

## SECOND DIVISION

[ G.R. No. 221436, June 26, 2019 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ERIC DUMDUM, ACCUSED-APPELLANT.**

### DECISION

**LAZARO-JAVIER, J.:**

#### The Case

This appeal assails the Decision<sup>[1]</sup> dated May 27, 2015 of the Court of Appeals (CA) affirming the trial court's verdict of conviction<sup>[2]</sup> against appellant Eric Dumdum for rape.

#### The Information

Appellant Eric Dumdum was charged with rape, as follows:

"That on the 17<sup>th</sup> day of November,(sic) 1997, at about 9:00 o'clock in the evening, at ██████████, ██████████, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and by means of force and intimidation, did then and there willfully, unlawfully and feloniously lie and succeed in having carnal knowledge with AAA, \* 14 years of age, against her will and consent.

CONTRARY TO LAW."<sup>[3]</sup>

The case was raffled to the Regional Trial Court (RTC), Branch 29, Toledo City, Cebu.

#### The Proceedings before the Trial Court

On arraignment, appellant pleaded not guilty.<sup>[4]</sup> During the trial, AAA and Dr. Roderick Asagra testified for the prosecution. On the other hand, appellant Eric Dumdum and Lucille Ricaña testified for the defense.

#### Evidence of the Prosecution<sup>[5]</sup>

Fourteen year old AAA worked at a canteen at ██████████, ██████████, ██████████, Cebu. On November 17, 1997, around 9 o'clock in the evening, she left her workplace. She passed by the store of Ramos along the national road and in front of the ██████████ National Hospital. She bought food and ate at the store, thereafter, she headed home. She walked by the side of ██████████ National High School. As she was

walking, she heard appellant call her name so she approached him. She knew appellant was one of the workers in Metaphil Corporation where she delivered food.

Appellant dragged her to a dark area near the corner of the road where there were no vehicles passing by. There were also no houses around. Appellant lifted her and laid her down on the grass. She tried resisting him but failed. He threatened to kill her and her parents. Appellant then removed her t-shirt and shorts, sucked her breast, and kissed her neck. He took off her panty and went on top of her. He, too, removed his briefs, spread her legs open, and inserted his penis in her vagina. She felt pain while appellant made push and pull movements for about a minute. He continued kissing her neck while she cried.

When appellant had finished ravishing her, he let her leave. She did not tell anyone about the rape because she was scared appellant would make good his threat to kill her and her parents. Two days later, her co-worker told her parents about the kiss marks on her neck. Consequently, she was constrained to tell her parents what really happened to her. Together with her parents, she went to the municipal hall of ██████████ to have the incident blotted. She was also medically examined by Dr. Roderick Asagra.

Dr. Asagra's medical findings revealed hymenal lacerations and contusions on AAA's breast, viz "2.0 cm. x 1.5 cm. contusion on the left breast or a bruising due to hematoma about 1 to 3 days old because it was still bluish; the genitalia admitted one finger with ease and the hymen was lacerated at 10 o'clock position most likely caused by a penetrating penis."<sup>[6]</sup>

### **Evidence for the Defense<sup>[7]</sup>**

Appellant claimed that on November 17, 1997, he and another companion were drinking with his cousin Owen Dumdum in front of the store where AAA bought and ate her snacks. They finished drinking around 9 o'clock in the evening and he arrived home by 9:30 in the evening. He admitted knowing AAA because he was a customer at the canteen where she worked. He denied having seen AAA approach the store that night. He quit his work at the Metaphil Corporation two days after the incident when he learned of the case filed against him. He left ██████████, ██████████ Cebu on November 21, 1997 or four days after the incident.

Lucille Ricaña testified she was the niece of the owner of the store which appellant frequented. On November 17, 1997, she tended the store from the time it opened until it closed by 10 o'clock in the evening. Appellant and his companions arrived around 5:30 in the afternoon and drank until 9 o'clock in the evening, after which, they all went home. She denied seeing AAA that night.

### **The Trial Court's Ruling**

By Decision dated May 25, 2012, the trial court rendered a verdict of conviction, thus:

**WHEREFORE**, in light of the foregoing, judgment is hereby rendered finding accused **ERIC DUMDUM "guilty"** beyond reasonable doubt of the crime of Rape and he is hereby sentenced to suffer the penalty of **RECLUSION PERPETUA** together with all the accessory penalties

provided for by law and to indemnify private complainant AAA the following amounts:

1. Fifty thousand Pesos (P50,000) by way of civil indemnity; and
2. Fifty thousand Pesos (P50,000) by way of moral damages.

The preventive imprisonment undergone by accused is fully credited in his favor.

With costs against accused.

SO ORDERED.<sup>[8]</sup>

The trial court gave full credence to AAA's detailed narration on how appellant succeeded in having sexual intercourse with her through force and intimidation. It also found that her testimony was corroborated by the physical evidence and Dr. Asagra's expert testimony. Finally, it rejected appellant's bare denial and alibi in light of AAA's positive testimony that it was he who sexually violated her.

### **The Proceedings before the Court of Appeals**

On appeal, appellant faulted the trial court for rendering a verdict of conviction despite alleged improbabilities<sup>[9]</sup> in AAA's testimony, viz: **first**, the rape incident could not have happened in a place along a well-lighted highway surrounded by a cluster of houses<sup>[10]</sup> without exposing himself to the eyes and ears of the residents there; **second**, although AAA claimed to have stopped by the store on her way home, store attendant Lucille Ricaña could not recall having seen her;<sup>[11]</sup> and **third**, considering that after drinking with his friends in the same store, he left around 9 o'clock in the evening,<sup>[12]</sup> he could not have crossed paths with the victim.

On the other hand, the Office of the Solicitor General (OSG)<sup>[13]</sup> riposted that the elements of rape were sufficiently established through AAA's candid, spontaneous, and straightforward testimony that appellant had carnal knowledge of her through force and intimidation.<sup>[14]</sup>

By Decision dated May 27, 2015, the Court of Appeals affirmed with modification, viz:

**WHEREFORE**, the Decision dated May 25, 2012, rendered by the Regional Trial Court, Branch 29, Toledo City in Crim. Case No. TCS-2907, finding the appellant, Eric Dumdum, guilty beyond reasonable doubt of the crime of Rape and sentencing him to suffer the penalty of *reclusion perpetua* together with all the accessory penalties provided by law is hereby **AFFIRMED** with the following **MODIFICATIONS** as to damages only:

1. The amount of civil indemnity is increased to P75,000.
2. The appellant is ordered to pay the victim the amount of P30,000 as exemplary damages.
3. The amount of P50,000 as moral damages is retained.
4. An interest of 6% per annum is imposed on all damages awarded from the date of finality of this judgment until fully paid.



xxx

xxx

xxx

**Q. You said that Eric Dumdum dragged you. What did you do when he dragged you, if any?**

**A. I resisted but I was not able to be released because he held me tightly in my arm.**

**Q. When you arrived in that dark place, what happened next?**

**A. He also dragged me to a little bit far distance and he lifted me and made me lie down on the ground.**

Q. xxx was there anything that happened that you can remember?

A. He embraced and kissed me.

Q. Which part of your body did he kiss?

A. In my neck.

Q. What did you do when he kissed you in the neck?

A. I got angry.

xxx

xxx

xxx

Q. You said that he also embraced you. What did you do when he embraced you?

A. I pushed him.

xxx

xxx

xxx

Q. How did you feel when he kissed you and embraced you?

A. I was afraid.

Q. Because you were afraid, did you say anything to him?

A. I did not say anything because of fear.

**Q. What about Eric Dumdum, if you can still remember, did he say anything to you while he was kissing and embracing you?**

**A. He told me that if I will tell my parents he will kill us.**

xxx

xxx

xxx

Q. You said that Eric Dumdum succeeded in making you lie down on the ground. What happened after that Miss witness, if any?