

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JACINTO ANDES Y LORILLA, ACCUSED-APPELLANT.

G.R. No. 227738. July 23, 2018

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CAGUIOA, J:

Before this Court is an ordinary appeal[1] filed by the accused-appellant Jacinto Andes y Lorilla (Andes) assailing the Decision[2] dated September 2, 2015 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06684, which affirmed the Judgment[3] dated February 13, 2014 of the BBB,[4] Regional Trial Court (RTC) in Criminal Case No. 2012-0455, finding Andes guilty beyond reasonable doubt of rape.

The Facts

An Information was filed against Andes for the rape of AAA,[5] which reads:

"That on or about October 24, 2012, in the City of [BBB], Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation and armed with a bladed weapon, did then and there wilfully (sic), unlawfully and feloniously have carnal knowledge of complaining witness, [AAA], against her will and consent, to her damage and prejudice.

CONTRARY TO LAW."[6] (Emphasis in the original)

The facts, as summarized by the trial court, are as follows:

On October 24, 2012, at around 1:00 O'Clock (sic) in the morning, at Sitio [CCC], [BBB], while the private complainant, [AAA], was sleeping with her 4 year old son, [DDD], in bed inside the room of their house, she was awakened when suddenly somebody covered her mouth, and told her not to shout and simultaneously poked a knife on her neck, saying, "don't shout, I will kill you and your son[.]"

While the inside of her house was then dark, she identified that person as the accused, JACINTO ANDES Y [LORILLA], through his voice and the words he uttered. She has known the accused for about 7 years because they stayed at her mother's house together with the accused as live-in partner of her mother for about 7 years. For said reason, she knew his voice.

She did not resist in doing what was commanded of her because she was thinking of the safety of her son as he could stab and kill him. She told him that she would accede to his request as long as he would not kill her son.

After undressing, the accused then placed himself on top of her body. She felt he was near her son so he moved her away. She was able to grab the handle of his knife. It was impossible for her to escape because he positioned himself near the door and her son was on her side. She was at the middle of them. The accused tried to insert his penis in her vagina but, at first, he was not able to consummate it because his penis was soft and he told her to hold and harden it. It was tried to be inserted again. That time, his penis was able to penetrate her vagina. The sexual intercourse lasted for about 30 minutes. While on top of her, he told her - "ANG SARAP NAMAN NG ANAK KO[.]"

The accused was calling her anak because he was her stepfather. She told him: "PUTA KA!" "[I]f you treat me

as your daughter, you will not do this to me." He told her that: "Even [EEE], I already did this to her because I am the one who send (sic) her to school and I have the right to do it." [EEE] is his 18 year old daughter. After telling her about it, he was just on top of her using her, his penis inside her vagina.

The accused rested on her side for a while for about 10 to 15. minutes. He told her that he wanted to have sex with her for a second time. He then put his body again on top of her and told her to lie on her stomach ("pinadapa") on the bed. Again he told her that "My daughter is so delicious." [W]hile he was saying that, his penis was inside her vagina. He was on top of her (witness was demonstrating by holding her back). She told him "Do not call me your daughter." She reiterated that the penis of the accused was again able to penetrate her vagina that lasted again for another 30 minutes. After the second time that the accused had sexual intercourse with her, he rested beside her and after uttering further some words, he already left.[7] (Emphasis and underscoring in the original)

The following morning, AAA was able to tell a cousin, her mother, and later on, barangay authorities about what Andes had done to her.[8] The accused was then arrested. That same evening, AAA had herself subjected to a medical examination by Dr. Zarah Charissa Magnaye Agualada (Dr. Agualada).[9]

During the trial, Dr. Agualada testified that she found a 1x1 cm hematoma on AAA's neck, which she explained could be caused by high pressure from a body part or other material.[10]

On the part of the defense, Andes admitted that AAA's adoptive mother was his live-in partner. However, he denied that he raped AAA. He averred that on the date and time of the alleged incident, he was already sleeping with AAA's adoptive mother. According to him, he slept at around 9:00 p.m., woke up at around 1:30 a.m. to go to the comfort room, and went back to sleep after 5 minutes. The following evening, he was surprised that a barangay tanod went to his house along with three policemen and invited him to the barangay hall, and subsequently, to the police station. When he arrived, AAA was there in the police station and was accusing him of raping her.[11]

Ruling of the RTC

After trial on the merits, in its Judgment dated February 13, 2014, the RTC convicted Andes of the crime charged. The dispositive portion of the said Judgment reads:

WHEREFORE, premises considered, judgment is hereby rendered finding accused JACINTO ANDES y LORILLA, guilty beyond reasonable doubt of RAPE, defined and penalized under Article 266-A-(1)(a) in relation to Art. 266-B, par. 2, of the Revised Penal Code, as amended by RA 8353, and he is hereby sentenced to suffer the penalty of Reclusion Perpetua, without eligibility of parole, and to pay the victim, [AAA], the amount of P75,000.00 as civil indemnity, P75,000.00 as moral damages and P30,000.00 as exemplary damages.

SO ORDERED.[12] (Emphasis in the original)

The RTC found AAA's identification of Andes sufficient, even if it was done only through his voice. It likewise held that Andes' defense of denial could not prevail over the positive identification by AAA. Lastly, the RTC found AAA's testimony spontaneous and credible after it had observed the demeanor of both AAA and Andes on the witness stand.

Aggrieved, Andes appealed to the CA. In the appeal, Andes raised questions on the believability of AAA's testimony, and if the element of coercion or intimidation was sufficiently proven. According to Andes, it was contrary to human experience for assailants to have a "chat"[13] with their victims, and hence AAA's testimony that she knew of his identity through his voice was incredible. Andes likewise alleged that the element of intimidation was absent because (1) AAA testified that she was able to get hold of his knife;[14] and (2) she even

told her abuser "[p]uta ka! If you treat me as your daughter, you will not do this to me" instead of begging for mercy.[15]

Furthermore, Andes questioned the presence of healed lacerations on AAA's hymen as these were not conclusive evidence of sexual abuse. As testified to by AAA's examining physician, Dr. Agualada, the lacerations may have been caused by her giving birth twice by normal delivery.[16] Finally, Andes reiterated his defense of denial and alibi, and argued that these should not be looked upon with disfavor.[17]

Ruling of the CA

In the questioned Decision dated September 2, 2015, the CA affirmed the RTC's conviction of Andes.

The CA held that denial could not, by itself, overcome AAA's positive and categorical accusation against Andes. The appellate court took note of AAA's straightforward narration, and the fact that she was clearly certain of the identity of her abuser from the onset.[18] The CA agreed with the RTC that AAA's identification of Andes as the perpetrator was sufficient and acceptable, though it was made only through recognition of his voice, because they had personally known each other personally for seven years, six of which they spent living in the same house.[19]

The CA also did not consider the exchange between Andes and AAA - in which the former made it known to the latter that he already did the same vile act to his own daughter - as a mere "chat." Instead, the CA viewed the same as a threat, in that AAA had no choice but to give in to his desires, "for if he was able to sexually abuse his own daughter, then there is simply no stopping him from doing it to [AAA] who is not even his own blood relative." [20]

The appellate court also ruled against Andes' contention that AAA's act of being able to grab the handle of his knife, and her saying "puta ka!" implied that force and intimidation were absent. It held that the argument was premised on the mistaken notion that rape victims must escape, or at least try to fight back.[21] The CA further remarked that the presence of AAA's 4-year old son on the same bed where the assault was performed only bolstered the fact that intimidation was present.

Hence, the instant appeal.

Issue

Proceeding from the foregoing, for resolution of this Court is the issue of whether the RTC and the CA erred in convicting Andes.

The Court's Ruling

The appeal is unmeritorious. The Court affirms the conviction of Andes as the prosecution was able to prove his guilt beyond reasonable doubt.

The two elements of rape - viz.: (1) that the offender had carnal knowledge of the girl, and (2) that such act was accomplished through the use of force or intimidation[22] - are both present as duly proven by the prosecution in this case. AAA was able to testify in detail how Andes committed the rape. AAA's testimony, found to be clear, straightforward, and believable, was given weight and credence not just by the RTC, but also by the CA upon appeal.

In rape cases, the accused may be convicted on the basis of the lone, uncorroborated testimony of the rape victim, provided that her testimony is clear, convincing, and otherwise consistent with human nature. This is a matter best assigned to the trial court which had the first-hand opportunity to hear the testimonies of the witnesses and observe their demeanor, conduct, and attitude during cross-examination. Such matters cannot be gathered from a

mere reading of the transcripts of stenographic notes. Hence, the trial court's findings carry very great weight and substance.[23]

Andes, however, raises an issue out of the alleged improbability of AAA's testimony. According to Andes, it was improbable that AAA was already able to grab the handle of his supposed knife, and yet she failed to take advantage. Andes likewise raises as issue AAA's supposed admission that no weapon was used during the rapes, as shown by the following testimony:[24]

"Q:

So, when he started attacking you, he was no longer poking the knife to your neck?

A:

When he was already on top of me, ma'am?

Q:

Yes. When he was already on top of you, he was no longer poking a knife to you?

A:

No more, ma'am[.]

Q:

And then, when he told you [to] touch his penis the first time around, there was no weapon poked on your neck?

A:

No more, ma'am.

Q:

And the whole time, for the whole 30 minutes, there was no weapon poked on your neck?

A:

None, ma'am.

Q:

So, after he rested for 10 to 15 minutes, as again, the alleged attacker raped you[,] as you claimed again for 30 minutes. Now during those 30 minutes, the second time around, was there a bladed weapon poked on you[r] neck or any party (sic) of your body?

A:

None, ma'm. But I am thinking that maybe he was still holding the weapon. I am not sure because it was dark.[25] (Emphasis, italics and underscoring in the original)

For Andes, the above testimony was an admission by AAA that force or intimidation was absent during the time the rape was supposedly committed.

The Court disagrees.

AAA sufficiently explained that despite the fact that no weapon was poked at her body at the time the actual rapes

were committed, she was of the belief that maybe Andes was still holding the weapon and that she could not ascertain where the weapon was because it was dark. It is established that the law does not impose on the rape victim the burden of proving resistance.[26] In rape, the force and intimidation must be viewed in the light of the victim's perception and judgment at the time of the commission of the crime and not by any hard and fast rule.[27]

Contrary to the Andes' contention, the above "admission"[28] even strengthens the finding that there was force and intimidation rather than casts doubt on AAA's testimony. This "admission," taken with the established facts that the crime was committed in a dark place, in the presence of AAA 's son who was sleeping, coupled with Andes' threat that he would kill the child if AAA would not give him what he wanted, all the more convinces the Court that intimidation was indeed present. As the CA correctly pointed out:

In fact, this Court sees that the close proximity of her son, who shared the same bed where she was abused, may have actually forced private complainant to silently endure the rape. As a mother, private complainant's primary instinct is to protect her child. She knows that accused-appellant brought a knife and the latter threatened to kill her son if she would not give in to his bestial desires. Since she admittedly did not know where the knife was placed by accused-appellant during the entire time she was being abused and the room was pitch-dark, private complainant was understandably apprehensive that one wrong move from her might jeopardize her 4-year old son's life.[29]

Andes also questions AAA's post-rape attitude as not being "that of a true rape victim." [30] Citing AAA's testimony the day after the alleged rape that she texted her cousin stating only that "Kuya, [Andes] entered our house last night," [31] Andes made an inference that the said testimony supposedly reveals that what he did the night before was merely "peeping" again on her, but that it was not rape. [32] Andes argues that AAA was so upset about a "peeping" incident that she decided to file this case to get back at him.

The argument deserves scant consideration.

The "peeping" incident that Andes referred to happened more than a year before the rape was committed. Because of the said "peeping" incident, AAA and Andes had a heated argument that resulted in the former reporting the incident to the police, as proved by a police blotter which is in the records of this case. [33] The argument, however, that the said incident was the driving force for the filing of this case utterly fails to convince - not only for being unsubstantiated, but ultimately for failing to make sense.

Andes questions the post-rape attitude of the victim by extracting a portion of the victim's testimony, taking the same out of context, and then making an issue out of it by taking a significant leap in logic by relating it to an unrelated matter. As sufficiently narrated in the Decision of the CA, the events following the rape incident were as follows:

In the morning following the rape incident, private complainant immediately went to her mother's house. [FFF], her adoptive mother, was there but she was not able to approach her because accused-appellant was still around. Upon seeing her, [FFF] asked her to cook breakfast and she obliged while waiting for accused-appellant to leave. She could not however, contain her feelings so she borrowed the cellphone of [EEE], accused-appellant's daughter. She sent a text message to one of her cousins that she has a big problem but she does not know how to tell her mother and her husband. She told this cousin that "Kuya Cinto entered our house last night." The cousin asked where is her husband (sic) and she replied that he is in Manila with their daughter. The cousin told her that she should immediately inform her mother of her predicament. She then returned the cellphone to [EEE] but her cousin sent a text message to [EEE]. Left with no choice, private complainant told [EEE] what happened. x x x [34] (Emphasis and underscoring supplied)

Andes' issue that it was unnatural for a rape victim to only say that the assailant "entered [the] house" could therefore simply be explained by the fact that the victim was overwhelmed or confused by her emotions. It bears

stressing that not all rape victims react the same way.[35] Not every victim of a crime can be expected to act reasonably and conformably with the expectation of mankind.[36] There is, unfortunately for Andes, no typical reaction or norm of behavior that ensue forthwith or later from victims of rape.[37] Andes was thus unreasonable to demand a standard rational reaction to an irrational experience[38] - which is rape.

Andes further puts in issue the fact that the presence of lacerations is only corroborative.[39] Andes harps on the testimony of AAA's examining physician that the healed lacerations on the victim's vagina could have resulted from her having given birth twice by normal delivery.[40]

The above contention is clearly without merit. The Court has held numerous times in the past that a medical examination is not indispensable in a prosecution for rape.[41] As the Court held in *People v. Docena*,[42]

x x x. Medical findings or proof of injuries, virginity, or an allegation of the exact time and date of the commission of the crime are not essential in a prosecution for rape. This is so because from the nature of the offense, the only evidence that can oftentimes be offered to establish the guilt of the accused is, as in the cases at bar, the complainant's testimony.[43] (Emphasis supplied)

Andes was convicted not because the lower courts relied on the medical findings, but because both courts found AAA's testimony to be sincere and believable. Andes' conviction rests on the credibility of AAA's testimony, and not on the findings of the examining physician.

Finally, Andes offers alibi and denial to prove that he did not rape AAA. Andes contends that his defense of alibi and denial should not be looked with disfavor and should assume importance in light of the supposed-weakness of the evidence of the prosecution.[44]

The Court has oft pronounced that both denial and alibi are inherently weak defenses which cannot prevail over the positive and credible testimony of the prosecution witness that the accused committed the crime. Thus, as between a categorical testimony which has the ring of truth on the one hand, and a mere denial and alibi on the other, the former is generally held to prevail.[45] Further, the continuing case law is that for the defense of alibi to prosper, the accused must prove not only that he was at some other place when the crime was committed, but also that it was physically impossible for him to be at the scene of the crime or its immediate vicinity through clear and convincing evidence.[46]

In the present case, Andes was within the immediate vicinity of the place of the crime. Even if Andes' explanation is to be accepted as true that he was in his house at the time of the incident,[47] he was still within a mere 10-minute walk from AAA's house[48] - where the crime actually happened. He even admitted that he left his house in the middle of the night, but offered the explanation that he only went out to go to the comfort room.[49] As it was not physically impossible for him to be at the place of the crime, his defense of alibi must, thus, necessarily fail.

With regard to the amount of damages, the Court deems it proper to adjust the award of damages in consonance with *People v. Jugueta*. [50] Thus, Andes is hereby ordered to pay AAA, the amount of seventy-five thousand pesos (P75,000.00) as civil indemnity, seventy-five thousand pesos (P75,000.00) as moral damages, and seventy-five thousand pesos (P75,000.00) as exemplary damages. Interest at the rate of 6% per annum on the monetary awards reckoned from the finality of this decision is likewise imposed to complete the quest for justice and vindication on the part of AAA.[51]

WHEREFORE, in view of the foregoing, the appeal is hereby DENIED. The Decision dated September 2, 2015 of the Court of Appeals in CA-G.R. CR-HC No. 06684 is hereby AFFIRMED WITH MODIFICATION by affirming the amounts of the awards for civil indemnity and moral damages, and increasing the award of

exemplary damages from thirty-thousand pesos (P30,000.00) to seventy-five thousand pesos (P75,000.00). Accordingly, accused-appellant Jacinto Andes y Lorilla is hereby CONVICTED of the crime charged.

SO ORDERED.

Carpio, Senior Associate Justice, (Chairperson), Peralta, Perlas-Bernabe, and A. Reyes, Jr., JJ., concur.

[1] See Notice of Appeal dated October 5, 2015, rollo, pp. 15-16.

[2] Rollo, pp. 2-14. Penned by Associate Justice Ma. Luisa C. Quijano-Padilla with Associate Justices Normandie B. Pizarro and Samuel H. Gaerlan, concurring.

[3] CA rollo, pp. 36-46. Penned by Presiding Judge Bernhard B. Beltran.

[4] The name of the city is replaced with fictitious initials pursuant to Supreme Court (SC) Administrative Circular No. 83-2015 dated July 27, 2015.

[5] The name of the victim is replaced with fictitious initials pursuant to SC Administrative Circular No. 83-2015 dated July 27, 2015.

[6] CA rollo, p. 36.

[7] Id. at 36-37.

[8] Id. at 37.

[9] Id. at 38.

[10] Id.

[11] RTC Judgment, id.

[12] CA rollo, p. 46.

[13] Rollo, p. 5.

[14] Id. at 4.

[15] Id. at 5.

[16] Id. at 6.

[17] Id.

[18] Id. at 8.

[19] Id.

[20] Id. at 9.

[21] Id.

[22] *People v. Soronio*, 281 Phil. 820, 824 (1991).

[23] *People v. Alemania*, 440 Phil. 297, 304-305 (2002).

[24] CA rollo, pp. 30-31.

- [25] Id.
- [26] *People v. Fabian*, 453 Phil. 328, 337 (2003).
- [27] Id.
- [28] CA rollo, p. 30.
- [29] Rollo, p. 10.
- [30] CA rollo, p. 32.
- [31] Id.; italics in the original.
- [32] Id.
- [33] Rollo, p. 11.
- [34] Id. at 12.
- [35] *People v. Soriano*, 560 Phil. 415, 420 (2007).
- [36] *People v. Gecomio*, 324 Phil. 297, 315 (1996).
- [37] *People v. Deleverio*, 352 Phil. 382, 400 (1998).
- [38] *People v. Pareja*, 724 Phil. 759, 779 (2014).
- [39] Brief for the Accused-Appellant, CA rollo, p. 33.
- [40] Id.
- [41] *People v. Campos*, 394 Phil. 868, 872 (2000).
- [42] 379 Phil. 903 (2000).
- [43] Id. at 913-914.
- [44] Brief for the Accused-Appellant, CA rollo, p. 33.
- [45] *People v. Piosang*, 710 Phil. 519, 527 (2013).
- [46] *People v. Desalisa*, 451 Phil. 869, 876 (2003).
- [47] RTC Judgment, CA rollo, p. 38.
- [48] CA Decision, rollo, pp. 11-12.
- [49] RTC Judgment, CA rollo, p. 38.
- [50] 783 Phil. 806 (2016).
- [51] *People v. Arcillas*, 692 Phil. 40, 54 (2012).

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