



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated March 3, 2021 which reads as follows:

“G.R. No. 209210 (PEOPLE OF THE PHILIPPINES, plaintiff-appellee v. MARLON GICANO y BULAWITAN, accused-appellant). – This resolves the appeal¹ filed by accused-appellant Marlon Gicano y Bulawitan (Marlon) praying for the reversal of the February 5, 2013 Decision² of the Court of Appeals (CA) in CA-G.R. CR-HC No. 04539, which affirmed the January 18, 2010 Decision³ of the Regional Trial Court (RTC) of Manila, Branch 48 convicting him of rape.

Antecedents

An Information was filed against Marlon charging him of rape, committed as follows:

That in the November 10, 2008, in the City of Manila, Philippines, the said accused with lewd design and by means of force, threat and intimidation, did then and there willfully, unlawfully and knowingly commit sexual abuse against one AAA, a minor, 15 years old, by then and there intoxicating her then kissing and undressing her and thereafter forcibly inserting his penis into the vagina of said AAA and succeeded in having carnal knowledge of her, against her will and consent thereby endangering the normal growth and development of said AAA, to he[r] damage and prejudice.

Contrary to law.⁴

- over – fifteen (15) pages ...
84-A

¹ Rollo, pp. 19-20.

² Id. at 2-18; penned by Associate Justice Ramon R. Garcia, with Associate Justices Amelita G. Tolentino and Danton Q. Bueser, concurring.

³ CA rollo, pp. 15-27; rendered by Judge Silverio Q. Castillo.

⁴ Rollo, p. 3.

On December 8, 2008, Marlon pleaded not guilty to the charge. On January 13, 2009, the pre-trial was conducted. Thereafter, trial on the merits ensued.

The antecedent facts reveal that at around 10:30 in the evening of November 9, 2008, Marlon invited AAA out for a drinking spree with his friends. AAA was then fifteen years old and was working as a saleslady at a mall in Binondo, Manila. She came to know Marlon through her best friend, who is Marlon's cousin. AAA had just finished her work, and declined the invitation because she was waiting for someone to fetch her. However, Marlon insisted and assured her that they would not take long. Eventually, AAA acceded.⁵

After drinking one big bottle of Red Horse beer, AAA felt dizzy. Thus, she asked Marlon for permission to go home. However, Marlon told her to spend the night at his house. AAA refused saying her parents would get angry at her.⁶

Meanwhile, their companions left at around 1 in the morning. AAA insisted that she wanted to go home. However, Marlon urged her to just stay at his place. Feeling dizzy, inebriated and afraid of traveling home in the wee hours, AAA agreed.⁷

When AAA went to sleep, Marlon laid down beside her and talked to her. Suddenly, he caressed her whole body, undressed her and removed her underwear. He then fondled her breasts and private parts. AAA resisted and told him that she was not yet ready. She struggled and pushed him away. However, she was very dizzy and her strength was no match for him.⁸

Taking advantage of AAA's inebriated state, Marlon laid on top of her, forcibly spread her legs and inserted his penis inside her vagina. He executed a push and pull movement. All this time, AAA kept crying, shouting and cursing at him. She continued struggling, yet her resistance proved futile. She cried out in pain. She lost all her energy and blacked out.⁹

At around 7 o'clock the next morning, AAA suddenly regained consciousness. She shouted and cursed Marlon, and kept crying. She

- over -

84-A

⁵ CA *rollo*, p. 16.

⁶ Id.

⁷ Id. at 91.

⁸ Id. at 17.

⁹ Id.

told him she wanted to go home, but he prevented her from leaving. She continued pleading with him, until finally, he let her go.¹⁰

However, AAA felt afraid to go home, so instead, she went to work. Then, she left work at 12 noon. While at home, her parents noticed that she was distraught and afraid. They asked her what happened. AAA cried and related the horrid ordeal she suffered.¹¹

Thereafter, on November 11, 2008, AAA and her mother reported the incident to the National Bureau of Investigation (NBI). AAA executed a *Sinumpaang Salaysay*.¹²

The next day, AAA submitted herself for a physical examination at the Medico-Legal Division Clinic at the NBI.¹³ The examination was conducted by Dr. Reynaldo P. Romero (Dr. Romero), who noted a hymenal laceration in AAA's genitalia in the 5 o'clock position.¹⁴

After which, the NBI arrested Marlon on the same day.¹⁵

Marlon vehemently denied the charge leveled against him.¹⁶ He claimed that AAA was his girlfriend. He stated that he received love letters from her, which he had already lost. He professed that he had embraced and kissed her in the past.¹⁷ Likewise, he related that on November 10, 2008, he was at home resting when he suddenly received a call from AAA, asking him to meet her at Soriano Bar. Upon arriving, he saw her waiting for him. She told him that her mother drove her away because she refused to give her salary. They consumed six bottles of Red Horse beer while talking about AAA's problems.

After drinking, AAA insisted on staying at the room he was renting. Albeit reluctant, he agreed. When they arrived, AAA saw his roommate Lorna Matias (Lorna). AAA got angry and hurriedly left. He chased her, but she had already boarded a jeepney home. They no longer communicated after the incident. He only learned about the case against him when he was arrested by the NBI officers without a warrant.¹⁸

- over -

84-A

¹⁰ Id.

¹¹ Id. at 92.

¹² Id.

¹³ Id. at 92-93.

¹⁴ *Rollo*, p. 4.

¹⁵ *CA rollo*, p. 93.

¹⁶ Id. at 47.

¹⁷ *Rollo*, p. 4.

¹⁸ *CA rollo*, p. 47.

Lorna corroborated Marlon's testimony. She related that Marlon and his girlfriend AAA arrived at their place at around 11 or 12 o'clock in the evening of November 9, 2008. She sent AAA home at 2 o'clock in the morning, because she had to work the following day. She claimed that no unusual incident happened. She narrated that their house consists of only one room, hence there is no privacy.¹⁹

Ruling of the RTC

On January 18, 2010, the RTC²⁰ convicted Marlon of rape. The RTC noted that AAA's acts following the incident prove the veracity of her claim. She immediately related the incident to her best friend, and thereafter to her parents. Then, she and her mother immediately reported the incident to the authorities.²¹ She likewise submitted herself for a medical examination.²² In turn, the medical findings confirmed that she had a hymenal laceration.²³

The RTC likewise opined that Marlon offered AAA beer with the primordial purpose of causing her to lose consciousness, and thereby allow him consummate his evil intention of having sexual intercourse.²⁴ She was weakened during the rape because of the beers she imbibed.²⁵ Accordingly, the RTC disposed of the case as follows:

WHEREFORE, the Court finds the accused GUILTY beyond reasonable doubt for the felony charged, and in conformity with law, he is ordered to suffer prison term of reclusion perpetua, and to pay the private offended party the following, to wit:

1. Php50,000.00 as indemnity fee;
2. Php20,000.00 as moral damages; and
3. To pay the costs.

The BJMP of Manila is ordered to commit the person of the accused at the National Penitentiary without any further delay.

SO ORDERED.²⁶

Dissatisfied with the ruling, Marlon filed a Notice of Appeal²⁷ with the RTC.

- over -

84-A

¹⁹ Id.
²⁰ Id. at 15-27.
²¹ Id. at 25.
²² Id.
²³ Id.
²⁴ Id. at 26.
²⁵ Id.
²⁶ Id. at 26-27.
²⁷ Id. at 28.



Ruling of the CA

The CA²⁸ affirmed the conviction meted by the RTC. It held that AAA was a credible witness. Her answers during her direct and cross-examination were candid and unwavering.²⁹ She positively identified Marlon as the man who raped her.³⁰ Likewise, she resisted Marlon's advances by struggling and pushing him away. However, her resistance proved futile due to her weakened condition.³¹

Moreover, the CA noted that AAA's testimony was corroborated by the Medico-Legal Report, which showed that she was indeed sexually abused.³² It is unlikely for AAA and her mother to concoct a sordid tale of rape.³³ In addition, the CA ratiocinated that AAA's ability to remember the rape despite being intoxicated is not improbable.³⁴ In the same vein, the absence of bruises or hematoma on AAA's body, lack of proof of irresistible force, and AAA's nonchalant conduct after the incident, do not disprove the rape.³⁵

Furthermore, the CA rejected Marlon's denial and sweetheart defense. It observed that Marlon failed to present any evidence to prove his claim that AAA was his girlfriend.³⁶

Finally, the CA increased the award of moral damages to ₱50,000.00.³⁷

The dispositive portion of the CA ruling reads:

WHEREFORE, premises considered, the instant appeal is hereby DENIED. The Decision dated January 18, 2010 of the RTC, Branch 48, manila is AFFIRMED with MODIFICATION in that the award of moral damages is INCREASED to Fifty Thousand Pesos (Php50,000.00), in addition to the court a quo's award of civil indemnity in the amount of Fifty Thousand Pesos (Php50,000.00) in favor of private complainant AAA.

SO ORDERED.³⁸

- over -

84-A

²⁸ *Rollo*, pp. 2-18.

²⁹ *Id.* at 13.

³⁰ *Id.*

³¹ *Id.* at 15.

³² *Id.* at 13.

³³ *Id.* at 14.

³⁴ *Id.*

³⁵ *Id.* at 15.

³⁶ *Id.* at 16.

³⁷ *Id.* at 18.

³⁸ *Id.*

Aggrieved, Marlon filed a Notice of Appeal with the CA.³⁹

Issue

The main issue in this case is whether or not the prosecution proved Marlon's guilt for rape beyond reasonable doubt.

Both parties filed separate Manifestations⁴⁰ indicating that they are adopting the Briefs they submitted before the CA in lieu of their Supplemental Briefs.

Seeking exoneration from the charge, Marlon attacks AAA's testimony as unbelievable and improbable.⁴¹ He claims that it is impossible for AAA to vividly remember all the details of the alleged rape when she admitted that she felt dizzy and eventually became unconscious due to heavy intoxication.⁴²

Likewise, Marlon claims that AAA admitted that she gave in to the sexual act not because she was overpowered by his strength, but rather, by her own body. This is a clear manifestation of her consent to the intercourse.⁴³ Moreover, he points out that the rape charge is belied by the absence of any physical injuries on AAA's body. This disproves her claim that she struggled against his advances.⁴⁴ Also, her actuations after the supposed rape incident were strange and inconsistent with one who had just been ravaged.⁴⁵ She appeared unperturbed.⁴⁶ In fact, she casually dressed up and went to work.⁴⁷ Furthermore, Marlon urges that he offered a plausible version of what truly transpired, which was even corroborated by his roommate Lorna. Thus, the trial court erred in rejecting his denial and sweetheart defense.⁴⁸

Finally, Marlon questions the Joint Affidavit of Arrest executed by the NBI agents. He alleges that the trial court should not have admitted it in evidence since it was not identified by any of the affiants.⁴⁹ Accordingly, the contents of said Joint Affidavit constitute hearsay evidence.⁵⁰ Without this, there is no proof that the arresting

- over -

84-A

³⁹ Id. at 19-20.

⁴⁰ Id. at 26-27; 30-31.

⁴¹ CA *rollo*, p. 49.

⁴² Id.

⁴³ Id. at 50.

⁴⁴ Id. at 51.

⁴⁵ Id. at 50.

⁴⁶ Id.

⁴⁷ Id.

⁴⁸ Id. at 51.

⁴⁹ Id. at 52.

⁵⁰ Id. at 53.

officers complied with the requisites under Article III, Section 12 of the Constitution, and Sections 2 and 3 of R.A. No. 7438.⁵¹

On the other hand, the People, through the Office of the Solicitor General (OSG) counters that AAA was a credible witness. It rebuffs Marlon's contention that it was impossible for AAA to have remembered the details of the rape since she was dizzy.⁵² On the contrary, she was perfectly capable of recalling the events and circumstances happening around her, especially since her defilement is not something that can be easily forgotten.⁵³ Besides, she clearly related that she fell unconscious after Marlon had already ravaged her.⁵⁴ Although her testimony was not perfect in all details, it bore earmarks of truth.⁵⁵ She testified in the manner of an unrehearsed and honest testimony.⁵⁶ Added to this, being of tender years, she lacked the sophistication to fabricate a charge of rape.⁵⁷

Furthermore, the OSG contends that Marlon's defense of consensual sexual intercourse is completely unworthy of belief. AAA categorically declared all throughout her testimony that she resisted Marlon's sexual advances.⁵⁸ Her statement that she was overpowered by her body should not be misinterpreted. Being young, she lacked the facility to clearly express herself.⁵⁹ Also, she was dizzy and intoxicated when she was raped. Likewise, her statement that she was not ready, and her act of cursing at Marlon clearly negate her consent.⁶⁰ The OSG urges that AAA's deportment after the rape incident is not significant as it has nothing to do with the elements of rape.⁶¹ Added thereto, the absence of external injuries is inconsequential, as proof thereof is not an essential element of rape.⁶² Also, the OSG points out that Marlon's testimony clashes with the statement of his witness Lorna.⁶³

Finally, the OSG rebuts Marlon's claim that his constitutional rights were violated.⁶⁴ It clarifies that the provisions Marlon harps on

- over -

84-A

⁵¹ Id.
⁵² Id. at 98
⁵³ Id.
⁵⁴ Id.
⁵⁵ Id.
⁵⁶ Id.
⁵⁷ Id.
⁵⁸ CA *rollo*, p. 103
⁵⁹ Id.
⁶⁰ Id.
⁶¹ Id. at 106.
⁶² Id. at 108.
⁶³ Id. at 99.
⁶⁴ Id. at 111.

prohibit the introduction of confessions and admissions made during a custodial investigation. In this case, Marlon did not make any confession or admission during his custodial investigation.⁶⁵

Ruling of the Court

The appeal is dismissed.

Marlon is guilty beyond reasonable doubt of rape.

Article 266-A of the Revised Penal Code (RPC), as amended by R.A. No. 8353,⁶⁶ defines the crime of rape as follows:

Art. 266-A. Rape, When and How Committed. – Rape is committed –

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a. Through force, threat or intimidation;

b. When the offended party is deprived of reason or is otherwise unconscious;

c. By means of fraudulent machination or grave abuse of authority;

d. When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present;⁶⁷

To sustain a conviction for rape, the prosecution must prove the following elements beyond reasonable doubt, namely, (i) that the accused had carnal knowledge of the victim; and (ii) 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.⁶⁸

Perusing over the records of the case, the linchpin of AAA's testimony was that Marlon inserted his penis inside her vagina despite her struggles and protestations. During the trial, AAA was intensely crying while she narrated the sordid details of the sexual abuse she

⁶⁵ Id. at 112.

⁶⁶ "The Anti-Rape Law of 1997."

⁶⁷ REVISED PENAL CODE, Article 266-A.

⁶⁸ *People v. Esteban*, 735 Phil. 663, 670 (2014).

suffered in his hands. She related how she told him that she was not yet ready, continuously struggled and pushed him away, and thereafter cried and cursed at him while he succeeded in his lewd and brutish objective by pinning her down. Her continuous act of crying and cursing at Marlon while he satisfied his lust is a clear sign of her objection.

Time and again, jurisprudence has held that in view of the peculiar nature of rape cases, a conviction often rests solely on the basis of the offended party's testimony as long as it is credible, natural, convincing, and consistent with human nature and the normal course of things.⁶⁹ Notably, the fact of rape and the identity of the perpetrator may be proven through the lone uncorroborated testimony of the victim, which is the most important proof of the commission of the crime.⁷⁰ Added to this, "[t]he revelation of an innocent child whose chastity was abused deserves full credence."⁷¹

In the case at bar, both the trial court and the CA observed that AAA's testimony was credible and convincing. She remained steadfast in her accusation and did not waver as she recounted the harrowing ordeal she suffered. Moreover, the trial court even noted that AAA was crying during her direct examination.⁷² Also, her trauma from the harrowing ordeal was evident from the fact that she received psychiatric treatment to help her get over the embarrassment and agony she suffered.⁷³

Furthermore, Marlon failed to prove any ill-motive on AAA's part to file a trumped up charge against him. Rather, it is clear that she was spurred by a desire to avenge the injustice she suffered.

Marlon's defenses do not inspire belief.

In a futile attempt to overturn his conviction, Marlon claims that he and AAA are lovers. As proof thereof, he avers that AAA failed to prove that she resisted his advances. He likewise contends that AAA had no bruises or hematoma on her body. Moreover, her actuations following the supposed incident are atypical of a person who had just been raped.

- over -

84-A

⁶⁹ *People v. Ramos*, G.R. No. 210435, August 15, 2018, citing *People v. Baraoil*, 690 Phil. 368, 375 (2012); *People v. Magayon*, 640 Phil. 121, 136 (2010); *People v. Corpuz*, 517 Phil. 622, 632-633 (2006).

⁷⁰ *People v. Agudo*, 810 Phil. 918, 930 (2017), citing *People v. Barberan*, 788 Phil. 103, 113 (2016) and *People v. Amistoso*, 716 Phil. 825 (2013).

⁷¹ *People v. Udtohan*, 815 Phil. 449, 463 (2017), citing *People v. Arcilla*, 808 Phil. 889 (2014).

⁷² CA rollo, p. 25.

⁷³ Id. at 96.

First, Marlon failed to prove that he and AAA are lovers.

Essentially, when the accused asserts the sweetheart defense, the Court requires compelling evidence that the accused and the victim were in fact lovers, and that the victim consented to the alleged sexual relations. The second is as important as the first, because love is not a license for lust.⁷⁴ Similarly, evidence of the relationship is required, such as tokens, love letters, mementos, photographs, and the like.⁷⁵

Marlon failed to present an iota of evidence proving the purported amorous relationship. He claimed that AAA gave him two love letters, yet conveniently recanted saying that he had lost said letters. He further related that he had embraced and kissed AAA in the past. However, his statement was uncorroborated.

Although Lorna confirmed Marlon's claim that AAA was his girlfriend, Lorna's testimony is unworthy of belief. Conspicuously, she and Marlon clashed on important details pertaining to Marlon's and AAA's supposed relationship as well as the rape incident. Particularly, their statements conflicted on the date when the rape happened; the time when Marlon and AAA arrived in their house; the time when AAA left; the reason why AAA left; the frequency at which AAA visited their house; and AAA's knowledge (or lack thereof) of Marlon's living arrangement with Lorna.

Interestingly, Marlon claimed that he and AAA went to his house on November 10, 2008, at around 11:00 in the evening. When AAA saw Lorna inside the room, she got angry and immediately left.⁷⁶ On the other hand, Lorna related that Marlon and AAA arrived at their house on November 9, 2008. Allegedly, AAA stayed, and thereafter left at 2:00 o'clock in the morning.⁷⁷ Furthermore, Lorna stated that AAA frequently visited their place, and was aware of her living situation with Marlon.⁷⁸ These inconsistent accounts certainly render Marlon and Lorna's testimonies suspect.

Even more strange, Lorna could not even mention the address of their house, despite claiming to live there.⁷⁹ To make things worse, Marlon's lies are further exposed by his conflicting defenses. During the trial, he related that AAA left after seeing Lorna at his room.

- over -

84-A

⁷⁴ *People v. Olesco*, 663 Phil. 15, 16 (2011).

⁷⁵ *Id.* at 20-21, citing *People v. Baldo*, 599 Phil. 382 (2009).

⁷⁶ *CA rollo*, p. 22.

⁷⁷ *Id.* at 21.

⁷⁸ *Id.*

⁷⁹ *Id.* at 100-101.

However, on appeal, he claimed that AAA consented to the sexual act.⁸⁰

Second, AAA's resistance was established.

It bears noting that the force used in the commission of rape need not be absolutely irresistible.⁸¹ Indeed, "tenacious resistance against rape is not required; neither is a determined or a persistent physical struggle on the part of the victim necessary."⁸² After all, resistance is not an element of rape.⁸³ Accordingly, a rape victim is not obliged to prove that she did all within her power to resist the force employed against her.⁸⁴ Likewise, as contemplated by the law, force in the commission of rape depends on the age, size and strength of the parties.⁸⁵ In the same vein, it is assessed from the perception and judgment of the vulnerable victim.⁸⁶ What remains essential is that the force employed was sufficient to enable the offender to consummate his lewd purpose.⁸⁷

There is no doubt that Marlon easily consummated his bestial desire by subduing AAA. AAA testified that she struggled to repel Marlon's advances but was too weak to ward him off. She fought and pushed him, but felt defenseless and weak against his strong body.⁸⁸ Added to this, AAA was intoxicated and dizzy. Marlon lured her by inviting her for a drink, and thereafter, took advantage of her weakened and intoxicated state, and insisted that she sleep at his place, instead of helping her get home.

Third, the absence of abrasions and contusions on AAA's body does not disprove rape.

It must be noted that the absence of bodily injury does not negate the commission of rape.⁸⁹ As the Court emphasized in the case of *People v. Zafra*,⁹⁰ the "absence of external signs of physical injuries does not negate rape."⁹¹ Neither does it make the victim a willing

- over -

84-A

⁸⁰ Id. at 50.

⁸¹ *People v. Barangan*, 560 Phil. 811, 836 (2007), citing *People v. Villaflores*, 25 Phil. 776, 784-785 (1989).

⁸² *People v. Ramos*, 743 Phil. 344, 364 (2014), citing *People v. Gayeta*, 594 Phil. 636, 647 (2008).

⁸³ *People v. Japson*, 743 Phil. 495, 503-504 (2014), citing *People v. Durano*, 548 Phil. 383, 397 (2007).

⁸⁴ Id., citing *People v. Rivera*, 717 Phil. 380, 395 (2013).

⁸⁵ *People v. Ramos*, supra, citing *People v. Gayeta*, supra.

⁸⁶ *People v. Lucena*, 728 Phil. 147, 161 (2014).

⁸⁷ *People v. Barangan*, supra note 81

⁸⁸ CA rollo, pp. 73-74.

⁸⁹ *People v. Cabungan*, 702 Phil. 177, 187-188 (2013).

⁹⁰ 712 Phil. 559 (2013).

⁹¹ Id. at 573.

partner in the sexual intercourse. What matters is that the accused accomplished his lewd objective amidst the victim's struggles and protestations.

Fourth, AAA's behavior following the rape incident does not affect her credibility.

AAA's act of going to work the next morning after the rape incident should not be taken against her. It is settled that although the conduct of the victim immediately following the alleged sexual assault is of utmost importance in establishing the truth or falsity of the charge, it is not correct to expect a typical reaction or norm of behavior from rape victims.⁹² The workings of the human mind when placed under emotional stress is unpredictable.⁹³ Thus, victims may not be expected to act with reason or conform to the usual expectation of mankind.⁹⁴

This rings more truth considering that AAA was only fifteen years old during the rape. Certainly, she cannot be expected to act in a rational and intelligent manner. Likewise, she explained that she decided to go to work after the incident because she was scared of going home. However, upon gaining courage, she immediately related the incident to her parents, and thereafter reported the rape to the NBI and submitted herself for a medical examination.

***The Affidavit of Arrest is Not
Essential to the Conviction for
Rape***

As a last-ditch effort to save himself, Marlon questions the trial court's admission of the NBI's Affidavit of Arrest. He claims that none of the affiants testified in court, hence, all the statements contained therein are hearsay evidence.⁹⁵

- over -

84-A

⁹² Id. at 572, citing *People v. Saludo*, 662 Phil. 738, 758-759 (2011).

⁹³ *People v. Paras*, 735 Phil. 193, 202 (2014), citing *Sison v. People*, 682 Phil. 608, 625 (2012).

⁹⁴ *People v. Zafra*, supra, citing *People v. Saludo*, supra.

⁹⁵ CA rollo, pp. 52-53.

Article III, Section 12 of the 1987 Constitution,⁹⁶ as well as Sections 2 and 3 of R.A. No. 7438⁹⁷ which Marlon staunchly harp on,

⁹⁶ **ARTICLE III. BILL OF RIGHTS**

Section 12.

1. Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

2. No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited.

3. Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him.

4. The law shall provide for penal and civil sanctions for violations of this Section as well as compensation to the rehabilitation of victims of torture or similar practices, and their families.

⁹⁷ **Republic Act No. 7438. AN ACT DEFINING CERTAIN RIGHTS OF PERSON ARRESTED, DETAINED OR UNDER CUSTODIAL INVESTIGATION AS WELL AS THE DUTIES OF THE ARRESTING, DETAINING AND INVESTIGATING OFFICERS, AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF**

Section 2. *Rights of Persons Arrested, Detained or Under Custodial Investigation; Duties of Public Officers.*—

(a) Any person arrested detained or under custodial investigation shall at all times be assisted by counsel.

(b) Any public officer or employee, or anyone acting under his order or his place, who arrests, detains or investigates any person for the commission of an offense shall inform the latter, in a language known to and understood by him, of his rights to remain silent and to have competent and independent counsel, preferably of his own choice, who shall at all times be allowed to confer privately with the person arrested, detained or under custodial investigation. If such person cannot afford the services of his own counsel, he must be provided with a competent and independent counsel by the investigating officer. *lawphiY*

(c) The custodial investigation report shall be reduced to writing by the investigating officer, provided that before such report is signed, or thumbmarked if the person arrested or detained does not know how to read and write, it shall be read and adequately explained to him by his counsel or by the assisting counsel provided by the investigating officer in the language or dialect known to such arrested or detained person, otherwise, such investigation report shall be null and void and of no effect whatsoever.

(d) Any extrajudicial confession made by a person arrested, detained or under custodial investigation shall be in writing and signed by such person in the presence of his counsel or in the latter's absence, upon a valid waiver, and in the presence of any of the parents, elder brothers and sisters, his spouse, the municipal mayor, the municipal judge, district school supervisor, or priest or minister of the gospel as chosen by him; otherwise, such extrajudicial confession shall be inadmissible as evidence in any proceeding.

(e) Any waiver by a person arrested or detained under the provisions of Article 125 of the Revised Penal Code, or under custodial investigation, shall be in writing and signed by such person in the presence of his counsel; otherwise the waiver shall be null and void and of no effect.

(f) Any person arrested or detained or under custodial investigation shall be allowed visits by or conferences with any member of his immediate family, or any medical doctor or priest or religious minister chosen by him or by any member of his immediate family or by his counsel, or by any national non-governmental organization duly accredited by the Commission on Human Rights or by any international non-governmental organization duly accredited by the Office of the President. The person's "immediate family" shall include his or her spouse, fiancé or fiancée, parent or child, brother or sister, grandparent or grandchild, uncle or aunt, nephew or niece, and guardian or ward.

As used in this Act, "custodial investigation" shall include the practice of issuing an "invitation" to a person who is investigated in connection with an offense he is suspected to have committed, without prejudice to the liability of the "inviting" officer for any violation of law.

Section 3. *Assisting Counsel.*— Assisting counsel is any lawyer, except those directly affected by the case, those charged with conducting preliminary investigation or those charged with the prosecution of crimes.

The assisting counsel other than the government lawyers shall be entitled to the following

pertain to the rights of persons arrested or detained during a custodial investigation. Plainly, the provisions ensure that the rights of the accused are respected. Likewise, they seek to prevent the illegal extraction of extrajudicial confessions from the accused.

Strangely, Marlon did not make any confession or admission during his custodial investigation. Neither did the prosecution present any extrajudicial confession extracted from him as evidence of his guilt. In fact, no statement was taken from him during his detention that was subsequently used as evidence against him.⁹⁸ Rather, his guilt for rape was established beyond reasonable doubt through AAA's credible testimony. Hence, the failure of the arresting officers to testify in court regarding the contents of the Affidavit of Arrest have no bearing on his conviction.

The Proper Penalty and Damages

Under Article 266-B of the RPC, as amended by R.A. No. 8353, the crime of simple rape is punishable with *reclusion perpetua*.

In addition, pursuant to *People v. Jugueta*,⁹⁹ the victim of simple rape shall be entitled to an award of civil indemnity, moral damages and exemplary damages in the amount of ₱75,000.00 each for every count of rape.¹⁰⁰ The total amount due shall be subject to a legal interest of six percent (6%) *per annum* from the finality of the Court's Resolution until full payment.

Accordingly, the Court increases the award of civil indemnity and moral damages to ₱75,000.00 each. In addition, the Court likewise imposes exemplary damages of ₱75,000.00.

- over -

84-A

fees;

(a) The amount of One hundred fifty pesos (P150.00) if the suspected person is chargeable with light felonies; *lawphil@alf*

(b) The amount of Two hundred fifty pesos (P250.00) if the suspected person is chargeable with less grave or grave felonies;

(c) The amount of Three hundred fifty pesos (P350.00) if the suspected person is chargeable with a capital offense.

The fee for the assisting counsel shall be paid by the city or municipality where the custodial investigation is conducted, provided that if the municipality of city cannot pay such fee, the province comprising such municipality or city shall pay the fee: Provided, That the Municipal or City Treasurer must certify that no funds are available to pay the fees of assisting counsel before the province pays said fees.

In the absence of any lawyer, no custodial investigation shall be conducted and the suspected person can only be detained by the investigating officer in accordance with the provisions of Article 125 of the Revised Penal Code.

⁹⁸ CA rollo, p. 111.

⁹⁹ *People v. Jugueta*, 783 Phil. 806 (2016).

¹⁰⁰ Id.

WHEREFORE, premises considered, the instant appeal is hereby **DISMISSED for lack of merit**. The February 5, 2013 Decision of the Court of Appeals in CA-G.R. CR-HC No. 04539 is **AFFIRMED with modification**. Accused-appellant Marlon Gicano y Bulawitan is held **GUILTY** of rape, and is hereby sentenced to *reclusion perpetua*. He is further **ORDERED to PAY** the victim AAA (i) ₱75,000.00 as civil indemnity; (ii) ₱75,000.00 as moral damages; and (iii) ₱75,000.00 as exemplary damages. The total amount due shall earn a legal interest of six percent (6%) *per annum* from the date of this Resolution until full satisfaction.

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court
9630

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
84-A

The Solicitor General
134 Amorsolo Street, Legaspi Village
1229 Makati City

Court of Appeals (x)
Manila
(CA-G.R. CR HC No. 04539)

The Hon. Presiding Judge
Regional Trial Court, Branch 48
1000 Manila
(Crim. Case No. 08-265199)

Public Information Office (x)
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Supreme Court
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No. 12-7-1-SC)

PUBLIC ATTORNEY'S OFFICE
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Supreme Court

Mr. Marlon B. Gicano
Accused-Appellant
c/o The Director General
Bureau of Corrections
1770 Muntinlupa City

Judgment Division (x)
Supreme Court

The Director General
Bureau of Corrections
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