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*Welford E. Lopez*  
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 CIVIL DIVISION, SUPREME COURT  
 Third Division  
 OCT 12 2016

Republic of the Philippines  
**Supreme Court**  
 Manila

THIRD DIVISION

AVELINO ANGELES y OLANO,  
 Petitioner,

G.R. No. 212562

Present:

VELASCO, JR., J.,  
*Chairperson,*  
 LEONARDO DE CASTRO,\*  
 PERALTA,  
 PEREZ, and  
 REYES, JJ.

- versus -

PEOPLE OF THE PHILIPPINES,  
 Respondent.

Promulgated:

October 12, 2016

*Welford E. Lopez*

X ----- X

DECISION

**PEREZ, J.:**

On appeal by *certiorari* is the February 28, 2014 Decision<sup>1</sup> of the Court of Appeals (CA) in CA-G.R. CR No. 35394 affirming the July 24, 2012 Order<sup>2</sup> of the Regional Trial Court (RTC), Branch 15, Naic Cavite, which in turn affirmed the November 28, 2011 Decision<sup>3</sup> of the 1<sup>st</sup> Municipal Circuit Trial Court (MCTC) in Maragondon, Cavite, in Criminal Case No. T-07-023, finding accused-appellant Avelino Angeles y Olanó guilty beyond reasonable doubt of Acts of Lasciviousness penalized under Article 336 of the Revised Penal Code.

In an Information<sup>4</sup> dated June 1, 2007, the Cavite Provincial Prosecutor's Office charged accused-appellant with the crime of Acts of

\* Designated as Additional Member in lieu of Justice Francis H. Jardeleza per raffle dated October 12, 2016.

<sup>1</sup> *Rollo*, pp. 32-40; penned by Associate Justice Amelita G. Tolentino, concurred by Associate Justices Ricardo R. Rosario and Leoncia R. Dimagiba.

<sup>2</sup> *CA rollo*, pp. 28-31; penned by Judge Lerio C. Castigador.

<sup>3</sup> *Id.* at 50-53; records, pp. 530-533; penned by Judge Maria V. Espineli.

<sup>4</sup> Records, p. 1.

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Lasciviousness. The accusatory portion of the Information reads:

“That on or about the 31<sup>st</sup> day of May 2007, in the Municipality of Ternate, Province of Cavite, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, actuated by lust, did, then and there, willfully, unlawfully and feloniously commit acts of lasciviousness upon one **JACQUELINE CRUZ y RIAZ**, by lying on top of her and sucking her breast, against her will and consent, to her damage and prejudice.

**CONTRARY TO LAW.”**

Upon being arraigned, accused-appellant entered a plea of NOT GUILTY to the crime charged.<sup>5</sup> At the pre-trial of the cases, the following stipulations were admitted by the court: (1) the identity of accused-appellant as the same person charged in the instant case; and (2) the jurisdiction of the court over his person and over the subject matter of the case.<sup>6</sup> Trial on the merits ensued thereafter.

### The Facts

The private complainant’s version of the facts as summarized by the CA, is as follows:

On May 31, 2007, Jacqueline and her housemaid, Sheryl, came from a ‘videoke session’ and got home at around 11 o’clock in the evening. After taking a bath, Jacqueline went to bed, with her body covered only with a bath towel.<sup>7</sup> She was later on awakened when she felt something heavy on top of her.<sup>8</sup> She also felt somebody licking and sucking her breasts; and when she opened her eyes, she saw accused-appellant lying on top of her.<sup>9</sup> She immediately pushed and kicked accused-appellant as she tried to get out of the bed as fast as she could. She exclaimed “*Putang ina mo ka, hayop ka, paano ka nakapasok dito!*”<sup>10</sup> She ran outside while accused-appellant followed her repeatedly saying “*Mare, pasensiya na, pasensiya na, mali ako ng inakala sa iyo.*”<sup>11</sup> Jacqueline saw Sheryl outside and asked her how accused-appellant was able to enter the house. Sheryl claimed that she did not know how accused-appellant managed to enter the house. Immediately thereafter, Jacqueline and Sheryl went to the PNP station in Ternate, Cavite to report the incident and to file a complaint against accused-appellant. A few hours later, accused-appellant was arrested.

<sup>5</sup> Id. at 21.

<sup>6</sup> Id. at 45.

<sup>7</sup> TSN, April 10, 2008, p. 30; records, p. 113.

<sup>8</sup> Id. at 31; id. at 114.

<sup>9</sup> TSN, January 17, 2008, p. 9; records, p. 67.

<sup>10</sup> Supra note 7 at 32; records, p. 115.

<sup>11</sup> Id.

On cross-examination, Jacqueline revealed that prior to the incident or in the afternoon of May 31, 2007, at around 2 o'clock in the afternoon, she and her friend Zoray, along with Sheryl, went to accused-appellant's "kubo" for a karaoke session. They were singing and drinking when accused-appellant joined them at around 7 o'clock in the evening. When accused-appellant was about to leave, Jacqueline requested him to stay longer, so the singing and drinking continued on. It was around 10 o'clock in the evening when Jacqueline and her companions headed home.

On the other hand, accused-appellant's version of the facts is as follows:

Accused-appellant and Jacqueline both stood as godparents of Sheryl's child and from then on, they remained good friends. Accused-appellant claims that in the early evening of May 31, 2007, he went to the *kubo* because someone told him that his *kumareng* Jack was waiting for him. When he arrived, the people were already dancing and singing. He was sitting in front of Jacqueline before he transferred beside her upon her request. Jacqueline was so drunk, she started dancing and while dancing, she took off her bra and tossed it to Sheryl. She then sat down beside accused-appellant, kissed him and asked him if he could make her happy. Aware of the flirting, accused-appellant replied, "Try me".<sup>12</sup> Accused-appellant claimed that after he answered the call of nature, Jacqueline led him behind a mango tree. It was there when she pulled up her blouse and pulled accused-appellant's head towards her breasts. Accused-appellant admitted to sucking her breasts.<sup>13</sup> When they returned to the *kubo*, Jacqueline fell asleep on accused-appellant's lap. According to accused-appellant, Jacqueline wanted him to accompany her home but he opted to stay in the *kubo* to clean up.<sup>14</sup>

Maintaining that an invitation was extended to him, accused-appellant admitted that he proceeded to Jacqueline's house after cleaning up.<sup>15</sup> According to him, the gate was unlocked and the main door was left open.<sup>16</sup> He entered and found Jacqueline and Sheryl lying on the bed. When Sheryl left the room, accused-appellant laid down beside Jacqueline but vehemently denied mounting her and sucking her breasts.<sup>17</sup> When Jacqueline was awakened, she pushed accused-appellant away demanding to know how he was able to enter the room.<sup>18</sup> She then left the room and proceeded to the kitchen while continuously berating accused-appellant. "*Mare, pasens'ya ka na't nabigyan ko ng masamang kahulugan iyong mga pinaggagawa mo sa akin*" was all that accused-appellant could say.<sup>19</sup>

<sup>12</sup> TSN, January 22, 2009, p. 13; records, p. 167.

<sup>13</sup> Id. at 16; id. at 170.

<sup>14</sup> TSN, March 5, 2009, p. 10; records, p. 187.

<sup>15</sup> Id. at 11; id. at 188.

<sup>16</sup> Id. at 13; id. at 190.

<sup>17</sup> TSN, May 28, 2009, p. 21; records, p. 220.

<sup>18</sup> Supra note 14 at 16; records, p. 193.

<sup>19</sup> Id.

Ismael T. Olano testified that on the night of the incident, he saw Jacqueline drinking and flirting with accused-appellant. Olano testified that Jacqueline took off her bra while dancing;<sup>20</sup> that he heard Jacqueline ask accused-appellant if he could make her happy;<sup>21</sup> that he saw Jacqueline pull accused-appellant's head towards her breasts;<sup>22</sup> and that before Jacqueline left, she told accused-appellant "*pare sumunod ka ha.*"<sup>23</sup>

### **Ruling of the Municipal Circuit Trial Court**

On November 28, 2011, the MCTC rendered a decision finding accused-appellant guilty of the crime charged. The dispositive portion of the decision reads:

"WHEREFORE, premises considered, this Court finds the accused AVELINO ANGELES y OLANO @ 'ANDY', GUILTY beyond reasonable doubt of acts of lasciviousness penalized under Article 336 of the Revised Penal code and is sentenced to suffer to indeterminate prison [term from] six (6) months arresto mayor as minimum to four (4) years and two (2) months prision correccional as maximum.

Accused is ordered to pay the offended party P25,000.00 as moral damages and P20,000.00 as civil indemnity.

SO ORDERED."<sup>24</sup>

### **Ruling of the Regional Trial Court**

Aggrieved, petitioner interposed an appeal to the RTC, assailing the MCTC's decision. Affirming the assailed decision, the RTC ruled that the previous flirting incidents cannot exonerate accused-appellant. The dispositive portion of its order reads:

"WHEREFORE, based on the foregoing, the instant appeal is hereby **DENIED** for lack of merit.

SO ORDERED."<sup>25</sup>

### **Ruling of the Court of Appeals**

Seeking a reversal of the conviction, petitioner filed a Petition for

<sup>20</sup> TSN, August 27, 2009, p. 9; records, p. 251.

<sup>21</sup> Id.

<sup>22</sup> Id. at 11; id. at 253.

<sup>23</sup> Id. at 12; id. at 254.

<sup>24</sup> Supra note 3 at 53; records, p. 533.

<sup>25</sup> Supra note 2 at 31.

Review before the CA. Upholding the conviction, the appellate court held that petitioner's denial cannot prevail over the positive and categorical testimony of the private complainant. The dispositive portion of the decision reads:

“**WHEREFORE**, premises considered, the instant *Petition for Review* is **DISMISSED**. The assailed order dated July 24, 2012 of the Regional Trial Court of Naic, Cavite, Branch 15 is **AFFIRMED**.

**SO ORDERED.**”<sup>26</sup>

### Our Ruling

In a *Petition for Review on Certiorari*<sup>27</sup> under Rule 45, petitioner now comes before this Court seeking a reversal of the CA decision affirming the conviction. After a thorough review of the facts and evidence on record, We rule for accused-appellant's acquittal as the degree of proof required in criminal cases has not been met.

### *Acts of Lasciviousness*

The crime Acts of Lasciviousness is punished under Article 336 of the Revised Penal Code, *viz*:

Art. 336. *Acts of lasciviousness*. – Any person who shall commit any act of lasciviousness upon other persons of either sex, under any of the circumstances mentioned in the preceding article, shall be punished by *prision correccional*.

To secure a conviction, the confluence of the following elements must be established by the prosecution beyond reasonable doubt: (1) that the offender commits any act of lasciviousness or lewdness; and (2) that it is done under any of the following circumstances: (a) by using force or intimidation; (b) when the offended woman is deprived of reason or otherwise unconscious; or (c) when the offended party is under twelve (12) years of age.<sup>28</sup>

The first element—that accused-appellant committed an act characterized by lewdness—was not proven beyond reasonable doubt. Accused-appellant conceded that he entered the purported victim's room and laid down beside her, but he vehemently denies mounting her and sucking her breasts. On the other hand, Jacqueline alleged that accused-appellant

<sup>26</sup> *Rollo*, p. 39.

<sup>27</sup> *Id.* at 3-30.

<sup>28</sup> *People v. Victor*, 441 Phil. 798, 815-816 (2002).

mounted her and sucked her breasts while she was asleep. In essence, the testimony of the purported victim is pitted against the the testimony of the accused-appellant. The Court is faced with the challenge of deciding which of the two opposing testimonies should hold more weight. The Equipoise Rule thus comes into play. Under the said rule, “where the evidence on an issue of fact is in equipoise, or there is doubt on which side the evidence preponderates, the party having the burden of proof loses.”<sup>29</sup> Considering that nothing is more settled in criminal law than the rule that the prosecution has the burden of proof to establish the guilt of the accused beyond reasonable doubt,<sup>30</sup> We hold that in the case at bar, the scales of justice should tip in favor of accused-appellant.

This Court is not unaware of the settled rule that “the lone uncorroborated testimony of the offended victim, so long as the testimony is clear, positive, and probable, may prove the crime as charged.”<sup>31</sup> It should be noted however, that the establishment of such jurisprudential rule is attributed to the fact that there are usually only two witnesses in rape cases; thus, if courts do not give due weight and credence to uncorroborated lone testimonies, convictions for rape cases would be next to impossible. However, We rule that such holding may not automatically be applied in the case at bar as there was another person – Sheryl Alvarez – who could have shed some light on the incident.

***On the Admissibility of the  
Belatedly Executed Affidavit***

Sheryl A. Alvarez (Sheryl), the purported victim’s housemaid, executed a *Sinumpaang Salaysay* dated June 1, 2007, to wit:<sup>32</sup>

“xxxx

T: *Bakit ka naririto sa himpilan ng pulisya ng Ternate at nagbibigay ng salaysay?*

Sagot: *Dahil tetestigo po ako.*

T: *Patungkol saan naman ang iyong ibig testiguhan?*

Sagot: *Tungkol po sa pagpasok ni Pareng Andy Angeles sa bahay ni ate Jaq.”*

xxxx

T: *Maari mo bang isalaysay sa mcikling at kumpletong pangungusap ang mga pangyayari sa nabanggit na oras at petsa?*

<sup>29</sup> *People v. Gabo, et al.*, 640 Phil. 396, 414 (2010).

<sup>30</sup> *People v. Campos, et al.*, 668 Phil. 315, 324 (2011).

<sup>31</sup> *People v. Tubat*, 680 Phil. 730, 737 (2012).

<sup>32</sup> Records, p. 6.

Sagot: *Mga bandang alas 11:00 po ng gabi habang nanonood po ako ng t.v. sa loob ng kubo sa tabi ng bahay ay tinawag po ako ni ate Jaq papunta sa loob ng kuwarta niya para kausapin po si kuya Boggie na asawa ni ate Jaq sa telepono. Tapos po pinahintay pa po ako ni ate sa kuwarta niya baka daw tumawag pa [ulit] si kuya Boggie sa telepono. Sa paghihintay po namin pareho na po kami nakatulog ni ate Jaq sa kama niya. Pagkatapos po ay nagising na lang po ako kasi may kumalabit sa akin sa kaliwang braso. Nakilala ko po siya ay si kuya Andy Angeles. Tinanong ko siya kung ano ang ginagawa niya sa loob ng bahay at paano siya nakapasok. Sinabi niya po sa akin na gumawa daw po siya ng paraan para makapasok sa loob ng bahay at sinabi po niya sa akin na nagpapakita daw ng motibo si ate Jaq sa kanya. Ang sabi ko po ay kung gusto niyang makausap si ate Jaq ay labas ako dyan, bahala sila mag usap na dalawa. Tapos po [inulit-ulit] ko kay kuya Andy na wala po akong alam sa pagpasok niya sa loob ng bahay ni ate Jaq at lumabas na po ako ng kuwarta. Pagkatapos po ay narinig ko po na nagkakagulo po sila sa kuwarta. Tapos po ay pumunta na kami ni ate Jaq sa police Station sakay sa kotse ni ate Jaq para mag reklamo.*

xxxx”

The prosecution intended to present Alvarez as a hostile witness,<sup>33</sup> but failed to do so. Curiously, Alvarez executed another Affidavit dated June 4, 2014, but this time, to support accused-appellant’s Petition filed before this Court.<sup>34</sup> The second *Sinumpaang Salaysay* reads:

*“Ako, si Sheryl Alvarez, may sapat na gulang, Pilipino, may asawa at naninirahan sa Mindoro Oriental, matapos na makapanumpa nang naaayon sa batas ay nagsasalaysay ng mga sumusunod:*

xxxx

6. *Na palubog na ang araw ng dumating si Avelino Angeles at ng dumating siya ay tinawag siya ni Jacqueline Cruz na umupo sa tabi niya.*

7. *Na kumanta at sumayaw si Jacqueline Cruz sa tugtog na “Totoy Biboy” at habang sumasayaw ay himubad niya ang bra niya at inihagis sa akin.*

8. *Na pagkatapos niyang kumanta ay lumapit sa amin at sa tabi ng mesa ay himubad ang pants niya at umihi sa harap namin.*

9. *Maya maya ay pumunta si Jacqueline Cruz sa may punong mangga at tinawag si Avelino Angeles. Ako naman ay inutusan niyang bumili pa ng alak ngunit hindi ako bumili.*

10. *Paglingon ko, nakita ko na lang na naghahalikan na sina Jacqueline Cruz at Avelino Angeles sa may punong mangga.*

<sup>33</sup> TSN, November 15, 2007, p. 3; records, p. 41.

<sup>34</sup> CA rollo, pp. 129-132.

11. Na nang pauwi na kami. nakita ko at dinig na dinig ko na sinabi ni Jacqueline Cruz kay Avelino Angeles na kung kaya daw siyang paligayahin ay sumunod siya at ibinigay pa ni Jacqueline Cruz ang kanyang cellphone number kay Avelino Angeles.
12. Na naiwan pa si Avelino Angeles sapagkat nag aayos pa siya sa kubo at kami naman ni Jacqueline Cruz ay naglakad na.
13. Nang huminto kami sa may waiting shed ang sabi ni Jacqueline Cruz ay "Ngarat nya, hindi niya ako matitikman, paglalawayin ko lung siya[.]"
14. Maya maya ay tumawag sa telepono ang asawa ni Jacqueline Cruz at nag away silang mag asawa sa [telepono].
15. Tanggal ang kalasingan ni Jacqueline Cruz sa sigawan nila sa telepono at dalidali na siyang umuwi kasama ako.
16. Na pagdating [namin] sa bahay derecho si Jacqueline Cruz sa banyo at naligo. Hindi niya isinara ang pinto sa kuwarta niya.  
[17.] Hindi niya rin iniutos na isara ko ang gate at main door. Iniisip ko na lamang na dahil narinig ko na pinasusunod niya si Avelino Angeles sa bahay.  
[18.] Na mayamaya ay lumabas ng banyo si Jacqueline Cruz at walang kahit anong saplot sa katawan ay humiga sa kama, bukas ang pinto at nilagyan lang ng tuwalya ang ibabaw na katawan. Wala ng bahid ng kalasingan sa mukha at kilos ni Jacqueline Cruz.  
[19.] Maya maya ay nakita ko si Avelino Angeles sa kuwarta. Hindi na ako nagtaka dahil alam kong pinasunod ito ni Jacqueline Cruz.  
[20.] Na nakita ko na akma pa lang gigisingin ni Avelino Angeles si Jacqueline Cruz pagdilal niya ay nakita niyang nakatingin ako, kaya bigla siyang sumigaw.  
[21.] Na walang paghalik sa dibdib na nangyari sa kuwarta sapagkat nakikita ko kung ano ang nangyari. May halikan na nangyari sa dalawa ngunit hindi sa kuwarta kundi sa may puno ng mangga sa may videoke.  
[22.] Mapatutunayan ko na walang puwersahan nangyari sa pagpasok ni Avelino Angeles sa kuwarta ni Jacqueline Cruz. Kagustuhan ni Jacqueline Cruz na pumunta sa bahay niya si Avelino Angeles para paligayahin siya, ayon sa nadinig kong sinabi niya kay Avelino Angeles.  
[23.] Matapos akong palayasin ay umuwi na ako sa bayan namin at ang ayokong tumestigo sa kaso ni Jacqueline Cruz na ipakulong ang taong wala [namang] kasalanan sa kanya.  
[24.] Na hindi ko inakala na maaari pa akong magbigay ng salaysay sapagkat pinapirma na ako ni Jacqueline. Nang mabalitaan ko sa Ternate na convicted daw si Avelino Angeles, nagtaka ako sapagkat hindi naman ako natuloy magtestigo. At alam kong walang kasalanan si Avelino Angeles.  
[25.] Na hinihiling ko na bigyang halaga ng Kataas-taasang Hukuman ang aking pinanumpuang salaysay



*sapagkat hindi kaya ng konsensya ko ang hindi magsalita kung makukulong si Avelino Angeles na walang kasalanan kay Jacqueline Cruz.*

[26.] *Ngayon ko napagtanto na planado ni Jacqueline Cruz ang ginawa kay Avelino Angeles sapagkat matapos niyang imbitahan at pasunurin sa bahay niya para paligayahin niya at sasabihin niya sa akin na “Ngarat niya, paglalawayin ko lang siya, di niya ako matitikman.”*

Given that the second affidavit was belatedly executed, thus, not marked during pre-trial and not formally offered, the Court may not assign any evidentiary weight and value to the same. It bears stressing that the affidavit is not in any way considered by this Court as proof of accused-appellant’s non-guilt. The Court’s appreciation of the second affidavit is highly limited. At most, the affidavit serves as further proof that another person was present when the incident happened. To the mind of this Court, such circumstance, when considered alongside the fact that the prosecution initially wanted to present Alvarez as a hostile witness but failed to do so, casts doubt on the conviction which was solely based on the purported victim’s testimony. It is also worth noting that although the prosecution had an opportunity to attack the veracity of the second affidavit when they filed their Comment on the Petition for Review, they nevertheless failed to do so.

### ***Denial versus Positive Identification***

The CA dismissed as weak accused-appellant’s defense of denial. For the CA, the denial of accused-appellant cannot prevail over the positive and categorical testimony of the private complainant who testified that she was roused from her sleep by the weight of accused-appellant who was on top of her and sucking her breasts.<sup>35</sup>

The much debated and highly controversial case of *People v. Webb, et al.*<sup>36</sup> comes to mind. Indeed, we look forward to the day wrongful convictions become a thing of the past. We thus take this opportunity to reiterate and echo the discussion on denials and positive identification We made in *Webb*,<sup>37</sup> lest it be forgotten:

“But not all denials and alibis should be regarded as fabricated. Indeed, if the accused is truly innocent, he can have no other defense but denial and alibi. So how can such accused penetrate a mind that has been made cynical by the rule drilled into his head that a defense of alibi is a hangman’s noose in the face of a witness positively swearing, [‘]I saw him do it.[’] Most judges believe that such assertion automatically dooms an alibi which is so easy to fabricate. This quick stereotype

<sup>35</sup> *Rollo*, p. 37.

<sup>36</sup> 652 Phil. 512 (2010).

<sup>37</sup> *Id.* at 581.

thinking, however, is distressing. For how else can the truth that the accused is really innocent have any chance of prevailing over such a stone-cast tenet?

There is only one way. A judge must keep an open mind. He must guard against slipping into hasty conclusion, often arising from a desire to quickly finish the job of deciding a case. A positive declaration from a witness that he saw the accused commit the crime should not automatically cancel out the accused's claim that he did not do it. A lying witness can make as positive an identification as a truthful witness can. The lying witness can also say as forthrightly and unequivocally, "[He did it!]" without blinking an eye.<sup>38</sup>

### ***On the Element of Lewdness***

A thorough review of the records leads this Court to conclude that accused-appellant entered the room with lustful intentions of a sexual partner that, what he thought, were also shared by Jacqueline. Jurisprudence<sup>39</sup> defines "lewd" as obscene, lustful, indecent, lecherous, a form of immorality that has relation to moral impurity, or that which is carried on a wanton manner. Such definition of "lewd" leaves Us with the question of "Are all lewd acts punishable?" The precise definition of the crime of Acts of Lasciviousness in Art. 336 of the RPC provides the answer, *i.e.*, that the lascivious act or lewdness must be under any of the circumstances provided for under Art. 335 of the RPC.<sup>40</sup>

Indeed, as discussed in *Amployo v. People*:<sup>41</sup>

The term "lewd" is commonly defined as something indecent or obscene; it is characterized by or intended to excite crude sexual desire. That an accused is entertaining a lewd or unchaste design is necessarily a mental process the existence of which can be inferred by overt acts carrying out such intention, *i.e.*, by conduct that can only be interpreted as lewd or lascivious. The presence or absence of lewd designs is inferred from the nature of the acts themselves and the environmental circumstances. What is or what is not lewd conduct, by its very nature, cannot be pigeonholed into a precise definition. xxx (Citations omitted)

Further on the point, the earlier case of *United States v. Gomez*<sup>42</sup> said:

It would be somewhat difficult to lay down any rule specifically establishing just what conduct makes one amenable to the provisions of [Article] 439 of the Penal Code. What constitutes lewd or lascivious conduct must be determined from the circumstances of each case. It may

<sup>38</sup>

Id.

<sup>39</sup>

*People v. Lizada*, 444 Phil. 67, 97 (2003).

<sup>40</sup>

*People v. Victor*, supra note 28 at 811, 813 (2002).

<sup>41</sup>

496 Phil. 747, 756 (2005).

<sup>42</sup>

30 Phil. 22, 25 (1915).

be quite easy to determine in a particular case that certain acts are lewd and lascivious, and it may be extremely difficult in another case to say just where the line of demarcation lies between such conduct and the amorous advances of an ardent lover. xxx.

Given that the delineation is highly dependent on the surrounding circumstances, courts must be vigilant in appreciating the circumstances, as these factors spell the difference between an acquittal and a conviction for crimes characterized by lewdness.

Putting into context the disquisitions above and the surrounding circumstances of the case at bar, We hold that the element that criminalizes lewdness, or the criminal circumstances of its commission were not proven beyond reasonable doubt. The facts indicate that the alleged acts of accused-appellant are in the nature of amorous advances made by an ardent lover or sexual partner, at the very least. Such conclusion can be drawn from the invitation made by the purported victim an hour before the said incident. Plainly, accused-appellant went to Jacqueline's bedroom with what he had reason to think was an invitation to a tryst. There was, however, either a change of mind or a completed teasing.

The RTC erred when it concluded that no testimony supported accused-appellant's allegation that an invitation was extended to him. A review of the records would reveal that accused-appellant's allegation was supported by the testimony of Ismael Olano, neither was there any categorical denial from Jacqueline that an invitation was extended. Moreover, an analysis of the other circumstances would strengthen accused-appellant's allegation that an invitation was indeed extended. First, the doors were unusually left unlocked, giving accused-appellant the impression that Jacqueline was still expecting him. Next, when accused-appellant entered the room, Sheryl simply left the room, a reaction completely contrary to that expected of a housemaid when she finds a non-member of the household in the premises at such a late hour.

On the other hand, the appellate court, practically dismissing the relevance of the invitation, concluded that the same did not mean that the purported victim would allow accused-appellant to do the alleged acts. We disagree. Although We recognize that prior consent in sexual acts does not amount to consent for subsequent sexual acts, We note that the circumstances in the case at bar call for a different treatment. The invitation indicative of the purported victim's consent must be interpreted *vis-à-vis* the incidents which occurred a few minutes before and after they parted ways.

The invitation was made when Jacqueline left the gathering, which was minutes after they were fondling each other and barely half an hour



before the said incident. From the time the invitation was extended and until the time accused-appellant entered the room, there was no significant occurrence which could have led accused-appellant to conclude that Jacqueline changed her mind. Simply put, in the span of an hour, there was no reason for accused-appellant to believe that the invitation was withdrawn. Viewed in this light, accused-appellant's initial reaction of – "*Mare, pasensiya na, pasensiya na, mali ako ng inakala sa iyo*" – would make sense. It would then seem that there was a continuing acquiescence on the part of the purported victim as the fondling incident by the mango tree up to the time she reached home would constitute an unbroken chain of events. The consent was only effectively and categorically withdrawn or revoked when she pushed accused-appellant away, exclaiming "*putang ina mo, bakit ka nakapasok dito?*" Upon witnessing Jacqueline's initial reaction, it being very clear that the consent and invitation were being revoked right then and there, accused-appellant immediately apologized and abandoned his intentions. That accused-appellant chose not to wake up Jacqueline upon entering the room should not be taken against him. Individuals have different preferences for sexual intercourse preliminaries and it is not for this Court to categorize a certain practice as unusual or contrary to normal human experience. Finally, We note that while the "sweetheart theory" does not often gain approval, We will not hesitate to set aside a judgment of conviction where the guilt of the accused has not been proven beyond reasonable doubt.

**WHEREFORE**, the foregoing premises considered, the Decision dated February 28, 2014 of the Court of Appeals in CA-G.R. CR No. 35394 is **REVERSED** and **SET ASIDE**. For failure of the prosecution to prove his guilt beyond reasonable doubt, Avelino Angeles y Olano is hereby **ACQUITTED** of the charge of Acts of Lasciviousness. Where accused Avelino Angeles y Olano is not in detention as reported by his counsel, Atty. Miriam S. Clorina, let a copy of this Decision still be furnished the Director of the Bureau of Corrections, Muntinlupa City for information and guidance that accused has been acquitted of the charge in this case.

**SO ORDERED.**

  
**JOSE PORTUGAL PEREZ**  
Associate Justice

**WE CONCUR:**

  
**PRESBITERO J. VELASCO, JR.**  
 Associate Justice  
 Chairperson

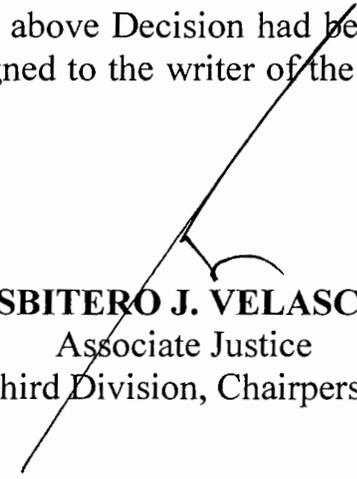
  
**TERESITA J. LEONARDO-DE CASTRO**  
 Associate Justice

  
**DIOSDADO M. PERALTA**  
 Associate Justice

  
**BIENVENIDO L. REYES**  
 Associate Justice

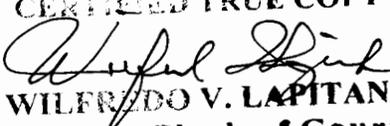
**ATTESTATION**

I attest 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.

  
**PRESBITERO J. VELASCO, JR.**  
 Associate Justice  
 Third Division, Chairperson

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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.

**CERTIFIED TRUE COPY**  
  
**WILFREDO V. LAPITAN**  
 Division Clerk of Court  
 Third Division

  
**ANTONIO T. CARPIO**  
 Acting Chief Justice

DEC 12 2016