

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDGAR EVANGELIO Y GALLO, JOSEPH EVANGELIO, ATILANO AGATON Y OBICO, AND NOEL MALPAS Y GARCIA, ACCUSED. JOSEPH EVANGELIO, ACCUSE...

G.R. No. 181902. August 31, 2011

Ponente: PERALTA, J.

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PERALTA, J.:

This is an appeal from the Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 00109, affirming the trial court's judgment finding appellant Joseph Evangelio guilty beyond reasonable doubt of the crime of Robbery with Rape in Criminal Case No. 2001-12-773.

Appellant Joseph Evangelio (Joseph), accused Edgar Evangelio y Gallo (Edgar), Atilano Agaton y Obico (Atilano) and Noel Malpas y Garcia (Noel) are charged with the crime of Robbery with Rape in an Information, which reads:

The undersigned City Prosecutor of the City of Tacloban accuses EDGAR EVANGELIO y GALLO, JOSEPH EVANGELIO, ATILANO AGATON y OBICO, and NOEL MALPAS y GARCIA of the crime of Robbery with Rape, committed as follows:

That on or about the 3[rd] day of October 2001, in the City of Tacloban, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping each other, with intent to gain and armed with a handgun and deadly/bladed weapons forcibly enter the inhabited house/residence of BBB and while inside, by means of violence and intimidation using said arms on the latter and the other occupants therein, and without the consent of their owners did, then and there willfully, unlawfully and feloniously, take, and carry away from said residence the following personal properties belonging to:

(a) BBB:

- *Two Saudi-gold necklace with pendant with a combined value of P25,000 more or less;
- * Saudi-gold bracelet valued at P25,000.00;
- * Leather wallet containing P1,500.00 cash;

and -

- * Two shoulder bags with a combined value of P2,000.00.

(b) CCC:

- * One tri-colored gold necklace (choker) valued at P50,000.00;
- * One yellow-gold necklace (choker) valued at P5,000.00;
- * One gold necklace with Jesus Christ head pendant valued at P12,000.00;
- * One gold necklace with star diamond pendant valued at P8,000.00;

- * One gold necklace, tri-colored cross diamond valued at P13,000.00;
- * Three tri-colored bracelet (gold) with diamond valued at P18,000.00;
- * Three tri-colored bracelet (twisted) valued at P15,000.00;
- * One gold bracelet with diamonds valued at P6,000.00;
- * One gold bracelet (dangling) valued at P4,000.00;
- * One gold bracelet (chain) valued at P7,000.00;
- * Five sets earrings and rings valued at P45,000.00;
- * One set earrings and rings (diamond Solitaire) valued at P45,000.00;
- * Two black-colored wristwatch (Pierre Cardin) valued at P25,000.00; and
- * Two gold-plated wristwatch (Pierre Cardin) valued at P25,000.00; and -
- * One gold bracelet (chain) valued at P4,000; and -

(c) Josefina Manlolo:

- * Instamatic Camera, Olympus brand.

to the damage and prejudice of said owners to the extent of the value of their respective properties above indicated.

That on the occasion of the said robbery and in the same house/residence, accused, by means of force and intimidation and using the said handgun and deadly/bladed weapons, did then and there, willfully, unlawfully and feloniously have carnal knowledge of AAA,[2] a 17-year-old minor, against her will and consent and at the time when the latter lost consciousness after her head was banged on the bathroom floor.[3]

CONTRARY TO LAW.

On December 18, 2001, a Warrant of Arrest was issued against the four accused. On February 8, 2002, appellant Joseph, accused Edgar and Atilano were arrested, while accused Noel remained at-large.

On May 21, 2002, appellant was arraigned and pleaded not guilty to the crime charged. Accused Edgar and Atilano, who at that time were detained at the Bacolod City Bureau of Jail Management and Penology (BJMP), were ordered to be brought to Tacloban City for trial. However, they were not brought to Tacloban City by the Bacolod City BJMP for the reason that they were criminally charged in the courts of Bacolod City.

The evidence of the prosecution follows:

On October 3, 2001, at 6:30 in the evening, while AAA, a 17-year-old househelper, was cooking in the kitchen of the house of BBB situated in Tacloban City, four persons, one of whom was armed with a handgun while the other three with knives, suddenly barged inside the house through the open kitchen door. The four men accosted her, warned her to keep quiet, and brought her to the living room. There, they herded all the other members of the household whom they caught and bound their hands and feet, and thereafter, placed masking tapes over their captives' eyes. With her eyes partially covered by the tape, AAA was brought by the appellant inside the comfort room and thereat, appellant and one of the robbers stripped off AAA's clothes and removed her panty. AAA resisted and fought back but they slammed her head twice against the concrete wall, causing her to lose consciousness. When she regained her senses, appellant and the other robbers were already gone, and she found herself lying on the side on the floor of the comfort room with her feet untied and her hands still tied behind her back. She saw her shorts and panty strewn at her side. She suffered pain in her knees, head, stomach, and her vagina, which was bleeding. Later on, AAA was freed from the comfort room by the other occupants of the house, who were earlier freed.

Prosecution witness Evelyn[4] was in the living room when the incident happened. She was tutoring her nieces

when the four men barged inside the house. She testified that she could not be mistaken as to the identity of the accused Edgar, who was armed with a handgun, because he is a friend of her husband and who used to work for him. Appellant and accused Noel are also familiar to her because they previously stayed in Sampaguita, Tacloban City, where she lives. Upon the instruction of accused Edgar, Edelyn was divested of her earrings, bracelet, watch, and ring. Thereafter, appellant tied her hands and feet, and blindfolded her with masking tape. She was hit on the head with a firearm, causing a cut and her losing consciousness. When she regained her senses, she found herself in the maids' room. She heard accused Edgar ask her nieces where their father kept their pieces of jewelry and firearm. When her nieces told him that the valuables were kept upstairs, accused Edgar brought one of them there.

BBB came home around 7:00 in the evening and when he entered the sliding door facing the garage, he saw the four accused inside, three of them armed with knives and the other one with a gun. When he entered, he was immediately accosted and warned to keep quiet. He recognized their faces, particularly the leader of the group, whom he identified as accused Edgar, who previously worked for him as a laborer in the construction of the extension of his house. Upon accused Edgar's command, the other three accused, one of whom he identified in open court as appellant, tied him up. Accused Edgar, then struck him with the gun on his head, causing him to fall face down on the floor with blood oozing from his left eyebrow. After a while, appellant and the three accused went out of the house, through the kitchen door, carrying two traveling bags and the jewelry box of his wife.

CCC, the wife of BBB, came home from the office in the early evening of October 3, 2001. Upon arriving thereat, she tried to open the door but was not able to do so. She then called out the names of her children, but nobody responded. She peeped through the window screen and saw people inside the house with whom she did not recognize. One of the accused then poked a gun at her head and told her to come inside, otherwise, he would kill her children. She ran away from their house, and cried out for help from the neighbors. They called the police. Shortly thereafter, the policemen arrived. They found the house in complete disarray, the cabinets were forcibly opened, CCC's jewelry box and her pieces of jewelry stolen, and the members of the household traumatized. An inventory was taken of the stolen valuables which amounted to PhP336,000.00, more or less. Some of the stolen items were later recovered from the house of accused Edgar.

The following day, AAA was examined by Dr. Angel Cordero, a medico-legal officer of the Philippine National Police (PNP) Crime Laboratory at Camp Ruperto Kangleon, Palo, Leyte. Dr. Cordero found that AAA sustained "deep healing lacerations at the 6 o'clock, 9 o'clock, and 3 o'clock positions and shallow healed lacerations at the 1 o'clock and 11 o'clock positions." He concluded that AAA was in a "non-virgin state physically" and that "findings are compatible with recent loss of virginity" and with "recent sexual intercourse."

In his defense, appellant denied having committed the crimes charged and interposed alibi as a defense. He claims that at the time of the incident on October 3, 2001, at about 6:30 in the evening, he was sleeping in his house at Diit, Tacloban City with his mother and sisters. No other witness was presented by the appellant.

On August 23, 2004, the Regional Trial Court (RTC) of Tacloban City, Branch 7, rendered its Decision[5] dated May 16, 2003, the dispositive portion of which reads:

WHEREFORE, premises considered, pursuant to Article 293 in relation to 294, par. 1 of the Revised Penal Code as amended, and the amendatory provisions of R.A. No. 8353, (the Anti-Rape Law of 1997) and R.A. No. 7659 (Death Penalty Law), the Court found accused, JOSEPH EVANGELIO, GUILTY beyond reasonable doubt of the special complex crime of ROBBERY WITH RAPE charged under the information and sentenced to suffer the maximum penalty of DEATH, and pay actual damages in the amount of Three Hundred Thirty-Six Thousand (P336,000.00) Pesos to spouses BBB and CCC and moral damages in the amount of Fifty Thousand (P50,000.00) Pesos; pay civil indemnity to AAA, the amount of Seventy Five Thousand

(P75,000.00) Pesos, and moral damages in the amount of Fifty Thousand (P50,000.00) Pesos; pay Edelyn the amount of Three Thousand (P3,000.00) Pesos as actual damages and moral damages in the amount of Twenty Thousand (P20,000.00) Pesos; and pay the costs.

SO ORDERED.[6]

An appeal was made and the records of the case were forwarded to this Court. However, pursuant to this Court's ruling in *People v. Mateo*,^[7] the case was transferred to the CA for appropriate action and disposition. The CA rendered a Decision dated August 10, 2007 affirming with modification the decision of the trial court. In view of the abolition of the death penalty, pursuant to Republic Act (R.A.) No. 9346, which was approved on June 24, 2006, the appellant was sentenced to reclusion perpetua without eligibility for parole. The CA did not consider the aggravating circumstances of nighttime and unlawful entry in the commission of the crime. The CA deleted the awards of PhP3,000.00, as actual damages, and PhP20,000.00, as moral damages, in favor of Edelyn, because they were not charged in the Information.

On August 28, 2007, appellant, through the Public Attorney's Office (PAO), appealed the decision of the CA to this Court. Appellant had assigned the following error in his appeal initially passed upon by the CA, to wit:

I

THE TRIAL COURT ERRED IN APPRECIATING THE AGGRAVATING CIRCUMSTANCES OF NIGHTTIME, COMMITTED BY A BAND, DWELLING AND UNLAWFUL ENTRY IN THE IMPOSITION OF THE PENALTY AGAINST THE ACCUSED-APPELLANT. [8]

In his Brief, appellant denied having committed the crime charged and interposed alibi as a defense. He claims that at the time of the incident on October 3, 2001, at about 6:30 in the evening, he was sleeping in his house at Diit, Tacloban City, together with his mother and sisters. On the other hand, the appellant was positively identified by the prosecution witnesses as one of the perpetrators of the crime of robbery with rape. Both the trial court and the CA found the testimonies of the prosecution witnesses- credible. The Court gives great weight to the trial court's evaluation of the testimony of a witness because it had the opportunity to observe the facial expression, gesture, and tone of voice of a witness while testifying, thus making it in a better position to determine whether a witness is lying or telling the truth.[9]

Between the categorical statements of the prosecution witness, on one hand, and the bare denial of the appellant, on the other, the former must perforce prevail. An affirmative testimony is far stronger than a negative testimony especially when it comes from the mouth of a credible witness. Alibi and denial, if not substantiated by clear and convincing evidence, are negative and self-serving evidence undeserving of weight in law. They are considered with suspicion and always received with caution, not only because they are inherently weak and unreliable but also because they are easily fabricated and concocted. [10] Denial cannot prevail over the positive testimony of prosecution witnesses who were not shown to have any ill-motive to testify against the appellant.[11]

As to the defense of alibi. Aside from the testimony of appellant that he was in Diit, Tacloban City at the time of the incident, the defense was unable to show that it was physically impossible for appellant to be at the scene of the crime. Basic is the rule that for alibi to prosper, the accused must prove that he was somewhere else when the crime was committed and that it was physically impossible for him to have been at the scene of the crime. Physical impossibility refers to the distance between the place where the appellant was when the crime transpired and the place where it was committed, as well as the facility of access between the two places.[12] Where there is the least chance for the accused to be present at the crime scene, the defense of alibi must fail.[13] The appellant testified during trial that Diit is only a one-hour ride away from Tacloban City.[14] Thus, it was not physically impossible for the appellant to be at the locus criminis at the time of the incident. In addition, positive

identification destroys the defense of alibi and renders it impotent, especially where such identification is credible and categorical.[15]

Further, appellant insists that he was at home at the time of the incident with his mother and sisters. The defense, however, failed to put them on the witness stand. Neither did they execute any statement under oath to substantiate appellant's alibi.

To be convicted of robbery with rape, the following elements must concur: (1) the taking of personal property is committed with violence or intimidation against persons; (2) the property taken belongs to another; (3) the taking is characterized by intent to gain or *animus lucrandi*; and (4) the robbery is accompanied by rape.[16]

In this case, the prosecution established that appellant and his three co-accused took the pieces of jewelry and valuables of the spouses BBB and CCC by means of violence and intimidation. Appellant and his co-accused barged into the house of the victims armed with a handgun and knives and tied the hands and feet of the members of the household. The perpetrators then asked for the location of the pieces of jewelry and valuables. BBB was also tied and was struck in the head with a gun causing him to fall face down on the floor with blood oozing from his left eyebrow. He was able to see the perpetrators going out of the house carrying bags and the jewelry box of his wife. Intent to gain, or *animus lucrandi*, as an element of the crime of robbery, is an internal act; hence, presumed from the unlawful taking of things.[17] Having established that the personal properties of the victims were unlawfully taken by the appellant, intent to gain was sufficiently proven. Thus, the first three elements of the crime were clearly established.

As regard the last requirement. Although the victim AAA did not exactly witness the actual rape because she was unconscious at that time, circumstantial evidence shows that the victim was raped by the appellant and the other accused.

Circumstantial evidence, also known as indirect or presumptive evidence, refers to proof of collateral facts and circumstances whence the existence of the main fact may be inferred according to reason and common experience.[18] Circumstantial evidence is sufficient to sustain conviction if (a) there is more than one circumstance; (b) the facts from which the inferences are derived are proven; (c) the combination of all circumstances is such as to produce a conviction beyond reasonable doubt.[19] A judgment of conviction based on circumstantial evidence can be sustained when the circumstances proved form an unbroken chain that results in a fair and reasonable conclusion pointing to the accused, to the exclusion of all others, as the perpetrator.[20]

The following circumstantial evidence presented by the prosecution, when analyzed and taken together, lead to the inescapable conclusion that the appellant raped AAA: first, while two of the robbers were stealing, appellant and one of the robbers brought AAA inside the comfort room; second, inside the comfort room, AAA was stripped off her clothes and her panty; third, when AAA resisted and struggled, appellant and the other robber banged her head against the wall, causing her to lose consciousness; fourth, when she regained consciousness, the culprits were already gone and she saw her shorts and panty strewn at her side; and fifth, she suffered pain in her knees, head, stomach and, most of all, in her vagina which was then bleeding.

In the following decided cases, the victim was unconscious and was not aware of the sexual intercourse that transpired, yet the accused was found guilty on the basis of circumstantial evidence.

In *People v. Gaufo*,[21] the victim was hit on her head by the accused but she fought back and asked for help. The accused then punched her abdomen causing her to lose consciousness. Upon regaining her bearings, she noticed that she had no more underwear, her vagina was bleeding and her body was painful. The combination of these circumstances, among others, led the Court to adjudge the accused guilty of rape.

In *People v. Pabol*,^[22] the accused hit the victim on her face causing her to fall. Accused then hugging the victim from behind, sat the victim on his lap, and stroke her breast with a piece of stone. When she shouted for help, accused covered her mouth and later she fell unconscious. When she had woken up some two hours later, she discovered that her ears had been sliced, her blouse opened and her underwear stained with her own blood. She also experienced pain in her private part after the incident. Given the foregoing circumstances, the Court found that the accused raped the victim.

The Court notes that AAA was examined by Dr. Angel Cordero, a medico-legal officer of the Philippine National Police (PNP) Crime Laboratory, Camp Ruperto Kangleon, Leyte the following day^[23] and found that she sustained deep healing lacerations and shallow healed lacerations. He concluded that AAA was in a "non-virgin state physically" and that "findings are compatible with recent loss of virginity" and with "recent sexual intercourse."^[24] Prosecution witness Dr. Cordero on direct examination stated that:

Q.

Now in your examination were you able to conduct a personal examination on the person of the victim?

A.

Yes, Sir.

Q.

And what was your finding?

A.

I had my findings in my report and it is all reflected in this particular report that I have made.

Q.

Now in your report in the second page of your report there is here a conclusion and remarks, No. 3 of which states that finding compatible with recent sexual intercourse. What do you mean by that Doctor Cordero?

A.

That there was a sexual connection between the victim and that of the offender and it was manifested on the findings that I have made and reflected in my report.^[25]

Although Dr. Cordero's report stated that AAA's lacerations were deep healing and healed lacerations, this finding does not negate the commission of rape on October 3, 2001. The Court held that the absence of fresh lacerations does not prove that the victim was not raped.^[26] A freshly broken hymen is not an essential element of rape and healed lacerations do not negate rape.^[27] Hence, the presence of healed hymenal lacerations the day after the victim was raped does not negate the commission of rape by the appellant when the crime was proven by the combination of highly convincing pieces of circumstantial evidence. In addition, a medical examination and a medical certificate are merely corroborative and are not indispensable to the prosecution of a rape case.^[28]

For a conviction of the crime of robbery with rape to stand, it must be shown that the rape was committed by reason or on the occasion of a robbery and not the other way around. This special complex crime under Article 294 of the Revised Penal Code contemplates a situation where the original intent of the accused was to take, with intent to gain, personal property belonging to another and rape is committed on the occasion thereof or as an accompanying crime.^[29] In the case at bar, the original intent of the appellant and his co-accused was to rob the victims and AAA was raped on the occasion of the robbery.

The trial court also found the presence of conspiracy between the perpetrators. Under Article 8 of the Revised Penal Code, there is conspiracy when two or more persons come to an agreement concerning a felony and decide to commit it. It may be inferred from the acts of the accused before, during or after the commission of the crime which, when taken together, would be enough to reveal a community of criminal design, as the proof of conspiracy is frequently made by evidence of a chain of circumstances.[30] To be a conspirator, one need not participate in every detail of the execution; he need not even take part in every act or need not even know the exact part to be performed by the others in the execution of the conspiracy. Each conspirator may be assigned separate and different tasks which may appear unrelated to one another but, in fact, constitute a whole collective effort to achieve their common criminal objective. Once conspiracy is shown, the act of one is the act of all the conspirators. The precise extent or modality of participation of each of them becomes secondary, since all the conspirators are principals.[31]

In the instant case, conspiracy was shown by the coordinated acts of the four persons. From the time they gained entry into the victims' residence, they tied and blindfolded the members of the household; inflicted physical injuries on some of the victims; some went upstairs and proceeded to ransack the house; the others brought AAA in the comfort room and sexually abused her; they then left the house together carrying the loot. With the foregoing circumstances, there can be no other conclusion than that the successful perpetration of the crime was done through the concerted efforts of the four armed men.

In *People v. Suyu*, we ruled that once conspiracy is established between several accused in the commission of the crime of robbery, they would all be equally culpable for the rape committed by anyone of them on the occasion of the robbery, unless anyone of them proves that he endeavored to prevent the others from committing rape.[32] There is no showing that the other accused prevented appellant from sexually abusing AAA. In view, however, that the accused Edgar, Atilano and Noel were not brought for arraignment and trial, judgment cannot be rendered against them.

THE PENALTY

We now come to the imposition of the proper penalty. The crime of robbery with rape is a special complex crime punishable under Article 294 of the Revised Penal Code as amended by R.A. 7659.[33] Article 294 provides for the penalty of reclusion perpetua to death, when the robbery was accompanied by rape. The provision reads as follows:

Art. 294. Robbery with violence against or intimidation of persons; Penalties. - Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

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

The CA correctly ruled in not considering the aggravating circumstances of nighttime and unlawful entry.

As correctly pointed out by the CA:

x x x [T]he aggravating circumstances of nighttime and unlawful entry cannot be considered. Under the law, specifically Sections 8 and 9, Rule 110 of the Revised Rules on Criminal Procedure, as well as jurisprudence, it is required that qualifying as well as aggravating circumstances must be expressly and specifically alleged in the Complaint or Information; otherwise, the same will not be considered by the court against the appellant, even if proved during the trial. And, this principle is applicable to all criminal cases.

The information merely stated that the crime took place "on or about the 3[rd] day of October 2001," without

specifying the time of its commission. Also nighttime is considered an aggravating circumstance only when it is deliberately sought to prevent the accused from being recognized or to ensure escape. There must be proof that this was intentionally sought to ensure the commission of the crime, and that the accused took advantage of it to insure his immunity from captivity. Here, there is a paucity of evidence that nighttime was purposely, deliberately, and especially sought by the accused. The mere fact that the offense was committed at night will not suffice to sustain a finding of nocturnity.

Further, the phrase, "forcibly enter the inhabited house" does not comprise the aggravating circumstance of "unlawful entry." Verily, evidence showed that all the accused freely entered the [victims'] residence through the open kitchen door, which is clearly intended for ingress and or egress.[34]

The trial court and the CA correctly appreciated the aggravating circumstance of the commission of a crime by a band.[35] In the crime of robbery with rape, band is considered as an aggravating circumstance.[36] The prosecution established that one of the accused was armed with a handgun, while the other three had knives when they committed the crime.[37]

The aggravating circumstance of dwelling[38] was also attendant in the present case. Dwelling aggravates a felony where the crime is committed in the dwelling of the offended party provided that the latter has not given provocation therefor.[39] In this case, robbery with violence was committed in the house of the victims without provocation on their part. In robbery with violence and intimidation against persons, dwelling is aggravating because in this class of robbery, the crime may be committed without the necessity of trespassing the sanctity of the offended party's house.[40] It is considered an aggravating circumstance primarily because of the sanctity of privacy that the law accords to the human abode.[41] He who goes to another's house to hurt him or do him wrong is more guilty than he who offends him elsewhere.[42]

Since the aggravating circumstances of band and dwelling were alleged in the Information and proven, the imposable penalty upon the appellant is death, pursuant to Article 63, paragraph 1, of the Revised Penal Code, which provides:

x x x In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

1. When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied. x x x

In view, however, of the passage of R.A. No. 9346,[43] prohibiting the imposition of the death penalty, the CA correctly reduced the penalty of death to reclusion perpetua,[44] without eligibility for parole.[45]

THE DAMAGES

The trial court did not order the appellant to return the items taken from the victims but, instead, directed the payment of actual damages amounting to PhP336,000.00. The said amount is the value of the items taken from the spouses BBB and CCC.

Under Article 105[46] of the Revised Penal Code, the appellant is obliged to return the items he took from the spouses BBB and CCC. If appellant can no longer return the articles taken, he is obliged to make reparation for their value, taking into consideration their price and their special sentimental value to the offended parties.[47] Hence, the Court modifies the decision of the trial court, as affirmed by the CA, and directs the appellant to return the pieces of jewelry and valuables taken from the spouses BBB and CCC as enumerated in the Information[48] dated December 3, 2001 and proven during trial. Should restitution be no longer possible, appellant shall pay the spouses BBB and CCC the value of the stolen pieces of jewelry and valuables as determined by the trial court in

the amount of PhP336,000.00.

The trial court's award of moral damages in the amount of PhP50,000.00 to the spouses BBB and CCC is not proper. In order that a claim for moral damages can be aptly justified, it must be anchored on proof showing that the claimant experienced moral suffering, mental anguish, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation or similar injury.[49] The victim spouses BBB and CCC, however, did not present any evidence of their moral sufferings as a result of the robbery. Thus, there is no basis for the grant of moral damages in connection with the robbery.

In line with prevailing jurisprudence, AAA is entitled to civil indemnification. Upon the finding of rape, the victim is entitled to civil indemnity.[50] Thus, AAA is entitled to PhP75,000.00 as civil indemnity.[51]

In addition, AAA is entitled to moral damages pursuant to Article 2219 of the Civil Code,[52] without the necessity of additional pleadings or proof other than the fact of rape.[53] Moral damages is granted in recognition of the victim's injury necessarily resulting from the odious crime of rape.[54] Such award is separate and distinct from the civil indemnity.[55] However, the amount of PhP50,000.00 awarded as moral damages, is increased to PhP75,000.00 in line with current jurisprudence.[56]

The award of exemplary damages in the amount of PhP30,000.00 should also be imposed. Exemplary damages are awarded when the crime is attended by an aggravating circumstance, or as a public example, in order to protect hapless individuals from molestation.[57] Furthermore, interest at the rate of six percent (6%) per annum shall be imposed on all damages awarded from the date of finality of this judgment, pursuant to prevailing jurisprudence.[58]

The CA was also correct in deleting the award of actual damages amounting to PhP3,000.00 and moral damages amounting to PhP20,000.00 in favor of Edelyn. Verily, it is a rule that the accused is entitled to be informed of the nature and cause of the accusation against him.[59] The information for robbery with rape filed against the accused shows that Edelyn is not one of the complainants therein and there is no description of the pieces of jewelry and valuables allegedly taken from her. Simply put, the appellant was not informed that he was being charged of robbery in so far as Edelyn is concerned. Hence, the CA correctly deleted the award.

On a final note, records reveal that accused Edgar and Atilano, who were charged with the appellant, were not brought for arraignment and trial, despite the fact that they are detained in Bacolod City.

Records show that the RTC of Tacloban City directed the BJMP of Bacolod City to transfer the accused Atilano and Edgar to the BJMP of Tacloban City in order for them to stand trial for the crime of robbery with rape.[60] In a letter[61] dated June 26, 2002, the Jail Warden of Bacolod City informed the trial court that Edgar and Atilano are being charged with several offenses in the courts of Bacolod City.[62] Thus, the Jail Warden of Bacolod City requested that Edgar and Atilano be transferred from the BJMP Bacolod City to the BJMP Tacloban City only after their pending criminal cases in Bacolod City shall have been terminated. However, the records are bereft of any information as to the status of this case, i.e., Criminal Case No. 2001-12-773, insofar as accused Atilano and Edgar are concerned.

WHEREFORE, the appeal is DISMISSED. The Decision of the Court of Appeals in CA-G.R. CR-HC No. 00109 is AFFIRMED with MODIFICATIONS. Appellant Joseph Evangelio is found guilty beyond reasonable doubt of Robbery with Rape and is sentenced to suffer the penalty of Reclusion Perpetua, without eligibility of parole pursuant to Republic Act No. 9346. He is ordered to return the pieces of jewelry and valuables taken from the spouses BBB and CCC as enumerated in the Information[63] dated December 3, 2001. Should restitution be no longer possible, appellant shall pay the spouses BBB and CCC the value of the stolen pieces of jewelry and

valuables in the amount of PhP336,000.00. He is further directed to pay AAA the amounts of PhP75,000.00 as civil indemnity, PhP75,000.00 as moral damages and PhP30,000.00 as exemplary damages. Interest at the rate of six percent (6%) per annum is imposed on all the damages awarded in this case from date of finality of this judgment until fully paid.

The Office of the Court Administrator is hereby DIRECTED to determine the status of the case against the accused Edgar Evangelio and Atilano Agaton who, despite being under the custody of the BJMP Bacolod City, were not brought for trial at the RTC, Tacloban City for the crime of robbery with rape. The said office is further directed to investigate and ascertain the possible liability of the person(s) concerned who caused the delay in the prosecution of accused Edgar Evangelio and Atilano Agaton for the said offense.

SO ORDERED.

Velasco, Jr., (Chairperson), Abad, Mendoza, and Sereno,[*] JJ., concur.

[*] Designated additional member, per Special Order No. 1028 dated June 21, 2011.

[1] Penned by Associate Justice Antonio L. Villamor, with Associate Justices Isaias P. Dicdican and Stephen C. Cruz, concurring; rollo, pp. 4-17.

[2] The victim is referred to as AAA; her employer, BBB; and her employer's wife, CCC, per Republic Act No. 9262 and A.M. No. 04-10-11-SC. See *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[3] CA rollo, pp. 8-10.

[4] Also referred as Edelyn.

[5] CA rollo, pp. 19-36.

[6] Id. at 35-36.

[7] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640, modifying Sections 3 and 10 of Rule 122, Section 13 of Rule 124 and Section 3 of Rule 125 of the Revised Rules on Criminal Procedure.

[8] CA rollo, p. 53.

[9] *People v. Pillas*, 458 Phil. 347, 369 (2003).

[10] *People v. Togahan*, G.R. No. 174064, June 8, 2007, 524 SCRA 557, 573-574.

[11] *Gan v. People*, G.R. No. 165884, April 23, 2007, 521 SCRA 550, 575.

[12] *People v. Delim*, G.R. No. 175942, September 13, 2007, 533 SCRA 366, 379.

[13] *People v. Dela Cruz*, G.R. No. 168173, December 24, 2008, 575 SCRA 412, 439.

[14] TSN, February 6, 2003, p. 12.

[15] *People v. Casitas, Jr.*, 445 Phil. 407, 425 (2003).

[16] *People v. Suyu*, G.R. No. 170191, August 16, 2006, 499 SCRA 177, 202-203.

[17] *Sazon v. Sandiganbayan (Fourth Division)*, G.R. No. 150873, February 10, 2009, 578 SCRA 211, 221.

- [18] *People v. Pabol*, G.R. No. 187084, October 12, 2009, 603 SCRA 522, 530.
- [19] Rules of Court, Rule 133, Sec. 4.
- [20] *Diega v Court of Appeals*, G.R. Nos. 173510 and 174099, March 15, 2010, 615 SCRA 399, 407- 408.
- [21] 469 Phil. 66 (2004).
- [22] *Supra* note 18.
- [23] AAA testified that she was subjected to medical check-up the following day of the incident. (TSN, October 16, 2002, p. 8). However, Dr. Cordero testified that he examined AAA on the same day of the incident at the later part of the evening. (TSN, November 6, 2002, p. 2.)
- [24] Living Case Report of AAA, records, p. 13.
- [25] TSN, November 6, 2002, p. 2.
- [26] *People v. Baylen*, 431 Phil. 106, 116 (2002).
- [27] *People v. Orilla*, 467 Phil. 253, 274 (2004).
- [28] *Id.*
- [29] *People v. Tamayo*, 434 Phil. 642, 654 (2002).
- [30] *Go v. Fifth Division, Sandiganbayan*, G.R. No. 172602, April 13, 2007, 521 SCRA 270, 290.
- [31] *People v. De Jesus*, 473 Phil. 405, 429 (2004).
- [32] *People v. Suyu*, *supra* note 16, at 202.
- [33] Otherwise known as An Act to Impose the death Penalty on Certain Heinous Crimes Amending for that Purpose the Revised Penal Code, As Amended, Other Special Penal Laws, and for Other Purposes.
- [34] Rollo, pp. 14-15.
- [35] Article 296 of the Revised Penal Code defines a band in this wise:
"When more than three armed malefactors take part in the commission of a robbery, it shall be deemed to have been committed by a band x x x.
- Any member of a band who is present at the commission of a robbery by the band, shall be punished as principal of any of the assaults committed by the band, unless it be shown that he attempted to prevent the same."
- [36] *People v. Tejero*, G.R. No. 128892, June 21, 1999, 308 SCRA 660, 683.
- [37] TSN, October 16, 2002, p. 4; TSN, October 17, 2002, pp. 3-4; TSN, November 7, 2002, p. 3.
- [38] Revised Penal Code, Art. 14, Par. 3, x x x that it be committed in the dwelling of the offended party, if the latter has not given provocation.
- [39] *People v. Bragat*, 416 Phil. 829, 843 (2001).
- [40] *People v. Paraiso*, 377 Phil. 445, 464 (1999).
- [41] *People v. Taboga*, G.R. Nos. 144086-87, February 6, 2002, 376 SCRA 500, 519.
- [42] *People v. Bragat*, *supra* note 39.

[43] An Act Prohibiting the Imposition of Death Penalty in the Philippines.

[44] R.A. 9346, Sec. 2.

[45] R.A. 9346, Sec. 3.

[46] ART. 105. Restitution - How made. - The restitution of the thing itself must be made whenever possible, with allowance for any deterioration, or diminution of value as determined by the court.

The thing itself shall be restored, even though it be found in the possession of a third person who has acquired it by lawful means, saving to the latter his action against the proper person who may be liable to him.

This provision is not applicable in case in which the thing has been acquired by the third person in the manner and under the requirement which, by law, bar an action for its recovery.

[47] People v. Carpio, G.R. No. 150083, May 27, 2004, 429 SCRA 676, 683.

[48] CA rollo, pp. 8-10.

[49] People v. Taño, 387 Phil. 465, 490 (2000).

[50] People v. Madsali, G.R. No. 179570, February 4, 2010, 611 SCRA 596, 621.

[51] Id.

[52] Civil Code, Art. 2219. Moral damages may be recovered in the following and analogous cases: x x x

(3) Seduction, abduction, rape, or other lascivious acts; x x x.

[53] People v. Ospig, 461 Phil. 481, 496 (2003).

[54] Id. at 496-497.

[55] People v. Sabardan, G.R. No. 132135, May 21, 2004, 429 SCRA 9, 29.

[56] People v. Madsali, supra note 50, at 621-622.

[57] People v. Neverio, G.R. No. 182792, August 25, 2009, 597 SCRA 149, 158.

[58] People v. Florante Relantes @ Dante, G.R. No. 175831, April 12, 2011.

[59] Revised Rules of Criminal Procedure, Rule 115, Sec. 1(b).

[60] Records, p. 31.

[61] Id. at 35.

[62] Accused Atilano and Edgar are facing trial for violation of Illegal Possession of Firearms and Ammunitions at the RTC Bacolod City, Branch 42. (Id. at 37-38.) Further, Atilano and Edgar are both facing charges for attempted robbery in the Municipal Trial Court in Cities, Branch 5, Bacolod City. (Id. at 39 and 41) Furthermore, Edgar is also facing charges for Direct Assault Upon an Agent of a Person in Authority at the Municipal Trial Court in Cities, Branch 5, Bacolod City. (Id. at 40.)

[63] CA rollo, pp. 8-10.

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