



Republic of the Philippines
Supreme Court
 Manila

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

AUG 11 2017

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
 Plaintiff-Appellee,

G.R. No. 218572

Present:

* CARPIO, J.,
 VELASCO, JR.
Chairperson,
 BERSAMIN,
 REYES, and
 TIJAM, JJ.

- versus -

BILLIE GHER TUBALLAS y
FAUSTINO,
 Accused-Appellant,

Promulgated:

June 19, 2017

Wilfredo V. Lapitan

X-----X

DECISION

TIJAM, J.:

Accused-appellant Billie Gher Tuballas y Faustino appeals the June 16, 2014 Decision¹ of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 05589 which affirmed with modification the May 4, 2012 Decision² of the Regional Trial Court (RTC), Branch 172 of Valenzuela City in Crim. Case Nos. 810-V-09 and 810A-V-09 finding accused-appellant Billie Gher Tuballas y Faustino guilty beyond reasonable doubt for two counts of rape under paragraph 1 of Article 266-A of the Revised Penal Code (RPC).

Accused-appellant was charged with two counts of rape under separate Informations, the accusatory portions of which read:

^{*}Designated as additional member as per Raffle dated March 15, 2017.

¹ Penned by Associate Justice Rodil V. Zalameda and concurred in by Associate Justices Ramon M. Bato, Jr. and Maria Elisa Sempio Diy, *rollo*, pp. 2-19.

² CA *rollo*, pp. 11-22.

M

Crim. Case No. 810-V-09

On or about November 12, 2009, in Valenzuela City, Metro Manila and within the jurisdiction of this Honorable Court, the accused BRYAN T. FLORENCIO, conspiring together with the accused BILLIE GHER F. TUBALLAS and ZZZ³, seventeen (17) years old, acting with discernment, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with one AAA⁴, fifteen (15) years old, against her will and without her consent as she was deprived of reason, thereby subjecting said minor to sexual abuse which debased, degraded and demeaned her intrinsic worth and dignity as a human being.

CONTRARY TO LAW.⁵

CRIM. CASE No. 810A-V-09

On or about November 12, 2009, in Valenzuela City, Metro Manila and within the jurisdiction of this Honorable Court, the accused ZZZ, seventeen (17) years old, acting with discernment, conspiring together with the accused BILLIE GHER F. TUBALLAS and BRYAN T. FLORENCIO, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with one AAA, fifteen (15) years old, against her will and without her consent as she was deprived of reason, thereby subjecting said minor to sexual abuse which debased, degraded and demeaned her intrinsic worth and dignity as a human being.

CONTRARY TO LAW.⁶

The case against Bryan T. Florencio (Florencio) was dismissed on October 27, 2010 due to his death on October 15, 2010⁷, while ZZZ had not yet submitted himself to the jurisdiction of the court. Records show that before the filing of the case, ZZZ's custody was turned over by the City Social Welfare and Development Office of Valenzuela to ZZZ's mother. Notices were sent to ZZZ's mother to appear and bring her son to court but the return showed that they were no longer residing at their given address. Warrants of arrest were issued against ZZZ and his mother, but they still remain at large.⁸

³ The accused's name is withheld, he being a minor at the time of the commission of the crime, consistent with A.M. No. 02-1-18-SC dated November 24, 2009 (*The Rule on Juveniles in Conflict with the Law*) and Republic Act No. 9344 (*Juvenile Justice and Welfare Act of 2006*) on confidentiality of proceedings and records.

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

⁵ *Rollo*, p. 4.

⁶ *Id.*, pp. 4-5.

⁷ *CA rollo*, p. 12.

⁸ *Id.*



On arraignment, accused-appellant pleaded not guilty to the two charges.⁹

The pertinent facts of the case, as summarized by the CA, are as follows:

AAA testified that in the morning of 12 November 2009, she and Arjay were invited by accused ZZZ and accused-appellant to have a drink in the house of the latter. Joining them were accused Bryan, Salvador Sanidad, a certain Renerio, as well as her friend Mary. AAA got drunk and when she became dizzy she was taken by Arjay and ZZZ to a room where she was told to sleep it off. She awakened when she felt somebody touching her breast and saw that it was ZZZ. ZZZ was inside her in a pumping movement. She tried to move but somebody was pinning her hand down. She saw Bryan standing beside the sofa bed and accused-appellant taking a video of her and ZZZ with his mobile phone. When they noticed that she was awake, ZZZ stopped what he was doing and stood up. He was replaced by another man whom AAA did not know. He too had carnal knowledge with her. Sometime around 1:00 o'clock p.m. Mary awakened her and helped her fix herself with Arjay following to take her home. The next day, she told her teacher what happened and her parents were called to a meeting in the school and were apprised thereof. Afterwards, AAA and her parents proceeded to the police station and to the Crime Laboratory.

AAA's testimony was substantially corroborated by her friend Mary and Arjay.

P/Insp. Cordero testified that he conducted a physical examination that included examining the genital and extragenital areas on (sic) AAA on 13 November 2009. He noticed, among others, lacerations in her genitalia which could have been caused by a blunt object or force or trauma that was inserted in the area like an erect penis.

After the prosecution rested its case, the defense presented accused-appellant.

The accused-appellant denied raping AAA and taking a video of her while she was being raped. He admitted, however, the occurrence of a drinking session in his house wherein ZZZ, AAA, Arjay, Mary, Salvador, Renerio, Bryan and himself were all present. He narrated that when AAA became drunk she kissed ZZZ, Bryan, and Arjay. Accused-appellant told ZZZ not to give AAA another drink because she was already drunk and flirting. Arjay also tried to stop AAA from drinking but did not (sic). After awhile AAA lay down on the sofa. Arjay and ZZZ brought AAA to a room and left her there alone. Arjay and ZZZ went outside while accused-appellant stayed in the living room and continued to drink. While accused-appellant was cleaning up, he heard a commotion. He saw Arjay and Salvador exchanging blows. Accused-appellant pacified the two and told them to sit in the living room. At 2:00 o'clock p.m., AAA left the room where she was taken and thirty (30) minutes later everybody left his house.¹⁰

⁹ Records, pp. 45 and 50.

¹⁰ Rollo, pp. 6-7.

On May 4, 2012, the RTC rendered a Decision¹¹ finding accused-appellant guilty beyond reasonable doubt for two counts of rape, to wit:

WHEREFORE, in view of the foregoing, the court finds accused Billie Gher Tuballas y Faustino guilty beyond reasonable doubt as principal of the two (2) counts of rape charged against him and he is hereby sentenced to suffer the following penalties:

1. In Crim. Case No. 810-V-09, the accused is hereby sentenced to suffer the penalty of reclusion perpetua. He is likewise ordered to pay AAA civil liability in the amount of P75,000.00; P75,000.00 for moral damages and P30,000.00 exemplary damages and to pay the cost.

2. In Crim. Case No. 810A-V-09, the accused is hereby sentenced to suffer the penalty of reclusion perpetua. He is likewise ordered to pay AAA civil liability in the amount of P75,000.00; P75,000.00 for moral damages and P30,000.00 exemplary damages and to pay the cost.

Considering that accused Billie Gher Tuballas y Faustino has undergone preventive imprisonment, he shall be credited in the services of his sentence with the full time spent in detention subject to the conditions provided for by law.

This decision is not applicable to child in conflict with the law (sic) ZZZ who up to this date has not yet submitted to the jurisdiction of this court.

Let an alias warrant of arrest be issued against accused ZZZ.

SO ORDERED.¹²

Hence, this appeal with accused-appellant raising this lone assignment of error:

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE FACT THAT HIS GUILT HAS NOT BEEN PROVEN BEYOND REASONABLE DOUBT.¹³

Accused-appellant claimed that the intoxicated state of AAA, the victim, Arjay and Mary, casts doubt on the veracity and accuracy of their statements. He further claimed that the RTC erred in finding that a conspiracy existed between accused-appellant, ZZZ and Florencio.

The appeal lacks merit.

¹¹ Supra, note 2.

¹² CA rollo, p. 22.

¹³ CA rollo, p. 41.

Article 266-A of the RPC provides that Rape is committed:

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

- a) Through force, threat or intimidation;
- b) When the offended party is deprived of reason or is otherwise unconscious;
- c) By means of fraudulent machination or grave abuse of authority;
- 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.

xxx xxx

Under the said provision, the elements of rape are: (1) the offender had carnal knowledge of the victim; and (2) such act was accomplished through force or intimidation; or when the victim is deprived of reason or otherwise unconscious; or when the victim is under twelve years of age.

In reviewing rape cases, this Court is guided by three principles, to wit: (1) an accusation of rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (2) in view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merits and cannot draw strength from the weakness of the evidence for the defense.¹⁴

As a result of these guiding principles, credibility of the complainant becomes the single most important issue. If the testimony of the victim is credible, convincing and consistent with human nature, and the normal course of things, the accused may be convicted solely on the basis thereof.¹⁵

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

¹⁴ *People v. SPO1 Arnulfo A. Aure and SPO1 Marlon H. Ferol*, G.R. No. 180451, October 17, 2008.

¹⁵ *Id.*

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.¹⁶ Especially so, in this case, where accused-appellant failed to impute any ill-motive on the part of AAA to have impelled the latter to file a case of rape against him. When there is no evidence to show any improper motive on the part of the complainant to testify against the accused or to falsely implicate him in the commission of the crime, the logical conclusion is that the testimony is worthy of full faith and credence.¹⁷

We have carefully examined the testimony of AAA and found the same to be credible, spontaneous, straightforward and trustworthy, to wit:

MS. CAPONES

Q. AAA, how old are you?

A. I am 16 years old, ma'am.

Q. When is your birthday?

A. January 10, 1994, ma'am.

xxx xxx xxx

Q. Do you remember where you were in the morning of November 12, 2009?

A. Yes, ma'am.

xxx xxx xxxxx

Q. At 5:30 in the morning what were you doing in school?

A. When I went to the school Billie and my other classmates were there, ma'am.

Q. And what did you do upon arriving in school and seeing them?

A. We stayed in the school and Billy (sic) and ZZZ were forcing us to have a drinking spree, ma'am.

Q. You mentioned Billy (sic) and ZZZ, who are they, how did you come to know them?

A. They are my classmates, ma'am.

xxx xxx xxxxx

¹⁶ *People v. Anastacio Amistoso y Broca*, G.R. No. 201447, January 9, 2013, citing *People v. Aguilar*, G.R. No. 177749, December 17, 2007.

¹⁷ *People v. Antonio Belga*, G.R. No. 129769, January 19, 2001.

M

Q. You stated a while ago that Billie and ZZZ invited you for a drink. What was your reply to his invitation?

A. I refused because we have a class in Mape, ma'am.

Q. Was this the first time that they ever invited you for a drink?

A. No, ma'am.

Q. How many times have you been invited before?

A. Three (3) times including that incident, ma'am.

Q. Two (2) times before that. And have you ever joined them in any of these drinking sprees?

A. No, ma'am.

Q. After you have said no to the invitation of Billie and ZZZ, what did you do?

A. Arjay and me went to school and they were left, ma'am.

Q. Does this mean that Billy (sic) and ZZZ did not go to class?

A. Yes, ma'am.

xxx

xxx

xxxx

Q. What were your activities during the day?

A. Because it was a feast day and we have nothing to do, we were just practicing our dance and our teacher told us to go to church, ma'am.

xxx

xxx

xxxx

Q. So what did you do after your teacher told you to go to mass?

A. After that Billie and ZZZ were in the court and telling us it is better that we should not have come to class, ma'am.

Q. After that conversation where did you go?

A. We went outside the school and they were following us and we went with them, ma'am.

Q. You went with them to where?

A. In the house of Billie, ma'am.

xxx

xxx

xxxx

Q. Upon reaching the house, what did you do?

A. ZZZ bought a drink, ma'am.

Q. Do you know the drink he bought?

A. Matador and lollipop, ma'am.

Q. What did you do with the Matador?

A. We drank it, ma'am.

Q. How much did you drink?

A. Five (5) shots I think, ma'am.

Q. Miss Witness are you used to drink that much alcohol?

A. No, ma'am.

xxx

xxx

xxxx

Q. After drinking the five (5) shots how did you feel?

A. I felt dizzy, ma'am.

Q. Would you know how long did it take before you felt dizzy?

A. Long time, ma'am.

Q. What did you do after that?

A. Because I felt dizzy ZZZ told me to have a rest for a minute and they brought me to the room and told me to sleep first, ma'am.

Q. So upon reaching the room what did you do?

A. I slept, ma'am.

Q. When did you wake up?

A. When I felt somebody was touching my body, ma'am.

Q. Were you able to identify or see what was it that you felt during that time?

A. ZZZ, ma'am.

MS. CAPONES

Your honor, we would like to put on record that the witness is crying.

Q. You were able to see ZZZ. What was he doing to you at that time?

A. He was touching my body and he was pumping ma'am.

Q. Would you remember which part of your body he was then touching?

A. My breast, ma'am.

Q. You said "may pumatong" can you elaborate on that?

A. (Witness crying)

COURT

Q. AAA what were you wearing when you saw ZZZ beside you?

A. My underwear was lowered, your Honor.

Q. But you still had your clothes on?

A. Yes, ma'am.

Q. And why did he lower your underwear?

A. Because he wanted to do something to me, ma'am.

Q. Can you state what he did to you exactly?

A. (Witness crying)

FISCAL MOLON:

May be we can continue hearing this case inside the chamber, your Honor.

A. His penis was inserted in my vagina that is why he is pumping, ma'am.

Q. And when you saw him inserting his penis into your vagina what did you do?

A. I tried to move but there was somebody who was holding my hand, ma'am.

Q. Do you know who it was who was holding your hand?

A. No, but I only saw Billie and Bryan taking video at (sic) us and I think they were amused on (sic) what ZZZ was doing to me, ma'am.

Q. So would you know if they noticed that you were aware of what was happening to you?

A. Yes, ma'am.

Q. So what did you do when they saw you?

A. ZZZ stood up and told them "sige na nga tama na ito kahit bitin"

xxx

xxx

xxxx

Q. You said after they noticed you that you were awake ZZZ stood up and what was your condition?

A. I felt dizzy and when ZZZ stood up somebody again mounted on me, ma'am.

xxx

xxx

xxxx

Q. What did the second person do?

A. The same thing ZZZ did to me, ma'am.

Q. The same thing meaning he also inserted his penis into your vagina?

A. Yes, ma'am.

Q. And how did you feel?

A. I was half-conscious but I know what they were doing, ma'am.

xxx

xxx

xxxx

Q. Before we go to that. While the second person was mounting on you (sic), where was Billie then?

A. When the first person mounted on me I saw Billie but when the second person mounted on me I did not see Billie, your Honor.¹⁸

AAA's foregoing testimony sufficiently established that ZZZ and another man, later identified by Mary as Florencio,¹⁹ had carnal knowledge

¹⁸CA rollo, pp. 85-91.

¹⁹ Direct testimony of Mary Malto:

Para-legal CAPONES:

Q: Then after that what happened?

A: After that ZZZ, Billie and Salvador went outside of the house, ma'am. And then Bryan went inside the room where AAA was, ma'am.

Q: Do you know why he went inside the second room?

A: Yes, ma'am.

with her. In this case, AAA was clearly in an inebriated condition when ZZZ and Florencio raped her, since AAA consumed five shots of hard liquor which she was not used to. When a woman, especially a minor, alleges rape, she says in effect all that is necessary to mean that she has been raped.²⁰ When the offended party is of tender age and immature, courts are inclined to give credit to her account of what transpired, considering not only her relative vulnerability but also the shame to which she would be exposed if the matter to which she testified is not true. Youth and immaturity are generally badges of truth and sincerity. A young girl's revelation that she had been raped, coupled with her voluntary submission to medical examination and willingness to undergo public trial where she could be compelled to give out the details of an assault on her dignity, cannot be so easily dismissed as mere concoction.²¹

As to the liability of accused-appellant, AAA positively testified that accused-appellant was inside the room recording the whole incident. The same was corroborated by Mary in her testimony. Likewise, Arjay testified²² that when he tried to stop ZZZ from what he was doing to AAA, accused-appellant pulled and kicked him and pointed a *sumpak* at him. Accused-appellant further threatened Arjay not to brag because the latter was in the accused-appellant's territory, otherwise accused-appellant will kill Arjay.

To hold an accused guilty as co-principal by reason of conspiracy, he must be shown to have performed an overt act in pursuance or furtherance of the complicity. Responsibility of a conspirator is not confined to the accomplishment of a particular purpose of conspiracy but extends to collateral acts and offenses incident to and growing out of the purpose intended.²³ To establish the existence of conspiracy, direct proof is not essential. Conspiracy may be inferred from the acts of the accused before, during and after the commission of the crime which indubitably point to and are indicative of a joint purpose, concert of action and community of interest.²⁴

We quote with conformity the finding of the CA, as to accused-appellant's liability, to wit:

As correctly held by the court *a quo*, the act of the accused-appellant in preventing Arjay from coming to the aid of AAA when she was being sexually abused by ZZZ revealed that he was acting in

Q: What did he do inside the room?

A: Bryan placed himself on top of AAA, ma'am.

Q: Did you see them on the bed, can you describe their clothing?

A: AAA was lying on the bed unconscious and her skirt was up, ma'am." CA rollo, pp. 97-98.

²⁰ *People v. Edilberto Pusing y Tamor*, G.R. No. 208009, July 11, 2016.

²¹ *People v. Guillermo B. Cadano, Jr.*, G.R. No. 207819, March 12, 2014.

²² CA rollo, p. 107.

²³ *People v. Marcelino Collado y Cunanan, et. al.*, G.R. No. 185719, June 17, 2013.

²⁴ *People v. Datsgandawali y Gapas and Nol Pagalad y Anas*, G.R. No. 193385, December 1, 2014.



confederation with ZZZ. And later when he saw that Bryan too was sexually abusing the unconscious AAA (sic) did nothing to stop him but instead went inside the room and closed the door presumably to watch the dastardly deed being done. This action of accused-appellant showed his concurrence in the criminal design of Bryan. Not to be forgotten is the fact that both AAA and Mary saw him taking a video of ZZZ raping AAA.²⁵

With the finding that conspiracy exists between ZZZ, Florencio and accused-appellant, the latter is liable as a co-principal to the two counts of rape.

Accused-appellant alleged that AAA's testimony was inconsistent with the testimonies of Mary and Arjay, such that AAA simply stated that as soon as she was taken to the room, she immediately slept and was only awakened when she felt ZZZ touching her, while Mary and Arjay both testified that AAA was taken to the room, twice. We find the same immaterial to the charge of rape. Inaccuracies and inconsistencies are expected in a rape victim's testimony. Rape is a painful experience which is often times not remembered in detail. It causes deep psychological wounds that scar the victim for life and which her conscious and subconscious mind would opt to forget. Inconsistencies in the testimony of the witness with regard to minor or collateral matters do not diminish the value of the testimony in terms of truthfulness or weight.²⁶ Thus, a few inconsistent remarks in rape cases will not necessarily impair the testimony of the offended party.²⁷

In contrast, accused-appellant's bare denial and alibi deserve scant consideration. Nothing is more settled in criminal law jurisprudence than that alibi and denial cannot prevail over the positive and categorical testimony and identification of the complainant. Alibi is an inherently weak defense, which is viewed with suspicion because it can easily be fabricated. Denial is an intrinsically weak defense which must be buttressed with strong evidence of non-culpability to merit credibility.²⁸ AAA's positive and straightforward testimony that accused-appellant was inside the room recording the dastardly act of ZZZ and Florencio, and the testimony of Arjay that accused-appellant threatened to kill him, deserve greater evidentiary weight than accused-appellant's uncorroborated defenses.

WHEREFORE, the instant appeal is **DISMISSED**. The June 16, 2014 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 05589 finding Billie Gher Tuballas y Faustino **GUILTY** beyond reasonable doubt of two counts of rape is **AFFIRMED in toto**.

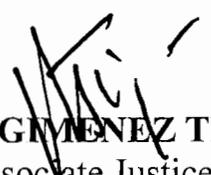
²⁵ *Rollo*, p. 15.

²⁶ *People v. Loreto Sonido y Coronel*, G.R. No. 208646, June 15, 2016.

²⁷ *People v. Ben Rubio y Acosta*, G.R. No. 195239, March 7, 2012.

²⁸ *People v. Guillermo B. Cadario, Jr.*, G.R. No. 207819, March 12, 2014.

SO ORDERED.



NOEL GIMENEZ TIJAM
Associate Justice

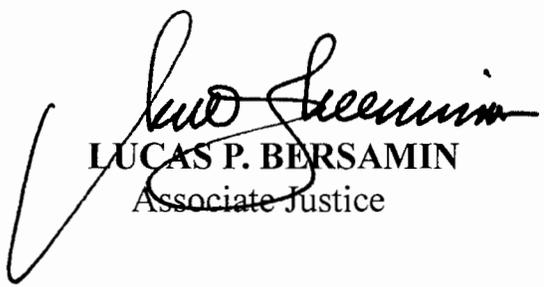
WE CONCUR:



ANTONIO T. CARPIO
Associate Justice



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson



LUCAS P. BERSAMIN
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.

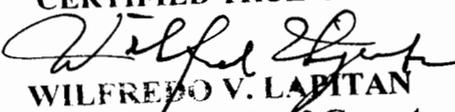


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

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.


MARIA LOURDES P. A. SERENO
Chief Justice

CERTIFIED TRUE COPY

WILFREDO V. LABITAN
Division Clerk of Court
Third Division
AUG 11 2017