

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ELPIDIO ANTONIO, APPELLANT.

G.R. No. 174372. January 20, 2009

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

The Court of Appeals having affirmed the conviction of Elpidio Antonio (appellant) by the trial court of two counts of rape of his minor daughter AAA and the denial by the trial court of his Motion for Reconsideration and Motion for New Trial anchored in the main on AAA's purported execution of an Affidavit of Desistance, the present appeal was lodged.

Appellant Elpidio Antonio was by separate Informations charged with two counts of rape of his minor daughter AAA before the Regional Trial Court (RTC) of Nueva Ecija. The first, docketed as Criminal Case No. 3765, alleged

x x x x

That on or about the 6[th] day of June 1994, at Barangay San Roque, Municipality of San Isidro, Province of Nueva Ecija and within the jurisdiction of this Honorable Court, the above-named accused with the use of force, pointing a kitchen knife to her, and taking advantage of his superior strength, did then and there, willfully, unlawfully and feloniously lay with and have sexual intercourse with the offended party [AAA], his daughter, a minor, about 14 years of age, against her will and in their own house.

x x x x[1]

The second, docketed as Criminal Case No. 3770, alleged

x x x x

That on or about the 14[th] day of August, 1994, at Barangay San Roque, Municipality of San Isidro, Province of Nueva Ecija and within the jurisdiction of this Honorable Court, the above-named accused with the use of force, pointing a kitchen knife to her, and taking advantage of his superior strength, did then and there willfully, unlawfully and feloniously lay with and have sexual intercourse with the offended party [AAA], his daughter, a minor, about 14 years of age, against her will and in their own house.[2]

x x x x

The two cases were jointly tried.

Culled from the records of the cases is the following version of the prosecution:[3]

At around 6:00 o'clock in the morning of June 6, 1994, the then 13-year-old AAA[4] who was sleeping with her six siblings at their house in San Isidro, Nueva Ecija awoke to find her father-herein appellant lying beside her, touching her breasts and vagina. Over her resistance, and at the point of a bladed weapon, he undressed her and inserted his penis into her vagina causing it to bleed. And he threatened to kill her if she reveals to anyone what he

had done.

In the morning of August 14, 1994, again as AAA was sleeping at their house with her siblings, she awoke to find appellant mashing and sucking her breasts, licking her vagina, pointing a bladed weapon at her, following which, over her resistance, he undressed her and himself and inserted his penis into her vagina. Again blood oozed from her vagina.

On August 20, 1994 or thereabouts, AAA's mother BBB, who was in Manila at the time the rapes took place, returned to their house and learned from AAA what had happened to her. She thus brought AAA to San Antonio Hospital for medical examination which yielded the following findings on the private and other parts of her body:

- Healed Lacerations at 1, 4, 7, 9 o'clock
- Negative Discharge
- Breasts - [F]irm, Supple, Brownish Areola and Nipples
- Abdomen - Flat and Firm.[5]

Dr. Benjamin Lopez (Dr. Lopez) who conducted the medical examination explained that the lacerations on AAA's hymen could have been due to the entry of a hard object into the vagina.[6]

Admitting that AAA is his daughter, appellant denied the charges, claiming that they were filed at BBB's instance in retaliation for his having driven her away from home following an altercation on August 13, 1994. And to show BBB's motive, appellant presented his mother who claimed that BBB demanded the payment by appellant of P100,000 and the transfer to her of the house and lot she (mother) owned as conditions for the dropping of the charges.[7]

By Decision[8] of August 15, 2000, Branch 36 of the Nueva Ecija RTC found appellant guilty of both charges, disposing as follows:

WHEREFORE, accused ELPIDIO ANTONIO Y SALAZAR, who, after hearing, was found guilty of RAPE, as charged, beyond reasonable doubt, is sentenced to suffer the penalty of DEATH, for each count of Rape, or two (2) deaths and to indemnify the victim [AAA] the sum of SEVENTY FIVE THOUSAND (P75,000.00) pesos for each count. And said Elpidio S. Antonio is further condemned to pay P50,000.00 for moral damages and another P50,000.00 for exemplary damages.

SO ORDERED.[9] (Underscoring supplied)

After the promulgation of the trial court's judgment, appellant filed a Motion for Reconsideration[10] and a Motion for New Trial[11] anchored in the main on, as stated earlier, the purported execution by AAA of a September 23, 2000 Affidavit of Desistance reading:

Ako, [AAA], dalaga, may sapat na gulang, at kasalukuyang naninirahan sa San Roque, San Isidro, Nueva Ecija, matapos manumpa nang ayon sa batas, ay malaya at kusang-loob na nagsasaysay ng mga sumusunod:

- Na ako ang nagsampa ng kasong Rape, Criminal Case Nos. 3765 at 3770 laban sa aking amang si Elpidio Antonio, na nakabinbin sa Regional Trial Court (RTC), Branch 36, Gapan, Nueva Ecija, at ang kapasiyan at hatol ng Hukom, Kgg. Arturo M. Bernardo, ay nakatakdang basahin sa ika-18 ng Setyembre 2000;
- Na matapos kong muling pag-aralan nagayong ako ay mayroon nag sapat na gulang at kalayaan, ang mga pangyayari kaugnay ng mga kasong isinampa ko laban sa aking amang si Elpidio Antonio - ay lubusan kong napatunayan, naliwanagan, at naipasya sa aking sarili na walang sapat na batayan at hindi makatarungan na

mahatulan at magdusa ang aking amang si Elpidio Antonio dahil ang tutuo ang kasong ito ay bunga lamang ng malubhang personal na alitan na namamagitan noon sa aking amang si Elpidio Antonio at inang si Thelma Manalad, at pinili kong pinanigan ang aking ina sa aking paniniwala noon na sya ang agrabyado at tama;

- Na sa ngalan ng katarungan at sa bisa ng sinumpaang salaysay na ito ay kusang-loob kong iniuurong at lubusang pinawawalan ng saysay ang aking nabanggit sa demandang Rape, Criminal Cases Nos. 3765 at 3770 laban sa aking amang si Elpidio Antonio, at walang sinumang pumilit, tumakot, at nangako ng anumang pabuya upang gawin ko ang sinumpaang salaysay pag-uurong ng demandang ito.[12] (Underscoring supplied)

The trial court denied both motions.[13]

The records of the cases were thereupon elevated for automatic review to this Court which, following *People v. Mateo*[14] providing for an intermediate review of criminal cases where the death penalty, life imprisonment and reclusion perpetua are imposed, referred them to the Court of Appeals.[15]

By Decision[16] of April 25, 2006, the Court of Appeals affirmed the trial court's decision, hence, the present appeal.

Appellant hinges his appeal on the execution by AAA of an Affidavit of Desistance.[17] Thus he faults the trial court

x x x IN ITS FINDING THAT THE ACCUSED IS GUILTY BEYOND REASONABLE DOUBT OF TWO COUNTS OF RAPE, DESPITE SUBSEQUENT RETRACTION AND SUBMISSION OF [THE] AFFIDAVIT OF DESISTANCE BY THE OFFENDED PARTY.

x x x x

x x x IN DENYING THE MOTION FOR NEW TRIAL AND IN NOT GIVING CREDENCE AND DISALLOWING THE PROBATIVE VALUE OF [THE] AFFIDAVIT OF DESISTANCE OF THE OFFENDED PARTY.[18] (Underscoring supplied)

The appeal is bereft of merit.

It bears noting that the affidavit was presented after the judgment of conviction by the trial court was promulgated which, as a rule, the Court frowns upon.[19]

For AAA's supposed Affidavit of Desistance to warrant a new trial, it must deny the truth of her complaint, not merely seek the withdrawal of appellant's prosecution.[20] Her statement that there is no sufficient basis for her father to be convicted of rape and it is unjust to convict her father and let him suffer ("walang sapat na batayan at hindi makatarungan na mahatulan at magdusa ang aking amang si Elpidio Antonio") is just a legal conclusion.

Apropos is this Court's pronouncement in *People v. Junio*: [21]

x x x The unreliable character of [the affidavit of desistance] is shown by the fact that after going through the process of having accused-appellant arrested by the police, positively identifying him as the person who raped her, enduring the humiliation of a physical examination of her private parts, and then repeating her accusations in open court by recounting her anguish, [the victim] would suddenly turn around and declare that "[a]fter a careful deliberation over the case, (she) find(s) that the same does not merit nor warrant criminal prosecution." [22]

Parenthetically, the affidavit is of doubtful authenticity, for AAA's purported signature thereon is different from her signature on her Complaint-Affidavit which she identified in open court.[23]

The conviction of appellant for both counts of rape must thus stand.

In view, however, of the enactment of Republic Act No. 9346 prohibiting the imposition of the death penalty, the penalty imposed for each count of rape is reduced to reclusion perpetua.[24]

WHEREFORE, the Decision of the Court of Appeals dated April 25, 2006 affirming the decision of Branch 36 of the Nueva Ecija dated August 15, 2000 is AFFIRMED with the MODIFICATION that the penalty imposed on accused-appellant, Elpidio Antonio, for each count of rape, is reduced to reclusion perpetua, with no eligibility for parole.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Corona, Azcuna, Tinga, Chico-Nazario, Velasco, Jr., Nachura, Leonardo-De Castro, and Brion, JJ., concur.

[1] Records, p. 1.

[2] Id. at 4.

[3] Vide TSN, May 18, 1998, pp. 2-46; TSN, May 22, 1998, pp. 2-23; TSN, May 29, 1998, pp. 2-15; TSN, July 14, 1998, pp. 2-7;

[4] AAA was born October 11, 1980, Birth Certificate-Exhibit "A," to Teresa Antonio and Elpidio Antonio; records, p. 70.

[5] Exhibit "B," id. at 14.

[6] TSN, May 29, 1989, p. 9.

[7] TSN, September 8, 1999, pp. 2-18.

[8] Records, pp. 271-286.

[9] Id. at 286.

[10] Id. at 289-322.

[11] Id. at 323-326.

[12] Id. at 327.

[13] Id. at 332.

[14] G.R. No. 147678-87, July 7, 2004, 433 SCRA 640, 653-658.

[15] CA rollo, p. 190.

[16] Penned by Court of Appeals Associate Justice Jose L. Sabio, Jr., with the concurrence of Associate Justices Regalado E. Maambong and Arturo G. Tayag. CA rollo, pp. 192-208.

[17] CA rollo, pp. 78-108.

[18] Id. at 92.

[19] Vide *Firaza v. People*, G.R. No. 154721, March 22, 2007, 518 SCRA 681, 692.

[20] *People v. Garcia*, G.R. No. 110990, October 28, 1994, 327 SCRA 826, 401.

[21] G.R. No. 110990, October 28, 1994, 237 SCRA 826.

[22] Id. at 834.

[23] Vide Exhibits "C-2"-"C-3," records, pp. 12-13; records, p. 327; TSN, May 18, 1998, pp. 13-14.

[24] Vide Section 2, Republic Act No. 9346.

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