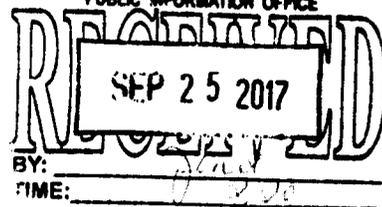




Republic of the Philippines
Supreme Court
 Manila

SUPREME COURT OF THE PHILIPPINES
 PUBLIC INFORMATION OFFICE



FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
 Plaintiff-Appellee,

G.R. No. 217973

Present:

- versus -

SERENO, *C.J.*, Chairperson,
 LEONARDO-DE CASTRO,
 DEL CASTILLO,
 PERLAS-BERNABE, and
 CAGUIOA, *JJ.*

FEDERICO GEROLA y AMAR
 alias "**FIDEL**",
 Accused-Appellant.

Promulgated:

JUL 19 2017

X-----X

DECISION

CAGUIOA, J.:

This is an Appeal¹ filed under Section 13(c), Rule 124 of the Rules of Court from the Decision² dated September 25, 2014 (questioned Decision) of the Court of Appeals, Special Eighteenth Division (CA), in CA-G.R. CR. HC. No. 01277, which affirmed the Decision³ dated January 28, 2010 of the Regional Trial Court of Himamaylan City, Negros Occidental, Branch 55 (RTC) in Criminal Case Nos. 1213, 1214, and 1215, convicting accused-appellant Federico A. Gerola (Federico) for the crimes charged therein.

The Facts

Three (3) separate Informations for Rape under Article 266-A, paragraph 1⁴ of the Revised Penal Code were filed in the RTC against Federico, as follows:

¹ CA rollo, pp. 118-120.

² Id. at 104-117. Penned by Associate Justice Gabriel T. Ingles, with Associate Justices Renato C. Francisco and Jhosep Y. Lopez concurring.

³ Id. at 51-57. Penned by Presiding Judge Franklin J. Demonteverde.

⁴ As amended by Republic Act (RA) No. 8353 (The Anti-Rape Law of 1997) in relation to RA No. 7610 (Special Protection of Children Against Abuse, Exploitation and Discrimination Act).

[CRIMINAL CASE NO. 1213]

That sometime in July of 1999, in the Municipality of Himamaylan, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, taking advantage of his moral ascendancy being the step-father of herein victim AAA,⁵ a minor, 11 years old, did then and there, willfully, unlawfully and feloniously have carnal knowledge of the latter, against her will.

CONTRARY TO LAW.⁶

[CRIMINAL CASE NO. 1214]

That sometime in the year 1998, in the Municipality of Himamaylan, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, taking advantage of his moral ascendancy being the step-father of herein victim AAA, a minor, 10 years old, did then and there, willfully, unlawfully and feloniously have carnal knowledge of the latter, against her will.

CONTRARY TO LAW.⁷

[CRIMINAL CASE NO. 1215]

That on or about the 9th day of January, 2000, in the Municipality of Himamaylan, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, taking advantage of his moral ascendancy being the step-father of herein victim AAA, a minor, 12 years old, did then and there, willfully, unlawfully and feloniously have carnal knowledge of the latter, against her will.

CONTRARY TO LAW.⁸

As culled from the questioned Decision, the antecedent facts are as follows:

Version of the Prosecution

Private complainant AAA was born on July 5, 1987. She was a minor when all three (3) acts of rape were committed. She was 11 years old when the first act of rape occurred sometime in the year 1998. The second act of rape happened sometime in the year 1999 when she was 12 years old and the third time was in January 2000 when she was 12 years and 6 months of age. At the time all three (3) acts of rape occurred, she was living in the same house in Barangay Libacao, City of Himamaylan in

⁵ Pursuant to RA No. 9262, otherwise known as the "Anti-Violence Against Women and Their Children Act of 2004," and its implementing rules, the real name of the victim, as well as those of her immediate family members, is withheld, and fictitious initials instead are used to represent her, to protect her privacy. See *People v. Cabalquinto*, 533 Phil. 703, 705-709 (2006).

⁶ CA *rollo*, p. 105.

⁷ *Id.*

⁸ *Id.* at 105-106.

San Jose with her full-blood sister, her half-siblings (children of her mother and step-father), her mother MMM and AAA's step-father, accused-appellant Federico Gerola.

Sometime in 1998 at around 8:30 in the evening, AAA and her sisters were sleeping. Her mother was in the hospital tending to her aunt who had just delivered a baby. At that time, appellant crawled towards AAA. Accused-appellant told AAA to keep quiet, lie down and remove her underwear. AAA tried to resist but appellant gestured to box her. AAA tried to shout but he covered her mouth. After removing her underwear, accused also removed his brief and laid on top of AAA. Appellant inserted his penis into her vagina. AAA bled and felt pain. AAA did not tell her mother about the incident because appellant threatened her of maltreating them if she did so.

In July 1999 at around 9:30 in the evening, AAA was raped for the second time. While she was sleeping in bed, appellant sat beside her and removed her underwear. He then inserted his penis into her vagina. The victim felt pain and bled. At that time, AAA's mother was in the Himamaylan hospital tending to her grandmother. Again, she did not tell her mother due to appellant's threat to maltreat her mother.

In January of the year 2000, appellant did the same act of having carnal knowledge with AAA for the third time. This was done at around 2:30 in the morning and lasted for about thirty (30) minutes while everyone else in the house was sleeping. AAA's mother was away from home to tend to the latter's younger sister who gave birth. Like the other incidents, AAA did not tell her mother. Instead, AAA told her friend who advised her to tell their teacher. AAA then narrated the incident to her teacher, Mrs. Rafil, who summoned her mother and told her what happened. When her mother learned of her daughter's ordeal, she cried. AAA's aunt Elen accompanied the victim to the Barangay Captain and reported the rape incidents. Appellant was then fetched by the Barangay Captain and thereafter brought to the police station where the appellant was detained.

On February 7, 2000, AAA was examined by Dr. Medardo Estanda who made a written case report and anatomical sketch of the victim pursuant to the incidents that occurred. The report indicated that there were penetrations on the organ of the victim which had hymenal lacerations at 5, 6 and 12 o'clock positions.

Version of the Appellant

Accused-appellant Federico Gerola y Amar alias Fidel testified that he was married to MMM, the private complainant's mother, in the year 1996 and they begot four (4) children. The family which was composed of his wife and himself, their four children and a child of MMM by her first marriage were living in San Jose Valing, Barangay Libacao, Himamaylan City. The other child of MMM by her first husband, AAA, lived with her aunt Erlita Aguirre.

As a cane laborer, accused-appellant worked in the sugarcane field and sometimes in the rice field. Since 1998 up to 2000, AAA was living with the latter's aunt Erlita Aguirre in a separate house because she was going to school in San Jose.



Accused-appellant testified that he was not in good terms with Dodoy Puertas, the brother-in-law of his wife MMM, because Puertas was not in favor of their marriage. Accused-appellant recalled that when he and MMM asked permission from Dodoy Puertas about their plan to get married, Puertas did not give consent and merely said "I don't know". Appellant further testified that MMM and Dodoy Puertas initiated the filing of the criminal cases against him because MMM and Puertas have an illicit affair and both live together in Mirasol.⁹

Ruling of the RTC

After trial, the RTC rendered the Decision dated January 28, 2010, finding accused-appellant guilty of all charges filed against him and imposing the penalty of *reclusion perpetua* for each charge, without eligibility of parole. The dispositive portion reads:

WHEREFORE, in view of all the foregoing, the Court finds the accused Federico Gerola y Amar alias "Fidel" "**GUILTY**" beyond a (sic) reasonable doubt on the three counts of Rape as charged against him. Since the death penalty is suspended, the Court hereby sentences the accused to **three (3) penalties of Reclusion Perpetua, without eligibility of parole.**

The accused is further ordered to pay the private complainant, [AAA], moral damages in the amount of **Fifty Thousand Pesos (Php50,000.00)** for each case; civil indemnity in the amount of **Seventy-Five Thousand Pesos (Php75,000.00)** for each case; and exemplary damages in the amount of **Twenty-Five Thousand Pesos (Php25,000.00)** for each case.

SO ORDERED.¹⁰

Pleading his innocence, Federico filed a Notice of Appeal on April 28, 2010.¹¹ Briefs were then respectively filed by Federico and plaintiff-appellee on August 15, 2011 and May 28, 2012, pursuant to the Notice to File Brief dated January 14, 2011 issued by the CA.¹²

On appeal before the CA, Gerola assailed the RTC's appreciation of the testimonies of prosecution witnesses, which he claimed to be replete with inconsistencies and contradictions.¹³ Gerola anchored his claim on the fact that AAA had difficulty recalling the specific dates when the incidents occurred and that she failed to promptly report the same to the proper authorities.¹⁴

⁹ Id. at 106-108.

¹⁰ Id. at 57.

¹¹ Id. at 109.

¹² Id.

¹³ Id.

¹⁴ Id. at 110.

Ruling of the CA

On September 25, 2014, the CA rendered the questioned Decision, affirming the judgment of the RTC *in toto*:

WHEREFORE, the appeal is hereby **DENIED**. The Decision of the Regional Trial Court of Himamaylan City, Negros Occidental Branch 55 in Criminal Case Nos. 1213, 1214 and 1215 dated January 28, 2010 is hereby **AFFIRMED** in its entirety.

SO ORDERED.¹⁵

Federico then elevated the case before the Court via Notice of Appeal¹⁶ dated October 22, 2014. In lieu of supplemental briefs, plaintiff-appellee filed a Manifestation and Motion (in Lieu of Supplemental Brief)¹⁷ dated September 1, 2015, while Federico filed a Manifestation (in Lieu of Supplemental Brief)¹⁸ dated September 23, 2015.

Issue

The sole issue for resolution is whether the CA erred in affirming the RTC's conviction of Federico for three (3) counts of Rape.

The Court's Ruling

The Appeal is dismissed.

Federico's lone assignment of error rests on his claim that AAA "could not exactly determine what year x x x the first rape incident occurred," which purportedly creates doubt on the credibility of AAA.¹⁹ Federico draws the same conclusion from AAA's failure to promptly disclose her repeated defilement to the proper authorities.²⁰ Such circumstances, Federico asserts, were not properly appreciated by the RTC when it handed out his conviction. The Court is not impressed.

The assessment of the credibility of witnesses is a task most properly within the domain of trial courts. In *People v. Gahi*,²¹ the Court stressed that the findings of the trial court carry great weight and respect due to the unique opportunity afforded them to observe the witnesses when placed on the stand.²² Consequently, appellate courts will not overturn the factual findings of the trial court in the absence of facts or circumstances of weight

¹⁵ Id. at 116-117.

¹⁶ Id. at 118-120.

¹⁷ *Rollo*, pp. 28-30.

¹⁸ Id. at 34-37.

¹⁹ *CA rollo*, pp. 45-46.

²⁰ Id. at 46.

²¹ 727 Phil. 642 (2014).

²² Id. at 658.

and substance that would affect the result of the case.²³ Said rule finds an even more stringent application where the said findings are sustained by the CA,²⁴ as in the case at hand:

Time and again, we have held that when it comes to the issue of credibility of the victim or the prosecution witnesses, the findings of the trial courts carry great weight and respect and, generally, the appellate courts will not overturn the said findings unless the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which will alter the assailed decision or affect the result of the case. This is so because trial courts are in the best position to ascertain and measure the sincerity and spontaneity of witnesses through their actual observation of the witnesses' manner of testifying, their demeanor and behavior in court. Trial judges enjoy the advantage of observing the witness' deportment and manner of testifying, her "furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh, or the scant or full realization of an oath" – all of which are useful aids for an accurate determination of a witness' honesty and sincerity. Trial judges, therefore, can better determine if such witnesses are telling the truth, being in the ideal position to weigh conflicting testimonies. Again, unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case, its assessment must be respected, for it had the opportunity to observe the conduct and demeanor of the witnesses while testifying and detect if they were lying. The rule finds an even more stringent application where the said findings are sustained by the Court of Appeals.²⁵

As well, that a witness' testimony contains inconsistencies or discrepancies does not, by such fact alone, diminish the credibility of such testimony. In *People v. Esquila*,²⁶ the accused therein similarly cited contradictions and discrepancies in the victim's testimony in questioning his conviction for rape.²⁷ Notably, as in the present Appeal, the purported discrepancies consisted of statements relating to date of the commission of the crime.²⁸ In affirming the findings of the lower courts, the Court brushed aside such inconsistencies and gave full weight and credit to the testimony of the victim, who was likewise a minor²⁹:

Thus, accused-appellant avers that the trial court erred in convicting him because the testimony of the victim, Maribeth, is uncertain, contradictory, and filled with inconsistencies and material discrepancies sufficient to destroy her credibility. He argues that in her direct testimony, Maribeth declared that the crime happened on October 15, 1991 at 12 o'clock midnight x x x while under cross-examination on August 3, 1992, she stated that she left accused-appellant's house on October 11, 1991 for Poblacion, Bansalan to look for work and stayed thereat for 1-1/2 months, from October 11, 1991 x x x. Thereafter she

²³ Id.

²⁴ Id.

²⁵ Id., citing *People v. Amistoso*, 701 Phil. 345, 356-357 (2013), further citing *People v. Aguilar*, 565 Phil. 233, 247-248 (2007).

²⁶ 324 Phil. 366 (1996).

²⁷ Id. at 371.

²⁸ See id.

²⁹ Id.

returned to Pananag, Managa, Bansalan but she did not go to accused-appellant's house. Instead she proceeded to her cousin's house x x x.

Indeed, the statements are contradictory. However, it should be remembered that the victim, Maribeth, was only 14 years old at the time she testified and, therefore, it is not unnatural should inconsistencies crop into her testimony as she is more prone to error than an adult person. In fact, minor inconsistencies may be expected of persons of such tender years.

The minor inconsistencies in Gloria's testimonies are to be expected. Protracted cross-examination of a 16-year old girl not accustomed to public trial would produce contradictions which nevertheless would not destroy her credibility. x x x

We will not deviate from the rule that "testimonies of rape victims who are young and immature are credible; the revelation of an innocent child whose chastity was abused demands full credence." x x x

Too, the inconsistent statements Maribeth made as to the date and place of the commission of the crime are collateral or minor matters which do not at all touch upon the commission of the crime itself x x x nor affect Maribeth's credibility.

This Court has time and again held that inconsistencies in the testimony of witnesses with respect to minor details and collateral matters do not affect either the substance of their declaration, their veracity, or the weight of their testimony x x x.³⁰ (Citations omitted; emphasis supplied)

Time and again, the Court has held that the date or time of the commission of rape is not a material ingredient of the crime and need not be stated with absolute accuracy; where the time of commission is not an essential element of the crime charged, conviction may be had on proof of the commission of the crime, even if it appears that the crime was not committed at the precise time alleged.³¹ It is well to stress that variance in minor details has the net effect of bolstering instead of diminishing the witness' credibility because they discount the possibility of a rehearsed testimony.³² Instead, what remains paramount is the witness' consistency in relating the principal elements of the crime and the positive and categorical identification of the accused as the perpetrator of the same.³³

Bearing the foregoing in mind, the Court finds that Federico's guilt was proven beyond reasonable doubt by the evidence of the prosecution.

In criminal cases, "[p]roof beyond reasonable doubt" does not mean such degree of proof, excluding possibility of error, that produces absolute

³⁰ Id. at 371-372.

³¹ *People v. Cinco*, 622 Phil. 858, 867-868 (2009); *People v. Ching*, 563 Phil. 433, 444 (2007).

³² *People v. Gahi*, supra note 21, at 659.

³³ *People v. Appegu*, 429 Phil. 467, 477 (2002).



certainty; only “moral certainty” is required, or that degree of proof which produces conviction in an unprejudiced mind.³⁴

In the instant case, aside from harping on the alleged inconsistencies of AAA’s testimony, Federico relies on his bare and uncorroborated refutations and nothing more.³⁵ No other testimonial or documentary evidence was offered by Federico during the course of the trial. Such counter evidence, when weighed against the positive identification and straightforward testimony of AAA, do little to affect the issue of Federico’s carnal knowledge of AAA, the elements of which have been consistently narrated by the latter. Following established jurisprudence, denials, being self-serving negative evidence, cannot be accorded greater evidentiary weight than the positive declaration of a credible witness.³⁶ All told, considering that the prosecution produced various testimonial and documentary evidence³⁷ on record, the Court is led to the unquestionable conclusion that Federico is indeed guilty of the crimes charged.

Anent the issue of delay, the Court agrees with the ruling of the CA that delay in the prosecution of an offense is not an *indicium* of a fabricated charge.³⁸ Such fact of delay was satisfactorily explained during trial, where it was revealed that the same was brought about by AAA’s fear of Federico, who was her step-father.³⁹ In the same manner, the Court brushes aside Federico’s desperate attribution of ill-motive against AAA and her mother for being self-serving and unsupported by the evidence on record.⁴⁰

Finally, in light of prevailing jurisprudence, the Court modifies the award for damages. As charged in the three (3) Informations, the crimes of rape are punishable by death under Section 11⁴¹ of Republic Act (RA) No.

³⁴ RULES OF COURT, Rule 133, Sec. 2.

³⁵ See CA *rollo*, pp. 114-115.

³⁶ *People v. Vergara*, 724 Phil. 702, 712 (2014).

³⁷ Testimony of AAA and her mother; Medical report of Dr. Medardo S. Estanda; Police blotter report; Notebook of AAA; see CA *rollo*, pp. 51-54.

³⁸ CA *rollo*, pp. 112-113.

³⁹ See *id.* at 112.

⁴⁰ *Id.* at 114.

⁴¹ SEC. 11. Article 335 of the same Code is hereby amended to read as follows:

“Art. 335. *When and how rape is committed.* – Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

1. By using force or intimidation;
2. When the woman is deprived of reason or otherwise unconscious; and
3. When the woman is under twelve years of age or is demented.

x x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:

1. **when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law-spouse of the parent of the victim.[”]** (Emphasis supplied)

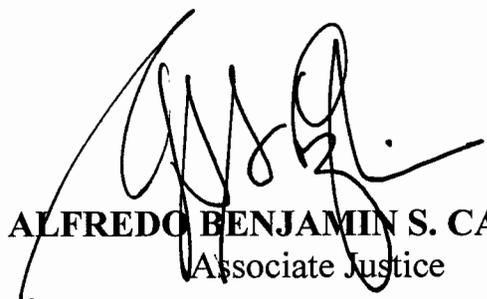
7659,⁴² given the confluence of the following elements: (i) that the victim was below eighteen (18) years of age at the time all three rape incidents occurred, and (ii) that the offender is the step-parent of the victim.

In *People v. Jugueta*,⁴³ the Court held that for those crimes where the penalty imposed is death but reduced to *reclusion perpetua* because of RA No. 9346,⁴⁴ the civil indemnity as well as the award for moral and exemplary damages shall each be set at One Hundred Thousand Pesos (₱100,000.00).

WHEREFORE, in view of the foregoing, the Appeal is **DISMISSED** for lack of merit and the Decision dated September 25, 2014 of the Court of Appeals in CA-G.R. CR. HC. No. 01277 is **AFFIRMED** with **MODIFICATION**. Accused-appellant Federico Gerola y Amar is hereby found **GUILTY** beyond reasonable doubt of three (3) counts of Rape as defined under Article 266-A, paragraph 1 of the Revised Penal Code and is hereby sentenced to suffer the penalty of *reclusion perpetua* for each count.

The amount of damages awarded is likewise increased, ordering accused-appellant to pay the amount of One Hundred Thousand Pesos (₱100,000.00) as civil indemnity, One Hundred Thousand Pesos (₱100,000.00) as moral damages, and One Hundred Thousand Pesos (₱100,000.00) as exemplary damages for each count of Rape. All monetary awards shall earn interest at the legal rate of six percent (6%) per annum from the date of finality of this Decision until fully paid.

SO ORDERED.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

WE CONCUR:



MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

⁴² AN ACT TO IMPOSE THE DEATH PENALTY ON CERTAIN HEINOUS CRIMES, AMENDING FOR THAT PURPOSE THE REVISED PENAL CODE, AS AMENDED, OTHER SPECIAL PENAL LAWS, AND FOR OTHER PURPOSES.

⁴³ G.R. No. 202124, April 5, 2016, 788 SCRA 331.

⁴⁴ AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES.

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

Mariano C. Del Castillo
MARIANO C. DEL CASTILLO
Associate Justice

Estela M. Pirlas-Bernabe
ESTELA M. PERLAS-BERNABE
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
MARIA LOURDES P. A. SERENO
Chief Justice

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