



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated August 15, 2022 which reads as follows:

“G.R. No. 259896 (*Rimando Cadap y Billayan v. People of the Philippines*). – The Court resolves to: (1) **GRANT** the motion of petitioner Rimando Cadap y Billayan (Rimando) for extension of twenty (20) days from the expiration of the reglementary period within which to file a petition for review on *certiorari*; and (2) **INFORM** Rimando that he or his authorized representative may personally claim from the Cash Disbursement and Collection Division of this Court the excess payment of the prescribed legal fees in the amount of ₱10.00 under O.R. No. 327979 dated April 19, 2022.

This is a petition for review on *certiorari*¹ assailing the Decision² dated January 15, 2021 and the Resolution³ dated February 22, 2022 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 12588 which affirmed Rimando’s conviction for two counts of rape.

The facts follow.

Rimando was charged with two (2) counts of rape docketed as Criminal Case Nos. 09-CR-7917 and 09-CR-7918 under Article 266-A, paragraph 1(a) and penalized under 266-B of the Revised Penal Code (RPC) in relation to Republic Act (RA) No. 7610,⁴ otherwise known as the Special Protection of Children Against Abuse, Exploitation, and Discrimination Act, to wit:

¹ *Rollo*, pp. 9–20.

² *Id.* at 21–39. Penned by Associate Justice Elishu A. Ybañez, with the concurrence of Associate Justices Walter S. Ong and Bonifacio S. Pascua.

³ *Id.* at 41–46. Penned by Associate Justice Walter S. Ong, with the concurrence of Associate Justices Maria Filomena D. Singh (now a member of this Court) and Bonifacio S. Pascua.

⁴ Entitled “AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, AND FOR OTHER PURPOSES,” approved on June 17 1992.

Criminal Case No. 09-CR-7917

That on or about the 27th (sic) day of September, 2009, [REDACTED] Province of Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of one [AAA259896],⁵ a minor being seventeen (17) years and seven (7) months of age at the time of the incident, without her will and consent, to her damage and prejudice.

CONTRARY TO LAW.

Criminal Case No. 09-CR-7918

That on or about the 24th day of September, 2009, at [REDACTED] Province of Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of one [AAA259896], a minor being seventeen (17) years and seven (7) months of age at the time of the incident, without her will and consent, to her damage and prejudice.

CONTRARY TO LAW.⁶

Rimando pleaded “not guilty” to the crimes charged. At the trial, the prosecution established that AAA259896’s brother, BBB259896, is a friend of Rimando and that the two met sometime in 2000. Rimando would frequently visit BBB259896 in his house and was regarded as a part of their family. On September 24, 2009, AAA259896 (then a seventeen-year-old college student), was alone at her boarding house in [REDACTED] Benguet, and did not report to school that day because she was not feeling well. At around 8:00 in the evening, Rimando knocked and asked AAA259896 where BBB259896 was. When AAA259896 opened the door, Rimando suddenly grabbed her and pushed her to the bed. AAA259896 resisted and tried to push and kick Rimando but he was so strong. Rimando succeeded in removing AAA259896’s shirt, pants, and underwear. Rimando then pinned AAA259896 to the bed and inserted his penis into her vagina. AAA259896 shouted for help but nobody was around at that time. After the incident, Rimando threatened to kill AAA259896 should she tell anyone of

⁵ The identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to RA No. 7610, entitled “AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, AND FOR OTHER PURPOSES,” approved on June 17, 1992; RA No. 9262, entitled “AN ACT DEFINING VIOLENCE AGAINST WOMEN AND THEIR CHILDREN, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFORE, AND FOR OTHER PURPOSES,” approved on March 8, 2004; and Section 40 of A.M. No. 04-10-11-SC, otherwise known as the “Rule on Violence against Women and Their Children” (November 15, 2004). (See footnote 4 in *People v. Cadano, Jr.*, 729 Phil. 576, 578 [2014], citing *People v. Lomaque*, 710 Phil. 338, 342 [2013]. See also Amended Administrative Circular No. 83-2015, entitled “PROTOCOLS AND PROCEDURES IN THE PROMULGATION, PUBLICATION, AND POSTING ON THE WEBSITES OF DECISIONS, FINAL RESOLUTIONS, AND FINAL ORDERS USING FICTITIOUS NAMES/PERSONAL CIRCUMSTANCES,” dated September 5, 2017).

⁶ *Rollo*, p. 22.

what happened. The following day, AAA259896 just stayed inside her room because she was still in a state of shock and did not know what to do.⁷

The same incident transpired on September 26, 2009. At around 8:30 in the evening, AAA259896 went out of her room to urinate. When AAA259896 returned, Rimando was already by the door inside the boarding house. Rimando suddenly grabbed and dragged AAA259896 until they were on her bed. Rimando removed AAA259896's pants and panty, and grabbed her bra until it was removed. Rimando then inserted his penis into her vagina. Rimando again threatened to kill her if she would tell anyone that he raped her. When Rimando left, AAA259896 remained inside her room, crying. AAA259896's uncle, CCC259896, saw AAA259896, through the window of her room, lying on the floor. CCC259896 forcefully opened the door and asked AAA259896 what happened to her but she just kept on crying. CCC259896 brought AAA259896 to his room and advised her to call her family. AAA259896 sent a text message to BBB259896 informing him that Rimando raped her. Around 1:00 in the early morning of September 27, 2009, Rimando's wife, Esmeralda Cadap (Esmeralda), arrived at AAA259896's house. Esmeralda talked to AAA259896, telling her not to reveal to anybody what Rimando did to her. Esmeralda also promised AAA259896 that she will take care of her and send her to school. AAA259896, however, told Esmeralda to just go home.⁸

Meanwhile, upon receiving AAA259896's text message, BBB259896 informed their father of what happened to AAA259896 and they proceeded to her boarding house. AAA259896 told them about the incident and they got furious. BBB259896 went to see Rimando at his house at [REDACTED] Benguet. BBB259896 then confronted Rimando, who begged for forgiveness. AAA259896 reported the matter to the National Bureau of Investigation. AAA259896 was then referred to the Benguet General Hospital where she was examined. AAA259896 was also referred to the Department of Social Welfare and Development (DSWD) where a psychologist conducted a series of tests on her. In October 2009, AAA259896 was confined in the hospital. Then in November 2009, AAA259896 went to the DSWD where she stayed for two years. AAA259896 stopped her schooling because she could not concentrate on her studies and lost direction in her life. AAA259896 only resumed school in the summer of 2010.⁹

The medical findings of Dr. Joan Ancheta, who examined AAA259896, revealed that she had fresh lacerations at the 5 o'clock and 7 o'clock positions on her genitalia with whitish discharge. The fresh lacerations indicate that they could have been sustained more or less during the day or within 24 hours from the examination. The lacerations could have been caused by a blunt object that penetrated her vagina. The examination of the whitish discharge yielded negative for sperm cells. Meanwhile, based on the psychological

⁷ Id. at 23-24.

⁸ Id. at 24.

⁹ Id. at 25.

evaluation conducted on AAA259896, she was found to be “unstable” and showing signs of post-traumatic stress disorder and depression.¹⁰

On the other hand, Rimando denied the accusation and claimed that he was already a detention prisoner at the time of the incident. On September 24, 2009, Rimando was granted a Court Pass by the Regional Trial Court of ██████████ Benguet, Branch 10. He was in the company of Lourdes Lamsis (Lourdes), a jail guard, and they were supposed to go to Tinoc, Ifugao. They, however, were not able to proceed to Tinoc because there was a typhoon. Instead of going back to the jail, they waited for Rimando’s mother, Helen Cadap (Helen), to arrive. While waiting, Rimando stayed in his house at ██████████ Benguet, with Lourdes, Esmeralda, Helen, his child, and the nanny. It was only on September 27, 2009 that Rimando went back to jail. Helen and Esmeralda corroborated Rimando’s testimony. They affirmed that he was granted a Court Pass on September 24, 2009, supposedly to attend a ritual in Tinoc, Ifugao. However, the ritual did not push through because of the onslaught of Typhoon Ondoy. Instead, Helen and Esmeralda went to ██████████ Benguet on September 26, 2009 to be with Rimando. Both claimed that while Rimando was temporarily out of jail by virtue of the Court Pass, he just stayed inside the house and never left. On September 27, 2009, Rimando went back to jail.¹¹

In a Decision¹² dated November 27, 2018, the Regional Trial Court of ██████████ Benguet, Branch 9 (RTC) convicted Rimando of two (2) counts of rape. The RTC held that the prosecution was able to establish all the elements of rape under Article 266-A of the RPC.¹³ Further, AAA259896 was able to convey her story, and she consistently and categorically narrated that she was raped twice by Rimando – first on September 24, 2009, and second on September 26, 2009, inside her boarding house located at ██████████ Benguet, thus:

WHEREFORE, from the foregoing, there being proof beyond reasonable doubt that accused committed the crimes of Rape as charged, RIMANDO CADAP y BILLAYAN is hereby found GUILTY for two (2) counts of Rape.

He is hereby imposed the penalty of *Reclusion Perpetua* in each case. Further, he is directed to pay the private complainant [AAA259896] the amounts of [P]75,000.00 each for civil indemnity, moral damages[,] and exemplary damages, subject to interest at the rate of six percent (6%) per annum from the time of finality of this decision until fully paid.

The period of his preventive suspension is credited to his period of imprisonment.

SO ORDERED.¹⁴

¹⁰ Id.

¹¹ Id. at 26.

¹² Not attached to the *rollo*.

¹³ *Rollo*, pp. 26–27.

¹⁴ Id. at 27.

Aggrieved, Rimando appealed to the CA docketed as CA-G.R. CR-HC No. 12588. In a Decision¹⁵ dated January 15, 2021, the CA affirmed *in toto* the RTC's findings. The CA held that the showing or presence of tenacious resistance on the part of AAA259896 while being raped is irrelevant. Failure to shout or tenaciously resist the accused does not mean that she voluntarily submitted to the accused's carnal desires. In rape cases, the law does not impose a burden on the rape victim to prove resistance because it is not an element of rape. Also, not all victims react the same way. The failure of a rape victim to offer tenacious resistance does not make her submission to the accused's criminal acts voluntary. What is necessary is that the force employed against her was sufficient to consummate the purpose that he had in mind. At any rate, AAA259896 consistently testified that she tried to resist Rimando but her efforts were in vain because he was too strong. In the first incident, Rimando suddenly grabbed her and pushed her to the side of the bed. Although AAA259896 was weak and was not feeling well at that time, she tried to push and kick Rimando but he was able to pin her down against the wall beside the bed. AAA259896 shouted for help but Rimando covered her mouth and apparently, nobody heard her scream because it was stormy that day. Similarly, the second incident happened after another sudden attack from Rimando, who grabbed and dragged AAA259896 to her bed.¹⁶

As to the penalty, the CA found that the RTC correctly imposed *reclusion perpetua* for each count of rape, according to Article 266-B of RA No. 8353.¹⁷ The CA likewise affirmed the awards of civil, moral, and exemplary damages of ₱75,000.00 each, plus six percent (6%) interest per annum from the finality of judgment until all monetary awards are fully paid, thus:

FOR THESE REASONS, the Decision dated 27 November 2018 rendered by Branch 9 of the First Judicial Region of the Regional Trial Court of ██████████ Benguet in Criminal Cases No. 09-CR-7917 and 09-CR-7918 are **AFFIRMED *in toto***.

SO ORDERED.¹⁸ (Emphasis in the original)

Rimando sought reconsideration but was denied in a Resolution¹⁹ dated February 22, 2022. Hence, this petition.

At the outset, the decision of the CA in criminal cases convicting the accused may be generally appealed to this Court through a petition for review on *certiorari* under Rule 45 of the Rules of Court. However, the remedy should be a notice of appeal if the penalty imposed is *reclusion perpetua* or

¹⁵ Id. at 21–39.

¹⁶ Id. at 30–37.

¹⁷ Entitled "AN ACT EXPANDING THE DEFINITION OF THE CRIME OF RAPE, RECLASSIFYING THE SAME AS A CRIME AGAINST PERSONS, AMENDING FOR THE PURPOSE ACT NO. 3815, AS AMENDED, OTHERWISE KNOWN AS THE REVISED PENAL CODE, AND FOR OTHER PURPOSES," approved on September 30, 1997.

¹⁸ *Rollo*, p. 38.

¹⁹ Id. at 41–46.

life imprisonment. Here, the CA imposed the penalty of *reclusion perpetua*; thus, the proper mode of appeal to this Court is by notice of appeal filed with the CA. In the interest of justice, however, the Court treats this petition as a notice of appeal.²⁰ Before this Court, Rimando insists that his guilt was not proven beyond reasonable doubt since there were inconsistencies in the testimony of AAA259896 and her witnesses. Rimando claims that there were no other injuries found on AAA259896 during medical examination such as bruises or scratches, which negates the presence of force or that she indeed resisted during the rape incident. Further, the CA failed to appreciate the testimony of the jail guard, Lourdes, who testified that he delivered Rimando back to jail on the morning of September 27, 2009.²¹

The appeal is unmeritorious.

Rimando assailed his conviction for two counts of rape on the ground that the testimony of the victim is incredible. On this point, we stress that the CA and the RTC's assessment on the credibility of the prosecution witness and the veracity of her testimony is given the highest degree of respect,²² especially if there is no fact or circumstance of weight or substance that was overlooked, misunderstood, or misapplied, which could affect the result of the case.²³ Moreover, the trial court had the best opportunity to determine the credibility of the prosecution witness, having evaluated her emotional state, reactions, and overall demeanor in open court. Here, AAA259896 vividly recalled the incidents on how Rimando raped her twice, thus:

Q: Did you see the accused that day September 24, 2009?

A: Yes, sir,

Q: Where did you see him?

A: The same place in my boarding house in Samoyao.

Q: Do you know the reason why he was there during that time?

A: I don't know why he was there but he asked me about my studies and he asked me where my brother was.

x x x x

Q: Do you have companion at that time in the boarding house?

A: None sir.

Q: So you are telling us that you were alone together with the accused?

A: Yes, sir.

Q: And what happened next after that?

A: He suddenly took hold of me, grabbing both my hands and forcibly pushed me on the side of the bed.

²⁰ *People v. Pagal*, G.R. No. 241257, September 29, 2020, <<https://sc.judiciary.gov.ph/16267/>>; *People v. XXX*, G.R. No. 236562, September 22, 2020, <<https://sc.judiciary.gov.ph/15522/>>; and *Ramos v. People*, 803 Phil. 775, 782-783 (2017).

²¹ *Rollo*, pp. 11-19.

²² *People v. Matignas*, 428 Phil. 834, 868-869 (2002), citing *People v. Basquez*, 418 Phil. 426, 439 (2001); *People v. Jaberto*, 366 Phil. 556, 566 (1999); and *People v. Deleverio*, 352 Phil. 382, 401 (1998).

²³ *People v. Orosco*, 757 Phil. 299, 310 (2015), citing *People v. De Leon*, 608 Phil. 701, 721 (2009).

Q: What did you do when he grabbed you and pushed you at the side of your bed?

A: I was pushing him and tried to resist him but he was very strong and he pinned me on the wall beside the bed.

x x x x

Q: Now you said awhile (sic) ago that the accused grabbed you and pushed you at the side of the bed. What did you do?

A: I tried to resist, I even tried to kick him but he was so strong and he pushed me against the wall.

Q: Did the accused say anything while he was doing that to you?

A: He told me not to tell anyone otherwise he would kill me.

Q: Now what else happened?

A: When he pushed me against the wall and pinned me against the wall he inserted his penis inside my vagina.

x x x x

Q: So while he pushed you on the wall and you were now laying down on the bed what else happened?

A: He inserted his penis.

COURT:

Q: He inserted his penis into your?

A: Vagina sir.

x x x x

Q: While he was inserting his penis into your vagina do you remember what were you doing at that time?

A: I was trying to resist but he really pinned me down so I was crying.

Q: After he inserted his penis inside your vagina what happened next?

A: He told me not to tell anybody because he would kill me.²⁴

On the second incident of rape, AAA259896 testified:

Q: You said you went outside to urinate that time, what time was that?

A: 8:30 in the evening of September 26, 2009.

Q: Now what else happened when you went out to urinate?

A: When I went out to urinate after urinating I went back to my house and I found Rimando Cadap on the door.

Q: Which door, on the CR or the boarding house?

A: The boarding house.

Q: What was he doing there?

A: I don't know he just suddenly grabbed me.

²⁴ *Rollo*, pp. 31-33.

Q: After grabbing you what else happened?
A: He pushed me going inside the house on the bed.

COURT

Q: In your room you mean?
A: He pushed me in going inside my boarding house.

ATTY. ATONEN:

Q: Now you said he pushed you inside the boarding house?
A: He wrapped his hands on my arms and pushed me inside the house.

Q: So when he pushed you inside the house what happened next?
A: He removed my pants

x x x x

Q: Now after removing your pants what else happened or what did he do next?
A: He inserted his penis inside my vagina.

Q: Before he inserted his penis into your vagina what else?
A: He told me not to tell anybody because he will kill me.

x x x x

Q: Now you said he inserted his penis inside your vagina after that what happened next?
A: He grabbed my bra.

Q: What happened to your bra after he grabbed it?
A: The hook was removed when he grabbed it.

Q: After grabbing your bra what else did he do if any?
A: He inserted his penis inside my vagina.

Q: Now after that what else did he do if any?
A: He keeps on telling me not to tell anybody otherwise he would kill me.²⁵

AAA259896's positive identification of Rimando as the perpetrator of the crimes and her categorical account of what transpired deserve full weight and credit. As the CA pointed out, a young girl's revelation that she had been raped, coupled with her willingness to undergo public trial where she could be compelled to give out the details of an assault on her dignity, cannot be so easily dismissed as a mere concoction. Corollarily, Rimando's denial and alibi cannot prevail over the positive declaration of the prosecution witness. These negative defenses are self-serving and undeserving of weight in law absent clear and convincing proof.²⁶ Rimando did not adduce evidence that he was somewhere else when the crimes were committed and that it was physically impossible for him to be present at the crime scene or its immediate vicinity at the time of its commission.²⁷ To be sure, [REDACTED] Benguet,

²⁵ Id. at 33-34.

²⁶ *People v. Togahan*, 551 Phil. 997, 1013-1014 (2007).

²⁷ *People v. Espina*, 383 Phil. 656, 668 (2000).

the place where the two incidents of rape were committed, is just about a kilometer away from ██████████ Benguet, the place where Rimando claims he was staying during the incidents. It was not physically impossible for Rimando to be in the place where the rape incidents were committed. Admittedly, Rimando can go to and from said places easily by taking a ride.

The elements of rape through sexual intercourse are: (1) the accused had carnal knowledge of the victim; and (2) 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.²⁸ Here, the prosecution sufficiently established all the elements of the crimes charged. AAA259896 categorically narrated the details of the rape incidents that transpired on September 24 and 26, 2009, and positively identified Rimando as her ravisher. AAA259896 testified in open court that on these two occasions, Rimando threatened her, forcibly undressed her, and inserted his penis into her vagina. As an element of rape, force, threat or intimidation need not be irresistible but just enough to bring about the desired result.²⁹ It is not necessary that the rape victim resisted unto death.³⁰ The rule is that resistance may be proved by any physical overt act in any degree from the offended party.³¹ Notably, AAA259896 protested and attempted to flee from Rimando but he physically subdued her and succeeded in consummating the lecherous acts. Similarly, Rimando intimidated AAA259896 with his constant threats to kill her should she expose the incidents to anyone. The existence of hymenal lacerations based on the medical findings and testimonies of the attending physician who examined AAA259896 further support the fact of forcible deflorations.³²

All told, the Court fully agrees with the CA and the RTC that the prosecution has established the gravamen of the crime of rape, which is sexual congress with a woman against her will or without her consent. Accordingly, the CA and the RTC correctly convicted Rimando of two counts of simple rape and imposed upon him the penalty of *reclusion perpetua* for each count.³³ Also, pursuant to current jurisprudence,³⁴ the CA properly awarded ₱75,000.00 civil indemnity, ₱75,000.00 moral damages, and ₱75,000.00 exemplary damages for each count of rape, with legal interest at the rate of six percent (6%) per annum from date of finality of the judgment until fully paid.³⁵

²⁸ *People v. Vañas*, G.R. No. 225511, March 20, 2019, 898 SCRA 45, 54, citing *People v. Jastiva*, 726 Phil. 607, 624 (2014).

²⁹ *People v. Hilarion*, 722 Phil. 52, 55 (2013).

³⁰ *People v. Edem*, 428 Phil. 43, 67 (2002), citing *People vs. Igdanes*, 338 Phil. 624, 632 (1997).

³¹ *People v. Rivera*, 717 Phil. 380, 393-394 (2013), citing Article 266-D of the RPC, to wit:
Article 266-D. *Presumptions*. - Any physical overt act manifesting resistance against the act of rape in any degree from the offended party, or where the offended party is so situated as to render her/him incapable of giving valid consent, may be accepted as evidence in the prosecution of the acts punished under Article 266-A.

³² *People v. Banayat*, 828 Phil. 231, 240 (2018), citing *People v. Sabal*, 734 Phil. 742, 746 (2014).

³³ See paragraph 1, Article 266-A in relation paragraph 1, Article 266-B of the RPC.

³⁴ *People v. Jugueta*, 783 Phil. 806, 849 (2016).

³⁵ *Nacar v. Gallery Frames*, 716 Phil. 267, 282-283 (2013).

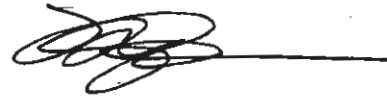
FOR THESE REASONS, the appeal is **DISMISSED**. The Decision dated January 15, 2021 and the Resolution dated February 22, 2022 of the Court of Appeals in CA-G.R. CR-HC No. 12588 are **AFFIRMED**. Petitioner Rimando Cadap y Billayan (petitioner) is found **GUILTY** of two (2) counts of simple rape and is sentenced to suffer the penalty of *reclusion perpetua* for each count. Petitioner is also **DIRECTED** to pay the victim the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, ₱75,000.00 as exemplary damages for each count, all with legal interest at the rate of six percent (6%) per annum from the finality of this Resolution until full payment.

SO ORDERED.”

By authority of the Court:

TERESITA AQUINO TUAZON
Division Clerk of Court

By:



MA. CONSOLACION GAMINDE-CRUZADA
Deputy Division Clerk of Court ^{nm}_{2/3}
03 FEB 2023

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HON. PRESIDING JUDGE (reg)
Regional Trial Court, Branch 9
La Trinidad, Benguet
(Crim. Case Nos. 09-CR-7917 & 09-CR-7918)

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Supreme Court, Manila

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