



Republic of the Philippines
Supreme Court
 Manila

CRIMINAL JUSTICE DIVISION
W. Peralta
 Division Clerk
 Third Division

JUL 28 2016

THIRD DIVISION

**PEOPLE OF THE
 PHILIPPINES,**
 Plaintiff-Appellee,

G.R. No. 208759

- versus -

Present:

VELASCO, JR., J.,
 Chairperson,
 PERALTA,
 PEREZ,
 REYES, and
 LEONEN,* JJ.

**DIONE BARBERAN AND
 DIONE DELOS SANTOS,**
 Accused-Appellants.

Promulgated:

June 22, 2016

R. Peralta

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RESOLUTION

PEREZ, J.:

Before this Court is an Appeal¹ filed by accused-appellants Dione Barberan (Barberan) and Dione Delos Santos (Delos Santos) assailing the Decision² of the Court of Appeals dated 20 March 2013 in CA-G.R. CR-H.C. No. 05185.

The decision of the Court of Appeals is an affirmance of the decision of the Regional Trial Court (RTC) of Legazpi City in Criminal Case No. FC-

* As per raffle dated 13 June 2016.

¹ CA rollo, p. 135-136.

² Id. at 123-133.

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06-0048 and No. FC-08-0293 finding the two (2) accused-appellants guilty beyond reasonable doubt of the crime of rape defined and penalized under Article 266-A and Article 266-B of the Revised Penal Code, committed against AAA.³

For Criminal Case No. FC-06-0048, Barberan and Delos Santos were charged as follows:

On or about the 22nd day of February, 2006 at more or less 10:00 o'clock in the evening at Barangay XXX, Municipality of XXX, Province of Albay, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd and unchaste design, by means of force, threat and intimidation, conspired, connived, confederated and helped each other to attain a common purpose, wilfully, unlawfully and feloniously have carnal knowledge [of] AAA, 13 YEARS OLD, against to her damage and prejudice.⁴

For Criminal Case No. FC-08-0293, Barberan and Delos Santos were charged as follows:

On or about the 22nd day of February, 2006 at more or less 10 o'clock in the evening at Barangay XXX, Municipality of XXX, Province of Albay, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd and unchaste design, and by means of force, threat and intimidation, conspired, connived, confederated and helped each other to attain a common purpose, which was to wilfully, unlawfully and feloniously have carnal knowledge of AAA, a 13-year old minor, against her will and consent, with accused Dione [DELOS] Santos covering her mouth to prevent her from shouting and helping in quelling the resistance that she offered while co-accused Dione Barberan was having carnal knowledge of her, to her damage and prejudice.⁵

Upon arraignment, both Barberan and Delos Santos pleaded not guilty to the crimes charged.⁶

³ This is pursuant to the ruling of this Court in *People of the Philippines v. Cabalquinto*, 533 Phil. 703 (2006), wherein this Court resolved to withhold the real name of the victim-survivor and to use fictitious initials instead to represent her in its decisions. Likewise, the personal circumstances of the victims-survivors or any other information tending to establish or compromise their identities, as well as those of their immediate family or household members, shall not be disclosed. The names of such victims, and of their immediate family members other than the accused, shall appear as "AAA," "BBB," "CCC," and so on. Addresses shall appear as "XXX" as in "No. XXX Street, XXX District, City of XXX."

⁴ Records, CR. FC-06-0048, p. 1.

⁵ Records, CR. FC-08-0293, P. 1.

⁶ Records, CR. FC-08-0293, p. 29 and CR. FC-06-0048, p. 58.

After trial on the merits ensued, the trial court held that the prosecution successfully discharged the burden of proof in two offenses of rape against AAA. The trial court relied on the credible and positive declaration of the victim as against the alibi and denial of Barberan and Delos Santos. Finding them guilty, the dispositive portion of the decision reads:

ALL THE FOREGOING CONSIDERED, the prosecution having proved the guilt of the accused beyond the peradventure of doubt, DIONE BARBERAN and DIONE DE LOS SANTOS are hereby found GUILTY of two counts of rape and accordingly each is sentenced to suffer in each count the penalty of *reclusion perpetua* without eligibility for parole and ordered separately to indemnify the private offended party, AAA, the amount of [P]75,000.00 as moral damages, [P]75,000.00 as civil indemnity and [P]30,000.00 as exemplary damages.

SO ORDERED.⁷

Upon appeal, the appellate court affirmed the findings of the trial court. It put more weight on the sole testimony of the rape victim for being credible and worthy of belief than the version of the two accused. Further, it disregarded the lack of sufficient physical resistance of AAA since it is not an element of rape.

Before this Court, the arguments previously raised before the appellate court are reiterated to argue against the conviction of the accused. They alleged that the appellate court erred in sustaining conviction despite the prosecution's failure to prove the guilt of the accused beyond reasonable doubt. To support their appeal, they argued that no direct proof was presented to establish rape other than AAA's unbelievable story that the accused had carnal knowledge of her inside the room in her grandmother's house while her grandmother and two brothers were sleeping just outside the complainant's room. They also argued that neither physical resistance nor cry of help was employed raising doubt on her testimony. They also raised the inconsistency on AAA's statement that she was raped on 22 February 2008 and that of the Forensic Physician that laceration could have occurred five days before her examination on 15 March 2006. Lastly, the appellate court should have relied on the strength of the prosecution's argument and not on the weakness of the defense.⁸

The Court finds no reason to reverse conviction.

⁷ CA rollo, p. 23.

⁸ Id. at 56-60.

Credibility of the victim

To escape conviction, Barberan and Delos Santos argued on the lack of direct proof to establish rape other than AAA's unbelievable story that she was raped inside her room while her grandmother and two brothers were sleeping just outside the door.

The issue on conviction based on the testimony of the victim is not a novel one. It is settled rule that rape may be proven even by the lone uncorroborated testimony of the offended victim, as long as her testimony is clear, positive, and probable.⁹ In this case, the victim was able to sufficiently narrate with clarity the circumstances attending the crime from the time she was awoken when Barberan and Delos Santos entered her room and physically restrained her to successfully consummate carnal knowledge. She even admitted that she was willing to bury her sad plight from the hands of the accused-appellants since she feared that they would kill her. However, in further aggravation of her fate, Barberan and Delos Santos even boasted about their carnal knowledge of her in their neighborhood and mocked her loss of virginity in their hands. Thus, the rumor prompted AAA's parents to confront the victim and it was then revealed that she was raped by the accused-appellants.¹⁰

The testimony of AAA was corroborated by her mother BBB. She narrated that she came to know of the crime when a rumor about AAA's loss of virginity was circulated in their *barangay*.¹¹ Upon confrontation, AAA admitted that she was raped by Barberan and Delos Santos on the night of 22 February 2006. Immediately after, she and AAA went to the office of the *barangay* and police station to report the crime. Thereafter, they proceeded to Camp Simeon Ola for medical examination.¹²

Time and again, this Court has held that when the offended party is young and an immature girl, as in this case, who has lived her whole life in a faraway island wherein almost all residents know everybody, courts are inclined to lend credence to her version of what transpired, considering not only their relative vulnerability, but also the shame and embarrassment to which they would be exposed, if the matter about which they testified were

⁹ *People v. Ogarte*, 664 Phil. 642, 661 (2011), citing *People v. Buenviaje*, 408 Phil. 342, 354 (2001).

¹⁰ TSN of AAA, 5 February 2009, pp. 2-11

¹¹ TSN of BBB, 12 November 2009, p. 8.

¹² *Id.* at 6.

not true. No young girl would usually concoct a tale of defloration; publicly admit having been ravished and her honor tainted; allow the examination of her private parts; and undergo all the trouble and inconvenience, not to mention the trauma and scandal of a public trial, had she not in fact been raped and been truly moved to protect and preserve her honor, and motivated by the desire to obtain justice for the wicked acts committed against her.¹³ Indeed in a rural setting the shame of rape is on the victim, not on the accused. And it will haunt the family of the victim for a long time.

To further find fault in AAA's testimony, Barberan and Delos Santos raised the improbability of rape due to the proximity of location of the victim's grandmother and siblings, who could easily be awakened at any sign of commotion. We disagree.

In *People v. Diosdado Corial y Requiez*,¹⁴ rapists are not deterred from committing the odious act of sexual abuse by the mere presence nearby of people or even family members; rape is committed not exclusively in seclusion. Several cases instruct us that lust is no respecter of time or place and rape defies constraints of time and space.¹⁵

In *People v. Pareja*,¹⁶ the Court recognized that it was not improbable for the accused to have sexually abused the victim, even considering that their house was so small that they had to sleep beside each other with AAA sleeping beside her younger siblings. If rape can be committed inside a small room with occupants sleeping side by side, more so in a room where the victim is the only occupant. Thus, we reject the argument that rape is impossible under circumstances.

Absence of physical resistance and cry of help

The accused-appellants faulted AAA for neither offering physical resistance nor cry of help, thus, negating accusation of rape. We do not concur.

¹³ *People v. Armando Chingh y Parcia*, 661 Phil. 208, 218 (2011), citing *Flordeliz v. People*, 628 Phil. 124, 135 (2010) and *People v. Matunhay*, 628 Phil. 208, 217 (2010).

¹⁴ 451 Phil. 703, 709-710 (2003).

¹⁵ *People v. Pareja*, 724 Phil. 759, 777 (2014), citing *People v. Mangitungit*, 533 Phil. 837, 847 (2006).

¹⁶ *People v. Pareja*, id.



From the direct testimony of AAA, she explained that she was not able to resist or cry help from her relatives since Barberan held her hands and covered her mouth while De los Santos was raping her. After De los Santos, Barberan took his turn and raped her. She did not have sufficient energy to resist the physical restraint employed by two men as she was immobilized by fear and shock. Lack of physical resistance, to emphasize, is not an essential element of the crime of rape.

Again in *Pareja*, it was held that:

A person accused of a serious crime such as rape will tend to escape liability by shifting the blame on the victim for failing to manifest resistance to sexual abuse. However, this Court has recognized the fact that no clear-cut behavior can be expected of a person being raped or has been raped. It is a settled rule that failure of the victim to shout or seek help do not negate rape. Even lack of resistance will not imply that the victim has consented to the sexual act, especially when that person was intimidated into submission by the accused x x x.¹⁷

In *People v. Velasco*,¹⁸ the Court reiterated that failure of the victim to shout for help does not negate rape and the victim's lack of resistance especially when intimidated by the offender into submission does not signify voluntariness or consent.¹⁹

A victim should never be faulted for her lack of resistance to any forms of crime particularly as grievous as rape. Failure to shout or offer tenacious resistance does not make voluntary the victim's submission to the perpetrator's lust. Besides, physical resistance is not the sole test to determine whether a woman involuntarily succumbed to the lust of an accused; it is not an essential element of rape. Rape victims react differently when confronted with sexual abuse. Thus, the law does not impose upon the private complainant the burden of proving resistance.²⁰

Testimony of forensic expert

In their attempt to raise inconsistency in the testimony of AAA, the accused-appellants averred that the testimony of the forensic expert with

¹⁷ *People v. Pareja*, supra note 15, at 778.

¹⁸ G.R. No. 190318, 27 November 2013, 710 SCRA 784.

¹⁹ Id. at 796-797, citing *People v. Basallo*, 702 Phil. 548, 573 (2013).

²⁰ *People v. Gilbert Penilla y Francia*, 707 Phil. 130, 146 (2013).

regard to the day of rape differs from the day testified to by AAA when she was raped. We disagree.

Upon review of the testimony of the forensic expert Dr. James Belgira, we see no inconsistency in his statement and that of AAA. In an answer to a question on his estimate of the number of days since the occurrence of the laceration, Dr. Belgira estimated that it could have happened five days prior to examination (15 March 2006). He admitted that only an estimation could be provided since it was hard to determine the specific date of occurrence. Clearly, what he provided for reference was only an estimation and not a categorical finding that the crime occurred five days ago.

Even granting that there was an inconsistency, the positive testimony of AAA will still prevail over the testimony of the forensic expert. This is because medical examination and testimony are not indispensable elements in a prosecution for rape. An accused can be convicted of rape on the basis of the sole testimony of the victim.²¹ Expert testimony is merely corroborative in character and not essential to conviction.²²

Prosecution's burden of proof

In their last attempt to overturn the guilty verdict, they both maintained alibi of lack of physical presence and denial to commit rape against AAA. Barberan, on his part, maintained that it was physically impossible for him to rape AAA as he was in Legazpi City to attend a court hearing on the day the alleged crime happened. No mode of transportation was available in the city to transport him back to their town other than the boat scheduled to leave the next day. He even presented as documentary evidence the Order dated 22 February 2006 issued by Branch 10 of RTC Legazpi City to prove his attendance in court on that day. On the other hand, De los Santos, as corroborated by his stepfather Dionisio Bazar, averred that they were together in the farm to process copra and stayed there until the morning of 23 February 2006, thus, it was impossible for him to have raped AAA. Both deserved scant consideration.

Alibi and denial are inherently weak defenses and “must be brushed aside when the prosecution has sufficiently and positively ascertained the

²¹ *People v. Pareja*, supra note 15, at 780.

²² *Id.*, citing *People v. Colorado*, 698 Phil. 833, 844-845 (2012).

identity of the accused.”²³ For a defense of alibi to prosper, the accused-appellants must prove not only that they were somewhere else when the crime was committed but they must also satisfactorily establish that it was physically impossible for them to be at the crime scene at the time of its commission.²⁴

“Physical impossibility” refers to distance and the facility of access between the crime scene and the location of the accused when the crime was committed. There must be demonstration that they were so far away and could not have been physically present at the crime scene and its immediate vicinity when the crime was committed.²⁵ In this regard, Barberan and De los Santos failed to prove that there was physical impossibility for them to be in the crime scene when rape was committed.

As correctly found by the trial and appellate courts, Barberan’s averment that he was in the Legazpi City cannot be sustained. Other than the testimony of a biased witness, no other evidence was presented to disprove his physical presence in the house of AAA. The Order presented by Barberan could have proved that he was in Legazpi City in the afternoon of that day if it is shown that he personally signed it as an acknowledgement of receipt. However, records show that the Order was signed only by his mother. In the ordinary course of official business, orders and processes are usually signed by the party himself. In his absence, his representative may be allowed to sign on his behalf.

De los Santos also failed to disprove his presence on the night of the crime. Despite his allegation that he was in another place to harvest copra, the fact remains that he was just within the immediate vicinity of his residence which is located in the same *barangay* where AAA resides. Thus, his alibi must fail.

Penalty

According to Article 266-B of the Revised Penal Code, whenever rape is committed by two or more persons, the penalty shall be *reclusion perpetua* to death. With the attendance of the aggravating circumstances of dwelling and conspiracy as alleged in the two sets of information and proven

²³ *People v. Floro Manigo y Macalua*, 725 Phil. 324, 334-335 (2014), citing *People v. Torres*, 559 Phil. 408, 418 (2007).

²⁴ *Id.*

²⁵ *People v. Ramos, et al.*, 715 Phil. 193, 206 (2013).

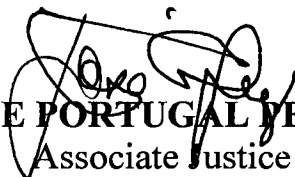


during trial, the impossible penalty is death conformably with Article 63²⁶ of the Revised Penal Code. However, upon the enactment of R.A. No. 9346,²⁷ the Court can only impose the penalty of *reclusion perpetua* without eligibility for parole, in lieu of the death penalty.

As to the impossible damages, recent jurisprudence of *People v. Ireneo Jugueta*,²⁸ is instructive. Where the penalty imposed is Death but reduced to *reclusion perpetua* because of R.A. 9346, the civil indemnity, moral damages and exemplary damages to be imposed will each be ₱100,000.00 for each count of rape.

WHEREFORE, the Decision of the Regional Trial Court in Criminal Case No. FC-06-0048 and No. FC-08-0293, dated 08 August 2011, as affirmed by the Court of Appeals in CA-G.R. CR-H.C. No. 05185, dated 20 March 2013, ordering **DIONE BARBERAN and DIONE DE LOS SANTOS** to suffer the penalty of *reclusion perpetua* and to pay the offended party, AAA, the amount of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱30,000.00 as exemplary damages, for each of the two (2) counts of rape is hereby **AFFIRMED with the MODIFICATION** that the civil indemnity, moral damages and exemplary damages be each increased to ₱100,000.00 pursuant to recent jurisprudence for each of the two (2) counts of rape. Further, all damages awarded shall earn interest at the rate of 6% *per annum* from the date of finality of this Resolution until fully paid.

SO ORDERED.



JOSE PORTUGAL YEREZ
Associate Justice

²⁶ Article 63. *Rules for the application of indivisible penalties.* - In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.


²⁷ AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES.

²⁸ G.R. No. 202124, 5 April 2016.


WE CONCUR:



PRESBITERO J. VELASCO, JR.
Chairperson



DIOSDADO M. PERALTA
Associate Justice




BIENVENIDO L. REYES
Associate Justice



MARVIC MARIO VICTOR F. LEONEN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Resolution 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

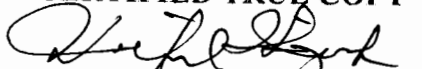
CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court.



MARIA LOURDES P. A. SERENO
Chief Justice

CERTIFIED TRUE COPY



WILFREDO V. LAPITAN
Division Clerk of Court
Third Division

JUL 28 2016

