

## THIRD DIVISION

[ G.R. No. 212562, October 12, 2016 ]

**AVELINO ANGELES Y OLANO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.**

### DECISION

**PEREZ, J.:**

On appeal by *certiorari* is the February 28, 2014 Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. CR No. 35394 affirming the July 24, 2012 Order<sup>[2]</sup> of the Regional Trial Court (RTC), Branch 15, Naic Cavite, which in turn affirmed the November 28, 2011 Decision<sup>[3]</sup> of the 1<sup>st</sup> Municipal Circuit Trial Court (MCTC) in Maragondon, Cavite, in Criminal Case No. T-07-023, finding accused-appellant Avelino Angeles y Olano guilty beyond reasonable doubt of Acts of Lasciviousness penalized under Article 336 of the Revised Penal Code.

In an Information<sup>[4]</sup> dated June 1, 2007, the Cavite Provincial Prosecutor's Office charged accused-appellant with the crime of Acts of Lasciviousness. The accusatory portion of the Information reads:

"That on or about the 31<sup>st</sup> day of May 2007, in the Municipality of Ternate, Province of Cavite, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, actuated by lust, did, then and there, willfully, unlawfully and feloniously commit acts of lasciviousness upon one **JACQUELINE CRUZ y RIAZ**, by lying on top of her and sucking her breast, against her will and consent, to her damage and prejudice.

**CONTRARY TO LAW."**

Upon being arraigned, accused-appellant entered a plea of NOT GUILTY to the crime charged.<sup>[5]</sup> At the pre-trial of the cases, the following stipulations were admitted by the court: (1) the identity of accused-appellant as the same person charged in the instant case; and (2) the jurisdiction of the court over his person and over the subject matter of the case.<sup>[6]</sup> Trial on the merits ensued thereafter.

### The Facts

The private complainant's version of the facts as summarized by the CA, is as follows:

On May 31, 2007, Jacqueline and her housemaid, Sheryl, came from a 'videoke session' and got home at around 11 o'clock in the evening. After taking a bath, Jacqueline went to bed, with her body covered only with a bath towel.<sup>[7]</sup> She was later on awakened when she felt something heavy

on top of her.<sup>[8]</sup> She also felt somebody licking and sucking her breasts; and when she opened her eyes, she saw accused-appellant lying on top of her.<sup>[9]</sup> She immediately pushed and kicked accused-appellant as she tried to get out of the bed as fast as she could. She exclaimed "*Putang ina mo ka, hayop ka, paano ka nakapasok dito!*"<sup>[10]</sup> She ran outside while accused-appellant followed her repeatedly saying "*Mare, pasensiya na, pasensiya na, mali ako ng inakala sa iyo.*"<sup>[11]</sup> Jacqueline saw Sheryl outside and asked her how accused-appellant was able to enter the house. Sheryl claimed that she did not know how accused-appellant managed to enter the house. Immediately thereafter, Jacqueline and Sheryl went to the PNP station in Ternate, Cavite to report the incident and to file a complaint against accused-appellant. A few hours later, accused-appellant was arrested.

On cross-examination, Jacqueline revealed that prior to the incident or in the afternoon of May 31, 2007, at around 2 o'clock in the afternoon, she and her friend Zoray, along with Sheryl, went to accused-appellant's "*kubo*" for a karaoke session. They were singing and drinking when accused-appellant joined them at around 7 o'clock in the evening. When accused-appellant was about to leave, Jacqueline requested him to stay longer, so the singing and drinking continued on. It was around 10 o'clock in the evening when Jacqueline and her companions headed home.

On the other hand, accused-appellant's version of the facts is as follows:

Accused-appellant and Jacqueline both stood as godparents of Sheryl's child and from then on, they remained good friends. Accused appellant claims that in the early evening of May 31, 2007, he went to the *kubo* because someone told him that his *kumareng* Jack was waiting for him. When he arrived, the people were already dancing and singing. He was sitting in front of Jacqueline before he transferred beside her upon her request. Jacqueline was so drunk, she <sup>[12]</sup> Accused-appellant claimed that after he answered the call of nature, Jacqueline led him behind a mango tree. It was there when she pulled up her blouse and pulled accused-appellant's head towards her breasts. Accused-appellant admitted to sucking her breasts.<sup>[13]</sup> When they returned to the *kubo*, Jacqueline fell asleep on accused-appellant's lap. According to accused-appellant, Jacqueline wanted him to accompany her home but he opted to stay in the *kubo* to clean up.<sup>[14]</sup>

Maintaining that an invitation was extended to him, accused-appellant admitted that he proceeded to Jacqueline's house after cleaning up.<sup>[15]</sup> According to him, the gate was unlocked and the main door was left open.<sup>[16]</sup> He entered and found Jacqueline and Sheryl lying on the bed. When Sheryl left the room, accused-appellant laid down beside Jacqueline but vehemently denied mounting her and sucking her breasts.<sup>[17]</sup> When Jacqueline was awakened, she pushed accused-appellant away demanding to know how he was able to enter the room.<sup>[18]</sup> She then left the room and proceeded to the kitchen while continuously berating accused-appellant. "*Mare, pasens'ya ka na't nabigyan ko ng masamang kahulugan iyong mga pinaggagawa mo sa akin*" was all that accused-appellant could say.<sup>[19]</sup>

Ismael T. Olano testified that on the night of the incident, he saw Jacqueline drinking and flirting with accused-appellant. Olano testified that Jacqueline took off her bra while dancing;<sup>[20]</sup> that he heard Jacqueline ask accused-appellant if he could make her happy;<sup>[21]</sup> that he saw Jacqueline pull accused-appellant's head towards her breasts;<sup>[22]</sup> and that before Jacqueline left, she told accused-appellant "*pare sumunod ka ha.*"<sup>[23]</sup>

### **Ruling of the Municipal Circuit Trial Court**

On November 28, 2011, the MCTC rendered a decision finding accused-appellant guilty of the crime charged. The dispositive portion of the decision reads:

"WHEREFORE, premises considered, this Court finds the accused AVELINO ANGELES y OLANO @ 'ANDY', GUILTY beyond reasonable doubt of acts of lasciviousness penalized under Article 336 of the Revised Penal code and is sentenced to suffer to indeterminate prison [term from] six (6) months arresto mayor as minimum to four (4) years and two (2) months prision correccional as maximum.

Accused is ordered to pay the offended party P25,000.00 as moral damages and P20,000.00 as civil indemnity.

SO ORDERED."<sup>[24]</sup>

### **Ruling of the Regional Trial Court**

Aggrieved, petitioner interposed an appeal to the RTC, assailing the MCTC's decision. Affirming the assailed decision, the RTC ruled that the previous flirting incidents cannot exonerate accused-appellant. The dispositive portion of its order reads:

"**WHEREFORE**, based on the foregoing, the instant appeal is hereby **DENIED** for lack of merit.

**SO ORDERED.**"<sup>[25]</sup>

### **Ruling of the Court of Appeals**

Seeking a reversal of the conviction, petitioner filed a Petition for Review before the CA. Upholding the conviction, the appellate court held that petitioner's denial cannot prevail over the positive and categorical testimony of the private complainant. The dispositive portion of the decision reads:

"**WHEREFORE**, premises considered, the instant *Petition for Review* is **DISMISSED**. The assailed order dated July 24, 2012 of the Regional Trial Court of Naic, Cavite, Branch 15 is **AFFIRMED**.

**SO ORDERED.**"<sup>[26]</sup>

### **Our Ruling**

In a Petition for Review on *Certiorari*<sup>[27]</sup> under Rule 45, petitioner now comes before this Court seeking a reversal of the CA decision affirming the conviction. After a thorough review of the facts and evidence on record, We rule for accused-appellant's acquittal as the degree of proof required in criminal cases has not been met.

### ***Acts of Lasciviousness***

The crime Acts of Lasciviousness is punished under Article 336 of the Revised Penal Code, *viz*:

Art. 336. *Acts of lasciviousness.* Any person who shall commit any act of lasciviousness upon other persons of either sex, under any of the circumstances mentioned in the preceding article, shall be punished by *prision correccional*.

To secure a conviction, the confluence of the following elements must be established by the prosecution beyond reasonable doubt: (1) that the offender commits any act of lasciviousness or lewdness; and (2) that it is done under any of the following circumstances: (a) by using force or intimidation; (b) when the offended woman is deprived of reason or otherwise unconscious; or (c) when the offended party is under twelve (12) years of age.<sup>[28]</sup>

The first element-that accused-appellant committed an act characterized by lewdness-was not proven beyond reasonable doubt. Accused-appellant conceded that he entered the purported victim's room and down beside her, but he vehemently denies mounting her and sucking her breasts. On the other hand, Jacqueline alleged that accused-appellant mounted her and sucked her breasts while she was asleep. In essence, the testimony of the purported victim is pitted against the the testimony of the accused-appellant. The Court is faced with the challenge of deciding which of the two opposing testimonies should hold more weight. The Equipose Rule thus comes into play. Under the said rule, "where the evidence on an issue of fact is in equipose, or there is doubt on which side the evidence preponderates, the party having the burden of proof loses."<sup>[29]</sup> Considering that nothing is more settled in criminal law than the rule that the prosecution has the burden of proof to establish the guilt of the accused beyond reasonable doubt.<sup>[30]</sup> We hold that in the case at bar, the scales of justice should tip in favor of accused-appellant.

This Court is not unaware of the settled rule that "the lone uncorroborated testimony of the offended victim, so long as the testimony is clear, positive, and probable, may prove the crime as charged."<sup>[31]</sup> It should be noted however, that the establishment of such jurisprudential rule is attributed to the fact that there are usually only two witnesses in rape cases; thus, if courts do not give due weight and credence to uncorroborated lone testimonies, convictions for rape cases would be next to impossible. However, We rule that such holding may not automatically be applied in the case at bar as there was another person - Sheryl Alvarez - who could have shed some light on the incident.

### ***On the Admissibility of the Belatedly Executed Affidavit***

Sheryl A. Alvarez (Sheryl), the purported victim's housemaid, executed a Sinumpaang Salaysay dated June 1, 2007, to wit:<sup>[32]</sup>

"xxxx

T: *Bakit ka naririto sa himpilan ng pulisya ng Ternate at nagbibigay ng salaysay?*

Sagot:*Dahil tetestigo po ako.*

T: *Patungkol saan naman ang iyong ibig testiguhan?*

Sagot:*Tungkol po sa pagpasok ni Pareng Andy Angeles sa bahay ni ate Jaq."*

xxxx

T: *Maari mo bang isalaysay sa maikling at kumpletong pangungusap ang mga pangyayari sa nabanggit na oras at petsa?*

Sagot:*Mga bandang alas 11:00 po ng gabi habang nanonood po aka ng t.v. sa loob ng kubo sa tabi ng buhay ay tinawag po aka ni ate Jaq papunta sa loob ng kuwarto niya para kausapin po si kuya Boggie na asawa ni ate Jaq sa telepono. Tapos po pinahintay pa po ako ni ate sa kuwarto niya baka daw tumawag pa [ulit] si kuya Boggie sa telepono. Sa paghihintay po namin pareho na po kami nakatulog ni ate Jaq sa kama niya. Pagkatapos po ay nagising na lang po ako kasi may kumalabit sa akin sa kaliwang braso. Nakilala ko po siya ay si kuya Andy Angeles. Tinanong ko siya kung ano ang ginagawa niya sa loob ng bahay at paano siya nakapasok. Sinabi niya po sa akin na gumawa daw po siya ng paraan para makapasok sa loob ng bahay at sinabi po niya sa akin na nagpapakita daw ng motibo si ate Jaq sa kanya. Ang sabi ko po ay kung gusto niyang makausap si ate Jaq ay labas ako dyan, bahala sila mag usap na dalawa. Tapos po [inulit-ulit] ko kay kuya Andy na wala po akong alam sa pagpasok niya sa loob ng bahay ni ate Jaq at lumabas na po ako ng kuwarto. Pagkatapos po ay narinig ko po na nagkakagulo po sila sa kuwarto. Tapos po ay pumunta na kami ni ate Jaq sa police Station sakay sa kotse ni ate Jaq para mag reklamo.*

xxxx"

The prosecution intended to present Alvarez as a hostile witness,<sup>[33]</sup> but failed to do so. Curiously, Alvarez executed another Affidavit dated June 4, 2014, but this time, to support accused-appellant's Petition filed before this Court.<sup>[34]</sup> The second Sinumpaang Salaysay reads:

*"Ako, si Sheryl Alvarez, may sapat na gulang, Pilipino, may asawa at naninirahan sa Mindoro Oriental, matapos na makapanumpa nang naaayon sa batas ay nagsasalaysay ng mga sumusunod:*

xxxx

*6. Na palubog na ang araw ng dumating si Avelino Angeles at ng dumating siya ay tinawag siya ni Jacqueline Cruz na umupo sa tabi niya.*