



REPUBLIC OF THE PHILIPPINES  
 SUPREME COURT  
 Manila

SUPREME COURT OF THE PHILIPPINES  
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SECOND DIVISION

**NOTICE**

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **16 October 2019** which reads as follows:

**G.R. No. 212809 – PEOPLE OF THE PHILIPPINES, plaintiff-appellee, versus RODRIGO “RUDY” DALIVA y DELIMA, accused-appellant.**

X-----X

After a careful review of the records of the case and the issues submitted by the parties, the Court finds no cogent reason to reverse the rulings of the Regional Trial Court (RTC) and Court of Appeals (CA), finding accused-appellant Rodrigo “Rudy” Daliva y Delima (accused-appellant) guilty of the acts charged against him in Criminal Case Nos. P-4051, P-4052 and P-4054. However, in view of the recent clarifications made by the Court, modifications of the nomenclature of the offenses committed, penalty imposed and award of damages, are in order.

**Criminal Case Nos. P-4052 and P-4054**

The Court agrees with the finding of both the trial court and CA that all the elements of Rape by carnal knowledge committed against AAA<sup>1</sup> have been established beyond reasonable doubt. In her testimony, AAA positively identified accused-appellant as the man who, on two (2) separate occasions, inserted his penis into her vagina and armed with a fan knife, threatened her not to disclose the incident to anyone, otherwise, she and her family would be killed.<sup>2</sup>

Accordingly, the Court sustains accused-appellant’s conviction for two (2) counts of Rape by carnal knowledge and the penalty of *reclusion perpetua*, on each count, imposed upon him. However, since in Criminal Case No. P-4052, it was alleged and proven that AAA was only eleven (11) years old at the time of the incident, the offense should properly be designated as Statutory Rape under Article 266-A(1)(d) of the Revised Penal Code (RPC). Moreover, pursuant to *People v. Jugueta*,<sup>3</sup> the amount of civil indemnity, moral damages

<sup>1</sup> The identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act (RA) No. 7610, entitled “AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, AND FOR OTHER PURPOSES,” approved on June 17, 1992; RA No. 9262, entitled “AN ACT DEFINING VIOLENCE AGAINST WOMEN AND THEIR CHILDREN, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFORE, AND FOR OTHER PURPOSES,” approved on March 8, 2004; and Section 40 of A.M. No. 04-10-11-SC, otherwise known as the “Rule on Violence against Women and Their Children” (November 15, 2004). (See footnote 4 in *People v. Cadano, Jr.*, 729 Phil. 576, 578 [2014], citing *People v. Lomaque*, 710 Phil. 338, 342 [2013]. See also Amended Administrative Circular No. 83-2015, entitled “PROTOCOLS AND PROCEDURES IN THE PROMULGATION, PUBLICATION, AND POSTING ON THE WEBSITES OF DECISIONS, FINAL RESOLUTIONS, AND FINAL ORDERS USING FICTITIOUS NAMES/PERSONAL CIRCUMSTANCES,” dated September 5, 2017); *People v. XXX*, G.R. No. 235652, July 9, 2018, accessed at <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64406>>.

<sup>2</sup> *Rollo*, pp. 7-8.

<sup>3</sup> 783 Phil. 806 (2016).

*And*

and exemplary damages awarded by the CA, in Criminal Case Nos. P-4052 and P-4054, should be increased to ₱75,000.00 each.

***Criminal Case No. P-4051***

In Criminal Case No. P-4051, wherein accused-appellant was charged with and convicted for Rape by Sexual Assault under Article 266-A(2) of the RPC, for inserting his two fingers into BBB's vagina, through violence and intimidation, the Court does not find any reason to reverse the factual findings of the RTC, as affirmed by the CA. BBB testified, in a clear and straightforward manner, that accused-appellant ordered her to undress herself; threatened to kill her and her family if she refused; and upon removing her short, inserted his finger into her vagina.<sup>4</sup>

However, as BBB was aged 14, in view of the Court's ruling in *People v. Tulagan*,<sup>5</sup> a modification of the penalty imposed, damages awarded, and nomenclature of the crime is in order.

In *Tulagan*, the Court prescribes the following guidelines in the proper designation or nomenclature of acts constituting sexual assault and the imposable penalty depending on the age of the victim, *viz.*:

Considering the development of the crime of sexual assault from a mere "crime against chastity" in the form of acts of lasciviousness to a "crime against persons" akin to rape, as well as the rulings in *Dimakuta* and *Caoli*. We hold that if the acts constituting sexual assault are committed against a victim under 12 years of age or is demented, the nomenclature of the offense should now be "Sexual Assault under paragraph 2, Article 266-A of the RPC in relation to Section 5(b) of R.A. No. 7610" and no longer "Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5(b) of R.A. No. 7610," because sexual assault as a form of acts of lasciviousness is no longer covered by Article 336 but by Article 266-A(2) of the RPC, as amended by R.A. No. 8353. Nevertheless, the imposable penalty is still *reclusion temporal* in its medium period, and not *prision mayor*.

*Whereas if the victim is 12 years old and under 18 years old, or 18 years old and above under special circumstances, the nomenclature of the crime should be "Lascivious Conduct under Section 5(b) of R.A. No. 7610" with the imposable penalty of reclusion temporal in its medium period to reclusion perpetua, but it should not make any reference to the provisions of the RPC. It is only when the victim of the sexual assault is 18 years old and above, and not demented, that the crime should be called as "Sexual Assault under paragraph 2, Article 266-A of the RPC" with the imposable penalty of prision mayor.*<sup>6</sup>

<sup>4</sup> Rollo, p. 8.

<sup>5</sup> G.R. No. 227363. March 12, 2019, accessed at <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65020>>.

<sup>6</sup> Id.; citations omitted, italics and emphasis supplied.

In line with the foregoing pronouncement, accused-appellant should be convicted of the crime of Lascivious Conduct under Section 5(b) of Republic Act No. 7610, instead of rape by sexual assault under Article 266-A(2) of the RPC. Also, applying the Indeterminate Sentence Law, the minimum term of the indeterminate penalty shall be taken from the penalty next lower in degree, *i.e., prision mayor in its medium period to reclusion temporal in its minimum period*, which ranges from eight (8) years and one (1) day to fourteen (14) years and eight (8) months; while the maximum term shall be that which could be properly imposed under the law, which is seventeen (17) years, four (4) months and one (1) day of *reclusion temporal*. Thus, the Court deems it proper to impose on accused-appellant the indeterminate penalty of fourteen (14) years and eight (8) months of *reclusion temporal*, as minimum, to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal*, as maximum.<sup>7</sup>

As regards the award of damages, the Court, in line with *Tulagan*, finds it apt to award exemplary damages in addition to civil indemnity and moral damages, the amount of which should all be fixed at ₱50,000.00 each.<sup>8</sup>

**WHEREFORE**, premises considered, the Decision<sup>9</sup> dated January 30, 2014 of the Court of Appeals, in CA-G.R. CR-H.C. No. 05523 is **AFFIRMED WITH MODIFICATIONS**.

1. In Crim. Case No. P-4051, accused-appellant RODRIGO "RUDY" DALIVA y DELIMA is hereby found **GUILTY** beyond reasonable doubt of the crime of Lascivious Conduct under Section 5(b) of Republic Act No. 7610 and is sentenced to suffer the indeterminate penalty of fourteen (14) years and eight (8) months of *reclusion temporal*, as minimum, to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal*, as maximum. He is **ORDERED** to **PAY** the victim BBB the amounts of ₱50,000.00 as civil indemnity; ₱50,000.00 as moral damages; ₱50,000.00 as exemplary damages and to pay the costs hereof;
2. In Crim. Case no. P-4052, accused-appellant is hereby found **GUILTY** beyond reasonable doubt of the crime of Statutory Rape under Article 266-A of the Revised Penal Code and sentenced to suffer the penalty of *reclusion perpetua*. He is **ORDERED** to **PAY** the victim AAA the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as

<sup>7</sup> See *Pendoy v. Court of Appeals (18th Division)-Cebu City*, G.R. No. 228223, June 10, 2019, accessed at <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65215>>.

<sup>8</sup> Supra note 5.

<sup>9</sup> *Rollo*, pp. 2-20. Penned by Associate Justice Rodil V. Zalameda (now a member of this Court) with Associate Justices Ramon M. Bato, Jr. and Agnes Reyes-Carpio, concurring.

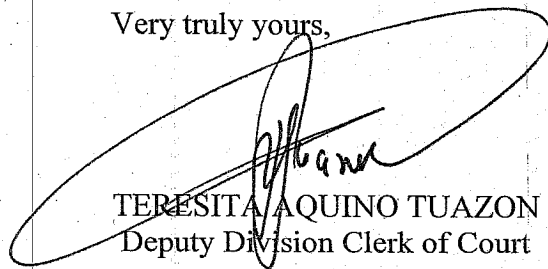
moral damages and ₱75,000.00 as exemplary damages and to pay the costs thereof;

3. In Crim. Case No. P-4054, accused-appellant is hereby found **GUILTY** beyond reasonable doubt of the crime of Rape under Article 266-A of the Revised Penal Code and sentenced to suffer the penalty of *reclusion perpetua*. He is **ORDERED** to **PAY** the victim AAA the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱75,000.00 as exemplary damages and to pay the costs thereof.

The amount of civil indemnity and damages are subject to interest of six percent (6%) per annum from the time of finality of this Resolution until fully paid.

**SO ORDERED.** (ZALAMEDA, J., no part; PERALTA, J., was designated additional member per Raffle dated October 7, 2019) "

Very truly yours,



TERESITA AQUINO TUAZON  
Deputy Division Clerk of Court

03 DEC 2019

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c/o The Director  
Bureau of Corrections  
1770 Muntinlupa City

THE DIRECTOR (reg)  
Bureau of Corrections  
1770 Muntinlupa City

HON. PRESIDING JUDGE (reg)  
Regional Trial Court, Branch 33  
Pili, 4418 Camarines Sur  
(Crim. Case Nos. P-4051 to 4055)

**(206)URES(m)**

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