Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee,	**G.R. No. 199494**
	Present:
- *versus* -	SERENO, *CJ.*, Chairperson, LEONARDO-DE CASTRO, BERSAMIN, VILLARAMA, JR., and REYES, *JJ.*
	Promulgated:
WELMO LINSIE *y* BINEVIDEZ, Accused-Appellant.	**NOV 27 2013**

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DECISION

LEONARDO-DE CASTRO, *J.*:

Before this Court is an appeal from the Decision[1] dated April 13, 2011 of the Court of Appeals in CA-G.R. CR.-H.C. No. 04333, entitled *People of the Philippines v. Welmo Linsie y Binevidez*, which affirmed the Decision[2] dated January 27, 2010 of the Regional Trial Court (RTC) of Parañaque City, Branch 195 in Criminal Case No. 06-005. The trial court convicted appellant Welmo Linsie *y* Binevidez of one count of the felony of simple rape as defined and penalized in Article 266-A, paragraph 1 in relation to Article 266-B, paragraph 2 of the Revised Penal Code, as amended by Republic Act No. 8353.

In an Information[3] dated December 19, 2005, appellant was accused of rape by the Office of the City Prosecutor of Parañaque City, purportedly committed as follows:

> That on or about the 14th day of December, 2005, in the City of Parañaque, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a knife, by means of force, threat

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1 *Rollo*, pp. 2-14; penned by Associate Justice Marlene Gonzales-Sison with Associate Justices Noel J. Tijam and Leoncia R. Dimagiba, concurring.

2 CA *rollo*, pp. 18-23.

3 Records, p. 1.

> and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with the complainant **[AAA[4]]**, against her will and without her consent.

During his arraignment on January 16, 2006, appellant pleaded "NOT GUILTY" to the criminal charge against him.[5]

The conflicting testimonies of the prosecution and defense witnesses were summarized by the trial court in this manner:

> [AAA] testified that she resides with her common law husband, [BBB], and brother [CCC], for almost a year already at x x x, Brgy. Moonwalk, Parañaque City. The three of them work at Kingsmen Tailoring, located at x x x, Brgy. Moonwalk, Parañaque City from 7 in the morning till 6 in the evening. She has known [appellant] for a very long time because he is a "kababayan" from Bicol. On December 14, 2005, she did not report for work because she had a headache and high fever. She only stayed at home. At around 11:00 in the morning, while resting, she heard someone knocking on the door. Thinking it was her husband, she opened the door, but, instead, she saw [appellant]. [Appellant] asked her if Edna was there to which she answered no. Knowing that she was alone, [appellant] pushed and closed the door, drew a knife which is about 6 to 8 inches long with a wood handle and pointed it to the center of her neck. [Appellant] covered her mouth with his left hand. She fought back but [appellant] punched her on the stomach. With the knife pointed at her, [appellant] asked her to undress. Fearing that [appellant] might kill her, she undressed and took off her shirt and then her bra. [Appellant] also took off his clothes with his one hand while the other hand was holding the knife which was still pointed at her. [Appellant] started kissing her neck for which she objected to by repeatedly slapping him even though she was using her hands in covering her chest. This made [appellant] mad and pressed the knife harder into her neck. She tried resisting the acts of [appellant] but he held her hair tighter. [Appellant] then removed her panty and inserted his penis into her "*pepe*". [Appellant] got naked ahead of her. They were already near her room when [appellant] was able to go on top of her. [Appellant] was able to sandwich her legs with his legs and succeeded in raping her. She did everything to resist [appellant]. She kicked [appellant] and made some noise. She was not able to shout since the knife was still pointed at her. After raping her, [appellant] threatened to kill her and told her not to tell her common law husband about what happened. Accused put on his clothes and left. After crying, she dressed up and sat on their bed. Her common law husband arrived at around noon, but she did not tell him what happened, fearing that his feeling might change towards her upon learning about it. Both of them ate lunch afterwards. Because she could no longer hide from her husband what happened, she told him about it the following day (December 16). They both went to the barangay and had the incident blottered. In response to her complaint, the barangay people accompanied her to the work place of [appellant] but the latter was not there so they just waited for him at his

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[4] In line with jurisprudence, the real name of the victim-survivor is withheld and fictitious initials are used to represent her. 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 families or household members, are not disclosed. (*See People v. Cabalquinto*, 533 Phil. 703 [2006].)

[5] Records, p. 15.

house. She was able to have a medical check up only on December 17, 2005. She executed a Sworn Statement (Exhibit A), narrating what [appellant] did to her.

Faltiquera was no longer placed [o]n the witness stand because the matters that she would testify on were already stipulated by the defense, thus, that: 1.) she is a neighbor of the complaining witness; 2.) at the time of the incident, she was in her house; and 3.) she heard a commotion from the house of the complaining witness.

With respect to Barangay Tanods Roberto Sagun and Oroya, their presence was likewise dispensed with. The defense merely admitted that; [appellant] voluntarily surrendered to them and that they had the case referred to the women's desk of Parañaque Police Station. The defense also admitted the due execution and genuineness of the Medical Certificate that Dr. Zaldua issued on December 17, 2005. With that admission, the prosecution dispensed with the presentation of Dr. Zaldua.

In the Order of this Court dated April 20, 2009, prosecution's Exhibits "A" to "C" were admitted against the objection of [appellant] as part of the testimony of its witnesses.

Defense presented as witnesses, Allan Talinghale and [appellant] himself.

Talinghale testified that on December 14, 2005, he saw [appellant] mixing cement for the construction of the house of a certain Aling Gigi. The house being constructed was in front of his store, located at Annex 35, Block 44, Cleopaz St., Betterliving Subdivision, Parañaque City, with a distance of more or less 6 to 7 meters. Between 11 and 11:30 in the morning, [appellant] went to his store and bought ice and 2 sticks of Hope cigarettes. He asked [appellant's] name and the latter said "Welmo". [Appellant] paid him P50.00. He gave P46.00 to [appellant] as his change. Thereafter, [appellant] went back to work at around 11:20 in the morning. He saw [appellant] place the ice in the pitcher.

[Appellant] had 2 companions, Mang Jhun and Philip. He was able to see [appellant] the whole time as there was no obstruction in front of him. [Appellant] continued mixing cement and handed it to those working on the top floor of the house. [Appellant] never left his place of work and went back to his store at around 5:10 in the afternoon to buy candy. The following day, he learned from Aling Gigi that [appellant] was accused of raping someone.

[Appellant] testified that he does not know of any reason [AAA] is accusing him of rape. He denied that on December 14, 2005 at around 11:00 o'clock in the morning, armed with a knife, he raped [AAA]. He had known [AAA] for only less than a week. On December 14, 2005, he left his house at around 6 o'clock in the morning and along with a certain Kuya Jun, boarded a tricycle and went to Annex 35 where he was working as a construction worker in the house of Aling Gigi. As a construction worker, he mixes the cement and as an assistant mason "tagadala ng mga halo at kung ano pang kailangan ng mason". He started working at 8 o'clock in the morning and had his break time at around 11 o'clock in the morning. He then went to the store of Kuya Allan which is located in front of the construction site. He then took his lunch and waited for their work

> to resume. His work for the day ended at around 5 o'clock in the afternoon. After resting for a while and cleaning his body, he dressed up and boarded a tricycle to go home. He arrived at his house at 6 o'clock in the evening. He learned that someone was accusing him of rape only on December 16, 2005 from Ate Baby. He asked her to accompany him to the Barangay Hall of Moonwalk to inquire about the case filed against him by [AAA]. He asked the barangay tanods to call [AAA]. When [AAA] arrived, he talked to her and asked her why she was accusing him of such crime when all the time she said she was raped, he was at work and would be impossible for him to do so. [AAA] insisted that he was the one who raped her. He was then brought to the police precinct at Coastal. He was not informed of his constitutional rights to remain silent and to have counsel of his own choice. Immediately, he was detained. After four days of detention, he was brought to the City Hall but was not informed of the reason why he was there.[6]

At the conclusion of the hearings, the trial court found appellant guilty beyond reasonable doubt of the felony of simple rape and on January 27, 2010 rendered the following verdict:

> **WHEREFORE**, this Court finds accused **WELMO LINSIE Y BINEVIDEZ**, **GUILTY BEYOND REASONABLE DOUBT** of the crime of Rape under Art. 266-A, 1st paragraph in relation to Art. 266-B 2nd paragraph of the Revised Penal Code, as amended by RA 8353 and hereby sentences him to suffer the penalty of Reclusion Perpetua without the eligibility of Parole, which carries with it the accessory penalties of civil interdiction for life or during the period of the sentence as the case may be, and that of perpetual absolute disqualification which the offender shall suffer even though pardoned as to principal penalty, unless the same shall have been expressly remitted in the pardon.
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> Accused is likewise ordered to pay private complainant the amounts of Fifty Thousand (₱50,000.00) Pesos, as indemnity ex delicto, Fifty Thousand (₱50,000.00) Pesos as moral damages, Twenty[-]Five Thousand (₱25,000.00) Pesos as exemplary damages.[7]

As can be expected, appellant appealed his conviction. On review, the Court of Appeals rendered judgment affirming the trial court ruling. The dispositive portion of the assailed April 13, 2011 Decision is reproduced below:

> **WHEREFORE**, in view of the foregoing, the 27 January 2010 decision of the Regional Trial Court of Parañaque City (Branch 195) in Criminal Case No. 06-005 finding accused-appellant Welmo Binevidez Linsie guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer the penalty of *reclusion perpetua*, and directing him to indemnify private complainant ₱50,000.00 as civil indemnity *ex delicto*, another ₱50,000.00 as moral damages and ₱25,000.00 as exemplary damages is **AFFIRMED**.[8]

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6 CA *rollo*, pp. 18-20.
7 Id. at 22.
8 *Rollo*, p. 13.

Undaunted, appellant comes to the Court with the instant appeal contending in his Appellant's Brief that:

I

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT FOR THE CRIME OF RAPE DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

II

THE COURT *A QUO* GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BASED SOLELY ON THE INCREDIBLE AND UNCORROBORATED TESTIMONY OF THE PRIVATE COMPLAINANT.[9]

In his Supplemental Brief[10] filed before the Court, he reiterates that: (1) AAA's testimony was plagued with inconsistencies and variations and she was far from candid in her narration of the incident; (2) there was no proof that AAA tenaciously resisted appellant's alleged bestial act and afterwards she showed no signs of disturbance or stress; and (3) appellant was able to prove that it was physically impossible for him to commit the alleged rape since his presence in his place of work at the time of the incident was corroborated by defense witness Allan Talinghale.

To recall, the Information charged appellant with the felony of simple rape committed with the use of a deadly weapon, as defined and penalized under Article 266-A, paragraph 1, in relation to Article 266-B, paragraph 2, of the Revised Penal Code. We quote the material portions of the statute here:

> Art. 266-A. *Rape, When and How Committed.* – Rape is committed –
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> 1. By a man who shall have carnal knowledge of a woman under any of the following circumstances:
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> a. **Through force, threat or intimidation**;
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> b. When the offended party is deprived of reason or is otherwise unconscious;
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> c. By means of fraudulent machination or grave abuse of authority;
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> d. When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.
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> x x x x

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9 CA *rollo*, p. 74.

10 *Rollo*, pp. 37-44.

> Art. 266-B. *Penalties*. – Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.
>
> Whenever the rape is committed **with the use of a deadly weapon** or by two or more persons, the penalty shall be *reclusion perpetua* to death. (Emphases supplied.)

The challenge to the trial court was to determine the existence of the foregoing elements of rape in the case at bar based on the degree of proof sufficient for a conviction.

It is settled in jurisprudence that in reviewing rape convictions, we are guided by three principles, namely (a) that an accusation of rape can be made with facility; it is difficult for the complainant to prove but more difficult for the accused, though innocent, to disprove; (b) that in view of the intrinsic nature of the crime of rape as involving two persons, the rapist and the victim, the testimony of the complainant must be scrutinized with extreme caution; and (c) that the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense.[11]

Unsurprisingly, the credibility of the rape victim's testimony is a recurring crucial factor in the resolution of a case of rape. In fact, we have held that, in rape cases, the accused may be convicted based solely on the testimony of the victim, provided that such testimony is credible, natural, convincing and consistent with human nature and the normal course of things.[12]

The trial court concluded that AAA's version of events is more credible than what appellant narrated after having had the opportunity to observe the deportment and manner of testifying of both parties. The same conclusion was likewise firmly upheld by the Court of Appeals.

In *People v. Deligero*,[13] we ruled that:

> [F]actual findings of the trial court, especially when affirmed by the Court of Appeals, are "entitled to great weight and respect, if not conclusiveness, for we accept that the trial court was in the best position as the original trier of the facts in whose direct presence and under whose keen observation the witnesses rendered their respective versions of the events that made up the occurrences constituting the ingredients of the offenses charged. The direct appreciation of testimonial demeanor during examination, veracity, sincerity and candor was foremost the trial court's domain, not that of a reviewing court that had no similar access to the witnesses at the time they testified." (Citation omitted.)

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11 *People v. Buado, Jr.*, G.R. No. 170634, January 8, 2013, 688 SCRA 82, 95.
12 *People v. Penilla*, G.R. No. 189324, March 20, 2013, 694 SCRA 141, 149.
13 G.R. No. 189280, April 17, 2013.

After a thorough review of the testimony and evidence as indicated in the records of this case, we find no cogent reason to deviate from the uniform findings of both the lower and appellate courts.

With regard to appellant's assertion that AAA's testimony was plagued with inconsistencies and variations that would merit appellant's acquittal, we conclude that these discrepancies in AAA's testimony involve minor matters that do not constitute material facts or circumstances of consequence. The suppositions that appellant could not have raped AAA as his legs at one point were supposedly sandwiching AAA's legs or that he could not have been able to undress while pointing a knife at the victim do not necessarily render AAA's testimony incredible. In the present case, AAA categorically stated under oath that despite her attempts to resist ("*palag [nang] palag*") appellant succeeded in removing her panty and inserting his penis inside her sexual organ,[14] thereby consummating the crime of rape.

We have repeatedly held that what is decisive in a rape charge is that the commission of the rape by the accused against the complainant has been sufficiently proven; and that inconsistencies and discrepancies as to minor matters which are irrelevant to the elements of the crime cannot be considered grounds for acquittal.[15] Furthermore, we have recently reiterated that rape victims are not expected to make an errorless recollection of the incident, so humiliating and painful that they might be trying to obliterate it from their memory, thus, a few inconsistent remarks in rape cases will not necessarily impair the testimony of the offended party.[16]

Likewise, we reject appellant's allegation that AAA did not "tenaciously" resist his sexual advances. The victim's testimony will bear out that she did exert efforts to refuse appellant's carnal desires by slapping the accused, kicking him and trying to create noise but she was physically overpowered and intimidated by the threat of mortal harm posed by appellant's knife as well as debilitated by illness. Nevertheless, we have in the past held that failure of a rape victim to shout, fight back, or escape from the scoundrel is not tantamount to consent or approval because the law imposes no obligation to exhibit defiance or present proof of struggle.[17]

Even appellant's attempt to discredit the medico-legal report (which he claimed merely proved that AAA had an active sexual relationship at the time material to the charge) cannot exculpate him from liability for rape because the said document and the medico-legal's subsequent testimony are not essential for the prosecution and conviction of a person accused of rape. We have previously stated that a medical examination and a medical

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14 TSN, May 29, 2006, pp. 34-35.
15 *People v. Monticalvo*, G.R. No. 193507, January 30, 2013, 689 SCRA 715, 734-735.
16 *People v. Veloso*, G.R. No. 188849, February 13, 2013, 690 SCRA 586, 598.
17 *People v. Basallo*, G.R. No. 182457, January 30, 2013, 689 SCRA 616, 641.

certificate, albeit corroborative of the commission of rape, are not indispensable to a successful prosecution for rape.[18]

For his ultimate defense, appellant puts forward denial and alibi. His alibi was corroborated by defense witness Talinghale who appears to be not related to appellant as borne by the records. However, we are not persuaded by appellant's alibi despite corroboration from a disinterested witness.

In *People v. Piosang*,[19] we reiterated our frequent pronouncements regarding denial and alibi in this manner:

> [B]oth 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 a ring of truth on one hand, and a mere denial and alibi on the other, the former is generally held to prevail. Moreover, for the defense of alibi to prosper, the appellant must prove that he was somewhere else when the offense was committed and that he was so far away that it was not possible for him to have been physically present at the place of the crime or at its immediate vicinity at the time of its commission. x x x. (Citations omitted.)

In the case at bar, we find that appellant's alibi did not sufficiently establish that he was working at a construction site when AAA was raped and that it was physically impossible for him to be at the scene of the crime when it was committed. Likewise, the corroborating testimony of defense witness Talinghale does not discount the possibility that appellant may have left the construction site to commit the dastardly act he was charged with and came back afterwards.

We quote with approval the trial court's disquisition on this issue, thus:

> [Appellant's] testimony that he was at the construction site from 8 in the morning till 5 in the afternoon on the date in question (December 14, 2005) is not worthy of belief considering that aside from his self-serving testimony, no other clear and convincing evidence was presented to substantiate the same. When asked by this Court if his employer keeps a logbook or a record of the time in and time out of the workers (page 44. TSN dated May 26, 2008), he answered in the affirmative. However, no logbook or record was presented by him. Neither was [his] alleged employer, Aling Gigi, nor any of his co-workers, was presented to corroborate his testimony that he was indeed at the construction site on the date and time in question.
>
> Instead of presenting Aling Gigi or any of his co-workers, defense presented Talinghale whose testimony can hardly be given credence. Admittedly, Talinghale, on the date and time in question was, tending his store which is 6 to 7 meters away from the construction site. It is, therefore, impossible for him to be attending to his customers or

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18 *People v. Buado, Jr.*, supra note 11 at 103.

19 G.R. No. 200329, June 5, 2013.

> answering the call of nature and at the same time watching [appellant]. What is very possible under this situation, is for [appellant] to leave the construction site, granting for the sake of argument that he was really there, without Talinghale noticing him. Most importantly, it is not physically impossible for [appellant] to be in the house of [AAA] at one time and to be in his work place on another time simply because the house of [AAA] is very near the construction site. It would take [appellant] only two (2) tricycle rides to reach [AAA]'s house, located at x x x, Bgy. Moonwalk, Parañaque City. As testified to by [appellant] himself, he took his break at 11 in the morning, the time that [AAA] said she was raped. x x x.[20]

We note too that appellant failed to show any motive why AAA would testify falsely against him. This fact further bolsters the veracity of AAA's accusation since we have previously held that no woman would concoct a tale that would tarnish her reputation, bring humiliation and disgrace to herself and her family, and submit herself to the rigors, shame, and stigma attendant to the prosecution of rape, unless she is motivated by her quest to seek justice for the crime committed against her.[21]

Based on the foregoing discussion, we therefore affirm the conviction of appellant for the felony of simple rape. Considering that appellant committed the crime with the use of a deadly weapon, the penalty imposed by the trial court which is imprisonment of *reclusion perpetua* without eligibility for parole is proper in accordance with Article 266-B, paragraph 2 of the Revised Penal Code that prescribes the punishment for such a circumstance to be *reclusion perpetua* to death. As correctly pointed out by the Court of Appeals, the mitigating circumstance of voluntary surrender may be appreciated in favor of appellant, however, considering that the imposable penalty of *reclusion perpetua* is single and indivisible, the same may not serve to lower the penalty.

The award of ₱50,000.00 as civil indemnity and another ₱50,000.00 as moral damages is upheld. However, in line with jurisprudence, the exemplary damages by reason of the established presence of the aggravating circumstance of use of a deadly weapon is increased from ₱25,000.00 to ₱30,000.00.[22] Moreover, interest at the rate of 6% per annum shall be imposed on all damages awarded from the date of the finality of this judgment until fully paid.[23]

WHEREFORE, premises considered, the Decision dated April 13, 2011 of the Court of Appeals in CA-G.R. CR.-H.C. No. 04333, finding appellant Welmo Linsie y Binevidez **GUILTY** in Criminal Case No. 06-005 for one (1) count of rape, is hereby **AFFIRMED** with the **MODIFICATIONS** that:

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20 CA *rollo*, pp. 30-31.
21 *People v. Atadero*, G.R. No. 183455, October 20, 2010, 634 SCRA 327, 345.
22 *People v. Toriaga*, G.R. No. 177145, February 9, 2011, 642 SCRA 515, 522.
23 *People v. Cabungan*, G.R. No. 189355, January 23, 2013, 689 SCRA 236, 248-249.

(1) The exemplary damages to be paid by appellant Welmo Linsie *y* Binevidez is increased from Twenty-Five Thousand Pesos (₱25,000.00) to Thirty Thousand Pesos (₱30,000.00); and

(2) Appellant Welmo Linsie *y* Binevidez is ordered to pay the private offended party interest on all damages 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 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