



Republic of the Philippines  
**Supreme Court**  
 Manila

SUPREME COURT OF THE PHILIPPINES  
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**SECOND DIVISION**

**PEOPLE OF THE  
 PHILIPPINES,**

Plaintiff-Appellee,

- versus -

**ALLAN NIEVERA,**

Accused-Appellant.

**G.R. No. 242830**

Present:

CARPIO, J., *Chairperson*,  
 CAGUIOA,  
 J. REYES, JR.,  
 LAZARO-JAVIER, and  
 ZALAMEDA, JJ.

Promulgated:

28 AUG 2019

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**DECISION**

**CAGUIOA, J.:**

Before the Court is an ordinary appeal<sup>1</sup> filed by the accused-appellant Allan Nievera (Nievera) assailing the Decision<sup>2</sup> dated April 30, 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 09117, which affirmed the Decision<sup>3</sup> dated February 10, 2017 of the Regional Trial Court of Valenzuela City, Branch 172 (RTC) in Criminal Case No. 563-V-15, finding Nievera guilty beyond reasonable doubt of Rape.

**The Facts**

An Information was filed against Nievera for the rape of AAA,<sup>4</sup> which reads:

<sup>1</sup> See Notice of Appeal dated May 23, 2018; *rollo*, pp. 19-20.  
<sup>2</sup> *Rollo*, pp. 2-18. Penned by Associate Justice Japar B. Dimaampao with Associate Justices Manuel M. Barrios and Renato C. Francisco concurring.  
<sup>3</sup> *CA rollo*, pp. 44-48. Penned by Judge Nancy Rivas-Palmones.  
<sup>4</sup> The real name of the victim, her personal circumstances and other information which tend to establish or compromise her identity, as well as those of her immediate family, or household members, shall not be disclosed to protect her privacy, and fictitious initials shall, instead, be used, in accordance with

On or about December 17, 2014, in Valenzuela City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the accused, by means of force, threat and intimidation, did and there willfully, unlawfully and feloniously remove the garment and kiss one [AAA], 14 years old (DOB: July 3, 2000), and thereafter, had sexual intercourse with her by inserting his penis into her vagina, against her will.

CONTRARY TO LAW.<sup>5</sup>

Upon arraignment, Nievera pleaded not guilty. Pre-trial and trial on the merits then ensued.

The version of the prosecution, as summarized by the CA, is as follows:

AAA was 14 years at the time of the alleged rape incidents. Her family lived in a residential apartment building at [XXX],<sup>6</sup> [YYY],<sup>7</sup> Valenzuela City. AAA and her family lived on the second floor. [Nievera] occupied the third floor with his second wife, Liza Alonzo.

On 17 December 2014 at around 3:00 o'clock in the afternoon, AAA asked permission from her mother to visit certain Rachel, her classmate, as they were going to cook gelatin for their school Christmas party. Before leaving, AAA went to the rooftop to call her brother. On her way down, she bumped into [Nievera] who persuaded her to go inside his apartment on the pretext that he would just show her something. AAA believed him and so went with him inside his apartment because she had seen that most of the kids in their apartment building also talked to him. Once inside the apartment, [Nievera] grabbed her and then hugged her, uttering, "*Sandali lang to*". Forthwith, [Nievera] escorted AAA inside his room, made her lie down and removed all her clothing. Frightened, she allowed him to mount her, kiss her and insert his penis into her vagina. After succumbing to his bestial desires, [Nievera] removed his penis and AAA felt his semen coming out. He then uttered, "*Kahit anong mangyari wag kang magsusumbong,*" and ordered AAA to clean up. On the same day, [Nievera] brought AAA to Rachel at Fortune 1 where they were supposed to meet. AAA did not disclose what happened to anyone out of fear. She was also afraid that if her parents would know, she would be asked to leave their house.

On 29 December 2014, AAA asked her mother for permission to go to the computer shop. On her way out, she met [Nievera]. He made her wait for him at the corner of [XXX] because they allegedly had somewhere to go. Arriving at the corner of [XXX], [Nievera] demanded that AAA board his motorcycle. AAA was unaware that she would be brought to Meycauayan, Bulacan. Arriving thereat, they went inside Peach Blossom Hotel. When AAA alighted from the motorcycle, [Nievera] ordered her not to remove her helmet and just proceed inside their room. As it happened, AAA was again raped by [Nievera]. Before leaving the hotel premises, [Nievera] showed AAA his gun and she became afraid.

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*People v. Cabalquinto* (533 Phil. 703 [2006]) and Amended Administrative Circular No. 83-2015 dated September 5, 2017. The real or genuine name/s or identities and personal circumstances of the victim/s cannot be ascertained from the *rollo*.

<sup>5</sup> Records, p. 1.

<sup>6</sup> See note 4.

<sup>7</sup> See note 4.

On even date, [Nievera] drove AAA back to Fortune 1. Afterwards, AAA went home. Again, out of fear, she did not tell anyone about the incident. When she arrived home, AAA's mother asked about her whereabouts, to which she replied that she just went to a computer shop. AAA's mother did not believe her because she went to the said place but did not find her there. [BBB],<sup>8</sup> AAA's older sister, forced her to tell the truth. AAA thus narrated to [BBB] the dastardly acts of [Nievera].

It turned out that [Nievera] gave AAA a cellphone. He also promised her that when she would reach the age of 18, he would marry and support her in case she gets pregnant. After she was raped, AAA agonized because getting pregnant would leave her no option but to stop studying.

AAA was brought to the Northern Police District Crime Laboratory in Caloocan City for examination. Police Chief Inspector Jocelyn Padilla Cruz (PCI Cruz) examined her, and her *Medico-Legal Report* divulged that anogenital findings were indicative of blunt force penetrating trauma to the hymen. AAA was referred to the Department of Social Welfare and Development (DSWD) for counseling. The examination, however, did not discount the possibility of AAA being a victim of sexual abuse.<sup>9</sup>

The version of the defense, on the other hand, as likewise summarized by the CA, is as follows:

As expected, [Nievera] vehemently denied the imputations hurled against him. He asserted that the court *a quo* had no jurisdiction over the case because the alleged rape incident happened in Meycauayan, Bulacan and not in Valenzuela.

[Nievera] averred that he lived on the 3<sup>rd</sup> floor of their apartment building and not on the rooftop as claimed by AAA. On the day of the alleged rape incident, he was with his wife, Grace Nievera, at Palo Alto Street, Marulas, Valenzuela City to collect the debts due him from some employees of Starwood Factory in Marulas, Valenzuela.

To bolster his defense, [Nievera] adduced in evidence the sworn *Affidavits* of Joseph Valdez, Dominic Ramirez and Neil Nerona to confirm that he was not at the apartment building at the time the alleged rape took place. Likewise, [Nievera] adduced the sworn affidavits of Guillian Grafil Nievera, his first wife, and Liza Alonzo, his third wife. Both lived in the same apartment building and they also attested that on the fateful date of the alleged rape, [Nievera] was in Palo Alto, Marulas, Valenzuela City. Apparently, AAA filed the case to extort money from him.<sup>10</sup>

### **Ruling of the RTC**

After trial on the merits, in its Decision<sup>11</sup> dated February 10, 2017, the RTC convicted Nievera of the crime charged. The dispositive portion of the said Decision reads:

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<sup>8</sup> See note 4.

<sup>9</sup> *Rollo*, pp. 3-5.

<sup>10</sup> *Id.* at 5.

<sup>11</sup> *Supra* note 3.



**WHEREFORE**, the court finds accused ALLAN NIEVERA guilty beyond reasonable doubt as principal of the crime of Rape, and he is hereby sentenced to suffer the penalty of imprisonment of *reclusion perpetua*, and ordered to pay AAA the amount of Php50,000.00 as moral damages, Php50,000.00 as civil indemnity and Php25,000.00 as exemplary damages, all said amount shall bear interest of 6% per annum reckoned from the finality of this decision.

x x x x

SO ORDERED.<sup>12</sup>

The RTC found that the prosecution was able to establish all the elements of the crime, *i.e.*, (1) that the offender is a man; (2) that the offender had carnal knowledge of a woman; and (3) that such act was accomplished by using force or intimidation.<sup>13</sup> The RTC added that AAA's testimony was corroborated by the medico-legal report, which indicated the presence of a "deep healed laceration at 7:00 o'clock position in her hymen."<sup>14</sup> With regard to Nievera's defenses of alibi and denial, the RTC ruled:

Accused's defense is denial. As against the positive assertion of AAA and her positive identification of the accused, accused[']s denial cannot be given weight. **The court had seen the demeanor of AAA while she testified, and the court could not find any reason why AAA would fabricate a story against the accused. AAA had told the court in detail her ordeal, and despite the rigorous cross-examination, she never wavered and she remained steadfast all throughout her testimony.**

Accused's claim that the family of AAA filed this case because they were mad at him when he refused to lend them the amount of Php5,000.00 due to the advice of his 3<sup>rd</sup> wife is incredible. No woman in her right mind would allow her private part to be examined and humiliate herself just to get even with the accused for not lending the amount of Php5,000.00.<sup>15</sup> (Emphasis supplied)

Nievera thereafter filed an appeal to the CA.

### **Ruling of the CA**

In the questioned Decision<sup>16</sup> dated April 30, 2018, the CA affirmed Nievera's conviction albeit with modification as to the amount of damages. The dispositive portion of the CA's Decision reads:

**WHEREFORE**, the *Decision* of conviction dated 10 February 2017 of the Regional Trial Court of Valenzuela City, Branch 172, in Criminal Case No. 563-V-15, is hereby **AFFIRMED with MODIFICATION** in that accused-appellant Allan Nievera is **ORDERED** to pay P75,000.00 as

<sup>12</sup> CA *rollo*, p. 48.

<sup>13</sup> Id. at 47.

<sup>14</sup> Id. at 48.

<sup>15</sup> Id.

<sup>16</sup> *Supra* note 2.



moral damages, P75,000.00 as civil indemnity and P75,000.00 as exemplary damages. All awards for damages shall be subject to interest at the legal rate of six percent (6%) *per annum* from the finality of this judgment until full payment.

**SO ORDERED.**<sup>17</sup>

The CA held that AAA's testimony on the rape incident had the hallmarks of truth and deserved full faith and credence. The CA added that AAA's demeanor after the rape incident and her failure to immediately report to the authorities were irrelevant, especially in light of the strength of her testimony in court which, in turn, was bolstered by the findings of the medico-legal examination. The CA also ruled that Nievera's alibi and denial could not prevail over the positive and categorical testimony of AAA that he committed the crime. The CA then modified the award of damages in accordance with *People v. Jugueta*.<sup>18</sup>

Hence, the instant appeal.

**Issue**

Proceeding from the foregoing, for resolution of this Court is the issue of whether the RTC and the CA erred in convicting Nievera.

**The Court's Ruling**

The appeal is without merit. The Court affirms the conviction of Nievera as the prosecution was able to prove his guilt beyond reasonable doubt.

The two elements of rape — *viz.*, (1) that the offender had carnal knowledge of the girl, and (2) that such act was accomplished through the use of force or intimidation<sup>19</sup> — are both present as duly proven by the prosecution in this case. AAA was able to testify in detail how Nievera committed the rape. AAA's testimony, found to be clear, straightforward, and believable, was given due weight and credence not just by the RTC, but also by the CA upon appeal.

In rape cases, the accused may be convicted on the basis of the lone, uncorroborated testimony of the rape victim, provided that her testimony is clear, convincing, and otherwise consistent with human nature. This is a matter best assigned to the trial court which had the first-hand opportunity to hear the testimonies of the witnesses and observe their demeanor, conduct, and attitude during cross-examination. Such matters cannot be gathered from

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<sup>17</sup> Id. at 17.

<sup>18</sup> 783 Phil. 806 (2016).

<sup>19</sup> *People v. Soronio*, 281 Phil. 820, 824 (1991).



a mere reading of the transcripts of stenographic notes. Hence, the trial court's findings carry very great weight and substance.<sup>20</sup>

Nievera, however, raises an issue out of the alleged improbability of AAA's testimony. According to him, AAA testimony "fails to qualify as clear, positive, convincing, and otherwise consistent."<sup>21</sup> He argues that AAA clearly testified that she did not resist, and hence the element of force or intimidation was not established. However, a perusal of AAA's testimony revealed that there clearly was force or intimidation that enabled Nievera to consummate the act. AAA testified:

Q After she allowed you to go to your classmate where did you go?  
A My mother asked me to call first my brother at the rooftop, so I called my brother at the rooftop.

Q So you used the stairs?  
A Yes, sir.

Q What happened next?  
A I saw Allan Nievera and he called me.

Q And what did he say to you, if any?  
A He said, "[AAA], halika dito."

Q And why was he saying "[AAA], halika dito?"  
A I don't know.

Q So what did you do?  
A I proceeded to the rooftop to call my brother and then went downstairs.

Q Who went down first?  
A Me, sir.

Q So when you went downstairs what happened?  
A When I was going downstairs I approached Allan.

Q Now, why did you come near Allan?  
A Because I was wondering why he called me so I approached him.

Q Have you met him before that incident?  
A Yes, sir.

Q And how did you come to know him?  
A They just transferred in that place and after a few days I used to see him at the rooftop and he used to tease me "wag kang tatalon." At first I did not mind him but after I learned he is a Muslim, I started asking questions.

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<sup>20</sup> *People v. Alemania*, 440 Phil. 297, 304-305 (2002).

<sup>21</sup> *CA rollo*, p. 34.

- Q When you found out that he is a Muslim why did you start asking questions?  
A Because I am already interested in Muslim/Islam religion.
- Q Let us go back to the time that after you went downstairs you approached him. Once you approached him what did he tell you, if any?  
A He made me enter his house and told me he will give me something.
- Q At that time did you have any idea or inkling what was that he was going to give you?  
A None, sir.
- Q So what did you do?  
A I entered the house.
- Q And who was inside the house?  
A None, sir.
- Q Once you were inside the house what happened?  
A He also entered the room and closed the door.
- Q How did you feel when he closed the door.  
A I was nervous.
- Q After he closed the door what happened?  
A He approached me.
- Q When he approached you what happened next?  
A **He was hugging me and I said “ayoko po” but I did not resist (hindi po ako nanlaban) because I know that he has a bladed weapon inside his room.**
- Q How did you know?  
A Because during that time that I was asking questions from him he used to have that weapon and his children also knew about the 4-finger sumpak with a [“]patalim.”
- Q Why did you still go inside knowing that he previously showed you this 4-finger sumpak with patalim?  
A Because he is kind [“mabait”] to me and I was thinking that he would not do anything wrong against me and he used to teach me Islam.
- Q When you say “ayoko po,” what did he say to you?  
A He said “wag akong maingay; sandali lang.”
- Q And where did he bring you?  
A In their room.
- Q How did he bring you in the room?  
A [“Payakap na hinatak.”]



Q What did he do to you once inside the room?

A He was kissing me.

Q Could you tell us where?

A On my neck, lips, paulit-ulit.

Q And what else happened?

A He was undressing me.

Q Once undressed, what did he do?

A He made me lie down.

Q Where?

A On the floor.

Q And once you were lying down on the floor, what did he do?

A **He was touching me and inserted his penis in my vagina.**

Q Where was he touching you?

A On my breast and he was touching my other hand.

Q How did he hold your hand?

A ["Paganoon po"] (witness demonstrating by raising her hand just above her shoulder and saying ["paganun sa sahiig."])

Q How about the other hand?

A **I used my o[t]her hand to shove his body away from me.**

Q When you say that he inserted his penis in your vagina, you mean he was on top of you?

A Yes, sir.

Q And how did you feel when he did that?

A I was feeling pain.

Q Was that the first time you experienced that?

A Yes, sir.<sup>22</sup> (Emphasis and underscoring supplied)

Clear from the foregoing testimony of AAA is that while she admittedly did not offer strong resistance against the advances of Nievera, she communicated to him that she was not giving her consent to what was being done to her. This absence of consent was shown by (1) her saying "*ayoko po*," and (2) using one of her hands to shove Nievera's body away from her. The sexual acts were, therefore, done to her against her will and without her consent.

<sup>22</sup> TSN dated February 19, 2016, pp. 6-10.



It is important to stress that “[t]he gravamen of the crime of rape under Art. 266-A (1) is sexual intercourse with a woman **against her will or without her consent.**”<sup>23</sup> As the Court held in the case of *People v. Joson*:<sup>24</sup>

We are not persuaded by the accused-appellant’s insistence that the absence of any resistance on the part of AAA raised doubts as to whether the sexual congress was without her consent. **The failure of the victim to shout for help or resist the sexual advances of the rapist is not tantamount to consent. Physical resistance need not be established in rape when threats and intimidation are employed and the victim submits herself to her attackers of because of fear.**

Besides, physical resistance is not the sole test to determine whether a woman voluntarily succumbed to the lust of an accused. Rape victims show no uniform reaction. Some may offer strong resistance while others may be too intimidated to offer any resistance at all. After all, resistance is not an element of rape and its absence does not denigrate AAA’s claim that the accused-appellant consummated his bestial act.<sup>25</sup> (Emphasis and underscoring supplied)

Verily, Nievera cannot insist that he should be acquitted of the charge simply on the basis of the supposed “implied consent” of the victim because she did not offer tenacious resistance. It is well established that “the failure to shout or offer tenacious resistance does not make voluntary the victim’s submission to the criminal act of the offender.”<sup>26</sup> Notably, the law does not impose on the rape victim the burden of proving resistance.<sup>27</sup>

It is equally important to note AAA’s explanation as to why she was unable to offer strong resistance. In the above quoted testimony, she mentioned that “I did not resist (*hindi po ako nanlaban*) because I know that he has a bladed weapon inside his room.” Nievera bewails the fact that the said bladed weapon was not presented in evidence to prove that it exists. Thus, according to him, the presence of intimidation was not sufficiently proved.

Nievera’s contention is, however, untenable.

Jurisprudence is settled that in rape, the force and intimidation must be **viewed in the light of the victim’s perception and judgment at the time of the commission of the crime** and not by any hard and fast rule.<sup>28</sup> AAA in this case was a 14-year-old who was tricked into being alone in a room by someone she thought she could trust. She was alone in a locked room with a fully grown man, overcome by the strength of his embrace, with the knowledge that the same man had in his possession — or at least owned — a bladed weapon. Viewed from this lens, it is the Court’s opinion that AAA was

<sup>23</sup> *People v. Monticalvo*, 702 Phil. 643, 659-660 (2013). (Emphasis supplied)

<sup>24</sup> 751 Phil. 450 (2015).

<sup>25</sup> *Id.* at 460.

<sup>26</sup> *People v. Palanay*, 805 Phil. 116, 124 (2017).

<sup>27</sup> *People v. Fabian*, 453 Phil. 328, 337 (2003).

<sup>28</sup> *Id.*

indeed in an environment where there was sufficient intimidation that would cow her to submit to the sexual act without offering tenacious resistance.

Nievera then questions AAA's post-rape attitude. According to him:

Second, AAA did not tell anyone what happened because she feared that her parents would hurt her and throw her out of their house if they learned about it. It is a surprise that despite the alleged rape, AAA would be concerned more about her parents hurting her and throwing her out of the house, rather than seeking for help from her parents. It appears that AAA is trying to hide something, which she knows that her parents might disapprove.

Third, after the alleged rape, AAA went with accused-appellant, who brought her to Fortune 1. She boarded the motorcycle of accused-appellant. She did not ask for help, nor did she try to stay away from the accused. It is contrary to common human experience that AAA would still go with the accused-appellant despite the alleged attack against her honor. AAA further stated that she just wanted to go home. However, she prioritized in going to her classmate. It was merely an afterthought that she wanted to go home when her classmate was not available at that time. It is absurd that despite the alleged rape, she would still have the will to go to her classmate and cook.<sup>29</sup>

The argument deserves scant consideration.

With regard to the contention that it was — in Nievera's words, a "surprise" — that AAA did not want to tell her parents initially for fear that they would scold her or kick her out of the house, the Court notes that this does not come as a surprise at all, especially in the context of the Philippine society. The Court is not unaware that our society remains, to a large extent, conservative in its values. As such, our society and its members still place an importance to a woman's virginity. As a consequence, women who have supposedly "lost" their "virtue" are undeservedly looked down upon, or worse, are viewed to have brought disgrace to their families even as — in the case of rape victims — they only "lost" the same because someone else "took it away" from them. It does not come as a surprise to the Court, therefore, that AAA in this case thought and acted the way she did. She cannot be faulted for thinking and acting in a way that could only be viewed as a reaction to the values system she was born into.

As regards her subsequent actions, *i.e.*, still going to her classmate's house and even agreeing that Nievera accompany her, AAA was able to explain the same sufficiently. In her testimony, she explained:

Q After that what happened?

A He gave me my clothes, have myself dressed and then went outside.

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<sup>29</sup> CA rollo, p. 34.

**Q** After washing yourself in the c.r., did you not run immediately out of the room after dressing up yourself?

**A** No, sir.

**Q** Why not?

**A** He was following me.

**Q** And after you got dressed, what happened?

**A** I told him that I will go to Fortune 1.

**Q** So when you said that to him what happened?

**A** He told me that he will accompany me there.

**Q** Did you agree?

**A** Yes, sir.

**Q** Now, once you left the room, did you not try to shout and called anyone's attention about what he did?

**A** No, sir.

**Q** Why not?

**A** Because I do no[t] know what to do during that time. I was nervous.

**Q** So how did you go to Fortune 1?

**A** He accompanied me and we boarded a motorcycle.

**Q** As you were riding a motorcycle, did you not try to tell people whom you passed by that he did something to you and you ask for help?

**A** No, sir.

**Q** Why not?

**A** I don't want anyone to know about what happened and I was thinking to just forget about it but I was nervous that he would bring me to any other place.<sup>30</sup> (Emphasis supplied)

To the mind of the Court, AAA's actions after the rape, though unexpected, were acceptable. AAA, then a 14-year-old, was simply confused and thus could not be expected to act rationally and immediately know what she needed to do after a traumatizing event. Even adults at times need time to process the events that happen to them, especially after a startling occurrence such as getting raped. In addition, the Court has time and again stressed that not all rape victims react the same way.<sup>31</sup> Not every victim of a crime can be expected to act reasonably and conformably with the expectation of mankind.<sup>32</sup> There is no standard or typical reaction or norm of behavior that ensues forthwith or later from victims of rape.<sup>33</sup> Nievera was thus

<sup>30</sup> TSN dated February 19, 2016, pp. 11-12.

<sup>31</sup> *People v. Soriano*, 560 Phil. 415, 420 (2007).

<sup>32</sup> *People v. Gecom*, 324 Phil. 297, 313 (1996).

<sup>33</sup> *People v. Deleverio*, 352 Phil. 382, 400 (1998).

unreasonable to demand a standard rational reaction to an irrational experience<sup>34</sup> — which is rape.

Nievera also questions why subsequent to the rape incident, AAA still went with him on December 29, 2014, which allowed him to have carnal knowledge of her once again. The Court, however, views this argument as irrelevant for the events of December 29, 2014 are not the ones in question. The Information filed against Nievera clearly states that the basis of the rape charge are the events of December 17, 2014. In other words, Nievera is not on trial for having carnal knowledge of AAA on December 29, 2014. Instead, he was indicted in this case because he forced himself upon AAA on December 17, 2014.

In a last-ditch attempt at tarnishing AAA's credibility, Nievera even brought up the fact that AAA currently has a 43-year-old common-law husband. Thus:

Lastly, AAA admitted during trial that she has a current live-in partner who is a forty-three (43) year old Muslim man and is the father of her child. AAA's parents did not approve of the relationship, so AAA hid from her parents because of her said relationship. AAA even admitted that she knew that her relationship was forbidden and that they could not get married because AAA is a minor.<sup>35</sup>

Grasping at straws, Nievera essentially argues that he should be acquitted because AAA voluntarily entered into sexual relations with older men even at a young age. The Court, however, only views the foregoing as a desperate attempt, hinged on an irrelevant point, to seek an acquittal.

Verily, whether AAA entered into a relationship with a significantly older man *subsequent* to the rape incident is beside the point. The question before the Court is simply whether Nievera had carnal knowledge of AAA through force or intimidation on December 17, 2014. Whatever AAA did subsequently is none of the Court's concern, not to mention the fact that the same is inadmissible evidence. Section 30 of the *Rule on Examination of Child Witness*<sup>36</sup> provides:

SECTION 30. *Sexual Abuse Shield Rule.* —


(a) *Inadmissible evidence.* — The following evidence is **not admissible in any criminal proceeding involving alleged child sexual abuse:**

**(1) Evidence offered to prove that the alleged victim engaged in other sexual behavior; and**

<sup>34</sup> *People v. Pareja*, 724 Phil. 759, 779 (2014).

<sup>35</sup> CA rollo, p. 35.

<sup>36</sup> A.M. No. 00-4-07-SC, dated November 21, 2000.



(2) Evidence offered to prove the sexual predisposition of the alleged victim.

(b) *Exception.* — Evidence of specific instances of sexual behavior by the alleged victim to prove that a person other than the accused was the source of semen, injury, or other physical evidence shall be admissible. (Emphasis and underscoring supplied)

In sum, none of Nievera's arguments was able to convince the Court to discredit AAA's credibility. The Court thus affirms the findings of both the RTC and the CA that AAA's testimony deserves full faith and credit. Inevitably, Nievera's defense of alibi and denial should fail in light of this finding. This must be so, for it is well-settled that the defenses of alibi and denial cannot outweigh the candid and straightforward testimony of the private complainant that the accused indeed had sexual intercourse with her through force, intimidation, and against her will.<sup>37</sup>

The Court has oft pronounced that both denial and alibi are inherently weak defenses which cannot prevail over the positive and credible testimony of the prosecution witness that the accused committed the crime. Thus, as between a categorical testimony which has the ring of truth on the one hand, and a mere denial and alibi on the other, the former is generally held to prevail.<sup>38</sup>

Further, the continuing case law is that for the defense of alibi to prosper, the accused must prove not only that he was at some other place when the crime was committed, but also that it was physically impossible for him to be at the scene of the crime or its immediate vicinity through clear and convincing evidence.<sup>39</sup>

In the present case, Nievera was well within the immediate vicinity of the place of the crime. In fact, the place where he was supposedly at during the time of the incident was just beside the residential building where the rape incident happened.<sup>40</sup> As it was not physically impossible for him to be at the place of the crime, his defense of alibi must thus necessarily fail.

All told, the Court is therefore convinced of Nievera's guilt beyond reasonable doubt.

**WHEREFORE**, in view of the foregoing, the appeal is hereby **DENIED**. The Decision dated April 30, 2018 of the Court of Appeals in CA-G.R. CR HC No. 09117 convicting the accused-appellant Allan Nievera is hereby **AFFIRMED**.

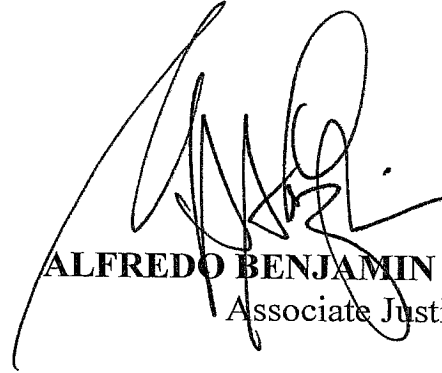
<sup>37</sup> *People v. Managaytay*, 364 Phil. 800, 809 (1999).

<sup>38</sup> *People v. Piosang*, 710 Phil. 519, 527 (2013).

<sup>39</sup> *People v. Desalisa*, 451 Phil. 869, 876 (2003).

<sup>40</sup> TSN dated September 23, 2016, pp. 4-5.

**SO ORDERED.**

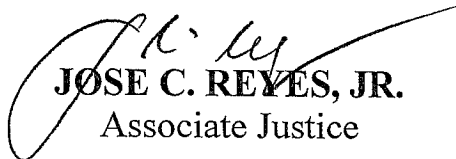


**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

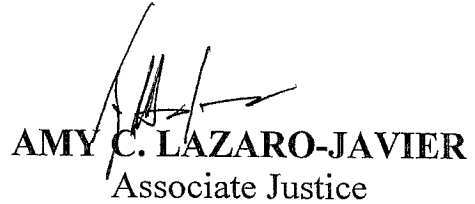
WE CONCUR:



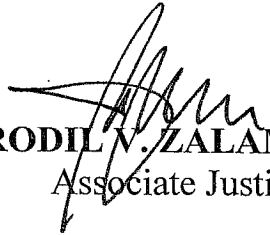
**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson



**JOSE C. REYES, JR.**  
Associate Justice



**AMY C. LAZARO-JAVIER**  
Associate Justice



**RODIL N. ZALAMEDA**  
Associate Justice

**ATTESTATION**

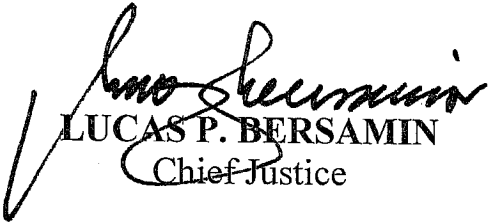
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



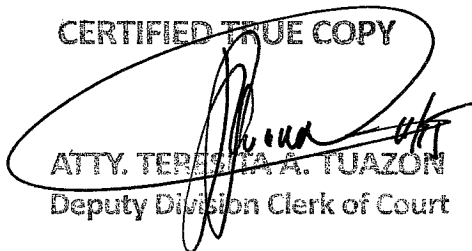
**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson, Second Division

**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.

  
LUCAS P. BERSAMIN  
Chief Justice

CERTIFIED TRUE COPY

  
ATTY. TERESITA A. TUAZON  
Deputy Division Clerk of Court

