

## SECOND DIVISION

[ G.R. No. 211002, January 21, 2015 ]

**RICHARD RICALDE, PETITIONER, VS. PEOPLE OF THE  
PHILIPPINES, RESPONDENT.**

### DECISION

**LEONEN, J.:**

Even men can become victims of rape.

Before us is a criminal case for rape through sexual assault committed against a 10-year-old boy. Accused Richard Ricalde (Ricalde) was charged with rape as described under the second paragraph of Section 266-A of the Revised Penal Code, committed "[b]y 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."<sup>[1]</sup>

This is a Petition for Review<sup>[2]</sup> assailing the Court of Appeals' August 28, 2013 Decision<sup>[3]</sup> affirming Ricalde's conviction for rape through sexual assault and January 15, 2014 Resolution<sup>[4]</sup> denying reconsideration.

The Provincial Prosecutor of Biñan, Laguna filed an Information charging Ricalde of rape through sexual assault:

That on or about January 31, 2002, in the Municipality of Sta. Rosa, Province of Laguna, Philippines, and within the jurisdiction of this Honorable Court, accused Richard Ricalde, prompted with lewd design, did then and there willfully, unlawfully and feloniously inserting [sic] his penis into the anus of XXX who was then ten (10) years of age against his will and consent, to his damage and prejudice.

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

Ricalde pleaded not guilty during his arraignment on August 21, 2002.<sup>[6]</sup> The prosecution presented the victim (XXX),<sup>[7]</sup> his mother, and the medico-legal as witnesses, while the defense presented Ricalde as its sole witness.<sup>[8]</sup>

The facts as found by the lower courts follow.

On January 30, 2002, XXX requested his mother to pick up Ricalde at McDonald's Bel-Air, Sta. Rosa at past 8:00 p.m.<sup>[9]</sup> Ricalde, then 31 years old,<sup>[10]</sup> is a distant

relative and textmate of XXX, then 10 years old.<sup>[11]</sup>

After dinner, XXX's mother told Ricalde to spend the night at their house as it was late.<sup>[12]</sup> He slept on the sofa while XXX slept on the living room floor.<sup>[13]</sup>

It was around 2:00 a.m. when XXX awoke as "he felt pain in his anus and stomach and something inserted in his anus."<sup>[14]</sup> He saw that Ricalde "fondled his penis."<sup>[15]</sup> When Ricalde returned to the sofa, XXX ran toward his mother's room to tell her what happened.<sup>[16]</sup> He also told his mother that Ricalde played with his sexual organ.<sup>[17]</sup>

XXX's mother armed herself with a knife for self-defense when she confronted Ricalde about the incident, but he remained silent.<sup>[18]</sup> She asked him to leave.<sup>[19]</sup>

XXX's mother then accompanied XXX to the barangay hall where they were directed to report the incident to the Sta. Rosa police station.<sup>[20]</sup> The police referred them to the municipal health center for medical examination.<sup>[21]</sup> Dr. Roy Camarillo examined<sup>[22]</sup> XXX and found no signs of recent trauma in his anal orifice<sup>[23]</sup> that was also "NEGATIVE for [s]permatozoa."<sup>[24]</sup>

On February 4, 2002, XXX and his mother executed their sworn statements at the Sta. Rosa police station, leading to the criminal complaint filed against Ricalde.<sup>[25]</sup>

Ricalde denied the accusations.<sup>[26]</sup> He testified that he met XXX during the 2001 town fiesta of Calaca, Batangas and learned that XXX's mother is the cousin of his cousin Arlan Ricalde.<sup>[27]</sup> He and XXX became textmates, and XXX invited him to his house.<sup>[28]</sup> On January 30, 2002, XXX's mother picked him up to sleep at their house.<sup>[29]</sup> He slept at 10:00 p.m. on the living room sofa while XXX slept on the floor.<sup>[30]</sup> He denied the alleged rape through sexual assault.<sup>[31]</sup>

The Regional Trial Court in its Decision<sup>[32]</sup> dated June 20, 2011 found Ricalde guilty beyond reasonable doubt of rape through sexual assault:

**WHEREFORE**, this Court finds accused Richard Ricalde **guilty** beyond reasonable doubt of the crime of **rape by sexual assault** and, accordingly, sentences him to suffer the penalty of imprisonment ranging from four (4) years, two (2) months and one (1) day of *prision correccional* as minimum, to eight (8) years of *prision mayor* as maximum. Accused is ordered to pay [XXX] the sums of P50,000.00 as moral damages and P50,000.00 as civil indemnity.

**SO ORDERED.**<sup>[33]</sup>

The Court of Appeals in its Decision<sup>[34]</sup> dated August 28, 2013 affirmed the conviction with the modification of lowering the amounts of damages awarded:

WHEREFORE, the Decision dated 20 June 2011 of Branch 34 of the Regional Trial Court of Calamba, Laguna, in Crim. Case No. 11906-B, is AFFIRMED but with MODIFICATION as to the award of damages. Accused-appellant RICHARD RICALDE is ordered to pay the victim civil indemnity in the amount of Thirty Thousand (P30,000.00) Pesos and moral damages likewise in the amount of Thirty Thousand (P30,000.00) Pesos, both with interest at the legal rate of six (6%) percent per annum from the date of finality of this judgment until fully paid.<sup>[35]</sup>

Ricalde filed this Petition praying for his acquittal.<sup>[36]</sup>

Petitioner argues the existence of reasonable doubt in his favor. First, the medico-legal testified that he found “no physical signs or external signs of recent trauma [in XXX’s] anus,”<sup>[37]</sup> or any trace of spermatozoa.<sup>[38]</sup> He contends that physical evidence “ranks high in [the court’s] hierarchy of trustworthy evidence.”<sup>[39]</sup>

Second, XXX did not categorically say that a penis was inserted into his anal orifice, or that he saw a penis or any object being inserted into his anal orifice.<sup>[40]</sup> XXX was also able to immediately push him away.<sup>[41]</sup> Thus, no push and pull movement happened that would explain XXX’s alleged stomach ache.<sup>[42]</sup> Petitioner submits that the alleged stomach ache was an attempt to aggravate the charge against him.<sup>[43]</sup>

Petitioner argues that XXX’s inconsistent testimony raises reasonable doubt on his guilt.<sup>[44]</sup> XXX claimed that he immediately pushed petitioner away, but in another instance, he testified as follows: “I felt that he was inserting his penis inside my anus because I was even able to hold his penis. He was also playing with my penis.”<sup>[45]</sup> XXX also stated in his *salaysay* that “the penis reached only the periphery of his anal orifice.”<sup>[46]</sup>

Third, XXX testified that after he had pushed petitioner away, he saw that petitioner was wearing pants with the zipper open.<sup>[47]</sup> Petitioner submits that performing anal coitus while wearing pants with an open zipper poses a challenge — the risk of injuring the sexual organ or having pubic hair entangled in the zipper.<sup>[48]</sup> Petitioner argues that the court must consider every circumstance favoring the innocence of an accused.<sup>[49]</sup>

Assuming he committed an offense, petitioner contends that the court should have applied the “variance doctrine” in *People v. Sumingwa*,<sup>[50]</sup> and the court would have found him guilty for the lesser offense of acts of lasciviousness under Article 336 of the Revised Penal Code.<sup>[51]</sup> The petition then enumerated circumstances showing possible homosexual affections between petitioner and XXX.<sup>[52]</sup> These include the fact that they were textmates and that petitioner played with XXX’s penis.<sup>[53]</sup>

Petitioner argues that this masturbation could have caused an irritation that XXX mistook as penetration.<sup>[54]</sup> XXX could also have mistaken the “overreaching fingers as a male organ trying to enter his [anus].”<sup>[55]</sup> Assuming these acts took place,

these would only be considered as acts of lasciviousness.<sup>[56]</sup>

The People of the Philippines counters that the prosecution proved beyond reasonable doubt all elements of the crime charged.

The Comment<sup>[57]</sup> discussed that it is neither improbable nor contrary to human experience that XXX's mother allowed her son to be left alone with a stranger.<sup>[58]</sup> Petitioner was not a complete stranger, and she could not have foreseen such abuse since "rape by sexual assault or any form of sexual abuse of a boy by a grown man is fairly uncommon in our culture."<sup>[59]</sup>

Petitioner's reliance on the medico-legal's findings deserves scant consideration.<sup>[60]</sup> The Comment quoted *People v. Penilla*<sup>[61]</sup> in that "[a] medical examination of the victim is not indispensable in a prosecution for rape inasmuch as the victim's testimony alone, if credible, is sufficient to convict the accused of the crime."<sup>[62]</sup> In any case, the medico-legal testified on the sphincter's flexibility and how an insertion into the anal orifice would not necessarily cause injury.<sup>[63]</sup>

Lastly, the prosecution established all elements of rape through sexual assault based on XXX's clear and categorical testimony.<sup>[64]</sup> Petitioner's defense of mere denial cannot outweigh positive testimony.<sup>[65]</sup> Consequently, petitioner's contention that the incident only amounts to acts of lasciviousness lacks merit.<sup>[66]</sup>

The issue before us for resolution is whether the prosecution proved beyond reasonable doubt petitioner Richard Ricalde's guilt for the crime of rape through sexual assault.

We affirm petitioner's conviction with modification on the penalty imposed.

The Anti-Rape Law of 1997<sup>[67]</sup> classified rape as a crime against persons<sup>[68]</sup> and amended the Revised Penal Code to include Article 266-A on rape through sexual assault:

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;

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 supplied)

Rape under the second paragraph of Article 266-A is also known as “instrument or object rape,”<sup>[69]</sup> “gender-free rape,”<sup>[70]</sup> or “homosexual rape.”<sup>[71]</sup> The gravamen of rape through sexual assault is “the insertion of the penis into another person’s mouth or anal orifice, or any instrument or object, into another person’s genital or anal orifice.”<sup>[72]</sup>

Jurisprudence holds that “the findings of the trial court, its calibration of the testimonies of the witnesses, and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings are accorded respect if not conclusive effect.”<sup>[73]</sup>

The trial court found that XXX’s “straightforward, unequivocal and convincing testimony”<sup>[74]</sup> sufficiently proved that petitioner committed an act of sexual assault by inserting his penis into XXX’s anal orifice.<sup>[75]</sup> There was no showing of ill motive on the part of XXX to falsely accuse petitioner.<sup>[76]</sup> The Court of Appeals accorded great weight to the trial court’s findings and affirmed petitioner’s conviction.<sup>[77]</sup>

No cogent reason exists for this court to overturn the lower courts’ findings.

First, petitioner’s argument highlighting alleged inconsistencies in XXX’s testimony fails to convince.

In a long line of cases,<sup>[78]</sup> this court has given full weight and credit to the testimonies of child victims. Their “[y]outh and immaturity are generally badges of truth and sincerity.”<sup>[79]</sup> XXX, then only 10 years old, had no reason to concoct lies against petitioner.<sup>[80]</sup>

This court has also held that “[l]eeway should be given to witnesses who are minors, especially when they are relating past incidents of abuse.”<sup>[81]</sup>

Petitioner contends that XXX did not categorically say that a penis was inserted into his anal orifice, or that he saw a penis or any object being inserted into his anal orifice.

This contradicts petitioner’s earlier statement in his appellant’s brief<sup>[82]</sup> that “[a]lthough it is true that the Supreme Court, in a long line of cases, did not rule out the possibility of rape in cases where the victim remained physically intact at the time she or he was physically examined, still, it bears stressing that in the instant case, *the private complainant testified that the accused-appellant’s penis fully penetrated his anus.*”<sup>[83]</sup>

The trial court also quoted portions of the transcript of XXX’s testimony in that he “felt something was inserted in [his] anus.”<sup>[84]</sup>

Q: That early morning of January 31, 2002, while you were