Betamax" movie in the house of a certain Emmy. She saw appellant and several other persons also watching it. After the show, she went home arriving therein at around 10:00 p.m. She was alone in the room of their house because BBB was still in Brgy. Damutan. While she was about to sleep, she saw appellant beside her bed. Appellant was naked from the waist down to the feet and armed with a 14-inch jagged knife. She also noticed that the cover of the room's window was removed. Thereupon, appellant took the room's kerosene lamp and blew out the light. Appellant approached her, pointed the knife to her neck, and warned her not to shout. Appellant soaked his penis with his saliva, removed AAA's shorts and panty, and placed himself on top of her. Appellant inserted his penis into her vagina and made a push and pull movement. AAA felt pain in her vagina. She could not shout for help because appellant pointed the knife to her neck and threatened to stab her. She tried to free herself but appellant pinned her down strongly. Later, she felt a fluid in her vagina. Appellant rested for a while beside her. Thereafter, appellant again placed himself on top of her, inserted his penis into her vagina and made a pumping motion. Appellant then stood up, wiped his penis, and warned her not to tell anyone of what happened or he would kill her. Appellant left her and passed through the room's window.[8]

On the morning of 20 September 1997, Monalyn confronted AAA and asked if appellant went to her room the night before and touched her private parts. Afraid of appellant's threat to kill her, she replied that appellant merely kissed her.[9]

On 21 September 1997, at about 10:00 p.m., AAA was again sleeping alone in the room of their house. Later, appellant entered her room through the room's window. Appellant had no underwear and pants and was armed with a knife. Appellant took the kerosene lamp and blew out the light. She could not shout because appellant pointed the knife to her. Appellant approached her, wet his penis with his saliva, and placed himself on top of her. She resisted but appellant overpowered her. Appellant then inserted his penis into her vagina. She felt pain in her vagina. As appellant stood up, she saw liquid on appellant's penis. Appellant warned her not to tell BBB of what happened or he would kill her. Appellant took her panty and left the room through the window.[10]

On the morning of 22 September 1997, AAA took a shower and left the house. She went to the house of her classmate named Maricel and stayed there for six days because she was afraid that appellant would rape her again. On 27 September 1997, BBB arrived at Maricel's house to fetch her. AAA embraced BBB and cried. She told BBB that appellant raped her. Thereafter, she and BBB went to the police to report the incidents and later on to Dr. Abilla for physical examination.[11]

AAA declared that she knew appellant because she always saw him then in the canteen of Monalyn. She also stated that appellant stayed in the house of a certain Bong Lupega which was fifty (50) meters away from her house.[12]

BBB, a widow, narrated that AAA is her fifth and youngest child. Since her four other offspring were all married and had families of their own, only AAA remained in her custody and care. She and AAA were residents of XXX from 1989 to 1998. Their house had two floors with two rooms at the ground floor and four rooms at the second floor. She and AAA occupied one of the rooms on the ground floor while the other room was rented by Monalyn who operated a small canteen thereat. The second floor was leased to several tenants.[13]

On 15 September 1997, BBB left the house and went to Brgy. Damutan, Hinoba-an, Negros Occidental. She harvested rice in her farm located in the said barangay. Afterwards, she plowed the field of a certain Junior Bonilla which was also situated in the same barangay for which she was paid P100.00 a day.[14]

On 27 September 1997, BBB went home. Upon arriving at the house, she noticed that AAA was not around. She went out of the house to look for AAA. She found AAA in the house of Maricel. Thereupon, AAA embraced her

and cried. AAA told her that she was raped by appellant. She and AAA reported the incidents to the police and lodged a criminal complaint for rape against appellant. The police referred them to Dr. Abilla for AAA's physical examination. Subsequently, Dr. Abilla conducted a physical examination on AAA.[15]

BBB averred that she had known appellant because she always saw him eating in the canteen of Monalyn. She also averred that appellant stayed in the house of Bong Lupega which was 50 meters away from her house.[16]

Dr. Abilla, Municipal Health Officer of Hinoba-an, Negros Occidental, declared that she conducted a physical and vaginal examination on AAA on 27 September 1997 and on 7 October 1997. During the 27 September 1997 examination, she observed that AAA's vagina was protruding and stretched out. She also noted healed hymenal tear in the 6:00 o'clock and 9:00 o'clock positions on AAA's vagina. Further, the fourchette[17] was not anymore in an acute angle but already rounded. According to her, the foregoing findings indicated that AAA's vagina was penetrated.[18]

With respect to the 7 October 1997 examination, Dr. Abilla disclosed that when she inserted a small-size speculum into AAA's vagina with ease, there were moderate purulent discharges manifested on the vaginal canal. She explained that purulent discharges referred to a yellowish substance or "na-na" in layman's term. She concluded that AAA was infected with gonorrhea, a sexually transmitted disease.[19] She issued an official medical report on her foregoing findings,[20] to wit:

27 September 1997:

To: Officer-on-Duty

PNP - Hinoba-an

Physical examination of AAA showed signs of entry into the vagina.[21]

10 October 1997:

Physical Exam : Findings:

Vaginal Exam : No pubic hair

Labia minora are protruding and stretched out.

Healed hymenal tear at 6 and 9 o'clock position.

Fourchette is rounded, no longer in acute angle.

Speculum Exam: (done on October 7, 1997, 4:00 pm)

A small size speculum was inserted into the vagina with ease and vaginal canal showed moderate purulent discharges.

No hematomas, lacerations, contusions, abrasions, on other parts of the body.

Conclusion : Physical examination shows sign of entry on vagina. Presence of moderate amount of purulent discharges in the vaginal canal indicates infection, most likely gonorrhea.[22]

SPO1 Santes, desk officer of the Hinoba-an Police Station, testified that on 27 September 1997, AAA and BBB arrived at the said station and reported the incidents. Thereafter, an information was received by the station that appellant was staying in a house at Tabuk Suba, Brgy. 1, Hinoba-an, Negros Occidental. Upon the order of his superior, SPO1 Santes proceeded to the said place and found appellant. He invited appellant to the station to which the latter acceded. When he and appellant arrived at the station, AAA pointed to appellant as the one who raped her.[23]

Felicitto, a longtime resident and Sitio Leader of XXX in the year 1997, recounted that he had known appellant

because he always saw him buying something in her daughter's store at XXX; that he frequently saw appellant in the house of BBB; that appellant used to work as a machine operator in Philex Mining Corporation (Philex) located at Brgy. Damutan; that appellant used to sleep in Bong Lupega's house which was around 50 meters away from his house at XXX; that he had known BBB because the latter's house was about 50 meters away from his house; and that during the period of September 1997, he saw appellant in XXX.[24]

Pepito, a retired member of the Hinoba-an Police Station and resident of XXX, testified that he retired as policeman on 20 November 1998; that he was the Intelligence Division Head of the Hinoba-an Police Station prior to his retirement; that on 27 September 1997, AAA and BBB went to the Hinoba-an Police Station and reported the incidents; that he instructed SPO1 Santes to make a report as regards the incidents; and that AAA pointed to appellant as her rapist.[25]

The prosecution also proffered documentary evidence to bolster the testimonies of its witnesses, to wit: (1) medical certificate of AAA dated 10 October 1997 issued by Dr. Abilla (Exhibit A);[26] (2) written report on the physical examination of AAA dated 28 September 1997 signed by Dr. Abilla (Exhibit B);[27] (3) sworn statement of BBB (Exhibit C);[28] (4) sworn statement of AAA (Exhibit D);[29] (5) blotter of the Hinoba-an Police Station regarding the incidents (Exhibit E);[30] and (6) criminal complaint for rape against appellant signed by BBB and filed before the Municipal Trial Court of Hinoba-an (Exhibit F).[31]

For its part, the defense presented the testimonies of appellant, Randy Katindig (Katindig), and Dr. Eriberto Layda (Dr. Layda) to refute the foregoing accusations. Appellant denied any liability and interposed the defenses of alibi and frame-up.

Appellant, a resident of Barangay 2, Poblacion, Hinoba-an, Negros Occidental, testified that he was hired by Philex in 1994 as a worker on its site at Brgy. Damutan, Hinoba-an, Negros Occidental. On 15 April 1997, Philex dismissed him for robbery. Thereafter, he frequently went to Basay, Negros Occidental, to solicit help from friends.[32]

On 19 September 1997, appellant left his house and went to Basay, arriving there at 10:30 a.m. He met his friend, Katindig, at about 4:20 p.m. Subsequently, he and Katindig proceeded to the house of a certain Polly at Bal-os, Negros Occidental. Polly was the younger brother of appellant's friend and a former co-employee named Junior. Appellant stayed in Polly's house from 19 September 1997 up to 22 September 1997. He never left Polly's house during the said period.[33]

Appellant denied knowing AAA and BBB and having stayed in the house of Bong Lupega. He claimed he never went to XXX. Also, AAA and BBB were merely instigated by Junior Bonilla to file the instant cases since the latter was terminated from work in Philex because of him.[34]

Katindig, a resident of Brgy. 2, Poblacion, Hinoba-an, Negros Occidental, narrated that he came to know appellant in January 1997. On 19 September 1997, Katindig left his residence and went to Basay, arriving there at 4:00 p.m. He proceeded to the house of a certain Diego to meet a certain Major Balodo. He met appellant in Diego's house. Appellant invited him to Polly's house at Bal-os to which he acceded. Upon their arrival at Polly's house, appellant and Polly talked. Subsequently, Katindig left Polly's house and returned to Basay to meet Major Balodo. The former returned to Polly's house that evening and joined the latter and appellant in a drinking spree. Thereafter, the three of them slept in Polly's house at about 9:00 p.m. Katindig woke up the following morning of 20 September 1997 and left Polly's house. He went back to the latter's house at about 5:00 p.m. of the same day and had a drinking session with him and appellant. They all slept in Polly's house that evening.[35]

On the morning of 21 September 1997, Katindig left Polly's house and proceeded to Basay. He returned to the

latter's house in the afternoon of the same day and talked with him and appellant. They slept in Polly's house that evening. On 22 September 1997, at around 2:00 p.m., he left the house and proceeded to Dumaguete. Later, his wife told him that appellant was arrested for rape. Appellant told him that he was a victim of a frame-up.[36]

Dr. Layda, Laboratory Department Head of the Corazon Locsin Montelibano Memorial Hospital, testified that he conducted a Clinical Microscopic Examination on appellant on 16 June 1998. The result thereof showed that appellant was not suffering from any sexually transmitted disease.[37]

The defense likewise adduced the said medical/laboratory report (Exhibit 1) on appellant signed by Dr. Layda as its sole documentary evidence.[38]

After trial, the RTC rendered a Decision convicting appellant of rape.[39] Appellant was sentenced to suffer capital punishment in each of the cases. He was also ordered to pay AAA in each of the cases the amount of P75,000.00 as civil indemnity and P50,000.00 as moral damages. The fallo of the RTC Decision reads:

WHEREFORE, the Court finds the accused Rolly Montesa y Lumiran guilty beyond reasonable doubt of the crime of rape defined and punished under Article 335, paragraph 1 of the Revised Penal Code, as amended by Section 11 of Republic Act No. 7659 and Republic Act No. 8353 and conformably sentences him to suffer the supreme penalty of death in each case. He is likewise ordered to indemnify the complainant (AAA) in the amount of Seventy Five Thousand Pesos (P75,000.00) as civil indemnity and Fifty Thousand Pesos (P50,000.00) as moral damages in each case.[40]

In view of the death penalty imposed on appellant, the instant cases were elevated to this Court for automatic review. However, pursuant to our ruling in *People v. Mateo*,[41] we remanded the cases to the Court of Appeals for disposition.

On 22 December 2006, the Court of Appeals promulgated its Decision affirming with modifications the RTC Decision.[42] The appellate court downgraded the death penalty to reclusion perpetua pursuant to Republic Act No. 9346. It also awarded AAA the amount of P30,000.00 as exemplary damages. Thus:

WHEREFORE, the assailed Decision of the Regional Trial Court, Branch 61, City of Kabankalan, Negros Occidental, in Criminal Cases Nos. 98-2035 and 98-2036, finding accused-appellant ROLLY MONTESA guilty beyond reasonable doubt of rape is hereby AFFIRMED with MODIFICATION. Rolly Montesa is hereby meted the penalty of reclusion perpetua, and ordered to indemnify the victim, (AAA) in the amount of Seventy Five Thousand Pesos (P75,000.00) as civil indemnity, Fifty Thousand Pesos (P50,000.00) as moral damages in each case, and considering that the crime of rape was committed inside the dwelling of the victim, by way of exemplary damages, Thirty Thousand Pesos (P30,000.00).

Appellant filed a Notice of Appeal on 16 January 2007.[43]

Before us, appellant assigned the following errors:

I.

THE LOWER COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIMES CHARGED DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

II.

ASSUMING ARGUENDO THAT THE ACCUSED-APPELLANT COMMITTED THE CRIMES CHARGED, THE LOWER COURT GRAVELY ERRED IN APPRECIATING THE AGGRAVATING CIRCUMSTANCE OF DWELLING THEREBY IMPOSING THE SUPREME PENALTY OF DEATH.[44]

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.[45]

The credibility, thus, 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.[46]

We have carefully examined AAA's court testimony and found it to be credible and trustworthy. Her positive identification of appellant as the one who ravished her on 19 and 21 of September 1997, as well as her direct account of the heinous acts, is clear and consistent, viz:

Q

When you were already prepared to sleep at about 10:00 o'clock in the evening of September 19, 1997, what happened, if any?

A

There was something which happened, Sir.

Q

What was that?

A

I saw Rolly Montesa already near my bed, no longer wearing his pants and brief, and when I looked at the window the cover was already removed.

Q

How did you recognize that it was Rolly beside your bed as it was nighttime?

WITNESS -

A

Because there was a light coming from the kerosene lamp, Sir.

PROSECUTOR GARDE -

Q

Aside from seeing Rolly Montesa beside your bed without any pants and brief anymore, what else did you notice in him, if any?

A

I saw him holding a knife when he was transferring the kerosene lamp and blew it off.

Q

Will you please describe that knife you saw being held by Rolly Montesa when he was beside your bed?

A

The length is about this, Sir.

INTERPRETER -

About one and one-half (1-1/2) feet -

COURT

-

About fourteen (14) inches -

PROCEED.

PROSECUTOR GARDE -

Q

How about the knife, please describe to us the knife?

WITNESS -

A

It was a jagged knife, Sir.

Q

After Rolly Montesa had blown off the kerosene lamp, what else did he do?

A

After he blew off the kerosene lamp he approached me, removed my shorts and panty, placed himself on top of me, wet his penis with his saliva and inserted his penis inside my vagina.

Q

All the time when Rolly Montesa was taking off your underwear and came near you, what did you do, if any - did you not shout?

A

No, Sir.

Q

Why did you not shout?

A

Because he warned me that if I will shout, he will stab me, Sir.

Q

What about that knife which he was holding when he was telling you that, what did he do with it?

WITNESS -

A

He was pointing it towards my neck, Sir.

PROSECUTOR GARDE -

Q

Was he able to have his penis inserted into your vagina?

A

Yes, Sir.

Q

Did you not do anything in order that he would not be able to insert his penis inside your vagina?

A

I was struggling, Sir, to free myself from his hold.

Q

Was there anything he was doing in counter-action to your struggle to free yourself from him?

A

He was pinning me down strongly, Sir.

Q

Will you please tell this Honorable Court for how long was Rolly Montesa on top of you and his penis inside your vagina, if you can recall?

WITNESS -

A

Quite sometime, Sir.

PROSECUTOR GARDE -

Q

What did you feel when he was doing this - while he was inserting his penis inside you vagina?

A

I felt that there was some fluid on my private part.

Q

How about your body?

A

I felt his heavy weight above me as well as the pain.

Q

How about your vagina?

A

I also felt the pain in my vagina, Sir.

Q

After you have felt something oozing from his penis, what else did you feel?

A

I felt pain in my vagina, Sir.

Q

After that what happened?

A

After that he took a rest beside me by lying beside me, and afterwards he repeated the sexual act.

PROSECUTOR GARDE -

Q

When you said repeated, you mean to say he inserted his penis again inside your vagina?

WITNESS -

A

Yes, Sir.

Q

Then, after the second sexual intercourse, what else happened?

A

He continued holding the knife, pointing it toward my neck.

Q

And after that what happened?

A

He continued pinning me down, pushing himself up and down, Sir.

Q

After that second act, what else did he do?

A

After the second act, he stood up and wiped his penis where there was a secretion coming out, and warned me that if I tell somebody he will kill me.

Q

Then, afterwards, what did he do?

A

He left, Sir.

Q

And when he left, where did he pass?

WITNESS -

A

He passed thru the window where he entered.

x x x x

Q

Will you please tell the Honorable Court what was that unusual incident which happened in the evening of September 21, 1997 in your room?

A

He again passed in the window, Sir.

Q

To whom are you referring when you said "he"?

A

Rolly Montesa, Sir.

Q

You mean the person who entered your room in the evening of September 19, 1997?

A

Yes, Sir.

Q

When he entered your room in the evening of September 21, 1997 what happened?

A

Again, he blew off the kerosene lamp when he was already naked, without pants and brief, Sir.

PROSECUTOR GARDE -

Q

And what happened after you saw him inside your room naked already?

WITNESS -

A

I did not make any noise because I was afraid as he was holding a knife.

Q

Was it the same knife which he used on September 19, 1997?

A

Yes, Sir.

Q

Was there anything which he did to you that night?

A

Yes, Sir.

Q

What did he do to you as he was already naked and holding a knife?

A

The same thing happened, Sir. After putting off the kerosene lamp, he approached me, lubricated his penis with his saliva and inserted his penis inside my vagina.

Q

Was he able to insert his penis inside your vagina?

WITNESS -

A

Yes, Sir.

PROSECUTOR GARDE -

Q

How did you know that his penis was already inside your vagina?

A

I felt pain in my vagina after he inserted his penis inside my vagina.

x x x x

Q

How about you, when he was on top of your body and his penis was inside your vagina, what were you doing?

A

I kept on moving, Sir.

Q

What was the reason why you said you kept on moving?

A

Because I felt pain when his penis was inside my vagina, and there was something oozing from his penis, Sir.

PROSECUTOR GARDE -

Q

Where did that substance come from?

WITNESS -

A

From the penis of Rolly Montesa, Sir.

Q

After he was through, what happened?

A

After that he stood up and warned me not to tell my mother or else he will kill me, and then went out of the window.[47]

Well-entrenched is the rule that the testimony of a minor rape victim, such as AAA, is given full weight and credence, considering that no young woman would concoct a story of defloration, allow an examination of her private parts, and thereafter pervert herself by being subject to a public trial, if she was not motivated solely by the desire to obtain justice for the wrong committed against her. Youth and immaturity are badges of truth.[48]

It is also significant to note that the RTC gave full credence to the testimony of AAA as she relayed her painful ordeal in a candid manner. It found the testimonies of AAA to be credible and sincere. 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.[49]

In addition to the aforesaid testimony of AAA, her physician, Dr. Abilla, corroborated AAA's testimony on material and relevant points. Her medico-legal report regarding AAA was also offered by the prosecution as its documentary evidence.

Appellant, however, maintained in his first assigned error that the foregoing testimony of AAA was unbelievable based on the following reasons: (1) it was impossible for him to have raped AAA in the latter's room because there were tenants in the room closely adjacent to that of AAA and in the rooms on the second floor of the house during the incidents; (2) when Monalyn asked AAA if appellant went to her room on the night of 19 September 1997 and touched her private parts, AAA replied that appellant merely kissed her; (3) AAA did not seek her neighbor's assistance with regard to the incidents; and (4) AAA acted normally and did her usual chores after the incidents.[50]

It was not impossible for appellant to have raped AAA in the latter's room despite the presence of tenants in the room closely adjacent to that of AAA and in the rooms on the second floor of the house. We have held that lust is no respecter of time and place.[51] Thus, rape can be committed even in places where people congregate, in parks, along the roadsides, in school premises, in a house where there are other occupants and even in places which, to many, would appear unlikely and high-risk venues for its commission.[52] The presence of people nearby does not deter rapists from committing their odious act.[53] Besides, there is no rule that rape can be committed only in seclusion.[54]

True, AAA testified that when Monalyn asked her if appellant went to her room on the night of 19 September 1997 and touched her private parts, she replied that appellant merely kissed her. Also, AAA did not seek assistance from her other neighbors with regard to the incidents. Nevertheless, these cannot be taken against AAA. A rape victim is oftentimes overwhelmed by fear rather than by reason.[55] Hence, it is not uncommon for

a young rape victim to conceal for some time the assault on her virtue because of a rapist's threat on her life.[56] AAA testified that appellant repeatedly threatened to kill her if she would divulge the incidents to others. This was the reason why AAA hesitated from revealing the incidents to Monalyn and to her other neighbors. AAA's fear of appellant's threat was reasonable, considering that appellant frequently stayed in XXX.

The fact that AAA acted normally and did her usual chores after the incidents does not negate rape. How the rape victim comported herself after the incident was not significant, as it had nothing to do with the elements of the crime of rape.[57] Further, AAA was barely 12 years old at the time of the incidents. At such a young age, AAA cannot be reasonably expected to act the way mature individuals would when placed in such a situation.[58] Not all rape victims can be expected to act conformably to the usual expectations of everyone. People react differently to a given situation, and there is no standard form of human behavioral response when one is confronted with a strange, startling or frightful experience. In *People v. Luzorata*,[59] we held:

This Court indeed has not laid down any rule on how a rape victim should behave immediately after she has been abused. This experience is relative and may be dealt with in any way by the victim depending on the circumstances, but her credibility should not be tainted with any modicum of doubt x x x.

Denial is inherently a weak defense, as it is negative and self-serving. It cannot prevail over the positive identification and testimony of credible witnesses who testify on affirmative matters.[60]

Appellant testified that he was sleeping in Polly's house at Bal-os during the incidents. Katindig claimed that he and appellant went to sleep at around 9:00 p.m. of 19 September 1997; that he woke up at 6:00 a.m. of 20 September 1997 and saw appellant in Polly's house; that he and appellant went to sleep at around 9:00 p.m. of 21 September 1997; and that he woke up at 6:00 a.m. of 22 September 1997 and saw appellant in Polly's house. Be that as it may, Katindig did not testify that he saw appellant in Polly's house at about or past 10:00 p.m. up to midnight of the dates of the incidents. Katindig merely stated he and appellant slept at around 9:00 p.m. and when he woke up at 6 a.m. the following morning, he saw appellant in Polly's house. Thus, it was highly possible that since Katindig was sleeping at 9:00 p.m., he did not notice appellant's departure from Polly's house a little after 9:00 p.m. Appellant then proceeded to the house of AAA at XXX where he raped AAA. It is also highly probable that Katindig did not notice appellant's subsequent return to Polly's house from the crime scene before 6:00 a.m., because he was still sleeping. The foregoing view is buttressed by the records showing that XXX can be reached in an hour from Bal-os.[61] There was, therefore, a huge possibility that appellant was present at the scene of the crime when it was committed at about 10:00 p.m. of 19 and 21 September 1997. Thus, the defense failed to prove that it was physically impossible for appellant to be at or near the crime scene when the incidents transpired. Besides, we have held that an alibi becomes less plausible as a defense when it is corroborated only by relatives or friends of the accused.[62]

Alibi is the weakest of all defenses, for it is easy to contrive and difficult to prove.[63] Alibi must be proved by the accused with clear and convincing evidence.[64] 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.[65]

Appellant concludes that he was a victim of a frame-up; that Junior Bonilla and Pepito were brothers; and that AAA and BBB were merely instigated by Junior Bonilla and Pepito to file the instant cases because he (appellant) was the reason why Junior Bonilla was terminated from his previous job in Philex.

The defense of frame-up, like alibi, has been invariably viewed by this Court with disfavor, for it can easily be concocted but is difficult to prove.[66] In order to prosper, the defense of frame-up must be proved by the accused with clear and convincing evidence.[67]

In the cases under consideration, appellant failed to present any clear and convincing proof that AAA and BBB were induced by Junior Bonilla and Pepito to file the instant cases. Further, Pepito clarified in his testimony that he did not know, nor had he met, appellant prior to the reporting of the incidents by AAA and BBB.[68] Pepito also testified that SPO1 Santes was the investigator in charge of the cases, and that the chief of the Hinoba-an Police Station was the one who filed the instant cases.[69] Thus, appellant's bare allegation of frame-up must fail.

Appellant also asserted that he could not have been the rapist of AAA because Dr. Layda testified that he was not suffering from gonorrhea. He cited the finding of prosecution witness Dr. Abilla that AAA was infected with gonorrhea at the time of the latter's examination.

Although Dr. Layda confirmed that appellant was not suffering from gonorrhea at the time of appellant's examination on 16 June 1998, this did not, however, conclusively show that appellant did not have gonorrhea at the time of the incidents on 19 and 21 September 1997. Dr. Layda admitted that gonorrhea could be cured by a daily intake of antibiotics for two weeks.[70] Dr. Layda also stated that antibiotics could be easily bought in drugstores.[71] It could be then that after raping AAA on 19 and 21 September 1997, appellant took antibiotics and was thereafter cured of gonorrhea. This readily explains why Dr. Layda found in his examination conducted on 16 June 1998 that appellant was not infected with gonorrhea. Dr. Layda testified as follows:

PROSECUTOR GARDE -

Q

Doctor, will you please tell us if this sexually transmitted disease like gonorrhea, is curable or not?

WITNESS -

A

It is a curable disease, sir.

Q

Are the drugs used to cure this kind of disease very easy to procure?

A

The drugs are available in the drugstores, with prescriptions, sir.

Q

If gonorrhea is treated immediately, how much time will it take to cure this disease?

A

After taking the drugs, may be in two (2) weeks time, sir.

Q

Can you give us the names of the drugs for this kind of disease?

A

Antibiotics like amoxicillin - there are many drugs in the market for curing that type of disease, sir.

PROSECUTOR GARDE -

Q

When you examined the patient on June 16, 1998, can we safely assume that if the patient had contacted gonorrhea sometime ago, he was already cured?

WITNESS -

A

Yes, sir - he can go to a physician for proper treatment.[72]

In his second assigned error, appellant argued that the RTC erred in appreciating the aggravating circumstance of dwelling and in imposing the death penalty.[73]

As the rapes were committed on 19 and 21 of September 1997, the applicable law is Section 11 of Republic Act No. 7659, otherwise known as the Death Penalty Law, which took effect on 31 December 1993. The said provision states that if rape is committed with the use of a deadly weapon, the penalty shall be reclusion perpetua to death. Since the informations alleged that appellant used a jagged knife in raping AAA and such fact was proven during the trial, the penalty imposable on appellant is reclusion perpetua to death.

Republic Act No. 7659 also provides that the death penalty shall be imposed if the rape victim was a minor and the offender was her parent, ascendant or relative. The information alleged that AAA was a minor (12 years old) during the incidents. Nevertheless, there was no allegation and proof that appellant was AAA's parent, ascendant, or relative. As such, AAA's minority cannot qualify the penalty to death. The penalty imposable on appellant, therefore, remains to be reclusion perpetua to death.

The information also alleged that appellant raped AAA in the latter's dwelling and such circumstance was duly proven during the trial. Under Article 14(3) of the Revised Penal Code, dwelling is an aggravating circumstance where the crime is committed in the dwelling of the offended party and the latter has not given provocation. Hence, we have steadfastly held that dwelling is an aggravating circumstance in the crime of rape.[74] Dwelling is considered as an aggravating circumstance primarily because of the sanctity of privacy the law accords to human abode.[75]

Article 63 of the Revised Penal Code provides that if the penalty is composed of two indivisible penalties, as in this case, and there is one aggravating circumstance, the greater penalty shall be applied. Since the aggravating circumstance of dwelling was present in these cases, the penalty of death should be imposed on appellant. Nonetheless, with the effectivity of Republic Act No. 9346[76] entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines," the imposition of the capital punishment of death has been prohibited. Pursuant to Section 2 thereof, the penalty to be meted out to appellant shall be reclusion perpetua. Said section reads:

SECTION 2. In lieu of the death penalty, the following shall be imposed:

- a) the penalty of reclusion perpetua, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code; or
- b) the penalty of life imprisonment, when the law violated does not make use of the nomenclature of the penalties of the Revised Penal Code.

Notwithstanding the reduction of the penalty imposed on appellant, he is not eligible for parole following Section 3 of said law which provides:

SECTION 3. Persons convicted of offenses punished with reclusion perpetua, or whose sentences will be reduced to reclusion perpetua, by reason of this Act, shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended.

Having determined the guilt of appellant for rape and the proper prison term imposable on him, we shall now assess the propriety of the damages awarded to AAA.

The RTC and the Court of Appeals were correct in awarding civil indemnity to AAA in each of the cases, since the grant of this damage is mandatory upon a finding of rape.[77] Both courts also acted properly in fixing the amount thereof at P75,000.00. In *People v. Quiachon*,[78] we explained that even if the penalty of death is not to be imposed on accused because of the prohibition in Republic Act No. 9346, the civil indemnity of P75,000.00 is still proper, as the said award is not dependent on the actual imposition of the death penalty but on the fact that qualifying circumstances warranting the imposition of the death penalty attended the commission of the offense. In the present cases, appellant raped AAA in the latter's dwelling. This circumstance was alleged in the informations and proven during the trial.

The award of moral damages in each of the cases is proper because AAA is assumed to have suffered moral injuries.[79] However, the amount of P50,000.00 imposed as moral damages should be increased to P75,000.00 based on prevailing jurisprudence.[80]

The Court of Appeals acted accordingly in granting exemplary damages to AAA in each of the cases because the rapes were attended by the aggravating circumstance of dwelling.[81] Nevertheless, the amount of P30,000.00 imposed as exemplary damages should be reduced to P25,000.00 in conformity with our latest decisions.[82]

WHEREFORE, after due deliberation, the Decision of the Court in CA-G.R. CR HC No. 00314, dated 22 December 2006, is hereby AFFIRMED with the following MODIFICATIONS: (1) the award for moral damages is increased from P50,000.00 to P75,000.00 in each case; and (2) that for exemplary damages is reduced from P30,000.00 to P25,000.00 in each case.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Nachura, and Reyes, JJ., concur.

[1] Penned by Associate Justice Romeo F. Barza with Associate Justices Isaias P. Dicdican and Pampio A. Abarintos, concurring; rollo, pp. 4-15.

[2] Penned by Judge Edgardo L. delos Santos; CA rollo, pp. 63-80.

[3] CA rollo, pp. 11-14.

[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.

[5] Rollo, p. 5.

[6] Records, p. 30.

[7] TSN, 8 July 1998, pp. 4-9.

[8] Id. at 25-32.

[9] Id. at 32-34.

[10] Id. at 35-38.

[11] Id. at 38-42.

[12] Id. at 19-24.

[13] TSN, 10 June 1998, pp. 32-38.

[14] Id. at 39 & 52-57.

[15] Id. at 39-44.

[16] Id. at 33-37.

[17] A small fold of membrane connecting the labia minora in the posterior part of the vulva - Webster's Third International Dictionary 1993 Edition.

[18] TSN, 10 June 1998, pp. 12-18.

[19] Id. at 18-23.

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

[21] Id. at 3.

[22] Id. at 1.

[23] TSN, 7 July 1998, pp. 16-21.

[24] Id. at 2-13.

[25] TSN, 13 April 1999, pp. 2-9.

[26] Folder of Exhibits, pp. 1-2.

[27] Id. at 3.

[28] Id. at 4.

[29] Id. at 5.

[30] Id. at 7.

[31] Id. at 6.

[32] TSN, 12 August 1998, pp. 3-6.

[33] Id. at 6-12.

[34] TSN, 2 September 1998, p. 10; 15 September 1998, pp. 15-18.

[35] TSN, 29 July 1998, pp. 3-16.

[36] Id. at 16-26.

[37] TSN, 9 March 1999, pp. 2-11.

[38] Folder of Exhibits, p. 9.

[39] CA rollo, pp. 63-80.

[40] Records, p. 107.

- [41] G.R. Nos. 147678-87, 7 July 2004, 433 SCRA 640.
- [42] Rollo, pp. 4-15.
- [43] CA rollo, pp. 161-163.
- [44] Id. at 49.
- [45] People v. Mangitngit, G.R. No. 171270, 20 September 2006, 502 SCRA 560, 572.
- [46] Id.
- [47] TSN, 8 July 1998, pp. 35-38.
- [48] People v. Arsayo, G.R. No. 166546, 26 September 2006, 503 SCRA 275, 287-288.
- [49] People v. Bejic, G.R. No. 174060, 25 June 2007, 525 SCRA 488, 504.
- [50] CA rollo, pp. 60-62.
- [51] People v. Balleno, 455 Phil. 979, 987 (2003); People v. Ortizuela, G.R. No. 135675, 23 June 2004, 432 SCRA 574, 582; People v. Belga, 402 Phil. 734, 742 (2001).
- [52] Id.
- [53] Id.
- [54] People v. Labayne, 409 Phil. 192, 208 (2001); People v. Mariano, 398 Phil. 820, 832 (2000); People v. Aquino, 448 Phil. 840, 853 (2003).
- [55] People v. Amaquin, 427 Phil. 616, 630 (2002); People v. Razonable, 386 Phil. 771, 782 (2000).
- [56] People v. Blancaflor, 466 Phil. 86, 99-100 (2004); People v. Glodo, G.R. No. 136085, 7 July 2004, 433 SCRA 535, 546.
- [57] People v. Audine, G.R. No. 168649, 6 December 2006, 510 SCRA 531, 541.
- [58] People v. Montemayor, 444 Phil. 169, 186 (2003).
- [59] 350 Phil. 129, 134 (1998).
- [60] People v. Aguila, G.R. No. 171017, 6 December 2006, 510 SCRA 642, 661-662.
- [61] Records, pp. 101-102.
- [62] People v. Larranaga, G.R. Nos. 138874-75, 21 July 2005, 463 SCRA 652, 662.
- [63] People v. Aguila, *supra* note 60 at 662.
- [64] Dela Cruz v. Court of Appeals, 414 Phil. 171, 184-185 (2001); People v. Lustre, 386 Phil. 390, 400 (2000).
- [65] Id.
- [66] People v. De Guzman, G.R. No. 177569, 28 November 2007, 539 SCRA 306, 318; Rodriguez v. Eugenio, A.M. No. RTJ-06-2216, 20 April 2007, 521 SCRA 489, 503.
- [67] Id.
- [68] TSN, 13 April 1999, p. 8.

[69] Id. at 5 and 8.

[70] TSN, 9 March 1999, p. 12.

[71] Id.

[72] Id. at 12-13.

[73] CA rollo, pp. 62-64.

[74] *People v. Sapinoso*, 385 Phil. 374, 395 (2000); *People v. Prades*, 355 Phil. 150, 168 (1998); *People v. Padilla*, 312 Phil. 721, 737 (1995); *People v. Moreno*, G.R. No. 92049, 22 March 1993, 220 SCRA 292, 307.

[75] Id.

[76] Approved on 24 June 2006.

[77] *People v. Dadulla*, G.R. No. 175946, 23 March 2007, 519 SCRA 48, 61.

[78] G.R. No. 170236, 31 August 2006, 500 SCRA 704, 719.

[79] Id. at 719.

[80] *People v. Ching*, G.R. No. 177150, 22 November 2007, 538 SCRA 117, 133-134; *People v. Fernandez*, G.R. No. 172118, 24 April 2007, 522 SCRA 189, 205; *People v. Dela Cruz*, G.R. No. 166723, 2 August 2007, 529 SCRA 109, 118.

[81] Article 2230 of the Civil Code: "In criminal offenses, exemplary damages as part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party."

[82] *People v. Ching*, supra note 80 at 134; *People v. Fernandez*, supra note 80; *People v. Dela Cruz*, supra note 80 at 118.

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