

## FIRST DIVISION

[ G.R. No. 217982, July 10, 2017 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V. ROLLY  
DIZON Y TAGULAYLAY, ACCUSED-APPELLANT.**

### 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 Judgment<sup>[1]</sup> dated April 10, 2012 in Criminal Case Nos. 15924 and 15925. The Court of Appeals affirmed the conviction in a Decision<sup>[2]</sup> 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 AAA<sup>[3]</sup> as follows:

#### 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.<sup>[4]</sup>

#### 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.<sup>[5]</sup>

Upon arraignment, Dizon pleaded not guilty to the charges.<sup>[6]</sup>

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.

During the police investigation, AAA pointed to Dizon as the culprit.<sup>[7]</sup> (Citations omitted.)

The prosecution likewise presented the following evidence: (1) the Certificate of Live Birth<sup>[8]</sup> of AAA; (2) the Medico Legal Certificate<sup>[9]</sup> issued by Dr. Aileen D. Marcilla of the Davao Regional Hospital; (3) the blood stained skirt<sup>[10]</sup> of AAA; and (4) the receipt<sup>[11]</sup> 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.<sup>[12]</sup> (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.**

3) Said accused is likewise ordered to pay [AAA] the sum of P75,000.00 as civil indemnity, P75,000.00 as moral damages, and P50,000.00 as exemplary damages.<sup>[13]</sup>

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,<sup>[14]</sup> 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.<sup>[15]</sup> The parties no longer filed their respective supplemental briefs.<sup>[16]</sup>

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

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*,<sup>[17]</sup> 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.<sup>[18]</sup>

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 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.<sup>[19]</sup>

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.<sup>[20]</sup>

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.<sup>[21]</sup>

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.<sup>[22]</sup>

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 8:00p.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.<sup>[23]</sup>

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