

## FIRST DIVISION

[ G.R. No. 181035, July 04, 2011 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NOEL DION, ACCUSED-APPELLANT.**

### D E C I S I O N

**LEONARDO-DE CASTRO, J.:**

The accused-appellant challenges in this appeal the July 25, 2007 **Decision** [1] promulgated by the Court of Appeals in **CA-G.R. CR.-H.C. No. 01161**, which affirmed *in toto* the judgment [2] of conviction for two counts of Rape rendered against him by Branch 53 of the Pangasinan Regional Trial Court (RTC) in **Criminal Case Nos. 4354-R and 4355-R**.

Accused-appellant Noel Dion y Duque (Dion) was charged with two counts of rape in two separate criminal complaints filed directly before the RTC on June 19, 2001, which read:

Criminal Case No. 4354-R:

The undersigned complainant under oath accuses NOEL DION y DUQUE Alias KIKO of Brgy Cabalaoangan Sur, Rosales, Pangasinan of the crime of Rape, committed as follows;

That on June 16, 2001 at around 10:00 o'clock in the evening in XXX, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, threats (*sic*) and intimidation, did then and there willfully, unlawfully, and felon[i]ously have carnal knowledge with the complainant, a minor, 10 years of age against her will. (Medico-legal Certificate is hereto attached) [3]

Criminal Case No. 4355-R:

The undersigned complainant under oath accuses NOEL DION y DUQUE Alias KIKO of Brgy Cabalaoangan Sur, Rosales, Pangasinan of the crime of Rape, committed as follows;

That sometime [i]n April 2001 at around 3:00 o'clock in the afternoon in XXX, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, threats (*sic*) and intimidation, did then and there willfully, unlawfully, and felon[i]ously have carnal knowledge with the complainant, a minor, 10 years of age against her will. (Medico-legal Certificate is hereto attached) [4]

The arraignment [5] for both cases was held on September 12, 2001, after the Office of the Assistant Provincial Prosecutor, which conducted the preliminary investigation requested by Dion, [6] found probable cause to hold him for trial. [7] On the same day, the RTC issued an Order [8] to reflect that Dion entered a plea of not guilty to the two charges, and to set the schedule of the pre-trial conference.

After the completion of the pre-trial conference on March 6, 2002, [9] joint trial on the merits followed.

AAA, [10] the private complainant, was the first witness for the prosecution. She testified that it was sometime in April 2001 when she was first raped by Dion, whom she knew as a distant relative. She identified Dion in open court. AAA alleged that at around three o'clock in the afternoon, after she had finished throwing garbage at the "*bakir*" or garbage pit [11] located some 300 meters from the back of their house, Dion came out from behind some trees, beckoning her to approach him. Instead of going to Dion, AAA started to run to their house, but she tripped and fell to the ground. This allowed Dion to catch up to her, and he then pulled her toward an area covered with tall grasses. After threatening AAA that he will cut her tongue and neck if she shouted, Dion forced her on her back and removed her undergarments. Dion then removed his own short pants and briefs then climbed on top of her. AAA described how Dion made the "push and pull movement" after he inserted his penis into her vagina. AAA claimed that when Dion had finished, he stood up and again warned her not to report the incident to anyone, otherwise he will cut her neck or tongue. [12]

Regarding the second incident of rape, AAA averred that at around ten o'clock in the evening of June 16, 2001, while she was getting water from their kitchen, she heard knocking at the door. AAA inquired who it was but received no response. She testified that all of a sudden, Dion was already inside their house, and he was calling her. Once again, Dion gave the same threats to AAA before raping her as he did previously, in April 2001. Dion had just finished his deed and was about to go home when AAA's uncle, CCC, arrived. Following the sound he had heard, CCC found Dion hiding in a corner in the kitchen. CCC immediately collared Dion and woke up BBB, AAA's grandmother. BBB thereafter called Dion's father and their *Barangay* Chairman. [13]

The prosecution introduced in evidence the Medico-Legal Certificate [14] prepared by Dr. Mary Ann Valdez Romero-Fernandez, who conducted the physical examination on AAA on June 17, 2001. Dr. Romero-Fernandez's findings, as stated in the certificate dated June 18, 2001, are as follows:

.x.x DOI= April 2001/June 16, 2001 TOI= 3P.M. / 10P.M.  
POI= 1. Backyard 2. Same as address  
NOI= alleged sexual abuse  
Physical findings : (+) healed, superficial, lacerated hymenal  
wounds at 4,6 & 9 o'clock positions

Admits 1 finger; Rectal examination : no skin tag, no fissures

tight sphinteric tone,  
cervix closed, uterus=small  
adnexae =(-)

Hymenal lacerations at 4,6, & 9 o'clock positions G<sub>0</sub>  
Cervicovaginal smear for presence of spermatozoa  
Result: Negative for spermatozoa .x.x

Noticeable in the Medico-Legal Certificate were the findings that the hymenal lacerations on AAA were not only healed but also only superficial. Moreover, the cervicovaginal smear done on AAA to test for presence of spermatozoa yielded a negative result.

Asked to restate her findings in non-technical language, Dr. Romero-Fernandez explained that the lacerations were "superficial" as they had "not gone through beyond more than half of the width of the hymen." [15] Likewise, they were "healed" since they appear to have occurred more than 24 hours before the examination. [16] The doctor elaborated that a number of factors could cause lacerations to the hymen, [17] but admitted that in AAA's case, she "could not surmise or definitely say that those lacerations could have been caused by sexual abuse." [18]

The prosecution next presented the maternal grandmother and guardian of AAA, BBB. BBB attested that AAA is the child of her daughter, who died when AAA was only three years old. Since then, she had been taking care of AAA, whom she confirmed to be a minor at the time of the rape incidents. [19]

After the prosecution rested its case, the defense presented the following as witnesses: Clarita Dion, Allan Ramirez, Leonardo Neris, and Pepito Dion, Sr. Although they had all testified before Dion himself took the stand, their testimonies were given to support and corroborate Dion's own account of the events.

Negating AAA's accusations, Dion denied that he had raped AAA, whom he claimed he had never talked to. He alleged that he could not have raped AAA in April 2001 because he was in *Barangay* Dusoc, Bayambang, Pangasinan the entire month, working as a "*bata-bataan*" [20] (boy) in the carnival which was situated there at that time. [21]

Zeroing in on the June 16, 2001 rape, Dion averred that he was on his way to a dance in the *barangay* when AAA called him to enter her house. He obliged, but upon entering her house, he found AAA's uncle, CCC, who, for no reason, accused him of raping AAA. [22] Dion's father, Pepito Dion, Sr., later arrived with their *Barangay* Chairman, Leonardo Neris, to look into what happened. Dion said his father "mauled" him when he said that he didn't do it. Afterwards, he was brought to the municipal hall where he was "incarcerated." [23]

Allan Ramirez, also a resident of Rosales, Pangasinan, was presented to corroborate Dion's alibi that he was at the carnival in another *barangay* in April of 2001. Ramirez disclosed that he had come to know Dion in the carnival where they both worked.

He claimed that in April 2001, both he and Dion were working in the carnival, which at that time was located in *Barangay* Dusoc, Bayambang. To prove this, he presented a certification [24] from the Punong *Barangay* of Dusoc, Bayambang, that the carnival owned by Mr. Jose Miguel was in their *barangay* from March 28 to April 30, 2001. However, Ramirez also mentioned that on April 1, 2001, the carnival was transferred to Rosales, so he and Dion also travelled to Rosales, but they went back to Bayambang in the afternoon. [25]

During her testimony, Dion's mother, Clarita Dion, noted the negative results of the medical examination done on AAA, and concluded that her son was telling her the truth when he denied raping AAA. Mrs. Dion averred that Dion was working as a supervisor or the person in charge of betting at a carnival in *Barangay* Dusoc, Bayambang, Pangasinan, from April 30 to May 16, 2001, and since Dion did not know how to travel by himself, he could not have gone back to Rosales to rape AAA. Moreover, she alleged that on June 16, 2001, her son was with her the entire day until the evening when he got dressed up to go to the *barangay* dancing hall for an event. She claimed that she went with Dion to the dancing hall to watch the celebration, although she went home earlier. Dion supposedly went home at eleven o'clock in the evening and he told her that the *Barangay* Chairman accused him of raping AAA. Mrs. Dion admitted that AAA was not only her neighbor, but also her husband's relative. She, however, alleged that while Dion was not fond of women, AAA was "fond of playing with men." [26]

The defense also offered in evidence the testimony of *Barangay* Cabalaoangan Sur's Chairman in 2001, Leonardo Neris. Neris testified that he only learned of both incidents of rape in the evening of June 16, 2001. He was at the *barangay* hall for the wedding celebration of a *barangay* mate when at around ten o'clock in the evening, he was informed that BBB's granddaughter was raped. Together with Pepito Dion, Sr. (Pepito) who was then the Chief *Barangay Tanod*, he went to BBB's house to investigate on the matter. He claimed that he did not see AAA that night because BBB said AAA was nervous and did not want to talk to anyone. Neris claimed that it was only when he got to BBB's house that he discovered that it was Pepito's son who was being accused. He opined that Dion was mentally retarded and in fact, in their town, Dion was nicknamed "Kiko," the term they use to call "abnormal people." Neris also stated that Dion was at AAA's house because he was supposed to go to the dancing hall with his uncle who lived there. [27]

Dion's father, Pepito Dion, Sr., averred that while his 25-year-old son might have a low I.Q., he is not a retardate. He affirmed that Dion was at the carnival in Bayambang, Pangasinan for the month of April 2001. Pepito alleged that since his son could not travel on his own, it was only on April 28, 2001 that he returned to Rosales, with his employer. Pepito claimed that from April 29 to 30, 2001, Dion was at home, as Dion helped him in filling the foundation of their house. Meanwhile, on June 16, 2001, as Chief *Tanod* tasked to maintain peace and order, he was at their *barangay* hall for a wedding event when he was called by their *Barangay* Chairman to respond to a report. It was around eight o'clock in the evening when he accompanied *Barangay* Chairman Neris to BBB's house to investigate BBB's claim that her granddaughter was raped. When Pepito arrived at BBB's house, he saw that it was his son Dion who was being accused, and when he asked Dion if he did it, Dion answered "No *Tatay*." Pepito also stated that Dion told him that he was there because AAA wanted him to accompany her to the dancing hall. [28]

On December 21, 2004, the RTC rendered its Decision, finding Dion guilty beyond reasonable doubt of two counts of statutory rape:

WHEREFORE, premises considered, the Court hereby renders judgment as follows:

1. In Criminal Case No. 4354-R, the Court finds the accused Guilty beyond reasonable doubt of the crime of Rape defined and penalized under Article 266-A, par. 1(d) and penalized under Article 266-B par. 1, and hereby imposes upon him the penalty of Reclusion Perpetua. He is also ordered to pay the victim [AAA] the amount of (a) P50,000.00 as moral damages and (b) P50,000.00 as indemnity or compensatory damages;
2. In Criminal Case No. 4355-R, the Court finds the accused Noel Dion Guilty beyond reasonable doubt of the crime of Rape defined under Article 266-A, par. 1(d) and penalized under Article 266-B par. 1. He is hereby sentenced to suffer the penalty of reclusion perpetua and ordered to pay the victim [AAA] the amount of (a) P50,000.00 as moral damages and (b) P50,000.00 as indemnity or compensatory damages. [29]

The RTC held that it had no reason to disbelieve the testimony of AAA because "she was clear, direct, firm, and forthright when she testified" [30] about her ordeals. On the other hand, the RTC found Dion's defense of alibi in relation to the April 2001 rape unworthy for not having met the requisites for such a defense to be acceptable. The RTC pronounced that the defense was not able to show that it was physically impossible for Dion to be at the crime scene during the whole month of April 2001. The RTC gave no probative value to the certification the *barangay* submitted since the person who issued it was not presented in court. It also considered Ramirez's admission that the carnival was transferred to Rosales on April 1, 2001, as having discredited Dion's claim that he was in Bayambang the entire month of April of that year. The RTC rejected the defense's claim that Dion was mentally deficient because his very job in the carnival they all claimed he worked in proved that Dion was "endowed x x x with common sense, x x x good memory and accurate mathematical ability, which are all indicia of normal average, if not high intelligence." [31]

The RTC also discounted Dion's denial of the June 2001 rape. The RTC found that Dion was not able to properly explain what he was doing at AAA's house at a very late hour and why he would be accused of raping AAA, especially since he had claimed that he neither liked her nor fought with her.

Dion elevated the RTC decision to the Court of Appeals, attacking the second information as defective and AAA's testimony as incredible and full of inconsistencies.

In its **Decision** dated July 25, 2007 in CA-G.R. CR.-H.C. No. 01161, the Court of