



Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated September 19, 2022, which reads as follows:*

“G.R. No. 255088 (Al Gomez y Declaro, *Petitioner*, vs. People of the Philippines, *Respondent*). — Before the Court is a Petition for Review on *Certiorari*<sup>1</sup> under Rule 45 of the Rules of Court filed by Al Gomez (Gomez) assailing the Court of Appeals (CA) Decision<sup>2</sup> dated January 7, 2021 in CA-G.R. CR-HC No. 13719. In the assailed decision, the CA affirmed with modification the Decision<sup>3</sup> dated June 29, 2019 of Branch 69, Regional Trial Court (RTC), Binangonan, Rizal which found Gomez guilty of the crime of Rape under paragraph 1(a), Article 266-A of the Revised Penal Code (RPC), as amended by Republic Act No. (RA) 8353.<sup>4</sup>

*The Antecedents*

The case stems from an Information filed before the RTC charging Gomez of the above-mentioned crime. It reads:

That on or about the 22<sup>nd</sup> day of September 2016, in the Municipality of Binangonan, Province of Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together with one malefactor whose true identity and whereabouts is still unknown, with lewd design and by means of force and intimidation, did, then and there willfully, unlawfully, and feloniously have carnal knowledge with one AAA5, a sixteen (16) year old minor, against her will and consent.

<sup>1</sup> *Rollo*, pp. 12-62.

<sup>2</sup> *Id.* at 116-132. Penned by CA Associate Justice Franchito N. Diamante and concurred in by Associate Justices Germano Francisco D. Legaspi and Alfredo D. Ampuan.

<sup>3</sup> *Id.* at 74-81. Penned by Acting Presiding Judge Dennis Patrick Z. Perez.

<sup>4</sup> The Anti-Rape Law of 1997, approved on September 30, 1997.

<sup>5</sup> 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 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 9262, entitled “An Act Defining Violence Against Women and their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, 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

CONTRARY TO LAW.<sup>6</sup>

Upon arraignment, Gomez pleaded “not guilty” to the crime charged. Trial on the merits proceeded after the pre-trial conference.<sup>7</sup>

AAA testified during trial. She narrated the events leading to and taking place during the commission of the crime.

According to AAA, in the last week of August 2016, Gomez and an unidentified companion approached her while she was waiting outside her school. She gave her name and mobile number to them upon their request.<sup>8</sup> This allowed Gomez to send vulgar messages to AAA. Subsequently, Gomez kept coming back to the same place where AAA would stand to wait after school. On September 19, 2016, Gomez approached her again and threatened to kill/do harm to AAA’s family if she would refuse to go with them.<sup>9</sup> On September 22, 2016 at 10:30 a.m., Gomez approached AAA and told her to follow him to *Barangay X*. AAA did as she was told because she was afraid of what Gomez might do to her and her family. On the way, on board a tricycle driven by the unidentified companion, Gomez pointed a knife at AAA’s back. When they arrived at the intended venue, the unidentified companion held AAA’s hands and Gomez proceeded to have carnal knowledge of AAA.

When she got home, she experienced severe pain and continuous bleeding from her vagina. This prompted her to confide with her sister as to what happened earlier in the day. Her parents overheard their conversation. Thereafter, they took AAA to Camp Crame.<sup>10</sup>

Upon AAA’s arrival, Dr. Aries Buenviaje, an OB-Gyne at Camp Crame, operated on her to repair the post-coital laceration in her hymen. Dr. Buenviaje testified that said laceration was secondary to an alleged rape.<sup>11</sup>

In addition, Dr. Jane G. Monzon, the medico-legal officer, examined AAA. Dr. Monzon found that there was a recent blunt penetrating trauma to AAA’s hymen and recent blunt traumatic injuries to her labia minora and periurethral region. Dr. Monzon testified that, at the time of examination, AAA had an active bleeding and that the aforesaid injuries were inflicted only recently or less than 24 hours prior to examination.<sup>12</sup>

On the other hand, Gomez denied knowing AAA or texting her. Instead, he offered an alibi. In his counter-affidavit, Gomez alleged that on

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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.).

<sup>6</sup> Id. at 117.

<sup>7</sup> Id.

<sup>8</sup> Id. at 117.

<sup>9</sup> Id. at 118.

<sup>10</sup> Id. at 119.

<sup>11</sup> Id. at 120.

<sup>12</sup> Id.

September 22, 2016, he was not at *Barangay X* at the time of the alleged commission of the crime; he was at work at ABS-CBN. However, in his rejoinder-affidavit, he then averred that at the time the alleged crime took place, he was at *Barangay Purok* where he and his wife were residing.<sup>13</sup> In particular, as shown on the *Barangay Purok* CCTV footages taken on September 22, 2016, first at 12:02 p.m. and then at 12:44 p.m. (CCTV footages),<sup>14</sup> he was near his home in *Barangay Purok*, buying *buko* juice for his wife who was suffering from urinary tract infection.<sup>15</sup>

On this point, the defense presented Jay-r Sebastian Cequeña, an administrator in *Barangay Purok*.<sup>16</sup> Cequeña admitted that he did not personally record the footage; he was also not present at the time of its recording. Nonetheless, he testified that when he retrieved the *barangay* CCTV footage at their *barangay* upon the request of Gomez's wife, Regine, he identified Gomez as the man shown in the video to be walking in their *barangay*, near Gomez's house. Further, Cequeña pointed out that *Barangay X* was estimated to be 20 minutes away from *Barangay Purok*.<sup>17</sup>

#### *Ruling of the RTC*

The RTC found Gomez guilty of the crime of Rape as defined under paragraph 1(a) of Article 266-A of the RPC, as amended by RA 8353. It gave more weight to AAA's testimony<sup>18</sup> over Gomez's weak and uncorroborated defenses of alibi and denial.<sup>19</sup> More particularly, the trial court did not give probative value to the alleged CCTV footages because these were never formally offered in evidence.<sup>20</sup> And even assuming that he was at *Barangay Purok* as supposedly shown in the CCTV footages, said *barangay* was only 20 minutes away from *Barangay X*. Thus, it was not impossible for him to travel to *Barangay X*<sup>21</sup> for the commission of the crime and return to *Barangay Purok* several minutes after.

In line with this, the trial court also ordered Gomez to pay AAA the following amounts: ₱75,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages plus costs.<sup>22</sup>

Aggrieved, Gomez brought the case to the CA *via* a Notice of Appeal.<sup>23</sup>

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<sup>13</sup> Id. at 127.

<sup>14</sup> Id. at 126.

<sup>15</sup> Id. at 120.

<sup>16</sup> Id. at 120-121.

<sup>17</sup> Id. at 127.

<sup>18</sup> Id. at 81.

<sup>19</sup> Id.

<sup>20</sup> Id.

<sup>21</sup> Id.

<sup>22</sup> Id. at 121.

<sup>23</sup> Id. at 113-114.

*Ruling of the CA*

The CA denied Gomez's appeal. It ruled as follows:

*First*, Gomez was not deprived of his right to due process. He filed several pleadings before the RTC, was represented by counsel during the proceedings, and even moved for reconsideration of the RTC conviction.<sup>24</sup> That the trial court did not consider the CCTV footages was in accord with the Rules on Electronic Evidence,<sup>25</sup> which requires the video evidence of events to be identified, explained, or authenticated by the person who made the recording or by some other person competent to testify on the accuracy thereof. The defense only presented Cequeña, who already admitted that he was neither the one who recorded the footage nor present during the time of its recording.<sup>26</sup>

Even if the CCTV footages are admitted in evidence, these would not cast doubt over Gomez's guilt. Notably, the CCTV footages only showed Gomez at 12:02 p.m. and then at 12:44 p.m. In other words, he was out of screen for 42 minutes.<sup>27</sup> While AAA alleged that she was raped at 11:30 a.m., it was not impossible that Gomez had first gone to *Barangay X* before proceeding to *Barangay Purok*, as supposedly shown on the CCTV footages, considering the short distance between the two *barangays*.<sup>28</sup> The CCTV footages cannot exculpate him from liability as it was not shown that it was actually physically impossible for him to be at *Barangay X* where the crime was committed.<sup>29</sup>

*Second*, the prosecution satisfactorily established the elements of the crime.<sup>30</sup> AAA testified that on September 22, 2016, Gomez had *carnal knowledge of her, against her will, by employing threat and intimidation*.<sup>31</sup> She *positively identified Gomez as the perpetrator*.<sup>32</sup>

The trial court gave more weight to AAA's consistent testimony. The RTC was in the best position to ascertain and measure the witnesses' sincerity and spontaneity because it had the occasion to observe in person their demeanor and behavior while testifying. Thus, these observations and conclusions deserve great respect and are accorded finality.<sup>33</sup>

Furthermore, the findings of Drs. Monzon and Buenviaje corroborated AAA's testimony.<sup>34</sup>

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<sup>24</sup> Id. at 123.

<sup>25</sup> A.M. No. 01-7-01-SC, approved on July 17, 2001.

<sup>26</sup> Id. at 124.

<sup>27</sup> Id. at 126.

<sup>28</sup> Id. at 127.

<sup>29</sup> Id.

<sup>30</sup> Id. at 128.

<sup>31</sup> Id.

<sup>32</sup> Id. at 129.

<sup>33</sup> Id.

<sup>34</sup> Id.

*Third*, the RTC's conviction of Gomez for Simple Rape and imposition of *reclusion perpetua* as penalty are upheld.<sup>35</sup> However, the award of moral and exemplary damages should be modified. Pursuant to *People v. Juguet*,<sup>36</sup> AAA is entitled to ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages. In addition, interest at the rate of six percent (6%) *per annum* shall accrue on the total amount of damages from the date of finality of the decision until full payment.<sup>37</sup>

Hence, Gomez filed the present Rule 45 petition.

#### *Accused's Arguments*

Gomez seeks the reversal of his conviction by insisting that the prosecution failed to overcome the presumption of innocence in his favor/to prove his guilt beyond reasonable doubt. Furthermore, he avers that the lower courts relied on the weakness of the defense and not on the strength of the prosecution's evidence.<sup>38</sup>

#### *The Court's Ruling*

The Court resolves to deny the petition for review on *certiorari* for raising mere issues of fact.

Verily, the remedy of filing a petition for review on *certiorari* is available to an accused in cases where the CA imposed a penalty of *reclusion perpetua*.<sup>39</sup> However, resort to this remedy must conform to the basic rule that a Rule 45 petition must not only raise pure questions of law<sup>40</sup> but also questions of such substance as to be of distinctly significant consequence and value.<sup>41</sup>

Foremost, the Court observes that the present petition is grounded upon arguments that take issue on the lower court's appreciation of evidence. Certainly, these are factual questions which are beyond the scope of the Court's review sought *via* Rule 45.

At any rate, even if the Court considers these questions of fact,<sup>42</sup> the petition remains unmeritorious.

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<sup>35</sup> *Id.* at 132.

<sup>36</sup> 783 Phil. 806 (2016).

<sup>37</sup> *Id.* at 131.

<sup>38</sup> *Id.* at 51.

<sup>39</sup> *Macad v. People*, 838 Phil. 102, 118 (2018).

<sup>40</sup> Section I, Rule 45, Rules of Court.

<sup>41</sup> *Kumar v. People*, G.R. No 247661, June 15, 2020.

<sup>42</sup> *Macad v. People*, *supra*.

*First*, the RTC and CA were consistent in finding that the elements of the crime of Simple Rape were established by the prosecution. In particular, AAA positively identified petitioner as her perpetrator and narrated with detail the events leading to and during the commission of the crime. The lower courts found AAA credible on account of her consistent and straightforward testimony.<sup>43</sup>

In addition, her testimony was corroborated by the testimonies of: (a) the *physician* who operated on her to repair the post-coital laceration in her hymen, which was found to be secondary to an alleged rape;<sup>44</sup> and (b) the *medico-legal officer* who, after examination, found that there was a blunt penetrating trauma to AAA's hymen, as well as blunt traumatic injuries to her labia minora and periurethral region, which had been inflicted only recently or less than 24 hours prior to examination.<sup>45</sup>

It does not appear that the lower courts overlooked, misapprehended, or misconstrued any relevant fact that would affect the outcome of the case.<sup>46</sup> Thus, their uniform factual findings are binding<sup>47</sup> and the Court sees no justifiable reason to depart therefrom.

*Second*, the lower courts properly excluded the CCTV footages from their consideration and evaluation.

To be admissible, the Rules on Electronic Evidence requires a video recording to be authenticated by the person who made the recording *or* another competent witness who can testify to its accuracy.<sup>48</sup> In the first place, the defense did not formally offer the CCTV footages in evidence.<sup>49</sup> They only presented a *barangay* administrator as a witness to give his account as to how he retrieved the CCTV footages upon the request of Gomez's wife.<sup>50</sup> However, the witness testified that he did not personally record the CCTV footage; he was also not present at the time of its recording.<sup>51</sup>

*Third*, Gomez's alibi is inconsistent and unpersuasive. Initially, he alleged that he was at his place of employment when the crime was committed. Later, he insisted that he was at *Barangay Purok*, as supposedly established by the CCTV footages.<sup>52</sup>

And even if the lower courts had considered the CCTV footages, his alleged presence at *Barangay Purok* at 12:02 p.m. and then at 12:44 p.m. did

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<sup>43</sup> Rollo, p. 129.

<sup>44</sup> *Id.* at 120.

<sup>45</sup> *Id.*

<sup>46</sup> *People v. Gomez*, 826 Phil. 561, 568 (2018).

<sup>47</sup> *People v. Lumikid*, G.R. No. 242695, June 23, 2020.

<sup>48</sup> *People v. Manansala*, G.R. No. 233104, September 2, 2020.

<sup>49</sup> *Id.* at 81.

<sup>50</sup> *Id.* at 127.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

not discount the possibility that he still had gone to *Barangay X* at about 10:30 a.m. to commit the crime. The two *barangays* are only 20 minutes apart. Thus, as the lower courts observed, it was still possible for Gomez to have committed the crime in *Barangay X* before returning to his residence in *Barangay Purok*.<sup>53</sup>

All that is left now for Gomez's defense is his bare denial. This cannot outweigh AAA's positive identification of him as her perpetrator and her consistent account of the events leading to and during the commission of the crime.<sup>54</sup>

Finally, the amounts awarded by the CA as civil indemnity, moral damages, and exemplary damages are in accord with prevailing jurisprudence.<sup>55</sup>

**WHEREFORE**, the Court **DENIES** the present petition for review on *certiorari* for lack of merit and **AFFIRMS** the Court of Appeals Decision dated January 7, 2021 in CA-G.R. CR-HC No. 13719.

**SO ORDERED.**"

By authority of the Court:

*Misael DC Batt*  
**MISAEAL DOMINGO C. BATTUNG III**  
*Division Clerk of Court* *01-26-23*

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The Presiding Judge  
REGIONAL TRIAL COURT  
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(Crim. Case No. 16-962)

<sup>53</sup> Id. at 81.

<sup>54</sup> See *People v. Nocado*, G.R. No. 240229, June 17, 2020.

<sup>55</sup> See *People v. Jugueta*, supra note 36.

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