



Republic of the Philippines
 Supreme Court
 Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 228947

Present:

PERLAS-BERNABE, S.A.J.,
Chairperson,
 HERNANDO,
 INTING,
 DELOS SANTOS, and
 GAERLAN,* JJ.

- versus -

JULIETO AGAN a.k.a.
 "JONATHAN AGAN",
Accused-Appellant,

Promulgated:

22 JUN 2020

X-----X

DECISION

INTING, J.:

That the medical examination showed no laceration, erythema, and abrasion in the victim's vaginal orifice is immaterial. Accused-appellant's inability to maintain an erection firm enough for continuous penetration will not save him from punishment. The Court, in deciding this appeal, stresses the oft-stated doctrine that in rape cases the slightest penetration is sufficient.

This is an appeal from the Decision¹ dated May 6, 2016 of the Court of Appeals (CA) in CA-G.R. CR No. 01210-MIN, which affirmed with modification the Decision² dated May 15, 2014 of Branch 4, Regional Trial Court (RTC), Iligan City, Lanao del Norte in Criminal Case No. 15388. The CA found Juliето Agan also known as "Jonathan Agan" (accused-appellant) guilty beyond reasonable doubt of the crime of Robbery with Rape.

* Designated as additional member per Special Order No. 2780 dated May 11, 2020; on leave.

¹ *Rollo*, pp. 3-11; penned by Associate Justice Oscar V. Badelles with Associate Justices Romulo V. Borja and Edgardo T. Lloren, concurring.

² *CA rollo*, pp. 18-39; penned by Presiding Judge Concordio Y. Barrio.

B

The Antecedents

Accused-appellant was charged in an Information³ with the crime of Robbery with Rape, viz.:

“That on or about January 22, 2011 in the City of Iligan, Philippines, and within the jurisdiction of this Honorable Court, the accused by the use of violence and intimidation upon the person of [AAA]⁴ that is, that is [*sic*] by poking a handgun at the latter and while he was doing the same, with intent to gain, did then and there willfully, unlawfully and feloniously take, steal, rob and carry away the one unit Samsung cellular phone amounting to Php10,000.00 belonging to the said [AAA] without her consent and against her will, to the damage and prejudice of the said owner in the aforesaid sum of Php10,000.00 Philippine currency and on occasion of the said robbery, the accused feloniously used force and intimidation against the herein victim and had carnal knowledge with [AAA] against the latter’s will and without her consent.

Contrary to and in violation of Article 294 of the Revised Penal Code.”⁵

Accused-appellant was arrested and committed to jail on May 11, 2011. During his arraignment, he entered a plea of not guilty to the crime charged.⁶

Trial ensued.

According to the prosecution, on January 22, 2011 at around 4:30 a.m., AAA (private complainant) was on her way home after watching

³ *Id.* at 18.

⁴ The identity of the victim, or any information to establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. (RA) 7610, “An Act Providing for Stronger Deterrence and Special Protection against Child Abuse, Exploitation and Discrimination, and for Other Purposes;” RA 9262, “An Act Defining Violence against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes;” Section 40 of A.M. No. 04-10-11-SC, known as the “Rule on Violence against Women and Their Children,” effective November 15, 2004; *People v. Cabalquinto*, 533 Phil. 703 (2006); and Amended Administrative Circular No. 83-2015 dated September 5, 2017, Subject: Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders Using Fictitious Names/Personal Circumstances.

⁵ *Id.*

⁶ *Rollo*, p. 4.

over her sister-in-law who just gave birth in a clinic. While walking along Zone Mars, Suarez, Iligan City she noticed that someone was following her. It was the accused-appellant. She walked faster, but accused-appellant caught up with her and declared "hold-up." At gun point, accused-appellant asked for her jewelry and other belongings. Accused-appellant warned her not to shout as he would not hesitate to kill her.⁷

Private complainant told accused-appellant that she had no jewelry, but accused-appellant demanded for her cellphone, opened her bag, and inspected its contents. Accused-appellant took her cellphone worth ₱10,000.00.⁸

Not satisfied with the cellphone, accused-appellant fondled private complainant's breast and genitalia, pulled her to the grassy part of the road, and ordered her to lie down. Private complainant obliged out of fear. As she was lying down, accused-appellant drew up her skirt and removed her panty. He then took off his pants and brief, placed his body on top of her, and started to caress her. He then tried to insert his penis into private complainant's vagina, but he failed as it was not fully erect. After trying and failing to penetrate private complainant's vagina, he gave up and put on his brief and trousers and instructed her to dress up. He again demanded for any jewelry from the private complainant. Private complainant told him again that she had none. When he sensed that she was telling the truth, he instructed her to pass from the right side of the road and not to look back. Private complainant hurriedly left.⁹

When private complainant arrived home, she reported the incident to her brother and mother. They then proceeded to the Nonucan Police Station to report the incident. Afterwards, they went to the City Health Office to secure a medical certificate.¹⁰

Dr. Efleida Valdehueza (Dr. Valdehueza) conducted the medical examination of the private complainant at 8:15 a.m. of the same day and

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 4-5.

¹⁰ *Id.* at 5.

found no laceration, erythema, and abrasion in her vaginal orifice, but noted the presence of a grass stalk and two small seeds near her anus.¹¹

In his defense, accused-appellant denied the charge of Robbery with Rape and made contradicting testimony with respect to his whereabouts on that fateful day. Initially, he claimed to be working as security guard of Happibee Disco Bar (Happibee), on January 22, 2011, then later admitted that he was jobless at that time and was staying in their house the whole day.¹²

Defense witnesses Vanessa Grace Nadoza and Ramil Pol testified that they fetched accused-appellant, together with Michelle Nadoza who is accused-appellant's common law wife, from Happibee at 3:00 a.m. on January 22, 2011. They were with accused-appellant until they reached his house where they ate and later on slept. Michael Ferolino (Michael), on his part, testified that on February 1, 2011, at the Suarez *Barangay* Hall, he heard private complainant saying that accused-appellant was not the culprit as her assailant has a tattoo in his body. This was specifically denied by private complainant when she was presented as a hostile witness. On the other hand, Police Officer II Carmelo Daleon (PO2 Daleon) testified that private complainant told him that accused-appellant was her assailant.¹³

In the Decision¹⁴ dated May 15, 2014, the RTC disposed of as follows:

WHEREFORE, all told, and in view of the evidence herein adduced, this Court renders judgment in the following manner to wit:

- a) Convicting the accused with the offense of Robbery with Attempted rape and hereby sentences him to suffer an imprisonment of reclusion temporal ranging from 14 years, 8 months and 1 day as minimum to 17 years and 4 months as maximum.
- b) To indemnify the offended party the sum of P10,000.00 representing the cost of the cellphone that was taken from her;

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *CA rollo*, pp. 18-39.

- c) No damages of any kind are being awarded for lack of proof.
- d) The period of accused's detention in jail is fully credited in the computation of his sentence.

SO ORDERED.¹⁵

On appeal, the CA, in its assailed Decision¹⁶ dated May 6, 2016, upheld accused-appellant's conviction with modification, to wit:

WHEREFORE, the appeal is DENIED. The 15 May 2014 Decision of the Regional Trial Court of Lanao del Norte, Branch 4 of Iligan City in Criminal Case No. 15388 is AFFIRMED with modification as follows:

The appellant's conviction of the crime of robbery with attempted rape is VACATED, and We find appellant Julieta Agan also known as "Jonathan Agan" guilty beyond reasonable doubt of the crime of robbery with rape. We SENTENCE him to suffer the penalty of reclusion perpetua, without eligibility for parole and ORDER him to pay the victim the amounts of Php50,000.00 as civil indemnity, Php50,000.00 as moral damages and Php10,000.00 as actual damages.

SO ORDERED.¹⁷

In the Manifestation¹⁸ dated May 27, 2016, accused-appellant prayed that his case be forwarded to the Court for automatic review considering that the assailed CA Decision convicted him of a more severe crime of Robbery with Rape which carried with it a penalty of *reclusion perpetua*.

The CA, in the Resolution¹⁹ dated October 25, 2016, granted accused-appellant's prayer and directed its Judicial Records Division to elevate the case to the Court.

¹⁵ *Id.* at 38-39.

¹⁶ *Rollo*, pp. 3-11.

¹⁷ *Id.* at 10.

¹⁸ *Id.* at 12.

¹⁹ *Id.* at 13-15.

The Court in the Resolution²⁰ dated February 22, 2017, required the parties to simultaneously file their respective supplemental briefs. However, the People of the Philippines, through the Office of the Solicitor General, manifested that it is no longer filing a Supplemental Brief there being no significant transaction, occurrence, or event that happened since the filing of its Appellee's Brief dated December 5, 2014.²¹ While the filing of accused-appellant's Supplemental Brief was dispensed with by the Court in the Resolution²² dated July 9, 2018.

The issue in this case is whether the CA correctly found that accused-appellant is guilty beyond reasonable of the crime of Robbery with Rape.

The Court's Ruling

The appeal is devoid of merit.

An appeal in criminal cases confers the appellate court full jurisdiction over the case and renders such court competent to examine the entire records of the case, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.²³

Proceeding from the foregoing, the CA correctly modified the RTC Decision as will be discussed hereunder.

Credibility of the witness is controlling.

Due to its distinctive nature, conviction in rape cases usually rests solely on the basis of the testimony of the victim, with the condition that the testimony is credible, natural, convincing, and consistent with human

²⁰ *Id.* at 17-18.

²¹ *Id.* at 19-20.

²² *Id.* at 35.

²³ *People v. Alejandro, et al.* 807 Phil. 221, 229 (2017), citing *People v. Comboy*, 782 Phil. 187, 196 (2016).

nature and the normal course of things.²⁴ Consequently, in the resolution of rape cases, the credibility of the private complainant is decisive.²⁵

In this case, private complainant positively identified the accused-appellant as her assailant, viz.:²⁶

(Private complainant, directly examined by Fiscal Macabenta Derogongan:)

Q: So, by the way, Miss witness how were you able to identify the accused when the incident occurred at 4:30 in the morning?

A: The place was lighted sir, because there were electric posts and besides that there were residence houses with lights outside, sir.

Q: So, you mean you were able to positively identified (sic) the accused because there (sic) lights at your surroundings, the electric post and the houses with lights outside?

A: Yes, sir.

[x x x]

Q: When the accused pointed his gun at you, in front of you, how far were you from the accused?

A: Very very near sir, in front of me and I was looking or staring at him, sir.

Further, defense witness PO2 Daleon, instead of corroborating the testimony of fellow defense witness Michael did the exact opposite and testified that private complainant told him that accused-appellant was the one who robbed and raped her, to wit:²⁷

(Fiscal Derogongan, cross-examining SPO2 Daleon:)

Q: What did the victim tell you if there was any when she saw the accused at a closer distance?

A: The vernacular word is "Siya gyud, Sir."

Q: When you say "Siya gyud, Sir", what (sic) was she referring to?

A: She was referring to accused Julieta Agan, sir.

Q: As what?

A: The suspect, the one who robbed her and the one who raped her, sir.

²⁴ *People v. Ganaba*, G.R. No. 219240, April 4, 2018, 860 SCRA 513, 525.

²⁵ *People v. Gerones*, 271 Phil. 275, 281 (1991).

²⁶ *Rollo*, p. 7.

²⁷ *Id.* at 8.

It must be stressed that both the RTC and the CA found the testimony of private complainant to be credible and persuasive.

On this note, the Court has time and again emphasized that the trial court is in the best position to determine facts and to assess the credibility of witnesses.²⁸ Thus, in the absence of any clear showing that the trial court overlooked or misconstrued cogent facts and circumstances that would justify altering or revising such findings and evaluation, the Court has deferred to the trial court's factual findings and evaluation of the credibility of witnesses, especially when its findings are affirmed by the CA.²⁹

In the case at bar, private complainant's positive identification of the accused-appellant as the one who took her cellphone and forced her to lay with him at gun point at the dawn of January 22, 2011, completely disproves and destroys the defense of denial and alibi presented by accused-appellant.

Nothing is more settled than the rule that alibi and denial, unless substantiated by clear and convincing evidence, is undeserving of weight, for being negative and self-serving.³⁰

The crime of rape is consummated the moment the penis touches the labia, regardless of the extent of erection.

The crime of Robbery with Rape is a special complex crime which is penalized under Article 294 of the Revised Penal Code (RPC), as amended by Section 9 of Republic Act No. 7659.

For one to be liable for the complex crime of Robbery with Rape, the following elements must concur:³¹

²⁸ *People v. Abdul*, 369 Phil. 506, 531 (1999).

²⁹ *People v. Sanota*, G.R. No. 233659, December 10, 2019.

³⁰ *People v. Caturan, Jr.*, 397 Phil. 325, 335 (2000).

- (1) the taking of personal property is committed with violence or intimidation against persons;
- (2) the property taken belongs to another;
- (3) the taking is characterized by intent to gain or *animus lucrandi*; and
- (4) the robbery is accompanied by rape.

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 was committed by reason or on the occasion of the robbery and not the other way around.³²

Applying the foregoing to the case at bar, the prosecution's evidence established with certainty that at the dawn of January 22, 2011, accused-appellant followed private complainant along Zone Mars, Suarez, Iligan City and when accused-appellant caught up with her, he declared a hold-up. At that moment, accused-appellant asked private complainant for jewelry and other belongings. He searched private complainant's bag and took her cellphone at gun point. Clearly, the first element, that the taking is committed with violence and intimidation, and the second element, that the property taken belongs to another, are present in this case. As to the third element, *animus lucrandi* or intent to gain is presumed from the unlawful taking of private complainant's cellphone.³³ *Acta exteriora iudicant interiora secreta*—a man's action is a reflection of his intention.

Thus, the first three elements of the crime were clearly established.

Anent the fourth element, it was established that on the occasion of the robbery, the private complainant was ordered by accused-appellant, at gun point, to lie down and out of fear she obliged. Accused-

³¹ See *People v. Evangelio, et al.*, 672 Phil. 229, 242 (2011), citing *People v. Suyu*, 530 Phil. 569, 596 (2006).

³² *People v. Bragat*, 821 Phil. 625, 633 (2017), citing *People v. Belmonte*, 813 Phil. 240, 246 (2017).

³³ *People v. Reyes*, 447 Phil. 668, 674 (2003), citing *People v. Del Rosario*, 411 Phil. 676, 686 (2001).

appellant drew up her skirt and removed her panties. Soon after, accused-appellant started caressing private complainant's private parts. He then positioned himself on top of the private complainant and began pumping his body to satisfy his lust.³⁴ It was also established, based from the testimony of Dr. Valdehueza who physically examined private complainant's genital organ that while there was no laceration or bleeding on the hymen, she however noted the presence of a grass stalk and two small seeds in the perianal area.³⁵

In this case, both the RTC and CA found that on the occasion of the robbery, rape was committed. However, their legal conclusions differed as to the stage of execution.

The RTC held that the crime committed was not consummated, but only attempted rape, since the accused-appellant's penis merely touched private complainant's genitalia due to his failure to have an erection.³⁶ However, the CA ruled that the crime was consummated.³⁷

The Court agrees with the CA.

Article 6 of the RPC defines the stages of a felony in this wise:

ART. 6. *Consummated, frustrated, and attempted felonies.* — Consummated felonies as well as those which are frustrated and attempted, are punishable.

A felony is consummated when all the elements necessary for its execution and accomplishment are present; and it is frustrated when the offender performs all the acts of execution which would produce the felony as a consequence but which, nevertheless, do not produce it by reason of causes independent of the will of the perpetrator.

There is an attempt when the offender commences the commission of a felony directly by overt acts, and does not perform all the acts of execution which should produce the felony

³⁴ CA rollo, p. 32.

³⁵ *Id.* at 30.

³⁶ *Id.* at 32.

³⁷ Rollo, p. 9.

by reason of some cause or accident other than this own spontaneous desistance. (Emphasis supplied.)

It is well-settled that the crime of rape is deemed consummated even when the man's penis merely enters the labia or lips of the female organ or, as once so said in a case, by the "mere touching of the external genitalia by a penis capable of consummating the sexual act."³⁸ That the slightest penetration of the male organ or even its slightest contact with the outer lip or the labia majora of the vagina already consummates the crime.³⁹ Thus, mere knocking of accused-appellant's penis at the door of the pudenda, regardless of the extent of erection, is sufficient to constitute the crime of rape.⁴⁰

Parenthetically, applying the above-mentioned principle, the slightest contact of the penis with even just the outer lip of the vagina consummates the crime of rape. Here, accused-appellant committed rape through sexual intercourse when he tried to insert his penis into private complainant's vagina though it merely touched her genitals as his penis was not fully erect.

A perusal of private complainant's testimony shows that she felt accused-appellant's penis touch her labia majora, to wit:⁴¹

(Atty. Macabenta Derogongan, cross examining the private complainant:)

Q: In your Affidavit Madam witness No. 8 paragraph of your Affidavit, you clearly mentioned that his penis did not fully erected (sic)?

A: Yes, sir.

Q: So, in other words, it is very soft?

A: Yes, sir.

Q: When it contact with your genital, am I correct?

A: Yes, sir.

Q: In other words, may I say that his an (sic) erected penis even touch you (sic) labia of your genital?

*A: **He touched my labia mejora (sic), he tried to insert it, sir.***

³⁸ *People v. Tumpos*, 455 Phil. 844, 858 (2003), citing *People v. Leri*, 381 Phil. 80, 87 (2000).

³⁹ *Ricalde v. People*, 751 Phil. 793, 809 (2015), citing *People v. Lonaagua*, 665 Phil. 750, 769 (2011).

⁴⁰ *People v. De la Cuesta*, 363 Phil. 425, 432 (1999), citing *People v. Echegaray*, 327 Phil. 349, 360 (1996).

⁴¹ *Rollo*, p. 9. Emphasis supplied, underscoring in the original.

Q: So, the reason why his penis did not erect fully because he is afraid that somebody might passed and saw you in that position, am I correct [sic]?

A: Yes, sir.

Undisputedly, accused-appellant's penis touched private complainant's labia majora.

The fact that the medical examination showed no laceration, erythema, and abrasion in her vaginal orifice is immaterial. "Carnal knowledge," unlike its ordinary connotation of sexual intercourse, does not necessarily require that the vagina be penetrated or that the hymen be ruptured.⁴² A complete or total penetration of the private organ is not necessary to consummate the crime of rape.⁴³

The slightest penetration is sufficient.

As long as the attempt to insert the penis results in contact with the lips of the vagina, even without rupture or laceration of the hymen, the rape is consummated.⁴⁴ This is based from the physical fact that the labias are physically situated beneath the mons pubis or the vaginal surface, such that for the penis to touch either of them is to attain some degree of penetration beneath the surface of the female genitalia.⁴⁵ Hence, the CA correctly convicted accused-appellant of the crime of Robbery with Rape.

In line with the recent jurisprudence,⁴⁶ the award of damages should be ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages. Further, the CA correctly affirmed the RTC's order to indemnify the private offended party in the sum of ₱10,000.00 as actual damages, representing the cost of the cellphone.

⁴² *People v. Lerio*, 381 Phil. 80, 87 (2000), citing *People v. Quiñano*, 366 Phil. 390, 410 (1999).

⁴³ *People v. Cruz*, 259 Phil. 1256, 1259 (1989).

⁴⁴ *People v. Banzuela*, 723 Phil. 797, 818 (2013), citing *People v. Boromeo*, 474 Phil. 605, 617 (2004).

⁴⁵ *People v. Besmonte*, 735 Phil. 234, 248 (2014), citing *People v. Pali-Balita*, 394 Phil. 790, 808-810 (2000).

⁴⁶ *People v. Romobio*, 820 Phil. 168 (2017); see also *People v. Jugueta*, 783 Phil. 806 (2016).

WHEREFORE, the Decision dated May 6, 2016 of the Court of Appeals in CA-G.R. CR No. 01210-MIN is **AFFIRMED** with **MODIFICATIONS**. Accused-appellant Julieto Agan a.k.a Jonathan Agan is ordered to pay AAA the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, ₱75,000.00 as exemplary damages, and ₱10,000.00 as actual damages. All monetary awards for damages shall earn an interest rate of 6% *per annum* to be computed from the finality of the judgment until fully paid.

SO ORDERED.


HENRI JEAN PAUL B. INTING
Associate Justice

WE CONCUR:


ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

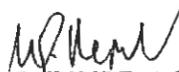

RAMON PAUL L. HERNANDO
Associate Justice


EDGARDO L. DELOS SANTOS
Associate Justice

(On leave)
SAMUEL H. GAERLAN
Associate Justice

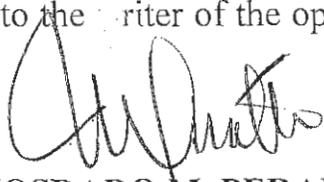
ATTESTATION

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.


ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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