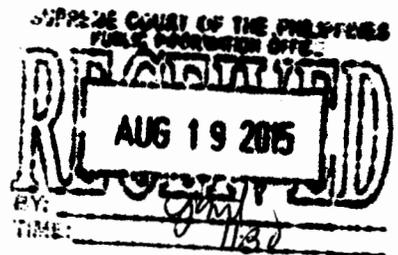




Republic of the Philippines
Supreme Court
 Manila

FIRST DIVISION

NOTICE



Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated July 29, 2015 which reads as follows:

“G.R. No. 201612 – (PEOPLE of the PHILIPPINES, petitioner, v. JERWIN ALEMANIA y CUSTADO, respondent). - This is an appeal from the Decision¹ of the Court of Appeals dated 16 December 2011 in CA-G.R. CR-HC No. 04532, which affirmed the Decision² dated 25 June 2010 of the Regional Trial Court, Branch 172, Valenzuela City, finding accused-appellant Jerwin Alemania y Custado (Alemania) guilty of the crime of rape in violation of Article 266-A(1)(a) of the Revised Penal Code.

On 20 October 2006, an Information was filed against Alemania for the crime of rape in relation to Republic Act No. 7610, otherwise known as *"Special Protection of Children Against Abuse, Exploitation and Discrimination Act,"* committed as follows:

That on or about October 17, 2006 in Valenzuela City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously had sexual intercourse with AAA, 13 years old (DOB: November 19, 1992), against her will and without consent, thereby subjecting the said minor to sexual abuse which debased, degraded and demeaned her intrinsic worth and dignity as a human being.³

Upon arraignment, Alemania pleaded a non-guilty plea.⁴

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¹ Penned by Associate Justice Antonio L. Villamor with Associate Justices Rosalinda Asuncion Vicente and Ramon A. Cruz, concurring; *rollo*, pp. 2-15.
² *CA rollo*, pp. 11-16.
³ RTC Decision in Criminal Case No. 883-V-06; *id.* at 11.
⁴ Records, p. 16.

On 25 June 2010, the trial court rendered a decision finding that the prosecution had established the essential requisites of the rape charge. It found the clear and categorical narration of AAA, that she was undressed by Alemania while sleeping and was forcefully subjected to sexual intercourse, credible and worthy of belief. On the other hand, it rejected the defense of alibi of the accused that he was on a drinking spree with a neighbor during the time of rape because it was not impossible for him to be at the time and place of the scene of the crime. Thus, Alemania was sentenced to suffer the penalty of *reclusion perpetua* as follows:

WHEREFORE, premised considered, the Court finds the accused JERWIN ALEMANIA guilty beyond reasonable doubt as principal of the crime of rape and he is hereby sentenced to suffer the penalty of *reclusion perpetua*. He is further ordered to pay the victim ₱75,000.00 as civil indemnity *ex-delicto*, ₱75,000.00 as moral damages and ₱25,000.00 as exemplary damages.⁵

In its Decision dated 16 December 2011, the Court of Appeals affirmed the ruling of the trial court. The appellate court dismissed the allegation of the accused that AAA was seen with a man in a “compromising situation at a young age,” in the absence of any proof to corroborate his version other than his self-serving statement.⁶

Hence, the present appeal.

Before this Court, Alemania contends that the lower courts, in convicting him of the crime of rape, erred in giving full weight and credence to the prosecution's testimony notwithstanding its failure to establish the real identity of the assailant and disregarding his alibi that he was on another place on the date of the crime. He alleges that he was mistakenly charged as the person who had carnal knowledge of AAA and maintains that he was only charged by AAA in view of the grudge she harbored against him when he scolded her when she allegedly brought a man inside his house.

We dismiss the appeal for lack of merit.

For the prosecution of rape to prosper, the following elements must be proved: (1) the accused had carnal knowledge of the victim; and (2) said act was accomplished (a) through the use of force, threat or intimidation, or

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⁵ CA rollo, p. 16.

⁶ Rollo, p. 9.

(b) when the victim is deprived of reason or otherwise unconscious, or (c) when the victim is under 12 years of age or is demented.⁷

In the case at bar, we find that the prosecution has sufficiently established that Alemania had carnal knowledge of his 13-year old house helper AAA, also a cousin of his wife Alma, against her will through force, threat, and intimidation. AAA's narration in a straightforward manner, that she was forced by the appellant to have sexual intercourse with him by using his strength over her, finds credibility in this Court. We quote her narration:

Q: You said a while ago that Jerwin did something to you. What did he do to you?

A: Yes, sir.

Q: What did he do to you? Don't be shy. How did it start? You woke up? What happened next when you woke up when you were not wearing your panty anymore?

A: I was then sleeping, then I felt he was touching my breast and my body.

Q: When you felt that Jerwin was touching you all over your body, what happened next?

A: I was pushing him. I was trying to push him away.

Q: What happened next when you were trying to push him?

A: I cannot push him because he was too big for me.

Q: Because you were not able to push him what happened next?

A: He kissed me on my neck and breast.

Q: What happened next when he kissed you on your neck and breast?

A: He made me lie down.

Q: Where did Jerwin make you lie down?

A: In the living room, sir.

Q: In the same place where you were sleeping then?

A: Yes, sir.

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⁷ Republic Act No. 8353, September 30, 1997, AN ACT EXPANDING THE DEFINITION OF THE CRIME OF RAPE, RECLASSIFYING THE SAME AS A CRIME AGAINST PERSONS, AMENDING FOR THE PURPOSE ACT NO. 3815, AS AMENDED, OTHERWISE KNOWN AS THE REVISED PENAL CODE, AND FOR OTHER PURPOSES otherwise known as "The Anti-Rape Law of 1997."

Q: What happened next when you were made to lie down on the mat?

A: I felt that he is trying to pinch my vagina and then he inserted his penis in my vagina.

xxx

Q: When did he stop making the push and pull motion?

A: When I looked at the clock it was 12:00 midnight.

Q: Do you know the reason why he stopped making the push and pull motion?

A: No, sir.

Q: Did you feel a hot liquid in your vagina?

A: Yes, your Honor, it looks like mucous.

Q: What did you feel when Jerwin placed his penis in your vagina and made a push and pull motion?

A: I felt pain, sir.

Q: Did you not object, did you not shout for help?

A: No, sir, because he told me not to shout, that if I shout, he would repeat it.

Q: From the time that Jerwin started touching your body, kissed you and inserted his penis into your vagina, what words did he tell you if any?

A: Yes, sir.

Q: What word did he utter, if any?

A: He told me not to inform my Ate Alma otherwise he will repeat it.⁸

To resolve the factual issues on appeal, the evaluation of the trial court of the demeanor and credibility of the witnesses is given great weight. This is because the trial court has the opportunity to observe them on the stand and detect the thin line between fact and prevarication that will determine the guilt or innocence of the accused.⁹ This is strengthened

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⁸ TSN of AAA, 27 August 2008, pp. 7-8.

⁹ *People v. Democrito Paras*, G.R. No. 192912, 4 June 2014, 724 SCRA 691, 700, citing *People v. De Guzman*, G.R. No. 76742, 7 August 1990, 188 SCRA 407, 410-411.

further in case the findings, assessments, and conclusions of the trial court were affirmed by the Court of Appeals. Thus, in the absence of any substantial reason which would justify the reversal of the factual findings, the reviewing court is generally bound by the lower court's findings sustaining the crime of rape.¹⁰

Moreover, the crime of rape was supported by the testimony of Dr. Jesille C. Baluyot, the medico legal officer who examined AAA. In her report, she found that AAA had shallow and healed lacerations caused by a blunt penetrating trauma more likely a male organ.¹¹ Where a victim's testimony is corroborated by the physical findings of penetration, there is sufficient basis for concluding that sexual intercourse did take place.¹²

From the foregoing we are convinced that all the elements constituting the crime of rape were sufficiently established.

The doubt on the real identity of the person who had carnal knowledge of AAA is without any merit. During the initial presentation of AAA as witness, her testimony was offered to prove the guilt of Alemania in the crime of rape. Indisputably, when AAA was asked to identify Alemania in court, she clearly pointed her finger to the direction of the accused. Furthermore, her previously discussed testimony undoubtedly identified Alemania as the person who forced her to sexual intercourse.

The accused in an effort to exculpate himself contends an alibi that he was out on a drinking spree during the time and place of rape.

Jurisprudence instructs us that for an alibi to prosper, the accused must prove that he was somewhere else when the crime was committed and that he must also satisfactorily establish that it was physically impossible for him to be at the crime scene at the time of its commission.¹³ As admitted by Alemania himself, he was out on a drinking spree with Efen Espino in the neighborhood. Thus, it was not physically impossible for him to go back to his house and rape the victim. Further, other than his self-serving statement, no evidence to corroborate his alibi was presented.

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¹⁰ *People v. Bernabe Pareja*, G.R. No. 202122, 15 January 2014, 714 SCRA 131, 147, citing *People v. Sanchez*, G.R. No. 197815, 8 February 2012, 665 SCRA 639, 643.

¹¹ TSN of Dr. Jesille C. Baluyot, 8 October 2008, p. 4.

¹² *People v. Floro Manigo*, G.R. No. 194612, 27 January 2014, 714 SCRA 551, 559, citing *People v. Corpuz*, 517 Phil. 622, 637 (2006).

¹³ *Id.*

The defense of alibi is inherently weak and easily to concoct; thus, it must be brushed aside when the prosecution has sufficiently and positively ascertained the identity of the accused.¹⁴ To stress further, as between an alibi of the accused and positive testimony of the victim, the latter deserves consideration.¹⁵

On his last effort to avoid conviction, the accused claims that improper motive prompted AAA to implicate him of the crime charged. He maintains that the case was only filed due to the grudge harbored by the victim when he reprimanded her in the past. Similar to his alibi, it cannot be given any consideration as it was uncorroborated and without any basis to sustain belief.

With respect to the penalty, the Court affirms the imposition of *reclusion perpetua* to the accused. With respect to the civil aspect, however, the Court modifies the award of moral damages and civil indemnity reducing the amount from ₱75,000.00 to ₱50,000.00 in line with the latest jurisprudence. Further, the award of exemplary damages is hereby increased from ₱25,000.00 to ₱30,000.00 to set a public example and to establish a deterrent against elders who abuse and corrupt the youth. Lastly, we also impose that the damages awarded shall earn legal interest at the rate of six percent (6%) *per annum* to be reckoned from the date of finality of this judgment until fully paid.¹⁶

WHEREFORE, the appeal is **DISMISSED** and the Decision of the Court of Appeals dated 16 December 2011 in CA-G.R. CR-H.C. No. 04532 is **AFFIRMED with MODIFICATIONS**. Accused-appellant Alemania is sentenced to suffer the penalty of *reclusion perpetua* and ordered to pay the victim ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱30,000 as exemplary damages with 6% interest on all the monetary awards for damages to be reckoned from the date of finality of this decision until fully paid.

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¹⁴ Id.

¹⁵ *People v. Corpuz*, 517 Phil. 622, 638 (2006).

¹⁶ Supra note 12; *People v. Primo P. Japson*, G.R. No. 210658, 17 September 2014, 735 SCRA 627, 638, citing *People v. Cabungan*, G.R. No. 189355, 23 January 2013 689 SCRA 236, 249

SO ORDERED.” SERENO, C.J., on official leave; **PERALTA, J.**, acting member per S.O. No. 2103 dated July 13, 2015.

Very truly yours,

~~_____~~
EDGAR O. ARICHETA
Division Clerk of Court ^{of the}
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The Solicitor General (x)
Makati City

Court of Appeals (x)
Manila
(CA-G.R. CR H.C. No. 04532)

The Hon. Presiding Judge
Regional Trial Court, Br. 172
1440 Valenzuela City
(Crim. Case No. 883-V-06)

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