



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
 Plaintiff -Appellee,

G.R. No. 190318

Present:

SERENO, *CJ.*,
 Chairperson,
 LEONARDO-DE CASTRO,
 BERSAMIN,
 VILLARAMA, JR., and
 REYES, *JJ.*

- *versus* -

Promulgated:

ROBERTO VELASCO,
 Accused-Appellant.

NOV 27 2013

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DECISION

LEONARDO-DE CASTRO, J.:

We resolve the present appeal from the Decision¹ dated August 25, 2009 of the Court of Appeals in CA-G.R. CR.-H.C. No. 03315, entitled *People of the Philippines v. Roberto Velasco*, which affirmed with modification the Decision² dated March 5, 2008 of the Regional Trial Court (RTC) of Malolos, Bulacan, Branch 13 in Criminal Cases No. 3579-M-2002, 3580-M-2002, 3581-M-2002 and 145-M-2003. The trial court found appellant Roberto Velasco guilty beyond reasonable doubt of the crime of three counts of rape under Article 266-A of the Revised Penal Code as charged in Criminal Cases No. 3579-M-2002, 3580-M-2002 and 3581-M-2002. The trial court also found appellant guilty beyond reasonable doubt of the crime of acts of lasciviousness in Criminal Case No. 145-M-2003.

The pertinent portions of the three Informations charging appellant with one count each of the felony of rape in Criminal Cases No. 3580-M-2002, 3581-M-2002 and 145-M-2003 read as follows:

¹ *Rollo*, pp. 2-18; penned by Associate Justice Apolinario D. Bruselas, Jr. with Associate Justices Conrado M. Vasquez, Jr. and Vicente S.E. Veloso, concurring.

² *CA rollo*, pp. 38-43.

hmt

[Criminal Case No. 3580-M-2002]

That on or about the 27th day of December 2001, in the municipality of Malolos, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being the stepfather of [Lisa³], a minor 14 years of age, did then and there wilfully, unlawfully and feloniously, by means of force and intimidation, have carnal knowledge of his stepdaughter [Lisa] against her will and without her consent.⁴

[Criminal Case No. 3581-M-2002]

That on or about the 28th day of December, 2001, in the municipality of Malolos, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being the stepfather of [Lisa], a minor 14 yrs. of age, did then and there wilfully, unlawfully and feloniously by means of force and intimidation, have carnal knowledge of his stepdaughter [Lisa] against her will and without her consent.⁵

[Criminal Case No. 145-M-2003]

That on or about the 29th day of December, 2001, in the municipality of Malolos, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused being the stepfather of [Lisa], a minor 14 years of age, did then and there wilfully, unlawfully and feloniously by means of force and intimidation, have carnal knowledge of his stepdaughter [Lisa] against her will and without her consent.⁶

On the other hand, the accusatory portion of the Information charging appellant with the felony of acts of lasciviousness in Criminal Case No. 3579-M-2002 stated:

That on or about the 21st day of December, 2002, in the municipality of Malolos, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, taking advantage of his moral ascendancy and influence over his stepdaughter [Lisa], a 15-year old child, with lewd designs, did then and there wilfully, unlawfully and feloniously by means of force and intimidation kiss and touch the private parts of complainant against her will and consent.⁷

Appellant was arraigned for the two charges of rape in Criminal Case Nos. 3580-M-2002 and 3581-M-2002; and one charge of acts of lasciviousness in Criminal Case No. 3579-M-2002 on February 3, 2003 to

³ The Court of Appeals opted to use the alias "Lisa" in referring to the victim pursuant to prevailing jurisprudence. The real name of the victims-survivors and their personal circumstances or any other information tending to establish or compromise their identities, as well as those of their immediate families or household members, are not to be disclosed. (*See People v. Cabalquinto*, 533 Phil. 703 [2006].)

⁴ Records (Criminal Case No. 3580-M-2002), p.1.

⁵ Id. (Criminal Case No. 3581-M-2002), p.1.

⁶ Id. (Criminal Case No. 145-M-2003), p. 1.

⁷ Id. (Criminal Case No. 3579-M-2002), p. 1.

which he entered a plea of not guilty on all charges.⁸ He was later arraigned on March 12, 2003 for the third charge of rape in Criminal Case No. 145-M-2003 to which he likewise pleaded “not guilty.”⁹

After pre-trial, the cases were consolidated and the trial court conducted joint hearings on the merits. The prosecution intended to present the victim “Lisa” and Dr. Ivan Richard Viray, the medico-legal officer who examined her. However, after “Lisa” completed her testimony, the presentation of Dr. Viray was dispensed with upon the defense’s admission of the due execution of the medical certificate and the stipulation of the prosecution that the cause of the victim’s non-virgin state was not determined by Dr. Viray.¹⁰ The defense, in turn, presented appellant and his nephew, Roderick Falconet.

The material facts according to the prosecution and restated in the Appellee’s Brief are:

Appellant is the live-in partner of [AAA], the mother of private complainant [Lisa]. [Lisa] stayed with them in their house in x x x, Malolos, Bulacan since she was fourteen (14) years old.

On December 27, 2001, at around 11:00 o’clock in the morning, [Lisa] was at the *sala* watching television. Momentarily, appellant approached her and thereafter, removed his shorts and underwear as well as that of [Lisa’s]. He then mounted [Lisa] and inserted his penis into her vagina. He warned her not to report the incident to anybody, otherwise, he will kill both [Lisa] and her mother. After satisfying his lust, appellant left without saying a word. At the time of the incident, [Lisa] and [appellant] were alone in the house as [Lisa’s] brother and mother were out for work.

The following day, or on December 28, 2001, appellant again approached [Lisa] and removed both their shorts and underwear. He went on top of her and inserted his penis into her vagina. She was again threatened not to tell anyone of the incident. The incident took place outside the family’s bedroom at around 11:00 o’clock in the morning while [Lisa’s] mother and brother were not in the house.

The next day, or on December 29, 2001, also at around 11:00 o’clock in the morning, [Lisa] was raped for the third consecutive time by appellant while they were alone in the house. [Lisa] testified that white fluid came out of appellant’s penis. Like in previous incidents, she was threatened not to tell anyone of the incident.

A year thereafter, or on December 21, 2002, at midnight, when the other members of the family were asleep, appellant attempted to insert his penis into [Lisa’s] vagina while the latter was sleeping on her folding bed. This time, [Lisa] cried. Although appellant succeeded in touching and kissing [Lisa’s] private parts, he did not push through with his intention of

⁸ Id. (Criminal Case No. 3579-M-02), p. 12; id. (Criminal Case No. 3580-M-02), p. 4; and id. (Criminal Case No. 3581-M-02), p. 3.

⁹ Id. (Criminal Case No. 145-M-2003), p. 17.

¹⁰ TSN, February 13, 2006, pp. 2-3.

raping her for fear of getting caught by the other family members who were sleeping just a few feet away from them.

The medico legal report submitted by public physician Richard Ivan Viray states that [Lisa] is in a non-virgin state; that she had shallow healed hymenal lacerations at 2 and 3 o'clock positions and deep healed lacerations at 6 and 7 o'clock positions.¹¹ (Citations omitted.)

Conversely, the defense offered a different version of events which was retold in the Appellant's Brief in this wise:

For six (6) days a week in December 2001 and December 2002, [appellant] was working as a mason in Barangay Caingin, Malolos, Bulacan. He leaves their house at 7:00 o'clock in the morning to go to work and arrives at 5:30 in the afternoon.

He was [the] live-in partner of [Lisa's] mother. He was at work on the 27th, 28th and 29th of December 2001 with his nephew Roderick Palconet while he was at home on the 21st of December 2002. The accusations against him were instigated by [Lisa's] father who was mad at him for having a live-in relationship with [Lisa's] mother.

RODERICK PALCONET, the [appellant's] nephew and co-worker at Caingin, Malolos, Bulacan, averred that from 8:00 o'clock in the morning to 5:00 o'clock in the afternoon of the 27th, 28th and 29th of December 2001, he was with [appellant].¹² (Citations omitted.)

At the conclusion of trial, the trial court convicted appellant on all the charges leveled against him. The dispositive portion of the March 5, 2008 Decision of the trial court reads:

WHEREFORE, given the foregoing, the Court finds the accused guilty beyond reasonable doubt of the crime of rape on three (3) counts as charged in Crim. Case Nos. 3579-M-02, 3580-M-02, and 3581-M-02 and hereby sentences him to suffer the penalty of *reclusion perpetua* for each count (total: three *reclusion perpetua*).

The Court likewise finds the accused guilty beyond reasonable doubt of the crime of Acts of Lasciviousness in Crim. Case No. 145-M-03, and hereby sentences him to suffer the indeterminate penalty of six (6) months of *arresto mayor* as minimum to six (6) years of *prision correccional* as maximum.

The accused is likewise directed to indemnify the private complainant in the amount of ₱150,000.00.¹³

Appellant elevated his case to the Court of Appeals which denied his appeal and affirmed with modification the trial court judgment in a Decision dated August 25, 2009, the dispositive portion of which states:

¹¹ CA *rollo*, pp. 60-62.

¹² Id. at 23.

¹³ Id. at 43.

WHEREFORE, in light of the foregoing, the decision of the trial court is **AFFIRMED** with **MODIFICATIONS** as follows:

1. In Criminal Case Nos. 3579-M-02, 3580-M-02 and 3581-M-02, appellant Roberto Velasco is held liable to pay the victim ₱50,000.00 as civil indemnity; ₱50,000.00 moral damages; and ₱25,000.00 exemplary damages for each count of rape in addition to the penalty of *reclusion perpetua*;
2. In Criminal Case No. 145-M-03, appellant Roberto Velasco is sentenced to suffer the indeterminate prison term of four (4) months of *arresto mayor* as minimum to four (4) years of *prision correccional* as maximum for the act of lasciviousness. He is also held liable to pay the victim ₱30,000.00 moral damages and ₱20,000.00 civil indemnity.¹⁴

Hence, appellant resorted to the present appeal, putting forward the following assignment of errors:

I

THE COURT A QUO GRAVELY ERRED IN NOT FINDING THE WARRANTLESS ARREST OF THE ACCUSED-APPELLANT AS ILLEGAL.

II

THE COURT A QUO GRAVELY ERRED IN NOT FINDING THAT ACCUSED-APPELLANT'S RIGHTS UNDER REPUBLIC ACT NO. 7438 (AN ACT DEFINING CERTAIN RIGHTS OF PERSON ARRESTED, DETAINED OR UNDER CUSTODIAL INVESTIGATION AS WELL AS THE DUTIES OF THE ARRESTING, DETAINING AND INVESTIGATING OFFICERS, AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF) WERE VIOLATED.

III

THE COURT A QUO GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE PRIVATE COMPLAINANT'S INCREDIBLE TESTIMONY.

IV

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.¹⁵

The petition is without merit.

¹⁴ Rollo, pp. 17-18.

¹⁵ CA rollo, pp. 19-20.

Appellant essentially focuses his defense on two issues: first, the preliminary issue surrounding the validity of his warrantless arrest; and, second, the substantive issue concerning the evidence used to convict him for three counts of rape and one count of acts of lasciviousness.

With regard to purported irregularities that attended appellant's warrantless arrest, we are of the same persuasion as the Court of Appeals which ruled that such a plea comes too late in the day to be worthy of consideration.

Jurisprudence tells us that an accused is estopped from assailing any irregularity of his arrest if he fails to raise this issue or to move for the quashal of the information against him on this ground before arraignment, thus, any objection involving a warrant of arrest or the procedure by which the court acquired jurisdiction of the person of the accused must be made before he enters his plea; otherwise, the objection is deemed waived.¹⁶

Nevertheless, even if appellant's warrantless arrest were proven to be indeed invalid, such a scenario would still not provide salvation to appellant's cause because jurisprudence also instructs us that the illegal arrest of an accused is not sufficient cause for setting aside a valid judgment rendered upon a sufficient complaint after a trial free from error.¹⁷

Having disposed of the issue concerning appellant's warrantless arrest, we now undertake to resolve the more crucial issue involving the weight and sufficiency of the evidence used to convict appellant of the felonies he was charged with in these consolidated cases.

Appellant argues that the trial court erroneously gave probative weight and credence to the alleged victim's incredible and uniform testimony which casts doubt on her truthfulness. He also contends that the medico-legal report's conclusion which states that the "subject is in a non-virgin state physically" did not prove that the victim was indeed raped. Moreover, he claims that the alleged victim's failure to resist or to wake her brother and mother immediately after the alleged sexual molestation on December 21, 2002 or to shout for help from their neighbors who were in close proximity to their house negated the credibility of her accusations.

Appellant also reasons that the alleged victim's willingness to live in the same house with him despite what he allegedly did to her, taken together with her failure to immediately report the alleged sexual assaults to the authorities, further eroded the reliability of the victim's statements. Finally, he points out that he could not have possibly committed the crimes attributed to him because, during the times and dates the alleged criminal acts took place, he claims to be somewhere else.

¹⁶ *Miclat, Jr. v. People*, G.R. No. 176077, August 31, 2011, 656 SCRA 539, 549.

¹⁷ *People v. Trestiza*, G.R. No. 193833, November 16, 2011, 660 SCRA 407, 443-444.

In short, appellant asserts that the prosecution failed to prove his guilt beyond reasonable doubt. However, after a careful review of the records of this case, we can safely conclude that such an assertion of innocence cannot be upheld.

It is settled in jurisprudence that in a prosecution for rape, the accused may be convicted solely on the basis of the testimony of the victim that is credible, convincing, and consistent with human nature and the normal course of things.¹⁸ Furthermore, it is axiomatic that when it comes to evaluating the credibility of the testimonies of the witnesses, great respect is accorded to the findings of the trial judge who is in a better position to observe the demeanor, facial expression, and manner of testifying of witnesses, and to decide who among them is telling the truth.¹⁹ Lastly, in order for a discrepancy or inconsistency in the testimony of a witness to serve as a basis for acquittal, it must establish beyond doubt the innocence of the appellant for the crime charged since the credibility of a rape victim is not diminished, let alone impaired, by minor inconsistencies in her testimony.²⁰

In the case at bar, we are in full agreement with the Court of Appeals that no fact or circumstance exists to warrant a reversal of the trial court's assessment that the victim's testimony is credible and worthy of belief. We also concur with the findings of the appellate court that the testimony of the victim was made in a candid and straightforward manner, even on extensive cross-examination. In sum, the alleged discrepancies in the victim's testimony were not significant enough to successfully tilt the scales of justice in favor of appellant.

With regard to appellant's argument that the findings of the medico-legal report do not support the allegation that the victim was indeed raped, we cannot give any credit to such claim in light of established jurisprudence holding that a medical certificate is not necessary to prove the commission of rape, as even a medical examination of the victim is not indispensable in a prosecution for rape.²¹

We have also recently reiterated that the failure of the victim to shout for help does not negate rape and the victim's lack of resistance especially when intimidated by the offender into submission does not signify voluntariness or consent.²² Furthermore, it is doctrinally settled that "delay in reporting rape incidents, in the face of threats of physical violence, cannot be taken against the victim"²³ because "delay in reporting an incident of rape is not an indication of a fabricated charge [and] does [not] necessarily cast

¹⁸ *People v. Viojela*, G.R. No. 177140, October 17, 2012, 684 SCRA 241, 251.

¹⁹ *People v. Estoya*, G.R. No. 200531, December 5, 2012, 687 SCRA 376, 383.

²⁰ *People v. Laurino*, G.R. No. 199264, October 24, 2012, 684 SCRA 612, 619.

²¹ *People v. Colorado*, G.R. No. 200792, November 14, 2012, 685 SCRA 660, 673 citing *People v. Balonzo*, G.R. No. 176153, September 21, 2007, 533 SCRA 760, 774.

²² *People v. Basallo*, G.R. No. 182457, January 30, 2013, 689 SCRA 616, 641.

²³ *People v. De los Reyes*, G.R. No. 177357, October 17, 2012, 684 SCRA 260, 279.

doubt on the credibility of the complainant.”²⁴ It is likewise settled in jurisprudence that human reactions vary and are unpredictable when facing a shocking and horrifying experience such as sexual assault, thus, not all rape victims can be expected to act conformably to the usual expectations of everyone.²⁵

Thus, on the basis of the foregoing doctrines, we cannot uphold appellant’s assertion that the victim’s lack of resistance; delay in reporting the rape incidents; and continued residence in appellant’s place of dwelling even after she was raped numerous times militates against a finding that the allegations of rape are true.

We likewise conclude that the lower courts’ imposition of the penalty of *reclusion perpetua* in each charge of rape was proper, notwithstanding the mention in the Informations of the qualifying circumstances of minority and relationship. As the Court of Appeals noted, the appellant’s relationship to the victim, as her stepfather, was not proven since there was no evidence of a valid marriage between appellant and the victim’s mother.

Anent the charge of one count of acts of lasciviousness, we declare that the prosecution was able to sufficiently prove that appellant did commit the same.

The elements of this crime under Article 336 of the Revised Penal Code are: (1) the offender commits any act of lasciviousness or lewdness; (2) it is done under any of the following circumstances: (a) by using force or intimidation, or (b) when the offended party is deprived of reason or otherwise unconscious, or (c) when the offended party is under 12 years of age; and (3) the offended party is another person of either sex.²⁶ Furthermore, there is jurisprudence which says that in case of acts of lasciviousness, the lone testimony of the offended party, if credible, is sufficient to establish the guilt of the accused.²⁷

In the case at bar, we agree with the Court of Appeals’ finding that the testimony of the victim was made in a straightforward and convincing manner. Her testimony in this regard detailed how she was forced and intimidated by appellant on December 21, 2002 and how appellant succeeded in molesting her by kissing and touching her private parts, thus, satisfying the required elements of the crime charged.

As his principal defense against all these criminal charges, appellant provided an alibi. He maintains that, at the time of the three rape incidents as well as the one instance of acts of lasciviousness, he was working at a construction site in Barangay Caingin, Malolos City, Bulacan with his

²⁴ *People v. Condes*, G.R. No. 187077, February 23, 2011, 644 SCRA 312, 330.

²⁵ *People v. Dumadag*, G.R. No. 176740, June 22, 2011, 652 SCRA 535, 546.

²⁶ *People v. Banan*, G.R. No. 193664, March 23, 2011, 646 SCRA 420, 434.

²⁷ *Garingarao v. People*, G.R. No. 192760, July 20, 2011, 654 SCRA 243, 252.

nephew Roderick Palconet who was the only witness he presented in court in order to corroborate his alibi.

Time and again, we have repeated the legal doctrine that for alibi to prosper, it must be proved that during the commission of the crime, the accused was in another place and that it was physically impossible for him to be at the crime scene.²⁸ Furthermore, we have also established in jurisprudence that, in order for a corroboration of an alibi to be considered credible, it must necessarily come from disinterested witnesses.²⁹

In the case at bar, the testimony of appellant's sole corroborating witness reveals that the distance between the construction site and the appellant's house where the instances of rape and acts of lasciviousness occurred is relatively short and can be covered by a mere five-minute travel by motor vehicle. The relevant portion of said testimony reads as follows:

[FISCAL JOSON]

Q When you said Caingin, it was a barangay of Malolos City?

A Yes, sir.

Q And you can reach Barangay Caingin from the place of the house of Mr. Velasco up to Brgy. Caingin, it will take only five (5) minutes ride?

A It can be if there is no traffic, sir.³⁰

Moreover, the testimony of appellant's nephew, which is undoubtedly coming from a close relative, cannot, in any way, be described as disinterested and unbiased. Therefore, considering these factual circumstances, appellant's defense of alibi certainly cannot prosper.

In view of the foregoing, we therefore affirm the conviction of appellant for three counts of the felony of simple rape and for one count of the felony of acts of lasciviousness. The award of ₱50,000.00 as civil indemnity, and ₱50,000.00 as moral damages for each count of simple rape is correct in addition to the penalty of *reclusion perpetua*. However, the award of exemplary damages for each count of simple rape shall be increased to ₱30,000.00 pursuant to prevailing jurisprudence.³¹ The award of ₱20,000.00 as civil indemnity and ₱30,000.00 as moral damages for acts of lasciviousness is proper in addition to the penalty of an indeterminate prison term of four (4) months of *arresto mayor* as minimum to four (4) years of *prision correccional* as maximum.

However, before we conclude, we clarify an oversight in the assignment of case numbers to the corresponding felonies charged which

²⁸ *People v. Batula*, G.R. No. 181699, November 28, 2012, 686 SCRA 575, 587.

²⁹ *People v. Jacinto*, G.R. No. 182239, March 16, 2011, 645 SCRA 590, 613.

³⁰ TSN, November 5, 2007, pp. 5-6.

³¹ *People v. Lomaque*, G.R. No. 189297, June 5, 2013.

was committed by the trial court in the dispositive portion of its March 5, 2008 Decision and repeated by the Court of Appeals in its August 25, 2009 Decision. In both rulings, the criminal charge of acts of lasciviousness was erroneously attributed to Criminal Case No. 145-M-2003 when, in fact, the Information filed for said case explicitly indicated the criminal charge of rape. On the other hand, the corresponding Information as well as the evidence presented in Criminal Case No. 3579-M-2002 clearly points to a criminal charge of acts of lasciviousness. Thus, the correct attribution of criminal cases *vis-à-vis* crimes charged should be Criminal Case Nos. 3580-M-2002, 3581-M-2002 and 145-M-2003 were for rape; and Criminal Case No. 3579-M-2002 was for acts of lasciviousness.

WHEREFORE, premises considered, the Decision dated August 25, 2009 of the Court of Appeals in CA-G.R. CR.-H.C. No. 03315, finding appellant Roberto Velasco **GUILTY** in Criminal Case Nos. 3580-M-2002, 3581-M-2002 and 145-M-2003 for a total of three (3) counts of rape for which he is to suffer the penalty of *reclusion perpetua* for each count, as well as, in Criminal Case No. 3579-M-2002 for one count of acts of lasciviousness for which he is to suffer the indeterminate prison term of four (4) months of *arresto mayor* as minimum to four (4) years of *prision correccional* as maximum, is hereby **AFFIRMED** with the **MODIFICATIONS** that:

- (1) The exemplary damages to be paid by appellant Roberto Velasco for each count of simple rape is increased from Twenty-Five Thousand Pesos (₱25,000.00) to Thirty Thousand Pesos (₱30,000.00);
- (2) Appellant Roberto Velasco is ordered to pay the private offended party interest on all damages awarded at the legal rate of six percent (6%) *per annum* from the date of finality of this judgment.

No pronouncement as to costs.

SO ORDERED.

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice

WE CONCUR:



MARIA LOURDES P. A. SERENO

Chief Justice

Chairperson



LUCAS P. BERSAMIN

Associate Justice



MARTIN S. VILLARAMA, JR.

Associate Justice



BIENVENIDO L. REYES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO

Chief Justice