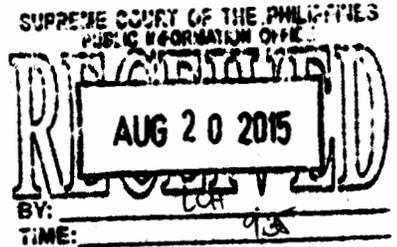




REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Baguio City

SECOND DIVISION

NOTICE



Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **06 April 2015** which reads as follows:

G.R. No. 208405 (People of the Philippines v. Rommel Gambol y Ticman). – We resolve the appeal of appellant Rommel Gambol y Ticman (appellant) from the December 28, 2012 decision¹ (penned by Associate Justice Magdangal M. de Leon, and concurred in by Associate Justices Stephen C. Cruz and Myra V. Garcia-Fernandez) of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 05018. The CA affirmed the November 4, 2010 decision² of the Regional Trial Court (RTC), Branch 49, Urdaneta City, Pangasinan, finding the appellant guilty beyond reasonable doubt of two (2) counts of rape.

In its decision dated November 4, 2010, the RTC convicted the appellant of two (2) counts of rape for having carnal knowledge of 17-year-old AAA on two occasions – February 23, 2002 and April 5, 2002.

The RTC gave credence to AAA's testimony. It held that the testimony of a rape victim, who is young and immature deserves full credit because no woman would concoct a story of defloration, allow the examination of her private parts and thereafter allow herself to be closely interrogated in a public trial had she not been motivated to have the culprit apprehended and punished. Consistent with AAA's testimony, her medico-legal certificate showed that she was about four to five months pregnant and had old healed hymenal lacerations.

The RTC disregarded the appellant's defenses of denial and alibi. It held that the appellant failed to demonstrate that it was physically impossible for him to be at the scene of the crime on those dates. Accordingly, the RTC imposed on the appellant the penalty of *reclusion perpetua*, and directed him to pay ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages, for each count of rape.

On appeal, the CA affirmed the RTC's ruling. The CA held that the appellant's defenses failed to overcome AAA's positive testimony. It also pointed out that the belated reporting of the rape incident does not diminish the verity of AAA's statements.

Our Ruling

We dismiss the appeal and uphold the appellant's conviction.

¹ Rollo, pp. 2-19.

² CA rollo, pp. 48-57.

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Under Article 266-A(1)(a) of the Revised Penal Code (*RPC*), as amended, there is rape when the offender had sexual intercourse with a woman through force, threat or intimidation.

In the present case, carnal knowledge was evidenced by AAA's testimony. AAA categorically stated how the appellant succeeded in having sexual intercourse with her on February 23, 2002 and on April 5, 2002. This is corroborated by the medical findings of Dr. Mary Gwendolyn M. Luna, which also disclosed that AAA was four to five months pregnant and had old healed hymenal lacerations at the time of her physical examination. It is settled that sufficient basis exists to conclude that sexual intercourse took place where a victim's testimony is corroborated by the physical findings of penetration.³

In his attempt to counter the medical findings, the appellant argued that he could not be the father of the child because AAA might have conceived the child in January 2002,⁴ therefore not within the dates when the rapes were committed. However, we have ruled that the question of who sired the victim's child is not an issue in rape cases, for pregnancy is not an element of the crime. What matters is the occurrence of the sexual assault on the person of the victim.⁵

Contrary to the appellant's contention, we find that the prosecution duly established the presence of force, threat or intimidation. As an element of rape, force, threat or intimidation need not be irresistible, but just enough to bring about the desired result.⁶ In this case, AAA categorically stated that she tried to push the appellant but the latter held her hands and covered her mouth while inserting his penis into her private part. The appellant further threatened to kill her if she would tell the incidents to anyone. We consider these acts sufficient to overpower AAA's resistance.

As the lower courts did, we also reject the appellant's defense of denial and alibi. Notably, these defenses are totally inconsistent with the appellant's contention that the rapes were committed without force or intimidation. The appellant's line of argument suggests that the acts of sexual intercourse between him and AAA were consensual.

At any rate, it is settled that for alibi to prosper, it is not enough for the accused to prove that he was somewhere else when the crime was committed. He must also prove that it was physically impossible for him to be at the scene of the crime or its immediate vicinity at the time of its commission.⁷ Physical impossibility refers not only to the geographical distance between the place where the accused was and the place where the

³ *People v. Corpuz*, 517 Phil. 622, 637 (2006).

⁴ AAA's date of delivery was on October 30, 2002.

⁵ *People v. Gahi*, G.R. No. 202976, February 19, 2014, 717 SCRA 209, 229.

⁶ *People v. Cañada*, 617 Phil. 587, 601-602 (2009).

⁷ *People v. Sabal*, G.R. No. 201861, June 2, 2014.

crime was committed when the crime transpired, but more importantly, the facility of access between the two places.⁸

The CA affirmed the RTC's finding based on the appellant's admission that the transportation from Alicia, Isabela to Urdaneta, Pangasinan is very accessible. The CA considered, too, that the appellant can also avail free transportation because his father was a bus inspector of Alma Transit. Thus, it was not physically impossible for the appellant to be at the scene of the crime when the rape incidents were committed.

Moreover, the appellant's alibi cannot prevail over AAA's positive testimony. The testimonies of the appellant's witnesses are mere self-serving assertions which cannot outweigh AAA's narration. We also note that the appellant did not show any ill-motive on the part of AAA to file the cases against him. The appellant's argument that the cases were filed because the negotiation for their marriage did not push through is untenable. Hence, AAA's testimony that the appellant sexually abused her is credible absent evidence of ill-motive to incriminate and testify against him.⁹

We sustain the penalty of *reclusion perpetua* in accordance with Article 266-B, in relation to Article 266-A(1)(a) of the RPC, as amended. We likewise sustain the awards of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages, for each case, conformably with the prevailing jurisprudence.¹⁰ In addition, we award the amount of ₱30,000.00 as exemplary damages in favor of AAA, for each count of rape. The attendance of AAA's minority as an aggravating circumstance justifies the grant of exemplary damages in order to set a public example and to establish a deterrent against elders who abuse and corrupt the youth.¹¹

Finally, we impose interest at the rate of 6% per annum on all the monetary awards for damages, to be reckoned from the date of the finality of this Resolution until their full satisfaction.

WHEREFORE, premises considered, we **AFFIRM** the Decision of the Court of Appeals dated December 28, 2012 in CA-G.R. CR-H.C. No. 05018 with the following **MODIFICATIONS**: (a) we order the appellant to pay AAA the amount of ₱30,000.00 as exemplary damages, for each count of rape; and (b) the award of damages shall earn interest at the rate of 6% per annum, computed from the date of the finality of this Resolution until their full satisfaction.

SO ORDERED."

⁸ *People v. Jumawan*, G.R. No. 187495, April 21, 2014.

⁹ *Supra* note 5, at 231.

¹⁰ *People v. Japson*, G.R. No. 210658, September 17, 2014.

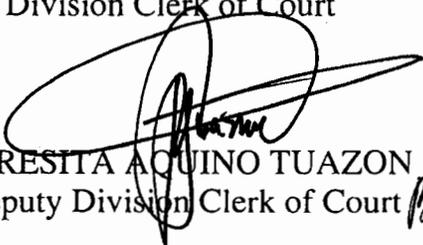
¹¹ *Id.*

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Very truly yours,

MA. LOURDES C. PERFECTO
Division Clerk of Court

By:


TERESITA ACQUINO TUAZON
Deputy Division Clerk of Court *11/17*

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HON. PRESIDING JUDGE (reg)
Regional Trial Court, Branch 49
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Crim. Case No. U-12306-07

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