

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CARLOS TAMAYO Y UMALI, ACCUSED-APPELLANT.

G.R. No. 234943. January 19, 2021

Ponente: CARANDANG, J.

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CARANDANG, J.:

This is an appeal[1] from the Decision[2] dated July 17, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 07651 finding accused-appellant Carlos Tamayo y Umali (Tamayo) guilty beyond reasonable doubt of the crime of Robbery with Rape and Attempted Homicide.

Facts of the Case

Tamayo was charged with the crimes of Robbery with Rape and Frustrated Homicide in two separate Informations[3] which respectively read as follows:

Criminal Case No. 2711-M-2010
(Robbery with Rape)

That on or about the 18[th] day of April, 2010, in the municipality of Hagonoy, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and feloniously, with intent to gain and by means of force, violence and intimidation, take, rob and carry away the bag with cellphone, USB, wallet and cash worth P3,000.00 owned by one [AAA],[4] that on the occasion of the said robbery and by reason thereof accused Carlos Tamayo y Umali feloniously touch (sic) the breasts and vagina of said AAA, forcibly laid her down on a cemented floor and inserted his finger on (sic) and lick her vagina.

Contrary to law.[5]

Criminal Case No. 2712-M-2010
(Frustrated Homicide)

That on or about the 18[th] day of April, 20 10, in the municipality of Hagonoy, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a bladed instrument and with intent to kill one [BBB][6] did then and there willfully, unlawfully and feloniously attack, assault and stab with the said bladed instrument the said BBB, hitting him on his chest, thereby inflicting upon him serious physical injuries, which ordinarily would have caused the death of the said BBB, thus performing all acts of execution which should have produced the crime of homicide as a consequence, but nevertheless did not produce it by reason of causes independent of their will, that is, by the timely and able medical assistance rendered to said BBB which prevented his death.

Contrary to law.[7]

According to the prosecution witnesses, at around 9:00 p.m. of April 18, 2010, AAA was heading to her house in Gatbuca, Calumpit, Bulacan when she saw an individual, later identified as Tamayo, urinating at the side of a

tawiran or footbridge located at the boundary of Santo Nino and Santa Monica. While AAA was already near the Sta. Monica side of the footbridge, Tamayo suddenly put his arms around her shoulder and poked a knife on her side. Tamayo instructed AAA not to shout and to just bow her head.[8] Tamayo brought AAA back to the dark portion of the Sto. Nino side of the footbridge where he was previously seen urinating. AAA claimed that he made her sit and took her personal belongings which include a Louis Vuitton wallet given to her by her aunt containing more or less P3,000.00, identification cards, a cellular phone, and a USB with approximately P500.00.[9]

When AAA's cellphone was already in Tamayo's possession, her then boyfriend and now husband, BBB, sent a message to AAA's number asking where she was. Tamayo allegedly sent a reply to BBB saying, "Gago ka, girlfriend ko si AAA." [10]

AAA added that after Tamayo took her belongings, he put them aside and started molesting her. Tamayo allegedly lifted AAA's shirt and bra and touched and licked her breasts. Tamayo allegedly removed AAA's pants and underwear and forcibly laid her on the cemented floor. Tamayo then licked AAA's vagina and inserted his finger in it. He also allegedly inserted his penis into her vagina.[11] AAA claimed that there were few people who walked past them but Tamayo instructed her to ignore them, keep her head bowed, and not to make any noise.[12]

BBB claimed that after more or less two hours of waiting for AAA at her house, he looked for her at the footbridge and found Tamayo forcing AAA to suck his penis.[13] AAA claimed that Tamayo forced her to suck his penis for about 15 minutes.[14] When BBB confronted Tamayo, the latter stood up and stabbed BBB on the chest.[15] When Tamayo was about to stab BBB again, BBB jumped into the river.[16] Sensing that she was also about to be stabbed, AAA jumped into the river and screamed for help.[17] After a while, the friends of AAA's brother arrived. Tamayo got AAA's bag and fled the scene. AAA went to the police station to report the incident while BBB was rushed to the hospital.[18]

On April 19, 2010, AAA was examined by Dra. Shiela I. Almario (Dra. Almario). The Medico-Legal Report[19] dated May 11, 2010 prepared by Dra. Almario indicated the following findings:

PHYSICAL FINDING

-

(+) Hematoma lower lip area.

-

(+) Abrasion both knee.

-

(+) Abrasion left leg.

-

(+) Abrasion right foot.[20]

Meanwhile, BBB was hospitalized for two days for the stab wound he sustained on his chest.[21] The Discharge

Summary reflecting the final diagnosis on BBB stated "SOFT TISSUE INJURY 2[0] STABBING." [22]

Tamayo denied the charges against him. In his defense, he invoked the "Sweetheart Theory." He narrated that he met AAA in December 2009 when she became a passenger in his tricycle. AAA asked him if Abril Tamayo or "Abe" (Abril) was his brother. When Tamayo answered yes, AAA told him that Abril was the former boyfriend of her sister. [23] Sometime in January 2010, AAA became his passenger again. He joked that she was beginning to be a regular passenger of his tricycle, to which she replied, "oo nga parang sinasadya ng pagkakataon." [24] Tamayo asked if she has a boyfriend and AAA said yes. Tamayo then said, "may boyfriend ka na pala sayang balak pa naman kita ligawan." [25] Tamayo asked her if he could court her and AAA answered that she would think about it. [26] Two weeks later, Tamayo claimed that he saw AAA again and started courting her. They allegedly agreed that they would only have a "mutual understanding" because she already has a boyfriend. On their fourth meeting, they became a couple. [27]

Tamayo narrated that on April 18, 2010, he and AAA again saw each other because AAA told him to meet her at the footbridge. Tamayo offered to bring AAA home but she insisted on staying. While they were talking, they held each other's hands. AAA asked him to go down the footbridge because people might notice them. They sat on a bench and talked about themselves. [28]

After some time, a man holding a flashlight arrived who shouted "mga demonyo kayo, mga walanghiya kayo, mga manloloko kayo." [29] Tamayo later recognized the man holding the flashlight as BBB. Tamayo stood up and noticed that BBB was carrying a knife. BBB attacked Tamayo but AAA stood between them. BBB then dragged AAA and the latter rolled over the ground. When Tamayo asked why BBB did that to AAA, BBB replied "gago ka pala syota ko yan." [30] Tamayo and BBB wrestled for the knife. Both of them rolled over the ground and BBB was accidentally stabbed. AAA then told Tamayo to run. Due to fear, he fled the scene, boarded a tricycle, and went home. [31] Tamayo claimed that no one knew about their relationship except him and AAA. He added that there were instances when he kissed AAA without resistance. [32]

Ruling of the Regional Trial Court

On June 30, 2015, the Regional Trial Court (RTC) rendered its Decision, [33] the dispositive portion of which reads:

VIEWED IN THE LIGHT OF THE FOREGOING, as regards Criminal Case No. 2711-M-2010, accused Carlos Tamayo y Umali is hereby found guilty beyond reasonable doubt of the crime of Robbery with Rape. The Court imposes upon the accused the penalty of Reclusion Perpetua and to pay the private complainant Php 4,500.00 actual damages, Php 50,000.00 moral damages and Php 50,000.00 civil indemnity.

With respect to Criminal Case No. 2712-M-2010, accused Carlos Tamayo y Umali is hereby found guilty beyond reasonable doubt of the crime of the crime of Attempted Homicide and is hereby sentenced to suffer an indeterminate penalty of six months of Arresto Mayor as minimum to six years of Prision Correccional as maximum and to pay private complainant Php 20,000.00 as moral damages.

SO ORDERED. [34]

The RTC held that the prosecution was able to prove the crime of Robbery with Rape. The RTC gave credence to the testimony of AAA and rejected the Sweetheart Theory Tamayo invoked. The RTC described Tamayo's testimony as scripted and rehearsed. For the RTC, Tamayo was not able to substantiate his defense as he does not even know the mobile number of AAA. [35]

As to the crime of Frustrated Homicide, the RTC only convicted Tamayo of the crime Attempted Homicide because the prosecution failed to present any evidence showing that the chest wound BBB sustained was

fatal.[36]

On appeal,[37] Tamayo impugned the findings of the RTC and raised the following errors:

I.

THE TRIAL COURT GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE INCONSISTENT AND INCREDIBLE TESTIMONIES OF THE PRIVATE COMPLAINANTS, AND DISREGARDING THE ACCUSED-APPELLANT'S DEFENSE.

II.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED IN CRIMINAL CASE NO. 2711-M-2010, DESPITE THE INSUFFICIENCY OF EVIDENCE AGAINST HIM.

III.

IN CRIMINAL CASE NO. 2712-M-2010, ASSUMING THAT THE PROSECUTION'S VERSION OF THE EVENTS ACTUALLY TRANSPIRED, THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF ATTEMPTED HOMICIDE DESPITE THE PROSECUTION'S FAILURE TO PROVE THE ESSENTIAL ELEMENT OF INTENT TO KILL.[38]

Tamayo argued that the inconsistent and incredible testimony of AAA casts doubt on her credibility. He claimed that AAA stated in her Sinumpaang Salaysay that she took off her pants upon the order of Tamayo. However, during AAA's direct examination, AAA testified that it was Tamayo who pulled down her pants.[39] Tamayo also pointed out that the allegation that he inserted his penis into AAA's vagina was not reflected in the Police Blotter nor in her Sinumpaang Salaysay. This allegation was only introduced during AAA's direct examination.[40] For Tamayo, the reason given by the RTC for AAA's reluctance to admit that he inserted his penis into her vagina, that she was ashamed to disclose such fact in the presence of many people and BBB at the police station, was not supported by evidence. In fact, AAA admitted that she went to the police station with her mother and the friends of her brother while BBB was rushed to the hospital.[41]

Moreover, Tamayo claimed that the Medico-Legal Report contradicted AAA's claim that Tamayo had carnal knowledge of AAA. The photographs she submitted in evidence merely revealed a cut in her lips and abrasions on her knees and feet.[42]

Lastly, Tamayo maintained that the prosecution failed to prove the element of intent to kill BBB. For Tamayo, if he had really intended to kill BBB, he would have inflicted more serious wounds on him. Tamayo posited that since BBB was hospitalized for only two days, he should be held liable for the lesser crime of slight physical injury punished under Article 266, paragraph 1 of the Revised Penal Code (RPC).[43]

Ruling of the Court of Appeals

On July 17, 2017, the CA rendered its Decision,[44] the dispositive portion of which reads:

WHEREFORE, premises considered, the appeal is DENIED. The Decision dated 30 June 2015 of Branch 9, Regional Trial Court (RTC) of Malolos City, Bulacan in Criminal Case Nos. 2711-M-2010 and 2712-M-2010 is AFFIRMED with MODIFICATION that.

1. In Criminal Case No. 2711-M-2010, accused--appellant Carlos Tamayo y Umali is found GUILTY beyond reasonable doubt of the crime of Robbery with Rape and is sentenced to suffer the penalty of reclusion perpetua without eligibility for parole pursuant to Section 3 of Republic Act No. 9346, He is ORDERED to pay AAA the following amounts: P75,000.00 as moral damages, P75,000.00 as civil indemnity and P75,000.00

as exemplary damages;

2. In Criminal Case No. 2712-M-2010, accused- appellant Carlos Tamayo y Umali is found GUILTY beyond reasonable doubt of the crime of Attempted Homicide and is sentenced to suffer an indeterminate penalty of one (1) month and one (1) day of *arresto mayor* as minimum to four (4) years and two (2) months of *prision correccional* as maximum. He is ORDERED to pay BBB the amounts of P20,000.00 as civil indemnity and P20,000.00 as moral damages; and

3. Accused-appellant Carlos Tamayo y Umali is further ORDERED to pay interest on all damages awarded at the rate of six percent (6%) per annum from the time of finality of this decision until fully paid.

SO ORDERED.[45] (*Emphasis and italics in the original*)

In Criminal Case No. 2711-M-2010, the CA found that Tamayo committed the special complex crime of Robbery with Rape as his acts revealed that he was initially motivated by *animus lucrandi*. The CA noted that he first took the belongings of AAA before molesting AAA by touching and licking her breasts, inserting his finger in her private part, inserting his penis in her vagina, and forcing her to perform oral sex on him.[46]

The CA held that, though there may be inconsistencies in the testimony of AAA, these are trivial and do not have relevance to the elements of the offense charged.[47] Despite the trivial inconsistencies, the CA ruled that the special complex crime of Robbery with Rape (by Sexual Assault) was sufficiently proven by the prosecution.[48]

In Criminal Case No. 2712-M-2010, the CA declared that Tamayo is guilty of Attempted Homicide. The CA explained that Tamayo's intention to kill BBB was established through the nature of the wound and the manner in which the crime was committed. Though BBB was stabbed on the chest, the CA found no evidence to show that the wound sustained by the victim was fatal enough to cause his death.[49]

Tamayo filed a Notice of Appeal[50] on August 14, 2017. The Court notified the parties to file their supplemental briefs.[51] However, Tamayo opted not to file a supplemental brief since he believes that he had already exhaustively discussed his arguments in his Appellant's Brief.[52] For its part, the Office of the Solicitor General manifested that it will no longer file a supplemental brief as Tamayo did not advance any cogent or compelling reason for the modification, much less reversal, of the assailed Decision.[53]

Issues

The issues to be resolved in this case are:

1. whether Tamayo is guilty of Robbery with Rape; and
2. whether Tamayo is guilty of Attempted Homicide.

Ruling of the Court

In Criminal Case No. 2711-M-2010, the lower courts committed error in convicting Tamayo of the special complex crime of Robbery with Rape.

Paragraph 1 of Article 294 of the RPC states:

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

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

x x x.

The elements of the special complex crime of Robbery with Rape are as follows: (1) the taking of personal property is committed with violence or intimidation against persons; (2) the property taken belongs to another; (3) the taking is done with animus lucrandi; and (4) the robbery is accompanied by rape.

A special complex crime is composed of two or more crimes that the law treats as a single indivisible and unique offense for being the product of a single criminal impulse.[54] It must be stressed that to be convicted of the special complex crime of Robbery with Rape, the original intention must be to commit robbery and that by reason or on the occasion of robbery, rape was committed.

After a judicious examination of the records of the case, We find that the evidence presented by the prosecution failed to firmly established the elements of the special complex crime of Robbery with Rape.

Immediately after the incident, AAA went to the Hagonoy Police Station to report to the authorities, as reflected in Police Blotter Entry No. 110322[55] which stated:

04/19/10 12:35AM

DUMULOG SA HIMPILAN ITO SI Bb. AAA, 24 TAONG GULANG, AT RESIDENTE NG PUROK 4, BRGY. STA. MONICA, HAGONoy BULACAN AT KANIYANG IPINAGSUSUMBONG ANG ISANG LALAKI NA HINDI NAKILALA NA SA MUKHA LAMANG NALALA DAHIL SA GINAWANG PANGHUHULDAP AT TANGKANG PANGHAHALAY AYON SA NAGPATALA AY PAPA-UWI SIYA SA KANILANG BAHAY NG NAGDAAN SAPARAAN SA TULAY PAPUNTANG STA. MONICA AT STO NINO NG NAGLALAKAD NA ANG NAGPATALA AY BIGLANG INAKBAYAN AT TINUTUKAN NG PATALIM SA LEEG SAKA PINAG-HAHALIKAN AT NG MAGAWANG MAKATAKBO NG NAGPATALA AY HINABOL PARIN ITO AT NG MADAPA ANG NAGPATALA AY INABUTAN ITO AT KINUHA ANG MGA GAMIT (sic) CELPHONE AT BAG NA NAGLALAMAN NG PERA AT MAHAHALAGANG BAGAY AT SINABIHAN PA ANG NAGPATALA NA LALASLASIN ANG LEEG AT IHUHULOG SA ILOG AT DUMATING ANG BOYFRIEND NG NAGPATALA AT NG SIYA AY TUTULUNGAN AY SINALUBONG ITO NG SAK-SAK AT INIHULOG NAGPATALA SA PUNO NG TULAY AT ANG BOYFRIEND NG NAGPATALA AY INIHULOG DIN x x x.[56]

Approximately a week after the incident or on April 25, 2010, AAA executed her Sinumpaang Salaysay[57] describing the incident on April 18, 2010.

Noticeably, in the police blotter entry made immediately after the incident, she only reported the robbery and attempted rape ("GINAWANG PANGHUHULDAP AT TANGKANG PANGHAHALAY")[58] Tamayo allegedly committed by poking a knife on her neck and by kissing her ("TINUTUKAN NG PATALIM SA LEEG SAKA PINAG-HAHALIKAN").[59] When she was asked to describe the incident in her Sinumpaang Salaysay executed a week after the incident, she did not disclose that he inserted his penis into her vagina. Instead, she introduced new details of the incident as quoted below:

08). T: Ano pa ang mga sumunod na nagapanap?

S: Nang mahubad ko na po ang aking pantalon ay agad po niyang pinaghahawak ang maseselang bahagi ng aking katawan mula sa aking dibib pababa sa aking ari at hindi pa siya nasiyahan ay hinubad pa niya ang aking panty at pilit po niya akong pinahiga sa may semento at matapos ay ipinasok niya ang kanyang daliri sa aking ari habang nakatutok pa sa aking tagiliran ang hawak niyang patalim.

09). T: Ano pa ang umunod na naganap?

S: Masakit man pong sabihin na pambababoy po ang ginawa niya sa akin ni Carlos Tamayo dahil hindi pa siya nasiyahan sa pagmomolestiya sa akin DINILAAN AT KINAIN pa po niya aking ari (PUKE).

x x x x

13.) T: Ano pa ang ginawa niya sa iyo?

S: Matapos po ang kalapastanganan ginawa niya sa akin ay pinaupo po niya ako sa semento, na ang pag-aakala ko na tapas na ang nagging kalbaryo ko ng gabing iyun ay hindi pa pala tumayo po siya sa harapan ko at hinubad niya ang suot niyang patalon at umupo sa aking tabi.

14.) T: Ano pa ang sumunod na nangyari?

S: inilabas po niya ang kanyang ari (titi) at ipinakita sa akin at inutusan po niya akong isubo ko daw iyun.

15.) T: Sumunod ka ba sa kanyang kagustuhan?

S: Ayaw ko pong sumunod subalit sa aking hindi pagsunod ay sa leeg ko naman niya itinutok ang hawak niyang patalim at sinabihan ako na kapag hindi ko ginawa ay tutuluyan niya akong patayin at sabay hawak sa aking buhok sa likuran at sapilitan niyang isinubsub ang aking mukha sa kanyang ari.[60] (Emphasis supplied)

It must be highlighted that AAA only introduced her new claim that Tamayo forced her to have sexual intercourse with him during her direct examination as shown in the following exchange:

Q

How about the accused, what was his position in relation to your position?

A

He was in front of me.

Q

In front or in [sic] top?

A

Nasa may baba ko siya nung dinidilaan niya ang aking ari at pumaibabaw siya ng pinasok niya yung ari niya sa ari ko.

Q

While the accused was doing that, what was your reaction?

A

I just cried and prayed, I cannot do anything at that time.

Q

Tell us the reason why you cannot do anything?

A

Because he told me that he will kill me, sir.

Q

So, you mentioned that the accused inserted his penis into your vagina, what happened after that?

A

I tried to prevent this man from inserting his penis to my vagina but he overpowered me, sir.

Q

So, what happened after that?

A

At that point he was able to insert his penis to my vagina; and at that point a man passed by and he stood up and told me that "nahihiya siya," tapos tumatawa pa po siya parang walang nagyayari.[61] (Emphasis supplied)

We find that the reasons advanced by the RTC for AAA's alleged reluctance to admit that Tamayo inserted his penis into her vagina are not supported by evidence. In the Decision of the RTC, it was stated that AAA "was ashamed as there were a lot of people in the police station"[62] and BBB was also present.[63] If she were truly hesitant to reveal how she was molested, there is no logical reason why she would mention in her Sinumpaang Salaysay that Tamayo licked her vagina, inserted his finger into her vagina, and forced her to suck his penis yet leave out the information that she was forced to have sexual intercourse with him as all these acts are equally humiliating. It is also difficult to understand why she would leave out such a vital piece of information when she reported to the authorities. Although it may be mortifying to talk about the alleged sexual molestation she experienced, it is contrary to ordinary human experience to omit such a pivotal piece of information which could later help in prosecuting Tamayo if the charges against him are really true.

What is even more incredible to believe is AAA's claim that the alleged molestation went on from 9:00 p.m. to 12:00 a.m. without attracting the attention of passersby who frequented the footbridge, as revealed in the following exchange:

Q

According to the Information, the incident happened at 9:00 in the evening, do you remember that?

A

Yes, ma'am.

ATTY. GADDI

Q

Now, from the moment that the accused got hold of you, how many minutes or hours elapsed before he ran away?

A

He ran away at pass (sic) 12:00, ma'am.

Q

You men to tell us that from 9:00 in the evening up to pass 12:00 of midnight you were there in that public area, correct?

A

Yes, ma'am.

Q

During that almost three (3) hours nobody passed or walked in that area?

A

Meron po madalang po kasi gabi na.

Q

Those people who passed did not even bother to see what is happening between you and the accused?

A

Tumitingin po sila pero siya po pinapayuko po niya ako nakatutok po talaga yung kutsilyo bale po hostage niya po ako.

Q

How many people passed by during that time?

A

Nakalimutan ko na po dahil po nakayuko po ako nuon.

Q

You mentioned that accused "dinilaan at kinain ang iyong ari" for how long did the accused to (sic) that to you?

A

Five (5) to ten (10) minutes, ma'am.

Q

And what was your position during that time?

A

Nakahiga po sa side.[64]

AAA claimed that she was molested for approximately three hours with passersby occasionally crossing the footbridge and witnessing the alleged molestation yet not even once did she try to seek help. Moreover, it is highly unlikely that not even one passerby would intervene upon discovering them in a compromising position.

In addition, AAA stated in her direct examination that:

A

Hostage niya po ako. Sinuntok niya po ako. Hindi ko po siya kaya napakalaki niya po.[65] [Emphasis supplied]

However, AAA never mentioned in the police blotter and in her Sinumpaang Salaysay that Tamayo punched her.

AAA also cannot consistently identify which part of her body Tamayo aimed the bladed weapon. During her cross-examination and in the police blotter, she said that Tamayo aimed the bladed weapon on her neck and suddenly kissed her.[66] Meanwhile, in her Sinumpaang Salaysay, she said that Tamayo aimed the bladed weapon on her tagiliran. She also did not mention in her testimony that Tamayo kissed her at that moment.[67]

In the police blotter, AAA also averred that before Tamayo took her belongings, she tried to runaway but he

caught her when she fell.[68] On the other hand, in her Sinumpaang Salaysay and subsequent testimony in court, she asserted that Tamayo immediately took her belongings and that she did not have an opportunity to escape due to Tamayo's threats until BBB arrived and they were able to jump into the river.[69]

Moreover, We observed that her narration of how she was undressed in her Sinumpaang Salaysay is not compatible with her testimony during her direct examination. In her Sinumpaang Salaysay, she revealed that:

S: Nagmamakaawa po ako sa kanya na huwag po niyang kuhanin ang aking bag dahil nandoon po ang perang pang gastos ng aking pamilya subalit hindi po siya nakinig sa aking pagmamakaawa itinatok pa din niya ang kutsilyo sa aking tagiliran at inutusan po niyang akong hubarin ko ang aking suot na pantalon at kung hindi ko daw huhubarin ay isaksak niya ang hawak niyang patalim sa akin at binulungan niya akong huwag sisigaw dahil sasamain daw aka at dahil po sa takot ay nagging sunod-sunuran ako sa kanya at habang hinuhubad ko ang aking pantalon ay nagpakilala siya sa pangalang MARK at residente daw siya ng Brgy San Miguel, Tampok, San Pascual lahat po ay sa Hagonoy, Bulacan.[70] (Emphasis supplied)

Meanwhile, during her direct examination, she introduced another version of her story, the pertinent portion of which is quoted below:

Q

So, you also mentioned that the accused ordered you to take off your pants, what was your reaction to that?

A

I cannot do anything, I became his puppet because of that deadly instrument poked at my side, sir, (the witness starting (sic) shedding tears).

Q

Were you able to pull down your pants?

A

It was he who pulled down my jeans.

Q

Was the accused successfully removing (sic) your pants?

A

Yes, sir, because nobody at that time passed that place, sir.[71] (Emphasis supplied)

We cannot simply consider these glaring inconsistencies as merely trivial and disregard them in Our appreciation of the evidence of the prosecution. These contradicting statements involve an essential aspect of the crime charged, the manner by which Tamayo allegedly sexually assaulted AAA. Her failure to give a consistent and coherent narration as to how she was undressed leads us to question whether the alleged molestation ever happened during the alleged robbery.

We are also convinced that she never mentioned that she was raped when she was at the hospital or even at the police station. If it were really true that AAA reported that she was robbed and raped when she was at the hospital,[72] the attending physician would have performed anogenital examination and she would not have just been treated for her external wounds. Had she disclosed this information to the attending physician or police investigator, protective measures to ensure the proper treatment for her injuries and documentation of the incident for possible prosecution would have been arranged for her pursuant to Sections 4 and 5 of RA No. 8505 or the

Rape Victim Assistance and Protection Act of 1998 which state:

Section 4. Duty of the Police Officer. - Upon receipt by the police of the complaint for rape, it shall be the duty of the police officer to:

(a)

Immediately refer the case to the prosecutor for inquest/investigation if the accused is detained; otherwise, the rules of court shall apply;

(b)

Arrange for counselling and medical services for the offended party; and

(c)

Immediately make a report on the action taken.

It shall be the duty of the police officer or the examining physician, who must be of the same gender as the offended party, to ensure that only persons expressly authorized by the offended party shall be allowed inside the room where the investigation or medical or physical examination is being conducted.

For this purpose, a women's desk must be established in every police precinct throughout the country to provide a police woman to conduct investigation of complaints of women rape victims. In the same manner, the preliminary investigation proper or inquest of women rape victims must be assigned to female prosecutor or prosecutors after the police shall have endorsed all the pertinent papers thereof to the same office.

Section 5. Protective Measures. - At any stage of the investigation, prosecution and trial of a complaint for rape, the police officer, the prosecutor, the court and its officers, as well as the parties to the complaint shall recognize the right to privacy of the offended party and the accused. Towards this end, the police officer, prosecutor, or the court to whom the complaint has been referred may, whenever necessary to ensure fair and impartial proceedings, and after considering all circumstances for the best interest of the parties, order a closed-door investigation, prosecution or trial and that the name and personal circumstances of the offended party and/or the accused, or any other information tending to establish their identities, and such circumstances or information on the complaint shall not be disclosed to the public.

The investigating officer or prosecutor shall inform the parties that the proceedings can be conducted in a language or dialect known or familiar to them.

In addition, ordinary human experience dictates that, even without knowledge of the cited provisions, the attending physician and the police investigator with whom AAA allegedly confided would have adopted reasonable protective measures to ensure proper treatment and documentation of the injuries she sustained allegedly as a result of the assault.

It also did not escape Our attention that the prosecution failed to present any competent evidence to rebut the evidence presented by Tamayo tending to establish that he and AAA knew each other prior to the incident because Tamayo's younger brother, Abril, is the former boyfriend of AAA's sister[73] and Tamayo's adopted brother, Armando Trono (Armando), is a classmate of AAA's in her third and fourth year in high school. Armando even confirmed that AAA has been to the house he shared with Tamayo before. It was also confirmed that AAA and Tamayo are both residents of Hagonoy, Bulacan.[74]

AAA also did not identify the perpetrator during the first opportunity to report the incident to the authorities. In her subsequent Sinumpaang Salaysay, she mentioned that the culprit introduced himself to her as "Mark" and as a resident of Barangay San Miguel, Tampok, San Pascual, Hagonoy, Bulacan. PO3 Dennis L. Salamat (PO3

Salamat), the apprehending officer who prepared the Affidavit of Arrest[75] on April 26, 2020 merely described in general terms how Tamayo was arrested without correlating how the composite sketch[76] and the follow-up operation of the authorities led to the determination of his residence in San Agustin, Hagonoy, Bulacan and resulted in his arrest. In the Affidavit of Arrest PO3 Salamat prepared, he stated:

Na ako kasama ang ilang confidential asset ng aming himpilan ay nagpatuloy na nagsagawa ng follow-up operation sa sakop ng Brgy. San Agustin Hagonoy, Bulacan na kung saan kami ay nakakuha ng impormasyon na doon bumaba ang suspek matapos ang insidente na ito ay sumakay sa isang trisikel at doon nagpahatid.[77]

Noticeably, PO3 Salamat failed to narrate definitively how the information that the culprit boarded an unidentified tricycle and the composite sketch led to his location approximately seven days after the incident. It is difficult to believe that a composite sketch of a person AAA claims she does not know and the follow-up operation resulted to Tamayo being readily identified.

The Court cannot simply ignore the seeming gap in the prosecution's narration of facts. While a composite sketch was prepared a day after the incident to help identify the assailant, and a follow-up operation was conducted by the police, it cannot be denied that the question as to how the authorities were able to trace his residence was left unanswered. It was not explained how these pieces of information were harmonized by the investigators and paved the way for them to identify the culprit and his location. To Our mind, the claim of Tamayo and his brothers that AAA and Tamayo knew each other prior to the incident and that she has been to his house before[78] fills this gap and resolves how the authorities were able to locate his residence.

Moreover, AAA claimed that her boyfriend sent her a text message asking her location while she was under the control of Tamayo. She alleged that Tamayo took her phone and replied to BBB, "Gago ka, girlfriend ko si [AAA]."[79] Noticeably, if the testimony of AAA were to be believed, at this point of the incident, she had not yet mentioned her name and Tamayo could not have known it either. Thus, it is illogical for Tamayo to send the reply "Gago ka, girlfriend ko si [AAA]" when there was no opportunity for him to know her name yet. For Us, this allegation of AAA supports the claim of Tamayo that they knew each other prior to the incident.

The constantly changing statements of AAA and the apparent gap in her narration of facts cast doubt on the veracity and truthfulness of her statements. AAA appears to be embellishing her story, adding new information not previously alleged every time her statement is taken, from the police blotter until her cross-examination. To Our mind, the inconsistencies in AAA's statements, the Medico-Legal Report[80] and the photographs[81] showing a cut in her lips and abrasion on her knees and feet, cannot simply be brushed aside. BBB's testimony is insufficient to prove the special complex crime of Robbery with Rape either as he did not witness the act of taking of AAA's belongings. AAA's Medico-Legal Report and photographs are also insufficient to prove the elements of the special complex crime of Robbery with Rape as these do not connect the crime to Tamayo. These factors convince Us that no Robbery with Rape occurred. Instead, what appears to be consistent is the fact that she was in a relationship with Tamayo and she was caught by her boyfriend BBB.

In *People v. Pacapac*,[82] it was settled that:

The maxim or rule "falsus in unis, falsus in omnibus" does not lay down a categorical test of credibility. It is not a positive rule of law or of universal application. It should not be applied to portions of the testimony corroborated by other evidence, particularly where the false portions could be innocent mistakes. Moreover, the rule is not mandatory but merely sanctions a disregard of the testimony of a witness if the circumstances so warrant. To completely disregard all the testimony of a witness on this ground, his testimony must have been false as to a material point, and the witness must have a conscious and deliberate intention to falsify a material point.[83]

In this case, We are not compelled to accept the findings of the trial court where the inconsistencies and falsities in the statements of the prosecution witness is substantial enough to impair the veracity of the prosecution evidence against Tamayo.

In *Kummer v. People*,^[84] it was held that

Affidavits are usually abbreviated and inaccurate. Oftentimes, an affidavit is incomplete, resulting in its seeming contradiction with the declarant's testimony in court. Generally, the affiant is asked standard questions, coupled with ready suggestions intended to elicit answers, that later turn out not to be wholly descriptive of the series of events as the affiant knows them. Worse, the process of affidavit-taking may sometimes amount to putting words into the affiant's mouth, thus allowing the whole statement to be taken out of context.

The court is not unmindful of these on-the-ground realities. In fact, we have ruled that the discrepancies between the statements of the affiant in his affidavit and those made by him on the witness stand do not necessarily discredit him since ex parte affidavits are generally incomplete. As between the joint affidavit and the testimony given in open court, the latter prevails because affidavits taken ex-parte are generally considered to be inferior to the testimony given in court.^[85]

However, in the present case, the inconsistencies and falsities observed in the testimony of AAA are not mere innocent mistakes or errors in the recollection of the incident that We can simply brush aside. The subsequent statements given by AAA after the initial blotter entry in her Sinumpaang Salaysay and her testimony in court do not even complement nor furnish supporting details tending to elaborate on her initial statements. As has been discussed, AAA appears to be embellishing her story, adding new information not previously alleged every time her statement is taken, from the police blotter until her cross-examination. AAA's conduct manifests a deliberate intention to concoct a story that is different from what actually took place on the date of the incident. We are convinced that Tamayo and AAA were in a relationship at the time of the incident, thus negating the claim that he robbed and raped her.

It is well-settled that the burden of proof rests upon the prosecution, and unless the State succeeds in proving by overwhelming evidence the guilt of the accused, the constitutional presumption of innocence applies. A conviction in criminal cases must rest on nothing less than the moral certainty of guilt. Due to the prosecution's failure to meet this test, it is the constitutional duty of the Court to acquit Tamayo of the crime of Robbery with Rape.

In Criminal Case No. 2712-M-2010, Tamayo should not be held liable for Attempted Homicide.

Tamayo suggested that he should only be held liable for slight physical injuries since BBB was only hospitalized for two days and the prosecution was not able to establish intent to kill.

The CA committed error in ruling that all the elements of the crime of Attempted Homicide were present. Intent to kill is a state of mind that the courts can discern only through external manifestations, including the acts and conduct of the accused at the time of the assault and immediately thereafter.^[86] In this case, there was no intent to kill. If We cannot believe the prosecution's allegation of Robbery with Rape against Tamayo, there is reason to believe that the charge for Attempted Homicide was concocted too.

Under paragraphs 5 and 6 of Article 12 of the RPC,^[87] among the circumstances that exempt a person from

criminal liability are if he acts under the compulsion of an irresistible force, and if he acts under the impulse of an uncontrollable fear of an equal or greater injury.

The records show that the altercation between Tamayo and BBB started when BBB saw Tamayo with AAA. In the testimony of Tamayo which We find more believable, he claimed that it was BBB who first attacked Tamayo with a knife. Fearing for his life, Tamayo wrestled for possession of the knife BBB brought which accidentally hit the latter.[88] Tamayo was left with no opportunity to escape or defend himself in equal combat. One who acts under the compulsion of an irresistible force and under the impulse of an uncontrollable fear of an equal or greater injury acts without voluntariness and free will. Although a crime was committed, no criminal liability arises. Therefore, Tamayo cannot be convicted of Attempted Homicide.

WHEREFORE, the appeal is GRANTED. The Decision dated June 30, 2015 of the Regional Trial Court of Malolos City, Bulacan, Branch 9 in Criminal Case Nos. 2711-M-2010 and 2712-M-2010, as well as the Decision dated July 17, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 07651 are REVERSED and SET ASIDE. Accused-appellant Carlos Tamayo y Umali is ACQUITTED for failure to prove his guilt beyond reasonable doubt, and is ORDERED to be IMMEDIATELY RELEASED unless he is being held for some other valid or lawful cause. The Director of the Bureau of Corrections is DIRECTED to inform this Court of the action taken hereon within five (5) days from receipt hereof.

SO ORDERED.

Peralta, C. J., Caguioa, Zalameda, and Gaerlan, JJ., concur.

[1] Rollo, pp. 26-27.

[2] Penned by Associate Justice Renato C. Francisco, with the concurrence of Associate Justices Ramon M. Bato, Jr. and Manuel M. Barrios; id. at 2-25.

[3] Records, pp. 1, 1A.

[4] The real name of the victim and of the members of her immediate family are withheld pursuant to Republic Act No. 7610 otherwise known as the Special Protection of Children against Abuse, Exploitation and Discrimination Act, and A.M . No. 12-7-15-SC entitled Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions and Finals Orders using Fictitious Names.

[5] Records, p. 1.

[6] Supra note 4.

[7] Records, p. 1A.

[8] TSN dated March 8, 2011, p. 7.

[9] Id. at 8.

[10] TSN dated May 3, 2011, p. 3.

[11] TSN dated March 8, 2011, p. 10.

[12] Id. at 14.

[13] TSN dated November 27, 2012, pp. 6-9.

- [14] TSN dated September 11, 2012, pp. 13-14.
- [15] TSN dated November 27, 2012, p. 10.
- [16] TSN dated May 21, 2013, p. 7.
- [17] Records, p. 10.
- [18] Id.; TSN dated May 3, 2011, p. 6.
- [19] Id. at 31.
- [20] Id. at 4.
- [21] Id. at 343.
- [22] Id.
- [23] TSN dated October 22, 2013, p. 3.
- [24] Id. at 4.
- [25] Id.
- [26] Id.
- [27] Id. at 5-6.
- [28] Id. at 6-8; TSN dated June 3, 2014, pp. 3-4.
- [29] TSN dated June 3, 2014, p. 4.
- [30] Id.
- [31] Id. at 4-6.
- [32] Id. at 11-12.
- [33] Penned by Presiding Judge Veronica A. Vicente-De Guzman; CA rollo, pp. 57-68.
- [34] Id. at 68.
- [35] Id. at 64-67.
- [36] Id. at 67-68.
- [37] Id. at 24-25.
- [38] Id. at 40-41.
- [39] Id. at 47-48.
- [40] Id. at 48.
- [41] Id. at 49-50.
- [42] Id. at 50.
- [43] Id. at 51-53.
- [44] Supra note 2.

- [45] Rollo, pp. 23-24.
- [46] Id. at 12-16.
- [47] Id. at 16.
- [48] Id. at 17.
- [49] Id. at 20-21.
- [50] Id. at 26-27.
- [51] Id. at 32-33.
- [52] Id. at 38.
- [53] Id. at 34.
- [54] *People v. Villaflores*, 685 Phil. 595, 610 (2012).
- [55] Records, p. 20.
- [56] Id.
- [57] Id. at 8-11.
- [58] Id. at 20.
- [59] Id.
- [60] Id. at 9-10.
- [61] TSN dated March 8, 2011, pp. 12-13.
- [62] *Supra* note 33 at 9.
- [63] Id.
- [64] TSN dated October 16, 2012, pp. 4-5.
- [65] Id. at 6.
- [66] TSN dated September 11, 2012, p. 11.
- [67] Id. at 19.
- [68] Records, p. 20.
- [69] Id. at 8-10; TSN dated May 3, 2011, p. 6.
- [70] Records, p. 9.
- [71] TSN dated March 8, 2011, p. 11.
- [72] TSN dated May 3, 2011, p. 11.
- [73] TSN dated October 22, 2013, p. 3; TSN dated October 10, 2014, pp. 3-5.
- [74] TSN dated February 17, 2015, pp. 2-5.
- [75] Records, pp. 12-13.

[76] Id. at 18.

[77] Id. at 12.

[78] TSN dated October 10, 2014, p. 4.

[79] TSN dated March 8, 2011, pp. 15-16; TSN dated May 3, 2011, pp. 2-3.

[80] Records, p. 31.

[81] Id. at 344.

[82] 318 Phil. 91 (1995).

[83] Id.

[84] 717 Phil. 670 (2013).

[85] Id.

[86] *Serrano v. People*, 637 Phil. 319, 333 (2010).

[87] Article 12. Circumstances Which Exempt from Criminal Liability. - The following are exempt from criminal liability:

x x x x

5. Any person who acts under the compulsion of an irresistible force.

6. Any person who acts under the impulse of an uncontrollable fear of an equal or greater injury.

[88] TSN dated June 3, 2014, pp. 4-6.

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