

## SECOND DIVISION

[ G.R. No. 228947, June 22, 2020 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
JULIETO AGAN A.K.A. "JONATHAN AGAN", ACCUSED-APPELLANT.**

### D E C I S I O N

**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 Decision<sup>[1]</sup> dated May 6, 2016 of the Court of Appeals (CA) in CA-G.R. CR No. 01210-MIN, which affirmed with modification the Decision<sup>[2]</sup> dated May 15, 2014 of Branch 4, Regional Trial Court (RTC), Iligan City, Lanao del Norte in Criminal Case No. 15388. The CA found Julieto Agan also known as "Jonathan Agan" (accused-appellant) guilty beyond reasonable doubt of the crime of Robbery with Rape.

#### *The Antecedents*

Accused-appellant was charged in an Information<sup>[3]</sup> 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]<sup>[4]</sup> 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."<sup>[5]</sup>

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.<sup>[6]</sup>

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 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.<sup>[7]</sup>

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 P10,000.00.<sup>[8]</sup>

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.<sup>[9]</sup>

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.<sup>[10]</sup>

Dr. Efleida Valdehueza (Dr. Valdehueza) conducted the medical examination of the private complainant at 8:15 a.m. of the same day and 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.<sup>[11]</sup>

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.<sup>[12]</sup>

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.<sup>[13]</sup>

In the Decision<sup>[14]</sup> 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;
- 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.<sup>[15]</sup>

On appeal, the CA, in its assailed Decision<sup>[16]</sup> 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 Julieto 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.<sup>[17]</sup>

In the Manifestation<sup>[18]</sup> 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 Resolution<sup>[19]</sup> dated October 25, 2016, granted accused-appellant's prayer and directed its Judicial Records Division to elevate the case to the Court.

The Court in the Resolution<sup>[20]</sup> 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.<sup>[21]</sup> While the filing of accused-appellant's Supplemental Brief was dispensed with by the Court in the Resolution<sup>[22]</sup> 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.<sup>[23]</sup>

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 nature and the normal course of things.<sup>[24]</sup> Consequently, in the resolution of rape cases, the credibility of the private complainant is decisive.<sup>[25]</sup>

In this case, private complainant positively identified the accused-appellant as her assailant, viz.:<sup>[26]</sup>

*(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.*

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]

(1) the taking of personal property is committed with violence or