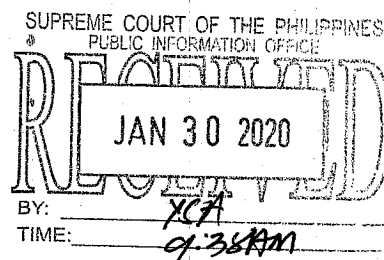




Republic of the Philippines
Supreme Court
Manila



FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **December 5, 2019** which reads as follows:

“G.R. No. 239003 — PEOPLE OF THE PHILIPPINES, plaintiff-appellee, versus JOE LOUISE FERNANDEZ y GATDULA, accused-appellant.

The Court affirms *in toto* the Decision¹ dated October 4, 2017 rendered by the Court of Appeals Fourteenth Division (CA) in CA-G.R. CR-HC No. 08282. The facts, as borne out by the records, sufficiently support the conclusion that accused-appellant is indeed guilty of the special complex crime of Robbery with Rape. The issues and matters raised before the Court were sufficiently addressed and correctly ruled upon by the CA. It is well-settled that in the absence of facts or circumstances of weight and substance that would affect the result of the case, appellate courts will not overturn the factual findings of the trial court.²

The CA was correct in affirming accused-appellant’s guilt for the crime of Robbery with Rape given the concurrence of the following elements: (i) the taking of personal property is committed with violence or intimidation against persons; (ii) the property taken belongs to another; (iii) the taking is characterized by intent to gain or *animus lucrandi*; and (iv) the robbery is accompanied by rape. In addition, it must be established that the rape was committed by reason or on the occasion of a robbery. Thus, it contemplates a situation where the original intent of the accused was to take, with intent to gain, personal property belonging to another and rape is committed

¹ *Rollo*, pp. 2-17. Penned by Associate Justice Ricardo R. Rosario, with Associate Justices Ramon A. Cruz and Pablito A. Perez concurring.

² *People v. Gerola*, 813 Phil. 1055, 1064 (2017).

merely as an accompanying crime. It was clearly established by evidence that accused-appellant, at gunpoint, took the cellphone, necklace, and earrings of AAA,³ and after knocking her unconscious, had carnal knowledge of AAA without her consent.

Accused-appellant's defense of denial and alibi cannot outweigh the positive identification of AAA that he was indeed the perpetrator of the crime charged. Accused-appellant's defense is further weakened by the finding of the RTC that the defense was unable to show that it was physically impossible for accused-appellant to be at the scene of the crime. Accused-appellant admitted that his father's residence, where he was drinking on the date of the incident, is a mere 10-minute walk from the cornfield in Brgy. Looc. It is an established⁶ rule that for the defense of alibi to prosper, the accused must prove not only that he was at some other place at the time of the commission of the crime but also that it was physically impossible for him to be at the *locus delicti* or within its immediate vicinity. The excuse must be so airtight that it would admit of no exception.⁴

On the issue of whether accused-appellant's out-of-court identification is valid, courts have fashioned out rules to assure fairness and compliance with the requirements of constitutional due process. In resolving the admissibility of and relying on out-of-court identification of suspects, courts have adopted the totality of circumstances test where they consider the following factors, *viz.*: (1) the witness' opportunity to view the criminal at the time of the crime; (2) the witness' degree of attention at that time; (3) the accuracy of any prior description given by the witness; (4) the level of certainty demonstrated by the witness at the identification; (5) the length of time between the crime and the identification; and (6) the suggestiveness of the identification procedure.⁵ The Court quotes with approval the disquisition of the CA on this issue:

Applying the totality-of-circumstances test, we find AAA's out-of-court identification to be reliable and thus admissible. x x x

x x x x

³ 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 *People v. Cabalquinto* (533 Phil. 703 [2006]) and Amended Administrative Circular No. 83-2015 dated September 5, 2017.

⁴ *People v. Ambatang*, 808 Phil. 237, 243 (2017).

⁵ *People v. Sabangan and Asal*, 723 Phil. 591, 613-614 (2013), citing *People v. Teehankee, Jr.*, 319 Phil. 128, 180 (1995).

It will be recalled that AAA testified that she flagged down appellant's tricycle in front of the house of her friend DDD,⁶ where there was a light post; that she asked appellant why they were going in a different direction to which he answered that he will load on gas; that they passed by several gasoline stations but that appellant did not stop for gas; when the tricycle finally stopped at the cornfield, appellant took her necklace, earrings and cellphone and told her to undress; and appellant put a handkerchief in her mouth and hit her twice with his gun before she lost consciousness. Undoubtedly, the sequence of events gave ample opportunity for AAA to view the face of appellant.

Even assuming *arguendo* that appellant's out-of-court identification was defective, his subsequent identification in court cured any flaw that may have initially attended it. As can be observed, AAA was able to give identifying marks of her attacker when policemen saw her in the hospital and she was firm and unyielding in her identification of appellant as culprit. x x x

x x x x

A positive identification of the appellant, when categorical, consistent and straightforward, and without any showing of ill motive on the part of the eyewitness testifying on the matter, as in this case, prevails over mere alibi.⁷

But assuming for the sake of argument that accused-appellant's out-of-court identification was invalid, the same will not overturn his conviction. It is settled that an out-of-court identification does not necessarily foreclose the admissibility of an independent in-court identification and that, even assuming that an out-of-court identification was tainted with irregularity, the subsequent identification in court cured any flaw that might have attended it.⁸

In the case at bar, when AAA was asked in open court to identify her attacker, she pointed with certainty to accused-appellant. As found by the RTC and the CA, AAA was able to categorically identify accused-appellant both outside and inside the court. On this point, the Court held in the *en banc* case of *People v. Cenahonon*:⁹

An affirmative testimony merits greater weight than a negative one, especially when the former comes from a credible witness. Categorical and positive identification of an accused, without any showing of ill motive on the part of the witness testifying on the matter, prevails over alibi and denial, which are

⁶ See note 3.

⁷ *Rollo*, pp. 10-13.

⁸ *People v. Lughasin and Guerrero*, 781 Phil. 701, 715 (2016).

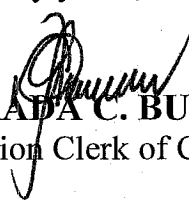
⁹ 554 Phil. 415 (2007).

negative and self-serving evidence undeserving of real weight in law unless substantiated by clear and convincing evidence.¹⁰

WHEREFORE, premises considered, the appeal is **DISMISSED** for lack of merit. The Court hereby **ADOPTS** the findings of fact and conclusions of law in the Decision dated October 4, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 08282. The Decision finding accused-appellant JOE LOUISE FERNANDEZ y GATDULA guilty beyond reasonable doubt for the crime of Robbery with Rape under Article 294 of the Revised Penal Code, as amended, is **AFFIRMED**. He is ordered to pay the private offended party Seventy-Five Thousand Pesos (₱75,000.00) as civil indemnity, Seventy-Five Thousand Pesos (₱75,000.00) as moral damages, Seventy-Five Thousand Pesos (₱75,000.00) as exemplary damages, and Fifty Thousand Pesos (₱50,000.00) as temperate damages. All monetary awards shall earn interest at the legal rate of six percent (6%) per annum from the date of finality of this Resolution until fully paid.

SO ORDERED.” *Inting, J., Additional Member per Special Order No. 2724 dated October 25, 2019.*

Very truly yours,


LIBRADA C. BUENA
Division Clerk of Court

98-B

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¹⁰ Id. at 430.