

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. AVELINO REYES DIZON ALIAS LINO, ACCUSED-APPELLANT.*G.R. No. 128889. August 20, 1999*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-128889/>**PER CURIAM:**

In its decision[1] in Criminal Case No. RTC-1642-I promulgated on 11 February 1997, the Regional Trial Court of Iba, Zambales, Branch 70, found accused-appellant Avelino Reyes Dizon alias Lino (hereafter DIZON) guilty beyond reasonable doubt of the crime of rape, and sentenced him to suffer the penalty of death and to pay the victim, six-year-old Kristine Sudaria (hereafter KRISTINE), the sum of P50,000 as moral damages.

The case is now before us for automatic review pursuant to Article 47 of the Revised Penal Code as amended by Section 22 of R.A. No. 7659.[2]

The information[3] under which DIZON was tried and convicted has this accusatory portion:

That on or about the month of May, 1994, at Brgy. Carael, in the municipality of Botolan, province of Zambales, Philippines, and within the jurisdiction of this Honorable Court, the said accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of Kristine Sudaria, a minor of six (6) years old, against her will, to the damage and prejudice of the latter.

CONTRARY TO LAW.

The witnesses for the prosecution were Helen Sudaria, Dr. Fe Evangeline E. Lim, Dr. Felipe L. Arriola, SPO3 Moises J. de la Cruz, SPO1 Eduardo Santos, Marcelino Abille and KRISTINE; while only DIZON testified in his defense. The trial court summarized the testimonies as follows:

Helen Sudaria, the mother of the victim testified that sometime in the morning of July 20, 1994, her six (6) year old daughter Kristine complained of a stomach ache and when she checked her daughter, she noticed that there was a discharge on her underwear. She immediately brought her daughter to the President Ramon Magsaysay Provincial Hospital (PRMPH) for check-up and laboratory examination. The test showed that her daughter was infected with gonorrhea. Suspecting that the child was raped, she went to the Criminal Investigation Service (CIS) Office at Maquinaya, Olongapo City, to file a complaint on July 21, 1994. On July 22, 1994, at 2:00 P.M., she and her daughter returned to the CIS Office when a police line-up was conducted and Kristine pointed from the five men in the line-up Avelino Dizon as the one who allegedly raped her. Afterwards she was investigated by the local police of Botolan. She was then accompanied by Police Inspector Rafael Dumlao, Jr., to the PRMPH at Iba, Zambales, where her daughter was examined again by Dr. Felipe Arriola.

She further testified that the accused has been working with her family for eight (8) years now. Accused is a stay-in worker in the furniture factory owned and operated by her parents. Said factory is located in the same compound where her parents' house and her house are located. Because of the long period of time that the accused had been working with her family, they have already considered him as member of the family. Even the victim calls the accused as "Kuya Lino." When nobody [was] around, the accused used to babysit for small children (Helen's nephew and nieces) in the compound, including the herein victim.

Dr. Felipe Arriola, a Medical Officer IV of the Department of Obstetrics-Gynecology testified that on July 5, 1994, at around 2:00 P.M., he examined a 6-year old child named Kristine Sudaria. He has issued a Medico-Legal Certificate relative to said examination. The child was then accompanied by her mother and Dr. Relin Corpuz. Dr. Corpuz endorsed the child for further examination because there was vaginal discharge. During said examination, the child was conscious, coherent, ambulatory, and her genitalia was normal looking and there no discharges noted. He noted that there were old healed lacerations at 2, 11, 6, 8 o'clock positions forcept on the hymen.

Dr. Fe Evangelista Ela-Lim, a private physician testified that on July 20, 1994, she conducted an examination concerning an alleged finding of gonorrhea on a 6-year old Kristine Sudaria. She was issued a Medical Certificate relative thereto on July 22, 1994. She was then at home at around 2:00 P.M. of July 20, 1994, when Dr. Corpuz called her (Ela-Lim) to go to her clinic because of a medical case where a child was suffering from gonorrhea as evidenced by a laboratory report. Dr. Corpuz told her that the former ha[d] already examined the child and the hymen [was] lacerated. Dr. Corpuz wanted her to re-examine the child. She found the same yellowish discharge and noticed that there were lacerations in the hymen.

Marcelino Abille, a Medical Technologist assigned with the President Magsaysay Memorial Hospital, Iba, Zambales, testified that he examined the sample taken from the genitalia of the six (6)-year-old victim Kristine Sudaria. He caused the preparation of the report relative thereto although it was his superior a certain Mrs. Nacin who was the one who wrote the said report. The said report states that there was "Gram (-) negative diplococci resembling Nizeria gonorrhea - few (intracellualr and extracellular; pus cells - moderate; epithelial cells, many."

Moises de la Cruz, a 46-year old Philippine National Police (PNP) member, testified that he [was] stationed as an investigator at the 301[st] Criminal Investigation Service (CIS), Olongapo City. On July 21, 1994, at 6:25 P.M., a certain Mrs. Sudaria appeared before their office to file a complaint for rape. Said case was assigned to SPO1 Eduardo Santos and Dela Cruz acted as the former's assistant. They immediately proceeded to the residence of the complainant at Carael, Botolan, Zambales where the victim was. Arriving thereat at around 9:00 P.M. of the same day, they invited the herein accused to go to the CIS Office at Olongapo City. During the interrogation, Santos failed to elicit any material information from the accused. The following day, at 2:00 P.M. a police line-up composing of five (5) men was conducted. On said occasion, the victim identified the herein accused as the one who allegedly raped her. After which, the police had the child examined by Dr. Ela Lim and obtained a Medical Certificate. He and Santos have executed a joint statement in connection with the investigation they have conducted on the case. On cross-examination, he disclosed that Santos was the one who actually investigated the accused while he was in the adjacent room. The accused was brought to the Olongapo City General Hospital for check-up but the result showed that the accused is not suffering from gonorrhea.

SPO1 Eduardo Santos, another member of the CIS, testified and identified the joint affidavit he executed with de la Cruz. He said that they invited the accused for investigation and brought him to their office at Maquinaya, Olongapo City. During the investigation, he informed the accused of the latter's constitutional right but the latter allegedly with the assistance of Atty. Tiburcio Edaña executed an affidavit of waiver.

Kristine Sudaria, the 6-year old victim testified that she is studying as Kindergarten at Botolan South Elementary School and presently residing at Carael, Botolan, Zambales. She positively identified the accused in open court. When asked if she remember[ed] anything unusual happened last May 1994, she replied that she forgot although apparently, she was referring to the exact date of the unusual incident. When asked if she remember[ed] if Lino (in reference to the accused) ha[d] done anything to her, she replied that the latter [had] raped her.

PROSECUTOR FADERA:

Q What did Lino do to you?

A He raped me.

Q What do you mean by the word "raped"?

A He inserted his private part to my private part. He inserted his penis into my vagina.

PROSECUTOR FADERA:

You quote: "Ipinasok ang ari niya sa ari ko."

She was raped twice, but she [could] no longer remember the exact time of the second, although she retorted that it was then still vacation time, apparently referring to the school calendar. She was raped when her mother and grandmother were in the market and when all the other persons in the house were not around. She did not report the incidents to her mother because the accused ha[d] threatened to kill her if she [was] going to report the matter. Her mother discovered the incident when she (the mother) saw that the child's panty ha[d] pus. On cross-examination she disclosed that she had never been close to Lino when the latter was still staying in their house.

The defense presented the accused as its lone witness. He denied the accusation against him. He said that he ha[d] been residing in the residence of the Dumlaos (in the same compound where the house of the victim is located) at Brgy. Carael, Botolan, Zambales for a period of eight (8) years prior to the accusation. He ha[d] been working as a bamboo set maker at the furniture factory of Alexander Dumlao (grandfather of the victim) located at the same compound. He was arrested and handcuffed by the elements of CIS without a warrant and was brought to the CIS Office at Olongapo City where he was detained. Upon the prodding of the investigators, he agreed to undergo an examination for any sexually transmitted diseases or gonorrhea at the Olongapo City General Hospital. The test showed that he was not afflicted with the disease at the time of the said examination. He used to babysit the victim from time to time when the babysitter [was] not around like when the latter [was] washing clothes. When asked about any possible reason why the mother or the victim was accusing him of the crime, he replied that he [did] not know of any reason.[4]

In convicting DIZON, the trial court admitted as additional proofs of rape the testimonies of the medical doctors confirming their medico-legal reports that lacerations were detected in KRISTINE's hymen. It also relied on the postulates that when an alleged victim of rape says she was raped, she says all that is necessary to show that the crime was committed, and that the accused may be convicted on the basis of the victim's testimony alone. The trial court then weighed DIZON's bare denial against his positive identification by KRISTINE and found DIZON guilty as charged.

In his appellant's Brief, DIZON alleges that the trial court erred

I.

IN FINDING THE ACCUSED APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE;

II.

IN GIVING WEIGHT AND CREDENCE TO THE TESTIMONIES OF THE PROSECUTION WITNESSES;

III.

IN FINDING THAT IT WAS THE ACCUSED WHO RAPED THE VICTIM;

IV.

IN HOLDING THAT THE CIRCUMSTANCES SURROUNDING THE PARTIES HERETO INDICATE A STRONG POSSIBILITY THAT THE ACCUSED HA[D] ALL OPPORTUNITIES TO PERPETUATE THE CRIME OF RAPE.

Relying on the constitutional presumption of innocence in favor of the accused and the principle that the prosecution must rely on the strength of its evidence and not on the weakness of the defense, DIZON concludes that it is our duty to acquit him.

In the Appellee's Brief, the Office of the Solicitor General asserts that the instant appeal revolves on the issue of credibility, and submits that the findings of the trial court thereon are "very convincing."

It is fundamental that when the issue is one of credibility of witnesses, appellate courts will generally not disturb the findings of the trial court thereon because the latter is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial. An exception is when the trial court has plainly overlooked certain facts of substance and value that, if considered, might affect the result of the case.[5]

DIZON disputes the findings of the trial court and attempts to discredit KRISTINE. First, he cites KRISTINE's inability to recall the date when the alleged rape occurred. It has been held that the failure to recall the exact date of the crime is not an indication of false testimony.[6] Moreover, the precise date when the victim was raped is not an element of the offense.[7] Second, DIZON points out KRISTINE's failure to immediately report the incident to anyone. But KRISTINE explained that DIZON had threatened to kill her if she told her mother about the crime. Her explanation is acceptable, even understandable, and consistent with the Court's frequent observation that it is not uncommon for young girls to conceal for some time the assault against their virtue because of the rapist's threats on their lives.[8] Thus, DIZON fails to tarnish KRISTINE's credibility or establish cogent reasons warranting a reversal of the trial court's findings.

Lastly, DIZON disputes the trial court's conclusion that he had the opportunity to perpetrate the offense charged. He quotes KRISTINE's testimony on cross-examination:

Q

From the time that Lino stayed with you as a worker in the furniture shop of your grandfather, now your grandmother's business, have you ever played with Lino or other workers?

A

No, sir.

Q

You have never been closed [sic] to Lino from the time that you stayed in your place of residence, is that correct?

A

No, sir.

Q

So, Lino is not in talking terms with you or anybody else in the family, is that correct?

A

No, sir.[9]

DIZON interprets the above testimony as indicative of a lack of opportunity on his part to perpetuate the crime. The interpretation fails to persuade, for it deliberately disregards the previous questions to, and answers by, KRISTINE. In any case, it is immaterial. KRISTINE categorically stated that DIZON raped her by inserting his penis into her vagina.[10] And when the woman says she has been raped, she says in effect all that is needed to show that she has been raped; and if her testimony meets the test of credibility the accused may be convicted on the basis thereof.[11]

Did the trial court correctly impose the death penalty?

The information charging DIZON with rape alleged the use of force and intimidation and the circumstance that the victim, KRISTINE, was six years old.

Under Article 335 of the Revised Penal Code, as amended by R.A. No. 7659, which was the governing law at the time DIZON committed the rape in question,[12] carnal knowledge of a woman under twelve years of age is rape even if there was no force or intimidation.[13] Hence, it was not necessary for the prosecution to prove force or intimidation. Under that same Article death shall be imposed "when the victim is ... a child below seven (7) years old." Accordingly, the trial court correctly imposed the mandatory penalty of death.

However, the trial court erred in not awarding KRISTINE an indemnity for the rape, which is mandated by Article 345 of the Revised Penal Code and which current jurisprudence fixes at P75,000.[14] Considering that she was just six years old when she was sexually assaulted, exemplary damages[15] of P50,000 should be imposed by way of example to deter others from committing similar acts or for correction for the public good.[16] The award of moral damages in the amount of P50,000 is in order even in the absence of proof therefor per *People v. Prades*. [17]

The Court, therefore, affirms the appealed decision with the above modification.

One Justice of the Court voted to impose reclusion perpetua because in his opinion, the testimony of the victim was so matter-of-factly given that considering the tender age of the victim, it could have been contrived or coached. He noted that as a result of the sexual contact, the victim was found to have gonorrhea; however, the accused was negative of gonorrhea. Hence, he could not agree to the imposition of the death penalty no matter how heinous the crime attributed to the accused.

Four Justices of the Court maintain their position that R.A. No. 7659 is unconstitutional insofar as it prescribes the death penalty; nevertheless, they submit to the ruling of the majority that the law is constitutional and the death penalty can be lawfully imposed in the case at bar.

WHEREFORE, the appealed decision of the Regional Trial Court of Iba, Zambales, Branch 70, in Criminal Case No. RTC-1642-I finding accused-appellant AVELINO REYES DIZON guilty beyond reasonable doubt as principal of the crime of rape and sentencing him to suffer the penalty of death is AFFIRMED, with the modification that he is ordered to pay the victim, KRISTINE SUDARIA, the amount of P75,000 as indemnity and P50,000 as exemplary damages, in addition to the award of P50,000 as moral damages.

In accordance with Article 83 of the Revised Penal Code, as amended by Section 25 of Republic Act No. 7659, upon the finality of this decision, let the records of this case be forthwith forwarded to the Office of the President for possible exercise of the power to pardon.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Pardo, Buena, Gonzaga-Reyes, and Ynares-Santiago, JJ., concur.

[1] Per Judge Felix Mamenta, Jr. Original Record (OR), 167-178; Rollo, 14-25.

[2] Entitled An Act to Impose the Death Penalty on Certain Heinous Crimes Amending for the Purpose the Revised Penal Code, as Amended, Other Special Penal Laws, and for Other Purposes. It took effect on 31 December 1993 (People v. Simon, 234 SCRA 555 [1994]).

[3] OR, 2; Rollo, 4.

[4] OR, 168-174; Rollo, 15-21.

[5] People v. Gomez, 251 SCRA 455, 465 [1995]; People v. Hubilla, 252 SCRA 471 [1996].

[6] People v. Rosell, 181 SCRA 679, 685 [1990].

[7] People v. Ocampo, 206 SCRA 223, 232 [1992]; People v. Sabellina, 238 SCRA 493, 499 [1994].

[8] People v. Leoterio, 264 SCRA 608, 615 [1996].

[9] TSN, 11 October 1995, 12-13.

[10] TSN, 11 October 1995, 9.

[11] People v. Cristobal, 252 SCRA 507, 516 [1996].

[12] Rape is now classified as a crime against persons under Title Eight of the Revised Penal Code and, specifically, Chapter Three, Articles 266-A, 266-B, 266-C and 266-D thereof pursuant to R.A. No. 8353.

[13] People v. Race, 212 SCRA 90 [1992]; People v. Lagrosa, 230 SCRA 298 [1994].

[14] People v. Victor, 292 SCRA 186, 200 [1998].

[15] See People v. Cristobal, 252 SCRA 507 [1996].

[16] Article 2229, Civil Code.

[17] G.R. No. 127569, 30 July 1998.

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