



Republic of the Philippines
Supreme Court
Manila

...COURT OF THE PHILIPPINES
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AUG 16 2017
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FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
 Plaintiff-Appellee,

G.R. No. 217982

Present:

- versus -

SERENO, *CJ.*,
 Chairperson,
 LEONARDO-DE CASTRO,
 DEL CASTILLO,*
 PERLAS-BERNABE, and
 CAGUIOA, *JJ.*

ROLLY DIZON y
TAGULAYLAY,
 Accused-Appellant.

Promulgated:
JUL 10 2017

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RESOLUTION

LEONARDO-DE CASTRO, J.:

Accused-appellant Rolly Dizon y Tagulaylay assails his conviction for one count of statutory rape under Article 266-A, paragraph 1(d) and one count of rape through sexual assault under Article 266-A, paragraph 2 of the Revised Penal Code, as amended. The Regional Trial Court (RTC) of Tagum City, Davao Del Norte, Branch 2, adjudged Dizon guilty of said crimes in a Judgment¹ dated April 10, 2012 in Criminal Case Nos. 15924 and 15925. The Court of Appeals affirmed the conviction in a Decision² dated November 14, 2014 in CA-G.R. CR HC No. 01020-MIN.

Dizon was charged with rape through sexual assault and statutory rape in two separate informations, respectively docketed as Criminal Case Nos. 15924 and 15925 before the RTC of Tagum City, Davao Del Norte. Said crimes were alleged to have been committed against AAA³ as follows:

* On official leave.

¹ CA rollo, pp. 43-49; penned by Judge Ma. Susana T. Baua.

² Rollo, pp. 3-9; penned by Associate Justice Henri Jean Paul B. Inting with Associate Justices Edgardo A. Camello and Pablito A. Perez concurring.

³ The real name of the private complainant, those of her immediate family members, and the other minor individuals who are involved in this case are withheld per Republic Act No. 7610 (Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act), Republic Act No. 9262 (Anti-Violence Against Women and Their Children Act of 2004), and A.M. No. 04-10-11-SC effective 15 November 2004 (Rule on Violence Against Women and Their Children). See *People v. Cabalquinto*, 533 Phil. 703 (2006).

Thus, the private offended party is referred to as AAA. The initials BBB refers to the younger sister of the private offended party, whereas CCC refers to the private offended party's 12-year-old neighbor who testified for the prosecution. The initials DDD refers to another

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Criminal Case No. 15924

That on or about January 19, 2008, in the City of Tagum, Province of Davao del Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously commit rape by sexual assault by means of inserting his finger into the anus of [AAA], eight-year-old minor, against her will.⁴

Criminal Case No. 15925

That on or about January 19, 2008, in the City of Tagum, Province of Davao del Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of [AAA], an eight (8)-year-old minor, against her will.⁵

Upon arraignment, Dizon pleaded not guilty to the charges.⁶

The Court of Appeals succinctly summarized the pertinent factual allegations of the prosecution as follows:

Version of the Prosecution

On January 19, 2008, while 8-year-old AAA was playing with her 6-year-old sister BBB near the billiard hall owned by their neighbor, accused-appellant Rolly Dizon y Tagulaylay (Dizon) called both kids. Dizon then instructed BBB to look for a neighbor named DDD; thus BBB left AAA with Dizon. After which, Dizon brought AAA to a grassy area where he forcibly laid her down, removed her skirt and underwear, and took off his short pants and underwear. Dizon then thrust his penis to AAA's vagina causing her pain until she started to bleed. Dizon then used the skirt of AAA to wipe the blood. Dizon also inserted his finger inside the anus of AAA. He told AAA not to tell anyone otherwise he will send her to jail.

All of these acts of Dizon were witnessed by BBB, who hid behind the banana plants.

A neighbor, who saw AAA bleeding, alerted AAA's family. They then brought AAA to a hospital where a medical report disclosed that AAA suffered "perinal (sic) laceration secondary to sexual abuse; disclosure of sexual abuse, genital findings, conclusive of sexual abuse." AAA had to undergo wound exploration and repair of perinal (sic) laceration as a result of the act.

neighbor of the private offended party. The initials XXX denotes the place where the crimes were committed.

⁴ Records, p. 3.

⁵ Id. at 11.

⁶ Id. at 28.

During the police investigation, AAA pointed to Dizon as the culprit.⁷ (Citations omitted.)

The prosecution likewise presented the following evidence: (1) the Certificate of Live Birth⁸ of AAA; (2) the Medico-Legal Certificate⁹ issued by Dr. Aileen D. Marcilla of the Davao Regional Hospital; (3) the blood-stained skirt¹⁰ of AAA; and (4) the receipt¹¹ of medical expenses of AAA.

The appellate court outlined the defense's factual allegations in this wise:

Version of the Defense

At around 3:00 o'clock of the afternoon of January 19, 2008, Dizon's live-in partner sent him a text message telling him to follow her at her mother's house at [XXX], Tagum City since she had no money to pay for her fare back home. After securing the money, Dizon went to his live-in partner. Both stayed at the house of his live-in partner's mother. While there, a neighbor informed them of the alleged rape incident. Later on, three (3) policemen in uniform and a barangay tanod arrived. They brought Dizon and eventually detained him at the police station.

On January 21, 2008, the police officers brought Dizon to the Davao Regional Hospital for the identification of AAA. During the first confrontation, AAA shook her head – indicating that Dizon was not the author of the alleged rape. After a while, the police officers again made Dizon face AAA; this time AAA nodded when asked if Dizon was the perpetrator.¹² (Citations omitted.)

The defense did not offer any documentary evidence.

In its **Judgment dated April 10, 2012**, the RTC found Dizon guilty of the crimes charged. The trial court decreed:

WHEREFORE, premises considered, accused **ROLLY DIZON y Tagulaylay** is hereby found **GUILTY** as charged by proof beyond reasonable doubt and is hereby sentenced:

1) For Rape under paragraph 1(d), Article 266-A, to suffer the penalty of **Reclusion Perpetua**; and

2) For Rape through Sexual Assault under paragraph 2, Article 266-A, to suffer the indeterminate penalty of **twelve (12) years, ten (10) months and twenty-one (21) days of reclusion temporal, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of reclusion temporal, as maximum.**

⁷ Rollo, pp. 4-5.
⁸ Records, p. 112; Exhibit A.
⁹ Id. at 113; Exhibit B.
¹⁰ Exhibit C.
¹¹ Records, p. 114; Exhibit D.
¹² Rollo, p. 6.

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3) Said accused is likewise ordered to pay [AAA] the sum of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱50,000.00 as exemplary damages.¹³

The RTC gave more credence to the testimonial evidence adduced by the prosecution and disregarded Dizon's uncorroborated defenses of denial and alibi.

The trial court found straightforward, convincing, and unequivocal the testimonies of AAA, BBB, and CCC that Dizon sexually violated AAA in the afternoon of January 19, 2008. The RTC held that the prosecution established that AAA was only eight years old at the time of the incident. Not only did Dizon penetrate her through her female organ but he also did so with the use of his finger through her anal orifice.

Anent the legality of Dizon's arrest without a warrant, the trial court agreed with his protestations that the same was irregular given that he was not in the act of doing anything criminal when the police took him into custody. However, the trial court ruled that Dizon can no longer invoke this issue as he failed to raise the same before he was arraigned.

On appeal,¹⁴ the Court of Appeals rendered its assailed **Decision dated November 14, 2014** that affirmed *in toto* the above ruling of the trial court.

Dizon filed the instant appeal, whereby he reiterated the arguments he invoked before the appellate court.¹⁵ The parties no longer filed their respective supplemental briefs.¹⁶

The Court finds no merit in Dizon's appeal.

In the Revised Penal Code, as amended, rape is committed 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; and

¹³ CA *rollo*, p. 49.

¹⁴ Records, p. 135.

¹⁵ *Rollo*, pp. 10-12.

¹⁶ *Id.* at 20-26.

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.

2. By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit **an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.**

Article 266-B. *Penalties.* — Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

x x x x

Rape under paragraph 2 of the next preceding article shall be punished by *prision mayor*.

x x x x

Reclusion temporal shall also be imposed if the rape is committed with any of the ten aggravating/qualifying circumstances mentioned in this article. (Emphasis supplied.)

In *People v. Marmol*,¹⁷ we explained the two classifications of rape punished in the above-quoted provisions in this manner:

Rape can be committed either through sexual intercourse or sexual assault. Rape under paragraph 1 of [Article 266-A] is rape through sexual intercourse; often denominated as “organ rape” or “penile rape,” carnal knowledge is its central element and must be proven beyond reasonable doubt. It must be attended by any of the circumstances enumerated in subparagraphs (a) to (d) of paragraph 1. x x x

Rape under paragraph 2 of Article 266-A is commonly known as rape by sexual assault. Under any of the attendant circumstances mentioned in paragraph 1, the perpetrator commits this kind of rape by inserting his penis into another person's mouth or anal orifice, or any instrument or object into the genital or anal orifice of another person. It is also called “instrument or object rape,” also “gender-free rape.” (Citations omitted.)

For a charge of rape through sexual intercourse to prosper, the prosecution must prove the following elements: (1) the offender had carnal knowledge of a woman; and (2) he accomplished such act through force, threat, or intimidation, or when she was deprived of reason or otherwise unconscious, by means of fraudulent machination or grave abuse of authority, or when she was under 12 years of age or was demented. Sexual intercourse with a girl below 12 years of age is statutory rape.¹⁸

As to the charge of rape by sexual assault, the same contemplates either of the following situations: (1) a male offender inserts his penis into

¹⁷ G.R. No. 217379, November 23, 2016.

¹⁸ *People v. Trayco*, 612 Phil. 1140, 1152 (2009).

the mouth or anal orifice of another person, whether a man or a woman, under any of the attendant circumstances in paragraph 1 of Article 266-A; or (2) a male or female offender inserts any instrument or object into the genital or anal orifice of another person, whether a man or a woman, under any of the attendant circumstances in paragraph 1 of Article 266-A.¹⁹

In this case, the Court agrees with the findings of the RTC and the Court of Appeals that Dizon committed the crime of rape by sexual assault against AAA by inserting his finger into her anus. We likewise sustain the findings of the lower courts that Dizon committed the crime of rape through sexual intercourse against AAA when he had carnal knowledge of her.

When AAA testified during the trial of the case, she positively identified Dizon as the person who abused her. AAA narrated that in the afternoon of January 19, 2008, she and her younger sister, BBB, were playing near a billiard hall close to a store in their barangay when Dizon called her. Dizon asked them to look for DDD, a friend of AAA. Dizon directed BBB to look for DDD and AAA was left alone with him. Dizon then led her to a grassy area, undressed her and himself, and succeeded in thrusting his penis into her vagina and inserting his finger into her anus.²⁰

BBB also identified Dizon in court and testified that she witnessed the aforesaid incidents as she was able to follow Dizon and AAA to the same grassy area while she hid behind banana plants.²¹

CCC, a 12-year-old neighbor of AAA, testified that in the afternoon of January 19, 2008, he was inside the store watching television when he saw Dizon talk to AAA and BBB. Dizon asked the girls if they had seen DDD and they replied that they had not. Dizon then accompanied the two girls to look for DDD. When Dizon was later apprehended by the police officers, CCC was asked to identify him at the *purok*. CCC told the authorities that he saw Dizon bring along AAA and BBB. CCC also identified Dizon in court.²²

In an effort to exculpate himself of the charges against him, Dizon could only muster a denial of the accusations leveled upon him. He testified that in the early afternoon of January 19, 2008, he was in another barangay in Tagum City when he was asked by his common-law wife to go to her residence in XXX. Dizon arrived in XXX at around 5:00 p.m. At around 8:00 p.m., a neighbor of theirs informed them of the rape incident. At 9:00 p.m., three police officers and a *barangay tanod* arrived and he was eventually brought to the police station for investigation. Dizon claimed that AAA, BBB, and CCC lied in their testimonies against him.²³

¹⁹ *People v. Espera*, 718 Phil. 680, 692 (2013).

²⁰ TSN, April 29, 2008, pp. 6-11.

²¹ *Id.* at 55-57.

²² TSN, June 2, 2008, pp. 4-7.

²³ TSN, October 10, 2011, pp. 4-17.

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The RTC unequivocally ruled that the testimonies of AAA, BBB, and CCC clearly passed the test of credibility. On the other hand, the trial court paid no heed to Dizon's denial as the same failed to overcome the testimonies of AAA, BBB, and CCC. The appellate court, in turn, upheld the trial court's assessment of the aforesaid testimonies.

We have carefully reviewed the records of this case and we found no cogent reason to overturn the lower courts' appraisal of the said witnesses' testimonies. We reiterate that:

It is a fundamental rule that the trial court's factual findings, especially its assessment of the credibility of witnesses, are accorded great weight and respect and binding upon this Court, particularly when affirmed by the Court of Appeals. This Court has repeatedly recognized that the trial court is in the best position to assess the credibility of witnesses and their testimonies because of its unique position of having observed that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying, which opportunity is denied to the appellate courts. x x x.²⁴ (Citations omitted.)

Jurisprudence likewise teaches that testimonies of child-victims are normally given full weight and credit, since when a girl, particularly if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape has in fact been committed. When the victim is of tender age and immature, courts are inclined to give credit to her account of what transpired, considering not only her relative vulnerability but also the shame to which she would be exposed if the matter to which she testified is not true. Youth and immaturity are generally badges of truth and sincerity.²⁵

The testimony of AAA that she was sexually abused was also buttressed by the Medico-Legal Certificate issued by the Davao Regional Hospital. The findings thereon indicated the presence of "PERINEAL LACERATION SECONDARY TO SEXUAL ABUSE; DISCLOSURE OF SEXUAL ABUSE, GENITAL FINDINGS CONCLUSIVE OF SEXUAL ABUSE."²⁶ The fact that AAA was only eight years old when the rape incident occurred on January 19, 2008 was established by her birth certificate, which stated that she was born on January 7, 2000.²⁷

All told, the evidence adduced by the prosecution sufficiently proved the above-mentioned elements of the crimes charged.

The Court affirms the penalties imposed by the RTC and the Court of Appeals but modifies the award of damages. The lower courts should have awarded separate damages for each of the crimes for which Dizon's guilt had been established.

²⁴ *People v. Leonardo*, 638 Phil. 161, 189 (2010).

²⁵ *People v. Garcia*, 695 Phil. 576, 588-589 (2012).

²⁶ Records, p. 113.

²⁷ *Id.* at 112.

Thus, for the crime of statutory rape under **Criminal Case No. 15925**, the trial court correctly imposed the penalty of *reclusion perpetua*. As for the award of damages, Dizon is ordered to pay AAA ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages in line with current jurisprudence.²⁸

For the crime of rape by sexual assault under **Criminal Case No. 15924**, the trial court properly imposed the indeterminate sentence of twelve (12) years, ten (10) months and twenty-one (21) days of *reclusion temporal*, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*, as maximum. This is in accordance with our ruling in *Ricalde v. People*²⁹ and *People v. Chingh*.³⁰

In *Chingh*, the Court affirmed the judgment of the Court of Appeals, which found the accused-appellant guilty of committing statutory rape and rape by sexual assault against a 10-year-old child under Article 266-A of the Revised Penal Code, as amended. We, however, modified the penalty as follows:

As to the proper penalty, We affirm the CA's imposition of *Reclusion Perpetua* for rape under paragraph 1(d), Article 266-A. However, We modify the penalty for Rape Through Sexual Assault.

It is undisputed that at the time of the commission of the sexual abuse, VVV was ten (10) years old. This calls for the application of [Republic Act] No. 7610, or "The Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act," which defines sexual abuse of children and prescribes the penalty therefor in Section 5(b), Article III, to wit:

SEC. 5. *Child Prostitution and Other Sexual Abuse.*

— Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.

The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:

x x x x

(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse: *Provided*, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may

²⁸ See *People v. Manson*, G.R. No. 215341, November 28, 2016.

²⁹ G.R. No. 211002, January 21, 2015, 747 SCRA 542.

³⁰ 661 Phil. 208 (2011).

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be: *Provided*, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period.

Paragraph (b) punishes sexual intercourse or lascivious conduct not only with a child exploited in prostitution, but also with a child subjected to other sexual abuses. It covers not only a situation where a child is abused for profit, but also where one — through coercion, intimidation or influence — engages in sexual intercourse or lascivious conduct with a child.

Corollarily, Section 2(h) of the rules and regulations of [Republic Act] No. 7610 defines “Lascivious conduct” as:

[T]he intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person.³¹

Applying the provisions of Republic Act No. 7610, the Court determined the proper imposable penalty in this wise:

In this case, the offended party was ten years old at the time of the commission of the offense. Pursuant to the above-quoted provision of law, Armando was aptly prosecuted under paragraph 2, Article 266-A of the Revised Penal Code, as amended by R.A. No. 8353, for Rape Through Sexual Assault. However, instead of applying the penalty prescribed therein, which is *prision mayor*, considering that VVV was below 12 years of age, and considering further that Armando’s act of inserting his finger in VVV’s private part undeniably amounted to lascivious conduct, the appropriate imposable penalty should be that provided in Section 5(b), Article III of R.A. No. 7610, which is *reclusion temporal* in its medium period.

X X X X

Applying the Indeterminate Sentence Law, the maximum term of the indeterminate penalty shall be that which could be properly imposed under the law, which is fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*. On the other hand, the minimum term shall be within the range of the penalty next lower in degree, which is *reclusion temporal* in its minimum period, or twelve (12) years and one (1) day to fourteen (14) years and eight (8) months.

Hence, Armando should be meted the indeterminate sentence of **twelve (12) years, ten (10) months and twenty-one (21) days of *reclusion temporal*, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*, as maximum.**³² (Emphasis supplied; citations omitted.)

³¹ Id. at 220-222.

³² Id. at 222-223.

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As to the award of damages, Dizon is ordered to pay AAA ₱30,000.00 as civil indemnity, ₱30,000.00 as moral damages, and ₱30,000.00 as exemplary damages.³³

WHEREFORE, the Court **AFFIRMS with MODIFICATIONS** the Decision dated November 14, 2014 of the Court of Appeals in CA-G.R. CR HC No. 01020-MIN. Accused-appellant Rolly Dizon y Tagulaylay is hereby sentenced as follows:

1. In Criminal Case No. 15925, the accused-appellant is found **GUILTY** beyond reasonable doubt of one count of statutory rape and is sentenced to suffer the penalty of *reclusion perpetua*. The accused-appellant is ordered to pay AAA ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages, plus legal interest on all damages awarded at the rate of 6% per annum from the date of finality of this Decision.

2. In Criminal Case No. 15924, the accused-appellant is found **GUILTY** beyond reasonable doubt of one count of rape by sexual assault and is sentenced to suffer the indeterminate penalty of twelve (12) years, ten (10) months and twenty-one (21) days of *reclusion temporal*, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*, as maximum. The accused-appellant is ordered to pay AAA ₱30,000.00 as civil indemnity, ₱30,000.00 as moral damages, and ₱30,000.00 as exemplary damages, plus legal interest on all damages awarded at the rate of 6% per annum from the date of finality of this Decision.

Costs against the accused-appellant.

SO ORDERED.


TERESITA J. LEONARDO-DE CASTRO
Associate Justice

³³ Id. at 223.

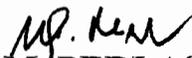
WE CONCUR:



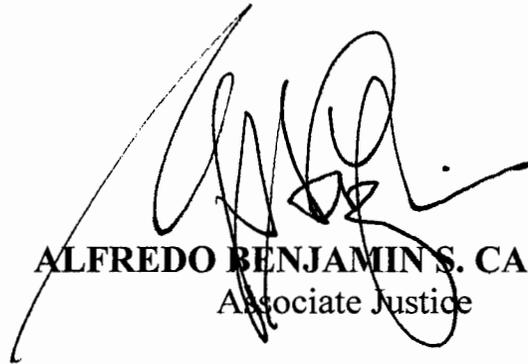
MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

On Leave

MARIANO C. DEL CASTILLO
Associate Justice



ESTELA M. PERLAS-BERNABE
Associate Justice



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice