

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. LEONARDO CRUZ Y ROCO, APPELLANT.

G.R. No. 205200. September 21, 2016

Ponente: PEREZ, J.

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PEREZ, J.:

At bench is an appeal[1] from the Decision[2] dated 24 January 2012 of the Court of Appeals in CA-G.R. CR-H.C. No. 04473, which affirmed the conviction of herein (appellant) Leonardo Cruz y Roco for rape under Article 266-A (1)(a) of the Revised Penal Code (RPC).

The antecedents:

On 11 January 2006, a criminal information[3] for rape under Article 266-A (1)(a) of the RPC was filed against the appellant before the Regional Trial Court (RTC) of Pasig City. The information accused the appellant of having carnal knowledge of his thirteen (13) year-old goddaughter and piano tutee, AAA,[4] through the use of force, threat and intimidation. The information was raffled to Branch 159 of the Pasig RTC and was docketed as Criminal Case No. 132364-H.

After being apprised of the accusation against him, the appellant entered a plea of not guilty. Trial thereafter followed.

The prosecution presented the testimony of AAA herself[5] to prove the charge against appellant. AAA's testimony centered on the events that took place on 2 January 2006--the day when the appellant purportedly raped her. The substance of AAA's narration is as follows:

- On 2 January 2006, AAA was at her school-the XYZ school[6] in Pateros for a dance practice. At around 1:00 in the afternoon, she received a text message from the appellant inviting her to come with him to a pictorial. AAA, who had known the appellant for more than two (2) years then as her godfather[7] and piano tutor, accepted the invitation.
- Shortly thereafter, the appellant arrived in his motorcycle at the XYZ school to fetch AAA. AAA boarded the motorcycle and the appellant drove off.
- The appellant drove the motorcycle all the way to Pasig City and proceeded to the area of the city where motels were prevalent. The appellant stopped at one of the motels, later identified to be the Queen's Court motel in Pasig,[8] and parked his motorcycle.
- After parking, the appellant alighted from his motorcycle, held both hands of AAA and told the latter: "Huwag ka nang magulo at huwag kang sisigaw at hindi ka na makakauwi." [9] The appellant then dragged AAA, who was then still wearing a helmet, to one of the rooms of the Queen's Court.
- Once inside the room, the appellant removed AAA's blouse and brassiere as well as the helmet worn by the latter. AAA tried to resist by pushing the appellant away from her, but the appellant only pushed her back towards

the bed. On the bed, AAA threw kicks at the appellant, but the latter stood firm and was able to remove the remaining articles of AAA's clothing. The appellant then held both hands of AAA and started to remove his own clothes.

- After undressing, the appellant laid on top of AAA where the former had his "organ" directly pointed at the latter's.[10] At that position, AAA felt something penetrate her "organ." [11] The appellant then threatened AAA not to shout or else he was going to kill her. AAA could no longer recall how many times her "organ" was penetrated at that moment, but she knew that the entire incident lasted for about fifteen (15) to twenty (20) minutes.[12]

- After the appellant had finished, AAA was left crying at the edge of the bed. AAA was then told by the appellant to put her clothes back on. Once AAA was dressed, the appellant dragged her towards his parked motorcycle and made her board the same. The appellant then drove back to XYZ school.

- The appellant dropped AAA off at the XYZ school at around 4:00 in the afternoon. Before leaving, the appellant told AAA not to report to anyone what happened between them. AAA then went home.

- AAA was, at that time, only thirteen (13) years of age.[13]

AAA further related that, due to her fear of the appellant, she was not able to immediately tell her parents what had happened to her.[14] According to AAA, she was only able to confide to her parents what she had gone through on 4 January 2006 or two (2) days after the incident.[15]

In addition to the testimony of AAA, the prosecution also presented the testimony of one Dr. Joseph C. Palmero (Dr. Palmero) of the Philippine National Police (PNP) Crime Laboratory. Dr. Palmero was the medico-legal officer who conducted a clinical examination of AAA on 4 January 2006 and the author of Initial Medico Legal Report Case No. R06-31[16] and Final Medico-Legal Report No. R06-31[17] that detail the results of such examination. Dr. Palmero testified to affirm and explain the results of his examination as contained in the medico-legal reports:

- Dr. Palmero testified that his examination of AAA revealed that the latter's hymen had "a deep healed laceration at 3 o'clock position and a shallow healed laceration at 9 o'clock position" that are consistent with "blunt force or penetrating trauma." [18] He, however, acknowledged the possibilities that said lacerations could have been more than two (2) days old at the time of AAA's examination[19] and that they could have been produced by causes other than sexual intercourse.[20]

- Dr. Palmero also stated that his examination of AAA registered a "negative" result in the "periurethral and vaginal smears," which meant that AAA's vagina had no traces of sperm in it at the time it was examined.[21]

The defense, on the other hand, countered the prosecution's story with its own version of events anchored chiefly on the testimony of the appellant.[22]

The appellant denied having raped AAA. The truth, according to the appellant, was that he and AAA were lovers and had been so since December of 2005.[23] On that end, the appellant conceded that he had been with AAA on 2 January 2006; though he clarified that such meeting was of a completely different nature and under an entirely different set of circumstances than those narrated and described by the prosecution. His recollection of what transpired on 2 January 2006 is as follows:[24]

- At around 2:00 in the afternoon of 2 January 2006, the appellant was in his house fixing a pugon with his wife Lea Cruz (Lea).

- At around 4:00 in the afternoon of 2 January 2006, the appellant left the house to meet AAA at an apartment that

the two had been renting in Tipas, Taguig City. The meeting was AAA's idea; AAA, who had just returned from a long vacation with her family, supposedly had missed the appellant and had wanted to see the latter.

- The appellant stayed with AAA at the apartment for about less than an hour. Afterwards, the appellant left. By 5:00 in the afternoon, the appellant was already at his house.

- At around 6:00 in the evening, the appellant left his house to have a drinking spree with his friend, Tristan Santos (Tristan). The appellant stayed out all night and only returned home at about 1:00 in the morning of the next day. After sending a text message to AAA bidding her good night, the appellant went to sleep.

The appellant further related that, upon waking up at around 6:00 in the morning of 3 January 2006, he was confronted by Lea about his relationship with AAA.[25] Lea, as it turned out, had tinkered with the appellant's mobile phone after the latter went to sleep and was able to discover therein an incriminating photograph showing the appellant half-naked with a blanket-covered AAA sitting on his lap.[26] The appellant said that he confessed to Lea his relationship with AAA later that day.[27] The appellant also testified that it was Lea who informed the parents of AAA about the AAA's trysts with the appellant.[28]

The testimony of the appellant was corroborated by the testimonies of Lea[29] and Tristan.[30]

Lea confirmed that she in fact confronted the appellant on 3 January 2006 after seeing an incriminating photograph of the appellant and AAA in the former's mobile phone;[31] and that she was the one who informed the parents of AAA about the AAA's trysts with the appellant.[32] Lea claimed that, fuming over the information she divulged, the parents of AAA had now caused the filing of the present rape charge against the appellant.[33]

Tristan, on the other hand, seconded the portion of the appellant's testimony pertaining to their drinking spree.[34] Tristan likewise attested having seen the incriminating photograph of the appellant and AAA in the former's mobile phone.[35]

Aside from the testimonies of the appellant, Lea and Tristan, the defense also presented the testimonies of a certain Preciosa Gillado Landrito (Preciosa)[36] and one Edwin Cenita (Edwin)[37] to disprove certain factual allegations made by AAA in her testimony. The gist of Preciosa's and Edwin's testimonies:

- Preciosa was the Principal of XYZ school. She testified that the XYZ school held no classes and sanctioned no activities on 2 January 2006 and had sanctioned no activities on that date.[38]

- Edwin, on the other hand, is the Officer-in-Charge (OIC) of the Queen's Court motel. Edwin testified that from 2003 to 2008, he did not come to know of any untoward incident within the motel that required any police investigation.[39]

Ruling of the RTC

On 30 March 2010, the RTC rendered judgment[40] finding the appellant guilty beyond reasonable doubt of rape under Article 266-A (1)(a) of the RPC. In so finding, the RTC accorded full weight and credence upon the testimony of AAA.

Accordingly, the RTC sentenced the appellant to suffer reclusion perpetua and to pay the following amounts to AAA: (a) P50,000.00 by way of civil indemnity, (b) P50,000.00 by way of moral damages and (c) P25,000.00 by way of exemplary damages. The dispositive part of the judgment of the RTC reads:[41]

WHEREFORE, in view of the foregoing, this Court finds [appellant] GUILTY beyond reasonable doubt of the crime of Rape under Article 266- A of the Revised Penal Code as amended by R.A. 8353 in relation to Section 5(a) of R.A. 8369, [APPELLANT] is hereby sentenced to suffer the penalty of reclusion perpetua and to

indemnify [AAA] in the amount of Fifty Thousand Pesos (P50,000.00) as moral damages, Fifty Thousand Pesos (P50,000.00) as civil indemnity ex delicto and Twenty-Five Thousand Pesos (P25,000.00) as exemplary damages.

SO ORDERED.

Aggrieved, the appellant filed an appeal with the Court of Appeals.

Ruling of the Court of Appeals

On 24 January 2012, the Court of Appeals rendered a decision^[42] denying the appellant's appeal and sustaining the judgment of conviction by the RTC. Thus:

WHEREFORE, premises considered, the appeal is hereby DENIED. The Decision dated 30 March 2010 of the Regional Trial Court, Branch 159 of Pasig City finding the accused GUILTY beyond reasonable doubt of the crime of Rape under Art. 266-A (a) of RA 8369 [is affirmed].

SO ORDERED.^[43]

Undeterred, appellant filed the present appeal before this Court.

The Present Appeal

The appellant claims that the RTC and the Court of Appeals erred in according full weight and credence to the testimony of AAA at the expense of his testimony and the testimonies of other defense witnesses. He argues that a scrutiny of the testimony of AAA will reveal that it is both deficient and unreliable:^[44]

- The testimony of AAA is deficient for it lacked the necessary details to be able to establish the crime of rape under Article 266-A (1)(a) of the RPC. AAA never categorically testified that it was the appellant's penis that penetrated her vagina. Hence, in effect, the testimony of AAA failed to prove that appellant had carnal knowledge of AAA.

- AAA, moreover, was shown to be inherently unreliable and untrustworthy. Key parts of AAA's testimony have been soundly refuted by the statements of Preciosa and Edwin and even by the medico-legal findings of Dr. Palmero, thereby giving indication that AAA merely fabricated her whole narration.

In view of the apparent insufficiency and incredibility of AAA's testimony, the appellant thus urges this Court to consider his alternate version of events as the truth of what happened in this case and, ultimately, to acquit him of the crime charged.^[45]

OUR RULING

We dismiss the appeal.

Testimony of AM Sufficient to Establish Rape Under Article 266-A (1)(a) of the RPC

The first issue raised by the appellant pertains to the sufficiency of the testimony of AAA to prove the crime of rape under Article 266-A (1)(a) of the RPC. The appellant posits that the testimony was substantially deficient for it failed to establish that he had carnal knowledge of AAA, which is one of the basic elements of the rape charged against him. On this end, the appellant points out that AAA, in her testimony, never specifically stated that it was his penis that penetrated her vagina, AAA only being able to recount having felt something penetrate her organ while the appellant was purportedly on top of her. The appellant submits that, in view of such omission, the testimony of AAA cannot be validly used as the basis of his conviction for rape under Article 266-A (1)(a) of the

RPC.

We do not agree.

Although AAA, in her testimony, was not able to explicitly state that it was the penis of the appellant that penetrated her vagina, she was able to provide ample details from which the conclusion of consummated sexual intercourse can be had. The pertinent portion of AAA's testimony provides:[46]

ATTY. CAMPANILLA

Q:

Inside the room, what happened?

AAA

A:

Doon na po nagsimula at sinabi niya [appellant] sa akin na huwag akong magulo at huwag akong sumigaw.

Q:

When you say "nagsimula," what are you referring to?

A:

[Appellant] removed my blouse and the bra that I was wearing, sir.

x x x

Q:

What happened next, if any?

A:

[Appellant] pushed me on the bed, sir.

x x x

Q:

How about the clothes when [appellant] pushed you, were you still wearing your clothes?

x x x

A:

After that, [appellant] removed my clothes, sir.

x x x

Q:

Then, what happened next, if any?

A:

[Appellant] started removing his clothes then while he was holding both of my hands, sir.

x x x

Q:

After removing his [appellant] clothes, what happened next?

A:

Naramdaman ko po na may pumasok po sa organ ko po.

Q:

How many times?

A:

I could not recall anymore, sir.

Q:

Why can't you remember?

A:

Hindi ko na po kasi alam kung anong nangyayari noong araw na yun.

x x x

COURT

Q:

Did you find out what went inside your organ?

AAA

A:

No, sir.

Q:

When you felt that something went inside your organ, what was the relative position of the [appellant]?

A:

He was on top of me, sir.

Q:

When you said, "he was on top of me," was [appellant's] organ directly in front of your organ?

A:

Yes, sir.

AAA's detailed narration reveals the different circumstances that make up the factual context of that critical moment when she felt something penetrate her vagina ("Naramdaman ko po na may pumasok po sa organ ko"). Such circumstances are:

- That, at the time AAA felt something penetrate her organ, the appellant was positioned on top of AAA;[47]
- That, at the same time, both the appellant and AAA were naked.[48]

- That, at such position in the state of nakedness, the appellant's "organ" was directly in front AAA's "organ." [49]

With the foregoing circumstances serving as context of AAA's penetration, it becomes abundantly clear that the something or the "meron" that AAA felt penetrating her "organ" is actually and can only be the penis of the appellant. Indeed, under those circumstances, no other reasonable supposition can be had. A conclusion that AAA's vagina could have been penetrated by something else other than the appellant's penis is, in fact, simply farfetched and unlikely given the context provided by AAA's testimony.

Verily, the testimony of AAA suffices to establish the fact that appellant had carnal knowledge of AAA. That fact, coupled with AAA's recollection of how the appellant employed force, threat and intimidation against her to accomplish the dastardly act, makes the testimony of AAA substantially complete to prove the crime charged against the appellant.

AAA is a Credible Witness; Appellant's Denial and Sweetheart Theory Unavailing as Against AAA's Testimony

The second issue raised by the appellant focuses on the credibility of AAA as a witness. The appellant posits that AAA was shown to be an untrustworthy witness after key parts of her version of events were soundly refuted by the testimonies of Preciosa and Edwin as well as the medico-legal findings of Dr. Palmero. Thus: [50]

- AAA's claim that she was at XYZ school for a dance rehearsal on 2 January 2006 was refuted by Preciosa's testimony that XYZ school held no classes and sanctioned no activities on such date.

- AAA's claim that she was dragged by the appellant to a room in Queen's Court motel was debunked by Edwin who testified that, from 2003 to 2008, he did not come to know of any untoward incident within the motel that required any police investigation.

- AAA's claim that the appellant raped her on 2 January 2006 was contradicted by the medico-legal findings of Dr. Palmero revealing that: (1) the lacerations in AAA's hymen were already healed when the latter was examined on 4 January 2006, which is just two (2) days after the purported rape, and (2) there was no sperm found in AAA's vagina at the time of examination.

The appellant postulates that the refutation of key parts of AAA's narration renders her whole testimony suspect, if not completely unreliable. The appellant, therefore, submits that it was plain error for the RTC and the Court of Appeals to have still accorded AAA's testimony full weight and credence at the expense of his testimony and the testimonies of other defense witnesses.

We do not agree.

The long-standing rule in our jurisdiction is that the assessment of a trial court in matters pertaining to the credibility of witnesses, are accorded great respect--if not finality--on appeal. [51] The rationale of this rule is the recognition of the trial court's unique and distinctive position to be able to observe, first hand, the demeanor, conduct and attitude of the witness whose credibility has been put in issue. [52]

Be that as it may, the above rule is not absolute. Indeed, this Court, in not a few cases, had underscored that factual findings of a trial court, including its assessment of credibility of a witness, may-by way of exception to the rule-be disturbed on appeal whenever there is a clear showing that it had "overlooked certain facts of substance and value that, if considered, might affect the result of the case." [53]

The appellant, in raising his second issue, seems to believe that the exception, rather than the general rule, ought to be applied by us. He, in essence, claims that the RTC and the Court of Appeals had overlooked the significance of the testimonies of Preciosa and Edwin as well the medico- legal findings of Dr. Palmero that, if considered, would not only cast doubt on the veracity of AAA's narration but also lend believability to the version of the

defense.

We, however, perused the testimonies of Preciosa and Edwin as well as the medico-legal findings of Dr. Palmero. From our review, we found nothing in the said testimonies and findings that discredits AAA's version of events or gives credence to the version of defense:

First. AAA's claim that she was at XYZ school for a dance rehearsal on 2 January 2006 was not rendered unbelievable by the testimony of Preciosa. Preciosa merely testified that XYZ school held no classes and other school activities on 2 January 2006 since it was a holiday.[54] Such testimony, however, does not categorically exclude the possibility that AAA could have been at XYZ school on 2 January 2006 just the same; especially when no other evidence was presented showing that the premises of the school were absolutely closed for students on that day or whether its gates have then been padlocked. Preciosa herself even testified that she did not know whether, in fact, the premises of the school were closed or padlocked on that day.[55]

Second. AAA's claim that she was dragged by the appellant to a room in Queen's Court motel was not debunked by the testimony of Edwin. Edwin did not testify that no untoward incident happened in the Queen's Court motel on 2 January 2006. Rather, what Edwin merely stated was that he does not know of any untoward incident that happened within the motel from 2003 to 2008.[56] Edwin even disclosed that, as OIC of Queen's court motel, he would only know of any untoward incident happening within the motel if and when the other motel employees report to him the happening of any such incident.[57] Hence, as Edwin himself acknowledged, in the absence of a report given to him by the motel's employees, it is still very possible for any untoward incident to take place in the motel without his knowledge.[58] Consequently, AAA's claim that she was dragged by the appellant into the Queen's Court motel remained entirely plausible.

Third. AAA's claim of rape is not discounted by the mere fact that the results of her medico-legal examination revealed no fresh lacerations in her hymen. As elucidated by Dr. Palmero, the absence of fresh lacerations was only an indication that, prior to 2 January 2006, AAA's hymen may have already been tom via penetration from a blunt object or even an accident.[59] Such finding, however, does not preclude the possibility of AAA having been raped on 2 January 2006 since a newly ruptured hymen on the part of the victim is not, and has never been, an element of rape.[60]

In the same vein, the medico-legal finding that noted the absence of sperm in AAA's vagina also does not foreclose the possibility of AAA being raped by the appellant. The absence of sperm in AAA's vagina during the time she was examined could have been caused by a number of reasons- none of which, however, would have any bearing on whether AAA was in fact raped or not. Rape under Article 266-A (1)(a) of the RPC, it must be remembered, is deemed consummated from the moment the offender's penis "touches" the labia majora or labia minora of the victim's genitals[61] regardless of whether the former ejaculates or not. Thus, like how a newly ruptured hymen on the part of the victim is not an element of rape, so too is ejaculation on the part of perpetrator not an essential ingredient of the crime.[62]

Fourth. Moreover, we find the denial and the "sweetheart theory" of the appellant to be unavailing as against the testimony of AAA. Such denial and theory lacked the backing of strong corroborating evidence that is necessary to overcome their inherent weakness as defenses.[63] As aptly pointed out by the Court of Appeals:

[Appellant] failed to present strong evidence to support his claim that he and AAA were in a relationship. First, he failed to present the photograph of them together. We cannot even assume its existence because while the [appellant] claims that, in the photograph, AAA was sitting on his lap, the other witness, [Tristan], testified that the accused and AAA were seated side by side. Furthermore, [appellant] claims that only AAA was covered with blanket which is contrary to [Tristan's] statement that both [appellant] and AAA were covered. Clearly,

such conflicting statements cannot deserve any credence.

The [RTC] even noticed the lack of sincerity on the part of Lea as she was often seen smiling during her testimony while she was narrating a harrowing story of a jilted wife which according to her led to the fabricated charge against [appellant].[64]

All told, we find that AAA's testimony is truly deserving of the full weight and credence accorded to it by the RTC and the Court of Appeals. The testimony was categorical, explicit and replete with the details of how appellant carried out his carnal designs against AAA. With such testimony, and in the absence of any strong evidence supporting the appellant's denial and sweetheart defenses, we find no reason to depart from the rulings of the RTC and the Court of Appeals anent the conviction of the appellant for the crime charged.

RE: Damages

In line with prevailing jurisprudence,[65] however, we find it necessary to modify the amount of damages adjudged by the RTC and the Court of Appeals against the appellant as follows:

- As to the appellant's civil liability, ex delicto, the same is increased from P50,000.00 to P75,000.00.
- As to the appellant's liability for moral damages, the same is increased from P50,000.00 to P75,000.00.
- As to the appellant's liability for exemplary damages, the same is increased from P25,000.00 to P75,000.00.

The civil liability ex delicto, moral damages and exemplary damages thus payable by the appellant are subject to interest at the rate of six percent (6%) per annum from the finality of this decision until fully paid.

RE: Motion to Withdraw Appeal

One final thing.

It has come to our attention that on 7 April 2016, the appellant filed a motion to withdraw the present appeal.[66] It must be noted, however, that the filing of such motion only came after the appellee had already filed a manifestation waiving its right to file a supplemental brief[67] and after the appellant himself filed a supplemental brief.[68] Hence, pursuant to Section 3 of Rule 50[69] in relation to Section 18 of Rule 124[70] of the Rules of Court, the fate of the motion rightly rests upon our discretion.

Our decision in the instant case leaves no doubt as to which way we opted to exercise our discretion. The present appeal was already deemed submitted for decision way before the appellant's motion was filed. We exercise our prerogative to decide. The appellant's motion to withdraw the present appeal is, therefore, denied.

WHEREFORE, premises considered, the instant appeal is DISMISSED. The Decision dated 24 January 2012 of the Court of Appeals in CA-G.R. CR-H.C. No. 04473 is hereby AFFIRMED with the following MODIFICATIONS: (1) that the amount of civil liability ex delicto is increased from P50,000.00 to P75,000.00; (2) that the amount of moral damages is increased from P50,000.00 to P75,000.00; and (3) that the amount of exemplary damages is increased from P25,000.00 to P75,000.00. The civil liability ex delicto, moral damages and exemplary damages thus payable by the appellant are subject to interest at the rate of six percent (6%) per annum from the finality of this decision until fully paid.

SO ORDERED.

Velasco, Jr., (Chairperson), Brion,[*] Peralta, and Reyes, JJ., concur.

November 9, 2016

NOTICE OF JUDGMENT

Sirs / Mesdames:

Please take notice that on September 21, 2016 a Decision, copy attached hereto, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on November 9, 2016 at 11:15 a.m.

Very truly yours,

(SGD)

WILFREDO V. LAPITAN

Division Clerk of Court

[*] As per Raffle dated 11 April 2016.

[1] By way of an ordinary appeal pursuant to Section 13(c) of Rule 124 of the Rules of Court.

[2] The decision was penned by Associate Justice Angelita A. Gacutan for the Thirteenth (13[th]) Division of the Court of Appeals with Associate Justices Magdangal M. De Leon and Francisco P. Acosta concurring. Rollo, pp. 2-22.

[3] Records, pp. 1-2.

[4] The real name of the victim is withheld pursuant to Section 44 of Republic Act No. 9262 and Section 40 of the Rule on Violence Against Women and their Children. See *People v. Cabalquinto*, 533 Phil. 703 (2006), wherein this Court resolved to withhold the real name of the victim-survivor and to use fictitious initials instead to represent her in its decisions. Likewise, the personal circumstances of the victims-survivors or any other information tending to establish or compromise their identities, as well as those of their immediate family or household members, shall not be disclosed. The names of such victims, and of their immediate family members other than the accused, shall appear as "AAA," "BBB," "CCC," and so on. Addresses shall appear as "XXX" as in "No. XXX Street, XXX District, City of XXX."

[5] TSN of AAA, 1 August 2006, pp. 42-82.

[6] The real name of the school is withheld pursuant to Section 44 of Republic Act No. 9262 and Section 40 of the Rule on Violence Against Women and their Children. See *People v. Cabalquinto*, *supra* note 4.

[7] A godfather in confirmation. See AAA's Certificate of Confirmation (Records, p. 83). See also TSN of AAA, 1 August 2006, p. 44.

[8] *Id.* at 57.

[9] *Id.* at 49.

[10] *Id.* at 53.

- [11] Id. at 52.
- [12] Id.
- [13] AAA's birth certificate; records, p. 82. The certificate was marked as Exhibit "H" for the prosecution.
- [14] TSN of AAA, 1 August 2006, pp. 54-55.
- [15] Id. at 55-56. Supplemented by the testimony of AAA's mother, TSN, 1 August 2006, pp. 7-42.
- [16] Issued on 4 January 2006. The report was marked as Exhibit "C" of the prosecution; records, p. 8.
- [17] Issued on 16 January 2006. The report was marked as Exhibit "F" of the prosecution; id. at 80.
- [18] Id. at 8 and 80. See also TSN of Dr. Joseph C. Palmero, 6 June 2006, pp. 8-9.
- [19] TSN of Dr. Joseph C. Palmero, 6 June 2006, pp. 14-15.
- [20] Id. at 24.
- [21] Id. at 80. See also TSN of Dr. Joseph C. Palmero, 6 June 2006, p. 11.
- [22] TSN of Leonardo Cruz, 29 June 2009, pp. 1-57.
- [23] TSN of Leonardo Cruz, 14 September 2009, p. 21.
- [24] TSN of Leonardo Cruz, 29 June 2009, pp. 5-21.
- [25] Id. at 22.
- [26] Id.
- [27] Id. at 25-26.
- [28] Id. at 34-36.
- [29] TSN of Lea Cruz, 2 June 2009, pp. 1-59.
- [30] TSN of Tristan Santos, 7 December 2009, pp. 1-22.
- [31] TSN of Lea Cruz, 2 June 2009, pp. 19-20, 28.
- [32] Id. at 30-32.
- [33] Decision of the RTC; CA rollo, p. 20.
- [34] TSN of Tristan Santos, 7 December 2009, pp. 6-9.
- [35] Id. at 10.
- [36] TSN of Preciosa Gillado Landrito, 11 February 2008, pp. 15-29.
- [37] TSN of Edwin Cenita, 24 March 2008, pp. 1-17.
- [38] TSN of Preciosa Gillado Landrito, 11 February 2008, pp. 16-17.
- [39] TSN of Edwin Cenita, 24 March 2008, pp. 10-11.
- [40] Records, pp. 12-22.
- [41] Id.

[42] Rollo, pp. 2-22.

[43] Id. at 21.

[44] See Brief for the Accused-Appellant; CA rollo, pp. 43-59.

[45] Id.

[46] TSN of AAA, 1 August 2006, pp. 50-53.

[47] TSN of AAA, 1 August 2006, p. 53.

[48] Id. at 50-52. The appellant had already taken off his ([Appellant] started removing his clothes then while he was holding both of my hands, sir) and AAA's ([Appellant] removed my blouse and the bra that I was wearing, sir xxx After that, [appellant] removed my clothes, sir) clothes.

[49] Id. at 53.

[50] Brief for the Accused-Appellant; CA rollo, pp. 43-59.

[51] *People v. Piosang*, 710 Phil. 519, 526 (2013).

[52] *People v. Costelo*, 375 Phil. 381, 391 (1999).

[53] *People v. Realon*, 187 Phil. 765, 787 (1980) citing *People v. Repato*, 180 Phil. 388, 395 (1979) and *People v. Espejo*, 146 Phil. 894, 913-914 (1970). See also *People v. Laganzon*, 214 Phil. 294, 307 (1984) citing *People v. Surban*, 208 Phil. 203, 216 (1983); *People v. Balmaceda*, 176 Phil. 430, 438-439 (1978); *People v. Ancheta*, 158 Phil. 542, 547-548 (1974); *People v. Geronimo*, 153 Phil. 1, 13 (1973); *People v. Abboc*, 152 Phil. 436, 445 (1973).

[54] TSN of Preciosa Gillado Landrito, 11 February 2008, pp. 16-17.

[55] Id. at 18.

[56] TSN of Edwin Cenita, 24 March 2008, pp. 10-11.

[57] Id. at 11.

[58] Id. at 16-17.

[59] TSN of Dr. Joseph C. Palmero, 6 June 2006, pp. 14-15, 17.

[60] *People v. Opong*, 577 Phil. 571, 592 (2008).

[61] *People v. Campuhan*, 385 Phil. 912, 921 (2000).

[62] *People v. Belgar*, G.R. No. 182794, 8 September 2014, 734 SCRA 347, 360-361.

[63] *People v. Nogpo, Jr.*, 603 Phil. 722, 742 (2009).

[64] Rollo, pp. 19-20.

[65] See *People v. Jugueta*, G.R. No. 202124, 5 April 2016.

[66] Rollo, pp. 46-51.

[67] The appellee, through the Office of the Solicitor General, filed the manifestation on 24 April 2013; id. at 33-34.

[68] The appellant filed his supplemental brief on 15 May 2013; rollo, pp. 38-41.

[69] SECTION 3. Withdrawal of appeal. An appeal may be withdrawn as of right at any time before the filing of the appellees brief. Thereafter, the withdrawal may be allowed in the discretion of the court

[70] SECTION 18. Application of certain rules in civil procedure to criminal cases. The provisions of Rules 42, 44 to 46, and 48 to 56 relating to procedure in the Court of Appeals and in the Supreme Court in original and appealed civil cases shall be applied to criminal cases insofar as they are applicable and not inconsistent with the provisions of this Rule.

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