



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **January 8, 2020** which reads as follows:*

“G.R. No. 249910 – (*Edgardo Dela Cruz y Devanadera v. People of the Philippines*).- The petitioner’s motion extension of fifteen (15) days within which to file a petition for review on certiorari is **GRANTED**, counted from the expiration of the reglementary period.

For our resolution is a Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court, assailing the Decision² dated October 11, 2019 of the Court of Appeals (CA) in CA-G.R. CR No. 41861, which affirmed with modification the Decision³ dated March 6, 2018 of the Regional Trial Court (RTC) of Calamba, Laguna, Branch 36, in Criminal Case Nos. 24114-2015-C and 24820-2015-C.

In two separate Information, Edgardo Dela Cruz y Devanadera (Dela Cruz) was charged with two counts of Rape by Sexual Assault of a 14-year-old minor, AAA, by inserting his finger into the latter’s female genitalia.⁴ The prosecution presented the testimonies of AAA, Dr. Jericho Cordero, and AAA’s friend, BBB.⁵

AAA testified that on February 3, 2015, at around 10:00 p.m., she was home inside her room chatting with her friend BBB on Facebook Messenger when Dela Cruz, who was their neighbor, suddenly came in and immediately closed the door. She tried to run

¹ *Rollo*, pp. 34-66.

² Penned by Justice Zenaida T. Galapate-Laguilles with Justices Ricardo R. Rosario and Walter S. Ong, concurring; *id.* at 8-26.

³ Penned by Judge Glenda R. Mendoza-Ramos; *id.* at 67-77.

⁴ *Id.* at 67.

⁵ *Id.* at 68.

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outside but Dela Cruz pulled her hand, locked the door, and pushed her to the bed. Dela Cruz pulled AAA's shorts and panty down to her knees but she was able to pull them back up. She could not shout for help as Dela Cruz was covering her mouth. Dela Cruz then started to touch her breasts and vagina, and again pulled her shorts and panty down to her knees and this time, held it in a way she cannot pull them back up. Then, Dela Cruz inserted his finger into her vagina causing her pain. She cried "*ayoko po*" and was again able to pull her shorts and panty back up. Dela Cruz then left the room but came back to say "*sorry lasing lang,*" but he told AAA that he will do it again and warned her not to tell her brothers about the incident, then left.⁶

Immediately thereafter, AAA told BBB about what happened. BBB took the initiative to tell AAA's father, who was then working abroad. The father called AAA's brother and grandmother to inform them about the incident. AAA's grandmother did not waste time to take AAA to the barangay to report the assault. AAA was then subjected to a physical examination at Camp Vicente Lim in Calamba City, which resulted to a finding of a deep-healed laceration in her hymen at 5:00 position.⁷

At that point, AAA confessed to her grandmother that a similar assault transpired on the evening of January 21, 2015. Dela Cruz also inserted his finger into her vagina while she was in her room. She struggled to remove Dela Cruz's hand until she was able to pull her shorts and panty back up. Dela Cruz then stopped and left her in her room. When confronted by the defense about said incident being an afterthought, AAA insisted that said previous assault really happened. She merely kept it to herself as she was afraid of her brothers. Also Dela Cruz warned her not to tell anybody about the incident.⁸

During trial, AAA also testified that Dela Cruz was not only their neighbor but a childhood friend of her mother. He was also friends with AAA's brothers. In fact, on the evening of February 3, 2015 when the assault happened, her brothers were at Dela Cruz's place as they were invited for his son's birthday party. On certain occasions, Dela Cruz comes to their house when he asks something from her brothers. She revealed that she treated Dela Cruz as a father, saying, "*para ko na po siyang tatay, sa kanya po nagbibilin si papa.*" Hence, she was scared to tell on him.⁹

⁶ Id. at 68-69.

⁷ Id. at 69.

⁸ Id. .

⁹ Id. at 69-70.

For its part, the defense presented the testimonies of Dela Cruz, his co-worker John Ivan Tuaño (Tuaño), and sister-in-law Carolina Leon Tobaña (Tobaña). Dela Cruz interposed the defense of denial and alibi. He claimed that at the time of the alleged assault on February 3, 2015, he was just home entertaining guests who were having a drinking spree for his son's birthday. After the party, he just went to sleep. As for the January 21, 2015 incident, Dela Cruz averred that it was a mere afterthought on the part of AAA to justify the finding of a healed hymenal laceration. On direct examination, he alleged that he did not go home on January 21, 2015 after work as he went to his sister and brother-in-law's house in Canlubang, Los Baños, Laguna to celebrate the latter's wedding anniversary. Upon the prodding of the prosecutor during the cross-examination, however, Dela Cruz admitted that he went home on the evening of January 21, 2015. Tuaño was presented to corroborate Dela Cruz's testimony that he came to work on January 21, 2015. On the other hand, Tobaña was presented to corroborate Dela Cruz's alibi that the latter was home, drinking with his son's guests on February 3, 2015. She, however, admitted that she went to sleep around 10:00 p.m. that evening.¹⁰

The RTC found Dela Cruz guilty beyond reasonable doubt of two counts of sexual assault under Article 266-A(2) of the Revised Penal Code (RPC), in relation to Section 5(b), Article III of Republic Act (R.A.) No. 7610. It disposed:

WHEREFORE, premises considered, the Court hereby finds the accused EDGARDO DELA CRUZ GUILTY beyond reasonable doubt of two (2) counts of sexual assault in relation to Republic Act 7610. Applying the Indeterminate Sentence Law, he is hereby sentenced to an indeterminate term of eight (8) years and one (1) day of *prision mayor* as minimum to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal*, as maximum FOR EACH COUNT of Sexual Assault committed on AAA. Likewise, the award of [P]20,000[.00] as civil indemnity; [P]15,000.00 as moral damages, [P]15,000.00 as exemplary damages; and the fine of [P]15,000.00, are proper FOR EACH COUNT of SEXUAL ASSAULT.

SO ORDERED.¹¹

On appeal, the CA affirmed the factual findings and conclusion of the RTC but modified the nomenclature of the offense committed, as well as the penalty therefor, pursuant to the prevailing jurisprudence on the matter. The appellate court also modified the

¹⁰ Id. at 71-73.

¹¹ Id. at 76-77.

award of damages, awarding ₱50,000.00 each for moral damages, exemplary damages, and civil indemnity for each count of lascivious conduct, and imposing an interest thereto from the finality of judgment until full payment thereof, thus:

WHEREFORE, the March 6, 2018 *Decision* of the RTC of Calamba City, Laguna, Branch 36, in Criminal Case Nos. 24114-2015 and 24820-2015-C is hereby **AFFIRMED WITH MODIFICATION**. The accused-appellant Edgardo Dela Cruz y Devanadera is found **GUILTY BEYOND REASONABLE DOUBT** of **TWO COUNTS** of **Lascivious Conduct under Section 5(b) of R.A. No. 7610** and is sentenced to suffer the penalty of twelve (12) years of *prision mayor* as minimum to seventeen (17) years, four (4) months, and one (1) day of *reclusion temporal* as maximum for each count and is **ORDERED TO PAY** AAA [₱]50,000.00 as civil indemnity, [₱]50,000.00 as moral damages, and [₱]50,000.00 as exemplary damages, for each count, all with interest at the rate of 6% per annum from the date of the finality of this judgment.

SO ORDERED.¹²

Hence, this petition.

In this petition for review under Rule 45, Dela Cruz imputes error on the part of the RTC and the CA in their appreciation of facts and evidence. Dela Cruz insists that the January 21, 2015 incident was a mere afterthought to conform to the finding of healed hymenal laceration. It is Dela Cruz's position that the "healed" hymenal laceration found during AAA's physical examination on February 4, 2015 belies the prosecution's claim that the assault happened just before the day of said examination. Hence, for said evidence to find significance, AAA concocted a previous assault. Dela Cruz also points out that AAA was inconsistent with her testimony regarding the date of the prior assault, *i.e.*, whether it was January 21 or January 27.

We find no reason to disturb the findings and conclusion of the CA. Foremost, this Court has consistently ruled that the factual findings of the trial court, when affirmed by the CA, are generally binding and conclusive upon the Court. Also, matters with regard to the determination of the credibility of the witness are best left to the trial court, which had the opportunity to observe the deportment and demeanor of the witness while testifying.¹³

¹² Id. at 25.

¹³ *People v. De Chavez*, G.R. No. 218427, January 31, 2018.

At any rate, we took a second look at this case and still find no reason to deviate from the ruling of conviction. As found by the courts *a quo*, AAA was able to narrate in a candid and straightforward manner her ordeal in the hands of Dela Cruz. Her testimony was consistent in all material parts, *i.e.*, that on two different occasions, Dela Cruz forced himself upon her and sexually assaulted her by inserting his finger into her vagina. That AAA was only 14 years old at the time of the two incidents of assault was also established during trial.

Dela Cruz's argument that the presence of healed hymenal laceration belies AAA's accusation that he sexually abused her on February 3, 2015 must fail in light of the fact that hymenal laceration is not an element of sexual assault. The foremost consideration in the prosecution of rape/sexual assault or lascivious conduct for that matter, is the victim's testimony and not the findings of the medico-legal officer. In fact, a medical examination of the victim is not indispensable in a prosecution for such cases.¹⁴

Anent the alleged inconsistency in AAA's testimony, specifically with regard to the exact date of the commission of the prior assault, the same is merely trivial and will not render AAA's testimony incredible. Such minor inconsistency or inaccuracy in the testimony of a sexually-abused victim, especially one who is a minor, is not unusual considering the painful experience is oftentimes not remembered in detail as "[i]t causes deep psychological wounds that scar the victim for life and which her conscious and subconscious mind would opt to forget."¹⁵

We are, thus, one with the RTC and the CA in ruling that between the clear, positive, and straightforward testimony of the minor victim, found credible by the courts *a quo*, and the unsupported denial and alibi of Dela Cruz, the former should prevail. Being a negative defense, the defense of denial, if not substantiated by clear and convincing evidence, as in the instant case, deserves no weight in law and cannot be given greater evidentiary value than the testimony of a credible witness, like AAA, who testified on affirmative matters.¹⁶ This is especially so as Dela Cruz retracted his denial that he did not come home on January 21, 2015. Also, Dela Cruz's alibi that he was home on February 3, 2015 cannot rule out his absolute

¹⁴ *Ramilo v. People*, G.R. No. 234841, June 3, 2019.

¹⁵ *People v. De Chavez*, *supra*.

¹⁶ *People v. Tulagan*, G.R. No. 227363, March 12, 2019.

absence in the place of the incident as he and the victim were just neighbors.

Finally, pursuant to the landmark case of *People v. Tulagan*,¹⁷ the CA also correctly modified the appellation of the offense, as well as its penalty, from rape by sexual assault under Article 266-A(2) of the RPC, in relation to R.A. No. 7610, punishable by *reclusion temporal* in its medium period, to Lascivious Conduct under Section 5(b) of R.A. No. 7610, punishable by *reclusion temporal* in its medium period to *reclusion perpetua*. The following elements of lascivious conduct under Section 5(b) of R.A. No. 7610 were sufficiently alleged and proved: lascivious act of inserting Dela Cruz's finger into AAA's genitalia through force and intimidation, AAA being a 14-year-old minor.

Applying the Indeterminate Sentence Law, and considering the absence of mitigating and aggravating circumstances, the CA correctly imposed the penalty of 12 years of *prision mayor* as minimum¹⁸ to 17 years, 4 months, and 1 day of *reclusion temporal* as maximum.¹⁹ Also, conformably with the said prevailing jurisprudence, the CA correctly awarded the amount of ₱50,000.00 each for civil indemnity, moral damages, and exemplary damages for each count of lascivious conduct. The fine imposed by the RTC in the amount of ₱15,000.00 should, however, be retained in accordance with Section 31(f),²⁰ Article XII of R.A. No. 7610. All of said monetary awards shall earn interest at the rate of six percent (6%) *per annum* from the date of finality of this judgment until full payment.

WHEREFORE, premises considered, the October 11, 2019 Decision of the Court of Appeals in CA-G.R. CR No. 41861 is hereby **AFFIRMED with MODIFICATION**. Edgardo Dela Cruz y Devanadera is found **GUILTY** beyond reasonable doubt of two (2) counts of Lascivious Conduct under Section 5(b) of R.A. No. 7610 and is sentenced to suffer the penalty of twelve (12) years of *prision*

¹⁷ Id.

¹⁸ Within the range of 8 years and 1 day of *prision mayor* medium to 14 years and 8 months of *reclusion temporal* minimum, which is one degree lower from the prescribed penalty of *reclusion temporal* medium to *reclusion perpetua*.

¹⁹ Within the range of the medium of the prescribed penalty of *reclusion temporal* medium to *reclusion perpetua*, which is 17 years, 4 months, and 1 day to 20 years, considering that there was no mitigating nor aggravating circumstance present in the case.

²⁰ Sec. 31. Common Penal Provisions. –

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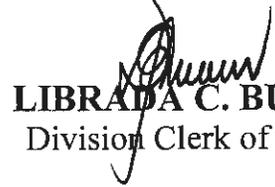
(f) A fine to be determined by the court shall be imposed and administered as a cash fund by the Department of Social Welfare and Development and disbursed for the rehabilitation of each child victim, or any immediate member of his family if the latter is the perpetrator of the offense.

mayor, as minimum, to seventeen (17) years, four (4) months, and one (1) day of *reclusion temporal*, as maximum, for each count and to **PAY** a **FINE** of ₱15,000.00 for each count. He is further **ORDERED** to **PAY** the victim, AAA, civil indemnity, moral damages, and exemplary damages, in the amount of ₱50,000.00 for each count. The fine, civil indemnity, and damages so imposed are subject to an interest at the rate of 6% *per annum* from the date of the finality of this Resolution until fully paid.

The motion to admit by Atty. Emmanuel E. Murillo, counsel for petitioner, submitting an affidavit of service with proof of service of the motion for an extension of time to file a petition for review on certiorari and copy of the said motion in PDF format is **NOTED**; and the petitioner is required to **SUBMIT** within five (5) days from notice hereof, the verified declarations of the soft copies of the signed motion for extension of the time to file a petition for review on certiorari and the motion to admit pursuant to A.M. Nos. 10-3-7-SC and 11-9-4-SC.

SO ORDERED.” *LOPEZ, J., on official leave.*

Very truly yours,


LIBRADA C. BUENA,
Division Clerk of Court

8

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