



Republic of the Philippines
Supreme Court
 Manila

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 Third Division

SUPREME COURT OF THE PHILIPPINES 2021
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THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff and Appellee,

G.R. No. 227866

Present:

LEONEN, J.,
Chairperson,
GESMUNDO,*
CARANDANG,
ZALAMEDA, and
GAERLAN, JJ.

- versus -

TAHIR TAMANO y TOGUSO,
Defendant-Appellant.

Promulgated:
July 8, 2020

X-----*[Signature]*-----X

DECISION

GAERLAN, J.:

This resolves the appeal filed by accused-appellant Tahir Toguso Tamano (Tamano) seeking the reversal of the February 5, 2016 Decision¹ promulgated by the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 06792, convicting him of two counts of rape.

The Antecedents

On July 15, 2009, Tamano was charged with two counts of rape committed as follows:²

* On official leave.

¹ *Rollo*, pp. 2-14; penned by Associate Justice Noel G. Tijam (now a retired Member of this Court), with Associate Justices Francisco P. Acosta and Eduardo B. Peralta, Jr., concurring.

² *CA rollo*, pp. 45-46.

CRIMINAL CASE No. 09-431

That on or about the 13th day of July 2009 in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, thru force did then and there willfully, unlawfully and feloniously have carnal knowledge with "AAA" after giving her a potion as a result of which she felt dizzy and weak thereby depriving her of reason and will to resist the sexual assault of the accused.

Contrary to law.

CRIMINAL CASE No. 09-432

That on or about the 13th day of July 2009 in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, thru force did then and there willfully, unlawfully and feloniously have carnal knowledge with "AAA" after giving her a potion as a result of which she felt dizzy and weak thereby depriving her of reason and will to resist the sexual assault of the accused.

Contrary to law.³

On September 3, 2009, Tamano pleaded not guilty to the charge. After the completion of the pre-trial conference on October 8, 2009, trial on the merits ensued.

Version of the Prosecution

In the evening of July 12, 2009, AAA went to Metropolis Mall in Muntinlupa City to purchase a liquid crystal display (LCD) for her PlayStation Portable (PlayStation). While roaming the stalls at Metropolis, a man approached her and asked if she wanted to sell her PlayStation. AAA declined the offer, but the man took her PlayStation and placed it inside the glass cabinet in his stall. Vexed, AAA told the man that she had no intention of selling her PlayStation, and tried to get it back. She noticed that the man was signaling a male person from another stall, who turned out to be accused-appellant Tamano.⁴

Tamano stood up, and took AAA's PlayStation from the glass cabinet and asked if he could purchase it. AAA refused. Despite AAA's protestations, Tamano put the PlayStation back inside the glass cabinet.⁵

Then, Tamano took AAA's Motorola cellphone and asked her if she wanted to sell it. He asked for her name and invited her to go out with him. He said that he would return her PlayStation only if she agreed to go out with him.⁶

³ *Rollo*, pp. 2-3.

⁴ *Id.* at 3-4.

⁵ *Id.* at 4.

⁶ *Id.* at 4.

AAA angrily ran away and boarded a jeepney home. However, she realized that she left her cellphone with Tamano.⁷

Seeking to recover her Motorola cellphone, AAA returned to Metropolis Mall at 5 o'clock in the afternoon of July 13, 2009. She looked for Tamano, but was informed that he was not there.⁸ After waiting for quite sometime, AAA asked for Tamano's number from the men at the stalls. She called the number, but there was no answer. She sent a text message to ask where he was. However, she did not receive a reply. She decided to leave.⁹

When she was about to go home, her phone suddenly rang. When she answered the call, she realized it was Tamano.¹⁰ He told her to be quiet, and not to let the others know that he called her. He instructed her to meet him at Jollibee in Metropolis Mall, and promised to return her Motorola cellphone.¹¹

AAA obliged. While at the second floor of the mall, Tamano suddenly grabbed her hand. He told her that he had been waiting for her and had been following her. He pulled her inside Jollibee. She followed him to avoid creating a scene. They sat on the farthest table with only a few people. All the while, she kept asking for her cellphone back.¹²

Then, a waiter appeared and served two sets of meals with a serving of Coke. Since AAA was parched, she drank the Coke. Immediately thereafter, she felt groggy and weak. Her head ached and she felt dizzy. Her vision likewise turned blurry, and she could not think straight. Tamano grabbed her arm and ordered her to come with him. She struggled but could not resist him.¹³

All of a sudden, AAA found herself in a very dark and nasty-looking narrow alley.¹⁴ Soon thereafter, she noticed that they were in a place marked with numbers. Then, she was taken to a room where she saw towels, a mirror, a bed and an air conditioning unit.¹⁵

Tamano pulled AAA and threw her on the bed. He removed her clothes and groped her whole body. She fought back by trying to punch him but failed because he was too strong. Tamano pinned down her lower extremity, inserted his penis inside her vagina, and made a pumping motion. She felt extreme pain and pleaded

⁷ Id.

⁸ Id.

⁹ Id.

¹⁰ Id.

¹¹ Id.

¹² Id. at 5.

¹³ Id.

¹⁴ Id.

¹⁵ Id.

for him to stop. Then, she felt a rush of something hot inside her while Tamano continued moaning. She was crying the entire time.¹⁶

Afterwards, Tamano carried AAA to the floor and continued to touch and kiss her. He bit her breasts and vagina and inserted his fingers inside her organ. He made her kneel in front of him in a crouching position then inserted his penis from behind and made a pumping motion. Again, AAA felt something hot inside of her.¹⁷

Subsequently, Tamano dragged AAA inside the comfort room and made her sit on the toilet. He then washed his penis and her vagina and ordered her to perform oral sex on him. AAA looked away and shut her mouth tight. He rubbed his penis all over her face, while she kept pulling away. Then, Tamano cleaned himself up.¹⁸

Still in a state of shock, AAA crawled outside of the comfort room, grabbed her clothes and dressed up. Tamano forced her outside of the room while carrying her things. Then, they boarded a jeepney and went to Festival Mall. Tamano brought AAA to the fourth floor of the mall, purchased a beverage and ordered her to drink it. She refused and told Tamano that she wanted to go home. Tamano promised to bring her home to a certain "Wawa," and told her that he would give her everything she desires.¹⁹

Fearful that he would not let her out of his grasp, AAA created an excuse to leave by asking to go to the comfort room. Tamano initially refused but eventually acceded under the condition that AAA would leave her things with him.²⁰

While at the ladies' comfort room, AAA asked for help from the janitress saying that someone was after her. Then, she suddenly fainted. When she regained consciousness, several persons, including Tamano, were surrounding her. She struggled to escape from Tamano's grasp and ran outside of the comfort room. However, she fainted again. When she awoke, she reported to the security guard that Tamano raped her.²¹

AAA was taken to the Ospital ng Muntinlupa, where she was treated. She was crying hysterically. She reported the incident as soon as her parents arrived.²²

¹⁶ Id. at 5-6.

¹⁷ Id. at 6.

¹⁸ Id.

¹⁹ Id.

²⁰ Id.

²¹ Id. at 6-7.

²² Id. at 7.

Version of the Defense

Tamano vehemently denied the charges leveled against him. He related that he met AAA at Metropolis Mall on July 11, 2009. She offered to sell her friend's PlayStation for ₱5,000.00. However, Tamano made a counter-offer of ₱1,500.00. She told him that she would have to confer with her friend.²³

The next day, while Tamano was passing by Jollibee at Metropolis Mall, someone tapped him from behind. Turning, he saw AAA. She introduced herself as the one who offered to sell the PlayStation, and invited him for a meal. He acquiesced.²⁴

Thereafter, AAA told Tamano to accompany her at her friend's house to get the PlayStation. He agreed since he pitied AAA who needed money. However, instead of going to her friend's house, they went to a motel in front of Metropolis. AAA signed a document at the cashier and borrowed five hundred pesos from Tamano. She then pulled his arm and invited him inside a room. She went to the toilet and came out clad in a towel. She unbuttoned his pants, and when he refused her advances, she cried and threatened to shout. He had no choice but to have sexual intercourse with her.²⁵

After their copulation, they went to Festival Mall to meet AAA's friend. He told AAA that he wanted to go home as he was already tired. AAA asked him to wait for her as she needed to go to the comfort room. After a few minutes, Tamano noticed a commotion at the ladies' comfort room. He peeped and saw AAA unconscious near the faucet and held by a janitress. He rushed to AAA and wiped her face with a wet handkerchief. She temporarily regained consciousness, but did not recognize him.²⁶

Then, she passed out again. Tamano asked for assistance from the security guards. They rushed AAA to the Ospital ng Muntinlupa. To his surprise, once AAA regained consciousness, she started screaming, asking that Tamano be driven away because he was running after her. He was asked to step out. Then, AAA's mother arrived and slapped him and shouted at him. Thereafter, he was invited to the police station.²⁷

Ruling of the Regional Trial Court

On December 1, 2013, the Regional Trial Court (RTC) rendered a Decision²⁸

²³ Id. at 8.

²⁴ Id. at 53.

²⁵ Id.

²⁶ Id.

²⁷ CA *rollo*, pp. 53-54.

²⁸ Id. at 47-57, signed by Judge Patria A. Manalastas-De Leon.

convicting Tamano of two counts of rape.

The RTC opined that AAA credibly and tearfully narrated the ordeal she suffered in the hands of Tamano. Her demeanor in court showed that she was telling the truth.²⁹ According to the RTC, Tamano was “a predator, [who] tricked and trapped her in his web to satisfy his sexual desires.”³⁰ He laced AAA’s drink with “some chemical” that rendered her weak and dizzy. Tamano took advantage of AAA’s weakened state, and brought her to a motel. He succeeded in having carnal knowledge of her, amidst AAA’s struggles.³¹

The RTC further noted that the circumstances following the rape incident support AAA’s claim that she was defiled by Tamano. She tried to get away from him by escaping to the comfort room. Although she momentarily lost consciousness, she immediately sought help as soon as she was lucid. Also, she told the security guard that she was raped by Tamano. The same thing happened at the hospital where upon regaining consciousness, she cried hysterically, asking that Tamano be removed from the premises because he raped her. The RTC held that AAA’s statements upon regaining consciousness form part of the *res gestae*.³²

The dispositive portion of the RTC ruling reads:

WHEREFORE:

1. In Criminal Case No. 09-431, the Court finds the accused, Tahir Tamano y Toguso, GUILTY beyond reasonable doubt of the crime of Rape under Art. 266-A, paragraph 1 (a) of the Revised Penal Code and hereby imposes upon him the penalty of reclusion perpetua. He is also ordered to pay the victim, [AAA] P30,000.00 as moral damages.

2. In Criminal Case No. 09-432, the Court finds the accused, Tahir Tamano y Toguso, GUILTY beyond reasonable doubt of the crime of Rape under Art. 266-A, paragraph 1 (a) of the Revised Penal Code and hereby imposes upon him the penalty of reclusion perpetua. He is also ordered to pay the victim, [AAA] P30,000.00 as moral damages.

In the service of his sentence, the accused shall be credited with the period of his preventive imprisonment.

SO ORDERED.³³

Aggrieved, Tamano filed an appeal with the CA.

²⁹ Id. at 55.

³⁰ Id.

³¹ Id.

³² Id. at 55-56.

³³ Id. at 57.

Ruling of the Court of Appeals

On February 5, 2016, the CA rendered the assailed Decision,³⁴ affirming the conviction meted by the RTC with modification on the amount of damages awarded.

The CA agreed with the RTC's assessment of AAA's credibility. The CA declared that AAA's acts after the rape do not render her claim dubious. It applied the jurisprudential tenet that there is no standard behavior and response expected from rape victims. According to the CA, what matters is that AAA consistently pointed to Tamano as the person who defiled her.³⁵

Similarly, the CA found that AAA's statements to the janitress, the security guard and to her mother at the hospital, after she regained consciousness may be admitted in evidence as part of the *res gestae*. She was in shock when she pointed to Tamano as her defiler.³⁶

The dispositive portion of the assailed CA ruling states:

WHEREFORE, premises considered, the instant Appeal is hereby DENIED. The assailed Decision of the Regional Trial Court (RTC), Branch 206, Muntinlupa City, dated December 1, 2013 in Criminal Cases Nos. 09-431 and 09-432 holding Accused-Appellant guilty of two (2) counts of Rape under Art. 266-A, are hereby AFFIRMED with MODIFICATIONS in that: 1) the moral damages is increased to P50,000.00; and 2) civil indemnity of P50,000.00, are awarded to the victim. These awards shall be for each count of rape committed against the victim.

The award of damages shall earn interest at the rate of six percent (6%) per annum from the date of finality of the judgment until fully paid.

SO ORDERED.³⁷

Undeterred, Tamano filed a Notice of Appeal.³⁸

The Issue

The essential issue for the Court's resolution is whether or not Tamano is guilty beyond reasonable doubt for two counts of simple rape.

³⁴ *Rollo*, pp. 2-14.

³⁵ *Id.* at 12.

³⁶ *Id.* at 12-13.

³⁷ *Id.* at 14.

³⁸ *Id.* at 15.

Tamano manifested that he will replead his former arguments in his Appellant's Brief³⁹ and dispense with the filing of a Supplemental Brief. Tamano raised the lone error that the trial court erred in regarding AAA's declarations as part of the *res gestae*, and accordingly, his guilt was not proven beyond reasonable doubt.⁴⁰ He urges that to be admitted as part of the *res gestae*, the statement must be made under the influence of a startling event witnessed by the person, immediately before he/she had time to think and make up a story or concoct a falsehood.⁴¹ AAA's statement that he raped her was not delivered spontaneously.⁴² He claimed that she merely feigned fainting so she could act hysterical upon waking up and point to him as someone she escaped from.⁴³

Likewise, Tamano criticizes AAA's conduct before and after the purported rape incident. Before the rape, AAA returned alone to Metropolis Mall despite her claim that she felt fearful while being pestered by Tamano and his acquaintance. She never reported the men's conduct to the mall authorities. She even allegedly agreed to meet Tamano at Jollibee.⁴⁴ Moreover, after she was purportedly raped, she still agreed to go with him to Festival Mall and even drank iced tea with him. He also attacks AAA's failure to escape despite the numerous opportunities to do so.⁴⁵

Finally, Tamano urges that his acts prove his innocence. He asserts that had he truly raped AAA, he would have abandoned her at the motel after having sexual intercourse with her, or leave her at Festival Mall. Instead, he stayed with her until she was brought to the hospital and even went back after he was taken to the precinct where he was interviewed by the police authorities.⁴⁶

On the other hand, the People, through the Office of the Solicitor General (OSG), counters that AAA's testimony was credible. Her testimony was straightforward and consistent.⁴⁷ There was no indication that the trial court fell short in scrutinizing the testimonies of all witnesses.⁴⁸

The OSG further urges that AAA's testimony should be taken together with the corroborating statements of all the prosecution witnesses.⁴⁹ The security guard Angelo Pingoy responded to the emergency and related that he saw AAA sitting on a wheelchair feeling dizzy. He noticed that every time Tamano came near AAA, she suddenly became hysterical.⁵⁰ Also, the Medico-Legal Officer affirmed the

³⁹ CA rollo, pp. 27-42.

⁴⁰ Id. at 27.

⁴¹ Id. at 39.

⁴² Id. at 41.

⁴³ Id. at 39.

⁴⁴ Id. at 38.

⁴⁵ Id.

⁴⁶ Id. at 41.

⁴⁷ Id. at 75.

⁴⁸ Id.

⁴⁹ Id.

⁵⁰ Id.

presence of spermatozoa on AAA's vagina, which further bolsters the charge of rape.⁵¹

Ruling of the Court

The appeal is dismissed for lack of merit.

The Prosecution Established Beyond Reasonable Doubt that Tamano is Guilty of Two Counts of Simple Rape

Article 266-A of the Revised Penal Code, as amended by Republic Act (R.A.) No. 8353,⁵² defines the crime of rape as follows:

Art. 266-A. Rape, When and How Committed. – Rape is committed –

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

- a. Through force, threat or intimidation;
- b. When the offended party is deprived of reason or is otherwise unconscious;
- c. By means of fraudulent machination or grave abuse of authority;
- d. When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present;

Essentially, to sustain a conviction for rape through sexual intercourse, the prosecution must prove the following elements beyond reasonable doubt: **(i) that the accused had carnal knowledge of the victim;** and **(ii) that said act was accomplished (a) through the use of force or intimidation,** or **(b) when the victim is deprived of reason or otherwise unconscious,** or **(c) by means of fraudulent machination or grave abuse of authority,** or **(d) when the victim is under 12 years of age or is demented.**⁵³

It bears stressing that Tamano admitted to having sexual intercourse with AAA. Hence, the only question to be resolved is whether the sexual intercourse was consensual or was consummated through force or intimidation.

On this score, the prosecution sufficiently established beyond reasonable

⁵¹ Id.

⁵² THE ANTI-RAPE LAW OF 1997.

⁵³ *People v. Esteban*, 735 Phil. 663, 669-670 (2014).

doubt that Tamano had carnal knowledge of AAA through force and intimidation twice on July 13, 2009. He succeeded in his brutish objective, in the first instance through force by pushing and pinning down AAA's lower extremity and then inserting his penis inside her vagina despite her persistent struggles; and in the second instance, by forcibly carrying her to the floor and forcing her to assume a crouching position, then inserting his penis inside her vagina, still against AAA's vehement protests. Coupled with this, AAA's continuous act of crying while Tamano satisfied his lust is a clear sign of her objection.

The Amount of Force Necessary to Overpower The Victim is Relative

It is a well-entrenched principle that "the force used in the commission of rape need not be overpowering or absolutely irresistible."⁵⁴ Certainly, "tenacious resistance against rape is not required; neither is a determined or a persistent physical struggle on the part of the victim necessary."⁵⁵ After all, resistance is not an element of rape.⁵⁶ Accordingly, a rape victim is not obliged to prove that she did all within her power to resist the force employed against her.⁵⁷ As contemplated by the law, force in the commission of rape depends on the age, size and strength of the parties.⁵⁸ It is likewise assessed from the perception and judgment of the vulnerable victim.⁵⁹ What remains essential is that the force employed was sufficient to enable the offender to consummate his lewd purpose.⁶⁰

Notably, in *People v. Ramos*,⁶¹ the Court considered the relative size of the victim as against that of her predator. Particularly, it gave credence to the trial court's observation that the victim was frail and petite, while the offender had a heavy built, thereby bolstering to the former's testimony that the latter easily succeeded in pinning her down, amidst her persistent struggling.⁶²

There is no question that Tamano easily consummated his bestial desire by subduing AAA. AAA testified that she struggled to repel Tamano's advances but was too weak to ward him off. She fought and pushed him, but felt defenseless and weak against his strong body.⁶³

Worse, from the very moment Tamano met AAA, he employed a dastardly

⁵⁴ *People v. Barangan*, 560 Phil. 811, 836 (2007), citing *People v. Villaflores*, 255 Phil. 776, 784-785 (1989).

⁵⁵ *People v. Ramos*, 743 Phil. 344, 364 (2014), citing *People v. Gayeta*, 594 Phil. 636, 647 (2008).

⁵⁶ *People v. Japson*, 743 Phil. 495, 503-504 (2014), citing *People v. Durano*, 548 Phil. 383, 397 (2007).

⁵⁷ *Id.*, citing *People v. Rivera*, 717 Phil. 380, 395 (2013).

⁵⁸ *People v. Ramos*, *supra*, citing *People v. Gayeta*, *supra*.

⁵⁹ *People v. Lucena*, 728 Phil. 147, 161 (2014).

⁶⁰ *People v. Barangan*, *supra*.

⁶¹ G.R. No. 210435, August 15, 2018, 877 SCRA 424.

⁶² *Id.* at 440.

⁶³ CA rollo, pp. 73-74.

scheme to lure her and weaken her. He called her cellphone, but specifically warned her not to tell the others that she was talking to him. Then he ordered her to go to Jollibee, all the while dangling the prospect that he will return her cellphone. Once at Jollibee, he cajoled her into having a meal with him. As soon as AAA drank the Coke Tamano offered, she instantly felt weak and dizzy. Everything was suddenly hazy. Next thing she knew, she was dragged along a dark, nasty-looking alley. Thereafter, she found herself in a place with numbers, a bed, mirror and towels. He abused her vulnerability then used his brute strength to overpower her.

***AAA's Testimony Regarding the Rape
Was Credible and Trustworthy***

Remarkably, due to the peculiar nature of rape cases, a conviction thereon most often rests solely on the basis of the offended party's testimony, if credible, natural, convincing, and consistent with human nature and the normal course of things.⁶⁴ Similarly, the Court explained in *People v. Pareja*⁶⁵ that the assessment of the witness' credibility is best left to the trial court judge in view his/her unique opportunity to observe the witness' deportment and demeanor on the stand. This vantage point is not available to the appellate courts. Thus, the findings of the trial court, when affirmed by the CA, are generally binding and conclusive upon this Court.⁶⁶

In the case at bar, the trial court observed that AAA's testimony was credible and convincing. Her demeanor throughout her court examination showed that she was telling the truth.⁶⁷ She remained steadfast in her accusation and did not waver as she recounted the harrowing ordeal she suffered. Moreover, The RTC noted that she was crying during her direct examination.⁶⁸

***AAA's Conduct Prior to and After the
Rape Incident, Her Failure to Seek
Help, or Flee, Do Not Establish
Consent to the Sexual Act***

Tamano attacks AAA's credibility by criticizing her behavior prior to and subsequent to the rape incident. He claims that her willingness to return to Metropolis Mall despite the alleged harassment she experienced, as well as her failure to escape or ask for help during the purported incident, dispel her tale of rape.

⁶⁴ *People v. Corpuz*, 517 Phil. 622, 632-633 (2006); *People v. Baraoil*, 690 Phil. 368, 376 (2012); *People v. Magayon*, 640 Phil. 121, 136 (2010).

⁶⁵ 726 Phil. 759, 773 (2014).

⁶⁶ *Id.*, *People v. Manalili*, 716 Phil. 762, 772-773 (2013).

⁶⁷ CA rollo, p. 74.

⁶⁸ *Id.*

The Court does not agree.

Although the conduct of the victim immediately following the alleged sexual assault is of utmost importance in establishing the truth or falsity of the charge, it is not correct to expect a typical reaction or norm of behavior from rape victims.⁶⁹ The workings of the human mind when placed under emotional stress are unpredictable.⁷⁰ Victims may not be expected to act with reason or conformably with the usual expectation of mankind.⁷¹ Thus, the failure of the victim to run, shout or seek help does not negate rape.⁷²

Certainly, it is unfair to demand a rational reaction from AAA, or fault her for failing to ask for help or expect her to escape. Tamano's accusation that AAA acted as if nothing happened⁷³ is absolutely baseless. The records show that Tamano devised ways to keep AAA by his side. In fact, she had to ask permission to go to the bathroom. Although he allowed her to go, he ordered her to leave her things to prevent her from escaping. In the end, what matters is that she sought help, and reported the rape, as soon as she had escaped from Tamano's watchful glare.

In the same vein, AAA may not be blamed for going with Tamano to Festival Mall after the rape incident. It must be remembered that prior to the incident, she was groggy and unaware of her surroundings. All that she vaguely remembered was being dragged to a dark and nasty alley, followed by finding herself inside a room with Tamano. Weak, unaware and trapped in an unfamiliar situation, she cannot be expected to devise a rational plan to flee.

AAA's Declarations Upon Regaining Consciousness Do Not Form Part of the Res Gestae

Tamano argues that the trial court and the CA erred in regarding AAA's utterances upon regaining consciousness as part of the *res gestae*.

Although a correct argument, this does not in any way exonerate him from the crime.

Significantly, one of the most basic rules on the admissibility of evidence states that "[a] witness can testify only to those facts which he or she knows of his or her personal knowledge; that is, which are derived from his or her own

⁶⁹ *People v. Zafra*, 712 Phil. 559, 572 (2013), citing *People v. Saludo*, 662 Phil. 738, 758-759 (2011).

⁷⁰ *Id.*, citing *Sison v. People*, 682 Phil. 608, 625 (2012).

⁷¹ *Id.*, citing *People v. Saludo*, *supra*.

⁷² *People v. Saludo*, *id.*, citing *Sison v. People*, *supra* note 66.

⁷³ *CA rollo*, p. 39.

perception.”⁷⁴ Accordingly, anything that is not based on a witness’ own personal knowledge shall be barred as hearsay. However, an exception to the hearsay rule is a declaration that forms part of the *res gestae*:

Section 44. Part of *res gestae*. — Statements made by a person while a starting occurrence is taking place or immediately prior or subsequent thereto, under the stress of excitement caused by the occurrence with respect to the circumstances thereof, may be given in evidence as part of the *res gestae*. So, also, statements accompanying an equivocal act material to the issue, and giving it a legal significance, may be received as part of the *res gestae*.⁷⁵

Albeit reworded under the New Rules on Evidence,⁷⁶ the essence of the *res gestae* rule remains unchanged. Notably, in *People v. Estibal*,⁷⁷ the concept of *res gestae* was explained in the following wise:

Res gestae speaks of a **quick continuum of related happenings, starting with the occurrence of a startling event which triggered it and including any spontaneous declaration made by a witness, participant or spectator relative to the said occurrence.** The cases this Court has cited invariably reiterate that the statement must be an unreflected reaction of the declarant, undesigned and free of deliberation. x x x

Res gestae means the “things done.” It “refers to those exclamations and statements made by either the participants, victims, or spectators to a crime **immediately before, during, or immediately after the commission of the crime, when the circumstances are such that the statements were made as a spontaneous reaction or utterance inspired by the excitement of the occasion and there was no opportunity for the declarant to deliberate and to fabricate a false statement.**” A spontaneous exclamation is defined as “**a statement or exclamation made immediately after some exciting occasion by a participant or spectator and asserting the circumstances of that occasion as it is observed by him.**” The admissibility of such exclamation is based on our experience that, under certain external circumstances of physical or mental shock, a stress of nervous excitement may be produced in a spectator which stills the reflective faculties and removes their control, so that the utterance which then occurs is a spontaneous and sincere response to the actual sensations and perceptions already produced by the external shock. Since this utterance is made under the immediate and uncontrolled domination of the senses, rather than reason and reflection, and during the brief period when consideration of self-interest could not have been fully brought to bear, the utterance may be taken as expressing the real belief of the speaker as to the facts just observed by him.” In a manner of speaking, the spontaneity of the declaration is such that the declaration itself may be regarded as the event speaking through the declarant rather than the declarant speaking for himself. Or, stated differently, “x x x the events speak for themselves, giving out their fullest meaning through the unprompted language of the participants. The spontaneous character of the language is assumed to preclude the probability of its

⁷⁴ NEW RULES ON EVIDENCE, Rule 130. Rules of Admissibility, C.1. Section 22.

⁷⁵ NEW RULES ON EVIDENCE, Rule 130. Rules of Admissibility, C.6. Section 44.

⁷⁶ NEW RULES ON EVIDENCE.

⁷⁷ *People v. Estibal*, 748 Phil. 850 (2014).

premeditation or fabrication. Its utterance on the spur of the moment is regarded, with a good deal of reason, as a guarantee of its truth.⁷⁸ (Citations omitted; Emphasis and underscoring supplied)

In *Manulat v. People*, the Court, citing the case of *People v. Salafranca*, mentioned two requisites for applying the *res gestae* rule: “(i) the act, declaration or exclamation is so intimately interwoven or connected with the principal fact or event that it characterizes as to be regarded as a part of the transaction itself; and (ii) the said evidence clearly negatives any premeditation or purpose to manufacture testimony.”⁷⁹

Similarly, in *People v. Jorolan*,⁸⁰ the Court stressed that there must be no intervening circumstance between the *res gestae* occurrence and the time the statement was uttered that could have allowed the declarant an opportunity to deliberate and reflect:

An important consideration is whether there intervened between the occurrence and the statement any circumstance calculated to divert the mind of the declarant, and thus restore his mental balance and afford opportunity for deliberation. His statement then cannot be regarded as unreflected and instinctive, and is not admissible as part of the *res gestae*. **An example is where he had been talking about matters other than the occurrence in question or directed his attention to other matters.**⁸¹ (Citations omitted and emphasis supplied)

Likewise, the Court enumerated the factors that may aid in determining whether the utterances were in fact “spontaneous”:

There is no hard and fast rule by which spontaneity may be determined although a number of factors have been considered, including, but not always confined to, (1) **the time that has lapsed between the occurrence of the act or transaction and the making of the statement**, (2) the place where the statement is made, (3) the condition of the declarant when the utterance is given, (4) **the presence or absence of intervening events between the occurrence and the statement relative thereto**, and (5) the nature and the circumstances of the statement itself.⁸² (Emphasis supplied)

In addition, in the cases where the Court applied the *res gestae* rule, such as in *People v. Lupac*,⁸³ *People v. Fallones*,⁸⁴ and *People v. Maniquez*,⁸⁵ the Court consistently noted the absence of any appreciable length of time between the

⁷⁸ Id. at 875.

⁷⁹ 766 Phil. 724, 744-745 (2015).

⁸⁰ 452 Phil. 698 (2003).

⁸¹ Id. at 713.

⁸² *Manulat v. People*, supra at 745, citing *People v. Dianos*, 357 Phil. 871, 885-886 (1998).

⁸³ 695 Phil. 505 (2012).

⁸⁴ 661 Phil. 281 (2011).

⁸⁵ 292 Phil. 406, 418-419 (1993).

startling occurrence and the utterance. Unfortunately, this essential requisite does not obtain in the case at bar.

Guided by the foregoing tenets, what militates against admitting AAA's statements as *res gestae* utterances is the fact that an appreciable length of time intervened between the startling occurrence, which was the rape incident, and the utterance that Tamano raped AAA. Moreover, in addition to the statement having been made after an appreciable lapse of time, it was also uttered in a place far from the *locus criminis*.

It is well to note that after the rape incident, Tamano and AAA boarded a jeepney and went to Festival Mall. After arriving at the said mall, they proceeded to the fourth floor and drank iced tea. It was only after AAA went to the comfort room and thereafter fainted, that she uttered the statement that a man was after her. At this point, she did not yet mention that she was raped. Afterward, she ran and fainted again. Upon recovering consciousness, she told the security guard that Tamano raped her.

It is all too apparent that a sufficient lapse of time and numerous intervening events transpired between the startling event (rape) and the utterance. These interferences eliminated the spontaneity that is characteristic of a *res gestae* statement.

Relatedly, in *People v. Estibal*, the Court held that the statements made by the victim were not part of the *res gestae*, "in view of the missing element of spontaneity and the lapse of an appreciable time between the rape and the declarations which afforded [the victim] sufficient opportunity for reflection."⁸⁶

Also, in *People v. Dagsa*,⁸⁷ the Court refused to consider as part of the *res gestae*, a statement that was uttered one day after the rape incident. The Court clarified that "[t]o be admissible as part of the *res gestae*, a statement must be spontaneous, made during a startling occurrence or immediately prior or subsequent thereto x x x."⁸⁸

Thus, the trial court and the CA erred in regarding the statements made by AAA as part of the *res gestae*. This notwithstanding, there were numerous pieces of evidence, other than her utterances after regaining consciousness, that indubitably point to Tamano's guilt beyond reasonable doubt.

Tamano's Defenses Do Not Inspire

⁸⁶ Supra note 73 at 873.

⁸⁷ G.R. No. 219889, January 29, 2018, 853 SCRA 276.

⁸⁸ Id. at 285.

Belief

Tamano strives to paint a demented picture of AAA, claiming that she was a temptress who lured him into having sexual intercourse, despite his alleged protestations. **His defenses that the sexual intercourse was consensual and spurred by AAA's enticement do not inspire belief.**

Furthermore, neither may he claim that his act of accompanying AAA in the hospital disproves his guilt. Notably, the accused's decision not to flee the scene of the crime when he had the means and the opportunity to do so, does not indicate innocence.⁸⁹ In *People v. Jorolan*,⁹⁰ the Court recognized that culprits have become bolder by returning to the scene of the crime to feign innocence.⁹¹ Thus, Tamano's brazen attempt to stay by AAA's side does not prove his innocence.


The Proper Penalty

Under Article 266-B of the Revised Penal Code, as amended by R.A. No. 8353, the crime of simple rape is punishable with *reclusion perpetua*.

In addition, the victim of simple rape shall be entitled to an award of civil indemnity, moral damages and exemplary damages in the amount of ₱75,000.00 each for every count of rape.⁹² All amounts due shall earn legal interest of six (6%) per *annum* from the finality of this Decision until full payment.

WHEREFORE, premises considered, the instant appeal is hereby **DISMISSED for lack of merit**. Accordingly, the February 5, 2016 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 06792 is **AFFIRMED with modification**. Accused-appellant Tahir Toguso Tamano is held **GUILTY** of two counts of simple rape, and is hereby sentenced to *reclusion perpetua*. He is ordered to pay the victim AAA (i) ₱75,000.00 as civil indemnity; (ii) ₱75,000.00 as moral damages; and (iii) ₱75,000.00 as exemplary damages, for every count of simple rape. All amounts due shall earn a legal interest of six percent (6%) *per annum* from the date of this Decision until full satisfaction.

SO ORDERED.


SAMUEL H. GAERLAN
Associate Justice


⁸⁹ *People v. Jorolan*, supra note 76 at 714-715.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *People v. Jugueta*, 783 Phil. 806 (2016).

WE CONCUR:

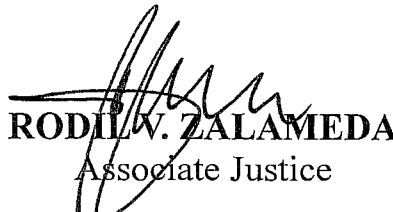


MARVIC M.V.F. LEONEN
Associate Justice
Chairperson

(On official leave)
ALEXANDER G. GESMUNDO
Associate Justice



ROSMARI D. CARANDANG
Associate Justice



RODIL W. ZALAMEDA
Associate Justice

ATTESTATION

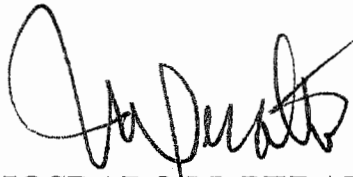
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARVIC M.V.F. LEONEN
Associate Justice
Chairperson, Third Division

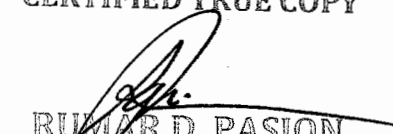
CERTIFICATION

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.



DIOSDADO M. PERALTA
Chief Justice

CERTIFIED TRUE COPY



RUMAR D. PASION
Deputy Division Clerk of Court
Third Division

JAN 26 2021