PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JUANITO CABIGQUEZ Y ALASTRA, APPELLANT.

G.R. No. 185708. September 29, 2010

Ponente: VILLARAMA, JR., J.

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VILLARAMA, JR., J.:

On appeal is the Decision[1] dated July 9, 2008 of the Court of Appeals (CA), Mindanao Station, which affirmed the Decision[2] dated October 29, 2003 of the Regional Trial Court (RTC) of Cagayan de Oro City, Branch 18 finding appellant Juanito Cabigquez y Alastra (Cabigquez) and Romulo Grondiano y Soco (Grondiano) guilty beyond reasonable doubt of robbery (Criminal Case No. 2001-816), and also convicting appellant Cabigquez of rape (Criminal Case No. 2001-815), both crimes committed against private complainant AAA,[3] a 43-year old widow and mother of ten (10) children. Grondiano decided to withdraw his appeal before the appellate court.[4] Hence, this review shall consider only Cabigquez's appeal.

Below are the facts, as culled from the records of both the trial and appellate courts.

In the evening of March 26, 2001, AAA and her three minor children - BBB, CCC, and DDD[5] - slept inside AAA's small sari-sari store which was annexed through the exterior balcony of her house at Purok 1-A, Tablon in Cagayan de Oro City. AAA's head was close to the door, while a cabinet stood at her right side. She left the 50-watt incandescent bulb on as they slept through the night.[6]

At around 3:30 a.m., March 27, 2001, AAA was awakened when clothes fell on her face. When she looked up, she saw a man whose face was covered with a handkerchief and wearing a camouflage jacket and cycling shorts. He immediately poked a gun at her. AAA shouted "Ayyy!," rousing her three children from sleep.[7] Despite the cover on the burglar's face, BBB was able to identify him as Romulo Grondiano, one of their neighbors, based on the hanging mole located below his left eye.[8] Armed with a stainless handgun,[9] Grondiano ordered AAA and her children to lie face down.[10] Though stricken with fear, BBB noticed that Grondiano had a companion who stayed at the balcony keeping watch.[11] Grondiano then ransacked the store, taking with him P3,000.00 cash from the cabinet and P7,000.00 worth of grocery items. Before he left, Grondiano pointed the gun at AAA's back and warned them not to make any noise.[12]

As soon as Grondiano left the store, the other man entered. BBB identified the man as appellant Juanito Cabigquez as the latter did not conceal his face. Armed with Grondiano's gun, Cabigquez stripped AAA of her short pants and underwear, placed a pillow on her lower abdomen and mounted her from behind. He lifted and twisted one of her legs and pinned the other. AAA shouted "Ayaw!" (No!), but offered no further resistance. Cabigquez inserted his penis into AAA's vagina, and proceeded to ravish her in full view of her children, and even as the latter cried for mercy. Before he left, Cabigquez threatened to kill AAA and her children if they would tell anyone about the incident.[13]

Afraid for their lives, AAA and her children remained prostrate on the floor even after the two malefactors had left. Shortly thereafter, they decided to proceed to the house of AAA's older son, EEE, and asked for help. AAA

failed to disclose to her son the identities of the two men. Meanwhile, BBB, fearing retaliation from the two men, decided not to divulge the identities of Cabigquez and Grondiano to her mother and brother.[14]

That same morning, March 27, 2001, AAA reported the incident to the Puerto Police Station. No criminal complaint, however, was filed since AAA was still uncertain of the identities of the two men. AAA was physically examined by Dr. Cristilda O. Villapañe and Dr. Riman Ricardo, resident physicians at the Northern Mindanao Medical Center.[15] Dr. Villapañe's examination revealed that the smear recovered from AAA's vagina was positive for spermatozoa,[16] while Dr. Ricardo found a two-centimeter contusion on AAA's left hand dorsum.[17]

On May 24, 2001, Cabigquez was arrested for possession of illegal drugs.[18] Grondiano was likewise arrested on May 26, 2001 also for possession of illegal drugs.[19] With the two men incarcerated, and now certain of their safety, BBB finally mustered the courage to reveal the identities of Cabigquez and Grondiano to her mother.[20]

On July 18, 2001, two Informations were filed against Cabigquez and Grondiano, viz:

> Criminal Case No. 2001-816 (For: Robbery)
>
> The undersigned Assistant City Prosecutor accuses JUANITO CABIGQUEZ y ALASTRA, alias "DODOY", and ROMULO GRONDIANO y SOCO, alias "Molok", of the crime they committed, as follows:
>
> That on March 27, 2001, at more or less 3:30 o'clock in the early morning in a store located at Purok 1-A, Barangay Tablon, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and helping with one another, with intent to gain and violence or intimidation of persons, did then and there wil[l]fully, unlawfully and feloniously take, rob and carry away cash - Php3,000.00 and assorted [grocery] stocks valued Php7,000.00 all in all amounting to Php10,000.00, owned by and belonging to one [AAA], in the following manner: that accused Romulo Grondiano intimidated the offended party with a gun pointed to her and her three children and ordered them to lay on the floor with face down and then took, robbed and carried away the aforementioned valuable personal things while Juanito Cabigquez y Alastra acting/serving as lookout at the door of the store, to the damage and prejudice of the offended party, in the total sum of Php10,000.00, Philippine Currency.

Contrary to and in violation to Article 294, par. 5, of the Revised Penal Code, as amended.[21]

Criminal Case No. 2001-815 (For: Rape)

The undersigned Assistant City Prosecutor accuses, JUANITO CABIGQUEZ Y ALASTRA ALIAS "DODOY", of the crime of RAPE that he committed as follows:

> That on March 27, 2001, at more or less 3:30 o'clock or thereabout, in the early morning, at Purok 1A, Tablon, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a gun, and with the use thereof, by means of force, and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledged (sic) of the offended party [AAA], against her will [and] in the presence and full view of her children.

Contrary to and in violation to (sic) Article 266-A (Formerly under Art. 335) of the Revised Penal Code, as amended by R.A. 8353.[22]

Both accused pleaded not guilty to the charges.[23] During the trial, Cabigquez admitted that on the night of March 26, 2001, he slept in the house of Leonila Omilao, a neighbor of Cabigquez and AAA.[24] He admitted that he did not have any quarrel with AAA and found no possible reason why AAA would file the complaints and testify against him.[25] Omilao herself testified that Cabigquez was in her house on the night of the incident and even saw the latter sleeping in the kitchen. During Omilao's cross-examination, however, the trial court noted

Silvina Cabigquez, appellant's daughter, coaching Omilao in her answers.[26]

On October 21, 2002, the trial court, on motion by the defense, ordered the National Bureau of Investigation (NBI) in Manila to conduct a deoxyribonucleic acid (DNA) analysis on the sperm taken from AAA's vagina. On May 21, 2003, NBI Forensic Chemist III Aida Viloria Magsipoc testified that the sample collected from AAA did not match Cabigquez's DNA profile since the specimen submitted to them were mere vaginal discharges from AAA.[27]

On October 29, 2003, the trial court rendered judgment convicting Cabigquez and Grondiano of the crimes charged. The dispositive portion of said decision reads:

> IN THE LIGHT OF ALL THE FOREGOING, the Court finds accused JUANITO CABIGQUEZ GUILTY beyond reasonable doubt of the crime of Rape under Article 266-A of the Revised Penal Code, punishable under Article 266-B of the same Code, and there being one aggravating circumstance [the used (sic) of a deadly weapon (firearm)] without a[ny] mitigating circumstance, accused JUANITO CABIGQUEZ is hereby sentenced and is SO ORDERED to suffer the supreme penalty of Death by lethal injection, including its accessory penalties. He is further directed and is SO ORDERED to pay the victim the sum of FIFTY THOUSAND PESOS (P50,000.00) as indemnity, plus another TWENTY FIVE THOUSAND PESOS (P25,000.00), as moral damages. Pursuant to Section 22 of R.A. 7659 and Section 10 of Rule 122 of the Rules of Court, let the entire record of this case be forwarded to the Supreme Court for automatic review.
>
> FURTHERMORE, the Court likewise finds accused JUANITO CABIGQUEZ and ROMULO GRONDIANO GUILTY beyond reasonable doubt of the Crime of Robbery punishable under paragraph 5 of Article 294 of the Revised Penal Code, and [there] being no aggravating nor mitigating circumstance, and after applying the Indeterminate Sentence Law, accused JUANITO CABIGQUEZ and ROMULO GRONDIANO are hereby sentenced and are SO ORDERED to serve the [penalty of] imprisonment of TWO (2) YEARS, TEN (10) MONTHS AND TWENTY (20) DAYS OF PRISION CORRECCIONAL, as the MINIMUM, to SIX (6) YEARS, ONE (1) MONTH AND ELEVEN (11) DAYS OF PRISION MAYOR, as the MAXIMUM, including its accessory penalties, plus further SO ORDERED to pay the stolen items and cash in the sum of TEN THOUSAND PESOS (P10,000.00).
>
> SO ORDERED. Cagayan de Oro City, October 29, 2003.[28]

The records of the case were elevated to this Court on automatic review. Pursuant to our ruling in People v. Mateo,[29] the case was referred to the CA.

In his appeal, appellant maintained his defense of alibi and denial. He questioned the accuracy and credibility of BBB's testimony given her failure to immediately divulge the identity of the perpetrators after the incident. Appellant also noted that AAA's lone interjection, while she was allegedly being raped by him, can hardly be considered as a manifest resistance.[30] The defense also argued that the prosecution failed to establish conspiracy since BBB did not actually see that Cabigquez was on the balcony while the robbery was being committed.[31]

By Decision dated July 9, 2008, the CA upheld the RTC in convicting appellant of both crimes of robbery and rape. The CA found BBB's testimony candid and not prompted by ill-motive. As to BBB's failure to promptly implicate Grondiano and Cabigquez for the crimes, the appellate court ruled that this cannot be taken against her in the light of serious threats made by said accused on their family. The alleged contradictions in the testimonies of AAA and BBB were likewise not fatal to the case of the prosecution as they bear no materiality to the commission of the crime. The CA also noted that the accused were able to consummate their criminal acts without any physical resistance from the victims who could not even cry loudly because they were ordered at gunpoint not to make any noise. It rejected the defense of alibi put up by Cabigquez in view of his admission that he stayed at a

house within the vicinity of AAA's store.[32]

The CA thus decreed:

> WHEREFORE, premises considered, the appealed October 29, 2003 Decision of the Regional Trial Court (RTC) of Misamis Oriental, 10[th] Judicial Region, Branch 18, Cagayan de Oro City, convicting Juanito A. Cabigquez, the lone appellant before Us, for the crimes of Robbery and Rape, is hereby AFFIRMED with MODIFICATION in that Juanito A. Cabigquez is hereby sentenced to suffer the penalty of reclusion perpetua for the crime of Rape.
>
> SO ORDERED.[33]

Before this Court, appellant Cabigquez reiterates the following arguments:

> I.
>
> THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE THEIR GUILT BEYOND REASONABLE DOUBT.
>
> II.
>
> THE COURT A QUO GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE INCREDIBLE AND INCONSISTENT TESTIMONY OF THE PROSECUTION WITNESSES.
>
> III.
>
> ASSUMING ARGUENDO THAT THE ACCUSED-APPELLANTS COMMITTED ROBBERY, THE COURT A QUO GRAVELY ERRED IN ORDERING THEM TO PAY THE COMPLAINANT P10,000.00 AS ACTUAL DAMAGES.
>
> IV.
>
> THE COURT A QUO GRAVELY ERRED IN FINDING THAT THERE WAS CONSPIRACY IN THE CASE AT BAR.[34]

We sustain the ruling of the CA.

The factual findings of the RTC, as affirmed by the appellate court, indubitably prove that appellant raped AAA even if the specimen obtained from the vaginal swabs and submitted to the NBI failed to match appellant's DNA profile. Rape is committed by a man who shall have carnal knowledge of a woman through force, threat or intimidation.[35] The commission of rape was clearly shown by testimonial and documentary evidence; the defense submits that it is the identity of the perpetrator which is not duly established.

For purposes of criminal investigation, DNA identification is indeed a fertile source of both inculpatory and exculpatory evidence.[36] In this case, however, the result of the DNA test is rendered inconclusive to exculpate or inculpate the appellant since the sample tested by the NBI merely contained vaginal discharges. In the laboratory test earlier conducted by Dr. Villapañe on the vaginal swab obtained from AAA's genitalia, the presence of spermatozoa was confirmed. This notwithstanding, the totality of evidence satisfactorily established that it was indeed appellant who raped AAA.

AAA's daughter, BBB, who witnessed the entire incident which happened inside their store on the night in question, positively identified appellant as the one who raped her mother against the latter's will by threatening her and her children with a handgun he was then carrying. BBB's unflinching and consistent testimony, when taken together with Dr. Villapañe's findings and AAA's own declarations in court, provides sufficient basis for the

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conviction of appellant for rape.

Quoted herein are the relevant portions of BBB's testimony on direct examination as to her identification of appellant as her mother's rapist, viz:

> Q
>
> Now, [BBB], you said that you are 13 years old and you said a while ago you sworn that you will tell the truth, can you remember that?
>
> A
>
> Yes, sir.
>
> Q
>
> Okay now, are you going to tell the truth and nothing but the truth before this Honorable Court?
>
> A
>
> Yes, sir I will tell the truth.
>
> Q
>
> Do you know what will happen to you if you tell a lie in court?
>
> A
>
> Yes, sir I will be imprisoned.
>
> Q
>
> Do you want to be imprisoned?
>
> A
>
> No, sir.
>
> Q
>
> So, you will tell the truth nothing but the truth?
>
> A
>
> Yes, sir.
>
> Q
>
> Do you know accused Romulo Grondiano?
>
> A
>
> Yes, sir because he is our neighbor.
>
> x x x x
>
> Q
>
> Do you also know accused Juanito Cabigquez who is accused for rape and co-accused in robbery?
>
> A

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Yes, sir he is also our neighbor.

Q

For how long have you known Juanito Cabigquez before March 27, 2001?

A

Since I came that age of reason I already knew Juanito Cabigquez.

Q

Is Juanito Cabigquez also a resident of Purok 1-A at Tablon?

A

Yes, sir.

Q

Do you also know the nickname of Juanito Cabigquez?

A

Its Dodoy.

Q

If Juanito Cabigquez is inside this courtroom, can you point to him?

A

Note: Witness pointed to a person who when asked of his name identified himself as Juanito Cabigquez.

Q

Okay, on March 27, 2001 at about 3:30 early in the morning, do you remember where were you?

A

I was inside our store sleeping together with our mother.

Q

Aside from you and your mother, who were other persons who were with you?

A

Together with my two (2) siblings.

x x x x

Q

Now, while you were sleeping together with your mother and your two (2) younger siblings at that time, what happened?

x x x x

A

The three (3) of us were awakened because of the shout of our mother.

Q

Who is that us?

A

I together with my two (2) siblings.

Q

Your mother also woke up?

A

Yes, sir.

Q

Now, after you were awakened by the shout of your mother, what did you observe, if there was any?

A

I saw my mother knelt down and I came nearer and then I embraced her because I thought she was dreaming but I saw Romulo Grondiano with a gun.

x x x x

Q

Alright, what happened while you saw accused Romulo Grondiano already at the door of your store of your mother holding a gun and your mother was kneeling?

A

He ordered us to lay face down.

Q

After Romulo Grondiano ordered you to lay face down, what did you, your mother and your two (2) siblings do?

A

I let my mother lay face down.

Q

How about you?

A

I also lay face down.

Q

How about your two (2) younger siblings?

A

They also lay face down.

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Q

Alright, while the four (4) of you were lying face down, what did you observe?

A

I noticed that he had a companion who is at our balcony.

Q

How were you able to notice that he has a companion?

A

Because we had a chair made of bamboo and then if somebody or a person hit it, it will sound.

x x x x

Q

Now, after Romulo Grondiano took all those things that you have enumerated a while ago, where did Romulo Grondiano go?

A

He pointed a gun at my mother's back and then ordered us not to move.

x x x x

Q

Alright, after Romulo Grondiano told you, your mother and your two (2) younger siblings not to move, where did Romulo Grondiano go?

A

He went to the balcony and then Juanito Cabigquez replaced him (Romulo) in going up, he (Juanito) went inside our store.

x x x x

Q

Alright, you testified a while ago that after Romulo Grondiano went inside your store he passed by the balcony of your house, then co-accused Juanito Cabigquez came in, where did Juanito Cabigquez come in?

A

He entered in our store.

Q

The same store where you, your mother and two (2) younger siblings were staying at that time?

A

Yes, sir.

Q

How were you able to recognize that it was Juanito Cabigquez who came in?

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A

Because I saw him.

Q

When you saw Juanito Cabigquez, were you still lying face down or were you already sitting?

A

I was already lying face down.

Q

How were you able to see him?

A

Because I looked back at the door because I thought that Romulo Grondiano already left but then I saw Juanito Cabigquez came in and replaced Romulo Grondiano.

Q

This Juanito Cabigquez who came in after Romulo Grondiano went out, is he the same Juanito Cabigquez the co-accused for robbery and accused in rape case?

A

Yes, sir.

Q

If he is inside this courtroom, can you point him again?

A

Note: Witness pointed again to a person who when asked of his name identified himself as Juanito Cabigquez.

Q

After Juanito Cabigquez came in inside the store, what did you observe?

A

He removed the shortpants of my mother and then he got the pillow of my mother and placed it under her abdomen.

x x x x

Q

Now, what was the position of your mother when Juanito Cabigquez took off the shortpants of your mother?

A

She was still lying face down.

Q

What was the position of your mother when Juanito Cabigquez put the pillow under her abdomen?

A

She was still lying face down.

Q

By the way, when Juanito Cabigquez entered the store, was the light still on?

A

Yes, sir.

Q

Now, you said that your mother shouted when Juanito Cabigquez came in. My question is, when did your mother actually shout?

A

When Juanito Cabigquez was removing the shortpants of my mother.

COURT: (to the witness)

Q

Can you tell the Court what kind of shout your mother did?

A

My mother shouted "ay!"

PROS. M. NOLASCO: (cont'g.)

Q

Now, was Juanito able to take off the shortpants of your mother?

A

Yes, sir because it was a gartered shortpants.

Q

Now, how about the panty of your mother?

A

It was removed together with the shortpants.

Q

Now, after the shortpants and panty of your mother were taken off and the pillow was placed under her abdomen, what next did you observe?

A

Juanito Cabigquez mounted on my mother.

Q

And then, what did Juanito do when he mounted to your mother?

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A

He did a push and pull motion.

Q

How about your two (2) younger siblings, were they still awake at that time?

A

Yes, sir, they were crying.

Q

How about you?

A

I also cried.

Q

When you noticed that he (Juanito Cabigquez) entered your store, was he carrying a gun?

x x x x

A

He was bringing a gun.

x x x x

Q

Can you demonstrate the length of the gun that you saw?

A

The gun which Juanito Cabigquez was bringing was the same gun Romulo brought.

Q

How about your mother while Juanito Cabigquez was already mounted on her and make a push and pull motion, what did your mother do?

A

My mother was crying.

x x x x

Q

You said that you, your mother and your two (2) younger siblings were crying while Juanito Cabigquez mounted on your mother and made a push and pull motion, what happened after that?

A

He pointed his gun at the back of my mother and then told us not to tell to anybody because they will return and kill us.

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Q

Now, after Juanito Cabigquez warned you not to tell anybody otherwise they will return and kill you, what did Juanito Cabigquez do?

A

He went up to the balcony.

x x x x

Q

How about Juanito Cabigquez, when he entered your store of your mother and raped your mother, what was he wearing?

A

He was wearing a white t-shirt and maong pants.

COURT: (to the witness)

Q

Was it long or short?

A

Long pants.

x x x x [37] (Emphasis supplied.)

Appellant asserts that it is significant that AAA herself did not recognize him and his co-accused despite her familiarity with them as they were her customers in her store. It was pointed out that the identification of the perpetrators was supplied solely by her daughter BBB, who should not have been given any credence in view of her inconsistent declarations such as when she testified that when she woke up, her mother was kneeling contrary to the latter's testimony that when clothes fell on her face, she was awakened and that her mother shouted but a gun was pointed to her. Moreover, BBB saw the accused several times after the alleged crimes transpired and yet she did not manifest any alarm even when they reported the matter to the police; it was only after the accused were detained that their identities were revealed. In the light of serious discrepancies in the testimonies of prosecution witnesses, appellant maintains that BBB's identification of the perpetrators of robbery and rape was unreliable and doubtful.[38]

We are not persuaded.

While it is true that the most natural reaction for victims of crimes is to strive to remember the faces of their assailants and the manner in which the craven acts are committed,[39] in this case, AAA cannot be faulted for failing to recognize appellant as her rapist though the latter was their neighbor. It must be recalled, as narrated by AAA and BBB, they were all still lying face down when appellant suddenly entered the store right after his co-accused Grondiano exited through the balcony taking the loot with him. BBB recounted that her mother was still lying face down when appellant removed her mother's short pants and panty, placed a pillow below her abdomen and then proceeded to rape her. It was BBB who had the opportunity to look at this second person who entered their house because she looked back at the door thinking that Grondiano (the one who first entered the store) already left, but then appellant immediately came in after Grondiano. Although AAA was able to shout at that time, she could not move because she was afraid that her three children, who were already crying, will be

harmed.[40]

As to the alleged inconsistency in the position of her mother when accused Grondiano entered their store, the same is inexistent considering that AAA was relating the exact moment when she woke up and realized the presence of an intruder because clothes fell on her face, while BBB who was awakened by the shout of her mother, simply described her mother then already in a kneeling position as she woke up first. BBB had thought her mother was just dreaming but then she saw Grondiano already inside the house with a gun.

Neither would BBB's delay in revealing the identities of the perpetrators to the police taint her identification of appellant as the one who raped her mother and conspirator of Grondiano in robbing their store. Failure to immediately reveal the identity of a perpetrator of a felony does not affect, much less impair, the credibility of witnesses, more so if such delay is adequately explained.[41] BBB sufficiently explained her action in not immediately divulging to her mother and brother nor reporting to the police whom she saw inside their house that early morning of March 27, 2001. She was afraid that the assailants would make good their threat that they will return and kill their family if they reported the incident to anybody. But when a couple of months later appellant and his co-accused Grondiano were arrested on drug charges, BBB finally felt it was safe to come out in the open and inform the police of the identities of the two men who robbed their house, one of whom subsequently raped her mother (appellant).

Appellant cannot seek acquittal on the basis of the negative result of the DNA test on the specimen conducted by the NBI.

A positive DNA match is unnecessary when the totality of the evidence presented before the court points to no other possible conclusion, i.e., appellant raped the private offended party. A positive DNA match may strengthen the evidence for the prosecution, but an inconclusive DNA test result may not be sufficient to exculpate the accused, particularly when there is sufficient evidence proving his guilt. Notably, neither a positive DNA match of the semen nor the presence of spermatozoa is essential in finding that rape was committed. The important consideration in rape cases is not the emission of semen but the penetration of the female genitalia by the male organ.[42]

Moreover, it is evident that the rape of AAA was committed in the presence and in full view of her three minor children. Thirteen (13)-year old BBB, as well as her two minor siblings who were present at the time when the rape was committed, was already old enough to sense the bestiality being committed against their own mother.[43] Such circumstance, as recited in the last portion of the Information for Criminal Case No. 2001-815 is, by itself, sufficient to qualify the rape under Article 266-B of the Revised Penal Code,[44] as amended. Consequently, the CA was correct in affirming the conviction of appellant for qualified rape.

With respect to the charge of robbery, we find no merit in appellant's argument that the prosecution failed to establish that he conspired with co-accused Grondiano in stealing goods from private complainant's store. He asserts that there was no proof that he was outside the store when the crime of robbery was being committed; private complainant and her daughter merely surmised that another person was outside the store because of a creaking sound created by a bamboo chair, but they actually did not see that person or if there was indeed that person.[45]

On this issue, we hold that the CA correctly ruled that conspiracy was sufficiently proven by circumstantial evidence on record, thus:

> We also find that the trial court correctly appreciated conspiracy against Cabigquez with respect [to] the crime of robbery. There is conspiracy when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Direct proof of previous agreement to commit a crime is not necessary.

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> Conspiracy may be shown through circumstantial evidence, deduced from the mode and manner in which the offense was perpetrated, or inferred upon the acts of the accused themselves when such lead to a joint purpose and design, concerted action, and community of interest.
>
> Neither [AAA] nor [BBB] saw Cabigquez acting as a lookout outside the store. However, the creaking sound coming from the balcony and the fact that [BBB] saw Cabigquez go inside the store, as soon as Grondiano left, reasonably verify a discernment that someone stood by outside and close to the store's entrance during the looting, and that such person was Cabigquez. The fact that only Grondiano concealed his face reasonably indicates a prior agreement between the two (2) malefactors for Cabigquez to act as a lookout in the commission of robbery. After raping [AAA], Cabigquez also warned of killing [AAA and her children] if they told anyone about the incident, which threat contributed to the common sentiment of concealing both crimes of robbery and rape. These circumstances sufficiently establish a joint purpose and design, and a community of interest, between Cabigquez and Grondiano, in committing the crime of robbery.[46]

On the matter of actual damages awarded by the trial court, appellant questions the amount thereof, insisting there was no basis for the actual cost of the items taken from the store.

We find no reversible error committed by the CA in sustaining such award. In People v. Martinez,[47] this Court ruled that the trial court has the power to take judicial notice of the value of stolen goods because these are matters of public knowledge or capable of unquestionable demonstration. Judicial cognizance, which is based on considerations of expediency and convenience, displace evidence since, being equivalent to proof, it fulfills the object which the evidence is intended to achieve. Surely, matters like the value of the appliances, canned goods and perfume are undeniably within public knowledge and easily capable of unquestionable demonstration.[48] Here, what is involved are common goods for everyday use and ordinary stocks found in small sari-sari stores like private complainant's store, i.e., milk, soap, coffee, sugar, liquor and cigarettes. The RTC was thus correct in granting the reasonable amount of P10,000.00 as computed by the private complainant representing the value of stolen merchandise from her store.

Further, the Court deems it proper to adjust the sums awarded as civil indemnity, moral and exemplary damages. Applying prevailing jurisprudence, the private complainant is entitled to P75,000.00 as civil indemnity, P75,000.00 as moral damages and P25,000.00 as exemplary damages.[49]

Lastly, the death penalty imposed on appellant was correctly modified to reclusion perpetua, in view of the passage of Republic Act No. 9346, entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines."[50] Notwithstanding the reduction of the penalty imposed on appellant, he is not eligible for parole following Section 3 of the said law, which provides:

> SEC. 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.

WHEREFORE, the appeal is DISMISSED and the Decision dated July 9, 2008 of the Court of Appeals, Mindanao Station in CA-G.R. CR-H.C. No. 00409 is AFFIRMED with MODIFICATIONS in that the penalty of reclusion perpetua imposed on appellant in Criminal Case No. 2001-815 for qualified rape is herein clarified as without eligibility for parole, and the appellant is ordered to pay the private complainant P75,000.00 as civil indemnity, P75,000.00 as moral damages and P25,000.00 as exemplary damages.

With costs against the appellant.

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SO ORDERED.

Carpio Morales, (Chairperson), Brion, Bersamin, Villarama, Jr., and Sereno, JJ.

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[1] Rollo, pp. 5-19. Docketed as CA-G.R. CR-HC No. 00409, penned by Associate Justice Jane Aurora C. Lantion, with Associate Justices Edgardo A. Camello and Michael P. Elbinias concurring.

[2] CA rollo, pp. 34-51. Penned by Judge Edgardo T. Lloren.

[3] Pursuant to the Court's ruling in People v. Cabalquinto, G.R. No. 167693, September 19, 2006, 502 SCRA 419, and Section 44 of Republic Act No. 9262 otherwise known as the "Anti-Violence Against Women and Their Children Act of 2004" the real names and personal circumstances of the victims as well as any other information tending to establish or compromise their identities or those of their immediate family or household members are withheld. Fictitious initials and appellations are used instead to represent them.

[4] CA rollo, pp. 201-204.

[5] Supra note 3.

[6] TSN, [AAA], January 8, 2002, pp. 6-8; TSN, January 9, 2002, pp. 3-4, 28-29.

[7] Id. at 7-8; TSN, October 29, 2001, p. 21.

[8] TSN, October 29, 2001, p. 10.

[9] Id.; TSN, [AAA], January 8, 2002, p. 8.

[10] Id. at 11; id.

[11] Id.; id. at 10.

[12] Id. at 12-13; id. at 9-11.

[13] TSN, [AAA], January 8, 2002, pp. 11-13; TSN, January 9, 2002, pp. 3-4, 20; TSN, October 29, 2001, pp. 15-18.

[14] TSN, January 9, 2002, pp. 4-6; TSN, October 29, 2001, p. 20; TSN, November 28, 2001, p. 32.

[15] Id. at 7-9; records, Vol. II, p. 12.

[16] TSN, November 27, 2001, p. 13; id.

[17] Id. at 25-26; id.

[18] CA rollo, pp. 102-103; see records, Vol. IV, p. 46.

[19] Id. at 103; records, Vol. I, p. 118.

[20] TSN, November 28, 2001, p. 32.

[21] CA rollo, p. 12.

[22] Id. at 13.

[23] Id. at 34-35; records, Vol. II, p. 27; records, Vol. I, p. 41.

[24] Id. at 44.

[25] Id. at 44-45.

[26] Id. at 44; TSN, July 8, 2002, p. 35.

[27] Rollo, p. 9.

[28] CA rollo, pp. 50-51.

[29] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640. The case modified the pertinent provisions of the Revised Rules on Criminal Procedure, more particularly Section 3 and Section 10 of Rule 122, Section 13 of Rule 124, Section 3 of Rule 125 insofar as they provide for direct appeals from the Regional Trial Courts to the Supreme Court in cases where the penalty imposed is death, reclusion perpetua or life imprisonment and allowed intermediate review by the Court of Appeals before such cases are elevated to the Supreme Court.

[30] CA rollo, pp. 90-93.

[31] Id. at 95.

[32] Rollo, pp. 15-16.

[33] Id. at 18.

[34] See rollo, pp. 38-39; CA rollo, pp. 82-83.

[35] Paragraph 1 of Article 266-A of the Revised Penal Code specifically provides:

ART. 266-A. Rape; When and How Committed. - Rape is committed:

1. By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat or intimidation;

b) When the offended party is deprived of reason or otherwise unconscious;

c) By means of fraudulent machination or grave abuse of authority; and

d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

[36] People v. Umanito, G.R. No. 172607, October 26, 2007, 537 SCRA 552, 560.

[37] TSN, October 29, 2001, pp. 5-21.

[38] CA rollo, pp. 90-91.

[39] People v. Garcia, G.R. Nos. 133489 & 143970, January 15, 2002, 373 SCRA 134, 151.

[40] TSN, [AAA], January 8, 2002, p. 11.

[41] People v. Casanghay, G.R. No. 143005, November 14, 2002, 391 SCRA 638, 647.

[42] People v. Hipona, G.R. No. 185709, February 18, 2010, p. 7.

[43] TSN, [BBB], November 19, 2001, pp. 14-18.

[44] The fifth paragraph of Article 266-B of the Revised Penal Code reads:

ART. 266-B. Penalties. - x x x

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x x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

x x x x

(3) When the rape is committed in full view of the spouse, parent, any of the children or other relatives within the third civil degree of consanguinity.

[45] CA rollo, p. 95.

[46] Id. at 245.

[47] G.R. No. 116918, June 19, 1997, 274 SCRA 259.

[48] Id. at 273.

[49] People v. Abulon, G.R. No. 174473, August 17, 2007, 530 SCRA 675, 705; People v. Bon, G.R. No. 166401, October 30, 2006, 506 SCRA 168, 217, citing People v. Quiachon, G.R. No. 170236, August 31, 2006, 500 SCRA 704, 719.

[50] Signed into law on June 24, 2006.

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