

## SECOND DIVISION

[ G.R. No. 242882, September 09, 2020 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
DIOSDADO JAGDON, JR., ACCUSED-APPELLANT.**

### D E C I S I O N

**DELOS SANTOS, J.:**

#### **The Case**

This appeal assails the Decision<sup>[1]</sup> dated June 29, 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 02327 which affirmed the Joint Decision<sup>[2]</sup> dated December 18, 2012 of the Regional Trial Court (RTC) of [REDACTED] in Criminal Case Nos. B-01591 and B-01592, finding Diosdado Jagdon, Jr. (accused-appellant) guilty beyond reasonable doubt of the crimes of Rape and Acts of Lasciviousness. The CA sentenced accused-appellant to the penalty of *reclusion perpetua* for the crime of Rape and modified his sentence for the crime of Acts of Lasciviousness to twelve (12) years and one (1) day of *reclusion temporal* in its minimum period, as minimum, to fifteen (15) years, six (6) months and twenty-one (21) days of *reclusion temporal* in its medium period, as maximum.

#### **The Proceedings Before the Trial Court**

##### **The Charges**

Two separate *Informations* for Rape and Acts of Lasciviousness were filed against accused-appellant involving two minors, viz.:

##### Criminal Case No. B-01591

That sometime in the third week of January, 2003 at noon, in [REDACTED] Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, with lewd design, did then and there willfully, unlawfully and feloniously have carnal knowledge with [AAA],<sup>[3]</sup> a 9 year old minor, against her will and consent.

CONTRARY TO LAW.<sup>[4]</sup>

##### Criminal Case No. B-01592

That sometime in the third week of January 2003, in the evening, in [REDACTED], Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously with lewd design, lick the [genitalia] of [BBB], a 6 [year] old girl, against her will and consent.

CONTRARY TO LAW.<sup>[5]</sup>

On arraignment, accused-appellant pleaded not guilty to both charges. Joint trial ensued.

### **The Prosecution's Version**

Accused-appellant was the live-in partner of the aunt of AAA's father, who happened to be their neighbor. One afternoon in the later part of January 2003, nine (9)-year-old AAA was just near her home in [REDACTED] when accused-appellant suddenly brought her inside a pigpen. There, accused-appellant started licking AAA's vagina then proceeded to insert his penis into her vagina. He continued with this motion for several times. AAA struggled and experienced pain during the penetration with accused-appellant proving too strong for her. After satisfying his bestial desires, accused-appellant gave AAA some cash and told her not to tell anyone about what happened.<sup>[6]</sup>

This incident was witnessed by AAA's younger sister, BBB, who was then on the road across the pigpen. BBB saw accused-appellant sitting inside the pigpen licking AAA's genitals while the latter was standing. Thereafter, she saw accused-appellant exit the pigpen. Her sister also left and joined a group of children who were playing nearby.<sup>[7]</sup>

Around the same week in January 2003, while six (6)-year-old BBB was playing alone outside their house, accused-appellant called her and instructed her to go inside. While inside the house, with the front door open, accused-appellant made BBB lie on a bed. He removed her skirt and underwear. He started licking BBB's vagina and inserted his finger into it. Thereafter, accused-appellant gave her P3.00 and told her not to tell her mother about what happened.<sup>[8]</sup>

Sometime in February 2003, due to an argument AAA and BBB had, BBB went and told their mother, CCC, that AAA had been having sex with accused-appellant. AAA was brought to a local government hospital to undergo a medical examination. In her provisional medical certificate, the examining doctor found indications suggestive of sexual abuse. This was confirmed by Dr. Naomi Poca<sup>[9]</sup> (Dr. Poca) of Vicente Sotto Memorial Medical Center.<sup>[10]</sup>

AAA disclosed that the incident in the pigpen witnessed by her sister was not an isolated one. Accused-appellant had been sexually ravishing her for quite some time. This usually occurs inside the pigpen, her house, accused-appellant's house or at a nearby banana grove. After each incident, accused-appellant would usually give her money.<sup>[11]</sup>

### **The Defense's Version**

Accused-appellant admitted that AAA was only nine (9) years old at the time of the rape incident and that BBB is younger than AAA, but he denied authorship of the crimes committed against the two minor victims.<sup>[12]</sup> He claimed that when the rape incident happened, he was at his workplace in [REDACTED]. It is worthy to note that [REDACTED] (where the rape incident took place) and [REDACTED] are adjacent municipalities. People can reach [REDACTED] from [REDACTED] by riding a jeepney or *habal-habal*.

According to accused-appellant, it normally takes him more than an hour of travel both to and from [REDACTED].<sup>[13]</sup>

Accused-appellant also imputes ill motive on the part of AAA and BBB's parents. He claims that the charges against him were merely concocted due to his estranged relationship with AAA, who was prone to speaking bad words, and with AAA and BBB's family, on account of political issues.<sup>[14]</sup>

### **The RTC's Ruling**

After due proceedings, the RTC rendered a verdict of conviction against accused-appellant for both charges of Rape and Acts of Lasciviousness. The trial court was convinced that both the crimes of Rape and Acts of Lasciviousness charged against accused-appellant were duly proven beyond reasonable doubt.

The dispositive portion of the trial court's Joint Decision<sup>[15]</sup> dated December 18, 2012 reads:

WHEREFORE, premises considered, accused Diosdado Jagdon, Jr. is hereby found guilty beyond reasonable doubt of the crime of rape and he is hereby sentenced to suffer the penalty of [*Reclusion Perpetua*].

Further, accused is hereby ordered to pay to private complainant [AAA] the amount of [P]50,000.00 as court indemnity and [P] 50,000.00 as moral damages.

With respect to the crime of Acts of Lasciviousness, in relation to RA 7610, he is hereby sentenced to suffer the penalty of 4 years, 2 months and 1 day to 6 years, the maximum period of [*prision correccional*].

Pursuant to Circular No. 4-92, as amended by Circular No. 63-92 of the Court Administrator, the Jail Warden of the Cebu Provincial Detention and Rehabilitation Center (CPDRC), Cebu City, is hereby directed to immediately transfer the accused to the custody of the National Bilibid Prison, Muntinlupa City, Metro Manila.

Let a copy of the decision be furnished the Jail Warden CPDRC for his information, guidance and compliance.

SO ORDERED.<sup>[16]</sup>

Dissatisfied, accused-appellant appealed to the CA.

### **The CA's Ruling**

The CA affirmed accused-appellant's conviction for both crimes of Rape and Acts of Lasciviousness with modification as to the penalty for Acts of Lasciviousness.

The dispositive portion of the Decision<sup>[17]</sup> dated June 29, 2018 reads:

IN LIGHT OF ALL THE FOREGOING the assailed Decision dated December 18, 2012, of the Regional Trial Court, Branch 61, Dakit, Bogu, Cebu in Criminal Cases Nos. B-01591 and B-01592, is AFFIRMED with MODIFICATIONS. Accused-Appellant DIOSDADO JAGDON JR. is found GUILTY of the crime of rape against AAA, and is sentenced to the penalty

of *reclusion perpetua*. He is ordered to pay AAA the amounts of Seventy Five Thousand Pesos (Php 75,000.00) as civil indemnity. Seventy Five Thousand Pesos (Php 75,000.00) as moral damages, and Seventy Five Thousand Pesos (Php 75,000.00) as exemplary damages.

Accused-Appellant DIOSDADO JAGDON JR. is further found GUILTY of the crime of acts of lasciviousness against BBB, and is sentenced to the penalty of twelve (12) years and one (1) day of *reclusion temporal* in its minimum period as minimum to fifteen (15) years, six (6) months and twenty-one (21) days of *reclusion temporal* in its medium period as maximum. He is ordered to pay BBB the amounts of Twenty Thousand Pesos (PhP 20,000.00) as civil indemnity. Fifteen Thousand Pesos (PhP 15,000.00) as moral damages. Fifteen Thousand Pesos (PhP 15,000.00) as exemplary damages and Fifteen Thousand Pesos (PhP 15,000.00) as fine.

All awards of damages are subjected to legal interest at the rate of six percent (6%) [*per annum*] from the date of finality of this decision until fully paid.

SO ORDERED.<sup>[18]</sup>

The CA held that AAA's testimony, coupled with her declaration of her minority at the time of the rape incident, as well as accused-appellant's open admission of such during trial, elucidates with sufficiency all the elements for the charge of rape — sexual copulation by accused-appellant with a girl below 12 years of age.<sup>[19]</sup>

It further held that all the elements of the crime of acts of lasciviousness were duly proven by accused-appellant's act of intentionally inserting his finger into BBB's vagina and licking the same. Such conduct definitely exhibits accused-appellant's intent to abuse, degrade, and harass BBB's person and extract arousal or sexual gratification.<sup>[20]</sup>

### **The Present Appeal**

Accused-appellant now seeks affirmative relief from this Court and prays anew for his acquittal. In compliance with Resolution<sup>[21]</sup> dated January 10, 2019, accused-appellant manifested that in lieu of supplemental briefs, he is adopting his brief filed before the CA.<sup>[22]</sup> On the other hand, the Office of the Solicitor General (OSG) manifested that it will no longer file a supplemental brief since all the issues raised by accused-appellant have already been sufficiently addressed in its plaintiff-appellee's brief likewise filed before the CA.<sup>[23]</sup>

### **Issue**

The issue for the Court's resolution is whether or not the CA erred in affirming accused-appellant's conviction for the crimes of Rape and Acts of Lasciviousness.

### **Ruling**

The instant appeal lacks merit. Modifications, however, as to the nomenclature of the crime in Criminal Case No. B-01591 for Rape and nomenclature of the crime and award of damages in Criminal Case No. B-01592 for Acts of Lasciviousness are in order.

At the outset, We stress that assessment of the credibility of witnesses is a task most properly within the domain of trial courts. Factual findings of the trial court carry great weight and respect due to the unique opportunity afforded to them to observe the witnesses when placed on the stand. Consequently, appellate courts will not overturn the factual findings of the trial court in the absence of facts or circumstances of weight and substance that would affect the result of the case. This rule finds an even more stringent application where the said findings are sustained by the CA, as in the instant case.<sup>[24]</sup>

***Criminal Case No.  
B-01591 -  
Statutory Rape.***

Rape is defined and penalized under Article 266-A of the Revised Penal Code (RPC), as amended by Republic Act No. (RA) 8353,<sup>[25]</sup> viz.:

Article 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 otherwise unconscious;
- c) By means of fraudulent machination or grave abuse of authority; and
- 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.

The *information* filed against accused-appellant in Criminal Case No. B-01591 alleged that AAA was only nine (9) years old at the time of the incident. Clearly, the charge was for Statutory Rape under Article 266-A (1) (d) of the RPC.

Statutory rape is committed by sexual intercourse with a woman below 12 years of age regardless of her consent, or the lack of it, to the sexual act.<sup>[26]</sup>

The elements necessary in every prosecution for statutory rape are: (1) the offended party is under 12 years of age; and (2) the accused had carnal knowledge of the victim, regardless of whether there was force, threat, or intimidation or grave abuse of authority.<sup>[27]</sup> Proof of force, intimidation or consent is unnecessary as they are not elements of statutory rape, considering that the absence of free consent is conclusively presumed when the victim is below the age of 12.<sup>[28]</sup>

Here, both these elements are present in this case.

*The element of age.*

In statutory rape cases, the best evidence to prove the age of the offended party is the latter's birth certificate. But in certain cases, the Court admits of exceptions. In *People v. Pruna*,<sup>[29]</sup> this Court have set guidelines in appreciating age, either as an element of the crime or as a qualifying circumstance, among which: