



Republic of the Philippines
Supreme Court
 Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
 Plaintiff-Appellee,

G.R. No. 242690

Present:
 PERALTA, *C.J.*, Chairperson,
 CAGUIOA,
 REYES, JR.,
 LAZARO-JAVIER, and
 LOPEZ, *JJ.*

-versus-

WODIE FRUELDA Y ANULAO,
 Accused-Appellant.

Promulgated:
SEP 03 2020

X-----X

DECISION

CAGUIOA, J.:

This is an appeal from the Decision dated May 29, 2018¹ rendered by the Court of Appeals (CA) in CA-G.R. CR-HC No. 08996, which affirmed with modification the Decision dated August 31, 2016² of the Regional Trial Court (RTC) of Pallocan West, Batangas City, Branch 8, finding accused-appellant Wodie Fruelda y Anulao (Fruelda) guilty beyond reasonable doubt of rape under Article 266-A, paragraph 1(b) of the Revised Penal Code (RPC).

The Facts

An Information³ was filed against Fruelda for the crime of rape, the accusatory portion of which reads:

That on or about April 28, 2014 at around 8:00 in the morning at Brgy. Kumintang Ibaba, Batangas City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, motivated

¹ *Rollo*, pp. 2-19. Penned by Associate Justice Renato C. Francisco, with Associate Justices Magdangal M. De Leon and Rodil V. Zalameda (now a Member of this Court) concurring.

² *CA rollo*, pp. 49-58.

³ Records, p. 1.

by lust and lewd designs, and by means of force and intimidation, did then and there willfully, unlawfully and feloniously insert his fingers into the genital organ of one [AAA]⁴ and thereafter have carnal knowledge to said [AAA], while the said offended party is deprived of reason or otherwise unconscious and against the latter's will and consent.

CONTRARY TO LAW.

Upon arraignment, Fruelda pleaded not guilty.

After pre-trial was terminated, trial on the merits ensued.

The CA summarized the respective versions of the prosecution and defense as follows:

Version of the Prosecution

The prosecution presented the private complainant AAA, Edna Rabano Ilagan, Police Inspector Julieta Magpantay, and Dr. Jerico Cordero.

The private complainant testified that she is a member and a full-time worker of Jesus the Anointed One Church in XXX City. She is in charge of the storeroom where bars of soaps, coffee and other items used to generate funds for the congregation were stored. On the other hand, Accused was the driver of the church's Bishop Arthur Gonzales.

At around eight o'clock in the morning of (8:00 A.M.) of 28 April 2014, she was charging her cellphone inside the church premises when the accused arrived and asked her where the storeroom was. After being pointed to where the storeroom was located, the Accused asked private complainant to retrieve bar soaps for him to which she obliged. Private complainant entered the storeroom through its main door while the Accused trailed behind her.

Inside, she pointed where the bar soaps were located. As she was about to leave, the Accused asked her why some of the expired fabric conditioners were still being kept. While she was explaining that an inventory is required before the items can be disposed of, the Accused suddenly grabbed her breasts. Out of shock, private complainant shouted. Although the Accused released her breasts, he, however, immediately grabbed the front of private complainant's pants directly over her private part. She was shouting in pain as the Accused dragged her further inside the bodega. The Accused then used his body to block and keep the door shut behind him as he fondled her breasts and tried to unzip her pants. When the Accused was able to open the zipper of her pants, the Accused inserted his fingers in and out of her vagina. All the while, private complainant resisted and tried to protect herself by crossing her arms in front of her in an "X" position thereby incurring bruises in the process. The Accused then pressed her onto the wall causing her to bump her head which left her disoriented and dazed. She also felt weakened by the pain that she was feeling all over

⁴ 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.



her body. The last thing she saw was the accused pulling out his penis and she heard him saying “*tumuwad ka*”.

When she regained composure, private complainant realized that she was already seated on the floor. She saw that her pants as well as her underwear were pulled down to her knees but the Accused was no longer to be found. She also does not know how much time has already lapsed after the accused told her “*tumuwad ka*”. Although it was already dark and she could not see anything, private complainant gathered her senses, pulled up her clothes and went out of the bodega. She was bursting in tears when her fellow church member Conchita Pandi saw her. She retrieved her cellphone and called Edna Rabano Ilagan, her fellow member at “Samahang Magdalo”, to come to her aid.

When Edna Rabano Ilagan arrived, they went to Camp Miguel Malvar where the private complainant filed her complaint. Pictures of her and her bruises were also taken. She was thereafter subjected to medical examination in Camp Vicente Lim in Laguna. When they returned to Camp Miguel Malvar to submit the results of the medical examination, she was told to rest and return the next day since she could not physically bear to execute a *sinumpaang salaysay*.

Edna Rabano Ilagan testified that she was acquainted with the private complainant as they are both members of Samahang Magdalo, a non-government organization. On 28 April 2014, she was on her way to fetch her granddaughter when she received a call from private complainant who was crying on the line. Private complainant was begging to be fetched as she was allegedly raped. When she arrived at Jesus the Anointed One Church, she saw private complainant crying and shaking near the storeroom. She also noticed that private complainant had bruises on her body. She then accompanied private complainant to the women’s desk at Camp Miguel Malvar where they were interviewed by P/Insp. Julieta Magpantay. She observed that private complainant at times could not answer the questions asked as she was crying and trembling while other times she was shouting and crying. When P/Insp. Julieta Magpantay noticed private complainant’s bruises, the police officer thought that a medico-legal examination is needed. However, there was no SOCO personnel available at Camp Miguel Malvar; thus, private complainant was brought to Camp Vicente Lim. After the examination, private complainant was in pain and since it was also heavily raining at that time, they were told to come back to Camp Miguel Malvar the next day for the completion of private complainant’s statement.

P/Insp. Julieta Magpantay testified that she is a member of the criminal investigation and detection team of the provincial police office. On 28 April 2014, she received a complaint for sexual assault from private complainant against the Accused. She interviewed private complainant and asked her to fill up the complaint sheet. She observed, however, that private complainant was not physically and emotionally prepared to do so as she was hysterical from time to time. Private complainant also passed out while she was accomplishing the complaint sheet.

When she noticed that private complainant had a lot of bruises, P/Insp. Julieta Magpantay took photographs. Thereafter, she, together with one SPO3 Herbert Mendoza, proceeded to the crime scene for ocular inspection. They were then able to verify the allegations of private complainant. Since the Accused was not around, SPO3 Herbert Mendoza



contacted Bishop Arthur Gonzales and informed him of the complaint against the Accused. P/Insp. Julieta Magpantay then accompanied private complainant and her companion Edna R. Ilagan to SOCO Camp Vicente in Calamba City, Laguna for medico-legal examination. When they went back to Batangas CIDG, he saw the Accused seating in the kitchen. Upon inquiry, she learned that the accused surrendered voluntarily. When the statement of private complainant was completed the next day, P/Insp. Julieta Magpantay assisted the parties at the City Prosecutor's Office for inquest.

Dr. Jerico Cordero testified that he is the Assistant Regional Chief and Medico-legal Officer of Regional Crime Laboratory Office 4A – CALABARZON. He was qualified and presented as an expert witness to testify on Medical Report No. SA-0139-14 which was executed by Dr. Dorothy Joy Collo based on the examination she conducted on private complainant. Dr. Dorothy Joy Collo, however, can no longer be presented as witness as she is no longer connected with the Regional Crime Laboratory Office and has already moved abroad. In any case, Dr. Jerico Cordero was asked to interpret the findings in the Medical Report. He testified that the presence of deep fresh hymenal lacerations indicate that the injuries were inflicted within a 24-hour period. A blunt object, such as a finger or penis, could have caused the injury by penetration. The medico-legal anatomic sketch also shows that the private complainant had multiple abrasions (*gasgas*) on her jaw, neck, chest and forearms.⁵

Version of the Defense

For the defense, the following witnesses took the witness stand: the Accused Wodie Fruelda himself, Conchita Pandi and Romel Elida.

Stripped of the non-essentials, the Accused denied the imputations against him and anchored his defense on the sweetheart theory.

The Accused testified that he had been a member of Jesus the Anointed One since 1991. Prior to being the personal driver of Bishop Arthur Gonzales, he used to work for the church as part of maintenance. He was acquainted with private complainant when she joined the church in 1996. When he got married in 1999, private complainant would usually ask him about his marital life. As time went by, they became closer with one another until private complainant became his mistress. As such, it was just natural for the both of them to engage in sexual activities as they did in the morning of 28 April 2014 inside the storeroom. After their rendezvous, the Accused went out of the storeroom ahead of the private complainant. However, he saw their fellow member Conchita Pandi outside the storeroom. He then went inside to retrieve soaps and handed to Conchita Pandi. Thereafter, he left to drive for the Bishop to Manila.

When he and the Bishop returned to the church, the Accused was informed that there was a complaint against him for rape filed by private complainant. The Bishop then told him that they needed to go to CIDG at the PNP Headquarters wherein a certain SPO3 Mendoza talked to him. He was then told to remain at the police station because of the complaint lodged against him. He stayed at the police station for two (2) weeks before he was brought to court and later to the city jail. He was saddened because the reason why he went to the camp was to explain his side that he did not commit the charges hurled against him.

⁵ Rollo, pp. 2-7.

Conchita Pandi testified that around seven thirty in the morning (7:30 A.M.) of 28 April 2014, she was looking for private complainant as she needed assistance in laying foam to be used for the church activity to be held the next day. She asked the security guard on duty, Romel Eldin, of the whereabouts of private complainant. She was told that private complainant was inside the storeroom with the Accused. She went to the storeroom but it was locked. She likewise did not find anybody inside the storeroom but she still waited outside.

After some time, the Accused went out of the storeroom and handed her some soap for cleaning. She, however, did not take the soap as she was not supposed to clean that day. She then saw private complainant peeping out of the door of the storeroom. When she asked private complainant what she was doing inside with the Accused, private complainant replied that the Accused locked her there. She, however, pointed out the impossibility of being locked from the inside considering that private complainant was able to open the door on her own. Private Complainant thereafter broke down in tears. She then asked that their HR be summoned in order to talk to private complainant. A woman thereafter arrived and picked up private complainant from the church premises. Later that day, private complainant and the woman returned with police officers who were looking for the Accused allegedly for raping private complainant. As the police officers were inspecting the storeroom, Conchita Pandi told them that no rape occurred as she merely caught the private complainant and the Accused together inside the storeroom.

Romil Elida corroborated the testimony of Conchita Pandi. He testified that he was a volunteer security guard at the Jesus the Anointed One Church of which the Accused and private complainant were his co-members. He, however, treats the Accused as his brother. On 28 April 2014, he was on duty when the Accused arrived and asked for private complainant who was inside the church premises. After about fifteen (15) minutes, Conchita Pandi arrived and was looking for private complainant as well to whom he responded that private complainant was inside. Conchita Pandi, however, returned saying that she could not find private complainant but he replied that he just saw private complainant with the Accused. After a while, Conchita Pandi returned saying that he caught private complainant and the Accused inside the storeroom. He then saw private complainant crying outside the storeroom.

Both Conchita Pandi and Romel Elida also testified as to the demeanor and interaction of the Accused and private complainant prior to the 28 April 2014 incident. Romel Elida averred that he had the notion that the Accused and private complainant was in some sort of relationship as the Accused would usually ask him about private complainant. He sees them flirting or joking with each other. However, he only confirmed his suspicion on 28 April 2014 when he saw private complainant crying outside the storeroom after Conchita Pandi told him that she caught the Accused and private complainant inside the storeroom. As for Conchita Pandi, she relayed to the court an incident she witnessed between the Accused and private complaint which occurred three to four years prior to 28 April 2014.⁶

⁶ Id. at 7-9.

Ruling of the RTC

In a Decision dated August 31, 2016, the RTC found Fruelda guilty of the crime of rape:

Wherefore, on the basis of the evidence presented by the Prosecution the accused Wodie Fruelda committed the crime of rape beyond reasonable doubt, consequently he is hereby sentenced to suffer the penalty of *reclusion perpetua* as well as to indemnify the victim in the amount of fifty thousand (Php50,000.00) as actual damage [*sic*] and twenty five thousand (Php25,000.00) as exemplary damage [*sic*].

SO ORDERED.⁷

The trial court convicted Fruelda, thus:

The accused in order to escape one's liability presented the idea that he has [a] prohibited love affair with the complainant. The Presiding Judge opted not to state in this Decision what the accused narrated in order to prove his illicit relationship with the complainant for fear that this formal Decision would be converted into a pornographic reading material. What the accused wanted to convey [was] that as lovers they had already [gone] to the extent of performing the marital act. Worthy of note that as held by the Supreme Court in the case of *People versus Rommel Bello y De Leon*, G.R. No. 187075, July 5, 2010-The defense of consensual sex must be established by strong evidence in order to be worthy of judicial acceptance.

Wherein it goes without saying, that such kind of relationship would be established by proof as mementos, love notes or photographs depicting a sign of special relationship between the loving couple. (*People versus Corpuz*, G.R. No. 175836, Jan 30, 2009, 577 SCRA 465) x x x.

The deaf/mute witness that never lies would be the document marked as Exhibit "C" Medico Legal Report No. SA-0139-14 issued by PNP-Medico Legal Officer, Police Senior Inspector Dorothy Joy Ortañez Collo, MD. The medico legal report reveals deep fresh laceration at 2 o'clock and 3 o'clock and 9 o'clock position and the posterior fourchette has been lacerated as interpreted by Dr. Jerico Cordero, Assistant Regional Chief of Regional Crime Laboratory Office 4A. The Assistant Regional Chief of Crime Laboratory Office 4A, explained that the vagina of the subject has been penetrated by a blunt object which logically be an erect penis. The Physician further stated that the injuries noted are what we refer to in tagalog as "gasgas".

x x x x

As testified to by Police Inspector Magpantay she conducted an ocular inspection of the place where the incident happened and she was convinced that AAA has been telling the truth. It may be proper to say that upon request of the parties the Presiding Judge conducted an ocular inspection of the place x x x. The place where the incident happened is really a secluded place and any banging sound could not be heard in the adjacent room as a result of the ocular inspection that has been conducted.

⁷ CA rollo, p. 58

The photographs marked as Exhibit “I”, Exhibit “J”, Exhibit “K”, Exhibit “L” and Exhibit “M” would convey an idea of a struggle. The Medico Legal Report No. SA-0139-14 issued by PNP-Medico Legal Officer, Police Senior Inspector Dorothy Joy Ortañez Collo, clearly reveals that AAA was ravished because of the presence of the fresh lacerations noted on the vagina of the victim and the injuries noted. The Medico Legal Report No. SA-0139-14 does not reveal any old healed laceration on the vagina of the victim logically pointing to a conclusion that the declaration of Wodie Fruelda about his secret relationship with the victim that they had already performed the marital act does not hold true.⁸

Ruling of the CA

In a Decision dated May 29, 2018, the CA affirmed the conviction of Fruelda, the dispositive portion of which reads:

WHEREFORE, in light of the foregoing, the assailed Decision dated 31 August 2016 of Branch 8 of the Regional Trial Court of Pallocan West, Batangas City, finding the accused Wodie Fruelda y Anulao guilty beyond reasonable doubt of the crime of Rape is hereby **AFFIRMED with MODIFICATION** in that he is ordered to pay the private complainant Seventy Five Thousand Pesos (Php75,000.00) by way of civil indemnity, Seventy Five Thousand Pesos (Php75,000.00) as moral damages and Seventy Five Thousand Pesos (Php75,000.00) as exemplary damages in line with prevailing jurisprudence.

SO ORDERED.⁹

The CA affirmed Fruelda’s conviction in this wise:

Accused-Appellant maintains that his sexual encounter with the private complainant was consensual as they were sweethearts. By taking this stance, Accused-Appellant inevitably admitted his carnal knowledge with private complainant. The burden of evidence to prove their relationship as sweethearts is therefore shifted upon him.

Accused-Appellant, in his defense, avouched that the private complainant did not escape his advances despite the opportunity to do so. Private complainant could have done every physical move to frustrate his advances but she failed to do so. Accused-Appellant also avers that the testimony of private complainant is bereft of allegation of threat or use of weapon or intimidation to succumb to his lustful desires. Moreover, if private complainant was indeed deprived of reason or otherwise unconscious as alleged in the Information then there is no way for the prosecution to establish with moral certainty if Accused-Appellant inserted his penis into her vagina. Lastly, Accused-Appellant submits that the testimony of private complainant was uncorroborated and therefore a mere fabrication of the charges against him to hide her shame for their illicit relationship.

The defense of Accused-Appellant is untenable.

x x x x

⁸ Id. at 55-57.

⁹ *Rollo*, p. i8.

The testimony of the private complainant as to the facts and circumstances that occurred prior and subsequent to the rape was clear, positive, and convincing. It also logically proved the Accused-Appellant committed the crime charged. The fact that the private complainant no longer had recollection of the precise time when she was raped does not negate her credibility. x x x

The element of force is also very glaring based on the evidence of injuries sustained by the private complainant. As aptly put by the court a quo: “[t]he photographs marked as Exhibit “I”, Exhibit “J”, Exhibit “K”, Exhibit “L” and Exhibit “M” would convey an idea of a struggle. The Medico Legal Report No. SA-0139-14 issued by PNP Medico Legal Officer, Police Senior Inspector Dorothy Joy Ortañez Collo, clearly reveals that [private complainant] was ravished because of the presence of fresh lacerations noted on the vagina of the victim and the injuries noted [on other parts of her body].”

Anent Accused-Appellant’s use of the sweetheart theory, the same must fail in the absence of any substantial proof. For courts to even consider giving credence to such defense, it must be proven by compelling evidence. The Accused-Appellant cannot just present testimonial evidence in support of the theory. Independent proof is required, such as tokens, mementos, and photographs, but none was presented in this case. And, even if it were true that Accused-Appellant and private complainant were sweethearts, this fact does not necessarily negate the commission of rape. Being sweethearts does not prove consent to the sexual act.

All told, the conviction of Accused-Appellant for the crime of rape is hereby sustained.

Hence, the instant appeal.

Issues

Whether the CA erred in finding Fruelda guilty beyond reasonable doubt of the crime of rape by carnal knowledge.

Whether the CA erred in finding that the mitigating circumstance of voluntary surrender cannot be appreciated in favor of Fruelda.

The Court’s Ruling

The appeal is partly meritorious. Contrary to the findings of the lower courts, Fruelda is guilty of the crime of sexual assault under Article 266-A (2) of the RPC, *not* rape by carnal knowledge under Article 266-A (1) (b).

Based on the Information, Fruelda is charged with two crimes — (a) sexual assault under Article 266-A (2); and (b) rape by carnal knowledge under Article 266-A (1)(b) of the RPC. Although two offenses were charged in just one Information, a violation of Section 13, Rule 110 of the Revised

Rules of Criminal Procedure,¹⁰ Section 3, Rule 120 of the same rules also states that:

[w]hen two or more offenses are charged in a single complaint or information but the accused fails to object to it before trial, the court may convict the appellant of as many as are charged and proved, and impose on him the penalty for each offense, setting out separately the findings of fact and law in each offense.

Since Fruelda did not file a motion to quash the Information, he can be convicted of the two offenses charged therein: sexual assault *and* rape by carnal knowledge.

Fruelda is guilty of sexual assault under Article 266-A (2) of the RPC, not rape by carnal knowledge under Article 266-A (1) (b)

In reviewing rape cases, the Court is guided by the following three principles: (1) to accuse a man of rape is easy, but to disprove it is difficult though the accused may be innocent; (2) considering that in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence for the prosecution must stand or fall on its own merit and not be allowed to draw strength from the weakness of the evidence for the defense. Corollary to these is the dictum that when a victim of rape says that she has been defiled, she says in effect all that is necessary to show that rape has been inflicted on her, and so long as her testimony meets the test of credibility, the accused may be convicted on the basis thereof.¹¹

In the case at bar, as in most rape cases, the issue boils down to the credibility of the victim. In this regard, the Court pored over the testimony of AAA and find that there is no reason to overturn the trial court's assessment of AAA's credibility. AAA recounted what happened inside the storeroom, thus:

Q: What did this Kuya Wodie of yours tell you when he approached you?

A: He asked me "where is the bodega?", sir.

Q: Why were you the person asked by this Kuya Wodie of yours where the bodega is?

A: Because I was the one in charge of the bodega, sir. Because the stocks there which were actually bar soaps were under my custody, sir.

Q: So when asked you "ang bodega" what did you answer if you did?

A: I told him it was there, that's what I told him, sir.

¹⁰ Section 13. *Duplicity of the offense.* — A complaint or information must charge but one offense, except when the law prescribes a single punishment for various offenses.

¹¹ *People v. Garces, Jr.*, 379 Phil. 919, 927-928 (2000).

- Q: When you answer him "andun po" what did he do if any?
A: He went there and I don't need to accompany him because he knew where it was and I just look behind him.
- Q: After this Wodie went to the bodega and she were looking behind what happened?
A: When I pointed to him the bodega he went inside the bodega and he went back to me and asked me about the bar soaps, sir.
- Q: And what did you answer him?
A: [Inutusan niya po ako "ikuha mo ako", sir.]
- Q: When this Wodie told you "ikuha mo ako", what did you do?
A: I heeded to his request, sir.
- Q: Where did you go?
A: I first went to the main door and then he followed me, sir. He locked the main door, sir.
- Q: When you say the main door which door you are referring to?
A: The main door going to the bodega, sir.
- Q: After you saw that this Wodie who followed you closed the main door what happened next?
A: I went inside the bodega and he followed me, sir.
- Q: Do you mean to say that when you enter the bodega was the bodega already open?
A: Yes, sir.
- Q: And when you enter the bodega what happened?
A: He followed me inside the bodega and I pointed to him the bar soaps, sir.
- Q: This bodega could you picture to us what are the things inside the bodega?
A: Mga kaldero po, tulyasi, timba, baretang sabon po at fabric conditioners, toilet bowl cleaner and the things used in the audio video presentation, sir.
- Q: So when you enter [sic] the bodega where was Wodie?
A: He followed me inside the bodega, sir.
- Q: And what did you do to his request to find you some bar soaps?
A: When I was able to point to him where the bar soaps were I turn [sic] my back going out of the bodega, sir.
- Q: And when you were about to get out of the bodega what happened?
A: When I was trying to turn my back out [sic] of the bodega he asked me again "why are these things still here? These are already expired. It should not be here" so I faced him back, sir.
- Q: What do you understand by the things that Wodie was referring to when he said "ba't nandito pa ang mga ito, di ba expire [sic] na 'to?"
A: He was telling me these fabric conditioners were [sic] already expired should already be disposed, sir.

x x x x

- Q: And what did you answer him?
A: I was telling it is still needed in the inventory the reason why these are not yet already disposed, sir.
- Q: So after you have answered him what happened?
A: I was shocked as to what he did, sir.
- Q: What did he do to you?
A: He immediately grabbed my two breasts, sir. It was not tender it was so hard, sir.
- Q: What did you feel when he grab [sic] held your breasts?
A: I was shocked and I shouted because it was painful, sir.

x x x x

- Q: So after he grab [sic] held your breasts which you said was painful and as a matter of fact you shouted as a reaction x x x what happened next?
A: When I shouted he released my breasts and he grab held my front, sir.
- Q: When you say "harapan" what are you referring to?
A: My genitals, sir.
- Q: In what manner did he grab held your genitals?
A: He grab [sic] held my genitals tightly, sir.

Prosecutor Gajete: May we put it on record, Your Honor, that at this juncture the witness is crying, Your Honor.

The Court: Noted.

Prosecutor Gajete: At this juncture, Your Honor, we would like to incorporate to the record that aside from the fact that the witness is crying she is likewise shaking, Your Honor.

The Court: Noted.

x x x x

- Q: When he grab [sic] held the front part of your pants directly over your genitals, what did he do next?
A: I was shouting it's painful and he pulled me inside, sir.

x x x x

- Q: When you were already inside after being pulled by Wodie, what happened next?
A: He used his body to close the door, sir.
- Q: Was the door in fact close[sic]?

A: He use [sic] to block the door. He pressed his body on the door to ensure that it is locked, sir.

Q: And after that what happened?

A: He mashed my breasts, sir.

Q: What was your response in relation to this [sic] acts of Wodie mashing your breasts?

A: I resisted, sir.

x x x x

Q: What did you do to resist?

A: I placed my hands in an X position to protect my breasts, sir.

Q: And when you put your hands in X position to protect your breasts what did he do next?

A: He was forcibly trying to remove my hands from X position, sir.

Q: What did he do next?

A: He was trying to open and remove my pants, sir. He was not able to open it but he successfully opened my zipper of my pants, sir.

Q: When your zipper was opened what did he do next to you?

A: He inserted his fingers inside my panty, sir.

Q: What did he do to his fingers?

A: He inserted it in my vagina, sir.

Q: And while his fingers was in your vagina what was he doing with it?

A: He inserted it, sir. He was inserting his fingers in and out of my vagina, sir.

Q: And what did you feel when he was doing it?

A: It was so painful, sir.

Q: At that juncture Ms. Witness, what did you do to resist?

A: I was trying to resist, sir.

x x x x

Q: In contrast to your resistance, what did the accused do?

A: He was trying to remove my hands in an X position in protecting my breasts he pressed me to lean on the wall and "napauntog po ako", sir.

Q: So while he was inserting his finger into your vagina, what happened next?

A: He pulled out his penis, sir.

Q: And when he already let out his penis what happened?

A: I was shocked, sir. He massage [sic] his penis, sir.

x x x x

- Q: I would like to go back to the point when you said he placed his fingers into your genitals the vagina. Can you be specific as to which finger or which hand use [sic] with that finger?
- A: Left hand, sir.
- Q: So while his left hand was holding your vagina he use [sic] his finger to insert what was he doing with his right hand if any?
- A: I was in X position in protecting my breasts and he was trying to remove the X position, sir.
- Q: Now you mentioned that while Wodie was inserting his finger and moving in and out of your vagina you experience [sic] pain. What did you do in relation to that?
- A: I was disoriented and dazed and I was weakened, sir.
- Q: And after you feel [sic] weak and disoriented or dazed what happened next?
- A: “Sabi po kasi niya tumuwad daw po ako”, sir.
- Q: How did he say it?
- A: “Tumuwad ka”, sir.
- Q: And did you heed his words?
- A: I was confused and I do not know what he was saying and I do not know what he was trying me to do [sic], sir.
- Q: After that what happened?
- A: He was telling me “tumuwad ka” and I did not know anymore what followed and last thing I heard of him saying was “tumuwad ka”, sir.
- Q: Having heard “tumuwad ka” what happened next?
- A: Thereafter I only realize [sic] I was already seated at the floor, sir.
- Q: And how did you come to realize that?
- A: Because I felt my buttocks were cold and my pants was [sic] pulled down up to my knees, sir.
- Q: Only your pants were pulled down up to your knees?
- A: Including my panty, sir.
- Q: Where was Wodie at that juncture when you realized that your buttocks were already cold?
- A: I did not know, sir.
- Q: You are trying to tell the Honorable Court that Wodie was no longer around?
- A: He was no longer there, sir.
- Q: When you said that was the last thing I remember can you estimate how long you have no knowledge anymore of what happened after you heard the word “tumuwad ka”?
- A: I do not know, sir, because I was so weak and I experienced pain all over, sir.¹²

¹² TSN, June 19, 2014, pp. 12-20.



It is a well-settled doctrine that when the case pivots on the issue of the credibility of the victim, the findings of the trial court necessarily carry great weight and respect.¹³ This is because the trial court's determination proceeds from its first-hand opportunity to observe the demeanor of the witnesses, their conduct and attitude under grilling examination, thereby placing the trial court in the unique position to assess the witnesses' credibility and to appreciate their truthfulness, honesty and candor.¹⁴

The RTC and CA, finding AAA's testimony credible, convicted Fruelda of the crime of rape by carnal knowledge. While the Court agrees with the lower courts that AAA's testimony is indeed credible, the Court finds that, on the basis of AAA's testimony, Fruelda can only be convicted of sexual assault.

AAA testified that while Fruelda was moving his finger in and out of her private part through the opening of her pants' zipper, he took out his penis and massaged the same. Shortly thereafter, AAA lost consciousness. When she woke up, she was seated on the floor with her underwear and pants pulled down to her knees. Based on the foregoing, the crime committed by Fruelda is sexual assault. Although it is possible that Fruelda had carnal knowledge of AAA while the latter was unconscious, he cannot be convicted of the crime of rape by carnal knowledge based on a mere possibility. The right of the accused to be presumed innocent until the contrary is proved is enshrined in the Bill of Rights. To overcome the presumption, nothing but proof beyond reasonable doubt must be established by the prosecution.¹⁵ Proof beyond reasonable doubt means that mere suspicion of the guilt of the accused, no matter how strong, should not sway judgment against him. Every circumstance favoring the accused's innocence must be duly taken into account.¹⁶

At this juncture, the question before the Court is this: Are there other pieces of evidence to prove beyond reasonable doubt that Fruelda is likewise guilty of rape by carnal knowledge?

There is none. The other evidence presented by the prosecution merely corroborate AAA's testimony and strengthen this Court's conclusion that Fruelda is guilty only of sexual assault.

AAA suffered injuries on her face, neck, chest, arms, and forearms that were photographed¹⁷ and described in the medico-legal report¹⁸ as follows:

CONTINUATION OF SA-0139-14

¹³ *People v. Aguilar*, 565 Phil. 233, 247 (2007).

¹⁴ *Medina v. People*, 724 Phil. 226, 234-235 (2014).

¹⁵ *People v. Mejia*, 341 Phil. 118, 144 (1997).

¹⁶ *People v. Claro*, 808 Phil. 455, 468 (2017).

¹⁷ Exhibits I-M, records, pp. 157 to 158

¹⁸ Exhibit C-1-A, id. at 149 (dorsal portion).

1. Area of multiple abrasions, right mandibular region, measuring 19.0 x 1.5cm, 9.0cm from the anterior midline.
2. Area of multiple abrasions, left mandibular region, measuring 4.0 x 0.5cm, 8.5 cm from the anterior midline.
3. Area of multiple abrasions, neck, measuring 9.8 x 2.0 cm, 4.0 cm right of the anterior midline.
4. Area of multiple abrasions, neck, measuring 8.0 x 2.0 cm, 3.0 cm left of the anterior midline.
5. Area of multiple abrasions, left pectoral region, measuring 10.0 x 7.0 cm, bisected by the anterior midline.
6. Area of multiple abrasions, right pectoral region, measuring 4.5 x 2.0 cm, 4.0 from the anterior midline.
7. Area of multiple abrasions, right arm, measuring 16.0 x 10.9 cm, bisected by its anterior midline.
8. Area of multiple abrasions, right forearm, measuring 12.0 x 5.0 cm, bisected by its anterior midline.
9. Area of multiple abrasions, left arm, measuring 18.0 x 5.0 cm, bisected by its anterior midline.
10. Area of multiple abrasions, left forearm, measuring 14.0 x 6.0cm, bisected by its anterior midline.

The medical examination performed on AAA the same day as the incident found blunt trauma to her labia minora and hymen:¹⁹

CONCLUSION:

MEDICAL EVALUATION SHOWS CLEAR EVIDENCE OF RECENT BLUNT PENETRATING TRAUMA TO THE HYMEN AND RECENT BLUNT TRAUMA TO THE LABIA MINORA.

The doctor presented to testify on the medical examination testified that a blunt object, such as a finger or penis, could have caused the injury by penetration.²⁰ Between the two blunt objects that could have caused the injury, the (insertion of a) finger is the version supported by the testimony of AAA and confirmed by Fruelda's sweetheart theory.

For his defense, Fruelda admitted that in the morning of April 28, 2014, while he and AAA were inside the storeroom of Jesus the Anointed One Church, he inserted his finger inside AAA's private part and, thereafter, AAA fellated him.²¹ Fruelda, however, claimed that these were all consensual as he and AAA were in a relationship.

To prove his relationship with AAA, Fruelda presented Romel Elida (Elida) and Conchita Pandi (Pandi). Elida testified that he often saw Fruelda and AAA flirting with each other. Pandi, on the other hand, testified to how

¹⁹ Exhibit C-1-A, records, p. 149.

²⁰ TSN, March 13, 2015, p. 21.

²¹ *Brief for the Accused-Appellant*, CA rollo, p. 37.



she had the impression that Fruelda and AAA were in a relationship based on events that happened three to four years prior to April 28, 2014.

The Court is not convinced. Absent independent proof of his alleged relationship with AAA, Fruelda's self-serving testimony and the speculative testimonies of his witnesses, Elida and Pandi, fall short of substantiating his sweetheart defense.

The "sweetheart theory" is an affirmative defense often raised to prove the non-attendance of force or intimidation.²² When an accused in a rape case claims, as in the case at bar, that he is in a relationship with the complainant, the burden of proof shifts to him to prove the existence of the relationship *and* that the victim consented to the sexual act. In *People v. Bautista*,²³ the Court held:

In rape, the 'sweetheart' defense must be proven by compelling evidence: first, that the accused and the victim were lovers; and, second, that she consented to the alleged sexual relations. The second is as important as the first, because this Court has held often enough that love is not a license for lust.²⁴

For the Court to even consider giving credence to such a defense, it must be proven by compelling evidence. The defense cannot just present testimonial evidence in support of the theory, as in the instant case. Independent proof is required — such as tokens, mementos, and photographs.²⁵

No such proof was presented by the defense in this case. Thus, the Court is left with the admission of Fruelda that he inserted his finger inside AAA's private part and that AAA fellated him — against her will. Fruelda's acts of inserting his finger inside AAA's private part against her will and forcing AAA to fellate him constitute two different acts of sexual assault under 266-A (2). However, since the Information is silent as to the second act admitted by Fruelda, that of forcing AAA to fellate him, he cannot be convicted for it.

The mitigating circumstance of voluntary surrender should be appreciated in favor of Fruelda.

Anent Fruelda's contention that the mitigating circumstance of voluntary surrender should be appreciated in his favor, the CA found that Fruelda had no intention to unconditionally surrender to the authorities:

Accused-Appellant nonetheless avers that the court a quo erred in not appreciating the mitigating circumstance of voluntary surrender in his favor. Accused-Appellant claims that he was not arrested by police officers.

²² *People v. Rubillar, Jr.*, 817 Phil. 222, 234 (2017).

²³ 474 Phil. 531 (2004).

²⁴ *Id.* at 534.

²⁵ *People v. Olesco*, 663 Phil. 15, 24 (2011).

Instead, he presented himself to the CIDG office saving the officers the trouble and expenses which they would otherwise incur had he not do so.

For the mitigating circumstance of voluntary surrender to be appreciated, the defense must prove that: (a) the offender had not been actually arrested; (b) the offender surrendered himself to a person in authority; (c) the surrender was spontaneous and voluntary. A surrender is said to be voluntary when it is done by the accused spontaneously and made in such manner that it shows the intent of the accused to surrender unconditionally to authorities, either because he acknowledges his guilt or he wishes to save them the trouble and expense necessarily incurred in his search and capture. Such intention, however, is absent in this case as Accused-Appellant testified during his direct examination that he went to the police station to explain his side that he did not commit crime charged. Verily, the mitigating circumstance of voluntary surrender cannot be appreciated in his favor.²⁶

Contrary to the conclusion of the CA, the Court holds that the mitigating circumstance of voluntary surrender should be appreciated in favor of Fruelda. When Fruelda found out that AAA had lodged a complaint against him, he immediately went to the Batangas Criminal Investigation and Detention Group to surrender.²⁷ Acknowledgment of guilt is not a condition *sine qua non* of the mitigating circumstance of voluntary surrender. It is sufficient that the accused spontaneously submits himself to the authorities because he wishes to save them the trouble and expenses necessary for his search and capture.

Proper Penalty

Taking into account the mitigating circumstance of voluntary surrender, Fruelda shall suffer the indeterminate penalty of imprisonment ranging from six (6) years of *prision correccional*, as minimum, to eight (8) years of *prision mayor*, as maximum.

WHEREFORE, premises considered, the assailed Decision is **REVERSED**. Wodie Fruelda y Anulao is **NOT GUILTY OF RAPE BY CARNAL KNOWLEDGE**. He is found **GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF SEXUAL ASSAULT** under paragraph 2 of Article 266-A of the Revised Penal Code and shall suffer the indeterminate penalty of imprisonment ranging from six (6) years of *prision correccional*, as minimum, to eight (8) years of *prision mayor*, as maximum. He is ordered to pay the private offended party Thirty Thousand Pesos (₱30,000.00) as civil indemnity, Thirty Thousand Pesos (₱30,000.00) as moral damages, and Thirty Thousand Pesos (₱30,000.00) as exemplary damages.

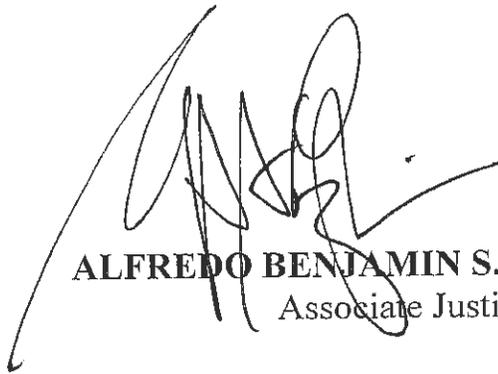
All monetary awards shall earn interest at the legal rate of six percent (6%) per annum from the date of finality of this Decision until fully paid.

²⁶ *Rollo*, p. 17.

²⁷ TSN, February 5, 2016, pp. 25-26.

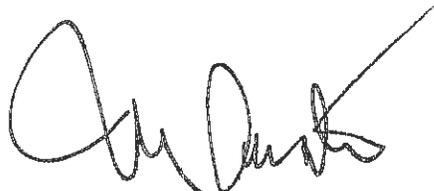


SO ORDERED.

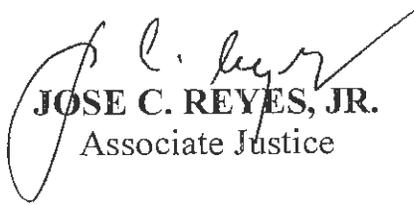


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

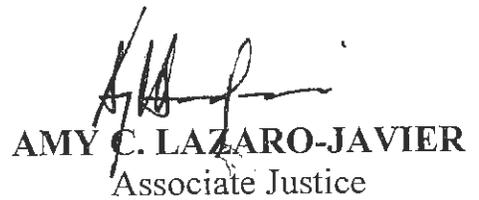
WE CONCUR:



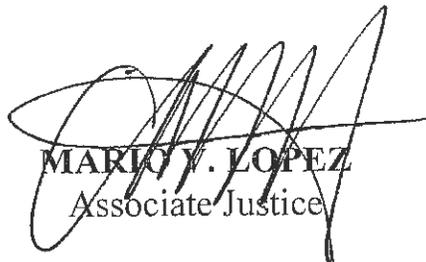
DIOSDADO M. PERALTA
Chief Justice
Chairperson



JOSE C. REYES, JR.
Associate Justice



AMY C. LAZARO-JAVIER
Associate Justice



MARIO V. LOPEZ
Associate Justice

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