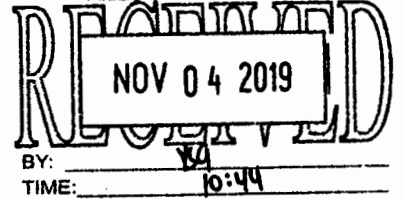




REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

SUPREME COURT OF THE PHILIPPINES
PUBLIC INFORMATION OFFICE



NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **09 October 2019** which reads as follows:*

¶ **G.R. No. 228783 (*People of the Philippines v. Norberto Mandagdag y Perez*)**

X-----X

The Case

This appeal seeks to reverse the Decision¹ dated October 30, 2015 of the Court of Appeals in CA-GR. CR-HC No. 05611, entitled *People of the Philippines v. Norberto Mandagdag y Perez*, affirming with modification appellant's conviction for rape.

The Proceedings before the Trial Court

The Charge

Appellant Norberto Mandagdag y Perez was charged with rape under the following Information:

That on or about the 2nd day of August, 2001, at about 6:30 o'clock in the evening, at XXX, Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a knife, by means of force and intimidation, did then and there wil[l]fully, unlawfully and feloniously lie with and have carnal knowledge with one AAA,² a seventeen (17) year old minor, against her will and consent.

CONTRARY TO LAW.³

The case was raffled to the Regional Trial Court-Br. 87, Rosario, Batangas. On arraignment, appellant pleaded not guilty.⁴ Trial ensued.

¹ *Rollo*, pp. 2-18; penned by Associate Justice Myra V. Garcia-Fernandez with Associate Justice Mario V. Lopez and now Supreme Court Associate Justice Rosmari D. Carandang, concurring.

² Pursuant to Supreme Court Administrative Circular No. 83-2015 which mandates that the complete names of the women and children victims be replaced by fictitious initials. Also, *People v. Manjares*, G.R. No. 185844, November 23, 2011, decreed: "In line with Section 29 of Republic Act No. 7610, Section 44 of Republic Act No. 9262, and Section 40 of A.M. No. 04-10-11-SC, the identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld. For purposes of discussion, the private offended party and her immediate family members shall be referred to using initials. See *People v. Cabalquinto* (550 Phil. 176) and *People v. Guillermo*, (533 Phil. 703)."

³ *Rollo*, p. 3.

⁴ *Id.*

Version of the Prosecution

On August 2, 2001, around 6:30 in the evening, then 17-year-old AAA brought clothes to her Kuya Kulas who lived about 300 to 400 meters away from where she and her family lived. On her way back home, she saw appellant waving at her. She recognized him because the moon was bright. As he approached her, she ran toward their house. But appellant easily caught up with her, held her hands, poked a knife on her neck, and dragged her into a forested area. Still poking a knife on her, he tore off her shorts and panty then forced her to lie down. He removed his brief, placed himself on top of her, and spread her legs. He inserted his penis into her vagina and did pumping motions. She shouted but appellant covered her mouth. She felt pain and passed out. Around 8 o'clock in the evening, she regained consciousness but appellant was already gone.⁵

She went home and told her mother BBB that appellant raped her. BBB saw blood on her panty. BBB immediately reported the incident to the Chief of the Barangay Police, Antonio Perez. The following morning, AAA, BBB, and the Barangay Chairman went to the police station and charged appellant with rape. Appellant was thereafter arrested.⁶

Municipal Health Officer Dr. Emelita Abacan found abrasion on AAA's right thigh; contusion on her external genitalia; hymenal laceration at 6 o'clock position; and whitish vaginal discharge which tested positive for sperm cells.⁷

Version of the Defense

Appellant testified he knew AAA because she usually passed by his house.⁸ On August 2, 2001, around 3 o'clock in the afternoon, he was in the house of a certain Frederick Paalam watching television. There, his *kumpadre* Tomas Ludevise invited him to a drinking spree in the latter's house which was about one and a half (1 ½) kilometers away from his house. Around 4 o'clock in the afternoon, he joined the drinking spree with six (6) other men. He did not leave the place until about 9 o'clock in the evening. He slept in his house until 6 o'clock in the morning of the following day.⁹

The Trial Court's Ruling

By Decision dated December 15, 2011,¹⁰ the trial court rendered a verdict of conviction, viz:

⁵ *Id.* at 4-5.

⁶ *Id.* at 5-6.

⁷ *Id.*

⁸ *CA rollo*, p. 33.

⁹ *Rollo*, p. 6.

¹⁰ Penned by Acting Presiding Judge Noel M. Lindog; *CA rollo*, pp. 29-41.

WHEREFORE, in view of the foregoing, the Court finds the accused **Norberto Mandagdag y Perez** GUILTY beyond reasonable doubt for the crime of *Rape* defined and penalized under *Article 266-A* in relation to *Article 266-B* of the *Revised Penal Code*, as amended by *Republic Act[.] No. 8353*, and is hereby sentenced to suffer the penalty of *Reclusion Perpetua* without eligibility for parole pursuant to *Republic Act[.] No. 9346*.

Accused is further ordered to indemnify the offended party, AAA, the amount of Fifty Thousand Pesos (₱50,000.00) as civil indemnity; Fifty Thousand Pesos (₱50,000.00) as moral damages; and Thirty Thousand Pesos (₱30,000.00) as exemplary damages.

The period which accused has undergone preventive imprisonment during the pendency of this case shall be credited to him provided he agreed in writing to abide by and comply strictly with the rules and regulations imposed upon committed prisoners.

SO ORDERED.¹¹

The trial court gave full credence to AAA's testimony for being simple, straightforward, and convincing leaving no room for doubt that appellant did sexually ravish her.¹² It found no reason why AAA, a girl of minor years and uneducated at that, would falsely charge appellant with the heinous crime of rape.¹³ Too, Dr. Abacan's physical findings corroborated AAA's claim that she got raped.¹⁴

The Court of Appeals' Ruling

The Court of Appeals affirmed with modification, imposing six percent (6%) interest per annum on the monetary awards, viz:

WHEREFORE, the decision dated December 15, 2011 rendered by the Regional Trial Court (RTC), Branch 87 of Rosario, Batangas in Criminal Case No. RY2K1-189 is AFFIRMED with MODIFICATION that accused-appellant Norberto Mandagdag y Perez is ordered to pay the victim interest on all damages at the legal rate of six percent (6%) per annum from the date of finality of this judgment until full payment.

SO ORDERED.¹⁵

The Present Appeal

Appellant now seeks affirmative relief from the Court and prays anew for his acquittal. In compliance with Resolution dated February 15, 2017,¹⁶ appellant and the Office of the Solicitor General (OSG) manifested¹⁷ that, in

¹¹ CA rollo, pp. 40-41.

¹² *Id.* at 34-37.

¹³ *Id.* at 36.

¹⁴ *Id.* at 38.

¹⁵ *Id.* at 17-18.

¹⁶ Rollo, pp. 23-24.

¹⁷ *Id.* at 26-34.

lieu of supplemental briefs, they were adopting their respective briefs before the Court of Appeals.

Issue

Did the Court of Appeals err in affirming appellant's conviction for rape?

Ruling

The appeal is devoid of merit.

Appellant, in the main, faults the Court of Appeals for affirming the trial court's factual findings on the credibility of AAA's testimony. He points out the alleged inconsistencies in AAA's testimony i.e., on direct examination, she testified that he was wearing *maong* pants and a white t-shirt during the incident. On cross, however, she stated he was naked; she testified that he did eight (8) pumping motions after inserting his penis into his vagina, albeit she also said she passed out after she was thrown to the ground. Too, he argues that AAA failed to show she resisted the alleged rape.¹⁸

Appellant's argument fails to persuade.

When the issue is one of credibility of witnesses, the Court will generally not disturb the trial court's factual findings, especially when the same had already been affirmed by the Court of Appeals. For the trial court was in a better position to decide the question of credibility since it heard the witnesses themselves and observed their deportment and the manner by which they testified during the trial.¹⁹

Here, AAA recounted in detail how appellant sexually violated her around 6:30 in the evening of August 2, 2001. She was on her way home when appellant chased her, dragged her into a forested area, pointed a knife on her neck, and tore her shorts and panty. Appellant then forced her to lie down on the ground. He removed his clothes, laid on top of her, spread her legs, inserted his penis into her vagina, and did pumping motions while he was on top of her. She shouted but he covered her mouth and threatened her. The whole time, he was poking a knife on her neck. She struggled to free herself from his hold but later passed out. When she woke up, appellant was gone.²⁰

The alleged discrepancies, if at all, are too trivial to merit consideration. Inconsistencies on minor matters which are irrelevant to the elements of rape cannot be considered as grounds for acquittal.²¹ Surely,

¹⁸ CA rollo, pp. 23-24.

¹⁹ *People v. Mabalo*, G.R. No. 238839, February 27, 2019; also see *People v. Bay-Od*, G.R. No. 238176, January 14, 2019.

²⁰ Rollo, p. 12-13.

²¹ *Id.* at 15

rape victims are not expected to make an errorless recollection of the incident so humiliating and painful that they might be trying to obliterate it from their memory. A few inconsistent remarks in rape cases will not necessarily impair the testimony of the offended party.²² Besides, minor inconsistencies in the testimony of AAA, unschooled and a minor, serve as badges of truth indicating she was not a rehearsed witness.²³

As it was, AAA's testimony did not stand alone. It was corroborated by Dr. Abacan who found that AAA sustained abrasion on her right thigh, contusion on her external genitalia, hymenal laceration at 6 o'clock position, and that sperm cells were present in her vagina. When the forthright testimony of a rape victim is consistent with medical findings, as in this case, the essential requisite of carnal knowledge is deemed to have been sufficiently established.²⁴

Against AAA's positive testimony, appellant only offered denial and alibi. We have pronounced time and again that these are inherently weak defenses which cannot prevail over the positive and credible testimony of the prosecution witness that it was appellant who committed the crime. Thus, as between a categorical testimony which has a ring of truth on one hand, and a mere denial on the other, the former is generally held to prevail.²⁵

All told, the Court of Appeals did not err when it affirmed the trial court's verdict of conviction for rape against appellant. When committed with the use of a deadly weapon, as in this case, rape is qualified and the penalty shall be *reclusion perpetua* to death, as provided under Article 266-B of the Revised Penal Code.²⁶ Considering that no aggravating or mitigating circumstance attended the commission of the crime, the trial court and the Court of Appeals correctly imposed *reclusion perpetua* on appellant. Pursuant to A.M. 15-08-02-SC,²⁷ however, the phrase "without eligibility for parole" need not be borne in the decision to qualify the penalty imposed.

²² *People v. Linsie*, 722 Phil. 374, 384 (2013).

²³ *People v. David*, 461 Phil. 364, 383 (2003).

²⁴ See *People v. Sabal*, 734 Phil. 742, 746 (2014), citing *People v. Perez* 595 Phil. 1232, 1258 (2008).

²⁵ *People v. Batalla*, G.R. No. 234323, January 07, 2019.

²⁶ As amended by Republic Act 8353, otherwise known as the "Anti-Rape Law of 1997".

²⁷ A.M. No. 15-08-02-SC - *Guidelines for the Proper Use of the Phrase "Without Eligibility for Parole" in Indivisible Penalties*:

x x x

The following guidelines shall be observed in the imposition of penalties and in the use of the phrase "without eligibility for parole":

(1) In cases where the death penalty is not warranted, there is no need to use the phrase "without eligibility for parole" to qualify the penalty of *reclusion perpetua*; it is understood that convicted persons penalized with an indivisible penalty are not eligible for parole; and

(2) When circumstances are present warranting the imposition of the death penalty, but this penalty is not imposed because of R.A. No. 9346, the qualification of "without eligibility for parole" shall be used in order to emphasize that the accused should have been sentenced to suffer the death penalty had it not been for R.A. No. 9364.

x x x

On the awards of civil indemnity and damages, prevailing jurisprudence²⁸ ordains the grant of the following: (a) ₱75,000.00 as civil indemnity; (b) ₱75,000.00 as moral damages; and (c) ₱75,000.00 as exemplary damages. These amounts shall earn six percent (6%) interest *per annum* from finality of this resolution until fully paid.

WHEREFORE, the appeal is **DENIED**. The Decision October 30, 2015 of the Court of Appeals in CA-G.R. CR-HC No. 05611 is **AFFIRMED with MODIFICATION**.

Appellant **Norberto Mandagdag y Perez** is found **GUILTY** of **RAPE**. He is sentenced to *reclusion perpetua* and ordered to **PAY**:

- (1) ₱75,000.00 as civil indemnity;
- (2) ₱75,000.00 as moral damages; and
- (3) ₱75,000.00 as exemplary damages.

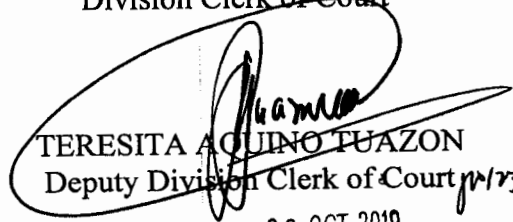
These amounts shall earn six percent (6%) interest *per annum* from finality of this resolution until fully paid.

SO ORDERED.¹¹

Very truly yours,

MARIA LOURDES C. PERFECTO
Division Clerk of Court

By:


TERESITA AQUINO TUAZON
Deputy Division Clerk of Court *pr/13*
23 OCT 2019

²⁸ *People v. Tulagan*, G.R. No. 227363, March 12, 2019, citing *People v. Jugueta*, 783 Phil. 806, 846 (2016).

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THE DIRECTOR (reg)
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HON. PRESIDING JUDGE (reg)
Regional Trial Court, Branch 87
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(Crim. Case No. RY2K1-189)

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