

DANTE HERNANDEZ DATU, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 169718. December 13, 2010

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

This is a Petition for Review on Certiorari under Rule 45 of the Rules of Court assailing the Decision[1] of the Court of Appeals dated March 31, 2005 in CA-G.R. CR No. 26159, which affirmed the Decision[2] of the Regional Trial Court (RTC) of the City of Manila, Branch 38 dated August 28, 2000 in Criminal Case No. 95-144230 that found petitioner Dante Hernandez Datu guilty beyond reasonable doubt of the crime of Acts of Lasciviousness penalized under Section 5, Article III of Republic Act No. 7610 or the Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act.

The full text of the Information filed against petitioner reads as follows:

The undersigned Assistant Prosecutor upon sworn complaint of Rolando Registrado, complainant herein, in representation of his daughter, Jerica Registrado, whose statement is hereto attached as Annex "A", accuses DANTE DATU Y HERNANDEZ of the crime of Acts of Lasciviousness punishable under RA 7610 otherwise known as the "Special Protection Against Child Abuse, Exploitation and Discrimination Act", committed as follows:

That on or about February 24, 1995, in the City of Manila, Philippines, the said accused, with lewd design, did then and there willfully, unlawfully and feloniously commit acts of lasciviousness upon JERICA REGISTRADO, 5 years of age, by then and there inserting his finger in the latter's genitals, against her will and consent.[3]

Upon arraignment, petitioner pleaded not guilty; thus, trial ensued.

The pertinent facts of this case are as follows:

The evidence for the prosecution shows that in the morning of February 24, 1995, at about 7:00 a.m., Jerica, aged 5, was playing with her friends Khamil and Neeca near the house of their neighbor Boyet Rama (or "Boyet") situated at the corner of a street in Old Sta. Mesa, Manila; that suddenly, [petitioner] grabbed Jerica and inserted his middle finger in her vagina, after which, he warned her not to tell it to anyone; that immediately, Jerica ran to her house; that while her mother was giving Jerica a bath, she found bloodstain in her (Jerica) panty and blood in her vagina; that upon being informed of her mother's discovery, Rolando, Jerica's father, looked at her vagina and found it swollen; and that asked by her father who did it, Jerica disclosed that it was appellant.

On the same date, February 24, 1995, Jerica was brought to the NBI where she was examined by Dr. Villena, whose findings are as follows:

"GENITAL EXAMINATION:

Pubic hair, no growth. Labia majora and minora, coaptated (sic). Fourchette, tense. Vestibular mucosa, congested. Contusion, purplish, peri-urethral area. Hymen, thin, short, intact. Hymenal orifice measures 0.5 cm. in diameter. Vaginal walls and rugosities, cannot be reached by the examining finger.

CONCLUSION:

Physical Virginity Preserved."

Professing innocence, appellant claimed that commission of the alleged sexual molestation is highly improbable as it supposedly took place in a busy street; that the charge was concocted upon inducement of David Escalo (or "Escalo"), a friend of Jerica's parents, as admitted by Escalo to Zaragosa during one of their drinking sprees; and that a case for oral defamation was filed by him against Jerica's parents for their false accusation.[4]

In the end, the trial court convicted petitioner of the crime charged in a Decision dated August 28, 2000, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered finding the accused guilty beyond reasonable doubt of the crime of Acts of Lasciviousness penalized under Section 5, Article III of Republic Act 7610 and sentences him to suffer an indeterminate penalty of twelve (12) years and one (1) day as minimum to fifteen (15) years, six (6) months and twenty (20) days of reclusion temporal together with the accessory penalties provided by law, to indemnify private complainant in the sum of P50,000.00 as and by way of moral damages and to pay the costs.[5]

Taking issue with the said judgment, petitioner appealed the same to the Court of Appeals but the appellate court merely affirmed the assailed lower court ruling in a Decision dated March 31, 2005.

Undaunted, petitioner filed with this Court a Petition for Review on Certiorari under Rule 45 of the Rules of Court[6] assailing the aforesaid Court of Appeals' Decision. This Court gave due course to the petition and required both parties to submit their respective Memoranda. However, in petitioner's Memorandum, his counsel indicated that petitioner died on August 3, 2006.[7] As proof of petitioner's death, a certified photocopy of his Death Certificate with Registry No. 2006-859[8] was attached as Annex "1" of the said pleading.

In light of this supervening event which occurred while petitioner's appeal of the judgment of his conviction was pending resolution before this Court, we are constrained by both law and jurisprudence to dismiss the present case for the appeal has been rendered moot.

Article 89(1) of the Revised Penal Code instructs us that criminal liability is totally extinguished by the death of the offender, to wit:

- By the death of the convict, as to the personal penalties; and as to pecuniary penalties, liability therefore is extinguished only when the death of the offender occurs before final judgment.

In the seminal case of *People v. Bayotas*,[9] we formulated the following principles which guide this Court as regards to the application of the foregoing penal provision, to wit:

- Death of the accused pending appeal of his conviction extinguishes his criminal liability as well as the civil liability based solely thereon. As opined by Justice Regalado, in this regard, "the death of the accused prior to final judgment terminates his criminal liability and only the civil liability directly arising from and based solely on the offense committed, i.e., civil liability *ex delicto* in *sensu strictiore*."
- Corollarily, the claim for civil liability survives notwithstanding the death of the accused, if the same may also be predicated on a source of obligation other than delict. Article 1157 of the Civil Code enumerates these other sources of obligation from which the civil liability may arise as a result of the same act or omission:

- a) Law
- b) Contracts
- c) Quasi-contracts

x x x x

- d) Quasi-delicts

- Where the civil liability survives, as explained in Number 2 above, an action for recovery therefor may be pursued but only by way of filing a separate civil action and subject to Section 1, Rule 111 of the 1985 Rules on Criminal Procedure as amended. This separate civil action may be enforced either against the executor/administrator or the estate of the accused, depending on the source of obligation upon which the same is based as explained above.

- Finally, the private offended party need not fear a forfeiture of his right to file this separate civil action by prescription, in cases where during the prosecution of the criminal action and prior to its extinction, the private-offended party instituted together therewith the civil action. In such case, the statute of limitations on the civil liability is deemed interrupted during the pendency of the criminal case, conformably with the provisions of Article 1155 of the Civil Code, that should thereby avoid any apprehension on a possible privation of right by prescription.[10]

It is therefore evident from the foregoing discussion that venturing into the merits of petitioner's appeal given the circumstance of his untimely demise has become superfluous because, even assuming this Court would proceed to affirm the lower court's judgment of conviction, such a ruling would be of no force and effect as the resultant criminal liability is totally extinguished by his death. Consequently, his civil liability arising from the crime, being civil liability ex delicto, is likewise extinguished by his death. Since his appeal was still pending before this Court, there was no final judgment of conviction upon which an award of civil indemnity could be based.

Accordingly, this Court holds that the death of petitioner extinguished his criminal liability and the civil liability based solely on the act complained of, i.e., acts of lasciviousness. Thus, the assailed Court of Appeals' Decision dated March 31, 2005, affirming petitioner's conviction by the trial court, had become ineffectual.[11] As a result thereof, the instant petition is hereby dismissed.

WHEREFORE, in view of the death of petitioner Dante Hernandez Datu, the Decision dated March 31, 2005 of the Court of Appeals in CA-G.R. CR No. 26159 is SET ASIDE and Criminal Case No. 95-144230 before the Regional Trial Court of the City of Manila is DISMISSED.

SO ORDERED.

Corona, C.J., (Chairperson), Del Castillo, Abad,[*] and Perez, JJ., concur.

[*] Per Special Order No. 917 dated November 24, 2010.

[1] Rollo, pp. 63-71; penned by Associate Justice Edgardo P. Cruz with Presiding Justice Romeo A. Brawner and Associate Justice Jose C. Mendoza (now a member of this Court), concurring.

[2] Id. at 58-61; penned by then Presiding Judge and now Court of Appeals Associate Justice Priscilla J. Baltazar-Padilla.

[3] CA rollo, p. 5.

[4] Rollo, pp. 64-65.

[5] Id. at 60.

[6] Id. at 14-57.

[7] Id. at 162.

[8] Id. at 215.

[9] G.R. No. 102007, September 2, 1994, 236 SCRA 239.

[10] Id. at 255-256.

[11] De Guzman v. People, 459 Phil. 576, 580 (2003).

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