

## THIRD DIVISION

[ G.R. No. 193854, September 24, 2012 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. DINA DULAY Y PASCUAL, APPELLANT**

### DECISION.

**PERALTA, J.:**

This is to resolve an appeal from the Decision<sup>[1]</sup> dated August 4, 2010 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 03725 affirming with modification the Decision<sup>[2]</sup> dated October 8, 2008 of the Regional Trial Court (RTC), Branch 194, Parañaque City, finding appellant Dina Dulay guilty beyond reasonable doubt of the crime of Rape under Article 266-A, No. 1 (a) of the Revised Penal Code (RPC) as amended by Republic Act (R.A.) 8353 as a co-principal by indispensable cooperation.

The records bear the following factual antecedents:

Private complainant AAA<sup>[3]</sup> was 12 years old when the whole incident happened. AAA's sister introduced the appellant to AAA as someone who is nice. Thereafter, appellant convinced AAA to accompany her at a wake at GI San Dionisio, Parañaque City. Before going to the said wake, they went to a casino to look for appellant's boyfriend, but since he was not there, they went to Sto. Niño at Don Galo. However, appellant's boyfriend was also not there. When they went to Bulungan Fish Port along the coastal road to ask for some fish, they saw appellant's boyfriend. Afterwards, AAA, appellant and the latter's boyfriend proceeded to the *Kubuhan* located at the back of the Bulungan Fish Port. When they reached the *Kubuhan*, appellant suddenly pulled AAA inside a room where a man known by the name "Speed" was waiting. AAA saw "Speed" give money to appellant and heard "Speed" tell appellant to look for a younger girl. Thereafter, "Speed" wielded a knife and tied AAA's hands to the *papag* and raped her. AAA asked for appellant's help when she saw the latter peeping into the room while she was being raped, but appellant did not do so. After the rape, "Speed" and appellant told AAA not to tell anyone what had happened or else they would get back at her.

AAA went to San Pedro, Laguna after the incident and told her sister what happened and the latter informed their mother about it. AAA, her sister and mother, filed a complaint at *Barangay* San Dionisio. Thereafter, the *barangay* officials of San Dionisio referred the complaint to the police station.

The Parañaque City Police Office (Women's and Children Concern Desk) asked the assistance of the Child Protection Unit of the Philippine General Hospital, upon which the latter assigned the case to Dr. Merle Tan. Consequently, with the consent of AAA and her mother, and in the presence of a social worker of the Department of Social Welfare and Development (DSWD), Dr. Tan conducted the requisite interview and

physical examination on AAA. Later on, Dr. Tan issued a Medico-Legal Report<sup>[4]</sup> stating that there was no evident injury in the body of AAA, but medical evaluation cannot exclude sexual abuse. During her testimony, Dr. Tan explained that such impression or conclusion pertains to the ano-genital examination and also stated that she found multiple abrasions on the back portion of the body of AAA.<sup>[5]</sup>

Thus, an Information was filed, which reads as follows:

That on or about the 3<sup>rd</sup> day of July 2005, in the City of Parañaque, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together with one alias "Speed," whose true name and identity and present whereabouts is still unknown, and both of them mutually helping and aiding one another, the herein accused Dina P. Dulay having delivered and offered for a fee complainant AAA, 12 year old minor, to accused alias "Speed," who with lewd design and by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge on said minor complainant AAA against her will and without her consent, which act is prejudicial to the normal growth and development of the said child.

CONTRARY TO LAW.<sup>[6]</sup>

With the assistance of counsel *de officio*, on August 3, 2005, appellant entered a plea of not guilty.<sup>[7]</sup> Thereafter, trial on the merits ensued.

To support the above allegations, the prosecution presented the testimonies of AAA and Dr. Merle Tan. On the other hand, the defense presented the sole testimony of appellant which can be summarized as follows:

Appellant met AAA a few days before June 2005 when the latter was introduced to her by her cousin Eglay Akmad during the wake of a relative of AAA at Palanyag. The cousin of appellant was AAA's neighbor at Palanyag. Around 1 o'clock in the morning of July 3, 2005, appellant averred that she was at *La Huerta*, at the Bulungan Fish Port in Parañaque City with her cousin Eglay and stayed there for about thirty (30) minutes. They then proceeded to the house of appellant's cousin in Palanyag. In the said house, appellant saw "Speed" and two (2) other male persons. She also saw AAA who was engaged in a conversation with "Speed" and his two (2) companions. She asked AAA what she was doing there and the latter said that it was none of her business ("*wala kang pakialam sa akin*"). Because of the response of AAA, appellant left the house and went home to General Trias, Cavite.

On October 8, 2008, the RTC found appellant guilty beyond reasonable doubt of the crime of rape as co-principal by indispensable cooperation. The dispositive portion of the decision reads:

WHEREFORE, finding Accused Danilo guilty beyond reasonable doubt for rape as a co-principal by indispensable cooperation, she is hereby sentenced to suffer an imprisonment of Reclusion Perpetua under Article 266-B of the Revised Penal Code and to pay the offended party the amount of P50,000.00 by way of damages.

The period of her detention shall be considered part of the service of her sentence.

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

Not satisfied with the judgment of the trial court, the appellant brought the case to the CA. The latter, on August 4, 2010, promulgated its decision affirming the ruling of the RTC with a modification on the award of damages, thus:

WHEREFORE, the appealed Decision of the court a quo is AFFIRMED with the MODIFICATION that the accused-appellant is sentenced to suffer the penalty of reclusion perpetua and ordered to indemnify the offended party the sum of Fifty Thousand Pesos (P50,000.00) as civil indemnity, Fifty Thousand Pesos (P50,000.00) as moral damages and Twenty-Five Thousand Pesos (P25,000.00) as exemplary damages.

SO ORDERED.<sup>[9]</sup>

Hence, the present appeal.

In her Brief, appellant assigned the following errors:

I

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF RAPE AS CO-PRINCIPAL BY INDISPENSABLE COOPERATION.

II

THE TRIAL COURT GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE TESTIMONY OF THE PRIVATE COMPLAINANT [AAA].

<sup>[10]</sup>

The Office of the Solicitor General, representing the appellee, refutes the above assignment of errors by stating the following arguments:

I.

CONSPIRACY WAS CLEARLY ESTABLISHED IN THIS CASE.

II.

THE LOWER COURT DID NOT ERR IN BELIEVING THE TESTIMONY OF PRIVATE COMPLAINANT.

### III.

ACCUSED-APPELLANT'S DEFENSE OF DENIAL CANNOT BE GIVEN GREATER EVIDENTIARY WEIGHT THAN THE POSITIVE TESTIMONY OF PRIVATE COMPLAINANT.<sup>[11]</sup>

An appeal in a criminal case throws the whole case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision on the basis of grounds other than those that the parties raised as errors.<sup>[12]</sup>

The appellant in this case was charged in the Information as having committed the crime of Rape under Article 266-A, No. 1 (a) of the RPC, as amended by R.A. 8353 in relation to Section 5 (b) of R.A. 7610. She was eventually convicted by the trial court of the crime of rape as a co-principal by indispensable cooperation and was sentenced to suffer imprisonment of *reclusion perpetua* as provided under Article 266-B of the RPC.

In sustaining the conviction of the appellant as co-principal by indispensable cooperation, the CA, ratiocinated:

To cooperate means to desire or wish in common a thing. But that common will or purpose does not necessarily mean previous understanding, for it can be explained or inferred from the circumstances of each case. The cooperation must be indispensable, that is, without which the commission of the crime would not have been accomplished. x x x

x x x x

The proven facts and circumstances obtaining in this case fall squarely on the above-cited example. It will be noted that the cooperation of the accused-appellant consisted in performing an act which is different from the act of execution of the crime committed by the rapist. Accused-appellant cooperated in the perpetration of the crime of rape committed by "Speed" by acts without which the crime would not have been consummated, since she prepared the way for the perpetration thereof, convinced the victim to go with her under the guise of looking for her boyfriend and upon arrival at the *kubuhan*, she pulled the victim inside a room where "Speed" was waiting, delivered the victim to him, and then after receiving some amount of money from "Speed" she settled in another room together with her boyfriend so that "Speed" might freely consummate the rape with violence and intimidation, as he did.<sup>[13]</sup>

However, this Court is of another view and does not subscribe to the findings of the trial court, as sustained by the CA that appellant is guilty beyond reasonable doubt as co-principal by indispensable cooperation in the crime of rape.

Under the Revised Penal Code,<sup>[14]</sup> an accused may be considered a principal by

direct participation, by inducement, or by indispensable cooperation. To be a principal by indispensable cooperation, one must participate in the criminal resolution, a conspiracy or unity in criminal purpose and cooperation in the commission of the offense by performing another act without which it would not have been accomplished.<sup>[15]</sup> Nothing in the evidence presented by the prosecution does it show that the acts committed by appellant are indispensable in the commission of the crime of rape. The events narrated by the CA, from the time appellant convinced AAA to go with her until appellant received money from the man who allegedly raped AAA, are not indispensable in the crime of rape. Anyone could have accompanied AAA and offered the latter's services in exchange for money and AAA could still have been raped. Even AAA could have offered her own services in exchange for monetary consideration and still end up being raped. Thus, this disproves the indispensable aspect of the appellant in the crime of rape. It must be remembered that in the Information, as well as in the testimony of AAA, she was delivered and offered for a fee by appellant, thereafter, she was raped by "Speed." Thus:

PROS. R. GARCIA: Now, what happened after you met this Dina Dulay?

WITNESS [AAA]: She invited me to go with her boyfriend, Sir.

x x x x

Q: You went to the bulungan, what happened when you reached the fish port or bulungan, AAA?

A: Pumunta kami sa kubuhan, Sir.

Q: Where is this kubuhan located in relation to the fish port?

A: At the back portion, Sir.

Q: And, when you said pumunta kami, who was then your companion in going to that kubuhan?

A: Dina Dulay and her boyfriend, Sir.

Q: Do you know the name of the boyfriend of Dina Dulay?

A: No, Sir.

x x x x

Q: All right. After reaching the kubuhan, what happened next?

A: Pina-rape po ako, Sir.

Q: What made you say [AAA] that accused here Dina Dulay had you raped at the kubuhan?

A: Kasi po binayaran siya nung lalaki, Sir.

Q: Now, do you know how much this Dina Dulay was paid by that person who was you said raped you?

A: No, Sir. I just saw them.

Q: And what did you see that was paid to Dina?

A: Pera, Sir.

Q: Aside from seeing a guy giving money to Dina Dulay, did you hear any conversation between this Dina Dulay and that man who gave money to her?

A: Yes, sir.

Q: Can you tell this Honorable Court [AAA], what was that conversation you heard between this Dina Dulay and the person who gave money to her?

A: He said to look for a younger girl, Sir.<sup>[16]</sup>

x x x

x

PROS. R. GARCIA: