

FIRST DIVISION

[G.R. No. 238112, December 05, 2018]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ANDRES TALIB-OG Y TUGANAN, ACCUSED-APPELLANT.**

DECISION

TIJAM, J.:

This is an appeal from the Decision^[1] dated December 15, 2017 of the Court of Appeals (CA) in CA-G.R. CR HC No. 01536-MIN, affirming with modification the Joint Judgment^[2] dated April 20, 2015 of the Regional Trial Court (RTC) of Dipolog City, Branch 7, in Criminal Case Nos. 12890, 13001, 13002 and 13003, finding accused-appellant Andres Talib-og y Tuganan guilty beyond reasonable doubt of two (2) counts of rape by sexual assault and two (2) counts of statutory rape, committed against AAA,^[3] a ten-year old girl.

The Antecedent Facts

On December 4, 2004, accused-appellant was charged with statutory rape and was charged with three (3) additional counts in separate Informations,^[4] the accusatory portions of which read:

Criminal Case No. 12890

The undersigned City Prosecutor I of Dipolog accuses ANDRES TALIB-OG y Tuganan of the crime of STATUTORY RAPE, committed as follows:

That on November 28, 2004, at 11:00 o'clock in the evening, more or less at XXX, Dipolog City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, moved by lewd and unchaste designs, did then and there willfully, unlawfully and feloniously have carnal knowledge with AAA, a ten-year old minor, against her will and without her consent.

CONTRARY TO LAW.

Criminal Case No. 13001

The undersigned Third Assistant City Prosecutor of Dipolog accuses ANDRES TALIB-OG y Tuganan of the crime of 'STATUTORY RAPE', committed as follows:

That on November 13, 2004, at 10:00 o'clock in the evening, more or less at XXX, Dipolog City, Philippines and within the jurisdiction of this

Honorable Court, the above-named accused, moved by lewd and unchaste design, did then and there willfully, unlawfully and feloniously have carnal knowledge with AAA, a ten-year old minor, against her will and without her consent.

CONTRARY TO LAW.

Criminal Case No. 13002

The undersigned Third Assistant City Prosecutor of Dipolog accuses ANDRES TALIB-OG y Tuganan of the crime of 'STATUTORY RAPE', committed as follows:

Timt on October 25, 2004, at 8:00 o'clock in the evening, more or less at XXX, Dipolog City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, moved by lewd and unchaste design, did then and there willfully, unlawfully and feloniously insert his middle right finger into the vagina of AAA, a ten-year old minor, against her will and without her consent.

CONTRARY TO LAW.

Criminal Case No. 13003

The undersigned Third Assistant City Prosecutor of Dipolog accuses ANDRES TALIB-OG y Tuganan of the crime of 'STATUTORY RAPE', committed as follows:

That on October 28, 2004, at 10:00 o'clock in the evening, more or less at XXX, Dipolog City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, moved by lewd and unchaste design, did then and there willfully, unlawfully and feloniously insert his middle right finger into the vagina of AAA, a ten-year old minor, against her will and without her consent.

CONTRARY TO LAW.^[5] (Underscore supplied)

Upon arraignment, accused-appellant pleaded not guilty to each of the crimes charged against him. After the pre-trial conference, the cases were heard on consolidated trial.^[6]

The prosecution presented four (4) witnesses, including AAA, the victim. AAA testified in open court that she was born on March 16, 1994.^[7]

AAA recalled that in the evening of October 25, 2004, she and her younger sibling were sleeping in their house while her father was out drinking and her mother was in Jolo. She woke up around 8 o'clock that night, when accused-appellant was removing her panty. She tried to flee, but accused-appellant held her feet, made her lie down and covered her mouth with his left hand. Accused-appellant inserted his right hand finger into her vagina and left shortly thereafter. She was able to recognize the accused-appellant because his face was illuminated by the light from a

lamp in their house. Before the incident, she already knew accused-appellant as Dodoy, her father's friend, whose house was located less than a kilometer away from their home. She did not report the incident to her father because accused-appellant had threatened her.^[8]

On October 28, 2004, accused-appellant raped AAA again around 10 o'clock in the evening while she and her younger sister were sleeping. The accused-appellant removed her underwear and inserted his middle finger into her vagina.^[9]

On November 13, 2004 at around 10 o'clock in the evening, AAA felt pain as accused-appellant inserted his organ into her vagina and did a pumping motion. She was not able to shout because the accused-appellant covered her mouth. Accused-appellant left through the back of the house when AAA's father arrived. AAA explained that the former could easily enter their house as their door was only covered by a tarpaulin.^[10]

Finally, on November 28, 2004 at 11 o'clock in the evening, AAA narrated that when her father came home drunk that night, she retreated to the *bodega* of their neighbor and slept on an empty sack. Accused-appellant went there and inserted his penis into her vagina after removing her underwear. When accused-appellant was done with his deeds, AAA ran to the house of her aunt nearby. She slept on the bench outside the said house and woke up the next morning. She finally told her aunt about the four incidents. They reported the same to the barangay, and accused-appellant was brought to the police for questioning. AAA was also brought to the doctor for examination and then to the Department of Social Welfare and Development (DSWD) where she was fetched by her mother.^[11]

For his part, accused-appellant proffered the defense of denial. He claimed that he was asleep in his house during three out of the four incidents narrated by AAA. On November 28, 2014, the fourth incident, he narrated that he was at the bodega to get a sack when he saw somebody sleeping on the floor. He woke that person up and told her to go home but he did not recognize the said person.^[12]

The RTC Ruling

On April 20, 2015, the RTC promulgated its Joint Judgment, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered finding accused Andres Talibog y Tuganan guilty beyond reasonable doubt of the following crimes:

1) In Criminal Case No. 13002, the accused is found guilty of rape by sexual assault, a crime defended [sic] under paragraph 2 of Article 266-A of the Revised Penal Code and is hereby sentenced to suffer the penalty of 2 years, 4 months and 1 day of *prision correccional*, as minimum, to 10 years of *prision mayor*, as maximum. He is further ordered to pay AAA the amounts of P30,000.00 as civil indemnity and P30,000.00 as moral damages, and the costs of the suit;

2) In Criminal Case No. 13003, the accused is found guilty of rape by sexual assault, a crime defined under paragraph 2 of Article 266-A of the

Revised Penal Code and is hereby sentenced to suffer the penalty of 2 years, 4 months and 1 day of *prision correccional*, as minimum, to 10 years of *prision mayor*, as maximum. He is further ordered to pay AAA the amounts of P30,000.00 as civil indemnity and P30,000.00 as moral damages, and the costs of the suit;

3) In Criminal Case No. 13001, the accused is found guilty of statutory rape by sexual intercourse, a crime defined under paragraph 1 of Article 266-A of the Revised Penal Code and is hereby sentenced to suffer the penalty of *reclusion perpetua*. He is further ordered to pay AAA the amounts of P50,000.00 as civil indemnity and P50,000.00 as moral damages, and the costs of the suit;

4) In Criminal Case No. 12890, the accused is found guilty of statutory rape by sexual intercourse, a crime defined under paragraph 1 of Article 266-A of the Revised Penal Code and is hereby sentenced to suffer the penalty of *reclusion perpetua*. He is further ordered to pay AAA the amounts of P50,000.00 as civil indemnity and P50,000.00 as moral damages, and the costs of the suit;

The award of damages shall earn legal interest at the rate of six percent (6%) *per annum* from the finality of this judgment until fully paid.

SO ORDERED.^[13]

Accused-appellant appealed his conviction to the CA and argued that the prosecution failed to prove his guilt beyond reasonable doubt.

In his Brief,^[14] accused-appellant questioned the credibility of AAA's testimony. He pointed out that the actuations of AAA before, during and after the alleged incidents were not in conformity with human experience. According to accused-appellant, AAA had every opportunity to flee from him but chose not to. He also mentioned that he had a quarrel with AAA's father, which could be the reason behind the accusations against him.^[15]

The CA Ruling

On December 15, 2017, the CA rendered a Decision affirming with modification RTC Joint Judgment by increasing the amount of civil indemnity and moral damages to P75,000.00, respectively, pursuant to *People v. Jugueta*.^[16]

Hence, this appeal.

On July 9, 2018, the Court required both parties to file their respective supplemental briefs. Accused-appellant, through the Public Attorney's Office, filed his Supplemental Brief.^[17] The Solicitor General, on the other hand, filed a Manifestation^[18] stating that they are adopting the arguments they had previously proffered in their Brief submitted with the CA.

Our Ruling

The appeal is bereft of merit.

Under Article 266-A, paragraph 1, of the Revised Penal Code (RPC), as amended by Republic Act No. 8353 or otherwise known as "The Anti Rape Law of 1997," the crime of rape may be 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[.]

In Criminal Case Numbers (Nos.) 12890 and 13001, the prosecution sufficiently established the presence of the elements of statutory rape under paragraph 1(d) as cited above, *viz*: (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. It is enough that the age of the victim is proven and that there was sexual intercourse.^[19] Here, it is undisputed that AAA was a minor when accused-appellant had sexual intercourse with her on two separate incidents, *i.e.* on November 13 and 28, 2004.

Accused-appellant's defense of denial does not persuade. As correctly ruled by the RTC, and affirmed by the CA, AAA's direct, positive, and straightforward narration of the incidents in detail prevails over accused appellant's unsubstantiated allegations. Basic is the 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 CA.^[20] As such, We find no cogent reason to deviate from the lower courts' factual findings.

Likewise, in Criminal Case Nos. 13002 and 13003, the RTC correctly convicted accused-appellant for two counts of rape by sexual assault instead of statutory rape as erroneously designated in the corresponding Information. Rape by sexual assault is defined under paragraph 2 of Article 266-A of the RPC, as follows:

- 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. (Emphasis ours)

As narrated by AAA, she was still a minor when accused-appellant inserted his finger into her vagina on October 25 and 28, 2004, or roughly a month before he raped her by sexual intercourse.

However, in accordance with prevailing jurisprudence, We modify the penalty imposed by the CA for the two counts of rape by sexual assault.