PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANTONIO ASPREC, BASALLO Y ACCUSED-APPELLANT.

G.R. No. 182457. January 30, 2013

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

This is an appeal from the Decision[1] dated May 11, 2007 of the Court of Appeals in CA-G.R. CR.-H.C. No. 02010, entitled People of the Philippines v. Antonio Basalla y Asprec, which affirmed with modification the Decision[2] dated April 5, 2004 and Order[3] dated July 5, 2004 of the Regional Trial Court (RTC) of Agoo, La Union, Branch 32 in Criminal Case No. A-3043. The trial court found appellant Antonio Basallo guilty beyond reasonable doubt of the crime of rape under Article 335 of the Revised Penal Code, since the act complained of was committed prior to the amendment of Article 335 by Republic Act No. 8353 (the Anti-Rape Law of 1997) which reclassified rape as a crime against persons penalized under Articles 266-A to 266-D of the Revised Penal Code.

We proceed to the factual antecedents of the case.

In an Information dated October 25, 1995 filed before Branch 32, RTC of Agoo, La Union, accused-appellant was charged with Rape, thus:

> That on or about the 8th day of May, 1995, in the Municipality of Agoo, Province of La Union, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, did then and there, by means of force and intimidation and against the will and consent of the aforenamed offended woman, [ABC],[4] wil[l]fully, unlawfully and feloniously have carnal knowledge of the latter, to her damage and prejudice.[5]

Despite the issuance of a warrant of arrest on February 22, 1996, it was returned unserved as appellant could no longer be found at his given address and he appeared to have gone into hiding purportedly in Cavite.[6] Subsequently, the trial court ordered the archival of the case and issued an Alias Warrant of Arrest dated November 27, 1997 against appellant.[7] Appellant remained at large until his arrest by the elements of the Philippine National Police (PNP) Criminal Investigation and Detection Group, CAR Criminal Investigation and Detection Office on August 15, 1998, more than two years after the original issuance of a warrant of arrest against him.[8]

Appellant's arraignment was deferred upon his own motion pending reinvestigation of his case. After the dismissal of appellant's appeal with the Department of Justice, he was finally arraigned on November 15, 1999 and he entered a plea of not guilty.[9]

Upon completion of pre-trial, the trial court issued a Pre-Trial Order dated January 17, 2001, wherein the parties entered into the following stipulations:

> 1. That during the time of [sic] the alleged act [was] committed, the victim was under the employ of the

accused as his housekeeper;

2. The identity of the complainant; [and]

3. The identity of the accused.[10]

Thereafter, the trial court conducted trial on the merits. The testimonies of the prosecution witnesses were summarized in the assailed Court of Appeals Decision dated May 11, 2007, in this wise:

> The victim ABC testified that she is a helper of the accused Antonio Basallo. Accused took her as his helper for the past three (3) years. They are neighbors and she calls the accused "uncle." As a helper, she cleans the house, washes clothes and takes care of the children. In the afternoon of 08 May 1995, she put said children to sleep. The wife of the accused was in the office. At around 1:00 p.m., while the children were sleeping at the first floor of the house, accused told her to take his shirt at the second floor of the house. She went inside the first room and took the shirt at the back of the door panel. After she entered the room, accused also followed her. Accused entered the room and laid on top of her. Then, accused removed her gartered shortpants and sleeveless blouse. Thereafter, accused removed her panty and bra. While accused was removing her clothes, she could not move because the former was holding a knife with his right hand. Accused then inserted his penis into her private part. As accused was inserting his penis into her private part, he was simultaneously kissing her and holding a knife. Accused inserted his penis to her vagina for thirty minutes. She was told by accused not to report the incident to her mother because the former would kill her. She did not move while accused was on top of her because he had a knife. After the incident, accused left and told her to take care of the children. She stayed at the house of the accused for one more week or until 15 May 1995. It was her mother who discovered that she was pregnant. She told her mother that she was sexually abused by accused, when her mother discovered her pregnancy. Thereafter, her mother brought her to the hospital where she was told that she was four (4) months pregnant. She was issued a medical certificate when she consulted a doctor. They filed a case against the accused. She did not talk to accused or the latter's wife after she stopped working at their residence. Accused went into hiding. She gave birth on 02 March 1996. The child is now six (6) years old. The experience in the hands of the accused caused her too much pain. Now that she has a child, she is being despised in the community because she begot a child without a husband. She has no feeling about what other people would say about her and she is not even ashamed. She only wants to take care of her child.
>
> On cross-examination, ABC testified that she is not related by blood to the accused. She was employed by the accused and his family since she was twelve (12) years old. She only reached first year high school. During the time of her employment with the Basallos, she did not sleep at the latter's residence at night. She received P20.00 a day for her services. Her house is sixty to seventy meters away from the house of accused. There are three houses near the house of the accused. However, the family of accused and her family are not close. She was able to work with the family of accused when the latter's wife fetched her. During the Basallo's family occasions, her parents are invited. She was never scolded during her stay at the Basallo's residence. Neither her mother and grandmother have any misunderstanding with the wife of the accused. She never had any boyfriend. She did not confide to her mother because she was afraid. When her mother discovered that she was pregnant, she was angry at her. Had she not been pregnant, she would not have reported the same to her mother. She also told her mother that she was raped by accused. She hated the accused for what he had done to her. She is afraid of accused even before the incident because he is a killer. They filed a complaint when she was already pregnant. She returned to the house of the accused to do chores because she was fetched. When her mother discovered that she was pregnant, she was not allowed to go back to the house of the accused. Her mother cried when she learned that it was accused who impregnated her. She never had any sexual experience before the incident on 08 May 1995. The house of accused is made of concrete. If somebody shouts inside the room, nobody would hear. Accused locked the door of the room, when the latter followed him. However, if somebody shouted in the window, neighbors would hear. She did not shout because she was afraid and accused put his hand on her mouth. Accused took off her clothes with both hands and thereafter laid on top of her. She did not kick accused because the latter was armed with a knife. Neither did she run away because she could not

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jump out of the window. Accused was wearing a denim short pants and a red t-shirt. Further, it was accused who spread her legs. At first[,] she attempted to cross her legs but the accused pulled them and spread them apart. She did not make any plea to the accused that she be spared from the act because she was afraid. Accused kissed her but she did not bite his lips. Moreover, accused fondled and kissed her breasts. She cried. After the incident, she put on her dress. She did not ask help from the neighbors because nobody was around. She still returned to the house of the accused the next day to take care of the children because she is afraid of the accused and pitied the children because nobody would take care of them.

Dr. Alicia Bandonill, the physician who examined ABC, testified that in 1998 she was working at the Doña Gregoria Memorial Hospital where she was a medical specialist in obstetrics and gynecology. She is a graduate of medicine from the University of Santo Tomas in 1962. She worked as a resident physician in San Fernando, La Union and later on as a resident physician of Lagawe, Ifugao. Further, she had special training in Ob-Gyne at the Fabella Medical Center. During her years as a medical professional, she performed more than three hundred pregnancy tests. She examined ABC on 26 September 1995. Witness presented a two-paged document which was entirely in her handwriting. She issued a pro forma medical certificate on the medical examination which she conducted on the person of ABC. The latter came to her twice. During the first visit, ABC did not tell her that she was raped. As per ABC's last menstrual period and the size of the fetus, she found out that ABC is 20-21 weeks pregnant. She also considered the fetal heartbeat in determining whether ABC is pregnant. With the use of a speculum, she also conducted an internal examination on ABC in order to see her cervix, vagina and hymen. By conducting an internal examination, she would be able to determine if there were any old lacerations. She found out that ABC had a "purstring" hymen. Based on the last menstrual period, it could have been that the fertilization of the egg came 11-14 days after the last menstruation.

On cross-examination, witness testified that of the three hundred (300) cases of pregnancy that she examined, none of them was a case of rape. However, she has examined more than fifty (50) cases of rape. In her experience, rape victims normally turn up for examination within 24 hours after the incident. ABC told her that her pregnancy was the result of a rape during the second time when she went to her for examination. Upon examination, there was no laceration on the hymen of ABC. Neither were there wounds on her body. It is her opinion and based on the examination she conducted that ABC was a victim of rape. The normal period of pregnancy is up to 40-41 weeks. It is possible but rare that a woman can conceive for more than 9 months. However, it is a very remote possibility that a woman can give birth on the 11th month. It could be that the intercourse which made ABC pregnant occurred sometime in June 1995 considering that she gave birth on 02 March 1996. On re-direct examination, witness testified that the safe period of a woman is from the last menstrual period up to the fifth day. However, there are females who have shorter or longer menstrual cycles. It is possible that a woman could be fertile on the sixth day from the last menstrual period.

ABC's mother testified that ABC is her third child. Her daughter was born on 19 August 1978. She knew accused for a long time. Accused took her daughter in his employ when the latter was fifteen years old. Her daughter stayed with the Basallos for two years. Her daughter is a stay-out helper. Her daughter goes home to their house at night at around 6:00 p.m. However, she does not go home at noontime. She has a grandchild with her daughter. She knew that her daughter was pregnant when she observed that her abdomen was getting bigger and when the latter did not have her monthly period. During the fifth month, she brought her daughter to the doctor. However, the doctor refused to give them a medical certificate because the latter did not want to testify in court. At that time, her daughter did not tell her the truth. She then brought her daughter to the Doña Gregoria Hospital where she was examined by Dr. Bandonill. Dr. Bandonill found out that her daughter was pregnant. At that time, she inquired who the father is. She was informed that it was accused who fathered the child. Her daughter told her that accused would kill all of them if her daughter revealed the matter to anybody. She cried when she learned that the accused forced her daughter. They then went to the police to file charges. She did not allow her daughter to work with the Basallos anymore. She no longer confronted accused about what happened because they were already able to file charges. Besides, accused disappeared. As a mother, she felt hurt with what happened. The future of her daughter was ruined as the latter was not able to go to school

> anymore. She wants accused to suffer for life. The name of the accused does not appear in the Certificate of Live Birth of ABC's son because the former would not admit that he is the father. She is also afraid of accused because the latter is a killer. Accused is known in the community to have killed a lot of people. She allowed her daughter to work for accused because she pitied the latter and believed that he would not do anything to her daughter.[11] (Citations omitted.)

On the other hand, the Court of Appeals condensed the defense evidence as follows:

> Accused Antonio Basallo testified that he knows ABC as the latter was employed as caretaker of his children. When ABC filed charges against him, the former ceased working for his family. He was informed by the barangay captain that a rape charge was filed against him. The charge against him is a lie because on 08 May 1995, he was appointed as a poll watcher at Barangay Capas. However, he does not have any identification that he was appointed by Dr. Eriguel to be in charge as such. Before proceeding to Barangay Capas, he first dropped by the house of Dr. Eriguel. Thereafter, he, together with his brother-in-law Tirso Fangonil, casted (sic) their vote in Brgy. San Julian. He reached Barangay Capas, which is 8 to 10 kilometers away, at around 9:10 in the morning. He rode a passenger jeepney in going to Barangay Capas with Rodolfo Balbalani Dularte driving the vehicle. After reaching Barangay Capas, he instructed his companions to man the vicinity of the Capas Elementary School, where the voting took place. At around 12:35 p.m. he, Dularte, Bautista and Tirso Fangonil ate lunch beside the school. After lunch, he smoked some cigarettes and slept under the tree. However, at around 1:40 p.m. he was awakened by a call in the walkie talkie where Kagawad Mariñas asked about the situation in Barangay Capas. He stayed in Barangay Capas the whole night and waited for the canvassing of the ballots. Then, they proceeded to the Municipal Hall where the ballot boxes were brought. During the election period, he asked his wife and three children to stay with his sister-in-law, Carol Fangonil. He, on the other hand, would only come home to take a bath and change his clothes. He often stayed in the house of Dr. Eriguel. He knows ABC but he could not understand why he was accused. As a result of the accusation, he has been detained since 1998 which caused him to be away from his family.
>
> On cross-examination, accused testified that ABC was their helper until September 1995. ABC would pick up his children and bring the children home for lunch. He returned to San Juan only on 10 July 1995 for his son's birthday party. ABC stopped working for his family in September 1995 when she filed a case against him. ABC accused him of having raped her because she was confused as to who really was the perpetrator. It was easy for ABC to point to him because she was working for him. He did not have any occasion to talk with ABC or the latter's parents after the latter filed the charge against him. However, before ABC filed the case, the latter still talked to him.
>
> Rodolfo Dularte testified that he knows the accused as the latter is a friend and companion in going to the cockpit. The accusation of ABC against accused is not true because he was with him on 08 May 1995. Dr. Eriguel sent him, the accused, Tirso Fangonil and Bonifacio Bautista to Capas to serve as election watchers. At around 8:30 in the morning, they reached the Capas Elementary School and proceeded to do the rounds in the school. At around 12:00, they prepared for lunch near the school and ate lunch under a tree. They fell asleep under the tree but he was awakened by the sound of the walkie talkie of the accused. He woke up the accused. They continued manning their post and stayed in the school until dawn of 09 May 1995. At around 3:00 in the morning, they returned to Agoo after bringing the ballot boxes to the Municipal Hall. He knows that accused and his family lived in Sta. Barbara, Agoo, La Union.
>
> Tirso Fangonil, brother-in-law of accused, testified that accused stayed in his house in Sta. Barbara. Accused is now detained in the San Fernando Jail for charges of rape. He and accused were together during the time the accused allegedly raped ABC. They were in the elementary school in Capas where they served as poll watchers. On 08 May 1995, he and accused casted (sic) their vote and then proceeded to the house of Dr. Eriguel. He, accused, Dularte and Regacho were assigned by Dr. Eriguel to man the polling precinct in Barangay Capas. Upon reaching Barangay Capas, they looked around the Capas Elementary School. At around lunch on 08 May 1995, he, the accused and their companions ate lunch at the school premises. During twilight,

> they noticed people roaming around the school. They told the accused to inform the headquarters. They left Capas at around 2:00 in the morning of 09 May 1995. He knows that the accused lives in Sta. Barbara in the house of Carol Fangonil. He is testifying in favor of the accused because he knew that the former was with him in Capas on 08 May 1995.
>
> Francisco Fangonil testified that he knows the accused who is the husband of his sister, Patricia. The family of accused lived with him in Sta. Barbara. ABC is the "caretaker" of his sister's children who went to their house to fetch the children to bring them to school and bring them back home. Further, ABC is a relative. ABC does not live with his sister. He noticed that when ABC brought the children home, she would often talk about her crushes and boyfriends. He stayed at home on 08 May 1995 with his mother Isabel, sister Patricia, brother Herminio, Maximo, Eugene, the children of Patricia and a sister from Manila. At that time, accused was in Capas as the latter was assigned to be a watcher of Dr. Eriguel. On the night of 08 May 1995, he watched the counting of ballots at the San Julian Elementary School. There, he saw some of his neighbors, ABC and the latter's friends. He even asked ABC who was leading the vice mayoralty race. The latter answered him that it was Dr. Eriguel. When he met ABC, the latter was her usual self, like she used to when she fetched the children. He did not notice anything unusual with ABC. After 08 May 1995, ABC went to their house on 15 May 1995 as it was the birthday of the son of the accused. She helped them serve food and washed the dishes. None of the members of his family called upon ABC to help them. ABC also approached his mother if the latter could hire the former as a laundry woman. ABC has two friends who are his neighbors. He knows that ABC and her friends go out to the seashore at 6:00 with their boyfriends.
>
> Patricia Basallo, wife of the accused, testified that her family resided in Sta. Barbara after their house was destroyed by an earthquake. After their house was repaired, they returned home to San Juan. However, in 1996 they returned to her mother's house in Sta. Barbara because they do not have any companion therein as her husband was busy campaigning for Dr. Eriguel. ABC is their relative because her mother and the former's grandmother are cousins. ABC took care of her three children and she paid the former P20.00 a day. She was able to know ABC's problems when the latter shared them with her. She did not mind listening to ABC's problems because she knew her since she was young. She would tell her about financial problems and her lovelife. There was one time when she got angry with ABC when the latter went out at night and used her as an excuse to avoid being scolded by her father. On 08 May 1995, she was at home because it was a holiday. Her husband was in the headquarters of Dr. Eriguel to get the assignment for his election day duties. Her husband was assigned at Brgy. Capas and came back on 09 May 1995. On the evening of 08 May 1995, they (ABC and her companions) went around the precincts. On that night, ABC was happy. She was laughing with her companions because Dr. Eriguel was winning. Somebody from the barangay hall informed her that her husband was accused of rape. She was shocked especially when she heard that ABC was already pregnant. She could not believe that her husband raped ABC because the latter did not say anything to her in the evening of 08 May 1995. On 15 May 1995, ABC still came to their house to prepare the "blow-out" of the accused. After 15 May 1995, ABC still came to their house once or twice a week to get the laundry of her mother. ABC still fetched her children from school until 24 September 1995. Her family treated ABC well. ABC's accusation against her husband may be an alibi just like those which she would tell her father when she went out at night. Since her husband was incarcerated, she was the one who raised her children. As a result, she encountered a lot of hardships in life.[12] (Citations omitted.)

After trial on the merits, the trial court convicted appellant of the crime of rape. The dispositive portion of the April 5, 2004 Decision of the trial court reads:

> WHEREFORE, the Court finds the accused Antonio Basallo y Asprec, GUILTY beyond reasonable doubt of the crime of rape and is hereby sentenced to suffer the penalty of Reclusion Perpetua. Further, the accused is ordered to pay [ABC] the amount of Fifty Thousand (P50,000.00) Pesos as civil indemnity and Fifty Thousand (P50,000.00) Pesos as moral damages.[13]

Contesting his conviction, appellant elevated his case to the Court of Appeals which denied his appeal and

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affirmed with modification the trial court judgment in a Decision dated May 11, 2007, the dispositive portion of which states:

> WHEREFORE, premises considered, the appeal is DENIED for lack of merit. The Decision dated 05 April 2004 and Order dated 05 July 2004 of the Regional Trial Court of Agoo, La Union, Branch 32 in Crim. Case No. A-3043 finding accused-appellant Antonio Basallo y Asprec guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer the penalty of reclusion perpetua and denying his motion for reconsideration, respectively, are AFFIRMED with the MODIFICATION that in addition to the awards of civil indemnity and moral damages in the amount of Php50,000.00 each, accused-appellant is further ordered to pay private complainant [ABC] the amount of Php25,000.00 as exemplary damages.[14]

Thus, appellant filed the present appeal where he puts forward the following assignment of errors:

> I
> THE COURT OF APPEALS ERRED IN AFFIRMING THE CONVICTION OF THE ACCUSED-APPELLANT CONSIDERING THAT THE PROSECUTION HAS FAILED TO ESTABLISH, BEYOND REASONABLE DOUBT, THE PRESENCE OF THE TWIN ELEMENTS OF CARNAL KNOWLEDGE AND FORCE OR INTIMIDATION.
>
> II
> THE COURT OF APPEALS ERRED IN TAKING "JUDICIAL NOTICE" OF "PSYCHOLOGICAL CONCEPTS" NOWHERE PROVEN OR SHOWN BY EVIDENCE IN THE TRIAL COURT PROCEEDINGS, IN ORDER TO CRAFT ITS OWN "THEORY" TO EXPLAIN THE COMPLAINANT'S BEHAVIOR AFTER THE ALLEGED RAPE INCIDENT.
>
> III
> THE COURT OF APPEALS ERRED IN IMPOSING CIVIL INDEMNITY EX DELICTO, MORAL AND EXEMPLARY DAMAGES AS THE EVIDENCE ON RECORD DOES NOT ESTABLISH THE ACCUSED-APPELLANT'S GUILT BEYOND REASONABLE DOUBT.[15]

Appellant contends that the prosecution failed to prove his guilt beyond reasonable doubt. He hinges this assertion on the belief that carnal knowledge and force or intimidation, which are the two indispensable elements of the crime of rape under Article 335(1) of the Revised Penal Code that the prosecution alleges to be present in this case, were not established with moral certainty. According to him, the following circumstances found in this case militate against the existence of proof beyond reasonable doubt: (a) the absence of overt and determined resistance by ABC during the alleged rape incident; (b) the absence of attempts to escape by ABC despite various opportunities; and (c) ABC's conduct subsequent to the alleged rape incident which was glaringly contradictory to the natural impulses of a woman whose honor and person had been defiled.[16]

Essentially, the focal issue of this case is whether or not appellant's guilt was indeed established by proof beyond reasonable doubt.

Since the incident of rape at issue happened prior to the enactment of Republic Act No. 8353, the applicable law is the previous definition of rape under Article 335 of the Revised Penal Code, to wit:

> Art. 335. When and how rape is committed. – Rape is committed by having carnal knowledge of a woman under any of the following circumstances:
>
> - By using force or intimidation;
>
> - When the woman is deprived of reason or otherwise unconscious; and
>
> - When the woman is under twelve years of age or is demented.

According to the foregoing provision, the elements of rape are: (1) the offender had carnal knowledge of the victim; and (2) such act was accomplished through force or intimidation; or when the victim is deprived of reason or otherwise unconscious; or when the victim is under 12 years of age.[17] In the case at bar, the prosecution insists that the elements of carnal knowledge and force or intimidation are present.

Time and again, the Court has held that, in rape cases, the accused may be convicted solely on the basis of the testimony of the victim that is credible, convincing, and consistent with human nature and the normal course of things.[18]

On the matter of the credibility of witnesses, recently in People v. Padigos,[19] we reiterated a long held principle that the Court gives great weight to the trial court's assessment. We held that "the trial court's finding of facts is even conclusive and binding if it is not shown to be tainted with arbitrariness or oversight of some fact or circumstance of weight and influence. The wisdom behind this rule is that the trial court had the full opportunity to observe directly the witnesses' deportment and manner of testifying, thus, it is in a better position than the appellate court to properly evaluate testimonial evidence."[20]

From a thorough evaluation of the records, the Court finds no fault on the part of the lower courts in relying on the trustworthiness of the victim's testimony. We agree with the assessment of the Court of Appeals that the following portion of ABC's direct testimony was delivered in a clear and straightforward manner:

> (PROSECUTOR LACHICA)
>
> Q
>
> At around 1:00 o'clock in the afternoon of May 8, 1995, do you still remember where you were?
>
> A
>
> Yes sir, I was in their house.
>
> Q
>
> Who was there in the house of Antonio Basallo when you were there at around 1:00 o'clock in the afternoon of May 8, 1995?
>
> A
>
> Nobody sir, except him (witness pointed to the accused who is sitted (sic) inside the courtroom).
>
> Q
>
> You pointed to a person, who is that person?
>
> A
>
> Antonio Basallo, sir.
>
> Q
>
> Now, do you know the reason why the wife of Antonio Basallo was out in that particular date at around 1:00 o'clock in the afternoon?
>
> A
>
> She went to work in the office.
>
> Q

Why, where is she working?

A

There at LUELCO sir.

Q

Do you know of any reason why the children were not at the house on that particular hour on that particular day of May 8, 1995?

A

I let them sleep, the children.

Q

You said you let them sleep on that particular hour, where did you let them sleep?

A

At the ground floor, first floor.

Q

You said you let them sleep on the first floor, do I get right from you that the house is a two storey house?

A

Yes, sir.

Q

While the children were asleep and only Antonio Basallo was there, do you remember if you were sent anywhere on that particular day?

A

No sir.

Q

While you were there together with Antonio Basallo, do you remember if anything unusual happened?

A

There was unusual incident that happened sir.

Q

What is that?

A

He sent me to take his shirt and that I went upstairs.

Q

Now, you said that you were sent to take the clothes of Antonio Basallo, where is the room of Antonio Basallo located in that house?

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A

There, upstairs sir.

Q

You said you went up to the second floor to get the shirt of Antonio Basallo, what particular place in that second floor where you went to take the clothes of Antonio Basallo?

A

First room.

Q

Where in that room did you take the clothes of Antonio Basallo, is there a door panel?

A

There is sir.

Q

Were you able to enter that room?

A

Yes sir, because it was opened.

Q

When you entered that room, do you remember any unusual incident that happened?

A

Yes sir, he also entered the room.

Q

By the way madam witness, from the time that you became the helper of Antonio Basallo at the age of three until May 8, 1995, how do you call Antonio Basallo?

A

Uncle sir.

Q

Why, are you calling him uncle, do you have blood relationship with him?

A

I call him uncle because I am in their house and I usually call him by that word “uncle”.

Q

While on that day May 8, 1995 when you were already inside the room and he entered the room, what happened next?

A

He entered the room and laid me down.

Q

You said he laid you down, where were you laid down by this Antonio Basallo?

A

At their bed sir.

Q

When he laid you down on their bed, what did he do next?

A

He removed my dress.

Q

By the way, what dress were you wearing on that particular day?

A

I was wearing usually shorts while inside their house.

Q

What is your clothings above?

A

Like this sir, sleeveless.

Q

When you told this Honorable Court that he removed your clothes or clothings, what particular clothes or clothings did he removed?

A

This one sir, like this what I am wearing now. (witness referred to the blouse).

Q

How about your shorts?

A

My short pants with a garter waist.

Q

And so what happened on that gartered shortpants?

A

He also removed sir.

Q

Aside from your blouse and you shortpants which is gartered, what else was removed if any?

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A

My bra and my underwear.

Q

You said underwear, are you referring to your panty?

A

Yes sir.

Q

By the way, what was removed if any?

A

My short pants sir.

Q

What is next?

A

My blouse sir.

Q

And then, what is next?

A

My bra sir.

Q

And what was the last?

A

My panty sir.

Q

While all these things were being removed by the accused, what did you do?

A

I could not move anymore because he was holding a knife.

Q

With what hand was he holding the knife?

A

Right hand sir.

Q

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With what hand did he removed all your clothings and your underwear?

A

His left arm sir.

Q

After he removed your panty, what did he do next if any?

A

He then raped me.

Q

Madam witness, the word rape is a technical word, will you tell this Honorable Court what he actually did to you?

A

He inserted his penis on my private part.

Q

When the accused inserted his penis in your private part, what did he do next?

A

He was still holding his knife and simultaneously kissing me.

Q

Now, how long a time did he insert his penis to your vagina?

A

Thirty (30) minutes sir.

Q

In all these thirty minutes that his penis was inserted to your vagina, do you remember what he did?

A

No more sir, but he told me that if ever you will report to your mother, I will kill you.

Q

When the penis was inserted into your vagina, what did you feel?

A

Somewhat warm.

Q

What else?

A

It is painful.

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Q

Now, within this 30 minutes that he was on top of you and inserted his penis, what did you do?

A

I cannot move because he got a knife.

Q

Did you try to close your legs?

A

No sir.

Q

After that 30 minutes, what happened next?

A

No more sir, he left.

Q

And you were left alone, after you were left, what did you do?

A

I still remain at their house because he told me that I still have to take care of the children.[21] (Emphases supplied.)

We further affirm the appellate court's conclusion that ABC's testimony upon cross-examination by defense counsel further clarified how she was cowed into silence by her fear while being violated by appellant. The relevant portion of her testimony reads:

COURT QUESTION:

Q

When your mother discovered that you were pregnant, exactly, what words did you tell your mother how you were impregnated?

A

Mama, I am already pregnant.

Q

Did you tell your mother that exactly which you used the word that you were raped by Mr. Basallo?

A

Yes, sir.

Q

After that incident of May 8, 1995, did you hate Mr. Basallo [for] what he have (sic) done to you?

A

Yes, sir.

Q

Were you afraid of Mr. Basallo?

A

Yes, sir.

Q

Before that incident, were you afraid of Mr. Basallo?

A

Yes, sir.

Q

Why were you afraid of Mr. Basallo before that incident?

A

Because he is a killer sir.

COURT: Continue counsel.

x x x x

Q

When Mr. Basallo locked that door, did you not run?

A

No, sir.

Q

Did you not shout?

A

No, sir, because I was afraid.

Q

Miss Witness, if ever somebody attempts to box you, what would be your reaction?

ROSECUTOR LACHICA:

That would be very speculative question Your Honor.

COURT:

Reform the question.

ATTY. VILLANUEVA:

Q

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[ABC], have you encountered any fight before?

A

Yes, sir.

Q

And during that fight, did somebody attempt to hurt you?

A

None, sir.

Q

When person attempts to stab you, would you not run?

A

I will run, sir.

Q

If somebody would attempt to kiss you only, would you not run?

A

I will run, sir.

Q

Going back to that incident which happened on May 8, 1995 when Mr. Basallo locked the door, you just remain calm, is that correct?

A

I was afraid, sir.

Q

Did you entertain during that precise moment that Mr. Basallo would attempt to ravish you?

A

I did not think that he will harm me.

Q

Okey, that was your reaction and in fact when he told you to lie down the bed, you freely lie down the bed also?

A

Yes, sir, because I was afraid.

x x x x

Q

And during that time when Mr. Basallo undressed both your maong short pant[s] and your blouse, you did not

shout, is that correct?

A

No, sir, because I was then afraid. He was armed with a knife.

Q

You did not kick him?

A

No, sir.

Q

You did not run away from him?

A

I planned to run away but I cannot jump from the window.

Q

And when he laid you down, what happened next?

A

He raped me, sir.

Q

And also what was he wearing during that time?

A

He was wearing short.

Q

What was the color of his short?

A

I think it is maong.

Q

How about his clothes, what was he wearing?

A

He was wearing red T-shirt.

Q

When he laid you down, you did not attempt to run away also, is that correct?

A

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No, sir, because I was afraid.

Q

And when he undressed you, although he was undressing you by both his hands, you did not bother to run away?

A

No, sir, because I was afraid.

Q

And you did not shout also, is that correct?

A

No, sir, because he put his hands on my mouth.

Q

But you did not bite his hands which was placed on your mouth, is that correct?

A

No, sir.

Q

When he laid you down after which you said that you were raped, did you spread your legs when he penetrated you?

A

He was the one who spread my legs.

Q

You never attempted to cross your legs when he tried to penetrate you?

A

I attempted to cross my legs but he pulled it spreading my legs.

Q

And you did not scratch him?

A

No, sir.

Q

And you did not shout during that time also?

A

No, sir.

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Q

You did not attempt to run away from him also during that time?

A

No, sir.

Q

You never also asked for help from anybody?

A

There was nobody inside, sir.

Q

You did not create any noise just to arouse the attention of the children downstairs, is that correct?

A

No, sir.

Q

And you did not push him back?

A

No, sir.

Q

And also you did not make any plea that he will be spared from that act?

A

I was then afraid, sir.

Q

[ABC], did Mr. Basallo kiss you during that incident?

A

Yes, sir.

Q

Did he put his lips into your lips?

A

Yes, sir.

Q

But you did not bother to bite his lips, is that correct?

A

No, sir.

Q

How long did the kissing last?

A

Just few minutes only.

Q

Did he fondle your breast?

A

Yes, sir.

Q

Did he kiss it?

A

Yes, sir.

Q

But you never also shout during that time?

A

No, sir.

Q

And you did not kick him also during that time?

A

No, sir.

Q

You did not shout also?

A

No, sir.

Q

In fact you have opportunity to shout also during that time?

A

Yes, sir.

Q

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You did not cry of course?

A

I cried, sir.

Q

But you did not ask help from the neighbors?

A

There was nobody around us, sir.[22] (Emphases supplied.)

On the basis of the foregoing consistent narratives from the victim, it is evident that carnal knowledge and force or intimidation as elements of the crime of rape were unmistakably present in this instance. This Court has held that the gravamen of the offense of rape is sexual intercourse with a woman against her will or without her consent.[23] We also previously declared that when a victim is threatened with bodily injury as when the rapist is armed with a deadly weapon, such as a knife or bolo, such constitutes intimidation sufficient to bring the victim to submission to the lustful desires of the rapist.[24] Thus, appellant's succeeding in having non- consensual sexual intercourse with ABC through intimidation using a knife plainly constitutes the crime of rape.

Appellant points out that, if the incident at issue did occur as alleged by ABC, the said sexual encounter should be characterized as consensual because, as evidenced by her own testimony, she did not perform any overt and determined resistance to her rapist nor did she take advantage of purported opportunities to escape.

This Court cannot subscribe to such theory. It is settled in jurisprudence that the failure of the victim to shout for help does not negate rape and even the victim's lack of resistance especially when intimidated by the offender into submission does not signify voluntariness or consent.[25]

Furthermore, we have emphatically ruled that the failure of a rape victim to shout, fight back, or escape from the scoundrel is not tantamount to consent or approval because the law imposes no obligation to exhibit defiance or to present proof of struggle.[26]

Appellant also takes issue with ABC's conduct subsequent to the alleged rape incident at issue. He argues that ABC's four-month delay in reporting the incident to her mother as well as her continuing to work in appellant's household during the interregnum is contradictory to human experience and "the natural impulses of a woman whose honor and person had been defiled."[27]

Again, this Court cannot accept appellant's supposition. Jurisprudence tell us that delay in reporting an incident of rape is not an indication of a fabricated charge and does not necessarily cast doubt on the credibility of the complainant.[28] We also stated in another case that delay and vacillation in making a criminal accusation does not necessarily impair the credibility of witnesses if such delay is satisfactorily explained.[29]

In the instant case, appellant instilled the fear of bodily harm in ABC's mind during the rape incident at issue and this fear continued to firmly grip ABC even after the incident especially since ABC believed, rightly or wrongly, that appellant held a reputation in their community as a "killer." This fear, coupled in all likelihood with shame, reasonably explained ABC's silence regarding her sordid ordeal at the hands of appellant until she had no more choice but to admit the truth to her mother when ABC's pregnancy due to the rape could no longer be concealed.

When asked by defense counsel what impelled her to continue working for appellant's household despite her avowed fear for appellant after what happened between them, ABC answered that she pitied appellant's children because nobody would take care of them in her absence.[30] Appellant underscores this statement made by ABC

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as totally incongruous with the natural reaction and mindset of a rape victim. However, this Court cannot agree with this assertion since fear for a rapist and pity for his children are not mutually exclusive or inconsistent emotional reactions or sentiments. Moreover, ABC testified that appellant insisted that ABC stay in the house to take care of his children immediately after raping her.[31] Having established that fear pushed ABC to keep silent about the rape incident at issue, it can easily be inferred that it is also that same fear which forced her to keep on returning to appellant's house to work. On this note we reiterate what we declared in a previous ruling which states that human reactions vary and are unpredictable when facing a shocking and horrifying experience such as sexual assault. Not all rape victims can be expected to act conformably to the usual expectations of everyone.[32]

For his defense, appellant puts forth denial and alibi. He insists that he acted as poll watcher in Capas Elementary School at the time the rape was committed and that he was never in contact with ABC on that fateful day.

This statement deserves scant consideration. It is an established jurisprudential rule that denial and alibi, being negative self-serving defenses, cannot prevail over the affirmative allegations of the victim and her categorical and positive identification of the accused as her assailant.[33]

We have held that for alibi to prosper, it is necessary that 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.[34]

In one case, we defined physical impossibility as the distance between the place where the accused was when the crime transpired and the place where it was committed, as well as the facility of access between the two places.[35]

In the case at bar, the testimonies of defense witnesses did not rule out the presence of appellant at the place of the commission of the crime. The distance between Barangay Capas, where appellant was supposedly on poll watching duty at the time of the commission of the crime, and Barangay San Juan, where the rape incident at issue occurred, is approximately about eight (8) to ten (10) kilometers and could be traversed by mechanical transport in less than one hour; thus, we can safely conclude that it was not physically impossible for appellant to be at the locus criminis.

Furthermore, this Court gives less probative weight to a defense of alibi when it is corroborated by friends and relatives. We have held that for alibi to prosper, it is necessary that the corroboration is credible, the same having been offered preferably by disinterested witnesses.[36] In the instant case, the witnesses for the defense were the wife, friends, and relatives of appellant. It would have been more favorable for appellant if the corroborating witnesses to his alibi were composed of persons not intimately related to him.

Lastly, the Court cannot turn a blind eye to the fact that appellant went into hiding immediately after the issuance of a warrant for his arrest and he, in fact, evaded arrest for more than two years. We have consistently ruled that the flight of an accused is competent evidence to indicate his guilt and flight, when unexplained, is a circumstance from which an inference of guilt may be drawn.[37] In the instant case, no compelling reason was presented by appellant to explain his deliberate evasion of the service of the arrest warrant on his person.

It is also worth noting that appellant filed an Urgent Motion[38] dated December 3, 1999 for the issuance of an order by the trial court to direct ABC, her son allegedly fathered by the appellant, and appellant himself to undergo DNA (Deoxyribonucleic acid) testing or any other medically accepted tests before the National Bureau of Investigation (NBI) or before any accredited medical institution for the purpose of determining whether the accused is the putative father of ABC's son. The said motion was granted by the trial court during the pre-trial hearing of the case on May 8, 2000.[39] The defense counsel was even reminded of this fact by the prosecutor

during a subsequent pre-trial hearing of the case on January 11, 2001. The defense counsel claimed that their motion was denied but the trial court rejected his claim by stating that no such denial of the said motion can be found in the court records.[40] It perplexes this Court that appellant did not continue with his initial desire to undergo a paternity test despite being informed by the trial court that his motion was, in fact, granted and not denied as claimed by his defense counsel. For a man who vehemently asserts his innocence, it mystifies the mind that appellant would not exhaust all available avenues to prove his innocence especially DNA testing that would conclusively prove that he is not the father of ABC's son who is alleged to be the fruit of his crime.

In view of the foregoing, we therefore affirm the conviction of appellant for rape. The amount of actual damages and moral damages awarded by the trial court and affirmed by the Court of Appeals which is P50,000.00 each is correct. However, in line with jurisprudence, the award of exemplary damages should be increased from P25,000.00 to P30,000.00.[41]

WHEREFORE, premises considered, the Decision dated May 11, 2007 of the Court of Appeals in CA-G.R. CR.-H.C. No. 02010, finding appellant Antonio Basallo guilty in Criminal Case No. A-3043, is hereby AFFIRMED with the MODIFICATIONS that:

(1) The award of exemplary damages Is increased to Thirty Thousand Pesos (P30,000.00); and

(2) Appellant Antonio Basallo is ordered to pay the private offended party interest on all damages awarded at the legal rate of six percent (6%) per annum from the date of finality of this judgment.

No pronouncement as to costs.

SO ORDERED.

Sereno, C.J., (Chairperson), Bersamin, Villarama, Jr., and Reyes, JJ., concur.

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[1] Rollo, pp. 2-58; penned by Associate Justice Celia C. Librea-Leagogo with Associate Justices Conrado M. Vasquez, Jr. and Jose C. Mendoza (now Supreme Court Associate Justice), concurring.

[2] CA rollo, pp. 26-62.

[3] Id. at 67-68.

[1] Rollo, pp. 2-58; penned by Associate Justice Celia C. Librea-Leagogo with Associate Justices Conrado M. Vasquez, Jr. and Jose C. Mendoza (now Supreme Court Associate Justice), concurring.

[2] CA rollo, pp. 26-62.

[3] Id. at 67-68.

[4] The Court of Appeals opted to use the initials ABC in referring to the victim pursuant to prevailing jurisprudence. The real name of the victims-survivors and their personal circumstances or any other information tending to establish or compromise their identities, as well as those of their immediate families or household members, are not to be disclosed. (See People v. Cabalquinto, 533 Phil. 703 [2006].)

[5] Records, p. 32.

[6] Id. at 40.

[7] Id. at 48.

[8] Id. at 51.

[9] Id. at 178.

[10] Id. at 280.

[11] Rollo, pp. 5-9.

[12] Id. at 9-13.

[13] CA rollo, p. 62.

[14] Rollo, pp. 55-56.

[15] Id. at 90.

[16] Id. at 91; see Appellant's Supplemental Brief.

[17] People v. Manjares, G.R. No. 185844, November 23, 2011, 661 SCRA 227, 242.

[18] People v. Subesa, G.R. No. 193660, November 16, 2011, 660 SCRA 390, 401.

[19] G.R. No. 181202, December 5, 2012, citing People v. Bosi, G.R. No. 193665, June 25, 2012.

[20] Id.

[21] TSN, March 22, 2001, pp. 5-12.

[22] TSN, November 29, 2001, pp. 7-28.

[23] People v. Bongat, G.R. No. 184170, February 2, 2011, 641 SCRA 496, 505.

[24] People v. Condes, G.R. No. 187077, February 23, 2011, 644 SCRA 312, 328-329.

[25] People v. Ofemiano, G.R. No. 187155, February 1, 2010, 611 SCRA 250, 257.

[26] People v. De Guzman, G.R. No. 188352, September 1, 2010, 629 SCRA 784, 800.

[27] Rollo, p. 91.

[28] People v. Condes, supra note 24 at 330.

[29] People v. Saludo, G.R. No. 178406, April 6, 2011, 647 SCRA 374, 395.

[30] TSN, November 29, 2001, p. 35.

[31] TSN, March 22, 2001, p. 12.

[32] People v. Dumadag, G.R. No. 176740, June 22, 2011, 652 SCRA 535, 546.

[33] People v. Relanes, G.R. No. 175831, April 12, 2011, 648 SCRA 325, 339.

[34] People v. Salcedo, G.R. No. 178272, March 14, 2011, 645 SCRA 248, 262.

[35] People v. Banan, G.R. No. 193664, March 23, 2011, 646 SCRA 420, 437.

[36] People v. Jacinto, G.R. No. 182239, March 16, 2011, 645 SCRA 590, 613.

[[37][]] People v. Combate, G.R. No. 189301, December 15, 2010, 638 SCRA 797, 811.

[38] Records, pp. 204-209.

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[39] Id. at 233.

[40] TSN, January 11, 2001, pp. 5-6.

[41] People v. Ortega, G.R. No. 186235, January 25,2012,664 SCRA 292.

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