REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **02 March 2020** *which reads as follows*:

"**G.R. No. 250827 (*Rico Julian y Tanala v. People of the Philippines*).** – The Court **NOTES** the verified declaration dated January 6, 2020 of counsel for petitioner, stating that the petition was submitted electronically on January 2, 2020 in accordance with the Efficient Use of Paper Rule.

Petitioner Rico Julian *y* Tanala (petitioner) assails the Court of Appeals' (1) Decision[1] dated January 8, 2019 affirming his conviction for the crime of Rape and increasing the award of damages, and (2) Resolution[2] dated October 25, 2019 denying his motion for reconsideration.

To begin with, petitioner clearly availed of the wrong mode of appeal via a petition for review on *certiorari* under Rule 45 of the Rules of Court. When the Court of Appeals imposes the penalty of *reclusion perpetua*, as in this case, the appeal should be by notice of appeal filed before it.[3]

We stress that a petition for review under Rule 45 is limited only to questions of law which must be distinctly set forth. Factual questions are not the proper subject of an appeal by *certiorari*.[4] Here, petitioner questions the sufficiency of evidence relied upon for his conviction. This clearly requires a review of factual findings. Unfortunately, this Court is not a trier of facts. It is not the function of this Court to weigh all over again evidence already considered in the proceedings below.

In any event, a re-examination of the merits of the case will not result in a different outcome.

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1 *Rollo*, pp. 37-48. Penned by Associate Justice Eduardo B. Peralta, Jr. and concurred in by Associate Justices Ramon R. Garcia and Gabriel T. Robeniol.
2 Id. at 49-50.
3 See *Ramos v. People*, 803 Phil. 775, 782-783 (2017).
4 *Gatan v. Vinarao*, G.R. No. 205912, October 18, 2017, 842 SCRA 602, 609.

For one, AAA's positive identification of petitioner as the one who ravished her was incessant and straightforward. True, there were some inconsistencies between her *Sinumpaang Salaysay* and testimony in open court. These inconsistencies, however, do not pertain to substantial details.

Petitioner points to the inconsistent statement and testimony of AAA as to the date of the alleged first rape incident. In her *Sinumpaang Salayasay*, AAA stated that the first rape incident happened on August 21, 2010 but in her testimony in open court she stated that it happened on September 16, 2010. AAA explained that she remembers telling the police officer that the first rape incident happened on September 16, 2010. Nevertheless, this date is material only to Criminal Case No. 11-7591 – another rape case against petitioner which was already dismissed by the trial court.

Petitioner also challenges the inconsistent statement and testimony of AAA regarding the events that transpired on September 21, 2010 leading to the rape incident. In her *Sinumpaang Salaysay*, AAA stated that she came from a birthday party and while on her way home she walked past petitioner's house when petitioner suddenly grabbed and pulled her towards the gate of his house. On the other hand, she testified in open court that there was a bible study in their house. During their bible study, she received several text messages and a ₱50.00 load from petitioner. She was then asked by petitioner to go to his house threatening her that he will kill her mother and sibling if she did not do what he wants.

Records reveal that although the prosecution formally offered the crime report prepared by PO1 Rosemarie E. Quirolgico, AAA's *Sinumpaang Salaysay* was not formally offered as its evidence.[5] But even assuming the prosecution itself offered AAA's *Sinumpaang Salaysay* as part of the People's evidence and petitioner is now pointing out the inconsistencies between AAA's *Sinumpaang Salaysay* and her testimony in court — and therefore obviating the need of impeaching her testimony by means of prior inconsistent statements — the alleged inconsistencies do not militate against her credibility as the Court has repeatedly held that since sworn statements are most always incomplete and inaccurate and do not disclose the complete facts for want of inquiries or suggestions, said sworn statements are generally considered to be inferior to the testimony given in open court.[6]

It is a well-settled rule that the evaluation of the credibility of witnesses and their testimonies is best undertaken by trial judges, who have the unique opportunity to observe the witnesses firsthand and to note their demeanor and conduct on the witness stand. For this reason, their findings on such matters, absent any arbitrariness or oversight of facts or circumstances of weight and substance, are final and conclusive upon this Court and will not be disturbed on appeal.[7] The Court gives full credence to

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5 *Rollo*, pp. 212-215.
6 See *People v. Alegado*, 298 Phil. 297, 303-304 (1993).
7 *People v. Pacuancuan*, 452 Phil 72, 81 (2003).

AAA's testimony in open court where the trial court had the best opportunity to observe her demeanor and later found her and her testimony credible.

It is also noted that petitioner chose not to cross examine AAA. He, thus, waived his right to question the credibility of AAA this late when he had the full opportunity to do so during the trial.

For another, petitioner's alibi that he was somewhere else when the September 21, 2010 rape incident happened was not well supported. Although petitioner's witnesses testified as to his presence somewhere else, these witnesses, however, failed to show or prove the physical impossibility for petitioner to be present at his house where, and at the time when, AAA was raped.

Carmelita Manalo (Manalo) and Nestor Mendoza (Mendoza) testified that they saw petitioner at the wake of one Nestor at St. Jude Chapel in Aguso, Mabalacat, Pampanga. Apparently, both Manalo and Mendoza did not devote their whole time at the wake watching over petitioner. Manalo spent some time talking to their other neighbors and their deceased neighbor's family while Mendoza tended and served food to the visitors. Clearly, during the time when Manalo and Mendoza were busy talking and serving the other visitors, petitioner could have left the wake without them noticing.

The Court also notes that it only takes five (5) to ten (10) minutes to get to Barangay Mabiga, where AAA was raped, from Aguso, Mabalacat, which is part of Barangay San Francisco, Pampanga, where petitioner was allegedly present.[8] This only reveals that it was not physically impossible for petitioner to return to his house in Mabiga, Pampanga just in time to rape AAA.

Likewise, Jaime C. Garbo's (Garbo) testimony that he saw petitioner left his house before 7:00 P.M. on September 21, 2010 and that he did not see petitioner return to his house that evening did not negate the physical impossibility for petitioner to have raped AAA in his house that very same evening.[9] What definitely is impossible was for Garbo to have watched over petitioner's house from 7:00 P.M. to 12:00 M.N. straight without blinking an eye. During this period, Garbo may have redirected his eyes to his food while he was having dinner or he may have used the toilet to answer the call of nature. It is therefore not impossible for petitioner to have arrived at his house at any of these times then ravish AAA that same evening.

Consequently, AAA's positive identification of petitioner as the one who ravished her prevails over petitioner's alibi since the latter can easily be fabricated and is inherently unreliable.[10]

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8 *Rollo*, p. 91.
9 See *People v. Cruz*, 612 Phil. 726, 736 (2009).
10 See *People v. Ramos and Ramos*, 715 Phil. 193, 207 (2013).

Still for another, petitioner started to raise the issue on the prosecution's non-presentment of the text messages only on its motion for reconsideration and not during trial. Petitioner could have very well raised this issue during trial but missed its opportunity with only himself to blame. By his failure to question the non-presentment of the text messages, petitioner stripped AAA off of the opportunity to justify the non-presentment of the text messages or to actually present them when asked by the trial court.

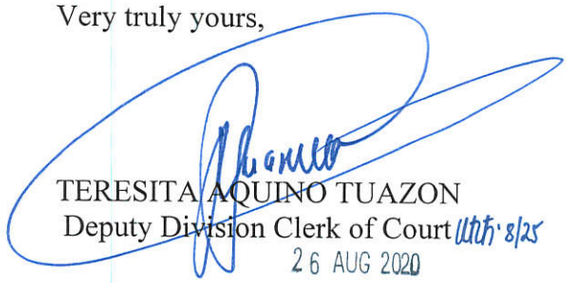
But as goes with all the issues raised by petitioner before Us, issues not raised during trial cannot be entertained on appeal. Although, the Court admits of exceptions, petitioner's case does not fall in any.

All told, the Court of Appeals did not err in affirming petitioner's conviction.

WHEREFORE, the petition for review is **DENIED**. The Decision dated January 8, 2019 of the Court of Appeals in CA-G.R. CR-HC No. 09995 is hereby **AFFIRMED**.

SO ORDERED."

Very truly yours,



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Deputy Division Clerk of Court
26 AUG 2020

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HON. PRESIDING JUDGE (reg)
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