



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE
PHILIPPINES,

OF THE
Plaintiff-Appellee,

G.R. No. 242882

Present:

PERLAS-BERNABE, J.,
Chairperson,
HERNANDO,
INTING,*
DELOS SANTOS, and
BALTAZAR-PADILLA,** JJ.

- versus -

DIOSDADO JAGDON, JR.,
Accused-Appellant.

Promulgated:

09 SEP 2020

X-----X

DECISION

DELOS SANTOS, J.:

The Case

This appeal assails the Decision¹ dated June 29, 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 02327 which affirmed the Joint Decision² dated December 18, 2012 of the Regional Trial Court (RTC) of [REDACTED] in Criminal Case Nos. B-01591 and B-01592, finding Diosdado Jagdon, Jr. (accused-appellant) guilty beyond reasonable doubt of the crimes of Rape and Acts of Lasciviousness. The CA sentenced accused-appellant to the penalty of *reclusion perpetua* for the crime of Rape and modified his sentence for the crime of Acts of Lasciviousness to twelve (12) years and one (1) day of *reclusion temporal* in its minimum period, as minimum, to fifteen (15) years, six (6) months and twenty-one (21) days of

* On official leave.

** On leave.

¹ Penned by Associate Justice Pamela Ann Abella Maxino, with Associate Justices Edward B. Contreras and Louis P. Acosta, concurring; *rollo*, pp. 4-19.

² Penned by Executive Presiding Judge Antonio D. Marigomen; *CA rollo*, pp. 45-55.

reclusion temporal in its medium period, as maximum.

The Proceedings Before the Trial Court

The Charges

Two separate *Informations* for Rape and Acts of Lasciviousness were filed against accused-appellant involving two minors, *viz.*:

Criminal Case No. B-01591

That sometime in the third week of January, 2003 at noon, in [REDACTED], Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, with lewd design, did then and there willfully, unlawfully and feloniously have carnal knowledge with [AAA],³ a 9 year old minor, against her will and consent.

CONTRARY TO LAW.⁴

Criminal Case No. B-01592

That sometime in the third week of January 2003, in the evening, in [REDACTED], Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously with lewd design, lick the [genitalia] of [BBB], a 6 [year] old girl, against her will and consent.

CONTRARY TO LAW.⁵

On arraignment, accused-appellant pleaded not guilty to both charges. Joint trial ensued.

The Prosecution's Version

Accused-appellant was the live-in partner of the aunt of AAA's father, who happened to be their neighbor. One afternoon in the later part of January 2003, nine (9)-year-old AAA was just near her home in [REDACTED] when accused-appellant suddenly brought her inside a pigpen. There, accused-appellant started licking AAA's vagina then proceeded to insert his penis into her vagina. He continued with this motion for several times. AAA struggled and experienced pain during the penetration with accused-appellant proving too strong for her. After

³ In accordance with Amended Administrative Circular No. 83-2015, the identities of the parties, records, and court proceedings are kept confidential by replacing their names and other personal circumstances with fictitious initials, and by blotting out the specific geographical location that may disclose the identities of the victims.

⁴ CA *rollo*, p. 90.

⁵ *Id.* at 91.



satisfying his bestial desires, accused-appellant gave AAA some cash and told her not to tell anyone about what happened.⁶

This incident was witnessed by AAA's younger sister, BBB, who was then on the road across the pigpen. BBB saw accused-appellant sitting inside the pigpen licking AAA's genitals while the latter was standing. Thereafter, she saw accused-appellant exit the pigpen. Her sister also left and joined a group of children who were playing nearby.⁷

Around the same week in January 2003, while six (6)-year-old BBB was playing alone outside their house, accused-appellant called her and instructed her to go inside. While inside the house, with the front door open, accused-appellant made BBB lie on a bed. He removed her skirt and underwear. He started licking BBB's vagina and inserted his finger into it. Thereafter, accused-appellant gave her ₱3.00 and told her not to tell her mother about what happened.⁸

Sometime in February 2003, due to an argument AAA and BBB had, BBB went and told their mother, CCC, that AAA had been having sex with accused-appellant. AAA was brought to a local government hospital to undergo a medical examination. In her provisional medical certificate, the examining doctor found indications suggestive of sexual abuse. This was confirmed by Dr. Naomi Poca⁹ (Dr. Poca) of Vicente Sotto Memorial Medical Center.¹⁰

AAA disclosed that the incident in the pigpen witnessed by her sister was not an isolated one. Accused-appellant had been sexually ravishing her for quite some time. This usually occurs inside the pigpen, her house, accused-appellant's house or at a nearby banana grove. After each incident, accused-appellant would usually give her money.¹¹

The Defense's Version

Accused-appellant admitted that AAA was only nine (9) years old at the time of the rape incident and that BBB is younger than AAA, but he denied authorship of the crimes committed against the two minor victims.¹² He claimed that when the rape incident happened, he was at his workplace in [REDACTED]. It is worthy to note that [REDACTED] (where the rape incident took place) and [REDACTED] are adjacent municipalities. People can reach [REDACTED] from [REDACTED] by riding a jeepney or *habal-habal*.

⁶ Id. at 47.

⁷ Id. at 92.

⁸ Id. at 91-92.

⁹ Also referred to as Dr. Naome Poca in some parts of the records.

¹⁰ CA *rollo*, pp. 52-53, 92.

¹¹ Id. at 92.

¹² TSN, June 21, 2012, pp. 5, 8.

According to accused-appellant, it normally takes him more than an hour of travel both to and from [REDACTED].¹³

Accused-appellant also imputes ill motive on the part of AAA and BBB's parents. He claims that the charges against him were merely concocted due to his estranged relationship with AAA, who was prone to speaking bad words, and with AAA and BBB's family, on account of political issues.¹⁴

The RTC's Ruling

After due proceedings, the RTC rendered a verdict of conviction against accused-appellant for both charges of Rape and Acts of Lasciviousness. The trial court was convinced that both the crimes of Rape and Acts of Lasciviousness charged against accused-appellant were duly proven beyond reasonable doubt.

The dispositive portion of the trial court's Joint Decision¹⁵ dated December 18, 2012 reads:

WHEREFORE, premises considered, accused Diosdado Jagdon, Jr. is hereby found guilty beyond reasonable doubt of the crime of rape and he is hereby sentenced to suffer the penalty of [*Reclusion Perpetua*].

Further, accused is hereby ordered to pay to private complainant [AAA] the amount of [P]50,000.00 as court indemnity and [P]50,000.00 as moral damages.

With respect to the crime of Acts of Lasciviousness, in relation to RA 7610, he is hereby sentenced to suffer the penalty of 4 years, 2 months and 1 day to 6 years, the maximum period of [*prision correccional*].

Pursuant to Circular No. 4-92, as amended by Circular No. 63-92 of the Court Administrator, the Jail Warden of the Cebu Provincial Detention and Rehabilitation Center (CPDRC), Cebu City, is hereby directed to immediately transfer the accused to the custody of the National Bilibid Prison, Muntinlupa City, Metro Manila.

Let a copy of the decision be furnished the Jail Warden CPDRC for his information, guidance and compliance.

SO ORDERED.¹⁶

Dissatisfied, accused-appellant appealed to the CA.

¹³ CA rollo, p. 52.

¹⁴ Id. at 92.

¹⁵ Id. at 45-55.

¹⁶ Id. at 54-55.

The CA's Ruling

The CA affirmed accused-appellant's conviction for both crimes of Rape and Acts of Lasciviousness with modification as to the penalty for Acts of Lasciviousness.

The dispositive portion of the Decision¹⁷ dated June 29, 2018 reads:

IN LIGHT OF ALL THE FOREGOING, the assailed Decision dated December 18, 2012, of the Regional Trial Court, Branch 61, Dakit, Bogu, Cebu in Criminal Cases Nos. B-01591 and B-01592, is AFFIRMED with MODIFICATIONS. Accused-Appellant DIOSDADO JAGDON JR. is found GUILTY of the crime of rape against AAA, and is sentenced to the penalty of *reclusion perpetua*. He is ordered to pay AAA the amounts of Seventy Five Thousand Pesos (Php 75,000.00) as civil indemnity, Seventy Five Thousand Pesos (Php 75,000.00) as moral damages, and Seventy Five Thousand Pesos (Php 75,000.00) as exemplary damages.

Accused-Appellant DIOSDADO JAGDON JR. is further found GUILTY of the crime of acts of lasciviousness against BBB, and is sentenced to the penalty of twelve (12) years and one (1) day of *reclusion temporal* in its minimum period as minimum to fifteen (15) years, six (6) months and twenty-one (21) days of *reclusion temporal* in its medium period as maximum. He is ordered to pay BBB the amounts of Twenty Thousand Pesos (Php 20,000.00) as civil indemnity, Fifteen Thousand Pesos (Php 15,000.00) as moral damages, Fifteen Thousand Pesos (Php 15,000.00) as exemplary damages and Fifteen Thousand Pesos (Php 15,000.00) as fine.

All awards of damages are subjected to legal interest at the rate of six percent (6%) [*per annum*] from the date of finality of this decision until fully paid.

SO ORDERED.¹⁸

The CA held that AAA's testimony, coupled with her declaration of her minority at the time of the rape incident, as well as accused-appellant's open admission of such during trial, elucidates with sufficiency all the elements for the charge of rape – sexual copulation by accused-appellant with a girl below 12 years of age.¹⁹

It further held that all the elements of the crime of acts of lasciviousness were duly proven by accused-appellant's act of intentionally inserting his finger into BBB's vagina and licking the same. Such conduct definitely exhibits accused-appellant's intent to abuse, degrade, and harass BBB's person and extract arousal or sexual gratification.²⁰

¹⁷ Id. at 89-104.

¹⁸ Id. at 103-104.

¹⁹ Id. at 98.

²⁰ Id. at 101-102.

The Present Appeal

Accused-appellant now seeks affirmative relief from this Court and prays anew for his acquittal. In compliance with Resolution²¹ dated January 10, 2019, accused-appellant manifested that in lieu of supplemental briefs, he is adopting his brief filed before the CA.²² On the other hand, the Office of the Solicitor General (OSG) manifested that it will no longer file a supplemental brief since all the issues raised by accused-appellant have already been sufficiently addressed in its plaintiff-appellee's brief likewise filed before the CA.²³

Issue

The issue for the Court's resolution is whether or not the CA erred in affirming accused-appellant's conviction for the crimes of Rape and Acts of Lasciviousness.

Ruling

The instant appeal lacks merit. Modifications, however, as to the nomenclature of the crime in Criminal Case No. B-01591 for Rape and nomenclature of the crime and award of damages in Criminal Case No. B-01592 for Acts of Lasciviousness are in order.

At the outset, *We* stress that assessment of the credibility of witnesses is a task most properly within the domain of trial courts. Factual findings of the trial court carry great weight and respect due to the unique opportunity afforded to them to observe the witnesses when placed on the stand. Consequently, appellate courts will not overturn the factual findings of the trial court in the absence of facts or circumstances of weight and substance that would affect the result of the case. This rule finds an even more stringent application where the said findings are sustained by the CA, as in the instant case.²⁴

Criminal Case No. B-01591 ***– Statutory Rape.***

Rape is defined and penalized under Article 266-A of the Revised Penal Code (RPC), as amended by Republic Act No. (RA) 8353,²⁵ viz.:

²¹ *Rollo*, p. 25.

²² *Id.* at 34.

²³ *Id.* at 27.

²⁴ *People v. Gerola*, 813 Phil. 1055, 1063 (2017).

²⁵ The Anti-Rape Law of 1997, approved on September 30, 1997.

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.

The *information* filed against accused-appellant in Criminal Case No. B-01591 alleged that AAA was only nine (9) years old at the time of the incident. Clearly, the charge was for Statutory Rape under Article 266-A (1) (d) of the RPC.

Statutory rape is committed by sexual intercourse with a woman below 12 years of age regardless of her consent, or the lack of it, to the sexual act.²⁶

The elements necessary in every prosecution for statutory rape are: (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.²⁷ Proof of force, intimidation or consent is unnecessary as they are not elements of statutory rape, considering that the absence of free consent is conclusively presumed when the victim is below the age of 12.²⁸

Here, both these elements are present in this case.

The element of age.

In statutory rape cases, the best evidence to prove the age of the offended party is the latter's birth certificate. But in certain cases, the Court admits of exceptions. In *People v. Pruna*,²⁹ this Court have set guidelines in appreciating age, either as an element of the crime or as a qualifying circumstance, among which:

4. In the absence of a certificate of live birth, authentic document, or the testimony of the victim's mother or relatives concerning the victim's age, **the complainant's testimony will suffice provided that it is expressly and clearly admitted by the accused.**³⁰ (Emphasis supplied)

²⁶ *People v. Udtohan*, 815 Phil. 449, 459 (2017).

²⁷ *People v. Eulalio*, G.R. No. 214882, October 16, 2019.

²⁸ *People v. Pacayra*, 810 Phil. 275, 288 (2017).

²⁹ 439 Phil. 440 (2002).

³⁰ *Id.* at 458.

Here, the prosecution failed to present and offer in evidence AAA's birth certificate. Nonetheless, AAA testified as to her minority at the time of the rape incident, while accused-appellant expressly admitted that AAA was only nine (9) years old at that time, *viz.*:

Q: Will you agree with me that at the time of the incident, the age of [AAA] is 9 years old?

A: Yes.

Q: And you will agree with me that [AAA] has a younger sister named [BBB].

A: Yes.

Q: And [BBB] is younger than [AAA]?

A: Yes.³¹ (Emphases supplied)

The prosecution may have been unable to present AAA's birth certificate or other authentic document such as a baptismal certificate during trial, however, such failure to present relevant evidence will not deter this Court from upholding that statutory rape was indeed committed by accused-appellant because he himself admitted in his testimony in open court that AAA was only nine (9) years old at the time of the rape incident. In the Court's view, this admission from accused-appellant, taken with the testimony of AAA, sufficiently proved that AAA was under 12 years of age at the time of the rape incident.³²

The element of carnal knowledge.

Both the RTC and the CA gave credence to AAA's testimony. She was able to fully and sufficiently establish the fact that accused-appellant had carnal knowledge of her. As correctly found by the CA, AAA was categorical in detailing her harrowing experiences in the hands of accused-appellant, even under the pain of a grueling cross-examination. Her testimony that accused-appellant inserted his penis into, and licked her vagina, was straightforward. Significantly, AAA's Provisional Medical Certificate states "*Medical Evaluation (sic) suggestive of sexual abuse,*" which medical finding was affirmed and confirmed by Dr. Poca of Vicente Sotto Memorial Medical Center.³³

We find that the prosecution, through AAA's categorical and straightforward testimony, was able to sufficiently establish that accused-appellant had carnal knowledge of AAA. AAA testified that she was ravished by accused-appellant more than once and detailed the last rape incident, *viz.*:

³¹ TSN, June 21, 2012, p. 8.

³² See *People v. Padigos*, 700 Phil. 368, 377 (2012).

³³ CA rollo, pp. 53, 92.

FISCAL MACIAS

Q- Can you tell us what did the accused do to you?

(Witness cried and refused to answer the question.)

FISCAL MACIAS:

Your Honor, I would like to manifest that the witness cried and cannot answer the question.³⁴

x x x x

FISCAL MACIAS:

Q- During the last hearing, you said that he opened you and tried to insert his [penis] into your vagina, who is this person you are referring to?

A- Junior.

Q- Is Junior present in this court room today?

A- Yes, he is around.

Q- Kindly point to Junior if he is around.

A- Yes, he is here inside the chamber.

(Witness pointing to accused and when asked answered the name Diosdado Jagdon, Jr.)

Q- You said [that] the accused tried to [insert his] penis into your vagina, did the accused succeeded in inserting his penis into your vagina?

A- Yes, Sir.

Q- Do you or how did you feel when the [penis] of the accused was inserted into your vagina?

A- It was painful.

Q- After the accused inserted his [penis] into your vagina, what else did he do afterwards?

A- He opened my vagina and then he licked it.

(WITNESS is showing [her] tongue out as if licking.)

FISCAL MACIAS:

Q- After the accused licked your vagina, what else did he do?

A- No more but he kept on repeating licking my vagina.

Q- What was your position when the accused licked and inserted his [penis] into your vagina?

A- I was lying down.³⁵

x x x x

Q- How many times did the accused rape you?

A- Several times.³⁶

x x x x

³⁴ TSN, August 17, 2005, p. 4.

³⁵ TSN, December 14, 2005, pp. 2-6.

³⁶ Id. at 8-9.

- Q- **During the last rape incident, what did the accused do to you?**
A- **When he opened my vagina, he licked my vagina.**
- Q- **What did he do next?**
A- **His penis banged my vagina. (dumbol-dumbol.)**
- Q- **And what did you feel when the accused banged his [penis] to your vagina?**
A- **I felt pain.**
- Q- Why did you feel pain?
(witness failed to answer the question.)
- Q- **Was it prior or was it because the [penis] of the accused was inserted into your vagina?**
A- **Yes.**
- Q- What did you do when the accused inserted his penis into your vagina?
A- I was struggling.
- Q- And the accused was strong?
A- Yes.³⁷ (Emphases supplied)

AAA's testimony was clear, convincing, and straightforward. Accused-appellant ravished her more than once. During the last incident accused-appellant inserted his penis into her vagina, fully satisfying the element of carnal knowledge in statutory rape.

Moreover, records disclose that AAA cried and refused to answer when she was asked "*Can you tell us what did the accused do to you?*" during her direct examination. The hearing was even reset because of her crying. Such spontaneous emotional outburst strengthens her credibility. This Court has held that the crying of the victim during her testimony is evidence of the credibility of the rape charge with the verity born out of human nature and experience.³⁸

In *People v. Ronquillo*,³⁹ the Court discussed:

This Court has held time and again that testimonies of rape victims who are young and immature deserve full credence, considering that no young woman, especially of tender age, would concoct a story of defloration, allow an examination of her private parts, and thereafter pervert herself by being subject to a public trial, if she was not motivated solely by the desire to obtain justice for the wrong committed against her. Youth and immaturity are generally badges of truth. It is highly improbable that a girl of tender years, one not yet exposed to the ways of the world, would impute to any man a crime so serious as rape if what she

³⁷ Id. at 13-15.

³⁸ *People v. Ortiz*, 614 Phil. 625, 634-635 (2009).

³⁹ 818 Phil. 641 (2017).

claims is not true.⁴⁰

In a bid to exonerate himself from the statutory rape charge, accused-appellant challenges the testimony of AAA that he raped her in the pigpen, a place which was open to the view of their neighbors. He posits that it is quite mind-boggling that a rapist would just attack his victim without even thinking of the possibility that he can easily be caught by the people around.⁴¹

To further his chance for exoneration, accused-appellant also point to the testimony of AAA's sister, BBB, that AAA immediately joined and played with the children in the area after the alleged rape incident. He argues that it is inconceivable for anyone to still be able to play with others after an unusual and harrowing experience.⁴²

Lastly, accused-appellant relies heavily on BBB's testimony that she saw accused-appellant merely kissing her sister's vagina while accused-appellant was sitting and her sister standing. He maintains that assuming that an incident indeed transpired between accused-appellant and AAA, the same does not constitute rape because BBB testified that accused-appellant was merely kissing AAA's vagina.⁴³

Accused-appellant's arguments failed to persuade.

For one, as explained in *People v. Agudo*,⁴⁴ this Court has long found and held that:

Rapists are not deterred from committing the odious act of sexual abuse by the mere presence of people nearby or even family members; rape is committed not exclusively in seclusion. Several cases instruct [Us] that lust is no respecter of time or place and rape defies constraint of time and space.⁴⁵

Thus, the fact that the subject rape incident happened in a place which was open to the view of their neighbors does not negate the fact that accused-appellant indeed raped AAA.

For another, the fact that AAA immediately joined and played with the children in the area after the rape incident does not run counter to AAA's claim that she was ravished by accused-appellant. *We* note AAA's testimony that she was ravished by accused-appellant several times and the rape

⁴⁰ Id. at 651-652, citing *People v. Closa*, 740 Phil. 777, 785 (2014).

⁴¹ CA *rollo*, p. 38.

⁴² Id. at 39.

⁴³ Id. at 39-40.

⁴⁴ 810 Phil. 918 (2017).

⁴⁵ Id. at 929.

incident subject of this instant case only pertains to the last one, which may have produced lesser pain on the part of AAA compared to the first few incidents. Too, although the conduct of the victim immediately following the alleged sexual assault is of utmost importance as it tends to establish the truth or falsity of the charge, it is, however, inaccurate to say that there is a typical reaction or norm of behavior among rape victims. The workings of the human mind and body when placed under emotional stress are unpredictable.⁴⁶

In *People v. Ramos*,⁴⁷ the Court further discussed:

Some victims may shout, some may faint, while others may be shocked into insensibility. Not every victim can be expected to act with reason or conformably with the usual expectation of mankind. Certainly, it is unfair to expect and demand a rational reaction or a standard behavioral response from AAA, who was confronted with such startling and traumatic experience.⁴⁸

Still for another, as correctly found by the CA, the alleged inconsistency between the testimony of AAA that accused-appellant inserted the tip of his penis into her vagina while inside the pigpen, and that of her sister BBB, who narrated that she only saw accused-appellant sitting down, licking AAA's vagina while the latter was standing near him, is not fatal to the finding of guilt of accused-appellant. BBB's testimony itself reveals that she did not actually see accused-appellant and her sister enter the pigpen nor did she testify that she saw the whole occurrence. *We* agree with the CA's finding that the fact that BBB witnessed a portion of it – one which did not include the penetration of her sister's genitals, does not negate the fact that accused-appellant indeed sexually ravished AAA.⁴⁹

We note however that although AAA testified and established that she was ravished by accused-appellant several times, the latter can only be convicted of one count of statutory rape since the information filed against him in Criminal Case No. B-01591 charges him of only one count

Criminal Case No. B-01592
– Acts of Lasciviousness.

When acts of lasciviousness is committed against a child under 12 years old, the designation of the crime committed shall be Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5 (b) of RA 7610.⁵⁰ Meanwhile, Section 5 (b) of RA 7610⁵¹ provides that when the

⁴⁶ See *People v. Ortiz*, supra note 38, at 634-635.

⁴⁷ G.R. No. 210435, August 15, 2018.

⁴⁸ Id.

⁴⁹ *Rollo*, p. 15.

⁵⁰ See *People v. Tulagan*, G.R. No. 227363, April 16, 2019.

⁵¹ Special Protection of Children Against Abuse, Exploitation and Discrimination Act. Approve on June 17, 1992.

victim of Acts of Lasciviousness is under 12 years of age, the offender shall be prosecuted under the RPC, provided that the penalty for lascivious conduct shall be *reclusion temporal* in its medium period.⁵²

Acts of Lasciviousness under the RPC has the following elements: (1) that the offender commits any act of lasciviousness or lewdness; (2) that it is done by using force or intimidation, or when the offended party is deprived of reason or otherwise unconscious; or when the offended party is under 12 years of age; and (3) that the offended party is another person of either sex.⁵³

Both the RTC and the CA gave credence to BBB's straightforward and candid testimony. BBB recounted her ordeal in the hands of accused-appellant, *viz.*:

FISCAL TEJANO

Q- And can you please tell us, what did Diosdado do against you?

FISCAL TEJANO:

I would like to make of record, your Honor, that the private complainant [BBB] is crying.

COURT:

Noted. Witness may answer.

Witness:

A- He lick my vagina.⁵⁴

x x x x

FISCAL TEJANO:

Q- Can you tell us [BBB] where did this incident happened wherein Diosdado Jagdon licked your vagina?

A- In our house.

Q- Where is your house located?

A- [REDACTED].⁵⁵

x x x x

Q- Can you tell the court, how did (sic) exactly did Diosdado Jagdon licked your vagina?

A- He called me and instructed to go inside our house.

Q- Since according to you, he instructed you to get inside, did you get inside?

A- Yes.

Q- When you were already inside the house, what happened?

⁵² *People v. Udtohan*, supra note 26, at 458.

⁵³ *Id.*

⁵⁴ TSN, April 8, 2010, p. 3.

⁵⁵ *Id.* at 4.

- A- He instructed me to lie down.
- Q- Where did he told you to lie down?
A- In the bed.
- Q- And what did he do next?
A- He removed my skirt.
- Q- After he removed your skirt, what did he do next?
A- He removed my panty.
- Q- After he removed your panty, what did he do to you?
A- He licked my vagina and then he inserted his finger to my vagina.
- Q- What did you feel when Diosdado Jagdon, Jr. inserted his finger into your vagina?
A- I felt pain.⁵⁶ (Emphasis supplied)

BBB candidly narrated, and successfully established, accused-appellant's lascivious conduct towards her. Accused-appellant licked, and inserted his finger into her vagina. A perusal of BBB's testimony reveals that accused-appellant committed the crime of Sexual Assault against her by inserting his finger inside her vagina. Accused-appellant, however, cannot be convicted of Sexual Assault because the information (Criminal Case No. B-01592) charged him with Acts of Lasciviousness only.

Sexual assault is a crime undoubtedly greater than Acts of Lasciviousness. While it is true that the crime of acts of lasciviousness is necessarily included in the crime of sexual assault, the crime of sexual assault however is not subsumed in the crime of acts of lasciviousness.

In *Andaya v. People*,⁵⁷ the Court ruled:

The allegations of facts constituting the offense charged are substantial matters and an accused's right to question his conviction based on facts not alleged in the information cannot be waived. No matter how conclusive and convincing the evidence of guilt may be, an accused cannot be convicted of any offense unless it is charged in the information on which he is tried or is necessarily included therein. x x x.⁵⁸

Thus, in Criminal Case No. B-01592, accused-appellant can be convicted, and herein found guilty of, Acts of Lasciviousness only.

⁵⁶ Id. at 4-5.

⁵⁷ 526 Phil. 480 (2006).

⁵⁸ Id. at 497.

***Variance as to the number of times
BBB was molested does not affect
BBB's credibility and is likewise not
fatal to the case.***

Accused-appellant points to the alleged inconsistency between the *Information* for Acts of Lasciviousness filed against him and the Sworn Statement executed by BBB. The *Information* (Criminal Case No. B-01592) charges accused-appellant with single count of Acts of Lasciviousness, while BBB's Sworn Statement reveals that she was molested by him twice. The Court does not see this as fatal to BBB's credibility.

It is already settled that variance as to the time and date of the lascivious conduct, the number of times it was committed or the garments which the accused or the complainant wore at the time of the incident do not generally diminish the complainant's credibility.⁵⁹ Here, accused-appellant merely alleges an inconsistency as to the number of times he molested BBB. Interestingly, nowhere in the information does it negate the possibility that BBB had been molested by accused-appellant more than once. More so, such variance as to the number of times accused-appellant molested BBB does not change the proven fact that indeed accused-appellant molested BBB.

***Accused-appellant's defenses of
denial, alibi, and ill motive on the
part of AAA and BBB's parents are
inherently weak.***

Accused-appellant denies the charge of statutory rape against him. He claims that he was at his workplace located in [REDACTED] when the rape incident happened. He, however, presented no other witness to corroborate such claim.

In *Ronquillo*,⁶⁰ the Court ruled:

It is well-settled that denial is an "intrinsically weak defense which must be supported by strong evidence of non-culpability to merit credibility." Alibi, on the other hand, is the "weakest of all defenses, for it is easy to contrive and difficult to disprove and for which reason it is generally rejected. x x x."⁶¹

For alibi to prosper, it is imperative that the accused establishes two elements: (1) he was not at the *locus delicti* at the time the offense was

⁵⁹ See *People v. Wilson*, 378 Phil. 1023, 1038-1039 (1999).

⁶⁰ *Supra* note 39.

⁶¹ *Id.* at 652.

committed; and (2) it was physically impossible for him to be at the scene at the time of its commission.”⁶² Here, accused-appellant was unable to establish any of the foregoing elements to substantiate his alibi. He merely claimed that he could not have committed the offense because he was working in [REDACTED] when the rape incident took place in [REDACTED]. Too, it only takes him a little more than an hour to get to [REDACTED] from [REDACTED]. This fact did not make it impossible for him to arrive in [REDACTED] just in time to rape AAA.

Between AAA’s direct, positive, straightforward, and categorical testimony and accused-appellant’s bare, self-serving, and uncorroborated alibi, the former will prevail.

In a desperate attempt to exonerate himself from criminal liability, accused-appellant imputes ill motive on the part of AAA and BBB’s family in filing the criminal charges against him. He alleged that the charges against him was merely concocted due to his estranged relationship with AAA who was prone to speaking bad words, and the political differences between him and the victims’ family. Notably, however, accused-appellant failed to present any clear and convincing proof that AAA, BBB, and their family were moved by hatred or revenge. Thus, accused-appellant’s bare allegation of ill motive on the part of the victims and their family must fail.⁶³

Given the foregoing, the CA correctly affirmed accused-appellant’s conviction for Statutory Rape and Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5 (b) of RA 7610.

Penalties and Damages.

Statutory Rape is punishable by *reclusion perpetua* under Article 266-B of the RPC, as amended, in relation to Section 5 (b), Article III of RA 7610. Thus, the CA correctly sentenced accused-appellant to suffer the penalty of *reclusion perpetua* for being guilty beyond reasonable doubt of the crime of Statutory Rape. *People v. Jugueta*⁶⁴ provides for the following damages when the penalty imposed in rape cases is *reclusion perpetua*: civil indemnity in the amount of ₱75,000.00, moral damages in the amount of ₱75,000.00, and exemplary damages in the amount of ₱75,000.00.

As earlier mentioned, when the victim of Acts of Lasciviousness is under 12 years old, the penalty shall be *reclusion temporal* in its medium period. Accordingly, the Court finds that the indeterminate penalty of twelve (12) years and one (1) day of *reclusion temporal* in its minimum period, as minimum, to fifteen (15) years, six (6) months, and twenty-one (21) days of

⁶² Id.

⁶³ See *People v. Gani*, 710 Phil. 467, 475 (2013).

⁶⁴ 783 Phil. 806 (2016).

reclusion temporal in its medium period, as maximum, imposed by the CA against accused-appellant is proper, considering that there is no aggravating circumstance present in the case. For Acts of Lasciviousness in relation to Section 5 (b) of RA 7610 where the victim is under 12 years old, *People v. Tulagan*⁶⁵ provides for the following damages: civil indemnity in the amount of ₱50,000.00, moral damages in the amount of ₱50,000.00, and exemplary damages in the amount of ₱50,000.00.

WHEREFORE, the appeal is **DISMISSED**. The Decision dated June 29, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 02327 is hereby **AFFIRMED WITH MODIFICATIONS**. The Court finds accused-appellant Diosdado Jagdon, Jr. **GUILTY** beyond reasonable doubt of:

1. Statutory Rape in Criminal Case No. B-01591 and is sentenced to suffer the penalty of *reclusion perpetua*. Accused-appellant is ordered to pay AAA ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages.
2. Acts of Lasciviousness under Article 336 of the Revised Penal Code in relation to Section 5 (b) of Republic Act No. 7610 in Criminal Case No. B-01592 and is sentenced to suffer the indeterminate penalty of twelve (12) years and one (1) day of *reclusion temporal* in its minimum period, as minimum to fifteen (15) years, six (6) months, and twenty-one (21) days of *reclusion temporal* in its medium period, as maximum. Accused-appellant is ordered to pay BBB ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages.

All monetary awards for damages shall earn interest at the legal rate of six percent (6%) *per annum* from the date of finality of this Decision until fully paid.

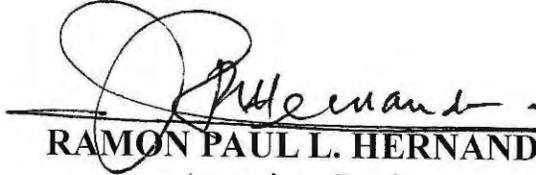
SO ORDERED.


EDGARDO L. DELOS SANTOS
Associate Justice

⁶⁵ *Supra* note 50.

WE CONCUR:


ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson


RAMON PAUL L. HERNANDO
Associate Justice

(On Official Leave)
HENRI JEAN PAUL B. INTING
Associate Justice

(On Leave)
PRISCILLA J. BALTAZAR-PADILLA
Associate Justice

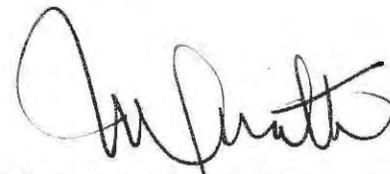
ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


DIOSDADO M. PERALTA
Chief Justice